

# **Customs reforms in eastern Congo (DRC)**

Between norms and  
practices

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**WORKING PAPER / 2013.04**

**ISSN 2294-8643**

# **Customs reforms in eastern Congo (DRC): between norms and practices**

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April 2013

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**ABSTRACT**

This paper attempts to explain how importers, clearance agents and customs officers respond to ongoing customs administration reforms in the DRC. Customs reforms include computerization, single desk system and pre-shipment inspection. The DRC case reveals that the reforms as norms are indeed implemented, but they have not eradicated some 'mispractices'. Actors involved adapt their practices within the framework of the reforms.

## 1. INTRODUCTION

Customs duties contribute over 30% to the budgets of most African states and therefore take up a special place in their tax systems. In the developing countries, most goods for consumption are imported and most of the customs revenue is collected at borders (Dequiedt V., and al. 2009: 153). However, trade liberalisation policies since the 1990s and 2000s in the context of the World Trade Organization led to an important reduction of internal public resources from foreign trade taxes. In Africa, the implementation of the Economic Partnership Agreements (EPAs) with the European Union put an end to preferential trade (Chambas G. 2005: 136) and has exacerbated the fall in customs revenue.

In other respects, it is often noted that African customs administrations collect fewer resources than is expected of them. Corruption cases in customs are often pointed out as a potential reason for this shortfall. Corruption here means '*misuse of public office for private gain*' (Robertson-Snape F. 1999: 589). In this context, since the 1990s, African customs administrations have been subjected to reforms in order to conform principally to the World Customs Organization (WCO) standards on rules, value, classification and procedure. These reforms come within the framework of facilitation and simplification of trade in order to ensure a favourable business environment and encourage private sector investment. In addition, improving "*best practices*" in customs may contribute to an increase in the revenue from customs duties. The main objectives of reforms are then trade facilitation, increased revenues and stronger ethics (Li Likeng M.L, and Cantens T. and Bilangna S. 2009: 2, note 2). Customs reforms include computerization and employing a single desk system. Automation is supposed to ensure transparency, monitoring and control. Computers and training are often supported by international donors (De Castelneau P., and Hammer J.-F. 2009: 116-117).

The Democratic Republic of Congo (DRC) has also implemented these reforms. This paper focuses on two reforms according to their importance for importers: the requirement of pre-shipment inspection (PSI) and the electronic single desk for all customs formalities. This study is focused on direct imports of consumer goods. They are the most liable to numerous formal and informal customs levies in eastern Congo. The term "informal" is used to describe levies without legal basis and practices that are not in keeping with official norms and recommended behaviour (Olivier de Sardan J.P. 2008: 9).

Public administration reforms in Africa emphasize equipment provision and training; actor-involved practices are less taken into account. Scholars often give an explanation for African public administration dysfunction much in terms of corruption. But it is also relevant to underline the practical ways used by all actors involved in an administrative process. The main purpose of this paper is to explain importers, customs agents and customs officers' practices, relating to taxes and fees, in the context of implemented customs reforms. Our perspective is to understand how actors involved in the arena of customs charges respond to ongoing reforms. By assumption, we consider that there is a gap between norms and practices despite customs reforms. Thomas Cantens, with reference to the Cameroon customs reform through computerization, noted that there were certainly improvements but the old logic still held out, escaping the nature of the tool clearance completely (2007: 291).

Reforms always aim to ensure that the behavior of the actors conforms to professional standards. Professional norms organize the functioning of state services and are formalized through official documents, procedures, organizational structures, terms and conditions,

programmes, trainings, ethics and monitoring (Olivier de Sardan, J.P. 2008: 8). Professional norms relate to normative frames that actors are supposed to comply with. It is the case particularly for customs offices in the DRC.

This paper explains how actors involved in customs formalities actually proceed. They may be more driven by practical norms and partially by professional norms. In this way, some rules of the game (*ibid.* 2008: 5, 9) may be pointed out apart from normative features. These rules may be based on arrangements or practical conventions. Tacking back McNeil theory, Michael Diathesopoulos (June 2010: 18) distinguishes norms that can be observed in practice, constituting norms in fact from normative norms. In the context of our research, reforms strengthen normative norms which are often related to the 'technocratic' approaches taken by international donors, but they may not get rid of norms in fact. As noted by Odd-Helge Fjeldstad (2005: 3), there is often an acute disjuncture between the formal rules that define institutional structure and functions, and the 'real politics' of how revenue administrations actually work. We agree with Kristof Titeca and Tom de Herdt who stated that the question is not to describe practices as legal or illegal, but to take into account the tactics and manoeuvres available to all parties involved (2010: 579).

This study is a qualitative explanation based on field research we conducted in eastern Congo in November and December 2012. We ran interviews with customs officers, customs clearance agents, importers and other public administrations officers in Kasindi, Beni and Butembo. We also used observation and had access to some annual reports of the customs administration.

This paper is structured as follows. The first section outlines the principal-agent theory applied on customs formalities. The second describes customs reforms and their implementation in eastern Congo. The third explains actors' practices in the Congolese customs arena. The fourth deals with formal and informal taxes, duties and fees levied on imported goods. Although administration reforms need time, in the fifth section we attempt to evaluate customs practices in eastern Congo.

## 2. CUSTOMS ADMINISTRATION AND PRINCIPAL-AGENT THEORY

The theoretical framework of the principal-agent approach may be applied to analyze interaction between actors involved in customs formalities. Principal-agent models assume that the interests of principal and agent diverge and there is asymmetric information to the advantage of the agent.

