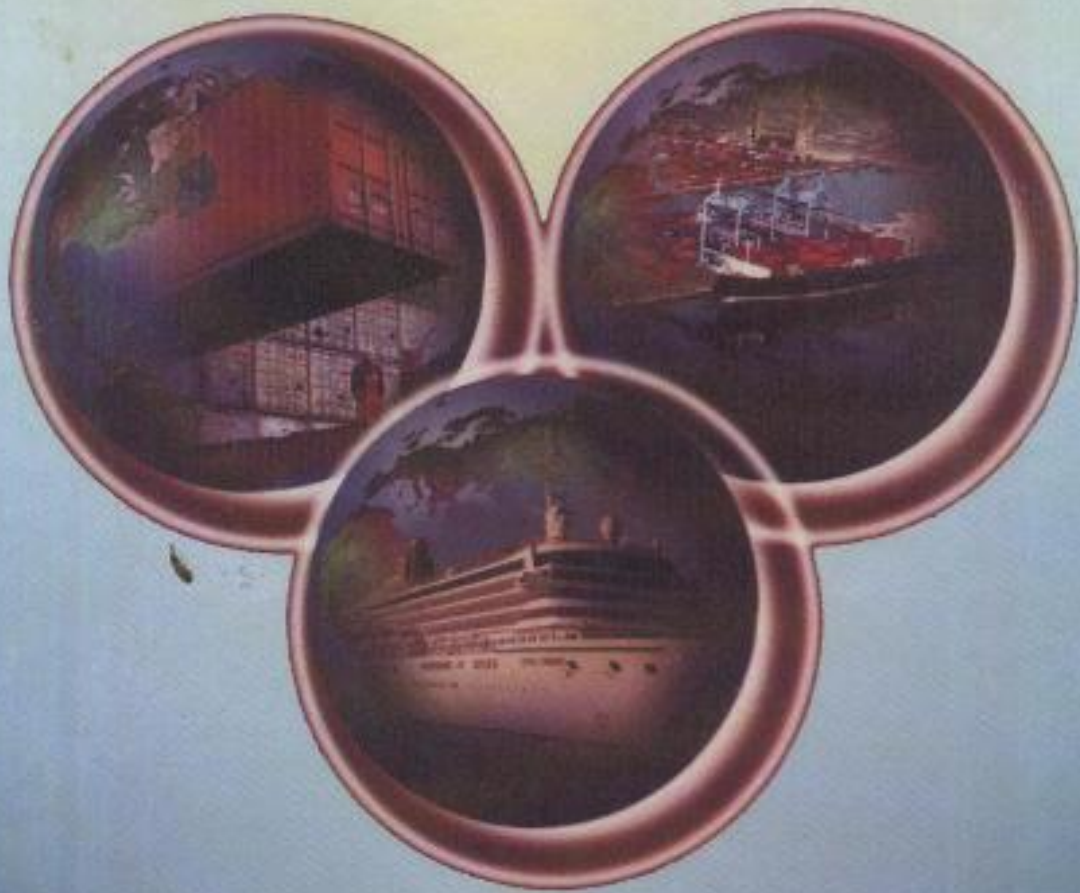


Customs & Customs Legislations



Mahmoud Abouel Alla

2011

Definition:

Customs is an authority or agency in a country responsible for collecting and safeguarding customs duties and for controlling the flow of goods including animals, transports, personal effects and hazardous items in and out of a country. Depending on local legislation and regulations, the import or export of some goods may be restricted or forbidden, and the customs agency enforces these rules. The customs authority may be different from the immigration authority, which monitors persons who leave or enter the country, checking for appropriate documentation, apprehending people wanted by international arrest warrants, and impeding the entry of others deemed dangerous to the country. In most countries customs are attained through government agreements and international laws.

A customs duty is a tariff or tax on the importation (usually) or exportation (unusually) of goods. In the Kingdom of England, customs duties were typically part of the customary revenue of the king, and therefore did not need parliamentary consent to be levied, unlike excise duty, land tax, or other forms of taxes.

Commercial goods not yet cleared through customs are held in a customs area, often called a bonded store, until processed. All authorized ports are recognized customs area.

What is Customs?

- The word itself has different etymologies. A custom is a habit. It is also a common tradition or usage so long established that it has the force of validity of law .
- It is also the duty paid by a tenant to his landlord. In medieval France, Customs duties were known as Droits de Coutume. Thus, it was customary to pay duties.

What can Customs do?

- Customs is usually a major budget contributor, and sometimes the most important source of revenue for a country.
- Customs also has a unique observation position. They are at the crossroads between trade, the economy, fiscal and budget issues, crime interdiction, environmental preoccupations, and transport, to name but a few.
- Customs all over the world is used to dealing with people across the border - so they are the first exposed to new products, activities, and even ideas (books too have to clear Customs).
- They cooperate far better with their foreign counterparts than any other administration.
- Customs has routine, non-judicial, access to sensitive commercial information.
- Customs keeps records of movements, and the people who initiate them. All this can be used not only to secure revenue, but also to protect society.

Traditional customs roles

Traditionally, Customs has three major roles:

- To assess and collect revenue based on the characteristics of the goods.
- To protect the country and the society by preventing smuggling.
- To ensure that national legislation is applied to imported goods.

Customs history

1- in ancient times

- The customs duties known as ashoor imposed on goods passing by the country. it is tenth of the value of the goods imported into the country.
- the tax was also known to the Persians , the Romans and the Greek.
- The oldest civilizations in Mesopotamia in Iraq is the first country to apply a Financial Penal Code.
- The Urnammu law was concerned with economical issues. It was also found in the texts of the Code of Hammurabi some reference to economic issues. This code is considered the oldest ancient laws.

2- Roman Era

- The laws & legislation were developed with the issuance of twelve panels
- This code included within it crimes that harm the general public interests.
- The Roman law knew customs crimes and smuggling that was closely linked to trade between nations.
- Julius Caesar was the first to make the so-called duty ashor inclusive in all parts of the Romanian Empire.

3- middle Ages

- The duty took a uniform character in England.
- The rulers of the provinces in France impose royalties on goods entering their districts in addition to customs duties, which are collected on goods entering or emerging from French territory.

4- Islamic Era

The tax and duties were not known in the Islamic regime until the reign of Abu Bakr .

During the reign of the second Khalif, Sovereign Omar bin al-Khattab the state knew the tithing system .

When the Islamic State expanded the Khaliph Omar ibn Al-Khattab established a tax system to deal with what is outside of the Arabian Peninsula , he imposed three types of taxes

a - levy tax and it is imposed on the land.

B - Poll tax imposed on the people of the Book (the non Muslims)

c - teenthing tax (customs duties) as previously indicated.

There were some exemptions from the tithe tax on goods for gifts and goods for personal use

5- Umayyad Reign

The tithing system remained till that time with the same proportions that were in the era of Omar ibn al-Khattab.

The tithing system continued in the era of the Abbasids, in the time of the Tulunid ,Alakhchidip, Fatimid, Ayyubid and Mamluk era .

The Ottoman State emerged privileges to the foreign & gave them the right to trade within the Ottoman Empire

the advantages or those above mentioned privileges granted from the Sultan were unfair to Turks and Egyptians till the French Ottoman Treaty in 1740 .

Mohammed Ali was limited in imposing taxes by the agreements done by senior Porte with European countries in 1838 .

6- modern age

This age started by the issuance of the Penal Code in Egypt in 1883 .

The collection of customs duties was the responsibility of the person who wins the auction of the collection of customs duties who were called committers..

Turkey issued the Ottoman Customs list in 7/4/1963 and reported it to foreign countries.

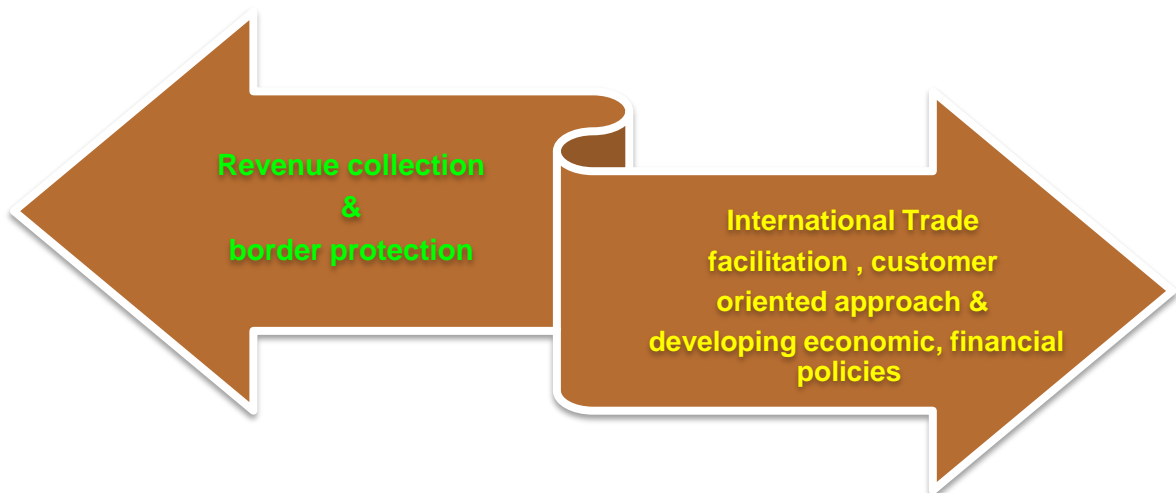
The Khedive Tawfik Pasha in 02.04.1984 issued the Egyptian tariff regulations.

After the issuance of the Tariff, appears in 1904 the Penal Code which included pictures of the customs smuggling and smuggling from other Tax.

After, a number of laws were issued addressing trafficking provisions of the customs law 42/1944 on Narcotics Control, Law No. 1947/80 on the control of cash and the Military Order No. 24/1948 on the crimes of gold smuggling.

Several separate laws have also been dealing with the apparent shortcomings in the laws referred to what appeared from a lack of tariff regulation until the issuance of Customs Law No. 66/63, in force till now.

Traditional & modern role for Customs Administration



Introduction:

The World Customs Organization (WCO) is the only intergovernmental organization exclusively focused on Customs matters. With its worldwide membership, the WCO is now recognized as the voice of the global Customs community. It is particularly noted for its work in areas covering the development of global standards, the simplification and harmonization of Customs procedures, trade supply chain security, the facilitation of international trade, the enhancement of Customs enforcement and compliance activities, anti-counterfeiting and piracy initiatives, public-private partnerships, integrity promotion, and sustainable global Customs capacity building programs. The WCO also maintains the international Harmonized System goods nomenclature, and administers the technical aspects of the WTO Agreements on Customs Valuation and Rules of Origin and Rules of Origin.

WCO History

In 1947, thirteen European countries established a Study Group to examine customs issues identified by the General Agreement on Tariffs and Trade (GATT). This work led to the adoption in 1950 of the Convention Establishing the Customs Co-operation Council (CCC), which was signed in Brussels. On January 26, 1953 the CCC's inaugural session took place with the participation of 17 founding members. WCO membership subsequently expanded to cover all regions of the globe. In 1994, the organization adopted its current name, the World Customs Organization. Today, WCO members are responsible for customs controls on more than 98% of all international trade.

Some brief facts...

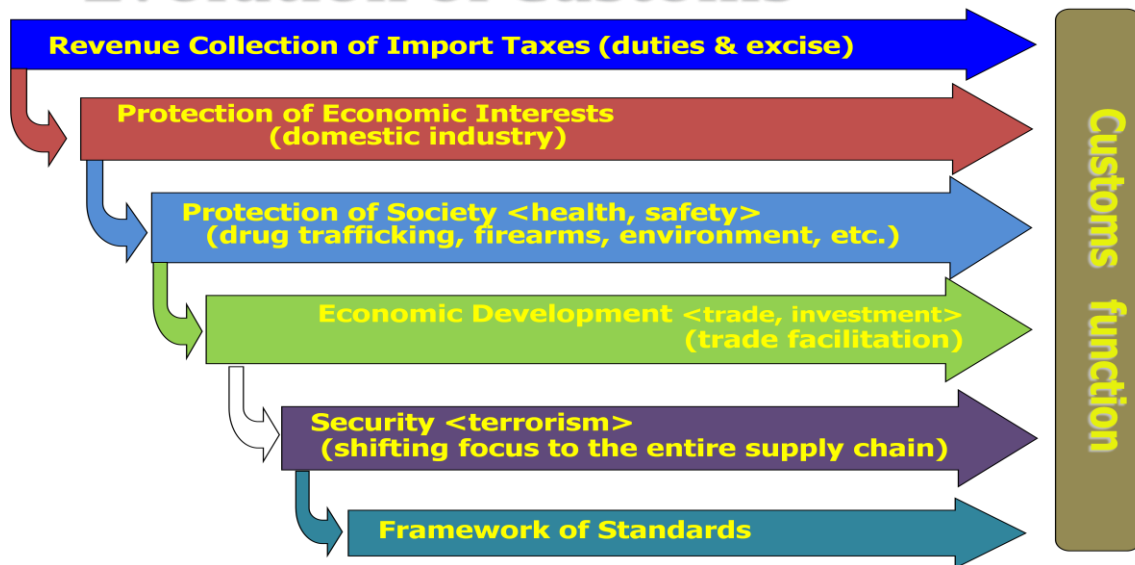
- ▲As of July 2011 : 177 Members
- ▲Two official languages : English and French
- ▲Headquarters : Brussels, Belgium
- ▲Budget for 2008/2009 : € 15 million
- ▲Democratic traditions : One Member = One vote

Vision and objectives

The WCO is internationally acknowledged as the global centre of customs expertise and plays a leading role in the discussion, development, promotion and implementation of modern customs systems and procedures. It is responsive to the needs of its members and its strategic environment, and its instruments and best-practice approaches are recognized as the basis for sound customs administration throughout the world.

The WCO's primary objective is to enhance the efficiency and effectiveness of member customs administrations, thereby assisting them to contribute successfully to national development goals, particularly revenue collection, national security, trade facilitation, community protection, and collection of trade statistics.

Evolution of Customs



WCO key activities

- Developing and maintaining international Customs instruments such as the Harmonized System, the Revised Kyoto Convention, the Istanbul Convention, the Nairobi Convention, the Time Release Study, etc.
- Encouraging uniform application of simplified and harmonized Customs systems and procedures and the increased use of IT as well as the implementation of the WCO Data Model (Single Window).
- Administering international instruments developed by other multilateral institutions such as the WTO Agreements on Customs Valuation and Origin and the UN Convention on Containers.
- Securing and facilitating the movement of goods in the international trade supply chain through the WCO SAFE Framework of Standards to secure and facilitate global trade (implementation of the Authorized Economic Operator system and mutual recognition of such systems).
- Promoting integrity in Customs through the revised Arusha Declaration on Integrity and the development of tools that assist Members to implement integrity best practices.
- Encouraging Customs-to-Customs co-operation and mutual assistance, and collaborating with international organizations on issues that impact on the global Customs community.
- Providing sustainable capacity building guidance and assistance to facilitate Customs modernization initiatives, and to implement international Customs and trade instruments.
- Promoting partnerships between Customs and the international business community.

- Combating transnational organized crime, environmental crime, drug trafficking, money laundering, smuggling, the illicit diamond trade, illegal arms and ammunition, stolen motor vehicles and other Customs offences.

WCO Instruments

In order to achieve its objectives, the WCO has adopted a number of customs instruments, including but not limited to the following:

1) The International Convention on the Harmonized Commodity Description and Coding System (HS Convention) was adopted in 1983 and came into force in 1988. The HS multipurpose goods nomenclature is used as the basis for customs tariffs and for the compilation of international trade statistics. It comprises about 5000 commodity groups, each identified by a six digit code arranged in a legal and logical structure with well-defined rules to achieve uniform classification. The HS is also used for many other purposes involving trade policy, rules of origin, monitoring of controlled goods, internal taxes, freight tariffs, transport statistics, quota controls, price monitoring, compilation of national accounts, and economic research and analysis.

2) The International Convention on the Simplification and Harmonization of Customs procedures (revised Kyoto Convention or RKC) was originally adopted in 1974 and was subsequently revised in 1999; the revised Kyoto Convention came into force in 2006. The RKC comprises several key governing principles: transparency and predictability of customs controls; standardization and simplification of the goods declaration and supporting documents; simplified procedures for authorized persons; maximum use of information technology; minimum necessary customs control to ensure compliance with regulations; use of risk management and audit based controls; coordinated interventions with other border agencies; and a partnership with the trade. It promotes trade facilitation and effective controls through its legal provisions that detail the application of simple yet efficient procedures and also contains new and obligatory rules for its application.

3) ATA Convention and the Convention on Temporary Admission (Istanbul Convention). Both the ATA Convention and the Istanbul Convention are WCO instruments governing temporary admission of goods. The ATA system, which is integral to both Conventions, allows the free movement of goods across frontiers and their temporary admission into a customs territory with relief from duties and taxes. The goods are covered by a single document known as the ATA carnet that is secured by an international guarantee system.

4) The Arusha Declaration on Customs Integrity was adopted in 1993 and revised in 2003. The Arusha Declaration is a non-binding instrument which provides a number of basic principles to promote integrity and combat corruption within customs administrations.

5) The SAFE Framework of Standards to Secure and Facilitate Global Trade was adopted in 2003. The SAFE Framework is a non-binding instrument that contains supply chain security and facilitation standards for goods being traded internationally, enables integrated supply chain management for all modes of transport, strengthens networking arrangements between customs administrations to improve their capability

to detect high-risk consignments, promotes cooperation between customs and the business community through the Authorized Economic Operator (AEO) concept, and champions the seamless movement of goods through secure international trade supply chain.

Tariffs & classification (HS code)

Definition:

The Harmonized Commodity Description and Coding System (HS) of tariff nomenclature is an internationally standardized system of names and numbers for classifying traded products developed and maintained by the World Customs Organization (WCO) (formerly the Customs Co-operation Council), an independent intergovernmental organization with over 170 member countries based in Brussels, Belgium.

The harmonized system means the Nomenclature comprising the headings and subheading and their related numerical codes, the Section, Chapter and subheading Noted and the General Rules for interpretation of the Harmonized System. It is a global language being used as a basis for the tariffs of more than 176 countries & Customs Union. There are 104 Contracting Parties to the Convention on the Harmonized System.

Uses of the Harmonized System

1. Customs Tariffs.
2. Imports & Exports statistical Schedules.
3. Rules of Origin.
4. Economic Agreements.
5. Trade Quotas Control.
6. Transport Tariffs.

Users of the Harmonized System

1. Government Sector.
2. Traders.
3. Manufacturers.
4. Statistical Agencies.
5. International Organizations.
6. Shipping Agencies.
7. Forwarders.
8. Port Authorities.

Customs Tariff:

It is an enforceable table under the legislation of a contracting party (using the Harmonized System as basis for tariff) for collecting customs duties on imported goods.

Unified Customs Tariff

The unified Customs tariff means the operative tables under the GCC Common Customs Law & the instrumental document for creating the GCC Customs Union (I.e, the same customs duties are applicable to imported goods from outside UAE Saudi Arabia, Bahrain, Qatar, Kuwait & Oman).

Importance of Proper Description & Classification of Goods

1. Accurate collection of customs duties as to realize fairness among all importers & make popular revenue for the treasury.
2. Create a reliable method for imports & exports statistics.

3. Protect the economic & social security through control over trading in goods (like; drugs; prohibited goods & health or environment detrimental substances e.g. Ozone Layer Depleting Substances).
4. Determine origin of goods for the purposes of proper implementation of the Economic Agreements.
5. Remove barriers, facilitate trade movement & simplify customs procedures.

Why customs duties are levied?

- Realize permanent revenue for the treasury to be used in the development & improvement of the basic infrastructure & public services e.g. roads, hospitals, education, and payment of employees' salaries. Etc.
- Protect national economy like; combat of dumping policies.
- Encourage investments in industry, agriculture & fisheries.

HS Structure

Under the HS Convention, the contracting parties are obliged to base their tariff schedules on the HS nomenclature, although parties set their own rates of duty. The HS is organized into 21 sections and 96 chapters, accompanied with general rules of interpretation and explanatory notes. The system begins by assigning goods to categories of crude and natural products, and from there proceeds to categories with increasing complexity. The codes with the broadest coverage are the first four digits, and are referred to as the heading. The HS therefore sets forth all the international nomenclature through the 6-digit level and, where needed, contains added subdivisions assigned 2 more digits, for a total of 8 at the tariff-rate line (legal) level. Two final (non-legal) digits are assigned as statistical reporting numbers if warranted, for a total of 10 digits to be listed on entries.

To ensure harmonization, the contracting parties must employ all 4- and 6-digit provisions and the international rules and notes without deviation, but are free to adopt additional subcategories and notes. The two final chapters, 98 and 99, are reserved for national use. Chapter 77 is reserved for future international use. Chapter 98 comprises special classification provisions, and chapter 99 contains temporary modifications pursuant to a parties' national directive or legislation.

5.5 sections:

- ◆ Section I Live animals; Animal products
- ◆ Section II Vegetable products
- ◆ Section III Animal or vegetable fats and oils and their cleavage products; ;
Waxes
- ◆ Section IV Prepared foodstuffs; Beverages, spirits and vinegar; Tobacco

- ◆ Section V Mineral products
- ◆ Section VI Products of the chemical or allied industries
- ◆ Section VII Plastics and articles thereof; Rubber and articles thereof
- ◆ Section VIII Raw hides and skins, leather, fur skins Travel goods,
handbags
- ◆ Section IX Wood and articles of wood
- ◆ Section X Pulp of wood or other fibrous cellulosic material... ; Paper and
paperboard...
- ◆ Section XI Textiles and textile articles
- ◆ Section XII Footwear, headgear, umbrellas feathers artificial flowers
.....
- ◆ Section XIII Articles of stone, plaster, cement... ceramic products... glass
and glassware
- ◆ Section XIV Pearls, precious or semi-precious stones , precious metals.....;
Jewellery; Coin
- ◆ Section XV Base metals and articles of base metals
- ◆ Section XVI Machinery and mechanical appliances; Electrical equipment;
Parts thereof.....
- ◆ Section XVII Vehicles, aircraft, vessels and associated transportation
equipment
- ◆ Section XVIII Optical, photographic.... precision, medical....;
Clocks....;Musical instruments....
- ◆ Section XIX Arms and ammunition; Parts and accessories thereof
- ◆ Section XX Miscellaneous manufactured articles
- ◆ Section XXI Works of art, collectors' pieces and antiques

HARMONIZED SYSTEM LEGAL NOTES

THE LEGAL NOTES ARE AN ESSENTIAL ELEMENT TO ENSURE THE COMMON, CONSISTENT APPLICATION OF THE HARMONIZED SYSTEM BY ALL COUNTRIES.

Legal notes are:

- MANDATORY
- LOCATED AT THE BEGINNING OF SECTIONS AND CHAPTERS
- 4 TYPES:
 - SECTION
 - CHAPTER
 - SUBHEADING
 - SUPPLEMENTARY

SOME LEGAL NOTES PROVIDE LISTS OF GOODS INCLUDED IN A PARTICULAR SECTION OR CHAPTER OR GROUP OF HEADINGS

Example: Legal Note 3 to Chapter 38 requires that ink removers and correcting fluids be classified only in Heading 38.24

SOME LEGAL NOTES PROVIDE LISTS OF GOODS EXCLUDED FROM A PARTICULAR SECTION OR CHAPTER OR GROUP OF HEADINGS.

EXCLUSION NOTES CROSS-REFER TO THE CORRECT CHAPTER

Example: Legal Note 2 to Chapter 40 states that rubber footwear is not classified in Chapter 40, but rather in Chapter 64.

SOME LEGAL NOTES PROVIDE A DEFINITION OF PARTICULAR TERMS

Example: Legal Note 1 to Chapter 51 -definition of "wool"

HARMONIZED SYSTEM LEGAL NOTES "THROUGHOUT THE NOMENCLATURE"

- Chapter 5, note 3 ivory
- Chapter 5, note 4 horsehair
- Chapter 39, note 1 plastics
- Chapter 40, note 1 rubber
- Chapter 41, note 3 composition leather
- Chapter 43, note 1 fur skins
- Chapter 43, note 5 artificial fur
- Chapter 51, note 1a wool
- Chapter 51, note 1b fine animal hair
- Chapter 51, note 1c coarse animal hair
- Chapter 54, note 1 man made fibers
- Chapter 60, note 3 knitted goods
- Chapter 70, note 5 glass
- Chapter 71, note 6 alloys of precious metals
- Chapter 71, note 7 metal clad with precious metals
- Section XV, note 2 parts of general use
- Section XV, note 3 base metals

- Section XV, note 4 cermets
- Chapter 72, note 1d steel
- Chapter 72, note 1e stainless steel
- Chapter 72, note 1f other alloy steel

HARMONIZED SYSTEM LEGAL NOTES:

“EXCEPT WHERE THE CONTEXT OTHERWISE REQUIRES”

Examples:

- Chapter 28, note 1 organic chemicals
- Chapter 40, note 1 rubber
- Chapter 71, note 6 alloys of precious metals

HARMONIZED SYSTEM GENERAL INTERPRETATIVE RULES

THE GENERAL INTERPRETATIVE RULES ARE THE KEY TO CONSISTENT INTERPRETATION OF THE HARMONIZED SYSTEM BY ALL USERS.

RULE 1:

CHAPTER AND SECTION TITLES ARE FOR CONVENIENCE ONLY CLASSIFICATION IS DEFINED BY THE HEADING TEXT, SUBJECT TO ANY APPLICABLE LEGAL NOTES

RULE 2(a):

Incomplete goods & Unassembled goods ARE CLASSIFIED AS COMPLETE AND ASSEMBLED IF THEY HAVE THE “ESSENTIAL CHARACTER” OF THE WHOLE

Rule 2(a) has the effect of broadening the scope of various Headings beyond the terms of their texts, in that it provides for the classification in a Heading of an article referred to therein, even if that article is incomplete or unfinished, or is presented unassembled or disassembled.

Two separate principles are embodied in this Rule:

- An incomplete or unfinished article is to be treated as a complete article; assembled. An unassembled or disassembled article is to be classified as if it were.

In order to be classified in the same Heading as the complete or finished article, the article in its incomplete or unfinished state must have the essential character of the complete or finished article.

As a general rule, blanks are also regarded as incomplete or unfinished articles classifiable in the same Heading as the complete article, unless they are specifically referred to in a given Heading.

For example, "sharp-edged blanks for corks or stoppers" cannot be classified in Heading 45.03 as finished corks or stoppers because the blanks are provided for in another Heading, namely 45.02.

In general, the term "blank" means an article not ready for direct use, having the approximate shape or outline of the finished article or part, and which (other than in exceptional cases) can be used only for completion into the finished article or part.

Semi-manufactured goods not yet having the essential shape of the finished articles (such as bars, discs, tubes, etc) are not regarded as blanks, and are classified in their own right.

For purposes of this Rule, "articles presented unassembled or disassembled" means articles whose components are to be assembled either by means of simple fixing devices (such as nuts, bolts, screws, electrical connections, etc) or by riveting or welding, provided that only simple assembly operations are required.

This Rule applies only if the Headings or Legal Notes do not require otherwise.

RULE 2(b):

MIXTURES OR COMBINATIONS: EACH HEADING IS OF EQUAL WEIGHT

Rule 2(b) states that: "Any reference in a Heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3."

Rule 2(b) says that when a Heading refers to a material or substance it includes a reference to that material or substance mixed or combined with other materials or substances.

For example:

- Milk to which vitamins or minerals have been added remains classified as milk - on the basis that its essential character has not changed.
- Corks remain classified as natural cork in Heading 45.03 even if they have been coated with paraffin.

Rule 2(b) does not apply where there are specific provisions in the Headings and Legal Notes to the contrary. For example:

- Heading 15.03 cannot cover mixed lard oil because the Heading specifies "lard oil . . . not . . . mixed".
- The classification of mixtures of textile materials is governed by the specific provisions of Legal Note 2 to Section XI, with the result that Rule 2(b) does not apply to textile mixtures.
- The classification of alloys of iron and steel is governed by the specific provisions of Legal Note 1 to Chapter 72, with the result that Rule 2(b) does not apply to alloys of iron and steel.

Rule 2(b) cannot be used to broaden the scope of a Heading so that the Heading then covers articles which cannot be regarded as answering the description of the Heading.

This would be the case when the addition of other materials or substances deprives the goods in question of the character of the goods classifiable in that Heading.

For example:

- adding sugar to milk (Heading 04.02 vs. Heading 04.01)
- adding alcohol to fruit juice (Chapter 22 vs. Heading 20.09)

RULE 3(a):

THE HEADING PROVIDING THE MOST SPECIFIC DESCRIPTION WILL TAKE PRECEDENCE OVER MORE GENERAL HEADINGS.

Rule 3(a):

In general a description by name is more specific than a description by class . e.g., steel forks are classified in Heading 82.15 and not in Heading 73.23 (table articles);

A description which identifies goods clearly and precisely is more specific than one which is less complete.

Examples of classification under Rule 3(a):

- tires for motor vehicles: Heading 40.11 rather than Heading 87.08;
- seats for motor vehicles: Heading 94.01 rather than Heading 87.08;
- tufted textile carpets, identifiable as being intended for use in motor cars, cannot be classified in Heading 87.08 as motor vehicle accessories, but must be classified in Heading 57.03, where they are more specifically described;
- Unframed safety glass, shaped and identifiable as being intended for use in airplanes, cannot be classified in Heading 88.03 as parts of goods of Heading 88.01 or 88.02, but must be classified in Heading 70.07, where it is more specifically described.

If two or more Headings each refer to one only of the materials or substances contained in mixed or composite goods, or to some only of the items in a set put up for retail sale, those Headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description than the others. In such cases, the classification of the goods concerned must be determined by application of Rule 3(b) or 3(c).

For example, an endless conveyor belt of plastic on one surface, and of vulcanized rubber on the other. Two Headings enter into consideration:

- Heading 39.26 . Other articles of plastics; and
- Heading 40.10 . Conveyor belts of vulcanized rubber.

These two Headings must be regarded as equally specific: Heading 40.10 cannot be considered to be more specific than Heading 39.26, even though it gives a more precise description ("Conveyor belts"), because each of the two Headings refers to only one of the two materials of which the belt is made.

As Rule 3(a) cannot be applied, this conveyor belt would have to be classified by application of Rule 3(b) or 3(c).

RULE 3(b):

CLASSIFY ACCORDING TO “ESSENTIAL CHARACTER”



RULE 3(c):

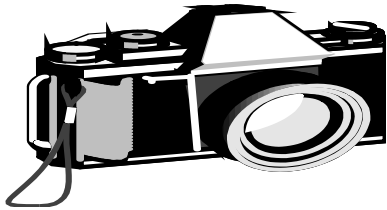
IF 3(a) AND 3(b) WON'T WORK, USE THE HEADING WHICH OCCURS LAST IN NUMERICAL ORDER

RULE 4:

IF NO HEADING CAN BE FOUND, USE THE HEADING FOR GOODS MOST AKIN

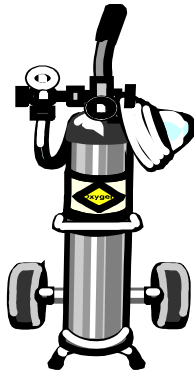
RULE 5(a):

FITTED CASES DESIGNED FOR LONG - TERM USE WITH AN ARTICLE CAN BE CLASSIFIED WITH THE ARTICLE.



RULE 5(b):

PACKING AND CONTAINERS WILL BE CLASSIFIED WITH THE GOODS, BUT PACKING OR CONTAINERS SUITABLE FOR REPETITIVE USE WILL BE CLASSIFIED UNDER THEIR RESPECTIVE HEADINGS



CLASSIFICATION

Sections I - IV

LIVE ANIMALS; ANIMAL PRODUCTS

VEGETABLE PRODUCTS

ANIMAL OR VEGETABLE FATS & OILS AND THEIR CLEAVAGE PRODUCTS; PREPARED EDIBLE FATS; ANIMAL OR VEGETABLE WAXES
PREPARED FOODSTUFFS; BEVERAGES, SPIRITS AND VINEGAR;
TOBACCO AND MANUFACTURED TOBACCO SUBSTITUTES

Chapters 1 to 24

Section IV covers products of animal or vegetable origin which have been processed to an extent beyond that allowed in Sections I and II and which are generally intended for human consumption. In addition, however, this Section covers animal foodstuffs of animal or vegetable origin, plus tobacco and manufactured tobacco substitutes.

Chapter 16 - Preparations of meat, fish or of crustaceans, molluscs or other aquatic invertebrates.

Chapter 17 - Sugars and sugar confectionery.

Chapter 18 - Cocoa and cocoa preparations.

Chapter 19 - Preparations of cereals, flour, starch or milk; pastrycooks' products.

Chapter 20 - Preparations of vegetables, fruit, nuts or other parts of plants.

Chapter 21 - Miscellaneous edible preparations.

Chapter 22 - Beverages, spirits and vinegar.

Chapter 23 - Residues and waste from the food industries; prepared animal fodder.

Chapter 24 - Tobacco and manufactured tobacco substitutes.

Section V

MINERAL PRODUCTS

Generally speaking, this Section of the Harmonized System covers all basic mineral substances in the form in which they are extracted from the earth (or the sea), together with a limited number of products obtained from these mineral substances by relatively simple degrees of processing.

The Section is divided into three Chapters:

Chapter 25 - Salt; sulphur; earths and stones; plastering materials, lime and cement.

Chapter 26 - Ores, slag and ash.

Chapter 27 - Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes.

Section VIII

RAW HIDES AND SKINS, LEATHER, FURSKINS AND ARTICLES THEREOF; SADDLERY AND HARNESS; TRAVEL GOODS, HANDBAGS AND SIMILAR CONTAINERS;

ARTICLES OF ANIMAL GUT (OTHER THAN SILK-WORM GUT)

Chapters 41- 43

Chapter 41 - Raw hides and skins (other than furskins) and leather

This Chapter covers raw hides and skins together with leather of animal origin. The products are grouped together according to the type of animal from which they come

(bovine and equine, sheep or lambs, goats or kids, other animals) and their order reflects the degree of preparation.

Legal Note 1(b) excludes bird skins or parts of birdskins, with their feathers or down, from Heading 41.03, assigning them to Heading 05.05 if not further worked than cleaned, disinfected or treated for preservation, and to Heading 67.01 if further worked.

Legal Note 3 defines the term "composition leather" wherever it may be referred to throughout the nomenclature. If an article described as "composition leather" does not contain natural leather or leather fibers it is not composition leather as defined by Legal Note 3 - it falls in Chapter 39 if made of plastics; in Chapter 40 if made of rubber; and in Chapter 48 if made of paperboard.

Chapter 42 - Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silk-worm gut).

The products of this Chapter are generally made from the products of Chapter 41 but also included are certain articles characteristically of the leather trade but made from other materials.

Heading 42.02 - This Heading covers two categories (check the punctuation!). The first group may be of any material, but the second group must be made of leather or composition leather, of plastic sheeting, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials.

For example: A handbag with outer surface of plastic sheeting falls in Subheading 4202.22, whereas a bag of moulded plastics would be classified in Heading 3926.90 as "other articles of plastics".

Chapter 43 - Furskins and artificial fur; manufacturers thereof

Legal Note 1 defines the term furskins "throughout the nomenclature".

Legal Note 2(c) provides that gloves consisting of leather and furskin or of leather and artificial fur are classifiable in Heading 42.03 - regardless of Rules 2 and 3. This is not a derogation of the Rules, because Rule 1 requires the use of the Section and Chapter Notes and thus, in this case, there is no opportunity to apply Rules 2 or 3.

Legal Note 5 defines artificial fur to not include imitation furskins obtained by weaving or knitting. Thus, imitation furskins consisting of wool, hair or other fibres gummed or sewn onto leather, woven fabric or other materials are classified in Heading 4304.00, whereas similar imitation furskins produced by weaving or knitting are classified respectively in Heading 58.01 or 60.01.

Section IX

WOOD AND ARTICLES OF WOOD; WOOD CHARCOAL; CORK AND ARTICLES OF CORK; MANUFACTURES OF STRAW, OF ESPARTO OR OF OTHER PLAITING MATERIALS; BASKETWARE AND WICKERWORK

Chapters 44 - 46

Chapter 44 - Wood and articles of wood; wood charcoal.

Chapter 45 - Cork and articles of cork.

Chapter 46 - Manufactures of straw, esparto or other plaiting materials basketware and wickerware.

Section X

PULP OF WOOD OR OF OTHER FIBROUS CELLULOSIC MATERIAL; RECOVERED (WASTE AND SCRAP) PAPER OR PAPERBOARD; PAPER AND PAPERBOARD AND ARTICLES THEREOF

Chapters 47 - 49

Chapter 47 - Pulp of wood or other fibrous cellulose material; waste and scrap of paper or paperboard

This Chapter covers pulp of wood and other fibrous cellulose material, together with waste and scrap of paper or paperboard.

In other words, it covers cellulose fiber pulps obtained from various vegetable materials rich in cellulose or from certain waste textiles of vegetable origin.

Wood being the most important fibrous cellulose material in terms of international trade, the most important type of pulp in the Chapter is wood pulp.

Chapter 48 - Paper and paperboard; articles of paper pulp, of paper or of paperboard

This Chapter covers a number of articles obtained from wood pulp or other fibrous materials of Chapter 47, but not all products made with paper and paperboard or incorporating paper or paperboard fall in this Chapter.

