

# **CORRUPTION IN CUSTOMS: A CODE OF CONDUCT FOR CUSTOMS OFFICERS IN LATINAMERICA AND THE CARIBBEAN**

**By María Gabriela Sosa\***

## **Introduction**

Corruption in customs seriously hinders the flow of international business. It has a negative effect on the country's institutions: not only does corruption undermine the legitimacy of the customs administration, but also it seriously affects the economy of the country by creating an uncompetitive business climate<sup>1</sup>.

These premises were the main motivation of a recent international effort to control corruption in customs<sup>2</sup>. Within the framework of the Free Trade Agreement of the Americas (FTAA) negotiations, trade ministers of participating countries agreed to implement eight measures related to customs aimed at promoting and facilitating international business in Latin America and the Caribbean (LAC). These eight measures are part of a list of recommendations presented by representatives of the private sector during the American Entrepreneurial Forum.

The Interamerican Development Bank (IDB) financed the implementation of these eight customs measures in all countries of LAC. The seventh of these measures was the design and adaptation of a Code of Conduct for customs officers ("the Code").

The implementation of this project started in early 2001. To date, the Code has been implemented in five countries and it should continue to be implemented in other LAC countries until the end of the project.

## **The Challenge: Designing the Code**

A team of lawyers was selected to design the Code<sup>3</sup>. All of us had a common challenge: to design a code of conduct that was wider in scope as well as more profound and detailed than the

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<sup>1</sup> See: "Controlling Corruption: A Key to Development Oriented Trade." By Peter Eigen, Chairman of the Board of Directors of Transparency International. [www.transparency.org](http://www.transparency.org).

<sup>2</sup> Additionally, several international declarations emphasize the importance of fighting corruption in customs. The most important are the Arusha Declaration (Tanzania, July 1993) and the Columbus Declaration (Columbus, Ohio, 1994). They aimed to obtain the countries' commitment to adopt a number of measures to facilitate trade and to improve customs integrity. These two declarations are not simply an isolated mandate from an international organization, but are the result of the international community's conviction of the need to effectively solve the problem of corruption in customs.

<sup>3</sup> The team was composed of Alejandro Falla, Silvia Anzola and the author. Alejandro Falla is a Peruvian lawyer, and former commissioner of the National Institute for the Defence of Competition and Intellectual Property Protection (INDECOPI), who specialize in the removal of barriers to trade and investment and the promotion of competition in public services. Silvia Anzola is a Colombian lawyer with more than 20 years experience in customs and former Director of Integration of the Foreign Trade Ministry of Colombia. The author is a Venezuelan lawyer expert in tax and customs litigation, with a private sector background. Andrea Ewart, a Jamaican lawyer who specializes in trade and customs, joined the team later helping to prepare the future adaptation of the Code to the Caribbean countries.

existing ones around the world. Moreover, it had to be easily adapted to countries with both Common Law and Civil Law traditions.

The following factors were analysed:

1. Recommendations from international forums and specialized international organizations, such as the World Customs Organization (WCO), the United Nations Conference for Trade and Development (UNCTAD), CIAT<sup>4</sup>, the Global Forum, Transparency International, the Group of States Against Corruption (GRECO), the Office of the High Commissioner for Human Rights of the United Nations, the Organization for Economic Cooperation and Development (OECD), the Organization of the American States (OAS), and the World Bank;
2. Legal and administrative instruments that regulate the conduct of public officials in general and Customs officials in particular in Australia, New Zealand, Canada, United States, Japan, United Kingdom, Portugal, Spain, Brazil, Argentina, Mexico and Italy; the experience of those countries regarding the effectiveness of such instruments; and the model for codes proposed by the WCO, GRECO and the Office of the High Commissioner for Human Rights of the United Nations;
3. The reality and needs of the LAC countries comprising, in the majority of cases, the absence of internal regulations to control the conduct of public officials, processes that are too inefficient and slow to fight corruption; and the inability of the justice system and of the systems of Public Administration to quickly and effectively conduct trials in disciplinary matters.

### **The product: An Innovative Code**

The Code is certainly innovative and, at first sight, even controversial. However, after careful examination, both government and private sector representatives came to appreciate the document and agree upon even in the most difficult areas, such as the sanctions and the conflicts of interest.

The main characteristics of the Code are:

1. **The Code is applied to the corrupting and the corrupt.** In the context of customs, it means that the Code is applied to customs officials, as well as to any person involved in customs activity that can initiate, facilitate, or participate in corruption. They include the importer, the exporter, the customs agent, the cargo agent, or the port operator, among others.
2. **Corruption is not the only action punished.** Each and every conduct that may damage the image of customs and/or make it lose effectiveness and legitimacy is prohibited. It is evident that not every conduct that must be prevented and punished is an act of corruption. There are other behaviours that damage the image of customs or promote disobedience and the

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<sup>4</sup> The Inter-American Centre of Tax Administration (CIAT in Spanish) highlights the new concept and philosophy of the customs and tax agents according to the new trends in public administration and in govern ability. Its central axis favours accepting the tax phenomenon, and obtaining voluntary compliancy in tax and customs. The strategy of voluntary compliance establishes the obligation of the customs and tax administrations to earn the utmost respect and trust of the public, by acting with transparency, integrity and equity. To achieve this, CIAT recommends a new organizational culture, establishing as prevailing values the efficiency and efficacy in every administrative act, appreciation of the human resources, and the concepts of service, ethics and efficiency in the public services.

mediocrity of customs officers, such as attending work under the effects of alcohol or illegal drugs.

