



East African Community
(EAC)



Federation of East African Freight
Forwarders Associations (FEAFFA)

THE EAST AFRICA CUSTOMS AND FREIGHT
FORWARDING PRACTICING CERTIFICATE

CUSTOMS MODULE

- CUSTOMS CLEARANCE OF GOODS
- CUSTOMS VALUATION
- CLASSIFICATION OF GOODS
- RULES OF ORIGIN
- CUSTOMS MANAGEMENT INFORMATION SYSTEMS

FEAFFA in collaboration with East Africa Revenue Authorities





East African Community (EAC)

The East African Community (EAC) is a regional intergovernmental organization of six (6) Partner States, comprising Burundi, Kenya, Rwanda, South Sudan, Tanzania and Uganda, with its headquarters in Arusha, Tanzania.



Federation of East African Freight Forwarders Associations (FEAFFA)

The Federation of East African Freight Forwarders Associations (FEAFFA) is a regional private sector apex body of the Customs Clearing and Freight Forwarding (CFA) industry in East Africa. It aims at promoting a professional freight logistics industry for trade facilitation and regional economic growth. FEAFFA strives to address the challenges experienced by its members through training, provision of information, and other aspects of capacity building. It advocates for the full implementation of the East African Community (EAC) Customs Union. The East Africa Customs and Freight Forwarding Practicing Certificate (EACFFPC) is the Federation's and the industry's premier training program in East Africa since 2007.

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- VALUATION AND TARIFF CLASSIFICATION

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Foreword

Customs Clearing Agents, Freight forwarders, and Warehouse Operators in the East African Community (EAC) region continue to play a vital role in the facilitation of trade particularly with regards to the assessment tax, storage of goods, transportation, and last-mile delivery to clients. This, in turn, facilitates cargo movement and clearance from all ports.

The agents handle goods worth millions of dollars on behalf of the shippers. Besides, they originate documents that facilitate movement and clearance of cargo culminating in errors that slow down the flow of business. The movement of cargo depends on how fast and correctly documentation is done for verification by the respective Customs Authorities. A delay in customs clearance increases the cost of doing business.

This pointed to the need for these agents to be equipped with the requisite knowledge, skills, and attitudes to carry out their work efficiently, just as their counterparts from customs.

The EAC region, with support from TradeMark East Africa (TMEA), has made significant steps towards bridging the knowledge and skills gap in the customs clearing and freight forwarding industry. The introduction of the East Africa Customs and Freight Forwarding Practicing Certificate (EACFFPC) in 2006, a regional training programme jointly implemented by the EAC directorate of customs, the East African Revenue Authorities (EARAs), the National Association of the Freight Forwarding Industry, and FEAFFA was a big step. Since its inception, over 7000 agents have graduated from this training.

A review of the programme in 2015 and a market survey conducted in 2020 supported by TradeMark East Africa (TMEA) highlighted key areas of improvement for the EACFFPC programme to achieve the aim of producing competent customs agents, freight forwarders, and warehouse keepers. The revised curriculum has therefore been designed to address these challenges and shortcomings. The revamped EACPPFC programme is designed to enhance the ability of freight forwarders to provide competitive and high-quality end-to-end services thereby reducing inventory costs and increasing safety levels in warehousing operations in the East African region.

With the revised EACFFPC curriculum, the dream of attaining a professional and compliant freight logistics industry in the East African region has been strongly boasted.

Acknowledgment

The Curriculum Implementation Committee (CIC) is grateful to the EAC sectoral council on Trade Industry Finance and Investment for adopting the EACFFPC as an EAC training programme for clearing and forwarding agents in the region. This is a testimony to the effect the programme has had on the clearing and forwarding industry in the EAC region.

The CIC is also grateful to the EAC Directorate of Customs, the Commissioners of Customs of the East Africa Revenue Authorities, the Chairpersons of National Associations of clearing and forwarding agents, and the President of FEAFFA for their dedication and support to the EACFFPC programme.

Special appreciation for the National Curriculum Implementation Committees for providing their trainers to participate in the development and validation of the curriculum and training materials. CIC also acknowledges the FEAFFA secretariat for excellently coordinating the curriculum and training materials development and validation process.

The CIC in a very special way recognizes TradeMark East Africa (TMEA) who provided the financial support to update the curriculum, develop and publish the 2021 edition of the EACFFPC training materials. We remain indebted to you forever.

We also appreciate all EACFFPC trainers, students, and stakeholders for the constant feedback that has been incorporated in this edition of the training materials.



UNIT 1

**CUSTOMS CLEARANCE
OF GOODS**

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LIST OF ABBREVIATIONS AND ACRONYMNS

| | |
|-----------|--|
| ACV | Agreement on Customs Valuation |
| AEO | Authorized Economic Operator |
| BDV | Brussels Definition Value |
| CITES | Convention on International Trade for Endangered Species |
| CMS | Customs Management System |
| CoC | Certificates of Conformity |
| COMESA | Common Market for Eastern and Southern Africa |
| CPC | Customs Procedure Codes |
| EAC | East African Community |
| EACCMA | East Africa Community Customs Management Act |
| EACCMR | East Africa Community Customs Management Regulations |
| ECUSG | European Customs Union Study Group |
| EEC | European Economic Commission |
| EPZ | Export Processing Zones |
| EU-GPS | European Union Generalised System of Preferences |
| GATT | General Agreement on Tariffs and Trade |
| GSP | Generalized System of Preferences |
| HSC | Harmonized System Code |
| IDF | Import Declaration Form |
| INCOTERMS | International Commercial Terms |
| KNESWS | Kenya National Electronic Single Window System |
| NEMA | National Environmental Management Authority |
| NEMC | National Environmental Management Council |
| PAG | Partner Government Agencies |
| PAPP | Price Actually Paid or Payable |
| PCA | Post Clearance Audit |
| RECTS | Regional Electronic Cargo Tracking System |
| REMA | Rwanda Environmental Management Authority |
| RKC | Revised Kyoto Convention |
| RoO | Rules of Origin |
| SADC | Southern African Development Community |
| SCT | Single Customs Territory |
| TCCV | Technical Committee on Customs Valuation |
| TFA | Trade Facilitation Agreement |
| TLIP | Trade Logistics Information Pipeline |
| UNBS | Uganda National Bureau of Standards |
| UNCTAD | United Nations Conference on Trade and Development |
| UNCTE | United Nations Conference on Trade and Employment |
| WCO | World Customs Organization |
| WTO | World Trade Organization |

UNIT 1 : CUSTOMS CLEARANCE OF GOODS

1.0 UNIT OVERVIEW

1.1 Unit Description

This course unit is intended to enable the participants to identify the scope of cargo clearance; determine prohibited and restricted goods; determine general Customs declaration conditions; apply import and export procedures; process goods through Customs Bonded warehouse; identify Customs security bonds; and determine Customs offences and penalties.

1.2 Unit Summary Learning Outcomes

At the end of the unit, the trainee should be able to:

1. Identify scope of cargo clearance
2. Determine prohibited and restricted goods
3. Determine general entry conditions
4. Apply Import/ Export Procedures
5. Process goods through Customs Bonded warehouse
6. Identify Customs security bonds
7. Determine customs offences and penalties.

2.0 OVERVIEW OF CUSTOMS LAWS OF THE EAST AFRICAN COMMUNITY (EAC)

2.1 Specific Learning Outcomes

At the end of this topic, the trainee should be able:

- i. Describe Customs institutions and administration
- ii. Analyse Customs Laws
- iii. Describe Customs Instruments
- iv. Describe the scope and implication of the instruments (RKC, TFA, WCO SAFE, MRA)

2.2 Introduction

This topic will help learners to understand the various sources of Customs Law; Customs Organs and Institutions; and Customs Instruments. The East African Community Partner States are Kenya, Uganda, Tanzania, Rwanda, Burundi and South Sudan.

2.3 Sources of Customs Law

According to Article 39 of the Protocol for the Establishment of the East Africa Community (EAC) Customs Union, Customs Law include the following:

- i. Relevant provisions of the Treaty establishing the EAC;
- ii. Protocol on the establishment of the EAC Customs Union and its annexes;
- iii. Regulations and directives made by the Council;
- iv. Applicable decisions made by the court
- v. Acts of the Community enacted by the Legislative Assembly; and
- vi. Relevant principles of international law.

Customs law of the Community shall apply uniformly in the Customs Union except where otherwise provided in the Protocol.

2.3.1 Relevant provisions of the Treaty for the establishment of the East Africa Community

Three Partner States (Kenya, Tanzania and Uganda) agreed within the framework of the Treaty for the Establishment of the East African Community, which was signed on 30 November 1999 and came into force on 7 July 2000 (East African Community, 2021)¹. Article 5(2) of the Treaty states, “the Partner States undertake to establish among themselves and in accordance with the provisions of this Treaty, a Customs Union, a Common Market, subsequently a Monetary Union and ultimately a Political Federation in order to strengthen and regulate the industrial, commercial, infrastructural, cultural, social, political and other relations of the Partner States to the end that there shall be accelerated, harmonious and balanced development and sustained expansion of economic activities, the benefit of which shall be equitably shared.”

2.3.2 Protocol on the Establishment of the East African Community Customs Union

In tandem with provisions of the Article XXIV.8(a) of the GATT, Article 1(k) of the Revised Kyoto

¹ East African Community. (2021). Retrieved from <https://www.eac.int/customs>

Convention and Article 1(e) of the Istanbul Convention, the EAC Customs Union as established in the Protocol provides for elimination of Customs duties and other charges of equivalent effect imposed on imports; removal of non-tariff barriers to trade among the Partner States; and establishment and maintenance of a common external tariff in respect of all goods imported into the Partner States from foreign countries.

The Protocol on the Establishment of the East African Community Customs Union was signed by the three East African Heads of State on 2 March 2004 in Arusha, Tanzania. The Republics of Rwanda and Burundi joined the Customs Union in 2008 and started applying its instruments in July 2009 (East African Community, 2021²). In April 2016, the Republic of South Sudan joined the EAC and became a full member in September 2016.

2.3.3 Regulations and directives made by the Council

Subject to the provisions of the Treaty on

2 East African Community. (2021). Retrieved from <https://www.eac.int/customs>

Establishment of the EAC, the regulations, directives and decisions of the Council shall be binding on the Partner States, on all organs and institutions of the Community -other than the Summit, the Court and the Assembly within their jurisdictions- and on those to whom they may under this Treaty be addressed.

2.3.4 Applicable decisions made by the Court

Decisions of the East African Court of Justice on the interpretation and application of this Treaty shall have precedence over decisions of national courts on a similar matter. Partner States are legally required to immediately take the measures required to implement a judgment of the Court.

2.3.5 Acts of the Community enacted by the Legislative Assembly

a) The East Africa Community Customs Management Act (EACCMA) 2004

The EACCMA, 2004 makes provisions for the management and administration of Customs and for related matters. Its structure comprises of twenty-one parts, two hundred and fifty-three sections, and six schedules as follows:

| | |
|---|---|
| PART I: Preliminary provisions <ul style="list-style-type: none"> Short title, application and commencement Interpretation | PART II: Administration <ul style="list-style-type: none"> The Directorate of Customs and its functions Provisions relating to staff, Customs seal and flag Officers to have powers of Police and hours of attendance Offences by, or offences in relation to officers Exchange of information and common border controls |
| PART III: Importation <ul style="list-style-type: none"> Prohibited and restricted imports Power to prohibit, etc., imports Exemptions of goods in transit. Procedures on arrival Reports Arrival overland Entry, examination and delivery of cargo | PART IV: Warehousing of goods <ul style="list-style-type: none"> Dutiable goods may be warehoused Entry and removal of warehoused goods Operations in the warehouse Penalty for unlawfully taking, etc., warehoused goods Bonded warehouses |
| PART V: Exportation <ul style="list-style-type: none"> Prohibited and restricted exports Exemption of goods in transit Entry of cargo for export Vehicles departing overland Treatment of goods under transit and transshipment | PART VI: Departure and clearance of aircraft and vessels <ul style="list-style-type: none"> Clearance required for departure to foreign port Deficiency or surplus in cargo or stores |
| PART VII: Importation and exportation by post <ul style="list-style-type: none"> Application of Act to postal articles Time of entry of postal articles Registered courier companies to land, stores, etc. | PART VIII: Carriage coastwise and transfer of goods <p>Meaning of carriage coastwise and transfer</p> <ul style="list-style-type: none"> Loading, etc. of coastwise and transfer cargo Transire to be delivered on arrival Examination of coasting vessels and goods |

| | |
|--|---|
| PART IX: Provisions relating to securities <ul style="list-style-type: none"> • General provisions relating to giving of security • Enforcement of bonds | PART X: Liability to duty <ul style="list-style-type: none"> • Rates, etc., of duty • Preferential tariff treatment under COMESA and SADC • Exemption regime • Goods imported duty free liable to duty • Time of entry determines rate of duty • Value of goods for export • Allowance for tare • Agency notices • Anti-dumping and countervailing duties • Drawback, remission, rebate and refund |
| PART XI: Customs agency <ul style="list-style-type: none"> • Licensing of agency • Liability of duly authorized agent • Liability of owner for acts of agents | PART XII: Prevention of smuggling <ul style="list-style-type: none"> • Power to require vessels, etc., to bring to or to depart • Power to stop vehicles • Power to search persons • Power to require production books, etc. |
| PART XIII: Manufacturing Under Bond <ul style="list-style-type: none"> • Licensing of bonded factories • Manufacturer to provide facilities • Goods from bonded factory may be entered for home consumption | PART XIV: Export Processing Zones and Free ports <ul style="list-style-type: none"> • Goods entering Export Processing Zones or free ports • Designated areas in Export Processing Zones or a free ports |
| PART XV: Inward and Outward Processing <ul style="list-style-type: none"> • Procedure of Inward operations • Compensating products and rate of yield • Authorization for Outward Processing • Relief from payment of duty | PART XVI: Application of information technology <ul style="list-style-type: none"> • Customs formalities may be carried out by ICT • Unauthorized access to or improper use of Customs computerised system |
| PART XVII: Offences, penalties, forfeitures and seizures <ul style="list-style-type: none"> • Offence with violence • Offences related to prohibited, restricted and uncustomed goods • General penalty • Restoration of seizures | PART XVIII: Settlement of cases by the Commissioner |
| PART XIX: Legal proceedings <ul style="list-style-type: none"> • Actions by or against the Commissioner • Protection of witnesses • Power of officer to prosecute | PART XX: Appeals |
| PART XXI: Miscellaneous provisions | SCHEDULES: <ul style="list-style-type: none"> • First schedule: Declaration of Officer • Second schedule: Prohibited and Restricted Imports Generally • Third schedule: Prohibited and Restricted Exports Generally • Fourth schedule: Determination of Value of Imported Goods Liable to Ad Valorem Import Duty • Fifth schedule: Exemption Regime • Sixth schedule: Warrant of Distress |

EACCMA, 2004 takes precedence over the Partner States' laws with respect to any matter to which its provisions relate.

b) The East Africa Community Customs Management Regulations (EACCMR) 2010

In accordance to Section 251 of the EACCMA, 2004, the Council makes regulations generally giving effect to EACCMA's provisions and for conduct of any business relating to Customs. Some of the matters covered under this Regulations include importation; internal container depot; warehousing of goods;

exportation; departure and clearance of aircraft and vessels; importation and exportation by post; importation and exportation by registered couriers; carriage coastwise and transfer of goods; Customs agents; manufacturing under bond; and export processing zones. The structure of the EACCMR, 2010 comprises of fourteen parts and two hundred and twenty regulations, as listed in the table below.

| | |
|--|---|
| PART I: Preliminary Provisions <ul style="list-style-type: none"> • Citation and commencement • Interpretation. | PART II: Administration <ul style="list-style-type: none"> • Delegation of powers of Commissioner • Working days and hours. • Overtime fees • Fees to Customs revenue. • Customs Union Seal and Flag. |
| PART III: Importation <ul style="list-style-type: none"> • Arrival and Report of Aircraft and Vessel • Arrival Overland • Entry, Examination and Delivery | PART IV <ul style="list-style-type: none"> • Internal Container Depot |
| PART V <ul style="list-style-type: none"> • Warehousing of Goods • Bonded Warehouses • Government Warehouses | PART VI <ul style="list-style-type: none"> • Exportation • Entry Outward and Loading of Aircraft and Vessels • Departure Overland • Goods in transit or for transshipment • Goods in transit • Transshipment |
| PART VII <ul style="list-style-type: none"> • Clearance and general declaration for aircraft • Departure and Clearance of Aircraft and Vessels | PART VIII <ul style="list-style-type: none"> • Importation and Exportation by Post |
| PART IX <ul style="list-style-type: none"> • Importation and Exportation by Registered Couriers | PART X <ul style="list-style-type: none"> • Carriage Coastwise and Transfer of Goods |
| PART XI <ul style="list-style-type: none"> • Duties • Goods imported for temporary use or purpose • Duty Drawback • Remission or refund • Rebate • Refund | PART XII <ul style="list-style-type: none"> • CUSTOMS AGENTS |
| PART XIII <ul style="list-style-type: none"> • Manufacturing under Bond | PART XIV <ul style="list-style-type: none"> • Export Processing Zones |
| PART XV <ul style="list-style-type: none"> • Free Ports | PART XVI <ul style="list-style-type: none"> • Inward and Outward Processing • Inward processing • Outward processing |
| PART XVII <ul style="list-style-type: none"> • Settlement of Cases by the Commissioner | PART XVIII <ul style="list-style-type: none"> • Miscellaneous Provisions |
| SCHEDULES <ul style="list-style-type: none"> • First Schedule Consists of various customs forms used in the process of clearing goods • Second Schedule is the East African Community Customs Union Flag that symbolizes the unity among the Partner States | |

c) The East African Community Customs Management (Compliance and Enforcement) Regulations, 2012

The Council formulated the East African Community Customs Management (Compliance and Enforcement) Regulations (EACCMR), 2012 in accordance with Section 251 of the EACCMA, 2004 to address matters that concern Customs administration; cross-border cooperation; post clearance audit; authorized economic operators; and use and management of information. The EACCMR, 2012 has six parts and forty-one regulations.

2.3.6 Other Laws and Regulations impacting Freight Logistics Industry

Customs Administrations in the Partner States usually work with Partner Government Agencies (PGAs) in the clearance of imports and exports. It is important that a practitioner in the Freight Logistics industry understands the various national Laws and Regulations with respect to the PGAs, to ensure compliance. Such Laws and Regulations include those that concern standards of goods; physio-sanitary requirements; and pharmaceutical and poisons requirements.

In addition to the EACCMA, 2004 and its accompanying regulations EACCMR, 2010, practitioners in the Freight Logistics industry must be aware of national Laws and Regulations regarding establishment, registration and operation of Clearing and forwarding firms include:

- a) Provision of Company's Ordinance/Act with regards to establishing of a company. This differs in each Partner State
- b) Registration requirements from the registrar of companies.
- c) Business Licensing requirements from the specific government organs.
- d) Any other Laws or regulations necessary to be completed prior to starting a business.

2.4 Customs Organs and Institutions

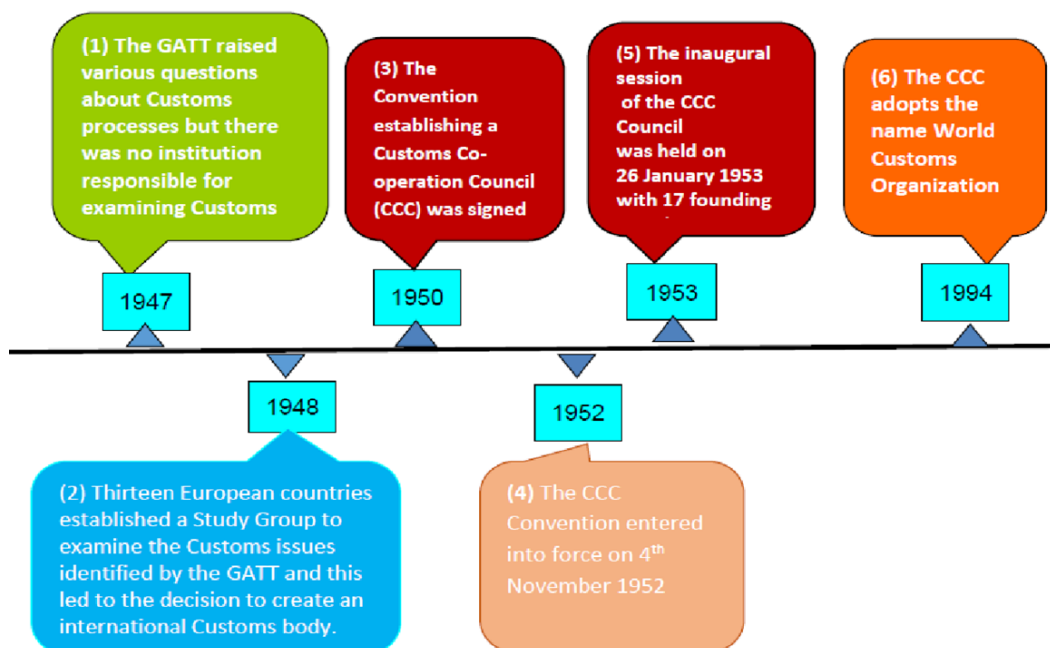
2.4.1 The World Customs Organization

The World Customs Organization (WCO) was established in 1952 as the Customs Cooperation Council. It is an independent intergovernmental body whose aim is to enhance effectiveness and efficiency of Customs Administrations. Currently, the WCO has 183 Member countries that process approximately 98% of the world's trade³. All the East African Partner States - Kenya, Uganda, Tanzania, Rwanda, Burundi and South Sudan- are Members of the WCO.

³ World Customs Organization. (2021). Retrieved from <http://www.wcoomd.org/en/about-us/what-is-the-wco/discover-the-wco.aspx>

CUSTOMS CLEARANCE OF GOODS

The following diagram illustrates the historical background of the WCO:



The WCO develops international standards, fosters cooperation and builds capacity to facilitate legitimate trade, to secure a fair revenue collection and to protect society, providing leadership, guidance and support to Customs administrations. The organization's structure consists of⁴:

- a) The Council - It is the supreme decision-making body of the WCO and convenes once a year. All Member States are represented in the Council.
- b) Policy Commission- The Policy Commission submits policy recommendations and the WCO Strategic plan to the Council. It comprises of thirty members and it meets twice a year.
- c) Finance Committee- It provides support and advice to the Policy Commission and Council in budgetary and financial matters. It comprises of seventeen Members and meets once a year.
- d) Audit Committee- Its responsibility is to undertake management audits. It comprises of six Members and meets once a year.
- e) The WCO Secretariat comprises of:
 - i. The Secretariat- The WCO headquarters are in Brussels, Belgium. The Secretariat staff assist in running daily operations of the organization, under the leadership of the Secretary General.
 - ii. The Secretary General- He provides leadership and executive management for the global Customs community's priorities.
 - iii. The Directorates- There are three Directorates in the WCO: Tariff and Trade Affairs Directorate (responsible for classification, valuation and rules of origin matters); Compliance and Facilitation Directorate (responsible for compliance, enforcement, procedures and trade facilitation matters); and Capacity Building Directorate (responsible for coordinating and delivering capacity building, technical assistance and training to WCO Members).

⁴ World Customs Organization. (2021). Retrieved from <http://www.wcoomd.org/en/wco-working-bodies>

WCO Working Bodies- Each Directorate consists of Working Bodies which help fulfil the mandate of their respective Directorate. Examples include Harmonized System Committee; Technical Committee on Customs Valuation; Technical Committee on Rules of Origin; Enforcement Committee; Permanent Technical Committee; Capacity Building Committee; Integrity Sub-Committee; and Private Sector Consultative Group.

2.4.2 The East African Community

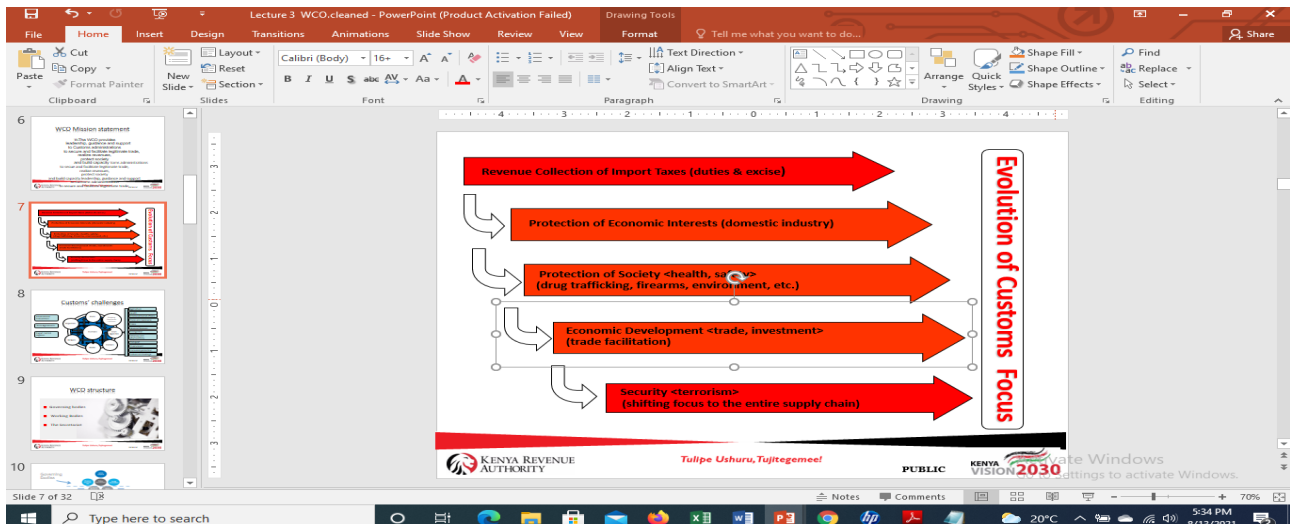
Article 9 of the Treaty on Establishment of the EAC provides for the following organs of the community:

- a) The Summit- It consists of the Heads of State who give general directions and impetus as to the development and achievement of the objectives of the Community.
- b) The Council- It consists of the Ministers responsible for East African Community Affairs of each Partner State; Minister of the Partner States as each Partner State may determine; and the Attorney General of each Partner State. The council is the policy organ of the Community.
- c) The Coordination Committee- It consists of the Permanent Secretaries responsible for East African Community affairs in each Partner State and such other Permanent Secretaries of the Partner States as each Partner State may determine. They submit reports and recommendations to the Council; implement decisions of the Council; and coordinate activities of the Sectoral Committees.
- d) Sectoral Committees- This Committees are responsible for preparation of comprehensive implementation programmes; monitoring of the implementation; and making recommendations to the Coordination Committee concerning the implementation.
- e) The East African Court of Justice- This is a judicial body which ensures the adherence to law in the implementation and application of and compliance with the Treaty. Upon request, the Court may give an advisory opinion to the Summit, the Council or a Partner State regarding a question of law arising from the Treaty.
- f) The East African Legislative Assembly- It comprises of nine members elected by each Partner State; and ex-officio members consisting of:
 - i. the Minister responsible for the EAC affairs from each Partner State;
 - ii. the Assistant Minister/ Deputy Minister/ Minister of State responsible for East African Community affairs from each Partner State; and
 - iii. the Secretary General and the Counsel to the Community.This is the legislative organ of the Community and shall among other functions, liaise with the National Assemblies of the Partner States on matters relating to the Community; and debate and approve the budget of the Community.
- g) The Secretariat- This is the executive organ of the Community which consists of the Secretary General, the Deputy Secretaries General; the Counsel to the Community; and such other offices as may be deemed necessary by the Council.

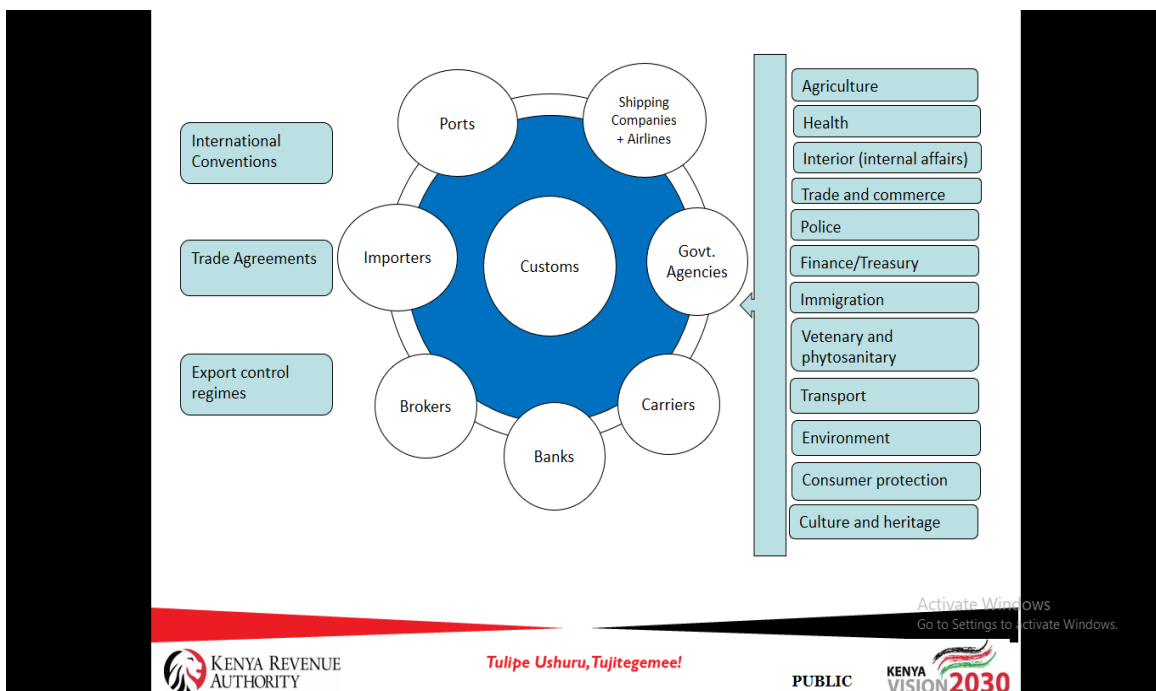
The organs and institutions of the EAC shall perform the functions, and act within the limits of the powers conferred upon them by the Treaty.

2.4.3 Customs Administrations in the Partner States

The four main roles of Customs Administrations globally include trade facilitation; revenue collection; protection of society; and collection of national statistics. The focus of Customs with regard to its roles has been evolving over the years as shown in the diagram below:



The following diagram shows the central role of Customs Administrations in the clearance of cargo at ports of entry/ exit:



2.5 Customs Instruments

The WCO has sponsored various Conventions and Agreements. Examples of Conventions and Agreements which relate to Customs clearance of goods include Customs Convention on ECS carnets for commercial samples; Customs Convention on the temporary importation of packings; Customs Convention on the temporary importation of professional equipment; Customs Convention concerning facilities for the importation of goods for display or use at exhibitions, fairs, meetings or similar events; Customs Convention on the ATA carnet for the temporary admission of goods; Customs Convention on the temporary importation of scientific equipment; Customs Convention on the temporary importation of pedagogic material; Revised Kyoto Convention; Nairobi Convention; Istanbul Convention; Customs Convention on Containers, 1972; WTO Agreement on Valuation; and WTO Agreement on Rules of Origin. Other instruments include WCO Recommendations, Declarations and Resolutions.

The section below will focus on three instruments which provide standards for clearance of goods. These include:

1. Revised Kyoto Convention (RKC), 1999
2. World Trade Organization (WTO) Trade Facilitation Agreement (TFA)
3. WCO SAFE Framework of Standards

2.5.1 Revised Kyoto Convention (RKC), 1999

RKC is an international agreement that provides a set of comprehensive Customs procedures to facilitate legitimate international trade while effecting Customs controls including the protection of Customs revenue and society. The RKC is the blueprint for modern and efficient Customs procedures in the 21st century. It is the main Customs facilitation instrument of the WCO. It deals with the following key principles⁵:

- i. Transparency and predictability of Customs actions;
- ii. Standardization and simplification of the goods declaration and supporting documents;
- iii. Simplified procedures for authorized persons;
- iv. Maximum use of information technology

- v. Minimum necessary Customs control to ensure compliance with regulations;
- vi. Use of risk management and audit based controls;
- vii. Coordinated interventions with other border agencies;
- viii. Partnership with the trade.

RKC is also referred to as “International Convention on the Simplification and Harmonization of Customs Procedures (as amended)”. The preceding Convention is the “Kyoto Convention” which was adopted in 1973 at the WCO Council Sessions in Kyoto, Japan and entered into force in 1974. The Protocol of Amendment to the 1973 Convention was adopted in 1999 and entered into force on February 3rd, 2006.

The structure of the RKC consists of:

- i. The full text of the body of the Convention;
- ii. The General Annex;
- iii. The Specific Annexes relating to specific Customs procedures and practices;
- iv. Guidelines to the Specific Annexes.

Benefits of the RKC to the Partner States’ economies include:

- i. Reduced transaction costs and avoidance of delays in the release and clearance process
- ii. Increased economic competitiveness
- iii. Promotion of foreign direct investment and development of industry
- iv. Increased participation of small and medium-sized enterprises in international trade
- v. Lower costs to consumers
- vi. Increased national revenue

Benefits of the RKC to the Trade Community include:

- i. Faster, predictable and efficient Customs clearance
- ii. Transparent procedures and appeals procedure
- iii. Greater facilitation for compliant traders

⁵ World Customs Organization. (2021). Retrieved from http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv.aspx

- iv. Lower compliance costs
- v. Enhanced competitiveness
- vi. Use of Information Technology

Benefits of the RKC to Partner States' Customs Administrations include:

- i. Enhanced Customs controls
- ii. Increased trade facilitation
- iii. More effective and efficient deployment of Customs resources
- iv. Reduced integrity problems
- v. Enhanced supply chain security

2.5.2 World Trade Organization (WTO) Trade Facilitation Agreement (TFA)

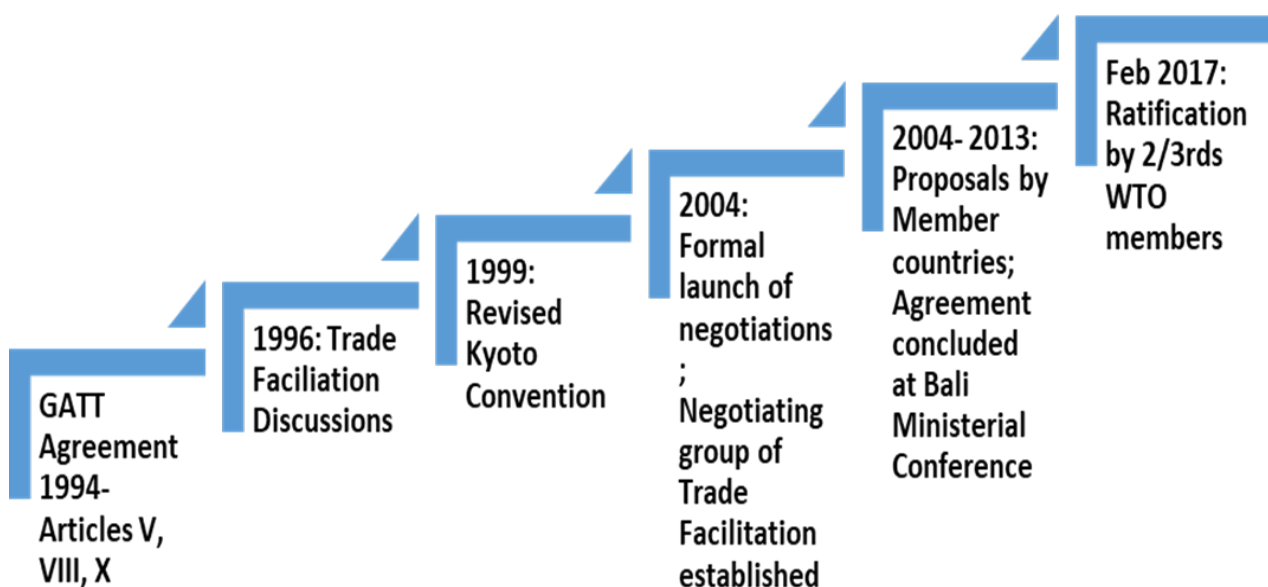
Trade facilitation is the simplification and harmonization of international trade procedures, which include activities, practices and formalities involved in presenting, collecting, communicating and processing data required for movement of goods in international trade. Trade facilitation simply means the avoidance of unnecessary trade restrictiveness⁶.

Trade facilitation has been increasingly necessitated by growth in worldwide trade; just-

6 World Trade Organization. (2012). Retrieved from https://gtad.wto.org/trta_subcategory.aspx?cat=33121

in-time production and delivery methods; need for countries to increase export potential; and need for countries to attract foreign investment. The WTO is an intergovernmental organization that deals with global rules of trade between nations. Its main objective is to ensure that trade flows smoothly, freely and predictably.

WTO members concluded negotiations at the 2013 Bali Ministerial Conference on the landmark Trade Facilitation Agreement (TFA), which entered into force on 22 February 2017 following its ratification by two-thirds of the WTO membership. The following diagram shows the milestones that led to the development of the WTO TFA:



The TFA contains provisions for expediting the movement, release and clearance of goods, including goods in transit. It also sets out measures for effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues. It further contains provisions for technical assistance and capacity building in this area⁷.

The WTO TFA structure consists of:

- i. Section I- Twelve articles regarding Trade Facilitation and Customs Cooperation (see below table for summary).

| | | |
|---|--|--|
| Article 1: Publication and availability of information | Article 5: Other measures to enhance impartiality, non-discrimination and transparency | Article 9: Movement of goods intended for import under customs control |
| Article 2: Opportunity to comment, information before entry into force and consultation | Article 6: Discipline on fees and charges imposed on or in connection with importation and exportation and penalties | Article 10: Formalities connected with importation and exportation and transit |
| Article 3: Advance rulings | Article 7: Release and clearance of goods | Article 11: Freedom of transit |
| Article 4: Procedure for appeal or review | Article 8: Border agency cooperation | Article 12: Customs cooperation |

Section II- Ten articles on Special and Differential Treatment for Developing Countries and Least-Developed Countries

- ii. Section III- Two articles on Institutional Arrangements and Final Provisions

It is expected that the WTO TFA will have the following impact on the Partner States:

- i. Reform of national procedures to ease trade and reduce red tape
- ii. Significant economic benefits in terms of added export potential

- iii. Increased foreign investment
- iv. Access to wider range of goods to customers
- v. Reduce total trade costs by at least 14% for low-income countries and more than 13% for upper middle income countries

⁷ World Trade Organization. (2021). Retrieved from https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm

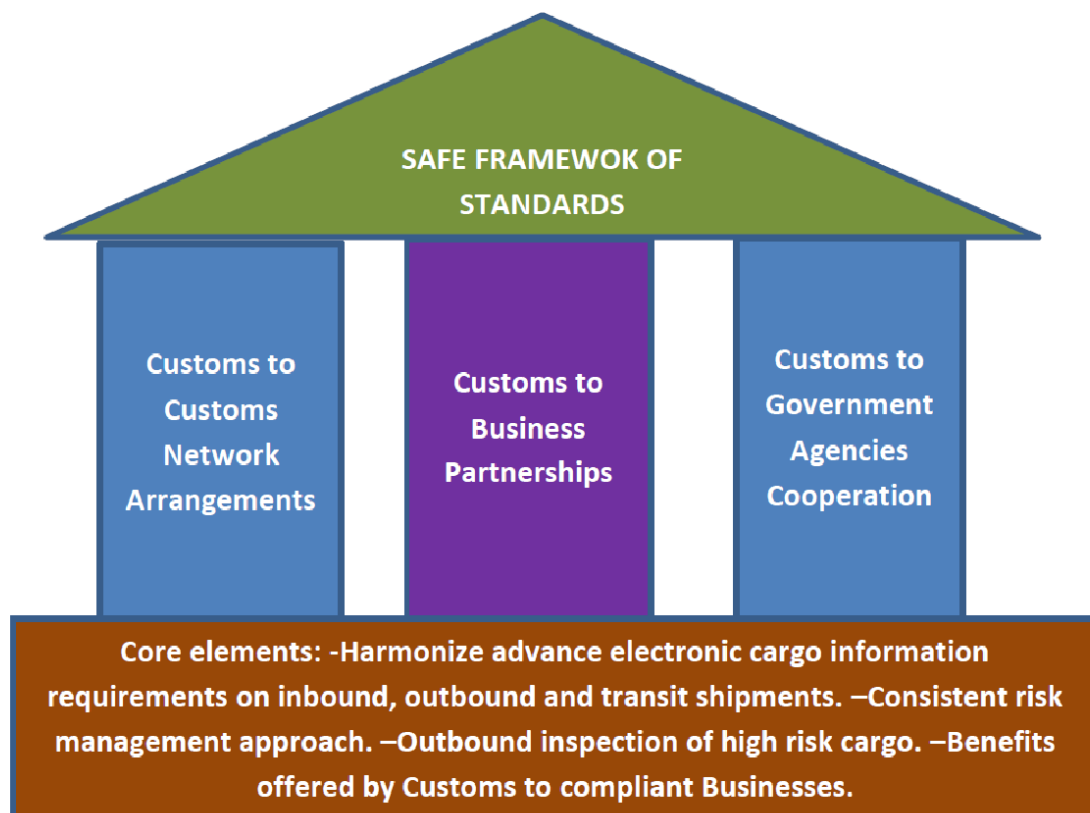
2.5.3 WCO SAFE Framework of Standards

This Framework of Standards was developed by the WCO to secure and facilitate global trade by helping international trade stakeholders to cooperate more effectively in order to improve supply chain security. The Standards serve as thresholds of what must be done by WCO Members.

The SAFE Framework aims to:

- i. Establish standards that provide supply chain security and facilitation at a global level to promote certainty and predictability.
- ii. Enable integrated and harmonized supply chain management for all modes of transport.
- iii. Enhance the role, functions and capabilities of Customs to meet the challenges and opportunities of the 21st Century.
- iv. Strengthen co-operation between Customs administrations to improve their capability to detect high-risk consignments.
- v. Strengthen co-operation between Customs administrations, for example through exchange of information, mutual recognition of controls, mutual recognition of Authorized Economic Operators (AEOs)², and mutual administrative assistance.
- vi. Strengthen co-operation between Customs administrations and other Government agencies involved in international trade and security such as through Single Window.
- vii. Strengthen Customs/Business co-operation.
- viii. Promote the seamless movement of goods through secure international trade supply chains.

The three pillars of the SAFE Framework of Standards are Customs to Customs network arrangements; Customs to Business Partnerships; and Customs to Government Agencies cooperation. See the illustration in the diagram below:



Numerous benefits accrue to Customs, Governments and Business as a result of the implementation of the SAFE Framework of Standards.

- i. Governments
 - Promote the seamless movement of goods through secure international trade supply chains, thus securing trade against terrorism and other transnational crimes;
 - Enhanced international trade will contribute to economic growth and development;
 - Modernization of Customs operations which will result to improved revenue collection and proper application of national laws and regulations;
 - Enable economic and social protection;
 - Improve foreign direct investment.
- ii. Customs
 - Exchange of timely and accurate information that will place Customs administrations in the position of managing risk on a more effective basis;
 - More effective management of risk that enables Customs to detect high-risk consignments;
 - Improved controls along the international trade supply chain and make for better and more efficient allocation of Customs resources;
 - Strengthened cooperation between Customs Administrations that enables Administrations to carry out controls earlier in the supply chain. For example, the Customs Administration at the country of exportation can conduct an inspection on behalf of the importing country's Customs Administration;
 - Mutual recognition of controls under certain circumstances which eliminates duplication and multiple reporting requirements.
- iii. Business
 - SAFE Framework takes account of, and is based on, modern international production and distribution models, thus it promotes international trade;
 - Authorized Economic Operators will

reap benefits, such as faster processing of goods by Customs, e.g. through reduced examination rates and expedited processing of their goods. This translates into savings in time and costs;

- Creation of one set of international standards helps to establish uniformity and predictability;
- Reduction of multiple and complex reporting requirements.

2.6 Authorized Economic Operators (AEO)

Authorized Economic Operators (AEO) is a World Customs Organization (WCO) Best practice, Customs Business model designed to reward players involved in the international supply chain who have demonstrated to be reliable partners of Customs. These partners must have a track history of compliance to Customs laws and regulations over time. Eligibility to join AEO is currently open to 2 categories;

- Clearing Agents
- Importers/Exporters/Manufacturers

AEO is a preferential customs clearing programme that allows trusted customs clients to enjoy:

- Preferential customs facilitation when clearing.
- Reduced time and cost at points of service.
- Customs certified secured and reliable trading partner when trading.

EAC Authorized Economic Operator (AEO)

The EAC regional **AEO** program was conceived by the Commissioners of Customs of the East African (EAC) countries of Burundi, Kenya, Rwanda, Tanzania and Uganda in 2006 after the adoption of the World Customs Organization (WCO) SAFE Framework of Standards by the WCO Council in 2005. The Commissioners' decision was in line with the EAC Protocol that requires the EAC region to set up a Customs Union as one of the building blocks for regional integration. The decision was also prompted by the consideration that since the AEO program is about trade facilitation and the security of the supply chain, traders and Customs

stood to gain more if the whole supply chain within the region is covered under one program.

The AEO program is designed to facilitate and enhance the experience of the **complaint trader** when undergoing Customs clearance processes. The simplified procedures for AEOs has had tremendous effect with regard to reducing the cost associated with the movement and clearance of goods. The EAC is currently pursuing mutual recognition with other trading blocs, a move which will lead to EAC AEOs enjoying more benefits when trading outside EAC region. Joining the Regional AEO program therefore opens the doors for unlimited opportunities and the key to unlock the potential of your freight forwarders.

The EAC Regional AEO program covers and is applicable in all the Partner States namely Burundi, Kenya, Rwanda, Tanzania and Uganda save for the Republic of South Sudan which was not a member Partner State of EAC at the commencement of the programme. However, plans are underway to operationalize the program in the Republic of South Sudan.

The regional AEO program operates under a common set of criteria, instruments, authorization process, benefits and monitoring system in all the Partner States. An applicant for AEO Status, irrespective of the Partner State therefore goes through the same set of criteria like her/his counterparts in other Partner States.

The authorization process can be summarized into a four-stage process as below;

1. The application is lodged with the national Customs administration, which takes it through the Authorization process.
2. Once satisfied that the applicant qualifies, the national Customs administration checks compliance records of the applicant with the Customs administrations in the other Partner States and approves the applicant's application.
3. The applicant is invited to sign a Memorandum of Understanding (MoU) which is done by the Customs Administration on behalf of EAC.
4. EAC Secretariat issues a certificate to the applicant.

AEO Benefits

1. Recognition as low risk company
2. Faster Clearance procedures with Customs
3. Automatic passing of declaration
4. No physical examination of goods, except for random or risk based interventions.
5. ECTS requirement waiver where applicable
6. Expedited payment of refund claim
7. Reduced Customs security where applicable
8. Priority to participate in Customs initiatives
9. Guaranteed renewal of Customs license
10. Priority treatment in cargo clearance chain
11. Waiver of movement bond requirements for AEO
12. Self-management of bonded warehouse.

2.7 Learning Activities

Review the following and discuss their implications to a Freight Forwarder:

1. Revised Kyoto Convention (RKC), 1999
2. World Trade Organization (WTO) Trade Facilitation Agreement (TFA)
3. WCO SAFE Framework of Standards
4. Authorized Economic Operator (AEO)

2.8 Self-Assessment Questions and Activities

1. Explain the various sources of Customs Laws in the East Africa Community.
2. Describe any two similarities in the roles of the World Trade Organization and the World Customs Organization.
3. Describe any two differences in the roles of the World Trade Organization and the World Customs Organization.
4. Namesome of the reform and modernization initiatives undertaken by the Customs Administration in your country, that are aligned to provisions of the Revised Kyoto Convention, 1999.
5. Explain the importance of the WCO SAFE Framework of Standards to Traders.

2.9 References

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- WCO Revised Kyoto Convention
- WCO SAFE Framework of Standards
- Protocol on the establishment of the EAC Customs Union
- The EAC Customs Management Act, 2004
- The EAC Customs Management Regulations, 2010
- The EAC Customs Procedures Manual
- The EAC Customs Training Material, 2011
- The EAC Duty Remission Regulation, 2008

3.0 IMPORT CUSTOMS PROCEDURES

3.1 Specific Learning Outcomes

At the end of this topic, the trainee should be able to:

- Explain the meaning of Import Customs procedures
- Discuss the categorization of imports
- Identify the importation documents
- Explain the import procedures under different customs regimes

3.2 Overview of Import Customs Procedures

Customs procedures in the Partner States are aligned to the Customs Law. This chapter will help learners to gain knowledge and skills on Customs procedures relating to arrival and reporting of conveyances; prohibitions and restrictions of imported goods; unloading and removal of imports; entry, examination and delivery of imports; exemption, duty remission, drawback, refund and rebates.

Imports can be categorized as follows:

- Direct imports
- Temporary imports
- Re-imports
- Warehoused goods

Below is a diagrammatic illustration that generally summarizes the import procedure:



Many Customs Administrations are adopting authorized trader schemes such as the Authorized Economic

Operator (AEO) scheme, to encourage voluntary compliance of traders as well as foster security in the supply chain of goods. Some of the incentives given to AEO traders in the EAC region include preferential treatment during clearance of goods to foster faster clearance. For example, AEO goods may not be examined by Customs because the owner of goods and their Customs Agent and Transporter have a proven track record of trustworthiness and compliance. AEOs are subjected to periodic post clearance audit.

Definition of Terms:

- “Approved place of loading” and “approved place of unloading” mean any quay, jetty, wharf, or other place, including any part of a Customs airport, appointed by the Commissioner by notice in the Gazette to be a place where goods may be loaded or unloaded.
- “Boarding station” means any place appointed by the Commissioner by notice in the Gazette to be a place for aircraft or vessels arriving at or departing from any port or place to bring to for the boarding by or the disembarkation of officers.
- “Cargo” includes all goods imported or exported in any aircraft, vehicle or vessel other than such goods as are required as stores for consumption or use by or for the aircraft, vehicle or vessel, its crew and passengers, and the bona fide personal baggage of such crew and passengers.
- “Customs area” means any place appointed by the Commissioner under section 12 for carrying out customs operations, including a place designated for the deposit of goods subject to customs control.
- “Customs warehouse” means any place approved by the Commissioner for the deposit of unentered, unexamined, abandoned, detained, or seized, goods for the security thereof or of the duties due thereon.
- “Master” includes any person for the time being having or taking charge or command of any aircraft or vessel.
- Import means to bring or cause to be brought into the Partner States from a foreign country.
- “Port” means any place, whether on the coast or elsewhere, appointed by the Council by notice in the Gazette, subject to any limitations specified in such notice, to be a port for the purpose of the Customs laws and, in relation to aircraft, a port means a Customs airport.
- “Proper officer” means any officer whose right or duty it is to require the performance of, or to perform, the acts referred to in this Act.
- “Sufferance wharf” means any place, other than an approved place of loading or unloading at which the Commissioner may allow any goods to be loaded or unloaded.
- “Transit shed” means any building or premises appointed by the Commissioner in writing for the deposit of goods subject to Customs control.
- “Uncustomed goods” includes dutiable goods on which the full duties due have not been paid, and any goods, whether dutiable or not, which are imported, exported or transferred or in any way dealt with contrary to the provisions of the Customs laws.

3.3 Arrival and Reporting of Aircraft, Vessel, Vehicle and Other Conveyances

Section 21-32 of EACCMA, 2004 as read with Regulations 11-38 of EACCMR, 2010 provide the legal basis for Customs procedures on arrival and reporting of conveyances to a Partner State. The conveyances, whether laden or in ballast, arriving at any port in a Partner State are under Customs control. The persons in charge of these conveyances must therefore act in accordance with Customs Law.

3.3.1 Procedure on Arrival of Aircraft or Vessel

Sec 24(1) of EACCMA, 2004 requires that the master or agent of every aircraft or vessel whether laden or in ballast to make a report on a prescribed form to the proper officer at any port or other place especially allowed by the proper officer, of an aircraft or vessel, of its cargo or stores, and of any package for which there is no Bill of lading, as follows:

- i. in the case of a vessel, not less than 24 hours before arrival from a foreign port;

- ii. in the case of an aircraft, immediately after take-off from a foreign port destined to a port in a Partner State.

The ocean/air cargo manifest is therefore submitted to the proper officer of the Partner State to which a conveyance is destined, at least 24 hours before arrival of a vessel and upon wheels up in the case of an aircraft. A cargo manifest is also referred to as a Summary Declaration. The shipping lines and air lines adhere to international best practices to ensure that all required data is captured.

For example, an ocean cargo manifest's general segment will contain information such as the voyage number; vessel name; nationality of flag; actual port of loading; expected date of arrival; and port of destination. The specific item segment provides details about the cargo on board a vessel or aircraft. Examples of the cargo details include Bill of Lading/ Air waybill number; marks and numbers; consignor and consignee addresses; goods' description; number of packages; cargo weight and volume; tare weight of the container; and seal number.

With regards to a cargo manifest, the following is the role of a Freight Logistician:

- a) To submit inward reports of all aircrafts, vessels and vehicles arriving from or leaving for a foreign port;
- b) To liaise with a proper officer in case there is need to amend a manifest and to give reasons for the amendment to the satisfaction of the officer;

The following is required of a master of every aircraft or vessel upon arrival in a Partner State:

- a) To only direct the aircraft or vessel to land, touch at, or enter a port;
- b) To come as quickly as possible to the port or an approved place of mooring or unloading, without touching any other place;
- c) To avail the aircraft or vessel for boarding;
- d) To remain at the proper place and not depart from there, except where there is authority to depart directly to another approved place of mooring or unloading, or directly to another port on place in the Partner State, or to a foreign port, in accordance with EACCMA, 2004;
- e) To ensure that after departure of aircraft or vessel, he/she does not land any good within

the Partner State except in accordance with EACCMA, 2004, or with the permission of the proper officer, or for some cause which the master can explain to the satisfaction of such proper officer.

3.3.2 Arrival Overland

Cargo may arrive overland by motor vehicles, trains, pipeline or other means such as animals. A person in charge of conveying goods must bring them into a Partner State through a port appointed under Section 11 of EACCMA, 2004 except where otherwise permitted. Section 29 of EACCMA, 2004 provides that the person in charge of a vehicle arriving overland, whether or not conveying goods, shall:

- a) report his or her arrival to the officer stationed at the frontier port at which he or she entered the Partner State;
- b) furnish on the prescribed form such information as may be required concerning the vehicle or any such goods;
- c) make and subscribe a declaration (form C17) as to the truth of all particulars contained in such form;
- d) fully and immediately answer all relevant questions put to him or her by the proper officer;
- e) produce all consignment notes or other relevant documents demanded of him or her by the proper officer;
- f) make as provided in the Customs laws, due entry of the vehicle and of any such goods.

Where cargo arrives on board a cross-border (international) train, the Customs area is the border railway station. The station master or other person in-charge of the railway station acts on behalf of the Railway Company or Corporation in fulfilling Customs formalities.

Section 30 of EACCMA, 2004 provides that the station master or any other person in-charge of the railway station, on the arrival of the train at any port in a Partner State, shall submit the following documents:

- a) Copies of invoices;
- b) Consignment notes;
- c) Way bills or other documents relating to the goods in wagons

The station master or other officer in-charge of the railway station must not allow any goods to leave the Customs area without the permission of the proper office because removal of such goods without permission constitutes an offence. In addition, he/she shall not, without written permission of the proper officer, deliver to the consignee or other person goods required to be entered at any other station.

Section 31 of EACCMA, 2004 provides that a person conveying goods by any other means, other than by vehicle and train, is required to fulfil obligations of reporting, documentation, answering questions and declaration, similar to those cited under Section 29 of EACCMA, 2004.

Section 32 of EACCMA, 2004 specifically provides for wet cargo, such as petroleum and gas, arriving overland by pipeline. The operator of the pipeline is required to:

- i. Report and record the nature and quantities imported through the pipeline, in the manner prescribed by the Commissioner;
- ii. Provide apparatus and appliances that enable proper record keeping and report writing, as specified by the Commissioner.

3.3.3 Boarding & Rummaging

The proper officer is supposed to first board a vessel, with the exception of the port pilot, health officer and any other public officer who in the exercise of their duties and duly authorized, may board the vessel before the proper officer.

Upon boarding a vessel or aircraft, the proper officer may do the following:

a) Ask questions

The master or agent of every aircraft or vessel is obliged by the Law to answer fully and immediately all such questions relating to the aircraft or vessel, its cargo, stores, baggage, crew, and passengers, as may be put to him or her by the proper officer. The answers provided by the master or agent are verified against the presented documentation. Secondly, the answers may provide the proper office with additional information which may be useful for risk analysis.

b) Collect required documentation for clearance of the vessel or aircraft

The master or agent of every aircraft or vessel is obliged by the Law to produce all such books and documents in his or her custody or control relating to the aircraft or vessel, its cargo, stores, baggage, crew, and passengers, as the proper officer may require. The documents required by the proper officer include:

- i. Inward report (form C2 in case of a vessel and form C4 in case of an aircraft)- It contains the particulars of a vessel or aircraft, such as nationality, tonnage, number of crew, port of landing etc.
- ii. Parcels list (form C3) - It indicates a list of all packages or parcels (other than passengers' accompanied baggage) imported, and for which no bill of lading has not been issued.
- iii. Crew list - the list contains details (e.g. full name; gender and nationality) of the master and of each officer and member of the crew.
- iv. Passenger list (form C5)- the list contains details of the passengers disembarking and of those remaining on board an aircraft or vessel.
- v. Declaration Advise Consumable Stores (form C6)- It provides details of all the dutiable stores on board a vessel or aircraft.
- vi. Crew Declaration (form C7)- It is a declaration by each crew member of all the dutiable goods in his/her possession.
- vii. Last port of call list- It lists the vessels last ten calls at port facilities in chronological order (the most recent call is first on the list).
- viii. Arms and Ammunitions list- It gives details of all arms and ammunitions on board a vessel or aircraft.
- ix. Narcotics list- It gives details of all the narcotics on board a vessel or aircraft.

It is expected that the cargo manifest will have been submitted to the proper officer prior to the arrival of a vessel or aircraft, in accordance with Section 24 of EACCMA, 2004.

- c) **Seal dutiable stores-** According to Regulation 23 of EACCMR, 2010, all stores which are required for the use of the crew and passengers of an aircraft or vessel during its stay in a port shall, on request, be produced separately to a proper officer, who may either approve the quantity produced or require a portion or the whole of the stores to be placed under seal. The duty-free allowable stores per crew member are provided for in Regulation 24 of EACCMR, 2010 and can be summarized by the following table:

| Cigarettes and tobacco in any form | Potable spirits the importation of which is not prohibited | Wine or beer |
|--|--|----------------------------------|
| 200 cigarettes or 200 grams of tobacco in any form | 750 ml | 3 litres of either wine or beer. |

Any portions over and above the duty free allowable stores are sealed by the proper officer to avoid the dutiable goods from being illegally landed. Breaking of the seal without express approval by the proper officer is an offence.

- d) **Process a certificate of clearance** - Once the proper officer is satisfied that all requirements in accordance to the Law are met, including the payment of USD 3, he/she shall issue a certificate of clearance (form C14 in case of a vessel; form C4 in case of an aircraft).
- e) **Rummaging** - On a risk basis, the proper officer may rummage a vessel, which entails conducting an intense search of the vessel or aircraft. Section 246 of EACCMA, 2004 gives the proper officer powers to search any aircraft or vessel. Regulations 25 of EACCMR, 2010 requires that the crew provide all necessary assistance to the proper officers conducting the search.

3.3.4 Inward Report Amendment and Supplementary Inward Report

Section 24 (4) and 24 (5) of EACCMA, 2004 provides that the proper officer may permit the master or agent of an aircraft or vessel to amend the destination, ownership or status of goods specified in the inward report, or to amend an obvious error or omission in the report.

The following is the Customs procedure for amendment of an inward report:

- Shipping line/ agent or Airline/agent submits a request for amendment of manifest;
- All required details for amendment are filled in and two supporting documents are attached: a manifest corrector and affidavit;
- Reasons for amendment are given online by the Shipping line/ agent or Airline/ agent;
- Customs officer approves amendment;
- Shipping line/ agent or Airline/agent pays amendment fee of USD 10.

Also noteworthy is that amendment of inward report may be necessitated by excess landed or short landed cargo, as provided for in Regulation 26 of EACCMR, 2010. Short landed cargo is cargo that was manifested but is not physically on board a vessel/ aircraft for unloading whereas excess landed cargo is cargo that was not manifested but it is physically on board a vessel for unloading. For approval to be granted in the case of short landed cargo, the Customs officer must satisfy himself/ herself that the goods:

- were not shipped; or
- were discharged and landed at a previous port; or
- were overcarried and landed at a subsequent port; or
- having been overcarried, have been returned to and landed at a port in the region on the return voyage, or
- by some other aircraft or vessel which they were overcarried; or
- were lost at sea; or
- were stolen or destroyed before the aircraft or vessel arrived within EAC ports.

Excess landed cargo is manifested using a supplementary manifest. The following steps give the Customs:

- a) Shipping line/ agent or Airline/agent creates a supplementary manifest either through a manual or automated process as prescribed by the Commissioner;
- b) The supplementary manifest is registered once the shipping line/ air line counter checks and confirms that all the details captured are correct;
- c) Customs officer verifies the submitted supplementary manifest and approves it, if all details are found to be okay;
- d) Shipping line/ agent or Airline/agent pays supplementary manifest fee, USD 10.

3.3.5 Coasting Vessels and Aircraft

Goods conveyed by sea or air from any part of a Partner State to another part thereof shall be deemed to be carried coastwise. Aircraft or vessel conveying such goods by air or sea shall be deemed to be coasting aircraft or coasting vessel. The conveyance of goods by sea includes conveyance by inland waters, such as Lake Victoria.

Section 96 to 109 of EACCMA, 2004 as read together with Regulations 123 to 130 of EACCMR, 2010 provides the legal framework for clearance of coasting conveyances and goods carried coastwise. The Customs procedure for clearance of coasting vessels or aircraft is as follows:

- a) Upon arrival of a coasting vessel or aircraft at a port in a Partner State from a foreign place, the proper officer may permit such aircraft or vessel to carry goods coastwise from such port to another port within a Partner State, or to carry goods on transfer from such port to a port in another Partner State, upon the presentation by the master of a transire.
- b) The master or agent of a coasting vessel aircraft or vessel intending to depart coastwise or carrying goods for transfer, shall deliver to the proper officer an account in triplicate on the prescribed form containing the particulars of all cargo taken on board for carriage coastwise or for transfer; and the original thereof, dated and signed by the proper officer, shall constitute the grant of transire for the carriage of the goods specified therein. In the case of a coasting aircraft or coasting vessel, the transire shall serve as the certificate of clearance for such aircraft or vessel for the coastwise voyage;

- c) When any goods are carried coastwise or are transferred under the provisions of this section, then the loading, unloading and delivery of the goods shall be subject to any regulations and to such conditions as the Commissioner may impose;
- d) Goods for carriage coastwise or transfer shall be unloaded from or loaded on to any aircraft or vessel at an approved place of loading or at a sufferance wharf;
- e) All goods which have been unloaded or landed from a coasting vessel or a coasting aircraft shall, if the proper officer so requires, be conveyed forthwith to a Customs area or transit shed;
- f) All goods which have been transferred by road shall, if the proper officer so requires, be conveyed forthwith, to a Customs house or to such other place as the proper officer may direct;

3.4 Prohibited and Restricted Imports

Customs Administrations in the EAC are mandated to facilitate international trade as well as protect the society from illicit goods, which include prohibited and restricted goods which have not met the required conditions. Prohibited goods are goods that are not allowed to be imported, exported or transferred into or outside any of the Partner States. According to EACCMA, 2004, “prohibited goods means any goods the importation, exportation, or carriage coastwise, of which is prohibited under this Act or any law for the time being in force in the Partner States.”

Restricted goods are goods whose importation or exportation is subject to meeting specific conditions before they are allowed to be cleared through Customs. The importation or exportation of such goods is controlled by specific government agencies depending on their nature. According to EACCMA, 2004, “restricted goods are any goods the importation, exportation, transfer or carriage coastwise must abide with any set conditions regulated by or under the Customs laws”. This means that clearance for importation, exportation or carriage coastwise of restricted goods shall only be granted against import permits, certificates or any other authority issued by a relevant agency.

3.4.1 Legal Framework for Prohibited and Restricted Imports & Goods Carried Coastwise

Section 18 of EACCMA, 2004 provides that goods specified in Part A of the Second Schedule are prohibited goods and the importation thereof is prohibited, whereas goods specified in Part B of the Second Schedule are restricted goods and the importation thereof, save in accordance with any conditions regulating their importation, is prohibited.

Section 19(1) of EACCMA, 2004 provides the Council's powers to, by order published in the Gazette:

- a) Amend the Second Schedule so as to provide that the importation of any goods or class of goods—is prohibited, either generally or in or in relation to any Partner State;
- b) Amend the Second Schedule so as to provide that the importation of any goods or class of goods is restricted;
- c) Provide that the importation into a Partner State, or any area thereof, of any goods, or class of goods, shall be prohibited or shall be restricted;
- d) Limit in respect of a Partner State the application of the provisions of the Second Schedule in respect of all or any of the goods specified therein; and thereupon in respect of such goods the provisions of this Act shall apply as if such goods are, or are not, as the case may be, included in the Second Schedule;
- e) Prohibit or restrict the importation of any goods, or class of goods, either generally or in any particular manner, either from all places or from any particular country or place.

Section 20 of EACCMA, 2004 provides that goods imported in transit or transshipment, or as stores of any aircraft or vessel, shall not be prohibited or restricted unless:

- a) The goods are within paragraph 2 of Part A of the Second Schedule of EACCMA, 2004 (that is: false money, counterfeit currency notes and coins and any money with no established standard in weight or fineness); or

- b) The goods are expressly prohibited or restricted in the Act (EACCMA, 2004).

Notwithstanding, with regard to transit and transshipment goods, section 86 of EACCMA, 2004 as read with Regulation 56 of EACCMR, 2010 provides that, "The Commissioner, may in the public interest or for the protection of public morality, safety, health or hygiene, or animal or plant health prohibit, restrict or otherwise control the entry of certain goods or means of transport from entering a Partner State."

The Second Schedule of EACCMA, 2004 has two parts, A and B, which provide a list of generally prohibited and restricted imports, respectively.

Part A - Prohibited Goods

- 1) All goods the importation of which is for the time being prohibited under this Act, or by any written law for the time being in force in the Partner State.
- 2) False money and counterfeit currency notes and coins and any money not being of the established standard in weight or fineness.
- 3) Pornographic materials in all kinds of media, indecent or obscene printed paintings, books, cards, lithographs or other engravings, and any other indecent or obscene articles.
- 4) Matches in the manufacture of which white phosphorous has been employed.
- 5) Any article made without proper authority with the Armorial Ensigns or Court of Arms of a partner state or having such Ensigns or Arms so closely resembling them as to be calculated to deceive.
- 6) Distilled beverages containing essential oils or chemical products, which are injurious to health, including thijone, star arise, benzoic aldehyde, salicyclic esters, hyssop and absinthe. Provided that nothing in this paragraph contained shall apply to "Anise and Anisette" liqueurs containing not more than 0.1 per centum of oil of anise and distillates from either pimpinella anisum or the star arise allcium verum.
- 7) Narcotic drugs under international control.
- 8) Hazardous wastes and their disposal as provided for under the base conventions.

- 9) All soaps and cosmetic products containing mercury.
- 10) Used tyres for light Commercial vehicles and passenger cars.
- 11) The following Agricultural and Industrial Chemicals:

(a) Agricultural Chemicals

- i. 2.4 - T
- ii. Aldrin
- iii. Captafol
- iv. Chlordaneform 1 Chlorobenzilate DDT
- v. Dieldrin
- vi. 1.2- Dibroacethanel (EDB)
- vii. Flouroacelamide
- viii. HCH
- ix. Hiplanchlor
- x. Hoscachlorobenzene
- xi. Lindone
- xii. Mercury compounds
- xiii. Monocrolophs (certain formulations)
- xiv. Methamidophos
- xv. Phospharmion
- xvi. Methyl - parathion
- xvii. Parathion

(b) Industrial Chemicals

- xviii. Crocidolite
- xix. Polychlorinated biphenyls (PBB)
- xx. Polychlorinated Biphenyls (PCB)
- xxi. Polychlorinated Terphenyls (PCT)
- xxii. Tris (2,3 dibromopropyl) phosphate
- xxiii. Methylbromide (to be phased out in accordance with the Montreal Protocol by 2007).
- 12) Counterfeit goods of all kinds
- 13) Plastic articles of less than 30 microns for the conveyance or packing of goods.
- 14) Worn underwear garments of all types

Part B- Restricted Goods

- 1) All goods the importation of which is for the time being regulated under this Act by any written law for the time being in force in the Partner State.
- 2) Postal franking machines except and in accordance with the terms of a written permit granted by a competent authority of the Partner State.

- 3) Traps capable of killing or capturing any game animal except and in accordance with the terms of a written permit granted by the Partner State.
- 4) Unwrought precious metals and precious stones.
- 5) Arms and ammunition specified under Chapter 93 of the Customs Nomenclature.
- 6) Ossein and bones treated with acid.
- 7) Other bones and horn - cores, unworked defatted, simply prepared (but not cut to shape) degelatinized, powder and waste of these products.
- 8) Ivory, elephant unworked or simply prepared but not cut to shape.
- 9) Teeth, hippopotamus, unworked or simply prepared but not cut to shape.
- 10) Horn, rhinoceros, unworked or simply prepared but not cut to shape
- 11) Other ivory unworked or simply prepared but cut to shape.
- 12) Ivory powder and waste.
- 13) Tortoise shell, whalebone and whalebone hair, horns, antlers, hooves, nail, Claws and beaks, unworked or simply prepared but not cut to shape, powder and Waste of these products.
- 14) Coral and similar materials, unworked or simply prepared but not otherwise Worked shells of molasses, crustaceans or echinoderms and cattle-bone, Unworked or simply prepared but not cut to shape powder and waste thereof.
- 15) Natural sponges of animal origin.
- 16) Spent (irradiated) fuel elements (cartridges) of nuclear reactors.
- 17) Worked ivory and articles of ivory.
- 18) Bone, tortoise shell, horn, antlers, coral, mother-of pearl and other animal carving Material and articles of these materials (including articles obtained by moulding).
- 19) Ozone Depleting Substances under the Montreal Protocol (1987) and the Vienna Convention (1985).
- 20) Genetically modified products.
- 21) Non-indigenous species of fish or egg of progeny.
- 22) Endangered Species of World Flora and Fauna and their products in accordance with CITES March 1973 and amendments thereof.
- 23) Commercial casings (Second hand tyres).

- 24) All psychotropic drugs under international control.
- 25) Historical artefacts.
- 26) Goods specified under Chapter 36 of the Customs Nomenclature (for example, percussion caps, detonators, signalling flares).
- 27) Parts of guns and ammunition, of base metal (Section XV of the Harmonised Commodity Description and Coding System), or similar goods of plastics under Chapter 39 of the Customs Nomenclature.
- 28) Armoured fighting vehicles under heading No 8710 of the Customs Nomenclature.
- 29) Telescope sights or other optical devices suitable for use with arms, unless mounted on a firearm or presented with the firearm on which they are designed to be mounted under Chapter 90 of the Customs Nomenclature.
- 30) Bows, arrows, fencing foils or toys under Chapter 95 of the Customs Nomenclature.
- 31) Collector's pieces or antiques of guns and ammunition under heading No 9705 or 9706 of the Customs Nomenclature.

Apart from the regional prohibitions and restrictions, Partner States have the power to prohibit/ restrict goods. However, such prohibitions or restrictions should be publicized or officially communicated to the Partner States in order to uphold harmony in trade and foster compliance. The national orders for prohibition or restrictions may be done by the Commissioner or Partner Government Agencies (PGAs). The list below shows some of the PGAs in each Partner State:

- i. Tanzania
 - a. Tanzania Foods and Drugs Authority
 - b. Tanzania Bureau of standards
 - c. Fair Competition Commission
 - d. Ministry of Home Affairs- Police force
 - e. National Environmental Management Council (NEMC)
- ii. Kenya
 - a. Agriculture and Food Authority
 - b. Kenya Bureau of Standards
 - c. Public Health
 - d. National Environmental Management Authority (NEMA)
 - e. National Radiation Management Board

- iii. Rwanda
 - a. Rwanda Bureau of Standards
 - b. Rwanda Environmental Management Authority (REMA)
 - c. Ministry of Internal Affairs – Police Force department
- iv. Burundi
 - a. Burundi Bureau of Standards
 - b. Ministry of security
 - c. Ministry of Health
- v. Uganda
 - a. Uganda National Bureau of Standards (UNBS)
 - b. Wildlife Authority
 - c. National Drugs Authority
 - d. Ministry of Internal Affairs -Narcotics Squads division

3.4.2 Conventions Governing Prohibitions and Restrictions

There are various international conventions regulating production, possession and movement of certain goods. Countries signatories to these conventions must adhere to them and fulfil all requirements. There are conventions relating to narcotic drugs, psychotropic substances, intellectual property etc.

- a) International conventions on narcotic drugs
 - i. Shanghai Convention, 1909

The control of narcotic drugs has been of global concern ever since the first international conference on the subject, held in Shanghai in 1909. The international control system has been built up step by step, continuing from 1920 under the auspices of the League of Nations, and since 1946 by the United Nations. A series of treaties adopted under the auspices of the UN require that:

 - Governments exercise control over production and distribution of narcotic drugs and psychotropic substances.
 - Governments combat drug abuse and illicit traffic.
 - Governments maintain the necessary administrative machinery and report to international organs on their actions.
 - ii. The Single Convention on Narcotic

Drugs, 1961

This convention replaced the treaties concluded before the Second World War on opiates, cannabis and cocaine. At present, control is exercised over more than 116 narcotic drugs, including opium and its derivatives as well as synthetic narcotics such as methadone and pethidine.

iii. The Convention on Psychotropic Substances, 1971

This Convention controls drugs not covered by previous treaties. Substances under control include; hallucinogens, amphetamines, barbiturates, non-barbiturate sedatives and tranquilizers. About 105 psychotropic substances are controlled, most of them in pharmaceutical products acting on the central nervous system.

The Convention on psychotropic substances has judged some of these substances to be particularly dangerous, such as LSD, and made calls to place them under even stricter control than narcotic drugs. Furthermore, the convention calls for substances with very wide legitimate medical use to be controlled in a less stringent way not to hamper their availability for medical purposes but on the other hand to avoid their diversion and abuse.

iv. The United Nations Convention against illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988

This convention urges the member countries to:

- Prevent the laundering of money obtained from illicit trafficking.
 - Provide concrete instruments for international law enforcement cooperation.
 - Provide legislation covering the tracing, freezing and confiscation of proceeds and property derived from drug trafficking.
- b) CITES- Convention on International Trade for Endangered Species
 - c) Basel (1992)-hazardous wastes /disposal
 - d) Stockholm (2004)-Persistent Organic Pollutants (POPs)

- e) Rotterdam-prior informed consent on chemicals
- f) Montreal (1987)-Ozone depleting substances
- g) Chemical Weapons Conventions
- h) Lusaka Agreement Task Force (LATF)

3.4.3 Reasons for Prohibition or Restriction of Goods

The following are reasons that necessitate prohibition or restriction of goods:

- a) Political reasons- Importation of seditious publications which may incite the public to revolt from a lawful elected government, are prohibited. On importation such publications should be seized and an offence instituted against the offender.
- b) Health reasons- Importation of dangerous drugs, likely to be abused is prohibited unless imported by a specialist, approved by the Ministry of Health. Other goods prohibited or restricted for health reasons include distilled beverages that are injurious to health; soaps and cosmetic products containing mercury; and worn underwear garments.
- c) Economic reasons- Importation of false money and counterfeit sterling or coin is prohibited due to the adverse effects that such goods can have on the economy. Some goods are prohibited and restricted in order to protect local industries in the Partner States. Examples include used tyres for light commercial vehicles and passenger cars and counterfeit goods.
- d) Safety and Security reasons- Importations of unsafe matches, lethal weapons, silencers, fire arms, flick knives are prohibited. Arms and ammunition other than military are restricted save by fulfilling the conditions of restriction such as, obtaining import license from the Police.
- e) Environmental and agricultural reasons- Several agricultural chemicals are prohibited to protect the soils as well as protect the society from their adverse health effects.
- f) Social reasons- Importation of indecent or obscene prints, books, cards, lithographs and other materials of similar nature are prohibited.

