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Post Clearance Control Training and Recommendations

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ABBREVIATIONS AND ACRONYMS

BPI	Business Plus Initiative
CVA	Customs Valuation Agreement
GATT	General Agreement on Tariffs and Trade
IPR	Inward Processing Relief
LOE	Level Of Effort
PCA	Post Clearance Audit
PCC	Post Clearance Control
WCO	World Customs Organisation
WTO	World Trade Organisation

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EXECUTIVE SUMMARY

The purpose of this project was to:

- ascertain the level of knowledge and expertise of the Mongolian Customs Post Clearance Audit (PCA) team;
- ascertain how appropriate the Mongolian Customs Law is to support Customs Post Clearance Control (PCC), both Compliance and Audit;
- devise and deliver initial training to meet the perceived needs of the PCA Team; and
- make recommendations to improve the Mongolian Customs law and PCA procedures.

During April and May 2013 the consultant held numerous discussions, via E-Mail, with Mr Amgalan, Chemonics, Ulaanbaatar and devised training based on Mongolian Customs Law and the General Agreement on Tariffs and Trade (GATT) Customs Valuation Agreement (CVA) and wrote the following courses:

- a six day valuation course; and
- a four day audit and compliance course.

The mission covered the period 20th May to 15th June 2013. During the first week in Ulaanbaatar three meetings were held with the Customs PCA Team in an attempt to clarify in excess of 100 issues identified by the consultant and requiring resolution in order to facilitate the correct interpretation of the Mongolian Customs Law.

The two training courses were run, between 24th May and 5th June 2013 and between 6th June and 15th June 2013.

SECTION I: INITIAL WORK

During April and May, in the UK, the expert examined the Mongolian Customs Law:

Constitution of Mongolia;

Customs Law of Mongolia;

Law of Mongolia on Customs Tariffs and Customs Duties; and
A Regulation Concerning Post Clearance Audit.

In combination with the WTO's CVA two training courses were devised. The courses comprise:

1. Modules;
2. Exercises; and
3. Handouts.

All the material was transferred to Mongolia by E-Mail, where it was translated into Mongolian and printed. During this period the expert posed numerous questions for the Mongolian Customs Department to answer. By the commencement of the first course approximately half of the final 100 questions were still outstanding.

During the first three days the expert was in Mongolia (20th May to 22nd May 2013), the mornings were taken up with finalizing and organizing the training material and the afternoons with meetings with PCA team members, including Mr Tunsh Munkhchuluun, Director of Post Clearance Audit Department. A fuller note of the results of these meetings is contained in the weekly reports at Annex I.

On 23rd May a meeting was held with Mr. Batbayar Enkhtaivan, Head of Budget Revenue Division – the head of the Mongolian Revenue Services, during which his approach to Customs PCA was explored. A note of this meeting is at Annex II

SECTION II: TRAINING DELIVERED

The two training courses were held at the Customs Training Centre in Ulaanbaatar, between 24th May and 15 June 2013.

The content of both courses was the same;

- the first six days covered the GATT CVA Method 1; and
- the remaining four days covered Customs Post Clearance Audit (three days) and Post Clearance Compliance (one day) techniques.

The content of each course is summarized at Annex V

Both courses received positive feedback, which is summarized at Annex III.

During the first course the trainees attended on time and almost every day. When they had to be absent (to attend court for a case) they informed me the day before.

During the second course there were some problems. I had been told prior to the commencement of the course that one or two of the students had to attend a tribunal/court hearing. As the students on the first course had informed me the day before they were to attend a court/tribunal hearing, I was expecting the same information from the second course trainees.

Several trainees did not attend a number of days and approximately half of them were significantly late arriving or early leaving. These students did not offer an explanation and most of them did not apologize.

In my view managers should not put staff on training courses if they know that the staff cannot attend all of the sessions. I cannot comment on the previous training provided to Mongolian Customs, but all of the training I deliver is both interactive (I expect the students to contribute to the training) and cumulative. This means that sessions build on the previous sessions. If one session is missed it will considerably diminish the value of the following sessions. When several sessions are missed it becomes pointless attending the course.

Currently the training planned for later in the year is not quite so susceptible to requiring students to attend all of the sessions at the beginning of the courses. The next valuation course covers Methods 2 to 6. So long as students can attend all of the days for a particular Method they will at least understand that Method. Only Method 6 builds on the previous training (including the training in the Method 1 course).

SECTION III: RECOMMENDATIONS

The primary legislation relating to Customs Post Clearance Audit in Mongolia is:

Order No 22 of 2011 **A REGULATION CONCERNING POST CLEARANCE AUDIT**

Structure of the Audit

The PCA Team informed me that they cannot leave an audit half way through and return at a later stage, unless the Director General of Customs authorizes them to do so. This is a major obstacle to efficient auditing. It is the interpretation of Article 3.2 that produces this obstacle:

3.2. PCA shall be conducted on the basis of a directive issued by the Customs Commissioner.

The PCA staff and their management seem to believe that this Article requires them to get the permission of the Customs Commissioner to extend the time of the audit and to leave it without finalizing all issues, but to come back and resolve them at a later date.

Audit is defined as the structured examination of a business's relevant commercial systems, financial and non-financial records, physical stock and other assets, internally generated data and that produced independently of the business.

The idea of audit is to focus the tests so that they provide a representative view of the trader's systems. Mongolian Customs check every declaration 100%. As each declaration takes 30 to 60 minutes to fully check, this results in a considerable amount of time being required. It should be noted that 100% checking is not audit. This is just 'transaction testing'. In a 15 day audit the testing should normally take only two or three days.

The most cost effective way to perform an audit is to select a representative sample of transactions/records to fully test. Assume that 15% of all transactions are selected via the audit process and assume further that of these one third present errors. In the UK the auditor will explain to the importer that he has four to six weeks (depending on the number of transactions to be examined) to fully examine all of his own transactions and to provide a schedule of all errors. At this stage, whilst a selection of errors are identified to the importer, not all of the errors are identified to the importer. The importer is made aware of the fact that the auditor knows there are more than he has identified, so that the importer cannot just identify those the auditor already knows about.

When the final schedule is provided to the auditor a number of transactions not included on the schedule are checked to ensure that the schedule is accurate. If there were 300 declarations over the five years that Mongolian Customs can recover arrears, it would take in excess of 20 days just to undertake the testing phase of the audit to check all 300 declarations. By requiring the importer to do this work the auditor can reduce the time to two to three days during the audit and a further one to two days when checking the importer's schedule. This will double or treble the number of audits and auditor can perform.

I recommend that the Director of the PCA Team be authorized to extend/postpone the date of finalization of all audits.

Having detected errors it is more efficient (for maintaining the audit plan) to identify them in the audit report and pass that to the compliance officer for their resolution. However Article 3.13 provides a barrier to this:

3.13. The PCA team shall take necessary measures in regard to detected failures and violations by providing all kinds of advice including official demands and recommendations to fix/correct detected violations and offences.

I recommend that the Director of the PCA Team be authorized to allocate this work to the compliance officer and that this work is able to be deferred until after the original audit is completed.

The next issue is ‘criminality’. Articles 3.17, 4.2 and 4.3 raise a serious obstacle to audit:

3.17. If an incidence of a criminal nature is detected during the PCA, the Customs Inspector in charge shall collaborate with the Customs Violation Prevention Unit of the CGA in order to take immediate measures in accordance with the “Regulation to take an immediate measure against crime related complaints and information” approved by the Prosecutor General’s Order No 123 on the basis of the Criminal Procedure Code of Mongolia.

4.2. If the detected violations are not subject to criminal liabilities, then fine or tax shall be imposed on persons/companies in accordance with relevant legislation. The PCA team shall prepare “Statement of the Customs State Inspector authorized to conduct PCA” using the form attached to this regulation as Annex 2 and the “Record of Violations.”

4.3. If there is a need to register criminal cases involving persons engaged in the incidence specified in provision 3.17 of this regulation, or hidden a large sum of taxable income or evaded tax, the “Customs State Inspector’s Conclusions” must be prepared and the related documents should be transferred to a relevant division for due actions.

The definition of “an incidence of a criminal nature” seems to be if the error is above a (quite low) monetary threshold. Audit requires the cooperation of the trader who’s system is under review. It takes an exceptional officer to perform an audit under the circumstances that the importer is liable to criminal actions by the auditor/auditors colleagues. I do not believe that there will be such officers within the Mongolian Customs Department for a number of years as they do not currently have the experience, expertise or adequate training.

