



**Report of Investigation into Alleged Commission of
Corruption and Corruption-Related Offences
involving Labianca Group of Companies and the
Customs Division of the Ghana Revenue Authority**

3 August 2022



1.0 Introduction

- 1.1 The Office of the Special Prosecutor presents this report on an investigation into a complaint of corruption and corruption-related offences against Labianca Company Limited and the Customs Division of the Ghana Revenue Authority.
- 1.2 The report has been redacted to protect the privacy of persons and lawful trade secrets of investigated companies.

2.0 Background

- 2.1 On 16 November 2021, the Office of the Special Prosecutor (hereafter, OSP) received a written complaint from one Frank Asare against Labianca Group of Companies and its subsidiaries (hereafter, Labianca) and the Customs Division of the Ghana Revenue Authority (hereafter, Customs Division).
- 2.2 The complainant alleged ongoing corrupt, illegal and questionable dealings between Labianca and the Customs Division resulting in unlawful markdown or reduction of benchmark values of frozen food products imported by Labianca under the guise of customs advance rulings. According to the complainant, the unlawful markdowns or reductions of benchmark values were procured and being procured chiefly because the beneficial owner and Chief Executive of Labianca, Ms. Eunice Jacqueline Buah Asomah-Hinneh engages in influence peddling through her positions as a member of the Council of State and a member of the Board of Directors of Ghana Ports and Harbours Authority.
- 2.3 The complainant contended that Labianca has gained undue competitive market advantage in the frozen foods industry by reason of the alleged corrupt and other unlawful dealings. It was also alleged that the same undue competitive market advantage had been secured for supposed subsidiaries of Labianca – Rafano Frozen Foods Company Limited and Yoba Capital Limited.

3.0 Investigation

- 3.1 The Special Prosecutor, upon determining that the complaint was within the mandate of the OSP, authorised the commencement of preliminary investigation into the matter in accordance with regulation 5 of the Office of the Special Prosecutor (Operations) Regulations, 2018 (L.I. 2374). The preliminary investigation was conducted with as little intrusion into the privacy of individuals



and the business operations of the cited companies as the circumstances permitted.

3.2 Labianca, being the main subject of the investigation, was directed to submit the following documents covering the period 2017 - 2021 in accordance with section 29 of the Office of the Special Prosecutor Act, 2017 (Act 959) and regulation 10 of L.I. 2374:

- i. Mode of payment for consignments (including Transfers and SWIFT) – to ascertain actual payments to suppliers
- ii. Sales contracts – to verify descriptions of products from suppliers abroad
- iii. Original invoices – to ascertain pricing of products and INCOTERMS
- iv. Bills of lading – for crosschecking with shipping lines
- v. Sales books – to ascertain quantity and description of products sold
- vi. Applications for customs advance ruling with attachments and annexures – to ascertain declared values and the basis for the grant by the Customs Division of markdown on benchmark values
- vii. List of all consignments to be cleared – to prevent subsequent clearance and assure markup of values where necessary
- viii. Details of company registration and that of subsidiaries (if any) – to detect the clearance of consignments through other persons, natural and juridical
- ix. Annual Tax Returns filed at the Domestic Tax Revenue Division of the Ghana Revenue Authority
- x. List of company assets
- xi. Record of employees
- xii. Declaration of property and income of officers of the company

3.3 Upon being satisfied that the circumstances of the matter reasonably indicated so, the Special Prosecutor authorised the commencement of full investigation under regulation 6 of L.I. 2374 to prevent or prosecute corruption or corruption-related offences. In aid of the investigation, several persons were invited to the offices of the OSP for interviewing and they were accorded the right to be represented by Counsel and full opportunity to respond to the complaint.

3.4 As a result of the nature of the documents obtained by the OSP during preliminary investigation, there was no necessity to request the complainant for further assistance.

3.5 The Deputy Commissioner for Customs, Mr. Joseph Adu Kyei was interviewed on 10 January 2022 in the presence of his Counsel, ACP/Mr. Edmond Omari



and ACP/Mr. Samuel Tetteh, both Customs Officers. Mr. Adu Kyei was considered a necessary person to the investigation as it was found that he granted markdown of benchmark values to Labianca in respect of frozen goods.