The most important goods made with paper and paperboard which do not fall in this Chapter are:

- products of the printing industry (Chapter 49), with limited exceptions,
- perfumed papers and papers impregnated or coated with cosmetics (Chapter 33),
- paper and cellulose wadding impregnated, coated or covered with soap or detergent (34.01), and
- All of the products listed in Legal Note 1 as exclusions.

Legal Notes define "newsprint" and "kraft paper and paperboard".

Chapter 49 - Printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans

The coverage of this Chapter is straightforward and clear.

As is the usual case, Legal Note 1 lists the products excluded from the Chapter and therefore, in a negative way, defines the scope of the Chapter.

Section XI

TEXTILES AND TEXTILE ARTICLES

Chapters 50 to 63

Section XI:

This Section consists of 14 Chapters and, as the title indicates, covers textiles and textile articles.

The first part, Chapters 50-55, covers the different textile materials, that is, those of animal, vegetable and chemical origin, in the form of fibers, ordinary yarn and ordinary woven fabrics.

The second part, Chapters 56-63, covers textile products other than fibers, ordinary yarns and woven fabrics, for example, special yarns and fabrics, made up articles, and knitted or crocheted goods.

The composition of an article is not important at the 4-digit level; it is only at the 6-digit level that composition becomes a consideration. The type of garment (men's,

women's, knit, woven, etc.) is the first thing to look for and then the fabric of which made.

Chapters 50 to 55

Chapters 50 and 51 cover textile materials of animal origin - silk in Chapter 50 and wool, fine or coarse animal hair, horsehair and woven fabric in Chapter 51.

Chapters 52 and 53 cover textile materials of vegetable origin - cotton in Chapter 52 and other vegetable textile fibers in Chapter 53, with paper yarn and woven fabrics.

Chapter 54 and 55 cover chemical textile materials.

Chapter 56 - Wadding, felt and nonwovens; special yarns; twine, cordage, ropes and cables and articles thereof.

Chapter 57 - Carpets and other textile floor coverings.

Chapter 58 - Special woven fabrics; tufted textile fabrics; lace; tapestries; trimmings; embroidery.

Chapter 59 - Impregnated, coated, covered or laminated textile fabrics; textile articles of a kind suitable for industrial use.

Chapter 60 - Knitted or crocheted fabrics

Chapter 61 - Articles of apparel and clothing accessories - knitted or crocheted

This Chapter covers articles of apparel and clothing accessories constituting made up knitted or crocheted articles.

In other words, it covers men's or boys' or women's or girls' knitted or crocheted clothing, together with knitted or crocheted clothing accessories.

However, knitted or crocheted brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof are excluded from Chapter 61. These articles are classified in Heading 62.12 because of Legal Note 2(a) to Chapter 61.

There are specific definitions of the terms suit, ensemble, babies' garments and clothing accessories and ski suits.

For example, Legal Note 6 defines "babies' garments" as articles for young children of a body height not exceeding 86 cm.

Chapter 62 - Articles of apparel and clothing accessories, not knit or crocheted

This Chapter covers, as indicated, articles of apparel and clothing accessories which are not knit or crocheted. It also covers the knitted articles mentioned in Legal Note 2(a) to Chapter 61 as well as articles made up from any woven fabric of Chapters 50 to 55, 58 and 59 or of felt or nonwovens (but not wadding) of Chapter 56.

The HS no longer refers to outer and under garments, as these concepts have different meanings in different parts of the world, mostly because of the climate and customary mode of dress. Garments are therefore normally referred to by the name they have in trade.

Chapter 63 - Other made up textile articles; sets; worn clothing and worn textile articles; rags

This Chapter covers made up articles, of any textile fabric, not more specifically covered by other Headings in the Section.

Section XII

FOOTWEAR, HEADGEAR, UMBRELLAS, SUN UMBRELLAS, WALKING-STICKS, SEAT-STICKS, WHIPS, RIDING-CROPS AND PARTS THEREOF; PREPARED FEATHERS AND ARTICLES MADE THEREWITH; ARTIFICIAL FLOWERS; ARTICLES OF HUMAN HAIR

Chapters 64 to 67

Chapter 64 - Footwear, gaiters and the like; parts of such articles

Footwear is classified according to the upper and outer sole and then by type. There is a provision for parts of footwear, but there is a Legal Note which excludes certain "parts" of footwear from the provision for parts.

Legal Note 4a defines the material of the "upper" as the material having the greatest external surface area. No account is taken of accessories or reinforcements such as ankle patches, edging, ornamentation, buckles, tabs, eyelet stays or similar attachments.

Legal Note 4b defines the material of the "outer sole" as the material having the greatest surface area in contact with the ground. No account is taken of accessories or reinforcements such as spikes, bars, nails, protectors or similar attachments.

Chapter 65 - Headgear and parts thereof

Chapter 66 - Umbrellas, Walking Sticks and parts thereof

Chapter 67 - Articles of Feathers/Down, Artificial Flowers, Articles of Human Hair

Section XIII

ARTICLES OF STONE, PLASTER, CEMENT, ASBESTOS, MICA OR SIMILAR MATERIALS; CERAMIC PRODUCTS; GLASS AND GLASSWARE

Chapters 68 to 70

Chapter 68 - Articles of stone, plaster, cement, asbestos, mica or similar materials

Chapter 69 - Ceramic products

Chapter 70 - Glass and glassware

The products of Chapter 69 must, in accordance with Legal Note 1 to the Chapter, have been both shaped and then fired. This is the basic difference between the products of Chapter 68, which are not usually fired, and products of Chapter 69, which require shaping and firing, and products of Chapter 70 in which the mixture is not fired but completely fused.

Definitions of "fired" and "fused" can be found in technical books and reference works and in the Explanatory Notes (The manufacturing process for ceramics is set out in the Explanatory Notes to Chapter 69).

"Waste glass" of Heading 70.01 is not defined by any Chapter Legal Note. However, the Explanatory Notes state that it comes from the manufacture of glass (including that splashed outside the melting pots); also broken articles. Waste glass is generally characterized by its sharp edges.

Section XIV

NATURAL OR CULTURED PEARLS, PRECIOUS OR SEMI-PRECIOUS STONES, PRECIOUS METALS, METALS CLAD WITH PRECIOUS METAL AND ARTICLES THEREOF; IMITATION JEWELLERY; COIN

Chapter 71

Legal Note 2 states that the Headings for jewellery (71.13, 71.14, 71.15) do not cover articles in which precious metal or metal clad with precious metal is present as a minor constituent only.

For example:

- A wine glass with a fine rim of silver would be classified as a glass in Chapter 70 and not as an article of precious metal.
- An initial in gold in the handle of shaving razor would not change the classification of the razor from Chapter 82 to Chapter 71.

Legal Note 4 - defines precious metal as being only silver, gold and platinum.

Legal Note 5 - defines the alloys of precious metals as follows:

- (a) An alloy containing 2% or more (by weight) of platinum is an alloy of platinum.
- (b) An alloy containing 2% or more (by weight) of gold but no platinum, or less than 2% (by weight) of platinum, is an alloy of gold.
- (c) Other alloys containing 2% or more (by weight) of silver are alloys of silver.

For example:

- a ring of 97% gold and 3% platinum = Platinum
- a ring of 3% gold, 1% platinum and 96% silver = Gold
- a ring of 1% gold, 1% platinum and 98% silver = Silver

The Explanatory Notes to Chapter 71 have a four page list of precious and semi-precious stones.

Section XV

BASE METALS AND ARTICLES OF BASE METAL

Chapters 72 to 83

Although Section XV is concerned solely with the classification of base metals and articles of base metal, many of the Legal Notes to Section XV apply throughout the nomenclature.

Section XV: Legal Note 2 defines "Parts of General Use" as -

- Articles of Headings 73.07 (tube or pipe fittings), 73.12 (stranded wire, ropes and cables, etc.), 73.15 (chain), 73.17 (nails, tacks, pins, staples, etc.) or 73.18 (screws, bolts, nuts, etc.) and similar articles of other base metals.

- Springs and leaves for springs, of base metal, other than clock or watch springs

- Articles of Headings 83.01, 83.02, 83.08, 83.10 and frames and mirrors, of base metal, of Heading 83.06.

And then states that references in Section XV to parts of goods (except Heading 73.15: chains and parts thereof) do not include these "Parts of General Use". Consequently, nuts, bolts, springs, etc. are to be classified in their own Headings and not as parts.

For example:

- leaf springs, of steel, for motor vehicle shocks, are classified in Chapter 73 (7320.10) and not in Chapter 87 (8708.80) as parts of motor vehicles.

- copper chain for hanging chandeliers is classified in Chapter 74 (7419.10) and not in Chapter 94 (9405.99) as parts of lamps.

- nuts and bolts, of aluminum, for dish washing machines of the household type are classified in 7616.10 and not as parts of dishwashers in 8422.90

Section XV: Legal Note 5 provides critical definitions of alloys:

An alloy of base metals is to be classified as an alloy of the metal which predominates by weight over each of the other metals.

For example:

- An alloy containing 60% iron and 40% copper is an alloy of iron (but not ferro-alloy because the copper content exceeds 10%)

- An alloy of 40% iron, 42% copper and 18% nickel is a copper alloy.

An alloy of base metals of Section XV and elements not falling within Section XV is to be treated as an alloy of base metals of this Section if the total weight of such metals equals or exceeds the total weight of the other elements present.

For example:

- An alloy containing 53% aluminum, 20% sulphur, 17% silica and 10% phosphorus is classified in Chapter 76 as aluminum.

- An alloy containing 35% zinc, 40% sulphur, 15% phosphorous and 10% silica is classified in Heading 38.23 as a chemical preparation.

Chapter 72 - Iron and Steel.

This Chapter covers ferrous metals presented in primary forms or as products derived directly there from.

There are many Legal Notes to this Chapter defining the products of the Chapter.

The Explanatory Notes describe in detail the manufacturing process used in creating the various products of this Chapter.

Chapter 73 - Articles of Iron and Steel

The Legal Notes contain definitions of "cast iron" and "wire" which must be kept in mind in identifying the products of this Chapter.

Chapter 74 - Copper and articles thereof

There are many definitions of copper products in the Legal Notes.

Chapter 75 - Nickel and articles thereof

Chapter 76 - Aluminum and articles thereof

Chapter 77 - Vacant

Chapter 78 - Lead and articles thereof

Chapter 79 - Zinc and articles thereof

Chapter 80 - Tin and articles thereof

Chapter 81 - Other base metals; cermets; articles thereof

Chapter 82 - Tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal

In general, the goods of this Chapter must have a blade, working edge, working surface or other working part of:

- Base metal;

- Metal carbides or cermets;

- Precious or semi-precious stones on a support of base metal, metal carbide or cermets; or

- abrasive materials on a support of base metal, provided that the articles have cutting teeth, flutes, grooves, or the like, of base metal, which retain their identity and function after the application of the abrasive.

Parts of the articles of Chapter 82 are to be classified with the articles, except for Parts of General Use and heads, blades and cutting plates for electric shavers.

- Heading 82.12 covers razors and razor blades - but not for electric shavers. (See Legal Note 2 to Chapter 82: heads, blades and cutting plates for electric shavers are to be classified in Heading 85.10)

WHAT IS A CERMET?

Cermets contain both a ceramic constituent (resistant to heat and with a high melting point) and a metallic constituent. They are used in the aircraft and nuclear industries and in missiles. They are also used in furnaces and metal foundries in the manufacture of bearings, brake-linings, etc.

Chapter 83 - Miscellaneous articles of base metal

While the articles of Chapters 73 to 81 are classified according to their constituent metal, the articles of this Chapter, like those of Chapter 82, are classified according to what they are.

Section XVI

MACHINERY AND MECHANICAL APPLIANCES; ELECTRICAL EQUIPMENT; PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION IMAGE AND SOUND RECORDERS AND REPRODUCERS, AND PARTS AND ACCESSORIES OF SUCH ARTICLES.

Chapters 84 and 85

Section XVI is by far the largest Section in the HS and its two Chapters comprise approximately 15% of all of the Headings and Subheadings in the nomenclature.

The Legal Notes to this Section contain some significant classification concepts:

Legal Note 2 spells out how parts are to be classified.

HARMONIZED SYSTEM PARTS CLASSIFICATION

First, consider:

- ◆ Headings and sub-Headings specifically describing the parts by name (For example: Spark Plugs of 8511.10; Tires of 40.11)

Second, consider:

- ◆ Legal Note XV-2 (Parts of General Use, of base metal) and XVI-1 (similar goods of plastics)

Third, consider:

- ◆ Parts provisions within Headings of Sections XVI and XVII, and Chapter 90

And finally, consider:

- ◆ Headings 84.87; 85.48; 90.33 (Legal Notes XVI-2 and 90-2: Parts of machines or apparatus of more than one Heading)

Section XVI is by far the largest Section in the HS and its two Chapters comprise approximately 15% of all of the Headings and Subheadings in the nomenclature.

The Legal Notes to this Section contain some significant classification concepts:

Legal Note 2 spells out how parts are to be classified.

Legal Note 3 defines Composite Machines as consisting of two or more machines fitted together to form a whole, and other machines adapted for the purpose of performing two or more complementary or alternative functions. Such machines are to be

classified as if consisting only of that component or as being that machine which performs the principal function.

Legal Note 4 defines Functional Units as being a machine, or a combination of machines, which consist of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or other devices) which are intended to contribute together to a clearly defined function covered by one of the Headings in Chapter 84 or 85. The Functional Unit is to be classified in the Heading appropriate to that function.

Section XVI:

The essential difference between the two Chapters of this Section is that Chapter 84 covers machines and Chapter 85 electrical machines - in general.

However, there are some machines of Chapter 84 which have electrical properties such as machinery powered by electric motors; electrically heated machinery such as central heating boilers; electro-magnetically operated machines such as typewriters, cranes with electro-magnetic lifting heads; and machines operated electronically such as ADP machines.

And, there are some articles classified in Chapter 85 which are not electrical, such as magnetic tapes, gramophone records and laser discs (85.23), and electrical insulators of glass or ceramics (85.46)

Chapter 84 - Nuclear reactors, boilers, machinery and mechanical appliances parts thereof.

Legal Note 5 defines ADP machines and systems

The last sentence in this Legal Note provides that Heading 84.71 does not cover machines performing a specific function other than data processing and incorporating or working in conjunction with an automatic data processing machine. Such machines are classified in the Headings appropriate to their respective functions or, failing that, in residual Headings.

Legal Note 7 provides that a machine which is used for more than one purpose is, for the purposes of classification, to be treated as if its principal purpose were its sole purpose.

Legal Note 7 also provides that a machine the principal purpose of which is not described in any Heading, or for which no one purpose is the principal purpose is, unless the context otherwise requires, to be classified in Heading 84.79.

Chapter 85 - Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.

Legal Note 4:- defines solid state non-volatile storage devices and smart cards (Heading 85.23).

Legal Note 5:- defines printed circuits (Heading 85.34).

Legal Note 8: - defines diodes, transistors and similar semiconductor devices as well as electronic integrated circuits and micro-assemblies (Headings 85.41 and 85.42).

- states that Headings 85.41 and 85.42 have precedence over any other Heading in the Nomenclature, except Heading 85.23, which might cover these articles by reference to function, etc.

Section XVII

VEHICLES, AIRCRAFT, VESSELS AND ASSOCIATED TRANSPORT EQUIPMENT

Chapters 86 - 89

Legal Note 2 lists articles that cannot be classified as “parts” or “accessories” in this Section, even if they are identifiable as for the goods of this Section.

Legal Note 3 gives instructions on the classification of “parts” and “accessories” in Chapters 86 to 88.

Legal Note 4 states that aircraft specially constructed so they can be used as road vehicles are to be classified as aircraft whereas amphibious motor vehicles are classified as motor vehicles.

Legal Note 5 specifies that air-cushion vehicles (Hovercraft) are to be classified in the Chapter to the goods to which they are most akin, i.e, Chapter 86 if designed to travel on a guide-track (Hover-trains) and Chapter 87 if designed to travel over land or both land and water.

Chapter 86 - Railway or tramway locomotives, rolling-stock and parts thereof; railway or tramway track fixtures and fittings and parts thereof; mechanical (including electro-mechanical) traffic signaling equipment of all kinds.

Chapter 87 - Vehicles other than railway or tramway rolling-stock, and parts and accessories thereof.

Chapter 88 - Aircraft, spacecraft, and parts thereof

Chapter 89 - Ships, boats and floating structures

Legal Note 1 provides that a hull, an unfinished or incomplete vessel, assembled, unassembled or disassembled, or a complete vessel unassembled or disassembled, is to be classified in Heading 89.06 as an “other vessel” if it does not have the essential character of a vessel of a particular kind.- (as named in the other Headings, for example).

Section XVIII

OPTICAL, PHOTOGRAPHIC, CINEMATOGRAPHIC, MEASURING, CHECKING, PRECISION, MEDICAL OR SURGICAL INSTRUMENTS AND APPARATUS; CLOCKS AND WATCHES; MUSICAL INSTRUMENTS; PARTS AND ACCESSORIES

Chapters 90 to 92

Chapter 90 - Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts

Legal Note 3 extends the “functional unit” classification principle to Chapter 90.

(See Legal Note 4 to Section XVI) :

Functional Units are defined as being a machine, or a combination of machines, which consist of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or other devices) which are intended to

contribute together to a clearly defined function covered by one of the Headings in this Chapter. The Functional Unit is to be classified in the Heading appropriate to that function.

Question:

Classification of a Computer Aided Design (CAD) system for industrial drafting consisting of the following:

- an automatic data processing machine (graphics processor)
- an interactive design console together with an electronic pen/tablet with the aid of which drawings are drafted on a video screen and information is fed into the "graphic processor" while at the same time being shown on the screen,
 - a "tele-display" with keyboard for giving commands to the processor
 - a digitizer/plotter which produces drawings on paper and is controlled by signals from the graphics processor;
 - a "tele-writer" which is used for giving commands to or receive information from the graphics processor.

Answer:

Taken as a whole, the system is what technicians call a computerized drafting machine, which is not to be regarded as an ADP system within the meaning of Legal Note 5 to Chapter 84, but as a computerized drafting machine as mentioned in the text of Heading 90.17.

The ADP system contributes to a function referred to in a Heading other than 84.71.

Thus the whole is classified in Subheading 9017.10 as a drafting machine, whether or not automatic, in accordance with the last paragraph of Legal Note 5 to Chapter 84 and in accordance with the provisions of Legal Note 3 to Chapter 90 relating to functional units.

In addition, the Explanatory Notes to Heading 90.17 list the machine.

Chapter 91 - Clocks and watches and parts thereof.

This Chapter covers apparatus designed mainly to measure time or for effecting some operation in relation to time. The articles of the Chapter may be of any material, including precious metals, and they may be decorated or trimmed with natural or cultured pearls, or natural, synthetic or reconstructed precious or semi-precious stones.

The classification of clocks and watches combined with other objects is governed by the Rules. The mere inclusion of internal lighting does not remove clocks or watches from this Chapter.

There is a Heading (91.09) for watch movements which are complete and assembled. They are meant mainly for the goods of Headings 91.04 to 91.07 but remain in this Chapter even if intended for use in other instruments of other Chapters. If not complete and assembled, the components would fall in Headings 91.10 or 91.14.

Chapter 92 - Musical instruments; parts and accessories of such articles.

Legal Note 2 provides that bows and sticks and similar devices used in playing the musical instruments of Heading 92.02 or 92.06 (violins and drums) which are presented with musical instruments are to be classified therewith.

Even if fitted with an electrical sound pick-up and amplifying device, musical instruments remain in this Heading.

Section XIX

ARMS AND AMMUNITION; PARTS AND ACCESSORIES THEREOF

Chapter 93

Telescopic sights and other optical devices presented with the arms are to be classified therewith but if presented separately they are to be separately classified.

Swords and cutlasses are included in this Chapter but not fencing foils nor bows and arrows (Chapter 95).

Section XX

MISCELLANEOUS MANUFACTURED ARTICLES

Chapters 94 to 96

Chapter 94 - Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like; prefabricated buildings.

Legal Note 2 states that the articles referred to in Headings 94.01 to 94.03 are to be classified in those Headings only if they are designed for placing on the floor or ground. But this Legal Note also provides that certain other articles such as seats and beds are classified as furniture even if designed to be hung, to be fixed to the wall or to stand one on the other

There is an Explanatory Note which defines "furniture" as any movable articles (not included under other more specific Headings of the nomenclature) which have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theaters, but there are exceptions to this definition:

- Furniture which incorporates more than minor components of precious metal or metal clad with precious metal is excluded -- Chapter 71.

- The Heading for medical furniture does not include invalid carriages used on the streets -- Chapter 87.

Note:

Chapter 94:

Prefabricated buildings are classified in this Chapter and are defined by Legal Note 4.

Chapter 95 - Toys, games and sports requisites; parts and accessories.

This Chapter covers all toys, whether designed for the amusement of children or adults. The articles of this Chapter may be made of any material except natural or cultured pearls, precious or semi-precious stones, precious metal or metal clad with precious metal. They may incorporate minor constituents of these goods.

Certain toys may be capable of limited use, such as toy sewing machines, but they are generally distinguished by their size and their limited capacity from the real things.

Traveling circuses are also classified in this Chapter.

Chapter 96 - Miscellaneous manufactured articles

This Chapter covers carving and moulding materials and articles of these materials, certain brooms, brushes and sieves, certain articles of haberdashery, certain articles of

writing and office equipment, certain requisites for smokers, certain toilet articles and various other articles not more specifically covered by other Headings in the HS.

Ivory is defined by Legal Note 3 to Chapter 5 as elephant, hippopotamus, walrus, narwhal and wild boar tusks, rhinoceros horns and the teeth of all animals.

This definition applies “throughout the nomenclature”, therefore it is applicable to the determination of articles of Heading 96.01.

Section XXI

WORKS OF ART, COLLECTORS' PIECES AND ANTIQUES

Chapter 97 :

Heading 97.04 covers postage or revenue stamps but only if

- (1) they are used or
- (2) In the case of unused articles, they are not of current or new issue in the country to which they are destined.

This is in contrast to the stamps of Heading 49.07.

Heading 97.06 covers antiques of an age exceeding 100 years but does not cover, irrespective of their age, pearls, natural or cultured, or precious or semi-precious stones of Headings 71.01 to 71.03 - or any article of the preceding Headings of Chapter 96

List of countries, territories or customs or economic unions

applying the Harmonized System.

138 countries and the European Union have signed the HS Convention and are Contracting Parties (24 May 2011)

Afghanistan +Albania +Algeria +Andorra + Angola + Antigua & Barbuda x Argentina + Armenia + Australia +Austria + Azerbaijan + Bahamas x Bahrain + Bangladesh + Barbados x Belarus + Belgium + Belize x Benin + Bermuda x Bhutan +Bolivia + Bosnia and Herzegovina x Botswana +Brazil + Brunei Darussalam x Bulgaria + Burkina Faso + Burundi x Cambodia + Cameroon + Canada + Cape Verde + Central African Rep. + Chad + Chile +China + Colombia + Comoros x Congo (Dem. Rep. of) + Congo (Rep. of) + Cook Islands x Costa Rica x Côte d'Ivoire + Croatia + Cuba + Cyprus + Czech Republic + Denmark + Djibouti x Dominica x Dominican Rep. + Ecuador + Egypt + El Salvador x Equatorial Guinea x Eritrea + Estonia + Ethiopia + Fiji + Finland + France + Gabon + Gambia x Georgia + Germany + Ghana + Greece + Grenada x Guatemala x Guinea + Guinea Bissau x Guyana x Haiti + Honduras x Hong Kong, China x Hungary + Iceland + India + Indonesia + Iran +Ireland + Israel + Italy + Jamaica x Japan + Jordan + Kazakhstan + Kenya + Kiribati x Korea (Rep.) + Kuwait + Kyrgyzstan + Laos x Latvia + Lebanon + Lesotho + Liberia + Libyan Arab Jamahiriya + Liechtenstein x Lithuania + Luxembourg + Macau, China x Madagascar + Malawi + Malaysia + Maldives + Mali + Malta + Marshall Islands x Mauritania + Mauritius + Mexico + Micronesia x Moldova + Mongolia + Montenegro + Morocco + Mozambique x Myanmar + Namibia + Nepal + Netherlands + New Caledonia (French Terr.) x New Zealand + Nicaragua x Niger + Nigeria + Niue x Norway + Oman x Pakistan + Palau x Panama + Papua New Guinea x Paraguay + Peru + Philippines + Poland + Polynesia (French Terr.) x Portugal + Qatar + Romania + Russia + Rwanda + Saint Kitts and

Nevis x Saint Lucia x Saint Pierre and Miquelon (FrenchTerr.) x Saint Vincent and the Grenadines Samoa x Saudi Arabia + Senegal + Serbia + Seychelles x Sierra Leone x Singapore +Slovakia + Slovenia + Solomon Islands x South Africa + Spain + Sri Lanka + Sudan + Suriname x Swaziland +Sweden + Switzerland + Syrian Arab Rep. + Tajikistan + Tanzania + Thailand +The Former Yugoslav Republic of Macedonia + Togo + Tonga x Trinidad and Tobago x Tunisia + Turkey + Turkmenistan x Tuvalu x Uganda + Ukraine + United Arab Emirates + United Kingdom + United States + Uruguay +Uzbekistan + Vanuatu x Venezuela + Vietnam + Wallis and Futuna (French Terr.) x Yemen + Zambia +Zimbabwe +European Union +Andean Community (CAN) Caribbean Community (CARICOM) + Common Market for Eastern and Southern Africa (COMESA) +x Common Wealth of the Independent States (CIS) + Economic and Monetary Community of Central Africa (CEMAC) (former CACEU) + Economic Community of Western African States (ECOWAS) +x Gulf Co-operation Council (GCC) + Latin American Integration Association (LAIA) +x Southern Cone Common Market (MERCOSUR) +x West African Economic and Monetary Union (UEMOA)

Valuation for Customs purposes

Background

Specific and ad valorem customs duties

Customs duties can be designated in either specific or ad valorem terms or as a mix of the two. In case of a specific duty, a concrete sum is charged for a quantitative description of the good, for example USD 1 per item or per unit. The customs value of the good does not need to be determined, as the duty is not based on the value of the good but on other criteria. In this case, no rules on customs valuation are needed and the Valuation Agreement does not apply. In contrast, an ad valorem duty depends on the value of a good. Under this system, the customs valuation is multiplied by an ad valorem rate of duty (e.g. 5 per cent) in order to arrive at the amount of duty payable on an imported item.

Definition

Customs valuation is a customs procedure applied to determine the customs value of imported goods. If the rate of duty is ad valorem, the customs value is essential to determine the duty to be paid on an imported good.

The Importance of CUSTOMS VALUE

- Unifying the valuation methodology is an essential element for Transparency and Justice
- The Main Customs Procedure needed for the Release of Goods.
- The Legal Procedure enables Customs to Identify and calculate the Customs Duties.

Short historical overview Article VII GATT

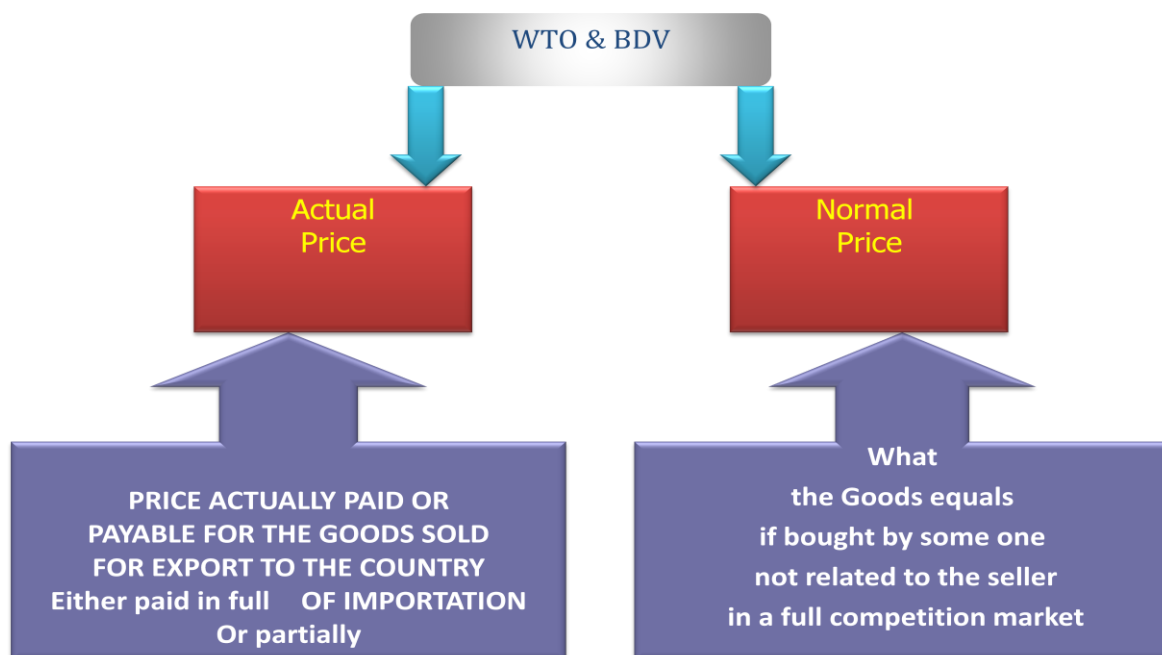
Article VII of the General Agreement on Tariffs and Trade laid down the general principles for an international system of valuation. It stipulated that the value for customs purposes of imported merchandise should be based on the actual value of the imported merchandise on which duty is assessed, or of like merchandise, and should not be based on the value of merchandise of national origin or on arbitrary or fictitious values. Although Article VII also contains a definition of "actual value", it still permitted the use of widely differing methods of valuing goods. In addition, 'grandfather clauses' permitted continuation of old standards which did not even meet the very general new standard.

Brussels definition of value

Starting in the 1950s, customs duties were assessed by many countries according to the Brussels Definition of Value (BVD). Under this method, a normal market price, defined as "the price that a good would fetch in an open market between a buyer and

seller independent of each other," was determined for each product, according to which the duty was assessed. Factual deviations from this price were only fully taken into account where the declared value was higher than the listed value.

Downward variations were only taken into account up to 10 per cent. This method caused widespread dissatisfaction among traders, as price changes and competitive advantages of firms were not reflected until the notional price was adjusted by the customs office after certain periods of time. New and rare products were often not captured in the lists, which made determination of the "normal price" difficult. The USA never became part of the BVD. It was clear that a more flexible and uniform valuation method was needed which would harmonize the systems of all countries.



WTO Agreement The new Agreement

The Tokyo Round Code was replaced by the WTO Agreement on Implementation of Article VII of the GATT 1994 following conclusion of the Uruguay Round. This Agreement is essentially the same as the Tokyo Round Valuation Code and applies only to the valuation of imported goods for the purpose of levying ad valorem duties on such goods. It does not contain obligations concerning valuation for purposes of determining export duties or quota administration based on the value of goods, nor does it lay down conditions for the valuation of goods for internal taxation or foreign exchange control.

Basic principle: Transaction value

The Agreement stipulates that customs valuation shall, except in specified circumstances, be based on the actual price of the goods to be valued, which is generally shown on the invoice. This price, plus adjustments for certain elements listed in Article 8, equals the transaction value, which constitutes the first and most important method of valuation referred to in the Agreement.

The 6 Methods

For cases in which there is no transaction value, or where the transaction value is not acceptable as the customs value because the price has been distorted as a result of certain conditions, the Agreement lays down five other methods of customs valuation, to be applied in the prescribed hierarchical order.

Overall the following six methods are considered in the Agreement:

- Method 1: transaction value
- Method 2: transaction value of identical goods
- Method 3: transaction value of similar goods
- Method 4: deductive method
- Method 5: computed method
- Method 6: fall-back method

Other provisions

The sequence of methods 4 and 5 can be switched at the request of the importer (not, however, at the discretion of the customs officer). Moreover, the Agreement contains provisions for special and differential treatment of developing countries and for technical assistance. Since this Agreement is an integral part of the single WTO undertaking, all WTO Members are Members of the Customs Valuation Agreement.

Method 1 - Transaction value

Definition of transaction value

The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods, and includes all payments made as a condition of sale of the imported goods by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller.

Conditions to be fulfilled

The customs value is the transaction value if all of the following conditions have been fulfilled:

Evidence of sale

There must be evidence of a sale for export to the country of importation (i.e. commercial invoices, contracts, purchase orders, etc.).

No restriction on the disposition or use

There must be no restriction on the disposition or use of the goods by the buyer, other than restrictions which:

- are imposed or required by law in the country of importation;
- are limited to the geographic area in which the goods may be resold;
- do not substantially affect the value of the goods.

Not subject to additional conditions

The sale or price must not be subject to conditions or considerations for which a value cannot be determined with respect to the goods being valued. Some examples are provided in Annex I, Note to

Article 1:1(b):

- the seller establishes the price of the imported goods on the condition that the buyer will also buy other goods in specified quantities;
- the price of the imported goods is dependent upon the price or prices at which the buyer sells other goods to the seller;
- The price is established on the basis of a form of payment extraneous to the imported goods.

Full prices, unless...

No part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless adjustment can be made in accordance with provisions in Article 8.

Sufficient information for adjustments

Sufficient information is available to enable the specific adjustments to be made under Article 8 to the price paid or payable such as;

- Commissions and brokerage, except buying commission
- Packing and container costs and charges
- Assists
- Royalties and license fees
- Subsequent proceeds
- The cost of transport, insurance and related charges up to the place of importation if the Member bases evaluation on a C.I.F. basis
- But not: costs incurred after importation (duties, transport, construction or assembly), [Annex I, Note 3 to Article 1].

Buyer and seller not related, otherwise...

The buyer and seller are not related, but even if so, the use of the transaction value is acceptable if the importer demonstrates that:

- The relationship did not influence the price, or
- The transaction value closely approximates a test value.

Related parties

The definition of related persons is found in Article 15 of the Agreement, which states that persons are to be deemed to be related only if:

- They are officers or directors of one another's businesses;
- They are legally recognized partners in business;
- They are employer and employee;
- any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;
- one of them directly or indirectly controls the other (the Interpretative Note to Article 15 provides that for the purposes of the Agreement, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter. The note also states that "persons" includes a legal person, where appropriate).

- Both of them are directly or indirectly controlled by a third person; or they are members of the same family.

Cases where Customs Administrations have reasons to doubt the truth or accuracy of the declared value

Customs valuation based on the transaction value method is largely based on documentary input from the importer. Article 17 of the Agreement confirms that customs administrations have the right to "satisfy themselves as to the truth or accuracy of any statement, document or declaration." A "Decision Regarding Cases Where Customs Administrations Have Reasons to Doubt the Truth or Accuracy of the Declared Value" taken by the Committee on Customs Valuation pursuant to a Ministerial Decision at Marrakesh spells out the procedures to be observed in such cases. As a first step, customs may ask the importer to provide further explanation that the declared value represents the total amount actually paid or payable for the imported goods.

If the reasonable doubt still exists after reception of further information (or in absence of a response), customs may decide that the value cannot be determined according to the transaction value method.

Before a final decision is taken, customs must communicate its reasoning to the importer, who, in turn, must be given reasonable time to respond. In addition, the reasoning of the final decision must be communicated to the importer in writing.

Methods 2 Transaction value of identical goods

Method 2: Transaction value of identical goods (Article 2)

The transaction value is calculated in the same manner on identical goods if the goods are:

- The same in all respects including physical characteristics, quality, and reputation;
- produced in the same country as the goods being valued;
- And produced by the producer of the goods being valued.

For this method to be used, the goods must be sold for export to the same country of importation as the goods being valued. The goods must also be exported at or about the same time as the goods being valued.

Exceptions

Some exceptions are accepted, in particular:

- where there are no identical goods produced by the same person in the country of production of the goods being valued, identical goods produced by a different person in the same country may be taken into account.
- Minor differences in appearance would not preclude goods which otherwise conform to the Definitions from being regarded as identical.

The definition excludes imported goods which incorporate engineering, artwork etc, provided by the buyer to the producer of goods free of charge or at a reduced cost, undertaken in the country of importation for which no adjustment has been made under Article 8.

Method 3: Transaction value of similar goods (Article 3)

The transaction value is calculated in the same manner on similar goods if:

- goods closely resembling the goods being valued in terms of component materials and Characteristics
- Goods which are capable of performing the same functions and are commercially interchangeable with the goods being valued
- Goods which are produced in the same country as and by the producer of the goods being valued. For this method to be used, the goods must be sold to the same country of importation as the goods being valued. The goods must be exported at or about the same time as the goods being valued.

Method 4 - Deductive value

Deduction of value from the price of the greatest aggregate quantity sold

The Agreement provides that when customs value cannot be determined on the basis of the transaction value of the imported goods or identical or similar goods, it will be determined on the basis of the unit price at which the imported goods or identical or similar goods are sold to an unrelated buyer in the greatest aggregate quantity in the country of importation. The buyer and the seller in the importing country must not be related and the sale must take place at or about the time of importation of the goods being valued. If no sale took place at or about the time of importation, it is permitted to use sales up to 90 days after importation of the goods being valued.

Determination of the greatest aggregate quantity sold

Under Article 5.1, the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity is to be the basis for establishing the customs value. The greatest aggregate quantity is, according to the Interpretative Note to that Article, the price at which

The greatest number of units is sold to unrelated persons at the first commercial level after importation at which such sales take place. To determine the greatest aggregate quantity all sales at a given price are taken together and the sum of all the units of goods sold at that price is compared to the sum of all the units of goods sold at any other price. The greatest number of units sold at one price represents the greatest aggregate quantity.

Deductions from the price at the greatest aggregate quantity.