That is not to say that the staff do not have potential or enthusiasm – they do. There are a number of staff employed in the Mongolian Customs PCA team I would have been happy to serve under me in the UK. However, what they currently have is potential, not proven ability. They need the cooperation of the traders to increase their knowledge and expertise. In the UK I used a number of compliant traders to train my staff. Whilst all errors detected during training visits were required to be corrected and arrears paid, no penalty action was ever taken.

It is fundamental to the process of improving the technical skills of the auditors that they are able to convince the traders that there will be no penalty action if the trader cooperates, even if the errors are found by the auditors.

When errors are discovered a Customs Authority has two basic options: to treat the errors as fraud (which means proving that the trader’s actions were deliberate); or to treat the errors as a ‘control problem’. The idea of treating errors as a ‘control problem’ is that the Customs Authority and the trader work together to resolve the current issues and to try to ensure that they do not happen again. For this to work in practice, the trader has to give his full cooperation. To achieve this level of cooperation requires the Customs Authority to explain that there will be no penalty action, so long as there is full cooperation.

I recommend that the Director of the PCA Team be authorized treat all errors as a ‘control problem’ and not as fraud. A ‘control problem’ can be resolved by the compliance officer,

without recourse to any criminal action or penalty. This will enable the PCA team to maintain the cooperation of the trader. The PCA team will produce significantly more revenue with the cooperation of the trader than they would be able to do without it. This will produce significantly greater revenue than the lost penalties.

The types of audit require definition. In the UK we use compliant traders for ‘training audits’. These are audits where the trader helps the auditor to understand the business in question, the trade sector and the particular accounting system he uses. It is important that the traders are informed of the purpose of such audits and that if any errors are found during such an audit no penalty action will be taken with regard to any trader who cooperates with the training audit.

I also believe that the traders should be made aware of the benefits to them of this strategy. This will include ‘education visits’, where Mongolian Customs provide specific regime training advice to traders and their staff, and ‘trader specific visits’ which are aimed at traders who request help with particular problems. These are not audits as such, but a chance to understand the trader and to ensure that his staff get it right first time more often.

Furthermore, I believe that this strategy is fundamental to the Mongolian Customs Department moving towards the concept of ‘right tax, right time’. As I have said the level of tax in Mongolia is not a barrier in itself to traders becoming compliant, but inefficiency in the Government Departments is. Mongolian Customs need to break down the barriers to compliance.

I recommend that the Mongolian Customs Department adopt a strategy for undertaking ‘training audits’.

This will require the department to consider what strategy it will adopt to obtain the cooperation of traders. Customs cannot expect traders to assist them without some sort of reward for doing so. This clearly includes no penalties for errors, even those detected by the auditors. In addition the department should consider what it believes to be an ‘acceptable price’, that is to say, what the department is prepared to do to obtain the full cooperation of the trader. The following are some things that might be appropriate for Mongolian Customs to consider to ensure such cooperation:

- A cooperative trader can reasonably expect the majority of his consignments to clear boarder customs immediately, unless there is a specific risk identified. In other words his goods will be cleared without examination unless there is a positive reason for examining them.
- He might reasonably expect his enquiries to be dealt with quickly and efficiently.
- He should be able to rely on what Customs tell him. If Customs make a mistake then he should not have to pay for it. However, if the information he provides is not totally accurate, then he would be expected to pay any arrears that result from the incorrect advice.
- Education audits would also be a price worth considering. These are ‘events’ primarily aimed at ensuring the trader’s staff understand the customs regimes and requirements.

I recommend that Mongolian Customs engage with the traders and discuss these issues with a view to improving both cooperation and compliance

Structure of the audit team

During the training I was informed that the PCA team does not have any dedicated support staff. I believe that this is an error. There are many routine tasks that can be performed by

clerical support staff and trainee auditors. In the UK a team of 20 auditors would be supported by at least four Assistant Auditors and two clerical support officers. These staff can also save the team's manager considerable time by collating all of the information he will require for monthly statistics etc.

It the job of these support staff to:

- book visits for compliance staff and audits for the auditors;
- chase up traders who are late in rendering returns and schedules of arrears;
- obtain the research information required to undertake an audit, including a sample of customs declarations and the information held by other tax authorities;
- obtain details of the person to see at the beginning of the audit and to ensure (s)he knows what the auditors will require during the audit, both in terms of personnel to see and documents to examine; and
- perform the initial checks on the trader's arrears schedules.

All of this work takes time, but it does not require the skills of trained auditors of compliance officers. When this sort of work is undertaken by support staff it can increase the number of audits and compliance visits considerably. In the UK I evened used the Assistant Auditors to perform routine visits to traders to ensure repayment claims were correct.

I recommend that a number of audit support staff are recruited to complement the auditors.

There is a considerable benefit in splitting audit from compliance. In the UK all Customs Post Clearance staff were called 'Control Officers' until the mid 1990s. These staff performed all the duties of auditors and compliance officers. However, it was noticed that very few audits were ever actually completed and even fewer were completed on time. When the traditional audit was examined in detail what was discovered provided the clue to the problem. During the course of an audit a technical problem (often many and varied problems) would be discovered. The auditor would then spend the rest of the allocated time resolving these issues. As a consequence, auditing was inefficient.

It was decided to split the two functions and have staff dedicated to each. This resulted in almost all audits being completed, but not necessarily by the due date as the auditors would invariably leave the importers to determine the extent of the arrears. However, most audits were completed within the number of days allocated and most of them within the same three monthly period used for reports.

The real problem is time allocation. If it is decided that an 'average audit' requires two officers for 15 days, there is a tendency for managers to want the auditors to complete for audits within three months (60 working days). This is impossible if errors are detected. In Mongolia it is inevitable that many errors will be detected during the audit. Then a decision is required. Do the auditors resolve all the issues whilst they are there or leave the trader to do it himself and come back and check later?

If they resolve the issues before leaving this will add many days to the length of the audit, often doubling the time required, with consequent problems for the next audit (and the one following that!). In other words the carefully constructed Team Audit Plan does not survive the first month! Later audits will not only be delayed because of the additional time spent on the earlier ones, but the later trader's vital staff would have been organized to be available when originally planned. For Multi-nationals it is important to keep to the agreed time scales as their staff are often out of the country for long periods of time. One American Multi-national I audited in the UK required at least six weeks notice for me to see the executive vice

president who understood the company structure and its transfer pricing policy. When he was available in the UK, for just five days each quarter, I had to be able to interview him.

I recommend that the Audit team be split into audit officers and compliance officers. It is possible for one officer to undertake both functions in the short term, but it must be made clear that all audits must be completed before the more complex issues are resolved, otherwise the audits will either take an inordinate amount of time, or not be completed at all. In the long term, due to different training requirements, it is more efficient to split the two roles.

The cumulative effect of my recommendations should be substantial. Given the relatively small size of the penalties in respect of Mongolian Customs offences there is little incentive to the trader to be honest. The barrier to honesty is not the amount of the tax, but two real issues:

1. If the trader is to be fined, even when he notifies customs that he has made an error, he will rather wait to see if customs find it themselves and then only pay what they find, plus the penalties associated to what they find. He would almost certainly have to pay considerably more if he were to inform customs of all the errors he found himself; and
2. Incorrect interpretation of the law. By this I mean that some of the actions taken are contrary to the correct reading of both National law and international agreements. For example, most Customs Officers I have met around the world believe that if a value declared under Method 1 is not acceptable to them they can immediately impose a Method 6 value. However, Customs cannot choose which Method they will accept in its place. By law they **MUST** proceed through Methods 2, 3, 4 and 5 and if an acceptable value can be determined under one of these Methods, it **MUST** be accepted, rather than going straight to Method 6.

When a trader perceives that the authorities are acting in a way he thinks is illegal, he will feel that it is perfectly OK for him to do the same. He will have no moral qualms about such actions.

In the UK I required all of my trainee officers to give me a presentation on each aspect of customs (the three main arrears of duty payment and all of the duty reliefs), covering the major issues of each regime, its law and the risk areas. We regularly held team meetings during which I updated my staff on amendments to the law and current interpretation of aspects of the law. Additionally, I required each team of two officers to pose a problem to all the trainees. They had to provide a solution, which I vetted for accuracy, and they had to take the rest of the team through both the issues and the solutions. This not only improved the skills of all the team members, but it significantly improved the knowledge of the staff who had to present both the problem and the solution.

I recommend that all Mongolian Customs officers are properly trained in the Customs Laws of Mongolia and that they are regularly tested/updated on the law.