In public economy, some authors consider agency problem between public administration, the principal and its officers, the agents. The public official is an agent pledged to act on behalf of the principal to produce public services. Despite incentives he receives, the agent can use his position for individual benefits in transactions with the clients. This misuse of public position for private gains is corruption which includes bribes, extortion, fraud and kickbacks (Klitgaard, R. E. 1991: 221, 224). So the principal cannot always monitor that the agent complies with the administration integrity. As pointed out by Klitgaard, experience as well as theory indicates that an organization is most vulnerable to corruption where agents enjoy greater monopoly power over clients, have greater discretion over the provision of a licit or illicit service, and take actions that are more difficult to monitor (1991: 225). Agency theory is concerned with resolving the *agency problem* that arises when the desires or goals of the principal and agent conflict and it is difficult or expensive for the principal to verify that the agent has behaved appropriately (Eisenhardt, K.M. 1989: 58).

Principal-agent theory attempts to find incentives schemes for agents to act in the interests of principals, to ensure their behavior complies with the wishes of the principals. If the principals have no adequate means of making sure agents carry out their wishes, agents are less likely to perform (Hughes, O.E. 2003: 12).

Drawing on Dequiedt and al. (2009), we consider the customs administration as the principal and the importer as agent although he doesn't act for the principal strictly speaking. In the DRC, customs duties are based on importer's declaration. But some importers could defraud through misspecification of quantity, misclassification of tariff, or undervaluation of goods (Dutz, M. 1996:5). Indeed, the agent knows more about the quantity and the value of his goods than the principal. This is an obvious case of asymmetric information. Customs administration has incomplete information. In such case, customs duties collected are not truthful because of the importer's opportunistic behaviour. He would minimize tariff payment and under evaluate goods. In such cases customs officers who control the imports may be corruptible and collude with importers.

To deal with this agency problem it is often recommended that the principal use another source of information especially a preshipment inspection (PSI) company. In the principal-agent theory, this company is considered as the supervisor. He carries inspection of the merchandises in the exporting country and intervenes before the customs administration. It is often supposed that this supervisor is not subject to corruption. It is a case of '*hiring integrity from the private sector, hiring private firms to conduct PSI of imports to provide objective data on the contents of imported shipments*' (Yang, D. 2008: 26, 27). Indeed, the customs administration needs an alternative source of information. This is in line with the Uruguay Round Agreement on PSI which states that, in order to prevent over- and under- invoicing and fraud, pre-shipment inspection entities correct the error and forward the correct information about goods<sup>1</sup>.

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[1] (Article 2.20).



According to Jean Tirole, the supervisor's role is to obtain more information about the agent's activity than is available to the principal, and to help the principal to control the agent. This author distinguishes three-layer hierarchies: principal, supervisor and agent (Tirole, J. 1986: 182-183). There is a goal conflict between importers who wish to minimize customs duties and the customs administration that aims to collect much revenue. There is agency problem on the one hand because the agent, in customs formalities may act in his self interest instead of the interests of the principal. In this way, the agent may deviate from principal's rules and aims and engage in informal practices. On the other hand it is related to information problem because the principal doesn't have adequate information about imports. Information available is provided to the principal by the import declaration and enclosures. The question is whether information provided is truthful. In this way, the principal may employ two different supervisors, the pre shipment firm and customs administration inspectors to control the agent's (the importing firm) declaration of imports. The model focuses on four elements (Dequiedt V., Geourjon A.M., and Graziosi G.R. November 2009: 2, 4, 12-13). First, the customs administration deal with asymmetric information as the agent knows more about the quantity and the value of imports. Second, the agent is opportunist and will underdeclare if the fear of being detected is not strong enough. Thirdly, the customs administration can inspect imported goods but the customs inspectors in charge of this control may be corrupt and enter a side-agreement with the agent. Fourthly, the PSI firm can also inspect the imports on behalf of the customs administration. According to these authors, the no PSI firm corruption assumption may be questionable but it is often taken as granted in the PSI literature. They quote from Johnson who argues that given their geographical separation, there is little contact between customs authorities and PSI agents, thereby making collusion between them extremely costly. Moreover, the PSI as a multinational company is highly dependent upon maintaining a good reputation and, therefore, has strong incentives to avoid corrupt activities such as colluding with the importer or government officials. But as the market for PSI services is oligopolistic, reputation as a disciplining force may not work properly (*ibid.* 4, note 7). PSI program reduces corruption by making it more difficult, but its benefits should not be overestimated.

Richard Waterman and Kenneth Meier point out that literature pays little attention to test the key principal-agent model assumptions of goal conflict and information asymmetry (1998: 173-202). However, it is relevant to apply principal-agent theory to analyze interaction between customs officers and importers because their practices sometimes apart from normative norms may be related to asymmetric information and conflicting purposes.

### 3. CUSTOMS REFORMS AND THEIR IMPLEMENTATION IN EASTERN CONGO

According to the revised Arusha declaration<sup>2</sup>: Automation or computerization of Customs functions can improve efficiency and effectiveness and remove many opportunities for corruption. Automation can also increase the level of accountability and provide an audit trail for later monitoring and review of administrative decisions and the exercise of official discretion. Where possible, automated systems should be configured in such a way as to minimize the opportunity for the inappropriate exercise of official discretion, face-to-face contact between Customs personnel and clients and the physical handling and transfer of funds.

Corruption typically occurs in situations where outdated and inefficient practices are employed and where clients have an incentive to attempt to avoid slow or burdensome procedures by offering bribes and paying facilitation fees. Customs administrations should reform and modernize their systems and procedures to eliminate any perceived advantages which might be obtained through circumventing official requirements.