- g) Protection of wildlife- Trade in endangered species; ivory; bones, horns and tissues; and marine life is controlled by restriction.

3.5 Unloading and Removal of Dry and Wet Cargo

These are places appointed for unloading goods which are subject to Customs control. Imported goods are goods under Customs control, as provided for in Section 16 of EACCMA, 2004.

3.5.1 Legal Framework for Unloading of Cargo

Section 11 of EACCMA 2004 provides for appointment of ports by the Council's notice in the Gazette, fixing the limits of ports, Customs airports and places of loading and unloading within ports. Unlike in Section 11 where the Council appoints ports, Section 12 of EACCMA 2004 provides that the Commissioner by notice in the Gazette appoints:

- a) Boarding stations
- b) Customs areas
- c) Sufferance wharves
- d) Transit sheds
- e) Internal container depots
- f) Among others

In practice, the entry and exit to these Customs areas is restricted as well as supervised.

Section 33 of EACCMA, 2004 provides that with the written permission of the proper officer, the following goods may be unloaded:

- a) duly entered goods
- b) unentered goods as prescribed by the Commissioner
- c) goods to be transferred from one vessel to another
- d) goods reported for re-exportation unloaded to another aircraft or vessel

The unloading of cargo should take place at an approved place of unloading or at a sufferance wharf. Unloaded/ landed goods are goods under Customs control (Section 16 of EACCMA 2004). According to Section 33(3) of EACCMA, 2004, unloaded goods should be conveyed to a Customs area, and if the officer so requires, the goods must be deposited into a transit shed or in a Customs warehouse. According to Section 33(4) of EACCMA, 2004, goods shall not be removed from any part of a Customs areas or from a transit shed or a Customs warehouse unless

such goods have been duly reported and entered and authority for the removal or delivery has been given by the proper officer.

The following is the Customs Procedure for unloading of cargo at a sufferance wharf:

- a) Duly enter goods in accordance to Section 2(2) of the EACCMA 2004;
- b) Fill in form C10 requesting the proper officer for permission to unload cargo (see appendix I, a);
- c) Master/ Agent of an aircraft or vessel to pay for costs related to transportation and accommodation of the proper officer, in the course of his/her service at the sufferance wharf;
- d) Cargo may be unloaded from any aircraft or vessel arriving from a foreign port at all times;
- e) Goods are conveyed to a Customs area, and if the proper officer requires, goods must be deposited to a Transit shed or Customs warehouse;
- f) Goods conveyed to a Customs area; transit shed or Customs warehouse are deemed to be on board the vessel. The Master or Agent of the vessel shall be responsible for the goods, except in cases where goods are handed over to an owner of a transit shed who is not an agent of the importing aircraft/ vessel.

3.5.2 Landing Permit

As earlier learnt, Landing permit is required for goods declared as parcels using a parcel list. The information about the value, classification and taxes with respect of the goods are entered on the reverse of Landing permit. According to Regulations 22 of the EACCMR, 2010 the master of a vessel or aircraft or their assigned agents can make application to break bulk prior to making an inward report and to unload goods prior to entry, using Form C8.

3.5.3 Goods in Transit Shed

Goods in a transit shed are deemed to be in the importing vessel/aircraft until they are delivered and the owner or agent shall continue to be responsible.

- i. Where goods reported for discharge are not duly unloaded and deposited in a transit shed or Customs area the master/

- agent must pay the duty thereof unless he/she explains to the satisfaction of the proper officer.
- ii. The owner of vessel or aircraft or his agent, or the transit shed owner who fails to account for the goods in his/ her custody commits an offence.
 - iii. The owner of vessel or aircraft or the owner of a transit shed is liable to pay for the reshipment or for destruction of the goods condemned.
 - iv. The owner or agent of an aircraft or vessel or owner of a transit shed who fails to meet the costs of reshipment or destruction of any condemned goods commits an offence.

3.5.4 Goods Reported to be unloaded but not unloaded

Where goods which are supposed to be unloaded and the goods are in effect not unloaded in a transit shed, the masters or agent of the aircraft or the vessel shall pay duty on the goods unless acceptable explanation is given to the proper officer.

3.5.5 Shipwrecked or Damaged Cargo

The master of an aircraft or vessel accidentally forced to land in the East African Community States must report immediately on the cargo and stores to the nearest Customs officer or Administrative Officer. The cargo and stores of an abandoned vessel or aircraft will be subjected to seizure unless the master or agent gives satisfactory explanation to the proper officer.

In case of loss or wreck of ships or aircraft master or agent of aircraft or vessels shall, with all reasonable speed make report of such aircraft or vessel and its cargo and stores to the nearest officer or administrative officer. (Section 28)

3.6 Entry, Examination and Delivery of Import Cargo

3.6.1 Entry of Goods

According to Section 2(2)(a) of EACCMA, 2004, goods shall be deemed to be entered when the entry in the prescribed manner is made and lodged by the owner and any duty due or deposit required under this Act in respect of the goods has been paid, or

security has been paid, or security has been given. This means that goods are deemed to have been entered if they are declared in the prescribed form; duties due paid or deposit to secure goods paid/ given. Section 2(2)(b) further clarifies that goods shall be deemed to be entered for home consumption when they have been declared for use in a Partner State, other than temporary use, and the provisions of paragraph (a) have been fulfilled.

Section 34(1) of EACCMA, 2004 requires that goods be entered within twenty-one days after the commencement of discharge or in the case of vehicles, on arrival or such further period as may be allowed by the proper officer. Cargo that remains unentered after lapse of twenty-one days after the commencement of discharge, shall be liable to Customs warehouse rent as provided for in Section 34(4) of EACCMA, 2004. In addition, cargo must be removed from the port of discharge within twenty-one days, otherwise it is deemed to be in a Customs warehouse (Section 34(5) of EACCMA, 2004.

Cargo may be entered for:

- a) Home consumption;
- b) Warehousing;
- c) Transshipment;
- d) Transit; or
- e) Export processing zones.

It is the duty of the owner to furnish with the entry full particulars and provide supporting documentary evidence for the goods referred to in the entry, in compliance to Section 34(2) of EACCMA, 2004. This means that the onus to prove correctness of particulars furnished in the entry lies on the owner and not on Customs. Examples of supporting documents include, but are not limited to:

- Bill of Lading/ airway bill/ road manifest
- Packing List
- Commercial Invoice
- Freight Invoice
- Insurance Debit Note
- Certificate of Export
- Certificate of Conformity
- Certificate of Origin
- Import Declaration Form
- Motor Vehicle Logbook
- Certificate of Roadworthiness
- Required permits/ licenses
- Chemical Analysis Report for imported chemicals
- Proof of payment e.g. Telegraphic Transfer; Letter of Credit etc.

- Taxpayer Identification Number issued by Revenue Authority
- Certificate of Registration/ Certificate of Incorporation/ National Identity Card
- Declaration of Value, Form C36- This is a statement by the importer on the terms of trading between him/her and his/her foreign supplier. The responsibility of completing the form lies with the owner of goods and not on the Customs Agent. The form is presented in two (2) parts called Certificate A and Certificate B, respectively. An importer who is not related to the supplier completes Certificate A while an importer who is related to the supplier completes Certificate 'B'.

Section 34(3) of EACCMA, 2004 provides that import goods may be entered before arrival of vessel, aircraft or vessel. This provision enables Customs Administrations in the Partner States to facilitate “pre-arrival processing” of goods. This helps to reduce clearance time and costs, among other benefits.

Exceptions are made for goods which may be cleared by Customs without an entry. Section 36(1) of EACCMA, 2004 expressly lists the goods:

- Mail bags and postal articles
- Goods which are the bon fide personal baggage of the passengers
- Human remains
- Diplomatic bags
- Bullions, currency notes, coin or perishable goods may be cleared without an entry, subject to an undertaking being given by the owner of goods to furnish the necessary entry within 48 hours of the time of delivery.

Section 37(1) provides that an owner of goods may lodge a provisional entry in the absence of sufficient documents or information concerning goods. The Commissioner of Customs in a Partner State may require that the duties payable on goods be secured either by a cash deposit, bank guarantee or bond. The owner is required to furnish full particulars and perfect entry within three months, or such further period as the proper officer may require.

The uses of a Customs Declaration (entry) include:

- a. Tax assessment
- b. Tax payments or arrange for payments of any relevant taxes and dues

- c. Determination of bond in force (BIF)
- d. To process the documents across the various institutions timely,
- e. Obtain genuine and authentic clearance from various institution involved in clearing process.

In order to facilitate international trade, it is very important that the layout of the Customs Declaration used by all Customs administrations be standardized. For this reason, Customs administrations are required by the Revised Kyoto Convention to conform to the UN layout key which prescribes the size of the form and the minimum data to be provided on the Declaration. The use of the UN layout key has led to the development of the Single Administrative Document for use by Customs Administrations. Regulations 39 of EACCMR, 2010, provides that imported goods other than goods imported for temporary use shall be entered using form C17.

Data items on form C17 include:

- Importer details
- Exporter details
- Declarant details
- Processing office
- Manifest number
- Date of arrival
- Agent details
- Mode of transport
- Nationality of transport
- Marks & numbers
- Description of goods
- Customs Value
- Total gross weight
- Net weight
- Unit of quantity
- Country of origin
- Rate of duty
- Duty Payable
- Other Charges
- Grand total payable
- Exchange rate
- Commodity code
- Regime code
- CPC code
- Type of packing
- Frontier office
- Place of Discharge
- Country of consignment
- Place of discharge

Customs regimes are given numerical codes that identify the general type of Customs transactions for which declarations are made. However, the codes have alphabetical character prefixes which may differ from one Partner State to another.

The following are the different types of import Customs Regimes:

- | | |
|---------------------------|---|
| • Imports for home use | 4 |
| • Temporary Imports | 5 |
| • Re-imports for home use | 4 |
| • Warehousing | 7 |

On the other hand, the Customs Procedure Codes (CPC) are the extended digit codes that identify the specific Customs transaction being undertaken. The CPC codes vary from one Partner State to another depending on the electronic Customs business processing system in use. Below are examples of specific transactions under their respective Customs regime:

Imports for home use:

- Imports for home use duty paid
- Provisional Import Declaration
- Release of perishables or other goods
- Imports for home use tax free by tariff
- Ex-warehouse home use duty paid
- Ex-warehouse home use duty paid for regional market
- Ex-warehouse home use tax free
- Ex-warehouse home use duty exempt under 3rd schedule of the EACCMA, 2004
- Home use after temporary importation in unaltered state
- Home use after temporary importation for repair
- EX-EPZ home use
- Ex-MUB home use
- Imports for home use duty exempt under 3rd schedule to the EACCMA, 2004

Temporary imports:

- Temporary importation for return in unaltered state
- Temporary importation for repair

Re-imports:

- Re-importation of goods after temporary export for renovation or repair, where repair charge has been raised

- Re-importation of goods after temporary export for renovation or repair, where no repair charge has been raised
- Re-importation of goods after temporary export, where the goods have substantially changed their character on tariff classification
- Re-importation of rejected or returned exports

Warehousing:

- Warehousing of goods
- Warehousing of goods for regional market
- Warehousing of goods for crude petroleum products
- Ex-warehouse removal
- Entry into an MUB from foreign
- Entry into an EPZ from foreign
- Entry into an MUB of home produced goods
- Entry into EPZ of home produced goods
- Transfer from one MUB to another
- Transfer from one EPZ to another

Before registering an entry, a Customs Agent must ensure that:

- a) All particulars are correctly and completely filled in;
- b) Particulars are consistent with the supporting documents;
- c) Tax payable and rate of taxes are correct;
- d) Goods are not prohibited imports;
- e) Restrictions, if any, are complied with.

The Customs Administrations in the Partner States have adopted various risk management measures to ensure that revenue is safeguarded; society is protected; while at the same time trade is facilitated. In this regard, entries are assessed against a set risk criteria and categorized as either high risk, medium risk or low risk.

3.6.2 Duty Assessment on Imports

The term “duty” as used in EACCMA, 2004 is an all-encompassing term that includes any cess, levy, imposition, tax, or surtax, imposed under this Act. This means that although the term “duty” is often used interchangeably in common conversation with the term “tax”, the former is a more encompassing term as compared to the latter. Customs Administrations collect various duties on behalf of their respective governments. Examples include import duty, export duty, value added tax,

excise duty, surcharge tax, import declaration fees, other fees and levies.

According to Section 2(2)(a) of EACCMA, 2004, goods are deemed to be entered when an entry is made in the prescribed manner and lodged by the owner and any duty due or deposit required in respect of the goods paid or given.

Under the Kyoto convention it is stated that the *National legislation shall define the circumstances when liability to duties and taxes is incurred* or the point in time to be taken into consideration for the purpose of determining the rates of duties and taxes. Section 120(1) of EACCMA, 2004, states that duty shall be paid at the rate in force at the time when the goods liable to such duty are entered for home consumption. Notwithstanding, Section 120(3) states that where goods are entered in accordance with Section 34 before the arrival at the port of discharge of the aircraft or vessel in which such goods are imported, the import duty upon the goods shall be paid at the rate in force at the time of arrival of such aircraft or vessel at such port of discharge.

Illustrations:

- A. Suppose ABC Limited imports a 1x20 ft. consignment of cotton fabric from India. The vessel arrives the port of Mombasa on 30th June and the Customs Agent enters the goods on 2nd July. Suppose there was an upward adjustment of import duty rate from 10% to 25%, with effect from 1st July that year, the prevailing duty rate applicable for the cotton fabric consignment will be 25%, which was the prevailing duty rate at the time when goods were entered for home consumption. This is in accordance to Section 120(1) of EACCMA, 2004.
- B. Suppose that ABC Limited imported the same 1x20 ft. consignment of cotton fabric from India. Although the vessel was expected to arrive on 30th June, it arrives on 2nd July. The Customs Agent enters the goods on 30th June with the expectation of the vessel's arrival on that day. Suppose there is an upward adjustment of import duty rate from 10% to 25%, with effect from 1st July that year. The prevailing duty rate will be the rate prevailing when the goods arrive, 25%, in accordance with Section 120(3) of EACCMA, 2004.

There are three types of Customs tariff:

- a) Specific duty- Duty imposed on measures of quantity e.g. millilitres; litres; kilograms; grams; units; etc. This type of tariff is not sensitive to changes in value of goods.
- b) Ad valorem duty- This type of duty rate is a percentage that is levied on Customs value of goods. There are three common duty rate bands in the EAC region:
 - 0% (mainly raw materials, agricultural products; farm machinery, implements and tools, solar equipment, mining equipment and other products used for economic activities that the Council wishes to promote in the EAC region);
 - 10% (mainly semi-finished products and fully processed inputs for manufacturing); and
 - 25% (mainly finished products).

Products that attract ad valorem rates higher than 25% are likely to be those that the EAC Council is discouraging their importation for various reasons which may be economic, environmental, safety and health, etc. For example, Kanga has an import duty rate of 50% (EAC CET 2017 version).

In practice, most tariffs in the EAC CET are ad valorem, and traders consider this type of duty more transparent and flexible since it allows for the volatility in price movements.

- c) Composite duty- This duty rate is made up of a combination of specific and ad valorem duty rates, and the rate that gives the higher duties is selected for application. This type of duty rate is common for sensitive items as listed in Schedule 2 of the EAC Common External Tariff. Example: worn items of clothing have a duty rate of 35% or USD 0.40/kg whichever is higher ((EAC CET 2017 version).

A Customs Agent should determine the duty to be charged on an imported consignment by:

- a) Properly classifying the goods to establish the applicable duty; and
- b) Determining the basis on which duty is calculated e.g. Customs value or a specific measure of quantity, or both; and
- c) Establishing whether goods qualify for preferential tariff treatment based on their origin;
- d) Determining whether the owner of goods or the imported goods are subject to any exemptions of duty;
- e) Assessing the total duties payable.

Computation of Duty for a Single Item Consignment

Illustration:

XYZ Limited, domiciled in Uganda, has imported 10,000 litres of Whiskey from Russia. From the commercial invoice, FOB value is USD 5000, insurance USD 200 and Freight charges USD 900.

Rate of import duty- 25%

Rate of Excise duty- 65%

Rate of VAT- 16%

Exchange rate USD-Ushs. 3,527

Assume that no other fees or levies are charged.

Solution:

Determine Customs value which is the CIF amount in the local currency:

$CIF = Cost + Insurance + Freight$

$CIF (USD) = USD 5,000 + USD 200 + USD 900 = USD 6,100$

$CIF (Ushs) = 6,100 * 3,527 = Ushs 21,514,700$

Compute the Import Duty:

$Import\ duty\ (ID) = ID\ rate * Customs\ value(CIF)$

$ID = 0.25 * 21,514,700 = Ushs 5,378,675$

Compute the Excise Duty:

$Excise\ duty\ (ED) = ED\ rate * ED\ value\ (Customs\ Value + Import\ duty)$

$ED = 0.65 * (21,514,700 + 5,378,675) = Ushs 17,480,694$

Compute the VAT:

$VAT = VAT\ rate * VAT\ Value\ (CIF+ID+ ED)$

$VAT = 0.16 * (21,514,700 + 5,378,675 + 17,480,694) = Ushs 7,099,851$

Sum up all the duties payable:

$Total\ tax\ liability = Import\ duty + Excise\ duty + VAT$

$Total\ tax\ liability = Ushs 29,959,220$

Computation of Duty for Multiple Items Consignment

The Customs Value for each item in a consignment must be declared independently on the Customs Declaration (entry) and the aggregate of the customs values reflects as the “Total Customs Value” of the consignment. The Declarant may face a challenge to determine customs value for each item in a consignment when there are shared costs for all items, such as insurance and freight. In such a case, the factor method is used to apportion the shared costs to each item.

Illustration:

The table below shows an extract of JKL Limited's invoice.

| Item | Item Description | Quantity | Unit Price (USD) |
|------|----------------------|--------------|------------------|
| 1 | Water Proof Footwear | 10,000 pairs | 18.00 |
| 2 | Woollen Headgear | 2500 pcs | 2.30 |

Additional Information:

- For each of the items, import duty is 25% and VAT is 16%
- Insurance charged-USD 300; Sea Freight cost incurred is USD 950
- Currency exchange rate is one US dollar to 100 Kenya shillings

Required:

- The FOB values for items 1 and 2
 $\text{FOB (foot wear)} = 10,000 \text{ pairs} \times \text{USD } 18 = \text{USD } 180,000$
 $\text{FOB (headgear)} = 2,500 \times \text{USD } 2.30 = \text{USD } 5,750$
- The factor for allocation of insurance and freight cost (*round off your answer to four decimal places*)
 $\text{Factor} = (\text{Total CIF in local currency} / \text{Total FOB value in foreign currency})$
 $\text{CIF in USD} = \text{FOB (footwear)} + \text{FOB (headgear)} + \text{Insurance} + \text{Freight}$
 $\text{CIF in USD} = 180,000 + 5,750 + 300 + 950 = 187,000$
 $\text{CIF in local currency} = 187,000 \times 100 = 18,700,000$
 $\text{Factor} = 18,700,000 / 185,750 = 100.6729$
- Customs value in local currency for each item
 $\text{Customs Value (CV) per item} = \text{FOB} \times \text{Factor}$
 $\text{CV (footwear)} = 180,000 \times 100.6729 = 18,121,131$
 $\text{CV (headgear)} = 5,750 \times 100.6729 = 578,869$
- The Grand total revenue that was due and payable by the importer at the time of importation.

| Footwear | Headgear |
|---|--|
| Import duty = $0.25 \times 18,121,131 = \text{Kshs } 4,530,283$ | Import duty = $0.25 \times 578,869 = \text{Kshs } 144,718$ |
| VAT = $0.16 \times 22,651,414 = \text{Kshs } 3,624,227$ | VAT = $0.16 \times 723,587 = \text{Kshs } 115,774$ |
| Total duties (footwear) = Kshs 8,154,510 | Total duties (headgear) = Kshs 260,492 |
| Total duties payable = 8,415,002 | |

Under the Kyoto convention, in order for importers and brokers to be able to establish what the actual rate is on the determined date, there should be a published list of the rates for exchanging foreign currencies to the domestic currency on that particular day in question for each import transaction. Customs should not be arbitrary in preparing these lists and they should be market based. This means that the exchange rates should be sought from the Central bank of the concerned country.

Under Section 122 of EACCMA, 2004, the rate of exchange to be used for determining the equivalent of a Partner State currency of any foreign currency shall be the selling rate last notified by the Central Bank of the respective Partner State when an entry is presented to and accepted by the proper officer.

The following are useful considerations in determination of duty/tax liability:

a) Adjustment for fractions of a dollar

The Kyoto convention states that National legislation shall specify a minimum value and/or a minimum amount of duties and taxes below which no duties and taxes will be collected. However, the collection and payment of duties and taxes should not be required for negligible amounts of revenue that incur costly paperwork, both for the Customs administration and the importer/exporter. Customs administrations must establish and specify in national legislation amounts below which duties and taxes need not be collected or paid. According to Section 124 of EACCMA, 2004, where the total amount of duty computed with reference to any one Customs document-

- is equivalent to 1.5 dollars or less, no duty shall be collected;
- exceeds the equivalent of 1.5 dollars and includes a fraction of a dollar the fraction shall be treated as a complete dollar and duty shall be collected.

b) Computation of Duty on gross weight of package

Section 125 of EACCMA, 2004, states that where goods liable to duty according to weight are imported in any package and the goods are intended for sale, or are normally sold retail, in the package then, if the package-

- is not marked or labelled with the net weight of the contents; or
- is not commonly sold as containing, or as reputed to contain, a specific quantity or

weight, and in either such case, the owner of the goods is unable to satisfy the proper officer of the correct net weight thereof, Then the goods shall be liable to duty according to the gross weight of such package and its contents.

c) Computation of Duty on reputed quantity

Section 126 of EACCMA, 2004, states that where goods liable to a specific duty are imported in any package and the goods are intended for sale or are normally sold retail, in the package, then, if the package-

- is marked or labelled as containing a specific quantity of such goods; or
- is commonly sold as containing, or as reputed to contain a specific quantity of the goods,

then the package shall be deemed to contain not less than such specific quantity.

d) Allowance for Tare

Section 128 of EACCMA, 2004, states that for purposes of the computation of the duty to which goods are liable, the Commissioner may fix the allowance for tare that may be granted and the conditions under which any such allowance may be granted. Tare is the weight of a container or package when empty.

e) Duty on package in exceptional cases

According to Section 129 of EACCMA, 2004, where goods are imported or exported in any package which, in the opinion of the Commissioner-

- is not the normal or proper package of the goods; or
- is designed for use, subsequently to such importation or exportation, other than as a package for any goods of the same or a similar nature,

the package shall be liable to duty as if it were a separate article and shall, for all the purposes of the Customs laws be deemed to be a separate article. This legal provision is the basis on which duties are levied on shipper's owned containers.

Current Retail Selling Price (CRSP) Method for Used Motor Vehicles

Customs Administrations aim at levying duties in a transparent, fair and predictable manner. Considering the various dynamics that affect pricing of second hand/ used motor vehicles, some Customs Administrations in the EAC have adopted the current retail selling price (CRSP) method. This

method involves the Customs Administrations obtaining local retail selling prices for motor vehicles from respective car manufacturers or their designated dealers.

Determination of Customs Value using the CRSP method:

| | |
|---|------|
| CRSP as read from manufacturer's list | xxx |
| Less standard profit margin | (xx) |
| Less depreciation of the motor vehicle | (xx) |
| Less VAT charged at importation | (xx) |
| Less excise duty charged at importation | (xx) |
| Less import duty charged at importation | (xx) |

Customs value xxx

Once the customs value of the motor vehicle is determined, the Customs Agent should apply the appropriate duty rates and compute the duties due. Where the transaction value of the used motor vehicle is higher than the customs value computed through the CRSP method, the higher value is selected for purposes of computing the payable duties.

The CRSP list, the depreciation schedule and computation worksheet is made available to the public, to facilitate compliance and foster transparency. Below is an example of a depreciation schedule used in Kenya:

| DEPRECIATION SCHEDULE FOR USED MOTOR VEHICLES (DIRECT IMPORTS) | |
|--|-----|
| 0 - 6 months | 5% |
| 6 - 12 months | 10% |
| 1 - 2 years | 15% |
| 2 - 3 years | 20% |
| 3 - 4 years | 30% |
| 4 - 5 years | 40% |
| 5 - 6 years | 50% |
| 6 - 7 years | 60% |
| 7 - 8 years | 70% |

Computation of Customs Warehouse Rent

Section 34(4) of EACCMA, 2004, states that where any goods remain unentered within the twenty-one-day period specified under subsection (1), then such goods shall, if the proper officer so requires, be removed by, or at the expense of, the agent of the aircraft or vessel in which such goods were imported to a Customs warehouse. Further to this provision, Section 34(5) of EACCMA, 2004 states that where entered goods are not removed from the port of discharge after the expiry of the twenty-one days prescribed under subsection (1), the goods shall be deemed to be in a customs warehouse.

Section 2 of EACCMA, 2004, defines a customs warehouse as "any place approved by the Commissioner for the deposit of unentered, unexamined, abandoned, detained, or seized goods

for the security of the duties due thereon." If the circumstances so demand, the proper officer may order that goods be deposited in a place other than the designated Customs warehouse. Such goods will then be deemed to be deposited in a Customs warehouse, and this action is referred to as "warehousing in situ".

The twenty-one days, are working days and therefore, weekends and public holidays are excluded. This means that the Customs warehouse date (CWD) is the twenty-second day from the date of discharge.

Customs Warehouse Rent = Goods' CBM * No. of Rent days * Rate per CBM * Exchange Rate

Where CBM is cubic measurement

The Commissioner may waive the whole or any

part of the rent charges (Regulation 85 of EACCMR 2010). Customs warehouse rent waivers should only be considered in exceptional or extraordinary circumstances.

Goods deposited in a Customs warehouse may be disposed through the following actions:

- Public Auction
- Destruction
- Private Treaty
- As Commissioner deems fit e.g. donations to orphanages, hospitals etc.

Section 42 (4) of EACCMA 2004 states that where any goods are sold through auction, then the proceeds thereof shall be applied in the order set out below in the discharge of—

- (a) the duties, if any;
- (b) the expenses of removal and sale;
- (c) the rent and charges due to the Customs;
- (d) the port charges; and
- (e) the freight and any other charges.

3.6.3 Examination and Release of Goods

Examination of documents and goods refers to checking the correctness of the information provided and inspection of the actual goods. According to Section 16(2) of EACCMA, 2004, all goods that are subject to Customs control may be stopped at any time and examined by a Customs officer.

Section 41 of EACCMA, 2004 provides that entered goods, may in the presence of the owner, be examined by the proper officer to determine the accuracy of the entry made. Examination of goods may be categorized into two approaches:

- a) Intrusive examination of goods e.g. physical verification of goods which may be partial verification or 100% verification.
- b) Non-intrusive examination of goods e.g. use of scanners

In practice, Customs Administrations in the Partner States conduct physical verification of goods in the presence of the owner, but this is not a mandatory requirement.

The main purpose of examination of goods by Customs, is to verify the completeness and/or correctness of the declaration made by the owner of goods. Such verification will aim to ascertain whether:

- a) The goods in the consignment match the

quantity, value, description, and origin declared on the entry.

- b) That the goods are not prohibited imports.
- c) That the conditions governing the importation of any restricted goods have been complied with.
- d) That any discrepancies between the entry and the goods are accounted for before the goods are released.

Under exceptional circumstances, requests for examination to take place at the importer's premises (or such other place as may be convenient) may be authorized on application. Categories of goods in respect of which this procedure may be applied include:

- a) Large consignments such as large machinery, household effects, etc.
- b) Consignments requiring special or expert handling such as radioactive materials.
- c) Consignments that are specially packed as to make it impossible to examine them at the freight shed.
- d) Perishable goods.

During examination of goods, a Customs Agent must prioritize safety. For example, the Agent should ensure that they wear protective gear; do not handle unknown substances with bare hands; and to read the dangerous goods' signs and take required caution before verifying the goods.

It may be necessary to extract samples after examination of goods for the following purposes:

- i. Customs purpose- to facilitate the involvement of other experts in the determination of the nature of goods for purposes of their correct classification; application of Customs and other controls; and or their positive identification at some future time in accordance to Sections 157(d) & 241 of EACCMA, 2004; or
- ii. Importer purpose- to confirm that the goods are in good shape or are supplied according to order, in accordance to Section 136 of EACCMA, 2004.

Section 105(3) provides for examination of any goods which have been unloaded from any aircraft or vessel after carriage coastwise or which are brought to any port or place to be loaded onto any aircraft or vessel for carriage coastwise in a Partner State. For the purposes of the examination, the officer may

require the owner of the goods to unpack or open and to repack the goods at the latter's expense.

Once the examination of goods exercise is concluded, the Customs examination (verification) officer inputs his/her findings, commonly referred to "Examination Account", onto the Customs Business Processing System. Where a proper officer is satisfied that all particulars in the entry are correctly captured and are consistent with the supporting documents and the examined goods, he/she issues online release of goods, commonly referred to as "Final Release Order" in some Partner States.

In the event that discrepancies are detected during examination of goods, the examination account will be input in the system, and may be followed by the following actions:

- a) Collection of extra taxes;
- b) Amendment of Customs Declaration (entry);
- c) Opening of an offence file and charging of fines and penalties, as provided for in the Law.

While imports for home use are released for delivery of goods to the owner, warehoused goods may be released for:

- a) export,
- b) home use,
- c) to another warehouse
- d) use as stores for aircraft or vessel;
- e) re-warehousing;
- f) transfer to an export processing zone; or
- g) transfer to a free port.

Section 48(4) of EACCMA 2004 states that all goods entered to be warehoused, shall within fourteen days of their release be removed to the warehouse for which they are entered and deposited therein. In the case of bulk cargo or goods destined for a bonded warehouse located far away from the port of discharge, the Commissioner may allow for such longer period not exceeding forty-five days.

The transfer of warehoused goods from the port to the Customs bonded warehouse is done under Customs monitoring and control, including use of electronic cargo tracking gadgets where necessary. The goods are sealed and the seal is broken by the resident Customs officer in the bonded warehouses, once the goods arrive at the destined warehouse. Examination of goods is undertaken by the proper

officer and an examination account input in the Partner State Customs Business System. The goods are then stripped for storage in the Customs bonded warehouse.

3.6.4 Removal and Delivery of Goods

"Removal" refers to the physical removal of goods from a Customs controlled area, for delivery to the owner. This takes place when all Customs formalities and procedures have been adhered to. Usually, the Customs Gate officer situated at the entry/exit gates of a Customs controlled area issues an online removal in the Customs Business System, on a real time basis. Of most importance is for the officer to confirm marks and numbers of the consignment exiting the Customs controlled area, to ensure that only consignments with "Final Release Order" are physically removed.

Goods declared shall be released as soon as the Customs have examined them or decided not to examine them, provided that:

- i. no offence has been found;
- ii. the import or export licence or any other documents required have been acquired;
- iii. all permits relating to the procedure concerned have been acquired; and
- iv. any duties and taxes have been paid or that appropriate action has been taken to ensure their collection.

Once Customs is satisfied that the physical goods are in compliance with the basic requirements of the procedure to be applied, the goods should be released to the owner as soon as possible.

3.6.5 The Role of Customs Agents in Clearance of Import Goods

A Customs Agent is a person who is licensed by the Commissioner for transacting business relating to the declaration or clearance of goods or baggage (other than accompanied un-manifested baggage) subject to Customs control of a person travelling by air, land, or sea; on behalf of the owner.

Section 145 of the EACCMA 2004 empowers the Commissioner of Customs to license or to decline. The Commissioner may refuse to issue a license, suspend, revoke any license or decline to renew such license if the agent has failed to meet certain conditions for licensing or contravened the law. A

Customs Agent performs his/her duties under the authority of the owner of the goods. In accordance with section 146 of the EACCMA 2004, the agent has to be authorized in writing by the importer/exporter.

A Customs Agent with a professional knowledge and Competences in the clearance of goods through Customs and subsequent forwarding them to the importer minimizes delays associated with clearance and forwarding of goods to final destination(s). He uses his/her professional knowledge for easy compliance with various laws and procedure related to clearing and forwarding of goods; thus minimizing delays, costs and penalties associated with non-compliance of the provisions of the laws governing clearance and forwarding of goods.

The role of Customs agents in the process of clearance of imports, is to act on behalf the owner of goods, to ensure that the Customs Law, formalities and procedures are adhered to:

- Acts as an intermediary between an importer and other parties in clearance of goods and border protection;
- Confirm that goods have been unloaded and deposited to the releasing station for clearance;
- During importation it is thus necessary for the Customs Agent to understand various regimes under which goods are imported;
- Verify documents submitted by the owner of goods and advise accordingly with regard to prohibited and restricted goods;
- Ensure all pre-clearance permits/ licenses are obtained for Partner Government Agencies;
- The entry when delivered to the proper officer by the Customs Agent on behalf of the owner must have particulars, which are fully supported by documentary evidence;
- Answer questions asked by proper officer regarding imported goods;
- Provide bond guarantees for goods under clearance where necessary;
- Facilitate refund claims such as duty draw back claims;
- Undertake necessary preparations and avail themselves for examination of goods;
- Perform due diligence to ensure that goods under Customs Control are not tampered with;
- Compute the correct duties payable and advise his/her client accordingly on the payment;
- Submit required documents/ reports to the various Agencies, including Port Authorities, to facilitate release and delivery of goods;
- Facilitates and avails warehousing facilities where necessary;
- Provides import/export consultancy services;
- Provide related transport/shipping and logistical services
- Deliver goods to the owner.

A person intending to be a Customs agent has to apply for a license in a prescribed form to Commissioner. The application shall be accompanied with an application fee as may be prescribed by the Commissioner. Where the application is approved, the applicant shall pay the license fee and execute a security bond of such amount as the Commissioner may require. Section 145-148 of EACCMA, 2004, as read with Regulations 149-152 of EACCMR, 2010, provide the legal framework for licensing and operational requirements of Customs Agents.

Before a Customs Agent applicant is licensed, he/she must meet the following conditions:

- Have an established office with office equipment including computers capable of being connected to customs computer system;
- Have at least two employees in charge of clearance with a diploma, certificate in customs training from a recognized institute;
- Have all required documents regarding establishment of the customs agency: Memorandum and Articles of association of the company; a certificate of registration of the company; the Tax Identification Number of the company and of the Director(s); a current Tax clearance certificate; copies of identity cards, passports or other forms of identification of the directors; recent passport size photographs of directors; proof of affiliation of membership of a recognized clearing and forwarding association; valid tenancy agreement for suitable office accommodation; and bank account details.

The Customs agent shall be deemed to be the owner of the goods and hence:

- Be liable to pay all Customs duties and taxes.
- Be able to answer all questions asked by the proper officer in relation to a particular transaction.

The owner of goods who authorizes an agent to perform any business transaction under Customs control on his/her behalf, shall be liable to the declaration made by the agent and be prosecuted for any offence committed by such agent, unless such offence is committed by the agent due to his/her negligence.

3.7 Exemption, Duty Remission, Drawback, Refund and Rebate

3.7.1 Exemption of Duties and Fees

The 5th schedule to the Act provides for general and specific exemptions. Specific exemptions cater for the following:

- a) The presidents,
- b) Partner States Armed forces
- c) Commonwealth and other governments
- d) Diplomatic and first time arrivals
- e) Donor Agencies with bilateral or multilateral agreement with Partner States
- f) International and regional organizations.
- g) The war graves commission
- h) Disabled, blind and physically handicapped persons
- i) Rally drivers
- j) Goods and equipment for use in Aid funded projects

Likewise, general exemptions provide narrative explanations for the importation of the following:

- a) Aircrafts operations
- b) Container and Pellets
- c) Deceased person's effect
- d) Fish, crustaceans and molluscs
- e) Passengers Baggage and personal effects
- f) Samples and Miscellaneous Articles
- g) Ships and Other vessels
- h) Preparation for cleaning diary apparatus

The complete list with the conditions for exemption is found in the fifth schedule and the agent is urged to understand those conditions before clearance with Customs. It is also essential for the agent to have all documents to justify qualification for specific exemptions.

3.7.2 Duty Remission

Section 140 of the EACCMA 2004, empowers the EAC Council to grant remission of duty on goods imported for manufacture of goods for export or for home use in case of an urgent national need. The procedure for approval of goods, for which remission may be granted, is provided for in the East African Community Customs Management (Duty Remission) Regulations (EACCMRR) 2008.

EACCMRR 2008 regulation 6 provides that the remission of duty granted shall be valid for a period of twelve months from the date of the publication of the grant in the Gazette. The application for remission procedure is as follows:

- An application for remission of duty shall be made to the Council through the Commissioner in a specified form (Form R 1) in the Schedule to Remission Regulations.
- Upon receipt of an application for remission, the Commissioner shall forward the application to the Committee established to oversee remission applications for its comments.
- The Commissioner shall after receiving the comments forward the application together with his or her comments to the Council.
- The Council may for reasons to be communicated to the applicant reject or approve an application for remission under the Regulations.

One of the mandatory tasks for a manufacturer is to maintain records for the goods produced. When it comes to the issue of duty remission, a manufacturer is expected to maintain separate books and records relating to the following:

- locally sourced goods;
- goods imported by the manufacturer;
- goods received by a manufacturer by way of transfer under regulation 11 of the Remission Regulations.

All these records have to be availed for audit by the Commissioner as per section 236 of EACCMA 2004. It is therefore the duty of the manufacturer to maintain those records for the period specified under the Customs laws.

In 2008 the EAC Council ratified the remissions regulations to cater for the matters pertaining to the remission of duties. The regulation is cited as East

African Community Customs Management (Duty Remission) Regulations 2008. The purpose was to put in place a harmonized mechanism for duty remission in all the Partner States.

Arrangement of Regulations

Regulation Title

1. Citation and commencement.
2. Interpretation.
3. Goods on which remission may be granted.
4. Duty Remission Committee.
5. Application for remission of duty.
6. Publication of goods and manufacturers.
7. Conditions attached to remission of duty.
8. Entry and bond for goods imported.
9. Cancellation of bond.
10. By-products scrap or waste from process of manufacture
11. Transfer, etc. of goods.
12. Commissioner may authorize re-exportation.
13. Maintenance of books and records.
14. Powers of a proper officer.
15. Revocation of grant.

3.7.3 Refunds of Duty

Refund of duty is the payment of import duty or part of it, previously paid on imported goods which has been damaged or pillaged during the voyage or damaged or destroyed while subject to Customs control. The refund also refers to the payment of import duty or export duty paid in error.

A refund claim may be effected where the commissioner is satisfied that: -

- i. The description, quality, state and condition of the goods; for which a refund is claimed, was not in accordance with the contract or that the goods were damaged before delivery out of Customs control or the goods with consent of the seller are returned unused or destroyed
- ii. The goods for which a refund is claimed, were damaged or pillaged during the voyage or damaged or destroyed while under Customs control. A refund in this case will be proportional to what has been damaged, pillaged or destroyed
- iii. Import or export duty was paid in error

- iv. A claim for refund must be presented to the Commissioner within twelve months from the date of payment of duty.

Circumstances under which refund may arise include:

- i. Double lodgements where two entries are lodged and paid for to clear the same cargo
- ii. Valuation dispute where a higher value led to over payment
- iii. Tariff dispute where an issue under dispute led to overpayment
- iv. Short landing whereby less quantities are received
- v. Payment under protest
- vi. Undelivered cargo
- vii. Goods imported are not in accordance with the contract of sale and if returned to the seller
- viii. Goods are damaged or destroyed while under Customs control
- ix. Goods are damaged or pillage during voyage

3.7.4 Duty Drawback

Duty drawback is a refund of all or part of any import duty paid in respect of goods exported. This is a facility adopted within revenue administration to facilitate trade and encourage production of goods for export using imported inputs. During importation the manufacturer will pay duties for the imported inputs and will claim a refund when the final goods are exported or used in a manner or for a purpose prescribed as a condition for granting a duty drawback. The goods under duty drawback are subject to Customs control as per section 16 of EACCMA.

Sections 138 to 139 of the EACCMA 2004 provides for conditions under which duty drawback can be allowed:

- i. The goods should be entered in a prescribed form and manner; and produced for examination by proper office prior to exportation.
- ii. A person claiming drawback should Complete and subscribe a declaration on a prescribed form.
- iii. For goods exported or put on board any vessel/aircraft for use as stores the conditions include that:
 - The goods have been exported or put on board as stores.

- The owner, at the time of declaration of the goods for drawback was and continues to be entitled to drawback
- iv. The goods, after having been put on board any vessel/aircraft for exportation or use as stores have been destroyed by accident and/or abandoned to Customs.
- v. For goods imported for use in the manufacture of goods which are exported, transferred to a free port or transferred to Export Processing Zone (EPZ), the

drawback is allowed if the goods exported, transferred to a free port or EPZ are a direct result of the imported goods used in the manufacture of such goods.

- vi. The claim for drawback is presented within twelve months from the date of exportation of the goods or performance of the conditions for which a drawback is allowed.

3.8 Learning Activities

1. The following information was extracted from a commercial invoice for goods imported by DEF Enterprises Ltd:

| Goods Description | Quantity | FOB Value(US\$) | Duty rate | Excise rate | Vat rate |
|-------------------|--------------|-----------------|-----------------------------|-------------|----------|
| Sugar | 150 tonnes | 6,500 | 35% or US\$ 0.32 per 100 kg | - | 16% |
| Hammers | 1,000 pcs | 500 | 25% | 10% | 16% |
| Fertilizer | 2,000 tonnes | 3,500 | 25% or US\$ 0.23 per 50 kg | - | 16% |

Additional information:

- Exchange rate is USD 1: Kshs 101
- The total Insurance and Freight Charges are USD 400 and USD 2,000 respectively.
- All the items are subject to IDF & RDL at 2.0% & 1.5% respectively.

Required:

- a) Compute the factor (estimate your answer to 2 decimal places).
 - b) Determine the Customs Value for the consignment in local currency.
 - c) Compute the total taxes and other charges payable for the consignment.
2. Used White Toyota Hilux, P/UP Double Cabin was imported by MNP Limited, for its operations in Kenya. The year of first registration is July 2016; Year of manufacture is May 2013. Its engine Capacity is 2980cc. The Current Retail Selling Price for a brand new vehicle of a similar model is Ksh

2,700,000. The vehicle is subject to import duty, excise duty and VAT at 25%, 20%, 16%, respectively. The exchange rate is 105 Kshs/USD.

Required:

- a) Determine the Customs value of the vehicle.
 - b) Advise on total duties, taxes and other charges that are due and payable by the importer if the time of importation is June 2021.
3. MSC Victory arrived at the sea port of Mombasa on 3rd December 20XX and begun to discharge on 4th December 20XX. The importer of a 1x40 ft. container landed by this vessel made a Customs entry the following year, on 21st January 20XX but the goods were physically removed from the port on 30th January 20XX.

Required:

- c) Determine the Customs Warehouse Date.
 - d) Compute Customs Warehouse Rent payable by importer.
4. Mr. XYZ is the owner of 123 Drink Ltd. He engages more with the distribution of various drinks. Recently he scored a deal and become the country distributor of STOUT beer from UK. Being unfamiliar with Customs procedure, Mr. XYZ appoints you as his Customs Agent. On your part you know very well that, as far as VAT is concerned the product is a taxable supply at a standard rate of 18%, 25% Import Duty and 6% exercise duty of 60%. The first consignment was 20 containers each having 3200 cartons of beer. The packing list shows that one (1) carton has 16 cans of 270ml each. The contract price charged to Mr. XYZ is \$ 1.65/ lit (C & F). Freight charge is \$1,500 while insurance paid for the consignment was \$2,000.

Required

- a) Establish the total quantity in litres imported by Mr. XYZ.
 - b) Compute the Customs value in local currency.
 - c) Compute import duty, exercise duty and VAT to be paid by Mr. XYZ if the exchange rate on the date of entry was Shs. 1,210 per one USD.
5. The students from Masai Mara Girls School were on a study tour in Dar es Salaam being hosted by Institute of Tax Administration (ITA) in collaboration with Tanzania Freight Forwarders Association (TAFFA). The students had planned to visit Dar es Salaam Port and other customs areas to gain expertise in various customs issues. On the part of TAFFA, you had been appointed to head the delegates. Miss Kidunducy, one of the talkative students asked,
- “You said most of the goods in customs area are there for the purpose of control. What types of goods specifically should we expect to find in those customs areas?”
 - “What can we understand by the term *goods being under Customs control*?”

- “What is the reporting procedure for a ship coming from Mombasa to the Port of Dar es Salaam?”

Required

Respond to her properly basing your answer on the EACCMA 2004.

6. Mr. Nkosi arrives for the first time in Tanzania through Tunduma Border accompanied by his wife, Nadhipa and Two Children using his Toyota Hiace with Zambia registration. The family expects to pay a visit in various national parks before going back to Zambia.

Required:

What restrictions have been imposed to the use of the motor vehicle as far as temporary importation is concerned?

3.9 Self-Assessment Questions and Activities

1. Explain the circumstances that may necessitate goods to be deposited to a Transit Shed.
2. Explain the various types of goods which may be deposited to a Customs Warehouse.
3. Explain the importance of the main supporting documents to an importation of goods by a returning resident.
4. Discuss data particulars of an entry that have implications on the determination of Customs value of goods.
5. Mr. Banjumni arrives in Tanzania by road at Tunuma Border accompanied by his wife Saadie and two children using a Toyota Hiace with Zambia registration. What Customs procedure will Mr. Banjumni and family adhere to on arrival, if they do not expect to return to Zambia.
6. Discuss conditions that must be met for the following persons to enjoy exemption of duties in your country:
 - a) Returning resident
 - b) First Arrival Diplomat
 - c) Physically challenged person

3.10 References

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- WCO Revised Kyoto Convention
- WCO SAFE Framework of Standards
- Protocol on the establishment of the EAC Customs Union
- The EAC Customs Management Act, 2004
- The EAC Customs Management Regulations, 2010
- The EAC Customs Procedures Manual
- The EAC Customs Training Material, 2011
- The EAC Duty Remission Regulation, 2008

4.0 EXPORT CUSTOMS PROCEDURES

4.1 Specific Learning Outcomes

At the end of this topic, the trainee should be able to:

- i. Explain the meaning of export customs procedures
- ii. Describe the legal framework for exportation of goods
- iii. Discuss the categorization of exports
- iv. Identify exportation documents
- v. Explain the customs clearance procedure for export goods

4.2 Overview of Export Customs Procedures

This topic will help learners to understand the Customs laws, procedures and formalities that concern the outward clearance of vessels, aircraft and motor vehicles; loading of export goods and ship stores; prohibitions and restrictions of export goods; entry, examination and delivery of exports; and export promotion schemes.

Definition of Terms:

- Export means to take or cause to be taken out of the Partner States.
- Export duties means Customs duties and other charges having an effect equivalent to customs duties payable on the exportation of goods.
- Export processing zone means a designated part of Customs territory where any goods introduced are generally regarded, in so far as import duties and taxes are concerned, as being outside Customs territory but are restricted by controlled access.

4.3 Outward Clearance of Vessels, Aircraft and Motor Vehicles

4.3.1 Outward Clearance of Vessels and Aircraft

Section 88 - 92 of EACCMA, 2004 as read with Regulations 88 - 102 of EACCMR, 2010 provide the legal framework for outward clearance of vessels and aircraft. The master or agent of every aircraft/vessel or vehicle in which any goods are to be exported, should make a report outward to the proper officer on the Customs prescribed form- form C2.

An aircraft or vessel, whether laden or in ballast, shall not depart from any port or place in a Partner State to any foreign port unless a certificate of clearance has been granted in respect of such aircraft or vessel. The certificate of clearance of a vessel departing to a foreign port shall be in accordance with form C14.

In the case of an aircraft, while the report of cargo is made using form C2, the master of the aircraft also delivers to a proper officer a general declaration for the aircraft using form C4. A copy of form C4 signed by the proper officer shall be the certificate of clearance of the aircraft.

Where the master or agent of any aircraft, or of any vessel of less than two hundred and fifty tons register, makes application for a certificate of clearance, then he or she shall at the same time:

- a) deliver to the proper officer an outward manifest on the prescribed form and in the prescribed manner;
- b) produce to the proper officer all such documents as the proper officer may require relating to such aircraft or vessel and its cargo, stores, baggage, crew, and passengers;
- c) answer all questions which the proper officer may ask relating to such aircraft or vessel and its cargo, stores, baggage, crew, and passengers.

Where the master or agent of any vessel of two hundred and fifty tons register or more makes application for a certificate of clearance, then the proper officer may grant such clearance subject to an undertaking by such master or agent to deliver to the proper officer, within twenty-four hours of the grant of such certificate of clearance, the outward manifest of such vessel in the prescribed form and in the prescribed manner, and to answer all such questions as he or she may be asked relating to such vessel, its cargo, stores, baggage, crew, and passengers.

Where any aircraft or vessel proposes to depart to a foreign port in ballast, then such aircraft or vessel shall be cleared in ballast, that is to say, the words "in ballast" shall be written in those parts of the forms relating to such aircraft or vessel which contain provisions for the particulars of its cargo; and for the purpose of this subsection, an aircraft or vessel shall be deemed to be in ballast when such aircraft

or vessel carries, in addition to the crew and its stores, only passengers and their bona fide personal baggage.

The outward manifest of a vessel shall be in accordance with form C2 and shall contain particulars of all cargo shipped in accordance with the description of the cargo in the relevant bill of lading or freight note, together with the weight or cubic measurement of such cargo. Each page of the outward manifest, other than the page bearing declaration statement and signature, shall be initialled by the master, or his/her agent. An outward manifest may be in electronic format.

The proper officer may permit the master or agent of any aircraft or vessel to amend any obvious error in the outward manifest, or to supply any omission which, in the opinion of the proper officer, results from accident or inadvertence, by furnishing an amended or supplementary outward manifest in the prescribed manner.

Where any certificate of clearance has been granted but the aircraft or vessel in respect of which it was granted has not left the limits of the port in which it was granted, then the proper officer may inform, either orally or in writing, the master of such aircraft or vessel that such certificate of clearance has been cancelled and may require the return of such certificate, and thereupon such certificate shall be deemed never to have been granted.

The proper officer may board any aircraft or vessel in a Partner State after clearance and require the master thereof to produce such certificate of clearance and to answer any questions relating to such aircraft or vessel, its cargo, stores, baggage, crew, and passengers. These powers enable Customs to maintain adequate controls over outward conveyances and loaded export goods, until they leave the territorial waters of a Partner State.

4.3.2 Outward Clearance of Motor Vehicles

Vehicles and goods, other than those for temporary exportation as provided for in Regulations 132-135 of EACCMR 2010, which are exported overland shall be entered using form C17. A person in charge of a vehicle, whether or not it is conveying goods, shall report to a proper officer the full particulars of the vehicle and goods, using form C2.

The person in charge of a vehicle departing from a Partner State must ensure that such a vehicle departs through an appointed port as provided for under Section 11 of EACCMA, 2004. In addition, before departing, he/she shall:

- a) Report his/her intended departure to a Customs officer.
- b) Furnish on the prescribed forms all information related to the vehicle and goods for exports.
- c) Fully and immediately answer all relevant questions put to him/her by the proper officer.
- d) Produce any consignment notes or any relevant documents demanded by the proper officer.
- e) Make due entry of the vehicle and goods for export.

4.4 Prohibited and Restricted Exports

According to Section 70 of EACCMA, 2004, goods specified in Part A of the Third Schedule are prohibited goods and the exportation of the goods is prohibited and goods specified in Part B of the Third Schedule are restricted goods and the exportation of the goods, save in accordance with any conditions regulating their exportation, is prohibited.

The following is an excerpt of the Third Schedule of EACCMA, 2004:

PART A—PROHIBITED GOODS

- (1) All goods the exportation of which is prohibited under this Act or by any written law for the time being in force in the Partner States.
- (2) Used or scrap cables and conductors of aluminium, steel and copper

PART B—RESTRICTED GOODS

1. (a) All goods the exportation of which is regulated under this Act or of any law for the time being in force in the Partner States;
- (b) Waste and scrap of ferrous cast iron;
- (c) Timber from any wood grown in the Partner States;
- (d) Fresh unprocessed fish (Nile Perch and Tilapia);
- (e) Wood charcoal.

- (f) Used automobile batteries, lead scrap, crude and refined lead and all forms of scrap metals.
- 2. The following goods shall not be exported in vessels of less than two hundred and fifty tons register:
 - (a) Warehoused goods;
 - (b) goods under duty drawback;
 - (c) transshipped goods.

The list of prohibited and restricted exports is significantly shorter as compared to the list of prohibited and restricted imports covered in the Second Schedule. Partner States are highly relying on National Laws to prohibit and restrict export goods not covered in the Third Schedule.

The main reasons for the restriction of goods under paragraph 1 of part B of the Third Schedule are:

- a) Economic reasons
- b) Environmental reasons

Paragraph 2 of part B of the Third Schedule also specifies the kind of goods which should not be exported in vessels that are less than two hundred and fifty tons register. These goods have an inherent revenue risk since warehoused and transshipped goods are covered by bond, whereas duty drawback goods are eligible for duty refund.

4.5 Loading of Export Goods & Stores

Section 75(1) of EACCMA, 2004 requires that goods put on board any aircraft or vessel departing to a foreign port:

- a) Be duly entered
- b) Fulfil all Customs formalities and procedures prescribed by the Commissioner
- c) Be loaded at an approved place of loading or from a sufferance wharf
- d) Be loaded after entry outwards of such a vessel or aircraft
- e) Be directly put on board such a vessel or aircraft
- f) Be loaded within the limits of the port

A master of an aircraft or vessel who wishes to proceed to a sufferance wharf, shall apply to the proper officer for permission to do so using form C10. However, loading of goods at a sufferance wharf is not allowed until they have been entered. Special exceptions to the submission of entry requirement prior to loading at a sufferance may be granted only with express permission from the Commissioner.

Departing vessels and aircrafts will often need to re-stock their stores. Dutiable stores may be transferred from one aircraft/ vessel to another aircraft/ vessel, or from a customs bonded facility to an aircraft/vessel (e.g. NAS facility at Jomo Kenyatta International Airport to an aircraft), under a Customs bond. The goods must also be duly entered on form C17.

Section 81 of EACCMA, 2004 states that where any goods are, with the permission of the proper officer, stored in a transit shed or a Customs area pending exportation or transshipment or while in transit,

- (a) the goods shall be subject to such rent and other charges as may be prescribed; and
- (b) notwithstanding section 17 (loss or liability occasioned by negligence of officer), the goods shall be stored at the risk of the owner.

4.6 Entry, Examination and Delivery of Exports

There are three types of exportation:

- a) Outright exportation – These are goods which are exported out of a Partner State with the intention to remain there permanently or to be consumed in those foreign countries. Examples include coffee, tea, processed nuts, French peas, avocados exported from a Partner State to a foreign country.
- b) Temporary exportation – These are goods which are exported out of a Partner State to a foreign country for special purposes and will be brought back, within a reasonable duration of time, usually not exceeding twelve months. Examples include goods exported for repairs, renovation, exhibition, entertainment and sports. The goods are declared on the respective procedure code whereby the re-importation certificate is issued as confirmation that the goods have left the country and will be re-imported.
- c) Re-exportation – These are goods that were imported into a Partner State for temporary use or purpose and are to be exported to a foreign country after the end of the intended purpose. Examples include goods for repairs, renovation, exhibition or entertainment. Such goods have to be entered properly and be secured with a Customs security bond. Re-exportation is normally checked against the preceding entry to ensure that the re-export entry

match/tally with the previously lodged temporary importation entry.

The following are the different types of export Customs Regimes:

- | | |
|----------------------|---|
| a) Exports | 1 |
| b) Temporary Exports | 2 |
| c) Re-Exports | 3 |

The CPC codes vary from one Partner State to another depending on the electronic Customs business processing system in use. Below are examples of specific transactions under their respective Customs regime:

Domestic Exports:

- Direct Exports of home produced goods
- Direct Exports of home produced goods incorporating imported materials
- Direct Exports of home produced goods under the Export promotion program
- Direct exports of ship stores

Temporary exports:

- Temporary exports for return in an unaltered state
- Temporary exports for repairs
- Temporary exports for outward processing

Re-exports:

- Ex-warehouse export
- Ex-warehouse export for ship stores
- Ex-MUB export
- Ex-EPZ export
- Re-exports after temporary importation for repair
- Re-exports after temporary importation
- Re-exports under drawback

For goods to be exported they need to be entered for export. The entry must show the following details:

- a. Name and address of exporter.
- b. Name and address of importer.
- c. Name and address of Customs agent.
- d. Country of destination.
- e. Commodity code and description of goods.
- f. Value of goods and total amount of duty payable.
- g. Marks and number of transporting vessel, aircraft, or vehicle.
- h. Total number of packages
- i. All other information as appeared in the SAD

All requisite permits/ licenses must be obtained for exportation of the goods at hand. Other trade related documents are also important as they may be required when goods arrives at the intended destination. These documents include commercial invoice, packing list, certificate of origin, health certificate and certificate of conformity.

Once the Customs Agent makes an entry and the entry is passed, the Customs Agent shall refer the export entries to the officer in-charge of the export station for the purpose of allocating an officer to witness loading and sealing of containers at the exporters premises. The goods will be physically examined before being loaded for export.

The stuffing of the export goods into a container is done under the supervision of a proper officer. The stuffing area may be an owner's/manufacturer's premise; container freight station (CFS); or an internal container depot (ICD). A stuffing facility must meet the following requirements:

- a) Must be licensed and approved by the Commissioner;
- b) Area must be secured with surveillance CCTV cameras, perimeter wall & electric fence;
- c) Area must have adequate lighting;
- d) Have adequate facilities: weights, measures, internet connectivity, facility for examining goods etc.;
- e) Owner must always keep records of all goods examined, stuffed & delivered from the facility;
- f) Owner must sign a letter of undertaking taking full responsibility of all goods stuffed at their facility;
- g) Stuffing time is strictly 8 a.m. to 8 p.m.;
- h) Company undergoes background security screening before licensing.

Once the stuffing is completed, the container is sealed and a stuffing report input into the Partner State's Customs Business System. The transportation of the sealed containers to the port of loading is done under Customs monitoring, with majority of the Partner States utilizing the Regional Electronic Cargo Tracking System (RECTS) or other electronic cargo tracking systems. At the entrance gate to the port of loading, a proper officer confirms that the seals of the goods are intact and that marks and numbers of the container tally with the Customs entry. Many Customs Administrations have invested in scanning

equipment to scan export goods prior to clearance for loading. The scan reports are compared against the entry and stuffing report earlier input by the officer who supervised stuffing of goods into the container. This advancement in use of digital examination tools has significantly reduced the volumes of export goods that are physically verified at the port of loading, and this has helped foster trade facilitation.

The export process is terminated (comes to an end) when vessel carrying goods for export leave the boundary of Partner States to foreign destination. Bill of Ladings are generated by the carrier (shipping line) once the vessel departs for a foreign country. Once the Customs Agent receives endorsed Bill of Lading from the shipping line, he/she presents it and its respective Customs entry to a proper officer, for processing of certificate of export. The Certificate of Export is an essential document because it will be used by Security Bonds Management Customs office for bond cancellation as well as for claim of Value Added Tax for eligible exporters.

Certificates of Origin are also issued by a proper officer stationed in the Rules of Origin office, to enable preferential tariff treatment of exported goods in the case where a free trade agreement exists between the exporting Partner State and the importing foreign country. These Certificates of Origin are issued in respect of qualifying goods upon payment of the appropriate fees. Most trade agreements allow for retrospective issuance of certificates of origin, thus it is common for this document to be processed after goods have been exported.

4.6.1 Duty Assessment of Export Goods

Majority of export goods from Partner States attract 0% export duty rate, for purposes of promoting exports from the EAC region by enabling them to be competitively priced in the foreign countries, and consequently increase their demand. Notwithstanding, where any goods are liable on export to any duty, the amount of such duty shall be stated on the export entry of the goods.

Export goods liable to any duty shall not be exported until such duty has been paid or security thereof given. If ad valorem duty is applicable to the export goods, then the value of goods shall include-

- the cost of the goods;
- transport and all other charges up to the

time of delivery of the goods on board the exporting aircraft or vessel, or at the place of exit from the Partner State.

- If the cost of the goods cannot be determined under the above, the cost of similar or identical goods exported from a Partner State at about or the same time shall apply.

4.6.2 Export Promotion Schemes

Export promotion schemes are schemes designed to promote production of goods for export. Partner States have agreed in the protocol for the establishment of customs union to engage in some of the export promotion schemes with a motive to promote trade. Some of the schemes are Manufacturing Under bond, Export processing zones, duty remission, duty drawback Inward/ Outward Processing and free ports.

4.6.3 Manufacturing Under Bond

Manufacturing under Bond (MUB) is a facility extended to manufacturers to import plant, machinery, equipment and raw materials tax free, for exclusive use in the manufacture of goods for export.

The EACCMA empowers the Commissioner of Customs to license any person who wishes to manufacture goods under bond subject to condition he/she may impose. The following are the conditions for licensing an MUB:

- a) Application for a licence to be made in a prescribed form (C18) specifying the purpose for which each building, room, place or item of plant is to be used. The application should be supported by a copy of the project authorization from the approving body; a plan of the buildings, factory and thoroughfares; and a list and description of plant and equipment.
- b) A security to be furnished as the Commissioner may think appropriate.
- c) Suitable office accommodation to be provided to Customs officer.
- d) Premises for manufacturing process must be approved by commissioner as to suitability and safety. The Customs inspecting officer is required to satisfy himself that the premises are safe, secure, waterproof and rat proof; suitable for use as a bonded factory; fitted with adequate lights and suitable ventilators;

fitted with doors capable of being secured by customs locks; and availability of labour, equipment and materials for storing, examining, packing, marking, cooperating, weighing and taking stock of goods in the factory.

- e) A prescribed annual licensing fee to be paid.

MUB license is issued in form C19, and cannot be transferred from one person to another. Once the premise is approved and licensed, no alterations should be made on the premises without prior permission of the Commissioner. Application for alterations must be accompanied by copies of drawings and plans.

The following are the responsibilities of a bonded factory licensee:

- a) Make an entry, prior to commencement of manufacturing under bond, in the prescribed form specifying the purpose for which each building, room, place or item of plant is to be used.
- b) Provide office accommodation and scales, measures and other facilities materials or just weights, for examining and taking account of goods and for securing them as the proper officer may reasonably require;
- c) Keep a record of all types of plant, machinery and equipment, raw materials and goods manufactured in the factory and keep that record at all times available for examination by the proper officer;
- d) Provide all necessary labour and materials for the storing, examining, packing, marking, cooperating, weighing and taking stock of the goods in the factory whenever the proper officer so requires.
- e) Non-compliance with set conditions may result into suspension, revocation or refusal to issue a license by the Commissioner

A MUB facility is distinguished by a unique number and words “Customs Bonded Factory” clearly marked at the principal entrance to the factory, or in any other place approved by the proper officer.

4.6.4 Export Processing Zones

Export Processing Zones (EPZs) are designated Customs areas where imported goods are offered duty free treatment for purposes of processing or manufacturing for export under given conditions.

Application for investment in any EPZ is first made to the EPZ competent authority, mandated to govern EPZs in a Partner State.

For operational purposes, export processing zones are considered to be foreign territories. The removal of goods from port to an EPZ enterprise must be covered by a bond. Any goods leaving an EPZ into a Partner State must be considered as imports and are therefore subject to importation procedures and additional duty (surcharge). Local goods supplied to an EPZ enterprise are considered as exports and must comply with all export procedures. EPZ owners usually enjoy tax holidays with respect to payment of income taxes.

The Objectives of EPZs include:

- i. To attract export led industrialization for diversification and enhancement of competitiveness.
- ii. To earn more foreign currencies.
- iii. To increase employment and develop the capacity of skilled labour.
- iv. To benefit from technology transfer and
- v. To process more local materials for export.

EPZ investors have the following obligations:

- i. To produce for Export markets.
- ii. To provide details of all raw materials received at the site of manufacturing during the previous quarter of the year.
- iii. To produce semi-finished or finished products including by products exported or off-loaded in the Customs territory.
- iv. To provide details of waste-products and how they are disposed.
- v. To provide accurate records of losses through evaporation, spillage, leakage or other causes.
- vi. To produce balances of raw materials and semi-finished products including stocks of by products at the premises of manufacture and transit.
- vii. To facilitate inspections and examination by the Customs.

- viii. To take all measures to reduce the fears of task cheating in a way that the agency concerned with EPZ cannot provide.

4.6.5 Duty Remission

Section 140(1) of EACCMA, 2004 provides that the Council may grant remission of duty on goods imported for the manufacture of goods in a Partner State. The Council may prescribe regulations on the general administration of the duty remission under this section. The manufacturer, and the approved quantity, of the goods with respect to which remission is granted under this section shall be published by the Council in the Gazette.

Section 141 of EACCMA, 2004 provides that where any goods are lost or destroyed by accident either on board any aircraft or vessel; or in removing, loading, unloading, or receiving them into, or delivering them from, any Customs area or warehouse; or in any Customs area or warehouse, before the goods are delivered out of Customs control to the owner, then, if the Commissioner is satisfied that such goods have not been and will not be consumed in a Partner State, the Commissioner may remit the duty payable in respect of the goods.

4.6.6 Duty Draw Back

Most administrations have in place procedures which help promote export trade and are in the interest of the national economy. Drawback is one such procedure and it is defined as, “refund of all or parts of any import duty paid in respect of goods exported or used in a manner or for a purpose prescribed as condition for granting duty drawback”. This procedure grants repayment of import duties and taxes paid on:

- Goods used in the processing or manufacture of exported products,
- Materials contained in the goods or consumed in the manufacture of the exported products, or
- Imported goods re-exported in the same state.

Under Section 138(2) of the EACCMA, 2004, the owner of any goods who claims or proposes to claim drawback in respect of goods shall:

- a) Enter such goods in the prescribed form and in the prescribed manner and produce such goods for examination by the proper officer before the exportation of the goods.
- b) Make and subscribe a declaration on the prescribed form to the effect that the conditions under which drawback may be allowed have been fulfilled.
- c) Present his/her claim or drawback within or period of 12 months from the date of the exportation of the goods or performance of the conditions on which drawback may be allowed.

Drawback shall not be allowed in respect of any goods:

- a) Where the value of such goods for home consumption is less than the amount of duty drawback; and
- b) Where the import duty on the goods was less than one hundred dollars;
- c) Unless such goods were exported unused in the original packages in which they were imported, or unless the contents were unpacked and repacked in other packages by authority and under supervision of the proper officer;
- d) Unless the proper officer is satisfied that the particulars of goods are identical with the particulars contained in the entries, invoices, and other documents relating to the goods which were damaged or spoilt before exportation.

Drawback provides relief from duties and taxes for the manufacture of exported goods, thus it is extensively used. Some administrations may allow it in combination with other procedures like inward processing, temporary admission or Customs warehouses. The following is a summary of economic benefits of duty drawback:

- a) The use of domestic labour and processing or manufacturing of goods add value to the finished goods for export;
- b) The repayment of duties and taxes paid on the imported goods enables domestic industries to offer the goods at competitive prices on international markets;
- c) Countries wishing to encourage trade through free zones in their territory

may also apply the drawback procedure to goods that are re-exported into these zones;

- d) Promotes domestic economic activities through forward and backward linkages;
- e) Provides for revenue protection on imported goods released into the Customs territory, and
- f) Offers options to interested persons when other procedures such as temporary admission cannot be applied to the goods.

Implementation of duty drawback scheme in a Partner State may be confronted with the following challenges:

- a) In many developing countries, refunds can only be made from a specially approved annual budget. Inadequate budget allocations lead to delays in refunds. This may negatively affect the competitive pricing of export goods.
- b) In the absence of effective controls, significant abuses may occur.
- c) The drawback system is often restricted to products included in an exhaustive list. This is usually an economic consideration and is designed to encourage the use of equivalents of imported goods which are produced within the country by domestic industry.
- d) Drawback refunds may delay due to the refund process that requires post import audits, among other requirements.

Where it may be difficult to identify certain exported goods as being those that were originally imported or those resulting from the processing of imported goods, administrations should allow the exportation of equivalent goods (e.g. compensating goods equivalent in all respects to the goods which should normally have been re-exported) and apply the drawback procedure to repay import duties and taxes where goods or materials are replaced by equivalent goods or materials.

Usually goods imported with the intention to re-export them, other than those used for processing or manufacture, are not permitted to be used during their stay in the Customs territory. If such use is allowed, administrations usually have provisions under which the amount of drawback

granted is reduced according to the extent of the resulting depreciation.

Some administrations use the term drawback for refund of taxes on imported goods that are not according to specification and are returned to the seller, or goods used in manufacture for home consumption, or imported goods that are obsolete, etc. The procedure covered by this Chapter does not relate to such goods.

The drawback procedure will not apply to repayment of or relief from other taxes (e.g. sales tax, value added tax) or to items which may be aids to the manufacturing process that are granted relief or repayment under other provisions.

When Customs administers the drawback procedure by implementing modern control techniques of selective verifications, risk assessment of users, post-audits of users' records and electronic data exchange and transfer of payments, drawback can be well managed and offers the full array of economic incentives to national economies.

4.6.7 Inward Processing

The Commissioner of Customs is given power by the law to allow temporarily importation or exportation of goods for processing operations free from tax provided that the ownership of such goods shall remain to the exporter, and importer shall only process them under contract. The Commissioner may also allow the importation of equivalent goods to replace the temporarily exported goods for outward processing.

Inward processing means the Customs procedure under which certain goods can be brought in a partner state conditionally exempted from duty on the basis that such goods are intended for manufacturing, processing or repair and subsequent exportation. The operator shall apply for authorization to the commissioner in a prescribed form to carry out the inward processing operations. The application detailing the intended inward processing shall be made in advance prior to importation of the goods subject to the process.

Conditions for granting an authorization

- a) The applicant offers the necessary guarantee for the proper conduct of the operation
- b) The administrative arrangements and supervision of the process are not disproportionate to the economic needs of the applicant.
- c) The applicant is established in the community except where imports of non-commercial nature are involved
- d) The imported goods can be identified in the processed products
- e) The applicant has provided Customs security

Goods imported for inward processing shall be entered in Customs prescribed form on production of:

- a) Original inward processing authorization
- b) Original invoices and other supporting documents

The proper officer shall examine such goods at the port of entry or at the owners premises before release for inward processing. The person authorized shall keep all records of the inward processing activities and the records shall indicate:

- a) The description of quantity of goods entered for the procedure.
- b) Date of importation.
- c) Details of processing.
- d) Correct amount of duty and taxes payable.
- e) Disposal of goods and waste or scrap or by-products.
- f) Compensating products obtained.

Inward processing procedure shall be terminated upon:

- a) Re-exportation of the compensating product in one or more consignments within a period of one year.
- b) Re-exportation of the goods in the same state as imported immediately.
- c) Release of processed products to circulation under duty relief.
- d) Placing the goods in free zones.
- e) Entered for home consumption

Compensating products means products resulting from the manufacturing, processing or repair of goods for which the use of the inward processing

procedure is authorized. Compensating products may be exported through a Customs office other than the office through which the goods under in-ward processing were imported, either in full or in parts under separate entries. Compensating products may also be entered for home consumption, where the import duty shall be computed on the basis of the nature, quantity, Customs value and duty rate applicable to the goods at the time they were entered for in-ward processing.

4.6.8 Outward processing

Outward processing means the Customs procedures under which goods which are in free circulation in a partner state may be temporarily exported for manufacturing, processing or repair outside the partner state and then re-imported.

The Commissioner shall only authorize goods to be exported temporarily from the partner state when:

- a) The exporter confirms that the compensating product shall result from the processing operation
- b) The outward processing procedure does not affect the interest of the partner state
- c) The compensating products shall be re-imported within a period of one year from the date of export

During re-importation, the compensating products may be re-imported through a Customs office other than the Customs office through which the goods were exported either in full or in partial consignment under separate entries. Goods may also be re-imported in an un-altered state.

The imported compensating products or unaltered goods may be granted total or partial relief from payment of duty when they are cleared for home consumption in the name of

- a) An authorized person
- b) Any person with the consent of the authorized person
- c) Where the re-imported goods were repaired and such repair could not have been undertaken in the Partner State
- d) Equipment or other goods were added to the exported goods that could not be added within the partner state.

Processing or manufacturing was done on the re-imported goods and the goods exported were the product of, and originated within the Partner States.

4.6.9 Free Ports

The establishment of free zones is part of an economic policy that encourages the flow of investment into a Customs territory and other commercial activities. The main purpose of free zones is to promote external trade and international commerce by granting relief from duties and taxes on goods imported to the territory. Another purpose is the creation of employment and the development of associated trade activities.

Goods handled in a free zone are often exported. Since exports are generally exempt from duties and taxes, this facilitates and encourages the development of external trade. Free zones are established on seaports, river ports, airports and places with similar geographic and economic advantages. A good example of a free port in the EAC region is the Lama port.

4.7 Learning Activities

1. Suppose you are a Customs Agent and you have been contacted by PQR Limited to advise them on the Customs procedures for clearance of their tea export consignment from a farm in Rwanda to India, through the port of Mombasa.

Required:

Describe the step by step Customs procedure for the exportation of tea through Mombasa port.

2. Suppose that three truck heads are being temporarily imported into Burundi based company, XYZ Limited, from DRC Congo for specialized fitting of petroleum tanks.

Required

- a) Describe the export promotion scheme that XYZ Limited can take advantage of, to grow in its industry.
- b) Explain the Customs formalities and procedures for exporting the three truck heads already fitted with petroleum tanks.

4.8 Self-Assessment Questions and Activities

1. Discuss the Customs controls inherent in the export clearance procedures in your country.
2. Distinguish between Export Processing Zones and Manufacture Under Bond.
3. Discuss the economic benefits of free ports to the host country.

4.9 References

- Baker.T. (2002), Dealing with Customs and Excise; Administration, Appeals, Disputes and Investigation, Tolley Publishing
- Wulf, & Jose' B. Sokol (2004) Edited Customs Modernization Hand book
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- The EAC Customs Training Material, 2011
- The EAC Duty Remission Regulation, 2008

5.0 TRANSIT & TRANSHIPMENT CUSTOMS PROCEDURES

5.1 Specific Learning Outcomes

At the end of this topic, the trainee should be able to:

- Discuss transit and transshipment customs procedures
- Explain the import and export procedures in EAC
- Explain the operations of the Single Customs Territory (SCT)

5.2 Overview of Transit & Transshipment Customs Procedures

This chapter covers the legal framework; the fundamental concepts; and Customs formalities and procedures for clearance of transit and transshipment goods.

Definition of Terms:

- Transit means the movement of goods imported from a foreign place through the territory of one or more of the Partner States, to a foreign destination.
- Transshipment means the transfer, either directly or indirectly, of any goods from an aircraft, vehicle or vessel arriving in a Partner State from a foreign place, to an aircraft, vehicle or vessel, departing to a foreign destination.
- Transit shed/ go down means any building or premises appointed by the Commissioner in writing for the deposit of goods subject to Customs control.

- Transit period means the period within which transit goods should have exited the country from date of the transit entry.

