

## PART IX: SPECIFIC ANNEX H

### Introduction to Specific Annex H

Specific Annex H has just one chapter. The chapter covers customs offenses and contains 20 standards and 7 recommended practices. Pakistan has not acceded to any aspect of Specific Annex H.

Table 19 summarizes the subject matter and number of standards and recommended practices covered by Specific Annex H.

Ch. No.	Subject	Standards	Recommended Practices	Total
1	Customs Offences	20	7	27
<b>Total</b>		<b>20</b>	<b>7</b>	<b>27</b>

Table 20 summarizes the overall assessments made with respect to the standards and recommended practices of Specific Annex H using the scoring system described in Table 1, which may be found in Table 1 of the Executive Summary.

Ch. No.	Category	Compliant	Substantially Compliant	Partially Compliant	Marginally Compliant	Non-Compliant	NA	Total
1	Standards	15		1		3	1	20
	Recommended Practices	2	1	1		3		7
<b>Total</b>		<b>17</b>	<b>1</b>	<b>2</b>		<b>6</b>	<b>1</b>	<b>27</b>

As indicated by Table 20, the gap analysis has determined that Pakistan's customs regime appears to be in full compliance with approximately 65% of the standards and recommended practices of Annex H (without taking into account the one standard for which a compliance rating is not applicable). With respect to a standard that has been identified as presenting compliance issues, recommendations are made in the individual assessment for that standard with respect to measures that may be taken to bring the customs regime into compliance. Many of the recommendations relate to suggested changes in national legislation; and others relate to suggested modifications to customs practice. If any aspect of the customs regime is modified, some type of training will need to be provided to the concerned customs personnel.

## **Chapter 1: Customs Offences**

### **Definitions:**

Three defined terms are provided at the beginning of Specific Annex H, and are to be used to properly understand the meaning of the standards and recommended practices contained in that annex. As explained in the general discussion of the use of definitions provided under Chapter 2 of the General Annex of this report, there is no explicit requirement in the RKC requiring a Contracting Party to adopt into its national legislation the terms and assigned meanings specified in the RKC. However, we note that in some cases it may be difficult for Pakistan to comply with its obligations under the RKC if certain of the customs-specific terms defined in the RKC are not used in Pakistan's customs legislation, or - if such a term is used – it is assigned a meaning that differs materially from that specified in the RKC, which reflects the generally accepted meaning of the term in international practice.

With regard to many of the other terms defined in the RKC that are not customs-specific (or are unique to the RKC), the question is not whether Pakistan's customs legislation uses the same terminology. The question is whether – when reviewing compliance with a specific standard that uses a term defined in the RKC - Pakistan's customs legislation and practice, as a matter of substance, complies with requirements of such standard, regardless of whether Pakistan's customs legislation and practice uses the same terminology. This is the case with respect to each of the three defined terms found in Specific Annex H:

- “administrative settlement of a Customs offence” means the procedure laid down by national legislation under which the Customs are empowered to settle a Customs offence either by ruling thereon or by means of a compromise settlement;
- “compromise settlement” means an agreement under which the Customs, being so empowered, consent to waive proceedings in respect of a Customs offence subject to compliance with certain conditions by the person(s) implicated in that offence;
- “Customs offence” means any breach, or attempted breach, of Customs law.

1. Standard	The investigation, establishment and administrative settlement of Customs offences by the Customs shall be governed by the provisions of this Chapter and, insofar as applicable, by the provisions of the General Annex.
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**Overall Assessment:** Not Applicable

**Relevant Law:**

- [None]

**Discussion:**

Standard 1 does not establish a requirement that a national customs regime must comply with. It only provides that the investigation, establishment and administrative settlement of Customs offences by the Customs are to be governed by Chapter 1 of Annex H and the applicable provisions of the General Annex.

**Conclusion:** Any compliance issues with respect to Standard 1 will be identified in the individual compliance assessments for the standards and recommended practices of Chapter 1.

**Recommendations:** Similarly, recommendations are provided in the context of the individual assessments for Chapter 1 whenever compliance with Standard 1 is implicated.

2. Standard	National legislation shall define Customs offences and specify the conditions under which they may be investigated, established and, where appropriate, dealt with by administrative settlement.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Sections 26, 32, 32A, 32B, 156, 179, 180, 185A and 195C

**Discussion:**

*Law:* Section 156 of the Customs Act does provide an exhaustive list of offences with regards to Customs and mentions therein the penalties for each offence. While analyzing the definition of Customs offence, it was observed that the said expression has not been defined in the Customs Act. Nevertheless, column 3 of the 'Table' given under section 156 of the Act clearly describes all constituents of Customs offences. Section 26 of the Act empowers the appropriate officer of Customs to conduct investigation such as calling and examination of documents relating to imports and exports of goods, production of documentary proof as well as personal appearance of the relevant persons in connection with enquiry or investigation, conduct of audit as well as production of goods.

After such investigation or enquiry, the appropriate officer may issue the notice to show-cause under section 32 of the Act read with section 180 thereof. As a result of response to such 'show-cause notice' a person who is alleged to have committed an offence under the Act, may be directed to deposit the leviable duties or taxes, with or without penalties, after adjudication under section 179 of the Act. The appropriate officer may also opt to proceed under section 32A of the Act for 'tax fraud'. In this case, the appropriate officer may refer the matter to the Special Judge, Customs, for proceeding under section 185A of the Act.

Sections 32, 32A, 179, 180 and 185A of the Act are also important with reference to Customs offences and how they are dealt with:

Notwithstanding the above referred action, the Customs may, in appropriate cases, carry out administrative settlement under section 32B of the Act or may refer the matter, on the request of the alleged defaulter, for 'Alternate Dispute Resolution' under section 195-C of the Act and may close the matter.

The two sections are reproduced below:

32B. Compounding of offence.- Notwithstanding anything contained in section 32 and 32A or any other provision of this Act, where any person has committed a duty or tax fraud, the Collector may, with the prior approval of the Board, either before or after the institution of any proceedings for recovery of duty or tax, compound the offence if such person pays the amount of duty or tax due along with penalty as is determined under the provisions of this Act.

195-C. Alternative Dispute Resolution.-

- (1) Notwithstanding anything in this Act, or the rules made there under, any aggrieved person, in connection with any dispute pertaining to liability of customs-duty, admissibility of refund or rebate, waiver or fixation of penalty or fine, confiscation of goods, relaxation of any time period or procedural and technical condition which is under litigation in any Court of law or an Appellate Authority, except in the cases where first information reports (FIRs) have been lodged or criminal proceedings have been initiated or where interpretation of question of law having larger revenue impact in the opinion of the Board is involved, may apply to the Board for the appointment of a Committee for the resolution of dispute in appeal.



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- (2) Subject to the provision of sub-section (1), the Board, after examination of the application of an aggrieved person, may appoint a committee, within thirty days of receipt of such application, consisting of an officer of customs and two persons from a notified panel of retired District and Sessions judge and retired judges of High Court or Chartered or Cost Accountants, Advocates, Tax consultants or reputable taxpayers for the resolution of the hardship or dispute.
  
- (7) The Board may, by notification in the official Gazette, make rules for carrying out the purposes of this section.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource Persons:**

- Muhammad Jamil Khan, Law Officer, Model Customs Collectorate, Peshawar.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Law), Model Customs Collectorate Appraisement, Karachi.
- Mr. M.D. Shahzad, Advocate Supreme Court, Special Prosecutor of Customs, Rawalpindi/Islamabad.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the standard.

**Recommendations:** None

3. Standard	National legislation shall specify which persons can be held responsible in connection with the commission of a Customs offence.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Section 156

**Discussion**

*Law:* Column (1) of the 'Table' given under section 156 of the Customs Act specifies the person or persons contravening any provision of this Act or the rules made thereunder, including an abettor of any such contravention, or the persons failing to comply with any provision of the Act or rules. Column (3) of the said 'Table' further specifies the provisions of the Act which relate to such contraventions.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource Persons:**

- Muhammad Jamil Khan, Law Officer, Model Customs Collectorate, Peshawar.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Law), Model Customs Collectorate Appraisement, Karachi.
- Mr. M.D. Shahzad, Advocate Supreme Court, Special Prosecutor of Customs, Rawalpindi/Islamabad.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the standard.

**Recommendations:** None

4. Standard	National legislation shall specify a period beyond which proceedings in connection with Customs offences may no longer be taken and shall fix the date from which that period shall run.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Sections 32, 168 and 180

**Discussion:**

*Law:* Section 32 of the Customs Act is attracted to the provisions of this Standard. Sub section (2) of the said section provides that no action for recovery of duties and taxes from a person who has either not paid or short paid the said duties and taxes or who has made a false statement in connection thereof, shall be initiated after the expiry of five years of the relevant date. On the other hand sub-section (3) thereof provides that where duties and taxes have not been levied or have been short-levied or have been erroneously refunded, a show cause notice for recovery thereof shall be served within three years of the relevant date. Nevertheless, in sub-section (3A), it is provided that if a recoverable amount of duties and taxes is discovered as a result of an audit or examination of importer's accounts, the period of limitation shall be five years of the date of discovery through an audit etc. instead of three years referred above.