According to Doing Business reports, the DRC often achieves substandard performance in public administration management. Several reforms have been undertaken in recent years. They include customs matters. The DRC implemented reforms to comply with the WCO standards and the Kyoto agreements on customs harmonization. They include the PSI of imported goods intended for Congo, the computerization of customs operations and the introduction of a single desk (*guichet unique*) system.

Since 2006, goods imported are checked before shipping by a company known as the Bivac, a multinational company which is a subsidiary of Bureau Veritas and is present in 145 countries around the world<sup>3</sup>. It has international centres for goods certification. In the DRC, there is a customs declaration system and customs taxation is mainly *ad valorem*. Customs duties are based on a declared invoice price of the goods. But it is the importer who knows the truth about the value, the quantity and other characteristics of the goods. As the customs administration does not always have adequate information on international prices to gauge the real value of imported goods, it subcontracts to this multinational. Thus, any importation of goods in the DRC is subject to PSI. Bivac inspectors control the quality, the quantity, the price and the compliance of imported goods, on behalf of its Congolese partners, the general direction of Customs and Excise (DGDA) and the Congolese Control Office (OCC). Bivac issues an inspection certificate which is useful in order to know the customs value of imported goods<sup>4</sup>. It is this base that should be utilized by the DGDA because importers may defraud through their customs declaration. The Bivac inspection should disclose goods under invoicing. Imports of goods without the PSI and the import licence are regarded as irregular and are subject to fines that equal the customs duties<sup>5</sup>. In principle, without these documents, imported goods should not be accepted for customs clearance. But they are allowed, providing that they pay penalties. Goods valued below \$2,500 USD are exempt from PSI. In fact, strict adherence to the law would require an import licence to import goods that are worth more than \$2,500, which is obtained from a commercial bank. Bivac receives a copy and transmits the information to its international offices in

[2] Articles 4 and 5

[3] There are five international firms active in PSI throughout the world: BIVAC International of Paris, COTECNA of Geneva, Inchcape Testing Services International (ITSI) of London, Inspectorate America from Houston, and Société Générale de Surveillance (SGS) of Geneva (LOW P. 1995: 5).

[4] Under Articles 1, 3 and 8 of inter-ministerial order 06/CAB/MIN/FINANCES/2006 and 004/CAB/140/MIN. CE/2006 of 16th June 2006.

[5] Under Article 1 of inter-ministerial order 009/CAB/MIN/ECONOMAT & COM/2008 and 281/CAB/MIN/FINANCES/2008 of 5th December 2008.

the exporting country. The supplier fixes an appointment to meet Bivac inspectors. After inspection, they send a report to their regional office<sup>6</sup> which forwards it to the Bivac main office in the importer's country; for the DRC it is in Kinshasa. This office gives permission to the Bivac office in the city of the importer to issue or print the inspection certificate. Since 2008 in the North Kivu Northeast region, the Bivac office is located in Butembo. For each customs dossier provided with the Bivac inspection certificate, the OCC charges a fee of 2.75% of the fob value of goods, 0.75% on behalf of Bivac. The main criticism against Bivac is that it creates delays and additional costs. In addition, the importer must subscribe the import information electronic form (FERI) issued by the Congolese multimodal freight management office (OGEFREM) or its shipping agents, in the port of loading<sup>7</sup>. It is useful for traceability, monitoring and control of imported goods carried by sea. This fee is paid at the port of loading or transit. For the Northern Corridor of imported goods to the DRC, this payment was suspended following a complaint of Congolese importers against the OGEFREM in a Kenyan court<sup>8</sup>.

Another reform consists of the establishment of the single desk for all customs operations. The hardware component consists of the computerization of customs through Asycuda<sup>9</sup>. This software developed and implemented by the United Nations Conference on Trade and Development is recommended to allow an integrated system of customs information. The single desk is a system of effecting customs clearance and collecting customs duties and taxes at a single administrative point. All documents and data required are processed on behalf of various administrations which are involved in customs clearance who electronically receive all information. In the specific case of customs operations, the DGDA is responsible for clearance and is institutionally in charge of the single desk<sup>10</sup>. It settles all taxes and fees on behalf of the other agencies involved in import taxation: the OCC, the OGEFREM, the Industry Promotion Fund, the National Fund for Road Maintenance, etc.

In Northern North Kivu province, main customs offices are located in Butembo, Beni and Kasindi. Kasindi is located at the border between the DRC and Uganda. As importers may clear their goods through the customs office of their choice, at present Kasindi receives more customs dossiers. Importers prefer to complete the entire procedure there so that their goods are then under free traffic from the border. Traffic through this customs post is often deemed to be the fourth or fifth place of national importance. Goods which enter by this bordering post are mostly destined for the commercial city of Butembo. Computerization and functioning of the single desk have been effective in the offices of Beni, Butembo and Kasindi during the first quarter of 2011.

We are particularly interested in the customs clearance of imported goods at the office of Kasindi. The Eastern Congo has turned, towards East Africa, the Middle East and South East Asia for its supplies. Goods arrive by sea, especially at the port of Mombasa in Kenya and then they are transferred by trucks to Congo.

Stages of the clearance process have not changed much save that the process is now electronic. As these customs offices have no public warehouse, goods are not unloaded.

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[6] For Asia, it is Dubai and Shanghai.

[7] Under the OGEFREM instruction ADG/ADT/001/08/2003 of 25th July 2003

[8] According to the Okapi radio news item (12/10/2012), the Kenyan law recognised on 17th September 2012, found that by levying its fees at a Kenyan port, the OGEFREM acted within law.

[9] Automated Systems for Customs Data.

[10] Under Article 7 of the decree 09/43 of 3rd December 2009.