A number of further, technical, recommendations are contained in Annex IV and the weekly reports

ANNEX I: WEEKLY REPORTS

Chemonics BPI initiative in Mongolia

Consultant: Laurrie Gidley, Senior Indirect Tax Specialist

Weekly Report 20th May to 26th May 2013

1. My input started Monday 20th May 2013 in the BPI offices in Ulaanbaatar. I met many the staff and discussed my proposed input with Mr. Efrain Laureano, Chief of Party (COP). My 'opposite number' in Chemonics is Mr. Amgalan (Amga). We discussed the new arrangements for my time in Ulaanbaatar. It had been planned that I would spend the period split into four periods of six days. The first period was for 'orientation', exploring how Post Clearance Audit (PCA) is performed and updating the training courses in the light of the answers to the approximately 100 questions I had asked. Just prior to my departure from the UK the 24 days had been split into three periods, the first encompassing 6 days for research etc. and then two nine day training courses. However, upon my arrival I was told that it had been decided that the first training event will start on Friday 24th May 2013, leaving only four days for research.
2. During the first three days (20th May to 22nd May 2013) the mornings have been taken up with discussions with Amga concerning primarily the format of the courses and their content and running order of the content. Additionally I have attempted to obtain as many answers to procedural issues as possible.
3. The afternoons of the first three days has been taken up with meetings with PCA team members. On the 20th May Mr. Tunsh Munkhchuluun, Director of Post Clearance Audit Department, attended the entire discussion, but was only available for brief periods for the remaining days. During these three days several members of the PCA, but not always the same officers, attended these discussions.
4. Most of the discussions centered around Customs Valuation and the entire first day covered only this subject. About 25% of the total time also covered issues relating to audit and audit techniques. By the end of Wednesday 22nd May almost half of my 100 questions had been addressed.
5. Towards the end of the meeting on 22nd May, when the PCA Director Mr. Munkhchuluun had returned from a meeting I raised the point with him that as we were starting the training on Friday 24th May and the first event was proposed for the less experienced staff, that meant there was the possibility of using Saturday 25th May for an additional day's training. Given that I had compressed 25 days of training into just nine days, perhaps this would be advantageous. To my surprise this sparked quite a heated debate, in Mongolian, which I did not follow. I suggested to Amga that we leave it with them as I was not trying to force this onto them, but it was just a suggestion.
6. Afterwards Amga informed me that the Director did not want any valuation training for his staff. Additionally, he did not want them to spend any more of their time answering my questions. As the nine days contain five days for valuation, this would mean a substantial re-write of the training course, which I started that night and worked through almost all of the night and started again very early the following morning.
7. On arrival in the office on Thursday 23rd May I discussed how we were to stretch the four days of audit training to cover all nine days. Amga told me that we were going to

continue with the original plan. We spent most of the day finalising the training material.

8. At 16:30 Mr. Laureano, Olin McGill and I attended a meeting at the Ministry of Finance and spoke to Mr. Enkhtaivan Batbayar, Head of Budget Revenue Division. Our discussions covered a number of topics and I have attached a copy of the report of this meeting at Annex 1 below. No mention was made of the 'problem' raised the previous day with the PCA Director.
9. In addition to these subjects Mr. Batbayar stated that as he had little or no experience of customs he wished to visit a Customs Boarder Office to see what their issues and problems are. He requested that Mr. Laureano allow me to accompany him. Ideally, this would be a very good use of resource. Unfortunately I do not have any free days except Saturday 1st June 2013, which is a public holiday in Mongolia and so far as I can establish, not a possibility for such a visit. From my perspective any Sunday would be suitable, but I do not believe that this is a possibility either. Consequently Chemonics will have to either decline this request or reduce one of the two courses by a day.
10. On Friday 24th May 2013 I commenced delivery of the Customs Valuation and Audit training course. This course was opened by:
Mr. Ganbat, Director General, Customs General Authority (CGA) and
Mr. Francis Donovan, Country Representative, USAID

Conclusions

Two significant issues and two problems have been identified this week.

Problem 1. Paragraph 9 above details the first problem.

Problem 2. The second problem is to do with the interpreters. It is quite apparent to me that neither of the interpreters is 'fully up to the job'. Amga believes that the young lady is better than the older gentleman, so I 'bow to his superior knowledge'. However, it is my view that what they are both doing is listening to the entire point I am making, trying to understand the content and then translating that into Mongolian. If they do not understand the concepts, then whatever they say will not be what I have said. Amga tells me that it is not possible for me to dictate in small bits what I want them to translate as this will not make sense in Mongolian. Again I 'bow to his superior knowledge', but what this means is that the interpreters **MUST** be able to fully comprehend the complexities of the subject. As the students, one of whom has worked for many years in the Mongolian Customs Section, are having difficulties in understanding some of the concepts themselves, I believe that there is absolutely no realistic prospect of these translators conveying the correct content of what I am trying to tell the trainees.

I admit that I do not know many Mongolians and even fewer who are fluent in English and, more particularly fluent in Customs. However, on 23rd May Amga and I interviewed a potential interpreter in the BPI office for an hour. I was told that she was very good and had been used by the BPI for technical interpretation and translation in the past. At the beginning of the interview I gave her Article 1 of the WTO's GATT Valuation Agreement and asked her to translate it into Mongolian. At the end of the interview (40 minutes or so later) I asked her to translate her Mongolian version back into English. I have reproduced the entire Article, which contains 41 words in English:

1. The customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8, provided:

During the course I will say this many times, so getting the translation right is absolutely vital as four of the first five days of the course depend on understanding this Article. I actually did not dictate it to her, but gave her the written version. The 41 words contain 11 concepts. She was only able to reproduce one of those concepts in a way that, in English, I could actually recognise it!

Bearing in mind that I will be trying to convey 24 pages of the Customs Agreement and approximately 100 pages of explanation, interpretation and examples, this is a very worrying issue. The only solution that I can see is for Amga to undertake all of the interpretation as he does have some idea of what I am talking about and has spent a week listening to me and at least seven hours acting as my interpreter in the meetings with the PCA team.

The young lady mentioned above is not the one we are currently using on the course. Amga tells me that the one we are using is actually better than the one I interviewed.

Issue 1 Risk.

Chemonics has provided considerable assistance to Mongolian Customs to develop an electronic risk management system. I suspect that those members of the department who are considering altering it do not fully understand what it was intended to do, how it was to achieve that end and what is need to progress it's evolution. Before any alterations to the system takes place, as opposed to the inbuilt evolution of the system which should be a routine event, it should be examined to see what it is actually doing, what the expectations are for the output of the system, why it is not meeting those expectations and whether or not those expectations are realistic in the light of the current situation in Mongolia.

Issue 2 VAT

There should be a relationship between the VAT collected at import and the VAT collected in total. Currently the total VAT collected by the Tax Department (for internal sales and imports) is approximately 150% of the VAT collected by customs on importations. What this means is that if the goods imported achieve a mark up covering all costs and profit within Mongolia of just 50%, no VAT is collected on goods and services produced for sale with Mongolia.

As an absolute minimum, the total VAT collect should exceed the VAT collected by customs on imports by a multiplier of 4. With the proper systems to target adequately trained auditors to significant risk a ratio of 1 to 4, or better, is achievable within 3 to 5 years. Additionally, the Import VAT should also increase in this period with similarly targeted audits and trained PCA staff. Achieving this ratio, whilst increasing the total VAT collected on imports at the same time, would result in a significant overall improvement in the VAT yield.

Laurrie Gidley
26th May 2013

Chemonics BPI initiative in Mongolia

Consultant: Laurrie Gidley, Senior Indirect Tax Specialist

Weekly Report 27th May to 2nd June 2013

1. The training at the Customs Training Centre in Ulaanbaatar continued for the five days of this week. It was apparent at the outset of this training that most of the staff attending this course had not read the World Trade Organisation's (WTO) General Agreement on Tariffs and Trade (GATT) Valuation Agreement, or at least did not understand it. Even those who had read it demonstrated that their understanding was limited and often incorrect. Most of the students did not realise the implications of Article 10 of the Mongolian Constitution, Article 2 of the Customs Law of Mongolia and Article 2 of the Law of Mongolia on Customs Tariffs and Customs Duties. All three pieces of law say substantially the same. Import valuation is specifically regulated under the last of these three pieces of law and Article 2.2 is reproduced below:

2.2. If the provisions of any International Treaties of Mongolia differ from those specified in this Law, the former shall prevail.

As a consequence, if the Law of Mongolia on Customs Tariffs and Customs Duties conflicts with the GATT Valuation Agreement, then the Mongolian law is not valid in Mongolia and the Valuation Agreement has force of law. The training is based primarily on the GATT Valuation Agreement and only refers to Mongolian laws where the Agreement is silent on a particular issue.

