



USAID Trade Project

Legal Gap Analysis *Consistency of Pakistan Customs Regime with the Revised Kyoto Convention*

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Table of Abbreviations

ATC	Appellate Tribunal of Customs
ADC	Additional Collector of Customs
ADRC	Alternative Dispute Resolution Committee
APTCA	Afghanistan-Pakistan Transit Trade Coordination Authority
APTTA	Afghanistan-Pakistan Transit Trade Agreement
CCS	Customs Computerized System
CGO	Customs General Order
CRN	Customs Reference Number
DTRE	Duty and Tax Remission for Exports
DG	Directorate General
EM	Export Manifest
EPZ	Export Processing Zones
ETA	Estimated Time of Arrival
FBR	Federal Board of Revenue
FPCCI	Federation of Pakistan Chambers of Commerce and Industry
FTO	Federal Tax Ombudsman
FED	Federal Excise Duty
GD	Goods Declaration
INTRA	Integrated Regulatory Authorities
IGM	Import General Manifest
IM	Import Manifest
KKH	Karakoram Highway
LC	Letter of Credit
LCS	Land Customs Station
LCCI	Lahore Chamber of Commerce and Industry
MoC	Ministry of Commerce
MCC	Model Customs Collectorate
MB	Manufacturing Bonds
N/A	Not Applicable
NBP	National Bank of Pakistan
NVOCCs	Non-Vessel Operating Common Carriers
PACCS	Pakistan Computerized Customs System
PCT	Pakistan Customs Tariff
POG	Policy Order of the Government
PPSCW	Printing & Publication Section, Customs Wing
PRAL	Pakistan Revenue Automation Ltd
PICCA	Pakistan and India Customs Cooperation Agreement
RKC	Revised Kyoto Convention
RP	Recommended Practice
SBP	State Bank of Pakistan
SRO	Special Regulatory Order
TJV	Tarbela Joint Venture
UN	United Nations
VOCCs	Vessel Operating Common Carriers
WeBOC	Web Based One Customs
WCO	World Customs Organization

Table of Authorities

1. Income Tax Ordinance, 2001
2. Customs Rules, 2001.
3. The Customs Act, 1969
4. The Customs, Excise and Sales Tax Appellate Tribunal Procedural Rules, 2006
5. Federal Excise Act, 2005
6. Sales Tax Act, 1990
7. The Federal Board of Revenue Act, 2007
8. The State Bank of Pakistan Act, 1956
9. Controller General of Accounts Ordinance, 2001
10. The Code of Civil Procedure, 1908
11. Civil Establishment Code (ESTA Code)
12. The Constitution of Islamic Republic of Pakistan, 1973
13. Tax Special Procedures Rules, 2007
14. Imports and Exports (Control) Act, 1950
15. Foreign Exchange Regulation Act, 1947.
16. Tracking and Monitoring of Cargo Rules, 2012
17. Imports and Exports (Control) Act, 1950
18. The Freedom of Information Ordinance, 2002
19. The Federal Board of Revenue Act, 2007
20. Federal Tax Ombudsman Investigation and Disposal of Complaints Regulations, 2001
21. The Establishment of the Office of Federal Tax Ombudsman Ordinance
22. Afghanistan-Pakistan Transit Trade Agreement, 2010 (APTTA)
23. Pakistan-India Customs Cooperation Agreement, 2012
24. Pakistan and Iran Customs Cooperation Agreement, 2004
25. Control of Narcotic Substances Act, 1997
26. Pakistan Animals Quarantine (Import and Export of Animals and Animal Products) Ordinance, 1979
27. Ordinance, 1979
28. The Drugs Act, 1976
29. The Pakistan Plant Quarantine Act, 1976

Executive Summary

This updated¹ report contains the findings of a legal gap analysis that has been conducted to assess the extent to which Pakistan's customs laws, regulations and practices comply with the standards and recommended practices contained in the International Convention on the Simplification and Harmonization of Customs Procedures (as amended), generally referred to as the "Revised Kyoto Convention" or "RKC". Where a legislative, regulatory and/or practice compliance issue with respect to an RKC standard or recommended practice has been identified, the issue is described in the specific compliance assessment relating to the concerned standard or recommended practice. These individual compliance assessments constitute the major part of this document and are set forth in Parts I-XI of this report. Each such individual compliance assessment also provides, where appropriate, recommendations regarding the suggested measures that may be taken to address a compliance issue that has been identified in that assessment. The recommendations in the individual assessments will form the basis for a "compliance roadmap" that proposes a rational sequencing of the suggested compliance measures. The compliance roadmap will be developed on the basis of this report and provided as a separate document.

The original International Convention on the Simplification and Harmonization of Customs Procedures was adopted by the Customs Cooperation Council (better known as the World Customs Organization or "WCO") on 18 May 1973, and entered into force on 25 September 1974. It was then revised and updated in the late 1990's to better meet the evolving demands of governments and international trade. The WCO adopted a Protocol of Amendment on June 26 1999 that was opened for signature on that date. The original Convention as amended by the Protocol of Amendment is referred to as the Revised Kyoto Convention or RKC. The RKC went into effect on 3 February 2006, the date on which 40 of the Contracting Parties to the original convention (which included Pakistan) had deposited their instruments of accession to the RKC. As of 13 August 2014, the number of RKC Contracting Parties had grown to 92.

The RKC comprises the text of the convention and 11 detailed annexes: a mandatory "General Annex" and 10 optional "Specific Annexes", with each of the Specific Annexes being designated by a letter from A through K (however, to avoid confusion, there is no Specific Annex "I"). Pakistan deposited its instrument of accession to the RKC on 1 October 2004. In its instrument of accession Pakistan accepted all requirements of the General Annex, which are mandatory for all RKC Contracting Parties, and Pakistan also agreed to be bound by the first chapter of four of the ten optional Specific Annexes: A, B, C, and J. However, the legal gap analysis summarized in this report assesses the compliance of Pakistan's customs regime with the entirety of the RKC, and is not limited to the aspects currently binding on Pakistan.

The General Annex contains both standards and transitional standards. For Pakistan there is no longer a distinction between the standards and transitional standards established by the General Annex because the transitional period of 60 months, which for Pakistan began on 3 February 2006 (the date the RKC came into effect for Pakistan), has expired. Therefore, compliance with both categories of standards established by the General Annex is now mandatory.

The Specific Annexes contain standards and recommended practices, but no transitional standards. It must be pointed out that the term "recommended practices" is somewhat misleading. Article 2 of the RKC provides that a Contracting Party "undertakes...to conform, in accordance with the

¹ This original version of this report was delivered to the FBR and Customs in September 2013. In May of 2014, the Trade Project spent a week at Customs House, Karachi, the officials of which provided a number of comments to this report as well as additional information, particularly with respect to customs practices, which are continually evolving. The Trade Project subsequently updated this Executive Summary and the parts of the report discussing the General Annex and Specific Annexes E, F, G and J to take into account the comments and information received from Customs House, Karachi.

provisions of this Convention, to the Standards, Transitional Standards and Recommended Practices in the Annexes to this Convention.” Therefore, when a Contracting Party decides to accede to a Specific Annex or a chapter of a Specific Annex, it is bound to implement all standards and recommended practices contained therein, with the exception of recommended practices for which it has lodged a reservation. Pakistan has acceded to the first chapter of each of the following Specific Annexes: A, B, C and J. Therefore, Pakistan is obligated to implement both the standards and recommended practices in those chapters.

Table 1 indicates the number of standards, transitional standards and recommended practices are in each annex:

Table 1				
Annex	Standards	Transitional Standards	Recommended Practices	Total
General	108	13		121
A	18		14	32
B	18		6	24
C	2		1	3
D	29		8	37
E	29		25	54
F	36		27	63
G	10		13	23
H	20		7	27
J	61		30	91
K	19		20	39
Total	350	13	151	514

Throughout the Annexes there are numerous standards that impose – either explicitly or through operation of Standard 1.2 of the General Annex - requirements on the “national legislation” of the Contracting Parties, i.e. an obligation to ensure that its national legislation complies with the standard. As is made clear by the RKC’s definition of “national legislation”² as further elaborated in the WCO’s General Annex Guidelines,³ the concept of “national legislation” is a broad one; it encompasses any national legislation (including, laws, decrees, regulations, rules, official notifications, etc.) that affects customs matters even if such legislation is not “customs” legislation per se. Therefore, while this report generally focuses on the degree of RKC compliance of Pakistan’s customs legislation - the Customs Act, the Customs Rules, and the Special Regulatory Orders (SROs) and the Customs General Orders (CGOs) issued by the FBR - it also reviews provisions of other elements of Pakistan’s national legislation that affect matters covered by the RKC and therefore are considered by this report to constitute part of Pakistan’s customs regime.

In addition to a review of the referenced legislation, this report also is based on the results of discussions with Customs officials concerning the actual practice of Customs with respect to subject matter falling within the scope of the standards and recommended practices of the RKC. These discussions revealed that certain current Customs practices raise compliance issues under the RKC. These practice issues are discussed with specificity in the context of the individual standard/recommended practice compliance assessments contained throughout this report.

² See Article 1(d) of the Convention.

³ See the Guidelines for Standard 1.2 of the General Annex.

After assessing the degree to which Pakistan’s customs regime complies with a given standard or recommended practice, this report assigns a general “overall assessment” grade in accordance with the following table:

Table 2	
Compliant	Both the law and practice currently appear to be compliant, and therefore no compliance measures are recommended at this time.
Substantially Compliant	The law and practice, taken as a whole, currently appear to be largely - but not entirely – compliant; consequently, some specific adjustments are required to the national legislation or customs practice or both.
Partially Compliant	There are some aspects of the law and practice that are significantly in compliance; however, significant adjustments are required to the national legislation or customs practice or both to achieve compliance.
Marginally Compliant	There is one aspect or a few aspects of the law/ practice that are in some degree of compliance; however, taken as a whole, the customs regime is largely not in compliance and very substantial adjustments are required.
Non-Compliant	Neither the law nor the practice is in compliance.

In addition to the compliance recommendations made throughout this report, a general comment should be made about RKC-related customs training. During the research conducted for this gap analysis, inquiries were made to FBR/Customs with respect to the RKC training that has already been provided to Customs personnel. Specifically, written and telephonic requests were directed to the Directorates General for Training in Lahore, Karachi and Islamabad seeking information on any RKC-related training provided to customs personnel during the years 2008-2012. The requests specifically inquired into the identity of the instructors providing such training and the outlines for any training courses provided to Customs personnel. Two responses were received. One response was received from the concerned five-year period. No response was received from the training center of the Directorate the DG for Training in Karachi relating to some very limited training that has been provided to Customs Officers holding BPS grades 14-18 (operational officers and supervisors).⁴ Another response was received from the DG for Training in Lahore revealing that no RKC training course took place during General in Islamabad.

From the responses received to the inquiries about RKC training, it is reasonable to conclude – in light of the large number of RKC standards that are currently mandatory for Pakistan – that little training on RKC-relevant matters has been provided to Customs personnel to date. We recommend that an in-depth and detailed course on the RKC that could use this gap analysis as training material be provided to the relevant policy level officials.

However, we do not recommend that such strategic-level RKC training be provided to Customs personnel generally because such a course would be of only indirect relevance to the day-to-day job performance of Customs personnel. Instead, as RKC-mandated changes in national legislation are adopted by the policy makers, training should be provided to Customs personnel on the nature of these legislative/regulatory changes and their proper implementation; during such training information about the specifically relevant RKC standards (and the applicable aspects of the RKC Guidelines) would be useful in promoting proper implementation of the concerned change.

⁴ The response from Karachi was rather general and noted that a total of 253 officers (BPS 14-18) participated in three RKC-related training seminars during the concerned five-year period. The three seminars were titled “Seminar on Kyoto Convention”, “WCO Framework of Standards” and “RKC, Customs Modernization and Trade Facilitation”, with each having duration of 1-3 days. The response from Karachi also indicated that the seminars reportedly covered the following subject areas: The Principles of RKC; The General Annex and the Guidelines; and The Specific Annexes and the Guidelines. No detailed information was provided with respect to identities or qualifications of the instructors or with respect to course outlines.

In addition, as pointed out in this gap analysis, there are some instances where changes in national legislation are not required but the current practice of Customs is not in line with the requirements of existing legislation and/or the RKC. Training aimed at correcting these specific practice issues should be provided to both Customs policy officials and – if these officials agree to the proposed practice changes – then to Customs personnel generally, with the relevant legislative language and/or RKC standards and RKC Guidelines used to explain why the practice change is being implemented.

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PART I: RKC GENERAL ANNEX
 (Updated August 2014)

Introduction to the General Annex

Full compliance with the standards of the General Annex is mandatory for all Contracting Parties. The General Annex comprises 10 chapters, each of which – other than Chapter 2 (the definitional section of the General Annex) – establishes standards and transitional standards⁵ with respect to the specific subject matter covered by that chapter. Unlike certain of the Specific Annexes, the General Annex contains no recommended practices. Table 3 summarizes the subject matter and number of standards and transitional standards covered by each chapter of the General Annex.