5.3 Clearance of Transit Goods

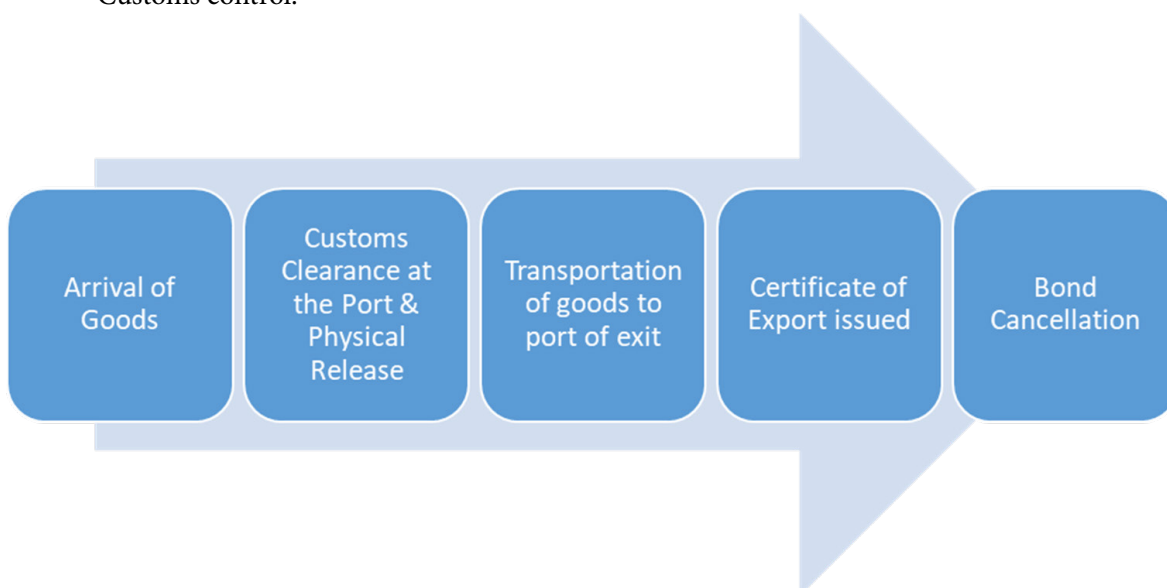
5.3.1 Transit Procedures

There are two types of transit procedures, namely:

- Transit Inwards which means the movement of imported transit goods from a foreign place through a Partner State(s) to a foreign country. For example, new children's garment from China, arrive at the port of Dar es Salaam and are conveyed through Tanzania, to Malawi.
- Transit Outwards means the movement of transit goods from a foreign country through a Partner State(s) destined for export to a foreign destination. For example, Diamond in transit from DR Congo through Uganda and Kenya, for exportation through the port of Mombasa to United Arab Emirates.

The Customs Regime for transit transactions in the EAC Partner States is coded by number "8" and encompasses three specific transactions expressed using Customs Procedure Codes assigned by each Partner State: transit inward; transit outward; and road Customs transit manifest.

The below diagram provides a summary illustration of the clearance procedure for transit goods:



Section 85-87 of EACCMA, 2004 as read with Regulations 104 of EACCMR, 2010 provide the legal framework for clearance of goods in transit. The following Customs formalities and procedures must be met for clearance of transit goods:

- a) All goods in transit to a foreign port shall be entered at the port of importation using form C17.
- b) An owner of the goods in transit shall at the time of entering the goods produce documents relating to the goods to a proper officer. Most Customs Administrations allow copies (and not originals) of the documents to support the entry.
- c) An owner of goods to be entered for transit shall furnish a bond using the Customs Bond Form or any other security in such amounts as the Commissioner may require.
- d) Goods in transit shall be conveyed by road or route approved by the Commissioner and the transit period in respect of the goods shall not exceed thirty days from the date of entry or any further period as the Commissioner may allow.
- e) Goods in transit shall only be carried through the Community in sealed vehicles except in the case of exceptional loads or any other special circumstances authorized by the Commissioner.
- f) In the case of goods carried by road, the carrying vehicle shall be licensed for the intended purpose by the Commissioner, using Form C28 (with the exception of vehicles licensed in any member of the COMESA or the SADC and in respect of which a certificate of approval has been granted, using Form C29).
- g) The carrying vehicle shall bear the words "TRANSIT GOODS" printed boldly and clearly on both sides as specified in Form C28.
- h) The carrying vehicle should be constructed and equipped in such manner that a customs seal can simply and effectively be fixed to the vehicle.
- i) Goods in transit shall be produced to the proper officer at the approved port or place of exportation, together with the copy of the transit entry.
- j) Where the quantity of goods in transit is found at the port or place of exportation or at any place of exit into foreign territory to be less than that specified in the entry, the owner of the goods shall immediately pay to the proper officer the duty chargeable on the discrepancy, unless it is accounted for to the satisfaction of the proper officer.
- k) Where the quantity of goods in transit is found to be less than that specified in the entry or where the period allowed expires before any part of the goods is exported, the owner of the goods shall immediately pay to the proper officer the penalty to bond, except that in the case of discrepancy, the penalty payable shall be calculated proportionately to the discrepancy unless the discrepancy is accounted for to the satisfaction of the proper officer.
- l) Payment of the penalty to bond shall not absolve the owner from exporting the goods within the period allowed and where the owner fails to export the goods, the goods shall be liable to forfeiture, unless the Commissioner otherwise directs.
- m) Where an owner submits an application for refund of deposit or cancellation of the bond using Form C. 26 and any other documents that may be required by a proper officer and upon satisfaction that the goods described in Form C. 26 have been exported, the amount of security furnished shall be refunded to the owner or the bond shall be cancelled.
- n) Where no application for cancellation of bond is submitted within thirty days from the date of exportation, the goods shall be deemed to have been imported for home consumption and shall be liable to any import duty chargeable on similar goods imported for home consumption at the rate in force at the time the goods are entered for home consumption, and the duty shall be paid immediately by the owner of the goods.
- o) Where the evidence of exportation is furnished after the expiry of the 30-day period after exportation, the owner of the goods shall pay a penalty to the bond at a rate of three per cent per month or at the equivalent rate where the period is less than a month.
- p) Where an owner intends to enter for home consumption any goods which are imported in transit, the owner shall apply in writing to the Commissioner to allow entry of the

goods and the Commissioner may allow the entry to be made and shall refund the deposit given or cancel the bond furnished in respect of the goods.

The following situations may warrant a person to seek further extension of transit period:

- a) The goods might be subject of a pending court case
- b) The goods are relief supplies belonging to an approved international relief agency
- c) The goods are tea and coffee which are subject to international auction
- d) The goods have not been exported due to special circumstances arising from national or international emergencies, civil strife, closure of border to trade or due to any other reasons beyond the control of the owner.

Customs Administrations in the Partner States play an important role of monitoring transit consignments and enforcing the controls, to mitigate against the risks of transit diversion; forgery; collusion; undervaluation for purposes of minimizing the bond in force; misdeclaration; and concealment.

5.3.2 Transit Go-Downs/ Sheds

It's important to note that similar premises located outside the port licensed by the Commissioner for the deposit of transit cargo awaiting transportation to the final destinations are known as transit go-downs.

Benefits of transit go-downs/ sheds:

- a) They decongest the port;
- b) They save on port demurrage;
- c) They accord an importer the opportunity to arrange for transport to final destination;
- d) They facilitate customs control.

5.3.3 The Single Customs Territory

The EAC Single Customs Territory is premised on the following pillars: Free circulation of goods; Revenue management systems; Port management systems; and Regional legal and institutional framework. The scope of free circulation of goods with regard to

the EAC covers treatment of imported goods in the EAC, intra-EAC transfer of goods, export of goods from Partner States to markets outside the EAC, Port and Border Operations and trade facilitation⁸.

The EAC Single Customs Territory is a destination model where goods are cleared at the first port of entry. Goods that arrive at the port of Mombasa for delivery through road to Rwanda, are cleared at the port of Mombasa which is the first port of entry in the EAC region. The following Customs procedure is followed:

- a) The importer/ Agent shall make a declaration using the data from the Manifest at any Customs house in the destination country where the Customs system is accessible. Where applicable importer/clearing agent may lodge customs declaration prior to submission of cargo manifest.
- b) The importer/agent shall lodge the declaration with other supporting documents to Customs and pay the assessed taxes to the destination country;
- c) The destination Partner State Customs Authority shall trigger selectivity based on the risk criteria;
- d) Green, Blue and yellow lane entries shall be released by officers of country of destination after all conditions have been fulfilled and a release message shall be sent to the Port authorities who shall commence the cargo removal process;
- e) The Declarants/Clearing Agents will pursue Delivery Orders from the Shipping Lines, who will process the Delivery Order Releases online to the Port authorities. The Delivery Order together with the Customs Releases received by the Port authorities will be used to validate the Declarant's/ Agent's applications for delivery of cargo.
- f) After validation and payment for related port services, the Port authorities will issue a Gate-in-Ticket for the transporter to move into the Port to collect and exit relevant cargo;
- g) Green, Blue and yellow lane entries shall be exited by the destination Partner State officers from the respective Customs Authority at the Port of Entry. A notification shall be sent to KRA or TRA who shall

⁸ The Single Customs Territory Procedures Manual. (2014). Retrieved from <http://repository.eac.int>

- execute the cargo removal.
- h) The Customs Authorities Enforcement officers shall add an ECTS seal (where required), arm and release the truck from the Ports;
 - i) For consignments that are in red channel that require physical examination, the Customs authorities will transmit an inspection/selectivity message to the Ports for movement of the cargo to the CFS/ICD. The CFS/ICD operators will prepare a Pick Up Order for movement of the cargo to the CFS.
 - j) After physical examination, the Electronic Verification Account shall be submitted to Customs authority of destination for further management;
 - k) Where top-up (extra taxes) are required, the Customs Authorities of destination Country shall notify the Importer/Agent;
 - l) The entries shall be released by Customs Authorities of destination Country after all conditions have been fulfilled;
 - m) A copy of the Customs management system release order is printed to allow the truck to move into the CFS/ICD to pick the cargo;
 - n) The destination Customs Authorities shall exit cargo in the system and send notification to KRA or TRA, Importer/ Clearing Agent and CFS Operator who shall commence the cargo removal process;
 - o) The Customs Authorities Enforcement officers shall add an ECTS seal (where required), arm and release the truck from CFS/ICD;
 - p) The Customs Authorities officers at the CFS/ICD gate shall confirm exit of the cargo in the Customs management system, transfer document (EXIT NOTE and C2/Release order) is generated by both the destination Partner States Customs Authorities and the host country;
 - q) The cargo is handed over to Customs Authority enforcement officers for monitoring through the Gazetted transit routes up to country of destination;
 - r) Upon arrival at the inland Border, the Customs Authority of the host country shall confirm the seal is intact and exit the cargo online and the destination country receives the cargo online.

5.4 One Stop Border Posts (OSBP)

The East Africa Community (EAC) was established with the aim of widening and deepening cooperation among the EAC Partner States and other regional economic communities in, among others, political, economic and social fields for their mutual benefit. One of the ways of reaping the economic and social benefits was through the establishment of One Stop Border Posts (OSBPs) as a trade facilitation tool applied at the borders, which promotes a coordinated and integrated approach to facilitate trade, the movement of people and improvement in security. OSBPs enable more efficient movement of persons and goods at land borders by streamlining necessary procedures by the two countries with one stop in a single facility instead of conducting the same procedures twice on both sides of the borders.

The implementation of OSBP has been supported by several OSBP Legal Instruments including:

1. The East African Community One Stop Border Posts Act, 2016
2. The East African Community One Stop Border Posts Regulations, 2017

OSBP Objectives

The main objective of OSBPs is to facilitate trade and travel by reducing the number of stops made at a border crossing, thereby reducing the time required for clearance at the border. This objective is achieved by co-locating exit and entry controls of both countries on each side of the border, or in one common facility with simplified procedures and joint controls where feasible.

Overall Benefits of OSBP

- Reduced clearance time
- Improved cooperation
- Sharing of information
- Harmonized procedures
- Community development

Additionally, OSBPs have;

- Increased physical access to market by facilitating faster movement of goods, persons and services. Time is saved and so is cost of doing business.
- Enhanced trade environment by reduction of border trade formalities of processing documents.

- Improved business competitiveness and this has an economic impact.

Benefits for OSBP Users

At an OSBP, border controls of the two Partner States are co-located in a way that people, goods, and vehicles stop only once, in the country of entry, for both exit formalities from one Partner State and entry formalities into the other.

The expected benefits from OSBPs include reduced clearance time and improved cooperation between and among border agencies through a coordinated framework for border operations. Local communities also benefit from OSBPs through simplified procedures for small scale traders as well as through infrastructural improvements at border crossings.

5.5 Transshipment

There are two types of transshipment:

- a) Direct Transshipment – This happens when goods from a foreign country passing through a Partner State's port to another foreign destination. For example, goods from China offloaded at the port of Dar es Salaam and transferred to another vessel to transport the cargo to South Africa.
- b) Indirect Transshipment- This happens when goods from a foreign country pass through a Partner State's two or more ports to another foreign destination. For example, goods from India are offloaded at the port of Mombasa and transferred by road to Moi International Airport, for delivery to Angola.

The Customs Regime code number for transshipment transactions is "9".

Section 85-88 of EACCMA, 2004 as read with Regulations 105-106 of EACCMR, 2010 provide the legal framework for clearance of transshipment goods. The following Customs formalities and procedures must be adhered to for clearance of transshipment goods:

- a) Goods reported for transshipment shall be entered using Form C. 17 and a bond in respect of the goods shall be executed using the Customs Bond Form.

- b) Goods which are not reported for transshipment and are unloaded, may be entered for transshipment in accordance with the provisions of the Customs Law. For example, the master or agent may apply for and obtain the permission of a proper officer to amend the inward report of the importing aircraft or vessel.
- c) Goods reported for transshipment shall be entered and reshipped within twenty-one days after the commencement of the discharge of the importing aircraft or vessel or within such further period as a proper officer may allow.

5.6 Learning Activities

You have been recruited by a Client in Kigali to import some raw materials for his factory from China. He has also requested that you export for him some finished goods to Europe.

Required

- i. State the import procedures that you will follow in importing the raw materials from China to Kigali
- ii. State the export procedures that you will follow in exporting the finished products from Kigali to Europe
- iii. State how you will facilitate the movement of the cargo along the various border points in EAC that have implemented the OSBP.

5.7 Self-Assessment Questions and Activities

1. Discuss the Customs controls inherent in the clearance procedure for transit goods.
2. Discuss the benefits of the Single Customs Territory procedures as implemented in the EAC region.
3. Discuss the following about One Stop Border Posts:
 - a) How the OSBPs operate.
 - b) Benefits to traders of the OSBP modernization initiative.

5.8 References

- Baker.T. (2002), Dealing with Customs and Excise; Administration, Appeals, Disputes and Investigation, Tolley Publishing
- Wulf, & Jose' B. Sokol (2004) Edited Customs Modernization Hand book
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6.0 MANAGE CUSTOMS BONDED WAREHOUSES

6.1 Specific Learning Outcomes

At the end of this topic, the trainee should be able to:

- i. Describe the legal framework for warehousing of goods
- ii. Describe the warehousing custom regimes
- iii. Identify types of bonded warehouses
- iv. Explain the responsibilities of a Customs Warehouse keeper
- v. Describe the procedures for depositing and removal of goods
- vi. Identify types of bonded warehouse documents
- vii. Describe the customs procedure for processing bonded warehouse documents
- viii. Identify exceptions of bonded warehoused goods

6.2 Overview of Customs Bonded Warehouses

This chapter will help the learner to identify the types of Customs bonded warehouses; apply for licensing of a Customs bonded warehouse; undertake responsibilities of a warehouse keeper; and apply Customs regulations in management of a Customs bonded warehouse.

Definition of Terms:

Bonded warehouse means any warehouse or other place licensed by the Commissioner for the deposit of dutiable goods on which import duty has not been paid and which have been entered to be warehoused.

6.3 Types of Warehouses

Imported dutiable goods may be deposited into a government warehouse or a Customs bonded warehouse, for storage of the dutiable goods in which duty has not been paid, and which have been entered for warehousing. Since duties are not paid on the dutiable goods, the owner of the goods furnishes a bond using a Customs Bond Form, to secure the duties payable on the goods.

There are three types of Customs bonded warehouses:

- a) General Bonded Warehouses- They are obliged to accept goods from third parties which have been entered for warehousing.

- b) Private Bonded Warehouses- They are licensed to warehouse only goods that are the property of the licensee.
- c) Duty Free Shops- A duty free shop is a room or premise situated at the port and licensed by the Commissioner for the deposit of dutiable goods on which duty has not been paid and which have been entered to be warehoused for use as stores on foreign bound means of transport or for sale to foreign or to entitled persons.

6.4 Licensing of a Customs Bonded Warehouse

Goods deposited in a Customs bonded warehouse are goods under Customs control and the warehouse keeper of the facility is licensed by Customs, as stipulated in Regulations 74-76 of the EACCMR, 2010.

- Application for approval and licensing of any premises, rooms or enclosed areas must be submitted on Form C.18.
- Application may also be made in respect of renewal of existing license.
- The application form must be accompanied by a plan of the proposed building, the site plan giving its situation in relation to other buildings and thoroughfares.
- The annual license fee for a bonded warehouse shall be USD 1,500 per calendar year.
- In respect of applications received after the expiry of the time notified to submit the applications, a further non-refundable late registration fee of USD 1,500 must accompany the application.
- Before a license is issued, the premises must be inspected for suitability for use as a warehouse.
 - Be equipped with at least one computer capable of connecting to the Customs business systems.
 - Have a parking yard or storage area which shall be tarmac or concrete finishing or made of some other rigid paving.
 - Have adequate parking space commensurate with the operations of the premises as the Commissioner may deem fit.

- Be well secured with a perimeter fence and adequate lighting system.
- Be equipped with a fire fighting system.
- Any activities that may endanger the goods in the warehouse, such as smoking in the warehouse, should be absolutely prohibited.

6.5 Customs Bonded Warehouse Operations

The warehousing period of goods is six (6) months while the re-warehousing period is three (3) months. However, certain goods as provided for in Section 57(1) of EACCMA, 2004, may be re-warehoused for a further period:

- wines and spirits in bulk warehoused by licensed manufacturers of wines and spirits; or
- goods in a duty free shop; or
- new motor vehicles warehoused by approved motor assemblers and dealers;

The following goods shall not be warehoused:

- Acids for trade and business
- Ammunition for trade and business
- Arms for trade and business
- Chalk
- Explosives
- Fireworks
- Dried fish
- Perishable goods
- Combustible or inflammable goods, except petroleum products for storage in approved places
- Matches other than safety matches
- Any other goods which the Commissioner may gazette

The licensee of a Customs bonded warehouse, known as the warehouse keeper, is responsible for various operations, including:

- Maintenance of registers
- Stack cards
- Permit warehoused goods to be repacked, skipped, bulked, sorted, lotted, or packed, therein;
- Permit samples of such goods to be taken by the owner;

- Permit the name of the owner of such goods in the account taken under section 47 to be changed if application is made on the prescribed form and signed by both the owner and the intended owner;
- Permit the assembly or manufacture in the warehouse of any article consisting wholly or partly of duty free goods;
- Transfer of warehoused goods to another bonded warehouse through use of cargo receipts

6.6 Duties of a Customs Bonded Warehouse Keeper

In addition, the duties of the warehouse keeper include:

- Provide office accommodation, weights, scales, measures, and other facilities, for examining and taking account of goods and for securing them as the proper officer may require.
- Keep a record of all goods warehoused and shall keep such record at all times available for examination by the proper officer.
- Stack and arrange the goods in the bonded warehouse so as to permit reasonable access to and examination of every package at all times.
- Provide all necessary labour and materials for the storing, examining, packing, marking, coopering, weighing, and taking stock, of the warehoused goods.

In accordance with Regulation 79(1) of EACCMR 2010, Customs bonded warehouses are distinguished by numbers. The words “Customs Bonded Warehouse” and the number allocated to a customs bonded warehouse are clearly marked on the principal entrance to the customs bonded warehouse. The words “Duty Free Shop” and the number allocated to a duty free shop are clearly marked on the principal entrance to the duty free shop.

6.7 Learning Activities

1. Suppose you have been selected to present a lecture in a conference on best practices on management of a Customs bonded warehouse. Prepare a presentation to cover the following:
 - a) Compliance to Customs requirements
 - b) Stock management
 - c) Records management
 - d) Security of warehoused goods
2. You have received a call from a new client who wishes to store his dutiable goods in your Customs bonded warehouse. Discuss some of the information that you need to obtain before accepting his request for storage services.

6.8 Self-Assessment Questions and Activities

1. Discuss the different types of warehouses
2. Explain the procedures for depositing and removal of goods

6.9 References

- Baker.T. (2002), Dealing with Customs and Excise; Administration, Appeals, Disputes and Investigation, Tolley Publishing
- Wulf, & Jose' B. Sokol (2004) Edited Customs Modernization Hand book
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7.0 MANAGEMENT OF CUSTOMS SECURITIES

7.1 Specific Learning Outcomes

At the end of this topic, the trainee should be able to:

- i. Describe the legal framework for warehousing of goods
- ii. Explain the concept of Customs securities
- iii. Describe the legal framework for Customs securities
- iv. Describe the types of customs securities
- v. Identify parties to a Customs Bond

7.2 Overview of Management of Customs Securities

This chapter will enable learners to differentiate different types of Customs securities, know parties to a Customs bond; understand types of Customs transactions that require security; and apply Customs procedures for execution, cancellation and retirement of bonds.

Definition of Terms:

- A bond is a contract executed under seal whereby a person or persons (sureties, guarantors or underwriters) bind themselves to pay some other persons up to a specified sum of money as a penalty for the failure by some other person (the principal) to perform certain agreed acts.
- Penalty to bond is the amount of money specified in the bond as payable, if the conditions of the bond are not met or are contravened. It is the Bond In Force (BIF) that is enforceable in case the conditions of the bond are contravened.

7.3 Types of Securities

The Commissioner may require any person to give security for the due compliance by that person with this Act and generally for the protection of the Customs revenue; and, pending the giving of such security in relation to any goods subject to Customs control, the Commissioner may refuse to permit delivery or exportation of such goods or to pass any entry in relation thereto.

A Customs security may be given in the following forms to the satisfaction of the Commissioner:

- a) Bond, in such sum and subject to such conditions and with such sureties as the Commissioner may reasonably require;
- b) Cash deposit; or
- c) Partly by bond and partly by cash deposit.

There are two types of a Customs Bond:

- a) Particular bond- This is a bond that covers only a single specified transaction and it is valid for a period ranging from forty-eight hours to twelve months. It is executed in accordance with the provisions of Section 117 of EACCMA, 2004 and has no provision for further extension. It is retired/discharged upon completion of the specific Customs transaction.
- b) General bond - This is a bond that covers many transactions and is valid for a duration of three years. It is executed in accordance with Section 107(3) of EACCMA, 2004 and it is replenishable.

7.4 Parties of a Customs Bond

The main parties to a Customs Bond are:

- a) The principal- This is the person who undertakes to perform or desist from performing certain acts (such as the licensee of a bonded warehouse).
- b) The guarantor/ surety- This is the person who undertakes to pay a penalty in the event of the principal failing to honor his or her obligations. The amount paid by the guarantor is referred to as the penalty of the bond. Where a bond is underwritten by several persons, such persons are jointly and severally liable.

Where any security is required to be given under EACCMA, 2004 for any particular purpose then such security may, with the approval of the Commissioner be given to cover any other transactions which the person giving the security may enter into within such period as the Commissioner may approve.

All bonds required to be given under EACCMA, 2004 shall be so framed that the person giving the bond, and any surety thereto, is bound to the Commissioner for the due performance of the conditions of that bond; and any such bond may, unless sooner discharged by the due performance

of the conditions thereof, be discharged by the Commissioner on the expiration of three years from the date thereof, but without prejudice to the right of the Commissioner to require fresh security. Where any bond given under this Act is discharged, then the Commissioner shall cause such bond to be cancelled and an endorsement to that effect made thereon.

Without prejudice to any rights of a surety to any bond given under EACCMA, 2004 against the person for whom he or she is surety, a surety shall, for all the purposes of any bond, be deemed to be the principal debtor and accordingly the surety shall not be discharged, nor his or her liability affected, by the giving of time for payment, or by the omission to enforce the bond for any breach of any conditions thereof, or by any other act or omission which would not have discharged the bond if he or she had been the principal debtor.

The Commissioner may require the person giving the bond to enter into fresh security, if a person being a surety,

- a) dies; or
- b) becomes bankrupt or enters into any arrangement or composition with, or for the benefit of, his or her creditors; or
- c) departs from a Partner State without leaving sufficient property therein to satisfy the whole amount of the bond;
- d) otherwise ceases to have capacity to honour the surety

According to Section 109 of EACCMA, 2004, where the conditions of any bond have not been complied with, the Commissioner may by notice in writing require the person who has given security under it to pay to him or her the amount of the security within fourteen days of the notice; and on failure to comply with the notice, the Commissioner may enforce payment of the security as though it were duty due and unpaid.

7.5 Customs Transactions That Require Security

The table below is a summary of the Customs transactions that require security:

| Procedure | Type of Bond |
|--|---------------------------------------|
| Removal of goods into a bonded warehouse | General bond |
| Operating as a Customs Clearing Agent | General bond |
| Conveying goods in transit | General bond |
| Transshipment of goods | General bond |
| Operating a transit shed | Not specified |
| Removal of uncleared goods from a Customs controlled area to another port/ place | General bond or particular bond |
| Removal of warehoused goods for export | General bond or particular bond |
| Transfer of stores from one foreign going means of transport to another | General bond; application on form C25 |
| Shipment of goods prior to entry | General bond |
| Re-exportation of imported goods delivered without payment of duty | Particular bond |
| Project goods imported and delivered without payment of duty | Particular bond |
| Imported goods for manufacture of export goods | General bond |
| Provisional entry of goods | General bond |
| Temporary imports | General bond or particular bond |

The Customs Bonds are coded “CB” followed by a number that refers to a specific Customs transaction. The following are examples of Customs bonds:

- CB1- For delivery of perishables or other goods prior to payment of duty.
- CB2- Bond for removal of goods from one port/place to be examined at another port/place.
- CB3- Bond for warehousing of goods or removal of warehousing of goods.
- CB4- Bond for exportation
- CB5- Bond for shipment of stores
- CB6- General bond for security of warehoused goods
- CB7- Bonds for goods to be shipped prior to entry
- CB8- Transit bond
- CB9- Transshipment bond
- CB10- Bond for re-exportation of imported goods delivered without payment of duty
- CB11- Bonds for Customs Agents
- CB12- Bonds for conveyance of goods subject to Customs Control
- CB13- General bond for securing goods deposited in an ICD
- CB14- Bond for removal of goods from or to an EPZ

7.6 Bond Execution, Marking Off, Cancellation and Enforcement

7.6.1 Bond Execution

Bond execution is the processing of the security bond through the filling of the bond form; signing; sealing; witnessing; approval and capture in the system for use in Customs transactions. Bonds are legal documents which must be meticulously prepared & properly executed.

Customs security bonds can be executed in accordance with Sections 106-109 of the EACCMA, 2004. In the process of bond execution, the following have to be observed:

- a) Bond forms should be fully completed, signed and sealed. All bonds must be sealed and signed by properly authorised persons representing the surety and the principal debtor.
- b) Be white in colour and size A4
- c) Be submitted in four copies, each clearly marked;

- Original,
 - Duplicate,
 - Triplicate and
 - Quadruplicate.
- d) Show full address of the principal; guarantor and their identification numbers
 - e) Show total bond amounts in both words and figures
 - f) The declared Bond In Force amount be supported by attachments
 - g) The signatories to show their full names and ranks
 - h) Be executed under relevant regulations as to bond types under the EACCMR, 2010
 - i) The forms be signed by authorized signatories who should be either, Directors or Company Secretaries and for officers of ranks below that, authority of the Board be obtained and Power of Attorney given.
 - j) To affix revenue stamp on original bond
 - k) Signatories to appear physically before a Customs Officer at specified times for confirmation and updating of the specimen signatures
 - l) Bonds should not be; transferred to other parties, punctured, perforated, erased or altered.
 - m) The executed bond upon approval is captured in the system for use by the importer/clearing agent in readiness for registration of entry/ entries.

Erasures must not be made on bond forms; any alterations to a bond should be initialled by the principal, surety and the witnesses. Also, all bonds executed in favor of the Commissioner are normally underwritten by a bank or a reputed insurance company.

7.6.2 Bond Marking Off

Bond marking off is the process by which Customs tracks the balance due on a general bond. When a Customs Agent registers an entry in the Customs Business system by selecting the relevant general bond which already exists in the system, the system automatically deducts the duty amount from the bond balance. This helps to ensure that all entries that require a bond are actually covered by a sufficient bond.

The Customs Business System will reject entries where the duty at stake is more than the bond balance. In such a case, the Customs Agent is notified that he/she has insufficient bond.

7.6.3 Bond cancellation

Bond cancellation is the process of bond termination upon completion of the specified Customs transaction(s) within the stipulated time limits. Cancellation of Customs security bonds is provided for under Section 108 of EACCMA, 2004.

To facilitate bond cancellation/discharge, the owner of goods or their appointed clearing agent (the principal) is expected to make an application by filling a bond cancellation form (C29) for processing and acquittal. The application has to be supported by documentary evidence that the secured goods have been treated as stipulated in the Customs law. Withdrawal will be complete when the letter of discharge is given by Customs to the Guarantor with original copy of the bond so that the Principal is discharged from the obligations of paying premiums.

7.6.4 Bond Enforcement

Bond enforcement is the process of recovery of revenue on the bond in force once the principal flouts any of the conditions of the bond.

Bond enforcement can be effected in the following manner:

- Where the conditions of any bond have not been complied with, the Commissioner may by notice in writing require the person who has given security under it to pay to him or her the amount of the security within fourteen days of the notice; and on failure to comply with the notice, the Commissioner may enforce payment of the security as though it were duty due and unpaid (Section 109 of the EACCMA, 2004);
- When the importer fails to meet the conditions of the bond or defaults, he/she commits an offence for which legal action shall be taken in accordance with the Customs offence compounding procedures (Section 219 of the EACCMA, 2004);
- Seize the goods and have them forfeited to the state (Section 210 of the EACCMA, 2004);

7.7 Benefits and Challenges of Bonds Management

The following are the benefits accruing from the usage of Customs security bonds:

- a) It is sort of credit given to importers as their cash is not tied up in upfront tax payments, thus boosting their cash flow;
- b) It facilitates international trade, thus conforming to the tenets of the WTO Revised Kyoto Convention;
- c) It is convenient to manufacturers who import raw materials to manufacture goods for both local consumption and for export, thus boosting the growth of local industries leading to the creation of job opportunities;
- d) The secured revenue is easier to recover in case of fraud or tax evasion;
- e) Cargo clearance time is minimized, which is cost saving.

Some of the challenges faced by Customs Administrations in management of bonds include:

- a) Tax payment is delayed for a long time, thus denying the Government revenue;
- b) Guarantors giving unilateral notifications to Customs to their decision to withdraw from guaranteed security bonds to some principals and expecting Customs to exonerate/exempt them from liabilities already incurred;
- c) Use of forged/fake security bonds leading to loss of revenue;
- d) Difficulties in recovery of revenue from outstanding security bonds from Principals and Guarantors who have prematurely wound up;
- e) Tendency of most Guarantors to engage Customs in prolonged correspondences when called upon to honour demand notes on outstanding security bonds
- f) It increases Customs administrative costs.

To mitigate these challenges, Customs Administrations in the Partner States have adopted modernization initiatives that have increased efficiency and effectiveness in bonds management. For example, many Partner States have implemented automatic generation of the certificate of export which automatically triggers commencement of the bond cancellation process. Use of electronic cargo tracking systems and other technology-enabled surveillance methods have helped reduce diversion of bonded goods.

7.8 Learning Activities

Suppose that you have been hired to a newly registered Clearing and Forwarding Company and you have been assigned the Head of Bonds Unit. Explain some of the measures that you will put in place to ensure compliance with Customs formalities and procedures.

7.9 Self-Assessment Questions and Activities

1. Bond security is one of the instruments provided by the Commissioner of Customs to facilitate trade.

Required:

- a) Differentiate between general bond and particular bond.
 - b) Explain any three ways in which the usage of bond securities facilitates trade.
2. Under what circumstances can the Commissioner require that the owner of goods deposits a bank guarantee.

7.10 References

- Baker.T. (2002), Dealing with Customs and Excise; Administration, Appeals, Disputes and Investigation, Tolley Publishing
- Wulf, & Jose' B. Sokol (2004) Edited Customs Modernization Hand book
- Lawrence J. Bogard, (1983) Customs Laws and Administration, Oceana Publication
- Keen, M. (2003). Changing Customs: Challenges and Strategies for the Reform of Customs Administration. International Monetary Fund. <https://doi.org/10.5089/9781589062115.058>
- WCO Revised Kyoto Convention
- WCO SAFE Framework of Standards
- Protocol on the establishment of the EAC Customs Union
- The EAC Customs Management Act, 2004
- The EAC Customs Management Regulations, 2010
- The EAC Customs Procedures Manual
- The EAC Customs Training Material, 2011
- The EAC Duty Remission Regulation, 2008

8.0 MANAGEMENT OF CUSTOMS OFFENCES

8.1 Specific Learning Outcomes

At the end of this topic, the trainee should be able to:

- i. Identify the types of Customs offences
- ii. Identify the types of penalties
- iii. Identify factors leading to offences and their mitigations

8.2 Overview of Customs Offences

This topic will enable learners to detect offences committed based on Customs Laws; apply Customs Laws to determine penalties for an offence; undertake obligations of a Customs Agent in the settlement of an offence; and appeal Customs penalties.

Definition of Terms:

- Customs offence is any breach or attempted breach of the statutory or regulatory provisions which are provided in EACCMA, 2004.
- Seizure means impounding, detention and delivery of the impounded good to the nearest Customs office or any other place of security.
- Forfeiture means losing ownership of goods to the State.
- Compounding an offence means settlement of an offence in accordance with Section 219 of EACCMA, 2004.

8.3 Customs Offences

Customs offences are committed when any person contravenes any of the provisions of EACCMA, 2004 and its accompanying regulations. Throughout the Act, a common phrase that specifies an offence related to violation of particular provisions is found: "A ... who contravenes this section commits an offence."

Additionally, offences are also enumerated under Part XVII of the Act. The offences covered in part XVII include the following:

- a) Section 193- Conspiring to contravene provisions of this Act;
- b) Section 194- Offences with violence
- c) Section 195- Removing or defacing Customs seals
- d) Section 196- Inducing another to commit offence

- e) Section 197- Offence to warn offender
- f) Section 198- Offence to assume character of officer
- g) Section 199- Master of vessel, aircraft or vehicle used for smuggling
- h) Section 200- Offence related to prohibited, restricted and uncustomed goods
- i) Section 202- Offence related to import or export of concealed goods
- j) Section 203- Offence to make or use false documentation.
- k) Section 204- Offence to refuse to produce documents
- l) Section 205- Offence to interfere with Customs gear
- m) Section 206- Uncustomed goods found to be reported
- n) Section 207- Goods offered on pretence of being smuggled
- o) Section 208- Aiders, abettors

In the EAC region, commonly committed offences include:

- a) Mis-declaration with regard to tariff number, quantities and item description
- b) Smuggling of prohibited and restricted goods
- c) Diversion of bonded goods
- d) Concealment
- e) Under-valuation
- f) Abuse of temporary importation procedures
- g) Counterfeit/prohibited goods
- h) Non-compliance with warehousing procedures

The detection of offences by a proper officer may be as a result of the following activities:

- a) Collection of information from informers and whistle blowers;
- b) Intelligence gathering;
- c) Risk profiling and targeting of high risk consignments;
- d) Scanning of goods;
- e) Physical verification of goods;
- f) Post clearance audit;
- g) Investigation;
- h) Document verification;
- i) Intense searching/ rummaging of conveyances;
- j) Border patrols

8.4 Customs Penalties

To ensure compliance to the Customs laws and regulations, the Act provide for penalties in case of non- compliance. These are charges imposed for either doing what is not supposed to be done or abstain from doing the rightful act within the premises of the laws and regulations. Penalties can be categorized as follows:

- a) **Specific Penalty-** This penalty is specifically prescribed for a particular violation of a section. Some offences are charged fines, up to a maximum limit, jail term, and/or forfeiture of goods.
- b) **General penalty-** This is for offences that no specific penalty has been mentioned. For such offences, Section 209 of EACCMA, 2004 states that the general penalty is a fine not exceeding USD 5,000.

- c) **Penalty basing on value of goods involved-** Some offences attract a penalty basing on the percentage of the value of goods involved in that offence.
- d) **Imprisonment-** Some offences are subject to imprisonment if convicted. The maximum time is twenty (20) years depending on the nature of offence and time provided.
- e) **Both imprisonment and fine**

The table below gives examples of offences that result to forfeiture of goods, penalty, or both.

| Section of the EACCMA | Summary of the offence | Forfeiture | Penalty |
|-----------------------|---|------------|---------|
| 9 | Bribery and Corruption of Officers | - | X |
| 15 | Failure to enter or leave or bring goods into or out of appointed entrance or to enter or leave Customs area when required to do so | X | X |
| 16 | Interfering in any way with goods subject to Customs control | X | X |
| 21 | Failure by Master of aircraft or vessel to come to an approved port and report | - | X |
| 23 | A person who other than health officer boards a vessel before the proper officer | - | X |
| 24 | A master or agent of aircraft or vessel who makes a false or incorrect report | X | |
| 25 | Failure by Master or agent of aircraft or vessel to answer questions or produce documents | - | X |
| 26 | Failure by owner or agent of aircraft or vessel to account for any goods within the period allowed | - | X |
| 28 | Failure by master or agent to report vessel or aircraft lost or wrecked, etc. | | X |
| 29 | Failure by owner of vehicle arriving overland to report to Customs, etc. | X | X |
| 33 | Unloading of goods in an unapproved place | X | X |
| 36 | Failure to furnish entry within forty-eight hours, in case of provisional entry of goods | - | X |
| 39 | Delivery from Customs area in special circumstances not returned | X | X |
| 48 | Removing goods to the warehouse and in packages in which they were imported or re-packed | X | X |
| 51 | Contravening a condition imposed in the operation in bonded warehouse | X | X |
| 53 | Failure to return goods temporarily removed from warehouse | X | X |
| 55 | Warehoused goods entered as ship stores not delivered as such | X | X |

| | | | |
|-----|---|---|---|
| 59 | Gaining access to a bonded warehouse without the presence of a proper officer | - | X |
| 61 | Removing or destroying goods in a warehouse | - | X |
| 62 | Using premises as a bonded warehouse without authority or contrary to conditions of license | | X |
| 64 | Failing to provide facilities in a Customs bonded warehouse | - | X |
| 65 | Interfering with warehoused goods | X | X |
| 67 | Failing to produce warehoused goods when required to by a proper officer | - | X |
| 74 | Master or agent of aircraft or vessel who fails to enter outwards vessel or aircraft and goods | - | X |
| 73 | Owner who fails to enter goods for export by aircraft or vessel | X | X |
| 75 | Goods loaded on board aircraft or vessel without entry etc. | X | X |
| 76 | Contravening conditions to load goods without entry etc. | X | X |
| 77 | Offloading of exports within the country etc. | X | X |
| 78 | Contravention of conditions for bonded goods entered for export | X | X |
| 79 | Failure to export goods entered as stores | X | X |
| 80 | Short-shipped goods not reported within forty-eight hours | X | X |
| 88 | Departure of an aircraft or vessel without clearance | - | X |
| 89 | Failure by master or agent of vessel to fulfil undertaking or return cancelled certificate or clearance | - | X |
| 90 | Failure of master or agent of aircraft or vessel to produce clearance certificate | | X |
| 91 | Possession in an aircraft or vessel of goods not declared in the manifest or found short | | X |
| 92 | Failure to bring aircraft or vessel to a boarding station when required to do so | - | X |
| 83 | Failure to answer questions put up by a proper officer to a person about to depart to foreign | X | X |
| 99 | Loading or unloading coastwise goods onto or from aircraft or vessel at unapproved place etc. | X | X |
| 100 | Giving incorrect or false information on Transire | - | X |
| 101 | Failure by master or agent or aircraft or vessel to produce Transire on arrival | | X |
| 102 | Contravening conditions for loading or unloading of coasting vessel | X | X |
| 104 | Coasting aircraft deviating from its voyage or failing to report wreck etc. | X | X |
| 105 | Refusal by master of aircraft or vessel to answer questions or making incorrect reply. | | X |
| 160 | Use of unlicensed premises to manufacture under bond or contravention of licence conditions | X | X |
| 162 | Failure to enter goods, equipment etc. on expiry of licence | X | |
| 163 | Failure of Manufacturer to provide facilities, records etc. | - | X |
| 164 | Failure to enter and properly store materials in the raw material stockroom | | X |
| 166 | Goods from bonded factory entered for home consumption | X | X |
| 164 | Imported machinery and raw materials not delivered from bonded factory | X | |

The Act however provides for general penalties in case of any act that no specific charges/penalty has been imposed. This is according to section 209 of EACCMA 2004.

8.5 Settlement of an Offence

The settlement of an offence in accordance with Section 219 of EACCMA, 2004 is known as compounding an offence. This mode of settlement of offences is most commonly used in practice because it is able to:

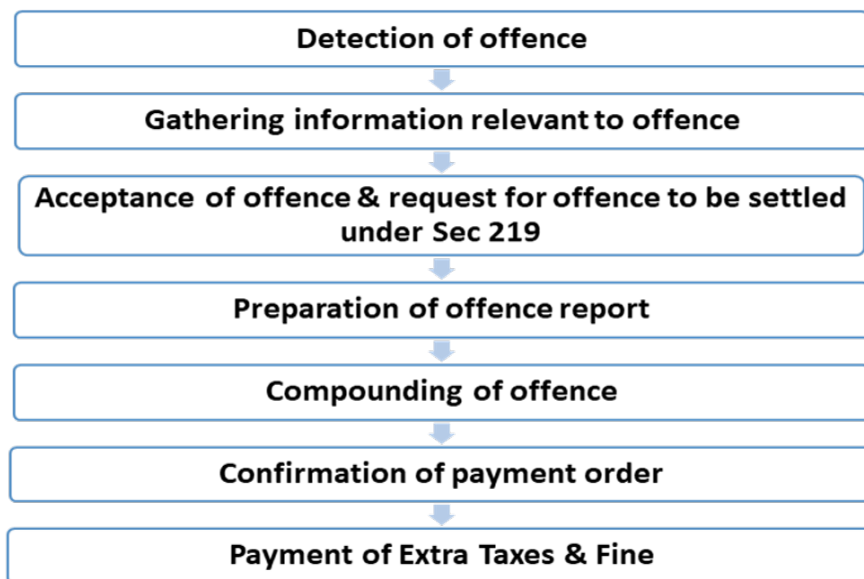
- a) Expedite the resolution of customs related cases, disputes or offences, thus avoiding the already clogged judicial process.
- b) Give opportunity for reformation of Customs law offenders by penalizing or warning them without jailing them.
- c) Financially punish Customs law offenders therefore it is an effective enforcement tool.

An offence settled through compounding, in accordance with Section 219 of EACCMA, 2004 cannot be further subjected to a court proceeding. On the other hand, the Commissioner cannot compound an offence that is already a subject of hearing in a court of law.

The compounding officer issues an order which:

- a) should be in writing ;
- b) shall specify the offence which the person committed and the penalty imposed by the Commissioner;
- c) shall make the offender not be liable to any further prosecution;
- d) shall be final and shall not be subject to appeal, and may be enforced in the same manner as a decree or order of the High Court.

The Customs procedure for compounding of an offence can be summarized as illustrated below:



The role of Customs agent in the compounding process includes:

- a) Admit commission of offence on prescribed form
- b) Completion of request for compounding form C35
- c) Submission of clearance documents
- d) Signing of offence documents
- e) Giving mitigating reasons before the compounding officer
- f) Payment of fines and penalties

8.6 Appeals on Customs Penalties

The Commissioner is empowered by the EACCMA 2004 to make a decision, assessment of tax, and to determine the value of imports/exports, within the framework of the Customs laws. In the process, the assessment made can aggrieve a taxpayer, who may be an importer or exporter. The aggrieved person may decide to apply for review or appeal against the decision.

An application for review or an appeal can be effected by an importer/exporter or their appointed Customs Agent. Section 229(1) of EACCMA, 2004 states that where a person is directly affected by the decision or omission of the Commissioner, or any other officer on matters relating to Customs, he/she shall within thirty days of the date of the decision or omission lodge an application for review of that decision or omission. The application should be in writing and should detail the reasons for the review.

Section 229(4) of EACCMA, 2004 requires that the Commissioner communicates to the appellant his/her decision within thirty days from the receipt of the application. In case the Commissioner does not make the communication within the stipulated time period, he/she shall be deemed to have made a decision to allow the application. The owner of goods can request to “pay and protest” or lodge a security, in order for the Commissioner to release the goods pending determination of his/her application.

Section 230 of EACCMA, 2004 also provides that a person dissatisfied with the decision of the Commissioner may appeal to a tax appeals tribunal. Such an appeal should be lodged within forty-five days after being served with the Commissioner’s decision.

8.7 Learning Activities

You have been invited by newly registered Clearing and Forwarding companies to give a presentation on “Operating within Regulations”. Based on EACCMA 2004, prepare a presentation addressing:

1. Type of custom offenses and disputes
2. Avoiding customs offences and disputes
3. Possible resolution mechanisms on disputes.

8.8 Self-Assessment Questions and Activities

1. A proper officer has detected a falsified commercial invoice which understates Customs value by USD 5,000. Which sections of EACCMA, 2004 will the owner of goods be charged?
2. List the two conditions that must be met by an importer for the Commissioner of Customs to accept to compound any offence as per Section 219 of the East African Community Customs Management Act (EACCMA) 2004.
3. Discuss the dispute resolution mechanisms set up by your country’s Customs Administration.

8.9 References

- Baker.T. (2002), Dealing with Customs and Excise; Administration, Appeals, Disputes and Investigation, Tolley Publishing
- Wulf, & Jose' B. Sokol (2004) Edited Customs Modernization Hand book
- Lawrence J. Bogard, (1983) Customs Laws and Administration, Oceana Publication
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- WCO Revised Kyoto Convention
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- Protocol on the establishment of the EAC Customs Union
- The EAC Customs Management Act, 2004
- The EAC Customs Management Regulations, 2010
- The EAC Customs Procedures Manual
- The EAC Customs Training Material, 2011
- The EAC Duty Remission Regulation, 2008

ANNEXES

Annex I: List of Customs Forms

Under EACCMA 2004 read with EAC Customs Management Regulations 2010, there are various forms that a Customs Agent should be well conversant with in the process of clearing goods. There are C-forms and CB-forms which are harmonized within the regions and serves as documentary evidence when used within Customs department. The forms may be used either as it is or as an attachment to another Customs form(s) or documents. Below is the current list of the harmonized Customs forms together with the applicable regulations.

Table: the list of Customs forms

| No. | FORM No. | FULL TITLE OF THE FORM | APPLICABLE REGULATION |
|-----|----------|---|--|
| 1 | C 1 | Overtime Request | Regulation 5 (1) |
| 2 | C 2 | Report Inward/Outward of Vessel/Aircraft/Vehicle | Regulations 11 (1), 12 (2), 20 (1), 88, 110, 112 (2) |
| 3 | C 3 | Parcels List | Regulation 11 (2) |
| 4 | C 4 | General Declaration – Aircraft | Regulation 12 (1) (2), 109 (1) (2) (3) (4) |
| 5 | C 5 | Cargo Manifest – Aircraft | Regulation 12(2), 20(1), 21,109(3) (4)110,111(2) |
| 6 | C 6 | Passenger List/Manifest | Regulation 15 (1), 93 (1), 111 (1) (2) (3) |
| 7 | C 7 | Declaration of Consumable Stores on Board Vessels | Regulation 15 (1) (b) |
| 8 | C 8 | Application to Break-bulk Prior to Making Report and Unloading Goods Prior to Entry | Regulation 22 |
| 9 | C 9 | Application to Amend Inward/Outward Manifest | Regulation 110 |
| 10 | C 10 | Application to Proceed to Suffrance Wharf or other Unapproved Place | Regulation 30, 90 |
| 11 | C 11 | Landing Certificate | Regulation 38 |
| 12 | C 12 | Application for Release of Perishables or Other Goods Prior to Payment of Duty | Regulation 49 (1) |
| 13 | C 13 | Application for Inward/Outward Processing | Regulation 185 (1), 186 (2), 192 (1), 193 (2) |
| 14 | C 14 | Certificate of Clearance | Regulation 107 |
| 15 | C 15 | Request to Repack Warehoused Goods | Regulation 70 (1) (2) |
| 16 | C 16 | Request to Transfer Ownership of Warehoused Goods | Regulation 71 |
| 17 | C 17A | Single Administrative Document (SAD) – ASYCUDA | Regulation 39, 89, 104, 105 |
| 18 | C 17B | Single Administrative Document (SAD) – SIMBA | Regulation 39, 89, 104, 105 |
| 19 | C 18 | Application for License of Premises to be used as a Bonded Warehouse/Factory/Internal Container Depot (ICD) | Regulation 57 (1), 74 (1) |
| 20 | C 19 | Licence for Private/ General Bonded Warehouse/Factory/Internal Container Depot | Regulation 57 (3), 74 (4), 153 (4) |
| 21 | C 20 | Application for Customs Agents' License | Regulation 149 (1) |
| 22 | C 21 | Customs Agents' License | Regulation 151 (3) |
| 23 | C 22 | Application to Ship Goods Prior to Entry | Regulation 94 (1) |

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| | | | |
|----|-------|---|--------------------------------|
| 24 | C 23 | Application to Reload Goods Unloaded in Error | Regulation 95 (1) |
| 25 | C 24 | Application to Ship Stores | Regulation 96 |
| 26 | C 25 | Application to Transfer Stores of Aircraft/Vessel | Regulation 98 |
| 27 | C 26 | Application for Refund of Deposit/Cancellation of Bond | Regulations 104 (15), 148 (2) |
| 28 | C 27 | Transire | Regulation 123 |
| 29 | C 28 | Vehicle/Vessel License for Conveying Transit Goods | Regulation 104 (5) (a) (b) |
| 30 | C 29 | Certificate of Approval for Licensed Motor Vehicles/Vessels from COMESA/SADC | Regulation 104 (10) |
| 31 | C 30 | Duty Drawback Rate of Yield Notification Form | Regulation 139 (2) |
| 32 | C 31 | Duty Drawback/Debenture Form | Regulation 139 (3) |
| 33 | C 32 | Temporary Importation of Road Vehicles from COMESA, SADC and Countries with Bilateral Arrangements with the Partner States - Declaration of Importation | Regulation 136 (2) |
| 34 | C 33 | Application for Remission /Refund of Import Duty on Abandoned/Damaged/Pillaged/Destroyed Goods | Regulation 143 (2), 145, 147 |
| 35 | C 34 | Application for Remission /Refund of Import Duty on Re-exported Goods | Regulation 146 (2) (a) |
| 36 | C 35 | Request for Settlement of a Case | Regulation 196 |
| 37 | C 36 | Declaration of Particulars Relating to Customs Value | Regulation 197 (1) (2) |
| 38 | C 37 | Notice of Seizure | Regulation 200 |
| 39 | C 38 | Application for Payment of Proceeds of Sale of Goods | Regulation 208 |
| 40 | C 39 | Application for Licensing Vessel/Vehicle for Conveyance of Goods Under Customs Control | Regulation 210 (1) |
| 41 | C 40 | Vehicle/Vessel Licence for Conveying Goods under Customs Control | Regulation 210 (2) |
| 42 | CB 1 | Bond for Delivery of Perishable or Other Goods Prior to Payment of Duties/Taxes | Regulations 49 (1), 171 (2) |
| 43 | CB 2 | Bond for Removal of Goods from One Port/Place to be Examined and Entered at Another Port/Place | Regulation 179 (2) |
| 44 | CB 3 | Bond for the Warehousing of Goods or Removal of Warehoused Goods | Regulation 68 (1) |
| 45 | CB 4 | Bond for Exportation | Regulation 94 (2) |
| 46 | CB 5 | Bond for Shipment of Stores | Regulation 68 (1), (99) |
| 47 | CB 6 | General Bond for Security of Warehoused Goods | Regulation 76, 155 |
| 48 | CB 7 | Bond for Goods to be Shipped Prior to Entry | Regulation 94 (2) |
| 49 | CB 8 | Bond for Transit | Regulation 104 (3) |
| 50 | CB 9 | Bond for Transshipment of Goods | Regulation 55 (2), 105 (1) |
| 51 | CB 10 | Bond for Re-Exportation of Imported Goods Delivered without Payment of Duty | Regulation 173 (3) |
| 56 | CB 11 | Bond for Customs Agents | Regulation |
| 57 | CB 12 | Bond for the Conveyance of Goods Subject to Customs Control | Regulation 104 (9), 211 (1) |
| 58 | CB 13 | General Bond for Ensuring Compliance with Customs Laws and Securing Duties on Goods Deposited into an Inland Container Depot | Regulation 57 (5) |
| 59 | CB 14 | Bond for Removal of Goods from/to Export Processing Zone | Regulation 169(2), 172(2), 174 |

Apart from the above mentioned forms, there are other forms which are recognized in individual Partner State for administrative purposes and may differ from one Partner States to another though serving the same purposes. For examples while Tanzania is using F88 to assess accompanied passenger's baggage, Uganda is using Passenger Baggage Assessment forms (PB-forms).

Annex II: Additional Self-Assessment Questions

1. The East Africa Community Management Act (EACCMA, 2004) the Regulation thereto provides control measures and procedures for unloading and removal of cargo imported in a vessel from Customs area.
Briefly explain the procedure applied and control measures in the unloading and removal of imported goods from a Customs area.
2. With specific examples, briefly explain what you understand by;
 - a) Prohibited goods
 - b) Restricted goods
3. Identify International Conventions on Prohibited and Restricted goods and give their role in controlling prohibited and restricted goods.
4. Discuss reasons for imposing restrictions and prohibitions
5. An applicant for Customs Agent license is required to meet certain conditions in order to be issued with a license. Briefly identify and explain conditions governing Customs Agent licensing.
6. What do you understand by the term compliance? Give six examples where compliance is required.
7. List the commonly committed Customs offences.
8. Explain how a Customs offence of misdeclaration can be settled by the Commissioner under section 219 of the Act.
9. In certain cases, a Customs Agent is required to defend the rights of an importer against certain decision of the Commissioner of Customs. Briefly explain legal measures and processes the Agent can take to ensure that his/her client is not affected by the wrongful decision or omission of the Commissioner of customs.

8.10 References

- Baker.T. (2002), Dealing with Customs and Excise; *Administration, Appeals, Disputes and Investigation*, Tolley Publishing
- International Convention on CITES
- Lawrence J. Bogard, (1983) *Customs Laws and Administration*, Oceana Publication
- Montreal Protocol (1987) on Ozone Depleting Substances
- Partner States Legislation relevant to Customs Operations
- Protocol on the establishment of the EAC Customs Union
- The EAC Customs Management Act, 2004
- The EAC Customs Management Regulations, 2010
- The EAC Customs Procedures Manual
- The EAC Customs Training Material, 2011
- The EAC Duty Remission Regulation, 2008
- The EAC Rules of Origin
- The EAC website: www.eac.int
- Uganda Revenue Authority Customs Departmental Instructions Revised, 2009
- Uganda Revenue Authority Customs Procedure Manual, 2010
- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988
- WCO Revised Kyoto Convention
- WCO SAFE Framework of Standards
- WCO website
- Wulf, & Jose' B. Sokol (2004) Edited *Customs Modernization Hand book*
- www.click.wcoomd.org
- <http://www.clearedanddelivered.com>

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UNIT 2

CUSTOMS VALUATION

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LIST OF ABBREVIATIONS AND ACRONYMS

| | |
|--------|--|
| BDV | Brussels Definition Value |
| CCC | Customs Cooperation Council |
| ECUSG | European Customs Union Study Group |
| EEC | European Economic Commission |
| GAAPs | Generally Accepted Accounting Principles |
| GATT | General Agreement on Tariffs and Trade |
| HSC | Harmonized System Code |
| NEMC | National Environmental Management Council |
| PAPP | Price Actually Paid or Payable |
| PCA | Post Clearance Audit |
| RECTS | Regional Electronic Cargo Tracking System |
| RTAs | Proliferation of Regional Trade Agreements |
| TCCV | Technical Committee on Customs Valuation |
| TFA | Trade Facilitation Agreement |
| UNCTAD | United Nations Conference on Trade and Development |
| UNCTE | United Nations Conference on Trade and Employment |
| WCO | World Customs Organization |
| WTO | World Trade Organization |

UNIT 2 : CUSTOMS VALUATION

1.0 UNIT OVERVIEW

1.1 Unit Description

This unit specifies the competencies required to determine Customs value of imported goods. It involves application of the principles of customs valuation; applying the WTO-ACV Legal texts; determining customs value based on the transaction value method, transaction value of identical goods method, transaction value of similar goods method, deductive value method, computed value method and fall back value method; confirming the authenticity of the goods value figure using customs documents; and, managing valuation disputes.

1.2 Unit Summary Learning Outcomes

At the end of the unit, the trainee should be able to:

1. Apply the principles of customs valuation
2. Apply the legal texts of WTO-ACV
3. Determine customs value based on transaction valuation method
4. Determine customs value using Transaction Value of Identical Goods Method
5. Determine customs value using Transaction Value of Similar Goods Method
6. Determine customs value using Deductive Value Method
7. Determine customs value using Computed Value Method
8. Determine customs value using Fall Back Method
9. Confirm the authenticity of the figures using Customs Documents
10. Reduce Customs valuation disputes.

2.0 OVERVIEW CUSTOMS VALUATION

2.1 Specific Learning Outcomes

At the end of this topic, the trainee should be able to:

- i. Describe evolution of customs valuation
- ii. Compare Previous Customs Valuation Systems with WTO-ACV
- iii. Describe the General Principles of Customs valuation

2.2 Introduction

Customs Valuation is key when dealing with international trade. It is the basis by which Customs duties liable to ad valorem duties are levied. This course is designed to provide the learners with knowledge and key competences to enable them to determine Customs value of imported goods accurately and correctly while applying the principles of the WTO valuation Agreement. The Customs valuation unit briefly describes the provisions of the WTO Agreement on Customs Valuation. The unit will explore the key requirements of the WTO Agreement in addressing application of its provisions to modernisation and reform of members' Customs procedures. The unit will also bring out vividly the objective of the Agreement which requires countries to adopt a valuation system that is fair, neutral, uniform, and transparent and it prevents the use of arbitrary and fictitious values by requiring countries to base the value of the imported goods to the greatest extent possible on the transaction value. This course will also enable learners gain knowledge and competences on settlement of valuation disputes as well as identification and application of Customs supporting documents in the determination of Customs Value.

2.3 Meaning of Customs Valuation

The term value is a homonym as well as both noun and verb. As noun the word value may refer to the importance, worth or usefulness of something. It may also refer to the principles and standards of behaviour. As a verb the term value may mean to have a high regard for someone or something and also to determine or assess the monetary worth of something.

Customs valuation therefore is the procedure applied to determine the value of imported goods for the purpose of levying ad valorem customs duties. Customs duties are instruments of fiscal and trade policy. These duties may be based on specific rates, ad valorem rates, or a combination of the two. The choice of the rate depends on various factors; such as tariff policy objective which may include and not limited to;

- a. Raise revenue
- b. Facilitate trade
- c. Protect domestic industry
- d. Encourage importation of certain products
- e. Collect trade statistics.

2.3.1 Ad valorem duties

Are taxes, duties or fees that vary depending on the value of products, services or property on which they are levied. They are expressed as a percentage of the value and most of the countries apply this system e.g. 25% of CIF. Ad valorem duty rate is not a recent invention but dates back to the middle ages and what seems to have been lacking at that time was the application of precise, standard methods of valuation. The preference for ad valorem duties re - emerged during the industrial era, when it was realized that the system offered greater protection, as it was more adaptable in the face of price fluctuations and differences in the quality of goods.

Specific duties - These are duties, taxes or fees levied based on specific measures of goods such as number, weight, volume, area, capacity etc. Here, a specific sum is imposed on each article regardless of its individual value e.g. price per litre of fuel.

2.3.2 Importance of Customs Valuation

Customs valuation is important because it;

- Enhances International Trade
- Protects domestic industry
- Encourages the importation of certain products
- Facilitates the collection of revenue
- Forms the taxable base for customs revenue
- Facilitates the compilation of trade statistics
- Facilitate the implementation of Tariff preferences
- Helps in Origin determination

2.4 Evolution of Customs Valuation

2.4.1 United Nations Conference on Trade and Employment (UNCTE)

This conference was held between November 21, 1947 and March 24, 1948 in Havana Cuba also known as the Havana Charter and probably one of the many attempts in the modern era to harmonize

Customs valuation systems. During this conference a consensus was reached and signed by fifty-three countries. The Customs valuation principle adopted by the conference was that Customs Valuation should be based on transaction value to the greatest extent possible and should not be based on the value of merchandise of national origin or on arbitrary or fictitious values. When the actual value is not ascertainable in accordance with the aforementioned, the value for customs purposes should be based on the nearest ascertainable equivalent of such value. The Havana charter which had sought to create an International Trade Organization however failed to come into force.

2.4.2 The European Customs Union Study Group (ECUSG)

This study group commenced their work in 1947 and completed it in 1950 and the declaration signed by thirteen countries namely Austria, Belgium, Denmark, France, Greece, Ireland, Iceland, Italy, Luxemburg, Netherlands, Portugal, Turkey and the United Kingdom, accordingly decided to create a Study Group for the purpose of examining the problems involved and the steps to be taken in the formation of a customs union or customs unions between any or all of the participating governments.

In matters of Customs Valuation, many participating countries agreed that a common definition of value be formulated. The Customs Committee came to the following conclusions: dutiable value should be based on uniform, commercial and simple principles. The system of valuation should enable importers to estimate, with a reasonable degree of certainty, the value for customs purposes; it should also protect the honest importer from any illegal competition resulting from any under-valuation, whether fraudulent or other.

Therefore, the **ECUSG** agreed as follows that for the purpose of levying duties, the value of imported goods shall be taken to be the normal price, that is to say the price which they would be deemed to fetch when the duty becomes payable on a sale in the open market between buyer and seller independent of each other for delivery of the goods at the place of entry into the importing territory. The Committee adopted a definition of an open market transaction and recalled that value for customs purposes included all costs, charges and expenses incidental to sale and delivery at the place considered for the

determination of such value. A convention was held in Brussels in 1950 that saw the establishment of the Customs Cooperation Council and text from the European Custom Union Study Group was incorporated and came into force in 1953 where the Brussels Definition of Value (BDV) was officially adopted.

2.4.3 Tokyo Round

The Tokyo Round negotiations (1973-1979) developed agreements on anti-dumping measures, government procurement, technical barriers to trade and other non-tariff measures which were known as “codes”. The Tokyo round was a multiyear and multi trade negotiation of one hundred and two member countries of the General Agreement on Tariffs and Trade (GATT). The Tokyo Round was hailed to be “the most comprehensive of all the seven rounds of negotiations held within the GATT since its founding in 1948.” Negotiations in this round came about as a result of increasing Customs valuation concerns that hampered the smooth flow of trade among nations. This round was characterised by hard-line stances from the European Economic Commission (EEC), North American Countries of (USA and Canada) and the developing countries led by India. The EEC group were vouching for the contents provided in the European Union Study Group and using the Customs Cooperation Council they rooted for the adoption of the Brussels Definition Value (BDV) at a time when more than one hundred nations were using the system. Thirty of them were members of the Customs Co-operation Council (now WCO). The BDV system was not based on real prices and therefore a notional concept.

The North American countries on the other hand were using a positive concept in their valuation systems though other countries felt this was protectionism especially for the USA. Canada on the other hand decried dumping of goods in its territory at low prices from other countries through the USA. It took two representatives of the EEC to tour Washington and Ottawa and their findings revealed that the North American positive concept was much better than the BDV as fronted by Europe. This necessitated the EEC to draft a compromise proposal that received mixed feelings among different groups. This led to further negotiations with two major issues under discussion. Firstly, which method to be adopted between the positive and notional concepts. The second matter under

discussion was who would determine the price, was it the importer or Customs authorities who would adjust the prices. Canada and most developing countries were very much opposed to the second aspect of the EEC compromise proposal. The USA bought into the EEC compromise proposal and convinced Canada to follow suit. Canada gave in and through 1979 the four most powerful and influential GATT contracting parties known as the “Quad” i.e. USA, Canada, EEC & Japan had endorsed the Agreement. Developing countries led by India disagreed strongly with this proposal because they lacked the capacity to monitor prices among their trading partners therefore not able to deal with the issue of fraudulent invoices.

Developing countries were also concerned that they may lose the much needed revenue from Customs duties if the EEC compromise proposals were to be adopted. Initially in 1978 India had proposed the use of transaction value. This concept was based on price actually paid or payable for goods when sold for export subject to certain adjustments such as cost of packaging or goods provided free of charge in production of the imported goods. The proposal further stated that the Customs administration of the importing should satisfy themselves with the accuracy and general price levels under competitive conditions. The developed countries disagreed with this proposal as it gave too much authority to the Customs Administration in determining Customs values. This Indian proposal however turned to be ultimate compromise though not all developed countries agreed with it.

The Tokyo round was concluded in April 1979 without a multi-lateral agreement on Customs valuation but rather a plurilateral code which countries could opt into as they wished. The GATT valuation code entered into force in 1981 ratified by thirty signatories with the EEC as a single signatory. The valuation code contained four parts, the first part was the rules of Customs valuation starting with Transaction value method and five alternate methods. The second part of the Code covered administration, consultation and dispute settlement procedures and the third part addressed special and differential treatment provisions for developing countries.

Finally, the fourth part contained various provisions governing such matters as amendments to the Code, accession and withdrawal from the Code. On

implementation some countries blatantly violated the code by using F.O.B instead of C.I.F as stipulated. Other challenges emanated from developing countries who felt that by using transaction value some importers were either undervaluing or overvaluing their imports with the aim of either evading Customs duties or moving money out of the country. However, with these difficulties the member nations of GATT were still determined towards building a concrete multilateral Customs Valuation Agreement with worldwide acceptance.

2.4.4 Uruguay Round

The Uruguay round is regarded as the largest trade negotiation of any kind in history as it took almost twice the intended original schedule with one hundred and twenty-three countries participating. This round was launched in Punta del Este in Uruguay in September 1986 and concluded in 1995 in Geneva Switzerland where the Agreement took effect and the World Trade Organization formed. 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. The conclusion of this round culminated in signing of the Agreement on Customs Valuation in Marrakesh Morocco in April 1994. The basic principle adopted and ratified was the use of the transaction value method and provided for other five alternate valuation methods if transaction value is rejected. In summary the conclusion of the Uruguay round resulted in the following:

- (a) Creation of World Trade Organization (WTO), which came into force 1995.
- (b) Requirement that all signatories to the WTO accept all GATT instruments, including the Agreement on implementation of Article VII.
- (c) Some slight amendments to the text of the GATT Agreement on Customs Valuation.
- (d) Review of Annex III to the Agreement
- (e) Adoption of decisions regarding, Burden of proof, Minimum Values and sole agents, sole distributors and sole concessionaires.

2.4.5 Adoption and Implementation of the WTO-ACV

A number of developing countries across the world especially in Africa and Asia delayed implementing the WTO-ACV for five years after acceding to the Agreement as contained in the provisions. Some of countries also relied on Pre-Shipment Inspection Companies (PSI) to certify valuations for certain products and source countries. And in implementation a number of countries began the Transaction Value method on selective products before applying to all traded items. Many of the developing countries while applying the WCO-ACV still maintain valuation databases so that they may impose penalties when importers declare lower values than those contained in such databases.

2.5 Previous Customs Valuation Systems

This section covers information relating to a specific learning outcome. The contents shall include but not limited to meaning of terms, methods, processes/ procedures/ guidelines, Illustrations (photographs, pictures, videos, charts, plans, digital content links, simulations links) and case studies.

2.5.1 The Brussels Definition of Value (BDV)

After Second World War, some countries of Europe formed Customs Cooperation Council (CCC) by signing the instruments in 1950 with headquarters at Brussels. The Cooperation Council however came into force in 1952. The Council has now grown into a full-fledged international organization World Customs Organization with more than 150 country members. Among the various aspects looked at by the Council, uniform valuation code was one of the important assignments. The Council developed a valuation method commonly called Brussels Definition of Value and abbreviated as BDV.

BDV is based on a notional concept, which treats Customs value as the price at which, the goods would be sold (the price which goods would fetch) in the course of international trade, the essential elements being price, time, place, quantity and commercial

level. The emphasis was on the intrinsic value of the goods. Over 100 countries were applying BDV by 1970 before the deliberations of the Tokyo Round.

At the time of conception of the system, it was argued that it would be able to combat fraud while the importer will be free from protectionist measures. The BDV was based on three articles: Article I contains the basis. There it is stated that 'for the purpose of levying ad valorem duties of customs, the value of any goods imported for home use shall be taken to be the price which they would fetch at the time when the duty becomes payable on a sale in the open market between a buyer and a seller independent of each other'. Article II provides a definition of a sale/purchase under conditions of free competition. Such is the case if the price has not been influenced by any commercial, financial or other special relationship between the seller and buyer and if there is no special connection between them.

Comparison between the BDV and ACV

| Brussels Definition of Value (BDV) | WTO - Agreement on Customs Valuation (ACV) |
|---|--|
| Notional concept | Positive concept |
| Relies on theoretical values | Relies of actual transaction values |
| Based on assumed conditions merchandise would be sold | Precludes use of arbitrary and fictitious values |
| Arbitrary administration | Uniform system |
| Lacking in transparency | Fair & Neutral system |
| Not responsive to today's business environment | Conforming with commercial realities |

2.5.2 Positive Valuation Systems

The positive valuation systems were being used by the USA, Canada, Australia, New Zealand among other countries. Under these systems, customs value was generally based on the actual price paid for the goods, rather than an abstract or notional price that might be paid under perfect competitive conditions. Typically, these systems provided for use of secondary valuation methods, in a ranking order, where the actual invoice price could not be found or

used (such as where the goods were imported under a lease, and therefore a sale price did not exist). For example, the US system, which strongly influenced the structure of the WTO Valuation Agreement, generally required customs to appraise goods first on the basis of the "export value" or price at which the goods were sold or offered for sale for export to the United States or, second, on the basis of the "United States value", which was the selling price of imported goods in the US market; and finally, if the preceding methods failed, on the basis of a "constructed value" or cost of production of the imported goods. There was also diversity in the application of both of these systems.

The BDV was subject to varying interpretations in different countries. Positive systems were equally diverse: for example, the US primary valuation method was based on the export value (the price of the goods at the time of exportation to the United States), whereas Australia used the price paid by the importer *or* the price at which the same goods are sold in the export country market, whichever was higher. Moreover, as noted in the discussion below of the American Selling Price valuation method, some of the "secondary" valuation methods employed by these countries were at best complex and at worst explicitly protectionist.

2.6 General Principles of Customs Valuation

The general principles of Customs valuation were embodied in Article VII of GATT. They are as follows: -

1. That the value should be based on the actual value of imported goods on which duty should be assessed or of like goods.
2. That the actual value should be the price at which at a time and place determined by national legislation of the country of importation such or like merchandise is sold or is offered for sale in the ordinary course of trade under fully competitive conditions.
3. That the value of merchandise should not be based on the value of national origin or on arbitrary or fictitious values.
4. The value for Customs purposes of any imported goods should not include the amount of any internal tax applicable within the country of origin or export from which the imported goods has been or will be relieved by means of refund.

2.7 Learning Activities

Activity 1: Read and review the text on the European study group, Tokyo and Uruguay rounds

Activity 2: Identify the elements of BDV

Activity 3: Compare and contrast BDV and ACV

2.8 Self-Assessment Questions and Activities

Activity 1 Fill in the missing blanks

1. The Havana charter took place in
2. The European study group essentially culminated into the formation of.....in 1953 and also formally adopted the..... valuation system.
3. The Tokyo round led to a compromise betweensystem and system
4. The Uruguay round took place in which countries.....

Activity 2

1. Compare and contrast between notional and positive valuation systems
2. Explain the reasons why the European Union preferred the Brussels Definition of Value (BDV) during the Tokyo round negotiations

Activity 3

Discuss the General principles of the Agreement as embodied in the Article VII of the GATT

2.9 References

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3.0 STRUCTURE OF THE WORLD TRADE ORGANISATION – AGREEMENT ON CUSTOMS VALUATION

3.1 Specific Learning Outcomes

At the end of this topic, the trainee should be able to:

- i. Describe the general provisions of the WTO Agreement
- ii. Explain the Articles of the Agreement, Articles 1-24
- iii. Describe the Rules of Customs valuation, Articles 1-17
- iv. Analyse the Administration, Consultation and Dispute Settlement Provisions of WTO-ACV
- v. Analyse the Special Provisions for the Developing countries who accept the agreement
- vi. Explain the Annexes to the WTO-ACV
- vii. Explain WCO Technical instruments

3.2 General Provisions of the WTO Agreement

The objectives of the World Trade Organisation Valuation Agreement are contained in the preamble of the Agreement and are as follows:

- (a) To further the objectives of GATT 1994 Agreement and secure additional benefits for developing countries.

The Agreement is a significant step in ensuring a uniform application of valuation procedures thus facilitating legitimate international trade. For new members joining from developing countries, it was agreed that they may delay application of its provisions for up to five years and may defer application of some specific rules for an additional three- year period. It was also agreed that developed countries shall provide technical assistance which may include capacity building, assistance in implementation, access to sources of information and advice on application of the provisions of the Agreement.

(b) To provide greater uniformity and certainty. This objective of the Agreement was to establish a precise set of rules which will be applied in the same way by all the members. This increases importers confidence that they will receive the same treatment to avoid distortion of competition. Article VII of GATT before 1994 was rather general and left each country with the widest discretion in its valuation system.

- (c) A fair, uniform and neutral system that precludes the use of arbitrary or fictitious customs values.

Some countries had the tendency of applying arbitrary or totally fictitious Customs values to goods in total disregard of the transaction undertaken between the buyer and seller. The aim of the Agreement is to ensure that goods are valued based on actual realities between the buyer and seller.

The basis for valuation should to a great extent possible be the transaction value of goods.

The Transaction value has been lauded as conforming to commercial realities and very simple to apply. The Agreement therefore provides that this method should be applied first.

- (d) Customs values should be based on simple and equitable criteria consistent with commercial practices.
- (e) Valuation criteria should be of general application without distinction between sources of supply.
- (f) Valuation procedures should not be used to combat dumping.

The structure of the Agreement is as follows:

| | |
|--------------------|--|
| PREAMBLE | General Introductory commentary |
| PART ONE | Rules on Customs Valuation (Articles 1-17) |
| PART TWO | Administration, Consultations & Dispute settlements (Articles 18-19) |
| PART THREE | Special Differential Treatment(Articles 20) |
| PART FOUR | Final provisions (Articles 21-24) |
| ANNEX ONE | Interpretative Notes |
| ANNEX TWO | Technical Committee on Custom Valuation |
| ANNEX THREE | Provisions for Developing Countries |

3.3 Articles of the Agreement 1-24:

| | |
|-------------------|--|
| Article 1 | Transaction Value Method |
| Article 2 | Transaction Value of Identical goods Method |
| Article 3 | Transaction Value of Similar goods Method |
| Article 4 | Application of Article 5 or 6 |
| Article 5 | Deductive Value Method |
| Article 6 | Computed Value Method |
| Article 7 | Fall back Method |
| Article 8 | Adjustments to transaction value |
| Article 9 | Currency conversion |
| Article 10 | Confidentiality of information |
| Article 11 | Importer's right to appeal without penalty |
| Article 12 | Obligation to publish laws |
| Article 13 | Obligation to provide a guarantee system |
| Article 14 | Notes to the articles |
| Article 15 | Definitions |
| Article 16 | Rights of importers to a written explanation |
| Article 17 | Rights of Customs Administrations |
| Article 18 | Institutions |
| Article 19 | Consultations and dispute settlement |
| Article 20 | Special Differential Treatment |
| Article 21 | Reservations |
| Article 22 | National legislation |
| Article 23 | Review |
| Article 24 | Secretariat |

3.3.1 PART I: Rules of Customs Valuation Articles 1-17:

Part 1 consists of 17 articles which explain the criteria for determining the Customs value, adjustments, definitions, rights of importers and Customs.