- 3.6 Ms. Eunice Jacqueline Buah Asomah-Hinneh was interviewed on 19 January 2022 in the presence of her Counsel, Mr. Owusu Adokoh of Rosentesia Law Firm, Accra. Ms. Asomah-Hinneh was considered a necessary person to the investigation as the beneficial owner and Chief Executive of Labianca and in respect of whom the complainant had alleged corruption and corruption-related offences in favour of Labianca by employing her high standing as a member of the Council State and a member of the Board of Directors of Ghana Ports and Harbours Authority.
- 3.7 Mr. Etse Gadegbeku was interviewed on 19 January 2022 in the presence of his Counsel, Mr. Owusu Adokoh of Rosentesia Law Firm, Accra. Mr. Gadegbeku was considered a necessary person to the investigation as the Managing Director of Labianca with responsibility for the day-to-day administration of the company.
- 3.8 The Commissioner for Customs, Colonel (Rtd.) Kwadwo Damoah was interviewed on 16 February 2022 in the presence of his lawyer, Mr. Bob Senyalah of Senyalah Law Bureau, Accra. Colonel (Rtd.) Damoah was considered a necessary person to the investigation as the supervisor of the official duties of Mr. Adu Kyei and the ultimate bearer of responsibility.

4.0 Findings

- 4.1 Labianca Company Limited commenced operations in 2014 and it is wholly owned and controlled by Ms. Asomah-Hinneh on all practical and legal considerations. The company, it appears, imports about two hundred (200) forty (40) footer shipping containers of frozen chicken parts, fish, pork and fries monthly primarily from Europe and the United States of America. It enjoys a substantial market share in the imported frozen foods industry.
- 4.2 There was not much engagement with the Customs Division in the first three (3) years of the company's operations beyond the settlement of standard customs duty and other tax obligations until 2017 when the company actively commenced applications to the Customs Division for the acceptance by the latter of the values of frozen foods it intended to import. By the time the company commenced the applications, Ms. Asomah-Hinneh had been elected a member of the Council of State representing the Western Region and appointed a



member of the governing board of Ghana Ports and Harbours Authority – positions she held at all material times. On this reckoning, Ms. Asomah-Hinneh is a politically exposed person as defined under section 79 of Act 959.

- 4.3 It would appear that the coincidence of the indicated applications and the public office appointments of Ms. Asomah-Hinneh was not altogether accidental. There is strong evidence to suggest that the events are a product of influence peddling.
- 4.4 Of especial significance to the investigation is a joint application for the acceptance of values of frozen foods intended to be imported lodged at the Customs Division by Labianca and Rafano Frozen Foods Company Limited on 6 April 2021, two (2) months after the appointment of Mr. Adu Kyei as the Deputy Commissioner of the Customs Division in charge of operations.
- 4.5 The application was almost outlandish as it, in effect, requested for the acceptance by the Customs Division of a range of values between 50% - 80% lower than the approved benchmark values of the frozen foods in question. Mr. Adu Kyei, who was seized with the matter, declined the prayer of the applicants on the advice of the Customs Technical Services Bureau (CTSB). Had the matter ended there, the complaint would have had no substance and the investigation would have terminated at the preliminary stage. Further, the perplexingly audacious nature of the application would have been rendered of no moment.
- 4.6 However, Mr. Adu Kyei proceeded to render a customs advance ruling to the applicants by reducing the values of their intended imports between a range of 5% - 10% below the approved benchmark values of frozen foods. Mr. Adu Kyei claimed that he based his decision on proper procedure – being a letter dated 6 February 2018 authored by Mr. Isaac Crentsil, a former Commissioner of the Customs Division and that his decision resulted in the prevention of loss of revenue to the State. Mr. Adu Kyei also contended that his decision to reduce the benchmark values for the applicants was founded on the practical guidelines for valuation control by the World Customs Organization issued in June 2012, particularly at pages 22 and 23.
- 4.7 Customs advance ruling is an authoritative decision in respect of the tax consequences of a transaction or a proposed transaction or an assessment in that regard. The United Nations Trade Facilitation Implementation Guide sums up the main attribute of customs advance ruling as facilitating the declaration and consequently the release and clearance process, as critical assessments in relation to the goods referred to in the ruling.