Ch. No.	Subject	Standards	Transitional Standards	Total
1	General Principles	3		3
2	Definitions	N/A	N/A	N/A
3	Clearance and Other Customs Formalities	36	9	45
4	Duties and Taxes	22	2	24
5	Security	7		7
6	Customs Control	9	1	10
7	Application of Information Technology	4		4
8	Relationship Between the Customs and Third Parties	7		7
9	Information, Decisions and Rulings Supplied by Customs	8	1	9
10	Appeals in Customs Matters	12		12
Total		108	13	121

Table 4 summarizes the general results of the gap analysis with respect to each chapter of the General Annex. That table summarizes the overall assessments made with respect to the standards of the General Annex, using the scoring system described in Table 1, which may be found in the Executive Summary.

⁵ As noted in the Executive Summary, for Pakistan there is no longer a distinction between the “standards” and “transitional standards” in the General Annex because the transitional period has expired, meaning that compliance with both categories is now mandatory. Consequently, this analysis of the General Annex makes no distinction between the two types of standards and uses the word “standards” to refer to both.

Table								
Ch. No.	Category	Compliant	Substantially Compliant	Partially Compliant	Marginally Compliant	Non-Compliant	NA	Total
1	Standards		1	1			1	3
	Transitional Standards							
2	Definitions							
3	Standards	14	8	9	2	4		37
	Transitional Standards	1	1	1	1	3	1	9
4	Standards	10	5	6	1	2		22
	Transitional Standards							2
5	Standards		2	4		1		7
	Transitional Standards							
6	Standards	2	1	4		2		9
	Transitional Standards		1					1
7	Standards	1		2		1		4
	Transitional Standards							
8	Standards	5	1	1				7
	Transitional Standards							
9	Standards	1	3	2		2		8
	Transitional Standards		1					1
10	Standards	5	5	1				11
	Transitional Standards		1					1
Total		39	30	31	4	15	2	121

As indicated by Table 4, the gap analysis has determined that Pakistan's customs regime appears to be in full compliance with approximately 33% of the standards of the General Annex (without taking into account the two standards 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 those recommendations relate to suggested changes in national legislation; and others relate to suggested modifications to customs practice, which will require some type of training for the concerned customs personnel. Several recommendations relate to the need for additional infrastructure or human or technology resources.

Chapter 1: General Principles

1.1. Standard	The Definitions, Standards and Transitional Standards in this Annex shall apply to Customs procedures and practices specified in this Annex and, insofar as applicable, to procedures and practices in the Specific Annexes.
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Overall Assessment: Not Applicable

Relevant Law:

- [None]

Discussion:

Introductory Note: Standard 1.1 mandates that the definitions,⁶ standards and transitional standards established in the General Annex shall apply to the procedures and practices specified in the General Annex. Standard 1.1 also provides that the definitions, standards and transitional standards of the General Annex shall apply *insofar as applicable* to the procedures and practices specified in the Specific Annexes.

Standard 1.1 does not establish a requirement that a national customs regime must comply with. It only defines the scope of application of the definitions, standards and transitional standards of the General Annex. Therefore, it is not possible to provide an overall compliance assessment rating with respect to this standard.

The balance of this report contains an assessment, on a standard-by-standard basis, of the extent to which Pakistan’s customs regime (its national legislation and practices) complies with the standards and recommended practices established by the RKC’s General Annex and ten Specific Annexes. When assessing the degree of compliance with any such standard or recommended practice, this report will – whenever relevant - refer to the requirements of Standard 1.1 within the context of the concerned individual compliance assessment.

Conclusion: Specific compliance issues with respect to Standard 1.1 are identified in this report in the context of the individual compliance assessments done with respect to the substantive standards and recommended practices of the RKC whenever Standard 1.1 is also implicated.

Recommendations: Recommendations that relate to Standard 1.1 are provided in this report in the context of those individual assessments whenever compliance with Standard 1.1 is also implicated.

⁶ One aspect of Standard 1.1 presents an interpretative issue that should be discussed. The standard provides that “The Definitions...in this Annex shall apply to Customs procedures and practices” (italics added). This wording is somewhat unusual as it seems to require that definitions are somehow to be applied to procedures and practices, a conceptually difficult result that does not seem to be the intent of Standard 1.1. The Guidelines for Standard 1.1 more clearly indicate that the definitions of the General Annex (which are set forth in in Chapter 2) are not – unlike the standards of the General Annex - actually to be applied to practices and procedures, but are to be used to understand the meaning of the defined terms when they appear in the standards and recommended practices set forth in the Annexes.

1.2. Standard

The conditions to be fulfilled and Customs formalities to be accomplished for procedures and practices in this Annex and in the Specific Annexes shall be specified in national legislation and shall be as simple as possible.

Overall Assessment: Partially Compliant

Relevant Law:

- The Customs Act
- The Customs Rules
- CGO's
- SRO's
- Other elements of Pakistan's national legislation affecting matters within the scope of the RKC

Discussion:

Introductory Note: Standard 1.2 imposes two broadly applicable, but highly important, requirements on the content of national legislation. With respect to each and every procedure and practice described in the General Annex or any of the Specific Annexes, Standard 1.2 requires (i) that national legislation specify the conditions and formalities applicable to that procedure or practice and (ii) that those conditions and formalities be as simple as possible. In short, Standard 1.2 establishes broad requirements aimed at ensuring that all customs conditions and formalities are both as simple as possible and highly transparent. It should also be noted that - even where another standard of the General Annex or a Specific Annex does not explicitly refer to the content of national legislation - Standard 1.2 of the General Annex contains a broadly applicable requirement that all conditions and formalities relating to the concerned practice or procedure must be specified in national legislation.

In our view, it is implicit in the standard's requirement that conditions and formalities be "as simple as possible" that any conditions and formalities so established must be clearly and rationally related to the advancement of an articulable and legitimate interest of the customs regime, and must be no more burdensome than necessary to advance that interest.

The definition of "national legislation" is set forth in the body of the RKC at Article 1(d):

"National legislation" means laws, regulations and other measures imposed by a competent authority of a Contracting Party and applicable throughout the territory of the Contracting Party concerned, or treaties in force by which a party is bound.

The RKC Guidelines on Standard 1.2 state:

Contracting Parties have to bring the Standards and Recommended Practices which they have accepted into force nationally. Their national legislation must therefore include at least the basic rules from the General Annex, together with detailed regulations for their implementation. These regulations will not necessarily be confined to Customs legislation and may apply to such instruments as official notifications, charters or ministerial decrees according to each Contracting Party's administrative system.

Law: Standard 1.2 has general applicability to all procedures and practices covered by the annexes of the RKC. Therefore, the degree to which Pakistan's national legislation complies with the simplicity and transparency requirements of Standard 1.2 is assessed within the context of the individual compliance assessments done with respect to the other standards and recommended practices established by the RKC whenever Standard 1.2 is also implicated.

Practice: Even though Standard 1.2 is not explicitly concerned with practice issues, it must be concluded that any standard that imposes a requirement on the content of national legislation must also be read as imposing a requirement that – once the provisions needed to bring national legislation into compliance with the standard have been adopted - the practice will comply with such provisions.

Conclusion: As indicated in the introduction to this report, we have determined that - on the whole - Pakistan's customs regime is in partial compliance with the RKC; and – as indicated throughout this report - this conclusion also applies to the requirements of Standard 1.2.

Recommendations: Specific recommendations that relate to Standard 1.2 are provided throughout this report in the context of the individual assessments whenever compliance with Standard 1.2 is also implicated.

1.3 Standard	The Customs shall institute and maintain formal consultative relationships with the trade to increase co-operation and facilitate participation in establishing the most effective methods of working commensurate with national provisions and international agreements.
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Overall Assessment: Substantially Compliant

Relevant Law:

- [None]

Discussion:

Introductory Note: This Standard requires Customs to both establish and to maintain formal consultative relationships with the trade for the purposes specified. Strictly interpreted, the standard does not explicitly require that there must be a provision in national legislation requiring the establishment of the referenced consultative relationships with the trade. However, Standard 1.2 - which provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be specified in national legislation (and as simple as possible) - can be read as being applicable to the practice required by the standard.

Law: Neither the Customs Act nor the Customs Rules contain any provisions that relate directly or indirectly to the establishment or maintenance of such consultative relationships with the trade.

Practice: During interviews with the resource persons specified below, it was asserted that FBR/Customs have established advisory committees comprising representatives of the trade and Customs as well as various subject matter experts. These committees reportedly meet periodically for the purpose of discussing Customs operations, the simplification of procedures, reviewing international best practices, strengthening mutual co-operation, and identifying methods for facilitating trade without compromising the collection of duties and taxes. Such advisory committees were reported to have been established in each of the 15 Model Customs Collectorates (“MCCs”) in Pakistan, including the five MCCs in Karachi (MCC Appraisalment, MCC PACCS, MCC Exports, MCC Port Qasim, and MCC Preventive) and the two MCC’s in Lahore.

Resource Persons:

- Mr. Mohammad Yaqoob Mako, Additional Collector of Customs, Karachi Airport, MCC, Karachi
- Mr. Zahid Baig. Additional Collector of Customs, MCC, Islamabad
- Mr. Abdul Waheed Khan, Former Collector of Customs and Consultant (Customs), Karachi
- Mr. Javed Iqbal Butt, Former Deputy Collector of Customs (Law), MCC Appraisalment, Karachi

Conclusion: Based on the information received during the interviews of the above-named resource persons, we have concluded that it is likely that Customs’ practice is in substantial compliance with the standard. However, we note that we have as yet been unable to obtain any formal documentation with respect to either the establishment or operation of these advisory committees.

Recommendations: To better ensure compliance with the standard, the documents establishing the referenced advisory committees should be made publicly available, as should the meeting calendars and agendas for each advisory committee. And it is also suggested that the Customs Act and the Customs Rules be amended to include new provisions governing the establishment and maintenance of the formal consultative relationships required by Standard 1.3.

Chapter 2: Definitions

Chapter 2 of the General Annex does not contain any standards. Instead, it sets forth a general list of terms and associated definitions that are to be used when interpreting the General Annex and of the Specific Annexes.⁷

Overall Assessment: Not Applicable

Relevant Law:

- [None]

Discussion:

Introductory Note: Chapter 2 of the General Annex imposes no obligations on a Contracting Party. Furthermore, there are no Guidelines for Chapter 2. Chapter 2 only sets forth a list of defined terms that must be used when interpreting the standards and recommended practices set forth in the Annexes. In addition, Standard 1.1 provides that “The Definitions in this Annex shall apply to Customs procedures and practices specified in this Annex and, insofar as applicable, to procedures and practices in the Specific Annexes.”⁸

Although Standard 1.1 and Chapter 2 do not explicitly require a Contracting Party to adopt into its national legislation the terms and assigned meanings specified in Chapter 2 of the General Annex (or any of the defined terms found in the Specific Annexes), we note that it will be difficult for Pakistan to comply with its obligations under the RKC if certain of the customs-specific terms 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 just simply 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 requirement of such standard, regardless as to whether Pakistan’s customs legislation and practice uses the same terminology. For example, the term “omission” is defined in Chapter 2 of the General Annex to mean the failure by Customs to discharge a legal duty imposed on it by customs legislation. However, the terms “omission” and “omit” (used in the sense of failing to discharge a duty) appear very rarely in the Customs Act and the Customs Rules, and even then such terms are only used with this meaning when referring to a failure by a private person, not by the Customs. It would therefore make little sense to copy the definition of the term “omission” from Chapter 2 and to paste it in the Customs Act or Customs Rules. And this is in any case unnecessary because the Customs Act and Customs Rules simply use other terms and phrases to convey the same meaning as the term “omission” defined in Chapter 2.

In addition, Chapter 2 defines a number of widely used terms (e.g., “appeal”, “decision” “due date”, “person”, “security”, “third party”) that already have an accepted legal meaning in Pakistan that aligns with that specified in Chapter 2. So it is not necessary for Pakistan’s national legislation to specifically set forth definitions of these terms that match up precisely to what is provided in Chapter 2. The absence of a customs-specific definition for such a term only means that it will carry the generally

⁷ In addition, each Specific Annex contains a special set of defined terms, the use of which is limited to that Specific Annex.

⁸ See the Discussion of Standard 1.1 above.

accepted legal meaning in Pakistan. So the absence of a specific definition for such a term in Pakistan's national legislation raises no compliance issues.

Law: Specific compliance issues arising because of terminological or definitional differences between the RKC and Pakistan's national legislation are identified in this report in the context of the compliance assessment done with respect to the concerned individual standard or recommended practice.

Practice: Chapter 2 is not directly concerned with practice issues.

Conclusion: Because it contains no obligations, assigning a compliance rating with respect to Chapter 2, a definitional section, would be inappropriate. However, we note that there are certain limited aspects of the customs-specific terminology of Pakistan's Customs Act and Customs Rules regime that are not consistent with similar terminology used in the RKC and international practice. As noted above, these issues are identified in the context of the concerned individual compliance assessments.