Article 1-Transaction Value Method

The basis of Customs Value of imported goods shall be the “Transaction Value”. It is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance to Article 8.

Article 2-Transaction value of identical goods

Where the customs value cannot be determined under Article 1 (Transaction value method), the Customs value shall be the transaction value of the identical goods sold for export to the country of importation and exported at or about the same time as goods being valued. These goods must have been valued and captured in Customs database. The goods should be the same in all respects including physical characteristics, quality and reputation. Minor differences in appearance shall not preclude goods otherwise conforming to the definition from being regarded as identical. The minor differences in appearance would include: color, size, label and pattern.

Article 3-Transaction value of similar goods

Where the customs value cannot be determined under Article 1 and 2 the Customs value shall be the transaction value of similar goods sold for export to the country of importation and exported at or about the same time as goods being valued. Similar goods are goods which, although not alike in all respect have like characteristics and 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 trade mark are among the factors to be considered in determining whether goods are similar and note that the goods must be produced in the same country as the goods being valued.

Article 4- Application of Article 5 & 6

Provides for the rights of the importer to alter the sequence of application of articles 5 and 6.

Article 5- Deductive Value Method

It provides for determination of the Customs Value basing on the unit price at which the imported goods or identical or similar goods are sold in the greatest aggregate quantity, at or about the time of importation of goods being valued, to persons who are not related to the person from whom they buy such goods.

Article 6- Computed Value Method

Under this article, the Customs value is determined on the basis of the costs of the 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.

Article 7- Fallback Method

Provides for determination of the Customs value; using reasonable means consistent with principles and general provisions of the Agreement and on the basis of data available in the country of importation.

Article 8- Adjustments to the transaction Value

This article provides for consideration of costs which have been incurred by the buyer but have not been included in the price actually paid or payable. They include compulsory and optional Adjustment

Article 9-Currency conversion

If conversion of currency is necessary for the determination of customs value, the rate of exchange to be used shall be that duly published by the competent authorities of the country of importation concerned.

Article 10- Confidentiality

All information which is provided on a confidential basis shall be treated as strictly confidential by the authorities concerned and shall not be disclosed without specific permission of the person issued except to the extent that it may be required to be disclosed in the context of judicial proceedings.

Article 11-Importer's right to appeal without penalty

The legislation of each member shall provide for the right of appeal without penalty within the customs administration or independent body up to the judicial authority.

Article 12- Obligation to publish laws

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 which requires that a member should inform other members of the amendments made.

Article 13- Obligation to provide for a guarantee system

The importer may be allowed to withdraw the goods from customs if it is necessary to delay the final determination of customs value provided that sufficient guarantee is provided.

Article 14- Interpretative Notes to the articles

These notes are set out under annex 1 and the articles of the Agreement are to be read and applied in line with these notes. Annex 1, as well as annex II and III form an integral part of the Agreement.

Article 15-Definitions

This article provides definitions and interpretation of various technical words used in the Agreement.

Article 16- Rights of importers to a written explanation

This article explains the right of the importer to an explanation in writing as to how customs value was determined.

Article 17- Rights of Customs Administrations

This article explains the right of Customs administrations to satisfy themselves regarding the truth or accuracy of any documents or declarations presented to Customs for valuation purposes.

3.3.2 PART II –Administration, Consultations and Dispute Settlement

This part has two Articles.

Articles 18-Institutions

This Article established the basic institutions of the implementation of the Agreement; these are WTO Committee on Customs Valuation and WCO Technical Committee on Customs Valuation.

Article 19-Consultations and Dispute Settlement

This article describes the procedure to be followed for consultations and dispute settlement.

3.3.3 PART III -Special and Differential Treatment

This part has only one Article:

Article 20: Special and Differential Treatment

The Article provides for special provisions available to developing countries. For example, developing countries were given a period of 5 years to delay implementation of provisions of the Agreement.

3.3.4 PART IV–Final Provisions

This part has 4 Articles.

Article 21- Reservations

This article states that the reservations may not be termed in respect of any of the provisions of the Agreement without the consent of other members.

Article 22- National legislation

This article requires each member to domesticate the Agreement and inform the committee of any changes in its laws. The EAC domesticated the law in 2005 vide section 122 read together with fourth schedule to the East African Community Customs Management Act, 2004.

Article 23- Review

This article provides for Review of implementation and operation of the Agreement by WTO Committee on Customs Valuation annually.

Article 24-Secretariat

This Article mandates WTO and WCO Secretariats to service this Agreement.

3.3.5 Annexes

The purpose of the annexes is to explain further issues covered by the Articles and mainly the interpretative notes to the Articles, the functions of the Technical Committee on Customs Valuation and the special provisions to the developing countries.

Annex I: Interpretative Notes

This annex provides the interpretative notes which supplement provisions of Article 1 until Article 15. In particular, they explain in more detail how the valuation methods are to be applied. The notes emphasize the use of the methods in hierarchical order.

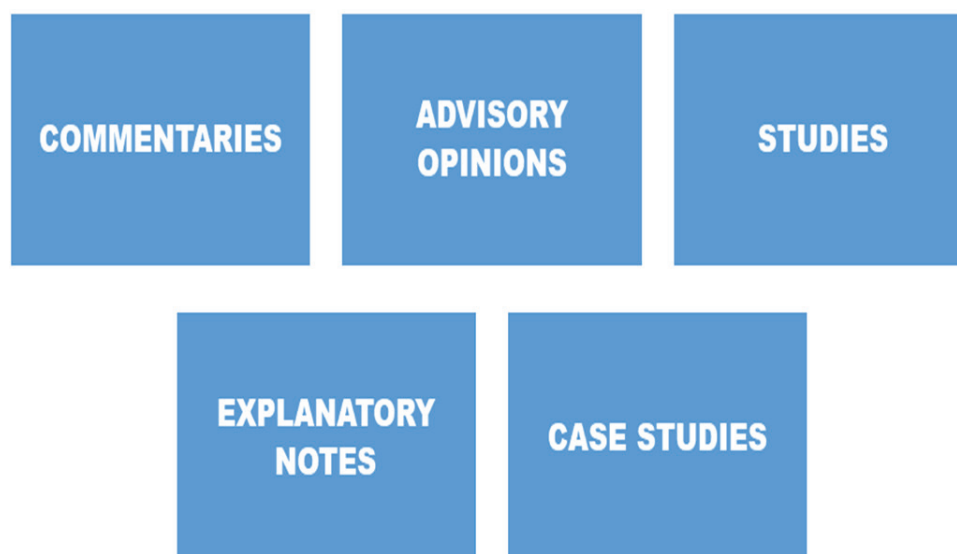
Annex II–Technical Committee on Customs Valuation (TCCV)

This annex establishes the Technical Committee on Customs Valuation under the auspices of WCO and describes the role and the responsibility of technical committee with a view to ensuring that at the technical level, there is uniformity in interpretation and application of the Agreement. The Agreement has two committees, the Committee on Customs Valuation based in Geneva and the Technical Committee on Customs Valuation based in Brussels. The former is concerned with the trade policy aspects of the Agreement while the latter deals with the Customs aspects of it. The main role

of the TCCV is the examination of 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.

- **Advisory opinions:** These answer questions raised on the application of the Agreement to a particular set of facts.
- **Commentaries:** These provide comments on parts of the Agreement and intended to supplement the text with additional guidance.
- **Explanatory Notes:** These provide the Technical Committee's views on questions of a general nature arising from the application of the Agreement.
- **Case Studies:** These are based on a set of facts relating to a particular commercial transaction. They can be used to demonstrate a practical application of the Agreement.
- **Studies:** These set out the results of detailed studies of questions related to the Agreement.

Technical Committee on Customs Valuation- Instruments



3.4 Learning Activities

1. Read legal texts and outline the general principles of the Valuation Agreement
2. Review the list of instruments of the Customs Valuation Technical Committee available here <http://www.wcoomd.org/en/topics/valuation/instruments-and-tools/advisory-opinions.aspx>. Identify two scenarios per instrument and prepare a presentation.

3.5 Self-Assessment Questions and Activities

1. The Rules of Customs valuation are contained in Articles 1-7 True or False
2. State the rules of Customs valuation in sequential order.
3. What are the objectives of the WTO Valuation agreement?
4. Discuss the objectives and contents of the Annexes to the WTO Valuation Agreement.

3.6 References

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4.0 TRANSACTION VALUE METHOD

4.1 Specific Learning Outcomes

At the end of this topic, the trainee should be able to:

- i. Explain the meaning of transaction value and its related terms
- ii. Discuss the elements of transaction value
- iii. Describe the conditions for the use of transaction values
- iv. Explain importations without sales
- v. Apply transaction value
- vi. Explain the adjustments in the transaction value method
- vii. Describe the use of INCOTERMS in valuation

4.2 Basis for Customs Value

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 the conditions of Article 1 are met.

4.3 Meaning of Transaction value and its related terms

Transaction value refers to the price actually payable for goods when sold for export to the country of importation adjusted in accordance with Article 8. Price actually paid or payable is often referred to as PAPP. The 4th schedule of EACCMA 2004 provides that 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.

Price Actually Paid or Payable (PAPP)

PAPP refers to the total payments made or to be made by the buyer for the benefit of the seller whether directly or indirectly. Price actually paid refers to the price already paid by the buyer to the seller by the time of importation. Such payment may be supported by documentary evidence in form of Telegraphic Transfer, Sales contract, Purchase order, Letters of credit, Advance payments, the Commercial Invoice, Payment advice etc.

Price Payable is the price that has not been paid by the time of importation but has been agreed to be

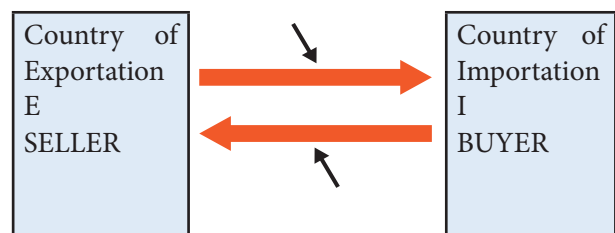
paid. Documentary evidence in support of price payable may include the Commercial Invoice, the sales contract, Letters of credit among others.

Sale for Export

This concept involves a transaction between two parties, the buyer and the seller who are in the countries of exportation and importation respectively. The seller agrees to transfer goods from his country to the country of the buyer (country of importation) on condition that he/she receives some consideration in exchange note that there has to be an international transfer of goods and payments for the benefit of the seller.

Examples of Sale for Export

Seller ships goods to Country I in an international transfer



Buyer pays agreed amount to seller in country E for the goods

Country of Importation

According to Article 15 of the Agreement, country of importation means country or customs territory of importation where goods are being valued.

Adjustments

Implies any cost elements incurred by the buyer but not included in the price actually paid or payable for the imported goods being valued.

4.4 Elements of Transaction value

Concept of Price Actually Paid or Payable (PAPP)

The Interpretative Note to Article 1 (Note to Paragraph 2 of 4th schedule of EACCMA) provides that 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. It further clarifies this term by indicating that the PAPP includes all payments actually made or to be made as a condition of sale for the imported goods, by the buyer to the seller or by the buyer to a third

party to satisfy an obligation of the seller (ANNEX III 7). The term “paid” or “payable” means that if the goods are paid for before valuation, the price paid will be used as a basis for valuation. If not paid, then the price to be paid will be used. The Interpretative Note to Article 1 specifies that the payment need not necessarily take the form of a transfer of money. Payment may also be made by letter of credit or negotiable instruments. The followings are some of the examples in relation to payments;

Direct and Indirect Payments

(a) Direct Payments

These are payments already made at the time of customs valuation of the imported goods. An example; a buyer in country P and a seller in country M enter into a contract to supply an industrial machine at 20 Million cu. At the time of customs valuation, the buyer had made the total payment as per contract.

(b) Indirect Payments

These are payments made by the buyer whether in whole or in part in the settlement of a debt owed by the seller. An example of an indirect payment would be where the price is reduced due to a debt owed by the seller to the buyer. In this case, the PAPP would be the sum of all payments, direct and indirect. Another form of indirect payment would be the settlement by the buyer of a debt owed by the seller to a third party.

Flow of Dividends

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 (Interpretative Note to Article 1). However, we must make a distinction between dividends and proceeds as dividends will not be added to the PAPP but proceeds will be added as an adjustment under Article 8.1(d). In general, proceeds are profits realized on the resale of the imported goods and are thus directly related to the imported goods. Dividends, while also considered as “profit”, are paid out to stockholders or shareholders. These dividends relate to the firm’s overall business and not just to the sale of the imported goods. Hence, they are not directly related to the imported goods.

Activities undertaken by the buyer on his or her own account

The Interpretative Note to Article 1 (Note to Paragraph 2 of the 4th Schedule of EACCMA) also specifies that activities, other than those for which an adjustment can be made under Article 8 (Paragraph 9 of 4th schedule of EACCMA), which are undertaken by the buyer on his or her own account are not considered an indirect payment although they might be regarded as for the benefit to the seller. This would include such activities as:

- Market studies and market research;
- Advertising brand or trademark under which goods are going to be sold;
- Preparation of showrooms;
- Participation in trade fairs and exhibitions;
- Testing of machinery and equipment; and
- Costs to obtain an irrevocable and confirmed letter of credit.

Discounts and Credits

Discounts are general reductions of the PAPP when certain conditions put by the seller are met. Such conditions may include prompt payment, quantity bought, etc. The PAPP is established after deducting any legitimate (meaning supported by quantifiable and verifiable data) cash or quantity discounts. The most common discounts include cash discount and quantity discount.

Note

A discount although not included in the customs value is not part of adjustment under Article 8, but is excluded by virtue of the definition of transaction value.

Cash discounts

These discounts are granted to buyers for payment in cash or payment made within a specified period e.g., 5% for a payment made within 10 days of receipt of the invoice and, for Customs purposes, the discounts must be freely available to all buyers. There should be a schedule to support the discount levels (Advisory Opinion 5.1 to 5.3).

Cash discounts can cause difficulties as they are usually effected after importation has occurred. However, the transaction value method requires the use of the PAPP and legitimate cash discounts can therefore be accepted as a deduction as the discounted price is in fact, the PAPP.

Quantity discounts

Quantity discounts are deductions from the price, allowed according to the quantities purchased at once or over a period of time. Sellers often encourage buyers to purchase in bulk as their costs are proportionately reduced. For valuation purposes, it is the quantity which has determined the unit price of the goods being valued when they were sold for export to the country of importation that is relevant. In order to be accepted by Customs, discounts must be freely available to all buyers. Quantity discounts can be established prior or subsequent to the importation of the goods (Advisory Opinion 15.1).

Examples: The seller offers the following range of quantity discounts:

1 to 9 units: no discount
10 to 49 units: 5 % discount
Over 50 units: 8 % discount

First situation

Buyer/Importer A purchases 27 units and is granted a 5 % quantity discount. Buyer C also purchases 27 units and is granted a 5 % quantity discount, but receives these units in three separate shipments each comprising 9 units. Can the 5 % discount be applied?

Answer: Yes, in both cases. The price actually paid or payable for the imported goods is reduced by the 5 % discount. The quantity purchased contributed to the setting of the price, not the delivery circumstances.

Second situation

B and C each purchase a further 42 units from the same supplier. They each receive an 8% quantity discount on the shipment of 42 units as the manufacturer grants the discount on the cumulative purchase of over 50 units. Can the 8 % quantity discount be applied?

Answer: Yes. Once again the quantity purchased contributed to the setting of the purchase price and therefore established the PAPP.

Third situation

In addition to the quantity discounts of 5 % and 8 % granted before Customs clearance, a further quantity discount of 3 % on the first shipment of 27 units is granted retrospectively. Can this additional discount be applied to the second shipment?

Answer: No. The additional quantity discount of 3 % granted retrospectively should not be allowed for the second importation as it did not contribute to the setting of the unit price of the 42 units being valued, but relates to the 27 units previously imported. To establish whether or not the 3 % “credit” should be allowed for the first shipment, it is necessary to begin by examining the question of credits.

Credits

Under normal business transactions, it's expected that the quantity paid in the invoice is the quantity delivered. If there is any shortfall it is expected that the buyer could be refunded the amount equivalent to the shortfall. However, in practice, the seller usually supplies excess of the product in the next consignment but decrease the price by the amount equivalent to what was not delivered earlier. In a way the supplier was granted a credit in the current transaction. The decision on whether or not to apply the credit to the previous shipment must be taken independently of the shipment being valued. Any adjustment made to the value of the previous shipment will depend on national legislation.

Example:

Importer I receives a shipment of tyres at an invoiced price of 20,000 c.u. However, the invoice mentions a credit of 5,000 c.u. which brings the final invoice price down to 15,000 c.u. The importer informs Customs that the credit was granted because 10 of the tyres in the previous shipment were damaged. The seller therefore granted a credit on the present shipment to compensate for the losses. Can this credit be applied to the shipment currently being valued?

Concept of sale

The Agreement” contains no definition of “sale”. It merely indicates that “a sale is a specific commercial operation satisfying certain requirements and conditions” (Advisory opinion1.1). It implies a transfer of ownership of the goods for some form of consideration. Hence a sale necessarily requires an agreement between a seller, who agrees to transfer the ownership of the goods in exchange for a specified price, and a buyer, who agrees to purchase those goods for a specified price.

4.5 Conditions for use of Transaction Value

The Customs value is the transaction value if the following conditions are fulfilled:

4.5.1 Condition One

Evidence of sale

There must be evidence of sale for export to the country of importation i.e. commercial invoices, contracts, purchase orders, Bank remittance slips etc.

4.5.2 Condition Two

No restrictions 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

Examples

- requirement to obtain a license or permit prior to any resale or use;
- requirement for certain types of labeling or packaging;
- requirement for testing or inspection before release;

- **are limited to the geographical area in which the goods may be resold**

Where the seller imposes a territorial restriction, such as regional distributorships, requiring resale only in a given area (e.g., country, region, province, county, etc.)

- **do not substantially affect the value of the goods**

In regards to this situation, there is no precise definition or amount for the term “substantially.” It must be decided on a case by case basis. In that regard, you may wish to consider the following:

- the nature of the restriction
- the nature of the goods
- the nature of the industry and its practices
- whether the monetary effect is commercially significant
-

Example

Where the seller requires the buyer of automobiles not to sell or exhibit the automobiles prior to a fixed

date which represents the beginning of a model year. This would not be a restriction as it does not substantially affect the price.

Where the seller requires that the imported product be sold to consumers exclusively through individual sales representatives who use a house-by-house sales technique. This would not be a restriction as it does not substantially affect the price. (Commentary 12.1).

4.5.3 Condition 3

Where the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the imported goods.

The above situation is further explained in paragraph 1(b) of the Interpretative Notes through the following three situations:

- The seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities.

Example

Manufacturer **F** in country of export **E** sells leather goods to buyer **X** in country **I** of import at a unit price of 50 c.u. on the condition that **X** also purchases a shipment of shoes at a unit price of 30 c.u.

- 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.

Example

Manufacturer **F** in country of export **E** has an agreement with importer **X** in country of import **I** to supply specialized equipment designed by **F** at a unit price of 10,000 c.u. on condition that importer **X** Supplies **F** with certain relays at a unit price of 150 c.u.

- 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 he will receive a specified quantity of the finished goods.

Example

Importer I buys lumber from a foreign seller. He uses the lumber to produce a desk. The price at which he buys the lumber is predicated on the buyer sending a certain number of finished desks to the seller.

4.5.4 Condition 4

That no part of the proceeds of any subsequent resale, disposal or use of the imported 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.

Example

Importer **A** in country **Y** imports **4000** pieces of hydraulic pumps from seller/exporter **B** in country **X** at **500 c.u.** per piece. On examining the contract between the buyer and the seller it discovered that buyer has to remit **2%** of the proceeds to seller **B** for each unit sold.

4.5.5 Condition 5

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 of Article 1 that is to say that if the relationship did not influence the price the transaction value may be accepted. The transaction value between related parties may also be acceptable subject to application of test values as follows:

- i) the transaction value in sales to unrelated buyers of identical or similar goods for export to the Partner State;
- ii) the customs value of identical or similar goods as determined under provisions of Paragraph 6;
- iii) the customs value of identical or similar goods as determined under provisions of Paragraph 7.

Parties deemed to be related

- i) they are officers or directors of one another's businesses;
- ii) they are legally recognised partners in business; (b) they have an employer and employee relationship;
- iii) any person directly or indirectly owns, controls or holds five percent or more of the outstanding voting stock or shares of both of them;

- iv) one of them directly or indirectly controls the other;
- v) both of them are directly or indirectly controlled by a third person;
- vi) together they directly control a third person; or
- vii) they are members of the same family.

4.6 Importations Without Sales

Free of Charge Shipments

These are those goods which are transferred free of charge and they may include samples, prototypes, promotional items etc.

Consignment sales

These are goods supplied to the country of importation not as a consequence of a sale but with the intention that the goods will be sold on the account of the supplier. In this case there is no sale because ownership of goods has not changed hands and no consideration has been received therefore the goods are still owned by the foreign supplier until they are sold in the country of importation.

Goods imported by intermediaries

These are imported goods supplied from the country of exportation but at the time of Customs valuation in the Country of importation have not been sold. They are imported to be held in stock at the risk of the foreign supplier until they are resold. Since there is no transfer of ownership, there is no transaction value for these goods at the time of importation.

Goods imported by branches

The delivery of goods from one branch to another does not constitute a sale. It's merely transferring goods from one office to another since branches do not have separate legal entity from another. Whether a transaction leading to the importation of goods by the branch office qualifies as a sale for export depends on the role of the branch in the transaction. If the main function of the branch is merely to find customers for the parent company, there is no sale between the parent company and the branch.

Goods imported under a hire or leasing contract

Hire and leasing contracts, even if they include an option to purchase the leased goods, do not constitute a sale. Leasing contracts are for the purposes of renting (or leasing) of goods, for example, machinery and equipment for use in the country of importation without actually purchasing

them from the exporter. The goods are valued using an alternative method and the leasing fees are generally taken to indicate the worth of the goods. Even though the rights of the importer may extend to the future purchase of the leased goods, the leasing contract cannot be substituted for a sale.

Goods supplied on loan

If the goods are loaned by an exporter to an importer, this does not constitute a sale and an alternative method will have to be considered.

Goods imported for destruction

Costs are usually incurred in connection with the importation of waste or scrap for destruction where the exporter pays the importer an amount for his/her services. As the importer does not pay for the imported goods but rather, on the contrary, is paid for accepting and destroying them, such an importation is not considered as a sale. In such a case, an alternative method of valuation will be applied.

Goods which are the subject of barter

Barter trade transactions, constitute a specific case in as much as they are totally or partially expressed in non-monetary terms. They may involve an exchange of goods of approximately equal value or, expressed in monetary terms but not settled (or only partially settled) in monetary terms (e.g. merchandise barter which includes a payment to make up the balance). Hence it is necessary to examine, on a case by case basis, whether the arrangements can be considered a sale.

4.7 Application of Transaction Value

Adjustments

The general introductory commentary to the Agreement indicates that Article 1 is to be read together with Article 8 (paragraph 9 of the 4th schedule of EACCMA).

Meaning of Adjustments

These are costs incurred by the buyer but not included in the price actually paid or payable for the goods. The adjustment must be based on objective and quantifiable data. There are mandatory and optional adjustments.

Mandatory Adjustments

These include those compulsory adjustments that must be added to PAPP if not already included. They include

- i) Article 8.1(a) Commissions, cost of containers and packing
- ii) Article 8.1(b) Assists
- iii) Article 8.1(c) Royalties and License fees
- iv) Article 8.1(d) Proceeds

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:

Article 8.1(a) Commissions, cost of containers and packing

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:

- commissions and brokerage, except buying commissions;
- the cost of containers which are treated as being one for customs purposes with the goods in question;
- the cost of packing whether for labour or materials;

Commissions and Brokerage

The provisions of the Agreement are clear on the principle of the treatment of commissions for Customs valuation purposes and depends upon the exact nature of services rendered by the intermediaries (Agents). (Explanatory Note 2.1, Commentary 17.1)

Intermediaries (Agents) include:

- Buying Agents (buying Commissions)
- Selling Agents (Selling Commissions)
- Independent Agents or Brokers (Brokerage fee)

The agent's fee is called a commission and is often expressed as a percentage of the total price of the goods. Agents who work on behalf of the buyer are called buying agents and those who work for the seller are called selling agents. Their fees are referred to respectively as buying and selling commissions.

i) Buying Agent

A buying agent represents the buyer. Buying commission is the fees paid by an importer to his agent for the service of representing him abroad in the purchase of goods being valued. The role of the buying agent is as listed below;

- Represents the Buyer
- Finds Suppliers for the goods wanted by the buyer
- Obtains samples from the Suppliers for the buyer's inspection
- Assists in arranging for insurance, transport and delivery of goods
- Assists the buyer in negotiating the lowest prices
- Expresses the needs of the buyer to the seller
- Helps prepare documents for the purchased goods
- Consolidates shipments from different sellers

ii) Selling Agent

A selling agent represents the seller. Selling commission is the fees paid by the seller to his agent for the service of representing him in the sale of the goods being valued. The role of the selling agent is as listed below;

- Represents the Seller
- Finds customers (Buyers) for the seller's goods
- Maintaining samples and showing them to prospective buyers
- Assisting in arranging for insurance, transport and storage
- Negotiates highest prices on behalf of the seller
- Separate shipments for different buyers
- Assisting in preparation of export documents and invoices

iii) Independent Agent (Broker)

The term "broker" refers to an intermediary who does not act on his/her own account. The broker can act for both buyer and seller and can arrange to put both parties in touch with each other. His/her fee is known as a brokerage.

In order to determine whether a brokerage should be added to the PAPP, it is necessary to look at what services were provided in return for the fee. If those services match those provided by a selling agent, then they are to be added. If they match the services provided by a buying agent, then they will not be added. In some cases, it may be determined that the brokerage fee is partly incurred by the buyer (representing a buying commission) and partly by the seller (representing a selling commission). The seller's portion will be included in the PAPP but buyer's portion should not be included in the PAPP.

The role of the independent agent/broker is as listed below;

- Acts for both the Buyer and the Seller
- Connects both parties to the transaction
- Specializes in certain types of goods
- Finds buyers for his goods
- Negotiates his own terms of sale
- Confirms all sales
- Arranges for the shipping of the goods

b) Cost of containers and packing

In referring to "containers", the Agreement is not referring to the commercial shipping containers commonly used for long distance transport. Container refers to, packaging and labeling used to store and transport products e.g. exterior packing, such as cartons, boxes, bottles, cans, etc.

Types of containers

There are two types of containers; Re-usable and Non Re-usable

Re-usable containers

The only containers, which do not form part of the goods and whose costs would not form part of the customs value of imported goods, and under national legislation are required to be separately declared in their own right.

These containers could be those of domestic (importing country) origin or, those that receive special tariff treatment under General Rules for the Interpretation of the Harmonized System such as:

- Containers which give the whole its essential character;
- Usual type of shipping or packing containers which are capable of re-use;
- Containers imported empty.

Generally, the application of Article 8.1(a)(ii) and (iii) is straightforward but decision makers must remember, that when in doubt, to seek further objective and quantifiable data on which to base their valuation decision.

Non Re-usable containers

Non re-usable containers are used for: Protection, handling in transit, and "retail" packing. They are however for the purposes of classification under the Harmonized System, taken to be as one with the goods and classified under the same heading with the goods. That is, for example, as perfumery or as a wristwatch.

For the purposes of taking into account all costs relating to the provision of packing and containers, such types are various and include:

- Interior packing boxes and cartons (referred to as “retail” packing such as bags, boxes, blister packs, plastic wrappers, cardboard boxes, etc.);
- Exterior packing boxes and cartons (also referred to as “export” packing and may include cardboard boxes, wooden crates, metal boxes, etc.);
- Packing materials (such as cardboard inserts, bubble wrap, hay, straw, shredded paper, foam chips, etc.);
- Labour costs involved in placing and securing the goods in their containers (such as packing and sealing the boxes or cartons, cooping, vacuum packing, environmental conditioning, placing on hangers or racks, etc.)

Article 8.1(b) Assists

Assists may be defined as the goods and services supplied directly or indirectly by the buyer, for free of charge or at reduced cost to the seller or a producer for use in connection with the production and sale for export of the imported goods.

Categories of Assists are as follows;

- a) Materials, components, parts and similar items incorporated in the imported goods e.g. raw materials, finished components;
- b) Tools, dies, moulds and similar items used in the production of the imported goods e.g. hand held drill;
- c) Materials consumed in the production of the imported goods e.g. fuel, chemicals;
- d) Engineering, development, artwork, design work & plans and sketches undertaken elsewhere other than in the country of importation and necessary for the production of the imported goods.

Valuation of Assists

The cost of Assists should only be added to the value if:

- (i) not already included in the PAPP,
- (ii) supplied by the Buyer either free of charge or at reduced cost,
- (iii) supplied directly or indirectly by the Buyer to the Seller, for use in the production and sale for export of imported goods.

The value of the assist includes transport costs to the manufacturing site as well as non-reimbursed duties and taxes if:

- the assist has already been used by the buyer, the initial cost of acquisition or of its production must be adjusted downwards to take this use into account when valuing the assist.
- the assist has been repaired or modified by the buyer, its value must take into account the cost of repairing or modifying it.
- the assist has been leased, the addition would be the cost of the lease.
- the assist consists of engineering work, development, design work, plans or sketches, it is possible to value them by consulting the buyer's commercial records.
- the engineering work, development, design work, plans or sketches are available in the public domain, then only the cost of obtaining copies is to be taken into consideration.
- the assist is only partly used for the manufacture of the imported goods, that level of use is taken into account. For instance, if design centre is located outside the country of importation and if the company attributes all the costs of this centre to its overhead expenses without allocation to specific products, then the total cost of the design centre are apportioned over the entire production benefiting from these services. The costs are apportioned to the price of the imported goods and are adjusted according to the number of units produced.

Article 8.1(c) Royalties and License fees

The Agreement imposes certain requirements on whether a royalty will form part of the customs value. Article 8.1(c) requires that the royalty covers payments made for the right to use, produce or sell a given product.

These charges are Added to the PAPP if they are;

- (i) Related to the goods being valued
- (ii) A condition of sale
- (iii) Not already included in the PAPP

That is, the royalty or license fee must relate directly to the imported goods, either because the goods have a trademark or copyright applied to them or, they may contain a patented process or, because of

some other protected right. Must be a condition of sale and paid directly or indirectly by the buyer.

That is, the purchase of the imported goods must require the payment of a royalty or license fee, or, the buyer must pay a royalty or license fee in order to receive the goods.

If the royalty payment is included in the PAPP, it will not be added again under Article 8.1(c). In fact, if the royalty payment already forms part of the “price” negotiated between the buyer and seller, Article 8 will not have to be considered at all in regard to royalties/ license fees.

If it is established that some form of royalty or license fee is a consideration in regard to the imported goods, the Customs administration must satisfy itself as to the correct valuation treatment. That is, will it form part of the customs value or not.

The Interpretative Note to Article 8.1(c) provides additional guidelines in respect to the treatment of royalties and license fees under the Agreement. All decisions made regarding the valuation treatment of royalties/license fees, must be based on objective and quantifiable data.

Categories of Royalty or License fees

- (i) Patents
- (ii) Trademarks
- (iii) Copyrights

With regard to the type of properties/rights to which royalties/ license fees do relate, the three types noted in sub-paragraph 1 of the Interpretative Note to Article 8.1(c) are worth looking at:

Patents

A patent is a document or testimony, issued by a relevant government authorities or agencies, which describes an “invention” and authenticates that “invention” through legal registration making it illegal for anyone to then duplicate or exploit the registered patent which is the registered property of the patentee. It can only be used with the express approval of the patentee, which in effect, is a reserved right. Therefore, patent is an invention, a novel idea which results from an inventive activity and is capable of industrial application.

Trademark

A trademark is a marketing device which is generally in the form of a particular sign or “logo” which is

affixed to imported goods that conveys an inherent quality and reputation statement. Normally, protection of a trademark requires the trade mark to be registered with the appropriate government authority. The registration is taken out to protect the holder’s rights and to be able to prosecute others who might copy the mark. A trade mark is not only a business’s main brand name but also can be its Business name, Product names, Sub brands, Logos and Symbols, Colours.

Copyright

A copyright is a reserved right which protects the holder from unauthorized use of his/ her work (usually artistic or literary) from reproduction, copying or translation. It is the exclusive right of the author, artists, etc. This form of protection would cover examples of work such as Literary work (novels, articles, papers etc.), Artistic works (paintings, drawings, sculptures, etc.), Photography, Motion pictures, Technical drawings, etc.

Treatment of Royalties

All decisions made regarding the valuation treatment of royalties/license fees, must be based on objective and quantifiable data. Where it is determined that such data does not exist, an officer cannot make an arbitrary adjustment and, therefore, Article 1, the transaction value cannot be applied. That is, when the officer is of the opinion that a royalty is relevant to the imported goods and, the importer is unable to provide further information, if the officer remains concerned regarding the appropriateness of Article 1, the importer should be advised that the first alternative method of valuation is to be considered and the reasons attached to that decision.

Also, if the royalty payment is based partly on the imported goods and partly on other factors which do not relate to the goods as imported, it is also inappropriate to make an adjustment for the royalty on the imported goods. For example, where imported goods are mixed with domestic ingredients and are no longer identifiable and where the royalty payment cannot be distinguished from the financial arrangements between the buyer and the seller.

Example

An importer buys cured tobacco in order to make cigarettes. In addition to the imported tobacco, the importer purchases domestic tobacco which is blended with the imported tobacco. There are no agreed set percentages of either tobacco type in the blending process.

The importer then pays a royalty based on the resale of the finished cigarettes. As the royalty is in fact relevant only to the imported tobacco and, as that tobacco had lost its identity in the finished goods, it is impossible to determine the royalty amount of the imported tobacco against the finished product. If, however the royalty payment was against a certain percentage of the imported tobacco being blended with a specific percentage of local tobacco, the royalty adjustment could be determined.

So, what facts must be established in order to determine whether payments are in fact royalties and whether they will form part of the customs value of the imported goods?

1. The payments must be related to the imported goods being valued, that is, the royalty's/license fees must be linked with the imported goods either because they involve the right to use a trademark or copyright, or, because the goods contain a patented process or, because of some other protected right.
2. That the buyer must pay the royalty/license fee directly or indirectly as a condition of the sale. As such, it does not matter if the royalty payment is paid to a third party (e.g., the designer/license holder), rather the fact that it is a condition of the sale.
3. It must be established that the royalty is not already included in the price actually paid or payable.

Identification of royalty/license fee payments can be relatively simple. In most cases, there will be a formal written agreement spelling out the rights and obligations being conferred from one party to the other. Examination of these documents will normally establish what the payment is for.

A question that can help in determining the status of the royalty is, "could the goods have been imported without the payment of a royalty"? This is a good starting point. Always base royalty/license fee considerations on objective and quantifiable data. Ask questions to the importer as required, before a final decision can be made. The decision maker must be satisfied that the facts are correct and appropriate adjustments are made in order to determine transaction value.

Article 8.1(d) Proceeds

Article 8.1(d) provides that in determining the customs value under the provisions of Article 1, there shall be added to the PAPP for the imported goods, 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. Proceeds must not be confused with transfers of dividends or other such payments made by the buyer to the seller. Neither must they be confused with royalties and license fees which are payable on the re-sale price of the imported goods. Payments falling within the definition of royalties and license fees must be examined solely within the context of Article 8.1 (c). Where a royalty payment has been examined and found not to form part of the customs value of the imported goods under Article 8.1(c), it cannot then be considered again under the provisions of Article 8.1(d).

The Agreement does not define the scope of Article 8.1 (d), nor does the Agreement impose any conditions on how these payments are to be taken into account in the customs value.

In particular, it does not require that such payments must constitute a condition of the sale of the imported goods. The mere existence of such proceeds requires an adjustment to be made to the price actually paid or payable for the imported goods. Sometimes at the time of importation the amount of the proceeds that accrues to the seller may be unknown, the transaction value method may not be applied. In this case, Article 13 may be applied that is, the importer may provide sufficient guarantee and the goods are released before final determination of the customs value. However, the general requirement that any addition under Article 8 must be made on the basis of objective and quantifiable data still applies.

Article 8.2 Optional Adjustments

In framing its national legislation, each Member state shall provide for the inclusion in or 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.

a) Cost of Transport (Freight)

The cost of transport includes those costs that physically move the goods from the factory of manufacture through the port of loading to the port of discharge to the country of importation. Such costs or charges include:

- inland freight (trucking),
- rail freight,
- ocean freight,
- air freight.

b) Loading, Unloading and Handling Charges

The charges referred to here are those incurred in the country of exportation. These charges would include a myriad of possibilities. Loading and unloading include costs or charges for the movement of goods to or off from any conveyance (vessel, truck or aircraft).

Handling would include any number of activities surrounding or incidental to the physical movement of the goods such as preparation of manifests, preparation of bills of lading or other waybills, obtaining any appropriate export licenses, preparation of customs documents and any other shipping arrangements.

However, all three costs or charges must be associated with the transport of the goods. Storage fees or warehouse fees which are not directly related to the transport of the goods are not included here.

c) Cost of Insurance

Cost of Insurance includes costs or charges that cover any risk on the goods being transported from the place of manufacture in the country of exportation to the country of importation. Such costs or charges include:

- Land insurance,
- Marine insurance,
- Air insurance.

The inclusion of insurance in the customs value is limited to insurance costs incurred for the transportation, loading, unloading and handling of the goods to the place of import. Companies sometimes arrange for global or group policies to be set up rather than individual policies for each shipment. In this case, where objective and quantifiable data is not available for each individual import, the customs value cannot be determined using Article 1. Where insurance costs have been omitted from the declared value this may be because

the importer has failed to advise his/her agent of the existence of such a policy. In some cases, the sales contract requires the seller to procure insurance against the buyer's risk of loss of or damage to the goods during carriage, but the buyer also decides to procure insurance. In other words, there is a 'double' insurance, however, in the event of loss or damage, legally only one claim can be made. Consequently, only the cost of the seller's insurance is to be included in the customs value as that is the basis of CIF. The above situation will depend upon the terms agreed on the sales contract.

In some cases, the importer may state that neither he/she nor the seller insured the goods.

If there is evidence to support this, then it is not necessary to include an amount for insurance under Article 8.2.

4.8 Use of INCOTERMS in Valuation

The term "Incoterms" is an acronym meaning International Commercial Terms. It is a trademark owned by the International Chamber of Commerce (ICC) and registered in several countries. There are eleven incoterms which are updated from time to time. The latest version is the Incoterm®2020. The incoterms rules are universally accepted and understood by all traders across the globe. When conducting Customs valuation, Incoterms are very important in disclosing optional adjustments under Article 8.2 of the Agreement. The Incoterms 2020 are categorised into:

- Rules for any mode or modes of transport
- Rules for sea and inland waterway transport

(i) Rules for any mode or modes of transport**EXW: Ex Works**

Under EXW the seller places goods at the disposal of the buyer at the seller's premises or any other. Here the seller is not obligated to ship the goods on behalf of the seller for export even if there is need to do so.

FCA: Free Carrier

The supplier or seller delivers goods to the carrier or any other nominated person at the seller's premises or another appointed place. The parties are advised to state the place of delivery very clearly as it is at this appointed place that risk passes from the buyer to the seller.

CPT: Carriage Paid to

The seller delivers to the carrier or another nominated by the seller at an agreed place. The seller pays for the carriage costs to bring the goods to the place of destination.

CIP: Carriage and Insurance Paid to

The seller has the same responsibilities as CPT however in addition he /she procures for insurance to cover the goods against risk of loss and damages during carriage. The buyer should note that under CIP the seller is required to obtain insurance only on minimum cover.

DAP: Delivered at place

The seller delivers when the goods are placed at the disposal of the buyer on the arriving means of transport ready for unloading at the named place of destination. The seller bears all risks involved in bringing the goods to the named place.

DPU: Delivered at Place Unloaded

DPU replaces the former Incoterm® DAT (Delivered At Terminal). The seller delivers when the goods, once unloaded are placed at the disposal of the buyer at a named place of destination. The seller bears all risks involved in bringing the goods to, and unloading them at the named place of destination.

DDP: Delivered Duty Paid

The seller delivers the goods when the goods are placed at the disposal of the buyer, cleared for import on the arriving means of transport ready for unloading at the named place of destination. The seller bears all the costs and risks involved in bringing the goods to the place of destination. They must clear the products not only for export but also for import, to pay any duty for both export and import and to carry out all customs formalities.

(ii) Rules for sea and inland waterway transport

FAS: Free Alongside Ship

The seller is considered to have delivered the goods when they are placed alongside a vessel nominated by the buyer at a port of shipment. The risk of loss or damage including all other costs passes to the buyer immediately the goods are placed alongside.

FOB: Free on Board

The seller delivers the goods on board the vessel nominated by the buyer at the named port of shipment or procures the goods already so delivered. The risk of loss of or damage to the goods passes

when the products are on board the vessel. The buyer bears all costs from that moment onwards.

CIF: Cost Insurance and Freight

The seller delivers the goods on board the vessel or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the products are on the ship. The seller must contract for and pay the costs and freight necessary to bring the goods to the named port of destination. The seller also contracts for insurance cover against the buyer's risk of loss of or damage to the goods during the carriage. The buyer should note that under CIF the seller is required to obtain insurance only on minimum cover. Should the buyer wish to have more insurance protection, it will need either to agree as much expressly with the seller or to make its own extra insurance arrangements.

CFR: Cost and Freight

The seller delivers the goods on board the vessel or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the products are on board the vessel. The seller must contract for and pay the costs and freight necessary to bring the goods to the named port of destination.

4.9 Learning Activities

Case study 2

Keja of Country I imported 15,000 iron sheets from Dom Roofing of Country X at \$30 per /sheet (Total payment was \$450,000.). Customs had doubts regarding the value declared and requested Keja to provide supporting documents. According to the documents, it was found out that Keja supplied Dom Roofing a mould valued at \$125,000 which can produce 25,000 iron sheets, besides the direct payment to Dom Roofing. After analyzing the documents provided by Keja, Customs found that:

- Keja supplied to Dom Roofing a mould through a Mould Supplier, valued at \$125,000, which can produce 25,000 sheets.
- Keja imported 15,000 sheets from Dom Roofing.
- Sales Contract between Keja and Dom Roofing indicates that the iron sheets are supplied at \$ 30 per sheet, thus the total payment to Dom Roofing is \$450,000 for 15,000 iron sheets.
- Dom Roofings manufactures Iron sheet products using the mould provided by Keja free of charge.

Required:

State whether the value of the mould supplied free of charge by Keja to Dom Roofing is part of the Customs Value by supporting with relevant Articles and legislation.

Case study 2

ICO in Country I imported televisions from XCO in Country X and paid license fees separately to XCO. Shall the license fees be included in Customs value? ICO declared invoice price of \$150,000 for the Televisions. Customs requested the contract of sale from ICO. The sales contract concluded between ICO and XCO showed that ICO must pay 3% of contract price as royalty and license fees to XCO before the shipment of goods. Two separate invoices were issued to ICO, one for the contract price, another for royalty and license fees. There is no relationship between ICO and XCO in the meaning of Article 15.4 of the Agreement. The importer challenged the inclusion of the second invoice on royalties and license fees as part of PAPP.

Required:

Advice the importer based on provisions of the WTO-ACV and the EACCMA 2004 Fourth schedule

4.10 Self-Assessment Questions and Activities

Question One

Review the conditions for use of the transaction value method and provide insights to the following scenario.

Employee Mary purchased a used motor vehicle in Country X then shipped to Country Y. XCO in Country X decided to sell used motor vehicles which were more than 5 years old to the company's employees at low prices as payment of some part of their salary. The employee Mary of XCO is one of the buyers of the used motor vehicle who later moved to country Y with the Motor vehicle. At the time of verification by Customs in country Y, it was found that XCO sold used motor vehicles to its employees at a low price as part payment of their salary (but the value of the salary was not found).

Required:

Is the purchase considered as subject for condition to determine the Customs value in the country of importation?

Answer

Customs concluded that the sale was subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, and rejected the transaction value.

Question Two

KMP Ltd imported 5,000 units of product X at the cost USD 25/Unit. It was agreed that the goods were to be picked by the importers agent from the Manufacturer premises. He then transported the goods to the port of exportation.

Additional information: -

- Cost of transport to the port of exportation \$350.00
- The agent charged both the supplier and the importer 10% as his fees. The supplier paid him on collection but did not include the amount on the invoice.
- The freight was \$2,500 while handling charges were @200
- There was no insurance debit note thus insurance was estimated at an agreed rate of 1.5% of C&F
- 20% of the product were supplied under license at a cost of 2% of the cost of the goods.

Required:

- a) Identify and explain the terms of delivery (INCOTERM) used in this Transaction.
- b) Calculate the Customs Value.

4.11 References

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5.0 TRANSACTION VALUE OF IDENTICAL GOODS METHOD

5.1 Specific Learning Outcomes

At the end of the topic, the trainee should be able to:

1. Explain the meaning of identical goods
2. Explain the specification of identical goods
3. Identify the Common requirements of identical goods
4. Determine the Customs value based on transaction value of identical goods method
5. Explain the Time elements of the importation of goods

5.2 Meaning of identical goods

Where the customs value cannot be determined under Transaction value method, there should normally be a process of consultation between then customs administration and the importer with the view to arriving at the basis of value under the provision of Article 2.

Identical goods

These are goods, which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance shall not preclude goods otherwise conforming to the definition from being regarded as identical. The minor differences in appearance would include:

- (i) Colour
- (ii) Size
- (iii) Label
- (iv) Pattern

5.3 Specification of identical goods

In regards to identical goods, Article 15.2(c to e) also provides further criteria in the selection of identical goods:

- (i) Goods will not be considered as identical if they incorporate or reflect engineering, development, artwork, design work, and plans and sketches which were undertaken in the country of importation and thus no adjustment was made under Article 8.1(b)
- (ii) In order to be identical, the goods must also be produced in the same country as the goods being valued;
- (iii) Identical goods produced by a different

person shall be taken into account only where there are no identical goods produced by the same person as the goods being valued.

5.4 Common requirements of identical goods

The following are the common requirements for identical goods under Article 2 of the ACV.

- (i) Goods were sold for export to the country of importation and exported at or about the same time as the goods being valued.
- (ii) Goods are generally at the same commercial level and substantially same quantity.
- (iii) Where costs and charges under Article 8(2) that is cost of transport, insurance and loading, unloading and handling charges are included, appropriate adjustments should be made.
- (iv) Where in comparison with existing database more than two values are found, the lowest of such values should be considered.

5.5 Determination of Customs value for identical goods

This section demonstrates calculation of Customs value under the provisions of Article 2 of the ACV.

Example 1

You have a shipment from supplier E at a unit price of 4 c.u. in a quantity of 1,700 pieces to a wholesaler. It is not possible to establish a transaction value under Article 1. You have records of an identical product supplied by E, at a quantity of 2,300 pieces to a wholesaler at a unit price of 4.75 c.u. You have a copy of F's price list, which you have determined is bona fide, which shows the price varies according to the amount purchased. For purchases of under 2,000 pieces, the price is 5 c.u. while 2,000 and over brings a price of 4.75 c.u. Since there is no transaction value for the shipment from E, what is the proper value?

Answer

5 c.u. Since the price of the identical goods does vary according to quantity purchased, and the identical goods are at a different quantity, you must make an adjustment. Using a given price list, select the price

in the range appropriate to the imported goods, or the price at **2,000** pieces and over.

Example 2

You have a shipment **1,700** pieces of televisions from Al Jazzer of Dubai to a wholesaler at a unit price of USD **100/pc** for valuation but it is not possible to establish a transaction value under Article 1. However, you have identical televisions from Dubai Co. Ltd, of **1,700** pieces to a wholesaler at a unit price of USD **120/pc** in your valuation database and thus resorting to Article 2.

Do you have a value to use and, must you make an adjustment to that value?

Answer

Yes, the value of USD 120/pc may be used and adjustment is not necessary as the goods are in the same quantities and at the same commercial level

1.1 Time elements of the importation of goods

Goods were sold for export to the country of importation and exported at or about the same time as the goods being valued. This is a period not exceeding 90 days from the date of importation of identical goods.

1.2 Other considerations of identical goods

In applying Method 2, 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 sales are found, a sale of identical goods that takes place under any one of the following three conditions may be used.

- (i) A sale at the same commercial level but in different quantities
- (ii) A sale at a different commercial level but in substantially the same quantities
- (iii) A sale at a different commercial level and in different quantities is exported at or about the same time as the goods being valued.

Note that If more than one transaction value of identical goods is found, the lowest should be used.

5.6 Learning Activities

Review legal texts related to method two – Transaction value of identical goods and come up with minor differences that may be associated with identical goods.

5.7 Self-Assessment Questions and Activities

1. With reference to Article two, if two values of identical goods are found in the database then the lowest should be adopted. True or False?
2. The transaction value of identical goods method is based on previously accepted values. True or False?
3. In applying Method 2, 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. Explain three conditions that may be used when no such sales are found.

5.8 References

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6.0 TRANSACTION VALUE OF SIMILAR GOODS METHOD

6.1 Specific Learning Outcomes

At the end of the topic, the trainee should be able to:

- (i) Explain the meaning of similar goods
- (ii) Explain the Specifications of similar goods
- (iii) Identify common requirements of similar goods
- (iv) Determine Customs value for similar goods
- (v) Explain the time elements of the importation of goods
- (vi) Identify the other considerations of similar goods

6.2 Meaning of Similar goods

Where the customs value cannot be determined under Article 1 and 2, there should normally be a process of consultation between the customs administration and the importer with the view to arriving at the basis of value under the provision of Article 3. The value of the similar goods must be a previously accepted customs value for goods imported at or about the same time.

“Similar goods” means goods which, although not alike in all respect, 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.

6.3 Specifications for similar goods

In that regard, similar goods will be like the imported goods in the following respects:

- (a) Physical characteristics (size and shape)
- (b) Component material (glass, metal, wood, textile, paper)
- (c) Same function and use
- (d) Commercially interchangeable (consumer will accept it as a substitute)

6.4 Common requirements of similar goods

The value of the similar goods must be a previously accepted customs value for goods imported at or

about the same time. Goods were sold for export to the country of importation and exported at or about the same time as the goods being valued. Goods are generally at the same commercial level and substantially same quantity. Where costs and charges under Article 8(2) that is cost of transport, insurance and loading, unloading and handling charges are included, appropriate adjustments should be made. Where in comparison with existing database more than two values are found, the lowest of such values should be considered.

6.5 Determination Customs value for similar goods

This section will demonstrate using an example on how to determine Customs value using the provisions of Article 3 of the ACV.

6.6 Time elements of importation of goods

Goods were sold for export to the country of importation and exported at or about the same time as the goods being valued. This is a period not exceeding 90 days from the date of importation of similar goods.

6.7 Other considerations of similar goods

In applying Method 3, Customs administration shall wherever possible, use a sale of similar goods at the same commercial level and substantially the same quantities as the goods being valued. Where no such sales are found, a sale of similar goods that takes place under any one of the following three conditions may be used.

- (i) A sale at the same commercial level but in different quantities
- (ii) A sale at a different commercial level but in substantially the same quantities
- (iii) A sale at a different commercial level and in different quantities is exported at or about the same time as the goods being valued.

Note that If more than one transaction value of identical goods is found, the lowest should be used.

6.8 Learning Activities

1. Identify four criteria of similar goods
2. Apply those characteristics on any ten (10) commodities that are similar

6.9 Self-Assessment Questions and Activities

1. The transaction value of similar goods method is based on previously accepted transaction value. True or False?
2. With reference to Article three, if two values of similar goods are found in the database then the lowest should be adopted. True or False?

6.10 References

- Albuero, F. A. (2021, August 24). *Customs Valuation Concerns and Approaches Concerns and Approaches in Asia*. Retrieved from UNDP/ESCAP Web site: https://artnet.unescap.org/tid/artnet/mtg/tfri_s2albuero.pdf
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7.0 DEDUCTIVE VALUE METHOD

7.1 Specific Learning Outcomes

At the end of the topic, the trainee should be able to:

- i) Explain the meaning of Deductive Value
- ii) Explain the use of Greatest Aggregate Quantity
- iii) Apply the at or About the Same Time of Import
- iv) Identify the acceptable price in the market
- v) Make Deductions under Deductive Value on the selected price
- vi) Apply Deductive Value Method in determining Customs value

7.2 Meaning of Deductive Value

If the customs value of the imported goods cannot be established under identical goods or similar goods method, then the deductive value method should be considered. However, Article 4 provides that the importer may request the trial of use of computed value method before deductive value method. Should this fail then the basis of valuation will revert to deductive value method. Under this method, the customs value 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 persons from whom they buy such goods, subject to certain deductions.

7.3 Greatest Aggregate Quantity

“Unit price at which.... goods are sold in greatest aggregate quantity” Means the price at which the greatest number of units is sold in sales to persons who are not related to person to whom they buy such goods at the first commercial level after importation at which such sales take place.

7.4 At or About the Same Time of Import

Any period but not exceeding 90 days from the date of importation of the goods being valued or identical/similar goods.

7.5 The acceptable price in the market

This is the price of goods sold to unrelated parties of which goods are sold in the greatest aggregate quantity.

7.6 Deductions under Deductive Value

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

- a) Commissions usually paid or agreed to be paid, the sum of profits and general expenses added in connection with sales must also be deducted;
- b) Where appropriate, the costs and charges referred to in Article 8.2 (Optional Adjustments)
- c) The 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;
- d) The customs duties and other national taxes payable in the country of importation by reason of the importation or sale of the goods.
- e) Value added by assembly or further processing, when applicable.

7.7 Application of Deductive Value Method

The Customs value under deductive value method will be determined on 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. 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.

| Selling points | Unit Price | Units Sold |
|----------------|------------|------------|
| A | 100 | 60 |
| B | 95 | 70 |
| C | 90 | 80 |
| D | 95 | 50 |

In the above illustration the greatest units sold **70 + 50 = 120**, therefore unit price at which the greatest aggregate quantity was sold is **95**.

Practical examples

Example 1

Goods are sold from a price list, which grants favourable unit prices for purchase made in increasingly larger quantities.

| Quantity Range | Unit Price | Sales Number. |
|----------------|------------|---------------|
| 1-10 | 100 | 10 sales of 5 |
| | | 5 sales of 3 |
| 11-25 | 95 | 5 sales of 11 |
| Over 25 | 90 | 1 sale of 30 |
| | | 1 sale of 50 |

The unit prices show the following aggregate totals:

| | |
|--------|----------|
| 100 cu | 65 units |
| 95 cu | 55 units |
| 90 cu | 80 units |

Answer

The greatest number of units sold at a given price is **80**. Therefore, the unit price in the greatest aggregate quantity would be **90**.

7.8 Learning Activities

Read Article 4 & 5 of the Agreement and deduce the requirements of the Deductive value method.

7.9 Self-Assessment Questions and Activities

The following data was gathered following a market survey.

| Sale quantity | Unit price | Number of sales |
|---------------|------------|---|
| 1-10 | 1500 | 20 sales of 15 units and 17 sales of 9 units |
| 11-20 | 1200 | 15 sales of 25 units |
| 20-23 | 1800 | 20 units of 08 units and 18 sales of 30 units |
| Over 25 | 100 | 20 sales of 7 units 5 sales of 50 units |

Additional information

Profit and General expenses 20%

Import duty rate 20%

Internal transport 120%

Required

- Determine the Greatest Aggregate Quantity
- Calculate the Customs value using the Deductive value method

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8.0 COMPUTED VALUE METHODS

8.1 Specific Learning Outcomes

At the end of the topic, the trainee should be able to:

1. Explain the meaning of Computed Value
2. Describe the elements of Computed Value
3. Apply GAAP in determining the elements of computed value
4. Identify the legal person providing Information regarding elements of computed value
5. Make final remarks on Computed Value Method

8.2 Meaning of Computed Value

If customs value cannot be based on any of the valuation methods under Article 1 to 5, then the computed value method is considered as an alternative method of valuation. The use of the computed value method will generally be limited to those cases where the buyer and the seller are related, and the producer is prepared to supply to the authorities of the country of importation the necessary costing and to provide facilities for any subsequent verification which may be necessary.

8.3 Elements of Computed Value

These elements are outlined in Article 6 as being the sum of the following:

- (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.

General expenses

These include the direct and indirect costs of marketing the goods compared with the goods being valued.

Generally Accepted Accounting Principles (GAAP)

“Goods of the same class or kind” in this context means goods which fall within the group or range of goods produced by a particular industry or sector and include the identical or similar goods.

8.4 Generally Accepted Accounting Principles (GAAP) in determining the elements of computed value

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. Recordings of expenses are, in general, controlled in a given country by a board of accountancy. This group decides which expenses are recorded as material or labour costs and which are recorded as general expenses.

In general, all cost not covered by Article 6 would be considered as general expenses or overhead and would include such costs as:

- Rent
- Electricity, water, heat and other utilities
- Legal fees
- Office salaries
- Office equipment
- Marketing expenses
- Telephone and telegraph
- Employee benefits

It should also be pointed out that for purposes of determining whether computed value information is consistent with GAAP in the country of production, it is acceptable that the importer submits a statement from a recognized accounting authority in the country of production stating that the figures are consistent with GAAP.

8.5 Legal person providing Information regarding elements of computed value

- (a) Examination of the costs of producing the goods being valued and other information which has to be obtained from outside the country of importation. However, in most cases the producer of the goods will be outside the jurisdiction of the authorities of the country of importation hence difficulty in verification.
- (b) The computed value method will generally

be limited to those cases where the buyer and the seller are related, and the producer is prepared to supply to the authorities of the country of importation with the necessary cost information to facilitate any subsequent verification which may be necessary.

- (c) Information supplied by the producer of the goods for the purposes of determining the customs value under computed value method 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.
- (d) 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, which prescribes the treatment of confidential information.
- (e) Under the computed value method, the producer's general expenses and profit equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by the producers in the country of exportation for export to the country of importation.

8.6 Final Remarks on Computed Value Method

Computed value is the sum of the following elements:

(a) Production costs = value of materials + cost of 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; sub-assemblies such as integrated circuit; and prefabricated components which will eventually be assembled.

Fabrication would include 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.

(b) General expenses and Profits prepared in accordance with the Generally Accepted Accounting Principles (GAAPs)

(c) Costs of expenses under Article 8.2 (refer to pages 33 and 34 of this Article)

Therefore

$$\boxed{\text{Computed Value}} = \boxed{\text{Production costs}} + \boxed{\text{General Expenses and profits}} + \boxed{\text{Costs under Article 8.2}}$$

8.7 Learning Activities

1. Activity 1-Review texts on Generally Accepted Accounting Principles
2. Activity 2- Apply knowledge learned in activity 1 above to enumerate at least five major GAAPs used by businesses in the world today
3. Activity 3- Read legal texts on the Computed value and explain the instances where it may be suitable

8.8 Self-Assessment Questions and Activities

An importer M from country Y has imported brand new vehicles with a functionality not found in any other vehicles in the market in the country of importation. Therefore, Customs are unable to apply Article 1 to Article 5 to determine the Customs value. It has also been revealed that the transaction was not made at arm's length. The producer of the vehicle was contacted and produced all the necessary documentation on the production costs and other expenses related to the motor vehicles being valued. The financial statements were prepared in accordance with GAAPs and audited by a reputable international Audit firm that also has an office in the country of importation.

The statements revealed the following

- i) Invoice value provided was USD 10,000 per vehicle
- ii) Costs of materials and fabrication per pair USD 6
- iii) General expenses and profits duly prepared in accordance the GAAPS is 5000 per unit.
- iv) Freight and insurance amounted to USD 2000

Required:

You are required to calculate the Customs Value using the computed value method.

8.9 References

- Albuero, F. A. (2021, August 24). *Customs Valuation Concerns and Approaches Concerns and Approaches in Asia*. Retrieved from UNDP/ESCAP Web site: https://artnet.unescap.org/tid/artnet/mtg/tfri_s2albuero.pdf
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9.0 FALL-BACK METHOD

9.1 Specific Learning Outcomes

At the end of the topic, the trainee should be able to:

- (i) Describe the general Principles of the Agreement
- (ii) Describe the general Principles of Article VII of GATT, 1994
- (iii) Identify examples of Flexible Approaches under Fall-back method
- (iv) Explain the limitation of using Fall-back Method
- (v) Explain how and when Test Values are used as a risk assessment tool
- (vi) Make Final Remarks on using Fall-back Method

9.2 General Principles of the Agreement

If the customs value of the imported goods cannot be determined on the basis of Article 1 through 6 inclusive (method 1-5), the customs value can be derived based on one of the five previous methods reasonably adjusted as necessary. The determined value should be based to the greatest extent possible on previously determined values only on the data available in the country of importation.

9.3 General Principles of Article VII of GATT, 1994

The following are the General principles of Customs valuation as contained in Article VII of the General Agreement on Tariffs and Trade (GATT) of 1994.

- Greatest reliance on transaction value
- Uniformity in valuation
- Fairness and neutrality
- Simple & equitable criteria
- Consistent with commercial practices

9.4 Examples of Flexible Approaches

The methods of valuation to be employed under Article 7, according to the Interpretative Notes to that Article, should be those laid down in Article 1 through 6, but a reasonable flexibility in the application of those methods would be in conformity with the aims and provisions of Article 7.

Some examples of reasonable flexibility are as follows:

Identical or similar goods

- (a) In the case of identical or similar goods, the requirement that the goods must be exported at or about the same time as the goods being valued could be flexibly interpreted. Country of **Belgium** Could also use goods from **Netherlands or Luxembourg**
- (b) In the case of identical or similar goods, the requirement that the country of production be the same as the goods being valued could be waived.

Deductive method

- (a) The requirement that the goods must have been sold in the condition as imported in Article 5.1 (a) could be flexibly interpreted.
- (b) The 90-day rule in Article 5.1 (b) could be flexibly administered.

In regards to the above examples, it would also be possible to flexibly interpret Article 1 in conjunction with Article 8. The following would be such an example of a flexible interpretation of Article 1.

Example

Company X in country I imports a machine tool after having it sent abroad for repair. When exported, the value of the machine tool was 9,000 c.u. Upon importation, company X pays only for the cost of repairs, 1,000 c.u. to exporter E.

Determine the customs value of the imported machine tools

Answer

Under Article 7, we could flexibly interpret the price actually paid or payable under Article 1 to be the cost of the repairs. To that cost, you would add the machine tool itself as an assist under the provisions of Article 8.

Therefore, use 9,000 c.u. plus 1,000 c.u. as the value under Article 7 through a flexible interpretation of Article 1 and 8. (There may be a distinction between dutiable values and appraised value; i.e. some administrations may not collect duty on goods of domestic origin). Therefore, the answer is 10,000 c.u.

9.5 Limitation of using Fall-back Method

1. One of the drawbacks of the fall back method is the likelihood of using prohibited methods not consistent with general principles of the agreement
2. There is also a likelihood of Customs to usurp too much authority and infringe on importers rights
3. The method may also lead to unnecessary disputes resulting to litigation

9.6 Use of Test Values as a risk assessment tool

A Test value refers to previously accepted Customs values for merchandise sold to unrelated parties in the country of importation. Test values may be

- i. the transaction value of identical or similar goods sold to unrelated buyers in the country of importation.
- ii. Deductive value of identical or similar merchandise
- iii. Computed value of identical or similar merchandise

Under the conditions for use of Transaction Value method, if the buyer and seller are related, then transaction value is rejected. However, under provisions of the WCO-ACV, if the price was not influenced by either of the parties, then test values may be used as basis to either accept or reject the declared Customs values. Therefore, for test values to be used effectively, then Customs administrations must establish valuation databases that may be used as risk assessment tools from time to time.

9.7 Final Remarks on using Fall-back Method

Despite a degree of flexibility, the aim of the law and its provisions should always be kept in mind. However, there are certain “flexible” approaches which also should not be used. The following are some of the approaches Customs should not take:

- Use of the further fabrication method under Article 6.2 when it was not requested by the importer.
- Expanding consideration of what is considered as identical or similar goods.
- Use of related party sales to establish a deductive value under Article 5.

Hierarchical order

In this regard, a question has arisen whether, while employing Article 7, it is necessary to follow the hierarchical order prescribed in the Agreement. That is, do you flexibly interpret Article 1 first, then Article 2 and so on.

The WCO Technical Committee on Customs Valuation, in Advisory Opinion 12.2, expressed the view that there is no specific provision in the Agreement which requires a hierarchical approach to the flexible interpretation of Articles 1 through 6 under Article 7. However, Article 7 does require the use of reasonable means consistent with the principles and general provisions of the Agreement and this would indicate that where reasonably possible, the hierarchical order should be followed. Thus, where you have several acceptable methods, all of which are considered a reasonably flexible interpretation, maintain the order of Article 1 through 7.

Prohibited means of determining value under the fall back method

Customs value shall not be determined under the provision of Article 7 on the basis of;

- (a) Selling prices in the country of importation of goods produced in such country (i.e., prices of goods manufactured in the importing country);
- (b) A system which provides for the acceptance for customs purposes of the higher of two alternative values (i.e., the lowest should be used);
- (c) The price of goods on the domestic market of the country of exportation (i.e., economies of countries are different);
- (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 (i.e.; valuation must be arrived at on the basis of data available in the country of importation);
- (e) Price of the goods for export to a country other than the country of importation;
- (f) Minimum customs values;

- (g) Arbitrary or fictitious values (this is aimed at systems which do not base values on what happens in the market place, as reflected in actual prices or sales and in actual costs, reason of the importation or sale of the goods).

9.8 Learning Activities

Activity – Using hypothetical figures demonstrate how you may apply the flexibility principle on same country of production and at or about the same time under methods 2,3 and 4.

9.9 Self-Assessment Questions and Activities

Identify and explain examples of the following: -

- i) Selling prices in the country of importation
- ii) Price of goods on the domestic market of the country of exportation

9.10 References

- Alburo, F. A. (2021, August 24). *Customs Valuation Concerns and Approaches Concerns and Approaches in Asia*. Retrieved from UNDP/ESCAP Web site: https://artnet.unescap.org/tid/artnet/mtg/tfri_s2alburo.pdf
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10.0 CUSTOMS VALUATION DOCUMENTS

10.1 Specific Learning Outcomes

At the end of the topic, the trainee should be able to:

- (i) Define a document
- (ii) Explain the Importance of documentation in clearance
- (iii) Identify types of Customs documentation
- (iv) Identify categories of Customs documents required in the process of valuation
- (v) Identify vital information on customs documents
- (vi) Analyse authenticity of Customs documents and ground for Customs rejection
- (vii) Make declaration of Customs value using the prescribed form

10.2 Define a document

Documentation plays an important role in the smooth movement of goods in International trade. Facilitation of legitimate trade largely depends on proper documentation. It is therefore important for Customs and other interested parties to be conversant with International Trade Documentation because it imparts them with the skills to authenticate the relevant documents used in clearance of goods in international trade.

Document refers to the presentation of data in digital or any other form for purposes of exchanging information and communication while Document check is the systematic analysis of all supporting documents to a customs declaration in order to facilitate proper valuation of imported goods.

10.3 Importance of documentation

Documents are useful for:

- Clearance of goods
- Identification of origin
- Provision of data for Statistics
- Post Clearance Audit (PCA)
- Intelligence analysis
- Serving as evidence in commercial dispute settlement
- Collection of taxes and duties
- Protection of community and the environment
- Proof of ownership
- Facilitation of legitimate trade

10.4 Types of Customs documentation

There are two major types of Customs documentation highlighted below

- a) Prescribed Customs Documents
- b) Supporting documents

(a) Prescribed Customs Documents

Prescribed Customs documents are those prescribed by the law and are used for the purposes of declaration. There are various Customs forms that are used for various purposes. The information declared on these Customs forms must be truthful, accurate and free from errors. They must be verified using supporting documents. Inconsistent and false declarations will often be penalized with the relevant provisions of the law some which are very punitive. For valuation purposes there are two major Customs forms that are key.

- i) The Single Administrative Form C17
- ii) Declaration of particulars relating to Customs Value Form C36

(b) Supporting documents

These are the documents that are used to support the Customs declarations made by Importers through their Customs agents. Care must be taken to ensure that the documents presented are authentic, consistent, truthful and free from alterations and misstatements. They include documents such as the Commercial Invoice, Packing list, Log book, Death certificate, Freight invoice, Insurance debit note, phytosanitary certificate, Certificate of Conformity etc. Supporting documents will be discussed in length under the following sections below.

10.5 Categories of Customs Documents required in the process of valuation

Customs documents used in the clearance of goods may be broadly categorized as following;

- (a) Commercial Documents
- (b) Transport Documents
- (c) Financial Documents
- (d) Regulatory Documents

All the four categories of documents, are interlinked and interdependent and should be presented to Customs and analysed simultaneously.

Commercial documents

(a) Purchase order

This is a commercial document used by the Buyer/Importer in placing an order with the supplier/seller. Important information on this document for customs purposes include the date when the order was placed, the company that ordered, the quantity ordered, suggested price to be paid or payable, signature and stamp of the ordering importer, preceding documents (e.g. Price quotation, catalogues, price list, etc.). However, it must be noted that different importers use different means of placing their orders; some have formal purchasing order forms, others order by telephone while others order by e-mail. Therefore, it is important for customs to establish the method of ordering that the importer used.

(b) Proforma Invoice

This is the document which the seller issues in response to the purchase order. It stipulates the terms and conditions upon which the seller will sell the goods to the buyer. Some of the important information contained in this document includes date of issue, preceding documents (if any), description of goods, unit price and total consignment price, the terms of payment, terms of delivery, obligations of each party and signatures of contracting parties.

(c) Sales Contract

This is a legal document that is enforceable by parties demonstrating that the buyer and seller agree on a sale of a particular good. It obliges the seller to supply goods to the buyer and ensure that the buyer acquires proprietary rights over the goods. Important information on this document for customs purposes include date of contract, terms of sale, description of goods, unit price and total contract price, terms of payments, seller's bank details, swift code and arbitration clause. Sometimes proforma invoice serve the same role as sales contract and the two may be used interchangeably.

(d) Commercial Invoice

This is a commercial document prepared by a seller as indication of the final agreement on the sale of goods. It lists all items sold and presented to the buyer for payment. It contains the following information; date of issue, description of goods, quantity sold, the actual price paid or payable, terms of payment, terms of delivery, the serial number and the stamp of the issuing authority. This document is different

from a pro-forma invoice in that whereas on the pro-forma invoice there is still room for negotiations and is subject to change, the commercial invoice is the final agreement between the parties.

(e) Receipt

This is a document that is issued in cases of cash transactions certifying receipt of payment by the seller. Vital information in this document include date of issue, serial number, payee, amount paid, means of payment (i.e. cash or cheque), balance due if any, signature and stamp of the seller.

(f) Packing list

This is a document that accompanies goods from the exporting country and it gives a detailed breakdown of the way goods that have been packed in the consignment to facilitate both the importer and customs authorities to easily verify the quantities and description of the consignment. Vital information to consider in this document includes, date and serial number, preceding document, goods description, weights, quantities and dimensions and signatures.

Transport Documents

(a) Shipping Bill/Export entry

This is a Customs document that is generated/issued by Customs of the exporting country. Vital information contained in this document includes the Customs reference number of the exporting country, the exporter, the consignee, the country of export, importing country, description of goods, Incoterms, carrier used, total export Customs Value, currency and preceding document (if any).

(b) Bill of Lading/Airway Bill

This is an official document prepared by the carrier/shipper duly accepting the goods for shipment and it contains the following information; the serial number, type of Bill of Lading/Airway Bill (master, house, combined transport, non-negotiable), date and place of issue, date shipped on board, name of the shipping line, name of the consignee, name of the vessel, the items shipped, the quantity and weight of goods, port of loading, the point of destination, preceding documents (if any), pre-carriage information, signatures and stamps.

(c) Freight Invoice

This is a document issued by the shipper/carrier as acknowledgement on the agreed freight terms. It

contains the following information; date of issue, serial number, name of carrier/shipper, name of the importer, amount paid, balance due if any, signature and stamp.

(d) Freight debit note

This is a document issued by the shipper/carrier in the event that freight amount is due. It contains the following information, date of issue, serial number, name of carrier/shipper, name of the importer, amount to be paid and date due, signature and stamp.

(e) Insurance certificate

This is a legal document certifying that goods or products are insured against certain risks before carriage. This can be marine insurance, marine and road insurance, or all risks cover. This certificate is issued as evidence that a certain insurance policy has been under taken to cover the goods. It is also contractual in nature meaning that it is a contract between the insurer and the insured. Vital information on this document includes; serial number, date of issue, the insurer, the insured, the insured amount, the insurance policy, signature and stamps.

(f) Insurance Debit Note

This is the document issued by the insurance company in the event that insurance charges are due. It contains the following information, serial number; date of issue, the insurer, the insured, the insured amount, the insurance policy, signature and stamp.

Financial Documents

(a) Form E

This is the declaration made by the exporter to the central bank of the exporting country showing the amount in foreign exchange that the goods are worth. Vital information on this document include, the issuing bank, date and serial number, place of issue, name of the exporter, description and quantity of goods, foreign exchange value, signature and stamp of both the bank and exporter.

(b) Payment Documents

These are documents that provide evidence that the goods in question have been paid for or will be paid for depending on the agreed terms of payment. These documents include, Telegraphic Transfer (TT), Letters of Credit (LC), Documentary credits, Bank draft/ Bill of exchange

and credit agreement etc. Vital information on these documents varies depending on agreed terms of payment. Accordingly, there are several means of payment used in settlement of amount owed to the supplier/exporter and this includes the following:

Telegraphic transfer

This refers to the payment of money by transferring funds from the sender's account to the beneficiary's via an electric cable in form of an automated fund transfer system which uses coded messages that are safe and convenient.

Letter of Credit

This is a formal document issued by financial institutions acting on behalf of the applicant by settling payments for a transaction to the beneficiary. These letters of credit are of different types, the most commonly used are;

- **Revocable Letters of Credit;** this is a form of credit letter whose contents can be amended without the consent of the beneficiary at the request and on the instruction of the applicant.
- **Irrevocable Letter of Credits;** this form of credit letter cannot be amended or cancelled without the consent of the issuing agency if any or the beneficiary.

Bank Guarantee

This refers to a formal security that lending institutions ensure that the liabilities of a debtor are met when due on behalf of the applicant in case he/she fails to settle them. A Bank guarantee and a Letter of credit are similar in many ways but they are two different things. Letters of credit ensure that a transaction proceeds as planned, while a Bank guarantees reduce the loss if the transaction does not go as planned. A Bank guarantee is used to insure a buyer or seller from loss or damage due to non-performance by the other party in the contract.

Bank overdraft

Literally a Bank overdraft is when someone is able to spend more than what is actually in their bank account; obviously the money does not belong to them and will have to be paid back automatically once money goes onto their account.

It is a mutual agreement between the lending agencies to act on behalf of an applicant to settle his liabilities. It can be in form of a bond, cash or loan usually on a maximum limit beyond which the lending agency cannot exceed.

Bank draft

This is a banker's cheque used as a negotiable instrument instructing a foreign bank to pay on demand a fixed amount of money to a named beneficiary. It is also known as "Cashier's Cheque" and it applies when you need to pay somebody with guaranteed funds. Bank drafts are more secure for sellers because the funds are guaranteed by the bank that issued the draft. If a personal cheque is used there are possibilities of bouncing, however banks only issue Bank drafts after they have taken money from the applicant's account – so the seller is assured of being paid. In international trade, a Bank Draft is a negotiable instrument issued by a local bank instructing a foreign bank to pay on demand, a fixed sum of money to a named beneficiary.

Bill of exchange

This is an unconditional order issued by a person or business when directing the recipient to pay a fixed sum of money to a third party at a future date. The future date may be either fixed or negotiable. A bill of exchange must be in writing and signed.