- 4.8 Section 151 of the Customs Act, 2015 (Act 891) defines customs advance ruling as “a binding written statement by customs that interprets and applies customs laws and regulations to a specific set of facts upon application by a trade about a prospective transaction.” The regime of customs advance ruling is governed by section 12 of Act 891. It details the circumstances for the issuance of the ruling, who may issue it, and who may apply for it.
- 4.9 Customs advance rulings are ordinarily issued by the Commissioner-General of the Ghana Revenue Authority. The OSP finds that for practical purposes customs advance rulings are issued by the Commissioner of the Customs Division of the Ghana Revenue Authority. The propriety or otherwise of this practice is not the object of the present investigation, and the OSP did not find any probable cause to involve the Commissioner-General in this investigation at this stage. This is because the purported customs advance ruling issued by Mr. Adu Kyei and apparently approved by Colonel (Rtd.) Damoah did not appear to have been brought to the notice of the Commissioner-General.
- 4.10 Customs advance rulings are issued in relation to tariff classification, customs value, country of origin of the goods or to any other activity to which customs laws apply. The beneficiary may be an importer, an exporter or a person or an authorised agent who has a demonstrable interest in the ruling.
- 4.11 Whatever the activity in question may be, a request for customs advance ruling must, of necessity, be in writing and include a laundry list of requirements in the nature of a statement of all relevant facts, the names and addresses of interested parties, the name of the port where the goods are expected to arrive or depart, and a description of the transaction in sufficient detail to allow the application of customs laws.
- 4.12 In addition to the above requirements, a request for a customs advance ruling in relation to valuation of goods for customs purposes must include the required information on an invoice, the terms of trade including Free on Board, Cost Insurance Freight, and a description of any relationship between the parties.
- 4.13 On another score, a request for a customs advance ruling in relation to tariff classification of goods must also include a complete description of the merchandise including the packing weight, the chemical analysis, the description of the goods, the production and expiration date, the name and brand of the goods, the physical description, function of the goods, composition of the goods, and characteristics of components. It must also include the commercial or technical designation of the goods, and where the goods consist of more than



one material, the composition of the goods by weight, volume and value of each component.

- 4.14 It appears to be the practice of the Ghana Revenue Authority, based loosely on the operation of sections 103 - 106 of the Revenue Administration Act, 2016 (Act 915), that a customs advance ruling may come in the form of a private ruling or a class ruling setting out the position of the Commissioner-General regarding the application of a tax law with respect to an arrangement or a proposed arrangement. As the classifications suggest, a private ruling refers to the outcome of a request by a person, while a class ruling refers to a publicised outcome of a request by a person in a specified class of persons commonly situated.
- 4.15 However, it seems to us that there is a significant difference between the binding effect of the private/class ruling regime and that of the province of customs advance ruling – for which reason the two constructs should not be interchanged, one in place of the other. In respect of the former, a ruling does not bind the applicant or any other person except the Commissioner-General in relation to an applicant or a member of a specified class. As regards the latter, a ruling is binding on the Commissioner-General only, in respect of goods for which customs formalities are completed after the date on which the ruling takes effect, or the recipient of the ruling only with effect from the date on which the recipient receives or is considered to have received notification of the ruling.
- 4.16 The OSP finds that Mr. Adu Kyei's cited bases for his decision are untenable, and the decision finds its anchor (if there is such) on no other hypothesis but one – that it was borne of influence peddling or trading in influence.
- 4.17 Mr. Adu Kyei's decision to render an advance ruling to the applicants by reducing the values of their intended imports between a range of 5% - 10% below the benchmark values was wrongful and unsupported by the requirements of the law for the issuance of customs advance ruling. Mr. Adu Kyei wilfully put aside the law by embarking on his own predilections.
- 4.18 Colonel (Rtd.) Damoah acknowledged the disingenuity of the outcome by admitting that the applicants did not meet the legal requirements for the issuance of customs advance ruling. Then again, Ms. Asomah-Hinneh and Mr. Etse Gadegbeku stated expressly that Labianca did not apply for customs advance ruling.
- 4.19 The admission by the officials of Labianca that that entity did not apply for a customs advance ruling belies Mr. Adu Kyei's stance and it vividly betrays all pretenses of propriety of action by that official. The outcome of the application



which founded the basis of the complaint was not and could not have been an either-or situation. That is to say, the application was not amenable to have been transformed to an application for customs advance ruling, should the application in its original form be rejected, as it was. This is because section 12 of Act 891 contains mandatorily strict provisions, which were grievously not complied with by the applicants – if the application were to be remotely characterised as any form of the classifications in respect of which customs advance ruling may be issued.