Section 32A of the Act explains "fiscal fraud" and provides limitation for issuance of a notice to show cause within a period of one hundred and eighty days of the date of detection of the fraud.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource Persons:**

- Muhammad Jamil Khan, Law Officer, Model Customs Collectorate, Peshawar.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Law), Model Customs Collectorate Appraisalment, Karachi.
- Mr. M.D. Shahzad, Advocate Supreme Court, Special Prosecutor of Customs, Rawalpindi/Islamabad.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the standard.

**Recommendation:** None

5. Standard	National legislation shall specify the conditions under which the Customs are empowered to : <ul style="list-style-type: none"> <li>• examine goods and means of transport;</li> <li>• require the production of documents or correspondence;</li> <li>• require access to computerized databases;</li> <li>• search persons and premises; and secure evidence.</li> </ul>
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act: Sections 26, 26A, 26B, 155L, 155M, Chapter XVIII, 158, 159, 160, 162, 163, 164, 165, and 166

**Discussion:**

*Law:* The Customs Act meets the requirements of this Standard. Section 164 of the Customs Act specifies the conditions under which the Customs may examine goods and means of transport. Sections 26 to 26B of the Act specify the conditions for requiring the production of documents or correspondence. Sections 155L and 155M of the Act provide for access to computerized database with a view to conducting audit and examining record. Sections 158, 162 and 163 of the Act specify conditions for search of persons and premises by Customs. Sections 165 and 166 of the Act provide for securing evidence. In this way, the Act meets the requirements of this Standard.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource Persons:**

- Muhammad Jamil Khan, Law Officer, Model Customs Collectorate, Peshawar.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Law), Model Customs Collectorate Appraisement, Karachi.
- Mr. M.D. Shahzad, Advocate Supreme Court, Special Prosecutor of Customs, Rawalpindi/Islamabad.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the standard.

**Recommendations:** None

6. Standard	Personal searches for Customs purposes shall be carried out only when there are reasonable grounds to suspect smuggling or other Customs offences which are regarded as serious.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Section 158

**Discussion:**

*Law:* Section 158 of the Customs Act provides for personal searches to be carried out by the appropriate officer who has reason to believe that any person is carrying about himself goods liable to confiscation or any documents relating thereto. Section 158 is reproduced below for ready reference.

158. Power to search on reasonable ground.- (1) The appropriate officer, if he has reason to believe that any person is carrying about himself goods liable to confiscation or any documents relating thereto, may search such person, if he has landed from or is on board or is about to board a vessel within the Pakistan customs- waters, or if he has alighted from, or is about to get into or is in any other conveyance arriving in or proceeding from Pakistan, or if he is entering or about to leave Pakistan, or if he is within the limits of any customs-area.

(2) Without prejudice to the provisions of sub-section (1) the appropriate officer may search a person, if he has reason to believe that such person is carrying about himself smuggled Platinum, any radioactive mineral, gold, silver or precious stones, manufactures of Platinum, any radioactive mineral, gold, silver or precious stones, or currency, or any other goods or class of goods notified by the Federal Government in the official Gazette, or any documents relating to any one or more of the aforementioned goods.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource Persons:**

- Mr. Sanaullah Abro, Deputy Director, Directorate General of Intelligence and Investigation (Customs), Karachi.
- Mr. Muhammad Jamil Khan, Law Officer, Model Customs Collectorate, Peshawar.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Law), Model Customs Collectorate Appraisement, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the standard.

**Recommendations:** None

7. Standard	The Customs shall not search premises unless they have reasonable grounds to suspect smuggling or other Customs offences which are regarded as serious.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Sections 162 and 163

**Discussion:**

*Law:* Section 162 of the Customs Act provides for search of a premises by an appropriate officer of Customs, on issuance of warrant by a Magistrate of the jurisdiction, when the officer has belief that goods liable to confiscation or documents or things which in his opinion will be useful as evidence in any proceedings under this Act are concealed in that premises.

Section 163 of the Act empowers an Assistant Collector of Customs employed for the prevention of smuggling on reasonable grounds for believing that any goods liable to confiscation or any documents or things which in his opinion will be useful for or relevant to any proceeding under the Act are concealed or kept in any place and that there is a danger that these may be removed before a search can be effected under section 162, he may search or cause search to be made for such goods, documents or things in that place without a search warrant.

The two sections read as under:

162. Power to issue search warrant.-

(1) Any [Judicial Magistrate] may, on application by a gazetted officer of customs stating the grounds of his belief that goods liable to confiscation or documents or things which in his opinion will be useful as evidence in any proceeding under this Act are secreted in any place within the local limits of the jurisdiction of such Magistrate, issue a warrant to search for such goods, documents or things.

(2) Such warrant shall be executed in the same way, and shall have the same effect, as a search-warrant issued under the Code of Criminal Procedure.

163. Power to search and arrest without warrant.-

(1) Whenever any officer of customs not below the rank of an [Assistant Collector] of Customs or any other officer of like rank duly employed for the prevention of smuggling has reasonable grounds for believing that any goods liable to confiscation or any documents or things which in his opinion will be useful for or relevant to any proceeding under this Act are concealed or kept in any place and that there is a danger that they may be removed before a search can be effected under section 162, he may, after preparing a statement in writing of the grounds of his belief and of the goods, documents or things for which search is to be made, search or cause search to be made for such goods, documents or things in that place.

(3) All searches made under this section shall be carried out *mutatis mutandis* in accordance with the provisions of the Code of Criminal Procedure.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.



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### Resource Persons:

- Mr. Sanaullah Abro, Deputy Director, Directorate General of Intelligence and Investigation (Customs), Karachi.
- Mr. Muhammad Jamil Khan, Law Officer, Model Customs Collectorate, Peshawar.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Law), Model Customs Collectorate Appraisalment, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the standard.

**Recommendations:** None

8. Standard	The Customs shall inform the person concerned as soon as possible of the nature of the alleged offence, the legal provisions that may have been contravened and, as appropriate, the possible penalties.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Sections 171 and 180

**Discussion:**

*Law:* Sections 171 and 180 of the Customs Act meet the requirements of this Standard. Section 171 provides that when a seizure or arrest is made, reasons for such seizure or arrest are to be given in writing as soon as possible. Whereas section 180 *ibid*, inter alia, provides that no order under the Act shall be passed for the confiscation of any goods or for imposition of any penalty on any person unless the owner of the goods, if any, or such person is informed in writing (or if the person concerned consents in writing, orally) of the grounds on which it is proposed to confiscate the goods or to impose the penalty.

The said sections are reproduced below:

171. When seizure or arrest is made, reason in writing to be given.- When anything is seized, or any person is arrested under this Act, the officer or other person making such seizure or arrest shall, as soon as may be, inform in writing the person so arrested or the person from whose possession the things are seized of the grounds of such seizure or arrest.

180. Issue of show-cause notice before confiscation of goods or imposition of penalty.- No order under this Act shall be passed for the confiscation of any goods or for imposition of any penalty on any person unless the owner of the goods, if any, or such person-

- (a) is informed in writing (or if the person concerned consents in writing, orally) of the grounds on which it is proposed to confiscate the goods or to impose the penalty;

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource Persons:**

- Mr. Sanaullah Abro, Deputy Director, Directorate General of Intelligence and Investigation (Customs), Karachi.
- Mr. Muhammad Jamil Khan, Law Officer, Model Customs Collectorate, Peshawar.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Law), Model Customs Collectorate Appraisement, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the standard.

**Recommendations:** None



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### 9. Standard

National legislation shall specify the procedure to be followed by the Customs after it has been discovered that a Customs offence has occurred and the measures they may take.

**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Sections 179, 180 and 185A

**Discussion:**

*Law:* When a Customs offence is discovered, the empowered officer of Customs under section 179 of the Customs Act issues a show cause notice under section 180 of the Act, to the alleged offender:

- informing him of the grounds of the proposed action which may include imposition of the penalty and confiscation of the goods;
- giving him an opportunity of making a representation against the proposed action; and
- giving him a reasonable opportunity of being heard personally or through a counselor duly authorized agent.

Section 179 of the Act binds the concerned officer to decide the case by passing an order within one hundred and twenty days of the issuance of a show cause notice. The said period may be extended for another sixty days by the Collector of Customs, if deemed appropriate.

The above provisions show that the procedure under the Customs Act is in compliance with the present Standard.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource Persons:**

- Mr. Sanaullah Abro, Deputy Director, Directorate General of Intelligence and Investigation (Customs), Karachi.
- Mr. Muhammad Jamil Khan, Law Officer, Model Customs Collectorate, Peshawar.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Law), Model Customs Collectorate Appraisement, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the standard.