Regulatory Documents**(a) Certificate of Origin**

This is a customs document that certifies the origin of goods. It also gives the criteria for conferring origin. This criterion may be wholly obtained, value added, change in tariff heading. This certificate shows the preferential treatment of the goods being considered. The certificate of origin is usually issued either by the national chamber of commerce or by the export promotion boards and may be counter signed by Customs authority. Vital information on this document includes; date and serial numbers, preceding documents (especially the commercial invoice Number), description of goods, name of the exporter, name of the importer, criteria of the goods, issuing authority, signature and stamps of both the issuing authority and exporter.

(b) Permit/certificate of analysis

This is a document issued by the manufacturer or bureau of standards in various countries certifying that the goods exported have undergone inspection and are certified to be consumed. This analysis is very crucial because apart from Customs collecting revenues they also protect the environment and human health. This certificate therefore recommends that goods to be consumed are safe to the environment or human health. Vital information

on this document includes serial number, name and address of the certifying authority, name of inspector, materials compound of the item, description of goods analyzed, recommended life span of the goods, date, signature and stamps of the issuing authority.

(c) Fumigation Certificate

This is a document that certifies that goods imported or exported have been tested /inspected and treated to make them free from pests or fungus and qualify to be consumed or used. Vital information on this document includes; name of fumigator, name of the exporter, descriptions of goods fumigated, date of fumigation, methods and chemical components used in fumigation, stamp and signature of the authorized institute.

(d) Phytosanitary Certificate

This is a document that certifies that livestock and plants imported or exported have been tested/inspected and vaccinated to make them free of infectious diseases. Vital information on this document includes; name of vaccinating authority, name of the exporter, details of livestock or plants vaccinated, date of vaccination, methods and chemical components used in vaccination, stamp and signature of the authorized institute.

(e) Certificate of Conformity

PVOC is Pre-export verification of conformity to standards. It is a conformity verification procedure applied at the country of exportation or origin to ensure compliance with standards of the country of importation where the goods will subsequently be consumed. Compliant goods will be issued Certificates of Conformity (CoCs) as proof of compliance by the relevant EAC Standards' Bureaus appointed inspection agents. When shipping, every consignment needs to have a COC certificate. These certificates are necessary to show that your products comply with the set standard for that particular country. Goods such as used motor vehicles are issued with a Certificate of Road worthiness, Petroleum products are issued with Certificates of quality.

10.6 Vital Information on customs document

The following information runs through most of the documents involved in international trade. It is important for Customs and other stakeholders to be conversant with this information that plays an

important role in customs valuation;

- Document name – A document must have a name to help distinguish it from other documents e.g. a Commercial Invoice as opposed to a Proforma Invoice.
- Date & Serial Number – A proper Document must have a date and must also be serialized to help keep track while issuing these documents.
- Name of Supplier / Exporter – Clear and detailed particulars of the Supplier or Exporter must be there (such particulars include the name, physical location, postal address, telephone contacts & email).
- Name of Importer – Likewise clear and detailed particulars of the Importer must be indicated (name, physical location, postal address, telephone contacts & email).
- Quantity & Description – The quantity supplied should be clearly indicated and proper description thereof.
- Gross & Net weight – This is vital information which points to the weight of the packaging and the actual products & this information is very useful not only at physical examination but also at valuation.
- Unit price & Total price – A proper Commercial invoice / Proforma Invoice should show the price per unit and also work through sub-totals and grand totals.
- Unit of Measure – The unit of measure upon which the price is based should also be indicated i.e., pieces, kilograms, liters, meters, square meters, etc.
- Terms of Delivery – Basically these are Incoterms which should also be very specific.
- Terms of Payment – these are the agreed upon terms on how the Importer will pay the supplier i.e., Telegraphic Transfer, cash, letters of Credit etc.
- Time of shipment – this is usually indicated on the Bill of lading and has a bearing on terms agreed upon in the Contract.
- Pre-carriage information – this is also indicated on the Bill of lading and at times on the Commercial Invoice / Proforma Invoice – and is very important for pre-carriage expenses.
- Port of loading – this is indicated on the Bill of lading and at times on the Commercial Invoice / Proforma Invoice – and has a bearing on the freight payable.
- Type of packaging – at a wider level Customs are looking at either 20ft or 40ft container (which can be a risk management pointer to the total taxes payable); but also at a micro level it is important for the type of packing to be specified as either cartons, bales, bags, drums, etc.
- Marks & Numbers – these can be container numbers, seal numbers or serial numbers (in case of machines) and they are useful in identification.
- Vessel or Freight Number – this information is usually found on the Bill of lading and is important in identifying the carrier.
- Country of Origin – This is important especially where preferential treatment is concerned, also origin has a bearing on the reputation of goods.
- Harmonized System Code (HSC) – in some cases the supplier specifies the HS codes and it is usually important to compare it with what has been declared; this is at times indicated on the Bill of lading, Packing list and Commercial invoice.
- Special remarks – especially on the Bill of lading should never be taken for granted – remarks like FCL/FCL, LCL/LCL, and RO/RO have special meaning and implication. (Note Meaning – FCL – full container load; LCL – low container load; RO/RO – Roll-on Roll-off).

10.7 Authenticity of Customs documents and ground for Customs rejection

| Major Point | Specific Aspects | Remarks |
|-----------------------------------|--|--|
| Customs Values | Exceptionally high or exceptionally low values | Declaration of can be an indicator of intention to evade Internal / Domestic taxes. On the other hand exceptionally low values are an indicator of a direct evasion of Customs taxes through under valuation. |
| | High Insurance costs | If the terms of delivery is CIF (Kampala or Kigali) & the break-down of inland insurance shows an exceptionally high figure – then there is a likely-hood of under declaration of the CIF Mom-basa. |
| | Disproportionate Transport | Likewise, if the delivery terms is CIF (Bujumbura or Kigali) and the breakdown of inland freight shows an exceptionally high figure – then there is a likelihood of under-declaration of the CIF Dar es salaam. |
| Falsification of documents | Erasers, rubbers and white wash | If such alterations are done on a document and white-wash, then it has to be authenticated by countersigning and stamping. Anything not counter-signed should be an indicator of a problem & should be probed further. |

| | | |
|---|-----------------------------------|--|
| Falsification of documents | Scanned Documents | Presentation of scanned documents should be followed by a look at the original documents, otherwise it is possible to change information on a document while scanning. |
| | Different fonts | Usually when a document is tampered with, there is a possibility of the Fonts inserted not matching with the original Fonts and at times even the formation of the numbers might be different – a keen eye is able to detect such. |
| | Date Format | There are two major date Number formats used in International Trade – the British format which is day/month/ year; and the American format which is year/month/date. And these formats were adopted by the colonies of these respective countries – so a forger who is not keen enough will mix up these aspects. |
| | Serial Number | Serial Numbers can be either manual or system generated, however it is always important to keep track of serial numbers of major Suppliers by keeping copies of their invoices, since someone forging might not be aware of the running serial number. |
| Samples of previous documents from same supplier | Invoice set-up, logos and colours | Companies have brands that identify them previous Documents logo & Color from others and these are also reflected from Same Supplier in their Documentation. By keeping copies of documents for major Suppliers one is able to quickly recognize the logos, company colors, and document formats of such Companies – so if someone present a contrary document the difference is easily noticed. |

| | | |
|----------------------------|--|---|
| Arithmetic Accuracy | Unit price Versus Sub totals Versus Grand totals | Rarely do both declarants and Valuation Officers work through the computations on the presented invoices / packing lists, however it is not uncommon to find inaccuracy in the computations once one works through. |
|----------------------------|--|---|

| | | |
|-------------------------------------|---|---|
| Consistency in information | Weight | The weight quoted on the packing list, proforma invoice, commercial invoice & bill of lading should always tally; any discrepancy is a pointer to an anomaly |
| | Goods description | The Goods Description should be uniform on the Packing list, Proforma invoice, Commercial invoice, and Sales Contract. |
| | Value | The quoted value should be uniform on the Purchase Order, Proforma invoice, Commercial invoice, Sales Contract, and Financial Documents. |
| | Ownership | The Ownership should be consistent on the Bill of lading, Transit Documents, Shipping Bill/Export Entry and the other supporting documents |
| Disproportionate Incoterms | FOB | Where the terms of Delivery are FOB, it is always necessary to watch out for the quoted Freight & Insurance charges as they are usually under declared. |
| | CIF | Where the terms of Delivery are CIF, it is always necessary to work back-wards by deducting approximate Freight charges and insurance. The remaining FOB should give an indicator on the authenticity of the declaration. |
| | Freight Collect Versus Freight pre-paid | It is always necessary to cross-check Freight terms quoted on the Bill of lading against those on the Proforma invoice /Commercial invoice, sometimes there is a discrepancy. |
| Unrealistic terms of payment | Cash Payments | Cash payments are the hardest to prove since there is no third party involved |

| | | |
|-------------------------------------|--|---|
| Unrealistic terms of payment | Unguaranteed Credit | Payment terms such as 'payment after 180 days or 360 days' which are not supported by guarantees should always be treated with suspicion. Likewise 'payment at sight of Documents' means that goods were dispatched before payment– so even in this case there should be a guarantee. |
| Vague Information | Suppliers name and address, importer's name and address, Description of goods, Breakdown of packages on the packing list | If someone is giving vague or incomplete Information Address, Importers information in terms of addresses, Name & Address, weights, and description of goods it means Description of goods, they are holding back some information and such should be scrutinized further. |
| Incomplete documentation | | At least all the Mandatory Documents as per the 'Check list' must be attached for a consignment to be comfortably passed under Transaction Value Method; otherwise attaching only a Commercial Invoice is not enough to pass the entry under Transaction value method. |
| Signature & Stamp | | If a Document has a provision for a signature & stamp then it should be signed and stamped – otherwise such a document cannot be accepted. |

Grounds for doubting the truth or accuracy of the declared value

If Customs has reasons to doubt the truth or accuracy of the particulars of documents produced by traders in support of the declared value, then Customs should communicate such doubt in line with WTO Decision 6.1 which recommends the following steps.

The Customs administration shall communicate in writing to the importer, via a specific form, their grounds for doubting the truth or accuracy of the particulars or documents produced and ask for further explanation, including documents or other evidences. A reasonable time frame should be given for a response. If the importer fails to provide adequate documentation, or other evidences which supports his declaration, within the specified time frame. The Customs administration communicates in writing their final decision to reject the transaction value, explaining the grounds for the decision. Relevant sections of the law should always be quoted to justify Customs rejection of a declared

transaction value. Decision 6.1 should be read together with Article 17. (refer to attachments on Legal Provisions on Documentation)

1.3 Declaration of Customs value using the prescribed form

It is important for customs agents to fully appreciate the definition and interpretation of Transaction Value and how the term relates to international trade documentation when making Customs declarations on the prescribed Single Administrative Form C17 and the Declaration relating to Customs Value form C36 (refer to EACCMA regulations 2010).

Definition of Transaction Value embeds most of the documents involved in international trade. As indicated in Article 1, Transaction Value is the price actually paid or payable for the goods when sold for export to the country of importation and adjusted in accordance with the provisions of Article 8. When broken down into parts and critically analyzed, several documents are implied in the key elements in this definition as follows:

| Key elements of Reference documents | Key elements of Reference documents |
|---------------------------------------|--|
| Price actually Paid | Commercial invoice, Receipts, Sales contract, Telegraphic transfer, Form E |
| Price actually Payable | Purchase order, Proforma invoice, Price lists, Credit agreement |
| For the goods | Sales contract, Packing list, Certificate of analysis, Specific permits |
| When sold for export | Sales contract, Sales confirmation, Certificate of origin, |
| To the country of Importation | Purchase order, Bill of lading, Inland transport documents |
| Adjusted in accordance with article 8 | Sales contract, Commercial Invoice |

10.8 Learning Activities

Activity 1- Read the following from East Africa Community Management Regulations 2010 and explain the provisions in relation to declaration of values on prescribed Customs documents as follows

- Form C17
- Declaration of value form

Activity 2- Research and look for the different types of regulatory, financial and commercial documents

10.9 Self-Assessment Questions and Activities

- Explain the provisions of Regulation 197 in relation to declaration of value
- Identify the columns on the form C17 where value is declared
- Identify the columns in which Adjustments under Article 8.2 relate.

10.10 References

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11.0 CUSTOMS VALUATION DISPUTES

11.1 Specific Learning Outcomes

At the end of the topic, the trainee should be able to:

- (i) Identify the types of valuation disputes
- (ii) Describe factors that lead to disputes
- (iii) Identify parties to the valuation dispute
- (iv) Describe the legal framework for valuation dispute resolution
- (v) Identify the rights of an importer in customs Valuation disputes
- (vi) Describe the process for solving customs valuation disputes

11.2 Types of Valuation Disputes

1. Disputes between Customs authorities and traders

These types of disputes are the most common. They normally occur at the entry or exit points including (sea ports, airports, land borders, Cargo Freight Stations, Internal Container Depots) where imported goods are being valued. They emanate from suspicion of declared values by Customs officials due to inconsistencies between the declared values, supporting documents and even with the physical goods. Many Customs administrations often use risk management techniques, intelligence gathering, valuation databases which guide them in detecting valuation fraud. These kind of disputes may also arise due to minute mistakes on the part of the declarant such as miscalculating figures, omissions among others. Customs agents are advised to be as accurate as possible when making declarations.

2. Disputes between member nations of the World Trade Organization

These are valuation disputes between member nations of the World Trade Organization (WTO). Most of the disputes revolve around misapplication of the rules of the WTO-ACV, countries aggrieved, Anti-dumping measures imposed on their goods by the importing country among others.

11.3 Factors Leading to Disputes

The following are some of the factors that may lead to Customs valuation disputes.

- i) Falsification of commercial documents
- ii) Double invoicing
- iii) Invoice excludes some dutiable charges
- iv) Partial payments

- v) Failure to disclose related party transactions
- vi) Mis-description of the product origin
- vii) Currency manipulation & Exchange rate manipulation
- viii) Failure to disclose assists
- ix) Lack of proper training on the part of the declarants (Customs agents) and Customs officers

1.4 Parties to the Valuation Dispute

- Customs officers
- Importers
- Customs agents
- Professionals such as Tax Accountants and Lawyers
- Industry players such as Manufacturers, Motor vehicle dealers

11.4 Legal Framework for Valuation Dispute Resolution

Article 11 of the Agreement requires that the legislation of each member provide a right of appeal without penalty to the importer or any other person liable for payment of Customs duty in connection with the determination of Customs value.

Article 11.2 also provides that a final right of appeal to a judicial authority must be available.

Sections 229, 230 of the East Africa Community Customs Management Act 2004 provide for appeal mechanisms

11.5 Rights of an Importer in Customs Valuation Disputes

Article 10- Confidentiality

All information which is provided on a confidential basis shall be treated as strictly confidential by the authorities concerned and shall not be disclosed without specific permission of the person who issued except to the extent that it may be required to be disclosed in the context of judicial proceedings.

Article 11 – Importers right to appeal without penalty

The legislation of each member shall provide for the right of appeal without penalty within the customs administration or an independent body up to the judicial authority.

Article 13- Requires Customs administration to provide a system for security before release of goods.

The importer may be allowed to withdraw the goods from customs if it is necessary where the final determination of customs value is delayed, provided that sufficient guarantee is provided.

Article 16 - Rights of importers to a written explanation

This article explains the rights of importers to an explanation in writing as to how customs value was determined.

11.6 Valuation Disputes Settlement Process

Article 19 of the Agreement deals with Consultations and the settlement of disputes.

- The article stipulates in the event of a dispute, members may seek mutual satisfactory solution on any matter and members shall afford sympathetic consideration to any request from another member
- At the request of a party to a dispute, a panel established to examine a valuation dispute under the Agreement may request the technical Committee to carry out an examination of any question requiring technical consideration
- The panel shall determine the terms of reference to the Technical Committee for a particular dispute and a time period for receipt of the report of the Technical Committee
- If the Technical Committee is unable to reach consensus on a matter referred to it then the panel should afford the parties to the dispute an opportunity to present, their views on the matter to the panel.

Dispute Settlement under EACCMA 2004 for East African Countries

- Valuation disputes usually arise when the Customs releasing officer inspecting the goods is dissatisfied with the Customs value declared.
- The Officer notifies the importer through his Customs agent the reasons for rejecting the declared values and refers to the Valuation Section which has been established to specifically deal with valuation issues and should act as a valuation arbitration office.

- If the Customs values are rejected at the valuation office, then the Importer may use the following procedures stipulated in section 229
 - Lodge an application within thirty days of the decision for review to the Commissioner of Customs stating the grounds upon which it is lodged
 - The Commissioner may accept a late application made on the account of a reasonable cause such as sickness or absence from the partner state.
 - The Commissioner shall communicate his decision within a period not exceeding thirty days in writing stating the reasons for the decision.
 - Failure by the Commissioner to communicate within the stipulated timelines will be deemed to mean that he/she has made the decision to allow the application.
 - During the pendency of the lodged application, the Commissioner may at the request of the person lodging the appeal release any goods in respect of the application provided that duty as determined by the Commissioner is paid or upon provision of sufficient security for the duty and payment of any penalty that may be determined by the Commissioner.

Section 230

- This section stipulates that any person dissatisfied with the decision of the Commissioner under section 229 may appeal to the Tax Appeals Tribunal.
- The person intending to lodge an appeal is required to do so within forty-five days after being served with the decision and shall serve a copy of the appeal to the Commissioner.

Further Appeals

If a person is dissatisfied with the decision of the Tax Appeals Tribunal, he or she may appeal to the High Court for determination in accordance with Civil procedure code of the partner states.

11.7 Learning Activities

Activity 1- Read the Article 19 on consultations and settlements
Relate the Article to one Valuation case found here https://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm. Identify the countries of the dispute and discuss how the case was resolved.

Activity 2- Review Sections 229 & 230 of EACCMA 2004 and state the provisions of the sections

Activity 3- Make a presentation on the procedures to be followed under Sec 229 Appeals process

11.8 Self-Assessment Questions and Activities

1. Discuss the types of customs valuation disputes
2. Discuss the customs valuation dispute resolution process
3. Discuss the rights of an importer customs Valuation disputes

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UNIT 3

CUSTOMS CLASSIFICATION OF GOODS

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LIST OF ABBREVIATIONS AND ACRONYMS

| | |
|------|--|
| BTN | Brussels Tariff Nomenclature |
| CCCN | Customs Cooperation Council Nomenclature |
| CET | Common External Tariff |
| CTH | Change in Tariff Heading |
| EAC | East African Community |
| EACU | East African Customs Union |
| GIRs | General Interpretative Rules |
| HSC | Harmonized System Convention |
| WCO | World Customs Organization |

UNIT 3 : CUSTOMS CLASSIFICATION OF GOODS

1.0 UNIT OVERVIEW

1.1 Unit Description

This module unit specifies the competencies required to classify goods. This involves understanding the scope of the Harmonized System Convention (HSC); determining the structure for classification of goods; classifying goods based on section notes, chapter notes headings and subheadings; determining appropriate tariff for selected sections goods; applying the East African Community (EAC) Common External Tariff (CET); and, managing tariff classification disputes.

1.2 Unit Summary Learning Outcomes

At the end of the unit, the trainee should be able to:

1. Describe the scope of the Harmonized System Convention (HSC)
2. Determine the structure of the HS for classification of goods
3. Classify goods based on section notes, chapter notes headings and subheadings
4. Determine appropriate tariff for selected sections goods
5. Apply the EAC Common External Tariff (CET)
6. Reduce disputes in tariff classification.

2.0 THE SCOPE OF THE HARMONIZED SYSTEM CONVENTION (HSC)

2.1 Specific Learning Outcomes

At the end of this topic the trainee should be able to:

- i. Historical background of HSC
- ii. Harmonized System (HS) Convention contents
- iii. Purpose / Objectives of the HSC
- iv. Importance of the HSC
- v. Parties to the HSC

2.2 The Harmonized System Convention (HSC)

2.3 The concept of Tariff classification

One of the major functions of customs administration is to facilitate legitimate international trade. Therefore, all internationally traded goods should

be (Entered) declared in specific customs forms, in the entry process, goods should be correctly classified for customs tariff and statistics. Importers/agents are legally obliged to classify goods correctly and on the other hand Customs officers are obliged to ensure compliance of customs laws. The customs authorities of a country determine the applicable tariff rate for a given product by first identifying the item in the tariff schedule under which a product is classified (Tariff Classification), then determining the product value as the basis of assessment for products to which ad valorem tariff rates apply, and finally identifying the product's country of origin for preferential tariff treatment (Rules of Origin).

2.4 Overview of the Tariff Classification

The Harmonized Commodity Description and Coding System generally referred to as "Harmonized System" or simply "HS" is a multipurpose international product nomenclature developed by the World Customs Organization (WCO). It comprises more than 5,000 commodity groups; each identified by a six-digit code, arranged in a legal and logical structure and is supported by well-defined rules to achieve uniform classification.

The system is used by more than 200 countries and economies as a basis for their Customs tariffs and for the collection of international trade statistics. Over 98 % of the merchandise in international trade is classified in terms of the HS.

The HS contributes to the harmonization of Customs and trade procedures, and the non-documentary trade data interchange in connection with such procedures, thus reducing the costs related to international trade. The HS is thus a universal economic language and code for goods, and an indispensable tool for international trade.

2.4.1 Historical background of the Harmonized System Convention (HSC)

The Harmonized System is the short form of the Harmonized Commodity Description and coding System (HS). It is an international customs language used provide Goods Nomenclature of all internationally traded goods. The term "Goods Nomenclature" refers to a systematic naming, enumerating and categorizing goods in groups according to world rules and interpretations.

2.4.2 Stages through which the HSC were Developed

In 1853, an International Congress held in Brussels debated the necessity of unifying Customs schedule from the awareness that differences among countries tariff classification had led to inconsistencies in Trade statistics.

In 1989, the International Trade and Industry congress held in Paris adopted a resolution that uniform nomenclature Tariff and Trade statistics should be employed.

In 1906, the second International Congress of Chambers and Commercial and Industrial Association held in Milan, issued a recommendation calling for unification of goods classification in customs tariffs. On the basis of resolutions adopted at the two Conferences held in Brussels in 1910 and 1913, a unified International Schedule was drawn up for the first time in 1931 with five main categories of sections covering a total of 186 products. This was exclusively for Trade statistics and was not utilized towards the unification of tariff classification among individual countries.

In May 1927, progress to harmonise tariff classification was seen. The World Economic Conference held by the League of Nations took up the discussion on wide-ranging issues concerning tariffs, treaties of commerce and other matters related to commerce. Among this topic was unification of a system of Goods Nomenclature. The Conference recommended to the Council of the League of Nations the formulation of a systematic Customs Goods Nomenclature citing it as a means of ensuring equity in the application of tariffs, ease in collection of trade statistics, removal of a subject for disputes as its motives.

On the basis of the above recommendation, the League of Nations established a sub-committee of experts for the unification of Customs Goods Nomenclature which in 1931 completed a draft Customs Nomenclature (known as Geneva Nomenclature) comprising 21 Sections, arranged in 86 Chapters and containing 991 four-digit Headings.

In 1937, the Geneva Nomenclature was revised upon consideration of the opinions of the government of each Member State. A portion of it was adopted by the European Member States. The movement to

expand its usage was stopped upon the outbreak of World War II.

2.4.3 Brussels Tariff Nomenclature (BTN) and Customs Cooperation Council (CCC)

In November 1947 after the end of World War II, the European Customs Study group was created to examine the possibility of other Member States forming a Customs Union in Europe. In 1948, a Committee was set up with the participation of experts from other Countries. This Committee formulated a new tariff schedule (BTN) based on Geneva Nomenclature.

After the founding of CCC, the BTN was renamed Customs Cooperation Council Nomenclature (CCCN). In 1950, the Convention establishing the CCC was signed (CCC Convention) with a goal of harmonizing and unifying monitoring these outcomes and other Customs related techniques. CCC Convention entered into force in 1952.

In 1955 BTN was revised. In 1959 BTN Convention entered into force. BTN classified goods in 21 Sections, 99 Chapter, 1097 Headings. Creation of the subheading was left to the discretion of the contracting party. A contracting party is not supposed to change the Notes stipulating the principles of classification.

The inaugural contracting parties to the Nomenclature Convention were limited to the countries in Europe and Turkey. United States of America did not sign the BTN.

2.4.4 Amendments and HS Editions

Since coming into force (1988) of the HS; it has been partially being amended after every five years. The purpose of these amendments is to bring the HS Nomenclature in line with the current changes in the international trade patterns as detailed in section 2.2.13 below.

The first Edition of the HS came into force in 1992 after the completion of editorial amendments. The HS codes were reduced from 5019 of the first Edition (1988) to 5018 HS codes (1992). The second Edition entered into force in 1996 with 393 sets of amendments and 5113 HS Codes. The third Edition entered into force on 1 January 2002 with 374 sets of amendments and 5224 HS Codes. The fourth

Edition entered into force on 1 January 2007 with 354 sets of amendments and 5052 HS Codes. The fifth Edition came into force on 1 January 2012 with 225 sets of amendments and 5205 HS Codes. The Sixth entered in force on 1 January 2017 with 233 sets of amendments and 5387 HS Codes and the seventh Edition shall come into force in January 2022.

2.4.5 The Contents of the Harmonized System Convention

In 1970, the Council Session established a study group to deliberate on the development of a new uniform Tariff Nomenclature aimed at including the United States and Canada participation in the uniform Tariff nomenclature. In 1973, basing on the report submitted by the Study Group, the CCC mandated the Session Council to draw up a Harmonized Commodity Description and Coding System (Harmonized System). BTN four digit classifications were used as the foundation by refining this four-digit code into five and six-digit code.

On June 14, 1983, the Harmonized System was implemented after a decade's work. The CCC adopted the International Convention on the Harmonized System and opened it for signature. On January 1, 1988, the Harmonized System convention entered in to force and was accepted by numerous Countries including the United States. Harmonized System is in use in more than 200 countries and economic unions.

Harmonized System comprises 6 digit numerical codes. All contracting parties must apply the General Rules of Interpretation of the Harmonized System, the terms of heading and all Section, Chapter, or Subheading Notes without modification to the scope of the Section, Chapter, heading or subheading. A Contracting party must publicly disclose its import and export trade statistics in accordance with the 6 digit codes of the Harmonized System. A Developing Country is permitted to delay the application of some or all of the subheadings (partial application) for five years or more upon request.

In 1994, the Customs Cooperation Council (CCC) was renamed World Customs Organization (WCO).

2.4.6 Objectives for the Establishment of the HSC

The HSC effects uniformity in the classification of goods and standardizes commercial documents which ultimately enhance international trade facilitation. Hence it was established in order to:

- Ensure the adoption of Internationally accepted customs language to all customs experts and public at large.
- Ensure simplification and certainty of the meaning of used Nomenclature during negotiations, application and correct interpretation of bilateral and multilateral agreements.
- Ensure that there is a systematic and uniform classification of all goods found in the international trade.
- Ascertain an internationally uniform mode of collecting international trade data and recording of international trade statistics.

2.4.7 Definition of Terms Used in Classification

The following are some of the terminologies that are used in the Classification of goods in tariff.

The “**Harmonized Commodity Description and Coding System**”, (Harmonized System or HS), means the Nomenclature comprising the headings and subheadings and their related numerical codes, the Section, Chapter and Subheading Notes and the General Rules for the interpretation of the Harmonized System. It is a global Customs Language used in the International Trade Transactions.

“**Goods Nomenclature**” means a systematic naming, or enumerating of all goods found in international trade along with international rules and interpretations.

“**Customs tariff nomenclature**” means the nomenclature established under the legislation of a Contracting Party for the purposes of levying duties of Customs on imported goods;

“**Classification of Goods**” means process of arriving at a particular heading and subheading of a commodity entering the international trade.

“International Trade” means an exchange of goods between two or more countries.

“Internal Tariff” means the rate of tax in respect of all goods tradable within the Community.

“Common External Tariff” means the Rates of import duty in respect of all goods imported into the Community.

“Inter alia” means among other things.

“Prima facie” means at first sight or on the face of it.

“Mutatis mutandis” means appropriate changes having been made at the heading level.

2.4.8 Importance of Harmonized System Convention (HSC)

All goods in the international trade should be classified uniformly and consistently according to a common international nomenclature. This avoids reclassifying goods as they are moved from one country to another. Customs terminology can be standardized to make it easier for import and export companies, manufacturers, shippers and Customs administrations. It also helps in trade negotiations. For example, East African Partner States always submit lists of raw materials for extension of Duty remission. Trade figures conform to a uniform standard and can be compared internationally. For example, analysis of exportation and importation of coffee can be done by targeting the Harmonized System Code for coffee. This facilitates analysis and comparisons of international trade.

2.4.9 Parties to the Harmonized System Convention (HSC)

If a Commodity Description System is suitable for many types of operation, it becomes useful. Harmonized Commodity Description and Coding System (Harmonized System) is designed as a multi-purpose tool and is therefore used by;

- Governments
- International Organizations
- Importers and Exporters
- Manufacturers
- Traders
- Shipping agents
- Transporters

- Port Authorities
- Statisticians

2.4.10 Economic Uses of the Harmonized System

Among the most important economic uses of the Harmonized System are the following:

- **A basis for Customs and Transport Tariffs**

Customs duties are levied at such rates as are specified in the Customs tariff laid down in the East African Community Common External Tariff (EAC-CET). To apply the correct rate of duty, it is necessary to determine the correct Subheading of the Harmonized System under which the goods fall. An accurate Classification number (HS Code) of a commodity helps the customs officers to determine the correct rate of customs duties and taxes to levy government revenue.

The rates for charging customs duties and taxes as well as transport charges are obtained through proper classification which enable both the customs officers and Customs agents to arrive at a specific heading and subheading of the particular product together with its correct description for proper decision making on appropriate Customs and Transport tariffs.

- **As a basis for the collection of International Trade Statistics**

The Harmonized System Convention stipulates that contracting parties should declare imported items using the Harmonized System Codes (Subheading level) such that if analysis is required, the Harmonized System Code is entered or used and data on a particular item of interest is displayed.

An accurate Classification of goods helps the customs officers to have reliable data regarding the quality, nature, type, rate, and amount of duties charged to specific product. Those statistics help the government in the formulation of international trade policies. Also statistics are helpful for various scholars in fulfilling their education/intellectual needs.

- **As a basis for Rules of Origin**

The Harmonized System code is used in one of the two criteria of Rules of Origin, Change in Tariff Heading (CTH). Accurate classification of goods helps both the customs officers and Customs agents to determine the originating status of a particular product which is either imported or transported across the partner states. The main objective for determining the origin of goods is to grant or not to grant preferential tariff treatments under the East African Community Trade Agreements

- **As a basis for trade negotiations**

It is easy for countries to have negotiations as all goods under international trade are classified under the Harmonized System. Through accurate classification of goods, customs authorities between parties involved in the intra-trade arrangement, enter into agreement regarding the treatment of certain products and thus come up with a binding decision for mutual benefits.

- **As a vital element of Customs control and procedures, including risk assessment, information technology and compliance**

Accurate classification of goods provides easier ways of controlling goods traded across the world. Since there are prohibited and restricted goods. The monitoring of importation or exportation of prohibited and restricted goods (like narcotics, chemical weapons, ozone layer depleting substances, and endangered species) is done by targeting their Harmonized System Codes.

Some goods are Marked as sensitive to the national economy and thus are charged with higher rates than normal goods to discourage their importation in order to protect local industries producing the like goods; to meet this objective, HS code and goods description should be accurate.

2.4.11 Harmonized System Amendments and Effects on the Structure of the HS

Since coming into force (1988) of the HS; it has been partially being amended after every five years. The purpose of these amendments is to bring the

HS Nomenclature in line with the current changes in the international trade patterns. This is to accommodate technological progresses, to clarify texts and environmental issues, and to simplify customs practices. Normally the amendments lead to changes in a structure of the HSC in terms of the number of subheadings while the number of headings remains intact only that some if not in use are put in brackets.

The 2017 edition is the fifth major revision of the HSC. It includes 233 sets of amendments to the Nomenclature. The list of all amendments is available on the WCO's website, but below are some examples of areas which were addressed.

i) Recording Technological progress in the nomenclature:

New provisions such as Multicomponent integrated circuits (MCOs) as defined in new Note 9 (b) (iv) to Chapter 85 in the Tariff book, this helps to keep the HS up to date by covering today's goods. MCOs are advanced semiconductor devices that combine integrated circuits and discrete components into a single package manufactured using semiconductor technology.

ii) Adapting the Nomenclature to reflect current trade practices:

Whilst some products being traded internationally become obsolete, others rise in importance; therefore, to reflect these changes in trade patterns, a number of subheadings are being deleted and new subheadings are being created and headings are being restructured to accommodate new commodities. The threshold currently stands at \$50 million for 6-digit subheadings and \$100 million for 4 digit headings and therefore a product which has reached the threshold is added and if it is below threshold are deleted unless they are included on environmental, security or social grounds.

iii) Clarifying the texts of the Nomenclature to ensure uniform application:

During their daily work the users of the HS come across terms and expressions that may be interpreted differently and which could lead to the non-uniform application of the HS. Since uniform classification in the HS is one of the WCO's main objectives, the wording is being improved where necessary to prevent misclassification and misunderstandings. For example, the regrouping of monopods, bipods, tripods and similar articles in a new heading, namely 96.20

iv) Accommodating social and environmental concerns in the Nomenclature:

The HS as a multi-purpose Nomenclature is also used to monitor and control various products of social and environmental concern. Environmental and social issues of global concern are the major feature of HS-2017, particularly since the HS is becoming a standard for classifying and coding goods of social and environmental concern.

The majority of these amendments in the HS are prompted by the FAO (Food and Agriculture Organization of the United Nations). These include amendments for fish and fishery products, the objective being to further enhance the coverage of species and product forms which need to be monitored for food security purposes and for better management of resources. For example, the creation of the following new subheadings:

- Livers, roes, milt, fish fins, heads, tails, maws and other edible fish offal:
0303.91.00 -- Livers, roes and milt
0303.92.00 -- Shark fins
0303.99.00 -- Other

The HS 2017 Edition also introduces new subheadings for specific chemicals controlled under the Chemical Weapons Convention (CWC), for certain hazardous chemicals controlled under the Rotterdam Convention and for certain persistent organic pollutants (POPs) controlled under the Stockholm Convention. Such as:

- Other, of vegetable origin:
2939.71.00 -- Cocaine, ecgonine, levometamfetamine, metamfetamine (INN), metamfetamine racemate; salts, esters and other derivatives thereof.
2939.79.00 – Other.

It can be seen that, a fundamental structure of the HSC changes. However, the overall products' coverage of the whole Customs Nomenclature has never been changed by any amendments, it always comprehensively covers all traded products. The products removed from one subheading have to be relocated to one or more other subheadings.

2.5 Learning Activities

Visit the following websites and answer the following questions:

- <https://unstats.un.org/wiki/pages/viewpage.action?pageId=7405716>
- <http://www.wcoomd.org/en/topics/nomenclature/overview/what-is-the-harmonized-system.aspx>

Required:

1. Discuss the need for the Harmonized System Classification in the world economies
2. Discuss the scope of the Harmonized System
3. Discuss the benefits and challenges in the use of the Harmonized System Classification

2.6 Self-Assessment Questions and Activities

1. What is the meaning of terms: Harmonized System, Goods Nomenclature and Classification of Goods?
2. Why is it important for importers/exporters to provide accurate HS Code number of goods?
3. Why does the Harmonized System Nomenclature undergo amendments after every five years?

2.7 References

- World Customs Organization, (2013). HS Classification Handbook, The Customs Co-operation Council. Brussels
- World Customs Organization, (2018). The Harmonized System. A universal language for international trade. 1988-2018 - 30 Years On. Brussels
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- EAC-Customs Union, (2017). Common External Tariff Hand Book. EAC Customs Union Secretariat
- Luc De Wulf and Jose' B. Sokol (2005), Customs Modernization Handbook, -The World Bank.

3.0 STRUCTURE OF THE CLASSIFICATION OF GOODS (HS)

3.1 Specific Learning Outcomes

At the end of this topic the trainee should be able to:

1. Describe the structure of the harmonized system of classifying goods
2. Explain criteria used to categorize goods in the Harmonized System
3. Describe the roles played by each level to the structure of the HS
4. Explain the meaning of punctuation marks in the headings

3.2 Introduction

Structure is an arrangement of related parts or elements of something complex into a logical pattern. Goods involved in the international trade are many and are of many types in terms of their nature, materials from which they are made of and functions that they perform. If they were not arranged in a logical pattern, the classification of goods would be difficult.

3.3 Structure of the Harmonized System

The Harmonized System is structured into 21 sections under which there are 99 chapters. Three chapters (77, 98 and 99) out of 99 chapters are reserved for future use. Chapter 77 is reserved for future use by contracting parties whereas chapters 98 and 99 are reserved for specific future use by individual countries. For more simplification of classification process; chapters are subdivided into 1244 headings and more than 5,000 article descriptions called subheadings. In addition, the Harmonized System also contains interpretative rules and section, chapter and subheading notes for legal classification of goods.

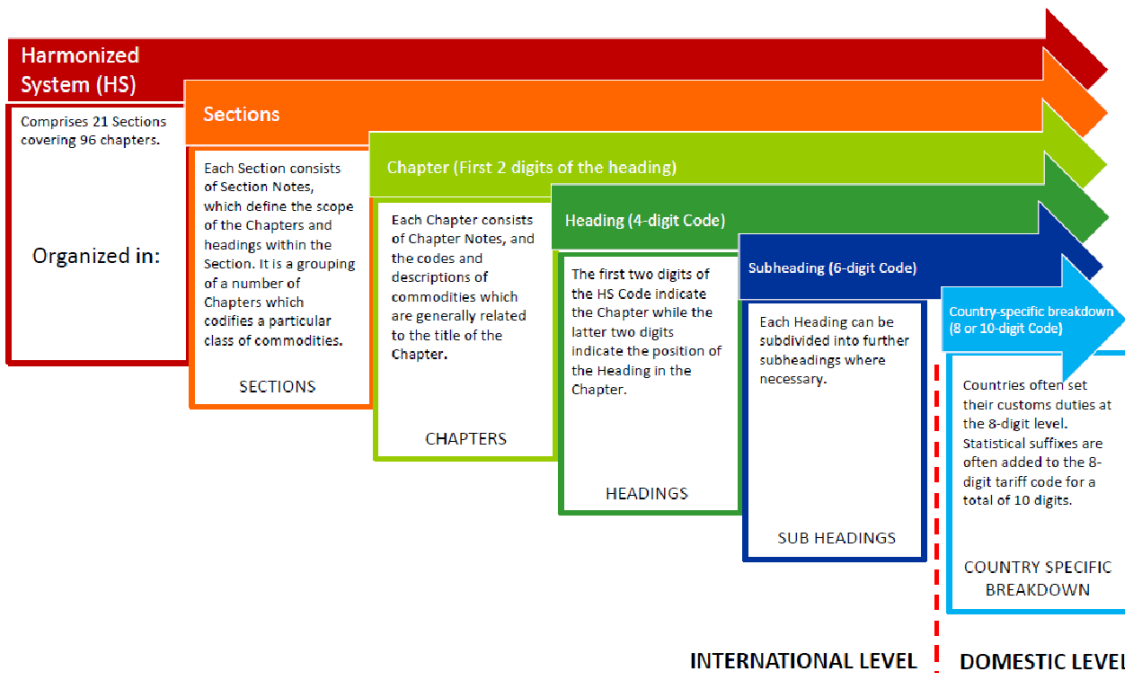
The Harmonized System comprises Goods which have attained different degree of manufacturing or processing stages as indicated below:

1. Natural or Un-worked products (Raw materials)
2. Semi-finished products
3. Finished products

Normally Natural or un-worked goods are generally allocated at the lower levels of the Harmonized System.

The Harmonized System is arranged into 21 Sections which cover all the commodities of international trade. The Section numbers are written in Roman numerals such as I, II, III. The following are rough groupings of the Sections:

- Sections I to IV referred to as the Agricultural or food Sections
- Sections V to VII referred to as Chemical Sections
- Section VIII refer to raw hides and Skins, Fur skins and articles thereof
- Section IX to X refer to Articles of wood and wood fibres
- Sections XI to XII as Textile Sections
- Section XIII refer to Articles of Stones, Cement, Ceramic, Glass
- Section XIV refer to precious metals and precious stones and articles thereof
- Section XV as the Metal Section
- Section XVI as Machinery Section
- Section XVII Transport Equipment
- Section XVIII Instruments and apparatus
- Section XIX Arms and Ammunitions
- Section XX Miscellaneous Articles
- Section XXI Work of Arts and Antiques



3.4 Classification Examples

Plastics and rubber articles thereof

Section VII covers particularly two important groups of products, namely plastics and articles thereof (Chapter 39) and rubber and articles thereof (Chapter 40).

Self – testing questions:

Classify the following up to 8-digit code.

1. Surgical gloves of rubber for referral hospital
2. Pneumatic automobile tyres for lorry (rim size 20)
 - a. if new
 - b. If retreated or used

Answers

1. Surgical gloves of rubber for referral hospital (4015.11.00).
2. Pneumatic automobile tyres for lorry (rim size 20)
 - a. If new (4011.20.20)
 - b. If retreated or used (4012.12.00)

Animal products of Leather or Fur skin

Section VIII covers certain animal products: hides and skins (Chapter 41) articles of leather or animal gut (Chapter 42), and fur skins, together with artificial fur (Chapter 43). It should be noted that headings 42.01 and 42.02 also cover certain articles

other than of leather.

Self – testing questions:

Classify the following up to 8-digit code.

1. Plastic sports bags
2. Wooden suitcase
3. Canvas shopping bag
4. Pure leather briefcase

Answers

1. Plastic sports bags (4202.92.00)
2. Wooden case (4415.10.00)
3. Textile shopping bag (4202.92.00)
 - Pure leather handbag (4202.21.00)

Wood pulp, paper and paper articles

Another important group of products of essentially vegetable origin is the subject of Section X, which covers pulp (Chapter 47), paper and paperboard and articles thereof (Chapter 48) and products of the printing industry (Chapter 49).

Self – testing questions;

Classify the following up to 8-digit code.

1. Bamboo chair
2. Textile printed Calendar
3. Children's picture books

Answers

1. Bamboo chair (9401.51.00)
2. Textile printed Calendar (4910.00.00)
3. Children's picture books (4903.00.00)

Footwear, headgear, umbrellas, walking sticks.....

Section XII covers footwear (Chapter 64) headgear (Chapter 65), umbrellas, walking sticks, (Chapter 66), together with certain articles made from feathers or down, artificial flowers and articles of human hair (Chapter 67).

Self – testing question;

Classify the following up to 8-digit code.

1. False beard of textile
2. Sun umbrella

Answers

1. False beard of textile (6704.90.00)
2. Sun umbrella (6601.99.00)

Products obtained from mineral materials

Section XIII deals with products obtained from mineral materials, such as articles of stone plaster, cement (Chapter 68), ceramic products (Chapter 69) and glass (Chapter 70).

Self – testing questions:

Classify the following up to 8-digit code (tariff code).

1. Cement building bricks
2. Coffee mugs of porcelain

Answers

1. Cement building bricks (6810.11.00)
2. Coffee mugs of porcelain (6911.10.00)

Cultured pearls, precious stones and metals.....

Chapter 71, the only Chapter in Section XIV, covers pearls and precious and semi stones, precious metals clad with precious and articles thereof; imitation jewellery.

Self – testing questions:

Classify the following up to 8-digit code.

1. Two tons of current bank coins imported by Bank of East Africa.
2. Silver tie pin.

Answers

1. Two tons of current bank coins imported by Bank of East Africa. (7118.90.00)
2. Silver tie pin (7113.11.00)

Base metals and articles of base metals

Section XV (Chapters 72 to 76 and 78 to 83) covers base metals and articles of base metals. In the case of ferrous metals (Chapter 72), a separate Chapter (Chapter 73) has been set aside for articles thereof, whereas the other base metal Chapters i.e. Chapter 74 (copper), Chapter 75 (nickel), Chapter 76 (aluminium), Chapter 78 (lead), Chapter 79 (zinc), Chapter 80 (tin) and Chapter 81 (other base metals and cermet), cover articles of these metals as the metals themselves, unwrought or semi-manufactured. However, certain articles of base metal have been diverted to Chapters 82 and 83, thus Chapter 82 has been set aside, in particular, for tools, implements, cutlery and spoons and forks. It should be noted that Section XV does not cover articles of base metal included in later Chapters of the harmonized system (Machinery and vehicles).

Self – testing questions:

Classify the following up to 8-digit code.

- a. Wire of refined Copper
- b. Axes of iron

Answers

1. Wire of refined Copper (7408.19.00)
2. Axes of iron (8201.40.00).

Machines

Section XVI comprising Chapters 84 and 85, is one of the most important Sections in terms of the number of headings and subheadings; these Chapters cover machinery and mechanical appliances, and electrical equipment. In particular, the first 24 headings of Chapter 84, which covers machinery and mechanical appliances in general, identify them

with reference to their function (reactors, turbines, pumps) and, in principle, take precedence over the remaining 61 headings, based primarily on the purpose for which the goods are used (agriculture, paper).

Chapter 85 covers electrical machinery and equipment, other than that covered by Chapter 84 or excluded from Section XVI. The machinery and equipment of this Chapter is grouped with reference to its use, as machinery for the production, transformation or storage of electricity; domestic appliances; machines or appliances, which depend, for their operation on the properties or effects of electricity;

It should be noted that recent technical advances, particularly in the fields of information technology and communications technology, have had a significant effect on Section XVI. These developments do have a bearing on the Nomenclature, which must therefore be adapted to keep pace with technological progress in order to meet the users' requirements.

Self – testing questions:

Systematically and logically, classify the following up to 8-digit code.

1. Vacuum pumps
2. Line telephone sets with cordless handsets

Answers

1. Vacuum pumps (8414.10.00)
2. Line telephone sets with cordless handsets (8517.11.00)

Transport equipment

The four Chapters of Section XVII cover Vehicles, Aircraft, Vessels, and associated transport equipment, distributed as follows: Railway rolling-stock (Chapter 86), Motor Vehicles and other land vehicles (Chapter 87), Aircraft and spacecraft (Chapter 88), and ships and floating structures (Chapter 89).

Self – testing questions:

Classify the following up to 8-digit code.

1. Aircraft seat
2. Railway tank wagons

Answers

1. Aircraft seat (9401.10.00)
2. Railway tank wagons (8606.10.00)

Instruments, clocks musical instruments

Chapter 90 (Optical, P h o t o g r a p h i c , Cinematographic, Measuring, Checking, Precision, Medical or Surgical instruments and apparatus). Chapter 91 (clocks and watches) and 92 (Musical instruments) together constitute Section XVIII.

Self – testing questions:

Classify the following up to 8-digit code.

1. Spectacle lenses of glass
2. Electric wall clock

Answers

1. Spectacle lenses of glass (9001.40.00)
2. Electric wall clock (9105.21.00)

Arms and ammunition; parts and accessories thereof

Chapter 93 covers arms and ammunition and is the only Chapter in Section XIX.

Self – testing questions:

Classify the following up to 8-digit code.

1. Artillery weapons, (for example, guns, howitzers and mortars) u 25%
2. Rocket launchers; flame-throwers; grenade launchers; torpedo tubes and similar projectors

Answers

1. Artillery weapons, (for example, guns, howitzers and mortars) (9301.10.00)
2. Rocket launchers; flame-throwers; grenade launchers; torpedotubes and similar projectors (9301.20.00) -

Miscellaneous articles

Section XX covers various articles such as furniture, lamps and lighting fittings, illuminated signs and prefabricated buildings (Chapter 94), toys, games and sports requisites (Chapter 95) and miscellaneous manufactured articles (Chapter 96).

Self – testing questions:

Classify the following up to 8-digit code.

1. Seats of a kind used for motor vehicles
2. Playing cards
3. Tooth brushes, including dental-plate brushes

Answers

1. Seats of a kind used for motor vehicles (9401.20.00)
2. Playing cards (9504.40.00)
3. Tooth brushes, including dental-plate brushes (9603.21.00)

Works of art, collectors' pieces and antiques.....

The final Section, XXI has just one Chapter (Chapter 97), covering works of art, collectors' pieces and antique. This include goods that are over 100 years

Self – testing questions:

Classify the following up to 8-digit code.

1. Paintings, drawings and pastels
2. Postage or revenue stamps,

Answers

1. Paintings, drawings and pastels (9701.10.00)
2. Postage or revenue stamps, (9704.00.00)

3.5 Roles Played by each Level in the Structure of the HS

3.5.1 Sections Level

The classification of goods nomenclature is a process starting at section level through to subheading level. The 21 sections of the HS comprise all commodities of international trade, including everything from animals to passenger goods. The sections are being identified by capital Roman numbers like I, III, VI-----XXI with common names as titles covering categories of related goods, for instance section I: covers a broad group of Live Animals, Animal products; section V: covers a broad group of Mineral

Products etc. The classification at this level cannot be completed as the commodity under review is just referred to the title of group in which it belongs. The process therefore moves to chapter levels as explained below.

3.5.2 Chapters Level

Chapters are the next level of the classification of in the Harmonized System. They are titled with common names covering a narrow group of related goods. Chapter's numbers are always written using Arabic numerals, i.e. ordinary numbers and they always have two digits, like (01, 02, 15, 16---97). For example; Chapter 01: covers with few exceptions, a group of Live Animals, chapter 25: covers a group of Salt; sulphur; earths and stone; plastering materials, lime and cement. Again at this stage a particular commodity cannot be found as it is named by a common name of the whole group in the chapter. But its name starts to emerge at heading levels as discussed below.

3.5.3 Headings Level

Under each chapter, the terms of headings describe more specifically the types of goods. The headings are the third level for the classification of goods in the Harmonized System. The headings are being identified by 4-digits code number divided by a dot like 02.06 (Edible offal of bovine animals, swine, sheep, goats, horses, asses, mules or hinnies, fresh chilled or frozen) to indicate chapter number and a position of the heading. The first two digits (02) indicate the Chapter number and the last two digits (06) show the position of that heading within a Chapter. Thus, heading code 02.06 represents the sixth heading of Chapter 2 in the HS.

Specific goods cannot be classified at a heading level as headings cover a general description specific group of related goods but having different characteristics and therefore the heading has to split into subheadings to accommodate the most specific description of goods. The subdivisions of headings are represented by one dash (-) as explained in the following paragraph.

3.5.4 Subheadings Level

Subheadings are the fourth and last level in the hierarchical subdivision for the classification of goods in the Harmonized System. They cover

the most specific description of goods. At the subheading level is where goods are given a 6-digit classification number known as the Harmonized System Code number, shortened as HS code.

To accommodate the most specific description of goods, the heading is subdivided into one dash subheading level. The heading code number is added with one digit and zero becoming 5 digits; the fifth digit is represented by one dash before the commodity description and one zero is added to comply with an international HS code of 6-digits e.g. 0206.10 – edible meat offal of bovine animals, fresh or chilled; this means that the first item subdivided from the heading 02.06, is described as “edible meat offal of bovine animals fresh or chilled.

The subheading can further be subdivided to accommodate more details of goods to be classified under the determined heading. If the one dash subheading is to be subdivided into two dash level, the one dash level is preceded only by the general description of goods without HS code number and ends with a colon (:) as follows,

- Of bovine animals, frozen:

The one dash (-) is divided into two dashes (- -) to accommodate more detailed edible offal of bovine animals and therefore the subheading becomes 0206.21 - - Tongues; this refers to “frozen edible meat offal (specifically tongues) of bovine animals”

The 6-digits code (0206.21) is an international subheading code system. It is however, a fully multipurpose, because it constitutes the “building block” which can be combined with additional digits in different ways to fulfil different needs of an individual users or economic unions.

Taking an example of East African community common external tariff, the international harmonized system (6-digit code numbers) is added up with two digits to become 8-digits code (0206.21.00) to suit her interests. The subdivision is termed as “National Subheadings”.

If the heading is not further subdivided, two zeros are added to the 4 digits’ code.

Example:

The heading 02.05; is not further subdivided, this means that, the classification of goods is closed at heading level and therefore the final classification is just to add 4 zeros in order to comply with the requirements of 6 digits of international subheading

and 8 digits for national subheadings as presented 0205.00.00 Meat of horses, asses, mules or hinnies, fresh, chilled or frozen;

Example:

0205.00.00 Meat of horses, asses, mules or hinnies, fresh, chilled or frozen- closed classification at heading levels

In addition, the system also has residual subheadings (“other”) which are identified by a figure “9” in the 5th or 6th digit or by “8” when number 9 is set aside for “**PARTS**” and the word “Other” which precedes a dash (es) [-, --, ---]. The first word “other” which precedes HS code number represents articles that have to be classified under a particular heading but have not met a threshold level to be assigned with specific code number and thus are put in a residual subheading. Another “other” which precedes dash (es), represents the splitting of the subheading if one condition for splitting the subheading has already been and then the other requirement for splitting is needed as illustrated below.

Example 1:

- 0206.49*.00 -- Other
- 0709.9*0.00 – other
- 8417.8*0.00 – other
- 8417.9*0.00 –**parts**

Example 2:

- Meat of swine:
- 0210.11.00 -- Hams, shoulders and cuts thereof, with bone
- 0210.12.00 -- Bellies (streaky) and cuts thereof
- 0210.19.00 – Other
- Other, including edible flours and meals of meat or meat offal:
- 0210.91.00 -- Of primates
- 0210.92.00 -- Of whales...

Heading 27.16 is the only optional heading in the harmonized system, each country can put any commodity. In the East African for instance, this heading is used for Electrical energy.

In summary please take note that dashes are structured as follows: -

- A one dash (-) is a subdivision of a heading.
- A two dash (--) is a subdivision of the one dash within the same heading.
- A three dash (---) is a subdivision of the two dash within the same heading

- A four dash (---) is a subdivision of the three dash within the same heading

NB: Unfamiliarity with this structure may indeed lead to the incorrect classification of goods. It is therefore of vital importance that people dealing with HS classification are familiar with this Harmonized System.

3.6 Criteria Used for Arrangement of Goods in the Harmonized System

To a large extent, the grouping of goods in the HS is sequentially organized on the basis of their nature, materials of which they are made of and functions they perform. In addition, the grouping of goods in HS is also based on their degree of manufacture starting with natural goods, semi manufactured goods and finished goods. Examples of goods grouped with reference to their nature are: Live animals and animal products, they are found in Section I; Vegetable products are allocated in section II, Mineral products in section V and Chemical products and allied industrial products, Sections VI-VII. Goods in Sections IX to XV (except Sections X & XII) are grouped with reference to their materials of which they are made of. From section XVI to section XXI goods are generally grouped in accordance with their functions. as detailed in section 2.1.6 to 2.1.8 below.

In a general observation, goods under chapters 1 to 83 are generally identified by their nature, materials and degree of manufacture, while goods under chapters 84 to 97 are generally identified by their functions. Thus, understanding this pattern of goods' arrangement, facilitates quick classification of goods leading to fast customs clearance.

3.7 Grouping of Goods in Sections

The arrangement of Sections in the Harmonized System is based on three major criteria.

(1) Material content of the article

Articles made of same material are grouped together, for example, Section II covers Vegetable products and Section XV covers Base metal and articles of base metal.

(2) Usage or function of the article

Goods that are used for the same need or same function are put together. Examples are; Vehicles,

aircrafts, vessels and associated transport equipment are used for transportation and are classified in Section XVII. Arms and ammunitions, parts and accessories thereof are used for defence purposes and are classified in Section XIX.

(3) Degree of processing or of manufacture of an article

Sections are also arranged according to the degree of processing or of manufacturing, for example A live cow is classified in Section I. When it is slaughtered, hides are derived which are classified in Section VIII. When the hides are further processed, shoes are derived (Section XII).

The above is illustrated as shown below.

Live Cow classified in Section I
Process (When slaughtered)
Hides from a Cow classified in Section VIII
When Processed
Shoes of leather from the Hides of Cow
are classed in Section XII

3.8 Grouping of Goods in Chapters

Chapters are the next level of sub-division after Sections in the Harmonized System. Sections in the Harmonized System contain one or more Chapters. For example, Section I has 5 Chapters, while Section III has only one Chapter. The Chapter numbers are always written using in Arabic numeral. They always have two digits for instance 01 (Chapter 1), 02 (Chapter 2), 15 (Chapter 15).

Like Sections, arrangement of Chapters in the Harmonized System is based on three major criteria.

(1) Materials content of the article

Articles made of same material are grouped together, for example, Wood and articles of wood are classified in Chapter 44. Plastic and articles thereof are classified in Chapter 39

(2) Usage or function of the article

Articles that are used for the same function are grouped together. Examples are; Vehicles used for transportation are classified in Chapter 87 while Arms and ammunitions, parts and accessories thereof are used for defence (Chapter 97).

(3) Degree of processing or manufacture of an article

Articles at the same stage of processing or Degree of manufacture are put together, for example

| Article | Chapter | Stage of processing |
|------------|------------|---------------------|
| Iron ore | Chapter 26 | Raw material |
| Iron bars | Chapter 27 | Semi – finished |
| Iron doors | Chapter 73 | Finished product |

3.9 Grouping of Goods at Headings and Subheadings Levels

There are 1224 heading numbers (Harmonized System 2017 version). Headings are denoted by the first four digits. Headings are arranged according to the Degree of manufacture or processing for example

Within a Chapter

| Article | Heading | Stage of processing |
|--------------------|---------|---------------------|
| Logs | 44.01 | Raw Materials |
| Railway Sleepers | 44.06 | Semi-finished |
| Wooden frames | 44.18 | Finished product |
| Statuettes of wood | 44.20 | Finished product |

Between Chapters

| | | |
|-------------------------|-------|------------------|
| Live trees | 06.02 | Raw material |
| Logs of wood | 44.01 | Raw material |
| Pulp of wood (chemical) | 47.03 | Semi – finished |
| Newsprint paper | 48.01 | Semi – finished |
| Newspaper | 49.02 | Finished product |

3.9.1 Structure of the Heading and Subheading in the Harmonized System

The terms of headings are separated by punctuation marks which are: comma (,) and semicolon (;)

Commas (,) refer to distributive of terms following after the item they are referring to. For example, in heading 03.06 Crustaceans, whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine. While semicolon (;) separates the terms of heading into parts of different scopes. For example, in the same heading 03.06 fresh crustaceans and smoked crustaceans are separated by semicolon (;)

Specific goods cannot be classified at a heading level as headings cover a general description specific group of related goods but having different characteristics and therefore the heading has to split into subheadings to accommodate the most specific description of goods. The subdivisions of headings

are represented by one dash (-) to for subheadings.

Example:

Heading 03.06 consists of four forms (states) of crustaceans separated by semicolon as follows:

- i. Crustaceans, whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine;
- ii. Smoked crustaceans, whether in shell or not, whether or not cooked before or during the smoking process;
- iii. Crustaceans, in shell, cooked by steaming or by boiling in water, whether or not chilled, frozen, dried, salted or in brine;
- iv. Flours, meals and pellets of crustaceans, fit for human consumption.

3.9.2 Sub Chapters in the Harmonized System

A chapter may be sub divided into two or more sub-Chapters to clarify and underline the differences between products in the same Chapter. Such classes of goods that are arranged according to their characteristics, level of processing, or to a combination thereof, are provided for in Chapter 28, 29, 39,63,69,71 and 72.

Example:

Chapter 71 “Natural or cultured pearls, precious or semi-precious stones, precious metals, metal clad with precious metal and articles thereof; imitation jewellery; coin” is divided into three sub-Chapters:

| | |
|-----------------|---|
| Sub-chapter I | Natural or cultured pearls and precious or semi-precious |
| Sub-chapter II | Precious metal and metals clad with precious metals |
| Sub-chapter III | Jewellery; goldsmiths’ & silversmiths’ wares and other articles |

3.9.3 Learning Activities

Visit the following website and attempt the activity below:

- <http://www.wcoomd.org/en/topics/nomenclature/overview/what-is-the-harmonized-system.aspx>

Required:

Identify the 21 Sections in the HS and indicate their focus and objectives

3.10 Self-Assessment Questions and Activities

From the above information answer the following questions:

1. What is the role of each component in the structure of the HS?
2. How are internationally traded goods arranged in the HS?
3. Why is it important for Customs officers and Customs agents to understand the pattern arrangement of goods in the HS?
4. What is the meaning of the word “other” as used in the HS Nomenclature?

3.11 References

- World Customs Organization, (2013). HS Classification Handbook, The Customs Co-operation Council. Brussels
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4.0 CLASSIFICATION OF GOODS ACCORDING TO THE PRINCIPLES OF CLASSIFICATION

4.1 Specific Learning Outcomes

At the end of this topic the trainee should be able to:

- i. Explain the meaning of general rules
- ii. Explain the use of the general rules in classifying goods
- iii. Discuss the Six General rules of classifying goods
- iv. Explain the Order of the use of the General Rules
- v. Apply the General Interpretative Rules in classifying goods

4.2 Introduction

All internationally traded goods must be classified at the time of importation or exportation. When classifying such goods, it is important to keep in mind that, the goods Nomenclature is logically structured into Sections, Chapters, headings, and subheadings in a hierarchical manner and the classification of goods must be governed by six principles of classification named as General Interpretative Rules (GIRs) or General Rules for the Interpretation of the Harmonized System. The General Rules for the Interpretation of the Harmonized System ("GRI") are the rules that govern the classification of goods under the Harmonized Commodity Description and Coding System (HS). The Harmonized System incorporates a series of preliminary provisions codifying the principles on which the HS is based and laying down general rules for ensuring uniform legal interpretation.

4.3 The Six General Interpretative Rules

The six key principles of classification, provide the guidance on how to classify goods in the Harmonized System Nomenclature. The principles are designed to ensure uniform and consistent application of the Harmonized System and to lay down rules on how the Nomenclature should be interpreted. As explained earlier, internationally traded goods are grouped and systematically described in sections, chapters and specifically described in headings and most specifically in subheadings.

The General rules are set out at the beginning of the Nomenclature. They are to be applied in a sequential order starting with GIR 1 through to GIR 5 at heading level and Rule 6 at subheading level. Rules 1 to 4 are related and must be applied in sequence; Rules 5 and 6 stand on their own to be applied as needed. GIRs are designed to ensure that a given product is always classified in a single heading and subheading. The General Rules for the Interpretation of the Harmonized System are applied in hierarchical fashion, i.e., Rule 1 takes precedence over Rule 2, Rule 2 over Rule 3, etc. Compilers should apply these rules when classifying goods not classified by customs. An overview of these rules are provided in the below:

1. **General Interpretative Rule 1 (GIR 1)**
GIR 1: Role of titles of Sections and Chapters and Sub-Chapters
2. **General Interpretative Rule 2 (GIR 2 (a) and GIR 2 (b))**
GIR 2 (a): Incomplete or unfinished articles; unassembled or disassembled goods
GIR 2 (b): Mixtures or combinations of materials or substances referred to in one heading
3. **General Interpretative Rule 3 (GIR 3 (a), GIR 3 (b) and GIR (c))**
GIR 3 (a): Mixtures, combinations, and goods put up in sets for retail sales, classifiable, prima facie, under two or more headings
GIR 3 (b): Classification of goods according to the material or component that gives them their essential character
GIR 3 (c): Use of the heading last in numerical order
4. **General Interpretative Rule 4 (GIR 4)**
GIR 4: Goods that are not specifically covered by any heading.
5. **General Interpretative Rule 5 (GIR 5 (a) and GIR 5 (b))**
GIR 5 (a): Cases, boxes and similar containers, suitable for long-term use and presented with the articles for which they are intended
GIR 5 (b): Packing materials and packing containers presented with the goods they hold
6. **General Interpretative Rule 6 (GIR 6)**
GIR 6: Classification in subheadings

4.4 Classification Techniques

Each traded commodity should be classified only once. To achieve this, classification of goods must be done in a step by step basis as follows:

Step by Step approach to classify goods in the HSN

Step 1: Identify a commodity (for section and chapter titles); in order to know the Nomenclature of goods to be classified; the following questions should be asked:

The question is: what is a product?

This question helps to analyse the goods arrangement criteria at section and chapter levels.

- i. What is the nature of goods to be classified?
- ii. What is the materials of goods to be classified? and
- iii. What is the function performed by the goods to be classified?

The question is: in which group does the product belong?

After having analysed the product, look for possible section and chapter title names. The nature, materials and functions will help to find an appropriate section and chapter titles in which the products are easily referred to.

Step 2: Consult the principles of classification (GIR 1 and then other Rules for legal classification),
The question is: what is the legal requirement?
Read through GIR1; GIR2a and b-----GIR6

Step 3: Determine an appropriate heading
The question is: in which heading the product is described? Find a proper heading (read the terms of the headings)

Step 4: Determine the HS code for the product
The question is: what is the product's classification number? determine appropriate comparable dash subheading (HS Code number and specific descriptions). Examples are provided in section 3.2 below.

4.5 General Interpretative Rule 1

The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for Legal purposes, Classification shall be determined

according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

1. At first, Rule 1 begins by establishing that, the titles of Sections, Chapters and Sub Chapters are provided "for ease of reference only". They accordingly have no legal bearing on classification.

The Harmonized System Nomenclature sets out, in systematic form, goods handled in international trade. It groups these goods in Sections, Chapters and Sub-Chapters whose titles indicate the categories or types of the goods as concisely as possible. In many cases, however, goods covered in a Section or Chapter are so various that it is impossible to specifically cover or cite all of them in their titles.

2. The second part of this Rule provides that, "For legal purposes classification shall be determined according to the terms of the headings and any relative Sections or Chapter Notes",

Where appropriate, provided the terms of the headings or legal Notes do not otherwise require, the product shall be classified according to the provisions of Rules 2, 3, 4, and 5. In this case, the terms of the headings and any relative Sections or Chapter Notes are paramount and take first consideration in determining the classification of goods.

4.5.1 Legal classification according to Terms of the headings

1. Determine appropriate headings for Knitted Men and Women Knitted suits

Step by step approach

1st identification: The commodity is identified on the basis of its materials as an article of textiles

2nd possible section and chapter titles: The article is referred to section XI titled as Textiles and textile articles and on chapter 61 titled as Articles of apparel and clothing accessories, knitted or crocheted.

3rd determination of appropriate heading through consultation of legal base. The suits are classified in headings 61.03 and 61.04 respectively according to terms of the headings. (GIR1)

4.5.2 Application of Section and Chapter Notes in the Harmonized System

General Interpretative Rule provides that, “For legal purposes classification shall be determined according to the terms of the headings and any relative Sections or Chapter Notes”. In the Harmonized System, there are Sections, Chapters and Subheadings Notes. Section and chapter Notes are being applied along with GIR 1 while Subheading Notes are being applied along with GIR 6. These Notes help to establish as precisely as possible the scope and limits of certain Sections, Chapters, Headings or to define, or give classification guidance as to certain terms or expressions.

Below are some examples of Notes and their functions:

Definitions Notes

These are Notes that specify the meaning of particular terms or expressions within the Section or Chapter. In the notes there are found words like “means or regarded”

Example

Note 3 to chapter 5 define the teeth of all animals including monkey teeth as Ivory. It states that Throughout the Nomenclature, elephant, hippopotamus tusks, rhinoceros’ horns and the teeth of all animals are regarded as “Ivory

Exclusion Notes

These are Notes limiting the Scope of a Section, Chapter, Heading or sub-heading. Exclusion Section Notes give an inventory of certain articles that must not be included in a particular Section. They therefore exclude some articles which should not fall in that particular Section, Chapter, Heading or sub-heading. These notes consist of the expression: ----“does not cover”, ----“except”

Examples

Note 1 to section XI excludes all items listed from “a to v” in the EAC-CET book; that they should not be classified in section XI but to the appropriate chapters or headings shown in front of the excluded item.

For instance, section Note 1(u) to section XI excludes: brushes, travel sets for sewing, slide fasteners, typewriter ribbons, sanitary towels (pads) and tampons, napkins (diapers) and napkin liners for babies made up of textile materials to be classified in chapter 96 and Note 1 to section XVII excludes articles that are classified in headings 95.03, 95.06 and 95.08 under section XX. It states that: This Section “does not cover” articles of heading, 95.03 or 95.08, or bob-sleighs, toboggans or the like of heading 95.06.

Inclusion Notes

These are Notes that consist of the expression “includes” or “inter alia” as reflected below: -

Note 1 to section I states that; any reference in this Section to a particular genus or species of an animal, except where the context otherwise requires, includes a reference to the young of that genus or species. For example, in the heading 01.05, the reference of “Live poultry” includes both one-year-old chicken and day old chicks.

Heading 13.02 applies, inter alia, to liquor ices extract and extract of pyrethrum, extract of hops, extract of aloes and opium.

Notes of Instructions/Classification Notes

These Notes establish the classification of certain goods which are clearly classifiable under two or more headings. They instruct users how to classify such commodities. In this type of notes the reference words are: “classified as”, “treated as”

Example

Note 5 to section XIV; directs how to classify certain alloys of precious metals as explained in 5a, 5b and 5c.

- (a) An alloy containing 2% or more, by weight, of platinum is to be treated as 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 to be treated as an alloy of gold;
- (c) Other alloys containing 2% or more, by weight, of silver are to be treated as alloys of silver.

4.5.3 Self-Assessment Questions and Answers with Reference to Legal Notes

Identify the type of legal Notes applicable to the classification of the following items?

1. Why Tails of bovine animals are named as horsehair in the HS?

Answer: according to definition Note 4 to chapter 5 throughout the Nomenclature, the expression “horsehair” means hair of the manes or tails of equine or bovine animals

2. Why Mixtures of spices from different headings are classified in heading 09.10?

Answer: according to Note of instruction 1(b) to chapter 9; mixtures of two or more of the products of different headings are to be classified in heading 09.10

3. Why Heading 12.07 applies also to palm nuts?

Answer: according to Inclusions Note 1 to chapter 12; Heading 12.07 applies, inter alia, to palm nuts and kernels----

4. Why wooded Furniture of chapter 44 are found in heading 94.03?

Answer: according to Exclusion Note 1(0) to chapter 44; furniture of wooden materials is to be classified in chapter 94.

4.5.4 Legal and Non Legal Texts

Legal Text

The Harmonized System contains Section Notes, Chapter Notes and Terms of the heading which are regarded as legal texts according to the General Interpretation Rule (GIR) 1 of the Harmonized System.

The Subheading Notes and terms of the Subheadings are Legal texts at the subheading level according to Rule 6 of the General Interpretative Rules of the Harmonized System. As parts of the structure of the Harmonized System, Section and Chapter Notes are often located at the beginning of Sections or Chapters and they should be consulted for every classification.

Non Legal Texts

There are some publications that assist in the classification of goods; they include Explanatory

Notes (EN) of the Harmonized System, the Alphabetical Index and the Compendium of Classification Opinions. These should be referred to during the classification process. The EN and the Index are the Harmonized System Committee’s formal guidance on the Harmonized System; the compendium is the Harmonized System Committee’s classification decisions of individual goods. They help users during classification. However, it should be noted that these publications have no legal force (not legally binding).

4.6 General Interpretative Rule 2

This Rule is divided into two parts, 2(a) and 2(b). It applies only when Rule 1 has failed.

General Interpretative Rule 2 (a) states:

“Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.”

GIR 2(a) focuses on the classification of “incomplete or unfinished articles” and “complete or finished articles but presented unassembled or disassembled”. An article that is incomplete or unfinished is still classified as if it were complete or finished, if it has the essential character of the complete or finished article.

The first part of rule 2(a) extends the scope of any heading which refers to a particular article to cover not only the complete article but also that article incomplete or unfinished, provided that, as presented, it has the essential character of the complete or finished article.

The provisions of this rule also apply to blanks. The term “blank” is contained in Explanatory Note to Rule 2(a) which stipulates that an article, not ready for direct use, having the approximate shape or outline of the finished article or part, and which can only be used, other than in exceptional cases, for completion into the finished article or part (example, bottle performs of plastics being intermediate products having tubular shape, with one closed end and one open end threaded to secure

a screw type closure, the portion below the threaded end being intended to be expanded to a desired size and shape).

Semi-manufactures not yet having the essential shape of the finished articles (such as bars, discs, tubes) are not regarded as “blanks”.

The second part of rule 2(a) deals with unassembled or disassembled goods. Articles presented “unassembled or disassembled” means articles the components of which are to be assembled either by means of fixing devices (screws, nuts and bolts) or by riveting or welding provided only assembly operations are involved. Presenting unassembled or disassembled goods may be for reasons such as requirement or convenience of packing, handling or transport. However, the following points should be taken into consideration when applying Rule 2(a):

No account is to be taken in that regard of the complexity of assembly method. However, the components shall not be subjected to any further working operation for completion into the finished state.

NB. Unassembled components of an article which are in excess of the number required for that article when complete are to be classified separately as an independent article.

- Cases covered by this rule are cited in the General Explanatory Notes to Sections or Chapters (e.g. Section XVI and Chapter 44, 86, 87 and 89).
- Moreover, goods of Section I to VI are not covered under this Rule.

A bicycle presented unassembled is classified in heading 87.12 as a complete bicycle since it has the essential character of the complete bicycle.

4.6.1 Self-Assessment Questions with Answers in Reference to Classification

1. In which heading (4-digit) would you classify a bicycle without handles?
 - What is the item?
 - It is an incomplete transport equipment

Answer: Classification: A bicycle without handles is classified under 87.12 as a complete bicycle because it has the essential character of a complete bicycle by application of GIR 2(a)

2. What are the possible section and chapter in which it belongs?

Answer: Section XVII and chapter 87

General Interpretative Rule 2 (b) states:

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 materials or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

GIR 2(b) concerns mixtures and combination of materials or substances, and goods consisting of two or more materials or substances. The headings to which GIR 2 (b) refers are headings in which there is a reference to a material or substance (e.g. heading 05.07 (ivory), and headings in which there is a reference to goods of a given material or substance (e.g. heading 45.03 (articles of natural cork). The Rule applies only if the headings or the Sections or the Chapter Notes do not otherwise require. For example, since the terms of heading 39.20 reads “Other plates, sheets not reinforced, or similarly combined with other material”, the Rule does not apply.

The effect of the Rule is to extend any heading referring to a material or substance to include mixtures or combinations of that material or substance with other materials or substances. The effect of the Rule is also to extend any heading referring to goods of a given material or substance to include goods consisting partly of that material or substance.

The last part of GIR 2(b) states that “the classification of goods consisting of more than one material or substance shall be classified according to the principles of Rule 3.”

In addition, there is the similar statement in Explanatory Notes to GIR 2(b) (XIII) which reads “as a consequence of Rule 2(b), if prima facie classifiable under two or more headings, must be classified according to the principles of Rule 3.”

To illustrate the point, the terms of heading 82.11 clearly stipulates that the heading covers “Knives

with cutting blades, of base metal. This base metal can be combined with wooden handle and still the articles shall be classified as knives in the same heading 82.11...

When GIR 2 (b) applies to the article in question, not only heading 82.11 is taken but also heading 44.04 (wooden tool handles) are extended. That is, there are two possible headings for the classification. Although GIR 2 (b) widens the scopes of the headings, it does not conclude the classification. The classification must be considered according to the principles of GIR 3.

4.7 General Interpretative Rule 3

When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be according to General Interpretative Rule 3.

This Rule provides three methods of classifying goods which, prima facie, fall under two or more headings, either under the terms of Rule 2 (b) or for any other reason. These methods operate in the order in which they are set out in the Rule. Thus Rule 3 (b) applies only if Rule 3 (a) fails in classification, and if both Rules 3 (a) and (b) fail, Rule 3 (c) will apply. The order of priority is therefore

- (a) Specific description;
- (b) Essential character;
- (c) Heading which occurs last in numerical order.

The Rule can only take effect provided the terms of headings or Section or Chapter Notes do not otherwise require. For instance, Note 4 (b) to Chapter 97 requires that goods covered both by the description in one of the headings 97.01 to 97.05 and by the description in heading 97.06 shall be classified in one of the former headings. Such goods are to be classified according to GIR1- Note 4 (b) to Chapter 97 and not according to Rule 3 (a).

Rule 3 (a): Classification by Specific Description

This Rule states:

The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part 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 of the goods.

The first method of classification is provided in Rule 3 (a), under which the heading which provides the most specific description of the goods is to be preferred to a heading which provides a more general description.

