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SAFE FRAMEWORK PILLAR 1:

CUSTOMS TO CUSTOMS

1. Introduction

On April 2019 Kenya Revenue Authority (KRA) reported that through collaboration with Interpol, they had managed to recover stolen vehicles at the port of Mombasa . The report further said that the same are to be repatriated back to United Kingdom (Where they came from). In May the British Broadcasting Corporation (BBC) reported the sacking of the Vice President of Gabon, together with a forestry minster, after "300 containers of timber went missing" at the port in the country, reportedly destined for China. This sacking was done by the president, Ali Bongo.

These two cases are among the many cross border situation that continually get reported by the World Customs Organizations (WCO) member states. Theoretically, with the WCO's assistance, fighting cross-border criminal system/networks both locally and international, as the ones referenced above, has never been easier.

But political interference and lack of capacity still present formidable challenges to many lesser developed WCO Member states. Conflict regions and other vulnerable regions and countries such as Northern Mozambique, Somalia, the Eastern provinces of the Democratic Republic of Congo (DRC), or the entire Central African Republic, among others, prove to be particularly hard territories for successful interventions against cross-border smuggling and crime.

The emergence of SAFE

In order to address these and many other global border tensions, the WCO Council adopted in June 2005 the Framework of Standards to Secure and Facilitate Global Trade – better known as the SAFE Framework. It is intended to provide strategies of deterrence to international terrorism, secure revenue collections and promote trade facilitation worldwide. Over time, the SAFE Framework has emerged as the global Customs community's concerted response to threats to supply chain security, equally supporting facilitation of legitimate and secure businesses .

Three pillars of SAFE have since been identified as drivers of its objectives. Customs administrations, in collaboration with respective governments, have been entrusted with the responsibility of making sure that the SAFE Framework is fully functional. The Three Pillars are: i) Customs-to-Customs, ii) Customs-to-Private sector and iii) Customs-to-Business.

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The Customs-to-Customs pillar, which is discussed in this note, essentially calls for partnerships among Customs administrations. Closer collaboration of Customs is essential for effective border control and monitoring of contraband, including UN Security Council embargoed material. This note attempts to look at the relationship (Customs to Customs – SAFE's Pillar I), the common challenges faced and recommends areas of policy improvement.

Customs to Customs

Increasingly, the trend within the international community to proliferate trade controls, international sanctions and embargoes requires Customs organization to not only focus on revenue collection and trade facilitation, but also to enhance the secure passage of legitimate goods and protect the global supply chains. To achieve these dual functions, the WCO formulated the SAFE Framework of Standards as the member states' primary tool kit.

One of the key objectives of the SAFE framework is to strengthen bilateral and multilateral co-operation between Customs administrations to improve their capability to detect and flag in real time high-risk consignments. High-risk consignments include the United Nations Security Council embargoed material, particularly proliferation-sensitive cargo destined to or originating from the Democratic Republic of North Korea (DPKR). Cases of violations of the UN sanctions resolution have been reported by the Panel of experts on DPRK; they have pointed out embargoed activities with North Korean counterparts in Uganda, Tanzania, Namibia, Angola, the DRC, and Mozambique.

The test of whether the provisions of SAFE Pillar I (Customs-to-Customs) and their correct implementation by member states will lead to more effective monitoring and detection of prohibited material is to-date inconclusive. In reviewing the performance of the Customs-to-Customs pillar, two key deliverables must be kept front and centre:

1.   Customs administrations arrangements have to promote seamless movement of goods through secure international trade supply chain.

2.   A mutually agreeable framework that enables the legal and seamless exchanges of actionable intelligence and information in a multilateral Customs to Customs collaboration

Changing cargo trends

However, these two mandates must accommodate today's Customs realities of ever-increasing volumes of cargo passing though the various entry points. Particularly, principal maritime entry points show almost unmanageable growth. In a year over year comparison, Mombasa ports reported a growth of 14.3% of cargo handled by June 2019. The 2018 to 2019 data is consistent

with longer-term growth patterns. In 2005, the port admitted 436,671 Twenty Equivalent Units – TEUs- (Containers); one year later, the cargo volume reached over 1.2 million TEUs.

Similar growth trends are reported in Dar es Salaam, which handled 287,948 TEUs in 2005. Container traffic volume rose to 590,763 TEUs in the year 2012/13 and over 800,000 in 2018.