Since the starting point in calculating deductive value is the sale price in the country of importation, various deductions are necessary to reduce that price to the relevant customs value:

- commissions usually paid or agreed to be paid, the sum of profits and general expenses added in connection with sales must also be deducted;
- The usual transport costs and corresponding insurance are to be deducted from the price of the goods when these costs are usually incurred within the country of importation;
- the customs duties and other national taxes payable in the country of importation by reason of the importation or sale of the goods are also to be deducted;
- Value added by assembly or further processing, when applicable.

Method 5 - Computed value

Definition: Production cost and profits and expenses.

Computed value, the most difficult and rarely used method, determines the customs value on the basis of the cost of production of the goods being valued, plus an amount for profit and general expenses usually reflected in sales from the country of exportation to the country of importation of goods of the same class or kind. Computed value is the sum of the following elements:

Production cost = value of materials and fabrication

The cost or value of materials and fabrication or other processing employed in producing the imported goods. Materials would include, for example, raw materials, such as lumber, steel, lead, clay textiles, etc.; costs to get the raw materials to the place of production; subassemblies, such as integrated circuits; and prefabricated components which will eventually be assembled. Fabrication would include the costs for labour, any costs for assembly when there is an assembly operation instead of manufacturing process, and indirect costs such as factory supervision, plant maintenance, overtime, etc. Cost or value is to be determined on the basis of information relating to the production of the goods being valued, supplied by or on behalf of the producer. If not included above, packing costs and charges, assists, engineering work, artwork, etc. undertaken in the country of importation would be added.

Profit and general expenses

Profit and general expenses usually reflected in export sales to the country of importation, by producers in the country of importation on the basis of information supplied by the producer, of goods of the same class or kind. The latter phrase means goods which fall within a group or range of goods produced by a particular industry or industry sector and includes identical or similar goods. The amount of profit and general expenses has to be taken as a whole (i.e. the sum of the two). General expenses could include rent, electricity, water, legal fees, etc.

Other expenses to be added

Finally, other expenses should be added to the price such as the cost of transport of the imported goods to the port or place of importation, loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation, and the cost of insurance.

Method 6 - Fall-back method

Definition

"Customs value determination based on "reasonable means consistent with the principles and general provisions of the Agreement, Article VII GATT and on the basis of available data".

When the customs value cannot be determined under any of the previous methods, it may be determined using reasonable means consistent with the principles and general

provisions of the Agreement and of Article VII of GATT, and on the basis of data available in the country of importation. To the greatest extent possible, this method should be based on previously determined values and methods with a reasonable degree of flexibility in their application.

Valuation criteria not to be used

Under the fall-back method, the customs value must not be based on:

- The selling price of goods in the country of importation (i.e. the sale price of goods manufactured in the importing country);
- A system which provides for the acceptance for customs purposes of the higher of two alternative values (the lowest should be used);
- The price of goods on the domestic market of the country of exportation (valuation on this basis would go against the principle in the Preamble that "valuation procedures should not be used to combat dumping");
- The cost of production other than computed values which have been determined for identical or similar goods (valuation must be arrived at on the basis of data available in the country of importation);
- The price of goods for export to a third country (two export markets are always to be treated as separate and the price to one should not control the customs value in the other);
- Minimum customs value (unless a developing country has taken the exception which allows for use of minimum values);
- Arbitrary or fictitious values (these prohibitions are aimed at systems which do not base their values on what happens in fact in the marketplace, as reflected in actual prices, in actual sales, and in actual costs, reason of the importation or sale of the goods are also to be deducted;

8 Special and differential treatment

Delay of application of the Agreement for five years for developing countries:

Article 20.1 allows developing country Members, not party to the Tokyo Round Code, to delay application of the provisions of the Agreement for a period of five years from the date of entry into force of the WTO Agreement for the Member concerned.

Delay of application of the computed value method for three years following the application of all other provisions of the Agreement

Article 20.2 allows developing country Members, not party to the Tokyo Round Codes to delay application of the computed value method for a period not exceeding three years following their application of all other provisions of the Agreement. In practice, this means that developing country Members, not party to the Tokyo Round Code, can delay the computed value method a total of 8

Extension of the transition period

Paragraph 1 of Annex III of the Agreement allows developing country Members for whom the five year delay in the application of the provisions of the Agreement provided for in Article 20.1 is insufficient to request, before the end of the five-year period, an extension of such a period, it being understood that the Members will give sympathetic consideration to such a request in cases where the developing country Member in question can show good cause.

Reservations to retain established minimum values

Paragraph 2 of Annex III provides that developing country Members may make a reservation to retain an already-existing system of officially established minimum values on a limited and transitional basis under such terms and conditions as may be agreed to by the Committee (even though minimum prices are prohibited under the Agreement).

Reservation against Article 4

Paragraph 3 of Annex III allows developing country Members the right to make a reservation permitting them to refuse the request of importers (allowed under Article 4 of the Agreement) to reverse the order of the deductive and computed value methods.

Special application of the deductive method

Paragraph 4 of Annex III allows developing country Members the right to value the goods under the deductive method even if the goods have undergone further processing in the country of importation, whether or not the importer so requests.

GENERAL INTRODUCTORY COMMENTARY

Articles 5 and 6 provide two bases for determining the customs value where it cannot be determined on the basis of the transaction value of the imported goods or of identical or similar imported goods. Under paragraph 1 of Article 5 the customs value is determined on the basis of the price at which the goods are sold in the condition as imported to an unrelated buyer in the country of importation. The importer also has the right to have goods which are further processed after importation valued under the provisions of Article 5 if the importer so requests. Under Article 6 the customs value is determined on the basis of the computed value. Both these methods present certain difficulties and because of this the importer is given the right, under the provisions of Article 4, to choose the order of application of the two methods.

Article 9: conversion of currency

- 1 - Where the conversion of currency is necessary for the determination of the customs value, the rate of exchange to be used shall be that duly published by the competent authorities of the country of importation concerned and shall reflect as effectively as possible, in respect of the period covered by each such document of publication, the current value of such currency in commercial transactions in terms of the currency of the country of importation .
- 2 - The conversion rate to be used shall be that in effect at the time of exportation or the time of importation, as provided by each Member .

Article 10: Confidentiality

All information which is by nature confidential or which is provided on a confidential basis for the purposes of customs valuation shall be treated as strictly confidential by the authorities concerned who shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings .

Article 11: right of appeal, without penalty

1. The legislation of each Member shall provide in regard to a determination of customs value for the right of appeal, without penalty, by the importer or any other person liable for the payment of the duty.
2. An initial right of appeal without penalty may be to an authority within the customs administration or to an independent body, but the legislation of each Member shall provide for the right of appeal without penalty to a judicial authority.
3. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. The appellant shall also be informed of any rights of further appeal.

Article 12: Publication of regulations

Laws, regulations, judicial decisions and administrative rulings of general application giving effect to this Agreement shall be published in conformity with Article X of GATT 1994 by the country of importation concerned .

TEXT OF THE AGREEMENT ON IMPLEMENTATION OF ARTICLE VII
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

GENERAL INTRODUCTORY COMMENTARY

1. The primary basis for customs value under this Agreement is "transaction value" as defined in Article 1. Article 1 is to be read together with Article 8 which provides, inter alia, for adjustments to the price actually paid or payable in cases where certain specific elements which are considered to form a part of the value for customs purposes are incurred by the buyer but are not included in the price actually paid or payable for the imported goods. Article 8 also provides for the inclusion in the transaction value of certain considerations which may pass from the buyer to the seller in the form of specified goods or services rather than in the form of money. Articles 2 through 7 provide methods of determining the customs value whenever it cannot be determined under the provisions of Article 1.
2. Where the customs value cannot be determined under the provisions of Article 1 there should normally be a process of consultation between the customs administration and importer with a view to arriving at a basis of value under the provisions of Article 2 or 3. It may occur, for example, that the importer has information about the customs value of identical or similar imported goods which is not immediately available to the customs administration in the port of importation. On the other hand, the customs administration may have information about the customs value of identical or similar imported goods which is not readily available to the importer. A process of consultation between the two parties will enable information to be exchanged, subject to the requirements of commercial confidentiality, with a view to determining a proper basis of value for customs purposes.
3. Articles 5 and 6 provide two bases for determining the customs value where it cannot be determined on the basis of the transaction value of the imported goods or of identical or similar imported goods. Under paragraph 1 of Article 5 the customs value is determined on the basis of the price at which the goods are sold in the condition as imported to an unrelated buyer in the country of importation. The importer also has the right to have goods which are further processed after importation valued under the provisions of Article 5 if the importer so requests. Under Article 6 the customs value is determined on the basis of the computed value. Both these methods present certain difficulties and because of this the importer is given the right, under the provisions of Article 4, to choose the order of application of the two methods.
4. Article 7 sets out how to determine the customs value in cases where it cannot be determined under the provisions of any of the preceding Articles.

Members,

Having regard to the Multilateral Trade Negotiations;

Desiring to further the objectives of GATT 1994 and to secure additional benefits for the international trade of developing countries;

Recognizing the importance of the provisions of Article VII of GATT 1994 and desiring to elaborate rules for their application in order to provide greater uniformity and certainty in their implementation;

Recognizing the need for a fair, uniform and neutral system for the valuation of goods for customs purposes that precludes the use of arbitrary or fictitious customs values;

Recognizing that the basis for valuation of goods for customs purposes should, to the greatest extent possible, be the transaction value of the goods being valued;

Recognizing that customs value should be based on simple and equitable criteria consistent with commercial practices and that valuation procedures should be of general application without distinction between sources of supply;

Recognizing that valuation procedures should not be used to combat dumping;

Hereby agree as follows:

PART I

RULES ON CUSTOMS VALUATION

Article 1

1. The customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8, provided:
 - (a) that there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which:
 - (i) are imposed or required by law or by the public authorities in the country of importation;
 - (ii) limit the geographical area in which the goods may be resold; or
 - (iii) do not substantially affect the value of the goods;
 - (b) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;

- (c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Article 8; and
 - (d) that the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is acceptable for customs purposes under the provisions of paragraph 2.
2. (a) In determining whether the transaction value is acceptable for the purposes of paragraph 1, the fact that the buyer and the seller are related within the meaning of Article 15 shall not in itself be grounds for regarding the transaction value as unacceptable. In such case the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the importer or otherwise, the customs administration has grounds for considering that the relationship influenced the price, it shall communicate its grounds to the importer and the importer shall be given a reasonable opportunity to respond. If the importer so requests, the communication of the grounds shall be in writing.
- (b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of paragraph 1 whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time:
- (i) the transaction value in sales to unrelated buyers of identical or similar goods for export to the same country of importation;
 - (ii) the customs value of identical or similar goods as determined under the provisions of Article 5;
 - (iii) the customs value of identical or similar goods as determined under the provisions of Article 6;

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 8 and costs incurred by the seller in sales in which the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related.

- (c) The tests set forth in paragraph 2(b) are to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under the provisions of paragraph 2(b).

Article 2

1. (a) If the customs value of the imported goods cannot be determined under the provisions of Article 1, the customs value shall be the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued.
- (b) In applying this Article, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.
2. Where the costs and charges referred to in paragraph 2 of Article 8 are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.
3. If, in applying this Article, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 3

1. (a) If the customs value of the imported goods cannot be determined under the provisions of Articles 1 and 2, the customs value shall be the transaction value of similar goods sold for export to the same country of importation and exported at or about the same time as the goods being valued.
- (b) In applying this Article, the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

2. Where the costs and charges referred to in paragraph 2 of Article 8 are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.
3. If, in applying this Article, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 4

If the customs value of the imported goods cannot be determined under the provisions of Articles 1, 2 and 3, the customs value shall be determined under the provisions of Article 5 or, when the customs value cannot be determined under that Article, under the provisions of Article 6 except that, at the request of the importer, the order of application of Articles 5 and 6 shall be reversed.

Article 5

1. (a) If the imported goods or identical or similar imported goods are sold in the country of importation in the condition as imported, the customs value of the imported goods under the provisions of this Article shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to deductions for the following:
 - (i) either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales in such country of imported goods of the same class or kind;
 - (ii) the usual costs of transport and insurance and associated costs incurred within the country of importation;
 - (iii) where appropriate, the costs and charges referred to in paragraph 2 of Article 8; and
 - (iv) the customs duties and other national taxes payable in the country of importation by reason of the importation or sale of the goods.
- (b) If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value shall, subject otherwise to the provisions of paragraph 1(a), be based on the unit price at which the imported goods or identical or similar imported goods are sold in the country

of importation in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of 90 days after such importation.

2. If neither the imported goods nor identical nor similar imported goods are sold in the country of importation in the condition as imported, then, if the importer so requests, the customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the country of importation who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in paragraph 1(a).

Article 6

1. The customs value of imported goods under the provisions of this Article shall be based on a computed value. Computed value shall consist of the sum of:
 - (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
 - (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation;
 - (c) the cost or value of all other expenses necessary to reflect the valuation option chosen by the Member under paragraph 2 of Article 8 .
2. No Member may require or compel any person not resident in its own territory to produce for examination, or to allow access to, any account or other record for the purposes of determining a computed value. However, information supplied by the producer of the goods for the purposes of determining the customs value under the provisions of this Article may be verified in another country by the authorities of the country of importation with the agreement of the producer and provided they give sufficient advance notice to the government of the country in question and the latter does not object to the investigation.

Article 7

1. If the customs value of the imported goods cannot be determined under the provisions of Articles 1 through 6, inclusive, the customs value shall be determined using reasonable means consistent with the principles and general provisions of this Agreement and of Article VII of GATT 1994 and on the basis of data available in the country of importation.
2. No customs value shall be determined under the provisions of this Article on the basis of:

- (a) the selling price in the country of importation of goods produced in such country;
 - (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
 - (c) the price of goods on the domestic market of the country of exportation;
 - (d) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Article 6;
 - (e) the price of the goods for export to a country other than the country of importation;
 - (f) minimum customs values; or
 - (g) arbitrary or fictitious values.
3. If the importer so requests, the importer shall be informed in writing of the customs value determined under the provisions of this Article and the method used to determine such value.

Article 8

1. In determining the customs value under the provisions of Article 1, there shall be added to the price actually paid or payable for the imported goods:
- (a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:
 - (i) commissions and brokerage, except buying commissions;
 - (ii) the cost of containers which are treated as being one for customs purposes with the goods in question;
 - (iii) The cost of packing whether for labour or materials;
 - (b) The value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:
 - (i) Materials, components, parts and similar items incorporated in the imported goods;
 - (ii) Tools, dies, moulds and similar items used in the production of the imported goods;

- (iii) Materials consumed in the production of the imported goods;
 - (iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the country of importation and necessary for the production of the imported goods;
 - (c) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
 - (d) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller.
2. In framing its legislation, each Member shall provide for the inclusion in or the exclusion from the customs value, in whole or in part, of the following:
 - (a) The cost of transport of the imported goods to the port or place of importation;
 - (b) Loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and
 - (c) The cost of insurance.
 3. Additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data.
 4. No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article.

Article 9

1. Where the conversion of currency is necessary for the determination of the customs value, the rate of exchange to be used shall be that duly published by the competent authorities of the country of importation concerned and shall reflect as effectively as possible, in respect of the period covered by each such document of publication, the current value of such currency in commercial transactions in terms of the currency of the country of importation.
2. The conversion rate to be used shall be that in effect at the time of exportation or the time of importation, as provided by each Member.

Article 10

All information which is by nature confidential or which is provided on a confidential basis for the purposes of customs valuation shall be treated as strictly confidential by the authorities concerned who shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

Article 11

1. The legislation of each Member shall provide in regard to a determination of customs value for the right of appeal, without penalty, by the importer or any other person liable for the payment of the duty.
2. An initial right of appeal without penalty may be to an authority within the customs administration or to an independent body, but the legislation of each Member shall provide for the right of appeal without penalty to a judicial authority.
3. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. The appellant shall also be informed of any rights of further appeal.

Article 12

Laws, regulations, judicial decisions and administrative rulings of general application giving effect to this Agreement shall be published in conformity with Article X of GATT 1994 by the country of importation concerned.

Article 13

If, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of such customs value, the importer of the goods shall nevertheless be able to withdraw them from customs if, where so required, the importer provides sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of customs duties for which the goods may be liable. The legislation of each Member shall make provisions for such circumstances.

Article 14

The notes at Annex I to this Agreement form an integral part of this Agreement and the Articles of this Agreement are to be read and applied in conjunction with their respective notes. Annexes II and III also form an integral part of this Agreement.

Article 15

1. In this Agreement:
 - (a) "Customs value of imported goods" means the value of goods for the purposes of levying ad valorem duties of customs on imported goods;
 - (b) "Country of importation" means country or customs territory of importation; and
 - (c) "Produced" includes grown, manufactured and mined.
2. In this Agreement:
 - (a) "Identical goods" means goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical;
 - (b) "Similar goods" means goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar;
 - (c) the terms "identical goods" and "similar goods" do not include, as the case may be, goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under paragraph 1(b)(iv) of Article 8 because such elements were undertaken in the country of importation;
 - (d) goods shall not be regarded as "identical goods" or "similar goods" unless they were produced in the same country as the goods being valued;
 - (e) goods produced by a different person shall be taken into account only when there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued.
3. In this Agreement "goods of the same class or kind" means goods which fall within a group or range of goods produced by a particular industry or industry sector, and includes identical or similar goods.
4. For the purposes of this Agreement, persons shall be deemed to be related only if:
 - (a) They are officers or directors of one another's businesses;

- (b) They are legally recognized partners in business;
 - (c) They are employer and employee;
 - (d) any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;
 - (e) One of them directly or indirectly controls the other;
 - (f) Both of them are directly or indirectly controlled by a third person;
 - (g) Together they directly or indirectly control a third person; or
 - (h) They are members of the same family.
5. Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purposes of this Agreement if they fall within the criteria of paragraph 4.

Article 16

Upon written request, the importer shall have the right to an explanation in writing from the customs administration of the country of importation as to how the customs value of the importer's goods was determined.

Article 17

Nothing in this Agreement shall be construed as restricting or calling into question the rights of customs administrations to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes.

PART II

ADMINISTRATION, CONSULTATIONS AND DISPUTE SETTLEMENT

Article 18

Institutions

1. There is hereby established a Committee on Customs Valuation (referred to in this Agreement as "the Committee") composed of representatives from each of the Members. The Committee shall elect its own Chairman and shall normally meet once

a year, or as is otherwise envisaged by the relevant provisions of this Agreement, for the purpose of affording Members the opportunity to consult on matters relating to the administration of the customs valuation system by any Member as it might affect the operation of this Agreement or the furtherance of its objectives and carrying out such other responsibilities as may be assigned to it by the Members. The WTO Secretariat shall act as the secretariat to the Committee.

2. There shall be established a Technical Committee on Customs Valuation (referred to in this Agreement as "the Technical Committee") under the auspices of the Customs Co-operation Council (referred to in this Agreement as "the CCC"), which shall carry out the responsibilities described in Annex II to this Agreement and shall operate in accordance with the rules of procedure contained therein.

Article 19

Consultations and Dispute Settlement

1. Except as otherwise provided herein, the Dispute Settlement Understanding is applicable to consultations and the settlement of disputes under this Agreement.
2. If any Member considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective of this Agreement is being impeded, as a result of the actions of another Member or of other Members, it may, with a view to reaching a mutually satisfactory solution of this matter, request consultations with the Member or Members in question. Each Member shall afford sympathetic consideration to any request from another Member for consultations.
3. The Technical Committee shall provide, upon request, advice and assistance to Members engaged in consultations.
4. At the request of a party to the dispute, or on its own initiative, a panel established to examine a dispute relating to the provisions of this Agreement may request the Technical Committee to carry out an examination of any questions requiring technical consideration. The panel shall determine the terms of reference of the Technical Committee for the particular dispute and set a time period for receipt of the report of the Technical Committee. The panel shall take into consideration the report of the Technical Committee. In the event that the Technical Committee is unable to reach consensus on a matter referred to it pursuant to this paragraph, the panel should afford the parties to the dispute an opportunity to present their views on the matter to the panel.
5. Confidential information provided to the panel shall not be disclosed without formal authorization from the person, body or authority providing such information. Where

such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of this information, authorized by the person, body or authority providing the information, shall be provided.

PART III

SPECIAL AND DIFFERENTIAL TREATMENT

Article 20

1. Developing country Members not party to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade done on 12 April 1979 may delay application of the provisions of this Agreement for a period not exceeding five years from the date of entry into force of the WTO Agreement for such Members. Developing country Members who choose to delay application of this Agreement shall notify the Director-General of the WTO accordingly.
2. In addition to paragraph 1, developing country Members not party to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade done on 12 April 1979 may delay application of paragraph 2(b)(iii) of Article 1 and Article 6 for a period not exceeding three years following their application of all other provisions of this Agreement. Developing country Members that choose to delay application of the provisions specified in this paragraph shall notify the Director-General of the WTO accordingly.
3. Developed country Members shall furnish, on mutually agreed terms, technical assistance to developing country Members that so request. On this basis developed country Members shall draw up programmes of technical assistance which may include, inter alia, training of personnel, assistance in preparing implementation measures, access to sources of information regarding customs valuation methodology, and advice on the application of the provisions of this Agreement.

PART IV

FINAL PROVISIONS

Article 21

Reservations

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

Article 22

National Legislation

1. Each Member shall ensure, not later than the date of application of the provisions of this Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement.
2. Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

Article 23

Review

The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the Council for Trade in Goods of developments during the period covered by such reviews.

Article 24

Secretariat

This Agreement shall be serviced by the WTO Secretariat except in regard to those responsibilities specifically assigned to the Technical Committee, which will be serviced by the CCC Secretariat.

ANNEX I

INTERPRETATIVE NOTES

General Note

Sequential Application of Valuation Methods

1. Articles 1 through 7 define how the customs value of imported goods is to be determined under the provisions of this Agreement. The methods of valuation are set out in a sequential order of application. The primary method for customs valuation is defined in Article 1 and imported goods are to be valued in accordance with the provisions of this Article whenever the conditions prescribed therein are fulfilled.

2. Where the customs value cannot be determined under the provisions of Article 1, it is to be determined by proceeding sequentially through the succeeding Articles to the first such Article under which the customs value can be determined. Except as provided in Article 4, it is only when the customs value cannot be determined under the provisions of a particular Article that the provisions of the next Article in the sequence can be used.
3. If the importer does not request that the order of Articles 5 and 6 be reversed, the normal order of the sequence is to be followed. If the importer does so request but it then proves impossible to determine the customs value under the provisions of Article 6, the customs value is to be determined under the provisions of Article 5, if it can be so determined.
4. Where the customs value cannot be determined under the provisions of Articles 1 through 6 it is to be determined under the provisions of Article 7.

Use of Generally Accepted Accounting Principles

1. "Generally accepted accounting principles" refers to the recognized consensus or substantial authoritative support within a country at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures.
2. For the purposes of this Agreement, the customs administration of each Member shall utilize information prepared in a manner consistent with generally accepted accounting principles in the country which is appropriate for the Article in question. For example, the determination of usual profit and general expenses under the provisions of Article 5 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of importation. On the other hand, the determination of usual profit and general expenses under the provisions of Article 6 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of production. As a further example, the determination of an element provided for in paragraph 1(b)(ii) of Article 8 undertaken in the country of importation would be carried out utilizing information in a manner consistent with the generally accepted accounting principles of that country.

Note to Article 1

Price Actually Paid or Payable

1. The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.
2. Activities undertaken by the buyer on the buyer's own account, other than those for which an adjustment is provided in Article 8, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the customs value.
3. The customs value shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:
 - (a) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;
 - (b) the cost of transport after importation;
 - (c) duties and taxes of the country of importation.
4. The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

Paragraph 1(a)(iii)

Among restrictions which would not render a price actually paid or payable unacceptable are restrictions which do not substantially affect the value of the goods. An example of such restrictions would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.

Paragraph 1(b)

1. If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes. Some examples of this include:
 - (a) the seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities;
 - (b) the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods;
 - (c) the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the seller on condition that the seller will receive a specified quantity of the finished goods.
2. However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in the country of importation shall not result in rejection of the transaction value for the purposes of Article 1. Likewise, if the buyer undertakes on the buyer's own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, the value of these activities is not part of the customs value nor shall such activities result in rejection of the transaction value.

Paragraph 2

1. Paragraphs 2(a) and 2(b) provide different means of establishing the acceptability of a transaction value.
2. Paragraph 2(a) provides that where the buyer and the seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the customs value provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the customs administration have no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer. For example, the customs administration may have previously examined the relationship, or it may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.
3. Where the customs administration is unable to accept the transaction value without further inquiry, it should give the importer an opportunity to supply such further detailed information as may be necessary to enable it to examine the circumstances

surrounding the sale. In this context, the customs administration should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of Article 15, buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to the seller, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced.

4. Paragraph 2(b) provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a "test" value previously accepted by the customs administration and is therefore acceptable under the provisions of Article 1. Where a test under paragraph 2(b) is met, it is not necessary to examine the question of influence under paragraph 2(a). If the customs administration has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in paragraph 2(b) has been met, there is no reason for it to require the importer to demonstrate that the test can be met. In paragraph 2(b) the term "unrelated buyers" means buyers who are not related to the seller in any particular case.

Paragraph 2(b)

A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and, whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the "test" values set forth in paragraph 2(b) of Article 1.

Note to Article 2

1. In applying Article 2, the customs administration shall, wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantities as

the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:

- (a) A sale at the same commercial level but in different quantities;
 - (b) A sale at a different commercial level but in substantially the same quantities; or
 - (c) A sale at a different commercial level and in different quantities.
2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:
 - (a) Quantity factors only;
 - (b) Commercial level factors only; or
 - (c) Both commercial level and quantity factors.
 3. The expression "and/or" allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.
 4. For the purposes of Article 2, the transaction value of identical imported goods means a customs value, adjusted as provided for in paragraphs 1(b) and 2, which has already been accepted under Article 1.
 5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustments, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 2 is not appropriate.

Note to Article 3

1. In applying Article 3, the customs administration shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as

the goods being valued. Where no such sale is found, a sale of similar goods that takes place under any one of the following three conditions may be used:

- (a) A sale at the same commercial level but in different quantities;
 - (b) A sale at a different commercial level but in substantially the same quantities; or
 - (c) A sale at a different commercial level and in different quantities.
2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:
- (a) Quantity factors only;
 - (b) Commercial level factors only; or
 - (c) Both commercial level and quantity factors.
3. The expression "and/or" allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.
4. For the purpose of Article 3, the transaction value of similar imported goods means a customs value, adjusted as provided for in paragraphs 1(b) and 2, which has already been accepted under Article 1.
5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only similar imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 3 is not appropriate.

Note to Article 5

1. The term "unit price at which ... goods are sold in the greatest aggregate quantity" means the price at which the greatest number of units is sold in sales to persons who are not

related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.

- As an example of this, goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

Sale quantity	Unit price	Number of sales	Total quantity sold at each price
1-10 units	100	10 sales of 5 units 5 sales of 3 units	65
11-25 units	95	5 sales of 11 units	55
over 25 units	90	1 sale of 30 units 1 sale of 50 units	80

The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

- As another example of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this example, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is 95.
- A third example would be the following situation where various quantities are sold at various prices.

(a) Sales	
Sale quantity	Unit price
40 units	100
30 units	90
15 units	100

50 units	95
25 units	105
35 units	90
5 units	100

(b) Totals	
Total quantity sold	Unit price
65	90
50	95
60	100
25	105

In this example, the greatest number of units sold at a particular price is 65; therefore, the unit price in the greatest aggregate quantity is 90.

5. Any sale in the importing country, as described in paragraph 1 above, to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in paragraph 1(b) of Article 8, should not be taken into account in establishing the unit price for the purposes of Article 5.
6. It should be noted that "profit and general expenses" referred to in paragraph 1 of Article 5 should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis of information supplied by or on behalf of the importer unless the importer's figures are inconsistent with those obtained in sales in the country of importation of imported goods of the same class or kind. Where the importer's figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer.
7. The "general expenses" include the direct and indirect costs of marketing the goods in question.
8. Local taxes payable by reason of the sale of the goods for which a deduction is not made under the provisions of paragraph 1(a)(iv) of Article 5 shall be deducted under the provisions of paragraph 1(a)(i) of Article 5.

9. In determining either the commissions or the usual profits and general expenses under the provisions of paragraph 1 of Article 5, the question whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis by reference to the circumstances involved. Sales in the country of importation of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Article 5, "goods of the same class or kind" includes goods imported from the same country as the goods being valued as well as goods imported from other countries.
10. For the purposes of paragraph 1(b) of Article 5, the "earliest date" shall be the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.
11. Where the method in paragraph 2 of Article 5 is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis of the calculations.
12. It is recognized that the method of valuation provided for in paragraph 2 of Article 5 would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However, there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty. On the other hand, there can also be instances where the imported goods maintain their identity but form such a minor element in the goods sold in the country of importation that the use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case-by-case basis.

Note to Article 6

1. As a general rule, customs value is determined under this Agreement on the basis of information readily available in the country of importation. In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside the country of importation. Furthermore, in most cases the producer of the goods will be outside the jurisdiction of the authorities of the country of importation. The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the authorities of the country of importation the necessary costings and to provide facilities for any subsequent verification which may be necessary.
2. The "cost or value" referred to in paragraph 1(a) of Article 6 is to be determined on the basis of information relating to the production of the goods being valued supplied by or

on behalf of the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.

3. The "cost or value" shall include the cost of elements specified in paragraphs 1(a)(ii) and (iii) of Article 8. It shall also include the value, apportioned as appropriate under the provisions of the relevant note to Article 8, of any element specified in paragraph 1(b) of Article 8 which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods. The value of the elements specified in paragraph 1(b)(iv) of Article 8 which are undertaken in the country of importation shall be included only to the extent that such elements are charged to the producer. It is to be understood that no cost or value of the elements referred to in this paragraph shall be counted twice in determining the computed value.
4. The "amount for profit and general expenses" referred to in paragraph 1(b) of Article 6 is to be determined on the basis of information supplied by or on behalf of the producer unless the producer's figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation.
5. It should be noted in this context that the "amount for profit and general expenses" has to be taken as a whole. It follows that if, in any particular case, the producer's profit figure is low and the producer's general expenses are high, the producer's profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind. Such a situation might occur, for example, if a product were being launched in the country of importation and the producer accepted a nil or low profit to offset high general expenses associated with the launch. Where the producer can demonstrate a low profit on sales of the imported goods because of particular commercial circumstances, the producer's actual profit figures should be taken into account provided that the producer has valid commercial reasons to justify them and the producer's pricing policy reflects usual pricing policies in the branch of industry concerned. Such a situation might occur, for example, where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in the country of importation and accept a low profit to maintain competitiveness. Where the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods.
6. Where information other than that supplied by or on behalf of the producer is used for the purposes of determining a computed value, the authorities of the importing country

shall inform the importer, if the latter so requests, of the source of such information, the data used and the calculations based upon such data, subject to the provisions of Article 10.

7. The "general expenses" referred to in paragraph 1(b) of Article 6 covers the direct and indirect costs of producing and selling the goods for export which are not included under paragraph 1(a) of Article 6.
8. Whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of Article 6, sales for export to the country of importation of the narrowest group or range of goods, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Article 6, "goods of the same class or kind" must be from the same country as the goods being valued.

Note to Article 7

1. Customs values determined under the provisions of Article 7 should, to the greatest extent possible, be based on previously determined customs values.
2. The methods of valuation to be employed under Article 7 should be those laid down in Articles 1 through 6 but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Article 7.
3. Some examples of reasonable flexibility are as follows:
 - (a) Identical goods - the requirement that the identical goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of Articles 5 and 6 could be used.
 - (b) Similar goods - the requirement that the similar goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of Articles 5 and 6 could be used.
 - (c) Deductive method - the requirement that the goods shall have been sold in the "condition as imported" in paragraph 1(a) of Article 5 could be flexibly interpreted; the "90 days" requirement could be administered flexibly.

Note to Article 8

Paragraph 1(a)(i)

The term "buying commissions" means fees paid by an importer to the importer's agent for the service of representing the importer abroad in the purchase of the goods being valued.

Paragraph 1(b)(ii)

1. There are two factors involved in the apportionment of the elements specified in paragraph 1(b)(ii) of Article 8 to the imported goods - the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements should be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.
2. Concerning the value of the element, if the importer acquires the element from a seller not related to the importer at a given cost, the value of the element is that cost. If the element was produced by the importer or by a person related to the importer, its value would be the cost of producing it. If the element had been previously used by the importer, regardless of whether it had been acquired or produced by such importer, the original cost of acquisition or production would have to be adjusted downward to reflect its use in order to arrive at the value of the element.
3. Once a value has been determined for the element, it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first shipment if the importer wishes to pay duty on the entire value at one time. As another example, the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment. As a further example, the importer may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production. The method of apportionment used will depend upon the documentation provided by the importer.
4. As an illustration of the above, an importer provides the producer with a mould to be used in the production of the imported goods and contracts with the producer to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The importer may request the customs administration to apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units.

Paragraph 1(b)(iv)

1. Additions for the elements specified in paragraph 1(b)(iv) of Article 8 should be based on objective and quantifiable data. In order to minimize the burden for both the importer and customs administration in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible.
2. For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the cost of obtaining copies of them.
3. The ease with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods.
4. For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside the country of importation in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of Article 8.
5. In another case, a firm may carry the cost of the design centre outside the country of importation as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of Article 8 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.
6. Variations in the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation.
7. In cases where the production of the element in question involves a number of countries and over a period of time, the adjustment should be limited to the value actually added to that element outside the country of importation.

Paragraph 1(c)

1. The royalties and licence fees referred to in paragraph 1(c) of Article 8 may include, among other things, payments in respect to patents, trade marks and copyrights. However, the charges for the right to reproduce the imported goods in the country of

importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value.

2. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the country of importation of the imported goods.

Paragraph 3

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of Article 8, the transaction value cannot be determined under the provisions of Article 1. As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.

Note to Article 9

For the purposes of Article 9, "time of importation" may include the time of entry for customs purposes.

Note to Article 11

1. Article 11 provides the importer with the right to appeal against a valuation determination made by the customs administration for the goods being valued. Appeal may first be to a higher level in the customs administration, but the importer shall have the right in the final instance to appeal to the judiciary.
2. "Without penalty" means that the importer shall not be subject to a fine or threat of fine merely because the importer chose to exercise the right of appeal. Payment of normal court costs and lawyers' fees shall not be considered to be a fine.
3. However, nothing in Article 11 shall prevent a Member from requiring full payment of assessed customs duties prior to an appeal.

Note to Article 15

Paragraph 4

For the purposes of Article 15, the term "persons" includes a legal person, where appropriate.

Paragraph 4(e)

For the purposes of this Agreement, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

ANNEX II

TECHNICAL COMMITTEE ON CUSTOMS VALUATION

1. In accordance with Article 18 of this Agreement, the Technical Committee shall be established under the auspices of the CCC with a view to ensuring, at the technical level, uniformity in interpretation and application of this Agreement.
2. The responsibilities of the Technical Committee shall include the following:
 - (a) to examine specific technical problems arising in the day-to-day administration of the customs valuation system of Members and to give advisory opinions on appropriate solutions based upon the facts presented;
 - (b) to study, as requested, valuation laws, procedures and practices as they relate to this Agreement and to prepare reports on the results of such studies;
 - (c) to prepare and circulate annual reports on the technical aspects of the operation and status of this Agreement;
 - (d) to furnish such information and advice on any matters concerning the valuation of imported goods for customs purposes as may be requested by any Member or the Committee. Such information and advice may take the form of advisory opinions, commentaries or explanatory notes;
 - (e) to facilitate, as requested, technical assistance to Members with a view to furthering the international acceptance of this Agreement;

- (f) to carry out an examination of a matter referred to it by a panel under Article 19 of this Agreement; and
- (g) to exercise such other responsibilities as the Committee may assign to it.

General

- 3. The Technical Committee shall attempt to conclude its work on specific matters, especially those referred to it by Members, the Committee or a panel, in a reasonably short period of time. As provided in paragraph 4 of Article 19, a panel shall set a specific time period for receipt of a report of the Technical Committee and the Technical Committee shall provide its report within that period.
- 4. The Technical Committee shall be assisted as appropriate in its activities by the CCC Secretariat.

Representation

- 5. Each Member shall have the right to be represented on the Technical Committee. Each Member may nominate one delegate and one or more alternates to be its representatives on the Technical Committee. Such a Member so represented on the Technical Committee is referred to in this Annex as a "member of the Technical Committee". Representatives of members of the Technical Committee may be assisted by advisers. The WTO Secretariat may also attend such meetings with observer status.
- 6. Members of the CCC which are not Members of the WTO may be represented at meetings of the Technical Committee by one delegate and one or more alternates. Such representatives shall attend meetings of the Technical Committee as observers.
- 7. Subject to the approval of the Chairman of the Technical Committee, the Secretary-General of the CCC (referred to in this Annex as "the Secretary-General") may invite representatives of governments which are neither Members of the WTO nor members of the CCC and representatives of international governmental and trade organizations to attend meetings of the Technical Committee as observers.
- 8. Nominations of delegates, alternates and advisers to meetings of the Technical Committee shall be made to the Secretary-General.

Technical Committee Meetings

- 9. The Technical Committee shall meet as necessary but at least two times a year. The date of each meeting shall be fixed by the Technical Committee at its preceding session. The date of the meeting may be varied either at the request of any member of the

Technical Committee concurred in by a simple majority of the members of the Technical Committee or, in cases requiring urgent attention, at the request of the Chairman. Notwithstanding the provisions in sentence 1 of this paragraph, the Technical Committee shall meet as necessary to consider matters referred to it by a panel under the provisions of Article 19 of this Agreement.