**Recommendations:** None

10. Recommended Practice	The Customs should set out the particulars of Customs offences and the measures taken in offence reports or administrative records.
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**Overall Assessment:** Substantially Compliant

**Relevant Law:**

- The Customs Act; Sections 15, 16, 161, 171 and 185A

**Discussion:**

*Law:* The goods listed in section 15 of the Customs Act can neither be imported into Pakistan nor such goods can be exported out of Pakistan. Under section 16 thereof similar prohibition is applicable to notified goods. Any person importing or exporting the goods in contravention of these provisions is liable to various penalties including confiscation of goods, imposition of penalty and fine and may also suffer prosecution resulting into imprisonment. Where a Customs offence as specified in section 156 of the Act is committed, either a 'Contravention Report' or a 'Seizure Report' is prepared. The pro forma for a Seizure Report is given in Appendix-I of Chapter IV of the Customs Preventive Service Manual (1985 Edition), Custom House, Karachi. The Seizure Report contains full particulars relating to date and place of seizure, description and value of goods seized, duties and taxes involved, particulars of owner of goods and a report of the seizing officer on the circumstances in which the goods were seized. A notice under section 171 of the Act is also served on the alleged offender. The notice briefly states the circumstances for such seizure and the provisions of law which are allegedly violated.

In cases where violation of some provision of the Act is detected but seizure of goods is not made and the violation warrants action for penal liability, a 'Contravention Report' is prepared which follows the pattern of the seizure report and gives a narration of the alleged contravention with necessary details referred above. The cases where the alleged offence involves a criminal liability, the cognizance of such offence is taken by the Special Judge under section 185A, inter alia, on a complaint lodged by a competent officer of Customs and when a First Information Report (FIR) under section 161 is prepared on arrest of a person.

### SEIZURE REPORT

1	Case No.	FIR No.23/2013 dated 16-06-2013 I&P MCC Islamabad.				
2	Date and Time of Seizure.	16-06-2013 at 1230 Hours				
3	Place of seizure.	Motor Way Burhan Interchange.				
4	Name & Addresses of the accused Persons.	1. Hassan Zy S/o Haji Marjan R/o Akora Khattak, Nowshera (Afghan Refugee Card No. UCH18H113254-owner/driver of the seized Vehicle No. LES-5557). 2. Sana Gul S/o Gul Habib R/o Akora Khattak, Nowshera (Afghan Refugee Card No. UCH18H112475-owner of the seized cloth). 3. Shakir Khan S/o Abdul Wahid R/o Akora Khattak, Nowshera (Owner of the seized cloth). 4. Asif Khan S/o Azeem Khan R/o Peerabad, P.O. Takhatbai, District Mardan (Registered owner of seized vehicle No. LES-5557).				
5	Description of seized goods/ Vehicles.	i. Polyester Gents suiting cloth Made in China = 1065 Kg ii. Toyota Hi-ace Van No. LES-5557 Model 2007				
6	Value of goods.	Rs. 4,61,102/- (Appraised Value)				
7	Duty /taxes involved.	<u>C.D.</u>	<u>S.T.</u>	<u>AST</u>	<u>WHT</u>	<u>TOTAL</u>
		69165/-	90145/-	18612/-	31951/-	209873/-
8	Value of Vehicle	Rs. 15,00,000/-				
9	Law Contravened.	Violation of Section 2(S) & 16 of the Customs Act, 1969 read with Section 3(1) of Imports & Exports (Control) Act, 1950 punishable under Section 156 (1) (80)(89) (90), 157 & 178 of the Customs Act, 1969.				
10	Name of Detecting /Investigating Staff.	1. Mr. Zargham Dil Superintendent Preventive. 2. Ch Muhammad Iftikhar, Deputy Superintendent 3. Mr. Asif Mehmood Inspector/Seizing officer 4. Mr. Muhammad Aslam Inspector I&P Branch MCC 1. Sepoys Shaukat Mehmood, Muhammad Hameed, Liaqat Ali Khan & Khan Bahadur.				
11	Code Of Informer	SMS C/o Shakir Muhammad Deputy Collector (Preventive)				
12	Custodian of seized goods.	State Ware House, G-12, Islamabad.				

#### BRIEF FACTS:

On 16-06-2013, on credible information received through Deputy Collector Customs Preventive Division, MCC Islamabad that an attempt of smuggling of foreign origin cloth from Peshawar to down country Punjab would be carried out by Toyota Hi-ace No. LES-5557. Acting on the received information, a raiding party comprising of the staff of Customs Preventive Division MCC Islamabad mentioned at S. No. 10 above was constituted by the Deputy Collector Customs Preventive Division, Islamabad under the supervision of Zargham Dil Superintendent Preventive was proceeded to Burhan Interchange Motorway and held naka bandi near Hameed Hotel. At 1230 hours, hinted Toyota Hi-ace was seen coming from Peshawar side, the said Toyota Hi-ace was signaled to stop by a uniformed Sepoy but the driver of the vehicle ignored the signal and fled away by accelerating the vehicle towards Motorway. The Motorway police was requested to intercept the said vehicle. The Motorway Police intercepted the above said

vehicle near Burhan Interchange. On search of the vehicle led to the recovery of 37 thans Gents suiting cloth Made in China, on weighment came to 1065 kilograms in total. At the spot, the occupants of the Hi-ace van, Hassan Zy S/o Haji Marjan R/o Akora Khattak, Nowshera holding Afghan Refugee Card No. UCH18H113254 (claimant owner/driver of the seized Vehicle No. LES-5557), Sana Gul S/o Gul Habib R/o Akora Khattak, Nowshera holding Afghan Refugee Card No. UCH18H112475 and Shakir Khan S/o Abdul Wahid R/o Akora Khattak, Nowshera jointly claimed the ownership of the recovered cloth. On demand, the occupants of the said Toyota hi-ace van did not provide any legal proof written or otherwise regarding payment of duty/taxes and possession of the recovered cloth. The recovered cloth and Toyota Hi-ace Van No. LES-5557 were taken into custody and all the three above said accused persons namely Hassan Zy, Sana Gul and Shakir Khan were placed under arrest after adhering to the provisions as envisaged under the Customs Act, 1969. A criminal case vide FIR No. 23/2013 dated 16.06.2013 was got registered with I&P Branch MCC Islamabad. On 17.06.2013, the arrested accused persons were produced before the honourable Court of Special Judge Customs, Taxation & Anti-Smuggling Rawalpindi for physical remand, the honourable court remanded the accused persons for three days. On 19.06.2013, on expiry of the physical remand, the accused persons were produced before the Honourable Special Judge Customs, Taxation & Anti-Smuggling Rawalpindi for judicial remand, on the direction of the Court the accused persons were sent to the Judicial Lock-up Adiala Rawalpindi.

2. On 17.06.2013, the case file alongwith arrested accused persons was marked to Investigation & Prosecution branch for further investigation purposes and the investigation of the instant case was entrusted to the undersigned. During the course of investigation, perusal of the case record and on the basis of statement of the accused persons it is come on record that all the three accused persons are relatives and as per their statements, they are actively involved in the act of smuggling for the last ten years. Further stated that they are afghan refugees and migrated to Pakistan thirty years back. They brought the smuggled cloth to Rawalpindi and disposed off in the local market. With regard to the seized Toyota hi-ace Van No. LES-5557, the arrested accused Hassan Zy claimed the ownership.

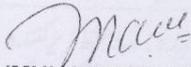
3. it is worth mentioning here that in the past, the above said arrested accused Hassan Zy was found involved in the smuggling copies of relevant O-in-O and order-in-Appeal are enclosed for ready reference. Further, the Customs staff of preventive Division Islamabad had lodged FIR under section 279/427, 337G/353 PPC with Police Station Hassanabdal District Attock against said Hassan Zy for assault and damaging the official vehicle on the staff during discharge of their duties (copy enclosed).

4. It is further added here that on 21.07.2013, during trial of the criminal case before the Honourable Special Judge Customs, Taxation & Anti-Smuggling Rawalpindi, all the above said arrested accused persons confessed the factum of smuggling and plead

guilty, therefore, the Honourable court has sentenced them with fine of Rs. 50,000/- each.

5. It is, therefore, proved that recovered cloth 1065 kgs is smuggled one and brought into country through unauthorized routs, therefore, the above said persons have violated sections as quoted above and hence liable to confiscation. The Toyota Hi-ace Van No. LES-5557 meant for transportation of smuggled goods is also liable to confiscation. From the foregoing facts, it is proved that the above said accused persons Hassan Zy S/o Haji Marjan, Sana Gul S/o Gul Habib and Shakir Khan S/o Abdul Wahid all residents of Akora Khattak, Nowshera have violated the provisions of Section 2 (s) and 16 of the Customs Act, 1969 read with Section 3 (1) of the Imports & Exports Control Act, 1950 punishable under Section 156 (1) (80) (89) (90), 157 & 178 of the Customs Act, 1969.

Seizure report is submitted for adjudication please.

  
(MUHAMMAD ASLAM)  
Investigating Officer



GOVERNMENT OF PAKISTAN  
OFFICE OF THE SUPERINTENDENT  
CUSTOMS INVESTIGATION & PROSECUTION  
MODEL CUSTOMS COLLECTORATE ISLAMABAD  
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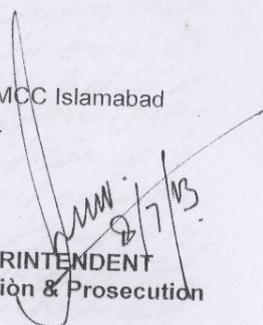
C. No. V-Cus (I&P)/16/2013/

Dated: 8-07-2013

The Additional Collector Adjudication, Customs House, MCC Building Islamabad for adjudication please.

