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Customs Automation and Process Reform
Lessons from Kenya

This Best Practice was adapted from "*Doing Business 2007*: How to Reform Case Study: Trading Across Borders—Kenya," prepared by Booz Allen Hamilton in cooperation with USAID for the World Bank Group's 2007 Doing Business Reformers Club Conference.

Executive Summary:

In an effort to improve its trading across borders and become more globally competitive, the government of Kenya has undertaken a series of administrative reforms to its trade processes. Though not fully implemented, these reforms have already achieved some positive changes, demonstrated by Kenya's Doing Business rank improving. It is hoped that with increased stakeholder involvement the full implementation of these reforms will further competitiveness in Kenya.

Introduction

In its efforts to meet its obligations as a founding member of the World Trade Organization (WTO) and its commitments to the Common Market for East and Southern Africa (COMESA), and in response to the formation of the East African Community (EAC) Customs Union and to the pressure of the private sector, the government of Kenya has begun a wide range of reforms in its trade processes. Although still underperforming, Kenya improved its Trading Across Borders ranking by nine places in 2006, moving from 154 to 145. These changes are only the beginning of what is possible with these progressive reforms.

Context

With the breakup of the first EAC in 1977, and the resulting economic and political turmoil within member countries (Kenya, Uganda, and Tanzania), Kenya entered an era of isolationism and import substitution that lasted into the 1980s. Between 1985 and 1990, Kenya attempted to shift from protectionism and import substitution to an export promotion strategy. Despite the introduction of measures such as manufacturing under bond (MUB), import duties, and value-added-tax (VAT) remission schemes, Kenya lacked the commitment to implement measures needed to liberalize trade, such as rationalization of tariff rates. When the pace of reform and liberalization remained slow, donors expressed their concern by freezing aid to Kenya in November 1991 and focusing their efforts in Tanzania and Uganda. This action called Kenya's leadership into question and served as a critical catalyst for Kenyan trade reform.

In 2003, the National Rainbow Coalition (NARC) government ushered in a time of change. The manifesto of the new government, its Economic Recovery Strategy for Wealth and Employment Creation (ERS), sought to provide a broad platform for the social and economic development of Kenya between 2003 and 2007. Even though "corruption remains a major monster," President Kibaki continues to drive reforms and to champion change.

Pressure for change specifically in Kenya's trade processes is being felt due to Kenya's position as a founding member of the World Trade Organization, its commitment to participate in the Preferential Trade Area (PTA) of the COMESA, the formation of the EAC Customs Union, and the private sector, which sees the need for Kenya to become globally competitive.

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Approach

In 1995, The Kenya Revenue Authority (KRA) was established to regularize Kenya's tax and customs administrations. It was expected to generate revenue through more efficient tax administration and the installation of customs procedures to eliminate, over time, corruption and waste, thereby expanding trade. In the years since its inception, the KRA, through a series of corporate strategic plans, has laid out and followed a focused course for reform and modernization. The KRA's most recent trade reforms are outlined in its Customs Reforms and Modernization Project (CRM) which runs through 2008–2009.

Specific Reforms

Under the CRM, the KRA has undertaken, among other things, installation of an electronic data interface system, establishment of a user-friendly Customs Services Department, introduction of pilot one-stop customs activity at border posts, streamlining of port operations through introduction of scanners, and development of a one-stop documentation process for handling import-export documentation. Such reforms, which are in various stages of implementation, are the building blocks needed to support Kenya's move to establish the port of Mombasa as a free port, a move seen as a "milestone in revolutionizing trade in the region," and one that will greatly strengthen Kenya's position of regional economic leadership.

Trade Facilitation Project

Kenya launched a trade facilitation project in 2004. Under the overall coordination of the Ministry of Trade and Industry, the project recognized the critical importance of trade facilitation to importers, exporters, and the Kenyan economy as a tool for solving trade-related situations and supporting Kenya's bid to continue as a leader in the regional integration process.

The Simba System

When the KRA began the search for an integrated systems architecture having the capacity to link all actors and documents involved within the tax and customs systems, it sought the experience of a range of other countries. There was pressure, including from COMESA, to convert to ASYCUDA, the system in use in Malawi, Uganda, Tanzania, Zambia, and Mauritius, among others. Kenya opted for the Simba system, which was in use in Senegal. At the time it was selected, Simba seemed able to support all the requirements of interface with both ASYCUDA and the documentation of regional integration without extensive upgrading. To support and facilitate interaction among regional systems, COMESA has designed an interface that allows ASYCUDA and Simba to talk to each other.