Recommendations: Specific recommendations that relate to Chapter 2's terms and definitions are provided in the context of those individual compliance assessments. The recommendations made throughout this report are collected and organized in the compliance roadmap, which is provided as a separate document.

Cautionary Note: The introduction of a new defined term into an existing piece of legislation or the introduction of a definition or an altered definition for a term already used in legislation must be done with great care. There may be no provision in the legislation that uses a newly introduced defined term, making the exercise at best meaningless. Or, if a term is already used in the legislation, and a definition or altered definition is introduced for that term, the new or altered definition may well affect in unintended ways the meaning of the provisions within which that term occurs.

Chapter 3: Clearance and Other Customs Formalities

3.1. Standard	The Customs shall designate the Customs offices at which goods may be produced or cleared. In determining the competence and location of these offices and their hours of business, the factors to be taken into account shall include in particular the requirements of the trade.
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Overall Assessment: Substantially Compliant

Relevant Law:

- The Customs Act; Sections 9, 10 and 65-67
- The Customs Rules
- S.R.O. 100(I)/83 dated 12 February 1983
- S.R.O. 101(I)/83 dated 12 February 1983
- S.R.O. 102(I)/83 dated 12 February 1983
- S.R.O. 103(I)/83 dated 12 February 1983
- S.R.O. 104(I)/83 dated 12 February 1983
- S.R.O. 105(I)/83 dated 12 February 1983
- S.R.O. 324(I)/2011 dated 25 April 2011

Discussion:

Introductory Note: The standard has two elements. First, it requires Customs to designate the Customs Offices at which goods may be produced or cleared. Second, when establishing the location, competence and hours of operation of these offices, the standard requires that Customs give specific consideration to the requirements of the trade.

The standard does not explicitly impose an obligation on the content of national legislation. However, Standard 1.2 - which provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be specified in national legislation (and be as simple as possible) - can be read as being applicable to the practice required by the standard.

Law: Certain provisions of the Customs Act are relevant to the standard:

- Section 9 authorizes the FBR (1) to designate customs ports, customs airports and land customs stations “for the clearance of goods or any class of goods imported or to be exported”, (2) to designate ports that may carry on coastal trade, and (3) to designate customs houses.
- Section 10 authorizes the FBR to specify the limits of any “customs station” (“customs station” is broadly defined to include any customs port, customs airport or land customs-station) and to approve the places in a customs station where goods, or any class of goods may be loaded or unloaded; and
- Sections 65-67 authorize FBR to set the hours of operation and competence of customs stations.

The FBR has exercised its authority under these sections by issuing notifications establishing the referenced customs facilities. The following table lists the most significant of such notifications.

Major Notifications Designating Customs ports

S.No	SRO No & Date	Name of Customs Ports
V	Notification SRO No 100(I)/83 dt 12-2-83	Karachi, Jiwani, Gwadur, Pasni Ormara, Gaddani and Port Muhammad Bin Qasim Karachi.
VI	Notification SRO No 101(I)/83 dt 12-2-83	The civil Airport Karachi the Sher-e-Shah Faisal Airbase, Karachi, the Masroor Airbase MauriPur, Karachi, the Nawabshah Airport, Nawabshah, the Quetta Airport, Quetta, the Jiwani Airport, Jiwani, Gwadur Airport, Gwadur, the Pasni Airport, Pasni, the Peshawar Airport, Peshawar, the Peshawar Airbase Peshawar, the Islamabad Airport Rawalpindi, the Allama Iqbal International Airport Lahore, the Sargodha Airbase, Sargodha, the Rafiqi Airbase Shorkot, the Multan Airport Multan, the Turbat Airport the Hyderabad Airport, Hyderabad, the Faisalbad Airport, Faisalbad, the Sukkur Airport, Sukkur, the Zhob Airprt, Zhob, the Kamra Airbase Kamra, the Moenjodara Airport Moenjodara, and the Faisalbad Airport.
VII	Notification SRO No 102(I)/83 dt 12-2-83	Land Customs Stations, Chhor, Gadro, Khokhropar, Hyderabad Railway Station, Rohri Railway Station, Ghokri Railway station, Mirpur Mathelo Railway Station, Wagha Lahore Railway station, Kotlakhpat Railway Station, Suntsar, Gabd, Qilaladhast, Dalbandin, Nok Kundi, Qila Saifullaha Gulaistan, Taftan, Shaighalu, Sust & Dhi, Jiwani, Taftan, Zhob, Anam Bostan, Qamar-u-din, (district zhob) Rideeg (District Mand) Chidgi (district Panjgoor) Gabd and Kalato, Katagar, Gaznali, Peshawar Railway Cantt, City Railway station Peshawar, Michini Bridge, Shah Alam Bridge, Nagoman Bridge Adezai Bridge, Shabqadar, Bakha Khel, Ghulam Khan, Shahi (Uperdir) Sher Garh, Nawa Pass (Bajaur Agency) Khapakh Mohmand Agency, Terimengal (Kurram Agency) Kharlachi (Kurram Agency), Shaheedano Dand (Kurram Agency),Lawara Boya Datta(N. Waziristan Agency),Angoor Adda(S. Waziristan Agency),Khand-Narrai (S. Waziristan Agency), Arandu Pass and Burki (Kurram Agency)
VII	Notification SRO No 103 (I)/83 dt 12-2-83	Customs Ports Shah-Bunder Karachi, Sokhi Bundar Jiwani, Ibrahim Hydry Gwadur, Keti Bunder Pasni, Sonmiani Ormara, Port Muhammad Bin Qasim
VIII	Notification SRO No 104(I)/83 dt 12-2-83	Customs Ports Shah-Bunder Karachi, Sokhi Bundar Jiwani, Ibrahim Hydry Gwadur, Keti Bunder Pasni, Sonmiani Ormara, Port Muhammad Bin Qasim
IX	Notification SRO No 104(I)/83 dt 12-2-83	Customs Houses West: Karachi Port Trust Office flats and the adjoining open space of M.I. Yard. North: KPT Badminton Court and the adjoining open space of M.I Yard. East: Eduljee Dinshaw Road South: Karachi Port Trust building.
X	Notification SRO No 105(I)/83 dt 12-2-83	Declaration of limits the Dangerous Petroleum Huts, Keamari, Block "A", Compartments A1,A2,and A3
XII	Notification SRO. No 324(I)2011 dt 25.04.2011	Declaration of Custom House Jamrud Road, School Road, Peshawar

In addition to the above, under Section 65 of the Customs Act (which authorizes the FBR to establish the working hours of customs stations) the FBR has, through Notification Number 113(I)/83, dated 12-02-1983, which is amended from time to time, specified the working hours for Customs at the various customs stations.

Where the Customs Computerized System is in operation, loading and unloading activity may be allowed by the Collector of Customs on a 24/7 basis. This was made possible by a proviso that was added to Section 65 of the Customs Act in 2006, which reads “*Provided that where the Customs Computerized System is in operation, all loading and discharge may be allowed by the Collector of Customs round the clock and on all days.*”

FBR/Customs therefore has the legal authority to designate, and has designated, the location, competence and hours of operations of customs offices where goods may be produced or cleared, as required by the first element of the standard. However, the second part of the standard requires Customs to give specific consideration to the “requirements of the trade” when determining the location, competence and hours of operation of customs offices; and there is nothing in the Customs Act or the Customs Rules imposing such a requirement.

Practice: According to interviews with the resource persons specified below, it appears that Customs practice is in accordance with the standard; i.e. these individuals have asserted that - when designating the location, competence and working hours of customs offices – FBR/Customs takes into account the requirements of the trade. It was pointed out that the number of Customs Collectorates has increased from time to time to accommodate the increased volume of trade as proposed by importers and exporters. For example, the Model Customs Collectorates of Faisalabad, Multan and Sambrial (Sialkot) were reportedly established to specifically handle the expanding volume of exports/imports in these regions. Similarly, MCC Gwadar was recently established in response to the rising volume of cargo passing through the Gwadar sea-port.

Resource Persons:

- Mr. Nasir Chandna, Customs House Agent, Karachi
- Mr. Aamir Altaf, Customs House Agent, Karachi, dealing with Afghan Transit Trade
- Mr. Sarfaraz Warraich, Collector of Customs MCC Sambrial, Sialkot
- Mr. Fazal Yazdani, Collector of Customs, (Preventive) Lahore

Conclusion: Based on the above research, it appears that the practice is in compliance with the standard, but the law is in partial compliance. So we conclude that, overall, the customs regime is in substantial compliance.

Recommendations: It is recommended that, the Customs Act be amended to include a provision requiring the FBR take into account the requirements of the trade when designating the competence, location and hours of business of customs offices.

3.2. Standard	At the request of the person concerned and for reasons deemed valid by the Customs, the latter shall, subject to the availability of resources, perform the functions laid down for the purposes of a Customs procedure and practice outside the designated hours of business or away from Customs offices. Any expenses chargeable by the Customs shall be limited to the approximate cost of the services rendered.
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Overall Assessment: Marginally Compliant

Relevant Law:

- The Customs Act; Sections 65 and 67
- SRO 340(I)/2009 dated 16 April 2009 (Fee on seals to be used for Pakistan Customs Container Security System)
- SRO 1053(I)/2011 dated 16 November 2011 (Service charges for filing Goods declaration under PACCS)

Discussion:

Introductory Note: The first sentence of the standard requires that when a person makes a request for reasons deemed valid by Customs, Customs *must*, subject to the availability of resources, perform Customs functions outside the designated hours of business or away from the premises of a Customs office. The first sentence therefore has two separate aspects: time and location. The second sentence of the standard requires that any expenses chargeable by the Customs for performing such functions shall be limited to the approximate cost of the services rendered.

The standard does not explicitly impose an obligation on the content of national legislation. However, Standard 1.2 - which provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be specified in national legislation (and be as simple as possible) – applies to the procedures required by Standard 3.1. It is not reasonable to expect that Standard 3.1 will be routinely complied with absent some provision in national legislation reflecting the requirements of the standard.

Law: Section 65 of the Customs Act governs the *time* when customs procedures may be performed. Generally, Section 65 prohibits the conduct of customs procedures (1) on any public holiday, (2) on any day on which the FBR has prohibited the conduct of the concerned procedure, and (3) on any day outside the hours of operation established by the FBR. There are, however, two significant exceptions to the general rule established by Section 65. First, Section 65 provides that the “appropriate officer” has the authority to permit the conduct of a customs procedure at a time that would otherwise be prohibited if the associated fees prescribed by the FBR are paid. Second, Section 65 provides that, where the Customs Computerized System is in operation, “loading and discharge” may be allowed by the Collector of Customs on a 24/7 basis.

We therefore conclude that Customs has the authority under national legislation to comply with the “time” aspect of the first sentence of the standard.

Section 66 of the Customs Act governs the location where customs procedures may be performed. Generally, Section 66 only permits the loading or unloading of goods at a place – which must be located within a customs station - that has been previously approved by the FBR (pursuant to Section 10(b), for the loading or unloading of the concerned goods. However, Section 67 provides a very narrow exception to the general rule of Section 66. Section 67 authorizes the *FBR*, through an official notification, to give general permission “for goods to be *loaded at any customs station* from any place not duly appointed for loading and without the presence or authority of an officer of customs.” [Italics added]. So Section 67 only authorizes the possibility of *loading* operations (not unloading operations)

to be conducted at a place *within* a customs station that has not previously been designated for the conduct of such loading operations. Section 66 is therefore not in compliance with the “location” aspect of the first sentence of the standard; and the narrow exemption found in Section 67 is simply insufficient to even partially comply with location aspect of the first sentence of the standard.

We therefore conclude that Customs is prohibited by national legislation from complying with the “location” aspect of the first sentence of the standard. Therefore, Sections 66 and 67 will likely need to be revised to enable Customs to comply with that aspect.

Finally, the second sentence of the standard requires that requires that any expenses chargeable by the Customs for performing any Customs functions outside of normal hours or away from a designated customs office shall be limited to the approximate cost of the services rendered. Section 18D of the Customs Act authorizes the Federal Government to establish, through the publication of an official notification, establish the fee and service charges associated with the conduct of various customs procedures:

18D. Levy of fee and service charges.- The Federal Government may, by notification in the official Gazette, subject to such conditions, limitations or restrictions as it may deem fit to impose, levy fee and service charges for examination, scanning, inspections, sealing and de sealing, valuation check or in respect of any other service or control mechanism provided by any formation under the control of the Board, including ventures of public-private partnership, at such rates as may be specified in the notification.

There is, however, nothing in Section 18D requiring the Government to ensure that the fee and service charges so established are limited to the approximate cost of providing the concerned services. Therefore, it is likely that the fee and service charges established pursuant to Section 18D were not set at a level intended to reflect the cost of rendering the concerned service, which is contrary to the requirement of the second sentence of the standard,

Practice: According to interviews with the resource persons specified below, it appears that Customs practice follows the law, but there have been exceptions reported. It has been asserted that when the “competent authority” is satisfied that Customs functions relating to goods clearance may be performed outside the designated place for imports, exports and passenger clearance, this is allowed as an exceptional case and under specific conditions to ensure revenue security, integrity of regulations, maintenance of Customs control and the payment of expenses to Customs. For example, imported heavy machinery for the “Tarbela Joint Venture” (TJV) was reportedly cleared at the Tarbela Dam away from the designated customs station. Nevertheless, it appears that these occasional “location” exceptions are contrary to Section 66 of the Customs Act.