Copy for information to:

- The Collector Model Customs Collectorate, Islamabad.
- The Deputy Collector Customs Investigation & Prosecution MCC Islamabad
- The Incharge Customs State Ware House, G-12, Islamabad.

  
8/7/13  
SUPERINTENDENT  
Investigation & Prosecution

o/c





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**Trade Project**

نوٹس ریڈ فرم 1711 کی تاریخ 15/6/2016

بنام

(1) حسین زئی والا 10 مئی 2016 کو ایم ایف ایم کے لئے نوٹس ریڈ فرم افغان جہاز  
کا نمبر 1122475 UCHISH  
CH: 10110614571 فی خانہ بندی

(2) شہاب گل والا گل مجیب سائن اؤٹو نوٹس ریڈ فرم افغان جہاز کا نمبر 11223581 UCHISH  
CH: 112675 فی خانہ بندی

(3) شہاب گل والا گل مجیب سائن اؤٹو نوٹس ریڈ فرم افغان جہاز کا نمبر 11223581 UCHISH  
CH: 112675 فی خانہ بندی

یہ نوٹس ریڈ فرم 1711 کی تاریخ 15/6/2016 کو ایم ایف ایم کے لئے نوٹس ریڈ فرم افغان جہاز  
کا نمبر 1122475 UCHISH  
CH: 10110614571 فی خانہ بندی  
یہ نوٹس ریڈ فرم 1711 کی تاریخ 15/6/2016 کو ایم ایف ایم کے لئے نوٹس ریڈ فرم افغان جہاز  
کا نمبر 11223581 UCHISH  
CH: 112675 فی خانہ بندی  
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کا نمبر 11223581 UCHISH  
CH: 112675 فی خانہ بندی

16/6/2016

ایم ایف ایم کے لئے نوٹس ریڈ فرم افغان جہاز  
کا نمبر 1122475 UCHISH  
CH: 10110614571 فی خانہ بندی



فرد بنامی و مقبول

انجمن 15 مارچ 2013 کو نوٹاریاتی ایس وین فری LES-SSS7 کی ندرت میں مل میں لاق  
کی نوٹاریہ ایس وین فری (کیڈا غیر ملکی سافٹ ویئر) کے ساتھ مقبول جن کو  
درجہ اولہ نوٹاریاتی وین فری درجہ اولہ کو درجہ اولہ نوٹاریاتی وین فری میں یا جانے فرد نوٹاریاتی  
تفصیل مقبول

تفصیل بہانہ امتیاز

- (1) کیڈا غیر ملکی سافٹ ویئر (امریکہ سونٹک مقبول) کی فری = 1065/1066
- (2) نوٹاریاتی ایس وین فری (LES-SSS7) کا ڈل 2007

2013/06/16

آصف محمود المیر  
انٹی اسٹریٹجی المیر  
اسم آباد

نوٹاری

She wood  
(1) مقبول  
انٹی اسٹریٹجی المیر  
اسم آباد

(2) مقبول  
انٹی اسٹریٹجی المیر  
اسم آباد



59/2013

**GOVT. OF PAKISTAN**  
office of the Deputy Superintendent Customs  
MCC G-9/1 Islamabad  
**ANTI SMUGGLING MOBILE SQUAD** Rawalpindi/ Islamabad  
Inventory of Vehicle No. LES-5557 Under Section 157  
of Customs Act, 1969

1. Name of Owner of Vehicle as per registration *Not provided*
2. Name of the driver who drove the Vehicle. *Hassan 27 s/o Haji Manjan  
H/o Nawab Akbar Khan*
3. Name of owner of seized goods *Gents Suting cloth*
4. Marks / Models of the Vehicle *2007*
5. Engine No. as per registration book
6. Chassis Number as per registration book
7. Seating capacity *14 seats*
8. No. of Cylinders *03 cylinders*
9. Spare Parts and other accessories if (any) including make of mounted tyres and stapny. *Tape*
10. Documents (if any) recoverd during search including other visible representation. *NIL*
11. Name and address of witness  
 1. *Munir Abbas* *sepy Manass* Inspector  
 2. *Shaukat Mehar* *sepy Incead* Customs Preventive  
 M.C.C Rwp/Isb.

76/06/2013

Received a copy of the inventory and admitted the above mentioned particulars.

Signature/LTR of The accused person  
*31*



WAGON / BUS / TRUCK / CAR / NO. LES-5557 Which on its way  
from G.T. Road Peshawar arrived at Burhan Motorway

At 12:30 AM today 16th day of June 2013

Asif Mahmood Inspector Inspector Anti

Smuggling Mobile Squad Rawalpindi/Islamabad Examined the Mentioned Vehicle

and found in to one D. Hassan 27 s/o Haji Marjan R/o  
Nawshera Akra Lehatali (Afghan citizen)

(2) Sana Gul s/o Gul Hatab R/o Akra Lehatali Nawshera  
(Afghan citizen)

(3) Shateir Khan s/o Abdul Wahid R/o Akra Lehatali  
Nawshera (Afghan citizen)

In possession of the under mentioned foreign articles. As no proof under section 3(1)  
of the import and Export Trade Control Act 1950 is produced in respect of the said  
Articles these are as such Prohibited under section 16 of the Customs Act 1969.  
Accordingly the said articles are seized for action section 156 (1) (89) (90) of  
the Customs Act: 1969.

Hence above ..... S/o .....  
is accordingly informed under Section 171 Pakistan Customs Act, 1969 that the  
articles given below have been recovered from him for necessary action under legal  
provisions given below.

**DETAILS OF ARTICLES SEIZED:**

- ① Shirts Suting cloth = 1065 legs  
made in china (Peysta) 37 Ralls
- ② offending vehicle LES-5557  
(Peysta Wace)

Witness-I Mumtaz Abbasi Sepay

Witness-II Shaukat Mahmood Sepay

16/06/2013  
Signature of the Seizing Officer

نقل فرد برآمدگی و متبوعہ کسی سامان غیر ملکی درج بالا بوجہ عدم ثبوت جائز در آمد خریداری درست پاکر اور اطلاع اور زیر دفعہ 171 کسٹمز

ایکت 1969 وصول پائی

دستخط نشان آگوشا  
انجمن اول کنندہ



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**CONTRAVENTION REPORT.**

1.	Case No.	02/2011 dated 26.02.2011
2.	Name & Address of Importer	M/s China International Water & Power Corporation H.No. 4 A, St. NO. 34, F-8/1, Islamabad
3.	Name and Address of Clearing Agent.	M/s Baig N.A Enterprises Custom Clearing Agency, Sost.
4.	Goods Declaration No.(GD)	GD No. 828 dated 4.1.2003, 1833 dated 20.4.04, 535 dated 4.10.03 and 139 dated 31.7.03.
5.	Description & Quantity of goods declared/cleared	Machinery
6.	Duty Taxes involved	CD Rs.5162655/- Sales Tax Rs. 6669695/-
7.	Law contravened	Section 32 of Customs Act,1969 and Rule 217 of Customs Rules 2001 issued under SRO,450(I)/2001, dated 18.6.2001 punishable under section 156(1),(10A) & (11) of the Customs Act, 1969.
8.	Name of Detecting Staff	1. Mr. Ehsanullah Khan, Deputy Superintendent 2. Mr. Amjad Mahmood, Deputy Superintendent

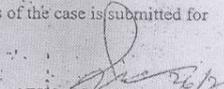
**BRIEF FACTS OF THE CASE**

Brief facts of the case are that M/s. China International Water & Electric Corporation Islamabad imported construction machinery from China and sought clearance against GD Nos. 828 dated 4.1.2003, 1833 dated 20.4.04, 535 dated 4.10.03 and 139 dated 31.7.03 in terms of Rule 217 of Customs Rules 2001 under the Draw Back Rules (same state goods), Chapter V of Customs Rules 2001. Accordingly 20% of the Customs Duty was paid in cash at the time of clearance whereas rest of the amount was deferred on submission of indemnity bond of equivalent value of the duty/taxes payable as per procedure laid down in the said rules. As per aforesaid rules the imported machinery was to be re-exported after completion of the project but the portion of machinery was re-exported however the rest was retained. M/s. China International Water & Electric Corporation Islamabad has submitted a representation through their legal council to the Collector MCC Islamabad that the rest of the machinery was retained on account of Ministry of Commerce, General Administration of Customs, General Administration of Quality Supervision, Inspection and Quarantine, China issued order

No. 5 which banned import of used machinery in China as such they could not export the said machinery and that they may be issued NOC for non-payment of duty/taxes. The Collectorate therefore, forwarded their request to the FBR which was regretted vide FBR letter No.1(7)Msch/92.p/53611 dated 20.4.2010. M/s. China International Water & Electric Corporation, Islamabad filed a writ petition No. 3962/2010 before the honourable Lahore High Court Rawalpindi Bench which was also dismissed vide their order dated 28.10.2010.