Global and Regional Trade Commitments

As a founding member of the WTO, "Kenya's commitments to WTO principles are integral to its economic policies," and Kenya has taken reform steps necessary to fulfill its WTO obligations. Kenya has also committed to participate in the Preferential Trade Area (PTA) of the COMESA. Through COMESA, for example, Kenya, with six other COMESA countries, is leading the way to put into place a regional customs bond guarantee program designed to, among other things, streamline the process of doing business in the critical trade corridor that runs from Mombasa in Kenya to Uganda and on to Kigali, Rwanda.

EAC-driven Reforms

The formation of the EAC Customs Union has provided major momentum to Kenya's trade reform process. Since the signing of the protocols in January 2005, the EAC Customs Union has gone into high gear to address critical areas of reform. Areas of reform include documentation rationalization and standardization, information communications technology, port services facilitation, border post cooperation, third-party insurance, transit charges harmonization, tariff reforms (common external tariff), and standards harmonization. The reforms will install the risk management procedures needed to build this expanded "domestic market" (originally signed by Kenya, Uganda, and Tanzania, the countries of Rwanda and Burundi have also now been accepted for membership). Kenya's need to comply with the requirements of the new Customs Union will continue to be a major driver for trade reform and customs modernization.

Private Sector–driven Reform

The Kenya Private Sector Alliance sees clearly that a major impetus for trade reform is Kenya's need to become globally competitive in business. A leading Kenyan lawyer expressed the opinion that the driving force for reform is being provided by Kenya's powerful clearing and forwarding agents, as well as leading importers and exporters – those who most understand the problems caused by dealing with excessive documentation, borderrelated costs, lost business opportunities, etc.

Indeed, the last couple of years have seen the dawn of a new era in public-private sector cooperation. The government of Kenya, under the leadership of the Ministry of Trade and Industry, has produced a private sector development strategy (PSDS) (2006–2010). The PSDS lays out five critical goals, the third of which calls for the government of Kenya to facilitate economic growth through trade expansion, for example, by finalizing Kenya's trade and industrial development policy and revitalizing its trade facilitation activities. While it remains to be seen if the plans outlined in the strategy be implemented, the private sector is more excited and encouraged than it has been in some time.

Reform Opposition

Opposition to reform has been relatively limited. Frustration with trade reform, whether from the public or private sector, has been no more than one would expect when significant change is introduced or, in the case of the KRA, when trade reform measures have to deal with expectations, as well as existing practice. When the Simba system was introduced in 2005 and did not immediately ease the backlog and hasten clearance procedures at the port, it encountered opposition from some stakeholders. The Kenya International Freight and Warehousing Association (KIFWA) initiated a court action because members felt that Simba imposed unfair and costly requirements, such as the need for computerization and training. Such reactions were caused less by opposition to reform and more by failure to introduce the system properly. Simba, although still not in full implementation, is now getting positive reviews, and more care is being taken to introduce and explain it. KRA and KIFWA are working on a memorandum of understanding that will govern the design and provision of training for freight forwarders and clearing agents.

Donor Involvement

Much of Kenya's trade reform has been carried out by the government of Kenya as part of the cost of government business. Donor involvement in Kenyan trade reform has been minimal in terms of direct funding and action, restricted to diagnostic studies and occasional technical assistance and training support. On the other hand, donors such as the World Bank, the Commonwealth Secretariat, USAID, and DFID have had a major impact on Kenya's thinking. Studies such as those carried out by the World Bank as part of the Diagnostic Trade Integration Study (DTIS) have provided detailed assessments of the potential for export-led growth in key productive sectors and have clearly delineated the types of constraints that Kenya has to address if it is to realize the trade potential of key productive sub-sectors.

Challenges of Reform

Delays, legislation, staffing/management, institutional conflicts, and capacity of the customs union have all proved to be challenges during this process. Reviews show that most projects take longer to implement than was originally planned. Simba, first investigated in 2002, was not introduced until 2005 and is still not fully implemented. Border post development and progress of railway transport were hindered, and laudable reforms such as those put forth by the Kenya and Uganda Revenue Authorities were "implemented in an uncoordinated manner leading to a disruption of business."

For the most part, Kenya's trade reforms have moved ahead of legislation. According to the managing director of the Kenyan Plant Inspectorate System (KEPHIS), "if we had waited for laws to do a number of things we're doing, we would not be doing them."