Resource Persons:

- Dr. Wasif Ali Memon, Collector of Customs, MCC Exports, Karachi
- Dr. Nadeem Memon, Additional Collector of Customs, MCC, Karachi
- Mr. Fazal Yazdani Khan, Collector of Customs, Preventive, MCC, Lahore

Conclusion: Based on the above research, it appears that the law and practice are only marginally compliant with the standard.

Recommendations: Sections 66 and 67 of the Customs Act should be re-drafted to require the concerned Collector of Customs to authorize the performance of Customs functions away from a designated customs station if resources are available and if the declarant has provided a justification that Customs, in the exercise of reasonable judgment, deems valid. In addition, a schedule of fees for these off-site and/or off-hours services should be developed and issued under Section 18D of the Act. And Section 18D should itself be modified to require that every fee and service charge must be



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established at a level that is reasonably commensurate with the estimated cost of providing the service concerned.

3.3. Standard

Where Customs offices are located at a common border crossing, the Customs administrations concerned shall correlate the business hours and the competence of those offices.

Overall Assessment: Compliant

Relevant Law:

- The Afghan Pakistan Transit Trade Agreement, (APTTA); Protocol Three, Article 7
- The Pakistan and India Customs Cooperation Agreement
- The Pakistan and Iran Customs Cooperation Agreement
- “Formal or Semi-formal Understanding” with China

Discussion:

Introductory Note: This Standard requires countries (and customs territories) that have Customs offices at a common border crossing to coordinate both the hours of operation and the competence of those offices. The Standard does not impose any obligation with respect to the content of national legislation or international agreements; and Standard 1.2 appears to have no material applicability to this subject matter. Therefore, we conclude that Standard 3.3 is exclusively concerned with practice issues. Nevertheless, it must be noted that Pakistan has executed certain bilateral agreements with its neighbours dealing generally with customs cooperation issues.

Law. It should be noted that Pakistan, China, India and Iran have all acceded to the RKC and are thus all similarly obligated to implement Standard 3.3. In addition, Pakistan has a customs cooperation agreement with India and another with Iran; and Pakistan also reportedly has some type of understanding with China relating to border trade using the Karakorum Highway. Afghanistan has not yet acceded to the RKC, and therefore its obligations with regard to customs cooperation on the Pakistan-Afghanistan border are limited to those established by APTTA.

Afghanistan: Article 34 of APTTA provides for the establishment of the “Afghanistan-Pakistan Transit Trade Coordination Authority (APTCA)”. And Article 7 of Protocol Three of APPTA provides for the correlation of business hours and the competence of customs offices at common border stations. Arrangements regarding the Torkham and Chaman border stations are specified in APTTA.

India: On September 21, 2012, Pakistan and India executed a Customs Cooperation Agreement with India, which subsequently became effective on February 2, 2013. Article 16 of the Agreement requires the establishment of a Joint Customs Border Liaison Committee “at each point of crossing between the border Customs stations of the Contracting Parties. Each such committee is to meet once every two months to, inter alia, discuss operational issues for the facilitation of trade.

Iran: Pakistan and Iran executed a Customs Cooperation Agreement in 2004; however we have not yet obtained a copy of this agreement.

China: There is reportedly a formal understanding with China in relation to border operations through Karakoram Highway (KKH); however as yet we have no written evidence supporting this.

Practice: According to the resource persons below, the general practice is that Pakistan Customs and their counterparts in each of the neighbouring countries regularly coordinate with each other regarding their respective customs operations and normally follow uniform/coordinated business hours.

Afghanistan: APTCA is to be responsible for all matters related to transit trade under APTTA; however, we are uncertain as to whether APTCA has yet been established. However, it is reported that the customs offices at Torkham and Chaman have coordinated their competence and office hours.

India: The Customs Cooperation Agreement only came into force in February; and - although it is likely - we do not yet have any specific information that the hours and competence of the concerned customs offices have been correlated as required by the standard. However, the resource persons below have indicated that Pakistan has initiated negotiations with India on joint border operations at Wagha border.

Iran: It is reported that the two customs administrations have developed close cooperation, and that border customs operations are being coordinated at Kohe Taftan - Mir Java within the framework of the Customs Cooperation Agreement.

China: In the case of the Sust/Tashgurkand border, the resource persons have indicated that, due to the geographical location and difficult terrain, joint border operations are practically not possible, but, nevertheless, the two sides operate in close coordination.

Resource Persons:

- Mr. Fazal Yazdani Khan, Collector of Customs, (Preventive), Lahore
- Mr. Ibrahim Vighio, Collector of Customs, Quetta
- Mr. M. Zubair Shah, Deputy Collector of Customs, Torkham/Peshawar
- Dr. Saeed Jadoon, Additional Collector of Customs, Torkham/Peshawar

Conclusion: Based on the above research, it appears that Pakistan's practice is in compliance with the standard.

Recommendations: No recommendations are deemed necessary at this time.

3.4. Transitional Standard	At common border crossings, the Customs administrations concerned shall, whenever possible, operate joint controls.
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Overall Assessment: Non-Compliant

Relevant Law:

- The Afghan Pakistan Transit Trade Agreement, (APTTA)
- The Pakistan and India Customs Cooperation Agreement
- The Pakistan and Iran Customs Cooperation Agreement
- [“Formal or Semi-formal Understanding” with China]

Discussion:

Introductory Note: Standard 3.4 requires that at common border crossings, the Customs administrations concerned shall, *whenever possible*, operate joint controls. The Standard does not impose any obligation with respect to the content of national legislation or international agreements; and Standard 1.2 appears to have no material applicability to this subject matter. Therefore, we conclude that Standard 3.4 is exclusively concerned with practice issues. Nevertheless, it must be noted that Pakistan has executed certain bilateral agreements with its neighbours dealing generally with customs cooperation issues. And it should again be noted that Pakistan, China, India and Iran have all acceded to the RKC and are thus obligated to implement Standard 3.4.

Law: Neither Pakistan’s domestic law nor – as far as we know – any of the above-referenced bilateral agreements have any provisions relating specifically to the operation of joint controls; however, the Standard does not impose an obligation on the content of national legislation or international agreements.

Practice. According to the resource persons named below, there are no joint controls currently in operation at any border crossing. Nevertheless, some preliminary efforts in this direction may be underway with India. The following summarizes our findings with respect to each of Pakistan’s four neighbours:

Afghanistan: The establishment of joint controls is possible within the general framework of APTTA, which provides for the close coordination and deliberations on facilitating all processes of goods clearance and transportation. Nevertheless, we have no information that the establishment of joint controls is currently under discussion.

India: Pakistan is reportedly pursuing initiatives with India within the framework of the recently concluded Pakistan and India Customs Cooperation Agreement on “joint border control”. It is not certain whether or not the establishment of “joint controls” within the meaning of Standard 3.4 are being contemplated.

Iran: Pakistan and Iran executed a Customs Cooperation Agreement in 2004; however we have not yet obtained a copy of this agreement. The resource persons named below have indicated that in July of 2012 Pakistan and Iran began exploring opportunities for joint activities with respect to trade and investment, including a strategy to exercise uniform customs procedures to the extent possible in accordance with bilateral agreements. However, there is no indication that the establishment of joint controls is under discussion.

China: Pakistan reportedly has some type of formal understanding with China in relation to border operations on the Karakoram Highway. However, there is no indication that the establishment of joint controls is contemplated by this understanding or otherwise under

discussion; however, due to the geographic characteristics of that border crossing, it may not be possible at this time to operate joint controls.

Resource Persons:

- Mrs. Rubina Athar, Joint Secretary, Ministry of Commerce, Islamabad
- Mr. Fazal Yazdani Khan, Collector of Customs, Lahore

Conclusion: Based on the above research, it appears that the practice is not in compliance with the standard.

Recommendations: In the near term, we recommend that FBR initiate consultations with Ministry of Commerce with a view to opening discussions with Iran and India – both of which are RKC Contracting Parties - about the establishment of joint controls at the most feasible border crossings. Reference should be made to the requirements of Standard 3.5, which is obligatory for all three countries. Longer term, similar discussions should be initiated with China – also an RKC Contracting Party - if and when it is determined that joint controls at a border crossing are possible.

And discussions with Afghanistan should be initiated within the framework of APTTA regarding the possible establishment of joint controls at any border crossing where this is feasible. Although Afghanistan is not an RKC Contracting Party, Standard 3.4 requires the establishment of joint controls “whenever possible”. Therefore Pakistan should initiate these discussions if only to determine whether there is currently a reasonable possibility to obtain Afghanistan’s agreement to such joint controls.

3.5. Transitional Standard	Where the Customs intends to establish a new Customs office or to convert an existing one at a common border crossing, they shall, wherever possible, co-operate with the neighbouring Customs to establish a juxtaposed Customs office to facilitate joint controls.
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Overall Assessment: Not Applicable (Not Currently Assessable)

Relevant Law:

- The Afghan Pakistan Transit Trade Agreement, (APTTA)
- The Pakistan and India Customs Cooperation Agreement
- The Pakistan and Iran Customs Cooperation Agreement
- [“Formal or Semi-formal Understanding” with China]

Discussion:

Introductory Note: Standard 3.5 is generally similar to Standard 3.4; however, Standard 3.5 differs from Standard 3.4 in that Standard 3.4 applies to existing customs offices at common border crossings, while Standard 3.5 is only applicable when a new Customs office is to be established or an existing Customs office is to be converted. In either event, Standard 3.5 requires Customs to cooperate, whenever possible, with any concerned neighbouring customs service to establish juxtaposed customs offices to facilitate joint controls. Like Standard 3.4, Standard 3.5 does not impose any obligation with respect to the content of national legislation or international agreements, and Standard 1.2 appears inapplicable to the subject matter. So, as written, the Standard is exclusively concerned with practice issues. Nevertheless, it must be noted that Pakistan has executed certain bilateral agreements with its neighbours dealing generally with customs cooperation issues. And it should again be noted that Pakistan, China, India and Iran have all acceded to the RKC and are obligated to implement Standard 3.5.

Law: Neither Pakistan’s domestic law nor, as far as we know, any of the above-referenced bilateral agreements have any provisions relating specifically to the operation of joint controls; however, the Standard does not impose an obligation on the content of national legislation or international agreements.

Practice: The discussion under Standard 3.4 also is generally relevant to Standard 3.5.

Resource Persons:

- Mr. Fazal Yazdani, Collector of Customs, (Preventive) Lahore
- Mr. Ibrahim Vigio, Collector of Customs, Quetta

Conclusion: Because Standard 3.5 becomes relevant only upon the occurrence of a future event (i.e. when a new customs office is to be established or an existing customs office is to be converted), it is not possible to assess the degree of present day compliance. We can only issue a recommendation that Customs be mindful of this standard whenever these events are planned and that good faith efforts be made to comply with it as and when it is applicable.

Recommendations: Whenever Customs plans to establish a new customs office or to convert an existing customs office, Customs must be mindful of this standard and undertake good faith efforts - together with any other concerned Pakistan Government agencies – to cooperate, whenever possible, with any concerned neighbouring customs service to establish juxtaposed customs offices to facilitate joint controls.

3.6. Standard	National legislation shall specify the conditions under which a person is entitled to act as declarant.
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Overall Assessment: Substantially Compliant

Relevant Law:

- The Customs Act; Section 207
- The Customs Rules
- Sales Tax Rules; Section 4

Discussion:

Introductory Note: Standard 3.6 applies to the content of national legislation and requires that such legislation specify the conditions under which a person is entitled to act as the declarant. This standard is intended to address a different issue from that covered by Standard 3.7, which specifies the class of persons who are to have the right to act as the declarant.

Initially, the Guidelines for Standard 3.6 seem to fail to draw a sharp distinction between that standard and Standard 3.7 by stating: “Standard 3.6 therefore stipulates that national legislation must prescribe who is entitled [i.e. has the right] to be a declarant and the conditions under which the person can act as a declarant.” However, the Guidelines for Standard 3.6 then provide some greater clarity on the standard’s intent and scope:

National legislation can specify certain requirements, such as that the declarant be established in the Customs territory. Some countries specifically require the declarant to be approved by Customs. Others require that the declarant have a financial interest in the goods. In some countries the administration decides who can be a professional declarant and may specify certain criteria that must be fulfilled, such as the person demonstrating a high level of integrity, experience in the international movement of goods, knowledge of the Customs law and a clean record with no offences.

In short, Standard 3.7 requires that any person having the right to dispose of the goods must be allowed to act as the declarant; provided, however, that Standard 3.6 also permits the imposition of additional conditions that such a person must meet, but only if these conditions are set forth in national legislation. It should also be noted that Standard 3.6 does not *require* that national legislation impose any such conditions. Instead Standard 3.6 means that only such conditions as are specified in national legislation (if any) may be applied. In addition, Standard 1.2 requires that any such conditions be as simple as possible.