In the light of Court Orders, M/s. China International Water & Electric Corporation Islamabad was asked to ensure re-export of the said machinery and also deposit the pending government dues in the instant case vide this office C.No. V.Cus/CDG/NA desk/01/2009/1891 dated 9.12.2010 and C.No.1841 dated 9.12.2010 but they have failed to do so. As such they have contravened the provisions of Section 32 of the Customs Act, 1969 and Rule 216, 217 of Customs Rules, 2001 issued under SRO. 450(I)/2001 dated 18.6.2001 punishable under Section 156(1), 10A and 11 of the Customs Act, 1969.

Contravention Report along with relevant papers of the case is submitted for adjudication please.

  
(EHSAN ULLAH KHAN)  
DEPUTY SUPERINTENDENT

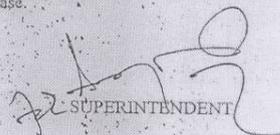
GOVERNMENT OF PAKISTAN  
OFFICE OF THE SUPERINTENDENT CUSTOMS SILK ROUTE  
DRYPORT SOST CAMP AT MCC ISLAMABAD.

C.NO.V.CUS.NA/DESK/01/09/31

Dated: 3 3.2011.

Copy for information to:-

- The Collector, Model Customs Collectorate, Islamabad.
- The Additional Collector, Customs, (HQ/GB)MCC Islamabad along with original case papers for adjudication of the case please.
- Office copy.

  
SUPERINTENDENT



In this manner the Customs offences on seizure and detection are dealt with.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource Persons:**

- Mr. Sanaullah Abro, Deputy Director, Directorate General of Intelligence and Investigation (Customs), Karachi.
- Mr. Muhammad Jamil Khan, Law Officer, Model Customs Collectorate, Peshawar.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Law), Model Customs Collectorate Appraisement, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are substantially in compliance with the recommended practice.

**Recommendations:** The Customs General Order No. 12 of 2002 may be modified to provide for the specific rules on the subject.



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11. Standard

The Customs shall seize goods and/or means of transport only when :

- they are liable to forfeiture or confiscation; or
- they may be required to be produced as evidence at some later stage in the procedure.

**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Sections 156, 157 and 168
- The Imports and Exports (Control) Act

**Discussion:**

*Law:* The goods are liable to confiscation if their import or export is prohibited or restricted by the Customs Act or under the Imports and Exports (Control) Act or any other law for the time being in force or if the goods contravene any provisions of the Act. In the same manner transport vehicle or any other means of conveyance used for carrying such goods are also liable to seizure and consequent confiscation under section 156 of the Act read with the other related sections. Section 156 provides in detail the various offences and the fines, penalties and liability to confiscation etc. Under section 168 of the Act, read with sections 156 and 157 thereof, the goods and transport vehicle or conveyance including the packages and containers used for the offending goods, which are liable to confiscation, may be seized and are not disposed of till the adjudication of the case by the concerned Customs authority, or, as the case may be, by a Court. Likewise, the documents, goods, their containers and the conveyance which may be useful as evidence in any proceedings under this Act also remain in the custody of Customs in accordance with sub section (3) of section 168 of the Act.

Sections 157 and 168 read as under:

157. Extent of confiscation.-

- (1) Confiscation of any goods under this Act includes any package in which they are found, and all other contents thereof.
- (2) Every conveyance of whatever kind used in the removal of any goods liable to confiscation under this Act shall also be liable to confiscation.

168. Seizure of things liable to confiscation.-

- (1) The appropriate officer may seize any goods liable to confiscation under this Act, and where it is not practicable to seize any such goods, he may serve on the owner of the goods or any person holding them in his possession or charge an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.
- (3) The appropriate officer may seize any documents or things which in his opinion will be useful as evidence in any proceeding under this Act.

In view of the above provisions, the law is in compliance with the standard.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource Persons:**

- Mr. Sanaullah Abro, Deputy Director, Directorate General of Intelligence and Investigation (Customs), Karachi.
- Mr. Muhammad Jamil Khan, Law Officer, Model Customs Collectorate, Peshawar.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Law), Model Customs Collectorate Appraisement, Karachi.



## Trade Project

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the standard.

**Recommendation:** None

12. Standard	If a Customs offence relates only to part of a consignment, only that part shall be seized or detained, provided that the Customs are satisfied that the remainder of the consignment did not serve, directly or indirectly, in the commission of the offence.
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**Overall Assessment:** Non-Compliant

**Relevant Law:**

- The Customs Act; Section 168

**Discussion:**

*Law:* The spirit of the section 168 (1) of the Customs Act is that only those offending goods may be seized which are liable to confiscation. Nevertheless, some times the packages or containers wherein such goods are transported or concealed are seized as having evidentiary value. Section 168 refers to the procedure of seizure etc. However there is no clear direction in this section or in any other section or rule that only offending parts of a consignment are to be seized and not the rest of the consignment or container load of consolidated LCL cargo. In cases of smuggling some goods are used for concealing the offending goods. Such goods obviously would be liable to seizure.

The said section is reproduced below:

168. Seizure of things liable to confiscation.-

- (1) The appropriate officer may seize any goods liable to confiscation under this Act, and where it is not practicable to seize any such goods, he may serve on the owner of the goods or any person holding them in his possession or charge an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.
- (3) The appropriate officer may seize any documents or things which in his opinion will be useful as evidence in any proceeding under this Act.

In view of the above the law is not in compliance with the Standard.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource Persons:**

- Mr. Sanaullah Abro, Deputy Director, Directorate General of Intelligence and Investigation (Customs), Karachi.
- Mr. Muhammad Jamil Khan, Law Officer, Model Customs Collectorate, Peshawar.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Law), Model Customs Collectorate Appraisement, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are not in compliance with the standard.

**Recommendations:** Section 168 may be suitably amended to provide that If a Customs offence relates only to part of a consignment, only that part shall be seized or detained, provided that the Customs are satisfied that the remainder of the consignment did not serve, directly or indirectly, in the commission of the offence e.g. concealing the offending goods.

13. Standard	When the Customs seize or detain goods and/or means of transport, they shall furnish the person concerned with a document showing : <ul style="list-style-type: none"> <li>- the description and quantity of the goods and means of transport seized or detained;</li> <li>- the reason for the seizure or detention; and</li> <li>- the nature of the offence.</li> </ul>
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Section 171

**Discussion:**

*Law:* Section 171 of the Customs Act meets the requirements of this Standard. The said section provides that upon seizure of any goods the concerned officer shall immediately inform in writing the person from whose possession the goods are seized and the grounds for such seizure and all other particulars are relevant to the matter.

The said section is reproduced below:

171. When seizure or arrest is made, reason in writing to be given.- When anything is seized, or any person is arrested under this Act, the officer or other person making such seizure or arrest shall, as soon as may be, inform in writing the person so arrested or the person from whose possession the things are seized of the grounds of such seizure or arrest.

In view of the above, the law is in compliance with the Standard. The practice is as per law. Even after serving Notice upon the person from whom goods are seized, a receipt in acknowledgement of such Notice is obtained in writing and placed on the record.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource Persons:**

- Mr. Sanaullah Abro, Deputy Director, Directorate General of Intelligence and Investigation (Customs), Karachi.
- Mr. Muhammad Jamil Khan, Law Officer, Model Customs Collectorate, Peshawar.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Law), Model Customs Collectorate Appraisement, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the standard.

**Recommendations:** The law and practice are in compliance of the standard. However the requirements of the Standard need to be made clear and more transparent.

14. Recommended Practice	The Customs should release seized or detained goods against adequate security, provided that the goods are not subject to any prohibitions or restrictions or needed as evidence at some later stage in the procedure.
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**Overall Assessment:** Non-Compliant

**Relevant Law:**

- The Customs Act

**Discussion:**

*Law:* The Customs Act and the rules made thereunder do not provide for the interim release of seized goods as visualized by the instant 'Recommended Practice'.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource Persons:**

- Mr. Sanaullah Abro, Deputy Director, Directorate General of Intelligence and Investigation (Customs), Karachi.
- Mr. Muhammad Jamil Khan, Law Officer, Model Customs Collectorate, Peshawar.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Law), Model Customs Collectorate Appraisement, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are not in compliance with the 'Recommended Practice'.

**Recommendations:** The Customs Act may be modified to provide for release of seized or detained goods against adequate security, provided that the goods are not subject to any prohibitions or restrictions or needed as evidence at some later stage in the proceedings.

<p>15. Recommended Practice</p>	<p>The Customs should release from seizure or detention means of transport that have been used in the commission of a Customs offence where they are satisfied that :</p> <ul style="list-style-type: none"> <li>- the means of transport have not been constructed, adapted or altered or fitted in any manner for the purpose of concealing goods; and</li> <li>- the means of transport are not required to be produced as evidence at some later stage in the procedure; and</li> <li>- where required, adequate security can be given.</li> </ul>
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Section 157
- The 'Seized Conveyance (Interim Release) Rules, 1982' (Notification Number SRO 182(I)/82 dated 25-02-1982)

**Discussion:**

*Law:* Proviso to sub section (2) of section 157 of the Customs Act provides for the release of a seized conveyance, pending adjudication, in appropriate circumstances, subject to furnishing of sufficient guarantee from a scheduled bank for the due production of the conveyance at any time and place it is required to be produced. In this context, the 'Seized Conveyance (Interim Release) Rules, 1982' (Notification Number SRO 182(I)/82 dated 25-02-1982) lays down the procedure in case a vehicle or conveyance may be released pending adjudication.