Physical inspection should ensure that each commodity corresponds to its description on the customs declaration. On the basis of import documents, customs officers acquaint themselves with the cargo. The importer's clearing agent keys in his declaration which specifies the nature, value, quantity and tariff of the goods according to the codification of the DGDA. The clearing agents are also connected and configured to the Asycuda server. At the DGDA acceptance desk, the declaration information is compared to the attached documents; sometimes these are false or even forged. After that, the system automatically selects a channel for the customs dossier according to several criteria, including the credibility of the importer, of the clearing agent, the quality of the goods, etc. The green channel needs no verification. This is the case for regular importations of homogenous goods by the same importer who is well known and credible. In the yellow channel, more verification is required. The red is reserved for the dossiers which are not credible; a complete control including documentary and physical inspection is required. This is the case for less well-known importers, who bring in heterogeneous goods or commodities that have high tariff rates and who might defraud. At present, most imports in this region are immediately selected as red. Even in the East African Community, Asycuda classifies imports depending on their risk under "green", "yellow" or "red" (Kafeero, E. 2008: 58).

The customs inspector controls the price, quantity and tariff classification compliance of the goods. At this stage, the control of quantity is approximate because goods are not unloaded from the truck. The Bivac certificate is particularly useful for the control of the value. Otherwise, customs administration has a database of the average international prices of goods imported regularly in the DRC which are used as control values. Yet these must be updated regularly. Where there is compliance, even if the dossier was originally selected as red, it is re-directed to green. If there is non-compliance, the inspector may request that an alteration is made to the customs declaration. The dossier may also be sent to the litigation customs department in situation of undervaluation, change in the nature, quantity or origin of the goods, etc. But such cases are very rare. After inspection, customs taxes, duties and other fees are calculated by the system and have to be paid at the bank by the importer. The bank evens out customs revenues into the accounts of administrations legally involved. At the end, customs administration issues a clearance certificate, and then the goods are released.

Notwithstanding that two years of implementation of these reforms are inadequate to make a judgement; some benefits have been identified by importers, customs officers and local bankers. In fact, at present customs clearance takes less time than before. If all the documents are available and the declaration is truthful, goods are cleared within four hours. If more inspection is required, it may take at least two days, whereas before with the manual procedure, it took at least a week. The automatic system has reduced waiting cost for trucks at the Congolese border. The instability of the internet connection is the main constraint for the customs administration.

The single desk system has also reduced the number of people in customs clearance and therefore harassment. The centralization of all administrative operations at one point means that the importer does not have to pass through numerous administration offices including the OCC, the FPI, OGEFREM, the DGI, the DGRAD and technical services offices such as the SQAV<sup>11</sup>. In the previous system, at each step of the customs procedure, the importers had to pay informal fees; in this way, they lost valuable time and money. The single desk prevents the fragmentation of samples which also increases the administrative cost of collecting the amounts

[11] The General direction of taxes (DGI), the General direction of administrative and state-owned revenues (DGRAD) and the Service for animal and vegetable quarantine (SQAV).

due (Horton, B., Cantens T., et al. 2012: 160). In fact, as noticed by Low (Low, P. 1995: 118), the management of information through computers also reduces direct personal contact between customs duties collectors and importers that gives rise to opportunities for fraudulent collusion. According to a customs clearance agent: *'the demand for informal fees by customs officers has become marginal; there are some nostalgic who have trouble getting rid of old practices'*.

In this way, referring to non-official fees and charges within East African Community customs, Edward Kafeero notes that despite the law, corruption is still rampant (2008: 68).

Computerization and the single desk have also reduced the number of parasite services grafted onto the customs administration, which required the signing of the customs declaration and levied informal taxes. Computerization has almost removed these signatures throughout the clearance process and therefore, accordingly certain informal payments.

In addition, the reforms have contributed to the banking economy. Indeed, the requirement to pay customs duties through banks encourages importers to open accounts and pay by bank transfer. Fraud and corruption have consequently declined. Public money is thus more immune to "puncture"; it is faster channelled to the Treasury account. This is how a customs officer sums up: *'Nobody sees more money; even the customs receiver sees only the electronic data and records joints'*.

Furthermore, customs duties are on the increase. According to Luc De Wulf (2005: 9), enhancing revenue mobilization has frequently been the focus of customs reforms. It is also the case in the DRC. For eastern customs offices, in 2009, the monthly minimum reached was \$874,221(US); in 2012, it reached \$1,678,665. The monthly maximum was \$1,312,612 in 2009; it reached \$3,751,821 in 2012. This highest monthly revenue is almost three times that of 2009. Table 1 shows the average monthly revenues (in USD, at official annual exchange rate):

**Table 1**      **Average monthly customs revenues**

Year	Average monthly revenue (USD)
2009	1121642
2010	997833
2011	1507800
2012	2669939

Source: Our assessments based on reports of the DGDA, sub-direction of Beni.

Average revenue for 2012 is twice as much as that of 2009 or 2010. Higher values are observed in March-April around Easter, June-July before the beginning of the school year and October-December, making preparations for the end of year celebrations. It is clear that there are many imports into this area, for example, in October 2012, 880 statements were subscribed under various customs regimes. According to a customs administration official, this has led to the increase of nearly 50% of the premium that customs receive monthly.

However, revenues collected are often below assignments. It is very rare that customs administrations reach 100% of assignments. Table 2 shows the monthly averages of assignments (in USD) and the average achievements:

**Table 2 Monthly average customs assignments**

Year	Assignments (USD)	Achievement rate %
2009	1383258	79.28
2010	3708262	28.65
2011	3705449	26
2012	3939713	70.25

Source: Our assessments based on reports of the DGDA, sub-direction of Beni.