Law: There are several provisions in the Customs Act that indicate who is entitled to act as declarant (a subject covered under Standard 3.7 below); however, there is only one provision in in the Customs Act, Section 207, that specifies a condition under which a person is entitled to act as a declarant in the manner indicated by Standard 3.6. Section 207 provides that only licensed Custom-house agents may serve as professional declarants.

There is also a relevant requirement in Section 4 of the Sales Tax Rules that mandates that “an importer” must be registered in the manner prescribed by those rules. “Importer” is broadly defined at Section 2(14) of the Sales Tax Act as “any person who imports any goods into Pakistan”. This sales tax registration requirement also constitutes a condition on who may act as a declarant.

The condition specified in Section 207 of the Customs Act is consistent with Standard 3.6 as it is specified in national legislation. And it can be argued that, strictly speaking, the registration requirement of Article 4 of the Sales Tax Rules also satisfies the “national legislation” requirement of Standard 3.6; however, to increase legislative transparency about the conditions a person must meet

to be a declarant, it is recommended that the Customs Act be amended to refer to any registration or other requirements that a declarant is required to meet, including those requirements established by other legislation.

Practice: According to interviews with the resource persons specified below, it appears that Customs requires that the declarant be the person whose name appears on the bill of lading, letter of credit or pro forma invoice. This requirement is not specified in national legislation even though it constitutes a condition on the ability of a person to act as a declarant, and therefore is not consistent with Standard 3.6.⁹

In addition, Customs will not accept a goods declaration unless the declarant is registered under the Sales Tax Rules and also possess a National Tax Number (NTN) as prescribed by the Income Tax Ordinance, 2001. The NTN requirement constitutes a condition on the ability of a person to act as a declarant and is generally imposed in the Customs Rules on all categories of persons transacting business with Customs.

Resource Persons:

- Syed Tanvir Ahmad, Collector of Customs, MCC Port Qasim, Karachi
- Mr. Amir Zaman, Inspector of customs Rebate Section (formerly examiner at Torkham for 3 years and inspector in law branch) Customs House, MCC Peshawar
- Mr. Faroque Tehsin, Superintendent, AFU, MCC (Preventive) Lahore
- Mr. M. Arif Moton, Advocate and former Member (Judicial), Customs Appellate Tribunal, Karachi

Conclusion: The standard is concerned with the content of national legislation, and we conclude that the law is substantially compliant with the standard; however, the law does need to be amended to more explicitly and accurately reflect all of the conditions being imposed by Customs on declarants.

Recommendations: The Customs Act should be amended to include – either within Section 79 or immediately next to Section 79 - one or more sections providing that any person having the right to dispose of the goods may serve as the declarant (see Standard 3.7) as long as such person meets the conditions specified in the Customs Act; and the Customs Act should be amended to specify a list of all such conditions.

The Customs Act should also be amended to include a definition of the term “declarant”. This will necessitate amendments to, inter alia, Sections 79, 81, 82, 83, 104, 108, 131 and 139 of the Act and to the Customs Rules. For example, Section 79 of the Act uses the term “owner” instead of “declarant”, and Section 81 uses the term “importer” instead of “declarant”.

⁹ This requirement also constitutes an impermissible restriction under Standard 3.7, which requires that any person having the right to dispose of the goods shall also have the right to act as declarant.

3.7. Standard	Any person having the right to dispose of the goods shall be entitled to act as declarant.
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Overall Assessment: Marginally Compliant

Relevant Law:

- The Customs Act; Sections 79, 104, 131, 139, 144, 207, 208(2) and 209(1)

Discussion:

Introductory Note: The standard requires that any person having the right to dispose of the goods shall also have the right (but not the obligation) to act as the declarant. This means that a properly authorized person may act as the declarant regardless as to whether the person is the owner of the goods or not. It should be noted – as more fully discussed under Standard 3.8 below - that if such a person acts as the declarant, i.e. fills out and the Goods Declaration and signs it in his own name as the declarant, he will be liable for the accuracy of all information therein and all applicable taxes, duties and penalties.

Even though the standard does not specifically mention national legislation, Standard 1.2 provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible. And it is not reasonable to expect that the requirement of Standard 3.7 will be complied with absent some provision in national legislation.

Law: Section 207 of the Customs Act is of some relevance to the standard. Section 207 requires that a person must be a licensed customs agent in order to act as an agent on behalf of a “principal” with respect to “the transaction of any business relating to the entrance or departure of any conveyance or any customs clearance related activity or the import or export of goods or baggage....” And “principal” is defined as “the owner of the goods or the person primarily responsible for making a declaration to Customs under this Act and includes the person in-charge of the conveyance, carrier, custodian of cargo, and the terminal operator.” Section 207 therefore indicates that a licensed customs agent may act *on behalf of* a principal with respect to the transaction of customs-related business (including presumably the filling out and filing of a declaration), but that section also indicates that - when doing so - the customs agent is not acting as the declarant (see the wording of the standard), but on behalf of the declarant. The definition of “principal” also seems to indicate that there are several categories of persons who are responsible for filing a goods declaration, but this is not supported by any other provision of the Act.

Section 208(2) provides that - if a principal decides not to use a licensed customs agent – that principal may choose to either transact his customs business directly or to authorize “an employee” or “a representative” to transact such business “for such principal”. When read closely, Section 208(2) does not authorize such an employee or representative to personally serve as the declarant, even if the employee or representative has broad authority to dispose of the goods. Section 208(2) only permits such an employee or representative to transact customs business for the principal.

Other provisions of the Customs Act - Sections 79, 104, 131, 139 - indicate that declarant must be the owner of the goods. Section 79 requires the “owner” of goods that are to be entered for home consumption, warehousing or other approved purposes to file a goods declaration. Section 104 permits either the owner or a “manufacturer-cum-exporter duly authorized by such owner” in respect of warehoused goods to clear such goods for home consumption by paying the duties and other amounts due. Section 104 does not, however, provide that a manufacturer-cum- exporter may act as

the declarant; so the rule of Section 79¹⁰ (that the owner must file the goods declaration) would still be applicable. Section 131 requires the owner of goods to be exported to file a goods declaration. And Section 139 requires the owner of baggage to make a verbal or written declaration (or an electronic declaration if the CCS is operational).

Finally, Section 209(1) provides “Subject to the provisions of section 207 and 208, anything which the principal is required or empowered to do under this Act may be done by any person expressly authorized by the principal for the purpose.” Although this provision may appear to bring the Act within the standard, a close reading indicates that it does not. First, Section 209(1) is expressly subject to the content of Sections 207 and 208. Second, Section 209(1) does not provide, as required by the standard, that any person having the right to dispose of the goods may act as the declarant. Section 209(1) only provides that a duly authorized agent may act on behalf of the principal with respect to any matter expressly authorized by the principal.

Therefore, none of the above-referenced sections nor any other provisions of the Customs Act or the Customs Rules permit a person who is not the owner but who has the right to dispose of the goods to act as the declarant. After a thorough review of the Customs Act and the Customs Rules, we have concluded that, under current law, only the owner may be the named declarant, even where the owner engages a customs agent, employee or other representative to act on the owner’s behalf.

Practice: According to interviews with the resource persons specified below, it appears that Customs requires that the declarant be the person whose name appears on the bill of lading, letter of credit or pro forma invoice.

Resource Persons:

- Syed Tanvir Ahmad, Collector of Customs, MCC Port Qasim, Karachi
- Mr. Amir Zaman, Inspector of customs Rebate Section (formerly examiner at Torkham for 3 years and inspector in law branch) Customs House, MCC, Peshawar
- Mr. Farooque Tehsin, Superintendent, AFU, MCC (Preventive), Lahore
- Mr. M. Arif Moton, Advocate, Karachi

Conclusion: Based on the above research, it appears that the law and practice are only marginally compliant with the standard.

Recommendations: Same as those provided in the discussion of Standard 3.6.

¹⁰ See the discussion under Standard 3.8 for a fuller description of Section 79.

3.8. Standard	The declarant shall be held responsible to the Customs for the accuracy of the particulars given in the Goods declaration and the payment of the duties and taxes.
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Overall Assessment: Compliant

Relevant Law:

- The Customs Act; Sections 156 and 207-209

Discussion:

Introductory Note: According to the Guidelines, the purpose of the standard is to ensure that the declarant is made responsible for the particulars provided to Customs in or by means of a declaration, including the particulars provided in any separate document that is supplied with the declaration, even when such other document has been provided by another person. Consequently, as noted in the Guidelines, the declarant is obligated to exercise reasonable care in preparing the declaration and in assuring the accuracy of supporting documents, even when these are provided by a third party.

As an example of the focus of the standard, the Guidelines note that in some countries - when the declarant is a “third party”¹¹, i.e. an agent acting for and on behalf of someone else - the principal is only held responsible for the information provided in or with the declaration when the third party is acting under a “direct representation”; if the third party is acting under an “indirect representation”, the third party is held responsible.¹² This result flows from the difference in the two types of representations: In a direct representation, the principal is named as the declarant; in an indirect representation, the third party is named as the declarant.

Even though the standard does not specifically mention national legislation, Standard 1.2 provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible. And it is not reasonable to expect that the requirement of Standard 3.8 will be complied with absent some provision in national legislation.

Law: After reviewing the Customs Act, and taking into account the discussion already provided under Standard 3.7 above, we have concluded that the law is in compliance with the standard. However, we also believe that Section 209 deserves special mention. From our review of this Section, as well as Section 207 and 208, it appears as if the Customs Act only recognizes “direct representations” (where an agent acts on behalf of a principal who is the named declarant), but not “indirect representations” (where an agent acts in his own name, even though he is acting under an authorization provided by a principal).

For example, Section 209(2) clearly presumes that an employee or representative is acting *on behalf* of a principal under a direct representation concluded under Section 208(2); and therefore Section 209(2) makes the principal liable for all acts done by the employee or representative within the scope of the authority provided by the principal. (Section 209(2) is silent on the issue of the liability of the employee or representative). Section 209(3) deals with the liability of a customs agent, and is similarly premised on the existence of a direct representation agreement between a principal and the customs agent under Section 208(1). Interestingly, Section 209(3) expressly makes a customs agent liable to the same extent as the principal, an aspect that is not found in 209(2).

¹¹ In Chapter 2 of the General Annex, “third party” is defined as “a person who deals directly with Customs *for and on behalf* of another person relating to the importation, exportation, movement or storage of goods.” [italics added].

¹² Chapter 8 of the General Annex, discussed in more detail below, contains 7 standards specifically governing the relationship between Customs and third parties.

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

Resource Persons:

- Syed Tanvir Ahmad, Collector of Customs, MCC Port Qasim, Karachi
- Mr. Amir Zaman, Inspector of customs Rebate Section (formerly examiner at Torkham for 3 years and inspector in law branch) Customs House, MCC, Peshawar
- Mr. M. Arif Moton, Advocate, Karachi
- Mr. Faroque Tehsin, Superintendent, AFU, MCC (Preventive), Lahore

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

Recommendations: Other than the already provided recommendations regarding the introduction of the term “declarant” into the Customs Act and Customs Rules, no recommendations are deemed necessary at this time.

3.9. Standard	Before lodging the Goods declaration the declarant shall be allowed, under such conditions as may be laid down by the Customs : (a) To inspect the goods; and (b) To draw samples
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Overall Assessment: Marginally Compliant

Relevant Law:

- The Customs Act; Sections 79, and 198 - 200

Discussion:

Introductory Note: The standard requires that, prior to submitting the declaration, the declarant (which under Standards 3.6 - 3.8 may be someone other than the owner) must be allowed to inspect the goods and to draw samples. The standard also provides that these rights of the declarant may be subject to “such conditions as may be laid down by the Customs”. The phrase “laid down” means that the conditions must be specified in rules or regulations; i.e. they cannot be developed and applied on an ad hoc basis. Also relevant is Standard 1.2, which requires that all formalities for practices and procedures covered by the RKC be specified in national legislation and be as simple as possible.

Law: The most relevant aspect of the Customs Act is the first proviso to Section 79(1) of the Customs Act. That proviso states that an *owner* of imported *used* goods may make a *request* to the Customs to *examine* the goods before filing the declaration. Furthermore, the owner may only make such a request if the owner can assert that he is unable without such an examination to make a correct and complete declaration because he lacks the necessary information. Finally the Customs officer to whom the request is made has broad discretion to accept or deny the request. The Customs officer “may permit” the owner to examine subject to such conditions as the Customs officer “deems fit”.

Thus the law only permits the owner to inspect “used goods” upon a request made to and granted by a Customs officer. The law has no provision authorizing the taking of samples by the declarant.

Sections 198, 199, and 200 of the Customs Act deal with related subject matter (the examination and drawing of samples by Customs officers and the liability of the owner for the expense thereof) but are ultimately not relevant to the standard.

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

Resource Persons:

- Syed Tanvir Ahmad, Collector of Customs, MCC Port Qasim, Karachi
- Mrs. Zeba Haye, Collector of Customs, MCC Appraisal, Lahore
- Mr. Wajid Ali, Deputy Collector of Customs, MCC Port Qasim, Karachi

Conclusion: Based on the above research, it appears that the law and practice are only marginally compliant with the standard.