Section 157 of the Act and the above referenced rules are reproduced below:

157. Extent of confiscation.-

- (2) Every conveyance of whatever kind used in the removal of any goods liable to confiscation under this Act shall also be liable to confiscation.

Provided that, where a conveyance liable to confiscation has been seized by an officer of customs, the appropriate officer may, in such circumstances as may be prescribed by rules, order its release, pending the adjudication of the case involving its confiscation if the owner of the conveyance furnishes him with a sufficient guarantee from a scheduled bank for the due production of the conveyance at any time and place it is required by the appropriate officer to be produced.

2. An officer of customs, not below the rank of a Deputy Collector, may release, provisionally, any conveyance seized for the offence of having been used in the removal of goods liable to confiscation and thereby rendered such conveyance liable to confiscation under sub-section (2) of section 157 of the Customs Act, 1969 (IV of 1969), pending adjudication of the case involving its confiscation subject to the following conditions, namely:--

- (i) The owner or his authorized agent furnishes a security in cash in an amount that may be fixed by the aforesaid officer of customs or a guarantee of an equivalent amount from a scheduled bank on such terms as may be directed by the aforesaid officer of customs for the due production of the conveyance, in the same condition in which it is released, at any place and time as directed by such officer of customs.
- (ii) The release of the conveyance, pending adjudication, on the basis of cash, security, or bank guarantee, as the case may be, shall not be permitted by the aforesaid officer of customs, unless--
  - (a) the value of the offending goods is insignificantly small as compared to the value of the conveyance to be seized;
  - (b) it is *prima facie* apparent that the owner or the person-in-charge had no knowledge of the smuggled goods being carried or placed in his conveyance;
  - (c) the officer of customs is satisfied that the conveyance has not been used previously for the carriage of smuggled goods and the owner or the person-in-charge of the conveyance was not found engaged in smuggling earlier; and
  - (d) the officer of customs is satisfied that there is no likelihood of any loss of evidence or any weakening of the case if the conveyance is so released.

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## Trade Project

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource Persons:**

- Mr. Sanaullah Abro, Deputy Director, Directorate General of Intelligence and Investigation (Customs), Karachi.
- Mr. Muhammad Jamil Khan, Law Officer, Model Customs Collectorate, Peshawar.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Law), Model Customs Collectorate Appraisement, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the recommended practice.

**Recommendations:** None

16. Recommended Practice	Means of transport should only be forfeited or confiscated where : <ul style="list-style-type: none"> <li>- the owner, operator or person in charge was, at the time, a consenting party or privy to the Customs offence, or had not taken all reasonable steps to prevent the commission of the offence; or</li> <li>- the means of transport has been specially constructed, adapted or altered or fitted in any manner for the purpose of concealing goods; or</li> <li>- restoration of the means of transport which has been specially altered or adapted is not possible.</li> </ul>
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Section 179

**Discussion:**

*Introductory Note:* In Pakistan, means of transport are generally confiscated only when such means of transport is either used with the consent of the owner, operator or person in charge of such means was, at the time, a consenting party or privy to the Customs offence, or had not taken all reasonable steps to prevent the commission of the offence or where the means are constructed or fabricated for the commission of the alleged offence or where the means of transport is adapted for concealment of offending goods that it cannot be restored.

*Law:* The decision of confiscation or otherwise of means of transport is made by the adjudicating officer on the basis of reasonable belief while judiciously applying his mind to the facts and circumstances of each case in exercise of powers vested in him under section 179 of the Act.

Section 179 of the Act is reproduced below:

179. Power of adjudication.-  
 (1) Subject to sub-section (2), in cases involving confiscation of goods or recovery of duty and other taxes not levied, short levied or erroneously refunded, imposition of penalty or any other contravention under this Act or the rules made thereunder, the jurisdiction and powers of the officers of Customs in terms of amount of duties and other taxes involved, excluding the conveyance....

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource Persons:**

- Mr. Sanaullah Abro, Deputy Director, Directorate General of Intelligence and Investigation (Customs), Karachi.
- Mr. Muhammad Jamil Khan, Law Officer, Model Customs Collectorate, Peshawar.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Law), Model Customs Collectorate Appraisement, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the recommended practice.

**Recommendations:** None.

17. Recommended Practice	Unless they are likely to deteriorate quickly or it would, due to their nature, be impracticable for the Customs to store them, seized or detained goods should not be sold or otherwise disposed of by the Customs before they have been definitively condemned as forfeited or confiscated or have been abandoned to the Revenue.
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**Overall Assessment:** Non-Compliant

**Relevant Law:**

- The Customs Act; Section 169

**Discussion:**

*Law:* The requirements of this 'Recommended Practice' are not met by the provision of sub-section (4) of Section 169 of the Customs Act which relates to the subject matter of this standard. The said sub-section provides that seized goods which include goods which are perishable or liable to deterioration may be disposed of by Customs pending adjudication. In this context, Paragraph 34 of Customs General Order 12/2002 (the CGO) is also applicable; it provides the procedure for disposal of seized/confiscated goods.

The relevant parts of Section 169 read as follows:

169. Things seized how dealt with.-

- (1) All things seized on the ground that they are liable to confiscation under this Act shall, without unnecessary delay, be delivered into the care of the officer of customs authorized to receive the same.
- (4) When anything liable to confiscation under this Act is seized by the appropriate officer under section 168, the Collector of Customs, or any other officer of customs authorized by him in this behalf, may notwithstanding the fact that adjudication of the case under section 179, or an appeal under section 193 or 194A or a proceeding in any court, is pending, cause the thing to be sold in accordance with the provisions of section 201 and have the proceeds kept in deposit pending adjudication of the case or as the case may be, disposal of the appeal or the final judgment by the court.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource Persons:**

- Mr. Sanaullah Abro, Deputy Director, Directorate General of Intelligence and Investigation (Customs), Karachi.
- Mr. Muhammad Jamil Khan, Law Officer, Model Customs Collectorate, Peshawar.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Law), Model Customs Collectorate Appraisement, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are not in compliance with the 'Recommended Practice'.

**Recommendations:** None

18. Standard	National legislation shall specify the powers of the Customs in connection with detention of persons and shall lay down the conditions therefor, in particular the period after which detention becomes subject to a review by a judicial authority.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Section 161

**Discussion:**

*Law:* Section 161 of the Customs Act meets the requirements of this standard. Section 161(1) provides that an authorized Customs officer having reason to believe that a person has committed an offence under the Act may arrest such person. Under Section 161(2), a person duly empowered for the prevention of smuggling who has reason to believe that any person who has committed an offence of smuggling under this Act may arrest such person.

Section 161(4) requires the production of the arrested persons before the competent Court within twenty four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the nearest magistrate. This right is also protected under Article 10 of the Constitution of Islamic Republic of Pakistan.

Section 161 of the Act reads as follows:

161. Power to arrest.-

- (1) Any officer of customs authorized in this behalf who has reason to believe that any person has committed an offence under this Act may arrest such person.
- (2) Any person duly empowered for the prevention of smuggling who has reason to believe that any person who has committed an offence of smuggling under this Act may arrest such person.
- (3) Every person arrested under this Act shall be taken forthwith before the nearest officer of customs authorized by the Collector of Customs to deal with such cases, or, if there is no such officer of customs within a reasonable distance, to the officer-in-charge of the nearest police-station.
- (8) When any person arrested under this Act is brought before an officer of customs or the officer-in-charge of a police-station as required by sub-section(3), or when such officer of customs or officer-in-charge of a police-station himself arrests any person under this Act, such officer shall, if he is an officer of customs, record the fact of arrest and other relevant particulars in the register mentioned in sub-section (12) or, if he is an officer-in-charge of a police-station, record such fact in the register ordinarily maintained by him, and shall immediately proceed to inquire into the charge against such person and if he completes the inquiry within twenty-four hours of his arrest, excluding the time necessary for journey as aforesaid, he may, after producing such person before the Special Judge or the nearest Judicial Magistrate make a request for his further detention in his custody.
- (12) The officer of customs empowered to hold inquiry under this section shall maintain a register to be called "Register of Arrests and Detention" in the prescribed form in which he shall enter the name and other particulars of every person arrested under this Act, together with the time and date of arrest, the details of the information received, the details of things, goods or documents recovered from his custody, the name of the witnesses and the explanation, if any, given by him and the manner in which the inquiry has been conducted from day to day; and such register or authenticated copies of its aforesaid entries shall be produced before the Special Judge whenever such officer is so directed by him.
- (14) The officer of customs, or as the case may be, the officer-in-charge of a police-station shall immediately intimate the fact of the arrest of a person under sub-sections (1),(2) or (4) to the Special Judge who may direct such officer to produce that person at such time and place and on such date as the Special Judge considers expedient and such officer or officer-in-charge shall act accordingly.