It is not practicable to lay down hard and fast rules by which to determine whether one heading more specifically describes the goods than another, but in general it may be said that:

- (a) A description by name is more specific than a description by class. Shavers and hair clippers, with self-contained electric motor, are classified in heading 85.10 as shavers and not in heading 84.67 as tools for working in the hand with self-contained electric motor or in heading 85.09 as electro-mechanical domestic appliances with self-contained electric motor.
- (b) If the goods answer to a description which more clearly identifies them, that description is more specific than one where identification is less complete.

Examples of the latter category of goods are:

- (1) Tufted textile carpets, identifiable for use in motor cars, which are to be classified not as accessories of motor cars in heading 87.08 but in heading 57.03, where they are more specifically described as carpets.
- (2) Unframed safety glass consisting of toughened or laminated glass, shaped and identifiable for use in aero planes, which is to be classified not in heading 88.03 as parts of goods of heading 88.01 or 88.02 but in heading 70.07, where it is more specifically described as safety glass.

However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part 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 shall be determined by Rule 3 (b) or 3 (c).

Rule 3 (b): Classification by essential character

The General Interpretative Rule 3 (b) states:

Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

This second method of classification relates only to:

- (i) Mixtures.
- (ii) Composite goods consisting of different materials.
- (iii) Composite goods consisting of different components.
- (iv) Goods put up in sets for retail sales.

It applies only if Rule 3 (a) fails. In all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

The factor which determines essential character will vary between different kinds of goods. It may, for example, be determined by: the nature of the material or component, by its bulkiness, by its quantity, by its weight or value, or by the role of a constituent material in relation to the use of the goods.

For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, provided these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

Examples of the latter category of goods are:

1. Ashtrays consisting of a stand incorporating a removable ash bowl.
2. Household spice racks consisting of a specially designed frame (usually of wood) and an appropriate number of empty spice jars of suitable shape and size.

As a general rule, the components of these composite goods are put up in a common packing.

For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:

- (a) Consist of at least two different articles which are, prima facie, classifiable in different headings.
- (b) Consist of products or articles put up together to meet a particular need or carry out a specific activity; and
- (c) Are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

The term therefore covers sets consisting, for example, of different foodstuffs intended to be used together in the preparation of a ready-to-eat dish or meal.

Examples of sets which can be classified by reference to Rule 3 (b) are:

- (a) Sets consisting of a sandwich made of beef, with or without cheese, in a bun (heading 16.02), packaged with potato chips (French fries) (heading 20.04): Classification in heading 16.02.
- (b) Sets, the components of which are intended to be used together in the preparation of a spaghetti meal, consisting of a packet of uncooked spaghetti (heading 19.02), a sachet of grated cheese (heading 04.06) and a small tin of tomato sauce (heading 21.03), put up in a carton: Classification in heading 19.02.

The Rule does not, however, cover selections of products put up together and consisting, for example, of:

- a can of shrimps (heading 16.05), a can of cheese (heading 04.06), a can of sliced bacon (heading 16.02), and a can of cocktail sausages (heading 16.01); or
- a bottle of spirits of heading 22.08 and a bottle of wine of heading 22.04.

In the case of these two examples and similar selections of products, each item is to be classified separately in its own appropriate heading.

More examples

1. Hairdressing sets consisting of a pair of electric hair clippers (heading 85.10), a comb (heading 96.15), a pair of scissors (heading 82.13), a brush (heading 96.03) and a towel of textile material (heading

63.02), put up in a leather case (heading 42.02):

To be Classified in heading 85.10 as clippers give all other articles their essential characters

2. Drawing kits comprising a ruler (heading 90.17), a disc calculator (heading 90.17), a drawing compass (heading 90.17), a pencil (heading 96.09) and a pencil-sharpener (heading 82.14), put up in a case of plastic sheeting (heading 42.02):

To be Classified in heading 90.17 as rulers give all other articles their essential characters

Rule 3 (c): Classification in a heading which occurs last in numerical order

This rule states:

When goods cannot be classified by reference to Rule 3 (a) or 3 (b), they shall be Classified under the heading which occurs last in numerical order among those which equally merit consideration.

When goods cannot be classified by reference to Rule 3 (a) or 3 (b), they are to be Classified in the heading which occurs last in numerical order among those which equally merit consideration in determining their classification.

4.7.1 Self-Assessment Questions with Answers in Reference to Classification

Classify a mixture composed of 50% of cassava flour and 50% of millet flour for preparation of a meal and justify stating the General Interpretative Rule of the Harmonized System applied.

Classification Question

What is the product? - Mixture of cassava and millet flour

What is it used for? - Preparing a meal

What are the possible headings?

Answer: Cassava falls in heading 11.06 while millet falls in heading 11.02

- GIR 1 cannot be applied because there is no heading which describe the set.
- GIR 2 (a) cannot apply because the rule does not apply to Sections I to VI.
- GIR 2 (b) can apply because the set consists of articles that fall in more than

one heading, and the rule directs us to GIR3.

- GIR 3(a) cannot apply because the description is not specific and each is referring to a composition of the article. The possible headings are regarded to be equally specific in relation to the mixture.
- GIR 3(b) cannot apply because the essential character cannot be determined. None of the items gives the article its essential character and they equally merit consideration.

Classification: The article is classified in heading 11.06 by application of GIR 3(c) because the heading occurs last in numerical order.

4.8 General Interpretative Rule 4

Goods which cannot be classified in accordance with the above Rules shall be classified under the heading appropriate to the goods to which they are most akin.

The rule relates to goods which cannot be classified in accordance with the Rules 1 to 3. It provides that such goods shall be classified under the heading appropriate to the goods to which they are most akin. When goods are classified in accordance with this rule, it is necessary to compare the presented goods with similar goods in order to determine the goods to which the presented goods are most akin. The presented goods are classified in the same heading as the similar goods to which they are most akin.

Kinship in the context of this rule depends on many factors such as description, character, and purpose. This rule is very rarely used and is mainly applicable for new articles in the market.

4.9 General Interpretative Rule 5

Rule 5 (a)

(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This

Rule does not, however, apply to containers which give the whole its essential character;

This Rule shall be taken to cover only those containers which:

- (1) Are specially shaped or fitted to contain a specific article or set of articles, they are designed specifically to accommodate the article for which they are intended. Some containers are shaped in the form of the article they contain;
- (2) Are suitable for long-term use, i.e., they are designed to have a durability comparable to that of the articles for which they are intended. These containers also serve to protect the article when not in use (for example during transport or storage.). These criteria enable them to be distinguished from simple packing;
- (3) Are presented with the articles for which they are intended, whether or not the articles are packed separately for convenience of transport. Presented separately the containers are classified in their appropriate headings;
- (4) Are of a kind normally sold with such articles; and
- (5) Do not give the whole its essential character.

Examples of containers, presented with the articles for which they are intended, which are to be classified by reference to this Rule are:

- (1) Jewellery boxes and cases (heading 71.13);
- (2) Electric shaver cases (heading 85.10);
- (3) Binocular cases, telescope cases (heading 90.05);
- (4) Musical instrument cases, boxes and bags (e.g., heading 92.02);
- (5) Gun cases (e.g., heading 93.03).

Examples of containers not covered by this Rule are containers such as a silver caddy Containing tea, or an ornamental ceramic bowl containing sweets.

Rule 5(b)

This rule states:

Subject to the provisions of Rule 5 (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if

they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.

This rule governs the classification of packing materials and packing containers of a kind normally used for packing goods which they relate. Packing materials or containers presented with the articles shall be classified with the articles in accordance with Rule 5(b) if they:

1. Are not of a kind covered under Rule 5(a).
2. Are of a kind normally used for packing such goods.

However, this rule is not binding to such packing materials and containers that are clearly suitable for repetitive use such as, certain metal drums or containers of iron or steel for compressed or liquefied gas, crates of Beer.

4.10 General Interpretative Rule 6

“For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, mutatis mutandis, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.”

- (1) Rules 1 to 5 govern, mutatis mutandis classification at subheading levels with the same heading.
- (2) For the purposes of Rule 6, the following expressions have the meanings hereby assigned to them:
 - a) “Subheading at the same level”: one-dash subheadings (level 1) or two-dash subheadings (level 2)

Thus, when considering the relative merits of two or more one-dash subheadings within a single heading in the context of Rule 3 (a), their specificity or kinship in relation to a given article is to be assessed solely on the basis of the texts of the competing one-dash subheadings. When the one-dash subheading that is most specific has been chosen and when that subheading is itself subdivided,

then, and only then, shall the texts of the two- dash subheadings be taken into consideration for determining which two-dash subheading should be selected.

- b) “Unless the context otherwise requires”: except where Section or Chapter Notes are incompatible with subheading texts or Subheading Notes.

Example

An example of inconsistency between a Chapter Note and a Subheading Note occurs in Chapter 71 where the scope assigned to the term “platinum” in the Chapter Note 4 (B) differs from that assigned to the term “platinum” in Subheading Note 2.

Note 4 (B) to Chapter 71 reads as follows: “The expression [platinum] means platinum, iridium, osmium, palladium, rhodium and ruthenium.”

On the other hand, Subheading Note 2 of Chapter 71 stipulates as follows: “Notwithstanding the provisions of Chapter Note 4 (B), for the purpose of subheading 7110.11 and 7110.19, the expression “platinum” does not include iridium, osmium, palladium, rhodium and ruthenium”.

For the purpose of interpreting subheadings 7110.11 and 7110.19, therefore, Subheading Note 2 applies and Chapter Note 4 (B) is to be disregarded.

- c) The scope of a two-dash subheading shall not extend beyond that of the one-dash subheading to which the two-dash subheading belongs; and the scope of a one-dash subheading shall not extend beyond that of the heading to which the one-dash subheading belongs.

4.10.1 Self-Assessment Questions with Answers in Reference to Classification under Rule Six

1. What is the HS Code (eight digits) for pure bred breeding Horses?

Classification:

Identification: The Horses are being identified by their nature as live animals
Look for possible section and chapter: The Horses are found in section I and in chapter 01.

Consult the legal base: The Horses are legally classified in Heading 01.01 according to terms of the heading (GIR 1)

Determine an appropriate HS Code: Pure bred breeding Horses are classified in Subheading 0101.21.00 - - according to terms of the sub heading (Pure-bred breeding animals).

4.11 Learning Activities

An exporter of wooden office tables did not indicate the classification numbers in the export documents. The tables were imported by the Education related stakeholder to be supplied in primary schools. An authorised Customs agent declared the imported tables by HS Code 4421.99.90 --- as Other articles of wood for clearance at the border post. Subsequently, a Customs officer (at a border post) challenged the classification and rejected the declaration with reasons of misclassification

The owner of imported tables filed an objection to the Commissioner of Customs claiming that his classification was done by an authorised customs agent on the basis of the East African Customs Union Common External Tariff (EACU, CET). The commissioner assigns this task to you to study the case and advise him on how to settle this matter.

Required:

1. Identify the appropriate principle of classification governing the classification of the above mentioned product
2. Determine the applicable of legal notes for the classification of the above mentioned product
3. Determine the correct classification of wooden table.

Solution for Case Study

The principles of classification (GIR 1&6) are applicable for the classification of goods in question. According to these rules, goods are legally classified

according to the terms of headings and subheadings respectively. In addition, relative sections, chapter Notes are to be considered if terms of headings and subheadings do not describe the goods in question. In this case the goods are identified on the basis of their materials as articles of wood. These articles are referred to section IX titled as Wood and Articles of Wood; ----, and to chapter 44 titled as Wood and articles of wood; wood charcoal.

The terms of headings and subheadings under chapter 44, do not provide specific descriptions of the goods and therefore an Exclusion Notes apply. Note 1(0) to chapter 44 excludes wooden furniture from being classified in chapter 44 but to be classified in chapter 94 at heading 94.03 (GIR1) and subheading 9403.30.00 - Wooden furniture of a kind used in offices (GIR 6).

4.12 Self-Assessment Questions and Activities

1. Discuss the meaning of general rules
2. Explain the importance of the general rules in classifying goods
3. State the Six General rules of classifying goods and their scope.

4.13 References

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4.14 CLASSIFICATION OF GOODS IN SELECTED SECTIONS

4.15 Specific Learning Outcomes

At the end of this topic the trainee should be able to:

- i. Classify goods in selected sections including:
 - Agricultural products
 - Mineral products
 - Articles of textiles
 - Vehicles and transport equipment
- ii. Determine appropriate tariff for selected sections goods

4.16 Introduction

Customs duties on internationally traded goods are chargeable on the act of importation or on some goods; customs duties are also charged on the act of exportation. The goods that enter international trade are many and are charged at different rates of customs duty as per national or economic union's interest.

It is therefore required that such goods which enter the international trade are grouped into exclusive similar categories / class of goods [e.g. natural goods, chemicals, metals, textiles, machinery, etc.] and enumerated on the basis of well-defined criteria. The sub division and enumeration of all goods entering International trade along with well-defined world rules of interpretation, form what is normally termed as the nomenclature of goods. In countries, governments utilize the nomenclature as the basis for prescribing appropriate duty on goods imported / to be exported. The combination of goods nomenclature with duty rates is called Customs Tariff.

In the Tariff book, commodities are arranged in a fixed pattern with the duty rates specified against each of them. The pattern of arrangement of goods in the Tariff is in the increasing degree of manufacture involved as per the following sequence: Natural products, Raw materials, Semi-finished goods and fully finished goods / article / machinery, etc.

4.17 Examples of Classification of Goods Under Selected Groups

4.17.1 Worked out examples for classification of Agricultural products

The first 24 Chapters deal with agricultural products in the broadest sense (Sections I to IV). Section I (Chapters 1 to 5) covers Live animals and animals' products (meat, fish, dairy produce, eggs, honey, other edible products, and inedible products); excluding, however, certain oils and fats (Chapter 15) as well as hides, skins, fur skins and articles thereof (Section VIII).

Self-testing questions

Section I Animals, Animal products

Classify the following articles at heading level

1. Horses involved travelling circuses.
2. Live Whale
3. Fresh Meat of Dolphin
4. Natural butter derived from milk

Answers

1. Horses of travelling circuses (95.08). Classified according to exclusion Note 1 (c) to chapter 01.
2. Live Whale (01.06). Classified according to exclusion Note 1 (a) to chapter 03.
3. Fresh Meat of Dolphin (02.08). Classified according to exclusion Note 1 (b) to chapter 03.
4. Natural butter derived from milk (04.05) Classified according to definition Note 2 (a) to chapter 04.

Section II Vegetable products

Section II (Chapters 6 to 14) covers vegetable products, whether or not edible (plants, seeds, vegetables, fruit, cereals, flours, straw, plaiting materials), but excludes certain oils and fats (Chapter 15) and wood (Chapter 44). With certain exceptions, the products of the first two Sections cannot be processed beyond a certain stage. For example, prepared or preserved products (particularly foodstuffs) fall in Section IV.

Self-testing questions

Classify the following articles at 4-digit level

1. Fresh mushrooms
2. Dried pears
3. Cinnamon –tree flowers
4. Rice in the Husk
5. Ground Ginger
6. Crushed Vanilla

Answers

1. Fresh mushrooms (07.09) Classified according to GIR1-terms of the Headings.
2. Fresh pears (08.08) Classified according to GIR1-terms of the Headings.
3. Cinnamon –tree flowers (09.06) Classified according to GIR1-terms of the Headings.
4. Rice in the Husk (10.06) Classified according to GIR1-terms of the Headings.
5. Ground Ginger (09.10) Classified according to GIR1-terms of the Headings.
6. Crushed Vanilla (09.05) Classified according to GIR1-terms of the Headings.

Section III Animal or Vegetable Fats and Oils and Their Cleavage Products; Prepared Edible Fats; Animal or Vegetable Waxes

Section III consists of a single Chapter (Chapter 15) covering animal or vegetable fats and oils and products derived thereof (prepared fats, waxes)

Self-testing questions

Classify the following at 6-digit level

1. Groundnut oil (crude)
2. Refined Sunflower oil
3. Palm kernel
4. Margarine

Answers

1. Groundnut oil (1508.10.00) Classified according to GIR6-terms of the Sub-Headings.
2. Refined Sunflower oil (1512.19.00) Classified according to GIR6-terms of the Sub-Headings.
3. Crude Palm kernel oil (1513.21.00) Classified according to GIR6-terms of the Sub-Headings.

4. Liquid Margarine (1517.90.00) Classified according to GIR6-terms of the Sub-Headings.

Section IV Prepared Foodstuffs; Beverages, Spirits and Vinegar; Tobacco and Manufactured Tobacco Substitutes

Section IV (Chapters 16 to 24) covers beverages, spirits, vinegar and tobacco, together with products of the food industries not covered by previous Chapters.

Self-testing questions

Classify the following at 6-digit level;

1. Dried Goat meat
2. Chemical pure sugar
3. Unfermented and not containing added spirit” mango juice (500ml)
5. Tomato sauce in 200ml plastic packaging
6. Soya beans oilcake for animal feed

Answers

1. Dried Goat meat (0210.99.00) Classified according to GIR1-exclusion Note 1 to chapter 16.
2. Chemical pure sugar (2940.00.00) Classified according to GIR1-exclusion Note 1(b) to chapter 17
3. Fresh mango juice (500ml) (2009.89.00) Classified according to GIR1-definition Note 6 to chapter 20.
4. Tomato sauce in 200ml plastic packaging (2103.20.00) Classified according to GIR1-terms of the Sub-heading
5. Premixes used in the manufacture of animal and poultry feeds (2309.90.10) Classified according to GIR6-terms of the subheading

Section V Mineral and chemical products

Section V (Chapters 25, 26 and 27) is devoted to mineral products.

Self-testing questions

Classify the following articles at 4 Digit level

1. Perfumery, cosmetic or toilet preparations
2. Tailors Chalk
3. Quartzite's pebbles for road metaling
4. Is a table salt, slightly iodized, in order to remain dry classified in Chapter 25?

Answers

1. Perfumery, cosmetic or toilet preparations (33.03) Classified according to GIR1-exclusion Note 2(d) to chapter 25
2. Tailors Chalk (96.09) Classified according to GIR1-exclusion Note 2(ij) to chapter 25
3. Quartzite's pebbles for road metalling (25.17) Classified according to GIR1-Instruction Note 3 to chapter 25
4. Is a table salt, slightly iodized, in order to remain dry classified in Chapter 25? (25.01) Classified according to GIR1-terms of the heading.

Section VI Products of the Chemical or Allied Industries

Section VI covers chemical and chemical products; separate chemically defined compounds generally are dealt with in Chapters 28 (inorganic chemicals) and 29 (organic chemicals)

Self-testing questions

Classify the following at 4 Digit level:

1. Sodium bromide
2. Sulphates of Magnesium
3. Sulphides
4. Carbonates

Answers

1. Sodium bromide (28.27) Classified according to GIR1-terms of the heading.
2. Sulphates of Magnesium (28.33) Classified according to GIR1-terms of the heading.
3. Sulphides (28.30) Classified according to GIR1-terms of the heading.
4. Carbonates (28.36) Classified according to GIR1-terms of the heading.

Chapters 30 to 38 cover the other products of the chemical industries (pharmaceutical products, fertilizers, soap, cosmetics, paints, explosives),

Self – testing questions;

Classify the following up to 6-digit code.

1. Cement for filling the teeth
2. A complete first Aid kit
3. Medicated shampoo (500ml) designed for the treatment of dandruff
4. Toothpastes

Answers:

1. Dental filling Cements (3006.40.00) Classified according to GIR1-exclusion Note 1(c) to chapter 34
2. A complete first Aid kit (3006.50.00) Classified according to GIR6-terms of the subheading
3. Medicated shampoo (500ml) designed for the treatment of dandruff (3305.10.00) Classified according to GIR6-terms of the subheading
4. Toothpaste (3306.10.00) Classified according to GIR6-terms of the subheading

Section XI Textiles and Textile Articles

Section XI is reserved for textiles. This Section comprises several groups of Chapters, distributed as follows:

- Textiles in forms ranging from the raw material to the finished fabric are divided among Chapters 50 to 55, according to their nature; textile material of animal origin are the subject of Chapters 50 (silk), 51 (wool and animal hair), textile materials of vegetable origin are covered by Chapters 52 (cotton), 53 (other vegetable fibres), and man-made textile materials are the subject of Chapters 54 (filaments) and 55 (staple fibres)
- Chapters 56 to 60 cover various calories of textile articles or special textiles such as: Wadding, felt and non-woven textile materials, special yarn, twine and rope (Chapter 56), floor coverings (Chapter 57), special woven fabrics, tufted textile fabrics, lace, tapestries, trimmings and embroidery (Chapter 58) impregnated, coated, covered or laminated textile fabrics and textile articles for industrial use (Chapter 59) and knitted or crocheted fabrics (Chapter 60).

- Chapters 61 and 62 deal respectively with knitted or crocheted articles of apparel and clothing accessories, and other articles of apparel and clothing accessories. Chapter 63 is set aside for other made up textile articles, together with certain sets and worn textile articles and rags.

Self – testing questions;

Classify the following up to 8-digit code.

1. Typewriter ribbon
2. Knitted brassier of cotton
3. Woman sanitary pads of cotton

Answers

1. Typewriter ribbon (9612.10.00) Classified according to GIR1-exclusion Note 1(u) to section XI
2. Knitted brassier of cotton (6212.10.00) Classified according to GIR1-terms of the heading
3. Woman sanitary pads of cotton (9619.00.10) Classified according to GIR1-exclusion Note 1(u) to Section XI

Section XVII Vehicles, Aircraft, Vessels and Associated Transport Equipment

The four Chapters of Section XVII cover Vehicles, Aircraft, Vessels, and associated transport equipment, distributed as follows: Railway rolling-stock (Chapter 86), Motor Vehicles and other land vehicles (Chapter 87), Aircraft and spacecraft (Chapter 88), and ships and floating structures (Chapter 89).

Self – testing questions:

Classify the following up to 8-digit code.

1. Railway or tramway passenger coaches, not self-propelled;
2. Rear view Mirrors of motor vehicles
3. Aircraft seat covered with Textile materials
4. Fishing vessels; factory ships and other vessels for processing or preserving fishery products.

Answers

1. Railway or tramway passenger coaches, not self-propelled; (86.05) Classified according to GIR1-terms of the heading
2. Rear view Mirrors of motor vehicles (70.09) Classified according to GIR3(a) –in the heading which provides specific description
3. Aircraft seat covered with Textile materials (94.01) Classified according to GIR3(a) -in the heading which provides specific description
4. Fishing vessels; factory ships and other vessels for processing or preserving fishery products. (89.02) Classified according to GIR1-terms of the heading

4.18 Learning Activities

An XYZ farming project manager imported the following commodities from Japan to be used in his farming and related activities: (1) a Combine harvester-threshers machine, to be bought together with centrifugal water pump. (2) one pick up vehicle for carrying the harvests (3) 100 Square Meters of unbleached plain woven fabrics weighing less than 200g/m² made up of mixed textile material in the following proportions: 40% by weight of cotton, 30% by weight of synthetic filaments. On his arrival, he presented the documents describing the particulars of each commodity to you for customs clearance.

Required:

Logically and with supporting legal bases; classify each of the above mentioned commodity by linking each with its duty rate

4.19 Self-Assessment Questions and Activities

1. For each of the following classes of goods, identify a particular product and classify them as appropriate
 - a) Agricultural products
 - b) Mineral products
 - c) Articles of textiles
 - d) Vehicles and transport equipment
2. What are the appropriate tariff for the selected sections goods?

4.20 References

- World Customs Organization, (2013). HS Classification Handbook, The Customs Co-operation Council. Brussels
- World Customs Organization, (2018). The Harmonized System. A universal language for international trade. 1988-2018 - 30 Years On. Brussels
- World Customs Organization, (2021). HS Nomenclature 2002, 2007, 2012 and 2022 Editions. <http://www.wcoomd.org/en/topics/nomenclature.aspx>
- EAC- Customs Union (2004). Customs Management Act, EAC Customs Union Secretariat
- EAC- Customs Union (2005). Protocol, EAC Customs Union Secretariat
- EAC-Customs Union, (2017). Common External Tariff Hand Book. EAC Customs Union Secretariat
- Luc De Wulf and Jose' B. Sokol (2005), Customs Modernization Handbook, -The World Bank.

5.0 EAST AFRICAN COMMUNITY EXTERNAL TARIFF

5.1 Specific Learning Outcomes

At the end of this topic the trainee should be able to:

- i. Identify the purpose of the EAC Tariff Book
- ii. Identify changes in the Tariff Book over time
- iii. Describe how to classify goods using the EAC CET

5.2 Overview of the East African Community External Tariff

The East African Community Common External Tariff (EAC CET) is a tariff regime established under the East African Community Customs Union where by Partner States levy a common rate of duty on goods imported from non-Partner States. The EAC CET took effect on 1st January 2005, the first edition was based on the HS Nomenclature version 2002. The current EAC CET in use is version 2017. However, the HS version 2022 will be out in January 2022. Below is the structure and underlying principles of the CET.

5.3 Purpose of the EAC Tariff Book

The EAC Partner States agreed to establish free trade (or zero duty imposed) on goods and services amongst themselves and agreed on a common external tariff (CET), whereby imports from countries outside the EAC customs territory are subjected to the same tariff when imported to any EAC Partner State.

5.4 Structure of CET

The structure of the CET to a great extent is based on the HS. The CET includes the General Rules for the Interpretation of the Harmonized System, abbreviations and symbols, Section, Chapter and Subheading Notes, and the headings and subheadings.

Each heading is identified by four digits, the first two indicating the Chapter number and the second two the numerical order in which the heading appears within the Chapter.

The heading numbers are shown in the first column. The second column contains the eight-digit codes

of the Harmonized System as transposed at the EAC level. The third column contains the text of the headings in bold and the texts of subheadings. The fourth column contains units of quantity for use when reporting statistics based on the Harmonized System. The fifth columns contain applicable Common External Tariff rates.

The Handbook comprises Schedule 1 with duty rates under the three-band tax structure and Schedule 2 with duty rates of sensitive items.

The fifth column of Schedule 1 contains applicable Common External Tariff rates and where the abbreviation "SI" (Sensitive Items) appears the applicable duty rates shall be those specified in Schedule 2.

The CET is based on the following legal framework:

-
- Article 8 (in respect of the HS) and article 12 (in respect of the tariff bands and among other things) of the Protocol establishing of the East African Community Customs Union,
- The East African Community Customs Management Act (EACCOMA) 2004 which also support Rulings of Commissioners,
- The WCO HS convention,
- The council and summit decisions,

5.4.1 Types of Duty Rates

There are mainly two types of duty rates and these are indicated below:

- **Ad-valorem**
This type of rate of duty is based on % of Customs value for example (Cost, Insurance and Freight) depending on the incoterms used. The advantage with this rate of duty is that it is easy to apply and protects the tax base from inflation. However, it is subject to arbitrariness of valuation and vulnerable to manipulation by importers.
- **Specific**
This type of rate of duty is based on unit of quantity. The advantage with this rate of duty it is unresponsive to downward prices and not subject to Customs value manipulation.

5.5 The Structure of the CET Tariff Bands

1. The three band tariff structure,
2. The sensitive list

5.6 Three Band Tariff Structure

The CET has three tariff bands other than the sensitive list and these are as follows;

- 0% that generally applies to capital goods, raw materials, semi-finished goods which are not available in sufficient quantities in the EAC and Goods of social importance for example medicine.
- 10% generally applies to intermediate goods (semi-finished, raw materials which are available in sufficient quantity in the EAC).
- 25% generally applies to finished goods.

The tariff bands may be reviewed by council to remedy adverse effect of implementation.

5.6.1 Sensitive Goods

The EAC adopted a common sensitive list of items to protect key sectors in agriculture and industry. The criteria used considered competing goods subjected to subsidies in the exporting countries, imported second hand goods that impact negatively on domestic production and to protect local production/Industries.

The sensitive product list is found in schedule 2 of the CET- sensitive items and consists of 58 tariff lines. The 58 tariff lines are in respect of the following products:

| | |
|----------------------------|--------------------------------------|
| • Milk and dairy products | 60% |
| • Maize and maize flour | 50% |
| • Wheat and Meslin | 35% |
| • Wheat or Meslin flour | 60% |
| • Rice | 75% or \$200/MT whichever is higher |
| • Sugar | 100% or \$200/MT whichever is higher |
| • Juggery | 35% |
| • Tobacco and Cigarettes | 35% |
| • Matches | 50% |
| • Kanga, kikoi and kitenge | 50% |

5.9 Self-Assessment Questions and Activities

From the above information answer the following questions:

1. What is the purpose and functions of the EAC Tariff Book?
2. Discuss the legal framework underpinning the EAC CET
3. Discuss the structure of the EAC CET

5.7 The Underlying Principles of the CET

The CET was developed based on the following principles:

- Need to protect local industry
- To encourage investment
- Support of agricultural policy
- Support of industrial policy
- Support health policy.
- Support of education policy
- Reduction of cost of production
- Increase of competitiveness in the region.
- Simplified trade regime - 3 band structure.

5.8 Learning Activities

The systematic coding of the Harmonised System makes it easier to classify goods in international trade. It is therefore important to identify parts of the structure of the EAC Common External Tariff.

Required:

- a) Explain the structure of the EAC Common External Tariff
- b) Explain the role its structure on the classification of goods.
- c) Explain the meaning of the three tariff bands and SI

5.10 References

- EAC- Customs Union (2004). Customs Management Act, EAC Customs Union Secretariat
- EAC- Customs Union (2005). Protocol, EAC Customs Union Secretariat
- EAC-Customs Union, (2017). Common External Tariff Hand Book. EAC Customs Union Secretariat
- Luc De Wulf and Jose' B. Sokol (2005), Customs Modernization Handbook, -The World Bank.
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- World Customs Organization, (2021). HS Nomenclature 2002, 2007, 2012 and 2022 Editions. <http://www.wcoomd.org/en/topics/nomenclature.aspx>

6.0 SETTLEMENT OF CLASSIFICATION DISPUTES

6.1 Specific Learning Outcomes

At the end of this topic the trainee should be able to:

- i. Explain the meaning of tariff misclassification
- ii. Identify possible areas of misclassification
- iii. Describe factors leading to misclassification
- iv. Explain how to justify a decision based on GIRs
- v. Explain the tariff dispute settlement process

6.2 Introduction

States which agree with other states the levels of duties which they each will levy on specific goods require a means of identifying exactly which goods will be subject to which duty rates. Customs classification rules assist in effecting this identification.

The process of classifying goods is quite technical in nature; it requires expertise in both identification and classification of goods. Most of Customs officers and Customs agents find it difficult to properly classify goods due to lack of classification knowledge and skills.

6.3 Meaning of Tariff Misclassification

Misclassification means provision of wrong description of the goods or the use of erroneous tariff heading/s and sub-heading/s resulting in deficiency between the duty and tax that should have been paid and the duty and tax actually paid and collection of wrong statistical data on traded goods.

6.4 Possible Areas of Tariff Misclassification

Proper identification of goods is an important part of the accurate classification number (HS Code). Tariff Misclassification can be a result of improper identification of goods to be classified. Goods should be properly identified on the basis of their Nature, materials and functions so as to ascertain their appropriate Nomenclature that will be used in the classification process.

6.5 Factors Leading to Tariff Misclassification

The General Interpretative Rules, and the binding section and chapter notes, are designed to differentiate between multiple headings that might appear to describe the same product and hence miss-interpretation of the rules and legal Notes leads to misclassification.

6.6 Justifying a decision based on GIRs

The six principles of classification, provide the guidance on how to classify goods in the Harmonized System Nomenclature. The principles are designed to ensure uniform and consistent application of the Harmonized System and to lay down rules on how the Nomenclature should be interpreted. Therefore, any decision relating to classification dispute resolutions should be based on the application of the General Interpretative Rules.

6.7 Tariff Dispute Settlement Process

There are basically two procedures for settling classification disputes: Informal (consultation); and Formal procedures.

In Informal dispute settlement procedure, customs officers and importers do communicate each other clarify issues in conflict aiming to resolve issues. Final decisions by Customs is made after traders have been given a chance to explain (either orally or in writing and in a reasonable timeframe) their point of view.

In formal dispute settlement procedure, importer or exporter aggrieved by Customs opts to refer the matters to courts of law for fair treatment and the Customs administration is obliged to clearly outline all legal requirements and procedures to the business community on how to file their appeals.

6.8 EAC Settlement of Classification Disputes

Any dispute between Contracting Parties concerning the interpretation or application of this EAC-Protocol shall, so far as possible, be settled by negotiation between them.

Each Partner State affirms her adherence to the principles for the administration and management of disputes and shall in particular:

- (a) accord due consideration to the other Partner States' presentation or complaints;
- (b) accord adequate opportunity for consultation on representations made by other Partner States; and
- (c) implement in good faith any decisions made pursuant to the Community's dispute settlement mechanisms.

Any dispute which is not so settled shall be referred by the Parties to the dispute to the Harmonized System Committee which shall thereupon consider the dispute and make recommendations for its settlement.

6.8.1 WCO Recommendation on Settlement of Classification Disputes

The WCO recommends as below in terms of settlement of classifications disputes:

"Where a dispute arises between two or more contracting parties regarding the interpretation or application of the HS, the parties concerned should, in the first instance, endeavour to reach agreement among themselves. However, classification disputes that cannot be settled by direct negotiation are referred through the WCO Secretariat to the Harmonized System Committee (HSC) which, after examination, makes appropriate recommendations for their solution. If the Committee is unable to settle a dispute, it refers the issue to the WCO Council for a recommendation on the question. In either event, the parties to a dispute may agree in advance to accept the recommendation of the Committee or the Council as binding".

6.8.2 Learning Activities

The goods were imported by an East African Community (EAC) based company from China. The imported goods were declared to one of the EAC Customs office in the partner States as Oil or petrol-filters for internal combustion of motor vehicles engines and classified under HS code 8708.99.00 – Other, with rate of duty 0%. The customs officer rejected the declaration with the reason of misclassification, and asked the importer to amend his declaration and pay the duty payable with penalties. The importer disputed the customs decisions and seeks an advice on how to settle this matter.

Required:

- a) Explain the procedure for dispute settlement
- b) Determine the correct HS Code for the consignment
- c) what is the economic consequences on this misclassification.

6.9 Self-Assessment Questions and Activities

1. Define what a tariff miscalculation is and the impacts to both the clearing and forwarding firm and Customs Authorities
2. Discuss the common areas of tariff misclassification
3. Discuss how you would handle and settle a dispute on tariff miscalculation.

6.10 References

- EAC- Customs Union (2004). Customs Management Act, EAC Customs Union Secretariat
- EAC- Customs Union (2005). Protocol, EAC Customs Union Secretariat
- EAC-Customs Union, (2017). Common External Tariff Hand Book. EAC Customs Union Secretariat
- Luc De Wulf and Jose' B. Sokol (2005), Customs Modernization Handbook, -The World Bank.
- World Customs Organization, (2013). HS Classification Handbook, The Customs Co-operation Council. Brussels
- World Customs Organization, (2018). The Harmonized System. A universal language for international trade. 1988-2018 - 30 Years On. Brussels
- World Customs Organization, (2021). HS Nomenclature 2002, 2007, 2012 and 2022 Editions. <http://www.wcoomd.org/en/topics/nomenclature.aspx>

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UNIT 4

CUSTOMS RULES OF ORIGIN

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LIST OF ABBREVIATIONS AND ACRONYMS

| | |
|------------|---|
| ARO | Uruguay Round Agreement on Rules of Origin |
| CMT | Council of Minister responsible for Trade |
| CNL | Competitive Need Limit |
| COMESA | Common Market for Eastern and Southern Africa |
| EAC | East African Community |
| EACCMA | East African Community Customs Management Act |
| EACCMAR | East African Community Customs Management Act Regulations |
| EPZ | Export Processing Zones |
| EU | European Union |
| GSP | Generalized System of Preferences |
| REX System | Registered Exporter System |
| RKC | Revised Kyoto Convention |
| RoO | Rules of Origin |
| SADC | Southern Africa Development Community |
| UNCTAD | United Nations Conference on Trade and Development |

UNIT 4: CUSTOMS RULES OF ORIGIN

1.0 UNIT OVERVIEW

1.1 Unit Description

This unit specifies the competencies required to determine origin of goods. It involves identifying the criteria/methods of determining origin of goods; identifying the preferential and non-preferential rules; applying the EAC, COMESA, SADC and EU Rules of Origin; and, identifying disputes in origin of goods.

1.2 Unit Summary Learning Outcomes

At the end of the unit, the trainee should be able to:

1. Identify the Criteria / methods of determining origin of goods
2. Identify the preferential and non-preferential rules based on agreements
3. Apply EAC Rules of Origin to determine the origin of the goods
4. Apply COMESA Rules of Origin to determine the origin of the goods
5. Apply SADC Rules of Origin to determine the origin of the goods
6. Apply European Union Rules of Origin to determine the origin of the goods

2.0 OVERVIEW OF RULES OF ORIGIN

2.1 Specific Learning Outcomes

At the end of this topic the trainee should be able to:

- vi. Explain the meaning of rules of origin
- vii. Explain the purpose of rules of origin
- viii. Describe the principles of determining origin
- ix. Identify types of rules of origin criteria

2.2 Introduction

The long-standing ties that exist among the people living on each side of the borders of countries and the trade between the citizens of any two countries are the mainstay of relations between the countries. It is these links and the need for regulation, control and fair trade that countries have Customs and Immigration Laws and the respective Administrations. For goods to move between any two countries Customs Administration and Agents must interact.

Governments invest in the training of their Customs Official to familiarize them in the theory and practice of the relevant laws and procedures. It is therefore only right that commensurate investment and effort should be put in, by government and the umbrella bodies that govern the clearing agency fraternity, to equip practitioners in this field with the theory and practice of all relevant laws and procedures that are in play in the clearing of goods.

Goods like persons do have a 'citizenship'. Similarly, so, just as there are laws governing the identification of persons' nationality and how those persons are dealt with upon arrival in another country, there exists "RULES OF ORIGIN" to govern how to identify the country from which goods are from and how they are to be dealt with.

The purpose of this unit is therefore to explore the Rules of Origin that are applicable in the East African Community Partner States so as to equip the learners with the tools they will require in their mission of facilitating legitimate trade.

2.3 Determination Origin of Goods

2.3.1 Introduction to Rules of Origin

Rules of Origin (ROO) can be defined simply as those set of criteria laws/criteria applied in international trade to determine the national source of goods.

Annex K to the Revised Kyoto Convention (RKC) defines ROO as "The specific provisions, developed from principles established by national legislation or international agreements applied by a country to determine the origin of goods."

The Agreement on Rules of Origin (Annex 1A to the Marrakech Agreement establishing the World Trade Organization in 1995) identifies and defines two types of ROO.

- a) **Non-Preferential Rules of Origin:** defined as those laws, regulations and administrative determinations of general application applied by any Member to determine the country of origin of goods.
- b) **Preferential Rules of Origin:** defined as those laws, regulations and administrative determinations of general application applied by any Member to determine whether goods qualify for preferential treatment under

contractual or autonomous trade regimes leading to the granting of tariff preferences going beyond the application of paragraph a of Article 1 of GATT 1994.

Rules of Origin generally come into force through National Legislation/ unilateral/ autonomous regimes or through international agreements/ contractual trade regimes.

2.3.2 Purpose of Rules of Origin

The purpose for which rules of origin are applied determines whether they are preferential of non-preferential.

a) Non-Preferential Rules of Origin

These are defined as those laws, regulations and administrative determinations of **general application** applied by any Member to determine the country of origin of goods.

This means that these rules are applied by a country for all other purposes other than the granting of preferential market access to goods originating from other countries.

Article 1(2) of the agreement on rules of origin for non-preferential rules of origin are meant for:

- i) Application of Most Favoured Nation (MFN) treatment;
- ii) Application of anti-dumping and countervailing duties;
- iii) Compliance with Origin Marking Requirements;
- iv) Application of tariff quotas

b) Preferential Rules of Origin:

These are defined those laws, regulations and administrative determinations of general application applied by any Member to determine whether goods qualify for preferential treatment under contractual or autonomous trade regimes **leading to the granting of tariff preferences** going beyond the application of paragraph a of Article 1 of GATT 1994.

It is crucial to note that the application of these rules must lead to the granting of tariff preference but is not only restricted to this. In other words, preferential rules of origin can be applied to also achieve the general administrative goals of non-preferential rules but the vice-versa cannot happen.

Granting of preferential tariff treatment or preferential tariff treatment means that the import duty levied on goods imported is lower than the MFN duty rate, either due to an agreement existing between the importing and exporting countries or by unilateral concessions by the importing state to goods deemed to originate from the exporting state.

2.3.3 Principles that Govern the Application of Rules of Origin

Article 9 of the Agreement on Rules of Origin sets out the following principles or objectives for the harmonious application of rules of origin:

Rules of origin should:

- i) Be objective, understandable and predictable: this means that their provisions should be objective and understandable to users and that their application should be predictable and not subject multiple interpretation;
- ii) Not be used as instruments to pursue trade objectives either directly or indirectly. This means that they should not create restrictive, distorting or disruptive effects on international trade.
- iii) Be administered in a consistent, uniform, impartial and reasonable manner
- iv) Be coherent;
- v) Be based on positive standards. This means that they should state what confers origin and not what does not confer origin. Application of negative standards can be used to clarify a positive standard.

2.3.4 Origin Criteria

Rules of origin can be defined as those criteria used to determine the national source of goods in international trade.

These criteria generally fall in to two: goods are considered to originate from a country where they are:

- 1) Wholly obtained/produced in that country; or
- 2) When more than one country is involved in the production of that good, the good is considered to originate in the country where the last substantial transformation/ working process was carried out.

Wholly obtained and substantial transformation are the two criteria for origin determination. Each set of Rules of origin will determine the exact provisions that explain the concept of the criteria.

Substantial transformation will however fall in any of these categories:

- i) Change in tariff classification. This may be at the heading or subheading level;
- ii) Application of ad valorem percentage criterion. This entails stating the percentage of maximum amount non-originating material to be used (the minimum amount of originating material that must be used) for a commodity to be deemed to originate. The value of such material will be checked against either the:
 - Total amount of materials used in production (Material Content Criterion:
 - The ex-works/ ex-factory cost or price (value addition criterion).

Generally, where this criterion is to be applied, the maximum acceptable Value of Non-Originating material will be set in the rules;

- iii) Where the specific working process or manufacturing operation must be applied in the production of the commodity to confer origin to it.

NOTE: goods whose origin is un-known are considered to be non-originating.

2.4 Learning Activities

In groups, taking your Partner State as the example, list the Rules of Origin that are applied for both imports and exports, describing them as either preferential or non-preferential. List also whether the Rules identified are negotiated or unilateral and which countries or territories are also party to those rules.

2.5 Self-Assessment Questions and Activities

1. Explain the difference between Preferential and Non-Preferential Rules Origin;
2. Explain any four principles that govern the application of Rules of Origin as set out in the Agreement of Rules of Origin;
3. Define Rules of Origin;
4. Goods are said to originate in a country if they have been wholly obtained there or have undergone substantial transformation in that country. Explain what substantial transformation (sufficient working) means and the categories which its application takes in Rules of Origin.

2.6 References

- EAC (2015). Manual on the Application of the East African Community Customs Union (Rules of Origin) Rules, 2015. Directorate of Customs, EAC Secretariat, Arusha, Tanzania
- Rules of Origin of the Common Market for Eastern and Southern Africa
- Handbook On the Rules of Origin for the Scheme of the European Community
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- Legal Texts: Uruguay Round of Multilateral Trade Negotiations
- East African Community Customs Management Act (EACCMA), 2004
- East African Community Customs Management Act Regulations (EACCMAR), 2004

3.0 EAST AFRICAN COMMUNITY RULES OF ORIGIN (EAC ROO)

3.1 Specific Learning Outcomes

At the end of this topic the trainee should be able to:

- i. Discuss the scope of the EAC ROO
- ii. Discuss the concept of originating goods
- iii. Explain the proof of origin
- iv. Discuss the administrative cooperation in the EAC ROO

3.2 Introduction

The Treaty establishing the East African Community, in **Article 75** sets out the undertaking by Partner States to the effect that they, inter alia, shall; establish a Customs Union, details of which shall be contained in a protocol which shall among others, include Rules of Origin.

The Protocol establishing the East African Community (EAC) Customs Union (the “Protocol”) provides, in **Article 14** that goods shall be accepted as eligible for Community Tariff treatment if they originate in the Partner States, and the definition of such products shall be as provided in Annex III of the Protocol of the EAC Customs Union.

The aim of this topic is to equip the learner to with the skills to apply the EAC Rules of Origin to determine the origin of the goods.

EAC Rules of Origin can be defined as: a set of criteria that is used to distinguish between goods that are produced within the EAC Customs territory and are eligible to Community Tariff treatment against those produced outside the EAC customs territory that attract import duties specified in the Common External Tariff.

The purpose of the EAC Rules of Origin is to implement the provisions of **Article 14 of the Protocol** establishing the EAC Customs Union to ensure that there is uniformity among Partner States in the application of the Rules of Origin and that to the extent possible the processes is transparent, accountable, fair, predictable and consistent with the provisions of the Protocol.

3.3 The EAC Origin Determination

Article 14 of the Protocol establishing the East African Community Customs Union provides that goods shall be accepted as eligible for Community tariff treatment if they are consigned directly from a Partner States to a consignee in another Partner State and they originate in the Partner States; i.e. goods which meet the criteria set out in the EAC Rules of origin.

Direct Consignment Rule:

This is the requirement that goods should be consigned directly from one Partner State to a consignee in another Partner State. It implies that goods should be transported directly to consignee in another Partner State. This is contained in **Rule 16** of the EAC Rules of Origin, 2015. However, goods consigned from and to land locked Partner States may for purposes of transportation, transit through other countries.

Example:

A trader in Kenya (k) wants to purchases wholly originating mushrooms from Rwanda. Strict application of the Direct Consignment Principle would mean that the goods have to be transported to Kenya by Air. But due to the reality of trade conditions, the goods can transit through the territory of Uganda and upon arrival in Kenya the goods will be granted preferential treatment because the principle has not been violated.

However, where goods transit through the territory of another country as in the example above, they must do so under the control of Customs in that state. In this case full compliance with the transit requirements in Uganda.

Criteria

The EAC Rules of origin provides under Rule 4 the criteria to enable the Authorities in Partner States to determine which goods qualify as originating in the EAC. The criteria referred to relate to how the goods have actually been produced. They are two in number and only one of them must be complied with for any goods to qualify for EAC preferential tariff treatment. The criteria are: -

Rule 4 (1) Good shall be accepted as originating in a partner state where the good are;

1. **Rule 4(1) (a)** wholly produced in a Partner State as provided for in Rule 5; or
2. **Rule 4(1) (b)** produced in the partner state incorporating materials which have not been

wholly obtained there (in the Partner State), provided that such materials have undergone sufficient working or processing in the Partner State as provided for under Rule 6

The exporter may base his/ her claim to EAC Preferential Community Tariff treatment on the criteria described in Rule 4, as read together with Rules 5 and 6 (for purposes of Rule 6 the criteria will be in Part 1 of the first schedule), according to which he/she has complied with in the production process. However, if all that was done in “production” the goods were one or more of the simple processes/insufficient workings listed under **Rule 7** of the EAC Rules of Origin and nothing else, the goods will not be eligible for EAC preferential tariff treatment since such process are, by themselves, or combined, are insufficient to enable the goods to be considered as having been produced in the Partner States.

NOTE: in the application of the EAC Rules of Origin, Partner States are considered to be one Territory.

3.3.1 Wholly Produced Goods – Rule 4 (1)(A) read with Rule 5

Goods under this category are regarded as those which have been obtained or produced exclusively from material/components that qualify in their own right as originating in EAC Partner States (contain no materials imported from outside the EAC region) as defined in Rule 5 of the Rules. For ease of reference Rule 5 of the EAC Rules of Origin provides a list of products that are considered as “wholly produced” in the Partner States and the list includes:

1. mineral products extracted from the ground or sea bed of the Partner States;
2. vegetable products including plant and plant products harvested, gathered or picked within the Partner States;
3. live animals born and raised within the Partner States;
4. products obtained from live animals within the Partner States,
5. used articles fit only for the recovery of materials, provided that such articles have been collected from users within the Partner States, and
6. scrap and waste resulting from manufacturing operations within the Partner State,
7. goods produced within the Partner State exclusively or mainly from the

8. following—

- (i) products referred to in this paragraph; and
- (ii) materials which do not contain elements imported from outside the Partner State or which are of undetermined origin. etc.

For the full list of products, refer to Rule 5 of the EAC Rules of Origin, 2015

Below are examples of goods that are wholly produced in the EAC

- i. Limestone mined in Burundi is wholly produced because it is extracted in Burundi.
- ii. Maize harvested in Rwanda is wholly produced even if the maize seed planted was originally imported from, outside of the EAC.
- iii. Hides from cattle that are born and raised in Uganda and slaughtered in Uganda are regarded as wholly produced in Uganda.
- iv. Fish caught in the territorial waters of Tanzania are regarded as wholly produced in Tanzania.
- v. Scrap metal collected in Kenya from scrap of used abandoned cars, regardless of where the cars were originally produced. If the scrap is used to make steel gates, the steel gates are also wholly produced in Kenya;
- vi. Manufactured biscuits produced by a Bakery in Burundi using flour grown and harvested in Burundi, Sugar made in Uganda from cane that was grown and harvested in Uganda, milk collected from Cows in Tanzania and Rwanda and Salt Harvested in the Kenyan Coast. This is due to the Principle of Cumulation as will be explained later.

3.3.2 Goods produced from Materials Not Wholly Obtained from a Partner State (Rule 4(1) (b)) read with Rule 6 and the First Schedule to the Rules.

Rule 4 (1) (b) provided that goods shall be considered as originating in a Partner State if they are produced in the Partner State incorporating materials which have not been wholly obtained in the Partner State, provided that such materials have undergone sufficient working or processing in the Partner State as provided for under Rule 6.

Rule 6 (1) in turn provides that a product is considered sufficiently worked or processed when the product listed in the second column of Part 1 of the First Schedule fulfils the corresponding criteria in the third column.

Part 1 of the of the first Schedule outlines four criteria used to determine sufficient working or processing: The criteria for sufficient working in the schedule will fall into the one of the following categories:

- i. Working or processing of certain wholly produced materials,
- ii. Workings of processing where the value of the all the non-originating materials used in manufacture does not exceed a certain maximum threshold,
- iii. working or processing where the 4-digit Harmonized System heading or 6-digit Harmonized System sub-heading of the manufactured products becomes different from the 4-digit Harmonized System heading or 6-digit sub-heading, respectively of the materials used
- iv. a specific working or processing operation is carried out

(i) **Working or processing of certain wholly produced materials;**

This means that the raw materials specified in the third column of part 1 of the First Schedule if used in manufacture, have to be wholly produced for the product specified in the second column to originate. E.g. Chapters 1-3,25 and ex 44, Headings 17.03 and 41.01-41.03, etc.

(ii) **Working or processing where the value of all the non-originating materials used in manufacture does not exceed a certain maximum threshold;**

It is necessary in this case for the value of the imported materials not to exceed a particular percentage of the ex-works price of the finished product

Example, an engine of HS heading 84.08 can qualify as originating in a Partner State if the customs value of the materials imported from outside the EAC region used in producing the engine does not exceed 70% of the ex-works price of the engine. This means that the value of originating materials and the working or processing carried out in a Partner State including the production costs and profit must

account for 30% of the ex-works price of the finished product. This means that the value added in the Partner State is 30% of the finished product.

Computation of Ex-Works Price

Note 9, of Part 2 of the First Schedule of the EAC Rules of Origin, 2015 provides that in the calculation of the ex-works price, for purposes of fulfilling the conditions specified in the third column of Part 1 of the First Schedule, the following elements of cost, charges and expenses in paragraphs 2 and 3 shall be included plus the factory profit margin:

1. *Materials:*

(a) *Non-Originating Material*

The cost of non-originating materials, including the cost of waste materials and materials lost in the process of manufacture, as represented by landed cost of these materials at the factory, including any charges incidental to the delivery of such materials to the factory or if this is not known or cannot be ascertained, the first ascertainable price paid for them in the Partner State where they were used in a process of production;

The following expenses, where included may be deducted:

- (i) the costs of freight, insurance, packing and all other costs incurred in transporting the materials to a Partner State or between the territories of two or more Partner States to the location of the producer;
- (ii) duties, taxes and customs brokerage fees on the material paid in the territory of one or more of the Partner States, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable; and
- (iii) the cost of originating materials used in the production of the non-originating material in the territory of a Partner State.

(b) *Originating Material*

The cost of local materials, including the cost of waste materials and materials lost in the process of manufacture, as represented by their delivery price at the factory.

2. *Other input costs:*

- (a) The cost of direct labour as represented by the wages paid to the operatives responsible for the manufacture of the goods;
- (b) The cost of direct factory expenses are represented by:
 - (i) The operating cost of the machine being used to manufacture the goods;
 - (ii) The expenses incurred in the cleaning, drying polishing, pressing or any other process, as may be necessary for the finishing of the goods;
 - (iii) The cost of putting the goods up in their retail packages and the cost such retail packages but excluding any extra cost of packing the goods for transportation or export and the cost of any extra packages;
 - (iv) The cost of special design, drawings or layouts; and
 - (v) The hire of tools, or equipment for the production of goods; and
- (c) The cost of factory overhead as represented by:
 - (i) Rent, rates and insurances charges directly attributed to the factory;
 - (ii) Indirect labour charges, including salaries paid to the factory managers, wages paid to foremen, examiners and testers of the goods.
 - (iii) Power, light, water and other service charges directly attributed to the cost of manufacture of the goods;
 - (iv) Consumable stores, including minor tools, grease, oil and other incidental items and materials used in the manufacture of the goods; and
 - (v) Depreciation and maintenance of factory buildings, plant machinery, tools and other items used in the manufacture of the goods; and others.

- 3. In the calculation of the ex-works price for purposes of fulfilling the conditions specified in the Second Schedule), the following elements of cost, charges and expenses are excluded:

- (a) Administration expenses represented by:

- (i) Office expenses, office rent and salaries paid to accountants, clerk's manager and other executive personnel.
 - (ii) Directors fees other than salaries paid to directors who act in the capacity of factory managers;
 - (iii) Statistical and costing expenses in respect of manufactured goods; and
 - (iv) Investigation and experimental expenses;

- (b) Selling expenses represented by:

- (i) The cost of soliciting and securing of orders, including expenses such as advertising charges and agents or salespersons' commissions or salaries; and
 - (ii) Expenses incurred in the making of design, estimates and tenders;

- (c) Distribution expenses, represented by all the expenditure incurred after the goods have left the factory, including:

- (i) The cost of any material and payments of wages incurred in the packaging of the goods for export;
 - (ii) Warehousing expenses incurred in the storage of the finished goods; and
 - (iii) The cost of transporting the goods to their destination;

- (d) Charges not directly attributed to the manufacturer of the goods represented by:

- (i) Any customs duty and other duties and charges of equivalent effect paid on the imported raw materials;
 - (ii) Any excise duty paid on raw materials produced in the country where the finished goods are manufactured;
 - (iii) Any other indirect taxes paid on the manufactured products;
 - (iv) Any royalties paid in respect of patents, special machinery or designs; and
 - (v) Finance charges related to working capital.

Example:

Manufacturer M based in Tanzania incurs the following costs to make chairs for transfer to other Partner States:

| | |
|---|-------|
| Raw wood imported from Malaysia | - 140 |
| Metal screws (imported from China) | - 30 |
| Plastic parts (imported from South Africa) | - 60 |
| Local materials | - 80 |
| Labour | - 45 |
| Overheads | - 25 |
| It is determined that the Profit per chair is | - 60 |

The criteria for furniture of heading 9401 in Part 1 of the First Schedule reads: "Manufacture in which the value of all the materials used does not exceed 70 % of the ex-works price of the product".

| | |
|-------------------------------|-------------------|
| Material Cost | |
| Local Material | 80 |
| Imported Material (140+30+60) | 230 |
| Labour | 45 |
| Overheads | <u>25</u> |
| Ex Works Cost | 380 |
| Profit | <u>60</u> |
| Ex-Works Price | <u>440</u> |

$$\begin{aligned}
 \text{The imported value is} &= \frac{\text{imported materials}}{\text{Ex- Works Price}} * 100 \\
 &= \frac{230}{440} \times 100 \% \\
 &= 52\%
 \end{aligned}$$

This can also be computed from the point of view of the local material content and value added.

Local Content

$$= \frac{(\text{Ex-Works Price} - \text{Value of Non Originating Material (VNOM)})}{\text{Ex-Works Price}} * 100$$

Ex-Works Price

$$= \frac{(440-230)}{440} * 100$$

$$= 48\% \text{ (value added or local content)}$$

The material content should be calculated to the nearest whole number.

Note: Tanzania is a member of SADC, this means that the Plastic Parts from South Africa enjoyed preferential treatment when imported into TZ. But in the EAC case they are considered as non-originating.

Explanation:

In the above example, the value of non-originating products is 52% of the ex-works price which is less than the maximum stipulated threshold of 70%, therefore the chairs qualify as originating in Tanzania. In this case, the value added is therefore 48%.

Note: In the computation of the Ex-Works price of a product, and to address the problem of fluctuating material costs and exchange rates, Rule 6 ((4)- (9)) provides for the use of averages based on the sum of the value of all the non-originating materials used in the manufacture of the products and the sum of the ex-works prices charged for all sales of the products carried out during the preceding financial

year. If figures for a complete financial year are not available, the averages may be based on a shorter period, but not less than three months.

- (iii) **Working or processing where the 4-digit Harmonized System heading or 6-digit Harmonized System sub-heading of the manufactured products becomes different from the 4-digit Harmonized System heading or 6-digit sub-heading, respectively of the materials used;**

This criterion is known as **the change in tariff classification criterion**

Example

| In this case, finished products are considered to be sufficiently worked or processed when the imported raw materials used in production are classified within a tariff heading or subheading that is different from that of the finished product. For example: | | |
|---|----------------------------|---|
| HS Heading | Description of the product | Origin Criteria (Working or processing carried out on nonoriginating materials that confers originating status) |
| 1 | 2 | 3 |
| 11.01 [4-digit] | Wheat or meslin flour | Manufacture from materials of any heading, except that of the product |
| 7218. 91 and 7218. 99 [6 –digit subheading] | Semifinished products | Manufacture from materials of heading 7201, 7202, 7203, 7204, 7205 or subheading 7218.10. |

- (iv) **A specific working or processing operation is carried out.**

Example

| Finished products are considered sufficiently worked or processed when particular specific working or processing is carried out. For example: | | |
|---|---|---|
| HS Heading | Description of the product | Origin Criteria (Working or processing carried out on nonoriginating materials that confers originating status) |
| 1 | 2 | 3 |
| 63.05 | Sacks and bags, of a kind used for the packing of goods | Weaving or knitting and making-up (including cutting) |

For the sack and bags of heading 63.05 to originate in a Partner state, the process of their manufacture must involve either weaving and making-up (including cutting), or knitting and making up (including cutting) if they are to be granted preferential market access to the markets of the other Partner States

There are instances where the applicable criteria in column three of Part 1 of the first schedule may

include more than one of the above four criteria for a particular product listed in the second column. In this case (where alternate rules exist) the exporter is free to choose the criteria he prefers and has no obligation to meet the other criteria. Example: Chapter's 45, and 66, Heading 38.23, Ex. Heading 29.32, and Sub Heading 3806.30, etc.

There are also instances where there are more than one criterion indicated in column 3 for a product/s specified in column two. In these case all the criteria set out in column 3 must be met for the product to originate. Example Chapter's 8, 16 and 35, and Heading 23.09, etc.

The Absorption Principle (Rule 6 (3))

This principle provides flexibility by allowing the use of more non-originating materials than the amounts of non-originating materials under the limitations provided for in product specific rules contained in the First Schedule. It allows intermediate products produced in a given Partner State to maintain their originating status when they are used for further manufacturing operations of originating goods **in the same Partner State** and to disregard the part of all former non-originating materials contained in intermediate products for the determination of the origin of the finished product. The effect of this is that:

- the value of the non-originating materials contained in intermediate products which acquire originating status is disregarded in the calculation of the value added and are not considered in the computation of the Value of Non-Originating Materials;
- the non-originating parts contained in intermediate products are not considered for the determination of origin under a change of tariff classification rule; or
- the manufacturing processes of non-originating materials contained in intermediate products are not taken into account when assessing the requirements of other technical operations for the origin determination of a final product.

Tolerance Rule 6 (10)

Tolerance allows for the use of non-originating materials in the manufacture of goods without affecting the originating status of goods. Under the tolerance provisions, goods that do not completely satisfy the origin criteria in the Second Schedule can qualify as originating if they meet the following conditions:

- (a) Agricultural products (Chapters 2 and 4 to 24) -15 % of the weight of the finished product.
- (b) Textiles of Chapters 50 to 63 -Tolerances are based on weight and are provided in **Notes 6 and 7** contained in Part 2 of the First Schedule.
- (c) Products (*other than textiles of Chapters*

50 to 63) - 15 % of the ex-works price of the finished product

There are instances where the 3rd Column of Part 1 of the First Schedule will specify the tolerance to be applied for that particular commodity: e.g.: heading 27.07 and 27.10.

The following steps are to be followed when determining whether a product originates under Rule 4 (1) (b) of the EAC Rules of Origin, 2015:

1. Establish the tariff classification of the product, (8-digit Harmonised System Code of the Product);
2. Establish the applicable specific rule (i.e. check Column 3). Where two or more rules are provided in Column 3, one has a choice of using any of the rules in Column 3. If rule is met, then the product may be regarded as originating in a Partner State. If not, then the product does not qualify
3. Where a specific rule is not mentioned for the given product, refer to the section dealing with the Chapter or Heading you are concerned with.

Example:

Plastic bottles are classified in heading 39.23 and Column 1 in the Part 1 of the First Schedule makes no reference to a specific rule for products of heading 39.23. In such a case, the rule to be applied is that found at the beginning of the section which reads "ex Chapter 39". The rules for "ex Chapter 39" for "*Plastics and articles thereof; except for*" are "*Manufacture from materials of any heading, except that of the product (CTH) or Manufacture in which the value of all the materials used does not exceed 70% of the ex-works price of the product*" as provided in Column 3. Here one has a choice of using a CTH rule or a material content rule.

Note: If all products of a given heading, subheading or Chapter are not subject to the same rule(s), the heading, subheading or Chapter number is preceded by "ex". "Ex' means that the rule in Columns 3 applies to goods classified in the heading, subheading or Chapter with certain exceptions. The exceptions are then listed separately and will have their own rules in column 3.

4. If the product qualifies as originating, a Certificate of origin to support its originating status is then completed. Alternatively, an origin declaration as prescribed in the Fourth Schedule of the Rules can be made on the commercial documents.

3.3.3 Processes not Conferring Origin:

Notwithstanding provisions of Rule 6, **Rule 7** provides that in applying the EAC Rules of Origin, 2015, there are certain processes that have a minor effect on the finished product such that they cannot be regarded as conferring originating status on finished products, even where their application would seem to fulfil the conditions set in the Third Column of Part 1 of the First Schedule for a particular product. These operations when carried out alone or where they are combined shall not confer origin as they are simple.

As a general rule, simple in reference to a process of production refers to Operations where neither special skills nor machines, apparatus or tools especially produced or installed for those operations are required for their performance.

The following operations and processes are considered as insufficient to confer originating status on the finished products:

- (a) packaging, bottling, placing in flasks, bags, cases and boxes, fixing on cards or boards and all other simple packaging operations;
- (b) (i) simple mixing of ingredients imported from outside a Partner State;
(ii) simple assembly of components and parts imported from outside a Partner State to constitute a complete product;
- (c) operations to ensure the preservation of merchandise in good condition during transportation and storage such as ventilating, spreading out, drying, freezing, placing in brine, Sulphur dioxide or other aqueous solutions, removal of damaged parts and similar operations;
- (d) change of packing and breaking up or assembly of consignments;
- (e) marking, labelling or affixing other like distinguishing sign on products or their packages;

- (f) simple operations consisting of removal of dust, sifting or screening, sorting, classifying and matching, including the making up of sets of goods, washing, planting and cutting up;
- (g) ironing or pressing of textiles;
- (h) simple painting and polishing operations;
- (i) husking, partial or total bleaching, polishing, and glazing of cereals and rice;
- (j) operations to colour sugar or form sugar lumps; partial or total milling of crystal sugar;
- (k) peeling, stoning and shelling, of fruits, nuts and vegetables;
- (l) sharpening, simple grinding or simple cutting;
- (m) a combination of two or more operations referred to in subparagraph (a) to (l) of this Rule; and
- (n) slaughter of animals.

3.4 Application of Other Rules to Determine Origin

3.4.1 Cumulative Principle (Rule 8)

Cumulation provides flexibility to the EAC rules of Origin by allowing producers in the Partner States to use materials from cumulating partners without losing origin thereby enhancing economic relations between the partners. The following forms of cumulation are provided in **Rule 8**:

1. **Full cumulation (Rule 8(1))** allows performing sufficient working or processing in the EAC customs territory. It means that all operations carried out in the EAC customs territory are taken into account when assessing the final origin of the finished product. All the working or processing that is necessary to confer originating status on a product is carried out not in the territory of a given Partner State, but in the entire area of the EAC Customs Union. To satisfy a claim that materials used were allowed for cumulation, the following documentary evidence will be required:
 - (i) The evidence of originating status of raw materials or semi-finished goods imported from another Partner State is given by a Certificate of Origin issued by the competent authority in the exporting/ transferring Partner State.

(ii) The evidence of originating status of semi-finished products within a Partner State is given by means of a supplier's declaration. *For example, Company A in Partner State X imports materials from a third country and makes an intermediate product which is used by Company B in Partner State X to make a final product for export to another Partner State Y.*

(iii) *Evidence of the working or processing carried out in the Partner States is given by means of a supplier's declaration. For example, where goods are manufactured in a Partner State do not meet the required origin rule in the Second Schedule and are exported to another Partner State for further manufacture.*

2. **Rule 8 (2)** allows producers in the EAC Partner States to use materials originating from countries or Regional Economic Communities (RECs), with which the EAC has concluded a Free Trade Area agreement with and such materials shall be considered as originating in the Partner State. Documentary evidence of originating status of raw materials or semi-finished goods is given by a Certificate of Origin issued by the competent authority in the exporting country or REC that EAC has concluded an FTA with.
3. **Rule 8(3)** allows producers in the EAC Partner States to use materials originating in the countries or group of countries with which the countries or RECs referred to in 2 (Rule 8(2)) have concluded a Free Trade Area Agreement with. Materials sourced from these countries or RECs will be considered as origination in the Partner state and they will be considered as if they originate in the EAC Partner States. This provision shall however not apply to materials contained in the Second Schedule of the EAC CET. **(Rule 8(4))**
4. **Rule 8 (5)** allows producers in the EAC Partner States to use materials imported from any country in the world which according to the EAC CET are duty free. However, agricultural products are excluded from cumulation. This provision shall not also apply to goods to which are subject to Antidumping Measures or Subsidies and Countervailing Measures at importation to a Partner State **(Rule 8 (6))**

3.4.2 Unit of Qualification Rule 9

This Rule provides that each item in the consignment be considered separately. However, where goods are classifiable within the single heading in accordance with the HS Code interpretative rules, such goods shall be treated as one. This means that the way the goods are treated for tariff classification purposes is the same way they should be treated for purposes of determining the origin.

3.4.3 Treatment of Sets Rule 10

Rule 10 states that when considering the originating status of a set, the origin of the individual components that make up the set be determined separately. If all the components are originating, then the whole set is originating. However, sets containing originating and non-originating components may also be regarded as originating in a Partner State if the value of the non-originating components does not exceed 15% of the ex-works price of the set.

3.4.4 Separation of Materials Rule 11

This Rule provides that where a producer uses materials of similar character but different origin, and it is not commercially practical to keep separate stocks of such materials the producer may determine origin of those goods based on any of the standard inventory accounting methods (e.g., FIFO, LIFO). The aim is to ensure that no more goods are deemed to originate as would have been if the materials were practically separable.

3.4.5 Treatment of Mixtures Rule 12

This rule provides that where a mixture is not a group of a set;

- A claim of origin maybe refused where the characteristics of the product resulting from mixing with goods that originate with non-originating goods as a whole are not different from the characteristics of the goods that have been mixed,
- However, origin will be granted in cases of particular products where it is recognised by the council that mixing is desirable, in respect of that part of the product that may be shown to correspond to the quantity that is

originating in a Partner State used in the mixture. This is subject to the conditions set by the council.

3.4.6 Treatment of Packaging Rule 13

- Packaging shall be considered as forming part of a whole if it is ordinarily sold at retail together with the product and it is not merely for transport or storage e.g. milk is normally retailed in packets, such packets will be considered as part of the milk,
- Containers and other packages used only for transport or temporary storage of the goods and are to be returned or they are not the normal retail packages of the product are not to be subject to the customs duty or other equivalent effect, e.g. crates for soda, boxes or gas cylinders unless these the particular products being traded,
- Where the above goods are not returnable or are the commodities being traded, they shall be treated separately from the goods contained in them.

3.4.7 Neutral Elements Rule 14

This rule provides that where electrical energy and fuel, plant and equipment, machine and tools, and goods that do not enter or are not intended to enter into the final composition of the final product, are used in the manufacture of a product, it shall not be necessary to determine their origin as these are considered to be **NEUTRAL ELEMENTS**.

3.4.8 Approved Exporters Rule 20

Exporters who make frequent exports of originating products, upon application and satisfaction to the competent issuing Authority in their Partner state of compliance to the Customs Laws, may make origin declarations (Fourth Schedule) on commercial documents instead of filling the Certificate of Origin. This will however be subject to the conditions that will be set by the competent Authority.

3.4.9 Validity of Proof Rule 21

A Certificate of Origin or Origin Declaration shall be valid for six months from the date of issue of

declaration and shall be submitted within that period to the customs of the importing partner state.

3.4.10 Exemptions from Certificate of Origin Rule 21

Products whose value does not exceed USD 500 where sent in small packages from private person to private person, and are not intended for trade, and goods not exceeding USD 1200 in value which form part of a traveller's luggage, shall be admitted as originating without requiring submission of the proof of origin. This applies to non-trade items.

3.4.11 Re - Exportation

Re-exporting of EAC originating goods shall be allowed only when goods remain under customs control and do not undergo any operations except those meant to preserve the goods, unloading and reloading.

3.5 Verification of Proof of Origin and Resolution of Disputes and Queries

3.5.1 Minor Queries (Manual on EAC ROO 3.3.3)

Minor inaccuracies or omissions of a clerical or similar nature detected on a proof of origin (for example, the omission of the weight or other quantity, or insertion of an incorrect Customs tariff number), may be allowed to be put right by the importer without rejection of the claim to EAC preferential tariff treatment. Similarly, it may become necessary in some cases to direct that the goods be physically examined to dispel any doubt or uncertainty that may have arisen in the course of the processing of the import entry as regards the origin of the goods, without at that stage making a formal query or questioning eligibility for EAC preferential tariff treatment.

The Manual also states that foreign markings on the goods or other physical evidence (e.g. instructions in a foreign language, packaging of an unrelated kind) should not be overlooked in the Customs examination as these may point to the need for further enquiry into the claim to EAC preferential tariff treatment.

3.5.2 Verification of Proof Rule 24

In cases of doubt, a competent authority in the importing Partner State may require further verification of information contained in a Certificate of Origin or an origin declaration. The request for such further information will be made to the competent Authority of the Exporting Partners State. The issuing authority has to submit its reply within three months in the form prescribe under the Fifth Schedule of the rules.

However, importing partner states shall not prevent an importer from taking delivery of goods solely on the grounds that it requires further evidence. In such a case the Customs of the importing partner state may require security on any duty or charges payable to it and release the goods. The security will be held until the matter is cleared and may be actioned by the customs authority for duties if the goods are found not to have originated or refunded to the importer if the claim of origin was genuine.

3.5.3 Joint-on-the-spot-investigations

Where serious doubts persist, the importing Partner State shall apply Chapter 3.3.4 and 3.4.4 of the Manual on the Application of the East African Community Customs Union (Rules of Origin) Rules, 2015 to request the exporting for a Joint Verification. The joint verification can also be initiated by the exporting state.

Below are examples of cases where serious doubts may arise:

- (i) A claim of “wholly produced” is made for certain kinds of machinery;
- (ii) The description of goods on the invoice is different from that appearing in the certificate of origin;
- (iii) There is indication of dubious transport route used;
- (iv) The proof of origin has not been signed or dated by the competent issuing authority;
- (v) The stamp used to endorse the proof of origin is different from the one that was notified to the Secretariat; or
- (vi) The proof of origin has not been signed by the exporter.

The two States will conduct a joint verification, which includes visiting the premises of the exporter, examination of the exporter’s documents. These

documents will include customs entries for importation of raw materials and exporting records. The two countries will then draft report with their findings.

Upon conclusion of the joint-on-the-spot verification, the importing Partner state shall notify the EAC Secretariat of the results. The EAC Secretariat shall in turn notify the other Partner States.

Where the doubts involve more than one country, the EAC Secretariat organises and facilitates a joint verification to be attended by all Partner States.

3.5.4 Dispute Resolution Process

Section 3.4.7 of the Manual provides for disputes to be resolved as follows

- (a) Any dispute between Partner States relating to the application of the provisions of the EAC Rules of Origin shall, in so far as is possible, be settled by negotiation between them. A dispute which is not so settled shall be referred to the Committee on Trade Remedies which shall in accordance with the EAC Dispute Settlement Regulations establish a Dispute Settlement Panel or an Arbitration Panel.
- (b) The parties to the dispute shall supply all documents and/or information to the Dispute Settlement/Arbitration Panel. The documents and/or information so supplied, shall also be supplied at the same time, to the other party to the dispute and the Secretary General.
- (c) The Dispute Settlement/Arbitration Panel shall conduct its proceedings in such manner as it considers appropriate provided that the parties to the dispute shall be treated with equality and that during the proceedings, each party shall be given a full opportunity of presenting its case.
- (d) Upon request by any party to the dispute during the panel proceedings, the panel shall hear evidence, oral or written, from any witness including experts invited by any party to the dispute.
- (e) The general terms of reference of the Dispute Settlement/Arbitration Panel shall be as provided in the EAC Dispute Settlement Regulations.
- (f) The Dispute Settlement/Arbitration Panel

shall consider the submissions from the parties to the dispute and any witness(es) and may request additional information or clarification from the parties to the dispute or the Secretary General, and make its recommendation(s).

- (g) In making its recommendations, the Panel shall, in addition refer to any relevant authorities and provisions whether or not cited by the parties to the dispute.
- (h) If the Dispute Settlement/Arbitration Panel is unable, through its findings and recommendation(s), to resolve the dispute in a manner consistent with the overall development objectives of the region and to the satisfaction of the parties to the dispute, it shall refer the matter, through the Secretary General, to the Court of Justice for a final ruling which shall be binding on all parties.

Each party to the dispute shall bear the costs attributable to the Partner it appointed to the Panel while the costs attributable to the third Partner of the Panel shall be borne in equal part by the parties to the dispute.

3.5.5 Infringements and Penalties Rule 26

Where a false claim of origin is made to an importing Partner state, the importing state informs the exporting Partner state and takes action to in accordance with the provision of the EACCMA, 2004. This means that the mere information of the infraction to the exporting Partner State, does not bar the importing Partner State from raising and offence under the relevant provisions of the EACCMA, 2004 on the importer.

The exporting Partner State has three months to take remedial action on the exporter, failing which, if further infringements are made, the importing Partner State refers the matter to the Committee on Trade Remedies, which takes action in accordance with the provision of the Treaty Establishing the EAC.

If the infringements by a Partner State persists, the matter is referred to the Council for resolution in line with the provisions of the Treaty.

3.5.6 Conclusion

The EAC Rules of Origin are the cornerstone of the EAC internal trade regime. The determination of the eligibility of products to EAC origin and the granting of preferential

Community Tariff treatment to goods originating in the Partner States are important processes in the implementation of the provision of the EAC trade regime. The effective and uniform implementation of the provisions of the EAC Rules of Origin by the Partner States is important as it helps in strengthening the EAC trade regime.