Recommendations: First, as recommended already under Standards 3.6-3.8, the term “declarant” should be properly defined and substituted, *wherever appropriate*, for the words “owner” and “importer” throughout the Customs Act, including Sections 79, 198, 199, and 200. Second, Section 79 of the Customs Act needs to be modified give the declarant the *right*, prior to filing the declaration, to examine the concerned goods (not just used goods) and to draw samples (note that Standard 3.10 requires that no separate declaration shall be required for samples that have been drawn). Third,

new Customs Rules should be developed and promulgated to specify the conditions under which the rights of examination and sampling may be exercised. Fourth, existing manuals being used by Customs will need to be modified to account for these legislative and regulatory changes.

3.10. Standard	The Customs shall not require a separate Goods declaration in respect of samples allowed to be drawn under Customs supervision, provided that such samples are included in the Goods declaration concerning the relevant consignment.
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Overall Assessment: Compliant

Relevant Law:

- The Customs Act; Sections 79, 131, 139 and 199

Discussion:

Introductory Note: Even though the standard does not specifically mention national legislation, Standard 1.2 provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible. And it is not reasonable to expect that the requirements of Standard 3.10 will be complied with absent some provision in national legislation

Law: The Customs Act does not provide for the filing of any separate declaration in respect of samples to be drawn. A single declaration is to be filed under Sections 79, 131 or 139 of the Act. And Section 199 of the Customs Act deals with the drawing of samples by Customs officers, but there is nothing in that or any other section of the Act indicating that a separate declaration is to be filed with respect to such samples.

Practice: According to interviews with the resource persons specified below, in practice the filing of a separate declaration is not required with respect to samples drawn by a Customs officer. The Customs officer notes this fact on the declaration. It therefore appears that Customs practice follows the law.

Resource Persons:

- Syed Tanvir Ahmad, Collector of Customs, MCC Port Qasim, Karachi
- Mrs. Zeba Haye, Collector of Customs, MCC Appraisement, Lahore

Conclusion: Based on the above, we conclude that the law and practice are compliant with the standard

Recommendations: Nevertheless, we suggest that the Act be modified to make it clear that any samples drawn must be included in the declaration covering the whole consignment. If the recommended modifications suggested under Standard 3.9 are made (allowing the declarant to sample the goods prior to the filing of the declaration), the Act should also make it clear that any such samples are to be included in the declaration for the whole consignment when it is filed.

3.11. Standard	The contents of the Goods declaration shall be prescribed by the Customs. The paper format of the Goods declaration shall conform to the UN-layout key. For automated Customs clearance processes, the format of the electronically lodged Goods declaration shall be based on international standards for electronic information exchange as prescribed in the Customs Co-operation Council Recommendations on information technology.
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Overall Assessment: Compliant

Relevant Law:

- CGO 12/2002

Discussion:

Introductory Note: The standard requires that the contents of the declaration must be prescribed by Customs and conform to the UN-layout key. This means that the contents of the declaration must be specified in rules or regulations and conform to the UN-layout key.

Law: The existing Goods Declaration format was originally introduced on 1 July 1996. It was revised by CGO 12/2002 of 15 June 2002. The existing declaration format is in accordance with the UN layout key. Likewise, the format of the electronically lodged declaration is based on international standards for electronic information exchange, as prescribed in the Customs Co-operation Council's recommendations on 'Information Technology'; this has been in effect since 1 July 2004. The basic form of the declaration is contained on one page, size A4, and has 66 entries. That form, and the form of the continuation sheet are reproduced immediately below.

GOODS DECLARATION. GD-1

Custom File No.

[] BILL OF ENTRY [X] BILL OF EXPORT [] BAGGAGE DECLARATION [] TRANSSHIPMENT PERMIT

1. EXPORTER'S/CONSIGNOR'S NAME AND ADDRESS		2. DECLARATION TYPE SB		3. VALUATION METHOD 7		4. PREVIOUS REF	
10. IMPORTER'S/CONSIGNEE'S/PASSENGER NAME & ADDRESS AAA AAA		5. PAGE 1 OF 2		6. CUSTOM OFFICE KAFE		7. BANK CODE 10 1	
14. NTN		15. STR.No / PASSPORT NO & DATE		8. IGM/EGM NO & DT 0-00-00-0000		INDEX 0	
18. DOCUMENTS ATTACHED <input type="checkbox"/> INV [] B/G <input type="checkbox"/> BL/AWB/ [] IT EXMP <input type="checkbox"/> CO [] <input type="checkbox"/> PL []		E-Form No ASD 000012 Date 03/06/2008 Value 1		9. DRY PORT IGM/EGM NO & DT		INDEX	
22. VESSEL MODE OF TRANSPORT		23. BL.AWL.CON.NO & DATE 12344		11. DECLARANT (OTHER THAN IMPORTER/EXPORTER) A. ONE FORWARD AGENCIES LTD. ROOM NO.328, 3RD FLR.PRINCE CENTRE, PREEDY ST, KARACHI. 12.TEL 733520		17. TRANSACTION TYPE Related	
27. PORT OF DISCHARGE KABUL		28. PLACE OF DELIVERY AAAA		13. C.H.A.L. No 104 Job No KAFE-1-2008		20. COUNTRY OF DESTINATION AFGHANISTAN	
31. NUMBER OF PACKAGES 1		32. TYPE OF PACKAGE BALE		16. WAREHOUSE LIC NO		30. MARKS/ CONTAINER NOS. TEST	
35. GENERAL DESCRIPTION OF GOODS TEST		33. GR OSS WT MT 10		19. LC/DD NO. & DATE 1 12/02/2008		21. CURRENCY NAME & CODE 0	
36. IN THE CASE OF DANGEROUS GOODS INDICATE HAZARD CLASS/DIV/FLASH POINT		34. Volume M3 0.0000		24. EXCHANGE RATE 0.00000		26. PAYMENT TERMS COLLECTION OF DOCUMENTARY PAYMENT (CME)	
37. ITEM NO 1		38. QUANTITY (Q) UNIT TYPE NO		39. CO CODE 586		40. SRO NO	
42. ITEM DESCRIPTION OF GOODS TEST		43. UNIT VALUE Declared Assessed		44. TOTAL VALUE Declared Assessed		45. CUSTOM VALUE (PKR) Declared Assessed	
41. HS Code 0101.1000		46. LEVY		47. RATE		48. SUM PAYABLE (PKR)	
42(a)		1		1		0.00000	
37. ITEM NO 2		38. QUANTITY (Q) UNIT TYPE NO		39. CO CODE 586		40. SRO NO	
42. ITEM DESCRIPTION OF GOODS TEST		43. UNIT VALUE Declared Assessed		44. TOTAL VALUE Declared Assessed		45. CUSTOM VALUE (PKR) Declared Assessed	
41. HS Code 0101.1000		46. LEVY		47. RATE		48. SUM PAYABLE (PKR)	
42(a)		1		1		0.00000	
49. SRO / Test Report No & Dt		50. FOB VALUE 222		54. LANDING CHARGES @ 1%		57. TOTAL REBATE CLAIM/ PROV. ASSMNT U/S 81 (PKR) 0.00	
		51. FREIGHT 0.1		55. OTHER CHARGES 0.00			
		52. CFR VALUE 5656		56. ASSESSED VALUE PKR 0.00000			
		53. INSURANCE 99		57. TOTAL REBATE CLAIM/ PROV. ASSMNT U/S 81 (PKR) 0.00			
58. MACHINE NO. & DATE Exch. Rate: 0.00000		59. REVENUE REC.OVERE CODE LEVY		60. AMOUNT (PKR)		61. A.O's name, sig & stamp	
64. I/we declare that the above particulars are true & correct.						SIG & DATE	
65. C/F/D NO & DATE							
Total:				63. Out of Charge Sig & Stamp		66. Bank Stamp	

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GOODS DECLARATION . GD- II File No. _____

Continuation Sheet					5. PAGE ____ OF PAGES ____		
37.ITEM NO.	38. QUANTITY (a.) Unit type	38(b) No of units	39. CO CODE	40.SRO NO.	41.HS CODE		
42.ITEM DESCRIPTION OF GOODS					46.LEVY	47.RATE	48.SUM PAYABLE (PKR)
43. UNIT VALUE		44. TOTAL VALUE		45.CUSTOMS VALUES (PKR)			
DECLARED	ASSESSED	DECLARED	ASSESSED	DECLARED	ASSESSED		
37.ITEM NO.	38. QUANTITY (a.) Unit type	38(b) No of units	39. CO CODE	40.SRO NO.	41.HS CODE		
42.ITEM DESCRIPTION OF GOODS					46.LEVY	47.RATE	48.SUM PAYABLE (PKR)
43. UNIT VALUE		44. TOTAL VALUE		45.CUSTOMS VALUES (PKR)			
DECLARED	ASSESSED	DECLARED	ASSESSED	DECLARED	ASSESSED		
37.ITEM NO.	38. QUANTITY (a.) Unit type	38(b) No of units	39. CO CODE	40.SRO NO.	41.HS CODE		
42.ITEM DESCRIPTION OF GOODS					46.LEVY	47.RATE	48.SUM PAYABLE (PKR)
43. UNIT VALUE		44. TOTAL VALUE		45.CUSTOMS VALUES (PKR)			
DECLARED	ASSESSED	DECLARED	ASSESSED	DECLARED	ASSESSED		
37.ITEM NO.	38. QUANTITY (a.) Unit type	38(b) No of units	39. CO CODE	40.SRO NO.	41.HS CODE		
42.ITEM DESCRIPTION OF GOODS					46.LEVY	47.RATE	48.SUM PAYABLE (PKR)
43. UNIT VALUE		44. TOTAL VALUE		45.CUSTOMS VALUES (PKR)			
DECLARED	ASSESSED	DECLARED	ASSESSED	DECLARED	ASSESSED		
37.ITEM NO.	38. QUANTITY (a.) Unit type	38(b) No of units	39. CO CODE	40.SRO NO.	41.HS CODE		
42.ITEM DESCRIPTION OF GOODS					46.LEVY	47.RATE	48.SUM PAYABLE (PKR)
43. UNIT VALUE		44. TOTAL VALUE		45.CUSTOMS VALUES (PKR)			
DECLARED	ASSESSED	DECLARED	ASSESSED	DECLARED	ASSESSED		
58.MACHINE NO. & DATE		A.O'S SIG. & STAMP		P.A'S SIG. & STAMP		64. DECLARANT'S NAME DESIGNATION, SIGNATURE & DATE	

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

Resource Persons:

- Syed Tanvir Ahmad, Collector of Customs, MCC Port Qasim, Karachi
- Mrs. Zeba Haye, Collector of Customs, MCC Appraisement, Lahore
- Mr. Wajid Ali, Deputy Collector of Customs, MCC Port Qasim, Karachi

Conclusion: Based on the above research, we conclude that the law and practice are in compliance with the standard.

Recommendations: We recommend that CGO 12/2002 be modified to replace the term “bill of entry” with “goods declaration” or “declaration of goods”, the term used in the Customs Act. No other recommendations are deemed necessary at this time.

3.12. Standard

The Customs shall limit the data required in the Goods declaration to only such particulars as are deemed necessary for the assessment and collection of duties and taxes, the compilation of statistics and the application of Customs law.

Overall Assessment: Compliant

Relevant Law:

- The Customs Act; Section 219 and Item 16 of the Third Schedule
- CGO 12/2002
- United Nations Layout Key for Trade Documents

Discussion:

Introductory Note: Even though the standard does not specifically mention national legislation, Standard 1.2 provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible. And it is not reasonable to expect that the requirements of Standard 3.12 will be complied with absent some provision in national legislation.

Law: The Customs Act contains no specific requirements on the content of the goods declaration; however, Section 219(2) of the Customs Act authorizes the FBR to issue rules on matters specified in the Third Schedule to the Customs Act, and “good declaration” is listed as item 16 in the Third Schedule.

The existing declaration sheet was issued by CGO 12/2002 of 15 June 2002 and is in accordance with the UN layout key. See the discussion under Standard 3.11 immediately above. Therefore, the particulars required by the declaration are only those necessary for the assessment and collection of duties and taxes, the application of customs law and the compilation of statistics.

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

Resource Persons:

- Syed Tanvir Ahmad, Collector of Customs, MCC Port Qasim, Karachi
- Mrs. Zeba Haye, Collector of Customs, MCC Appraisement, Lahore
- Mr. Wajid Ali, Deputy Collector of Customs, MCC Port Qasim, Karachi

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

Recommendations: No recommendations are deemed necessary at this time.

3.13. Standard

Where, for reasons deemed valid by the Customs, the declarant does not have all the information required to make the Goods declaration, a provisional or incomplete Goods declaration shall be allowed to be lodged, provided that it contains the particulars deemed necessary by the Customs and that the declarant undertakes to complete it within a specified period.