10. The meetings of the Technical Committee shall be held at the headquarters of the CCC unless otherwise decided.
11. The Secretary-General shall inform all members of the Technical Committee and those included under paragraphs 6 and 7 at least 30 days in advance, except in urgent cases, of the opening date of each session of the Technical Committee.

Agenda

12. A provisional agenda for each session shall be drawn up by the Secretary-General and circulated to the members of the Technical Committee and to those included under paragraphs 6 and 7 at least 30 days in advance of the session, except in urgent cases. This agenda shall comprise all items whose inclusion has been approved by the Technical Committee during its preceding session, all items included by the Chairman on the Chairman's own initiative, and all items whose inclusion has been requested by the Secretary-General, by the Committee or by any member of the Technical Committee.
13. The Technical Committee shall determine its agenda at the opening of each session. During the session the agenda may be altered at any time by the Technical Committee.

Officers and Conduct of Business

14. The Technical Committee shall elect from among the delegates of its members a Chairman and one or more Vice-Chairmen. The Chairman and Vice-Chairmen shall each hold office for a period of one year. The retiring Chairman and Vice-Chairmen are eligible for re-election. The mandate of a Chairman or Vice-Chairman who no longer represents a member of the Technical Committee shall terminate automatically.
15. If the Chairman is absent from any meeting or part thereof, a Vice-Chairman shall preside. In that event, the latter shall have the same powers and duties as the Chairman.
16. The Chairman of the meeting shall participate in the proceedings of the Technical Committee as such and not as the representative of a member of the Technical Committee.

17. In addition to exercising the other powers conferred upon the Chairman by these rules, the Chairman shall declare the opening and closing of each meeting, direct the discussion, accord the right to speak, and, pursuant to these rules, have control of the proceedings. The Chairman may also call a speaker to order if the speaker's remarks are not relevant.
18. During discussion of any matter a delegation may raise a point of order. In this event, the Chairman shall immediately state a ruling. If this ruling is challenged, the Chairman shall submit it to the meeting for decision and it shall stand unless overruled.
19. The Secretary-General, or officers of the CCC Secretariat designated by the Secretary-General, shall perform the secretarial work of meetings of the Technical Committee.

Quorum and Voting

20. Representatives of a simple majority of the members of the Technical Committee shall constitute a quorum.
21. Each member of the Technical Committee shall have one vote. A decision of the Technical Committee shall be taken by a majority comprising at least two thirds of the members present. Regardless of the outcome of the vote on a particular matter, the Technical Committee shall be free to make a full report to the Committee and to the CCC on that matter indicating the different views expressed in the relevant discussions. Notwithstanding the above provisions of this paragraph, on matters referred to it by a panel, the Technical Committee shall take decisions by consensus. Where no agreement is reached in the Technical Committee on the question referred to it by a panel, the Technical Committee shall provide a report detailing the facts of the matter and indicating the views of the members.

Languages and Records

22. The official languages of the Technical Committee shall be English, French and Spanish. Speeches or statements made in any of these three languages shall be immediately translated into the other official languages unless all delegations agree to dispense with translation. Speeches or statements made in any other language shall be translated into English, French and Spanish, subject to the same conditions, but in that event the delegation concerned shall provide the translation into English, French or Spanish. Only English, French and Spanish shall be used for the official documents of the Technical Committee. Memoranda and correspondence for the consideration of the Technical Committee must be presented in one of the official languages.
23. The Technical Committee shall draw up a report of all its sessions and, if the Chairman considers it necessary, minutes or summary records of its meetings. The Chairman or

a designee of the Chairman shall report on the work of the Technical Committee at each meeting of the Committee and at each meeting of the CCC.

ANNEX III

1. The five-year delay in the application of the provisions of the Agreement by developing country Members provided for in paragraph 1 of Article 20 may, in practice, be insufficient for certain developing country Members. In such cases a developing country Member may request before the end of the period referred to in paragraph 1 of Article 20 an extension of such period, it being understood that the Members will give sympathetic consideration to such a request in cases where the developing country Member in question can show good cause.
2. Developing countries which currently value goods on the basis of officially established minimum values may wish to make a reservation to enable them to retain such values on a limited and transitional basis under such terms and conditions as may be agreed to by the Members.
3. Developing countries which consider that the reversal of the sequential order at the request of the importer provided for in Article 4 of the Agreement may give rise to real difficulties for them may wish to make a reservation to Article 4 in the following terms:

"The Government of reserves the right to provide that the relevant provision of Article 4 of the Agreement shall apply only when the customs authorities agree to the request to reverse the order of Articles 5 and 6."

If developing countries make such a reservation, the Members shall consent to it under Article 21 of the Agreement.

4. Developing countries may wish to make a reservation with respect to paragraph 2 of Article 5 of the Agreement in the following terms:

"The Government of reserves the right to provide that paragraph 2 of Article 5 of the Agreement shall be applied in accordance with the provisions of the relevant note thereto whether or not the importer so requests."

If developing countries make such a reservation, the Members shall consent to it under Article 21 of the Agreement.

5. Certain developing countries may have problems in the implementation of Article 1 of the Agreement insofar as it relates to importations into their countries by sole agents, sole distributors and sole concessionaires. If such problems arise in practice in developing country Members applying the Agreement, a study of this question shall be made, at the request of such Members, with a view to finding appropriate solutions.

6. Article 17 recognizes that in applying the Agreement, customs administrations may need to make enquiries concerning the truth or accuracy of any statement, document or declaration presented to them for customs valuation purposes. The Article thus acknowledges that enquiries may be made which are, for example, aimed at verifying that the elements of value declared or presented to customs in connection with a determination of customs value are complete and correct. Members, subject to their national laws and procedures, have the right to expect the full cooperation of importers in these enquiries.
7. The price actually paid or payable includes all payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller.

Basic & traditional role of Customs

Customs procedures & especial régime

STREAMLINING CUSTOMS PROCEDURES: EXPORTS AND DUTY-RELIEF REGIMES

Various duty-relief regimes enable export-oriented manufacturers to import their manufacturing inputs without paying the applicable duty/tax. In such cases, the duty/tax is suspended or relieved pending the re-exportation of these inputs incorporated in the finished goods being exported. Examples of such regimes include: inward processing; manufacturing under bond; export processing zones; temporary admission for re-exportation in the same state; and Customs warehousing.

A drawback regime requires duties/taxes to be paid at time of importation, then refunded after the finished goods are re-exported. An exemption regime allows full or partial exemption of duty/tax at time of importation, without any requirement for re-exportation, for the purpose of investment incentives, imports for government use, foreign financed projects, imports for diplomatic representations, imports of relief goods, and imports for charitable, cultural, educational or religious institutions.

These regimes are designed to remove or reduce the tariff burden to give exporters access to their industrial inputs at world prices and thereby make exports more competitive.

By exempting duty/tax on inputs at time of import, or refunding duty paid when the inputs are incorporated into the finished goods and exported, capital costs can be reduced. The principle of not levying import duty/tax on goods that are not remaining in the Customs territory is fully consistent with WTO rules, provided the amount refunded does not exceed the duty/tax payable (in which case it would be an export subsidy and be prohibited under WTO rules).

Given the fact that duty/tax is being temporarily deferred, it is very important that Customs services exercise effective controls to ensure that there is no leakage of such raw materials into the domestic market.

1. *Duty/Tax Exemptions*

To obtain duty/tax exemptions, export-oriented firms must apply to Customs or another competent authority for a full or partial exemption of duty/tax on specific imported raw materials to be integrated into finished goods to be exported. This application should:

- n Describe the entire manufacturing process;
- n Specify the number of inputs required over what period;
- n Specify the quantity of finished exports anticipated; and
- n Propose the manufacturing input/output coefficients and wastage factors applicable, and the exemption validity period.

Before approving the application, the competent authorities may decide to visit the applicant to verify the manufacturing premises, the proposed coefficients and wastage

factors, etc., before issuing an exemption approval and number to be quoted on each of the import declarations. Normally such exemptions are only granted to firms that are primarily export oriented, with firms having to maintain a very high percentage of their finished production for export (normally at least 80% of production must be exported). Customs should ideally have a software application in its automated import declaration system to: record all exemptions granted; verify at time of clearance of the imported raw materials that the goods qualify for the exemption granted; and to monitor the import against export quantities, and local sale quantities, taking into consideration approved coefficients and wastage factors. The computer application should alert Customs if exports are not sufficient, given the amount of inputs imported over a period of time and consequently raising suspicions that inputs may be diverted into the local market. The advantage of an exemption regime to export-oriented firms is that it does not tie up the firms' capital by requiring them to pay duty/tax on raw materials at time of import. Exemptions should be, at least theoretically, relatively easy for Customs to administer. That being said, exemption regimes can represent a significant revenue risk if effective customs audit systems are not in place to ensure that exempted inputs are not being diverted into the local market. Diversion of local inputs and finished goods into the local market can cause significant economic distortions. Products such as spare parts, fuel, and other consumables are especially difficult to control given that these products can be easily diverted to home consumption. In some countries, other conditions are imposed on firms receiving such exemptions.

For example, in the United States, Canada, India, Nepal, Tanzania, export-oriented manufacturers are allowed to import raw materials without duty payment. Such *'manufacturing under bond'* regimes may require the manufacturer to operate within a specific bonded factory or warehouse that must be licensed by Customs and covered by financial security posted representing the duty/tax liabilities related to the raw materials imported. However, such regimes are often very cumbersome due to the annual licensing and bonding requirements as well as the requirement that the raw materials remain locked up in bonded stores requiring joint Customs firm removal of goods from the warehouse into production.

2. Drawback

As opposed to duty/tax exemptions, drawback procedures do not necessarily require firms to submit any application and pre-approval by Customs. In certain countries there are restrictions on what goods can be eligible for drawback⁷⁶. Drawback is more suited to firms that are only occasionally or exceptionally exporting a minority of their finished products. In many countries, Customs requires an indication on the import and export goods declaration whether or not a drawback is to be claimed. This gives Customs an opportunity to verify and take samples of the goods if it deems this appropriate.

Once the goods are exported, the firm will submit a drawback claim form that effectively shows what was imported and what was exported and requests a specific amount of drawback refund of duty/tax. Normally photocopies of the import and export declarations are required to support the drawback claim. Upon receipt of a drawback claim (form or electronic application), covering a single consignment or a specific periodic (e.g. quarterly), Customs will check the claim and refund the duty/tax. Issuing the refund check or paying the refund through Electronic Funds

Transfer (EFT) should not be delayed, even if Customs wishes to undertake further checking of claims submitted through post-audit verification of the firm's books and records. In certain countries, Customs charge a processing or service fee to process the refund claim. This practice often undermines the competitiveness of exports.

Inefficient procedures and burdensome document requirements in many countries, frequently results in exporters incurring extremely high costs. In the end the firm simply gives up on receiving a refund or the refund received has been drastically reduced in value due to inflation. It is important to note that in many countries there has been massive drawback refund fraud when Customs does not exercise proper controls when goods are exported or does not perform post-audit checks. This problem can be especially acute in developing countries where the fiscal situation of the country is such that the government may at time not have sufficient budget to pay drawback refunds, and is instead obliged to provide credits against duty/tax payable on future imports (a scenario that can cause further administrative burden on the Customs Department).

These are some of the elements that can help establish efficient and effective drawback regimes:

- n Creation of high-level committees comprising representatives of finance, customs, industry, trade, and stakeholders to develop the procedures, document requirements and to set time limits for processing of refund claims (e.g., refund issued within 10 days after claim is submitted to Customs).

- n Drawback should normally cover 100% of the duties/taxes paid on imported inputs, as well as raw materials and intermediate goods used for the production of the final export, including imported packaging.

They should also cover indirect exporters, i.e., the refund should include imported materials paid for by other exporters

- n The procedures should be simple and easy to administer, timely, and easily understood by manufactures. The export declaration should be sufficient proof of exportation and no other documentation should be required.

- n It is important that the ministry of finance put in place a mechanism for periodic replenishment of the budget required to issue refund checks.

3. Bonded Warehousing

Bonded warehouse regimes allow specified imported goods into customs approved and bonded warehouses without payment of import duty/tax for a limited period of time (normally until such goods are either re-exported or entered into home use at which time duty/tax becomes payable). The Customs law must set out the requirements and conditions by which a bonded warehouse may be approved and licensed to operate. This normally involves the operator submitting an application to Customs containing detailed drawings of the proposed building, its security features, location, proposed inventory control systems, etc. Customs will review the application and undertake an on-site visit to verify that the applicant has met all requirements before licensing the operator of the warehouse. The operator must post security to cover all the total duty/tax to be deferred on the goods resting in the warehouse.

Goods must be under transit control from the point of arrival until entry into the bonded warehouse (see transit control). Goods entering bond must be declared to Customs on an import goods declaration using in-warehouse customs procedure code. As with any import declaration, the duties and taxes will be calculated, but payment is suspended pending the submission of an ex-bond declaration to remove the goods from the warehouse or an export declaration to remove the goods from the Customs territory or into another suspense regime (e.g., Freeport). If the goods are to be entered into home consumption, the duties and taxes are then payable on the whole or part of the consignment removed.

Bonded warehouse systems require extensive physical customs controls over the movement of the container to the warehouse, the unstuffing and entry of the goods into the bond (performing a goods inspection where appropriate), maintaining the inventory balance of goods kept in the bond, any authorized operations while in the bond (e.g., sorting, repacking or packaging, conditioning); and inspection of goods being removed from bond. Depending on the size of the bond and level of activity, Customs officers may need to be permanently posted to these warehouses. It is important that officers posted to bonded warehouses be regularly rotated to ensure that they do not become too familiar with the operator.

Unfortunately, in many developing countries, Customs controls over bonded warehouses have been extremely poor, with such warehouses being exploited by fraudsters to smuggle goods into the country. For example, fraudsters can exploit the transit of goods from the airport or port to the bonded warehouse, removing or substituting undeclared goods during the transit movement. Lack of proper inspections at the airport or port and upon arrival and entry of the goods into the bond can lead to serious cases of smuggling and associated revenue loss. In some countries, security considerations regarding bonded warehouses were not being effectively enforced, with bonded warehouses often attached to wholesale or retail establishments and goods being allowed to move freely between the warehouse and the shop floor without Customs control. In many developing countries, there is no automated inventory control over bonded warehouses, with Customs instead relying on cumbersome manual ledgers that can be easily manipulated in collusion with customs officers posted almost permanently at these warehouses. While the situation is gradually improving, in one East African country in the recent past, under pressure of the donor community, all bonded warehouses in the country were required to be closed down due to rampant smuggling and total absence of Customs control.

In modern Customs administrations, the computer system should maintain an overall balance of inventories in each bonded warehouse utilizing the details from the in- and ex-warehouse Customs declarations processed through the Customs computer system. Customs should also have online access to the operator's inventory system to supplement and compare this data with that in the Customs inventory e.g., the exact location of the goods in the warehouse. These inventory systems should also report any goods overlying in the bond (i.e., goods not removed from the bond within the prescribed maximum timeframe of normally 12 months). Normally it is the responsibility of the bond operator to deliver such overlying goods to the customs warehouse for auctioning or disposal.

As security systems and inventory systems become more sophisticated, Customs services in most developed countries have moved away from permanent presence of customs officers in bonds and instead are applying an 'open-bond' concept. Under such an approach, Customs control is exercised through providing Customs online access to CCTV systems; the operator's inventory system; and by performing unannounced and selective periodic inventory stock-takes, spot-checks, and audits of inventory systems to ensure that no goods are missing or substituted. This movement from physical control to audit control has significantly reduced the human resource costs to both Customs and related fees charged to operators for special service, while increasing Customs enforcement effectiveness, as well as reducing opportunities for corruption.

4. Free Zones

These regimes have become increasingly popular during the last decade, with many countries attempting to promote exports of non-traditional manufactured goods,

strengthen the competitiveness of exporters, attract investors, diversify the economy, create employment, transfer technology, expand trade and transport linkages to the country as a whole, promote tourism, encourage foreign direct investment (FDI), and achieve development and growth. A number of operations may be undertaken inside the zone, from simply break-bulk and shifting of goods from one container to another, sorting/repackaging/re-labeling, further assembly or manufacturing, etc.

Frequently the success of a free zone is directly linked to lack of political stability and inefficiency of ports and customs services in the region.

Sometimes referred to as Free Trade Zones, Duty Free Zones, Tax Free Zones, Free Export Zones, Special Economic Zones, Export Processing Zones, by whatever name, such zones are considered legally outside the Customs territory of the country and thereby subject to an entirely different Customs tariff and income tax regime. They are also eligible for various other tax and investment incentives not found in the Customs territory to attract and encourage growth and investment. That being said, such zones are physically located within the national boundaries and are part of the national economy. Free Zones can encompass an entire area of a country or entire city, all or part of an air/port, all or part of an industrial park, or be even limited to an individual factory. Free zone however normally has a secure perimeter that is under Customs control.

The national Customs service normally should only operate at the perimeter to the zone. Its role is to control goods entering the zone from the Customs territory or from a third country; being imported from the zone into the Customs territory for home consumption; or being entered into another duty deferral regime. This can involve controlling the transit movement of goods to and from the zone. If goods are entered into home consumption, an import goods declaration must be presented to Customs and applicable duty/taxes paid as would apply to goods from any third country. In many free zones, quantitative restrictions apply on how much of an operator's production can be allowed into the domestic market (e.g., 20%) and it is Customs responsibility to ensure that this limit is not exceeded.

Customs is required to monitor all activities undertaken inside the zone through audits of the zone operators' books, records, and systems. Customs must ensure that no illegal trade is occurring inside the zone. Normally, the zone authority and zone operators are legally obligated to create and maintain an inventory of all goods entering, exiting, and the balance remaining inside the zone. Reports regarding all operations are to be submitted to Customs for auditing purposes. In many zones, Customs is provided with online access to inventories. Licensed operators in the zone are required to submit a simplified Customs declaration to for approval to admit or remove goods from the zone. Normally no duty/tax is payable on goods entering or being exported from the zone to third countries.

However, certain administrative fees may be collected to finance the zone authority's administrative operations, and to maintain or improve the zone's infrastructure facilities that it rents or leases to operators.

5. *Temporary Admission*

Temporary admission provides a full or partial relief from import duties/taxes on goods imported for specific purposes, under the condition that the goods will be re-exported in the same state. The norm is that a full relief is provided if the goods are re-exported within the prescribed period. Temporary admission is a simple procedure whereby

security is posted to cover the duty/tax liability. It is commonly applied to: vehicles of experts temporarily working in a country; equipment being used temporarily for construction purposes; goods for display on exhibitions, fairs, meetings or similar events; commercial samples; containers used in international transport; and travelers' personal effects.

Normally a simplified goods declaration needs to be presented to Customs. The goods must be identifiable so Customs can be assured that the same goods imported are being exported. Security must be posted and may be furnished by an international guarantee such as the internationally recognized ATA Carnet, which has a guarantee issued by the International Chamber of Commerce. A reasonable time limit for re-export should be set. At time of re-export, a re-export declaration should refer to the initial temporary admission declaration. Once exported, the security posted should be released immediately.

ATA Carnet

Definition

International customs document for temporary duty free import of certain goods (for a specific period, usually 12 months), without posting a bond for the assessed duty. It is generally used to import sales promotion literature, inexpensive samples for distribution, designs and works of art for exhibition, and machinery and equipment for display or demonstration. A combination of French and English terms, (admission temporaire /temporary admission) it is issued by local chambers of commerce affiliated to the International Chambers Of Commerce (ICC). Local chambers guaranty payment of customs duties in case goods allowed under ATA Carnet are not re-exported on due date. Most, but not all, countries accept ATA Carnet. Also called 'a temporary admission.'

6. Transit

What is customs transit?

Customs transit is a customs procedure used to facilitate the movement of goods between two points of a customs territory, via another customs territory, or between two or more different customs territories. It allows for the temporary suspension of duties, taxes and commercial policy measures that are applicable at import, thereby allowing customs clearance formalities to take place at the destination rather than at the point of entry into the customs territory.

Customs transit is particularly relevant to the Community where a single customs territory is combined with a multiplicity of fiscal territories: it allows the movement of goods under transit from their point of entry into the Community to their point of clearance where both the customs and national fiscal obligations are taken care of.

The transit systems within the European Union are:

- Common and Community transit
- TIR Convention

- ATA Convention
- Rhine manifest
- NATO movements
- Post (including parcel post)

ICT can be effectively used to assist Customs in streamlining procedures and controls over the physical movement of goods during their transit through the Customs territory. The customs transit procedures and computer application should ideally include the following steps:

- 1) Authorized transit agent prepares the transit goods declaration (with required supporting documents, including commercial invoices and the transit document from the neighboring country from where the transit has just arrived).
- 2) Authorized transit agent presents the hardcopy declaration and transmits (using the UN EDIFACT Customs Declaration (CUSDEC) message standard) to the customs office of transit commencement. The documents are ideally sent prior to arrival of the transit conveyance to avoid delays when the transit cargo actually arrives at the border.
- 3) Customs accepts the signed hardcopy of the transit declaration (and retrieves a corresponding electronic message that has already been subject to edits and validation checks to ensure completeness and correctness). Officer checks for completeness and accepts the calculated amount of transit security bond required to cover the duty/tax liability.
- 4) The Customs officer must decide whether a physical inspection of the conveyance and cargo is required. Customs should not normally inspect transit containers unless it has received intelligence information or has other suspicions regarding the transit consignment. Ideally, high-risk transit containers should be X-rayed at the office of transit commencement, with the images recorded and sent to the office of termination for re-verification to ensure that goods have not been removed or substituted during transit;
- 5) If the conveyance is approved for transit, the Customs officer must physically place a tamper-proof customs seal (which has a unique identification number on the seal itself) on the container's doors.
- 6) The Customs officer records the seal number into the computer as well as ensures that the vehicle registration number, driver name, and container number have been correctly recorded into the automated system.
- 7) Once the Customs officer has approved the transit movement, the automated system should automatically draw-down the appropriate amount of the blanket security bond that the authorized agent has posted with the department.
- 8) Transit documents are stamped and signed by the officer, with a copy returned to the driver (in a completely manual system, the documents must be mailed or faxed to the office of transit destination). It is extremely important that Customs establish specific transit routes and maximum time frames that trucks are allowed to complete the transit movement. Drivers should be informed of the route, the maximum time to complete the movement and be aware that they are required to immediately report to Customs any incident occurring during the transit that would prevent completion of the transit within prescribed time frames.
- 9) Transit data from transit declaration, including the date and time of departure of the transit truck from the office of transit commencement, are then transmitted to the office of transit termination to allow the receiving customs office to be aware of what transit truck to expect and when.

10) Customs and border security police should selectively monitor the physical movement of the transit across the Customs territory to ensure that no diversion or substitution of cargo occurs during transit. This can be done by undertaking selective surveillance on high-risk transit conveyances or requiring the transit conveyance to stop and report at various checkpoints along the transit route in order to monitor progress. GPS technology is now also being used very effectively applied to monitor transit movements.

11) Upon reaching the office of transit termination, Customs officers should check that the customs seal remains intact on the container's doors and that maximum time frame to complete the transit has not been exceeded. If seals are found tampered with or broken, and if maximum time frames have not been complied with, Customs should inspect the transit cargo against the description and quantities appearing on the transit documents. If appropriate, Customs should recover any short payment of duty/tax applying administrative fines if applicable for breakage of seals or other transit fraud offense as prescribed under the law.

12) If the transit has been successfully completed, customs officer should input into the system that the transit has been successfully completed, and release the authorized agent's transit security bond.

Overview of Customs Procedures in the Egyptian Customs Administration

The Egyptian Department of Customs, which operates under the Ministry of Finance, is responsible for clearing merchandise into Egypt. Imported goods may not legally enter

Egyptian commerce until the shipment has arrived within the port of entry and customs has authorized delivery of the merchandise. Import declarations and corresponding documentation are filed either by the customs broker or by the importer. Standard commercial practice is for a broker to file the entry as an agent of the importer.

Prior to importing agricultural goods into Egypt, a written request from the importer to the Ministry of Agriculture is required. A response from the Ministry takes approximately two weeks. If the approval is granted, then an import can be transacted.

When the imported goods arrive, the importer must inform the Ministry of Agriculture and assemble a committee of three agriculture experts to briefly inspect the goods prior to unloading. Upon verification, the committee provides a Ministry of Agriculture Approval Letter specifically for the shipment. The Approval Letter is part of the entry documents submitted to Customs when filing the entry.

The form used for import declaration is the K 19 Import Declaration. The entry is registered with Customs and is given a serial or entry number. The Customs Accounting

Committee calculates the duty to be paid on the imported merchandise. The Accounting

Committee then forwards the entry to a three-member Committee, consisting of an agricultural inspector (who simply inspects the commodity on its face value), an analyst who runs all the proper testing and a senior inspector who is to receive comments from the other two members before giving an approval that everything is fine and ready for discharge. At this point, Customs generates a Customs Payment Application and Receipt against which the importer is requested to pay duty and the corresponding sales tax. Receipts for both the duty and sales tax are issued by the Ministry of Finance,

Customs House. The Customs Payment Application and Receipt is then stamped with the government seal finalizing the customs clearance procedure.

Customs Regimes

1. Definitive Importation for Consumption

Entry for definitive consumption for imported goods going directly into the commerce of Egypt without any time or use restrictions is carried out by filing a K19 Import Declaration with Customs accompanied by the following documentation:

- Health certificate from country of origin
- Commercial invoice certified by a chamber of commerce in the country of origin and legalized by the Egyptian consulate
- Certificate of Origin
- A bill of lading, airway bill, or carrier's certificate naming the consignee as having the right to make entry
- Preliminary approval from the Ministry of Agriculture
- Copy of the company's import license
- Copy of the company's tax card
- Copy of the company's commercial registry Form No. 11 from the bank for the financing of the import in foreign currency

2. Temporary

Customs authorities allow for a practice where goods are imported into Egypt without payment of duty, by posting a bond to guarantee that they will be exported. The amount of the bond is usually equivalent to the estimated duties.

Goods imported may remain in Egypt without the payment of duty for up to a year. These goods must be exported before the expiration of the bond period to avoid the assessment of liquidated damages in the amount of the bond. If the goods are not exported, the bond is forfeited, usually in the amount of the value of the customs duties that would have been payable on the products.

3. Transit

Formalities pertaining to transit goods may not be allowed to be carried out except at the Customs branches intended for the purpose and after payment of the customs duties and other levies due thereon by way of deposit or after presentation of guaranteed undertaking to dispatch the goods to their destinations.

The arrival of the goods at their destinations in the foreign country shall be evidenced by the presentation of a certificate from the Customs of these countries acknowledging the receipt thereof, and the Customs shall have the right to grant exemption from the presentation of this certificate or to accept any other evidence. The goods shall be transported according to the transit scheme on all roads and by all means of transport under the responsibility of the signatory of the transit undertaking. Transit goods or any means of transporting them or both shall be stamped in the manner to be determined by the Customs, and the signatory of the undertaking shall be held responsible for any damage to the stamps or tampering.

4. Bonded Warehouse

Customs supervised warehouse is where goods are stored "in bond" until released by the Customs, therefore delaying payment of duties and taxes for a period of up to one year. Primary materials as imported with the aim of processing them in Egypt as well as the items and articles imported for repair or for completing their manufacture shall be exempted temporarily from customs taxes and other taxes and duties. For applying such exemption, the importer shall be required to deposit with the Customs

Department a “Bond” or a “Guarantee” covering the value of taxes and duties. Goods must be exported within one year from the date of their import. If this period lapses without completing the foregoing, the taxes and duties shall accrue and become payable. This period may still be extended by virtue of a Decree of the Minister of the Treasury.

The “Bond” or “Guarantee” referred to above shall be returned in case the end product or the articles which have been repaired are sold, without exporting them to quarters enjoying total exemption from taxes and duties. The equivalent of the partial exemption from customs taxes and other taxes and duties payable and due on the end-product shall be returned if the sale is made to quarters enjoying partial exemption.

List of Customs Procedures Codes

Type of entry is identified on line 3 of the K19 Import Declaration. The applicable type for home consumption is نهائي إفراج (Final Release).

Import Procedure Type:

Final Release نهائي إفراج

Temporary Release مؤقت إفراج

Bond أمانات

List of Entry Ports and Codes

The Customs port of entry appears on line 1 of the K19 Import Declaration form. Both codes and names appear on the form.

Airports:

CAI Cairo International 2 terminals مطار القاهرة الدولي

ALY Alexandria Nozha مطار النزهة

ASW Aswan, Upper Egypt مطار اسوان

HRG Hurdhaga, Red Sea مطار الغردقة

Marine Harbors:

LK1 Alexandria, Mediterranean ميناء الإسكندرية

LK3 Port Said, Mediterranean ميناء بورسعيد

Damietta, Mediterranean دمياط

LK4 Suez, Gulf of Suez السويس

Hurghada, Red Sea الغردقة

Safaga, Red Sea سفاجا

Sharm El-Sheikh, Red Sea شرم الشيخ

Specimen Documents

Import Declaration - K19 Form

Purpose - Import declaration for customs clearance

Issuing Authority - Egypt Department of Customs

Where entry number is marked - Line 4

Where procedure code is marked - Line 3; codes are not utilized; the procedure for an import for consumption is “Final Release”

Where duty amount is marked - At this point in the entry procedure the duty and taxes have not been calculated. They Duty and Sales Tax paid appears on the Customs Payment

Application and Receipt and the corresponding receipts of payment

Where stamps are posted - The Customs Payment Application and Receipt is stamped English Translation

1. Ministry of Finance - Customs Department

2. Registration No./Date/Signature of Customs Officer

3. Name of Customs Office/Service/Procedure: bond/temporary/final release Procedure

أمانات/مؤقت / نهائي إفراج Procedure

4. Commercial registry number

5. Importer address

6. Customs certificate number

7. Type of applicant (Redemption/Agent/Commissioner)

8. Tax ID number

9. Sector (Governmental/Private/Public/Investments)

10. Name of importer

11. Import license number

12. Importer representative

13. Release permit number

14. Address of representative

15. Policy number

16. Country of origin

17. Arrival (Ship/airplane/date)

18. Port of embarkation

19. HS number

20. Amount

21. Gross weight

22. Unit of measure

23. Goods description

24. Numbers and marks

25. Kind of packages

26. Number of packages

27. Total amount

28. Unloading

29. Value of bank credit

30. Documents date

31. Letter of credit date

32. Comments

33. Currency

34. Freight charges

35. Bank credit number

36. Method of payment

37. Cost of insurance

38. Branch

39. Payment details

40. Number of letter of credit

41. Signature

42. Date

Customs Duty Payment Receipt

Purpose - Proof of duty payment required for customs release

Issuing Authority - Ministry of Finance, Customs house

Where entry/reference number is marked - Referenced in text

Where duty amount is marked - Amount is hand written after corresponding line

Translation of Form

The Arab Republic of Egypt

Ministry of Finance

Customs House (A)

Customs of _____ (Form No. 37 "K. M.")

LE PT

(Group No. 37)

Cash Receipt

(A Copy Given to the Payer)

An amount of _____ was paid to the Treasury of _____ (as written in words hereinabove), by Mr. _____, as per Customs Declaration No. _____.

Dated : _____

Clerk : _____

Cashier: _____

مصلحة الجمارك
حرف (أ) (نموذج رقم ٣٧ ك. م.)
صورة لمرزب النقود
جمرك
مصلحة الجمارك
قصر الجمارك
٣٨ إيصال توريد نقود - مجموع رقم ٣٨
قط
قد ورد إلى خزنة
من السيد /
التاريخ
كاتب القسيمة
الضراف

Customs Payment Application and Receipt

Purpose - Proof of duty payment and customs release

Issuing Authority - Ministry of Finance, Customs house

Where release is mentioned - Upper right corner of document, in Arabic, "customs release"

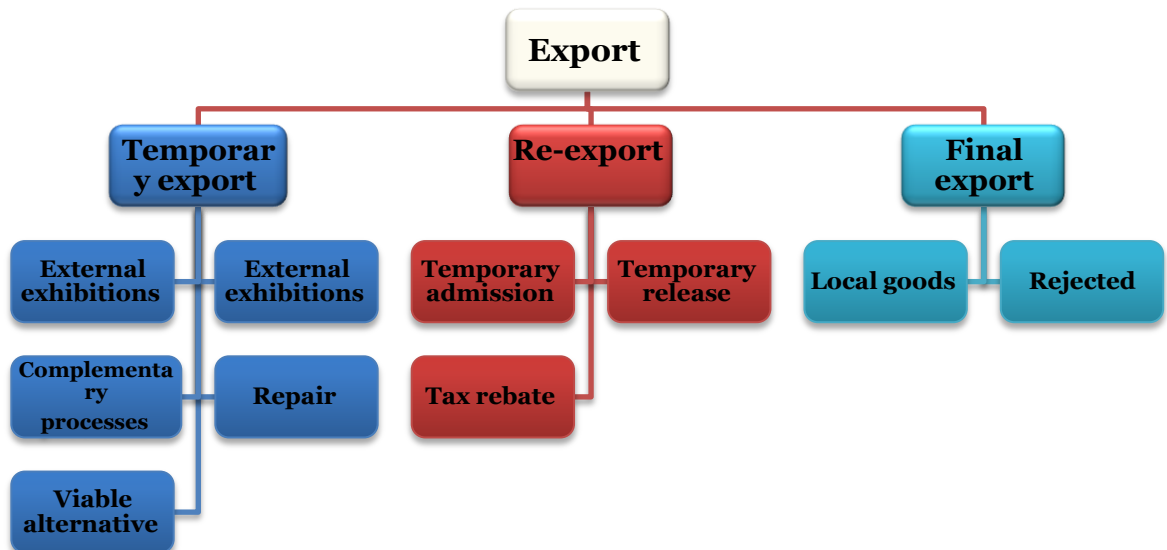
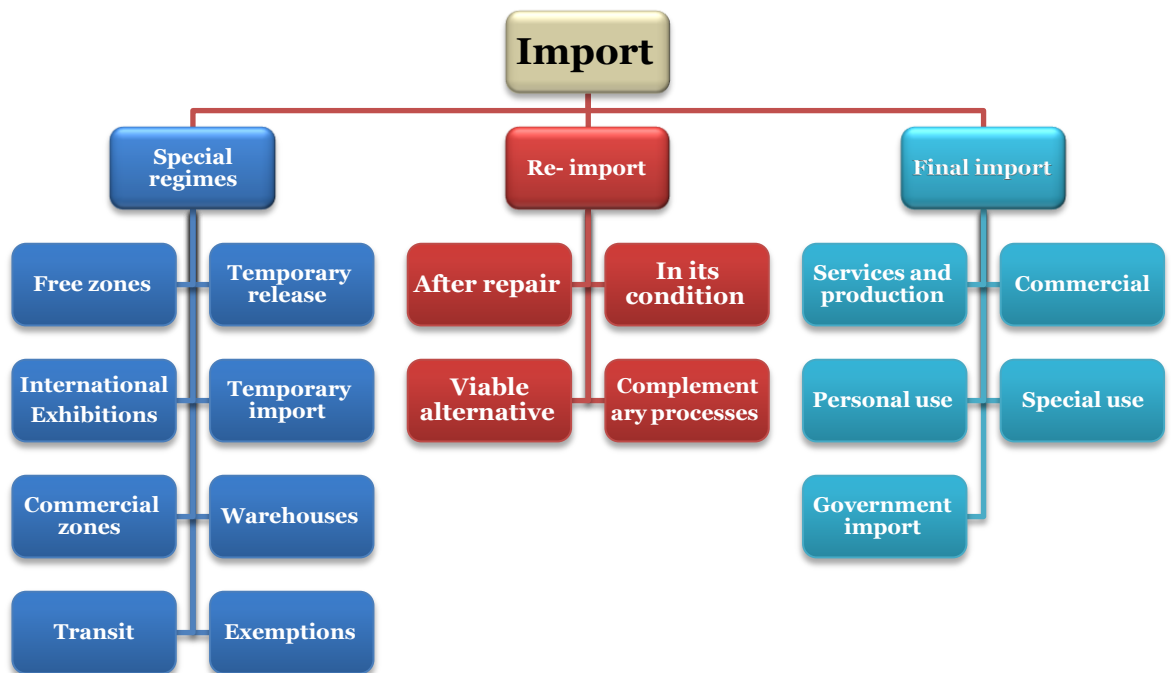
Where stamp is marked - back page of the Receipt