## Trade Project

The above referred provisions show that the law is in compliance with the Standard.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource Persons:**

- Mr. Sanaullah Abro, Deputy Director, Directorate General of Intelligence and Investigation (Customs), Karachi.
- Mr. Muhammad Jamil Khan, Law Officer, Model Customs Collectorate, Peshawar.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Law), Model Customs Collectorate Appraisement, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the standard.

**Recommendations:** None

19. Standard	The Customs shall take the necessary measures to ensure, where applicable, that as soon as possible after a Customs offence is discovered: <ul style="list-style-type: none"> <li>- the administrative settlement of the latter is initiated; and</li> <li>- the person concerned is informed about the terms and conditions of the settlement, the avenues of appeal and the time limits for such appeals.</li> </ul>
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**Overall Assessment:** Non-Compliant

**Relevant Law:**

- The Customs Act; Sections 179 and 180

**Discussion:**

*Law:* There is no provision in the Act or the rules for such summary proceedings in Customs. In Customs when an offence is discovered, the Customs officer empowered under section 179 of the Customs Act has to issue a show cause notice under section 180 of the Act to the alleged offender. He cannot release the goods on payment of duties and taxes plus fines and penalties without following the procedure provided in section 180 of the Act etc. In practice there are cases where in cases of accompanied baggage the passengers are asked to pay duties and taxes plus some fine and on payment of these the goods are released. However, this practice has no sanction under the law. This is generally called summary adjudication and in most of the cases the passengers file appeals against such orders as the fines imposed are generally very high i.e. 100 percent of the value of the goods.

*Practice:* There is no provision in the law or the rules. However, there is a practice of 'summary adjudication' at the air ports of Pakistan for the accompanied baggage of the passengers. In these cases goods are assessed to duties and taxes and fines imposed on them on the request of the passengers. On payment of these duties, taxes and fines the goods are released. The passengers ofcourse have the right to file appeals against such summary proceedings.

**Resource Persons:**

- Mr. Sanaullah Abro, Deputy Director, Directorate General of Intelligence and Investigation (Customs), Karachi.
- Mr. Muhammad Jamil Khan, Law Officer, Model Customs Collectorate, Peshawar.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Law), Model Customs Collectorate Appraisement, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are not in compliance with the standard.

**Recommendations:** The Customs Act (Sections 179 and 180) should be amended to include summary adjudication proceedings. This will also require detailed rules for the application of such proceedings.

20. Recommended Practice	Where during clearance of the goods a Customs offence has been discovered which is regarded as of minor importance, it should be possible for the offence to be settled by the Customs office which discovers it.
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**Overall Assessment:** Non-Compliant

**Relevant Law:**

- The Customs Act; Sections 32 and 179
- SRO 886(I)/2012 dated 18-07-2012

**Discussion:**

*Law:* There is no provision in the Act or the rules for such summary proceedings in Customs. In Customs when an offence is discovered, the Customs officer empowered under section 179 of the Customs Act has to issue a show cause notice under section 180 of the Act to the alleged offender. He cannot release the goods on payment of duties and taxes plus fines and penalties without following the procedure provided in section 180 of the Act etc.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource Persons:**

- Mr. Sanaullah Abro, Deputy Director, Directorate General of Intelligence and Investigation (Customs), Karachi.
- Mr. Muhammad Jamil Khan, Law Officer, Model Customs Collectorate, Peshawar.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Law), Model Customs Collectorate Appraisalment, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are not in compliance with the 'Recommended Practice'.

**Recommendations:** Sections 32, 179 and 180 should be modified to provide that where - during clearance of the goods - a Customs offence of minor importance is discovered, the field officers of respective Collectorates of Customs are empowered to settle such minor offences in cases that are brought before them. These minor offences should be those identified in the Guidelines for Standard 3.39 of the General Annex.

21.Recommended Practice	Where a traveler is regarded as having committed a Customs offence of minor importance, it should be possible for the offence to be settled without delay by the Customs office which discovers it.
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**Overall Assessment:** Partially Compliant

**Relevant Law:**

- The Customs Act; Sections 32 and 179

**Discussion:**

*Law:* There is no provision in the Act or the rules for such summary proceedings in Customs. In Customs when an offence is discovered, the Customs officer empowered under section 179 of the Customs Act has to issue a show cause notice under section 180 of the Act to the alleged offender. He cannot release the goods on payment of duties and taxes plus fines and penalties without following the procedure provided in section 180 of the Act etc.

*Practice:* There is no provision in the law or the rules. However, there is a practice of 'summary adjudication' at the air ports of Pakistan for the accompanied baggage of the passengers. In these cases goods are assessed to duties and taxes and fines imposed on them on the request of the passengers. On payment of these duties, taxes and fines the goods are released. The passengers, of course have the right to file appeals against such summary proceedings.

**Resource Persons:**

- Mr. Sanaullah Abro, Deputy Director, Directorate General of Intelligence and Investigation (Customs), Karachi.
- Mr. Muhammad Jamil Khan, Law Officer, Model Customs Collectorate, Peshawar.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Law), Model Customs Collectorate Appraisement, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are partially in compliance with the recommended practice.

**Recommendations:** Amendments to the relevant sections of the Customs Act reflecting the recommended practice should be made.

22. Standard	National legislation shall lay down the penalties applicable to each category of Customs offence that can be dealt with by administrative settlement and shall designate the Customs offices competent to apply them.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Sections 156 and 179
- SRO 499(I)/2009 dated 11<sup>th</sup> June, 200

**Discussion:**

*Law:* Section 156 of the Customs Act specifies the various categories of Customs offences as well as the penalties applicable to each category. Section 179 of the Act, on the other hand, empowers various officers of Customs to administratively settle the offences specified under section 156 thereof.

SRO 499 (I)/2009 dated 11<sup>th</sup> June, 2009, specifies the categories of goods which can be released on payment of fines and penalties. It also specifies goods which cannot be released against fines and penalties. However, the only instance where this is used for summary release of the goods is baggage imported in commercial quantities by incoming passengers. There is however no law or rule supporting such summary release of goods despite the fact that the summary release of passenger's baggage is an established practice.

*Practice:* There is no specific provision for summary release of goods in the law or the rules. However, there is an established practice for release of passengers' accompanied baggage after summary adjudication. The fine imposed is as per SRO 499(I)/2009 dated 11<sup>th</sup> June 2009 where passengers' accompanied baggage is released on payment of duties and taxes plus twenty percent fine.

**Resource Persons:**

- Syed Muhammad Attique Shah, Additional Attorney General for Pakistan, Advocate Supreme Court, Peshawar.
- Mr. Shahanshah Husnain, Collector of Customs (Adjudication), Karachi.
- Mr. M.D. Shahzad, Advocate Supreme Court, Special Prosecutor of Customs, Rawalpindi/Islamabad.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the standard.

**Recommendations:** Sections 32, 179 and 180 should be modified to provide that where during clearance of the goods a Customs offence of minor nature is discovered, the field officers of respective Collectorates of Customs be empowered to settle such minor offences in cases which are brought before them. These minor offences should be those identified in the Guidelines for Standard 3.39 of the General Annex.

23. Standard	The severity or the amount of any penalties applied in an administrative settlement of a Customs offence shall depend upon the seriousness or importance of the Customs offence committed and the record of the person concerned in his dealings with the Customs.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Section 156
- SRO 499(I)/2009 dated 11<sup>th</sup> June, 2009
- The Customs General Order 12/2002 (Paragraph 82)

**Discussion:**

*Law:* Section 156 of the Customs Act specifies the various categories of Customs offences as well as the penalties applicable to each category. A perusal of the section establishes that the pitch of the penalties provided therein correspond to/depend upon the nature of the offence involved. Clauses (1), (27) and (32(i)) of sub-section (1) of the section may be referred to as examples. They provide a range within which the competent authority may impose the penalty as is evident from the expression "shall be liable to a penalty not exceeding twenty five thousand rupees."

The FBR/Customs has issued guidelines; vide Paragraph 82 of the Customs General Order 12/2002, for perusal of the adjudication officers of Customs so as to settle cases of Customs offences. The principle that award of penalty has to be commensurate with the severity of offence is a well-established practice in Customs. However, apart from the penalties prescribed there are no clear cut guidelines to this effect. The principle of the fines and penalties being in line with the severity of the offence is maintained in SRO 499(I)/2009, 11<sup>th</sup> June, 2009 and is in line with the same provided in section 156 of the Act. Besides the degree of seriousness of the offence, Customs also considers the past record of compliance of the person in relation to Customs laws and rules. A habitual violator of law is bound to be penalized more heavily than a person found in breach of law or rule for the first time.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource Persons:**

- Syed Muhammad Attique Shah, Additional Attorney General for Pakistan, Advocate Supreme Court, Peshawar.
- Mr. Shahanshah Husnain, Collector of Customs (Adjudication), Karachi.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Law), Model Customs Collectorate Appraisalment, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the standard.