- 4.20 Our jurisdiction holds fidelity to the principle that where, as in this case, an enactment has prescribed a specialised procedure by which an activity is to be performed, it is that procedure alone that is to be followed, and officials cannot call into assistance their own proclivities to fashion an outcome. Consequently, as far as customs advance rulings go, it was as if the applicants had presented a blank sheet of paper before the Customs Division and Mr. Adu Kyei had no warrant to proceed.
- 4.21 This leaves us with Mr. Adu Kyei's contention that he based his decision on a letter dated 6 February 2018 authored by the Commissioner of the Customs Division at the time and the practical guidelines for valuation control by the World Customs Organization issued in June 2012, particularly at pages 22 and 23.
- 4.22 First, the OSP finds that the 6 February 2018 letter cannot by any stretch of the imagination be regarded as a lawful basis for the issuance of a customs advance ruling in the circumstances of the applicants. The tenor of the letter does not satisfy the pre-requisite dictates of section 12 of Act 891; and it cannot be characterised as an omnibus customs advance ruling – if such is allowable. This should have been quite obvious to Mr. Adu Kyei and any claim of lack of knowledge on this score sounds only in willful blindness.
- 4.23 The 6 February 2018 letter was, as stated earlier, authored by Mr. Isaac Crentsil, a former Commissioner of the Customs Division and addressed to the Acting Commissioner-General and copied to all Deputy Commissioners of the Customs Division and Sector Commanders intitled – Graduated Valuation vis-à-vis Benchmark Values for Frozen Goods. It states, in its essential part, as follows:

Please be informed that with effect from Tuesday, 13 February 2018 the following graduated valuation shall apply to frozen foods imported into the country relating to the quantum of the consignment per shipment and the value per kilogram vis-à-vis the benchmark value.



- 4.24 The letter, if it has any efficacy and still operable at the time in question, speaks for itself. At best, it may charitably be described as a practice direction in its specific context. Under our law, customs advance rulings do not come in the form of practice directions either. If the letter is upheld, for the sake of argument, its effect, to be applicable, is ascertainability and certainty of the quantities of goods *per* shipment and the value of a specified weight as compared with the benchmark value. That is to say, the understanding one gets from the letter is that the quantity of the goods must be known and the value *per* kilogram in relation to the benchmark value must also be known.
- 4.25 The letter defeats Mr. Adu Kyei's contention and it is contrary to his decision, by reason of the fact that the application contained no discernible and verifiable information to make it good for the purposes of the letter. In effect, Mr. Adu Kyei pulled the "information" from out of nothing. Mr. Adu Kyei's insistence on the rightfulness of his actions and his proclamation that he saved funds for the Republic is akin to a self-righteous declaration that he is an overly philanthropic and benevolent public official who perceives non-existent and scientifically unverifiable information on applications to render them fit for purpose.
- 4.26 Whatever be its original effect, if operable at all, the letter itself had been overtaken by events and rendered inoperable by the time Mr. Adu Kyei claimed to have founded his decision on its authority. In 2019, the Government reduced benchmark values significantly – thirty percent (30%) for vehicles and fifty percent (50%) for all other goods. This was contained in a piece dated 29 April 2019 and numbered H/TAR/1 authored by the Commissioner-General at the time, Mr. Kofi Nti. Acting on this order, the author of the 6 February 2018 letter, Mr. Isaac Crentsil, who was still Commissioner of the Customs Division, issued a memo to all ports and stations for strict compliance. Even if not stated expressly, the 2019 directive marked a clear departure from the 6 February 2018 letter. Even if the 2018 letter is applicable to this case in its original intendment and effect, it is most unlikely that the graduated valuations therein were meant to be applicable to the 2019 directive. If it were so, then there was the clear and present danger of unreasonable double-dipping by importers and exporters. And the OSP cannot accept the invitation to that startling conclusion that the Government intended to stultify its revenue generation efforts by instituting an open standing order of encouraging importers and exporters to brazenly undercut it.
- 4.27 Second, the OSP finds that the World Customs Organization Practical Guidelines for Valuation Control, June 2012 do not in any way or form back Mr. Adu Kyei's decision.