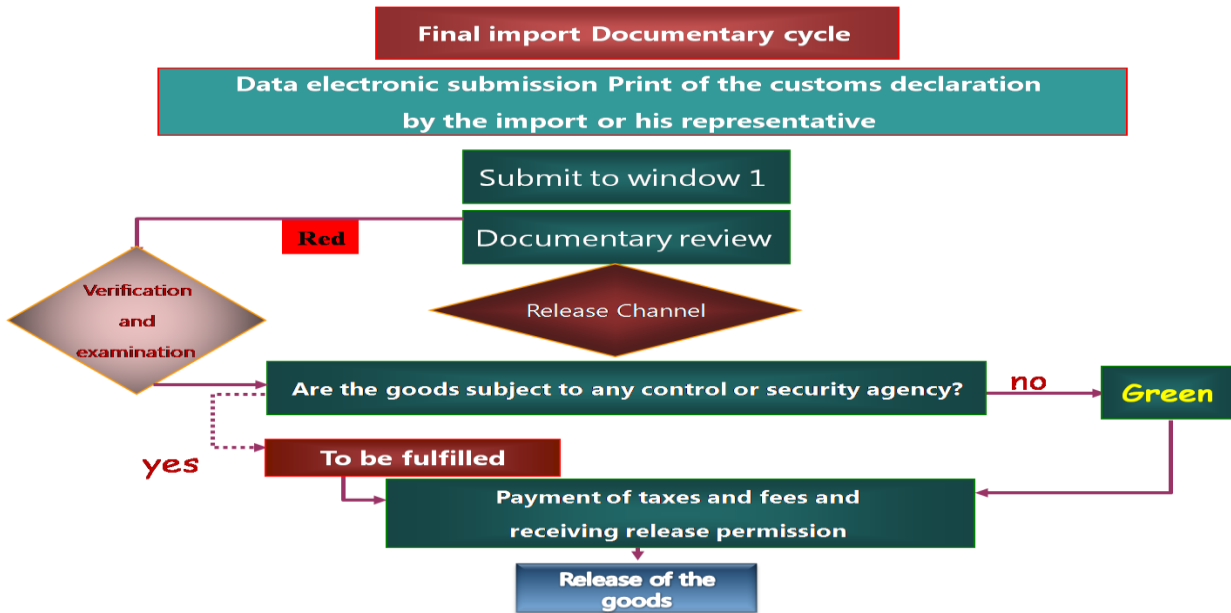
Upper right hand corner of the document states:

COPY OF THE RELEASE ORDER R = صورة اذن الافراج

The Arab Republic of Egypt					
Copy of the Release Order			No. of page: 1 of 1		
General Terms					
Custom Office: No. _____			Department: _____		
Exemption Code: _____		Date: _____		Time: _____	
Concerned Person: _____		Tax No.: _____		Department: _____	
Name of person submitting: _____		Capacity: _____		Activity No: 12/4000002	
Name of Supplier: _____		Nationality of Supplier: _____		County of _____	
Manifest Terms					
Manifest No. _____		Method of Shipment: _____		Date of arrival: _____	
Warehouse: _____		Procedures: _____		Policies: _____	
Customs required for release: _____					
Cargo Date: _____		No. of Packages: _____		Type of Packages: _____	
Weight/per unit: _____					
Valuation					
Currency price: _____		Contractual Price: _____		Invoice No. _____	
Value _____		Date of Custom assessment _____		Value not paid _____	
Elements used in calculating invoice _____		Insurance: _____		Other expenses: _____	
Documents: _____		Discharge _____		Price Amendment _____	
_____		Bank _____		Type _____	
_____		Letter of Credit _____		_____	
Terms of Equipments and Products					
Code of Equipment					
Country of Origin					
Agreement					
Importation objective					
Optional systems					
Net weight					
Invoice Value					
Acceptable Value					
Unpaid Value					
Final Value					
Statistical Amount					
Collection Unit					
Customs for Equipment	Category of the custom tax	Category of the custom tax	Category of the custom tax	Category of the custom tax	Category of the custom tax
Importation Tax					

DIFFERENT KINDS OF CUSTOMS PROCEDURES



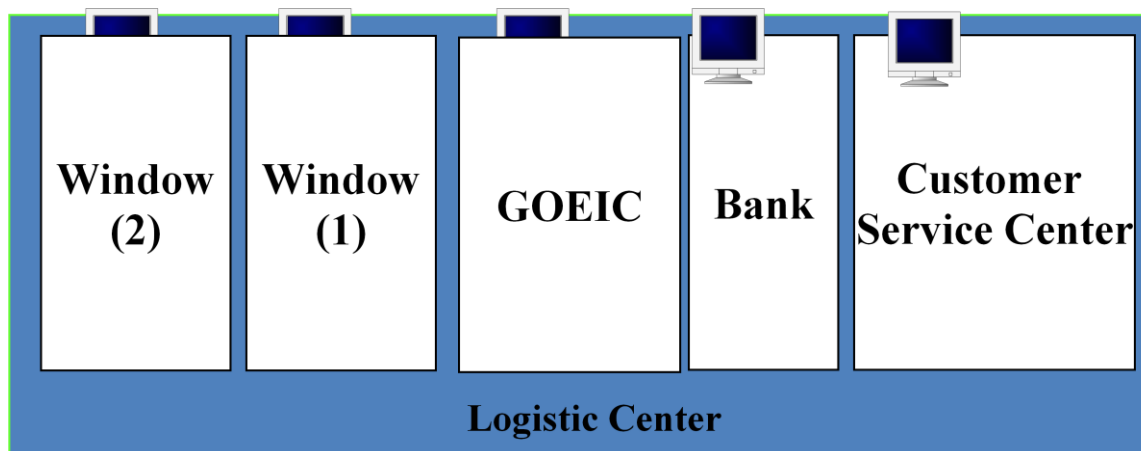


Modern Customs Centers MCC

- In the past, we used to have 34 customs procedures and 35 person to conduct.
- The release time average was 22 days
- Absence of transparency and lack of discipline
- High percentage of smuggling cases
- The main purpose of establishing the MCC is to present a perfect customs service to all clients
- The release time will decrease to only one day
- the working place is more convenient to both customs employees and clients
- A single window approach where all government authorities are in the same place

Logistics Centers

- Logistic Centers were established to speed up the release of goods
- It is almost a place where we serve the importer /exporter at the highest level of service:
 - Declaration data entry is made as well as bills of lading
 - Payment of Customs Duties and Taxes at the bank branch
 - Completion of release procedures required by GOEIC



Transit

- **Transshipment:**

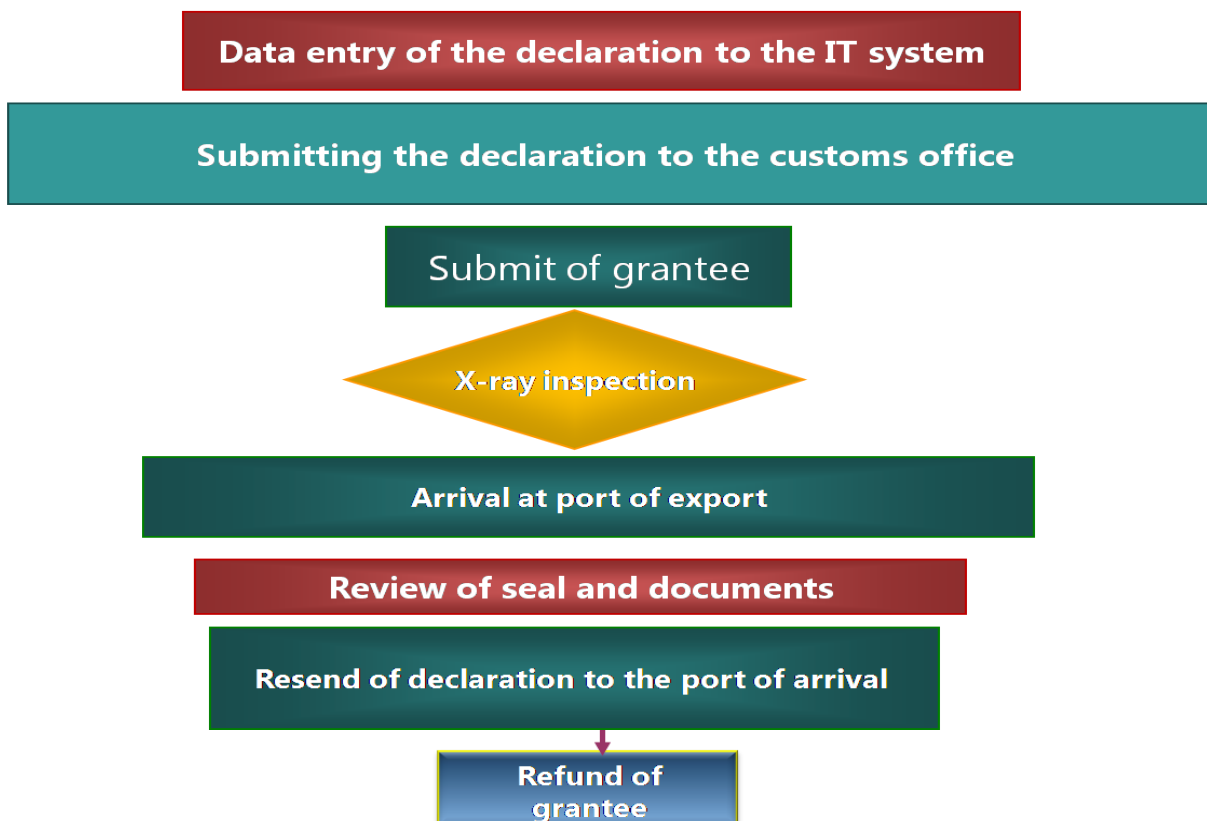
- ✓ The maritime agency submits a special declaration to the customs office
- ✓ Accordingly, the goods are to be transported from the port of arrival to the ship at the port of destination accompanied by a customs observer at no fees or duties

Transit goods

- This kind of transit has three parties:
 - ✓ Country of export
 - ✓ Country of transit
 - ✓ Country of import

Customs procedures on the transit goods:

- Submit of a transit declaration attached to the shipment documents (invoice, packing list, bill of lading.. Etc)
- On the documents , valuation of goods in transit is calculated, no physical inspection , only x-ray inspection
- Goods are to be released from customs to the port of departure
- When the recite of goods at the port of departure arrives to the customs office, the grantee is to be refunded



Temporary release

- goods could be released from customs conditionally, i.e. without paying the duties assigned to it
- an accepted grantee is to be deposited till the goods are exported or adjusted by customs
- conditions and case of temporary release:
- Machinery and equipments and its accessories imported by ministries and governmental unites to be used in construction or economical projects and then re-exported.
- Goods imported for exhibitions, carnivals and the like provided that an approval from the concerned authority is submitted.
- Machinery and equipments and its accessories imported for laboratories, industrial or agricultural approved by the concerned authority.

Customs Law

No. 66 of the Year 1963

As amended by law no. 95/2005

Overview

- Customs Law No. 66 year 1963.
- Customs Law No. 95 year 2005 amending Customs Law No. 66 year 1963.
- The law of Customs Exemptions No. 186 year 1986.

Section and chapters of Customs Law

Customs Law No. 66 year 1963.

Section 1 : General Provisions

Chapter I : Introductory Provisions

Chapter -2 : Customs Duties

Chapter -3 : Prohibition and Restriction

Chapter -4 : Distinctive Features of the Goods

Section - 2 : Customs Officials

Section - 3 : Customs Formalities

Chapter 1 : Manifests

Chapter 2 : Customs Statements

Chapter 3 : Inspection and Withdrawal of the Goods

Chapter 4 : Arbitration

Customs Law No. 66 year 1963.

Section 4 : Special Customs Schemes

Chapter I : General Provisions

Chapter -2 : Transit Goods

Chapter -3 : Warehouses

Chapter -4 : Free Zones

Chapter -5 : Temporary Exemption

Chapter -6 : Temporary Release

Chapter -7 : Refund Of Customs Taxes

Section 5 : Customs Exemptions

Section 6 : Services Charges

Section 7 : Customs Contraventions

Section 8 : Smuggling

Section 9 : Selling of Goods

Section 10 : Distribution of Compensation, Fines and the Value of confiscation
Objects

Decree of the President of The
United Arab Republic
As Per Law No. 66 of the Year 1963
Promulgating

Customs Law

As amended by laws Nos. 88/76, 75/1980 , 158/1997 , 175/1998 , 160/2000 ,
13/2001 , 157/2002 , 14/2004 and 95/2005 (1)

In The Name of the Nation;
The President of the Republic;
After perusal of the temporary constitution;
The constitutional declaration issued on 27th September, 1962, in connection
with the political organization of the supreme powers of the State;
The opinion of the State Council;
And the approval of the Council of Presidency;
The following law has been promulgated:

Article: 1

The provisions of customs law attached shall enter into effect.

Article: 2

Shall be cancelled the provisions of the customs regulations issued on 2nd April, 1884, as amended, decree as per law No. 324 of 1952 concerning the temporary release scheme, as amended, decree as per law No. 325 of 1952 regulating the refund of customs duties, excise or consumption duties and additional dues on foreign materials employed in local industries which are exported abroad, as amended, decree as per law No. 306 of 1952 concerning the scheme of free zones, as amended, law No. 623 of 1955 concerning the provisions of customs smuggling, law No. 55 of 1961 in connection with customs exemptions concerning the members of foreign diplomatic and consular corps working in the United Arab Republic, and law No. 65 of 1961 in connection with exempting the representative missions of the United Arab Republic abroad and their employees as well as the employees on secondment at the United Nations Organizations and specialized agencies from the customs duties and dues, municipal and other local dues⁽¹⁾. Shall also be cancelled every other

¹ The Official Journal — Issue No.24 (Bis) — Dated 21 June 2005

² The decree law No. 148/1964 was issued comprising the following:

Article: 1

The context of law No. 66/1963 shall be cancelled in connection with canceling enforcing law No. 65/1961 concerning exempting the representative missions of the United Arab Republic and Agencies from the

provision in conflict with the stipulations of the law.

Article: 3

This law shall be published in the Official Journal and shall enter into effect as from the date of its publication, and the Minister of Treasury shall have the right to issue the necessary regulations and decrees for its execution.

The executive regulations of the present law shall be issued by virtue of a decree of the Minister of Finance within three months with effect from the date on which the present law comes into force.

Article: 4 ⁽³⁾

The executive regulations shall define the rates, goods, rules, conditions, guarantees and the procedures the determination or issue of which shall be entrusted to the Minister of Finance, Head of the Customs Administration, or the Director-General of Customs.

Issued at the Presidency of the Republic on 13th June, 1963.

GAMAL ABDEL NASER

General Provisions

Chapter - I Introductory Provisions

Article: 1

The customs region shall be taken to mean the territories and the territorial water subject to the sovereignty of the State. Free Zones not subject to the customs provisions may be established in this region.

Article: 2

customs duties and dues, municipal and other local dues.

Article : 2

The provisions of law No. 65/1961 shall be enforced provided that the exemption shall be made once only for those delegated for the service abroad. Such exemption shall not be enforced in case of the repetition of their service abroad.

(Published in the Official Journal - Issue No. 69, dated 24TH March, 1964).

³ Added as per Law No. 95/2005

The customs line shall be the political boundaries dividing between the United Arab Republic and the adjacent countries and sea shores surrounding the Republic. Nevertheless, shall be regarded as being a customs line the two banks of the Suez Canal and the shores of the lakes in which this canal passes.

Article: 3

The marine scope of customs control shall extent from the customs line to a distance of 18 nautical miles in the seas surrounding the line. But the land scope shall be determined as per a decree to be issued by the Minister of Treasury according to the exigencies of control. Special measures may be adopted within the scope for controlling some goods which shall be determined as per a decree to be issued by the Treasury Minister.

Article: 4

The customs area shall be the scope which shall be determined by the Minister of Treasury at every seaport or airport where there is available customs office in which authority is given for completing all or part of the customs.

Chapter -2 Customs Duties

Article: 5

The goods which enter the territories of the Republic shall be subject to the duties on imports prescribed in the customs tariff in addition to the other prescribed duties save the goods which are excepted under a special provision.

Goods going out of the territories of the Republic shall not, however, be subject to customs duties excepting those for which a special provision is herein contained.

The customs duties and other dues and levies which fall due on the occasion of the arrival of the goods or the export thereof shall be collected in conformity with the regulatory laws and decrees, and no goods may be released before completion of the relative customs formalities and payment of the duties and levies due unless otherwise is provided for in this law.

⁽⁴⁾The amounts of the aforementioned taxes and dues and other amounts payable to the Public Treasury according to the provisions of the present law shall have prior lien on all property of the debtors thereof or the property of those bound to pay such debts. These amounts shall be collected out of the price of property encumbered with that lien whichever the hand it is held in,

⁴ Added as per Law No. 13/2001.

before any other claim thereon even if it is a privileged right or guaranteed by a collateral real right, with the exception of legal expenses.

Article: 6

The customs tariff shall be determined and amended as per a decree to be issued by the President of the Republic.

Article: 7

As per a decree to be issued by the President of the Republic, the goods of which the origin or source of countries which have not concluded trade agreements with the Republic containing the most favored country clause, may be subjected to an additional duty equivalent to the duty prescribed in the schedule of customs tariff, providing this additional duty does not fall below 25% of the value of the goods.

Article: 8

Cancelled As Per Law No. 161/1998 ⁽⁵⁾

Article: 9

The decrees of the President of the Republic referred to in Articles 6, 7 and 8 hereof shall have the force of the law and shall be brought before the legislative Authority immediately after they take effect at its existing session or at the first session to be held by it, and if these decrees are not approved by this Authority they shall cease to have the force of law and shall continue to be valid in relation to the past period.

Article: 10

The Presidential decrees issued for amending customs tariff shall, starting from the time of their entering into force, apply to the goods for which customs duties have not been paid. As to the goods, which are destined for export and for which amounts have been paid on account of the duty before their entering the customs area in whole, the part thereof which has not entered, shall be subject to the tariff in force at the time of entering, and the goods arriving in the name of ministries, departments, general organizations and public authorities,

⁵ Article 8 cancelled as per Law No. 161/1998, read as follows:

“As per a decree to be issued by the President of the Republic, the goods arriving may be subjected to a compensatory duty if an export bounty is directly or indirectly enjoyed by them abroad.

Similar measures may also be adopted in the cases in which some countries reduce their prices or use any other means for directly or indirectly depressing the products of the Republic”.

which shall be determined as per a decree to be issued by the Minister of Treasury, shall be subjected to customs tariff in force at the time of authorizing the release of such goods.

Article: 11

Customs duties shall be paid for the goods subject to an advalorem duty according to their condition at the time of applying customs tariff and according to its schedules.

As to the goods subject to a specific duty, this duty shall be paid thereon in full regardless of the condition of the goods unless it is ascertained by the Customs Authorities that a damage has occurred to the goods as a result of a force majeure, in which case the specific duty may be reduced in proportion to the damage caused to the goods

Article: 12

As per a decree to be issued by the Ministry of Treasury, there shall be determined the rules whereby the calculation of the duty on taxable goods shall be based on the weight and the duty shall be calculated on the packages and containers in which the goods arrive.

Chapter -3

Prohibition and Restriction

Article: 13

A statement shall be submitted in respect of all goods entering or going out of the Republic and they shall be brought before the Authorities at the nearest customs branch as may be determined by the Customs Administration.

Article: 14

As per a decree to be issued by the Minister of Treasury at the proposal of the Director General of the Customs Administration, the Customs Administration's branches may be established and their functions determined and so also the types of goods in respect of which formalities are permitted to be completed.

The customs guard rooms shall be established and their functions determined as per a decree to be issued by the Director General of the Customs Administration.

Article: 15

Shall be regarded as being prohibited all goods which are not allowed to be imported or exported. If the import or export of goods is subject to restriction by any authority whatsoever, they shall not be allowed to be brought in or sent out unless they are fulfilling the required conditions.

Article: 16

Ships, of which the tonnage falls below 200 marine tons, may not undertake the transport of prohibited goods subject to exorbitant duties to or from the Republic.

The Director General of the Customs Administration shall determine the types of goods which are subject to exorbitant duties.

It shall further be prohibited for the ships, of which the tonnage falls below 200 marine tons, and which are loaded with goods of the types referred to in the preceding Article, to ramble or change their course within the scope of marine control except in the circumstances arising from a force majeure or marine emergencies. Captains of ships should in such circumstances advise the nearest customs office without delay.

Article: 17

Ships of any tonnage whatsoever shall be prohibited to harbour at other than the ports intended for the purpose or in the Suez Canal or its lakes or in the two months of the Nile

without a prior permission from the Customs except in the circumstances arising from marine emergencies or a force majeure. Captains of ships should in such circumstances advise the nearest customs office.

Article: 18

Aircraft shall be prohibited to cross the frontiers at other than the places determined for the purpose or to take off or to land at other than the airports provided with customs offices except in cases of force majeure. Captains in charge of the aircraft should in such cases submit a report to the customs.

Chapter -4

Distinctive Features of the Goods

Article: 19

The origin of the goods shall be the country of their production whether they are agricultural or natural crops or industrial products, and the rules specifying the origin of goods if they are industrialized in other than the first country of production shall be determined as per a decree to be issued by the Minister concerned.

The Minister of Treasury shall determine the cases in which the documents in evidence of the origin of the goods should be submitted.

Article: 20

The origin of the goods shall be the country from which they are directly imported.

Article: 21

The type of goods shall be determined according to their names as indicated in the customs tariff. In the absence of names for the incoming goods, the Minister of Treasury shall issue decrees for such goods to be given treatment akin to that given to the items closely resembling them, decrees which shall be published in the official Gazette.

Article: 22(6)

Subject to international agreements that the Arab Republic of Egypt is party to them, the amount as declared for customs purposes where goods are imported shall be the actual value of the goods to which are added all actual costs and expenses paid in connection with the goods until their arrival at the port of destination in ARE territories

If the value is defined in foreign currency it shall be estimated on the basis of the exchange rate as announced by the Central Bank of Egypt on the date the customs statement is registered, according to the conditions and terms to be determined by the Minister of Finance.

⁶ Substituted as per Law No. 160/2000

Article: 23 (7)

The concerned party shall submit the purchase contracts or original invoices indicating there in the contract terms, as well as the documents connected with the goods, duly approved by a quarter specified or accepted by Customs Department. If it transpires to Customs Department that the documents, wholly or partly, or in some of their data, are incomplete or invalid, the department may not reckon with them. The concerned party shall be informed in writing, and upon its request, of the reasons on which the decision of the Department is based.

Article: 24

The value, which should be declared relatively to the goods destined for export, shall be equal to the normal export price at the time of registering the customs manifesto presented therefore plus all expenses until the place of export. This value shall not include the export duty, the excise and other duties which shall be refunded for goods upon exportation are imposed on the goods when exported.

⁷ Substituted as per Law No. 160/2000

Section – 2

Customs Officials

Article: 25

Customs officials, whose posts shall be determined as per a decree to be issued by the Minister of Treasury, shall be regarded as being members of the judicial officers within the limits of their functions.

Article: 26

Customs officials shall have the right to search the places, persons, goods and the means of transport within the customs area and at the places and warehouses subject to the supervision of the customs. The Customs shall have to take all such measures as are considered adequate for preventing smuggling within the customs area.

Article: 27

Customs officials shall have the right to board the ships within the scope of customs control for searching them or for claiming the presentation of the manifests or other documents required under the prescribed rules. In this connection, they may enlist the assistance of the officials of other authorities.

In the event of the presentation of documents being refused or in the absence of such documents or on suspicion that smuggled or prohibited goods exist; the necessary measures shall be adopted including the use of power for seizing the goods and escorting the ship to the nearest customs branch when required.

Article: 28

Customs officials shall have the right to seize prohibited or monopolized goods through the Republic as long as their availability is against the prescribed rules. In case where there is a strong suspicion that goods are being smuggled, customs officials shall further have the right to search the places and shops within the scope of control in search of smuggled goods.

Article: 29

Customs officials and whoever assist them from among the personnel of the other authorities shall have the right to chase the smuggled goods and to continue doing this when the goods go out of the scope of customs control.

They shall further have the right to inspect and search the caravans passing through the desert on suspicion that they are violating the provisions of the law.

They shall in such circumstances have the right to seize persons, goods and means of transport and escorting them to the nearest customs branch.

Article: 30 (8)

The shipping and transport establishments, and the natural and juridical persons who have any connection with customs operations, shall maintain and keep all papers, registers, instruments and documents connected with these operations.

Importers of foreign goods and those who purchase directly from them for trading purposes shall maintain and keep the papers and documents establishing the settlement of the tax.

All other holders of foreign goods who keep these goods for trading purposes shall maintain any document indicating the source of these goods.

The Minister of Finance shall issue a decree determining the rules, procedures and periods to be observed in maintaining the papers, registers, instruments and documents referred to in the previous clauses.

The concerned customs officials shall have the right to view and have access to any of the papers, registers, documents and instruments stipulated upon in this article, and seize them in case any violation is established in them.

Article-30 (Bis): (9)

Unless the perpetrator is caught in the very act, none of the procedures for investigating it may be adopted with regard to any of the crimes committed by the customs administration's employees who have the capacity of officers of law in the course of carrying out their duties, except after getting a written request to that effect from the Minister of Finance or his delegated deputy. In all cases, the criminal action may not be brought against any of the customs administration's employees except after obtaining such request.

⁸ Substituted as per Law No. 160/2000

⁹ Added as per Law No. 95/2005

Section -3

Customs Formalities

Chapter - 1

Manifests

Article: 31

All goods arriving by sea should be registered in the public and only manifest of the ship cargo.

This manifest should be signed by the captain of the ship, and the name and nationality of the ship, types of goods, numbers, signs and marks of their parcels, name of the shipper and consignee, description of the covers and the ports of shipment should be indicated in the manifest.

Should the goods be of the prohibited type, they should be written down in the manifest in their real names.

Article: 32

The captains of ships or their representatives should, within not more than 24 hours from the arrival of the ship, official holidays excluded, submit to the customs office the manifest of the cargo shipped on board to the Republic in accordance with the conditions provided for in the preceding Article.

In all circumstances, the Customs shall have the right to have access to the public manifest and all documents pertaining to shipment.

If the manifest pertains to ships which do not sail on scheduled travels or which do not have shipping agencies in the Republic, or if the ships are sailing boats, the manifest should be endorsed by the Customs authority at the port of shipment.

Article: 33

The captains of ships or their representatives should submit, within the time-limit provided for in the preceding Article, lists giving the names of their passengers and all supplies concerning the ship including the necessary tobacco and alcohols for consumption in the ship as well as the objects which are held by the crew and which are subject to customs duties.

They should store the tobacco and alcohols in excess of the requirements of the ship at the time of harbouring in a special depot to be stamped with the stamp of the customs.

Article: 34

Ships may not depart from the ports of the Republic whether loaded or empty except in accordance with a permit from the Customs. For granting this permit, it is a condition to present the manifest or an undertaking from the agent of the maritime company to present the manifest within three days from the departure of the ship.

Article: 35

No mention may be made in the manifest of a number of closed parcels grouped in any manner whatsoever as if they are one parcel.

Article: 36

No goods may be unloaded from the ships or carriers or boats or loaded unto them or transported from one to another ship except in accordance with a permit from the Customs.

Article: 37 (10)

Captains of ships, aircraft, and other means of transport, or their representatives shall ascertain that the amount of goods or the number of parcels or their contents are conforming to the list of shipment (manifest) and shall preserve and maintain them until their complete delivery at the Customs Stores, or the warehouses, or to the concerned parties.

A decree of the Head of Customs Department shall determine the percentage of tolerance in bulk goods (more or less) and also the partial shortage in goods resulting from natural factors or weakness in the wrappings and the leakage and outflow of their contents.

¹⁰ Substituted as per Law No. 175/1998.

Article: 38 (11)

“The responsibility for violating the provisions of article (37) of the present law shall be removed in the following cases:

1. If the missing goods or parcels have not originally been loaded from the shipping port.
2. If they were loaded but have not been unloaded inside the country, or have been unloaded outside it.
3. If the vessels’ holds have sound seals, or if the containers have arrived bearing sound seals and numbers in conformity with what is indicated in the bill of lading, or if the parcels have been delivered in an outward sound condition, the case in which the availability of a decrease before loading may be possible.

The reason for the decrease in the cases mentioned in the aforementioned three items shall be in accordance with the rules and conditions set by the executive regulations of this law.”

Article: 39

For the goods transported by air, there should be presented manifests signed by the crew in charge of the aircraft on arrival or before departure of the aircraft. The other provisions concerning the goods transported on board of the ships shall apply to these goods.

Article: 40

The provisions of Articles 35 through 38 shall apply to goods arriving by land, and the Director General of the Customs shall determine the direct methods of bringing in and sending out these goods.

The goods arriving overland should be brought before the nearest customs office to the frontiers, and the owners of the goods or those accompanying them to keep to the road or path directly leading to this office.

For these goods there should be presented a special manifest for each of the units of transport in compliance with the stipulations of Article 32 of this law.

Concerning the goods arriving by railways, the manifest should be signed by the railway official concerned at the dispatch station as well as by the railways representative on the train, and shall be endorsed by the export customs or the first local customs office from where the goods have entered.

¹¹ Substituted as per Law No. 95/2005.

Article: 41

Captains of ships or transport organization or their representatives shall have to present to the customs the manifests or their summaries pertaining to the goods which are unloaded at the free zones forthwith the goods are unloaded.

The authority undertaking the management of the free zone shall have to submit to the customs within 36 hours a table for each ship or train or any other means of transport, containing descriptions of the goods unloaded as to the number, type, marks, figures and the source from which they have been shipped

Article: 42

Incoming or outgoing goods through the post shall be accepted in compliance with international postal agreements, and the postal Authority shall have to bring before the customs authorities, within the limits of these agreement, parcels post, packets and wrappings which are subject to customs duties or to special restrictions or formalities.

Chapter -2

Customs Statements

Article: 43

A detailed statement (Customs Declaration) shall have to be presented to the customs in respect of any goods before commencing the customs formalities even if such goods are exempted from customs duties.

This statement shall include all information and explanations as well as the elements enabling customs schemes being applied and duties being paid when required.

The form of this statement and the documents to be enclosed shall be determined as per a decree to be issued by the Minister of Treasury.

Article: 44

The statement provided for in the preceding Article shall be submitted by factory owners or their attorneys, who are acceptable to the customs, or by authorized clearing agents, and the signatory of the statement shall be regarded as being responsible for the accuracy of the information contained therein, without prejudice to the responsibility of the owner of the goods.

Article: 45

The customs statement shall be registered with the customs and shall be given a serial number, after ensuring that the provisions of the two preceding Articles have been carried into effect.

Article 46 (12)

The explanations contained in the customs declaration submitted to the customs department may be modified before determining the parcels that are subject to inspection. The material mistakes occurring during any one of the stages of release may be rectified.

Article 47

The owners of the goods or their representatives may request to have access to their goods, inspect and obtain samples thereof when required under the supervision of the customs officials.

Article 48

The Holder of the delivery order of the goods shall be regarded as being the deputy of the owner in taking delivery thereof and the customs shall not be held responsible for delivering the goods to him

Article 49

Shall be regarded as a clearing agent every natural or Judicial person who undertakes to prepare, sign and present the customs statement to the customs and complete the procedures in respect of the goods for the account of third parties.

He may not undertake his work as a clearing agent until after obtaining a permit from the Customs Administration.

The Minister of Treasury shall determine the conditions of granting the permit, the regime concerning clearing agents and the competent disciplinary authority to deal with contraventions committed by and the penalties to be imposed on them.

Chapter -3

Inspection and Withdrawal of the Goods

Article 50

After registration of the statement, the customs shall undertake to inspect the goods and ascertain their type, value; origin and those they comply with the

¹² Substituted as per Law No. 95/2005.

certificate and the relative documents.

Customs may or may not inspect all or part of the goods according to the rules to be issued by the Director General of the customs.

Article 51

The parcels may not be opened for inspection except in the presence of the interested parties. Notwithstanding the foregoing, customs may, subject to a written permission from the local chief, open the parcels on suspicion that they contain prohibited materials without the interested parties being present after the expiry of one week from advising them thereof. A report to this effect shall be drawn up by the committee which shall be set up for the purpose.

Nevertheless, as per a decree to be issued by the Director General of the Customs in case of necessity, parcels may be opened without the interested parties being present by the committee which shall be set for the purpose.

Article 52

Inspection shall take place at the customs area. Permission may in some cases be given for the inspection to be carried out outside the customs area at the request and at the expense of the interested parties according to the rules which shall be established by the Director General of the Customs Administration.

Article 53

Customs may under all circumstances re-inspect the goods as long as they are under its control.

Article 54

Customs shall have the right to analyze some materials with a view to ascertaining their type, specifications or their compliance with health and agricultural regulations and otherwise. The analysis may be carried out at the request and expense of the interested parties.

The interested parties may object against the result of the analysis which **has** been carried out at request of the customs or may request the analysis be repeated at their expense.

The rules regulating these formalities shall be determined as per a decree to be issued by the Minister of Treasury.

Article 55

Customs shall undertake to destroy the materials, which the analysis proved being harmful, at the expense and in the presence of the owners thereof unless they undertake to re-export such materials during the delay to be determined by Customs.

These materials shall be destroyed in the presence of the interested parties at the time to be fixed to them by Customs. In the event of their failure to be present, the materials shall be destroyed without their presence, and a report to this effect shall be drawn up.

Article 56

When the state of emergency is declared, measures may be adopted for the withdrawal of the goods against special guarantees and under special conditions to be determined as per a decree to be issued by the Minister of Treasury.

Chapter -3

Arbitration

Article 57 (13)

In case a litigation arises between customs department and the concerned party on the type, origin or value of the goods, and the concerned party or his representative requests that the dispute be referred to arbitration, and customs department concedes thereto, the litigation shall be referred to an arbitration committee to be formed under one of the judiciary bodies' members whose grade is same as or equivalent to that of a President of a court, to be chosen by the body, and appointed by a decree of the Minister of Justice, with the membership of an arbiter from Customs Department to be appointed by the Head of the Department or his deputizing assignee, and an arbiter to be chosen by the concerned party or his representative.

The committee shall issue its substantiated decision, with the majority of views. If the decision is issued unanimously, it shall be final and mandatory to the two parties and incontestable except in the cases prescribed in the Law on Arbitration in Civil and Commercial matters, as promulgated by law no. 27 of the year 1994.

A non-final decision of the Committee may be traversed before a higher arbitration committee to be formed under a member of the judiciary bodies with at least a counselor's grade or its equivalent, to be chosen by the body and appointed by a decree of the Minister of Justice, with the membership of an arbiter for Customs Department to be chosen by the Head of the Department or

¹³ Substituted as per Law No. 160/2000.

his deputizing assignee, and an arbiter to be chosen by the concerned party or his representative.

The higher arbitration committee shall decide the litigation by virtue of a substantiated decision issued with the majority of views. The decision shall comprise a statement indicating the party that shall bear the arbitration costs.

The decision of the higher arbitration committee shall be final and binding to the litigation parties. It shall be incontestable except in the cases prescribed in law no. 27 of the year 1994 referred to.

If the non-final decision of the committee is not traversed, the concerned party may traverse that decision in accordance with the cases prescribed in law No. 27 of the year 1994 referred to.

The rules and procedures prescribed in law No. 27 of the year 1994 referred to shall be applied to the arbitration where no special provision is mentioned in the previous clauses.

Article 58 (14)

In order that arbitration be carried out according to the previous article, the goods are stipulated to be still under customs department's control, except in the cases and according to the conditions and terms to be determined by a decree issued by the Minister of Finance.

¹⁴ Substituted as per Law No. 160/2000.

Section - 4

Special Customs Schemes

Chapter - 1

General Provisions

Article 59

The goods may be admitted or transported by land or by sea or by air from one to another place within the Republic or otherwise and suspending the payment of customs duties and other dues and levies due thereon being suspended according to the terms, conditions and periods to be determined by the Minister of Treasury.

Article 60

The goods provided for in the preceding Article shall be subject to the duty in force at the date of payment of the duties and levies due thereon by way of deposit or at the date of registration of the undertaking in case where the periods referred to in that Article are not observed.

Article 61

National and foreign goods, for which customs duties have been paid, may be transported from one to another place within the Republic without having to pass at foreign ports according to the conditions to be determined by the Customs.

Article 62

Foreign goods, for which customs duties have not been paid and which are not subject to one of the special schemes contained in this law, may be returned abroad or transferred from one to another place within the Republic, or condition of the necessary guarantees being submitted and the formalities to be determined by the Director General of the Customs being complied with.

Chapter -2

Transit Goods

Article 63

Foreign goods which are produced under the scheme of transit goods may be transported without taking the sea route whether they entered the borders to go out directly from other borders or whether they are dispatched from one to another branch of the Customs.

Article 64

Formalities pertaining to transit goods may not be allowed to be carried out except at the branches of the Customs intended for the purpose and after payment of the customs duties and other levies due thereon by way of deposit or after presentation of guaranteed undertaking to dispatch the goods to their destinations within the fixed period.

Article 65

Transit goods shall not be subject to the restriction and prohibition unless otherwise is provided for in the decrees issued in this connection.

Article 66

The arrival of the goods at their destinations in the foreign countries shall be evidenced by the presentation of a certificate from the Customs of these countries acknowledging the receipt thereof, and the Customs shall have the right to grant exemption from the presentation of this certificate or to accept any other evidence.

Article 67

The goods shall be transported according to the transit scheme on all roads and by all means of transport under the responsibility of the signatory of the transit undertaking.

Article 68

The provisions concerning the statement and inspection as provided for in this law shall apply to the goods referred to in the foregoing Article.

Article 69

Transit goods or any means of transporting them or both shall be stamped in the manner to be determined by the Customs, and the signatory of the undertaking shall be held responsible for the damage being caused to the stamps or the goods being tampered with.

Chapter -3
Warehouses

Article 70

Warehouses shall be taken to mean the storage facilities where incoming goods shall be accepted without payment of customs duties for the periods to be determined by this law. The warehouses shall be divided into two types, namely a public warehouse where goods are stored for the account of third parties and a private warehouse where the owner thereof stores his incoming goods authorized to be stored therein.

1: The Public Warehouse:

Article 71

As per a decree to be issued by the Minister of Treasury upon the proposal of the Customs Administration, the scheme of the public warehouse shall be authorized to enter into operation.

The storage and other expenses as well as the fees due for payment to the Customs Administration, the guarantees to be offered and other stipulations pertaining to the warehouse shall be determined as per a decree to be issued by the Minister of Treasury.