Overall Assessment: Non-Compliant

Relevant Law:

- The Customs Act; Section 81

Discussion:

Introductory Note: Standard 3.13 requires that a declarant must be allowed to file an incomplete or provisional declaration where – for reasons deemed valid by Customs - the declarant does not have all the information needed to file a definitive declaration. And the standard requires that any such provisional or incomplete declaration be accompanied by the declarant’s commitment to complete the declaration within a specified period. The standard recognizes that Customs must have the reasonable discretion to determine whether the declarant’s reasons are valid, and that the Customs must determine what “necessary” particulars must be provided in a provisional or incomplete declaration.

Even though the standard does not specifically mention national legislation, Standard 1.2 provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible. And it is not reasonable to expect that the requirements of Standard 3.13 will be complied with absent some provision in national legislation.

Law: Although there is a provision in the law (Section 81) permitting the provisional determination of liability for duties, taxes and other charges and their subsequent provisional release, there is no provision in the law that permits the filing of an incomplete or provisional declaration.

Practice: There is no evidence that Customs permits the filing of a provisional or incomplete declaration in practice. Furthermore, the computerized system (PACCS) – either one customs or WeBOC - does not accept an incomplete declaration.

Conclusion: Based on the above research, it appears that neither the law nor the practice is in compliance with the Standard.

Recommendations: We believe that Section 79 should be modified substantially to take into account the recommendations provided above under Standards 3.6 – 3.10 and to also allow the declarant to file an incomplete or provisional declaration if the declarant does not have all the information needed to file a definitive declaration for reasons that Customs, in the exercise of reasonable judgment, deems valid. In addition, Section 79 should specify (or require Customs to specify in a rule) the necessary particulars that must be set forth in a provisional or incomplete declaration. Section 79 should give the declarant 30 days to file the complete declaration, and require that the declarant furnish adequate security to ensure the declarant complies with this obligation with the 30 day period. Also, the computerized system should be programmed to allow the filing of an incomplete or provisional declaration when authorized by the appropriate Customs officer. The recommended modifications to Section 79 should also include those suggested under Standard 3.14 below.

<p>3.14. Standard</p>	<p>If the Customs register a provisional or incomplete Goods declaration, the tariff treatment to be accorded to the goods shall not be different from that which would have been accorded had a complete and correct Goods declaration been lodged in the first instance.</p> <p>The release of the goods shall not be delayed provided that any security required has been furnished to ensure collection of any applicable duties and taxes.</p>
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Overall Assessment: Non-Compliant

Relevant Law:

- The Customs Act; Sections 79 and 81

Discussion:

Introductory Note: The entire standard is premised on the assumption that a declarant is permitted to file a provisional or incomplete declaration as required by Standard 3.13, something that is not currently permitted by the law or the practice.

Even though the standard does not specifically mention national legislation, Standard 1.2 provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible. And it is not reasonable to expect that the requirements of Standard 3.14 will be complied with absent some provision in national legislation

Law: See the discussion under Standard 3.13. Also note that Section 81 of the Customs Act permits a customs officer to provisionally establish the amount of duties, taxes and other charges owed, once a complete declaration has been filed, but Section 81 does not provide for the filing of a provisional or incomplete declaration.

Practice: See the discussion under Standard 3.13.

Resource Persons:

- Mr. Mohammad Yaqoob Mako, Additional Collector of Customs, Karachi Airport, MCC, Karachi
- Mr. Zahid Ali Baig, Additional Collector of Customs, MCC, Islamabad
- Mr. Muhammad Jameel Khan, Law Officer, MCC, Peshawar

Conclusion: Based on the above, it appears that neither the law nor the practice complies with the standard.

Recommendations: The recommended modifications to Section 79 discussed under Standard 3.13 should also include provisions mirroring the requirements of Standard 3.14.

3.15. Standard	The Customs shall require the lodgement of the original Goods declaration and only the minimum number of copies necessary.
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Overall Assessment: Substantially Compliant

Relevant Law:

- The Customs Rules; Rule 601(g)

Discussion:

Introductory Note: Even though the standard does not specifically mention national legislation, Standard 1.2 provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible. And it is not reasonable to expect that the requirements of Standard 3.15 will be complied with absent some provision in national legislation

Law: There is nothing in the Customs Act specifying the number of copies that must accompany the original goods declaration. Section 601(g) of the Customs Rules – which applies only to Afghan transit goods - specifies that six copies of the original declaration are required. There are no other provisions in the Customs Rules specifying the required number of copies of the goods declaration.

Practice: When filing Goods declaration (declaration) electronically in PACCS system (run with WeBOC software), which currently applies to over 70% of the transactions by volume, no hard copies are required for filing as the declaration is electronically filed and processed. In the One-Customs system (electronic filing of declaration and its manual processing), the declaration is filed electronically but must be accompanied by a minimum of four hard copies. One-Customs is likely to be replaced by PACCS/ WeBoc during 2013. It is expected that in the near future no filing of hard copies will be required except in certain special cases e.g. Afghan transit goods.

Resource Persons:

- Mr. Humayun Zafar, General Manager, Customs Operations, PRAL, FBR, Islamabad
- Syed Tanvir Ahmed, Collector of Customs, MCC Port Muhammad Bin Qasim, Karachi

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

Recommendations: We recommend that a provision be added to the Customs Rules specifying the number of copies required when filing manually and when using the PACCS system. The number of copies should be the minimum Customs needs.

3.16. Standard

In support of the Goods declaration the Customs shall require only those documents necessary to permit control of the operation and to ensure that all requirements relating to the application of Customs law have been complied with.

Overall Assessment: Compliant

Relevant Law:

- The Customs Act; Section 79
- CGO 12/2002; Annex 1

Discussion:

Introductory Note: The standard stipulates that in support of a declaration Customs may only require those documents that are necessary to permit control of the operation and to ensure that the requirements of Customs law have been complied with.

Even though the standard does not specifically mention national legislation, Standard 1.2 provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible. And it is not reasonable to expect that the requirements of Standard 3.16 will be complied with absent some provision in national legislation.

Law: Section 79 of the Customs Act specifies that the declaration is to be supported by a “commercial invoice, bill of lading or airway bill, packing list or any other document required for clearance...in such form as the Board may prescribe”. Item 19 in Annex I of CGO 12/2002 contains a list of the possible supporting documents.

Practice: In electronic processing of a declaration using the PACCS/WeBOC system, no hard documents are mandatory for clearance. Only information relating to the Bill of Lading and the invoice is required to be entered electronically when filing the declaration. Other documents are not attached. Customs may request supporting documentation only when required for processing purposes or under the risk management system. The assessing officer generally calls for the packing list, Letter of Credit (L/C) and the pro forma Invoice. However, documents like certificate of Origin, certificate of Plant Protection, Animal Quarantine, certification of for Pharmaceutical and Medicines etc. are only called for when required by law. These documents are received in the system as scanned copies; originals are asked for if there is some doubt about the documents.

Under One-Customs (electronic filing combined with manual processing), the invoice, packing list, letter of credit (if any), and bill of lading are required to be filed along with printed copies of the declaration.

Resource Persons:

- Mr. Mohammad Yaqoob Mako, Additional Collector of Customs, Karachi Airport, MCC, Karachi
- Mr. Javed Iqbal Butt, Former Deputy Collector of Customs (Law), MCC, Appraisalment, Karachi
- Mr. Inam Rehmani, C.H.L. No.90, 608 Business Plaza, Mumtaz Hassan Road, Customs Clearing Agent, Customs House, Karachi
- Mr. Muhammad Jameel Khan, Law Officer, MCC, Peshawar.
- Mr. Ejaz khokhar, Chairman Readymade Garments Manufacturers and Exporters Association, (PRGMEA), Karachi

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

Recommendations: No recommendations are deemed necessary at this time.

3.17. Standard	Where certain supporting documents cannot be lodged with the Goods declaration for reasons deemed valid by the Customs, they shall allow production of those documents within a specified period.
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Overall Assessment: Marginally Compliant

Relevant Law:

- [None]

Discussion:

Introductory Note: Although the standard does not expressly impose any requirement on the content of national legislation, the use of the word “shall” in the standard indicates that what is required is something more than an ad hoc wholly discretionary practice; therefore it is difficult to see how the standard can be complied with unless there is at least a rule regulating the situation described in the standard. And Standard 1.2 provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible.

Law: Neither the Customs Act nor the Customs Rules contain provisions covering the situation described in the Standard.

Practice: In both the PACCS and One Customs system a declaration cannot be accepted without the required supporting documents. Nevertheless, it is reported that in exceptional cases customs officers allow the manual filing of a declaration without all required supporting documentation and note the reasons for the exception on the declaration. This practice is not, however, based on any legislative or regulatory provision.

Resource Persons:

- Mr. Sarfaraz Warraich, Collector of Customs MCC, Sambrial, Sialkot
- Mr. Muhammad Jameel Khan, Law Officer, MCC, Peshawar
- Agha Shahid Majeed, Additional Collector of Customs, MCC, PACCS, Karachi
- Mr. Irfan Javed, Additional Collector of Customs, MCC Appraisalment, Karachi

Conclusion: Based on the above research, it appears that the law is silent on the situation described in the standard; and the practice is only marginally in compliance with the Standard.

Recommendations: We believe that an amendment should be made to the Customs Act, in or near Section 79, to provide that - if all supporting documents cannot be filed with the declaration for reasons that Customs, in the exercise of reasonable judgment, deems valid - the declarant shall be given a specific amount of time (e.g., 30 days) to file the supporting documentation if the declarant furnishes adequate security to ensure that the declarant complies with this obligation. Also, the computerized system should be programmed to allow the filing of a declaration without all ordinarily required supporting documentation when authorized by the appropriate Customs officer.

3.18. Transitional Standard

The Customs shall permit the lodgement of supporting documents by electronic means.

Overall Assessment: Substantially Compliant

Relevant Law:

- The Customs Act; Section 155Q
- The Customs Rules; Rules 433, 437 and 444

Discussion:

Introductory Note: Although the standard does not expressly impose any requirement on the content of national legislation, the use of the word “shall” in the standard indicates that what is required is something more than an ad hoc wholly discretionary practice. And Standard 1.2 provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible.

Law: Section 155Q of the Customs Act deals with the subject of the electronic filing of supporting documents; however, it does not require Customs to permit the filing of supporting documents by electronic means as required by the standard. Rules 433, 437 and 444 refer to the electronic filing of a declaration; however they make no provision for the electronic filing of supporting documents. Most relevant is Rule 437, which deals with the submission of supporting documents but does not provide that these may be filed electronically.

Practice: Pakistan Customs allows the lodgement of supporting documents electronically under the PACCS system being run with WeBOC software. However, at some land customs stations (e.g. in Islamabad), where the manual system is still operational under the ‘One-Customs’ system, supporting documents are not allowed to be submitted electronically as the system does not support the lodgement of supporting documents by electronic means. Nevertheless, the WeBOC software is expected to become applicable nationwide during 2013, and therefore the practice is expected to fully comply with the standard by the end of 2013.

Resource Persons:

- Mr. Mohammad Yaqoob Mako, Additional Collector of Customs, Karachi Airport, MCC, Karachi
- Mr. Zahid Ali Baig, Additional Collector of Customs, MCC, Islamabad and focal person for FBR on computerization
- Mr. Javed Iqbal Butt, Former Deputy Collector of Customs (Law), MCC, Appraisalment, Karachi

Conclusion: Based on the above research, it appears that the *practice* will be in full compliance with the Standard during 2013; however, given the mandatory character of the standard, we believe it can only be fully complied with if – in addition - a rule is promulgated requiring Customs to permit the filing of supporting documents by electronic means.

Recommendations: Once the WeBOC software is being used nationwide, we recommend that a simple rule mirroring the language of the standard be incorporated into the Customs Rules.

3.19. Standard	The Customs shall not require a translation of the particulars of supporting documents except when necessary to permit processing of the Goods declaration.
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Overall Assessment: Partially Compliant

Relevant Law:

- The Customs Act; Section 155N

Discussion:

Introductory Note: Although the standard does not expressly impose any requirement on the content of national legislation, the use of the words “shall not” in the standard indicates that what is required is something more than an ad hoc wholly discretionary practice. And Standard 1.2 provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible.

Law: Section 155N of the Customs Act authorizes a Customs officer to require an English language translation of any non-English document submitted; and there are no restrictions on the Customs officer’s authority to require such a translation. The standard, however, requires that there be such restrictions.

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

Resource Persons:

- Mr. Mohammad Yaqoob Mako, Additional Collector of Customs, Karachi Airport, MCC, Karachi
- Mr. Inam Rehmani, C.H.L. No.90, 608 Business Plaza, Mumtaz Hassan Road, Customs Clearing Agent, Customs House, Karachi
- Mr. Sarfaraz Warraich, Collector of Customs MCC, Sambrial, Sialkot

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

Recommendations: We suggest that Section 155N of the Customs Act be modified to include the following final wording “but only to the extent necessary to permit the processing of the declaration of goods”.

3.20. Standard

The Customs shall permit the lodging of the Goods declaration at any designated Customs office.