2. A number of the sessions were dropped from the course. I decided that it is more important that the students have a reasonable understanding of the most fundamental sessions than that they have a superficial understanding of all of them. Consequently I covered in sufficient depth to ensure the trainees understood them only the following sessions:

- Valuation terminology;
- The law (both Mongolian and the Valuation Agreement);
- Article 1 of the Agreement;
- Additions, assists and further payments;
- Research and development (R&D)(basic);
- Royalties and license fees (basic);
- Deductions and discounts; and
- Explored the differences between selling agents, buying agents and brokers.

The course also included definitions of the various types of insurance the PCA Team may come across and the concept of successive sales, otherwise known as 'prior sale'.

3. Most of the more complex exercises were not undertaken by the students, although I did cover some of the points from two of them in the class where I thought the issues to be vital for their understanding. I briefly explained the concepts of 'unbundling' and 'price influence'. However, these issues were not covered in sufficient depth for the trainees to have anything more than an 'awareness' of the issues. I do not think they can address these issues effectively when they come across them.

The trainees were told to read the handouts on their powers and the law and that they can, with confidence, use the training material as a set of reference documents.

4. The Post Clearance Audit (PCA) part of the course started on Friday 31st May. Before I came to Mongolia I had asked on several occasions whether Mongolian Customs really needed Audit training at this time. Before speaking to the PCA Team I anticipated that they would not

yet be sufficiently proficient at Compliance Control of importers that Audit training would now be appropriate. I raised this during the first meeting with the Director of the PCA Team and some of the team members. The definition of Audit was provided before I came to Mongolia and to the PCA Team, but they confirmed that Audit training is what was required.

5. When I started the Audit training on Friday 31st May it was immediately apparent to Amga and to me that they had not realised that audit training would only cover audit, defined as follows:

“the structured examination of a business’ relevant commercial systems, financial and non-financial records, physical stock and other assets, internally generated data and that produced independently of the business”.

It is apparent that the PCA staff and their Director were expecting me to show them how to investigate serious fraud and really complex Multi-National/Inter- Government agreements. It is also apparent that their expectation was that I would cover all of the Compliance issues and techniques for controlling an importer.

Compliance is defined as “everything that is not fraud or audit”.

6. When I explained the following, the mood in the room changed dramatically:

The main functions of a modern Customs Department are:

- Prohibitions and Restrictions (P&R), otherwise known as ‘Safeguarding Society’; and
- Revenue collection.

Revenue collection breaks down into two main functions:

- Fraud investigation; and
- Control.

Control breaks down into two main sections:

- Compliance; and
- Audit.

This course focuses on only the last of these issues - Audit.

7. I also explained that to undertake any of the above functions, Customs Staff have to be able to efficiently interview members of the public and referred them to the training material on Interview Techniques. Having tried to get the trainees to ask me several questions as though I were the Managing Director of a British Multi-National, who speaks only two words of Mongolian (Tiim – yes, and Ugui – no), it is very apparent to me that the trainees are not yet able to conduct an effective interview.

1. I recommend that Interview Techniques training be given to the members of the PCA Team as a matter of some urgency.

8. I have concluded that the trainees actually want some training in Compliance issues. When I mentioned in the classroom that I was thinking of trying to include something on Compliance there was actually a cheer!

On Saturday 1st June, in my hotel, I started to write a Compliance Control training module.

9. When I was returning to my hotel on Friday evening, Amga mentioned that the next training sessions in September would be for the entire PCA Team, 20 or more staff. It is not possible to provide interactive training to 20 trainees, especially in such a small room and with such limited facilities for syndicate exercises (these are where groups of up to four trainees

work through an exercise together. It enables those who are struggling to learn from those who have grasped the fundamentals of the issues covered by the exercise. It also reinforces the learning experience for the more accomplished trainees as it encourages them to explain and defend their position to their colleagues).

If all of the PCA Team and their manager, and the valuation specialists, are to attend the training in one class, then I will have to change from the current training methods and just provide lectures. As nearly half of the learning on the courses to date has come from discussions, answering questions and explaining why my answer is correct, this will mean that their understanding of the subject matter will be significantly reduced.

2. I recommend that interactive training be continued for the next training courses.

3. I recommend that I deliver one 10 day Methods 2 to 6 Valuation course to the PCA Team and the Valuation specialists in the Department. As most importations use Method 1, there is no need for all of the PCA team members to be trained in the other Methods. In the UK, of the approximately 600 Customs Post Clearance Control staff (approximately split 400 compliance and 200 audit), less than 50 have been trained in Methods 2 to 6.

This course should contain a maximum of 15 trainees, including the valuation specialists and managers. If any more attend I will not be able to discuss the issues that the trainees raise or answer very many of their questions if I am to get through all of the Methods in the 10 days (this course takes 8 days in the UK, so I would expect it to take 12 or more in Mongolia even with only 12 trainees).

10. In the UK fraud training takes seven weeks in the class room and nine months practical training before an officer undertakes a simple case as 'case officer'. Tax avoidance takes many years for the most experienced and able staff. Transfer Pricing is a five day course, so in Mongolia it will take seven to eight days via an interpreter. Tax planning can be covered adequately in one day.

It is my opinion that, other than providing an overview, there is not much to be gained by delivering an eight day training course on all of these subjects. Given that I have not been able to complete all of the valuation Method 1 training, I believe that focussing here will be more beneficial for Mongolia.

4. I recommend that I develop an 'Intermediary Method 1 valuation course' to cover what has been left out of the Stage II course and to go some way into the Advanced Method 1 course (Stage 4). Whilst 'prior sales', 'unbundling', R&D and royalties were mentioned in the Stage II course, it is clear that these issues, together with 'price influence' and the way multi-nationals trade, are of considerable importance to the PCA Team.

However, such a course does not currently exist, so it would have to be written. I expect that it will take approximately 12 days to prepare all of the training materials for translation.

11. The interpreter who was originally expected to translate for me was unable to attend the training before Friday 31st May, due to ill health. Two members of the Customs Department 'stepped into the breach' and translated for the first five days. Unfortunately they are not first class translators. It is due to the significant amount of invaluable help provided by Amga that the training is the success(?) that it is.

The interpreter who was originally planned to work with me started on Friday 31st May and there was an improvement, but even so she does not really understand the subject matter. Consequently I do not expect the second course, due to start on Thursday 6th June, to include many more, if any, of the sessions that the first course managed to cover.

12. During our meeting last week, Mr. Enkhtaivan Batbayar, Head of Budget Revenue Division requested that I be available one or two evenings a week to discuss issues that are important to him. To date I have not received any request for such a meeting. I am not pushing this as I have been working 10 hours a day or more as it is, but if I am asked to have meetings with Mr Batbayar I will do so.

However, I would ask that they start punctually. I will still have work to do in my hotel each evening. Together with having a shower, having a meal and talking to my wife, I currently only have about two hours of free time. If I attend the Budget Revenue Division in the evening after the training I would like to be able to start soon after 5:30 pm and no later than 6pm, in order to give him one to one and a half hours. Otherwise, I suggest that we do not raise this subject and wait to see if he does.

Laurie Gidley
1st June 2013

Chemonics BPI initiative in Mongolia

Consultant: Laurrie Gidley, Senior Indirect Tax Specialist

Weekly Report 3rd June to 9th June 2013

1. The training at the Customs Training Centre in Ulaanbaatar continued for the first three day of this week, covering Post Clearance Audit and Post Clearance Compliance.

The students have put in considerable effort to understand the subjects and I am very pleased with their attentiveness and application. It was of a higher standard than Customs Departments in other parts of the world.

2. At the end of the course I reminded the students that the Mongolian Customs Department is 'vulnerable' with regard to certain issues;

Royalties: 'implied condition of sale'; and

Is Mongolia going to take into account the additional three conditions that apply to trade mark royalties?

Inward Processing Relief: will Mongolian Customs use 'straight line depreciation' of the GAAP curve?

Will Mongolian Customs use, as a minimum customs value the freight (and insurance) cost to get the goods to Mongolia?

Customs Warehouse: why does Mongolia insist on onerous physical security when fiscal security is easier and more comprehensive?

Why does the Mongolian Customs Department not treat the warehouse keeper as jointly liable for the customs debt with the depositor of the goods?

GATT Article 1: currently Mongolian customs will have to accept any sale in a sequence of sales that meets the criteria 'sold for export to Mongolia', not just the sale that introduced the goods into free circulation in Mongolia – a 'prior sale'.

Any addition to the Mongolian Customs Law that prevents the use of a 'prior sale' will almost certainly result in the duty point for customs warehousing moving from when the goods are entered into the warehousing regime, to when they are removed from the warehousing regime.

'Closely approximates': what definition will Mongolia adopt for this condition?