- 4.28 The guidelines are practical steps developed by the World Customs Organization in response to concerns of challenges regarding the control of declared customs values and tackling suspected undervaluation of goods. The guidelines are intended to assist members of the organisation in improving fair and efficient revenue collection. They are an offshoot of the World Trade Organization (WTO) Customs Valuation Agreement, which is applied by most countries; and which requires Member States (including Ghana) to implement and apply its principles for imported goods subject to *ad valorem* customs duties – that is, customs duties based on a percentage of the value of goods.
- 4.29 The concept of customs advance rulings is explained with general recommended procedures and suggested information to be provided when requesting a customs value ruling at pages 21 - 23. The guidelines are not intended to supplant national laws; and indeed, they do not derogate from section 12 of Act 891. Even if it is assumed that the guidelines have the force of law in Ghana on their own, Mr. Adu Kyei failed to apply the detailed practical steps and he refused to insist on the listed information required of an applicant. In any case, it is totally unacceptable for Mr. Adu Kyei to set aside and ignore section 12 of Act 891 and to prefer the guidelines to the Customs Act as his source of his authority.
- 4.30 The OSP finds, that Mr. Adu Kyei's decision to issue customs advance ruling to the applicants, resulted in a short collection of or shortfall in revenue in the amount of One Million Seventy-Four Thousand cedis Six Hundred and Twenty-Seven cedis Fifteen pesewas (GHC1,074,627.15) from a total of five hundred and thirty-one (531) declarations in respect of Labianca. Therefore, it lies ill in Mr. Adu Kyei's mouth to claim that he saved the Republic financial loss by his conduct; and his claimed bases for his decision are unsupportable afterthought.
- 4.31 The OSP finds that though Colonel (Rtd.) Damoah sought to distance himself from Mr. Adu Kyei's decision during his interview on 16 February 2022, he gave his tacit approval to the decision and the determination stood to the benefit of the applicants. Indeed, Mr. Adu Kyei's decision would not have passed muster but for Colonel (Rtd.) Damoah's apparent approval. The halfhearted seeming recantation is unhappily belated and does not absolve Colonel (Rtd.) Damoah of ultimate responsibility for the apparently contrived decision.
- 4.32 The OSP finds no evidence to suggest that Ms. Asomah-Hinneh was or is a beneficial owner or officer of Rafano Frozen Foods Company Limited and Yoba Capital Limited. The OSP does not reckon that the circumstances of the case, as yet, warrants an application to the Court for lifting the veil of incorporation of these companies. However, the OSP cannot overlook the seemingly convenient



fact that a joint application was submitted in respect of Labianca and Rafano Frozen Foods Company Limited.

- 4.33 The OSP finds that there is strong evidence to suggest that Mr. Adu Kyei's decision to issue a customs advance ruling for the applicants was procured through influence peddling or trading of influence by Ms. Asomah-Hinneh by employing her position as a member of the Council of State and a member of the Board of Directors of Ghana Ports and Harbours Authority.
- 4.34 The OSP further finds that the conduct of Mr. Adu Kyei and the placid coddling by Colonel (Rtd.) Damoah portends an institutionalised culture of lighthearted unconcern regarding impropriety of action at the Customs Division of the Ghana Revenue Authority – which indicates a high propensity to engender corruption and corruption-related activities.

5.0 Directions

- 5.1 On 21 March 2022 the Special Prosecutor issued an interim directive to Labianca Company Limited to pay an amount of One Million Seventy-Four Thousand cedis Six Hundred and Twenty-Seven cedis Fifteen pesewas (GHC1,074,627.15), representing the short collection or shortfall of revenue arising from the issuance of the unlawful customs advance ruling by the Deputy Commissioner for Customs in charge of operations, Mr. Joseph Adu Kyei into the Asset Recovery Account of the Office of the Special Prosecutor.
- 5.2 Labianca Company Limited complied with the directive on 31 March 2022.
- 5.3 The Special Prosecutor directs the Commissioner-General of the Ghana Revenue Authority to submit, on or before 31 December 2022, an Integrity Plan to the Office of the Special Prosecutor designed with the aim of preventing the corruption of the exercise of discretion by officials of the Customs Division, especially in respect of the rendering of rulings, to assure the effective operation of the Customs Act, 2015 (Act 891) and the Revenue Administration Act, 2016 (Act 915).

6.0 Further Action

- 6.1 On the basis of the findings stated in paragraphs 4.33 and 4.34, the Special Prosecutor directs the opening of a wider investigation in respect of the issuance



of customs advance rulings and markdown of benchmark values between July 2017 and December 2021.

7.0 Commendation

- 7.1 The Office of the Special Prosecutor commends the complainant for his public-spiritedness and sense of duty.

A handwritten signature in green ink that reads "Kissi Agyebeng".

Kissi Agyebeng
Special Prosecutor
The Republic of Ghana
3 August 2022