Without adjustments to inspection and admission protocols, requiring Customs authorities all over the world to abandon their traditional unilateral processing of cargo and embrace a far more international integrated workflow will not promote the major goals of facilitating international trade and keeping supply chains secure.

a)   Advance Electronic Information Screening

Customs administrations must have the ability to inspect and screen cargo and transport conveyances before it arrives at the respective entry/exit point. Such forward looking Customs-to-Customs approaches lead to faster clearances and more accurate pinpointing of potential at-risk containers.

Under SAFE Pillar 1, Customs-to-Customs relationships are supported by an Advance Electronic Information system that assists in identifying high-risk cargo and transport conveyances (means of transport). The combination of the advance notification systems with automated screening and targeting tools enables receiving Customs administrations to manage risks of incoming cargo by identifying high-risk shipments while the vessel is still out in international waters. Thanks to the advance notification, preparations can be made, including having expert Customs inspectors or forensic teams at the dock when the vessel in question arrives. Taking action, in this context, includes also sharing identified risks with other relevant customs administrations abroad and internally with concerned authorities, such as other law enforcement or trade control authorities.

Despite the isolated and insular approach of Customs operations coming to a long-overdue end in the theory designed under SAFE Pillar 1, the praxis for African Customs operations remains burdened by severe capacity constraints. The key improvement to facilitate real time exchange of information among customs administrations across African nations would be the modernization of inspection technology. It should include, but is not limited to, large-scale X-ray and gamma-ray machines and radiation detection devices. But, this is only one part in upgrading of Customs processes. The second part pertains to communication means through which real-time exchanges of information, intelligence, and reports can be disseminated to relevant authorities and customs administrations that allow prompt interventions where needed.

For example, if a customs administration officer based in Kenya detects a potential risk during a routine check of its export consignments, that information should be transmitted immediately to the counterpart Customs organization of the cargo's destination country. Customs administration officials should continually and cooperatively work with their international

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counterparts and enable ways and means of not only sharing information but also developing plans of action aimed at securing international supply chains.

Even if, in theory, the deployment of more advanced technology would be embraced by developing countries and their Customs administrations, there still remains the unanswered questions of how they could acquire it and who will train their staff to apply it effectively. In other words, a great deal of political will is required to achieve fully informed Customs agencies across whole regions of the world.

Trademark East Africa (TMEA), an agency operating in the East African region, has been at the forefront in helping EAC governments' law enforcement agencies, including customs, better address the challenges of technology and infrastructure. From its report, TMEA says that approximately 38% of its budget is in the area of "Enhanced Trade Environment;" most of the budget is assigned to improving regional and national coordination through developing the capacities of the EAC organs, institutions, and ministries of EAC in each Partner State. Its eventual impact will come to the fore over time but already visible are some joint regional customs activities and initiatives the agency has been implementing in the region. One of TMEA's key successes is the creation of Joint Border Initiatives that enable, for example, Uganda's and Kenya's Customs administrations to work together at the border of Malaba. The same initiative has been replicated at the joint border of Namanga (Kenya and Tanzania). On these border crossings, customs officers work jointly, exchange information, and perform more efficiently – precisely as the SAFE Pillar 1 Customs-to-Customs intended.

Other players, like the Japan International Cooperation Agency (JICA), have also been fostering Customs-to-Customs collaboration with joint capacity building initiatives such as the Risk Management for Customs officials in the EAC. These joint activities and initiatives by both TMEA and JICA have contributed to improving working relations among customs administrations both at the respective customs officials and their organisation in the region.

SAFE's Customs-to-Customs pillar envisages further improvements of standards for all customs administrations :

• Integrated Supply Chain Management;

• Cargo Inspection Authority;

• Modern Technology in Inspection Equipment;

• Risk-Management Systems;

• High-risk Cargo or Container;

• Advance Electronic Information;

• Targeting and Communication;

• Performance Measures;

• Security Assessments;

• Employee Integrity

• Outbound Security Inspections.

So - what is the problem?