Compared to 2009, the average monthly assignments in 2012 almost tripled. According to the local DGDA officers, the assignments are overestimated compared to the local ability to mobilize revenue and the fluctuations of commercial traffic. The general direction setting assignments would ignore the realities of specific customs offices at local level. According to customs officers, assignments for eastern offices, particularly in the North Kivu province, should not be so high for various reasons. On the one hand, their regular imports relate to low-value goods such as clothing made in China compared to other customs offices such as Matadi that often clear high-value goods such as cigarettes or fuel. Assignments should take into account the nature of the goods regularly cleared at a given customs office. Also, many importers in this area are not well-read people; they run small enterprises and they often get into groups to purchase abroad. Their low fiscal culture should gradually develop. The local customs administration also noted that North Kivu has its own unique context because of the presence of armed groups and the impoverishment due to insecurity. In this way, the customs administration should apply the tariff in this area with a little flexibility. If a customs office is intransigent with importers, they may move to another which means the loss of importers and, as a result, the loss of the opportunity to reach revenue assignment. A customs officer pointed out that: 'The custom tariff is a law, but customs administration must adapt to the realities'. Thus, despite computerization, each office has its own way of working, given the realities of the environment, the degree of tax compliance and fiscal culture, the level of border rigidity, etc. Finally, according to customs officers, customs direction often raises assignments without taking into account ongoing tax exemptions which therefore reduce revenue.

To fight against customs fraud, a DGDA deputy director works at the Kenyan port of Mombasa. From Kenyan customs, he often receives copies of statements of goods in transit towards Congo. This should help the DGDA to know the real value, quantity and origin of goods. However, the recent report of the DGDA Beni<sup>12</sup> deplored 'the non-traceability of goods in transit or re-exported from Kenya to the province of North Kivu, yet communicated regularly by our representative of Mombasa.'

According to customs officers, mutual assistance agreement between the DRC, its neighbours and the main transit countries should help to fight against the falsification of documents and to have the real information about the merchandise along the whole route from its origin to its destination. This is especially helpful when goods have been transferred from a truck to another in a transit country or at a border. However, the data exchange with foreign customs administrations is still weak.

[12] The DGDA Beni report (October 2012).

#### 4. CUSTOMS NORMS AND ACTORS' PRACTICES

In July 2010, a study of the Ministry of Commerce noticed that importers do not respect the requirement of PSI. The absence of the Bivac verification certificate provides an opportunity for importers and customs officers to negotiate the customs value. In any event, in Eastern Congo the percentage of goods respecting the PSI system is low, only close to 10% of imports; this creates a market for customs transactions at the border (Ministry of Commerce, 2010: 68, 69). According to customs officers in Kasindi and Beni, the situation has not changed much. Most imports are accompanied neither with the Bivac certification nor the import licence. Local importers set out some reasons for not obtaining an import licence. It is nominative, yet most imports are the bulk purchases of many small traders; many do not have bank accounts but in the micro-finance institutions which cannot validate an import licence. In addition, they regularly travel to explore items to buy because the goods available from suppliers often change. This is mainly the case for clothes, shoes, phones, appliances, etc. It is therefore difficult to conform to the procedure recommended: ordering, receiving a pro-forma invoice, applying for an import licence and an inspection before shipment, purchasing and paying through a bank, shipping and at last clearing. In addition, the DGI receives a copy of the import licence. According to this fiscal administration, several traders commit tax fraud. Importers therefore fear the fiscal authorities gaining access to any information that would inform on their turnover. Until recently, traders were subjected to tax on turnover; it has now been replaced by VAT.

According to the Bivac official in Butembo, the rate of those who submit to the control of Bivac has increased and now exceeds 30%. This is the case of those who import under a customs exemption, a regime provided by the Investment Code. Others conform because they cannot defraud, they regularly import homogeneous goods, the average value of which is already known. At the start, some traders tried to comply with this inspection procedure. But they deplored the Bivac delay due to the fact that its inspectors are not present in all the cities where importers have their suppliers including China, Indonesia and the United Arab Emirates. It may have taken weeks for inspectors to arrive, but importers are not willing (or able) to wait because they depend on the schedules of their carriers; they want to save time to sell as soon as possible and ensure a rapid inventory turnover. In addition, it is difficult for inspectors to conduct systematic control when they purchase numerous items in small quantities at different prices as is usual for small local importers. Moreover, importers have realized that Bivac customs duties based on the real value of the goods are high and this has an impact on the selling price. They therefore believe that if they comply with Bivac, they are not competitive. In fact, importers come to arrangements with customs officers. According to clearance agents, despite penalty fees and informal payments, many importers prefer to pay rather than comply with the legal process. Importers are not afraid that the absence of the Bivac certification would be detected; they know that they would have to pay a penalty if caught but they profit more from this situation than to pay higher customs duties when the tariff is applied to the real value of goods. By illustration, some importers would pay fewer customs duties if they pass off clothing taxed at 20% as fibre threads which are taxed at 5%.

At each step of the customs clearance, customs officers assume that a dossier without a Bivac certificate is not truthful and that the importer might be trying to defraud. He is therefore willing to pay penalties, even bribes. These are called by customs officers “à côté” (AC), or “*compte bureau*” (CB). This extra revenue is paid in cash to customs officers, without

any proof of payment. Without a Bivac certificate, some importers or their clearance agents know that they should negotiate beforehand with the customs official a low customs value to put on the declaration. To meet with his approval, they have to pay him \$500-\$1500, according to the dossier. In this way he permits under-invoicing of goods. In addition, at each clearance step, other fees are negotiated and paid to customs officers: usually \$100 at the taking charge of goods desk, \$100 at acceptance, \$400- \$500 to inspectors to avoid returning the dossier to modification, \$50-\$100 to re-orientation and \$100-\$200 at the brigade desk. Customs officers know that such dossiers pass first to the local chief's office; so they ask their share to turn a blind eye. This income is to be considered as a "collusion premium". According to several customs officers, previously the system of informal income was centralized. It was used to pay a premium to customs officers not yet registered, to entertain customs delegations or guests, or to manage "local affairs" to use the customs jargon. Local customs officials also needed informal revenue to often offer various gifts to their hierarchies and customs inspectors. At local level, officers used to regularly share informal revenues with colleagues. But with the increasing pressure from the direction to officers to present a good image of customs administration, informal revenue collection is somehow "decentralized" and less common. By estimation, the customs office of Kasindi generates monthly average revenue of \$500,000 for the Treasury. According to our assessment, customs officers' informal revenue might reach \$100,000 per month, which represents 20% of customs revenue.