The implementation of the EAC Rules of Origin requires Partner States to apply common procedures in determining the eligibility of products to EAC origin and the granting of Preferential Community Tariff Treatment as provided under the EAC trade regime.

3.6 Learning Activities

In groups discuss and make a presentation with relevant examples on one of the following topics:

1. The principles of cumulation and absorption, distinguishing them and explaining how they are applied in the EAC Rules of Origin
2. Computation of Ex-Factory Price.
3. Interpretation of part I of the first schedule to the EAC Rules of Origin, 2015.
4. Seven scenarios that are to be considered in-sufficient to grant origin.

3.7 Self-Assessment Questions and Activities

1. Explain the principle of cumulation as it is applied under Rule 8 of the EAC-ROO, 2015.
2. Explain the difference between cumulation and absorption.
3. What is tolerance?
4. A manufacturer in Burundi transfers his products to a customer in Kenya. The products are transported by road via Uganda.
 - a. Explain direct consignment.
 - b. What conditions must be fulfilled by the goods during transportation for them not to violate the principle of direct consignment?
5. Giving four examples, explain what processes are considered insufficient and this cannot confer origin.

3.8 References

- EAC (2015). Manual on the Application of the East African Community Customs Union (Rules of Origin) Rules, 2015. Directorate of Customs, EAC Secretariat, Arusha, Tanzania
- Rules of Origin of the Common Market for Eastern and Southern Africa
- Handbook On the Rules of Origin for the Scheme of the European Community
- United Nations Conference on Trade and Development (UNCTAD) (2013). Generalized System of Preferences: Handbook on the Rules of Origin of the European Union. UNCTAD
- The Uruguay Round Agreement on Rules of Origin (ARO)
- Inama, S. (2009). Rules of Origin in International Trade. Cambridge University Press.
- Legal Texts: Uruguay Round of Multilateral Trade Negotiations
- East African Community Customs Management Act (EACCMA), 2004
- East African Community Customs Management Act Regulations (EACCMAR), 2004

4.0 COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA (COMESA) RULES OF ORIGIN

4.1 Specific Learning Outcomes

At the end of this topic the trainee should be able to:

- i. Explain the Concept of Originating Goods under COMESA ROO
- ii. Discuss the Proof of Origin under COMESA ROO
- iii. Discuss the COMESA Certificate of Origin

4.2 Introduction

The Treaty Establishing the Common Market for Eastern and Southern Africa (COMESA) provides, in Article 48, that goods shall be accepted as eligible for Common Market treatment if they originate in the Member States, and the definition of such products shall be as provided in a Protocol on Rules of Origin. The Protocol on COMESA Rules of Origin are provided at Annex IX (Rules of Origin).

4.3 Background

In 1994, COMESA member countries agreed on the rules of origin for products to be traded between themselves, as provided for under Article 4(1) (e) of the Treaty. The COMESA Rules of Origin are the cornerstone of the COMESA trade regime and serve to prevent non-COMESA members from benefiting from preferential tariffs for them to access the COMESA market. The determination of the eligibility of products to COMESA origin and the granting of preferential tariffs to goods originating in the Member States are important processes in the implementation of the COMESA trade regime. The effective and uniform implementation of the provisions of the Protocol on Rules of Origin by the Member States is important as it helps in strengthening the COMESA trade regime.

Under the COMESA trade regime, goods qualify for preferential tariff treatment if they originate in the Member States. This means that all goods that meet the requirements of the COMESA Rules of Origin qualify for preferential tariff treatment when they are traded within COMESA.

4.4 Definition

COMESA Rules of Origin are a set of criteria that are used to distinguish between goods that are produced within the COMESA Member States (originating goods) and are entitled to preferential tariff treatment and those that are considered to have been produced outside the COMESA (non-originating) region that attract full import duties when traded.

From the foregoing, COMESA Rules of Origin are Preferential Rules of Origin.

4.5 Determination of Origin (Rule 2 of the Protocol on Rules of Origin)

Article 48 of the Treaty Establishing the Common Market for Eastern and Southern Africa (hereinafter referred to as the “Treaty”) provides that goods shall be accepted as eligible for Common Market tariff treatment if they originate in the Member States, and the definition of products originating in the Member States shall be as provided for in a Protocol on Rules of Origin referred to in Annex IX. Rules of Origin.

Under the COMESA trade regime, a product shall be considered as originating in a Member State if it is **consigned directly** from a Member State to a consignee in another Member State and has either been wholly produced or undergone substantial transformation in that Member State.

Rule 2 of the COMESA Rules of Origin Sets out four concepts that are key to the implementation of the Rules:

- i) The principle of Direct Consignment
- ii) The criteria;
- iii) The concept of cumulation; and
- iv) The determination of the place of production of marine, river or lake products.

The COMESA Rules of Origin have five independent criteria, and goods are considered as originating in a Member State if they meet any of the five.

4.5.1 The COMESA Criteria for Originating Goods

Goods shall be accepted as originating from a Member State if they are **consigned directly** from a Member State to a consignee in another Member State and:

- i) The goods should be wholly produced in a Member State; or

- ii) The goods should be produced in the Member States and the c.i.f. value of any foreign materials should not exceed 60% of the total cost of all materials used in their production; or
- iii) The goods should be produced in the Member States and attain a value added of at least 35% of the ex-factory cost of the goods; or
- iv) The goods should be produced in the Member States and should be classifiable under a tariff heading other than the tariff heading of the non-originating materials used in their production; (the processes are specified in Appendix V)
- v) The goods should be designated by the Council of Ministers as “goods of particular importance to the economic development of the Member States” and should contain not less than 25% value added, notwithstanding the provisions of paragraph (iii) above.

In the application of the ‘goods of particular importance to the economic development of a Member State’ criterion, The Council may:

- (a) Determine how long the goods contained in the list shall remain on such list and may, from time to time, amend the list as may consider necessary; and
- (b) Amend any of the percentage values and value-added thresholds, from time to time, as may consider necessary.
- (c) the list of “goods of particular importance to the economic development of a Member State” are specified in Appendix VI

4.5.2 Wholly Produced Goods – (Rule 2(1) (A) of the Protocol)

Goods are considered to be wholly produced in a Member State if they meet the provision of Rule 2(1) as read together with Rule 3 of the Protocol.

Rule 3 provides a list of products that are considered as “wholly produced” in the Member States. Such products contain no materials imported from outside the COMESA region.

Goods wholly produced in the Member States:

- (a) Mineral products extracted from the ground or sea-bed of the Member States;
- (b) Vegetable products harvested within the Member States;

- (c) Live animals born and raised within the Member States;
- (d) Products obtained from live animals within the Member States;
- (e) Products obtained by hunting or fishing conducted within the Member States;
- (f) Products obtained from the sea and from rivers and lakes within the Member States by a vessel of a Member State;
- (g) Products manufactured in a factory of a Member State exclusively from the products referred to in sub-paragraph (f) of paragraph 1 of this Rule;
- (h) Used articles fit only for the recovery of materials, provided that such articles have been collected from users within the Member States;
- (i) Scrap and waste resulting from manufacturing operations within the Member State;
- (j) Goods produced within the Member States exclusively or mainly from one or both of the following:
 - i. Products referred to in sub-paragraphs (a) to (i), above
 - ii. Materials containing no element imported from outside the Member States or of undetermined origin.

NOTE: Neutral Elements

Electrical power, fuel, plant, machinery and tools used in the production of goods shall always be regarded as wholly produced within the Common Market when determining the origin of the goods.

4.5.3 Determination of the Place of Production of Marine, River or Lake Products

In determining the place of production of marine, river or lake products and goods in relation to a Member State, a vessel of a Member State shall be regarded as part of the territory of that Member State. In determining the place from which goods originated, marine, river or lake products taken from the sea, river or lake or goods produced therefrom at sea or on a river or lake shall be regarded as having their origin in the territory of a Member State if they were taken by or produced in a vessel of that Member State and have been brought directly to the territory of the Member State. (Rule 2(4))

This means that a vessel of a Member State as defined in the Rules is part of the territory that Member State

and any products taken by that vessel and brought directly to the territory of the Member State shall be considered to originate in the Member state.

Rule 1 in the interpretation of the terms used in the COMESA Rules of Origin Defines the Vessel of a Member State as follows:

“Vessel of a Member State” means vessel of a Member State if it is registered in a Member State and satisfies one of the following conditions:

- (i) At least 75 percent of the officers of the vessel are nationals of a Member State; or
- (ii) At least 75 per cent of the crew of the vessel are nationals of a Member State; or
- (iii) At least the majority control and equity holding in respect of the vessel are held by nationals of a Member State or institution, agency, enterprise or corporation of the Government of such Member State.”

Examples:

- Fish drawn from Lake Malawi in that part of the lake that Malawi has legal claim to are wholly produced in Malawi.
- If a Mauritian factory ship, draws tuna in international water, processes and cans it in the high seas and brings the canned tuna directly to the Port Luis, then the canned tuna acquires Mauritian origin by the fact that it was processed in a Mauritian Vessel and brought directly to Mauritian Territory.

Formula for calculation of material content (%):

- a) Import material content:

Import material content =
$$\frac{\text{c.i.f. value of imported materials}}{\text{cost of local materials} + \text{c.i.f. value of imported materials}}$$

- b) Local material content:

This rule can also be expressed in terms of domestic materials, where a minimum of 40% local content should be achieved for the finished goods to qualify as originating in a Member State.

Local material content =
$$\frac{\text{cost of local materials}}{\text{cost of local materials} + \text{c.i.f. value of imported materials}}$$

4.5.4 Material Content Criterion – (Rule 2(1)(B)(I) of the Protocol)

Rule 2(1)(b)(i) provides for the Material content criterion where goods have been produced in a Member State wholly or partially from imported materials (or from materials of unknown origin) and the c.i.f. value of materials imported from outside the region does not exceed 60% of the total cost of materials used in production.

Under this criterion, only the cost of the materials (domestic and imported) used in production is considered for purposes of determining origin.

Materials whose origin is unknown are considered as “imported/non-originating” for purposes of this rule, and their price shall be the earliest ascertainable price paid for them in the Member State where they are used in a process of production.

The value of the imported materials is the c.i.f. value accepted by Customs at the time of clearance for home consumption or under temporary admission procedures.

4.5.5 Value-Added Criterion – (Rule 2(1) (B) (II) of the Protocol)

Rule 2(1)(b)(ii) provides for the value added criterion where goods are considered to originate in a Member State where they have been wholly or partially produced from imported materials (or materials of unknown origin) and the value added resulting from **the process of production** accounts for at least 35% of the ex-factory cost of the finished product.

The value added is a result of the process of production.

The value added is the difference between the ex-factory cost of the finished product and the c.i.f. value of imported materials used in production.

Ex-factory cost means the value of the total inputs required to produce a given product.

In applying this criterion, domestic material content may be either low or non-existent in the composition of the products to be exported.

Materials whose origin cannot be determined shall be deemed to have been imported/non-originating.

$$\text{Value added} = \frac{\text{ex-factory cost} - \text{value of imported material}}{\text{Ex-factory cost}} \times 100$$

Calculation of ex-factory cost

When calculating ex-factory cost some charges and expenses are included whereas others are excluded. The following costs, charges and expenses should be included:

- (a) The cost of imported materials, as represented by their c.i.f. value accepted by the Customs authorities on clearance for home consumption, or on temporary admission at the time of last importation into the Member State where they were used in a process of production, less the amount of any transport costs incurred in transit through other Member States. Provided that the cost of non-originating materials not imported by the manufacturer will be the delivery cost at the factory but excluding customs duties and other charges of equivalent effect thereon;
- (b) The cost of local materials, as represented by their delivery price at the factory;
- (c) The cost of direct labour as represented by the wages paid to the operatives responsible for the manufacture of the goods;
- (d) The Cost of direct factory expenses, as represented by:
 - i. the operating cost of the machine being used to manufacture the goods;
 - ii. the expenses incurred in the cleaning, drying, polishing, pressing or any other process, as may be necessary for the finishing of the goods;
- iii. the cost of putting up the goods in their retail packages and the cost of such packages but excluding any extra cost of packing the goods for transportation or export and the cost of any extra packages;
- iv. the cost of special designs, drawings or layout; and the hire of tools, or equipment for the production of the goods.
- (e) The cost of factory overheads as represented by:
 - i. rent, rates and insurance charges directly attributed to the factory;
 - ii. indirect labour charges, including salaries paid to factory managers, wages paid to foremen, examiners and testers of the goods;
 - iii. power, light, water and other service charges directly attributed to the cost of manufacture of the goods;
 - iv. consumable stores, including minor tools, grease, oil and other incidental items and materials used in the manufacture of the goods;
 - v. depreciation and maintenance of factory buildings, plant and machinery, tools and other items used in the manufacture of the goods

The following costs, charges and expenses should be excluded:

- (a) Administration expenses as represented by:
 - i. office expenses, office rent and salaries paid to accountants, clerks, managers and other executive personnel;
 - ii. directors' fees, other than salaries paid to directors who act in the capacity of factory managers;
 - iii. statistical and costing expenses in respect of the manufactured goods;
 - iv. investigation and experimental expenses.
- (b) Selling expenses, as represented by:
 - i. the cost of soliciting and securing orders, including such expenses as advertising charges and agents' or salesmen's commission or salaries;
 - ii. expenses incurred in the making of designs, estimates and tenders.
- (c) Distribution expenses, represented by all the expenditure incurred after goods have

left the factory, including:

- i. the cost of any materials and payments of wages incurred in the packaging of the goods for export;
 - ii. warehousing expenses incurred in the storage of the finished goods;
 - iii. the cost of transporting the goods to their destination.
- (d) Charges not directly attributed to the manufacture of the goods:
- i. any customs duty and other charges of equivalent effect paid on the imported raw materials;
 - ii. any excise duty paid on raw materials produced in the country where the finished goods are manufactured;
 - iii. any other indirect taxes paid on the manufactured products;
 - iv. any royalties paid in respect of patents, special machinery or designs; and
 - v. finance charges related to working capital.

Example:

A producer in Member State X makes wooden tables for sale to a buyer in Member State Y. The producer uses local timber and timber imported from Member State Z and Malaysia, respectively. The producer incurs the following costs per table, but he is not sure whether the tables qualify for preferential tariff treatment or not:

Materials Cost (currency unit)

Timber:

| | |
|----------------------------|-----|
| <i>Local timber</i> | 200 |
| <i>From Member State Z</i> | 100 |
| <i>Malaysian origin</i> | 900 |

Other costs:

| | |
|--|---|
| <i>Glue (imported from Brazil)</i> | 5 |
| <i>Varnish (imported from Germany)</i> | 8 |

Factory overheads:

| | |
|---------------------------|------|
| Rent and rates | 100 |
| Depreciation of machinery | 80 |
| Direct labour | 300 |
| Ex-factory cost | 1693 |

Required.

Determine the origin of the consignment above.

Material Content Criterion

Originating Material: $200 + 100 = 300$

Non-Originating Material: $900 + 5 + 8 = 913$

Total Material = $300 + 913 = 1213$

Imported Material $\frac{913}{1213} * 100 = 75.27\%$ Approximately 75%

Under the Material Content Criterion, the chairs do not originate.

Value Added Method:

Ex-Factory Cost: 1693

Imported Material: 913

Local Value Added: $1693 - 913 = 780$

Value Added: $\frac{780}{1693} * 100 = 46.07\%$ Approximately 46%

The Chairs Originate as the Value Added is 46% which is above 35%

4.5.6 Change in Tariff Heading (CTH) Rule – (Rule 2(1)(B)(III) Of The Protocol) Rules of Origin

The goods have been produced in a Member State wholly or partially from imported materials and are classified or become classifiable under a heading other than the tariff heading of the imported materials.

Under this criterion, origin is conferred if the manufacturing or processing carried out in the Member States is substantial and results in a product which falls under a heading of the Harmonized Commodity Description and Coding System (HS) which is different from that under which the non-originating materials used in its manufacture fall.

However, the actual application of the CTH Rule in COMESA is guided by the provisions of Appendix V to the Rules. The appendix is titled “**Workings and Processings for Determining Origin of a Good Under Rule 2(1)(B)(iii) of The COMESA Protocol on Rules of Origin**”

In this case the product named in Column Two of the Appendix V must meet the corresponding CTH criteria in Column three for it to be considered to originate under the CTH rule.

In applying the CTH Rule (Appendix V) particular attention should be given to exclusions.

Example I

CTH RULE Under Appendix V the CTH Criteria is a below:

| HS Code | Description of goods | Working or processing carried out on non-originating materials that confers originating status |
|---------|--|--|
| 15.17 | Margarine; edible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this Chapter, other than edible fats or oils or their fractions of heading No.15.16. | Manufacture from materials classified in a heading other than that of the product, except from materials of headings 15.07, 15.08, 15.12 and 15.15 |

This means that Margarine of tariff heading 15.17 manufactured in a COMESA Member State can only qualify as a COMESA originating product if it is manufactured from imported materials classified in headings other than 15.07, 15.08, 15.12 and 15.15.

However, it worth noting that if the materials of 15.07, 15.08, 15.12 and 15.15 which are originating are used in production the product will still be deemed to originate.

Example II

Chapter Rule for Chapter 61: Articles of apparel and clothing accessories, knitted or crocheted.

The manufacture of products of Chapter 61 from parts and accessories classified in heading 61.17, respectively, does not confer originating status

| HS Code | Description of goods | Working or processing carried out on non-originating materials that confers originating status |
|----------------|--|---|
| Ex. Chapter 61 | Articles of apparel and clothing accessories, knitted or crocheted | Manufacture from materials classified in a heading other than that of the product, except from materials of heading 61.17 |
| 61.17 | Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories. | Manufacture from materials classified within a heading other than that of the product, except from materials from other headings of this Chapter. |

Men's or boys' shirts, knitted or crocheted of tariff Heading 61.05.

Rule: CTH except from cotton fabrics and goods of heading 61.17.

These products will qualify as originating in COMESA if they are made from imported fabrics other than cotton, and also if they have not been made from parts and accessories of heading 61.17.

4.5.7 Goods of Particular Importance to Economic Development – (Rule 2(1) (C) of the Protocol)

The goods have been produced in the Member States and should be designated by Council as “goods of particular importance to the economic development of the Member States” and should contain not less than 25% value-added, notwithstanding the provisions of Rule 2(1)(b)(ii) above.

These goods are specified in Appendix VI of the COMESA Rules.

Examples:

Tariff Heading Commodity description

HS 25.23 Portland cement;

HS 84.53 Machinery for preparing hides; etc.

4.5.8 Direct Consignment Rule

The Rules provide that goods should be consigned directly from one Member State to a consignee in another Member State. This implies that goods should be transported directly from a consignor in another Member State. However, goods can be consigned from one-member state to another Member States to another indirectly as long as the principles governing direct consignment as discussed above are met.

4.5.9 Cumulation

Rule 2(3) of the COMESA Rules of Origin provides that Raw materials or semi-finished goods originating in accordance with the provisions of this Protocol in any of the Member States and undergoing working or processing either in one or two or in more States shall, for the purpose of determining the origin of a finished product, be deemed to have originated in the Member State where the final processing or manufacturing takes place. This means that full cumulation applies within the COMESA.

4.5.10 Processes Not Conferring Origin (Rule 5 of the Protocol)

The Protocol contains a list of operations and processes, which shall be considered as insufficient to support a claim that goods originate from a Member State.

The list is as follows:

- (a) packaging, bottling, placing in flasks, bags, cases and boxes, fixing on cards or boards and all other simple packaging operations;
- (b) (i) simple mixing of ingredients imported from outside Member States
- (ii) simple assembly of components and parts imported from outside the Member States to constitute a complete product;
- (iii) simple mixing and assembly where the costs of the ingredients, parts and components imported from outside Member States and used in any of such processes exceed 60 per cent of the total costs of the ingredients, parts and components used.
- (c) operations to ensure the preservation of merchandise in good condition during transportation and storage such as ventilation, spreading out, drying, freezing, placing in brine, sulphur dioxide or other aqueous solutions, removal of damaged parts and similar operations;
- (d) changes of packing and breaking up of or assembly of consignments;
- (e) marking, labelling or affixing other like distinguishing signs on products or their packages;
- (f) simple operations consisting of removal of dust, sifting or screening, sorting, classifying and matching, including the making up of sets of goods, washing, painting and cutting up;
- (g) a combination of two or more operations specified in sub-paragraph (a) to (f) of this Rule;
- (h) Slaughter of animals.

Products resulting from these operations and processes retain their foreign origin and are thus not entitled to preferential tariff treatment.

4.5.11 Unit of Qualification Rule 6(1&2)

The COMESA ROO provide that each item in a consignment shall be considered separately. However, where particular items constitute the standard equipment customarily included on the sale of articles of that kind they shall be treated as part of that article.

Examples:

- Where the HS Code specifies that a group, set or assembly of articles is to be classified within a single heading, such a

group, set or assembly shall be treated as one article;

- Tools, parts and accessories, which are imported with an article, and the price of which is included in that of the article or for which no separate charge is made, shall be considered as forming a whole with the article: a vehicle imported with its spare wheel. The spare wheel and jack are part of the vehicle and in the determination of origin they will take the origin of the vehicle.

As a general principle, goods are treated as a single article if they are so treated for purposes of assessing customs duties on like articles by the importing Member State.

4.5.12 Split Consignments (Rule 6(3) of the Protocol)

Unassembled or disassembled articles, which for transport or production reasons may have to be exported at different times shall for purposes of granting preference, be treated as one article.

This means that upon importation of the first consignment the importer should agree with the Customs authorities for the goods to be treated as one article and hence a single proof of origin (certificate) should be produced.

4.5.13 Separation of Materials

There are some industries or processes or circumstances where in the process of production it is impossible to physically separate originating and non-originating materials because they may be similar. For instance, a vehicle wiring system made with originating and non-originating copper wire.

Rule 7 provides that such separation may be replaced by an appropriate accounting system, which ensures that no more goods are deemed to originate in the Member State than would have been the case if the producer had been able physically to separate the materials. And that the Council shall set the conditions that the system has to conform to ensure that adequate control measures shall be applied.

4.5.14 Treatment of Mixtures

In the case of mixtures, not being groups, sets or

assemblies of goods dealt with under Rule 6 of this Protocol, a Member State in application of Rule 8 may refuse to accept as originating in the Member States any product resulting from the mixing together of goods, which would qualify as originating in the Member States with goods which would not qualify, if the characteristics of the product as a whole are not different from the characteristics of the goods which have been mixed.

The Council, upon the recommendation of the Committee through Intergovernmental Committee may set conditions under which the above may not apply.

4.5.15 Treatment of Packing

Rule 9 provides as follows:

1. Where for purposes of assessing customs duties, a Member State treats goods separately from their packing, it may also, in respect of its imports consigned from another Member State, determine separately the origin of such packing.
2. Where 1 of this Rule is not applicable, packing shall be considered as forming a whole with the goods and no part of any packing required for their transport or storage shall be considered as having been imported from outside the Member States when determining the origin of the goods as a whole. (This is the conventional way of treating packaging material). This however only applies to the packing with which goods are ordinarily sold at retail shall not be regarded as packing required for the transport or storage of goods.
3. Containers which are used purely for the transport and temporary storage of goods and are to be returned shall not be subject to customs duties and other charges of equivalent effect. Where containers are not to be returned, they shall be treated separately from the goods contained in them and be subject to import duties and other charges of equivalent effect.

4.5.16 Goods Produced Under EPZ and License

The Manual on the Application (2.12&3) of the COMESA ROO Provides as follows:

- Goods produced in Export Processing Zones within member States shall be granted preferential tariff treatment if they meet the requirements of the

COMESA Rules of Origin.

- Goods produced under license shall be granted preferential tariff treatment if they meet the requirements of the COMESA Rules of Origin. Companies manufacturing goods under license of international firms should ensure that the outer package of the product shows the name and address of the company producing the products in the Member State. This will enable the goods in question to be considered as goods of COMESA origin.

4.6 Re-Exportation of COMESA Originating Goods

There are cases where person imports originating goods to their country and due to commercial reasons (lack of markets, better prices etc.) they want to export the same goods to another COMESA State. Such re-exportation is subject to the provisions 3.9 of the Manual on the application of the COMESA ROO and are subject to the following

- (a) the goods remain under customs control and do not undergo any operations except those meant to preserve the goods, loading and reloading;
- (b) the re-exporter in the second COMESA exporting Member State shall make an application on the form shown in Annex VII. After the approval the exporter shall submit an export customs declaration together with the COMESA Certificate of re-exportation of Originating Goods as shown in Annex VIII. A photocopy of the original Certificate of Origin shall be attached to the certificate of re-Exportation of Originating Goods.
- (c) the Certificate of re-Exportation of Originating Goods shall be accordingly approved and provided to the re-exporter.

4.7 Retrospective Issuance of the Certificate of Origin

A certificate of origin is said to be issued retrospectively if it is issued after the goods to which it relates to have already been exported. This could be a result of delays in processing of paper work, nature of goods especially where they are perishable among other. The Manual on the Application of the COMESA Rules of Origin 3.10 provides for such issuance as follows:

- A registered exporter makes an application in writing to the designated authority stating the reasons for such an issue and attaches in his application, copies of the export documentation of the products to which the Certificate relates.
- A Certificate of Origin will be issued retrospectively if an application is made within three months from the date of exportation of the products.

A Designated Competent Authority will issue a certificate after exportation/ retrospectively if:

- i) No Certificate of Origin was issued at the time of exportation;
- ii) The Certificate contained involuntary clerical or typing errors or involuntary omissions; and
- iii) Any other unforeseen circumstances relating to the issuance of the Certificate of Origin as accepted by the designated authority.

The issuing authority must insert and endorse the following insert in Box 5 of the form:

“ISSUED RETROSPECTIVELY”

4.8 Issuance of Replacement Certificates of Origin

A replacement Certificate of Origin can be issued if a registered exporter makes an application in writing to the designated authority stating the reasons for such an issue.

Replacement certificates are issued in case of theft, loss and destruction of the original Certificate of Origin.

The issuing authority must insert and endorse the following insert in Box 5 of the form:

“REPLACEMENT CERTIFICATE NO..... OF
CERTIFICATE OF ORIGIN NO.....
ISSUED ON.....”

4.9 Learning Activities

1. Distinguish between the criteria under the EAC Rules of Origin, 2015 and the COMESA Rules of Origin,
2. Computation of ex-factory cost using an example and clearly explaining the difference between ex-factory cost and ex-factory/works price.

4.10 Self-Assessment Questions and Activities

1. Give five examples of processes that do not confer origin.
2. Discuss the meaning of retrospective issuance of Certificates of Origin and the situations under which a COMESA Certificates of Origin may be issued retrospectively.
3. What consists of a unit of qualification under the COMESA Rules of Origin? Discuss how this concept is not contradicted when consignments have to be split.

4.11 References

- Rules of Origin of the Common Market for Eastern and Southern Africa
- COMESA Treaty (1993)
- EAC (2015). Manual on the Application of the East African Community Customs Union (Rules of Origin) Rules, 2015. Directorate of Customs, EAC Secretariat, Arusha, Tanzania
- United Nations Conference on Trade and Development (UNCTAD) (2013). Generalized System of Preferences: Handbook on the Rules of Origin of the European Union. UNCTAD
- Inama, S. (2009). Rules of Origin in International Trade. Cambridge University Press.
- East African Community Customs Management Act (EACCMA), 2004
- East African Community Customs Management Act Regulations (EACCMAR), 2004

5.0 SADC RULES OF ORIGIN (ANNEX I OF THE SADC PROTOCOL ON TRADE)

5.1 Specific Learning Outcomes

At the end of this topic the trainee should be able:

- i. Identify the Scope of the SADC Rules of Origin
- ii. Explain the SADC Origin Criteria
- iii. Explain how to determine origin status of manufactured goods under SADC ROO.

5.2 Introduction

The SADC Protocol on Trade provides that goods shall be accepted as eligible for preferential treatment when traded among SADC Member States if they originate in the Member States, and the qualification of such products shall be as provided in Article 3 and Appendix 1 of Annex 1 of SADC Protocol on Trade.

Rules of origin are needed to provide a transparent, clear and predictable criterion for determining whether or not the traded products are eligible for the benefits the SADC Free Trade area provides.

5.3 Definition of SADC Rules of Origin

SADC Rules of Origin are a set of criteria that is used to distinguish between goods that are produced within the SADC Member States and are entitled to preferential tariff treatment and those that are considered to have been produced outside SADC region that attract Most Favoured Nations (MFN) tariff rates.

5.4 SADC Origin Criteria

Annex I Rule 2 of the SADC Protocol on Trade as read with section 3 of the Rules of Origin Regulations sets out the origin criteria on which goods are deemed to be of SADC origin.

Such products shall be considered as originating in a Member State if it has either been wholly produced or has been sufficiently worked or processed in that Member State.

5.5 Origin Criteria

For the purpose of implementing this the SADC Rules of Origin, goods shall be accepted as originating in a Member State if they are consigned directly from a Member State to a consignee in another Member State and:

- (a) they have been wholly produced in any Member State as provided for in Rule 4 of this Annex; or
- (b) they have been obtained in any Member State incorporating materials which have not been wholly produced there, provided that such materials have undergone sufficient working or processing in any Member State within the meaning of paragraph 2 of this Rule.

Paragraph 2 explains what is meant by sufficiently worked. It has three provisions as follow:

- i. For the purpose of this Rule, products, which are not wholly produced, are considered to be sufficiently worked or processed when the conditions set out in the list in Appendix I of this Annex are fulfilled.

| HS HEADING NO. | DESCRIPTION OF PRODUCTS | WORKING OR PROCESSING CARRIED OUT ON NON-ORIGINATING MATERIALS THAT CONFERS ORIGINATING STATUS |
|----------------|--------------------------------|---|
| 1 | 2 | 3 |
| Chapter 22 | Beverages, spirits and vinegar | Manufacture: - from materials of any heading except that of the product; and - in which any material derived from grapes used must be wholly produced |

In this case all products whose raw materials are imported will meet the origin criteria if they are classified in a heading other than the one they are in. However, if they contain grapes or derivatives of grapes, the grapes must be wholly produced.

| HS HEADING No. | DESCRIPTION OF PRODUCTS | WORKING OR PROCESSING CARRIED OUT ON NONORIGINATING MATERIALS THAT CONFERS ORIGINATING STATUS | |
|--|-----------------------------|--|--|
| 1 | 2 | 3 | 4 |
| 5501 to 5511 | Man-made staple fibres | Manufacture from materials of any heading except that of the product | |
| 5512 to 5516 Woven fabrics of man-made staple fibres: | | | |
| | Incorporating rubber thread | Manufacture from single yarn | Manufacture from single yarn |
| | - Other | Manufacture from: - coir yarn; - natural fibres; - man-made staple fibres not carded or combed or otherwise prepared for spinning; - chemical materials or textile pulp; or - paper or Printing accompanied by at least two preparatory or finishing operations (such as scouring, bleaching, mercerising, heat setting, raising, calendering, shrink resistance processing, permanent finishing, decatizing, impregnating, mending and burling) where the value of the unprinted fabric used does not exceed 47.5% of the ex-works price of the product | Manufacture from single yarn or Printing accompanied by at least two preparatory or finishing operations (such as scouring, bleaching, mercerising, heat setting, raising, calendering, shrink resistance processing, permanent finishing, decatizing, impregnating, mending and burling) where the value of the unprinted fabric used does not exceed 47.5% of the ex-works price of the product |

For Headings 55.01-55.11 all the SADC Member States apply the criterion in column three. For Headings 55.12-55.16 MMTZ countries will apply the criteria in column 4.

- ii. The conditions referred to in subparagraph (a) indicate, for all products covered by this Protocol, the working and processing which must be carried out on non-originating materials used in manufacturing and apply only in relation to such materials. Accordingly, it follows that if a product, which has acquired originating status by fulfilling the conditions set out in this list, is used in the manufacture of another product, the conditions applicable to the product in which it is incorporated do not apply to it, and no account shall be taken of the non-originating materials which may have been used in its manufacture.

Paragraph two above refers to the ABSORPTION PRINCIPLE in the meaning of SADC Rules of Origin

- iii. Notwithstanding the provisions of subparagraph (a), products of HS chapters 50 to 63 exported to SACU by MMTZ Member States (meaning the Republic of Malawi, the Republic of Mozambique, the United Republic of Tanzania and the Republic of Zambia) will be considered to be sufficiently worked or processed when the conditions set out in column 4 of the list in Appendix I are fulfilled, subject to such quantitative limits, time periods and arrangements for the administration and enforcement of such quantitative limits as agreed upon by the CMT on 4 August 2000.

Non originating materials are defined as:

- i) Materials or components imported from a non SADC country; or
- ii) Materials produced in a SADC country but, do not meet the rule of origin.

5.5.1 Wholly Produced Criterion (Rule 4)

Wholly produced goods are those that contain no element of non-originating materials in them. The list below shows examples as per Rule 4 of the SADC ROO:

- a. Mineral products extracted from the ground or seabed of a Member State;
- b. Vegetable products harvested in a Member State;

- c. Live animals born and raised in a Member State;
- d. Used articles collected in a Member State fit only for the recovery of raw materials;
- e. Products produced in a Member State exclusively from one or both of wholly produced raw materials or materials containing no element imported from outside the Member States or of undetermined origin.

In determining the place of production of marine, river, or lake products and goods in relation to a Member State, a vessel of a Member State shall be regarded as part of the territory of that Member State. In determining the place from which goods originated, marine, river or lake products taken from the sea, river or lake or goods produced in a vessel of a Member State at sea or on a river or lake shall be regarded as having their origin in the territory of a Member State and have been brought directly to the territory of the Member State.

5.5.2 Vessel of a Member State

A vessel shall be regarded as a vessel of a Member State if it is registered in a Member State and satisfies one of the following conditions:

- (a) The vessel sails under the flag of a Member State;
- (b) At least 75 percent of the officers and crew of the vessel are nationals of a Member State;
- (c) At least the majority control and equity holding in respect of the vessel are held by nationals of a Member State or institution, agency, enterprise or corporation of the Government of such Member State.

5.5.3 Value Tolerance

In the application of the Appendix I where non-originating materials which, according to the conditions set out in the list the Appendix I, should not be used in the manufacture of a product may nevertheless be used, provided that:

- i) their total value does not exceed 15 per cent of the ex-works price of the product; and

- ii) any of the percentages given in the list for the maximum value of non-originating materials are not exceeded through the application of this subparagraph.

The application of the provisions above on Tolerance shall not apply to products falling within HS chapters 50 to 63, 87 and 98.

Example

A product uses two materials, A and B, both non-originating materials. As a result of its transformation into the finished product, A makes the required HS classification change but B does not make the required change, the finished product will not qualify unless the value of B is more than 15% of the ex-works price of the item.

Note: To determine the percentage content of added value on non-originating materials on the finished product the producer should subtract the value of imported material (customs value) from the ex-factory price. In most cases, the customs value of non-originating material is the total amount it cost the producer to purchase the material and the cost of getting them at the first port of entry into the Member State where production process will be first carried out. Then divide the difference by the ex-factory price and convert the result to a percentage.

5.5.4 Cumulative Treatment

For the purposes of implementing this the SADC ROO, the Member States shall be considered as one territory; this allows for the Member States to source raw materials from each other. When the materials sourced from another Member State are incorporated in production in another State, they shall be deemed to originate in the Member State where the last substantial process took place.

This also means that raw materials or semi-finished goods originating in accordance with the provisions of this Annex in any of the Member States and undergoing working or processing either in one or more Member States shall, for the purpose of determining the origin of a finished product, be deemed to have originated in the Member State where the final processing or manufacturing takes place.

However certain agricultural products are not eligible for cumulation so that notwithstanding any provision in the SADC ROO, agricultural products, whether or not processed in any way, obtained, or partially obtained from food aid or monetization or similar assistance measures, including arrangements based on non-commercial terms, shall not be eligible for any preferential treatment under this Protocol.

Example

Sugar cane harvested in Swaziland, crushed in South Africa and refined in Zimbabwe or Zimbabwe may import sugar cane from Swaziland, crush, mill and refine it, sugar the end product, *will be regarded as originating in Zimbabwe.*

5.5.5 Processes Not Conferring Origin (Annex I Rule 3 of the SADC Protocol on Trade)

Rule 3 contains a list of operations and processes, which shall be considered as insufficient to support a claim that goods made from non-originating materials even though the working carried out may seem to satisfy the criteria as defined in the Appendix (for example: while some operations may meet the CTH criterion, the product will be deemed not to originate because the operations carried out are simple operation and not sufficient to confer origin.

The list includes the following examples:

- a) Packing, packaging and other preparations or processes for shipping and for sales or preservation in good condition;
- b) Mere dilution, blending and other types of mixing;
- c) Simple assembly or combining operations;
- d) Slaughter of Animals;
- e) Any process or work in respect of which it may be demonstrated, on the basis of the preponderance of evidence, that the sole objective was to circumvent the rules.
- f) A combination of two or more insufficient working or processing operations does not confer origin, regardless of whether the product-specific rules of origin have been satisfied or not.
- g) All the operations carried out in the Member States on a given product shall be considered together when determining whether they are to be regarded as insufficient within the meaning of this Rule.

5.5.6 Neutral Elements

Electrical power, fuel, plant machinery and tools used in the production of goods shall always be regarded as wholly produced within the Region when determining the origin of the goods.

5.5.7 Unit of Qualification (Rule 5)

Each item in a consignment shall be considered separately. However, the interpretative rules of the Harmonized System shall apply in the case of sets, tools parts and accessories. In addition, goods shall be treated as a single article if they are so treated for purposes of assessing Customs duties on like articles by the importing Member State.

An un-assembled or dis-assembled article which is imported in more than one consignment because it is not feasible for transport or production reasons to import it in a single consignment, shall be treated as one article.

5.5.8 Separation of Materials (Rule 6)

Where it would be impracticable for the producers to physically separate materials of similar character but different origin used in the production of goods, such separation may be replaced by an appropriate accounting system which ensures that no more goods are deemed to originate in the Member State than would have been the case if the producer had been able to physically separate the materials. To ensure that adequate control measures are applied The Council of Minister responsible for Trade (CMT) shall set the conditions that the system must conform to.

5.5.9 Treatment of Mixtures (Rules 7)

In the case of mixtures, not being groups, sets or assemblies of goods dealt with under Rule 5 as explained above, any product resulting from the mixing together of goods originating in the Member States with goods which would not qualify as originating in the Member States, would not qualify as originating if the characteristics of the product as a whole are not different from the characteristics of the goods which have been mixed.

The Council may set conditions where the above may be set aside for that part of the mixture that is originating.

5.5.10 Treatment of Packing (Rule 8)

A Member State treats the origin of the goods separately from the origin of the packing when assessing customs duties, may also, in respect of its imports cosigned from another Member State, determine separately the origin of such packing.

Otherwise packing shall be considered as forming a whole with the goods and no part of any packing required for their transport or storage shall be considered as having been imported from outside the Member States when determining the origin of the goods as a whole.

Note:

- packing with which goods are ordinarily sold at retail shall not be regarded as packing required for the transport or storage of goods.
- Containers which are purely for the transport and temporary storage of goods and are to be returned shall not be subject to Customs duties and other charges of equivalent effect.
- Where containers are not to be returned; they shall be treated separately from the goods contained in them and be subjected to Customs duties and other charges of equivalent effect.

5.5.11 Documentary Evidence (Rule 9)

- The claim that goods shall be accepted as originating from a Member State in accordance with the provision of SADC Rules of Origin shall be supported by a certificate given by the exporter or their authorized representative in the form prescribed in Appendix II of the Rules. The certificate shall be authenticated with a seal by an authority designated for this purpose by each Member State. Certificate of Origin duly signed by the exporter and authenticated with a seal and signature by the designated authorities of the country of export:
 - (i) giving an exact description of the products;
 - (ii) Origin criteria
 - (iii) Consignee and consignor
- Where the exporter of goods is not the producer, the producer of the goods shall, in respect of goods intended for export, furnish the exporter with a written declaration in conformity with Appendix III of the Rules to the effect that the goods qualify as originating in the Member State.

- An importing Member State may in exceptional circumstances and notwithstanding the presentation of a certificate issued in accordance with the provisions of these Rules, require, in case of doubt, further verification of the information contained in the certificate. Member States shall assist each other in this process and such a request for verification should be responded to within three months of the request being in the prescribed form that is Appendix IV to the Rules.
- The importing Member State shall not prevent the importer from taking delivery of goods solely on the grounds that it requires further evidence, but may require security for any duty or other charge which may be payable: provided that where goods are subject to any prohibitions, the conditions for delivery under security shall not apply.
- Copies of certificates of origin and other relevant documentary evidence shall be preserved by the appropriate authorities of the Member States for at least five years.
- For the purpose of administrative cooperation, Member States shall deposit with the Secretariat the names of Departments and Agencies authorized (Competent Authorities) to issue the certificates as well as the names and specimen signatures of officials authorized to sign the certificates and the impressions of the official stamps to be used for that Purpose.
- The secretariat shall circulate the signatures to the Member States promptly.

5.5.12 Infringement and Penalties (Rule 10)

- Any Member State to which an untrue claim is made in respect of the origin of goods shall immediately bring the issue to the attention of the exporting Member State from which the untrue claim is made, in accordance with the provisions on mutual assistance and co-operation in customs.
- Continued infringement by a Member State of the provisions of this Annex may be dealt with in accordance with the provisions of Annex VI of the Protocol.

5.6 Step by Step Guide to Determining Origin Status of Manufactured Goods

In determination of whether a product qualifies as an originating good under the SADC FTA Rules of Origin, the following steps apply

Step 1

- Was the product last processed in one of the SADC FTA countries?
- If yes, go to step 2.
- If no, the product does not qualify.

Step 2

- Do any of the materials or components used in the product originate from outside a SADC FTA country?
- If yes, go to step 3. (If you do not know the origin of any material, you have to assume it does not originate in a SADC FTA country.)
- If no, the product qualifies. Go to Step 8.

Step 3

- Determine the HS classification number of the product being imported into SADC FTA Country. Usually, the six-digit, subheading level is sufficient.

Step 4

- Using the HS Code, identify the specific rule of origin in Appendix I of Annex I that applies to the product.

Step 5

- Determine the HS Codes of the non-originating materials or components you used to produce the product in a SADC FTA country.

Step 6

- Does the change from the HS Code of the non-originating materials to the HS classification of the product imported into the SADC FTA country meet the classification change required in the specific rule of origin you identified in Step 4?
- If yes, the HS classification change requirement is met. Go to Step 7.
- If no, the product does not qualify, unless it falls under certain exemptions.

- If the value of the non-originating materials that do not meet the HS classification change requirement is not more than 10% of the ex-works price of the item, the value tolerance exemption may apply, and the product may qualify as an originating product, if it meets all other requirements of the rule of origin.

Step 7

- Does the specific rule contain an RVC test?
- If no, and the HS classification change requirement is met, it qualifies as an originating product. Go to Step 8.
- If yes, do the RVC test to establish the ex-factory price of the product.

Step 8

- Complete the Certificate of Origin if the product is originating.

5.7 Learning Activities

Fill out a sample Certificate of Origin and explain the meaning of information filled in each category.

5.8 Self-Assessment Questions and Activities

1. Explain the difference in application of the substantial transformation criteria for articles of Chapters 50 – 63 for MMTZ States as compared to other SADC Member States.
2. Distinguish the difference in application of the Rule on Separation of Materials and that on Treatment of Mixtures

5.9 References

- Southern African Development Community (SADC). (2003). Rules of Origin: Exporters Guide Manual. SADC
- Southern African Development Community (SADC). (nd). Annex I Concerning the Rules of Origin for Products to be Traded Between the Member States of the Southern African Development Community
- Southern African Development Community (SADC). (1996). Protocol on Trade. Amended in 2000, 2007, and 2008.
- EAC (2015). Manual on the Application of the East African Community Customs Union (Rules of Origin) Rules, 2015. Directorate of Customs, EAC Secretariat, Arusha, Tanzania
- United Nations Conference on Trade and Development (UNCTAD) (2013). Generalized System of Preferences: Handbook on the Rules of Origin of the European Union. UNCTAD

6.0 GENERALISED SYSTEM OF PREFERENCES (GSP)

6.1 Specific Learning Outcomes

At the end of this topic the trainee should be able to:

- i. Explain what a GSP Scheme is
- ii. Explain the objectives of GSP
- iii. Discuss the rules of GSP
- iv. Identify International GSP Programs

6.2 Overview of a Generalized System of Preferences (GSP)

The Generalized System of Preferences, or GSP, is a preferential tariff system which provides tariff reduction on various products. The GSP provides nonreciprocal, duty-free tariff treatment to certain products imported into developed countries from designated beneficiary developing countries (BDCs). The United States, the European Union (EU), and other developed countries have implemented similar programs since the 1970s in order to promote economic growth in developing nations.

In 1971 UNCTAD established the GSP Scheme with the aim for developed countries to help developing countries integrate into the world economy by allowing products made in those countries to preferential access their markets. The countries granting the preferential access are called DONOR COUNTRIES, while those from which the goods originate are called BENEFICIARY COUNTRIES. Donor countries set the terms, rules and conditions that are to be met by goods from the beneficiary countries. The rules vary from donor country to donor country and are not negotiated with the beneficiary countries.

6.3 Objectives of a Generalized System of Preferences (GSP)

The basic principle behind GSP trade programs worldwide is to provide developing countries with unilateral preferential market access to developed-country markets in order to spur economic growth in poorer countries. The preferential access is in the form of lower tariff rates (or as in the U.S. case, duty-free status) for certain products that are determined not to be “import sensitive” in the receiving country market.

The GSP concept and programs were established based on the premise that preferential tariff rates in developed country markets could promote export-driven industry growth in developing countries. It was believed that this, in turn, would help to free beneficiaries from heavy dependence on trade in primary products (e.g., raw materials), and help diversify their economies to promote stable growth.

6.4 Generalized System of Preferences (GSP) Rules

GSP Rules are unilateral. This means that the donor country set terms and conditions that the beneficiaries will meet in order to benefit from its scheme. In developing their individual GSP Schemes Donor Countries should ensure that the GSP Rules formulated are:

- Generalized;
- Non-discriminatory; and
- Non-reciprocal

The rules should also adhere to all the other principles that guide the development and application of Rules of Origin

Although not specifically allowed or codified in the GATT, the programs of most GSP-granting countries place certain conditions on the nonreciprocal preferences. These include:

1. Excluding certain countries
2. Determining specific product coverage;
3. Determining rules of origin governing the preference;
4. Determining the duration of the scheme;
5. Reducing preferential margins accruing to developing countries by continuing to lower or remove tariffs as a result of multilateral, bilateral, and regional negotiations;
6. Preventing the concentration of benefits among a few countries;
7. Including safeguard mechanisms or “escape” clauses to protect import-sensitive industries; and
8. Placing caps on the volume of duty-free trade entering under their programs.

6.5 International GSP Programs

The GST instituted by UNCTAD in 1971 has the following 15 countries and territories grant GSP preferences: Armenia, Australia, Belarus, Canada, the European Union (this comprises of all the EU

Member States viewed together as one block), Iceland, Japan, Kazakhstan, New Zealand, Norway, the Russian Federation, Switzerland, Turkey, United Kingdom and the United States of America.

Generally, each preference-granting country extends to qualifying developing countries (as determined by each benefactor) an exemption from duties (reduced tariffs or duty-free access) on most manufactured products and certain “non-sensitive” agricultural products. Product coverage and the type of preferential treatment offered varies widely.

For GSP, each preference-granting country establishes particular criteria and conditions for defining and identifying developing country beneficiaries. Consequently, the list of beneficiaries and exceptions may vary greatly among countries. If political or economic changes have taken place in a beneficiary country, it might be excluded from GSP programs in some countries but not in others. For example, the EU recently suspended Cambodia’s GSP membership due to concerns over human rights abuses, while it remains a GSP beneficiary in the U.S. program.

Some countries, including the United States, also reserve the right to exclude countries if they have entered into another kind of commercial arrangement (e.g., a free trade agreement) with any other GSP-granting developed country, and in the U.S. case, “if it has, or is likely to have, a significant adverse effect on United States commerce.”

In terms of additional GSP product coverage for LDCs, the EU’s program, which offers duty-free access for “Everything but Arms,” is currently perhaps the most inclusive. GSP-granting countries may also have incentive-based programs that provide enhanced benefits for beneficiary countries that meet certain additional criteria. In 2007, for example, the EU implemented a regulation that grants additional GSP benefits to countries that have demonstrated their commitment to sustainable development and internationally recognized worker rights.

Each preference-granting nation also has safeguards in place to ensure that any significant increases in imports of a certain product do not adversely affect the receiving country’s domestic market. Generally, these restrictions take the form of quantitative limits on goods entering under GSP. Under Japan’s system, for example, imports of certain products under the preference are limited by quantity or value (whichever is applicable) on a first-come, first-served basis, administered monthly (or daily, if indicated). For other products, import ceilings and maximum country amounts are set by prior allotment. The United States quantitatively limits imports under the GSP program by placing “competitive need limit” (CNL) thresholds on the quantity or value of commodities entering duty-free.

Each GSP benefactor also has criteria for graduation—the point at which beneficiaries no longer qualify for benefits because they have reached a certain level of development. Most preference-granting countries require mandatory graduation based on a certain level of income per capita based on World Bank calculations. Some programs, such as the EU’s, also specifically provide for graduation of certain GSP recipients with respect to specific product sectors.

6.6 Learning Activities

Activity 1

Visit <https://unctad.org/topic/trade-agreements/generalized-system-of-preferences>

Download and read the following documents:

- Quantifying the Benefits Obtained by Developing Countries from the Generalized System of Preferences (UNCTAD/ITCD/TSB/Misc.52)
- Trade Preferences for Least Developed Countries: An Early Assessment of Benefits and Possible Improvements (UNCTAD/ITCD/TSB/2003/8)

Required:

1. Provide a summary of the benefits of the Generalized System of Preferences to the developed countries
2. Discuss the challenges faced in the implementation of the Generalized System of Preferences

Activity 2

Visit <https://unctad.org/topic/trade-agreements/generalized-system-of-preferences>

Download and read the following documents:

- Generalized System of Preferences: List of Beneficiaries (UNCTAD/ITCD/TSB/Misc.62/Rev.6)

Required:

Identify the Generalized System of Preferences Schemes that each of the following EAC Members participate in:

1. Burundi
2. Kenya
3. Uganda
4. Tanzania
5. Rwanda
6. South Sudan

6.7 Self-Assessment Questions and Activities

1. Explain the benefits of the GSP Schemes
2. Discuss the rules of the GSP Schemes
3. Discuss the challenges developing countries face in participating in multiple GSPs

6.8 References

- UNCTAD (2021). “About GSP,” <http://www.unctad.org>.
- UNCTAD (2021). Generalized System of Preferences. <https://unctad.org/topic/trade-agreements/generalized-system-of-preferences>
- UNCTAD (2018). Generalized System of Preferences: List of Beneficiaries (UNCTAD/ITCD/TSB/Misc.62/Rev.6)
- UNCTAD (1999). Quantifying the Benefits Obtained by Developing Countries from the Generalized System of Preferences (UNCTAD/ITCD/TSB/Misc.52)
- UNCTAD (2003). Trade Preferences for Least Developed Countries: An Early Assessment of Benefits and Possible Improvements (UNCTAD/ITCD/TSB/2003/8)
- Sanchez Arnau, Juan C. (2002). The Generalized System of Preferences and the World Trade Organization. London: Cameron May, Ltd.

7.0 EUROPEAN UNION GENERALISED SYSTEM OF PREFERENCES (EU-GSP)

7.1 Specific Learning Outcomes

At the end of this topic the trainee should be able to:

- i. Explain the EU GSP Rules of Origin
- ii. Explain the conditions to benefit from the EU-GSP
- iii. Explain the basic structure of EU-GSP
- iv. Explain the EU-GSP proof of origin
- v. Explain how to use the origin documents

7.2 Introduction

The EU-GSP is the EU trade policy's main tool to support developing countries and their efforts to pursue sustainable development. It removes import duties from products coming into the EU from developing countries. It aims to help developing countries to alleviate poverty and create jobs, while at the same time abiding by international values and principles.

7.3 EU-GSP Scheme

The EU-GSP has three different arrangements to give preferential access to the EU market.

1. STANDARD GSP

The general arrangement grants duty reductions for around 66% of all EU tariff lines to low income or lower-middle income countries (according to the World Bank classification), which do not benefit from other preferential trade access to the EU market.

2. GSP+

The special incentive arrangement for Sustainable Development and Good Governance ('GSP+') grants full duty suspension for essentially the same 66% of tariff lines as the Standard GSP to eligible countries that are vulnerable in terms of their economic diversification and export volumes. In return, beneficiary countries must ratify and effectively implement 27 international conventions, which cover human and labour rights, environmental protection and good governance.

3. EBA (Everything But Arms)

The special arrangement Everything

But Arms ('EBA') grants full duty-free, quota-free access for all products except arms and ammunition to countries classified by the United Nations as Least Developed Countries (LDCs). Unlike for the beneficiaries of the Standard GSP and GSP+, LDCs benefitting from the EBA do not lose EBA status by entering into a trade agreement with the EU

The provisions relating to the rules of origin (ROO) of the EU GSP scheme are contained Commission Implementing Regulation 2015/2447 and Commission Delegated Regulation 2015/2446.

7.4 Conditions to Benefit from the EU-GSP

In order for goods to benefit from the EU GSP upon importation into the EU, three conditions must be fulfilled:

- the goods must originate in a beneficiary country in accordance with the EU GSP ROO;
Products are considered to originate in a particular beneficiary country if they are:
 - (i) wholly obtained in that beneficiary country, (applies mainly to things occurring naturally in a beneficiary country or as allowed by cumulation and to goods produced entirely from them); or
 - (ii) sufficiently worked or processed in that beneficiary country.
- during transportation from a beneficiary country to the EU, the goods must not be altered, transformed or subjected to operations other than operations performed in order to preserve them in good condition; and
- a valid proof of origin must be submitted (, statement on origin under the REX System)

The meaning of sufficient working or processing, depends on the product in question. Annex 22-03 of Commission Delegated Regulation 2015/2446 contains a list of products and sets out the conditions to be fulfilled by the product for it to be deemed to originate.

The structure of this list is to be applied as follows for determination of the origin criteria:

The list consists of 3 columns,

- (i) column 1 states the HS heading or

- sub-heading of the product,
- (ii) column 2 contains the description of the goods which come under the HS heading or subheading in question and
- (iii) column 3 contains the applicable criteria. For certain headings and sub-headings, a differentiation has been done for least developed countries and other beneficiary countries. Where this is the case the third column is split between the qualifying operation applicable to least-developed countries and the qualifying operation applicable to other countries.

In describing what amount of working or processing can be considered as “sufficient for each product, the list contains one of four criteria, or combinations of these criteria:

- a) The change of heading/classification criterion
An example is the manufacture of a straw basket, classified under heading 4602 of the HS. The list shows for the whole of Chapter 46 the criterion “manufacture in which all the materials used are classified within a heading other than that of the product”. As the basket is classified under 4602, while the straw material are imported under 1401, the origin criterion is clearly satisfied.

In some cases, the change of tariff sub-heading (at a 6-digit level) rule applies. It works in the same manner as the change of heading rule.

- b) The value or ad valorem criterion, where the value of non-originating materials used may not exceed a given percentage of the ex-works price of a product.
An example is the manufacture of umbrellas of HS heading 6601, where column 3 in the criteria reads “manufacture in which the value of all the materials used does not exceed 70% of the ex-works price of the product”. Here a comparison has to be made between the ex-works price of the product and the value of all non-originating materials. The umbrellas will be deemed to originate according to this criterion of the

value of non-originating material is less than 70% of the ex-works price. This can also be stated in terms of the local content and value added. The umbrellas will be considered to originate if the value derived from local components and the production process account for 30% or more of the ex-works price.

- c) The specific process criterion,
An example of this kind of origin criterion can be found in the textile sector, where the criteria for woven fabrics of cotton of headings 5208 to 5212 of the HS, reads among other “weaving accompanied by dyeing or by coating”. For example, the manufacture of a garment starting from non-originating yarn confers origin. This means that weaving and all subsequent manufacturing stages must be carried out in the beneficiary country.

A process criterion of this kind implies that starting from an earlier manufacturing stage (e.g. chemical material or natural fibre) also confers originating status, while starting from a later stage (e.g. dyeing only) does not.

- d) Working or processing is carried out on certain wholly obtained materials.
An example is the manufacture of preparations used in animal feeding of heading 2309. According to the list the criteria applicable to this product is that “all the materials of Chapters 2 (Meat and edible meat offal) and 3 (fish) used in the manufacture of such products are to be wholly obtained”. This means that EXCEPT for those materials which must be wholly obtained, all other materials used in the production of the animal preparations can be non-originating

7.5 Proof of Origin Under the EU GSP Scheme

The provision of proof of origin under the EU GSP Scheme is done via the Registered Exporter (REX) System. It takes the form of a Web application accessed with a username and a password as a website through Internet.

The beneficiary country registers exporters on the REX System and the registered exporters make statements of origin on their commercial documents in prescribed form.

The statement of origin will take the following form as per ANEXX 22-07 of regulation 2447/2015
“The exporter ... (insert the Number of Registered Exporter) of the products covered by this document declares that, except where otherwise clearly indicated, these products are of (State the Country of Origin) preferential origin according to rules of origin of the Generalized System of Preferences of the European Union and that the origin criterion met is ... (State the applicable origin Criteria)”

7.6 Process of Making the Statement of Origin Under the REX System

The process of Making out the Statement of Origin under the REX System involves the following:

1. The exporter shall fill the Pre-application form and submit it online,
2. The exporter shall sign on box five of the printed form.
3. If the exporter elected to allow publication of his data, he shall also sign on box six of the form. If not, the exporter will leave Box 6 unsigned.
5. The competent authority will study the content and the goods in question to ascertain their eligibility under the GSP Rules of Origin Applicable.
6. If the goods originate, the Competent Authority will register the exporter on the Rex System and notify the exporter of the registration. Note that the effective date of registration is the date the exporter filled the form and not the date they are registered.
7. The exporters will make statements of origin on commercial documentation.

The data of the REX system is published and maybe searched online to verify the validity of the registrations of the registered exporters who submit those statements on origin.

By signing box 6 of the pre-application form, a registered exporter allows all his registration data to be published. The data to be published is all the data contained in the pre-application form.

If he doesn't consent for the publication of all his registered data, an anonymous subset of the registered data including only the REX number of the registered exporter, the date from which the registration is valid and the date of revocation if applicable are published to allow for verification the validity his registration.

4. He shall present the duly signed form to the competent authority. This presentation may take any format (manual or via electronic media) that is acceptable by the competent authority.

7.7 Conclusion Notes

1. Norway, Switzerland and Turkey have in their GSP scheme rules similar to the ones of the EU-GSP scheme. Therefore, the REX system is also applicable for proving origin under their GSP Schemes.
2. As at September 2021 all the Burundi, Kenya, Rwanda, Tanzania and Uganda apply the REX System. South Sudan is yet to apply the REX System and the proof of Origin Applicable is the FORM A GSP Certificate of Origin
3. Each Partner State will apply the respective GSP Schemes of each donor country depending on its designation by the Rules set out in the GSP Scheme of that Donor Country.

7.8 Learning Activities

1. Discuss the accession of each Partner State to the GSP Rex System
2. Discuss which EU-GSP Scheme is applicable to each Partner States and the reasons why.

7.9 Self-Assessment Questions and Activities

1. Distinguish between Standard GSP and Everything But Arms (EBA) in the EU-GSP Scheme stating the criteria used determine how a country qualifies for what scheme.
2. Explain the various forms that substantial transformation is applied under the EU-GSP Scheme.
3. Distinguish between negotiated Rules of Origin (e.g. EAC, COMESA and SADC Rules of Origin) and unilateral Rules of Origin like the EU-GSP Rules

7.10 References

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- United Nations Conference on Trade and Development (UNCTAD) (2013). Generalized System of Preferences: Handbook on the Rules of Origin of the European Union. UNCTAD
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UNIT 5

**CUSTOMS
MANAGEMENT
SYSTEMS**

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LIST OF ABBREVIATIONS AND ACRONYMS

| | |
|--------|--|
| KNESW | Kenya National Electronic Single Window System |
| NEM | National Environmental Management Authority |
| NEMC | National Environmental Management Council |
| PAPP | Price Actually Paid or Payable |
| RECTS | Regional Electronic Cargo Tracking System |
| RTAs | Proliferation of Regional Trade Agreements |
| TFA | Trade Facilitation Agreement |
| TLIP | Trade Logistics Information Pipeline |
| UNCTAD | United Nations Conference on Trade and Development |
| UNCTE | United Nations Conference on Trade and Employment |
| WCO | World Customs Organization |
| WTO | World Trade Organization |

UNIT 5: CUSTOMS MANAGEMENT SYSTEMS

1.0 UNIT OVERVIEW

1.1 Unit Description

This unit describes the competencies required for effective customs declaration and clearance through the Customs Management System (CMS). It addresses procedures for customs declaration; processing a manifest; processing different entries; and, exiting from the Customs area of the system. This course is intended to enable the participants to explain the Customs reform path; create import declaration form, manifest, import entry for home use of commercial goods, temporary importation entry, warehousing entry and gate pass.

This training manual focuses on Customs Management Systems used in Kenya.

1.2 Summary of General Learning Outcomes

At the end of the unit, the trainee should be able to:

1. Determine the Scope of Customs Management System
2. Create Import Declaration Form (IDF)
3. Process manifest
4. Process Entry for Import for home use of commercial goods
5. Process Entry for temporary importation
6. Process Entry for Import Warehousing

2.0 CUSTOMS REFORM PATH

2.1 Learning Outcomes

At the end of this topic the trainee should be able to;

- i. Describe Customs Reform Path
- ii. Describe the scope of CMS
- iii. Explain the purpose of CMS
- iv. Describe the Systems integrated with CMS
- v. Discuss the roles of Customs Agents in CMS
- vi. Describe the statuses of Customs Declarations (CD)
- vii. Explain the SAD Fields

2.2 Introduction

This topic will help learners to understand factors that have led to automation of Customs Management Systems (CMSs) in past years; scope, purpose and benefits of automated CBSs; systems integrated with automated CMSs; roles of Customs Agents in CMSs; status of Customs Declarations; and Single Administrative Document fields.

2.3 Customs Reform and Modernisation Initiatives

The “Customs in the 21st Century” strategy document vividly describes the role of Customs as: “... control the movement of goods and thereby secure the state’s interests and safeguard revenue collection. The key aims have been to ensure compliance with state policies and laws applicable to the cross-border movement of goods, to combat smuggling, and to secure borders, whilst ensuring the facilitation of legitimate trade”. This means that the role of Customs has continued to evolve, from the traditional role of revenue collection towards more complex roles.

Customs Kenya’s mandate, like that of many Customs Administrations globally, includes trade facilitation; revenue collection; protection of society; and collection of national statistics. In order to fulfil its mandate effectively and efficiently, Customs Kenya leveraging on technology.

2.3.1 Factors that Necessitate Automation of Customs Management Systems

According to the World Customs Organization (WCO)¹⁰, the following global realities are creating the pressure on Customs Administrations globally to make reforms and modernize:

- a) Global financial crisis that requires protection and creation of jobs; and collection of all revenues due to the State -

9 World Customs Organization. (2021).

Retrieved from http://www.wcoomd.org/ru-ru/topics/capacity-building/activities-and-programmes/mercator%20programme/cb_support_customs_reform_modernization

10 World Customs Organization (2021).

Retrieved from http://www.wcoomd.org/ru-ru/topics/capacity-building/activities-and-programmes/mercator%20programme/cb_support_customs_reform_modernization

- Customs Administrations help countries to realize these goals by ensuring compliance with the laws governing international trade.
- b) Growing international trade volumes - Growth in trade volumes means that Customs have to process more transactions and the workload is increasing, usually with the same or less resources, especially in times of fiscal austerity.
 - c) New trade rules - With the establishment of the World Trade Organization (WTO) in 1995, countries committed themselves to new international trade rules. The WTO Trade Facilitation Agreement (TFA) requires that Member countries implement reforms and modernization initiatives in order to comply with the various TFA measures.
 - d) Proliferation of Regional Trade Agreements (RTAs) - According to a recent WTO report, some 220 RTAs are estimated to be operational and nearly all WTO Members belong to at least one RTA, with an average of six RTAs per Member. The proliferation of RTAs means that trade is subject to complex preferential rules of origin in addition to rules that are already administered by Customs.
 - e) Traditional trade patterns are changing and participants are increasing - The share of developing countries in world merchandise trade is increasing. Also, global production specialization has advanced, in particular in manufactured goods. The share of parts and components exports within total merchandise exports has greatly increased. This changing structure impacts on the types of transactions handled by many Customs Administrations.
 - f) New logistics and supply chain models - New procedures such as just-in-time distribution, low inventory retention, reverse logistics and multi-modal transport are resulting in innovative methods of moving goods across borders. The needs of modern international business exert pressure on Customs administrations to process goods effectively and efficiently and to minimize delays.
 - g) Emergence of transnational organized crime and terrorist networks - Transnational organized crime and terrorism facilitate many of the serious threats to international

peace and security. Illicit trade activities take the form of smuggling of commercial goods; drugs, counterfeits, dangerous and harmful goods; cross-border money laundering; and commercial fraud such as under-invoicing and misclassification that impedes the collection of state revenue. Customs administrations have a responsibility to stop illicit trade.

- h) Growing concerns regarding public health and the environment - The international community has adopted a number of international instruments aimed at controlling the international movement of harmful and dangerous goods. These international instruments are implemented by Customs administrations at national borders.

Without doubt, the external and internal environment in which Customs Kenya operates has evolved over time, and this has necessitated reform and modernization initiatives. For example, in 1980, Kenya imported goods worth USD 2.05 billion. In 2019, Kenya's imports stood at USD 20.41 billion, which is a 90% increase in import volumes¹¹. Increase in trade volumes has necessitated that Customs Administrations become more effective and efficient in the clearance of cargo, which demands for greater trade facilitation; increased revenue collection; protection of society from illicit trade and goods; and accurate, complete statistics.

Some of the challenges that necessitated Customs Kenya reforms and modernization include:

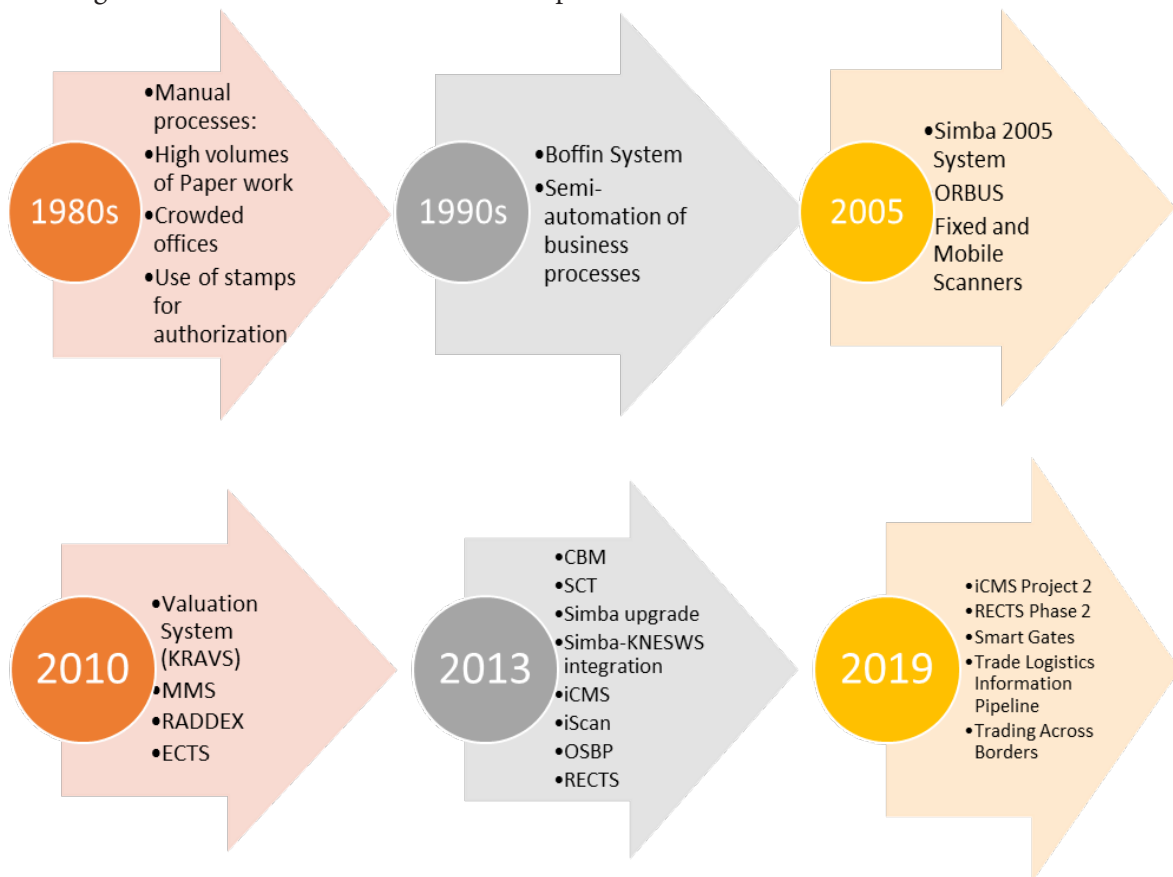
- a) Inconsistent procedures across Customs stations;
- b) Inaccurate trade statistics and management reports;
- c) poor workload management;
- d) Congestion at the port, ICD and Customs officers;
- e) Long queues at border stations;
- f) Uncoordinated border management among government border agencies;
- g) High cost of administration and high cost of doing business;
- h) Expanding scope and complexity of work;

¹¹ World Bank (2021). Retrieved from https://tcdata360.worldbank.org/countries/KEN?indicator=1541&countries=BRA&viz=line_chart&years=1970,2019&country=KEN

- i) Challenges in management of tons of paper records and documents generated annually; and
- j) Inefficient risk management system that made compliant traders to be treated the same as non-compliant traders.

2.3.2 Reforms and Modernisation Journey

The diagram below illustrates Customs reform path:



The ORBUS system was used till the Single Window System was implemented in year 2015. The KNESWS was integrated to Simba 2005.

The Simba 2005 system was integrated with numerous systems which meant that users needed to log into various systems to perform various Customs transactions. Examples of the sub-systems integrated to Simba are shown in the table below:

| Vehicle Management System (VMS) | ORBUS | KWATOS |
|---------------------------------|---------|--------|
| CCRS | RTMS | CAMIS |
| ECTS | SCANNER | COSIS |
| RCTG | KRAS | RADDEx |
| APSC | DA | |

The fact that Simba 2005 system runs on a multiplicity of subsystems and requires multiple points of authenticity for users means that some procedures take more time, leading to low performance and integration challenges. Also, not all Customs procedures were automated in the Simba system, thus there were manual processes such as Exemptions, Bonds, Refunds, Offence management and Customs Warehouse. Security concerns regarding the Simba system were also raised over the years. These challenges led to the development of the Integrated Customs Management System (iCMS).

2.3.3 Benefits of Reforms and Modernisation Initiatives

The reform and modernization initiatives have made it possible for:

- Efficient Customs operations that consume less time and minimize transaction & compliance costs-
- Significant growth in revenue collection-
- Reduced complexity to Customs that fosters voluntary compliance-
- Increased security of the supply chain-Improved risk management

2.4 Integrated Customs Management System

The iCMS consolidates all existing Customs systems into one modern, robust and more efficient system built on the latest technology, with capacity of seamless interfaces with other internal and external systems.

The diagram below illustrates some of the systems integrated to iCMS:



The iCMS system is expected to yield the following gains:

- a) Simplification and optimization of Customs processes;
- b) Reduction of clearance time for imports and exports by at least 60 percent;
- c) Exchange of Customs Declaration information with Customs systems used by Partner Systems;
- d) More efficient monitoring and control of transit goods;
- e) More user friendly, interactive capabilities that eliminate redundant processes;
- f) Automation of manual and semi-manual processes;
- g) Enablement of traders/ owners of goods to make Customs Declarations by themselves;
- h) Elimination of falsification of documents and non-compliance through auto-upload feature (e.g. cargo import data is auto uploaded from shipping manifest) and digital exchange of information with iTax;
- i) More accessible services to the public e.g. iCMS will make it possible for Customs to conduct virtual, electronic empowered auctions;
- j) Reduced paper work and bureaucratic practices;
- k) Encourage voluntary compliance;
- l) Enhanced competitiveness of traders due to minimized costs, and predictable Customs processing times; and
- m) Improved coordination with Partner Government Agencies.

2.5 Role of Customs Agents in iCMS

The following are the roles of Customs Agents in iCMS:

- a) User Management by the Super user
- b) Submission of Customs Declarations on behalf of exporters and importers
- c) Payment of taxes on behalf of exporters and importers
- d) Payment of extra taxes
- e) Request for removal of cargo
- f) Request for alteration of documents
- g) Request for cancellation of Customs documents
- h) Participation in physical inspection (response to scheduling and inspection (outside the system))

2.6 Status of Customs Declarations

The status of the Customs Declaration (CD) keeps changing as cargo clearance process progresses from one stage to another. The following are the various CD status:

- a) Created - At this stage the CD has been created but can still be edited.
- b) Registered - No changes can be done without Customs approval.
- c) Accepted - Taxes have been paid or a bond executed to secure the goods (it is the equivalent of Long Room pass as was previously known).
- d) Under Control - The process is under Verification Officer's stage where goods may be examined and the documents further verified.
- e) To Amend - A discrepancy has been detected during cargo or document verification and Head Verification officer confirms that CD is not compliant and requires amendment.
- f) Amended - Required amendment is done by Customs Agent. Three options are available to the Customs Agent: accept amendment; reject amendment; pay and protest.
- g) To Alter - This involves changes initiated by Customs Agent that will not affect tax computation.
- h) Alter Pending - Payment of alteration fees by Customs Agent is pending.
- i) To Cancel - Customs Agent requests for cancellation due to various reasons e.g. IDF is lodged and cargo is no longer being imported.
- j) Cancel Pending - Customs Agent to generate payment slip and make payment for cancellation of CD.
- k) Pending Release - Customs officer is yet to issue Release Order. For Authorized Economic Operators, this status is skipped since an automatic Release Order is issued.
- l) Pending Removal - Goods are yet to be physically removed from the release station.
- m) Settled - All cargo in the manifest has been accounted for, such that total weight of packages has been knocked off.

2.7 Single Administrative Document (SAD)

Goods in iCMS are classified into three categories:

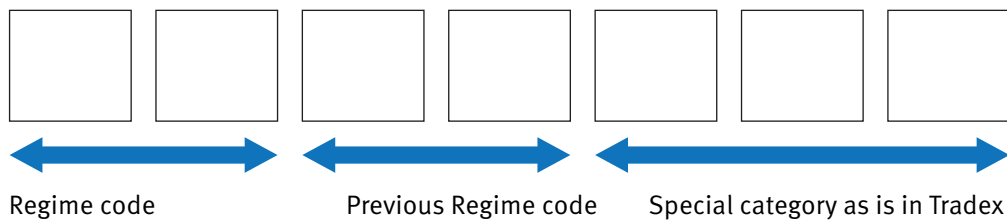
- Import- Code IM
- Export- Code EX
- Transit- Code TR

The tax regime codes in iCMS have three characters.