'Materiality': What level of materiality is acceptable to Mongolian Customs?

'De-minimus': it is not cost effective to recover arrears of duty that cost more to collect than they are worth. What level will Mongolian Customs decide is not worth pursuing? In the EU it is 10 Euros per declaration. Where the arrears of duty are less than this, per declaration, it is not recovered.

Technical penalties: to obtain the cooperation of importers it is vital that 'minor technical errors' are not penalised, at least on the first occasion.

3. The second course started on 6th June and continued through Saturday the 8th June. The first three days covered import valuation. The second course appears to be going a little quicker than the first. Unfortunately this seems to be because the students, on the whole, are

less experienced than the first course. This is combined with the fact that one of the students on this course was in charge of Mongolian Customs Valuation for a period of time. It appears that the more junior staff are intimidated by her. However, as the course proceeds they do seem to be 'getting over' this problem.

4. There is another problem that is affecting the course. The trainees on the first course all attend each day, on time, unless they had a very good reason not to. Even then they told me in advance that there might be a problem with half a day. The students on this course are not so considerate. On the first day, at approximately 09:30 one student told me that he had to leave at 10:30 to undertake an examination. He did not say how long he would be and did not return until after the start on the third day (Saturday). Two other students did not turn up at all for the first day and a half. I was offered no explanation or apology.

5. Several of the students arrive late for the start of the day and leave early with no explanation or apology. One of the students does not want to take part in the syndicate exercises, refusing to leave his seat. However, he is quite willing to get up and walk about talking on the telephone. I have been told (by Amga) that he is to be shown respect for his age as he will retire soon. I retired 7 years ago and am older than he is, so I would expect, at the very least, as much respect from him as he seems to think he is entitled to!

6. I have experienced worse than this on other projects, but because of the way the first set of students behaved, I guess I was expecting rather more from this set of students. Overall I would say that their level of knowledge is no higher than the first set of students, which is disappointing considering the level of experience of several of the staff. Additionally, they seem to be obsessed with using customs valuation rules to address what they see as a problem with investment in Mongolia by some multi-nationals, despite me telling them that the GATT Valuation Agreement cannot be used in the way they wish.

Laurie Gidley
9th June 2013

Chemonics BPI initiative in Mongolia

Consultant: Laurie Gidley, Senior Indirect Tax Specialist

Weekly Report 10th June to 15th June 2013

1. The training at the Customs Training Centre in Ulaanbaatar continued for the final week. Again some students did not attend for the entire day, or at all on some days.
2. The more junior staff seem to be less 'over awed' by the senior staff and are beginning to ask some questions, but still most questions come from the same handful of students. However, perhaps because not all the students are present for all the time, we seem to be getting through the course content slightly faster than we did on the first course.
3. As with the first course, the students were offered the option of receiving just audit training for the last four days of the course, or some compliance training. They requested that two thirds of the time be spent on audit and one third on compliance in addition to the Valuation Audit Pack training (valuation audit reporting) scheduled for the last day.
4. The students on both courses have asked to be able to contact me direct with any customs problems or issues they come across in the future. I informed them that any such contact would have to come through Chemonics and this was confirmed on the last day by Amga. He will 'vet' any requests the Post Clearance Audit team may have.

Overall Assessment of the Training

Both sets of students were surprised by the training methods used. They informed me that this was their first experience of interactive training. At the end of the training I told the students that this type of training only works well for around 12 staff or so. It would not be possible to train 20 to 25 students this way in the Autumn. They were unanimous in saying that, in that case, they will ensure that there will only be approximately 12 students next time! I take this to mean that the students on both courses prefer interactive training to attending lectures.

Amga has the individual feedback sheets (commonly referred to as 'revenge sheets' in the UK) for each course. In summary, what I have seen appears to support the fact that the students much prefer interactive training.

Laurie Gidley
16th June 2013

ANNEX II: REPORT ON THE MEETING WITH MR ENKHTAIVAN BATBAYAR, HEAD OF BUDGET REVENUE DIVISION

Meeting on 23rd May 2013 at Ministry of Finance, from 16:30 to 18:30.

Present: Mr. Enkhtaivan Batbayar, Head of Budget Revenue Division

For Chemonics: Mr. Efrain Laureano Chief of Party, Mr. Olin McGill, and

Mr. Laurie Gidley, Senior Customs Consultant.

Topics discussed:

1. improving compliance by importers;
2. trade facilitation;
3. customs training;
4. customs risk;
5. the very poor level of vat payment within Mongolia; and
6. increasing the vat registration threshold.
7. reducing the data base of registered companies

1 & 2. Mr. Batbayar was keen to improve the compliance of importers and was particularly interested in ways in which providing trade facilitation could potentially increase the revenue collected at the same time as improving the growth of business. Mongolian taxes are not prohibitive, indeed they are relatively low overall. They do not in themselves present a significant obstacle to good trade compliance. Importers are more likely to want to reduce both the time and cost of importing and exporting their goods than to focus on 'minimising' their tax liability. As a consequence any initiatives that reduce the customs burden on importers and exporters, whilst requiring them to become more compliant, will not face the barrier of a high tax burden and are likely to provide considerable benefits in the short term. Continued improvement in facilitation, such as helping tax payers to understand and navigate easily around the Customs duty reliefs available in Mongolia, will enable this improvement to continue into the medium term. Close cooperation with those tax payers who demonstrate their willingness to improve their compliance will enable the Customs Department to consult with, and provide advice on, changes in the law, changes in the way the law is to be implemented and how the tax payer can improve the efficiency of his systems and reduce the cost of compliance by enabling tax payers to take advantage of regimes similar to the EU's Local Import Control and Local Export Control. These regimes enable compliant traders to import and export goods to and from their own premises with the minimum of customs presence. In effect the tax payer becomes his own customs officer.

3. Mr. Batbayar is keen to improve the training of his customs staff and requested that Chemonics consider providing a customs expert in the next week or so accompany him when he visits the customs boarder to provide both advice and training to himself and the staff.

4 Mr. Laureano raised the subject of risk. Specifically, Chemonics has provided considerable assistance to Mongolian Customs to develop an electronic risk management system. This system has had it's teething problems. However, it is my experience that all risk systems need time to bed it before they are truly effective. It is also my opinion that an effective risk system does not exist 'straight out of the box'. All risk system need to develop and any system that is not constantly monitored and updated in the light of new experience and information quickly becomes both ineffective and a burden on the tax department using it.

The risk system developed with Chemonics' help would contain the two fundamental elements: initial set up to address current risk and perceived future developments; and

monitoring and developing to amend/update the system in the light of actual experience. Without spending the time necessary to absolutely confirm my belief, I suspect that the second stage has not been progressed properly. Additionally, I suspect that those members of the department who are considering altering it do not fully understand what it was intended to do, how it was to achieve that end and what is need to progress it's evolution. Before any alterations to the system takes place, as opposed to the inbuilt evolution of the system which should be a routine event, it should be examined to see what it is actually doing, what the expectations are for the output of the system, why it is not meeting those expectations and whether or not those expectations are realistic in the light of the current situation in Mongolia.

5. We discussed the relationship between the VAT collected at import and the VAT collected in total. Currently the total VAT collected by the Tax Department (for internal sales and imports) is approximately 150% of the VAT collected by customs on importations. What this means is that if the goods imported achieve a mark up covering all costs and profit within Mongolia of just 50%, no VAT is collected on goods and services produced for sale with Mongolia.

As an absolute minimum, the total VAT collect should exceed the VAT collected by customs on imports by a multiplier of 4. The UK is the largest trading nation in the world when international trade is expressed on a per head of population basis. Yet it achieves a ratio of 1 to 7 for VAT on import VAT to total VAT. In the short term Mongolia cannot realistically expect to achieve anywhere near this ratio. However, with the proper systems to target adequately trained auditors to significant risk a ratio of 1 to 4, or better, is achievable within 3 to 5 years.

Achieving this ratio, whilst increasing the total VAT collected on imports at the same time, would result in a significant overall improvement in the VAT yield.

6. Surprisingly, achieving this outcome could be speeded up by increasing the VAT registration threshold. It is an unfortunate fact that there is little correlation between the size of the arrears discovered during an audit and the resource needed to quantify and collect it. Small tax payers do not require a commensurate reduction if audit time and expense to quantify the totality of the debt. On average the tax rate for a totally exempt or unregistered trader who buys and sells goods is, effectively, between 30% and 40% of the VAT rate that would be applicable to his circumstance. As a consequence removing small traders from the tax data base will not have a significant impact on the tax yield. If this option is pursued, it should be coupled with the opportunity for small traders to 'voluntarily register' even when their turnover is significantly below the VAT registration threshold.