The terms and conditions concerning the specification and management of the warehouse shall be determined as per a decree to be issued by the Minister of Treasury in agreement with the Minister concerned.

Article 72

72

The period of stay of the goods at the public warehouse shall be fixed at six months which may be extended for another three months when required in accordance with a special request to be approved by the Director General of the Customs.

The period may, in cases of necessity, be reduced or extended as per a decree to be issued by the Minister of Treasury.

Article 73

Shall not be permitted to be stored in the public warehouse prohibited goods, explosives and similar materials, inflammable materials, goods displaying symptoms of contamination and those the availability of which at the public warehouse exposes them to risks or may cause damage to the other goods, the goods the preservation of which requires special installations and the goods in bulk unless the warehouse is intended for the purpose.

Article 74

The goods shall not be accepted at the public warehouse unless they are accompanied by a warehouse warrant.

This warrant shall be presented and the goods inspected in accordance with the conditions to be determined by the Customs Administration.

Article 75

The Customs shall have the right to exercise control on the public warehouses which are operated by the other authorities, and the authority exploiting the warehouse shall be held responsible for the goods stored therein in accordance with the provisions of the laws in force.

Article 76

The authority exploiting the public warehouse shall replace the owners of the goods stored therein vis-a-vis the Customs as to all their obligations arising from storing these goods.

Article 77

The goods stored at the public warehouse shall be sold in accordance with the stipulations provided for in Section 9 should the interested parties fail to return them abroad or pay the Customs duties payable thereon during the period of storage, a sale which shall be effected after one month from the date of serving a notice on the exploiting authority.

Article 78

The Customs shall have the right to authorize the following operations being carried out at the public warehouse under its control:

(a) to mix foreign products with other foreign or domestic products for the purpose of re-exporting them only. In this case, it is a condition to put special marks on the coverings and allocate a special place for them.

(b) to remove the coverings, to transport from one to another container, to collect or divide the parcels and to carry out all work intended for maintaining the products or improving their appearance or facilitating the disposal thereof.

Article 79

Customs duties shall be assessed on the goods, which have previously been stored at the public warehouse, on the basis of the weight and number thereof at the time of storage.

The authority exploiting the warehouse shall be held responsible for the customs duties, other dues and levies due for each shortfall, loss or change in these goods, besides the fines to be imposed by the Customs.

These duties and levies shall not fall due if the shortfall or loss or change is due to natural causes, a force majeure reason or an accident beyond control.

Article 80

Goods may be transported from one to another public warehouse or to one of the branches of the customs as per guaranteed undertakings.

The signatories of these undertakings shall have to present a certificate for admitting the goods to the public warehouse or to the customs storage facilities for storing or withdrawing them for consumption or for subjecting them to any other customs scheme.

77- Private Warehouse

Article 81

Authorization may be given for the establishment of a private warehouse at the places where branches of the Customs are available if an economic necessity so requires.

The business of the private warehouse shall be liquidated within not more than three months from date of canceling the customs branch.

Article 82

The license establishing the private warehouse shall be issued as per a decree by the Ministry of Treasury upon the proposal of the Director General of the Customs.

The decree shall determine the location of the warehouse, the rent to be paid annually, the guarantees to be offered and the other stipulations.

Shall also be determined as per a decree to be issued by the Minister of Treasury in agreement with the Minister concerned the terms and conditions concerning the specifications and management of the warehouse.

Article 83

The goods deposited with the warehouse should be presented on each demand by the customs, and any shortage occurring for any reason other than that arising from such natural causes as evaporation, dryness or leakage or the like may not be disregarded.

Article 84

84

The goods, of which importation is prohibited, shall not be allowed to be deposited with private warehouses except with a special permission from the Director General of the Customs.

Article 85

The provisions of Articles 72,74,75,76,77 and 80 shall be applied to private warehouses.

Chapter -4

Free Zones (15)

¹⁵ Free zones have been fully reorganized by virtue of Law No. 43 for the year 1974 on the investment of Arabic and Foreign Capitals and free zones regimes, amended by Law No. 8/1997 on investment incentives and guarantees and its

Chapter -5
Temporary Exemption

Article 98 (16)

There shall be exempted temporarily from the customs taxes and other taxes and fees the primary materials and intermediate goods that are imported with the intent of manufacturing them as well as the production requisites of exported goods and the items imported for the object of repairing or completing the manufacture thereof.

Pursuant to a presentation by the Minister of Finance and the Minister concerned with Foreign Trade, a decree shall be issued by the Prime minister showing the cases, the terms and procedures in which there will be temporary exemption against the depositing of a security or a surety of the value of the taxes and fees due as well as the cases in which no such security or surety is to be deposited.

The said materials and items shall also be exempted from the import rules provided for in the laws relevant to importation.

The said materials and items may be disposed of for purposes other than those for which they were imported, subject to satisfaction of the import rules and payment of the taxes and fees due on the date on which such materials and items entered into the country plus a surtax at the rate of (2%) monthly of the value of the taxes and fees due for each month of delay.

Importer shall, under the supervision of the Customs Administration, submit thereto an adequate annual inventory in which to show the materials that had been disposed of for other than their intended purposes. The amounts due thereon shall be settled according to the provisions of the preceding paragraph.

In cases other than those provided for in the preceding paragraphs of this Article, for the said materials and items to be disposed of for purposes other than those intended from their import without referring to the Customs Administration, the taxes and fees due on the date on which such materials and items entered into the country will have to be paid plus two times as much as the surtax provided for in this Article.

amendments, which makes the chapter on free zones - within the customs law - (namely, the articles from 86 -97) included in the second article of the civil law (legal opinion no. 593 dated, 29/7/1993, file no. 37/2/444, the General Assembly for the legal opinion and legislation department, the state council.

¹⁶ Substituted as per Law No. 158/1997 then substituted as per Law No. 157/2002.

The security or surety aforementioned shall be refunded forthwith in the proportion of what had been transferred by importers or by third parties of the manufactured products or items to some free zone or had been exported out of the country or had been sold to bodies enjoying complete exemption from taxes and fees or to bodies which paid the taxes and fees due in respect thereof in accordance with the provisions of this article, within two years from the release date. Should the said time-limit expire without this completed, the said taxes and fees shall become payable. Such time-limit may be extended for other term(s), not to exceed two years, by a decree of the Minister of Finance or whoever is delegated thereby.

The equivalent of the value of the partial exemption from the taxes and fees due on the end products or the items referred to in the first paragraph of this article shall be refunded if the sale was made to bodies enjoying partial exemption.

The rules and procedures regulating temporary allowance and the systems of returning the security or surety aforementioned shall be decreed by the Prime minister pursuant to a presentation by the Minister of Finance and Minister concerned with Foreign Trade.

Article 99

Shall be determined as per a decree to be issued by the Minister of Treasury in agreement with the Minister of Industry the materials and items which are subject to this scheme and the industrial operations to be carried out thereon, as well as the percentage of industrial waste and the necessary conditions for this.

Article 100

If the industrial operations, which have been carried out on the items referred to, have changed their features to such an extent as to render it difficult to recognize their kind suffice it for the exported products to be of the type in the manufacture of which usually enter the imported items in accordance with a decree to be issued by the Minister of Treasury in agreement with the Minister of Industry.

Chapter -6

Temporary Release

Article 101

The goods may temporarily be released without charging the prescribed customs duties and dues under the terms and conditions to be determined by the Minister of Treasury.

The Minister of Treasury shall establish special regulations for facilitating the release of the goods arriving in the name of Ministries, government departments, general organizations and the companies belonging thereto according to the conditions and formalities to be determined by him.

Chapter - 7

Refund Of Customs Taxes

Article 102 (17)

The customs taxes and fees as well as the service fees charged to the foreign materials that had been used in the making of local exported products shall be refunded provided that they should have been transferred to a free zone, have been re-exported or have been sold to bodies enjoying complete exemption from such taxes and fees, within a period not to exceed two years from the release date. Such period may be extended for other period(s) up to two years maximum by a decree of the Minister of Finance or whoever is delegated thereby.

The equivalent of the value of partial exemption from taxes and fees shall be refunded if the sale was made to bodies enjoying partial exemption.

Refund shall take place immediately after the transfer to a free zone or completion of the export or sale in the above-mentioned cases, within not later than one month from the date of submitting an evidence of the same.

A special account may be opened for this purpose, with the approval of the Minister of Finance, at some commercial bank in which to deposit a percentage of the proceeds drawn from the drawback system.

Article 103 (18)

The rules and procedures regulating the refund of customs taxes and other taxes and fees on the foreign materials that were used in the production of exported goods and the industrial processes performed thereon and the percentage thereof as well as the requirements that have to be satisfied for the same shall be determined by a decree to be issued by the Prime minister pursuant to a presentation by the Minister of Finance and the Minister concerned with Foreign Trade.

Article 104

If the industrial operations, which have been carried out on the items referred to, have changed their features to such an extent as to render it difficult to recognize their kind, it may suffice for the products exported to be of the type

¹⁷ Substituted as per Law No. 157/2002.

¹⁸ Substituted as per Law No. 157/2002.

in the manufacture of which usually enters the imported items themselves on condition of these items being previously imported from abroad.

Article 105

Customs and consumption duties shall be refunded upon exporting the imported foreign products, which have no locally produced substitute, on addition of the sample thereof being ascertained and export being carried out within one year from the date of payment of the duty according to the terms and conditions for which shall be issued a decree by the Minister of Treasury.

Shall also be refunded the customs duties and other dues which have previously been collected upon exporting machinery or equipment or goods which have previously been imported and the acceptance of which has finally been refused for any reason, on condition of the export thereof being affected within one year from the date of payment of the duty.

Article 106

Shall be refunded the customs duties previously collected at the time of export in respect of domestic goods and products if they are re-imported from abroad or withdrawn from the free zone in the condition in which they have been at the time of export or at the time of entering the free zone according to the terms and conditions for which shall be issued a decree by the Minister of Treasury.

Section -5

Customs Exemptions

Articles from 107:110

This Chapter has been eliminated by virtue of law no. 19 for the year 1983 and replaced by law no. 186 for the year 1986 and it's amendments concerning the Customs Exemptions.

Section -6

Services Charges

Article 111

The goods which are deposited with storage yards, stores and warehouses, which are administered by the Customs, shall be subject to storage, portage and insurance charges and the other additional charges required by the operations of depositing and inspection of the goods and all other services provided by the Customs.

The goods which are deposited with the free zones shall not, however, be subject to other than the charges in respect of occupying the zones where they are deposited and the charges in respect of the services provided to them.

The prices of printed matters and the rates to be charged in respect of the services referred to in the aforementioned two paragraphs shall be fixed as per a decree to be issued by the Minister of Treasury, and the Minister, or whoever is deputed by him, shall have the right to reduce or grant exemption from the storage charges in the cases to be designated by him.

Article 112

The wages in respect of the work to be undertaken by the customs officials for the account of the interested parties in other than official working hours or outside the customs area shall be determined as per a decree to be issued by the Minister of Treasury.

Article 113

The charges and wages provided for in the two foregoing articles shall not be included in the scope of the exemption from or the refund of the taxes referred to in this law.

Section -7

Customs Contraventions

Article 114 (19)

“A fine amounting to L.E. 500 shall be inflicted on the captains of vessels, aircraft and other means of transport in the following cases:

1. Failure to submit the manifest, its non-existence, its plurality, delaying its submission or refraining from submitting any other document when required by the customs.
2. The omission of what shall be included in the manifest.
3. The moorage of vessels, landing of aircraft, or parking of other means of transport within the customs circle in other than the places determined for them by the customs department.
4. Loading, unloading or transferring the goods from one means of transport to another whatever its kind without an authorization from the customs department, or without the presence of the customs employees.
5. Unloading the goods within the customs circle in other than the places appropriated for that purpose.
6. The departure of vessels, aircraft, or other means of transport from the customs circle without a permit to that effect.

The customs department shall have the right to remove the causes for the violation at the expense of the violator.

In all cases, the customs department shall not delay the release, unloading, or transporting of goods in discharge of the above-mentioned fine. The customs department may not claim from the parties in whose names the goods have been imported, to pay their value”.

¹⁹ Substituted as per Law No. 95/2005.

Article 115 (20)

Subject to any stricter penalty provided for in the law, a fine amounting to L.E. 200 shall be inflicted in the following cases:

1. Preventing the customs employees from carrying out their duties, and exercising their rights of inspection, verification, and having access to the relevant documents.
2. Failure by the customs brokers to follow the statutes that determine their duties.
3. Failure to maintain the seals affixed to the parcels, or other means of transport without leading to a decrease or a change in the goods.
4. Failure to follow the procedures prescribed in article-62 of this law.

Article 116 (21)

A fine not exceeding three hundred Egyptian pounds shall be imposed, if the Customs duties that are exposed and liable to be lost do not exceed one thousand Egyptian pounds in the following cases:

- 1 - Possession or transport of goods within the scope of Customs Control, contrary to Customs Statutes.
- 2 - Entry or exit of the goods into or from the Arab Republic of Egypt or embarking on doing that without a Customs statement, or through other than the Customs channels or offices.
- 3 - Import - by post - of closed rolls, or boxes carrying no regular cards contrary to the provisions of postal conventions/agreements.
- 4 - Contravening the regulations and systems of transit, warehouses, free zones, temporary admission, temporary release, or exemptions.

²⁰ Substituted as per Law No. 95/2005.

²¹ Substituted as per Law No. 175/1998.

Article-117 (22)

Subject to the provisions of article (38) of this law, and any stricter penalty prescribed by the law, whoever causes premeditatedly or by negligence an increase in the items listed in the manifest, in terms of the number or contents of the parcels, or the bulk goods, shall be liable to a fine equals one quarter of the customs duty that is exposed to loss.

If the goods in excess are found to carry the same numbers and marks that are placed on other parcels listed in the manifest, then the parcels on which bigger taxes and duties are due shall be considered the parcels in excess.

Article-118 (23)

A fine equals one quarter of the customs duty that is exposed to loss shall be imposed in the following cases:

1. Submitting incorrect data concerning the country of origin and the kind of goods.
2. Violating the transit, warehouses, free zones, temporary admission, temporary release, exemptions, and other special customs systems, if the customs duties that are exposed to loss exceed one thousand pounds.
3. Failure to maintain the papers and documents, or non-submitting them, in violation of the provisions of article (30) of the present law.

A fine equals 15% of the customs duty that is exposed to loss shall be inflicted in case of submitting data concerning the evaluation of the imported goods for customs purposes in such a way that decreases the customs duty by more than 20%, providing the customs department shall abide by the agreement regarding the evaluation of imported goods for customs purposes.

Article-118 (Bis) : (24)

In case the violations mentioned in articles nos. (114, 115, 116, 117 and 118) of this law are committed by a juridical personality, the official in charge of the actual management of that violating juridical personality shall be liable to the same penalties prescribed with regard to the acts committed in violation of the provisions of these articles, whenever the fact that he was aware of such violations is established, and the crime took place due to his default in carrying out his duties. The juridical personality shall be jointly responsible with that official for settling the fines ruled in case the crime is committed by one of its employees in its favor and on behalf of it.

²² Substituted as per Law No. 95/2005.

²³ Substituted as per Law No. 95/2005.

²⁴ Added as per Law No. 95/2005

The goods shall act as a security for the fines imposed in respect thereof in case the violation is committed by the person in possession of such goods or his representative.

Article-119 (25)

The fines and compensations prescribed in articles 114, 115, 116, 117, and 118 of the present law shall be ruled by virtue of a Court criminal warrant, according to the rules and procedures prescribed in the Criminal Procedure Law, upon the request of the Head of Customs Department or his deputizing assignee.

The Head of Customs Department or his deputizing assignee may accept arranging a composition until before a peremptory ruling is passed in the court action, against settling not less than the minimum of the aforementioned fines and compensations. The composition shall result in abating the criminal action.

The fines and compensations shall be collected in favor of Customs Department. In all cases, the goods shall be a security for settlement of the fines and compensations.

Article-120

The captains of ships and aircraft and the drivers of the other means of transport shall be regarded as being responsible under the civil law for each contravention pertaining to the crew of the ships, aircraft or the means of transport. The ships, aircraft and other means of transport shall be a guarantee for the payment of the customs duties and fines.

The owners of the goods shall be regarded as being responsible for the acts of their employees as well as for the acts of the clearing agents to the preparation of customs information and formalities, and the clearing agents shall be answerable for their acts and those of their employees in this connection.

Section - 8

Smuggling

Article-121

Shall be regarded as smuggling the bringing in or sending out of goods of any type from the Republic through illegitimate means without payment of all or part of the customs duties payable or in contravention of the schemes in operation in connection with prohibited goods.

(26) Possessing foreign goods for trading purposes, while knowing they are

²⁵ Substituted as per Law No. .175/1998 then by Law No. 160/2000.

smuggled goods, shall be considered as good as smuggling. Submitting false and fabricated documents or invoices, placing phony marks, concealing and hiding the goods or marks, or committing any other act aimed at getting rid of due customs taxes, wholly or partially in violation of the systems in force concerning the banned goods, shall also be considered as good as smuggling.

The failure to seize the goods shall not preclude from proving that smuggling has taken place.

Article-122 (27)

Subject to any stricter penalty prescribed by any other law, whoever perpetrates the crime of smuggling shall be liable to a penalty of imprisonment and a fine not less than five hundred pounds and not exceeding ten thousand pounds, or either penalty.

If the crime of smuggling goods is perpetrated for trade purposes, then the penalty to be inflicted shall be an imprisonment term not less than two years and not exceeding five years, and a fine not less than one thousand pounds and not exceeding fifty thousand pounds, or either penalty.

Whoever possesses smuggled goods for trade purposes while knowing that they are smuggled, shall be liable to a fine less than one thousand pounds and not exceeding fifty thousand pounds.

In all cases a court ruling shall be pronounced inflicting on the perpetrators, their accomplices and the juridical personalities in whose favor the crime was committed jointly, the payment of a compensation equivalent to the amount of the due customs duties. If the goods, subject of the crime are of the prohibited kinds or their import is banned, the compensation shall be equivalent to twice their value or twice the due customs duties, whichever is bigger. In such case, a court ruling shall be pronounced confiscating the smuggled goods. However, in case these smuggled goods are not seized, a court ruling shall be pronounced to the effect of paying an amount equals the value of these goods.

A court ruling may be pronounced confiscating the means of transport, tools and materials that have been used in the crime of smuggling, with the exception of vessels and aircraft unless they were actually prepared or chartered by their owners for that purpose.

The infliction of the stricter penalty with regard to the crimes committed in association with smuggling shall not prevent the infliction of the aforementioned

²⁶ Clause - 2 of article 121 is substituted as per law No. 75/1980 then substituted as per law No. 175/1998.

²⁷ Substituted as per Law No. 95/2005.

compensation and confiscation.

Smuggling actions, when referred to the court, shall be heard summarily.

Article-123 (28)

The penalties prescribed in the second and fourth clauses of article (122) of the present law shall be inflicted on whoever refunds by way of forgery, all or part of the customs duties or the other taxes, as well as the amounts paid on account of these duties or taxes or the guarantees submitted in their respect. The compensation shall be equivalent to twice the amount subject of the crime.

Article-124 (29)

The criminal action may not be brought in the crimes of smuggling prescribed in the previous articles, except upon a written request from the Minister of Finance or his delegated deputy.

The Minister of Finance or his delegated deputy shall have the power to accept the conciliation in any of such crimes in return for paying the compensation amount in full at any one of the criminal action stages. If the goods, subject of the crime are of the prohibited kinds or their import is banned, the compensation shall be calculated on basis of the customs duty or the value of the goods, whichever is bigger.

In case of conciliation, the seized goods shall be returned after settling the taxes due thereon, unless they are of prohibited kinds or their import is banned. The means of transport, tools, and materials used in the crime of smuggling shall be also returned.

The compensation amount referred to above shall be doubled in case the conciliation takes place in respect of a crime of smuggling committed by a convict who had committed during the last five years another crime of smuggling in whose respect a final court ruling of conviction was issued, or the criminal action in regard thereof was abated by conciliation.

The conciliation shall result in abating the criminal action as well as all the effects resulting from the ruling. The Public Prosecution shall order staying the execution of the criminal penalty if the conciliation takes place in the course of its execution, even if the ruling is final.

Article-125

²⁸ Substituted as per Law No. 95/2005.

²⁹ Substituted as per Law No. 95/2005.

The customs shall have the right to dispose of the goods, means of transport, tools and materials which have finally been pronounced to be confiscated.

Section -9
Selling of Goods

Article-126

The customs shall have the right to sell the goods which have remained for a period of four months at the customs stores or on quays and that after the approval of the Minister of Treasury.

The Minister shall have the right to reduce this period in the cases of necessity.

As to the goods which are liable to decrease or deterioration, they may not be held at the customs except for the period which their condition permits and if they are not withdrawn during this period, a report on their condition shall be drawn by the customs and the goods shall automatically be sold by the customs without the need to advise the interested parties.

The provisions of paragraph - 1 shall apply to the objects which are left by passengers at the customs offices.

Article-127

Prior to a judgment being delivered by the competent court or a decree being issued by the Authority concerned as the case may be the Customs shall have the right to sell the goods and objects which are liable to deterioration or exposed to leakage or decrease as well as the animals kept with the customs as a result of a dispute or seizure.

Sale shall be effected after a report on the circumstances justifying the sale being drawn up by the official concerned.

If, after the sale, a pronouncement being passed for returning the goods or the objects referred to or the animals to their owner, the balance of the price shall be paid to him after deduction of all expenses.

Article-128

The customs shall have the right to sell also:

1) The goods and objects which have devolved to the customs as a result of a reconciliation or assignment.

2) The goods which have not been withdrawn from the general or private warehouses during the period fixed for the purpose, with due regard to the

provision of article (77).

3) The remainders of the goods and objects of a negligible value of which the owners have not been identified and which have not been claimed during three months.

Article-129

The sales provided for in the preceding articles shall be effected according to the terms and conditions for which shall be issued a decree by the Minister of Treasury and such goods shall be sold after payment of the customs duties and other duties and taxes, and the price shall be paid immediately.

Article-130

The proceeds of sale shall be distributed according to the following order:

1. Selling expenses and expenses of whatever type which have been spent by the customs.
2. Customs duties.
3. Other dues and levies.
4. The expenses spent by the owner of the warehouses.
5. Storage charges.
6. freight.

The balance of the selling price of the goods authorized to be imported shall, after deduction of the above expenses, be deposited with the cash office of the customs, and the interested parties shall have the right to claim it within three years from the date of sale, failing which it shall become the right of the State Treasury.

The Balance of the selling price of the goods prohibited to be imported shall, however, become the right of the State Treasury.

Article-130 Bis: (30)

If the goods set forth in article (126), and items (2 , 3) of article (128) of the present Law have been put up for sale at least twice, in accordance with the prescribed rules and procedures, and their owners failed to withdraw them within two years from the date of the last time of putting them up for sale, their owners shall be considered to have relinquished them with the purpose of waiving their ownership to the state once their owners have been notified thereof by registered letter with acknowledgment of receipt with the lapse of six months from the date of that

³⁰ Added as per Law No. 14 of the year 2004.

notification.

The Customs Department, after obtaining a writ on a petition from the competent judge may dispose of the goods referred to in the foregoing clause to the governmental quarters, the public juridical persons, or public-benefit societies, for free or with charges to be agreed upon with them according to the situations and procedures to be issued by decree of the Minister of Finance following approval by the concerned quarters.

In this case, the goods waived or disposed of shall be exempted from the taxes and customs duties, the general sales tax, and services fees.

Section - 10

Distribution of Compensation, Fines and the Value of confiscation

Objects

Article-131 (31)

The Minister of Finance shall set one or more statutes for remunerating the employees of the customs administration in light of their rates of performance and standards of achievement in work, without being restricted by any other statutes and after consulting the view of the Prime Minister. The State's General Budget shall provide for allocating moneys for contributing to the social cooperation and saving funds, the joint funds, as well as the sporting clubs concerned with the administration's employees.

³¹ Substituted as per Law No. 95/2005.

Modern customs functions

1- Intellectual property rights

What is Intellectual Property rights?

Intellectual property rights refers to rights in creations of the human mind which arise under the laws of patents, copyrights, trademarks, trade secrets, unfair competition and related laws. Article 2 of the Convention Establishing the World Intellectual Property Organization (WIPO) defines intellectual property as follows:

"Intellectual property" shall include the rights relating to:

- Literary, artistic and scientific works;
- Performances of performing artists, phonograms, and broadcasts;
- inventions in all fields of human endeavor;
- scientific discoveries;
- Industrial designs;
- Trademarks, service marks, and commercial names and designations;
- protection against unfair competition; and
- all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Intellectual property rights (IPRs) are the legal rights given to creators of intellectual property. IPRs usually give the creator of intellectual property the right to exclude others from exploiting the creation for a defined period of time. Intellectual property laws provide the incentives that foster innovation and creativity, and strive to ensure that the competitive struggle is fought within certain bounds of fairness. The protection of IPRs contributes significantly to technological progress, competitiveness of businesses and our country's well-being.

KEY FORMS OF INTELLECTUAL PROPERTY

the key forms of intellectual property are patents, copyrights, trademarks, and trade secrets. Because intellectual property shares many of the characteristics of real and personal property, associated rights permit intellectual property to be treated as an asset that can be

bought, sold, licensed, or even given away at no cost. IP laws enable owners, inventors, and creators to protect their property from unauthorized uses.

1 - copyright:

A literary and artistic works and scientific author

2 - related rights:

The rights of performers, producers and broadcasting organizations

3 - Patents:

invention and creativity or innovation in any area of human activity - it must be marked by seriousness and ability of the application in respect to the public order and morality

4 - Trademarks:

A distinctive name or form or words or signatures that distinguish a good or service or place of other goods or services, or places, the types:

- Signs of an industrial - commercial branch (mark) - signs of Service - collective signs - signs of quality control

5 - models, drawings and industrial designs

It is a mixture of lines and color and form, which gives a striking feature model

6 - Geographical Indications

, The indicators that determine the origin of the goods in the region or member of the World Trade Organization. When the product of trade or other features of the product that affect the proliferation of trade due to the origin of trade

7 - Trade secrets: a non-confidential information was disclosed and the results of the efforts of scientists, such as chemical products, pharmaceutical or cosmetics

8 - Unfair Competition:

unlawful methods of forgery or counterfeiting of products such as counterfeit medicines

9 - Integrated circuits: a product designed to achieve an integrated electronic post

10 - Protection of New Plant:

It is derived from plant varieties must be a privileged class, such as orange

11 - Trade names: a name that indicates a company or institution or "body or organization such as "Microsoft

Objectives

Financial incentive

These exclusive rights allow owners of intellectual property to benefit from the property they have created, providing a financial incentive for the creation of and investment in intellectual property, and, in case of patents, pay associated research and development costs.

Economic growth

Economists estimate that two-thirds of the value of large businesses in the U.S. can be traced to intangible assets. "IP-intensive industries" are estimated to generate 72 percent more value added (price minus material cost) per employee than "non-IP-intensive industries"

A joint research project of the WIPO and the United Nations University measuring the impact of IP systems on six Asian countries found "a positive correlation between the strengthening of the IP system and subsequent economic growth.

Morality

The protection of intellectual property is essentially a moral issue. The belief is that the human mind itself is the source of wealth and survival and that all property at its base is intellectual property. To violate intellectual property is therefore no different morally than violating other property rights which compromises the very processes of survival and therefore constitutes an immoral act.

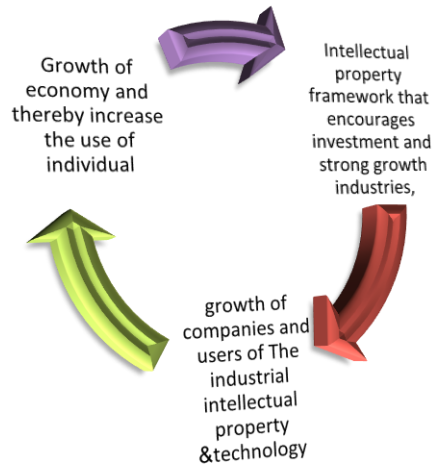
Importance of an effective system for the protection of intellectual property

- 1 - Economic benefit
- 2 - the benefit of social
- 3 - Encourage the development of the national heritage and civilization
- 4 - law enforcement and justice

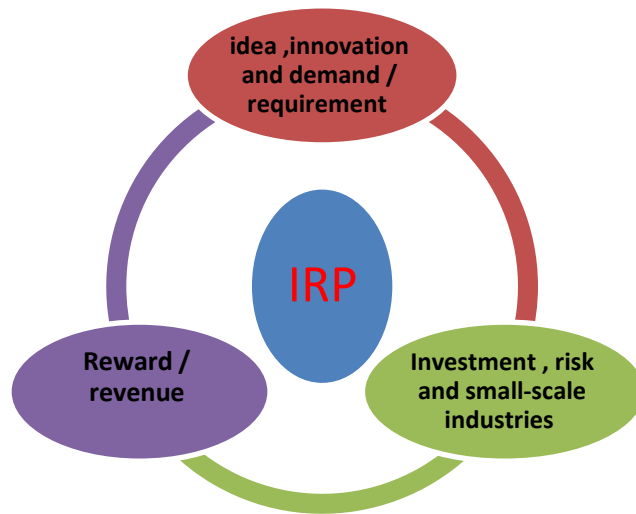
IPR value

- high economic value
- Play a vital role in the economic sector
- enhance growth in various economic sectors

Intellectual property and benefit of the positive circuits



IPR positive cycle



Protection of IPR in the international law

World Intellectual Property Organization (WIPO)

The World Intellectual Property Organization (WIPO) is one of the 16 specialized agencies of the United Nations. WIPO was created in 1967 "to encourage creative activity, to promote the protection of intellectual property throughout the world".

WIPO currently has 184 member states, administers 24 international treaties, and is headquartered in Geneva, Switzerland. The current Director-General of WIPO is Francis Gurry, who took office on October 1, 2008. 183 of the UN Members as well as the Holy See are Members of WIPO. Non-members are the states of Cook Islands, Kiribati, Marshall Islands, Federated States of Micronesia, Nauru, Niue, Palau, Solomon Islands,

Timor-Leste, Tuvalu, Vanuatu and the states with limited recognition. Palestine has observer status

The World Intellectual Property Organization aims to:

- 1 - Strengthening of intellectual property culture
- 2 - insuring the inclusion of intellectual property in national development policies
- 3 - developing laws to protect intellectual property rights
- 4 - providing services for the protection of intellectual property of the States
- 5 - developing of cooperation between countries in the management of intellectual property

International IPR Treaties

TRIPS

the TRIPS Agreement came into force in 1995, as part of the Agreement Establishing the World Trade Organization. TRIPS incorporates and builds upon the latest versions of the primary intellectual property agreements administered by the World Intellectual Property Organization (WIPO), the Paris Convention for the Protection of Industrial Property, and the Berne Convention for the Protection of Literary and Artistic Works, agreements that go back to the 1880s.

TRIPS is unique among these IPR accords because membership in the WTO is a “package deal,” meaning that WTO members are not free to pick and choose among agreements. They are subject to all the WTO’s multilateral agreements; including TRIPS. TRIPS applies basic international trade principles to member states regarding intellectual property, including national treatment and most-favored-nation treatment. TRIPS establishes minimum standards for the availability, scope, and use of seven forms of intellectual property: copyrights, trademarks, geographical indications, industrial designs, patents, layout designs for integrated circuits, and undisclosed information (trade secrets). It spells out permissible limitations and exceptions in order to balance the interests of intellectual property with interests in other areas, such as public health and economic development.

Other International IPR Treaties

- 1- TRADEMARK LAW TREATY Trademark Law Treaty (TLT), adopted on October 27, 1994, entered into force on August 1, 1996.
- 2- PATENT LAW TREATY Patent Law Treaty (PLT), adopted by WIPO in June of 2000, entered into force on April 28, 2005.
- 3- PATENT COOPERATION TREATY SYSTEM Patent Cooperation Treaty (PCT) go back to 1966,
- 4- MADRID SYSTEM FOR THE INTERNATIONAL REGISTRATION OF MARKS was adopted in Spain's capital on June 27, 1989, and entered into force on December 1, 1995.
- 5- THE HAGUE SYSTEM FOR THE INTERNATIONAL DEPOSIT OF INDUSTRIAL DESIGNS
- 6- BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSE OF PATENT PROCEDURE signed on April 28, 1977, was amended on September 26, 1980.
- 7- INTERNATIONAL CONVENTION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

IPR Climate in Egypt

Egypt is a signatory to the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, the Berne Copyright Convention, the Paris Convention for Protection of Industrial Property of 1883, the Madrid Agreement Concerning the International Registration of Marks 1954, and the Nice Agreement Concerning the International classification of goods and services, the Stockholm Act of 1967, the Hague Agreement, the Geneva Act 1999, the Patent Cooperation Treaty (1970 as modified and amended), and the Trademark Law Treaty.

In recent years, Egypt has made some progress in strengthening its IPR regime through improvements in its domestic legal framework and enforcement capabilities. In May 2002, Egypt enacted a new comprehensive IPR law (Law 82 of 2002) that met certain key TRIPS requirements, including providing data exclusivity and exclusive marketing rights and enacting a patent mailbox. The law also addressed IPR protection in areas such as patents, copyrights (with enhanced protection for sound and motion-picture recordings and computer software), trademarks, plant varieties, industrial design, and integrated circuit layout design.

Although the law has certain shortcomings, its passage demonstrated a marked improvement in the major facets of Egypt's IPR regime. In July 2003, implementing regulations for the patent, trademark, and botanical variety provisions of the law were

issued. Implementing regulations for Copyright provisions were issued in 2005. Egypt also ratified the WIPO Patent Cooperation Treaty in 2003.

From April 2001 until December 2003, the Government of Egypt did not approve any generic copies of internationally protected pharmaceuticals. Since then, however, the Minister of Health has approved local copies of pharmaceuticals, in violation of Egypt's international property protection obligations. The international property protection problem appeared to worsen in late 2004 when the Egyptian Ministry of Health apparently embarked on the approval of a significant number of copies of pharmaceutical products for marketing in Egypt. As a result, the office of the United States Trade Representative (USTR) in 2004 elevated Egypt from the "Watch List" to the "Priority Watch List" (where it had been until 2003) during its annual "Special 301" IPR review. After 4 years on the Priority Watch List, USTR lowered Egypt to Watch List in 2008. Reasons cited for the movement to Watch List in 2008 included progress in improving Egypt's IPR regime overall, especially in the area of pharmaceutical IPRs, and increased bilateral communication on IPR between the governments of Egypt and the United States. Egypt remained in the Watch list in 2009 report even in light of efforts done in the Area of the IPR Enforcement, particularly in the area of entertainment and business software piracy.

A modern, computerized Egyptian Patent Office operating under the authority of the Ministry of Higher Education and State for Scientific Research processes patent applications and grants patent protection. The government has significantly improved the quality and transparency of Egypt's trademark and industrial design registration system. In preparation for the new WTO patent regime, in effect as of January 1, 2005, the Ministry began hiring new technical examination staff in 2003.

The International Intellectual Property Alliance's (IIPA) 2008 Special 301 Report estimated that the level of piracy for business software in Egypt during 2008 had fallen to 59% from 60% the previous year. IIPA also estimated the level of piracy for records and music in Egypt to be 75% during 2007, up from 70% the previous year.

The following paragraphs summarize the law's provisions on different types of IPR: Patents: The law increases the protection period for a patent term to 20 years, and for pharmaceuticals includes provisions on data exclusivity and exclusive marketing rights which had been adopted by Prime Ministerial decree in 2000. Egypt has elected to be treated as a Developing Country for pharmaceuticals and chemicals under the TRIPS Agreement. As of January 1, 2005, Egypt has been required to be in full compliance with its TRIPS patent obligations. There were estimated to be some 4,000 patent applications filed in its TRIPs "mailbox" for applications relating to pharmaceutical products. The patent authorities began to review these applications in 2005 as required. The Egyptian Patent

Office now reports that all applications filed in the WTO TRIPs mailbox have been processed.

Adopting first Arab, African Egyptian patent office as int'l body On Friday September 25, 2009 The World Intellectual Property Organization (WIPO) approved the Egyptian Patent Office as an international body; thereby adopting the first Arab, African patent office. The step is part of a cooperation treaty under which the Egyptian Patent Office will accept patent applications from all countries. It came after years of preparations made by the Egyptian government with the UN specialized agency (WIPO).

Egypt became the first country in Africa and the Middle East and the third in the developing world to have acquired this authority. The office, established in 1951, is affiliated to the Academy of Scientific Research and Technology. Since 1975, Egypt has been a member of the WIPO which is dedicated to developing a balanced and accessible international intellectual property system, which rewards creativity, stimulates innovation and contributes to economic development while safeguarding the public interest.

Data Protection: In January 2007, the Government of Egypt announced its enactment of a new streamlined drug registration system for drugs carrying a USFDA or EMEA approval. Such a system would be useful to increase the effective pharmaceutical data protection period, which is counted as five years starting from the date the application for registration of a drug is filed at the Ministry of Health. The system does not yet operate as intended.