3. **The forbidden conducts are clearly defined.** It is not sufficient for the Code to simply describe the principles that must rule the conduct of the people who are subject to its provisions. The violations are described clearly to avoid ambiguities. At the same time, the description of such conduct are broad enough so as to not leave out any corrupt behaviour, nor any behaviour that must be punished because it is detrimental to the customs image.
4. **The disciplinary procedure is carried out by an entity outside customs.** Traditionally, the customs codes have internal disciplinary procedures (that are directed by the customs officials). Obviously, this increases the opportunity for corruption. The Code places the disciplinary process in the hands of a tripartite entity, the Disciplinary Committee, in which customs; private sector individuals involved in customs activities and the civil society participate.
5. **The disciplinary procedure produces a quick decision.** The disciplinary procedure is short and simple, applying techniques and procedural styles appropriate to the characteristics of each country. We had to be careful that the short nature of the procedure did not diminish the right of the accused to due process.
6. **Civil society must have an active role in controlling corruption.** The country, represented by its civil society is the main victim of corruption, and thus, the most interested to fight it effectively. Moreover, public derision is one of the main disincentives to corruption.
7. **To prevent is better than to punish.** The main objective of a Code is to instruct the officials in the expected behaviour, not merely to punish. Therefore, it creates mechanisms of prevention and establishes punishments that act as disincentives for the acts of corruption and improper conduct of those subject to the Code.

### **Adapting the Code to LAC countries**

The IDB required us to implement the Code in all the countries of the region that lack a code of conduct for its customs officers. To do that, the team travelled to the selected countries to know each country's Customs and meet with the people that could be subject and/or involved in the implementation of the Code.

Implementing the Code in each country required two steps: (1) adapting the Code to the legislation and special characteristics of each country and (2) designing the way in which the Code would be inserted into the local legislation.

To adapt the Code to the legislation as well as to the social, economical and political characteristics of each country, it was mandatory for us to start the work with an evaluation of the country economic activities, population, trade, investment climate<sup>5</sup> and political situation. The data collected at this point was also useful in the last step, when presenting the Code to the Customs officers and private sector representatives.

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<sup>5</sup> We analysed several instruments such as the Index of Economic Freedom provided by the Heritage Foundation ([www.heritage.com](http://www.heritage.com)).

The following and most important part of this first step, however, was a profound analysis of the country's legislation and legal tradition, beginning with the Constitution and including any law or regulation related to customs, public servants, and administrative procedures. This evaluation also involved the analysis of the special characteristics, problems and needs of each Customs<sup>6</sup>. We met with customs officers, as well as representatives of customs brokers, transport unions, labour unions, importers and exporters. The information gathered was then used to insert, delete and re-write several articles of the Code in such a manner that it: (a) does not collide with the local legislation; and (b) meets the special needs and characteristics of the country.

The second step was to determine whether the Code could be enacted as law within the existing legal and regulatory framework. This was the ideal way of enacting it given that the Code regulates the conduct not only of public servants but also of private sector representatives.

If enacting the Code as law was not possible, either because the legal framework did not allowed it or because the political situation of the country made it inconvenient<sup>7</sup>, it was necessary to design the reform of certain pieces of legislation so a decree could bring the Code into force. In some cases we found a simple way of giving to the Customs Director or the Financial Minister the special authority to apply the Code internally within Customs.

### **The results up to date: Honduras, Paraguay, Saint Vincent and the Grenadines, Dominica and Grenada.**

In the case of Honduras, we expanded the Code to include all officials in the Income Executive Agency. In this way it covers, not only customs, but also the entire tax administration. This experience is evidence of both the versatility of the Code to be adapted to a country's needs, and the clear possibility of the Code becoming a model for the rest of the Public Administration. Currently, the Code is in Congress to be passed as law.

Implementation in Paraguay was affected by two unusual factors. First, the Code was requested and delivered to a previous administration, while a subsequent administration was in charge of enacting the Code as a decree. The second factor was that the most important NGOs of Paraguay were extremely enthusiastic about the Code and were willing not only to participate in the disciplinary process established therein, but also to pressure the new administration for the Code to be enacted as soon as possible.

The adaptation of the Code to the aforementioned Caribbean countries was equally illustrative of its versatility.<sup>8</sup> It may be applied to countries both under civil law and common law. Besides, the experience of implementing the Code in the Caribbean showed clearly the feasibility and benefits of extending the Code to all areas of the public service.<sup>9</sup> In the Caribbean countries, given their socio-economic characteristics, the disciplinary process was simplified. It was also necessary to ease certain control mechanisms, especially those related to conflict of interests. Incorporation of the Code to the legislation of these countries is still pending.

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<sup>6</sup> Caribbean Customs are very different from Paraguay Customs, where the most important one is located in the triple frontier with Brazil and Argentina and it is famous for its corruption.

<sup>7</sup> Changes in the political structure of the country or even the composition of the country's Congress could mean that the Code was never enacted.

<sup>8</sup> Adaptation of the Code to Caribbean countries is discussed in more detail in the accompanying article by Andrea Ewart.

<sup>9</sup> Particularly in the case of Saint Vincent and the Grenadines representatives of the Public Service Commission (in charge of administering the proper conduct of public officials) expressed their belief that the Code should be adapted to the other areas of public administration.

Despite the many differences among these countries, there was a common reaction when the Code was initially presented to mid-level customs officers: rejection. All alleged that they could not be the only public officials subject to a code of conduct unless they would receive a better salary. We knew that this would happen to us too, so we decided to use some of the information we gathered in the first step. We started our final presentation to these officers showing them how their countries are seen by the international community, specially investors, as well as the corruption indexes of their countries. Their reaction was a much better one.

## **Conclusion**

The Code is by itself an important step and a useful instrument to fight corruption. Furthermore, it reflects that the recipient countries and many others in the future are willing to show the international community that they are getting in good shape for the future trade agreements. Knowledge of these initiatives and improvements should be widely spread among developed countries and investors worldwide.