Some customs officers argue that they do not demand anything from importers but importers themselves or their clearance agents, aware of their wrongdoing, offer money to make customs operations easier. Actually, according to several former clearance agents, at the beginning it was seen as a kind of rightful bonus proposed by importers to customs officers. But as pointed out by Robert Klitgaard about Chinese culture, the "gift-giving" practice provided a fertile ground for corruption (1991, 5).

Later, such payment became "institutionalized" to such an extent that a customs officer at Kasindi pointed out that 'at present, customs officers are less interested in a customs dossier with an import licence and Bivac certification; they don't jump at it', because it fails to offer an opportunity for informal income. This situation is similar to that in Tanzania as described by Low:

*"In Tanzania (...) importers are obliged to pay numerous facilitation fees at each stage of the customs clearance procedures. While payment of these fees is necessary to speed up processing and avoid the costs of delays, the fees have become such an entrenched part of customs clearance that it is probably also true that goods may not be cleared at all without such payments"* (Low P., 1995: 100).

From a dossier without Bivac certification, not only do some customs officers earn informal income, but also 40% of penalties are given back to fiscal administrations; somehow customs officers are thus among the beneficiaries of these too.

Arrangements between customs officers and importers are thus based on a reciprocity norm as defined by Diathesopoulos M. (2010: 21): every party assumes that it will earn a benefit because of its own behaviour in the relationship and specifically that the other party will respond to it; every party's provision is matched by the other party's counter-provision.

Clearance agents recognized that it is often those who take the initiative to propose giving money to customs officers to cover fraud or falsehoods they have introduced in their declarations. Frequent customs infringements include misrepresentation of goods value, misrepresentation of goods tariff or quantities, false declaration of goods origin or number of goods parcels, etc. Certain clearance agents also justified the receipt of informal premiums as moti-



vation for customs officers to shorten the clearance process. In addition, importers often give them inadequate money for the entire clearance process; therefore they must negotiate with customs officers. On the other hand, tariffs, excise and VAT combined are so high that when applied to the goods true value, customs fees are very high.

Sometimes in Uganda, Congolese importers transfer goods from containers to ordinary trucks. One truck can carry the load of two containers of 20 feet each. The transportation cost is minimized, and a part of the quantity of the goods may be deliberately omitted on the clearance declaration. According to the chairman of the FEC Butembo, this agreement was negotiated with the Ugandan authorities. Congolese importers argued, on one hand, that given the bad conditions of roads in the DRC, transportation takes a long time and consequently the containers renting cost raises. On the other hand, their owners abroad demand that their containers should not go to the DRC to avoid the risk of theft or destruction because of permanent insecurity in this country. Some importers benefit from this opportunity to pass their goods under a border traffic regime where rates are lower.

For customs officers, importers and clearing agents have difficulty in changing their practices and conforming to reforms. Other officers pointed out that customs services have been computerized but not the brigade which still works as before. It is responsible for seeking smuggling. Even though some importers clear fewer goods than actually loaded in their vehicle; cases disclosed by the brigade are very rare. For customs offices of Beni, Butembo and Kasindi, the 2012 DGDA report mentioned only six cases of litigation for false declaration of customs value and undervaluation. According to customs officers, the brigade has more opportunity to earn informal income by hiding smuggling cases and making informal arrangement with importers.

Goods under a border traffic regime are subject to easier customs clearance. It concerns small parcels from border centres. Since the early 2000s, the disabled are involved in transport and clearance of small parcels at the border between the DRC and Uganda. According to the president of their association called "Umoja ni nguvu", this favour was negotiated under the rebellion administration (2001-2003). The disabled were allowed to do this so they would no longer come into public administrations offices to beg. Since then, they carry goods on their carts, especially soft drinks, beers, salt and salted fishes from the Ugandan border to the Congolese, a distance of about two kilometres. The disabled appoint people to push their carts which are often overloaded. The DGDA and the OCC use an ordinary small gate to clear such goods. Traders use the disabled because their carts offer an opportunity to transport quantities of undervalued goods in order to minimize customs fees. Indeed, the DGDA and OCC payment is based on their officers' visual valuation. The disabled as clearing agents pay in cash at this gate, on the importers behalf. On the Congolese border, after customs clearance, goods are then loaded onto trucks bound for domestic markets. Daily, especially on Tuesday and Friday, hundreds of carts go back and forth between the two border cities. The disabled are paid for the transportation and customs clearance.