7. A Problem with 'dormant' companies 'cluttering up the data base' was also discussed. A solution proffered is to charge all companies a significant annual fee for remaining registered (somewhere around MNT200,000 to MNT 500,000), but allow them to offset this fee against their tax liability for the year. Those companies that are actually trading will not be affected, but this will 'focus the mind' of the owners of companies that are not trading and encourage them to de-register. I would personally recommend that this fee be charged at the end of each tax year, but it would be a way of raising a small amount of the tax revenue at the beginning of the year if all companies were required to pay this fee on the first day of their tax year.

Laurie Gidley
Senior customs Consultant
25th May 2013

ANNEX III: TRAINING COURSE EVALUATION SUMMARIES

EVALUATION QUESTIONNAIRE: Summary of all students attending the course

Valuation Stage 2

As the Customer, please help us to assess your level of satisfaction with this training. The information gained from the analysis of this form will help us to monitor overall satisfaction levels and improve services to you and your colleagues in the future.

To complete this form answer the questions by marking the box you believe most closely represents your opinion. Please use a black or blue pen or pencil. Any additional comments or information should be written at the back of the form.

Course Start
Date:

20	13	/	0	5	/	2	4
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(Optional) Surname:

Initials:

Subject:	Q1. How confident do you feel about using the knowledge and skills covered on the course?					Q2. How relevant was the training to your job?						
a) Roles & Responsibilities	Very confident	6	3			Not at all confident	Very relevant	6	2		1	Not at all relevant
b) Valuation Terms	Very confident	6	1	2		Not at all confident	Very relevant	6	3			Not at all relevant
c) Law	Very confident	6	2	1		Not at all confident	Very relevant	7	2			Not at all relevant
d) Powers	Very confident	1	4	1	1	Not at all confident	Very relevant	4	1	1	1	Not at all relevant
e) Method 1 - Definition of a sale	Very confident	7	1	1		Not at all confident	Very relevant	7	1		1	Not at all relevant
f) Additions & Assists	Very confident	5	4			Not at all confident	Very relevant	8	1			Not at all relevant
g) Deductions & Discounts	Very confident	6	3			Not at all confident	Very relevant		6	3		Not at all relevant
h) Currency Exchange Rates	Very confident	3	4	1		Not at all confident	Very relevant	4	3	1		Not at all relevant
i) Price Review Clauses	Very confident	7			1	Not at all confident	Very relevant	7			1	Not at all relevant
j) Successive Sales	Very confident	2	6		1	Not at all confident	Very relevant	4	2		1	Not at all relevant
k) Price Influence	Very confident	6		1		Not at all confident	Very relevant	8				Not at all relevant
l) Value for VAT	Very confident	4	2		1	Not at all confident	Very relevant	5		1	1	Not at all relevant
m) Mark-up v Margin	Very confident	4	2	1		Not at all confident	Very relevant	6	2			Not at all relevant

Subject:	Q1. How confident do you feel about using the knowledge and skills covered on the course?					Q2. How relevant was the training to your job?				
n) Risks	Very confident	5	3	1		Not at all confident	Very relevant	5	3	Not at all relevant

Q3. Was the timing given to the training:	3	Too short
	6	About right
	0	Too long

Q4. Overall how relevant do you think the training is to your job?	Very relevant	7	2	0	0	0	Not at all relevant
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Q5. Before the training, the discussion you had with your Line Manager about the learning objectives was:	Very satisfactory	4	1	0	0	0	Not at all satisfactory
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	OR	O	You did not discuss the learning objectives
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Q6. As a result of the training has your overall confidence	9	Increased
	0	Remained the same
	0	Decreased

Q7. Do you think there is a better way to carry out this training?	2	Yes	If yes, please comment overleaf
	4	No	

Q8. Overall, the course was	Very good	8	1	0	0	0	Very Poor
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Q9. Overall the trainer(s) were	Very good	9	0	0	0	0	Very poor
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TRAINERS

Please rate the course trainers in the following aspects:

Trainer 1 Name: Laurrie Gidley

Very credible	9	0	0	0	0	Not at all credible
Very knowledgeable	9	0	0	0	0	Not at all knowledgeable
Very professional	9	0	0	0	0	Very unprofessional
Very supportive	9	0	0	0	0	Not at all supportive
Very good presentation	8	1	0	0	0	Very poor presentation

Better way to carry out the training?

Trainer has a good knowledge therefore the training was very effective.

Thank you USAID team.

We had many other international trainers but we never had a trainer like Laurie who knows Mongolian law that much, has experience and open person. Thank you Laurie.

Comments on Trainers:

Training was very effective because the trainer has a lot of experience and gave many practical recommendations.

Comments on Course:

EVALUATION QUESTIONNAIRE: Summary of all students attending the course

Valuation Stage 2

As the Customer, please help us to assess your level of satisfaction with this training. The information gained from the analysis of this form will help us to monitor overall satisfaction levels and improve services to you and your colleagues in the future.

To complete this form answer the questions by marking the box you believe most closely represents your opinion. Please use a black or blue pen or pencil. Any additional comments or information should be written at the back of the form.

Course Start Date:

20	13
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0	6
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0	6
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(Optional) Surname:

Initials:

Subject:	Q1. How confident do you feel about using the knowledge and skills covered on the course?					Q2. How relevant was the training to your job?						
a) Roles & Responsibilities	Very confident	4	3	2	1	Not at all confident	Very relevant	7	2	1	Not at all relevant	
b) Valuation Terms	Very confident	6	3	1		Not at all confident	Very relevant	6	3	1	Not at all relevant	
c) Law	Very confident	4	5	1		Not at all confident	Very relevant	8	2		Not at all relevant	
d) Powers	Very confident	6	1	2	1	Not at all confident	Very relevant	6	2	1	Not at all relevant	
e) Method 1 - Definition of a sale	Very confident	6	3	1		Not at all confident	Very relevant	9	1		Not at all relevant	
f) Additions & Assists	Very confident	7	2			Not at all confident	Very relevant	8	1		Not at all relevant	
g) Deductions & Discounts	Very confident	4	6			Not at all confident	Very relevant	7	2	1	Not at all relevant	
h) Currency Exchange Rates	Very confident	3	4	2	1	Not at all confident	Very relevant	5	1	4	Not at all relevant	
i) Price Review Clauses	Very confident	5	3	1	1	Not at all confident	Very relevant	7	2	1	Not at all relevant	
j) Successive Sales	Very confident	3	4	3		Not at all confident	Very relevant	5	4	1	Not at all relevant	
k) Price Influence	Very confident	4	4	2		Not at all confident	Very relevant	5	4	1	Not at all relevant	
l) Value for VAT	Very confident	4	2	3	1	Not at all confident	Very relevant	5	1	3	1	Not at all relevant
m) Mark-up v Margin	Very confident	4	3	2	1	Not at all confident	Very relevant	6	1	2	1	Not at all relevant
n) Risks	Very confident	6	2	2		Not at all confident	Very relevant	8	2		Not at all relevant	

Q3. Was the timing given to the training:	2	Too short
	8	About right
		Too long

Q4. Overall how relevant do you think the training is to your job?	Very relevant	9	1	0	0	0	Not at all relevant
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Q5. Before the training, the discussion you had with your Line Manager about the learning objectives was:	Very satisfactory	7	2	1	0	0	Not at all satisfactory
	OR	0	You did not discuss the learning objectives				

Q6. As a result of the training has your overall confidence	10	Increased
	0	Remained the same
	0	Decreased

Q7. Do you think there is a better way to carry out this training?	6	Yes	If yes, please comment overleaf
	2	No	

Q8. Overall, the course was	Very good	8	2	0	0	0	Very Poor
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Q9. Overall the trainer(s) were	Very good	9	1	0	0	0	Very poor
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TRAINERS

Please rate the course trainers in the following aspects:

Trainer 1 Name: Laurrie Gidley

Very credible	4	0	0	0	0	Not at all credible
Very knowledgeable	4	0	0	0	0	Not at all knowledgeable
Very professional	4	0	0	0	0	Very unprofessional
Very supportive	4	0	0	0	0	Not at all supportive
Very good presentation	4	0	0	0	0	Very poor presentation

Better way to carry out the training?

- Connect it with practice
- This level is good
- Do analysis about the training at province (regional), do comparison analysis with the financial software and financial statements of the companies of his country (See and learn experiences of PCA custom inspectors on the spot)

Comments on Trainers:

- Very good
- Laurrie Gidley has an excellent knowledge about customs valuation, violation, classification, doing PCA and many other areas. He is passionate and experienced on sharing and teaching his knowledge to others.