Overall Assessment: Not Compliant**Relevant Law:**

- The Customs Act; Sections 3.3A, 3AA, 3B, 3BB, 3BBB, 3C, 3CC, 3D, 3DD, 3E, and 9
- S.R.O. 100(I)/83 dated 12 February, 1983 (Customs Ports)
- S.R.O. 101(I)/83 dated 12 February, 1983 (Customs Airports)
- S.R.O. 102(I)/83 dated 12 February, 1983 (Land Customs Station and Routes)
- S.R.O. 103(I)/83 dated 12 February, 1983 (Ports for the carrying on of coastal trade within the Customs Ports in Pakistan)

Discussion:

Introductory Note: Although the standard does not expressly impose any requirement on the content of national legislation, the use of the word “shall” in the standard indicates that what is required is something more than an ad hoc wholly discretionary practice. And Standard 1.2 provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible.

Law: Under Section 9 of the Customs Act various Customs stations have been declared through official legal notifications called Gazette Notifications. Section 9 reads as follows:

9. Declaration of customs–ports, customs airports, etc. - The Board may, by notification in the official Gazette, declare:

- a) The places which alone shall be customs-ports or customs airports for the clearance of goods or any class of goods imported or to be exported;
- b) The places which alone shall be land customs-stations for the clearance of goods or any class of goods imported or to be exported by land or inland waterways;
- c) The routes by which alone, goods or any class of goods specified in the notification may pass by land or inland waterways into or out of Pakistan, or to or from any land customs-station or to or from any land frontier;
- d) The places which alone shall be ports for the carrying on of coastal trade with any specified customs-ports in Pakistan; and
- e) What shall for the purposes of this Act be deemed to be a custom house and the limits thereof.

A list of some of the S.R.O.’s issued under Section 9 is provided above.

Practice: The filing of the declaration for consignments destined for a particular designated customs station requires that the Customs processing should be completed within the jurisdiction of that customs station. In other words, a declarant, irrespective of his work location, may file the declaration at the customs station where goods have arrived.

The software of WeBOC and One-Customs computer systems were designed to comply with existing legal requirements. This arrangement allows filing of declaration from anywhere in Pakistan but only for the designated customs station, i.e. the station where the goods are lying and are required to be cleared as per the bill of lading and the import general manifest. In case of import, where the goods are to be presented for customs processing for exportation thereof, a consignment which is destined for one designated Customs station, declaration cannot be filed electronically with another designated Customs station. The electronic system is not designed to process the same at any customs station other than the one where the goods have been unloaded or have arrived for clearance or are physically available.

In PACCS, every designated Customs collectorate has been allocated a code so that the declaration for goods arriving in that collectorate may be filed in that collectorate only.

Resource Persons:

- Mr. Zahid Ali Baig, Additional Collector of Customs, MCC, Islamabad and focal person for FBR on computerization
- Mr. Inam Rehmani, C.H.L. No.90, 608 Business Plaza, Mumtaz Hassan Road, Customs Clearing Agent, Customs House, Karachi

Conclusion: Based on the above research, it appears that neither the law nor the practice is in compliance with the Standard.

Recommendations: We recommend that the Customs Act be amended to include a provision mirroring the language of the standard, and that the Customs Rules and other subsidiary legal instruments be adjusted to comply with that new provision. In addition, the PACCS system will require some modification to comply with the new requirement.

3.21. Transitional Standard

The Customs shall permit the lodging of the Goods declaration by electronic means.

Overall Assessment: Substantially Compliant

Relevant Law:

- The Customs Act; Section 155Q
- The Customs Rules; Rules 433 and 444

Discussion:

Introductory Note: Although the standard does not expressly impose any requirement on the content of national legislation, the use of the word “shall” in the standard indicates that the standard can only truly be complied with if there is at least a rule requiring Customs to permit the filing of the declaration by electronic means. Also relevant is Standard 1.2, which provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible.

Law: Section 155Q of the Customs Act deals with the subject of the electronic filing of supporting documents and reads as follows:

155Q. Electronic exchange of information and authentication through the Customs Computerized System: Any declaration, documents or record, accounts, notice, order, payment, authentication, authorization or information required, delivered or provided by the Customs or any registered user shall be deemed to have been required, delivered, provided or done under this Act when communicated electronically through the Customs Computerized System.

Section 155Q does not *require* Customs to permit the filing of the declaration by electronic means as required by the standard. However, Customs Rule 433 provides that “every declaration in relation to each consignment of imported goods shall be filed with PACCS online....” And Rule 444 contains a similar prescription with respect to export declarations.

Practice: Under the PACCS system, all declarations are filed electronically. In the case of the One-Customs system, the original declaration is filed by electronic means; however, hard copies can also be filed manually to allow manual processing in appropriate cases.

Resource Persons:

- Mr. Aamir Ahmed, Collector of Customs, MCC PACCS, Karachi
- Mrs. Zeba Hahee, Collector of Customs, MCC Appraisalment, Lahore
- Mr. Inam Rehmani, C.H.L. No.90, 608 Business Plaza, Mumtaz Hassan Road, Customs Clearing Agent, Customs House, Karachi
- Mr. Nasir Chandnaa, Customs House Agent, Karachi

Conclusion: Based on the above research, it appears that the law and practice are substantially in compliance with the standard. However, it appears that the law does not provide that every declarant have the opportunity to file a declaration electronically.

Recommendations: Section 155Q should be amended to require Customs to permit any declarant to file any declaration electronically. And a proviso should be added to allow Customs to require the manual filing of a declaration in exceptional cases where electronic filing clearly is not possible because the electronic system is not available.

3.22. Standard

The Goods declaration shall be lodged during the hours designated by the Customs.

Overall Assessment: Compliant**Relevant Law:**

- The Customs Act; Section 65
- S.R.O. 113(I)/83 dated 12 February 1983
- FBR letter C. No. 6(4)/2005-CB dated 5 June 2006

Discussion:

Introductory Note: The Standard requires that the filing of a declaration is to be permitted if done during the hours publicly designated by Customs. The standard does not expressly impose any requirement on the content of national legislation; and it does not seem that the subject matter of the standard is such that it needs to be reflected in national legislation.

Law: Section 65 of the Customs Act and the notifications issued by the FBR pursuant item (b) thereof are somewhat relevant to the standard. Section 65 of the Customs Act reads as follows:

65. Goods not to be loaded or unloaded or passed on certain days or at certain times:

Except with the permission in writing of the appropriate officer and on payment of such fees as may be prescribed by the Board no goods, other than passengers' baggage or mail bags, shall in any customs-port be discharged, or be shipped or water-borne to be shipped or shall be loaded or unloaded or passed at any land customs-station or customs-airport-

- (a) On any public holiday within the meaning of section 25 of the Negotiable Instruments Act, 1881(XXVI of 1881), or on any day on which the discharge or shipping of cargo at customs-port or loading, unloading passage or delivery of cargo at any land customs-station or customs-airport, as the case may be, is prohibited by the Board by notification in the official Gazette; or
- (b) On any day except between such hours as the Board may, from time to time, by a like notification, appoint

Provided that where the Customs Computerized System is in operation, all loading and discharge may be allowed by the Collector of Customs round the clock and on all days.

The concerned notifications are: S.R.O 113(I)/83 of 12 February 1983 and FBR letter C. No. 6(4)2005-CB of 5 June 2006.

There is nothing in the Customs Act or the Customs Rules explicitly stating that a declaration may be filed during the hours designated by Customs; however, the standard does not require that there must be.

Practice: With the PACCS system, declarations may be filed at any time. Most declarations are filed during the designated office hours; after hours the frequency of filings drops sharply.

Resource Persons:

- Mr. Aamir Ahmed, Collector of Customs, MCC PACCS, Karachi
- Mr. M. Yaqoob Mako, Additional Collector of Customs, AFU, Karachi
- Dr. Asif Mehomood Jah, Additional Collector of Customs (AFU), MCC, Preventive, Lahore

Conclusion: Based on the above research, it appears that the law is largely silent on the specific subject of the standard, but the practice is wholly compliant.

Recommendations: No recommendations are deemed necessary at this time.

3.23. Standard	Where national legislation lays down a time limit for lodging the Goods declaration, the time allowed shall be sufficient to enable the declarant to complete the Goods declaration and to obtain the supporting documents required.
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Overall Assessment: Compliant

Relevant Law:

- The Customs Act; Sections 79, 82 and 224

Discussion:

Law: Section 79 of the Customs Act stipulates that the declaration and the necessary supporting documents must be filed within 15 days after the arrival of the goods.

Section 82 of the Customs Act provides that, after 20 days have passed since arrival, Customs has the authority - upon due notice to the owner or (if the owner's address cannot be ascertained) to the carrier, shipping or customs agent or custodian of the goods – to sell the goods at auction or to take them into custody. Section 82 also provides for the possibility of a ten day extension, thus giving the owner up to 30 days to file the declaration and required documentation.

The ten day extension specified in Section 82 would have to be sought under Section 224 of the Customs Act, which contains a general provision on the extension of timelines specified in the Act. Section 224 provides as follows:

The Federal Government, the Board or the appropriate officer of customs, may, upon being approached by an aggrieved party if satisfied that the delay was beyond the control of the applicant and that by granting such extension there is a possibility of some loss or hardship to the applicant being mitigated or prevented, condone the delay and extend the time limit laid down in this Act or the rules made thereunder.

Practice: Declarations in almost all cases are filed within fourteen days. Delays beyond the 15 day period are reportedly rare, but no statistics have been made available by FBR/Customs. It is also reported that such delays are generally permitted, if the customs officer believes the delay was not caused by the negligence of the owner.

Resource Persons:

- Mr. Mohammad Yaqoob Mako, Additional Collector of Customs, Karachi Airport, Karachi
- Mr. M. Arif Moton, Advocate and former Member (Judicial), Customs Appellate Tribunal, Karachi
- Mr. Zahid Ali Baig. Additional Collector of Customs, MCC, Islamabad and focal person for FBR on computerization
- Mr. Muhammad Jameel Khan, Law Officer, MCC, Peshawar

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

Recommendations: No recommendations are deemed necessary at this time.

3.24. Standard

At the request of the declarant and for reasons deemed valid by the Customs, the latter shall extend the time limit prescribed for lodging the Goods declaration.

Overall Assessment: Compliant

Relevant Law:

- The Customs Act; Sections 3, 4, 79 and 224
- S.R.O. 371(I)/2002 dated 15 June 2002

Discussion:

Introductory Note: Although the standard does not expressly impose any requirement on the content of national legislation, the use of the word “shall” in the standard indicates that the standard can only truly be complied with if there is at least a rule specifying the conditions under which an extension may be granted. Also relevant is Standard 1.2, which provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible.

Law: See the discussion under Standard 3.23.

Practice: See the discussion under Standard 3.23.

Resource Persons:

- Mr. Mohammad Yaqoob Mako, Additional Collector of Customs, Airport, Karachi
- Mr. Javed Iqbal Butt, Former Deputy Collector of Customs (Law), MCC, Appraisalment Karachi.
- Mr. Muhammad Jameel Khan, Law Officer, MCC, Peshawar
- Mr. Inam Rehmani, C.H.L. No.90, 608 Business Plaza, Mumtaz Hassan Road, Customs Clearing Agent, Customs House, Karachi

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

Recommendations: No recommendations are deemed necessary at this time.

3.25. Standard	National legislation shall make provision for the lodging and registering or checking of the Goods declaration and supporting documents prior to the arrival of the goods.
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Overall Assessment: Compliant

Relevant Law:

- The Customs Act; Second proviso to sub section (1) of Section 79
- The Customs Rules; Rules 422 to 556

Discussion:

Law: The second proviso to sub-section (1) of Section 79 of the Customs Act clearly provides that an owner of goods may file a declaration as early as ten days before the expected arrival of the goods.

Practice: Declarations are often filed before the arrival of the goods. The release of the goods may have to wait until they are examined, if such an examination is required.

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

Recommendations: No recommendations are deemed necessary at this time.

3.26. Standard	When the Customs cannot register the Goods declaration, they shall state the reasons to the declarant.
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Overall Assessment: Partially Compliant

Relevant Law:

- [None]

Discussion:

Introductory Note: Although the standard does not expressly impose any requirement on the content of national legislation, the use of the word “shall” in the standard indicates that the standard can only truly be complied with if there is at least a rule requiring Customs to provide the declarant with its reasons for not registering a declaration. Also relevant is Standard 1.2, which provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible.

Law: There are no provisions in the Customs Act or the Customs Rules requiring Customs to provide reasons to the declarant when Customs determines it cannot register the declaration.

Practice: Under the Computerized system where an incomplete declaration is filed, the computer automatically rejects the registration thereof and simultaneously provides the reasons for the rejection.

Under the One-Customs system, when the declaration is manually handled, the concerned officer indicates the specific reasons for not accepting the declaration for registration. Sometimes the deficiencies in the declaration are verbally indicated and sometimes in writing.

Resource Persons:

- Mr. Syed Tanvir Ahmad, Collector Customs MCC Port Qasim, Karachi
- Dr. Asif Jah, