Transparency International EU

The global coalition against corruption

At the border: corruption, customs and trade

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Trade agreements are increasingly less about administration of protection, but administration of risk. Risks to consumers, to the environments, risks to good governance.

Transparency International have been supportive of the attempts in both TPP and TTIP – RIP – to include a dedicated anti-corruption chapter. We recognize this is a complex issue with lots of pros and cons, nonetheless, on balance we think this is a good development and we welcomed the European Commission's commitment in 2015 to make this a standard feature of all future EU trade agreements.

The pervasiveness of corruption in customs procedures and the impact that has on trade. The total cost to the global economy of customs–related corruption is estimated at about $2 billion in lost revenues per year. On some West African trade routes, each truck driver will pay on average a bribe of $50 and lose 70 minutes every 100km, much of this due to illegal shakedowns.

West Africa may seem very far away, but the evidence suggests that even in the EU, far from being models of probity, there are many pockets of customs corruption. The evidence from firm-level surveys over the last decade or so is that there are countries such as Poland, Latvia and Slovenia where a small but significant number of companies report, always or frequently, paying a bribe.

The impact on trade, security and people's livelihoods is clear, and the WTO has put a lot of effort into agreeing trade facilitation measures that came into effect last year, which are designed to make these practices more difficult. But of course the question is whether ultimately these global measures are effective in reducing corruption.

Here the empirical evidence is mixed, whatever about other benefits, such as increased trade. Based on the limited data we have, there appears to be no clear relationship between the adoption of trade facilitation measures and changes in the frequency of bribes paid.

What is clear from the studies that exist is that progress in reducing trade-related corruption depends not only on the reforms implemented by customs agencies, but depends significantly on the extent of bribery in other government agencies and the regulatory environment more generally. Essentially it depends on whether there is a broader culture of integrity across the public service and government.

This is perhaps the first lesson, if we want to reduce corruption in customs and trade then we need to pay attention to overall levels of corruption and poor governance. That should be the focus of our efforts in the field of trade, and the next generation of trade deals – with their focus on regulatory coherence, transparency and good governance – provide us with an opportunity to do so.

Another reason to see these trade deals as presenting the anti-corruption movement with an opportunity, is the increasing focus on investment flows as well as trade.

There is an unambiguously negative effect that corruption has on FDI in countries with low levels or red-tape and low tariffs – a state of affairs that increasingly characterizes much of the developed and developing world. The effect is even more apparent in some of the riskier kinds of investment, such as mergers and acquisitions. So if we want to see the benefits of these kinds of investment, that is a reason to be concerned with anti-corruption measures as part of your trade policy and trade agreements.

But there is an important corollary of this principle. Many of the provisions in a modern trade and investment deal is designed to protect investors, for example by providing for compensation or dispute resolution mechanisms. If an investment – such as an acquisition of a foreign company – is found to have been made as a result of corruption, then investors should be stripped of these protections. This would provide another inventive to avoid these corrupt transactions, and the principle should be enshrined in all trade and investment agreements, and indeed it is good to see this partially reflected in the final text of CETA.

However, the main reason we are interested in anti-corruption provisions in global or regional trade agreements is that it provides another point of entry, another lever to ensure global convergence around tried and tested norms of good governance, insofar as they impact on international trade relations.

The question then arises – what is the value-added of embedding these norms in the WTO or ‘mega-regional’ trade deals over and above, say, the UN Convention against Corruption, now ratified by over 180 countries. There are two main responses to this question.

Firstly, there is at least a theoretical enforceability to the provisions in trade deals that are not available in cases where countries renege on their commitments under UN treaties. Trade agreements usually have state-to-state resolution mechanism, or agreed penalties, or at least consultation mechanisms in cases where obligations are breached. With regard to environmental or labour provisions, such mechanisms can be triggered as a result of a ‘persistent pattern of non-enforcement’, which would provide an element of redress in cases where a government only enacted paper reforms with no intention of enforcing them.

Such mechanisms have yet to be invoked in practice, and it is notable that the anti-corruption provisions in the TPP were not covered by the enforcement clauses in that agreement. Nevertheless, the mere threat of such redress can focus minds in a way that the peer review mechanisms of international conventions do not.

Secondly, including anti-corruption provisions in trade agreements gets the issue on the agendas of finance and trade ministers who normally don’t have to deal with such things. That can only be a good thing, and indeed sometimes finance ministers can be even more progressive on these matters, as we have seen in recent EU discussions on the benefits of

whistleblower protection legislation.

Perhaps there are some who think that the enforceability of such standards is pie in the sky, but in that case we must admit that all the environmental and labour and consumer protection clauses we put in the latest generation of trade agreements is also pie in the sky, and the whole project of achieving deeper trade integration through regulatory coherence based on shared principles and values is doomed. But that would be an odd thing for proponents and supporters of the EU to argue as a matter of principle, rather than something that should be applied with caution outside the EU's borders.

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