



Addressing Public Corruption is Fundamental to Trade Facilitation

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BY: EVELYN M. SUAREZ

With the finalization of a Trade Facilitation Agreement (?TFA?) at the conclusion of the 9th Ministerial Conference in Bali, Indonesia, on December 7, 2013 (see: https://mc9.wto.org/system/files/documents/w8_0.pdf), the World Trade Organization (?WTO?) proved that it is not dead. Significantly, the TFA is the first WTO trade agreement concluded since 1998 and the first fully multilateral trade agreement negotiated under the auspices of the WTO. The Organization for Economic Cooperation and Development estimates that these customs reforms would lower the total trade cost of shipping goods by 10 to 15 percent depending upon the country. Some expect implementation of TFA?s measures to boost global trade by an estimated \$1 trillion and global GDP by nearly 5 percent. As stated by the Office of the United States Trade Representative, ?it makes it easier for businesses big and small to participate in trade around the world ? and to support jobs through that trade.? In other words, improved customs procedures and trade facilitation should help all companies, large and small, gain access to new export opportunities by providing predictability, simplicity and uniformity in customs and other border procedures.

The WTO defines trade facilitation as ?the simplification and harmonisation of international trade procedures? covering the ?activities, practices and formalities involved in collecting, presenting, communicating and processing data required for the movement of goods in international trade.? The main features of the TFA include: required publication of regulations and fees; appeal-and-comment rights when new regulations are introduced; mandatory Internet availability of documents and payment options; simple and clear access to overseas documents and regulations; special procedures for expedited release of air cargo and perishable goods; transit guarantees for cargoes from land-locked countries through neighboring countries to seaports without special fees; support for the use of express delivery and air cargo; requirements for clear procedures to deal with cargo holdups and releases; and technical assistance and capacity building for low-income countries to put these reforms into place.

Developed economy Member countries are expected to implement the TFA on the date of entry into force, supposedly July 31, 2015, assuming approval by two-thirds of the WTO Member countries. There are special implementation rules for developing and least-developed Member

countries. Once the TFA is ratified, however, the hard work really begins with the technical assistance and capacity building needed for implementation in the lesser developed parts of the world. An unaddressed area fundamental to efficient and effective customs administration is the public integrity of border officials. Bribery of customs officials has been an all too common basis for investigations under the U.S. Foreign Corrupt Practices Act (?FCPA?). For example, investigations concerning the activities of freight forwarders and their oil and gas customers have yielded some hefty penalties (up to \$80 million). Payments to expedite customs clearance, avoid cargo inspections, avoid duties and taxes and extend Temporary Import Permits to avoid local regulations and overlook incomplete documentation have created liability under the U.S. anti-corruption law. So have misdescriptions of such charges, because the FCPA also requires companies to maintain accurate books and records. The solicitation of bribes and extortion by public officials have been described as an everyday reality in many parts of the world.

While enforcement of these laws against companies does encourage compliance, public corruption at the border goes largely unaddressed. It inhibits business in and trade with certain parts of the world, most notably in emerging markets, where many significant business opportunities lie because such markets need infrastructure and have growing middle classes. Implementation of trade facilitation measures must go hand in hand with addressing the demand side of corruption. There can be no trade facilitation when border officials solicit bribes and grant favorable treatment to those who pay such bribes. The demand side of corruption has generally been overlooked, and the implementation of TFA provides an excellent and even funded opportunity to address the problem. Thus, measures to ensure public integrity must be adopted along with the trade facilitation measures specified in TFA. Business must press for nothing less.

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