## 5. CUSTOMS TAXES AND DUTIES

Imported goods are subjected to many customs taxes and duties, charged by numerous administrations. Formal levies are collected through the electronic single desk system. The Customs office (DGDA) collects customs duties, excise and VAT on behalf of the Treasury. The tariff rates have been reduced to 5%, 10% and 20%. However, the excise duties have increased. Levy on turnover had different rates depending on the type of merchandise ranging from 3% to 18%. In January 2012, this was replaced by VAT at a rate of 16% which is the same for all goods. If all taxes and duties are added up, customs cost has really increased for certain goods. On its own account, the DGDA also collects administrative and computing fees. The general direction of taxes levies 1% on the goods CIF value as a down payment of annual income tax. The Fund for the promotion of industry charges a fee of 2% on the customs value of goods. The OGEFREM charges a fee of 0.59% of the CIF value. The quarantine tax, collected by the SQAV, is levied on some goods especially pharmaceuticals, food, animals, etc. The administrative revenues administration (DGRAD) charges 1% of the goods CIF value as a penalty on importations without an import licence and 100% of customs duties as a penalty on importations without Bivac certification. The OCC charges duties of 2.75% of the value of the goods. Apart from the single desk, the provincial administration also levies a development tax. The Central Bank of Congo charges 0.2% on the amount transferred for goods imported with an import licence. The commercial bank which has validated the import licence also charges its fees.

Further charges are levied by various public administrations away from the customs clearance procedure. Despite their banning at the border, further administrations are still present including the national intelligence agency (ANR), military intelligence (B2), the public prosecutor's office of anti-fraud, borders police, ordinary police, the army (FARDC), etc. In 2011, the clearance agents association established in Kasindi a kind of informal single desk for these administrations, a unique point where each is paid its fee. On each dossier the clearance agents association charges \$80 on behalf of these informal fees. It is a local arrangement, more or less formalized to save importers the trouble of harassment. For clearance agents, it is also a strategy to provide them with security because it is known that they always carry large sums of money. If they do not pay these administrations which are related to security services, they are afraid of being harassed, robbed or attacked.

There are also other fees charged on each importation including \$15 collected by clearance agents association for local development, \$100-\$250 collected by the traders' union (FEC) in Butembo as an entrepreneurs' contribution to local development initiatives (CO.E.I.D.L.). These "private taxes" are collected by non-state actors.

Numerous public administration agents, formal and informal, are also present when goods are unloaded. The customs (DGDA) and control agents (OCC) are present to monitor goods quantities unloaded comparatively to those cleared. In fact, it is also an opportunity for these officers to earn informal payment from the importer.

This taxes listing aim is to prove that imported goods are subject to various levies. One wonders whether fiscal administrations take into account traders' interests and their real fiscal capacity. Importers, who conform to rules and those who do not, often sell at the same price. But the former is penalized with higher taxes. This is not likely to encourage formalization.

## 6. ACTORS PRACTICES, COLLUSION GOVERNANCE AND PRINCIPAL-AGENT RELATIONSHIP

As we pointed out, some importers make “arrangements” with customs officers in order to reduce customs duties. We have already noted that even before completing customs declaration, some importers or their clearance agents negotiate with the local customs chief the value to take into account. During the unloading, some importers also negotiate with the brigade of DGDA in order to hide discrepancies between goods quantities declared and those really unloaded. These are opportunities for collusion between importers and customs officers, and for informal payments. The single desk system has prevented administrations from collusion with importers. Some of them complain about the revenue collected by the DGDA on their behalf arguing that it is not adequate. For them, it is due to the fact that the DGDA officers collude with importers to undervalue imported goods; consequently all taxes and duties are lower. By illustration, the OCC often charges additional fees besides those paid through the single desk. According to one of its officials, the DGDA computerization has not completely ended the practice of arrangements because *‘it is a human who manipulates the machine’*. Opportunities for malpractice have been reduced slightly. In the ad valorem system, customs value is based on the invoice price. It therefore happens that importers arrange with customs officers to undervalue the goods in order to pay lower customs duties. Collusion refers to this complicity as described by Yang (2008: 25-26): *‘corrupt customs officers may be complicit in the revenue fraud, turning a blind eye to falsified import documentation in return for bribes.’*

The customs brokers play an important role in this “collusion”. Their main strategy is to build relationships through which they secure customs dossiers from importers and negotiate the lowest clearance duties with customs administration. To pay the lowest customs duties, they use various means including under-invoicing, undervaluation, changing goods nature, origin, or quantity, offering bribes, etc. By “collusion” we mean *‘an agreement made between two or more people for a fraudulent or deceitful purpose’* (Olsen, T.E and Tursvik, G. 1998: 413).

A customs declaration is filled in by clearance agents and approved by the DGDA. They can get help by clearing assistants. These assistants are mainly responsible for following customs dossiers and arrangements through customs administration. They are therefore called “followers”. Another category of assistants consists of “marketers”. These brokers may be well known by importers or customs officers. They use these relationships to give dossiers to clearance agents or to facilitate the follow-up of customs dossiers. These assistants are not licenced by the DGDA, but their relationships may be used by importers or customs officers to implement collusion. In practice, for customs clearance an amount of money is often given to the clearance agent by the importer to cover all formal and informal payments. At this level there is information asymmetry as the importer ignores the payment made by the agent at each step of the dossier. Only the agent masters this information; this allows them to earn considerable sums because there is no proof of payment. This income opportunity has attracted several individuals into the customs agencies<sup>13</sup>.

At the DGDA, particularly for technical staff, the conventional procedure of recruitment is now followed but some officers were appointed several years ago through family or friendly relationships, recommendations, membership of political party, favoritism etc. This is

[13] Probably to clean up their sector, the recently the DGDA has increased the agent licence deposit from \$30,000 to \$100,000 to clear various goods, and from \$100,000 to \$250,000 to clear petroleum products. At the same time, it has reduced the agents’ maximum rate of commission from 5% to 3% of customs duties.

probably one of the reasons for the plethora of staff at the DGDA pointed out by the 2009 report of the sub-direction of Beni. Currently, it has more than 230 agents. However, in principle, customs officers and agents should be on regular rotation to avoid forming a relationship and colluding with importers.