Copyrights: The new law offers copyright protection to artistic and literary works, computer programs, and audio-visual works. Books and computer programs are provided protection for the author's lifetime plus 50 years. Sound recordings are granted 50 years protection from the recording date. The specified penalty for copyright violations is a fine of LE 5,000-10,000 per infringement or a prison term of not less than one month, or both. The 2005 implementing regulations for copyrights were amended twice in 2006 primarily to address procedural matters. Significantly, the latest amendments clarified that registration and enforcement authority for software and database IPRs rests with the Information Technology Industry Development Agency (ITIDA) under the Ministry of Communications and Information Technology (MCIT). **Trademarks:** The new IPR law offers trademark protection of ten years, in accordance with the Trademark Law Treaty. Penalties have increased to a maximum of 20,000 Egyptian pounds or imprisonment of not less than one month, or both. **Madrid Protocol:** On December 24, 2008, a joint Shura Council and People's Assembly Committee agreed to the ratification of the Madrid Protocol relating to the Madrid Agreement Concerning the International Registration of Marks. The Committee approved the treaty. Egypt has been a signatory of the Madrid Protocol (since June 28, 1989) but it never ratified the treaty, and as such did not enter into force. Joining the Madrid Protocol should improve US-Egyptian trade by opening the way

for Egyptian businesses to register their marks in more foreign countries through a single filing, by simply designating the countries in which they want to register. Egyptian companies will have this advantage in an additional 27 countries or territories that have joined the Protocol but not the Madrid Agreement, including the United States and the European Union. In addition, US businesses will now be free to designate Egypt on their single trademark filing under the Madrid Protocol, rather than having to hire a local agent and file directly in the Egyptian Trademark Office in the Commercial Registry Administration. There are also other advantages to the Protocol such as filings and correspondence which can be conducted in the English-language under the Protocol and fees should be higher for Egypt.

Conclusion:

Protection of IPR in the Egyptian law

Egypt acceded to the Convention for the protection of intellectual property rights by Republican Decree 72 of 1995 and published in the Official Gazette No. 24, "he said in 15/6/1995 and has committed itself to amend the national in line with them. Egyptian laws, which focused on the protection of intellectual property

Law No. 354 of 1954

Law No. 57 of 1939

Law No. 82 of 2002

Act 132 of 1949

2- Single Window System

The Single Window System is a trade facilitation idea. As such, the implementation of a single window system enables international (cross-border) traders to submit regulatory documents at a single location and/or single entity. Such documents are typically customs declarations, applications for import/export permits, and other supporting documents such as certificates of origin and trading invoices.

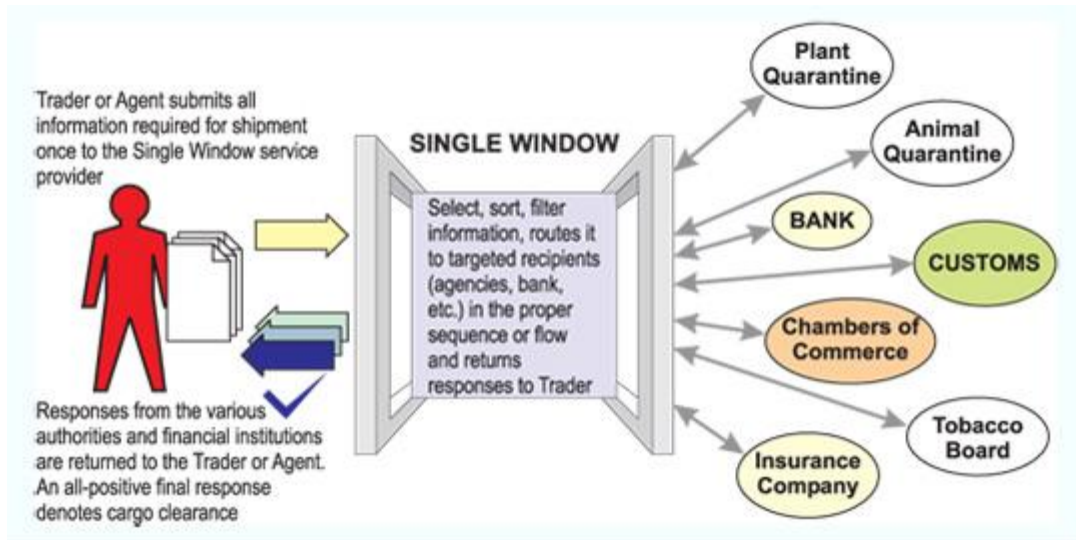
The main value proposition for having a Single Window for a country or economy is to increase the efficiency through time and cost savings for traders in their dealings with various government authorities for obtaining the relevant clearance and permit(s) for moving cargoes across national or economic borders. In a traditional pre-Single Window environment, traders may have had to contend with visits and dealings with multiple government agencies in multiple locations in order to obtain the necessary papers, permits and clearance in order to complete their import or export processes.

There is no single definitive viewpoint of what a single window system should be. A common definition of the term "Single Window" is:

"A facility that allows parties involved in trade and transport to lodge standardized information and documents with a single entry point to fulfill all import, export, and transit-related regulatory requirements. If information is electronic then individual data elements should only be submitted once." [1]

The concept is recognized and promoted by several world organizations that are concerned with trade facilitation. Among these are the United Nations Economic Commission for Europe (UNECE) and its Centre for Trade Facilitation and Electronic Business (UN/CEFACT), World Customs Organization (WCO), SITPRO Limited of the United Kingdom and the Association of Southeast Asian Nations (ASEAN).

The diagram below illustrates an example of an implementation of a Single Window system within a country or economy.



Benefits

A single window service aims to deliver specific benefits to the main communities and stakeholders in cross-border trade.

- Government
 - Customs
 - Permit-issuing Agencies
 - Ministries

Ministries (and other trade monitoring bodies) may be able to obtain cross-border trade related data and statistics in a comprehensive and timely manner from the single window service provider

- Shipping and Forwarding Community
 - Ship Arrival Notice
 - IMO FAL Forms:
 - 1. general Declaration
 - 3. Ship's Stores Declaration
 - 4. Crew's Effects Declaration
 - 5. Crew List
 - 6. Passenger List
 - Electronic Ship Clearance
- Shippers and Traders
- Banking and Insurance Community

DEFINITION OF THE SINGLE WINDOW

- **Definition by United Nations Economic Commission for Europe (UNECE)**

The Single Window (SW) concept has been defined at UN level as follows⁷:

The Single Window environment aims to expedite and simplify information flows between trade and government and bring meaningful gains to all parties involved in cross-border trade. In a theoretical scheme, Single Window can be described as "a system that allows traders to lodge information with a single body to fulfil all import or export-related regulatory requirements".

In practical terms, a SW environment provides one entrance (either physical or electronic) for the submission and handling of all data and documents related to the release and clearance of an international transaction. This entry point is managed by one agency which informs the appropriate agencies and/or performs combined controls.

- **Definition by World Customs Organization (WCO)**

The WCO defines a single window as follows⁸:

A facility that allows parties involved in trade and transport to lodge standardized information and documents with a single entry point to fulfill all import, export, and transit related (...) regulatory requirements", explaining that "the single window is clearly a trade facilitative measure. It permits the trader or transporter to submit all the data needed for determining admissibility of the goods in a standardized format only once to the authorities involved in border controls and at a single portal. (2) The Single Window concept places the onus on the authorities to manage the Single Window and to ensure that the participating authorities or agencies are either given access to the information or are actually given the information by the managing authority. It eliminates the need for the trader or transporter to submit the same data to several different border authorities or agencies.

- **Definitions in the proposals on the modernized Customs Code and on the**

Electronic Customs Decision

The proposed modernized Customs Code follows these definitions when defining the Single Window and the One Stop Shop concepts as follows: "In the interests of facilitating business, while at the same time providing for the proper levels of control of goods brought into or out of the customs territory of the Community, it is appropriate that the information provided by economic operators is shared, taking account of the relevant data protection provisions, between customs authorities and with other agencies involved in that control, such as police, border guards, veterinary and environmental authorities, so that the economic operator need give the information

only once ('single window') and that the goods are controlled by those authorities at the same time and at the same place ('one stop shop').”

According to the *proposed Electronic Customs Decision*, the Single Window will allow for the “seamless flow of data between economic operators and customs administrations, between customs authorities and the Commission, and between customs administrations and other administrations and agencies, and enabling economic operators to submit all information required for import or export clearance to customs, even if it is required by non-customs legislation”.

KEY ELEMENTS OF A SINGLE WINDOW

According to e-government principles, governments must become citizen/constituent centric and service-based.

Consequently the following e-government features should be taken into account when setting up a Single Window:

- Fully integrated front- and back-office processes
- Electronic processing from end-to-end
- Services that span government agencies and jurisdictions
- Improved and more accessible business management information

Key to these improvements is how next-generation e-government systems embraces existing workflows, business rules and legacy systems, leveraging and making use of current investments.

THE BENEFITS OF THE SINGLE WINDOW

The single window concept will provide economic operators with the following benefits:

☐ easier access to information through better co-ordination between all authorities involved- leading to time savings when looking for information and increased compliance due to better understanding;

☐ improved efficiency when submitting information through exchange of data between authorities involved allowing economic operators to give the same information only once to these authorities - faster processing, more rapid clearance, greater accuracy of data and increased compliance;

☐ fewer delays, less uncertainty, and more targeted inspections through better coordination between authorities involved;

☐ lower barriers to trade, which makes it possible for new traders to focus on strategic and commercial considerations as opposed to regulatory regulations.

EXAMPLES OF CONCRETE SW APPLICATIONS IN THE FIELD OF CUSTOMS.

Electronic documents accompanying the customs declaration

Common electronic solutions for import and export licences and certificates, and other documents accompanying the customs declaration are needed to achieve a single window and a paperless environment for customs and trade (see inventory of certificates list in TARIC).

Trader identification

A trader identification system is a key issue of electronic customs. DG TAXUD's objective of a common traders' register would allow economic operators to register only once for all customs transactions in the Community. Such a register is also essential with regard to common risk management, as laid down in Regulation (EC) 648/200512, and may serve as a common reference for the exchange of data between Member States' customs administrations.

Electronic signatures

A common solution for electronic signatures or a system based on mutual recognition of existing solution will be provided in order to enable economic operators to send information not only to other Member States than the one where they are established but also to other administrations than customs, and to enable these administrations to verify the authenticity of the author, of the sender and of the information.

Guidelines & Technical Approaches to the Single Window Environment

Even as there are several Single Window initiatives taking shape all over the world, there are no clear standards or guidelines concerning this area. Customs is increasingly being expected to participate in and take responsibility for Single Window implementations.

The document "Single Window: Implications for Customs Administrations" describes the possible impact that a development around a Single Window Environment has on the future of Customs' Business.

WCO has developed Single Window Data Harmonization Guidelines to provide Single Window environment developers with tools that can be used in order to achieve data harmonization and to develop internationally standardized data sets including the data element names, definitions, the United Nations Trade Data Element Directory (UNTDDED) tag and the formats.

The United Nations Centre for Trade Facilitation and Electronic Business (UNCEFACT) has developed Recommendation 33 on the subject, which is an important piece of work in this area.

Single Window Initiatives

A good way to develop understanding about a Single Window Environment is to examine the various initiatives that have been launched around the world. These provide a broad picture about the technical approaches to Single Window. It is clear that data harmonization is the key piece in any such endeavor.

The following is a collection of links that lead to information on Single Window initiatives that are presently under various stages of implementation.

Single Window Initiatives > WCO

Sr. No.	Title of the Document	Added
003	Single Window: Implications for Customs Administrations	20/11/2008
002	WCO Data Model General Information	19/11/2008
001	WCO Data Model History and Current Status	19/11/2008

Single Window Initiatives > APEC

Sr. No.	Title of the Document	Added
009	APEC US International Trade Data System & ACE - April 2009	19/08/2009
008	APEC Korea Customs UCR Project - April 2009	19/08/2009
007	APEC Singapore Evolution of Single Window - April 2009	19/08/2009
006	APEC Sub-Committee on Customs Procedures SW Implementation Guide - July 2009	19/08/2009
005	APEC Chile Single Window pilot project - April 2009	16/07/2009
004	APEC Thailand National Single Window developments - April 2009	16/07/2009
003	APEC Viet Nam National Single Window developments - April 2009	16/07/2009
002	APEC Single Window Development Report - June 2007 (short version)	11/11/2008

001	APEC Single Window Development Report - June 2007 (long version)	17/11/2008
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Single Window Initiatives > ASEAN

Sr. No.	Title of the Document	Added
005	Agreement on ASEAN SW	11/11/2008
004	Protocol to Establish ASEAN Single Window	11/11/2008
003	ASEAN SW Factsheet	11/11/2008
002	ASEAN Single Window Technical Guide	11/11/2008
001-02 001-01	ASEAN SW Presentation	11/11/2008

Single Window Initiatives > ITAJDE

Sr. No.	Title of the Document	Added
001	Information Technology for Adoption and Intelligent Design for E-government	19/11/2008

National Single Window Initiatives

Region/Country	Updated
Canada	15/04/2009
France	11/02/2009
Ghana	11/02/2009
Indonesia	29/02/2010
Macedonia	11/02/2009
Mexico	10/02/2010
Peru	11/11/2008

3- POST CLEARANCE AUDIT

Customs audit is the process whereby the examination and verification of the goods is conducted by Customs before, during and after release of the goods, within a specified period of time.

DEFINITION

[Post-clearance audit] [Customs audit] means the [audit] conducted by the customs [for customs purposes] [following customs release [and during a determined period of time]] [on the basis] of the account books and vouchers, customs declaration documentations or data, commercial documents [and goods] of the [traders] [importers, consignees or their representatives] including electronically stored information [for the purpose of customs compliance][for compliance with customs legislation] [with the purpose to identify [the authenticity and validity of the trade][and guarantee the compliance with customs legislation.]

The need of customs controls:

Customs controls that are carried out after release from the port, typically for 3 main reasons:

- where goods are released conditionally for process or re-export
- where duties or official requirements are suspended in a warehouse or free zone
- where verification of a declaration is made on a historical basis

PCA Related definitions:

Verification

A check, or series of checks, usually at transaction level, designed to prove that a trader has fully met a legal requirement in an individual instance

Audit

The structured examination of a business's:

- relevant commercial systems
- financial and non-financial records
- physical stock and other assets
- internally generated data

.... and comparison with other information obtained about the business.

Compliance

The ability of a trader or individual to act in accordance with relevant customs legislation or other requirements.

Often referred to as a “Compliance Level”

Low compliance levels can be caused by:

- lack of understanding
- poor systems
- mistakes
- Deliberate actions.

Post Clearance Audit Inspections

- Internationally becoming the most common type of control
- Not related to specific imports
- Makes more use of traders records and accounts.
- Aim for `Self Regulation` by the Trader

PCA Benefits for Customs

- Facilitate the movement of goods
- Protect revenues;
- Ensure greater compliance with Customs laws, regulations and agreements;
- Obtain more latitude in deployment of control resources;
- Combat fraud more comprehensively;
- Provide greater control in areas such as licensing, quotas, dumping, etc.as licensing,

Post-Clearance Audit Process

1. Planning and selection
2. Field Audit
3. Measurement and evaluation

1- Planning and selection

- A. Development of audit programs

To identify the PCA categories

- importer/exporter audit, ,
- value verification, ,
- free trade zone audits, trade
- broker audits, etc

B. Targeting and selection for Audit

Customs has to select “high -risk Companies / persons

Criteria for the selection of audit candidates should be developed candidates should be developed

- Intelligence
- Trade trends Trade trends
- High risk priority area

C. Strategic Audit Planning

Customs must optimize the use of available resources available

An annual/monthly audit plan should be developed

- Man--hour availability
- Work in progress / new audit initiative
- Standard hours of audit completion of audit completion

2- **Field audit**

- Assess and evaluate the strength and weakness within the system of the auditee.

e.g.

- Organization and structure
- Commodity information
- Method of payment
- Value of commodities
- Costs associated with commodities

- **Initial importer contact**

- To notify the date and period of audit, number of auditors,
- To request detailed information on the type of records and documentation to be presented
- Audit questionnaire can be sent

- **Opening conference**

- To discuss the scope and objectives of the audit

Should be attended by: Should be

-- Auditor or audit team Auditor

-- Representatives of the auditee (e.g. consultants, accountants, controllers, lawyers, etc.)

- **Field audit**

Onsite inspection on documents

- Cross-check of books and records
- Inquiry for persons
- Audit coordination (should be conducted in a professional manner).

- **Exit conference**

• To present the findings, and to provide an opportunity for the auditee to give any explanations needed to assist preparation of the final report.

- **Final Report**

• Customs should prepare a final report and let the auditee have a copy, provided the national law provides for this.

• A copy should also be sent to the appropriate Customs office for resolution of any issue which has arisen.

- **Follow up visit**

• To ensure any findings and recommendations for changes are carried out

3- **Measurement / Evaluation**

Customs should develop a mechanism to measure, assess and evaluate the success of its PCA

e.g:

- Additional revenue collected
- Additional Number of investigation referrals
- Cost / benefit analysis

4- Risk Management

Risk Management is the name given to a logical and systematic method of identifying, analyzing, treating and monitoring the risks involved in any activity or process.

Risk Management is a methodology that helps managers make best use of their available resources

Risk Management process steps

The Risk Management process steps are a generic guide for any organization, regardless of the type of business, activity or function

The Risk Management process:

Establish the context

Identify the risks

Analyse the risks

Evaluate the risks

Treat the risks

Communication & consultation

Monitoring and review

Risk Management in Customs

Customs administrations have turned increasingly to Risk Management as an effective means of meeting national objectives. Administrations provide facilitation while maintaining control over the international movement of goods and persons. Risk management helps in matching Customs priorities to resources.

International Organizations encourage and support the adoption of modern Customs control techniques, using Risk Management principles.,

e.g.,

- WTO/Kyoto Convention.
- APEC Sub-Committee on Customs Procedures.

Transport Industry representative bodies

Definitions:

- (a) Risk means the potential for non-compliance with customs and/or other relevant laws, regulations or procedural requirements connected with the importation, exportation or transit of goods.
- (b) Risk Management means the systematic application of management procedures and practices providing customs [and other relevant border agencies] with the necessary information in order to address movements or consignments which present a risk.
- (c) Customs Control means measures applied by the customs to ensure compliance with the laws and regulations [or procedural requirements] which the Customs is responsible for enforcing.]

Risk management within Customs can be strategic, operational or tactical

STRATEGIC: THROUGH THE REVIEW OF COMPREHENSIVE INFORMATION, CUSTOMS IS ABLE TO SIFT OUT AREAS OF LOW RISK AND TO INTERVENE ONLY WHERE EXPERIENCED AND PRACTICAL JUDGEMENT SAYS IT IS NECESSARY. IN THIS WAY, CUSTOMS GOES FROM THE "GATEKEEPER MENTALITY" OF TRYING TO CHECK EVERYTHING AND EVERYBODY TO A "INTERDICTION" MENTALITY OF ONLY LOOKING AT HIGHLY SUSPECT CARGO OR PASSENGERS.

OPERATIONAL: OPERATIONAL RISK MANAGEMENT IS THE PRACTICAL APPLICATION OF RISK MANAGEMENT. EXAMPLES OF THIS ARE DETERMINING THE AUDIT LEVEL OF IMPORTERS OR DECIDING HOW TO DEPLOY STAFF AND EQUIPMENT.

TACTICAL: TACTICAL RISK MANAGEMENT IS USED BY OFFICERS AT THEIR WORKPLACE IN DEALING WITH IMMEDIATE SITUATIONS. IN THE TACTICAL PHASE, THE CUSTOMS OFFICERS, WITH THE ASSISTANCE OF SET PROCEDURES COMBINED WITH INTELLIGENCE, EXPERIENCE AND SKILL MUST DECIDE WHAT PASSENGERS OR CARGO TO SEARCH.

Importance of Risk Management in Customs

- Economic benefits, by facilitating the movement of goods, ships, aircraft and people – when rated low risk.
- Makes more effective use of existing skills and experience – giving better results.
- Improves the quality of Customs controls – information and accountability.

- The process helps Administrations focus on priorities and in decisions on deploying limited resources to deal with the highest risks.

Risk Management process :-

Step 1: Establish the Risk Management Context

Establishing the risk management context involves establishing the goals, objectives, strategies, scope and parameters of the activity, or part of the organisation to which the risk management process is being applied. This step is also about establishing the risk criteria, that is the criteria against which risk will be measured. Examples of risk criteria are revenue leakage, the ECA's image and delivery of government policy intent. These will form a fundamental basis for decisions made in the later steps of the cycle.

These criteria should be used to determine acceptable and unacceptable levels of risk such as what level of revenue leakage is acceptable, what negative effects on the ECA's image can be tolerated, what level of movement away from government policy intent is acceptable. In Customs, officers involved in establishing the context for risk should be considering, as a minimum, such factors as:

- size of client base;
- government policy intent;
- protection of revenue;
- self-assessment;
- the improvement of future compliance;
- the balance between control and facilitation;
- assistance to industry; and
- the needs and responsibilities of other agencies.

Step 2: Identify Risks

No plan for managing risks can be developed until it is known exactly what the risks are, and how and why they might arise. In addition, unidentified risks pose a possible threat to the ECA. Begin by identifying the obvious risks then work from this point. In order to identify all possible risks, the following questions should be asked:

- what can happen; and
- when, where, how and why each risk can occur.

Initially, possible sources of risk could include:

- performance of an industry against legislative/administrative requirements;
- performance of regional or other sectors of particular industry groups against legislative/administrative requirements;
- performance of individual clients;

- element/s of individual clients' operations (e.g. internal controls, separation of duties, results of external reviews if appropriate);
- Customs business - e.g. electronic systems, ASYCUDA++ etc; or particular Customs legislative requirements - e.g. audit powers, penalties, record keeping etc.

Step 3: Analyze Risks

Having identified the risks, each risk should be analysed. Risks must be analysed to decide which risk factors will potentially have the greatest effect and will therefore need to be managed. Risk is analysed in terms of likelihood (or probability/frequency) and consequence (or the outcome of an event) in the light of existing controls. That is, are the controls currently in place sufficient to manage these risks or is the probability and/or impact of the risk still significant?

Currently, likelihood is determined using a five point scale as follows:

- Almost Certain - Likely - Moderate - Unlikely - Rare.

Consequence is also determined using a five-point scale as follows:

- Extreme - Very High - Medium - Low - Negligible.

The subsequent level of risk depending on the likelihood and consequence ratings is measured on a seven-point scale as follows:

- Severe - High - Major - Significant - Moderate - Low- and Trivial.

Determination of Likelihood and Consequence

Determining the Level of Risk: Consequences

Likelihood	Negligible	Low	Medium	Very High	Extreme
Almost Certain	Significant	Major	High	Severe	Severe
Likely	Moderate	Significant	Major	High	Severe
Moderate	Low	Moderate	Significant	Major	High
Unlikely	Trivial	Low	Moderate	Significant	Major
Rare	Trivial	Trivial	Low	Moderate	Significant

Determining the Likelihood of Risk

Almost Certain	The event is expected to occur in most circumstances.
Likely	The event could be expected to occur in most circumstances.
Moderate	The event should occur at sometime in the future.
Unlikely	The event could occur at some time in the future.
Rare	The event may occur only in exceptional circumstances.

Management Response to the Level of Risk

Severe Risk	Must be managed by senior management with a detailed plan.
High Risk	Detailed research and management planning required at senior levels.
Major Risk	Senior management attention is needed.
Significant Risk	Management responsibility must be specified.
Moderate Risk	Manage by specific monitoring or response procedures.
Low Risk	Manage by routine procedures.
Trivial Risk	Unlikely to need specific application of resources.

Consequence

Extreme	The system is so weak that non-compliance is unlikely to be detected and dealt with.
Very high	There is non-compliance that is unlikely to be detected and dealt with.
Medium	There is a large degree of non-compliance that will be detected and dealt with.
Negligible	Minor non-compliance within the tax system.
Low	There is some non-compliance, but it will be quickly detected and dealt with in acceptable time frames.

Step 4 - Assess and Prioritize Risks

Following analysis, risks must be assessed to decide whether they are acceptable or unacceptable. This is done by comparing the level of risk that has been determined by the risk registers, with levels of acceptable risk determined in Step 1 of the risk cycle. For example, if an event will lead to a major unethical competitive advantage (severe risk), then will this fall outside the parameters set in Step 1 for delivery of policy intent? If so, this risk is unacceptable and must be treated.

Decisions about the acceptability of risk must take account of the wider context of the risk. Successful management of risks involves taking into account the wider obligations and commitments required by legislation and the political, social and economic environment in which staff operate. The assessment should take account of the:

- degree of control over risk;
- cost impact;
- benefits and opportunities presented;
- risk borne by other stakeholders; and
- impact on community confidence.

Those risks that have been identified as unacceptable will be prioritized to determine which will be treated first. Operationally, this may result in the selection of Significant to Severe risk industries, sub-industries or clients for compliance activity. In some instances, a decision may also be made to research or verify the Low risk rating given to other industries.

Step 5 - Treat Risks

Risk treatment involves activity by Customs to avoid, reduce, transfer or accept risks. This may include identifying a range of options for addressing risk, evaluating these options, preparing and implementing risk treatment plans. It is important that all risks assessed as unacceptable are included in the risk treatment plan. The cost of compliance activity must be measured against the benefits obtained. In selecting the most appropriate risk treatment option, the cost of implementing each option (i.e. time taken, resources used) must be compared with the overall benefit received (i.e. additional revenue received/ foregone, assurance regarding the level of compliance within an industry). Non-revenue benefits are more difficult to quantify (e.g. eliminating unfair competitive advantage). It is however, important that these are considered when evaluating options for treatment.

Cost of Managing Risk = Benefits - Cost of Action (or Inaction)

In quantifying the benefits, it is important to not only consider the immediate benefits, but also those in the longer term, that is if the risk is not treated now what will the long term effects be?

Make a Decision - Utilizing the risk and cost analysis, make a decision on what proper course of action to take. When making a decision, be aware that a combination of several decisions may significantly alter the threat of risk factors.

Step 6 - Monitor and Review

Monitoring and review are a continuous process and an integral step in the process of managing risk. All steps of the cycle must be monitored and reviewed to:

- determine if risks previously identified are still current and whether new risks have emerged, as few risks remain static;
- re-evaluate the levels of risk assigned previously in the light of recent risk treatment activity; and
- evaluate the effectiveness of compliance activity undertaken.

Ongoing review is essential to ensure that future audit programs are relevant. Factors affecting the likelihood and consequences of an outcome may change, as may factors affecting the suitability or cost of the various treatment options. The review process should become an integral part of the Customs planning process.

Monitoring and review should be undertaken at the following levels - shown as step 7 below.

Step 7 - Document the Decision

Documenting the decision is very important element in the risk management process. It allows revisiting and evaluating decisions in order to:

- ascertain their effectiveness; and
- consider changes if circumstances mean that the decision is no longer appropriate.

Appropriate documentation will enable people to understand the reasoning behind risk decisions taken by their predecessors and justification of outcome.

5- The use of X-ray scanners in customs

The role of CUSTOMS IN PORTS AND MARITIME SECURITY

Customs' mission is to facilitate trade whilst maintaining an appropriate level of control to prevent smuggling and other illegal and terrorist activities. According to the recommendations of the SAFE set of standards from the WCO, the revised Kyoto Convention 1999 as well as the ISPS code and other national directives, Customs should focus on selective audit controls by using risk management techniques jointly with Non Intrusive Inspection (NII) techniques like X-ray scanners

Definition of X-Ray Scanning from customs perspective:

X-Ray Scanning by customs is a step towards 21th century customs. It is the a good and effective way to control imported cargo without unloading the goods.

The speed of scanning, the penetrative power of the beam, its excellent spatial resolution and the flexibility of this system are all key factors of this service.



Terrorism

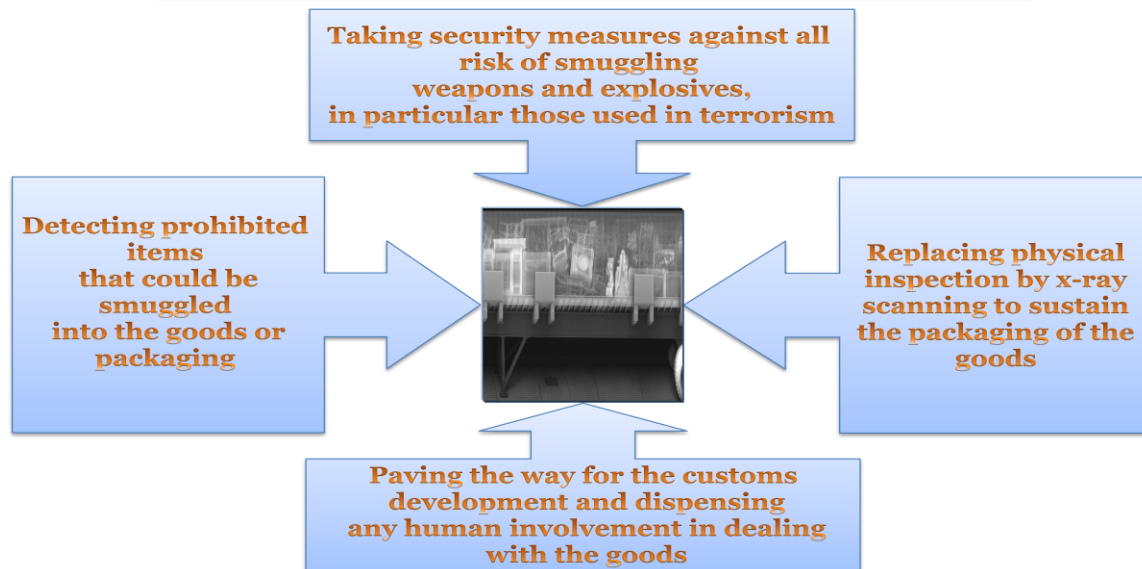


Smuggling

key benefits of using X-Ray Scanning

- 1- Combat illegal imports
- 2- Comply with the Container Security Initiative for exports and recommendations of the World Customs Organization Kyoto Convention 1999
- 3- Optimize Customs control by reducing the clearance time
- 4- Improve the efficiency and security of international trade with tailored customs training program
- 5- Promote a positive and modern image of customs services with more effective law enforcement
- 6- A large and continuously updated database of products/countries/exporters
- 7- Comply with the International Ship Port Security (ISPS) Code.

Objectives of customs using the x-ray inspection



Objectives of customs using the x-ray inspection

- 1- Securing the country from the risk of smuggling weapons and explosives, in particular resin that can be used in terrorism
 - i. The use of x-ray detectors will help in securing the country effectively & essentially from the dangers of smuggling in general.
 - ii. In particular, such acts which aim to undermining security and stability of the country. Terrorist acts carried out recently depend on using weapons and explosives made of resin materials and organic materials with low densities, which can not be detected using recognized X-ray detectors.
 - iii. Some of the terrorists now use pistols made of plastic and are accompanied by one of them to any means of transportation, whether aircraft or ships, or otherwise . Those weapons can not detect except through the devices which are design to detect plastic material. The X-ray detectors are able to achieve this target in that is why all customs around the world use it as an effective means of customs in combating international terrorism.
 - 2- Replacing physical inspection by x-ray scanning to sustain the packaging of the goods
- For the first time in the customs business, the Egyptian customs administration started using the X-ray devices for the detection of imported goods as a substitute for human

inspectors(manual inspection) as these devices can detect the cargo inside the containers in a precise &effective manner. It also gives accurate results by 100% without opening container or dealing with packaging in any traditional ways.

- ☞ A container of home refrigerators in 50 cartons can be extracted through the image identifying the absence of any items different other than the home refrigerator.
- ☞ The role of customs will be focusing on matching invoice data, such as trademark, model, and size by dealing with only one item or package without the need to take out the container entirely for inventory & checking similarity purposes.

3- Paving the way for the customs development and dispensing any human involvement in dealing with the goods

- ☞ Within the frame of the ongoing effort of the Egyptian Customs Authority at the present time, which aims to develop the customs business, to help the X-ray devices through the full and proper risk management system to move away from traditional methods of inspection & detection of goods, to the results produced by the risk management system which directed to any channel other than Green channel. A simple procedure could be done prior to the traditional examination through examining the goods with X-ray detectors.
- ☞ "The objective of the Egyptian customs administration is to apply the traditional procedures on more than 10% of imports (red channel) which can be achieved at least partially through the use of radiation detection equipment, thereby reducing the proportion of human intervention and decrease the required release time of cargo imported to the minimum time possible, accordingly this will contribute effectively to facilitate trade and increase the volume of international trade, a goal required by the countries all over the world"

4-Detecting prohibited items that could be smuggled into the goods or packaging

Although the rules of customs according to the WTO system provide executed restrictions on any kind of import goods, there is still quite a few items that are not consistent with the religious and ethical norms, such as drugs (restriction rules applied), in addition to those goods which are concealed inside the containers to avoid paying any fees on them, or those goods that require approval in order to be imported from some control agencies.

It was possible through the use of these devices to detect a large number of containers and means of transport which contain concealed goods, whether forbidden or valuable goods such as gold, Egyptian currencies, narcotic tablets, stimulant drugs, illegal or not allowed to use, and fabrics of high-value items such as curtains, wedding dresses, were all had been concealed to avoid paying the due taxes & duties.

6- Advance rulings

Introduction:

With the aim of providing advance and predictable information to companies in order to facilitate compliance with Customs requirements, a number of Customs administrations have established a binding ruling program, in accordance with the provisions of Standard 9.9 of the revised Kyoto Convention.

The expression “binding ruling” (or “advance ruling”) generally designates the option for Customs to issue a decision, at the request of an economic operator planning a foreign trade operation, relating to the regulations in force. The main benefit for the holder is the legal guarantee that the decision will be applied.

Although tariff classification is at the present time the most common area for binding rulings, origin and valuation rulings are also common. With regard to tariff classification, for example, this system helps operators obtain the correct tariff classification for the goods they plan to import or export. This is clearly an important factor, given that the tariff heading of the goods determines the rate of the Customs duties as well as the application of the different legal provisions (import/export licenses, rules of origin, anti-dumping duties, security standards, etc.).

The use of such a ruling will also help importers and exporters reduce the Customs clearance formalities for their goods and will consequently expedite the goods’ release.

The basic elements of this procedure can be summarized as follows :

- The request must supply the administration with all the information required (detailed description of the goods, possible inclusion of samples, plans, various documents, etc.). Should the request contain inaccurate or incomplete information, the ruling based on such information could be revoked;
- The reply must be issued in writing within a specified period;
- The ruling is binding on the administration following its issue and is valid for a specified period. However, in some cases (issuing of a new regulation, amendment of the interpretation of the nomenclature at international level, etc.), this decision ceases to be valid;
- Only the holder of the binding ruling can call upon its application, provided that he/she demonstrates that the commodity presented and the commodity described in the decision correspond in every respect;
- These decisions are generally made public to ensure transparency and equality of treatment of operators as well as the uniform application of the regulations.

Advance rulings areas

1-Classification into Customs tariff

- The identification of the proper tariff heading and subheading determines the duty rate to be applied to commodities. Many tariffs contain 10,000 headings or more, with highly-technical chapters, such as chemical compounds, textile goods, and electronic components. Sometimes, final classification depends on laboratory analysis of a sample of the goods.
- Hence, an advance ruling analysis and classification decision will simplify the clearance process and reduce delays.

2- Assessment of Customs value

- This involves the determination of the valuation criteria of goods according to the WTO valuation definition in line with Article VII, GATT 1994.
- Customs valuation defines duty liability and the compilation of foreign trade statistics.
- Valuation can be a complex and lengthy process,

Example:

- 1 - a seller and a buyer are related or associated. In such cases the Customs authority may have to probe into the circumstances of the transaction to assess whether the invoice price reflects the true price payable,
- 2 - The transaction value of an identical or similar import has to be computed ,so a final decision often depends on the importer submitting satisfactory documentation.

An advance valuation decision greatly facilitates Customs clearance.

3-Verification of the origin of goods

- This procedure includes appraisal whether a product qualify for preferential market access under a given free trade arrangement in accordance with the provisions on rules of origin contained in a given preferential trade arrangement.
- Preferential treatment extended under regional trade arrangements (e.g., the General System of Preferences (GSP) or free trade agreements) means a lowering or phasing out of customs duties for trade among members of a preferential trade arrangement and constitutes an important exception to the Most Favored Nation rule of the GATT. Hence, to promote the smooth exchange of goods between participating countries under preferential conditions, trade agreements normally include provisions on advance rulings.

Benefits of advance rulings

- Advance rulings are a proven trade facilitation tool for both traders and Customs administrations that enhance the certainty and predictability of Customs operations.
- Advance and binding information, e.g. on classification, gives the trader precise duty and tax liabilities and thus allows her to decide if imported goods are competitive in the domestic and foreign marketplaces.
- Disputes with the Customs authority on tariff headings, valuation and origin, i.e. eligibility to preferential treatment, are reduced because of the process of deliberation among Customs officials taking place before the issuance of the advance ruling.
- Many advance ruling provisions foresee an appeal mechanism.
- Automated Customs clearance, pre-arrival clearance and electronic release of goods from Customs will be expedited by advance rulings.
- Traders will also be able to conduct just-in-time operations more efficiently.
- Advance rulings can raise cooperation and build confidence between traders and Customs while reducing time-consuming complaints and appeals.

7- Integrity within Customs

Definition.

Broadly speaking, integrity can be defined as a positive set of attitudes which foster honest and ethical behavior and work practices.

Overview.

Integrity is more than simply the absence of corruption; rather it involves developing and maintaining a positive set of attitudes and values which give effect to an organization's aims, objectives, and the spirit of its integrity strategy. It is therefore a prerequisite for the proper functioning of a Customs administration. The special position of Customs authorities within the international trade supply chain, both in terms of its regular contact with financial and goods movements, and the application of specific legal powers, requires a high degree of professional integrity on the part of Customs officials.