Comments on Course:

- Very good
- Training went very well. It would be great if further trainings are productive and the topics of the trainings meet the needs of participants like this training. The instructor has an excellent knowledge and experience who taught the training. The instructor like him should be chosen. Thank you USAID team and expert instructor.
- Training was held on good timing and with high quality. It clearly and briefly taught about valuation and PCA methodology in broader sense.

ANNEX IV: RECOMMENDATIONS

Consideration of the Mongolian implementation legislation for Post Clearance Customs Control of imported goods:

Order No 22 of 2011 A REGULATION CONCERNING POST CLEARANCE AUDIT

This document is the basic regulation governing how a Customs Post Clearance ‘event’ is to be conducted and includes the rights and responsibilities of the Customs Officers and the Tax Payer and his staff.

The regulation describes the ‘events’ it covers as Post Clearance Audit, but includes all activities appropriate to compliance control as well, making no distinction between the two main aspects of Customs Post Clearance Control.

The way the regulation is structured it anticipates that staff will move from audit to compliance and back again throughout the ‘event’, with no distinction made as to which type of control is being performed. This suggests that the Mongolian Customs Department and the Legislators have not recognized the distinction between these two aspects of Post Clearance Control.

1. I recommend that the Customs Department reconsider the remit of the Post Clearance Audit Team. There should be a defined separation between Audit and Compliance. It is not necessary that different officers undertake the two functions, but it is vital to the timely completion of audits that whilst the audit is underway the auditors are not required to resolve the compliance issues. They should either be resolved at a later date by the officers, or a separate team/officer should resolve them. Having said that, it is entirely appropriate for the auditors to resolve issues that will take a few minutes, such as advising the correct form to use for a duty relief, or determining the correct Commodity Code for a very straight forward product (but not complex issues).

Audit is the comprehensive and logical examination of systems. As a consequence the taking of samples would not normally form a part of an audit. Whilst confirming that the tax payer has performed stock checks and resolved any issues arising from those stock checks does form a part of the audit, actually taking part in a tax payer’s stock check, or performing the stock check itself is a compliance matter.

There are a number of specific aspects within the regulation that require addressing.

Article 3.17. If an incidence of a criminal nature is detected during the PCA, the Customs Inspector in charge shall collaborate with the Customs Violation Prevention Unit of the CGA in order to take immediate measures in accordance with the “Regulation to take an immediate measure against crime related complaints and information” approved by the Prosecutor General’s Order No 123 on the basis of the Criminal Procedure Code of Mongolia.

This is a major obstacle to audit. It is very likely that errors exceeding the limits in the Criminal procedure Code will be found almost at the outset of the audit. Article 3.17 will, effectively, halt the audit in it’s tracks and require a criminal investigation. This will mean the tax payer and his staff will not cooperate, will not talk to the auditors or provide them with any information. It would be almost impossible to perform an audit under these circumstances, even if it were appropriate to do so, which it is not.

2. I recommend that this Article be removed from the PCA Regulation, or that it be amended so that the head of the PCA division may authorize the auditors to ignore Article 3.17 and to

inform the tax payer that criminal action will not occur unless he refuses to cooperate or it can be shown that he acted deliberately to defraud the revenue.

Article 4.10. The Customs State Inspector who prepared the records and reviews shall supervise and take measures to ensure compliance with the matters contained therein.

Ensuring that the tax payer complies with the recommendations is a compliance issue, not an audit issue and should not be performed by the audit officer. Additionally, if this includes ensuring that the proper additional taxes are paid, this is not best practice. Enforcement actions (recovering the additional revenues) should be not be undertaken by the person who calculated the arrears/errors, but by an independent officer, i.e. not an officer who was employed on the audit itself.

3. I recommend that Article 4.10 be deleted.

Article 6.1. Premises and warehouses owned by audited persons/companies shall be sealed on following occasions:

6.1.3. the remaining goods if its sample and specimen has to be taken for analysis.

This seems to be totally inappropriate in the cases where the auditors are querying the correct Commodity Code of a product that is obviously not subject to any prohibitions or restrictions. It is appropriate where a product may be subject to such provisions, but where this prevents the legitimate trade of the tax payer it is totally inappropriate.

4. I recommend that Article 6.1.3 be amended by the addition of the following:

“...but only where there are grounds to believe that the articles to be analyzed may be the subject of a prohibition or restriction under”

Article 6.2. A new customs declaration may be filled out for following reasons:

6.2.1. if the concerned persons/companies decide to voluntarily declare the tangible or intangible assets acquired through engineering or technological solutions, construction, arts, ornamental and design works, general sketches or technical design drawings performed in a foreign country, and in order to correct the offences detected during internal compliance related self-assessments;

The problem with the way this is worded is that it pre-supposes that if these items have not been declared on the declaration then an offence has been committed. However, not all of these items are required to be added to the transaction value under Article 8 of the WTO's GATT Valuation Agreement.

Article 8.1 of the GATT Valuation Agreement:

1. In determining the customs value under the provisions of Article 1, there shall be added to the price actually paid or payable for the imported goods:

- (b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:
 - (i) materials, components, parts and similar items incorporated in the imported goods;
 - (ii) tools, dies, moulds and similar items used in the production of the imported goods;
 - (iii) materials consumed in the production of the imported goods;

- (iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in Mongolia and necessary for the production of the imported goods;

It is not clear which of these items are those mentioned in Article 6.2.1. It may be that Article 6.2.1 was meant to reflect the contents of Article 8.1 of the Agreement, but there have been translation issues. On the other hand it may have been intentional on the part of the legislators to include the items as stated as being something other than those in Article 8 of the Valuation Agreement. If the later, this raises the issue that as some of them are not mentioned in the Valuation Agreement they cannot be added to the customs value under Mongolian law.

5. I recommend that the purpose of the legislators in wording Article 6.2.1. in this fashion be established and corrective action be taken to bring this Article in line with the WTO's GATT Valuation Agreement.

Article 7.2. The CSI who is a member of the PCA team shall have the following duties in addition to those specified in provision 274.2, the Customs Law of Mongolia:

7.2.3. provide the persons/companies selected for PCA with customs legislation related information and advice;

and

Article 8.1. The persons/companies selected for PCA shall be entitled to the following rights in addition to those stated in Articles 16-18 and provision 57.1, the Customs Law:

8.1.2. seek and obtain customs legislation related information and advice; and

These two Articles require that the customs officers have access to copies of all the law that is in force in Mongolia in respect of imported (and exported) goods. In other words, the customs authority is required by these two Articles to provide copies to it's staff of, amongst others, the WTO's GATT Valuation Agreement and Article VII, together with all of the Decisions, Texts, Advisory Opinions, Commentaries, Explanatory Notes, Case Studies and Studies, or at least those upon which it intends to rely. When printed these amount to a bundle of papers approximately 2.5 centimetres high. The Customs Law of Mongolia itself runs to 299 Articles. The staff are, by inference if not by actual statement, required to read and understand all this law so that they can provide "information and advice" or they are required to provide the law itself to fulfill the requirements of these two Article.

6. I recommend that these two Articles be amended by adding after the word "advice" at the end of each Article "pertinent to the enquiries or audit activities."

Laurrie Gidley
Senior Customs Consultant
22nd May 2013.

LAW OF MONGOLIA on Customs Tariffs and CUSTOMC duties

Article 8. Verification of Customs Value

8.1. The Customs shall check the Customs valuation method and whether a Customs value determined by a declarant is accurate and well grounded or not and make its own decision.

- The word shall should be changed to may, otherwise this law requires the Mongolian Customs Department to check every single declaration for these two issues.

10.3.2. the commissions and brokerage, paid or payable by a buyer in connection with a purchase of the goods concerned, and the cost of containers or packings which are treated as being one with the goods in question;

- The GATT CVA states that commissions and brokerage except buying commissions are to be included in the customs value.

10.5. In case where there are involved different kinds of imported goods in one shipment across the national frontier the costs to be added to or deducted from the transaction value shall be distributed among each kind of goods in correspondence with their weight proportion against net weight of total shipment. Where the cost distribution by weight is impossible the volume or the price factor may be used.

- Under this system if two items are imported in a single consignment and one is of high value, low weight and 10% duty, whilst the other is of low value, high weight and 0% duty the insurance costs would be almost entirely allocated to the high weight goods whereas they would have been primarily charged on the low weight, high value goods.

I recommend that this Article be altered so that “. or value, depending upon the manner in which these costs are actually charged...” is added at the * and “.. or value ..” at **.