According to some importers, certain suppliers abroad facilitate the goods undervaluation. Better to see their customer back soon for another purchase than to give the true valuation. They provide two invoices: one for the customer and another undervalued provided for Bivac inspectors. The importer avoids penalties and pays low duties.

Arrangements between actors become, to some degree, customary practices to the extent that one can speak of “collusion governance” as a mode of functioning particularly for customs formalities. Relationships, mutual incentives and repeated play are among mechanisms which make collusion possible (Olsen, T.E. and Torsvik, G. 1998: 433).

Collusive behaviour implies that the actors involved attempt to manipulate information for their vested interests, particularly in the context of informational asymmetry (Laffont J.J., and Martimort D. 1997: 880). Bhagwati dealt with information manipulation, particularly “faked invoicing” (1978: 68) concerning imports. Indeed, information about goods imported may be manipulated by importers in collusion with customs agents. They collude because they both take advantage of such practice. As Jean Tirole noted: ‘...one-sided favours call for reciprocated ones’ (1986:185).

To fight against such practices, the DRC has adopted an import verification programme in order to secure customs revenue. It delegates to Bivac, an international independent firm, responsibility of goods inspection before shipment. Its certificate should ensure that the customs value is based on accurate information. Customs is a public sector, but it is forced to hire the services of a private partner. The customs administration may be considered the “principal”; it delegates control activity to a “supervisor”, the Bivac, to access the importer’s information. The importer is assimilated with the “agent”. Supervisor intervention should reduce customs officers’ corruption. But it is necessary to ensure that there is no collusion between customs officers and the inspection company in order that this anti-corruption mechanism works properly (Dequiedt V., et al. 2009: 156, 158). It is expected that the supervisor will correct the information asymmetry and to put an end to collusion opportunities between importers or their clearance agents and customs officers.

There is thus a link between some aspects of collusion theory or those of principal-agent theory.

PSI is thus helpful to provide the customs administration with true and correct information on goods imported. But it is not enough to put an end to collusion practices in Eastern DRC. Penalties for importations without the Bivac certification seem to be suited to importers. In this context, PSI is used but the aim of preventing under-invoicing is not achieved because arrangements are still possible between customs officers and importers who fail to fully comply with customs reforms.

## 7- CONCLUSION

This paper attempts to explain how importers, customs agents and customs officers respond to ongoing customs administration reforms in the DRC. It shows that there is a gap between norms and practices despite these reforms. Old mispractices of bribery, fraud, kickbacks, extortion and collusion between officers and importers still hold up. However, the DRC is in the process of reforms which effects are not likely to be observed until the medium and long term. Automated customs clearance process and preshipment inspection should improve efficiency in customs formalities and revenue collection. In fact the inspection of imported goods before loading and the single desk system are helping to reduce fraud and customs revenue is rising. However, in the arena of customs taxation, a number of importers, clearance agents and customs officers still use “arrangements” as practical norms. Our findings point out that commodities are still cleared through legal channels, but importers use collusion in order to minimize numerous and high customs duties. Customs officers, clearance agents and importers do not reject the reforms. In practice, there are also unofficial norms. International institutions advised developing countries to adopt reforms in order to ensure good governance, accountability, transparency, democracy etc. The administration sphere is therefore subjected to normalization from the state legislation and from the international governance framework. Beside these official norms there are also informal norms which guide actors’ behavior (Chauveau, J.-P. et al. 2001, 147, 148). The reality between these various spheres is that in the customs sector in the DRC, one can also speak of the “negotiability” of official norms. Practical norms such as of flexibility, gift-giving, reciprocity and arrangements are among norms in fact or practical ways that actors involved in customs taxation arena still use. So importers, their clearance agents and some customs officers move between norms and practical ways. The DRC case reveals that the reforms are indeed implemented, but they have not eradicated certain practices. Actors involved seek their interests within the framework of the reform. Some importers continue to seek low customs duties and a number of customs officers continue to get informal payments despite automation.

Automation, single desk and preshipment inspection contribute in some respects to strengthen transparency and control. But these ‘technocratic’ reforms should also take into account actors’ involved practices.

The DRC has reduced some customs duties rates, but importers still consider that it is not enough. Moreover, using public revenue for public infrastructures provision may encourage importers to share administration goal of maximizing resources from taxes.

There is agency problem in customs formalities. On one hand customs administration’s and importers’ goals are conflicting. On the other hand, as customs formalities are based on importer’s declaration, the DGDA as principal faces up to asymmetric information. Based on the principal-agent theory, the use of a customs supervisor for PSI, namely Bivac, helps to reduce information asymmetry and fraud. But regulation itself allows for collusion by the tolerance of informal imports although subjected to penalties. Importers accommodate themselves to these fines. In addition, this option provides the importers or clearing agents an opportunity to negotiate the customs value to declare in order to minimize duties. This is also an opportunity for informal income. It is obvious in such a case that, ultimately, the Treasury is the loser. The DGDA reforms still need concrete measures of supervision, monitoring and control so that practices change radically. In this way, regular rotation of customs officers and relocation of staff, less monopoly power over importers and restructuring relationship between officials and cus-

toms clearance agents should contribute to fight against customs mispractices. Moreover, the Congolese administration should also fight against impunity. It is difficult for customs administration to be sheltered from corruption when other administrations such as justice are still corrupted. Reforms should include ethical issues in order to promote general interest. In this way, Luc de Wulf (2005: 17) notices that: *'new procedures can be provided, automation installed, and integrity proclamations made. However, in the final analysis, the services will only be as good as the staff that provides them'*.

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