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There have been numerous reports of smuggling of contraband by criminal gangs in many African ports and harbours in Africa. The maritime industry's internal intelligence systems are replete with reports of criminal gangs off-loading prohibited cargo at small commercial harbours, usually not manned 24/7 by Customs officials, along Africa's east coast. These semi-active posts stretch from Kismayu in Somalia to Angoche in Mozambique. Even bigger ports are not been spared this vice. Criminal networks have also infiltrated and exploited semi-operational land border posts and, in some locations, even secondary and tertiary airports. Some powerful criminal networks have an impact at times on the political elite and the politics of some member states. Reports of drug gangs campaigning for political position directly or indirectly have been reported. By amassing such power, criminal gangs gain high levels of political protection and near impunity.

Transnational criminal gangs have been reported to operate in most entry points in Africa and elsewhere. A report by the UN Security monitoring team indicated that, in strife-torn Somalia, militia groups have "started to profit from drugs trafficked into Kenya. The main port in southern Somalia is in Kismaayo, a town that is under the full control of al-Shabaab, which receives its supplies through Kismaayo port and exploits port taxation schemes as a source of revenue."

More recently the president of the Republic of Kenya has been at the forefront on the fight against illicit trade of counterfeits. Some of the people behind this illicit trade tend to work with government officials, including in the respective customs administrations. This can manifest itself in the form of selling of information to criminal groups, facilitating the passage of illicit goods, and obstructing investigations. such illegal practices clearly interfere with the capacity of Customs organizations and diminish the potential benefits of effective Customs-to-Customs collaborations. A culture of condoned regional criminality tends to undermine the economy and trade. Therefore, these tendencies must be stopped and the effectiveness of law enforcement, including Customs enforcement, promoted.

1.   Capacity of Customs Administration

The success of the implementation of SAFE Framework Pillar 1 hinges on two deliverables:

•   The seamless exchange of information between customs administrations;

•   The provision for a mutual recognition of controls under certain conditions. The mutual recognition here refers to mechanisms developed by respective Customs administration that are equally agreed upon as acceptable for purposes of validation and authorization. For example, two Customs administrations can come up with a mutual recognition that if goods have been "checked" by one of them and the same goods are brought into the second administration, the check done Is respected and there is no need for a further check by the receiving administration. These mechanisms are needed to eliminate or reduce redundant or duplicated validation and authorization efforts.

These are the necessary tools to create an enabling environment for effective Customs enforcement.

For many Customs administrations of developing countries, tools like X-ray scanners are not cheap to acquire and maintenance costs present additional financial burdens. It should, however, be appreciated that most African customs administrations have benefited from donor countries that have enabled them to acquire some of these tools. These improvements greatly enhanced the work of Customs operations in Uganda where, for example, X-ray scanners have been used to detect smuggled ivory and pangolin. Similarly, in February 2019, South Sudan, using British supplied scanners, detected ivory concealed in containers destined for Asia.

In the era of automation, there is a need to link the scanners to most of these countries central customs processing systems. The capacity of these scanners to link the work of these tools to the main customs clearance system is well-understood. However, far from all main border points/areas are equipped with this equipment.

2.   Corruption

According to Transparency International, many countries in Africa rank poorly when it comes to the corruption index. This corruption has reportedly infiltrated many government institutions, including Customs services. In the absence of a robust risk management system (see below), the very nature and working method of Customs affords officers a lot of discretion, for example, in selecting which cargo to inspect and which to ignore. This exercise of discretion is fraught with abuses that can result in assisting traffickers and organized crime, defeating the whole purpose of customs enforcement. Many factors, including difficult working conditions, inadequate salaries, or limited career prospects, combined with the high probability of wrongdoing not being detected, are incentives to accept bribes or other forms of corruption.

To fully benefit from the Customs-to-Customs relationship approach, African countries and all others around the world must commit to fight corruption, particularly in government agencies like Customs.

3.   Political will

With many competing interests, never-ceasing budgetary pressures, and ever diminishing budget allocations, very deliberate political engagements by high level government officials can ensure that Customs organizations are equipped and prepared to implement the Customs-to-Customs concept. These political needs run counter to most countries in the developing world, whose political decisions makers often are left with budgetary constraints that they seem to overcome only by taking advantage of the short-term fix of Customs revenue collections.

Understandable as such decisions may be, they forgo the richer and more sustained benefits of a secure supply chain over the long-term. Changing mindsets at the top of the political food

chain will enable the effective implementation of the SAFE Framework Pillar 1 and a healthier supply chain.