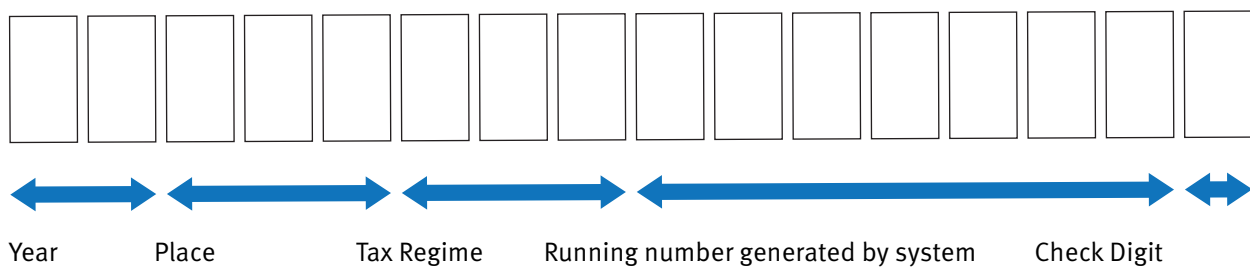
The following table shows some examples:

| | |
|-------------------------------------|--|
| IM0- Import Declaration Form | IMC- Courier and Direct Assessment |
| IM4- Home use | IMP- Direct Assessment Accompanied Baggage |
| IM5- Temporary import | EX1- Direct Export |
| IM6- Re-import | EX2- Temporary Export |
| IM7- Import warehousing | EX3- Re-export |
| IMA- Post parcels | |

Customs Procedure Codes (CPCs) have three characters, in the following sequence:



A Customs Declaration (entry) in iCMS has sixteen character, in the following sequence:



Standard 3.11 of the Revised Kyoto Convention (RKC) states, “For automated Customs clearance processes, the format of the electronically lodged Goods declaration shall be based on international standards for electronic information exchange as prescribed in the Customs Co-operation Council Recommendations on information technology.” The following is a sample of a Customs Declaration (form C17C) generated through the iCMS system which adheres to the aforementioned standard:

EAST AFRICAN COMMUNITY

SINGLE ADMINISTRATIVE DOCUMENT(SAD)-ICMS

A CUSTOMS OFFICE C. 17C

| | | | | | | | | | | | | | | | | | | |
|----------------|---|--|---|--|--------------------------------|--|--|--|---|--|--|--|--|--|--|--|--------------------------------|--|
| CUSTOMS OFFICE | 1 | | 2 Consignor/Exporter KE [REDACTED] Transport & Logistics Kenya Limited | | PIN/TIN [REDACTED] | | 1 DECLARATION IM4 | | 3 Page Of 1 1 | | 4 Total gr. mass 10.0000 | | A CUSTOMS OFFICE 21BDOIM400001446 KE BDO BDO 29/09/2021 | | C. 17C | | | |
| | | | 8 Consignee KE [REDACTED] Transport & Logistics Kenya Limited | | PIN/TIN P000600883U | | 5 Total Items 1 | | 6 Total packages 1 | | 7 Reference number | | | | | | | |
| | | | 14 Declarant/Representative KE [REDACTED] Transport & Logistics Kenya Limited | | PIN/TIN P000600883U | | 9a Total freight 0.0000 | | 9b Total insurance 0.0000 | | 9c Total Other Charges 109,850,0000 | | 9d Total Customs Value 109,850,0000 | | | | | |
| | | | 18 Identity and nationality of means of transport at departure/on arrival | | 19 Ctr. 0 | | 15a Country of Last Consignment AF | | 16 Date of exit/arrival | | 12 Valuation method 1 | | 17a Country of Destination KE | | 17b Region of destination code (Kenya county) 30 Baringo County | | | |
| | | | 21 Identity and nationality of active means of transport crossing the border | | | | 20 Delivery terms FOB BUNGOMA | | 22 Currency and total amount invoiced USD 1000 | | 23 Exchange rate 109.849996534 | | | | | | | |
| | | | 25 Mode of transport 3 Road at the border | | 26 Inland mode of transport | | 27 Place of loading/unloading Alii Shirzayi | | 28 Financial and banking data | | | | | | | | | |
| | | | 29 Office of exit / entry | | 30 Location of goods | | | | | | | | | | | | | |
| | | | 31 Packages and structured description of goods | | 32 Item 001 No | | 33 Commodity HS Code 22083000 | | 34 Country origin Code a AF | | 35 Gross mass (kg) 10 | | 36 Preference 10 | | 37 P R O C E D U R E 4000 400 | | 38 Net mass (kg) 10 | |
| | | | 44 Additional information Document s produced Certificate s and | | NAME AlcoholContent | | AVALUE 23 | | NAME BaseProduct | | AVALUE 23 | | 45a FOB value 109850 | | 45b Freight value 0 | | 45c Insurance cost 0 | |
| | | | 47 Calculation of taxes | | Tax Type 1002/ Import Duty | | Tax Base 109,850.00 | | Rate 0.25 | | Amount 27,463.00 | | MP A | | 48 Deferred payment B ACCOUNTING DETAILS | | 49 Identification of warehouse | |

I/We CSAP000600883UAH the undersigned of [REDACTED] Limited being the agent/principal of Bollere Transport & Logistics Kenya Limited do hereby declare that the information and particulars declared herein are true and complete.

Signature and stamp

Place: [REDACTED]

Tel/Fax: [REDACTED]

2.8 Learning Activities

1. Read on the following Customs modernization efforts and write brief notes:
 - i. Kenya National Electronic Single Window System (KNESW)
 - ii. Trade Logistics Information Pipeline (TLIP)
 - iii. Regional Electronic Cargo Tracking System
 - iv. Smart Gates
2. Describe improvements made in iCMS as compared to Simba 2005.
3. Go through each field on the sample form C17C and explain the information that should be captured under that field.

2.9 Self-Assessment Questions and Activities

1. Discuss the purpose and benefits of the iCMS
2. What are the specific challenges that customs agents / clearing and forwarding agents face in using the iCMS? What are the possible mitigation measures?
3. Describe the classifications and codes used in the Single Administrative Documents

2.10 References

- Kenya Revenue Authority - KRA (2017). Integrated Customs Management System (ICMS) Training Manual For Clearing and Forwarding Agents.
- Kenya Revenue Authority - KRA (2019). Integrated Customs Management System (iCMS).
- EAC- Customs Union (2004) Customs Management Act, EAC Customs Union Secretariat
- World Customs Organization (WCO) (1999). Revised Kyoto Convention. WCO, Geneva
- World Customs Organization (2021). Retrieved from http://www.wcoomd.org/ru-ru/topics/capacity-building/activities-and-programmes/mercator%20programme/cb_support_customs_reform_modernization.

3.0 IMPORT DECLARATION FORM (IDF)

3.1 Learning Outcomes

At the end of this topic the trainee should be able to;

- i. Create an IDF Entry
- ii. Add an item to the IDF
- iii. Register an IDF
- iv. Alter an IDF
- v. Cancel an IDF

3.2 Introduction

This chapter will enable the learner to create, register, print, search and clone an Import Declaration Form (IDF).

3.3 Introduction to IDF

It is the responsibility of an importer or his/her appointed Customs Agent to register an IDF for every consignment that is expected to be brought into Kenya. The IDF is therefore a pre-importation declaration and is considered a base document, because it is first submitted, before Customs clearance procedures for imported goods can commence. In practice, an IDF incorporates a declaration value (DV1) or form C36.

Usually, once an IDF is submitted, it is assigned a unique consignment reference (UCR) number. On average, it takes 5-30 minutes to create an IDF, depending on the number of items in a consignment, competence of the Declarant, network stability and speed.

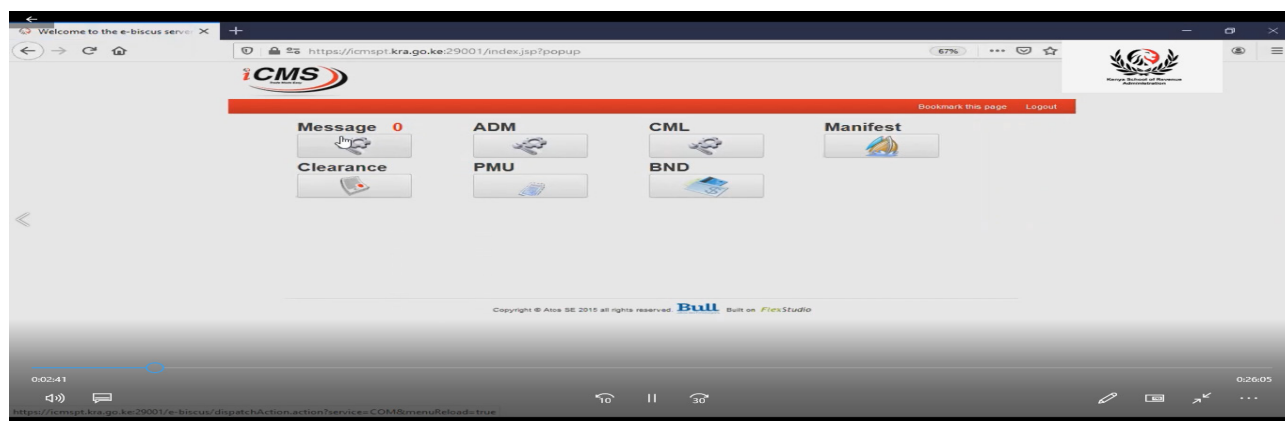
There are import goods that require pre-importation permits while some goods do not require pre-importation permits. In the case where pre-importation permits are required, the IDF once created moves to “pending approval” status to allow for Partner Government Agencies (PGAs) to process permits. Once the PGAs finish processing of permits, the status changes to “approved”. Example of goods that require pre-importation permits include plants, food items, chemicals and pharmaceuticals. In the case of consignments that do not require pre-importation permits, such as motor vehicles and machineries, the IDF changes to “approved” status once it is created.

Goods are described in three ways in the IDF: commercial goods description; tariff description; and structured/ complementary data description.

1.1 IDF Declaration- Creation, Registration, Printing & Searching

The following is a step by step process of creating, registering and printing an IDF:

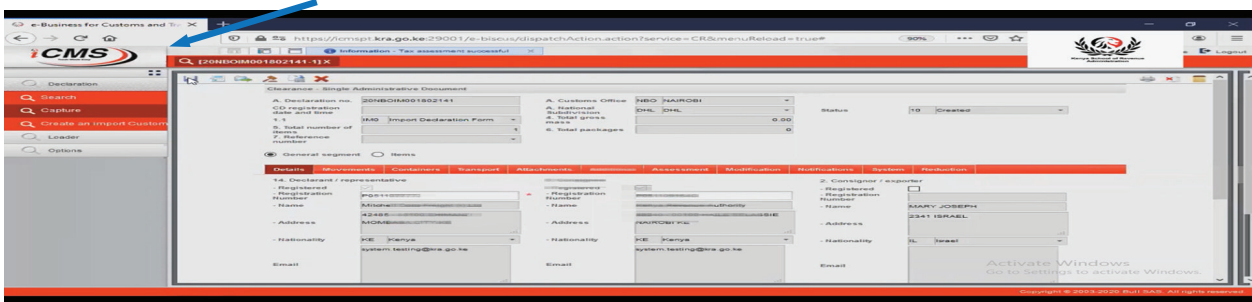
- i. URL address: icms.kra.go.ke
- ii. Log into iCMS by keying in your user ID and password.
- iii. Click on green tick to close the broadcast message window.
- iv. On the home page, click on the clearance module icon (see screen shot below).



- v. On the left side of the screen, you have three options: declaration; loader and options.
- vi. To submit a declaration, click on declaration and then select capture. The capture function will enable you to fill in details of the consignment.
- vii. The top most part of the capture window is called “Header”. Fill in all the mandatory fields (denoted by a sign “*”).
- viii. Select the General Segment button and click on “Details” tab. Fill in all the required details, including all mandatory fields. (Exporter’s details- exporter has not PIN thus double click on “registered” box; named place is the port where responsibility of seller ends).
- ix. Click “Movement” tab and fill in all required fields.
- x. Click “Attachments” tab and fill in all required information. Click on green cross; select Certificate type e.g. select general; certificate reference e.g. proforma invoice; type certificate serial number e.g. F001.
- xi. To upload the document, click on green cross; select uploading icon; select file to upload; allow time for file to load; click on submit and SAVE.
- xii. A declaration number (16 characters) is assigned e.g. 21MBAIM012345674. Status code changes to “created”.
- xiii. Select the Items Segment button and fill in all required information under each of the tabs: Details, Procedure, Containers, Attachment, Additional, Packages, Assessment, System and Reduction (see screen shot below).

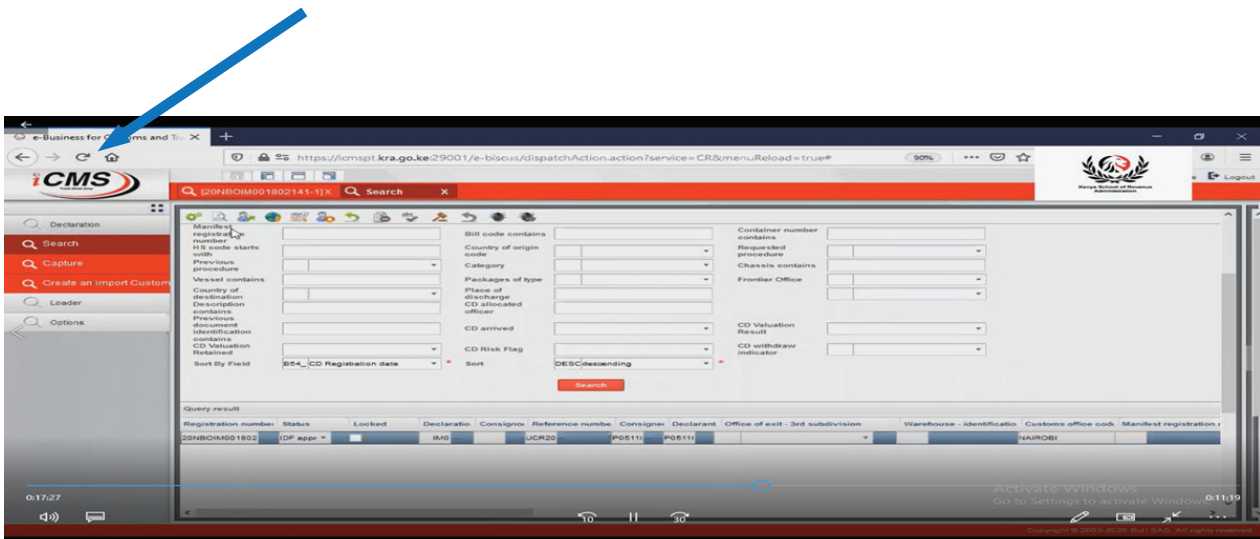
NB: The tariff code, iCMS is integrated with the tariff book so if you type item description, the tariff number will be pulled onto the assigned field.

- xiv. If you have several items in a consignment, click “add item”. Note that FOB in the general segment should be equal to Total FOB of the various items. SAVE.
- xv. To fill in structured goods description/ complementary data, click on “assess” icon (next to save icon). All fields with exclamation marks are mandatory.
- xvi. Go back to General segment and click on the Declaration Value (DV1) icon that looks like a hammer (see screen shot below), located at the top of the screen.
- xvii. Fill in all mandatory fields that concerns DV1 and SAVE.



- xviii. Print your draft to confirm details if necessary.
- xix. Click on Register icon at the top of the screen. Confirm registration.
- xx. If all items are correctly captured, the system approves the IDF and the status changes to “Approved”. If the items need pre-importation permits, status will read “Pending Approval”.

- xxi. To print the approved IDF, Click on Search tab on the left side of the screen.
- xxii. Type your IDF registration no. on the respective field and search.
- xxiii. Highlight the Query result and click on “Display” icon to print the IDF (see screen shot below).



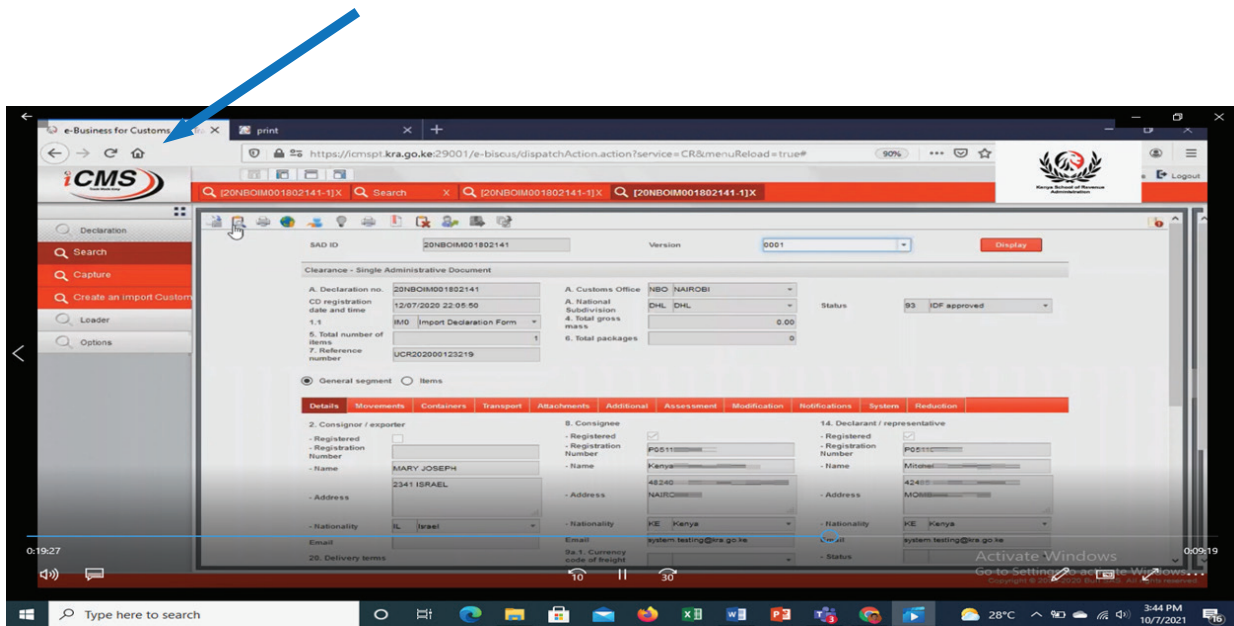
- xxiv. Click “printer” icon. Water mark on document shows that the IDF is approved.
- xxv. To search a declaration: click search tab on the top left side of the window; key in registration no.; search.

3.4 Cloning of IDF

Cloning an IDF enables an iCMS user not to keep repeating data input process where imported goods, consignor and consignee details are similar to a previously imported consignment.

The process of cloning an IDF is described as follows:

- i. Click on search on the left side of the window and key in IDF registration number.
- ii. Highlight IDF details displayed in the query result. Click on “Display” icon.
- iii. Click on “Clone” icon (see screen shot below). New IDF registration no. is generated. Status of IDF changes to “created”.



- a.
- iv. To register the IDF, click search on the left side of window and key in IDF registration no. Click Search icon and highlight IDF details in the query result.
- v. Click “Process” icon. Confirm details on IDF and make any changes as appropriate.
- vi. Select the General Segment button and click “Attachments” to attach supporting document- proforma invoice.
- vii. Click on small green cross and fill in certificate details. Upload supporting document by clicking on larger green cross; select file and click “open”.
- viii. Click on “Submit” icon and SAVE.
- ix. Go to Item segment and make necessary amendments.
- x. Click on “Assess” icon at the top of the screen, then click on Register icon. Confirm registration.
- xi. Status changes to “Registered”.
- xii. Click Search tab on the left side of the screen. Fill in the IDF registration no. and search. Status will show “approved” for goods that do not require pre-importation permits.

3.5 Learning Activities

ABC Limited intends to import Ladies’ leather bags from Turkey. The Exporter is Extravagant Bags Limited, Turkey, 5649 001 Vile Street, Istanbul. Consignee’s PIN is P123456789M. Their address is P. O. Box 69872, Nairobi. The goods are valued at USD 5,000 and weigh 7,000 kgs. The quantity of goods are 1000 pieces. The goods will be imported through the port of Mombasa, and processed for release at Interpel CFS.

Required:

- i. Create and register an IDF
- ii. Print approved IDF
- iii. Clone the approved IDF.

3.6 Self-Assessment Questions and Activities

Discuss the roles and responsibilities of customs agents / clearing and forwarding agents face in IDF Declaration process

3.7 References

- Kenya Revenue Authority - KRA (2017). Integrated Customs Management System (ICMS) Training Manual For Clearing and Forwarding Agents.
- Kenya Revenue Authority - KRA (2019). Integrated Customs Management System (iCMS).
- EAC- Customs Union (2004) Customs Management Act, EAC Customs Union Secretariat
- World Customs Organization (WCO) (1999). Revised Kyoto Convention. WCO, Geneva
- World Customs Organization (2021). Retrieved from http://www.wcoomd.org/ru-ru/topics/capacity-building/activities-and-programmes/mercator%20programme/cb_support_customs_reform_modernization.

4.0 CARGO MANIFEST PROCESSING

4.1 Learning Outcomes

At the end of this topic the trainee should be able to;

- i. Define the term manifest
- ii. Demonstrate how to create and submit cargo manifest
- iii. Perform Manifest amendment
- iv. Carry out Pre-verification request
- v. Carry out Supplementary Manifest
- vi. Perform a House Manifest

4.2 Introduction

This topic will enable the learner to create and submit a cargo manifest to Customs; request for manifest amendment and supplementary manifest; request for pre-verification; request for cargo transfer; and create a house manifest.

Functions of Shipping Agents in iCMS with respect to cargo manifest includes the following:

- a) Submission of manifests
- b) Submission of consolidation manifests
- c) Payment of amendment fees on behalf of exporters and importers
- d) Request to Supplement manifests
- e) Request to Amend manifests
- f) Pre-verification requests

4.3 Definitions

- A cargo manifest in iCMS is known as Summary Declaration (SD). It is a document listing the cargo, passengers and crew of a ship, aircraft or vehicle for the use of Customs and other officials.
- Transport document (B/L)- A document issued by a carrier or its agent to the shipper as a contract of carriage of goods. It is also a receipt for cargo.
- Line of package (LP)- The lines of packages segment holds information on the individual packages related to each transport document of the SD.
- Temporary storage (CFS)- Customs approved temporary storage areas. They are also called “Customs areas” and include port docks, sheds, private sheds, container freight stations and other premises granted by Customs for holding goods.
- Customs office country code -Customs

office country code is set by the system as the country of implementation.

- Customs office code -Customs office code is validated using the country of implementation as the country code.
- Customs office code national subdivision -Customs office code national subdivision is validated using the country of implementation as the country code and the Customs office code in the first subdivision. When the Summary Declaration is entered in CI/DTI mode, the Customs office subdivision name is displayed automatically upon entry of valid codes.
- TR number of carrier or its representative -This information is mandatory i.e. the carrier must be registered on the Traders Registry. The check of the Registration is performed at the save of the general segment of the SD and at the registration of the SD.

4.4 Creation & Submission of Cargo Manifest

The legal basis for creation and submission of a cargo manifest is Section 24(1) of EACCMA 2004 which states as follows:

The master or agent of every aircraft or vessel, whether laden or in ballast, shall, except where otherwise provided in any regulations, make a report on the prescribed form to a proper officer at any port or other place especially allowed by the proper officer, of its cargo and sores, and of any package for which there is no bill of lading, as follows:

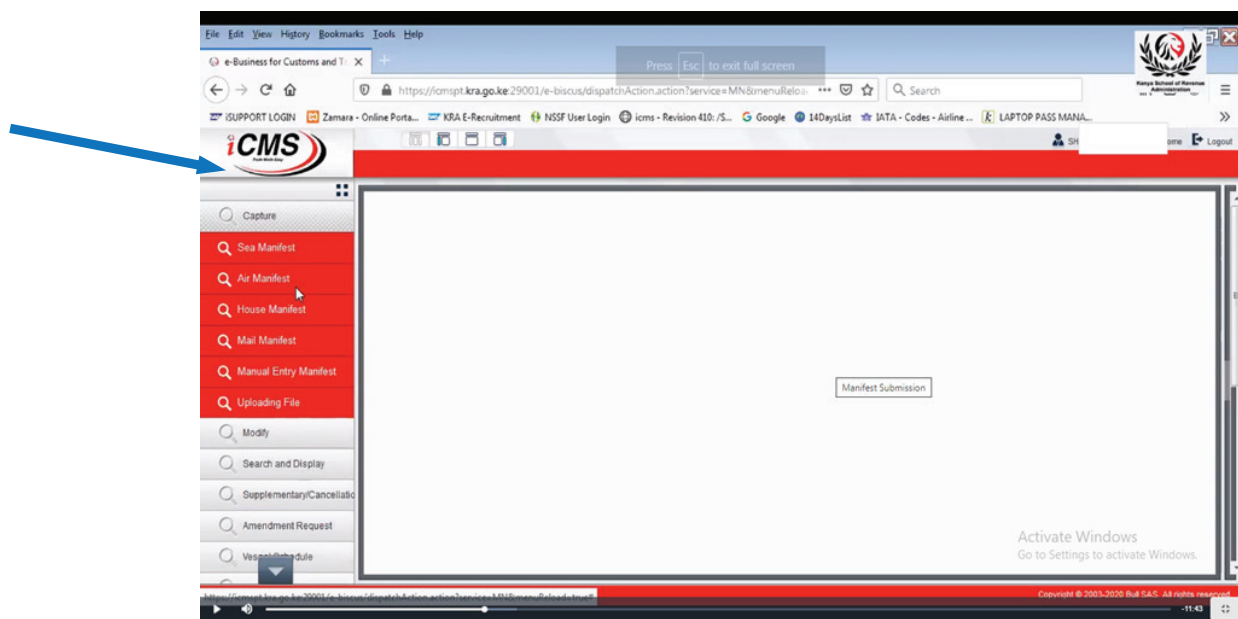
- (a) In the case of a vessel, not less than twenty-four hours before arrival from a foreign port;
- (b) In the case of an aircraft, immediately after take-off from foreign port destined for a port in a Partner State.

A cargo manifest may be submitted using the following methods:

- a) Manually creating and submitting a cargo manifest
- b) Using xml file
- c) System to system integration

The step by step process of manually creating and submitting a cargo manifest is as follows:

- i. Click the manifest module on the home page.
- ii. Go to left side of the window and click on sea manifest (see image below)- you must have a vessel schedule; search vessel schedule; select one vessel schedule.



- iii. Fill in Customs office e.g. MBA; Customs sub-division e.g. MSA; Save. The directory no. is issued.
- iv. Add Transport Document (TD). Key in all mandatory details (with red asterix). Since consignor does not have a PIN, uncheck PIN box. Last country of consignment must be Kenya. The "T" status will either be community goods (SCT), non-community goods (destination is Kenya) or mixed consignments. Nominated temporary storage is the CFS. Cargo type options include containerized; loose cargo; dry bulk; wet bulk; motor vehicle; SAVE.
- v. Scroll down; under containers, type container details: container number; container size; seal number; ISO container type e.g. 20 ft. general purpose; type of container; container weight e.g. 2200. Once you are done keying in container details, SAVE.
- vi. Click packages tab; new Line of Package (LP); key in all mandatory LP details (see screenshots below); SAVE and exit.

1

The screenshot shows the iCMS interface with a sidebar menu on the left containing options like 'Capture', 'Sea Manifest', 'Air Manifest', 'House Manifest', 'Mail Manifest', 'Manual Entry Manifest', 'Uploading File', 'Modify', 'Search and Display', 'Supplementary/Cancellation', 'Amendment Request', and 'Version Schedule'. The main window displays the 'LP Details' form for 'Capture SD 70072X'. The form has several input fields and a 'Tariff Search' button. The background shows a 'Storage Office' window with a 'Partial Bag' tab.

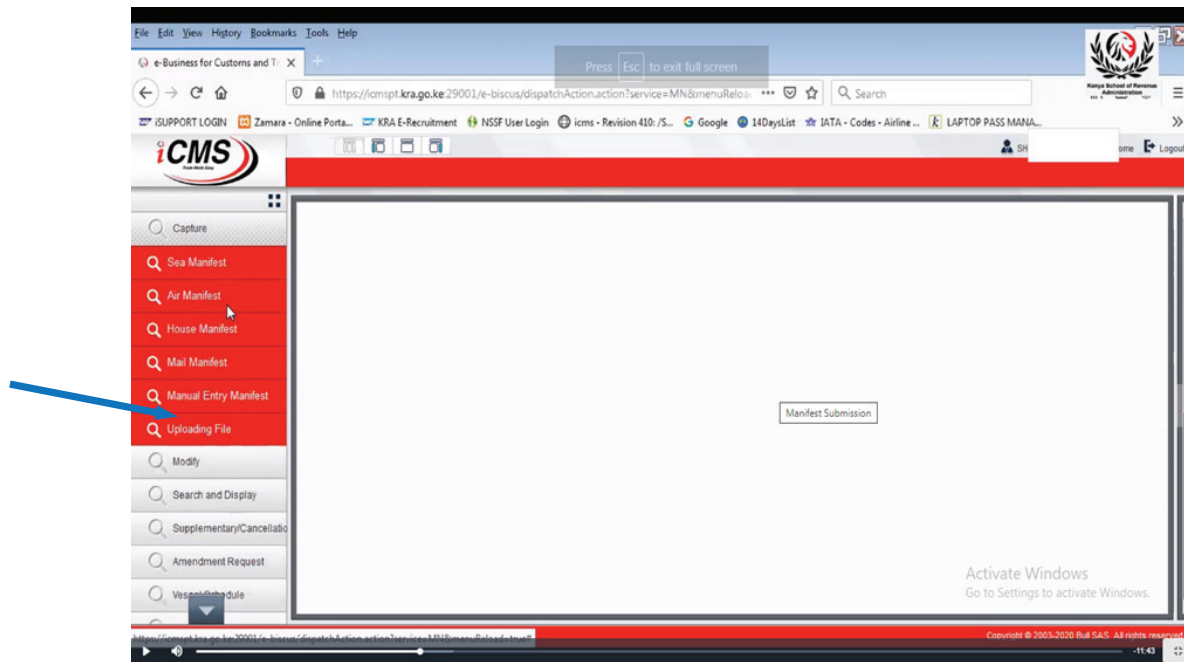
2

The screenshot shows the iCMS interface with the 'Tariff Search' form. The form includes fields for 'Marks of Packages', 'UN Dangerous Goods', 'Net Weight/Kgs', 'Volume', 'Container Reference', 'Description of the Goods', 'Country of Origin', 'Temperature', and 'Volume Unit'. The 'Description of the Goods' field is filled with 'Rusked (brown) rice'. The 'Country of Origin' is set to 'Kenya'. The 'Volume Unit' is 'MTQ Cubic meter'. The 'Container Reference' is 'PV'. The background shows the same 'Storage Office' window as in the previous screenshot.

- vii. Register SD; confirm registration;
- viii. Manifest number is issued and status changes to “Registered”.
- ix. To confirm if manifest is approved; go to search and display; search summary declaration; type registration no.; select version no.; SD will appear, highlight it by selecting and click on display icon.
- x. If manifest is successfully registered but goods have not arrived at CFS yet, status will read “Registered”. If goods arrive at the CFS, status will read “Accepted”.

The step by step process of submitting a cargo manifest using xml file is as follows:

- i. Click the manifest module on the home page.
- ii. Click on upload of file (see screen shot below).



- iii. Select file; upload result will show “successful”.
- iv. Directory no. is generated. Copy directory no.; click on modify and select sea; paste directory no. and search;
- v. Click Register; confirm registration; manifest number is generated.

To submit a cargo manifest using system to system integration, open source software SoapUI is used by shipping lines.

The following are important points to note:

- a) Routing information requires information on the last ports of call up to a maximum of 10. The last port of call is the country of destination.
- b) If cargo is for transshipment, last country of destination will not be Kenya. This control helps to determine what kind of declaration will be used to clear a consignment.
- c) Cargo type- CN is for containerized cargo; AH is for bulk cargo; VH is for motor vehicle
- d) There can be 999,999,999 lines of packages per transport document.
- e) Manifest; then Transport documents under a manifest; then line of packages under a transport document.

4.5 Manifest Amendment

Manifest amendments involves making changes to details of already submitted manifest. The legal basis for manifest amendment is Section 24(4), (5) of EACMA, 2004. It states as follows:

- (4) The proper officer may permit the master or agent of an aircraft or vessel to amend the destination, ownership or status of goods specified in the report where a change in such destination, ownership or status is intended.
- (5) The proper officer may permit the master or agent of an aircraft or vessel to amend an obvious error in the report, to supply an omission, which in the opinion of the proper officer results from accident or inadvertence.

The step by step process of amending a cargo manifest is as follows:

- i. Log in as a Shipping agent; untick and click manifest module.
- ii. Click amendment request on the left side of the window.
- iii. Capture amend request.
- iv. Paste manifest number on the field required.
- v. Click search. Select transport document that you want to amend; click amend transport document (TD) icon at the top.

- vi. Click drop down menu at TD amendment indicator: to amend several columns, select “both”; other options include excess landing, short landing and other.
- vii. On the respective fields that require amendment, type the correct details. Under LP transaction at the bottom of page, you can amend quantities, weight, marks of packages and description of goods.
- viii. SAVE.
- ix. Window pop ups that attachments are necessary e.g. manifest corrector, affidavit etc. click OK.
- x. Click attachments- Type description of the documents.
- xi. Click on first document to highlight; click green plus sign to upload document; select document to upload; SAVE and exit (red X sign).
- xii. TD is in created status; highlight and submit; submitted SD successfully; status changes to pending approval; if approved, C/Agent generates e-slip and goes to pay.
- xiii. To generate e-slip: click on search and display amendment request on the left window; key in manifest no.; search; display; status is “pending payment”; select TD request; select print e-slip icon; e-slip pop-ups; make payment (fee of USD 10 per field).
- xiv. C/Agent can now use amended manifest.

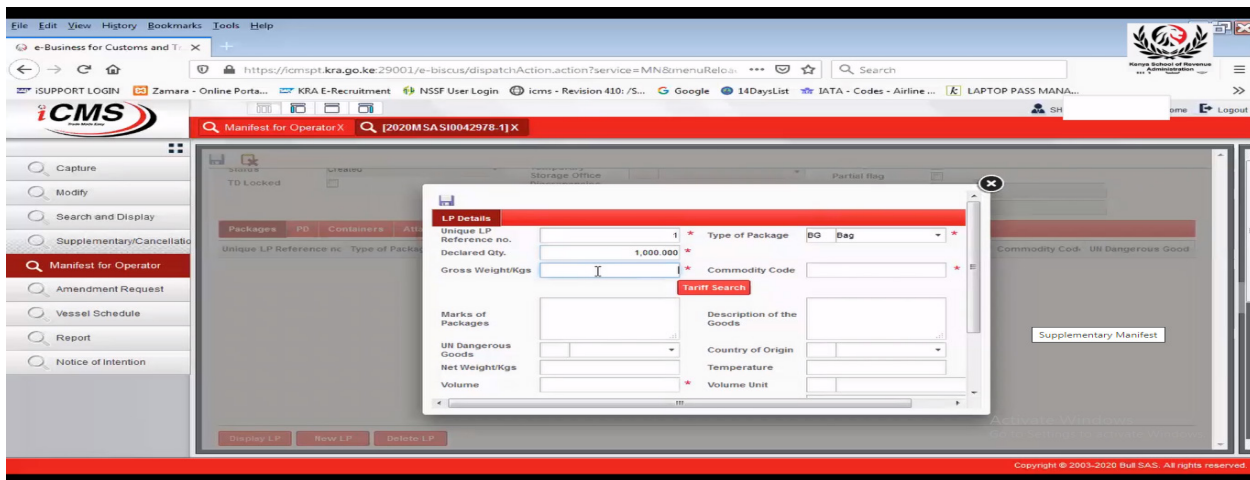
4.6 Supplementary Manifest

Supplementary manifest is an addition of TD to an existing manifest due to excess landed consignments. The legal basis for amendment of a cargo manifest is Section 24 (4) & (5) of the EACCMA 2004.

The following is a step by step process of amending a cargo manifest:

- i. Log in as Shipping Agent; click on green tick; click on manifest module.
- ii. Click supplementary/ cancellation on the left window.
- iii. Click on manifest for operator; type in no. of manifest that you want to supplement on the registration no. field; search by clicking the binoculars icon.
- iv. Select “plus sign” that says add a supplementary TD.
- v. Fill in details of BL, consignee, destination, country of consignor, country of routing (Kenya), port of loading, date of loading, notify party, T status, temporary storage, date, place of delivery (KEMBA) etc. (see screen shot below).

- vi. SAVE
- vii. Scroll down and click on New LP. Fill in details (see screen shot below)



- viii. Save; Exit; Submit- pop up message will show submitted successfully.
- ix. Once request is submitted, Customs manifest office will approve the request.
- x. Once approval is done, S/Agent will be able to search for the approved supplementary manifest under summary declaration on the left window. Type in manifest no. in the registration no. field. Select version 2; search; select and display.
- xi. Status will be pending payment; click print e-slip icon and go and pay amendment fee (\$10).

Guiding Notes:

- i. The status of the master SD at the time when a manifest amendment & supplementary manifest is requested is “accepted”.
- ii. Supplementary manifest caters for excess landed cargo thus we expect the containers in the request for supplementary manifest to be contained in the bay plan.
- iii. The general segment of a manifest cannot be amended.
- iv. iCMS will only allow the carrier agent who lodged/deconsolidated the manifest to request for the supplementary manifest.
- v. Transport documents are uniquely identified by the combination of their covering SD, prefix, and bill code.
- vi. The Manifest (also called the Summary declaration) supports all types of transport documents (bills of lading, airway bills, rail consignment, road transport documents)

or transit documents.

- vii. The status of the original (consolidated) transport document before Deconsolidation is “under deconsolidation”.
- viii. The total gross weight for all BLs in a House manifest shall be exactly equal to sum of gross weights of the master BLs that constitute the House manifest

4.7 Pre-Verification Request

iCMS allows declarant to lodge a pre-verification request to Customs prior to lodging a Customs declaration.

Pre-verification request is made at TD level, and only one can be made per TD.

The step by step process for submitting a pre-verification request is as follows:

- i. Log into the system as a Shipping agent; click on green tick; click on manifest module.
- ii. Click on pre-verification request on the left side of the window.
- iii. You will have to options displayed: search pre-verification request and capture pre-verification request. Select capture pre-verification request.
- iv. Key in manifest number and search
- v. Select TD that you wish to do pre-verification on, then search
- vi. Key in reason for pre-verification in the newly popped up window
- vii. Submit by clicking the tick icon. Pre-verification request number is generated.

- viii. Once verification of goods is done, officer will input report. S/Agent will then go to the left window side and select search pre-verification request.
- ix. Enter manifest number and search
- x. Highlight one TD; select view pre-verification report icon at the top of the popped up window
- xi. Print report if necessary

4.8 House Manifest

A house manifest is a summary declaration in which a Consolidator Agent breaks down the master transport document (TD) to individual consignees.

The step by step process for creating and registering a house manifest is described below:

- i. Click on the manifest icon on the home page.
- ii. Select capture tab on the left side of the screen.
- iii. Select house manifest, type manifest number and then search summary declaration that needs to be consolidated. SAVE.
- iv. Add transport document and fill in all required fields. SAVE.
- v. Select line of package and fill in all required fields. SAVE.
- vi. The house manifest is automatically approved.

Guiding Notes:

- When entering a deconsolidation summary declaration, the carrier must specify the transport document to deconsolidate.
- When Consolidated TD ID is present (deconsolidation), the Carrier (deconsolidation agent) must be registered from the Traders Registry.
- The Consolidated Transport Document referenced must be included in an import covering SD (either air, or sea or house) and the consignee of this Consolidated TD must be registered and have the same TR number as the one of the deconsolidation agent.
- When the deconsolidation procedure is completed, the specified Consolidated TD is automatically discharged.
- The Consolidator can only deconsolidate Bills of Lading assigned to them; this applies to sea manifest since the manifest clearly indicates who the Consolidator is for

a given consignment.

- However, for air manifest there is no provision in the IATA CIMP for indicating the consolidator, hence different consolidators can view any cargo which has not been deconsolidated.
- The Consolidator is a role in the application. On the Manifest, the Consolidator is indicated as the Consignee. Only a User related to the Consolidator and having a Consolidator Role can deconsolidate BL or AWL. For AWL, The Freight Forwarding Agent will be indicated as the deconsolidator (Consignee). In case the Freight Forwarder nominates another deconsolidator, a special transaction known as "Change Ownership" will be used.
- The total gross weight for all BLs in a House manifest shall be exactly equal to sum of gross weights of the master BLs that constitute the House manifest, otherwise system will give failure error message¹².

4.9 Learning Activities

The course trainer will present you with excerpt details of a Bill of Lading and cargo manifest.

Required:

From the Bill of Lading and cargo manifest

- i. Create and register a cargo manifest
- ii. From the approved manifest, create and register a supplementary manifest
- iii. From the approved manifest, make alteration on consignee details and commercial description details.

4.10 Self-Assessment Questions and Activities

1. Describe what you understand by the following terms:
 - a. Manifest
 - b. Manifest amendment
 - c. Manifest pre-verification
 - d. Supplementary manifest
 - e. House manifest
2. Discuss the roles and responsibilities of customs agents / clearing and forwarding agents face in creating and submitting cargo manifest.

4.11 References

- Kenya Revenue Authority - KRA (2017). Integrated Customs Management System (ICMS) Training Manual For Clearing and Forwarding Agents.
- Kenya Revenue Authority - KRA (2019). Integrated Customs Management System (iCMS).
- EAC- Customs Union (2004) Customs Management Act, EAC Customs Union Secretariat
- World Customs Organization (WCO) (1999). Revised Kyoto Convention. WCO, Geneva
- World Customs Organization (2021). Retrieved from http://www.wcoomd.org/ru-ru/topics/capacity-building/activities-and-programmes/mercator%20programme/cb_support_customs_reform_modernization.

5.0 IMPORT FOR HOME USE CUSTOMS DECLARATION

5.1 Learning Outcomes

At the end of this topic the trainee should be able to;

- Process Import Declaration for Home Use, Duty Paid (IM4)
- Make Import Declaration for Home Use Commercial Goods, Duty Paid from EAC/ COMESA Originating Goods
- Perform an alteration and cancellation of a Customs Declaration
- Amend a Customs Declaration.

5.2 Introduction

This topic will enable a learner to create and submit an import for home use Customs Declaration (CD); temporary import CD; export CD; warehousing CD; alter and cancel a CD;

5.3 Import Declaration for Home Use, Duty Paid (IM4)

IM4 is the tax regime code for goods imported for home use.

The CPC code is 4001400 where 40 is the code for importation for home use duty/tax fully paid/payable; 01 is the previous document of reference which is IDF; and 400 is the special category code which is importation for home use duty/tax fully paid.

The following is a step by step process of entering imports for home use, duty paid:

- URL address: icms.kra.go.ke; Log into iCMS using your user ID and password.
- Click on green tick once you read the broadcast messages, normal messages and notifications which are related to particular declarations.
- Click on clearance icon on the home page.
- Go to Declaration; from the drop down list, select “create an import customs declaration”.
- Type IMO no. OR copy paste it to the IDF registration no. field; then search.
- Select IMO which must be in the status “IDF approved”.
- Fill in all the mandatory requirements. Regime code, IM4, is usually auto-populated as it is the default regime.
- Highlight the IM0; click display icon at the top of pop up window; items on IM0 are displayed.
- Choose all items that you wish to declare; click on create icon; all selected information is pulled to the IM4.
- UCR no. is generated which is the link reference no. to Kentrade system.
- Fill in all the required field both under the General Segment and Item Segment. Note that you do not need to input containers if you have a SD. In case you do not have an SD, click on green plus sign (see screen shot below). Click on red circle: field to type container no. will be activated. Choose container size.

The screenshot displays the iCMS web application interface for creating an import customs declaration. The main form is titled "Clearance - Single Administrative Document" and includes several input fields and tabs. A blue arrow points to the "Container Number" field in the "Details" tab. The form contains the following fields:

- A. Declaration no.: 20EMKIM400046209
- CD registration date and time: 11/02/2020 12:51
- 1.1: IM4 Import for home use of comm
- 6. Total number of items: 0
- 7. Reference number: UCR20200123046
- A. Customs Office: EMK JCD EMBAKASI
- A. National Subdivision: JCD JCD EMBAKASI
- 4. Total gross mass: 0
- 6. Total packages: 0
- Status: 10 Created

The form also includes tabs for Details, Movements, Containers, Transport, Attachments, Additional, Assessment, Modification, Notifications, System, Reduction, and Size. The bottom of the screen shows a Windows taskbar with the time 12:51 and date 17/02.

- xii. When you fill in all general segment information, SAVE. message shown is “general segment saved”.
- xiii. Under the items segment, ensure to attach supporting documents to the declaration. Click on Attachment tab; click smaller green plus; click red circle; choose general; select document type e.g. commercial invoice; input number; upload by clicking larger plus sign; select file; click upload icon. To see the uploaded document, click on display icon. Repeat process to add additional documents.
- xiv. Input information for an Item, at a time. Keep repeating the process and SAVE.
- xv. Once you are done with input of all mandatory information, go back to General segment. Confirm that all information is correctly captured and then click on “Assess” icon on the top of the window. System assesses whether information keyed is correct. Scroll down, click on assessment button and amount of duties payable will be displayed.
- xvi. To print draft C17C, click on the print button at the top right side of the window.
- xvii. Click on register; confirm registration and register; status changes to “registered”.
- xviii. Print registered C17C by clicking on the print button; then proceed to generate e-slip by clicking on the “Declaration e-slip” icon on the top of the window.
- xix. Print e-slip to by clicking on the “Print” icon. Make payment of duties. Status changes to “accepted”.

Guiding Notes:

- i. Automatic pass for declarations
- ii. Amendments/ alterations/ corrections versioned- changes reflected in the system
- iii. Structured goods description against the HS code helps to avoid vague descriptions
- iv. iCMS accepts .pdf and .jpg file types uploads.

- v. For a CD to be created, both summary declaration (SD) and transport document (TD) must be in accepted status.
- vi. Pre-requisites documents before creation of a Customs declaration: commercial invoice; packing list; SD and TD.
- vii. Customs station which is the region where goods will be cleared from; national sub-division is the particular station where goods will be cleared.
- viii. Under Item segment, there is the additional tab. There is no need to input additional data because this segment contains complimentary information which is pulled from the IMO.
- ix. Line of Package (LP) reference no. is gotten from the TD.

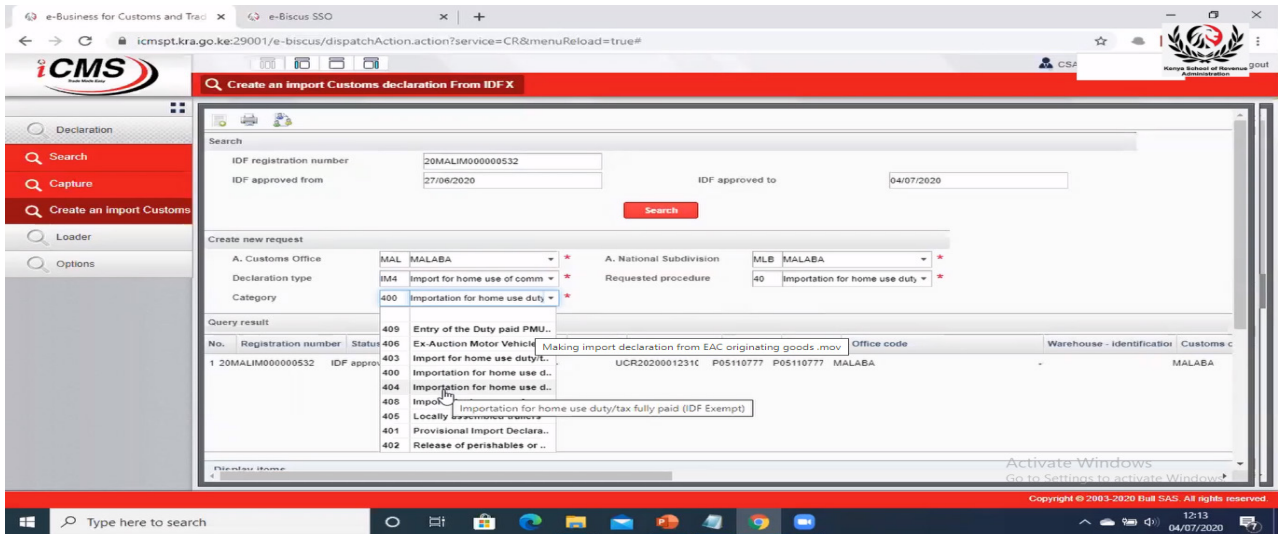
5.4 Making Import Declaration for Home Use Commercial Goods, Duty Paid from EAC/COMESA Originating Goods

For EAC originating goods, the CPC code is 4001404 (EAC originating goods duties fully paid and IDF exempt).

For COMESA originating goods, the CPC code is 4001400.

The step by step process of creating and registering CD for home use goods originating from EAC/ COMESA is described below:

- Log into iCMS using your log in credentials.
- Click clearance icon on the home page.
- Click on Declaration; create import declaration (if not already done)- input IMO no.; fill in details under create new request section (see screen shot below).



- Select all items that you wish to make a CD on; click create icon. Information from the IMO is pulled; confirm all information and edit where appropriate.
- Under Items section, select item 1; Under additional code 2, type the regional trading block that the goods are origination from. For EAC originating countries, type “EAC”. For COMESA goods, type “COME”.
- Ensure the country of origin in Box 34, “country of origin”, the country selected is an EAC or COMESA country.

5.5 Alteration and Cancellation of a Customs Declaration

Cancellation of Customs Declaration (CD) may be requested for any time before the status “pending removal”. This means between the time the CD is registered up to the status “under control”.

Alteration fee is payable per field altered, at the rate of USD 5.

When alteration is successfully done, a new version is made available and the status of the CD changes to “to alter”.

Alterable fields for imports include the following:

- Office of entry/exit
- Identity of the means of transport
- Region of destination
- Mode of inland transport mode
- Nationality of transport
- Seals number
- Identification of warehouse

- Textual additional information-complementary data segment
- PS segment- marks of the packages

When the examination findings entered by the Verification Officer indicate discrepancies between the particulars of the CD and the documents and/or goods examined, the CD must be amended accordingly and its status is changed to “to amend”.

The amendment transaction is only available for performance by a Customs officer. When this transaction is successfully completed, a new version is made available and the status of the CD changes to “amended”. The declarant is supposed to compare new version with the old version and either accept changes; reject changes; pay and protest.

The following is a step by step process for cancellation of a CD:

- Log into iCMS using user ID and password.
- Click on clearance icon on the home page.
- Click Declaration tab on the left side of the screen.
- Search for declaration by selecting range of dates within which the declaration was registered; select declaration regime IM4; select status of declaration, registered; search.
- Select declaration to be cancelled as displayed in the query result. Select “Display” icon at the top. Click on “Cancellation” icon and confirm proceed by clicking OK.
- Write cancellation comments on the text

box and click cancel button at the top. The message displayed is “request to cancel entry has been submitted to Customs”.

- Status changes to “to cancel”. CD moves to Customs Officer’s profile for his/her approval.
- When cancellation request has been accepted by Customs officer, status will change to “cancel pending”. Search for CDs with cancel pending status. Select status and dates.
- Select CD pending cancellation. Click “Display” icon. Click on “Modification e-slip” icon.
- Pay cancellation fee of USD 10. Status changes to “cancelled”

The following is a step by step process for alteration of a CD:

- Log into iCMS using your user ID and password.
- Click on clearance icon on the home page.
- Click Declaration tab on the left side of the screen.
- Search for declaration by typing in registration no. and clicking on search tab.
- Highlight CD by selecting it; click “Display” icon. Click on “Alteration icon”. Confirm progress by clicking OK.
- Click on Item and select segment for alteration; go to specific field that needs alteration. SAVE.

- Go to General Segment; make specific field alteration; and then make general comment to Customs officer.
- Click “Alter” icon on the top of window. Message displayed: “Request to alter this declaration has been submitted.”
- Status changes from registered to “to alter”. Customs will now need to approve the alteration. Once approval is done, notification message will be sent to the Customs Agent that alteration request has been approved.
- Search and highlight CD; click display; and click “Modification e-slip” icon.
- If you want to know the alteration done before payment, click the “Compare icon”.
- Make payment of alteration fees. Once payment is done, alteration is perfected and status of CD changes back to registered.

5.6 Amended Customs Declaration

An amendment may arise due to discrepancies detected during verification by Customs.

- Click on Search on the left side of the window; search CDs that are in “amended” status.
- Select CD; display to know what was amended; click “Compare” icon and you will see the comparison between version 1 and 2 (see screen shot below). Close comparison window once done.

The screenshot shows the iCMS system interface. The main window displays a comparison of two versions of a Customs Declaration (Version:0001 and Version:0002). The table below shows the differences between the two versions.

| Name | Version:0001 | Version:0002 |
|--|--------------|------------------------------|
| General Segment | | |
| 9d Total Customs value | 7041225.58 | 9794083.29 |
| 22 Total FOB amount invoiced - Currency | EUR | GBP |
| 22 Total FOB amount invoiced - Amount | 62280.38 | 75000 |
| Payable amount | 387518 | 535925 |
| Items 1 | | |
| 42 Item price(FOB) | 62280.38 | 75000 |
| 46 Statistical value | 7041225.58 | 9794083.29 |
| Payable amount | 387518 | 535925 |
| Additional [DCLGr1QuantityOrNbOfPackages] | | |
| Element name | N/A | DCLGr1QuantityOrNbOfPackages |
| Element value | N/A | 23 |
| Additional [DCLGr1UnitWeightPerPackage] | | |
| Element name | N/A | DCLGr1UnitWeightPerPackage |
| Assessment [1002P10021002] | | |
| Tax base | 7041225.58 | 9794083.29 |
| Assessment [1102P11021102] | | |

The interface also includes a sidebar with navigation options (Declaration, Search, Capture, Create an import Customs, Loader, Options) and a top bar with search and user information. A watermark for 'Kenya School of Revenue Administration' is visible in the top right corner.

- Select CD; click on “Process” icon (green in color).
- Take action by clicking on the accept icon (green “√” tick); reject icon (red “X” mark) or pay and protest icon (hammer symbol) at the top of the displayed window. See screen shot below.

The screenshot shows the iCMS web application interface. At the top, there's a navigation bar with the iCMS logo and a search bar. Below the navigation bar, there's a sidebar with a list of icons for various functions. The main content area displays the 'Pay and protest' form for an Administrative Document. The form is divided into several sections, including 'General segment' and 'Items'. The 'General segment' contains fields for Declaration no., CD registration date and time, Total number of items, Reference number, Customs Office, National Subdivision, Total gross mass, and Total packages. The 'Items' section contains a table with columns for Declarant/representative and Consignee. The status of the document is '28 Amended'. There are also tabs for 'Details', 'Movements', 'Containers', 'Transport', 'Attachments', 'Additional', 'Assessment', 'Modification', 'Notifications', 'System', and 'Reduction'. The 'Details' tab is currently selected, showing information for the Declarant/representative and the Consignee. The bottom of the screen shows a Windows taskbar with the system clock at 12:21.

- If you click Reject icon, confirm that you want to proceed with rejection. Select reason by clicking drop down arrow and type reasons for rejection on reason field. Document goes back to status “under control”. Head Verification Officer (HVO) will escalate document to the next level.
- If you click Accept icon, confirm acceptance. Select reason by clicking drop down arrow and type reasons for rejection on reason field. Make payment by searching CD and highlight it on the query result section. Click on “Display” icon. Click on declaration e-slip icon and make payment. CD goes back to status “under control” and HVO can release entry.
- If you click Pay and protest icon, select reason by clicking drop down arrow and type reasons for rejection on reason field; select mode of payment e.g. choose bank guarantee. Click “ok” to confirm action. Go back to home page. Execute bond that will cover transaction by clicking on “bond” icon; on the left side. Select bond. Under bond category field, choose guarantee. In the Declaration ID field, select CD to be covered by guarantee; choose guarantor in the “guarantor name” field; click submit icon. The message shown is “your application for the bond has been submitted

successfully”. Bond will be approved and executed. Declaration goes back to status “under control”.

5.7 Learning Activities

Log into the iCMS and undertake the following tasks.

Required:

- Create and register an IM4 on iCMS.
- Create and register an IM5 on iCMS.
- Create and register an IM6 on iCMS.
- Make a request for alteration of IM4 on iCMS.
- Make a request for cancellation of IM4 on iCMS.

5.8 Self-Assessment Questions and Activities

- Discuss the scope of IM4 in customs declaration.
- Under what circumstances should you undertake the following:
 - Alteration and Cancellation of a Customs Declaration
 - Amending of a Customs Declaration

5.9 References

- Kenya Revenue Authority - KRA (2017). Integrated Customs Management System (ICMS) Training Manual For Clearing and Forwarding Agents.
- Kenya Revenue Authority - KRA (2019). Integrated Customs Management System (iCMS).
- EAC- Customs Union (2004) Customs Management Act, EAC Customs Union Secretariat
- World Customs Organization (WCO) (1999). Revised Kyoto Convention. WCO, Geneva
- World Customs Organization (2021). Retrieved from http://www.wcoomd.org/ru-ru/topics/capacity-building/activities-and-programmes/mercator%20programme/cb_support_customs_reform_modernization.

6.0 TEMPORARY IMPORTATION CUSTOMS DECLARATION

6.1 Learning Outcomes

At the end of this topic the trainee should be able to;

- Process IM5 temporary importation permit
- Process IM6 temporary re-importation permit

6.2 Introduction

This chapter enables a learner to make a Customs declaration (CD) of temporary imports (IM5) and of re-importation goods (IM6).

6.3 Temporary Importation Customs Declaration

The regime code for temporary importation in iCMS is IM5.

Temporary importations are categorized into three:

- Temporary importation for return in unaltered state- The CPC code is 5001500
- Temporary importation for repairs- The CPC code is 5001510
- Temporary importation for filming equipment- The CPC code is 50015015

Pre-requisites to creating a temporary importation CD:

- Approved IDF
- CB10 bond for temporary importations (particular bond)

The step by step process for creating and registering an IM5 is described below:

- Log into iCMS using your user ID and password.
- Select “Clearance” icon on the home page.
- Select Declaration tab on the left side of the window; create import customs declaration; input IDF registration no. and search.
- Fill in all mandatory fields under create new request (see circled fields in the screenshot below).

- Select IDF in the query result section. Click on “Display” icon. Check the item displayed. Click on “Create” icon at the top.
- Reference no. for CD is automatically generated. Fill all mandatory fields under the General segment- confirm whether all pulled data from IM0 are correct. Fill in CB10 details- fill in reference no. and the system will pick the amount automatically. SAVE
- Fill in all mandatory fields under Item segment. SAVE.
- Click on “Assess” icon. Go to assessment section under General segment to see the payable taxes (see screen shot; A- payable; M- duties covered by bond)

| Tax Type | Total tax amount in KSH | Tax method of payment |
|----------------------------|-------------------------|-----------------------|
| 1518 Concession Fees | 250.00 | A |
| 1102 Excise Duty | 0.00 | M |
| 1202 Vat Imports | 97,247.00 | M |
| 1002 Import Duty | 180,086.00 | M |
| Total taxes payable | 277,583.00 | |

- Click on “Register” icon and confirm registration of document.
- Print e-slip by clicking declaration e-slip icon; Make payment of due taxes.

6.4 Re-Importation Customs Declaration

The regime code for re-importation in iCMS is IM6.

Re-importations are categorized as follows:

- Re-importation after temporary export for renovation where a repair charge has been raised- The CPC code is 6113610.
- Re-importation after temporary export for renovation where repair charge has not been raised- The CPC code is 6113620
- Re-importation after temporary export where goods have not changed their character or tariff classification e.g. exhibition- The CPC code is 6213620
- Re-importation of rejected/returned exports- The CPC code is 6313621

To create an IM6 CD, an IDF is not a pre-requisite document. It is the documents that were used for exportation of the goods being re-imported which are required.

The step by step process for creating and registering an IM6 is described below:

- Log into iCMS using your user ID and password.
- Select “Clearance” icon on the home page.
- Select Capture tab on the left side of the window.

- Fill in all mandatory fields (preceding transaction is road manifest for export; preceding document is export CD) and SAVE.
- Click on “Assess” icon;
- Click on “Register” icon; confirm registration of document.
- Print e-slip by clicking declaration e-slip icon; make payment of due taxes.

6.5 Learning Activities

Log into the iCMS and undertake the following tasks.

Required:

- Create and register an IM6 CD on iCMS
- Create and register an IM5 CD on iCMS.

6.6 Self-Assessment Questions and Activities

- Discuss the scope of IM5 and IM6 in customs declaration.
- Under what circumstances should you undertake the following:
 - Temporary importation
 - Temporary re-importation.

6.7 References

- Kenya Revenue Authority - KRA (2017). Integrated Customs Management System (ICMS) Training Manual For Clearing and Forwarding Agents.
- Kenya Revenue Authority - KRA (2019). Integrated Customs Management System (iCMS).
- EAC- Customs Union (2004) Customs Management Act, EAC Customs Union Secretariat
- World Customs Organization (WCO) (1999). Revised Kyoto Convention. WCO, Geneva
- World Customs Organization (2021). Retrieved from http://www.wcoomd.org/ru-ru/topics/capacity-building/activities-and-programmes/mercator%20programme/cb_support_customs_reform_modernization.

7.0 EXPORTS CUSTOMS DECLARATION

7.1 Learning Outcomes

At the end of this topic the trainee should be able to;

- i. Process direct export customs declaration
- ii. Process temporary export of home goods
- iii. Create and register a direct export

7.2 Introduction

This topic enables a learner to create and register Customs Declaration for direct exports, temporary export of home goods and re-export goods; and to create and register a road manifest.

7.3 Direct Export Customs Declaration

The tax regime code for exports is EX1.

The CPC code for home produced direct exports is 1000100, where 10 is code for direct export; 00 means there is no previous document; and 100 is the special category code for home produced export goods.

The step by step process of creating and registering a direct export CD is described below:

- i. Log into iCMS using your user ID and password.
- ii. Click on Clearance icon on the home page.
- iii. Click on Declaration on the left side of the window; and select capture tab.
- iv. Select the entry type as “Direct Export”. Input all mandatory fields in the general segment (untick consignee registration no. since they are not expected to have a PIN; period in facility should not exceed 30 days).
- v. SAVE. Export declaration number is generated e.g. 20MBAEX100233845. Status changes to “created”.
- vi. Move to Items segment and input all mandatory details. SAVE.
- vii. Go to General Segment and confirm that all information is correctly provided. Click on “Assess” icon and the message displayed is “tax assessment successful”.
- viii. Preview draft CD by clicking on print icon on the right. Once you are satisfied that all information is well captured, click on “Register” icon. Confirm registration by clicking on “register”.

- ix. Status changes to “removed” which enables capturing of road manifest.
- x. To create road manifest, close all windows and go to home page. Click clearance icon; click declaration and then search on the left side of the window.
- xi. Input registration no. & search; highlight CD on the query result section.
- xii. Click display icon at the top of the window; click “Clone SAD” icon. A new registration no. is generated.
- xiii. Close all window; select search; input new registration no. and the status will be created. Highlight SAD and click on “Process” icon at the top.
- xiv. Edit pulled data from export CD to suit road manifest details. Input/edit all mandatory data under General segment and SAVE.
- xv. Go to Items segment and then edit/input data (details, procedure, packages) and SAVE.
- xvi. Click “Assess” icon. The message “tax assessment is successful” will be displayed. Click “Register” icon and confirm registration.
- xvii. Click “Assess” icon to see MSS levy payable. Click “Declaration e-slip” icon to generate e-slip.
- xviii. CD moves from “registered” to status “under control”. This enables Customs Agent to engage Customs officer for supervision of loading and sealing.
- xix. To notify Customs officer that you are ready for stuffing and sealing, go to home page. Click on messages; select notification; create notification; and click post.

7.4 Temporary Export of Home Goods Customs Declaration (EX2)

The tax regime for temporary export of home goods is EX2.

Temporary exports may be for return in unaltered state (code 20) or for repairs (code 21).

All the steps followed under EX1 apply other than step (vii) where the procedure details under box 37 will be as follows:

- Requested- code 20 (temporary exports for return in unaltered state) or code 21 (temporary exports for repairs)
- Previous- code 00
- Type of category- code 2
- Subcategory- code 00

7.5 Re-Export Customs Declaration

The tax regime for re-exports is EX3.

The step by step process of creating and registering a direct export CD is described below:

- i. Log into iCMS using your user ID and password.
- ii. Click on Clearance icon on the home page.
- iii. Click on Declaration on the left side of the window; and select capture tab.
- iv. Select the entry type as “Re-export”. Input all mandatory fields in the general segment.
- v. All other steps will be the same as those outlined in the EX1 process other than step (vii) where procedure details under box 37 and 40 will depend on the nature of the re-export.
 - For example, the following details will be filled under box 37 for re-export of warehoused goods: Requested= code 30; Previous= code 70; Type of Category= code 3; Subcategory= code 00.
 - The following details will be filled under box 40 for re-export of warehoused goods: Type of document- code Z (previous document); Abbreviation= IM (previous SAD import); First subdivision: Identification = 20NBOIM7123456789-3 (where 20NBOIM712345678 is the warehousing declaration number followed by a dash, then 3 is the item number).

7.6 Learning Activities

Log into the iCMS and undertake the following tasks.

Required:

- i. Create and register an EX1 and its accompanying road manifest.
- ii. Create and register an EX2 and its accompanying road manifest.
- iii. Create and register an EX3 and its accompanying road manifest.

7.7 Self-Assessment Questions and Activities

1. Discuss the scope of exports customs declaration.
2. Under what circumstances should you undertake the following:
 - a. Direct exports
 - b. Temporary exportation
 - c. Re-exportation.

7.8 References

- Kenya Revenue Authority - KRA (2017). Integrated Customs Management System (ICMS) Training Manual For Clearing and Forwarding Agents.
- Kenya Revenue Authority - KRA (2019). Integrated Customs Management System (iCMS).
- EAC- Customs Union (2004) Customs Management Act, EAC Customs Union Secretariat
- World Customs Organization (WCO) (1999). Revised Kyoto Convention. WCO, Geneva
- World Customs Organization (2021). Retrieved from http://www.wcoomd.org/ru-ru/topics/capacity-building/activities-and-programmes/mercator%20programme/cb_support_customs_reform_modernization.

8.0 WAREHOUSING CUSTOMS DECLARATION

8.1 Learning Outcomes

At the end of this topic the trainee should be able to;

- Make an IM7 Entry
- Generate E-slip for IM7 Entry
- Make an Ex-warehouse home use Entry

8.2 Introduction

This topic enables a learner to create and register an ex-warehouse home use and warehouse Customs Declaration (CD).

8.3 Definition of Terms

- Inactive - Status of a warehouse record showing that inventory is expected to be received into the facility.
- Active - Status of a warehouse record showing the inventory that has been physically received into the warehouse and is available for use
- Stock Number - A unique number identifying each item of inventory in a warehousing facility.
- Entity ID - This is the identification of the general entity which represents the goods in a facility e.g. Customs Declaration number, Transport document number, manufacturing processing code.
- Item ID - this is the item number of the entity representing the good in the facility. E.g. item number of a Customs Declaration, Transport document LP number, Item number of manufacturing.

- INWRH - This is inventory that has been generated from a warehousing declaration entering the bonded facility.
- REPACK - This is inventory that has been generated after a repacking request has been completed.
- OWNER - Inventory whose ownership was transferred within the warehouse.
- MANUF- Inventory created using the production/blending formulae representing the output of the production process or in the case of tea blending, the specific blend generated.
- WASTE - waste inventory created in the production formulae representing waste generated during a production process.
- FIXED - Inventory brought in through declaration that is not an input in production e.g. machinery and equipment.

8.4 Warehouse Customs Declaration

The tax regime code for Warehouse goods is IM7. The CPC code is 7001700.

The following is a step by step description of how to create and register a warehouse CD:

- Log into iCMS using your user ID and password.
- Click "Clearance" icon on home page.
- Create IDF. Click "Declaration" tab on the left side of the screen; select create an import declaration.
- Key in IDF no.; search (status should be Customs approved); fill in details under "create new request" section (see screen shot below).

- v. Select displayed item; click “Display” icon.
- vi. Select items displayed; click on “Create” icon.
- vii. Fill in all mandatory details both in the General segment and Item segment (identification warehouse on column 49 is mandatory; period in the facility is 180 days).
- viii. Click on “Assess” icon to verify that all information is correctly captured.
- ix. Print draft CD if you wish by clicking on print icon on the right top of the window.
- x. Click on Register icon; click on register in the pop up window to confirm registration. Status changes to “Registered”.
- xi. Generate declaration e-slip by clicking at the icon and make payment of due taxes. Status changes to “accepted”.

Taxes are paid during the ex-warehousing since they are dutiable goods being entered for consumption in the Kenyan market.

The following is a step by step description of the process of creating and registering and ex-warehouse home use:

- Log into iCMS using your user ID and password.
- Click on the “Warehousing” icon on the home page.
- Click “Request” tab on the left side of the window, then click on Repackaging.
- Fill in all the mandatory details in the fields.
- Click on “Clearance” icon on home page. Fill in all mandatory details both in the General segment and Item segment; SAVE. Take note of box 37 and 40 details as shown in the screen shot below.

8.5 Ex-Warehouse Home Use Customs Declaration

The tax regime code for ex-warehouse home use goods is IM4.

The screenshot displays the iCMS interface for creating an ex-warehouse home use declaration. The form is titled "Capturing ex warehouse home use declarations". It includes a sidebar with navigation options like Declaration, Search, Capture, Create an import Customs, Loader, and Options. The main form area contains several sections: "CD registration date and time", "A. National Subdivision", "4. Total gross mass", "6. Total packages", "32. Item number", "37. Procedure", "40. Summary declaration / Previous document", and "41. Ex-Warehouse home use duty". The "41" section is highlighted in red. The "40" section shows a "Previous document" dropdown set to "Z" and a "Previous SAD import" dropdown set to "IM". The "41" section shows a "Requested" dropdown set to "41" and a "Subcategory" dropdown set to "10". The "37. Procedure" section shows a "Requested" dropdown set to "41" and a "Subcategory" dropdown set to "10". The "40. Summary declaration / Previous document" section shows a "Previous document" dropdown set to "Z" and a "Previous SAD import" dropdown set to "IM". The "41. Ex-Warehouse home use duty" section shows a "Requested" dropdown set to "41" and a "Subcategory" dropdown set to "10". The form is titled "Capturing ex warehouse home use declarations".

- Click on “Assess” icon on the top of the window. System assesses whether information keyed is correct. Scroll down, click on assessment button and amount of duties payable will be displayed.
- To print draft C17C, click on the print button at the top right side of the window.
- Click on register; confirm registration and register; status changes to “registered”.
- Print registered C17C by clicking on the print button; then proceed to generate e-slip by clicking on the “Declaration e-slip” icon on the top of the window.
- Print e-slip to by clicking on the “Print” icon. Make payment of duties. Status changes to “accepted”.

Guiding Note:

- In case you key in a facility without enough bond OR which has no valid license, you will get an error message.

8.6 Learning Activities

Log into the iCMS and undertake the following tasks.

Required:

- Create and register an IM7 entry.
- From the IM7 entry, create and register an ex-warehouse home use entry.

8.7 Self-Assessment Questions and Activities

1. Discuss the scope of warehousing customs declaration.
2. Discuss the roles and responsibilities of a customs agent / clearing and forwarding agent in warehousing declaration.

8.8 References

- Kenya Revenue Authority - KRA (2017). Integrated Customs Management System (ICMS) Training Manual For Clearing and Forwarding Agents.
- Kenya Revenue Authority - KRA (2019). Integrated Customs Management System (iCMS).
- EAC- Customs Union (2004) Customs Management Act, EAC Customs Union Secretariat
- World Customs Organization (WCO) (1999). Revised Kyoto Convention. WCO, Geneva
- World Customs Organization (2021). Retrieved from http://www.wcoomd.org/ru-ru/topics/capacity-building/activities-and-programmes/mercator%20programme/cb_support_customs_reform_modernization.

9.0 EXIT FROM CUSTOMS AREAS

9.1 Learning Outcomes

At the end of this topic the trainee should be able to;

- Transfer cargo to a CFS/Shed
- Process grain bulk entry into a CFS
- Exit cargo from a Customs area.

9.2 Introduction

This topic enables a learner to request for Cargo transfer to a CFS/Shed; undertake necessary Customs formalities to enable grain bulk to enter a CFS; and to appreciate the process for exit of cargo from a Customs area.

9.3 Request Cargo Transfer to CFS/Sheds

To request transfer of cargo from the port to a CFS, follow the steps outlined below;

- Log in with the profile of a Shed operator or a de-consolidator;
- From the left navigation panel, go to CHECK > Check packages as shown below;
- Enter the manifest number and select the “type of check report” as “Transfer request”;
- Click on the “SEARCH” button to populate the TD and LP info;

Selection Criteria

Registration No. 17MSAS100000703F

TD ID NLAAM1-12345567

Type of Check Report Transfer Request

Search TD

Search

Check Package Report

Check Packages Reference ID

TD Info

Notify Name Mohammed Oloo

Consignee No. P051437325D

Carrier No. P051437325D

Status Registered

T Status

Intended Temporary Storage GBH

Conveyance ID Number

Lines of packages

| Included in Report | Declared Qty. | Declared Gross Weight | Marks of Packages | Desc. of PK | Item No | Unique LP Reference |
|-------------------------------------|---------------|-----------------------|-------------------|-------------|---------|---------------------|
| <input checked="" type="checkbox"/> | 100 | 1,000,000 | medicine | Medicaments | | 1 |

- v. Enter the Conveyance ID.
- vi. Select the LP you want to transfer and click on the “PROCESS” icon at the top left side.
- vii. A transfer confirmation message will be displayed as shown in the screen shot below.

The screenshot shows the iCMS web application interface. At the top, a red navigation bar contains a 'PROCESS' icon, which is highlighted by a red box and a blue arrow. Below the navigation bar, the main content area displays the 'Sea Manifest' screen. This screen includes several input fields for registration and package details, a 'Search TD' button, and a table titled 'Lines of packages'. The table has columns for 'Included in Report', 'Declared Qty.', 'Declared Gross Weight', 'Marks of Packages', 'Desc. of PK', 'Item No.', and 'Unique LP Reference'. A single row is visible in the table with the following values: 100, 1,000,000, medicine, Medicaments, -, 1.

- viii. The status of the LP changes from “LP CREATED” to “LP TRANSFER” as shown below;

The screenshot shows a close-up of the 'LP Status' field in the iCMS web application. A red box highlights the field, and a blue arrow points to it. The field contains the value 'Transfer'.

| Type of Package | Removed Package | Container No. | LP Status | Last Type of Report | Last Report I |
|-----------------|--------------------------|---------------|-----------|---------------------|---------------|
| CS | <input type="checkbox"/> | - | Transfer | Transfer Request | 17092100101 |

9.4 Grain Bulk Entry into CFS

- i. For all Grain Bulk, a Notice of intention will precede the entry into the CFS. The Import Manifest should have been received and accepted prior to Registering the Notice of intention.
- ii. Customs officer approves Notice of intention.
- iii. Upon approval of a notice of intention, the GBH shed operator will make a transfer request and the Grain bulk will be moved to Grain bulk handling facility (GBH). Entry into customs area, declaration and clearance procedures will remain the same as all other cargo.

9.5 Exit from Customs Area

This is a function of the Customs Enforcement officer who verifies that the physically presented consignment at the exit gate corresponds with the Customs Declaration and supporting documentation, and that all Customs procedures have been complied with.

- i. When Customs officer finishes the logistics operation, the Line of packages are indicated as “removed”.
- ii. The status of the Transport Document switches to “discharged”.
- iii. Every day, the system detects and locks imported goods that are still in a Customs area after the delay to complete the clearance process has expired.

9.6 Learning Activities

Log into the iCMS and undertake the following tasks.

Required:

- i. Request for cargo transfer to CFS/Shed
- ii. Make a transfer request to move grain bulk to Grain Bulk Handling facility (GBH).

9.7 Self-Assessment Questions and Activities

Discuss the roles and responsibilities of a customs agent / clearing and forwarding agent in exiting Custom areas.

9.8 References

- Kenya Revenue Authority - KRA (2017). Integrated Customs Management System (ICMS) Training Manual For Clearing and Forwarding Agents.
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- EAC- Customs Union (2004) Customs Management Act, EAC Customs Union Secretariat
- World Customs Organization (WCO) (1999). Revised Kyoto Convention. WCO, Geneva
- World Customs Organization (2021). Retrieved from http://www.wcoomd.org/ru-ru/topics/capacity-building/activities-and-programmes/mercator%20programme/cb_support_customs_reform_modernization.

NOTES

NOTES

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.



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