To assist Customs authorities to instill a high degree of integrity at all levels within their administrations, the World Customs Organization (WCO) has produced a number of helpful tools for use by its Members. In addition, the WCO has spent a considerable amount of time promoting the concept of Integrity within Customs. These efforts resulted

in the adoption by WCO Members of what is now known as the revised Arusha Declaration on Integrity in Customs. This declaration commits Customs administrations to maintain a high standard of integrity throughout their management and operational spheres by the introduction of national integrity programs.

Integrity in Customs does of course also play its part from a trade facilitation perspective. A Customs administration suffering from a lack of integrity will normally be less effective and certainly inefficient resulting in little or no trade facilitation due to mismanagement, bad governance, and flourishing corruption. It thus remains imperative for all stakeholders in the international trade environment to fully support all efforts to introduce a culture of integrity throughout the goods supply chain.

Causes of corruption

In reviewing the causes of corruption, it is important to address not only the overall factors which may lead to corrupt practices but also the specific nature and causes of corruption in customs administrations. General factors include: extensive intervention of the Government in the economy; cultural norms and practices that influence the behavior of administrators; centralized decision making; excessive discretionary power in the hands of administrators; lack of supervision and guidance; lack of accountability, and inadequate control systems. In addition to these general factors, incentives and opportunities to engage in corrupt practices exist far more in revenue administrations than in many other administrations. Nobody likes to pay taxes. Therefore, the taxpayer will take every opportunity and make every effort to reduce the tax burden, including, if necessary, the bribing of a revenue official. In the case of customs transactions, the incentive goes beyond just the desire to reduce the tax burden, as the importer is also interested in obtaining the goods as fast as possible and may take the opportunity to "facilitate" their release.

The most important factors that lead to lack of integrity in the administration of duties and taxes include:

- Complex and restrictive tax and foreign trade systems that lead to rent seeking and corrupt behavior-- The rules may be so complex that importers and exporters have no choice but to meet face-to-face with an official to seek an explanation or the exercise of the discretionary power that the official may possess. This is often compounded by the lack of information that allows importers and exporters to determine their liability and comply voluntarily with the law.
- High tax and tariff rates-- The higher the tax rates, the greater the incentive to engage in corrupt practices to reduce this burden. A dramatic example of this is in the area of "IR" excises, particularly on tobacco and alcohol, where organized crime is involved in the bribery of revenue officials, resulting in widespread illegal production and smuggling of these goods.

- Exemptions--In addition to exemptions that are provided for in the law, discretionary exemptions that can be granted by the Ministers and/or the head of the customs administration, Create the opportunity to engage in corrupt practices. They undermine the fairness of the system and may create, in the mind of the importers who are paying the duties and taxes, a doubt about the reasonableness of continuing to comply.
- complex and bureaucratic procedures--Instead of making it easy for importers and exporters to voluntarily comply and pay the taxes multiple forms and steps are often introduced that require stops at many desks and visits to many offices each one associated with a "fee" to facilitate processing.
- Weak control systems--Too little attention is paid to the implementation of Systems that make it difficult for officials to engage in corrupt practices. Individuals take into account the perceived threat of being detected when they decide to engage in corrupt practices and, if the risk is low, many more will be willing to take the risk.
- lack of effective disciplinary measures--Sanctions are an important factor in deterring corrupt behavior If the penalties are not severe enough and applied each time that inappropriate behavior is detected, they will not be effective in reducing corruption.
- Lack of professionalism--Too often employment in customs administrations is seen as an opportunity to work for a short period of time to enrich oneself and not as a long-term professional career.

Building a system to promote integrity

Building a system to promote integrity in customs administration requires not only the effort to put in place the necessary measures to combat corruption but also on-going vigilance to ensure that the measures continue to operate as intended. Even in those countries that are considered to have the most efficient and honest administrations, considerable effort is still invested to ensure that the controls continue to operate and that corrupt behavior is detected and dealt with. Threats are always present. For exempt in countries with generally low tax and tariff rates, criminals involved in drug smuggling have the ability to pay large amounts of money to a customs officer to allow a shipment to proceed without inspection.

<p>It can't happen here</p> <p>In one country that has a reputation for integrity in its public service, in general, and the customs administration, in particular, recent cases of collusion with organized</p>		<p>In order to deal effectively with corruption, at the outset, there must be a commitment from the Government to address the problem. This goes beyond mere statements that corruption will not be tolerated to the actual actions of Ministers and other high ranking government officials. Too often these officials believe and act as if they are above the law and demand special treatment from customs officials (e.g.,</p>
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<p>crime have been detected related to the smuggling of goods with high excises. When this was discovered, there was, on the one hand, shock that such practices had taken place, and on the other hand, satisfaction that the systems were in place to discover the corrupt behavior.</p>	<p>proceeding through customs without paying duty). Given this atmosphere a Government cannot, in all honesty, expect a customs administrator to collect duties and taxes from every other importer. Once the commitment has been made, there are certain essential actions that must be undertaken to build a system that has integrity and that will produce the returns expected by the Government. Most of these involve designing measures to reduce the incentives and opportunities to engage in corrupt practices and, at the same time, creating organizations that are interested and committed to doing a good job.</p>
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Clear, well understood policy framework

Simplification of the tax system (e.g., reducing the number of rates to the minimum and restricting exemptions) is not only good economic policy but it £50 reduces the opportunities for corruption. From a customs administrators point of view, simple, clear legislation creates the framework for the development of systems and procedures that are easily understood by both the trade community and the officials. This policy framework should be based on the following principles:

- Minimum number of rates--Rationalization of tax and tariff rates and clear definitions of how and when different rates apply reduce the need for interpretation by administrators and the face-to-face negotiations that may result in the exchange of money for a favorable ruling.

<p>One administrator's experience</p> <p>In response to a question concerning the impact of the newly implemented VAT on customs administration, the head of one local office in an eastern European country responded, "The tax is easy to administer because there is only one rate and the exemptions are provided for in the</p>	<ul style="list-style-type: none"> • low rates--If it is generally perceived that the system is fair which means, among other things, that the rates of tax are reasonable, there is less incentive to become involved in fraudulent activities. • minimum exemptions--While it is virtually impossible to eliminate all exemptions, tax legislation should be written to include exemptions in the law and to eliminate the discretionary power of Ministers or government officials to grant exemptions. • minimum non tariff barriers to foreign trade--The need for numerous approvals for foreign trade licenses and multi-agency authorization to import and export, creates the opportunity and incentive to engage in corrupt practices. • effective penalty system--A good penalty system should provide the administrator with the ability to impose administrative penalties for minor offences. This may
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<p>law. There is no room for negotiation."</p>		<p>include fines, for example, for broken seals on vehicles transporting goods in-transit and presentation of declarations with an unacceptable level errors. Serious cases of fraud, including the bribing of revenue officials, would result in more serious actions, including criminal prosecution.</p>
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- Provide an independent appeal mechanism--Every tax law, no matter how well written, is capable of being interpreted differently. In order to preserve the independence of the officials and the integrity of the system, it is important that taxpayers have the ability to challenge decisions and be assured of a fair and equitable hearing and that decisions are widely publicized

In addition to a clear and simple policy framework, there is also the need to separate the setting of policy from its administration. The policy makers should engage in whatever dialogue is necessary during the design of the policy and the drafting of legislation, including discussions with the trade community. However, once the policy has been established and provided for in the law, there must be a clear separation between the policy makers and the administrators. It must be clear that the law, as interpreted by the administrators, will be applied and that it is not possible to obtain more favorable treatment through the influence of the policy makers. It should not be the responsibility of senior policy makers or Ministers to review and rule on individual cases. Among others, the customs administrations in the United States and the United Kingdom, have clearly established rules supporting this separation of responsibilities.

Simple, transparent procedures

It is the responsibility of the customs administrators to put in place simple, easily understood systems and procedures. The reasons for this approach are twofold. Firstly, it reduces the compliance costs for the importers and exporters and, secondly, it reduces the opportunities for corruption.

The most important principle in the design of simple, straight forward customs procedures is self-declaration. Importers should have the capability of determining their duty and tax liabilities and, based on their understanding of the law, presenting to the customs administration a declaration that includes a calculation of the amount owing. This must be supported by documentation and information as requested by the administration and is, of course, subject to verification, either at time of presentation or later through post-release

review. To be effective and to reduce the opportunities for corruption, the self-declaration system should be based on the following:

- one step process--A customs declaration should be lodged at the reception counter of the customs office and the paperwork processed by the administration with no further need for contact, until that processing has been completed.
- minimize the information and documentation requirement--Customs administrations must define their information and documentation needs in a way that minimizes administrative requirements upon the importers and exporters. For example, the customs declaration can be used for multiple purposes (e.g., calculation and payment of duties and taxes and preparation of foreign trade statistics).
- consistent interpretations--Importers can only be expected to self- declare their liabilities in an environment where the interpretation of the laws is consistent and procedures are standardized, with each transaction treated in the same way as the previous one,
- computerization--The introduction of computerized support for the processing of customs documents, perhaps more than any other change, provides the opportunity to implement standardized procedures that leave little to the discretion of the officials. A properly designed system ensures that the correct rates of duties and taxes are applied; exemptions are only granted to authorized organizations and for authorized goods and services,' the required information and documentation is presented; timeframes for payment are met; and those who do not comply with filing and payment timeframes are identified and follow-up action is taken, In addition, the system can provide useful management information including, for example, identifying transactions that do not meet time standards for processing or individual officers who undertake actions that are out of the ordinary (e.g., physically inspecting too many shipments).

Code of conduct

It is important that employees and importers and exporters be aware of the conduct that is expected of both parties. By clearly articulating expectations, customs administrators can hold employees accountable for performance and take appropriate action when these standards are not met. Many administrations publish a 'code of conduct" with these expectations. For such a code to be effective; it must also include a description of the disciplinary actions that will be taken if unacceptable behavior is discovered (to be effective, disciplinary actions must be taken on a regular, consistent basis). The political and social context of a particular country is important in establishing the rules for acceptable conduct and the rules guiding participation of tax and customs officials in activities outside their

officials responsibilities will vary from country to country. However, the code would normally include the following:

- **Maintaining integrity**--The acceptance of gifts, favors, or benefits to influence decisions is not permitted. Disciplinary action up to and including dismissal is normally taken in cases where employees accept a gift of any significant value.
- **Confidentiality of information**--information from customs declarations as well as that obtained from post-release reviews is confidential and, as such, must not be used by employees nor disclosed in an unauthorized manner.
- **Conflict of interest**--Employees would normally be prohibited from engaging in activities that are in clear conflict with their official position. For example, a customs officer would not be permitted to own a customs brokerage business or to engage in any business that involves extensive import and export activities. Many administrations also have a requirement that employees disclose their assets at time of hiring, and update this information on a regular basis so that their managers can detect, at an early stage, that an employee has accrued assets that are inconsistent with the level of compensation received by the employee.
- **Appearance and conduct**--Standards for appearance and conduct normally include: observing the hours of duty; dressing appropriately; dealing courteously with the taxpaying public; prohibiting the use of intoxicants in the work place; and using government equipment, including vehicles, only for business purposes.

Effective internal audit

While it is the overall responsibility of management to monitor performance and to ensure that operational policies are being followed and performance standards are being met, this must be supplemented by effective internal audit. Usually, the internal audit department reports to the head of the administration and is responsible for carrying out regular reviews of all operations in the organization. It is often the internal auditors in customs administrations who are the first to detect instances of corruption when reviewing compliance with procedures. Serious cases of corruption, involving violations of the law, are usually turned over to law enforcement officials for criminal prosecution. internal audit activities normally include the following:

- **compliance with operational procedures**--Based on clearly defined procedures which would normally be laid out in manuals or procedure guides, an auditor reviews the actual operation of the customs offices. This would include, for example, reviews of declaration processing and procedures for the selection of shipments for physical inspection.
- **expenditure/use of government funds/assets**--There are opportunities in the administration of large government departments to mis-appropriate funds and it is

one of the roles of internal audit to review activities related, for example, to the purchasing of supplies, awarding of contracts, and hiring personnel (e.g., some countries have a serious problem with "ghost-workers" on the payroll).

8- Rules of origin

Introduction: The Importance of Rules of Origin

Rules of origin are the criteria used to determine the nationality of a product. Rules of origin were designed as an uncontroversial, neutral device essential to implementing discriminatory trade policies, compiling economic statistics, and marking a good. Once the origin of a good is known, the importing country can apply any country-specific or trade area-specific trade preferences or restrictions to the imported good (such as duty free entry for goods originating in a free trade area, quantitative restrictions on goods originating in a country subject to a quota, or anti-dumping duties on goods from the targeted company that originate in the targeted country), account for the good in its compilation of economic statistics on trade flows, and ensure that the good is conspicuously marked with its country of origin. Rules of origin remained an uncontroversial, neutral device as long as the parts of a product were manufactured and assembled primarily in one country, and as long as other mechanisms for implementing protectionism existed.

Because rules of origin are an indispensable means of implementing discriminatory trade regimes, their importance has grown significantly as countries increasingly have treated similar imported goods differently according to where the product was made. As the degree of differentiation among similar goods from different countries or trading groups increases, rules of origin become more important and more controversial, because the benefit of being determined to be from a certain country or trading group vis-à-vis others increases.

The increased disparate treatment of similar goods, the growing number of restrictions placed on the use of traditional tariff and non-tariff barriers to trade by the General Agreement on Tariffs and Trade ("GATT"), the lack of regulation of rules of origin until recently by the GATT, the technical obscurity in which rules of origin operated, and the globalization of means of production provided countries with the opportunity and incentive to use their rules of origin to implement trade policies in an obscure manner.

The rise of multinational corporations and the production of goods in multiple stages using parts produced in different places around the world provided an opportunity to use rules of origin as an effective means of protection. In a world where goods are produced from parts from around the world, there is no single, correct definition of origin. Instead, the origin of a product depends on the formulation and application of the applicable rules of origin. In this world, rules of origin can serve as an extremely effective means of protectionism in at least two ways. First, overly restrictive definitions or applications of preferential rules of origin may deny trade preferences to products that last underwent substantial processing in a favored country or trading area by holding that the product did not originate in the favored country. Second, overly liberal definitions and applications of

non-preferential rules of origin will extend country-specific trade restrictive measures to products otherwise exempt from them by holding that the product, even though it last underwent substantial processing in a third country, originated in the disfavored country.

Because most people had the misconception (a proper conception as long as imported goods were produced in a single country with parts and materials from that country) that the formulation and application of rules of origin result from a technical, objective process, few people paid attention to, much less scrutinized, the process of defining and applying rules of origin. This lack of transparency was heightened by the complex, technical nature of rules of origin, which would have made it difficult to realize that they were being used for restrictive purposes. Furthermore, while the GATT increasingly restricted the ability of countries to use tariffs or traditional non-tariff barriers to protect domestic industry from foreign competition, it did not regulate rules of origin. Therefore, the use of rules of origin to insure trade restrictive effects provided a means for countries to satisfy pressure from domestic industry for protection from foreign competition. By taking advantage of the fact that formulations of the rules and determinations of origin are not objective, technical exercises but rather policy-influenced decisions made in a non-transparent manner, governments were able to protect domestic industries in a hidden, effective manner.

As a result of the growing pressure to find new barriers to trade, the lack of global regulation of rules of origin, and the effectiveness of rules of origin as a protective device, governments increasingly turned to rules of origin as a mechanism for protectionism.

The Use of Rules of Origin as Barriers to Trade

Rules of origin are divided into two categories: preferential and non-preferential rules of origin. Preferential rules of origin are used to determine whether certain products originate in a preference-receiving country or trading area and hence qualify for the trade preference. Non-preferential rules of origin are used for all other purposes, including enforcement of product and country specific trade restrictions that increase the cost of entry (i.e., antidumping duties) or restrict or prevent market entry (i.e., quotas). Both types of rules of origin can be used as a barrier to trade.

By determining whether a product originates in a preference-receiving country or trading area and thereby enters the importing country on better terms than products from the rest of the world, preferential rules of origin allow governments to discriminate between products from different countries because instead of a global trading environment ruled by GATT's principle of non-discrimination and its most favored nation clause, countries have created a growing proliferation of trading agreements that give preferential treatment to developing countries and regional trading partners. By varying the severity of the required transformation and by allowing different degrees of cumulation on a regional, donor, or global basis, countries use the rules of origin to control the degree of preference. If the preferential rules of origin are formulated so that they require a greater transformation of the product than the rules of origin otherwise would require, the rules of origin may be serving as a discriminatory policy device that restricts trade.

The rapid, recent spread of reciprocal preferential trading agreements that, inter alia, liberalize trade through the creation of regional free trade areas has focused increasing attention on rules of origin and their importance. While reciprocal, trade liberalizing preferential agreements in theory should result in net trade creation, their use of more restrictive rules of origin than the non-preferential rules, though nominally designed to prevent trade deflection, may result in trade and investment diversion.

Trade deflection occurs when companies place a minimal processing or assembly plant in a preference-receiving country to take advantage of those trade preferences. The preferential rules of origin attempt to prevent trade deflection by establishing criteria that ensure an adequate degree of transformation in a preference-receiving country to justify allowing a good to benefit from the preference. However, the rules of origin in reciprocal preferential trading agreements often are more restrictive than necessary to ensure substantial transformation. When the rules of origin are more restrictive than necessary to prevent trade deflection, they give producers an incentive to increase the amount of intermediate and final good manufacturing, processing and assembly done within the preferential area at the expense of facilities in other countries that would otherwise have a comparative advantage. This distortion of the sourcing and purchasing decisions causes an inefficient allocation of global resources

The effectiveness of restrictive rules of origin in diverting trade and investment will depend on the difficulty of complying with the rule, the size of the market, the degree of technical skill needed, the level of education of the work force, and the "penalty" for failing to comply with the preferential agreement. Multinational corporations will have greater incentive to source manufacturing and assembly plants within an area if the "penalty" for not complying with the preferential rule of origin is substantial, such as the loss of substantial tariff preferences or the loss of market access to a large market, rather than if the penalty is minimal, such as a small tariff on goods sold to a small market. Alternatively, if the preference is not that large or if the goods are destined for a number of countries, the firm may just ignore the preferential agreement and its intricate rules of origin.

These overly restrictive preferential rules of origin are not designed to protect final good producers, as traditional barriers to trade are. Instead, they are designed to increase the amount of investment in production and assembly of intermediate goods and to protect and enhance the position of existing intermediate producers. This protection of intermediate producers results in inefficient trade diversion, and is the focus of non-member resentment of the preferential trading agreements. Furthermore, over time, the domestic intermediate producers may be replaced, or crowded out of the market, by foreign producers who relocate their intermediate production facilities to the protected area.

However, rules of origin can also serve as a traditional barrier to trade, i.e., to protect domestic producers of final goods when the rules of origin are so administratively or technically difficult to comply that they serve as a non-tariff barrier to trade. If the penalty for non-compliance is severe enough, they will nullify the trade preference, because no firm will seek to take advantage of it. However, if one member's market is much larger than the other members, firms have an incentive to source factories in that country where most of

the final goods are destined to be sold, so as to avoid having to comply with the origin rules. Because rules of origin are only applied to imported goods, i.e., goods crossing a national border, if the good is produced and sold domestically, no origin determination is necessary. Of course, its imported parts will have to comply with non-preferential trade law, including applicable tariffs and quotas.

Methods of Determining Origin

When a product is wholly obtained and produced in a single country, it is relatively easy to determine its origin. Difficulties arise in determining the origin of a product that is manufactured in, assembled in, or uses materials originating in more than one country.

At least four different methods or criteria exist for determining the origin of goods that are manufactured in, assembled in, or use materials originating in more than one country:

1. Using the concept of substantial transformation as a rule;
2. Using an ad valorem percentage test;
3. Listing specific manufacturing or processing operations which confer or do not confer origin upon the goods; and
4. Requiring a specified change in tariff classification.

Whichever method is employed to determine origin, each seeks to prevent simple assembly and packaging operations from conferring origin. This section of the article will evaluate the different methods according to their effectiveness in determining the origin of a good and in preventing circumvention, their clarity, their certainty, their transparency and the predictability or consistency of origin of determinations which use that method.

A. Substantial Transformation

The traditional substantial transformation rule states that a good originates in the last country where it emerged from a given process with a "distinctive name, character or use." The substantial transformation of a good requires more than just a change in the article; it requires an article be transformed into a "new and different article" "having a distinctive name, character or use

The traditional substantial transformation rule captures the heart of the meaning of the rules of origin in a simple, concise way. For a product to be from a particular state, it must be substantially transformed there. To prevent a product from having multiple countries of origin, the good is a product of the country where it last underwent substantial transformation. The standard's flexibility allows it to evolve to meet technological change; however, this flexibility can result in inconsistent origin determinations that undermine the certainty required for strategic planning by businesses.

B. Value-Added Percentage Test

The value-added test defines the degree of transformation required to confer origin on the good in terms of a minimum percentage of value that must come from the originating country or of maximum amount of value that can come from the use of imported parts and materials. If the floor percentage is not reached or the ceiling percentage exceeded, the last production process will not confer origin. If the determination is for non-preferential purposes, then origin will be conferred on a prior country; if it is for preferential purposes, then no further origin determination is necessary unless the prior country is also a beneficiary country under a preferential trading agreement with the importing country.

While the value-added method is often praised for its simplicity and precision, in practice it is very far from that because it generates substantial compliance costs and uncertainty for companies. The value-added test is a very unsatisfactory method of determining origin.

The value-added test generates substantial compliance costs for companies. It can be very costly and difficult to comply with its administrative requirements, especially if the rules require tracing the value of specific parts and materials. Firms often will find it cheaper not to comply with the value-added test, forgoing the trade preferences and paying the most-favored-nation tariff, when the product results from complex manufacturing operations or when the product does not otherwise face high tariff or non-tariff barriers. To comply with a value-added rule requiring tracing, a manufacturer of a complex product would need a highly sophisticated inventory and accounting system to adequately ensure that particular goods contain specific local components at specific values.

C. Specified Processes

The specified process tests of origin, also referred to as technical tests, prescribe certain production or sourcing processes that may (positive test) or may not (negative test) confer originating status.

D. Change in Tariff Classification

The change in tariff classification method determines the origin of a good by specifying the change in tariff classification of the Harmonized System of Tariff Nomenclature ("Harmonized System") required to confer origin on a good. Because the Harmonized System has been adopted by countries representing 90% of the world's trade, it provides a uniform, hierarchical nomenclature to be used in defining origin determinations for all products in international trade.

The Origin Agreement

The Origin Agreement seeks to harmonize all the non-preferential rules of origin used by signatory countries into a single set of international rules. Under the Origin Agreement, each country is free to adopt its own preferential rules of origin, or to adopt different preferential rules of origin for its different preferential agreements

The Origin Agreement anticipates a two stage harmonization process. First, the Origin Agreement anticipates a three-year transitional period, during which time the harmonized rules will be drafted and adopted. The proposed harmonized rules will be drafted by the Technical Committee on Rules of Origin, with the Committee on Rules of Origin considering its results "with a view to endorsing such interpretations and opinions." The Origin Agreement does not specify whether consensus decisions, majority voting, or supermajority voting will apply. However, by drafting the rules in a multilateral context where all countries are represented and where the adopted rules will be used for all non-preferential purposes, the ability of any one country to draft the rules in politically motivated ways will be limited. For example, if the United States sought to protect its domestic car industry by having the harmonized rule of origin for automobiles be unduly restrictive, those same American companies would be injured when they sought to export their automobiles to other countries. Once the harmonization work program is completed, a GATT Ministerial conference will establish the results of the harmonization program as an Annex to the Origin Agreement, along with a time frame for its entry into force.

Three criteria will be used to define origin under the harmonized rules. First, the Technical Committee will develop a detailed harmonized definition for determining when goods are wholly obtained in one country. Second, the Technical Committee will develop a harmonized list of minimal operations or processes that do not by themselves confer origin to a good. Finally and most importantly, the Technical Committee will define when the last substantial transformation of a good produced in more than one country occurs, primarily through use of the change in tariff classification method at the heading or sub-heading level, using the Harmonized System as the underlying nomenclature, and, when supplemental tests are necessary, through the use of the value added and specified processing methods of determining origin. The Origin Agreement states that origin will be conferred where the last substantial transformation occurred, not where the most significant occurred. This rule increases certainty in application and simplifies the determination of origin because the custom authorities can disregard previous operations.

Both during and after the transitional period, the member countries are forbidden from using negative rules, unless they are used to clarify a positive standard or when a positive determination is not necessary. This provision will make the rules of origin more specific and clear, because negative provisions only state what will not constitute a substantial transformation, not what will constitute a substantial transformation. This provision is aimed at the criticized European Communities practice of issuing product-specific origin regulations that use negative rules, such as European Communities Regulation 2071/89, which was allegedly changed to confer Japanese origin on photocopiers produced by Ricoh (a Japanese company) in the United States in order to apply anti-dumping duties imposed on Japanese photocopiers on these United States assembled copiers.

The Origin Agreement provides for an advance publication and ruling procedure to be implemented in each signatory country, starting immediately, for all origin determinations. Signatory countries must publish the rules of origin and any applications of the rules. Any changes in the rules cannot be applied retroactively. Upon the request of any interested person, the member country must issue and publish a binding assessment of origin within 150 days of a request containing all the necessary elements. This assessment

must clearly and precisely state what requirements must be met to confer origin. Any confidential information submitted by the parties shall remain strictly confidential, unless the person or government providing it specifically permits its disclosure or unless judicial proceedings require disclosure. The assessment request can be made in advance of trading in the good and once made, will be valid for three years in all comparable situations. This advance ruling procedure will allow firms to rationally plan its sourcing and production processes with knowledge of the final good's origin and corresponding treatment

Additionally, because the assessments will be published, interested parties will be able to make more cogent arguments for favorable rulings, using these prior rulings as precedents, because these prior rulings will be binding on the custom authorities for three years in all "comparable" situations. This process, which improves on the American system of inconsistent review of determinations of origin, will create a more fact-specific, common law-like context for origin determinations that will lead to fairer, more objective determinations as the rules are explained through application to specific factual situations. Because the determinations are binding in comparable situations, are published, and are subject to review, there will be implicit pressure on the custom authorities to explain their reasoning, thereby increasing the transparency and consistency of the process.

Conclusion

Because decisions on rules of origin impact purchasing, sourcing, and investment strategies of profit-maximizing firms, it is imperative that they result from a transparent, de-politicized, and predictable process, so that firms can account for them as a factor of production when planning their profit-maximizing strategies. A major step towards this goal has been taken with the Origin Agreement, which harmonizes the non-preferential rules of origin and attempts to create a more transparent, technical, predictable implementation process for all determinations of origin.

However, harmonization of the rules of origin is only a second-best solution. As long as countries continue to differentiate in the treatment of goods from different countries, i.e., to discriminate between different sources of supply of a product, rules of origin will continue to be a controversial, necessary, but inefficient device in international trade.

9- Pre arrival processing

The measure in the WTO Context

Pre-arrival processing is related to Article VIII of GATT 1994 (Fees and Formalities Connected with Importation and Exportation). Of particular relevance is paragraph 1(c): "The contracting parties also recognize the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements." For an overview of proposals see the WTO's reference document TN/TF/W/43 (latest revisions) under Release and Clearance of Goods.

Background

In cross border trade transactions the clearance and release of goods at point of entries often create a barrier to trade because of long delays. Modernization of Customs procedures so as to expedite the clearance and the release are therefore an import trade facilitation tool. For some categories of goods and traders clearance can be simplified and goods released with little or no delay upon arrival at the border. Goods likely to be subject to pre-arrival processing are i.e. air-borne shipments, perishable goods, dangerous substances, or express consignments. For these types of goods in particular immediate release after arrival at the port of entry is essential.

Definition

There is no internationally agreed-upon definition of pre-arrival processing, but it can be described as a procedure allowing traders to submit clearance data to Customs for advance processing and release of the goods immediately upon arrival into the country.

Release may even take place prior to the actual arrival of the goods, provided all necessary details have been communicated and screened by Customs in advance.

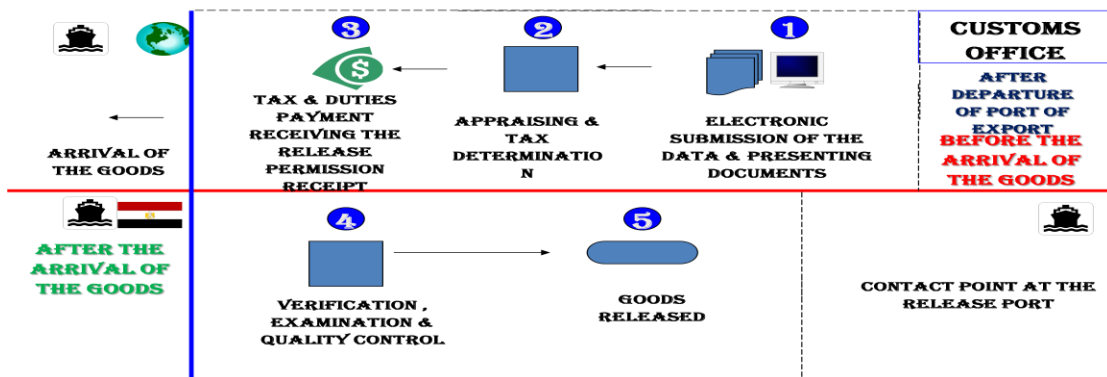
Release in the Customs context means the action by Customs to permit goods undergoing clearance to be placed at the disposal of the persons concerned. Clearance means the accomplishment of the Customs formalities necessary to allow goods to enter home use, to be exported or to be placed under another Customs procedure. (RKC)

Pre arrival processing

- 1) Customs procedures can be started on documents of goods as soon as they are shipped from abroad and prior to arrival.
- 2) Customs taxes and duties are estimated, according to data in the documents.
- 3) Computerized recommendations of the risk management directorate are implemented and the release channel is determined accordingly.
- 4) Imported goods are inspected according to set percentages, or documents are verified according to recommendations of the risk management directorate, based on the information obtained from computers.
- 5) Goods are released in case they conform to the documents submitted by stakeholders to Customs. In case of nonconformity of the imported goods to the items or quantities declared, the goods are re-inspected and Customs taxes and duties are re-estimated, based on the actual imports, without prejudice to compliance with import, control and security rules if required.

Pre -arrival procedures

PRE -ARRIVAL PROCEDURES



10- E-Customs services

The electronic customs initiative, as set out in the Electronic Customs Decision, aims to establish secure, interoperable electronic customs systems for the exchange of data between CUSTOMS and traders to:

- E-Customs means using digital systems to collect and safeguard Customs duties; to control the flow of goods, animals, personal effects and hazardous items in and out of member states; and to provide security from crime. The initiative aims to replace paper-based customs procedures with wide electronic operations, thus creating a more efficient and modern customs environment. The objectives of the e-Customs initiative are:
- Facilitate import and export procedures;
- Reduce compliance and administrative costs;
- Improve clearance times;
- Coordinate the approach to the control of goods and application of the legislation;
- Ensure proper collection of Community duties and charges;
- Enable the seamless flow of data between the parties involved and allow re-use of data.

Examples of other e-Customs offerings

In addition to EMCS and DMS, IBM and IBM Business Partners have been and are collaborating on the following e-Customs assets:

Customs Messaging Gateway, an integrated solution featuring a secure, multi-channel communications and data transformation gateway leveraging IBM hardware, software and services

Customs Message Broker, messaging service through which current legacy systems or newly developed applications can satisfy the information exchange .

E-customs in Egypt

- This e-service is an important step on the path of the e-customs that all customs administrations seek to reach where all the work of customs is done through direct communication between the client (trade community) and the Automated System of Customs.
- Many customs administration in different countries achieve comprehensive automation progress like Singapore Customs which perform all customs functions through the Internet, as well as in Japan and quite a few countries in the world.
- There is no doubt that this level of performance of customs needs a trade community with a high degree of culture, and full knowledge of the customs technicalities which is not available at many of the members of the trade community in developing countries and underdeveloped countries.

E-services

- Electronic submission of the Customs declaration
- Electronic submission of the manifest
- Customs Tariff Headings Query
- Information about the currency exchange.
- Providing any further inquiry using the available databases over the customs website on the internet

11- Enforcement and Compliance

Customs enforcement is concerned with the protection of society and fighting transnational organized crime based on the principles of risk management. In discharging this mandate, Customs enforcement services are involved in a wide range of activities relating to information and intelligence exchange, combating commercial fraud, counterfeiting, the smuggling of highly taxed goods (especially cigarettes and alcohol), drug trafficking, stolen motor vehicles, money laundering, electronic crime, smuggling of arms, nuclear materials, toxic waste and weapons of mass destruction. Enforcement activities also aim to protect intellectual and cultural property and endangered species of plants and animals.

In order to assist its Members improve the effectiveness of their enforcement efforts and achieve a balance between control and facilitation, the WCO has developed a

comprehensive technical assistance and training programme. In addition, it has established Regional Intelligence Liaison Offices (RILOs) that are supported by a global database, the Customs Enforcement Network (CEN), to facilitate the exchange and use of information.

The WCO has also developed instruments for international co-operation in the form of the revised Model Bilateral Agreement (MBA), the Nairobi Convention which provides for mutual administrative assistance in the prevention, investigation and repression of Customs offences, and the Johannesburg Convention which provides for mutual administrative assistance in Customs matters. The WCO's Customs Control and Enforcement program therefore aims to promote effective enforcement practices and encourage co-operation among its Members and with its various competent partners and stakeholders.

In the context of the priorities laid down in the Strategic Plan, which are defined by the Members, the WCO is currently giving priority to other major new initiatives, one of them being the security and facilitation of the international trade supply chain

World trade stakeholders recognize that international trade is an essential driver for economic prosperity. The global trading system is vulnerable to terrorist exploitation that could severely damage the entire world economy.

As government authorities that control and administer the international movement of goods, Customs administrations are in a unique position to provide increased security to the global trade supply chain and to contribute to socio-economic development through revenue collection and trade facilitation. For these reasons, it was imperative for the WCO to develop a strategy that would secure the movement of global trade in a way that does not impede but, on the contrary, facilitates the movement of this trade.

What is Customs Enforcement and Compliance?

- Activities relating to :
 - information and intelligence exchange,
 - combating commercial fraud,
 - counterfeiting,
 - the smuggling of highly taxed goods (especially cigarettes and alcohol),
 - drug trafficking,
 - stolen motor vehicles
 - money laundering,

- electronic crime,
- smuggling of arms,
- nuclear materials,
- toxic waste and weapons of mass destruction.

Enforcement and Compliance - international Tools and Instruments Customs Enforcement Network (CEN)

Intelligence is a vital element of enforcement for Customs administrations which have to perform control missions whilst at the same time facilitating trade.

In order to prevent control and search operations from impeding the free movement of persons, goods and means of transport, Customs services are implementing intelligence-based selective and targeted controls. Information exchange on potential or real risks of offences is therefore vital if Customs services are to implement their enforcement strategy.

To enable its Members to combat transnational organized crime more effectively, the WCO has developed a global system for gathering data and information for intelligence purposes, the CEN.

The Customs Enforcement Network (CEN) is not only a database, it is also a Web site and an encrypted communication tool facilitating the exchange and use of information and intelligence.

It offers the possibility of sharing and disseminating information on Customs offences in a timely, reliable and secure manner with direct access 24 hours a day.

Operational since July 2000, the CEN offers 2,000 Customs officers representing more than 150 countries access to :

- A Database of (non-nominal) Customs seizures and offences, comprising data required for the analysis of illicit traffic in the various areas of Customs competence.
- The CEN Web site (CWS) containing alerts as well as information of use to Customs services.
- A Concealment Picture Database to illustrate exceptional concealment methods and to exchange of X-ray pictures.
- A communication network facilitating co-operation and communication between Customs services and CEN users at international level.

The CEN uses modern technologies to perform reliable, secure and inexpensive operations. It is Internet-based and has effective database protection, only permitting access to authorized users.

Users require a login ID and password to access the CEN, these being granted on request by Member States. Furthermore, users have to install a Certificate issued by the Certificate Authority to ensure that the system remains secure.

The CEN relies on encryption technology to protect communication and data transfers. Its main characteristics are simplicity, user-friendliness and low-cost communication which is rapid and secure.

The CEN contains 13 different headings and products covering the main fields of Customs enforcement activity :

- Drugs
- Tobacco
- Alcoholic beverages
- CITES
- Intellectual property rights (IPR) - Counterfeiting
- Precursors
- Tax and duty evasion
- Weapons and explosives
- Currency
- Nuclear materials
- Hazardous material
- Pornography / Pedophilia
- Other prohibitions and restrictions (including works of art, stolen vehicles, anabolic steroids etc.)

12- Dispute settlements

- On of the most popular performance measurements
- Customer oriented approach
- Fast settlement is considered more requested and urgent than justice
- An arbitration mechanism

Reform and modernization of customs dispute settlements mechanism

1. Use of an automated system
2. Electronic signature

3. Microfilm.
4. Simplifying & unifying the customs procedures (Kyoto convention)
5. Reconciliation in smuggling and irregularities cases
6. Debt drop
7. Customs arbitration center

13- Account Management Service

- AMS is a new service targeting a number of importers who were selected based on a set of measures among which is that their importations exceed 5 million dollars annually. There are many benefits for the importer, e.g. release of consignments in less than 24 hours. It also ensures the compliance of the trusted importers through a set of transparent processes of RM, Compliance and PCA.
- During May 2005, the Customs Commissioner along with a team of Booze Allen experts held a number of meetings with the Ministers of Transport, Health, Agriculture, Foreign Trade and Industry to put into action this service and achieve as well as develop the cooperation and coordination tools with the other authorities dealing with Customs to provide this service to the importers.