10.8. The seller and buyer shall be deemed to be related if:

10.8.1. they work together with the same economic entity or organization;

- This condition means that two cleaners employed by the world's largest super market, one in New York and the other in Tokyo and sell one to the other over the internet, are related even if they have never met and were previously unaware of each other. This is obviously wrong.

I recommend that it be substituted by Article 15

- (a) they are officers or directors of one another's businesses;
- (b) they are legally recognized partners in business;

10.8.3. one of them directly or indirectly owns, controls or holds 5 per cent or more of the other's outstanding voting stock or shares;

10.8.4. one of them directly or indirectly controls the other;

10.8.5. both of them are directly or indirectly controlled by a third person;

10.8.6. together they directly or indirectly control a third person; or

- What does Mongolia mean by the word 'control' in the above three Articles? This is not clear, either in Mongolian law or international law.

I recommend that Mongolian Customs determine a definition of the word ‘control’ for the purposes of this Article.

- 10.9. Where a value of the sale between related persons specified in 10.8. of this Law, depending on the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported and the differences in value, closely approximates to one of the following test values occurring at or about the same time, the transaction value method shall be used:

10.9.1. the transaction value in sales to unrelated buyers of identical or similar goods imported by the person specified in 10.8. of this Law;

10.9.2. the Customs value of identical or similar goods imported by the person specified in 10.8. of this Law, determined by the transaction value method and accepted by Customs.

- What does Mongolian Customs mean by the phrase ‘closely approximates’? Will they adopt the UK policy for this: the difference cannot exceed the percentage that the business’s net profit represents, and in any event it must be below 10%.
- Article 10.9 only allows related buyers to prove their transaction value is acceptable under Method 1 by comparisons using Methods 2 and 3. Under the GATT CVA they can also use Methods 4 and 5.

I recommend that Article 1.2 of the GATT Valuation Agreement do written into Mongolian law.

WTO’s GATT Customs Valuation Agreement

Article 14 of the Agreement states:

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

Texts issued by the Technical Committee on Customs Valuation

8. “.... Advisory opinions, commentaries, explanatory notes, studies or reports do not constitute international law. As distinct from the Agreement’s Interpretative Notes contained in Annex I, there is nothing in the Agreement to imply that any of the Technical Committee’s decisions would have force of law within the Member countries to the extent that they are not incorporated in the national law of the Member.

9. At the same time, however, it is clear from the language of Annex II that it is expected that the decisions of the Technical Committee are to play an important and vital role in achieving uniformity in the interpretation and application of the Agreement. ...”

It is clear from the above that ‘Advisory opinions, commentaries, explanatory notes, studies or reports’ are not binding on Mongolian Customs.

I recommend that these are adopted as law in Mongolia

There is a need for a definition of the word ‘document’ in Mongolian Law.

I recommend that Mongolia adopts the UK definition:

The Customs traders (Accounts and Records) Regulations 1995

Article 3 says that if someone importing good liable to customs duties receives, issues, prepares or maintains a record listed in schedule 1 (of the regulations) he must preserve it.

Schedule 1 lists the records:

Order, Invoice, delivery Note, Credit Note, Debit Note, A record relating to an importation or an exportation, A statement of Account, A record of payment or receipt, A journal or ledger, a profit & loss account, trading account, management account, management report or balance sheet, Internal or external auditor's report, a record relating to any drawback, remission, repayment, or reimbursement of, or relief from, duty, a record required, other than by virtue of these regulations, by or under any customs & excise acts, a stock record, any other record maintained for a trading or business purpose.

Article 1 defines Method 1 as:

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:

This presents a significant problem for many signatories to the Agreement. The expression "when sold for export to the country of importation" does not specify which sale is to be used when more than one sale meets this definition.

For example, a Mongolian company orders road signs from a UK company. These signs are in the Mongolian language and show distances between Mongolian towns. The UK company does not manufacture these signs in the UK, but uses a contract manufacturer in India. The UK company pays £100 to the Indian Company for each sign and charges the Mongolian company £150 for each sign.

The UK company provides all of the information to the Indian company, including details of the Mongolian company's order. The UK company requires the Indian company to send the goods direct to the Mongolian company and to include a copy of the invoice for £100 with the delivery documents.

On arrival in Mongolia the importer declares the customs value as £100 and presents the invoice from the Indian company to the UK company as proof of that price. The importer also presents the invoice from the UK company, which is the price it pays, for £150.

Under the definition of a sale for export to Mongolia, both of these values are legally correct under the GATT Valuation Agreement.

I recommend that the Mongolian Government accept that in such situations either sale is legally correct and may be declared without any worries by the importer that he will subject to any offence action, or

Mongolian law is amended so that in the situation where more than one sale meets the requirements of Article 1 only the last sale, the one that introduces the goods into free circulation in Mongolia will be accepted for customs valuation purposes. If this is policy adopted it will mean that for customs warehousing, the customs value will be the transaction that removes the goods from the warehouse and not the transaction that placed them in the warehouse as is currently the situation.

There is a problem with goods importer to Inward Processing Relief, where those goods are imported for repair. As an example, a company manufactures aircraft lightning conductors. These are returned for repair when there is a problem. These lightning conductors are

guaranteed for three years, but have a life expectancy of 15 years. When a broken seven year old lightning conductor is imported what is its value?

UK policy on this issue is as follows:

The new price of the goods is to be depreciated over the life expectancy of the item, in a straight line. So if the item is seven and a half years old with a life expectancy of 15 years it would be initially valued at 50% of its original cost.

Next a deduction should be made for repairing the item. The cost of this repair is not the cost of putting the item back into 'as new condition' but to repair it to a working condition to be expected from its age. However, this cost cannot reduce the value to zero or less. The UK policy is that the minimum value will be the cost of getting the goods through the customs border control. This is a Method 6 valuation using Method 5 flexibly.

I recommend that Mongolia adopt the UK policy on IPR repair goods

Royalties and License Fees:

GATT Article 8

1. In determining the customs value under the provisions of Article 1, there shall be added to the price actually paid or payable for the imported goods:

- (c) royalties and license fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

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Article 10.3.4. royalties and licence fees paid or payable by the buyer as a condition of sale of the goods concerned;

This is not quite what the GATT says. The difference is such that it may render the Mongolian law 'null and void' which will mean that the fact that the conditions for trade mark royalties are not mentioned does not allow Mongolian Customs to ignore these additional three conditions contained in Advisory Opinions 4.1 to 4.13.

I recommend that Article 10.3.4 is re-written to precisely reflect Article 8 1 (c) of the GATT. This will enable Mongolian customs to ignore the additional three conditions contained in the Advisory Opinions for trade mark royalties if that is what the Mongolian Government wishes.

Discounts:

Goods are often sold on the basis that the sooner the customer pays the less he actually has to pay. For example, the following discounts are normal:

Cash on delivery – 5%;

Payment within 30 days – 2%; and

Payment after 30 days – zero discount.

When goods are sold on this basis what will Mongolian Customs determine the value to be if, say, the goods are imported after 15 days and they have not been paid for? In these circumstances there are two legally correct values: the full amount without any discount; and the price less 2%.

UK policy is to accept the discount that can be achieved and only amend the value if the importer usually does not achieve the discount. In other words, if the importer normally achieves the discount, no adjustment is made on those occasions when he does not.

I recommend that Mongolian Customs give this matter urgent consideration.

Sample/Promotional/Spares Discounts.

When the samples etc are included in the same consignment and are provided free of charge, no addition is made to the transaction value. This is because the importer has paid the agreed price and has received all the goods, including the free ones, for that price.

However, a problem arises when the free samples etc. are sent separately. In these circumstances, as the importer has no intention to sell them, it seems unreasonable to use Methods 2 and 3 as these will include an element for profit. UK policy is, with the agreement of the importer, as with IPR, to use a flexible Method 5 under Method 6. The value is taken at the cost of production without any addition for profit.

I recommend that Mongolian Customs adopt the UK policy.

Post Import Adjustments

It is quite common for the transaction price to be adjusted at some point after the goods have been declared to customs. If this was envisaged in the contract at the time the goods were declared to customs, then the UK policy is to allow the adjustment, both by increasing or decreasing the customs value. If this is a verbal contract, UK Customs still accept that an adjustment can be made.

However, if there was no agreement at the time the goods were declared to customs UK policy is a little different. If the price is adjusted upwards and the importer pays the additional price, the UK say that there must have been an implied condition in the sales agreement, otherwise the importer would not pay it. In these circumstances UK Customs increases the customs value and requires the additional duty to be paid.

If the adjustment is to reduce the price of the goods, UK policy is that anyone will accept a refund, without the need for it to be a part of the sales agreement, and consequently no adjustment is allowed.

I recommend that Mongolian Customs consider adopting UK policy in this matter.