**Recommendations:** None

24. Standard	Where untrue particulars are furnished in a Goods declaration and the declarant can show that all reasonable steps had been taken to provide accurate and correct information, the Customs shall take that factor into account in considering the imposition of any penalty.
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**Overall Assessment:** Non-Compliant

**Relevant Law:**

- The Customs Act; Section 32

**Discussion:**

*Introductory Note:* This Standard has nexus with Standard 22. A violation of Customs law or Customs rules is an offence and it has to be adjudicated upon by a competent Customs authority with powers of the settlement of the offence in accordance with law.

*Law:* A case under sub section 2 of section 32 of the Customs Act may be initiated against an alleged offender when he makes or signs a false statement, knowing or having reason to believe that such document or statement is false. Subsection 3 of section 32 provides that if by reason of inadvertence, error or misconstruction some duty or tax has not been levied the person can also be served with a notice. However, there is no difference what so ever in the treatment of such offences under section 156 of the Act, therefore it is left to the discretion of the adjudicating officer to impose more or less penalties. This obviously needs correction. This is generally done but some corrective measures will improve the situation and curb corruption. The practice is as per law. However, the adjudicating officers do take care of the seriousness of the offence in imposing fines and penalties.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource Persons:**

- Syed Muhammad Attique Shah, Additional Attorney General for Pakistan, Advocate Supreme Court, Peshawar.
- Mr. Shahanshah Husnain, Collector of Customs (Adjudication), Karachi.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Law), Model Customs Collectorate Appraisement, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the standard.

**Recommendations:** The law needs fundamental change to incorporate fines and penalties according to the severity of the offence e.g. the penalties in case of offences under subsection 2 of section 32 should be more severe as compared to offences under subsection 3 of section 32. It should not be left to the discretion of the adjudicating officers. This leads to corruption and inappropriate decisions. Detailed guidelines also need to be issued as rules for adjudicating officers to be judicious, fair and objective.

25. Standard	Where a Customs offence occurs as a result of force majeure or other circumstances beyond the control of the person concerned and there is no question of negligence or fraudulent intent on his part, no penalty shall be applied provided that the facts are duly established to the satisfaction of the Customs.
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**Overall Assessment:** Partially Compliant

**Relevant Law:**

- The Customs Act; Section 179

**Discussion:**

*Law:* In cases of violations or non-compliance occurring due to force majeure or other circumstances beyond the control of the person concerned and there is no question of negligence or fraudulent intent on his part, the adjudicating authority while exercising powers under section 179 of the Customs Act is bound under principles of natural justice to acquit the owner/person allegedly involved in the offence of the charges as it is beyond the control of such person. Obviously in such cases the person or legal entity has to be exonerated and the adjudicating officers keep this in mind while deciding the cases. This is supported by case law and various decisions of the superior courts.

Some of the relevant judgments of the Superior Courts are:

PTCL 1999 CL 813	M/s Sardar Chemicals GA, Peshawar	Vs	Collector Cu & CE Peshawar
PTCL 1996 CL 1	M/s Kamran Ind.	Vs	Collector CU (Exports) Karachi
1993 SCMR 266	Regional Comm. IT Karachi	Vs	S.Sultan Ali Jeofery

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource Persons:**

- Syed Muhammad Attique Shah, Additional Attorney General for Pakistan, Advocate Supreme Court, Peshawar.
- Mr. Shahanshah Husnain, Collector of Customs (Adjudication), Karachi.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Law), Model Customs Collectorate Appraisement, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are partially in compliance with the standard.

**Recommendations:** The law needs fundamental change to incorporate provisions which clearly state that in cases of force majeure the persons and legal entities that appear to have committed various offences should either be exonerated or treated very leniently. It should not be left to the discretion of the adjudicating officers. This leads to corruption and inappropriate decisions.

Detailed guidelines also need to be issued as rules, for adjudicating officers to be judicious, fair and objective.

26. Standard	Goods that have been seized or detained, or the proceeds from the sale of such goods after deduction of any duties and taxes and all other charges and expenses incurred, shall be : - turned over to the person entitled to receive them as soon as possible after the Customs offence has been definitively settled; or - when this is not possible, held at their disposal for a specified period, provided that the goods have neither been condemned as forfeited or confiscated nor abandoned to the Revenue as a result of a settlement.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Sections 169, 179, 180, 182 and 201.

**Discussion:**

*Law:* If the goods, earlier seized or detained, for alleged commission of a Customs offence are not found to be involved in the offence and, therefore, are not confiscated to the State in proceedings under section 179 of the Customs Act or if the said goods have not been abandoned to Customs by the owner, the same are property of the entitled person and are to be returned to him. However, he has to pay duties, taxes, charges and expenses due thereon, if any. Likewise, if goods have already been disposed of by Customs after the same had come into their control, the sale proceeds thereof have to be returned after payment of duties and taxes as well as other charges and due recoverable in respect thereof. Section 169(5) of the Act provides that 'If on such adjudication or, as the case may be, in such appeal or proceeding in Court, the thing so sold is found not to have been liable to such confiscation, the entire sale proceeds, after necessary deduction of duties, taxes or dues as provided in Section 201, shall be handed over to the owner.'

The relevant parts of Section 169 read as follows;

169. Things seized how dealt with.-

(1) All things seized on the ground that they are liable to confiscation under this Act shall, without unnecessary delay, be delivered into the care of the officer of customs authorized to receive the same.

(4) When anything liable to confiscation under this Act is seized by the appropriate officer under section 168, the Collector of Customs, or any other officer of customs authorized by him in this behalf, may notwithstanding the fact that adjudication of the case under section 179, or an appeal under [section 193 or 194A] or a proceeding in any court, is pending, cause the thing to be sold in accordance with the provisions of section 201 and have the proceeds kept in deposit pending adjudication of the case or as the case may be, disposal of the appeal or the final judgment by the court.

(5) If on such adjudication or, as the case may be, in such appeal or proceeding in Court, the thing so sold is found not to have been liable to such confiscation, the entire sale proceeds, after necessary deduction of duties, taxes or dues as provided in section 201, shall be handed over to the owner.

Thus if the goods are not confiscated, they are to be returned and this in accordance with the stipulations of the standard.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.



## Trade Project

### Resource Persons:

- Syed Muhammad Attique Shah, Additional Attorney General for Pakistan, Advocate Supreme Court, Peshawar.
- Mr. Shahanshah Husnain, Collector of Customs (Adjudication), Karachi.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Law), Model Customs Collectorate Appraisement, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the standard.

**Recommendations:** None

27. Standard	Any person implicated in a Customs offence that is the subject of an administrative settlement shall have the right of appeal to an authority independent of the Customs unless he has chosen to accept the compromise settlement.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Sections 179, 193, 194, 194A and 196

**Discussion:**

*Law:* Customs offences are, in the first instance, adjudicated upon/administratively settled under section 179 of the Customs Act. Appeals against the above mentioned adjudication is provided in section 193 of the Act, when the order is passed by an officer up to the rank of Deputy Collector of Customs. Second appeal against such appellate Order is available before the 'Customs Appellate Tribunal' constituted under section 194 of the Act which is a body functioning independent of Customs under the Ministry of Law, Government of Pakistan. Where the original order is passed by an Additional Collector or Collector of Customs, appeal directly lies to the Customs Tribunal under section 194A of the Act. Appeals can also be filed to the High Courts against the decisions of the Appellate Tribunals under section 196 of the Act. The above referenced sections of the Customs Act are as follows:

194. Appellate Tribunal.-

(1) The Federal Government shall constitute an Appellate Tribunal to be called the Customs [Omitted] Appellate Tribunal consisting of as many judicial and technical members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

194-A. Appeals to the Appellate Tribunal:

(1) Any person or an officer of Customs aggrieved by any of the following orders may appeal to the Appellate Tribunal against such orders:

- (aa) a decision or order passed by an officer of Customs not below the rank of Additional Collector under section 179.
- (ab) an order passed by the Collector (Appeals) under section 193;
- (c) an order passed under section 193, as it stood immediately before the appointed day;
- (d) an order passed by the Board or the Collector of Customs under section 195:
- (e) an order passed in revision by the Director-General Customs Valuation under section 25D, provided that such appeal shall be heard by a special bench consisting of one technical member and one judicial member.

196. Reference to High Court. – (1) Within ninety days of the date on which the aggrieved person or Collector or Director of Intelligence and Investigation, as the case may be, was served with order of the Appellate Tribunal under sub- section (3) of section 194B, the aggrieved person or any officer of Customs not below the rank of an Additional Collector or Additional Director, authorized by the Collector or Director in writing, may prefer an application, in the prescribed form along with a statement of the case, to the High Court, stating any question of law arising out of such order.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource Persons:**



## Trade Project

- Syed Muhammad Attique Shah, Additional Attorney General for Pakistan, Advocate Supreme Court, Peshawar
- Mr. Shahanshah Husnain, Collector of Customs (Adjudication), Karachi
- Mr. Javed Iqbal Butt, Former Deputy Collector (Law), Model Customs Collectorate Appraisement, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the standard.

**Recommendations:** None

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