For example, there have been reports of tensions among border agencies in some East African countries. This naturally doesn't support the Customs-to-Customs network. Effective border management requires that governments continually work in a cooperative manner in a ''chain'' like situation. To be able to accomplish this objective, cooperation is essential.

But cooperation is hard to come by if, at a typical border point, multiple national agencies have mandates to protect, control, and raise revenues while not necessarily sharing a mandate to cooperate with each other or with their counterparts across the border. Cross-border information sharing between front-line actors of border management operations, for example between Kenyan and Somalian Customs agents, is essential to prevent contraventions of sanctions, smuggling, and other criminal activities. In maritime border settings, the lack of bi-lateral, tactical Customs information sharing leads to even worse vulnerabilities, like piracy or hostage taking of humanitarian aid providers.

Policy options and the reality of national policies

Seamless exchange of information among Customs administrations is the cornerstone of the Customs-to-Customs network. To further facilitate this goal, the WCO has developed and deployed Regional Intelligence Liaison Offices (RILO). The RILO framework consists of regional offices serving respective, clearly demarcated regions of the WCO. Its key mandate is to coordinate communication, encourage information exchanges among national Customs operations, and, particularly, ensure the timely communication of tactical intelligence.

Each member state is expected to have a focal point within its administration who will be RILO's regional office's first contact for information exchange on and intervention against illicit border transfers. The RILO concept does not only work on a need-to-know basis. Seamless information exchange also has to entail a continuous interaction and cross-border flow of information without necessarily "asking for it." A supported and robust RILO network can do more for these free and efficient exchange of information which in the long will support the Customs to Customs pillar being discussed here.

While the WCO is encouraging its member states to accede to such cooperative protocols and recommending greater coordination in information exchanges, the practical application lags. Supportive multi-lateral and bilateral agreements notwithstanding, many African states can't see their way towards full support while dealing with the multitude of other challenges, distractions, and budgetary pressures. There is need for deliberate efforts, at times bilateral or even regional efforts, to have closer cooperation and enhancement of Customs to Customs cooperation. This will not only help customs administrations manage borders (including revenue collection) better but also help in making the world a secure place.

As an example of Customs to Customs cooperation, Kenya Customs implemented its Customs clearance system in 2005 called Simba. It was eventually enhanced with a module that provides constant and regular transmissions of information to Uganda Customs administration, including electronically flagging of sensitive cargo consignments. Based on such real-time information flow, the Ugandans could initiate necessary action in a timely manner. Kenya benefitted as well from the Simba transmissions because, when the data was reconciled for all cargo flows, some was found not to have arrived in Uganda; it was instead dumped in Kenya. This meant that Kenya could institute necessary enforcement measures for the goods not confirmed as received in Uganda. Such enforcement measures included collection of revenue. For revenue collection purposes, Simba was a win-win for Kenya.

Within East Africa, all customs administrations have online clearance systems. Uganda operates the Automated System for Customs Data (ASYCUDA); Kenya has the Simba system; Tanzania has Tanzania Customs Integrated System (TANCIS). Whereas the three countries operate as one Customs territory and harmonized legislation with a common external tariff, these customs clearance systems are not integrated, do not communicate with each other, and therefore present another insular Customs risk management approach. This is the challenge they face and perhaps necessary measures need to be put in place to make sure that this is addressed.

As part of this discussion, the WCO has come up with several IT tools and placed them at the disposal of its members; if fully adopted, they could greatly help in improving these customs to customs partnership. Such IT tools include the:

a) National Customs Enforcement Network (nCEN). This tool gives Customs administration the ability to collect, store, analyze, and disseminate at the national level information relevant not only to itself but also to other law enforcement agencies. nCEN gives Customs the opportunity to establish a vibrant intelligence and profiling capability that could help the Customs to Customs partnership if embraced.

b) Cargo Targeting System (CTS). This tool primarily has been established to enable Customs to capture air and maritime cargo manifest data in an "electronic format and analyze the collected data in order to identify high-risk shipments at import, export, and transshipment across the full range of Customs threats," including of UN embargoed material.

Such tools need to be fully adopted and implemented by WCO member states so that they can realize the full benefits of Customs to Customs partnership.

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