Implementation of trade reform and introduction of new electronic and customer service systems have forced the Kenya Revenue Authority to undertake extensive change-management activities. These have not been without incident. In its efforts to move its reforms forward quickly, the KRA introduced its first programs and personnel shifts before carrying out change-management sessions. There was a period of internal uncertainty as retrenchments were carried out and new employees recruited. Now, as part of its customs modernization reform activities, KRA employees are employed under the terms of service contracts that spell out expectations, in keeping with the government of Kenya's larger results-based management strategy.

Inadequate harmonization among key players continues to contribute to delays in implementation. For example, the Ministry of Trade has ideas of its responsibilities with regard to trade in agriculture that overlap with ideas held by the Ministry of Agriculture. In the area of customs administration, some jurisdictional debate continues between the Kenya Revenue Authority and

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BizCLIR, or the Business Climate Legal & Institutional Reform Project, is a multi-year initiative of the United States Agency for International Development with the goal of improving the efficiency and impact of assistance programs intended to help developing countries improve their business enabling environments. This series, Best Practices for the Business Environment, represents one of many knowledge management components of the BizCLIR project. The goal of the series is to highlight the known best practices, case studies, lessons learned, and in some cases worst practices, so that the lessons can benefit other practitioners in the field. All issues are available at www.bizclir.com.

the Bureau of Standards, although as a result of ongoing stakeholder meetings, Customs and the Bureau of Standards now appreciate each other. This understanding stands to be enhanced by Simba and by smooth operation between the two governmental agencies at border posts.

Concern is expressed about the capacity of the EAC Customs Union to move forward successfully. A number of those interviewed remarked on the fact that participating countries remain suspicious of each other. There is also the view that the EAC needs to be restructured so that it can act more quickly and spend less time talking.

Results

The reform process has resulted in a positive impact as each reform stage has progressed, as shown below:

- The stabilization of the Simba system, the introduction of scanners in Mombasa and the establishment of a "one-stop" document processing center at KRA headquarters have reduced clearance lead time for export-import documents from five days to one day.
- Clearance times at Mombasa port—achieved through improved agency coordination, harmonization of procedures, and 24/7 hours of operation—have been reduced from an average of 17 days to between 10 and 11 days.
- There is a perceived impact in terms of reduction of corruption. Private sector users of the new systems report that there is less need to pay undocumented fees, as there are fewer "officials" handling their documents and fewer documents being handled.
- Based on actions and reforms carried out to date, Kenya has effectively positioned itself to qualify for donor financing of some of its major projected reforms. The World Bank EAC Transport and Trade Facilitation Project is a US $70 million activity designed to provide support for implementation of the Customs Union; investments for trade facilitation in border post implementation, regional cargo tracking and port security; and support to joint privatization of Kenya and Uganda railways. The World Bank also will support the continued modernization of the Kenya Revenue Authority through the provision of support to the Customs Reform and Modernization Program.

Conclusions

Sixty-nine percent of firms in the trade sector interviewed registered satisfaction with the performance of the business environment. These sentiments are echoed by both private and public sector representatives. Although members of the Kenya National Chamber of Commerce and Industry feel that the trading system is still not fixed, as reflected in continuing issues involving interpretation of tariff classifications and police roadblocks, they feel that things are moving forward, that improvements are being made, and that the private sector is more involved.

One of the most powerful lessons of reform to date is increasing realization of the need for involving all stakeholders in reform (Kenya's parliament has yet to become involved!) and the importance of dialogue and communication among all stakeholders. At a meeting of UNCTAD representatives held in October 2006, a representative of the Commonwealth Secretariat stated that, based on experience to date, Kenya, as it moves forward, should give more attention to ensuring that problems are understood by all stakeholders, addressing absorption capacity issues, lining up political will, managing expectations, and putting implementation partnerships into place.

In Doing Business 2007, Kenya ranks 83rd out of a total of 175 economies in overall ease of doing business. Among the ten topics that comprise this overall ranking, Kenya has consistently performed lowest in the Trading Across Borders category. Although still underperforming, Kenya improved its Trading Across Borders ranking by nine places in 2006, moving from 154 to 145, even though its rankings in all other Doing Business categories decreased or remained the same. Kenya's nine-place advance in the 2007 rankings is seen as being the beginning of what is possible. "We haven't even started exploiting the potential of our IT system."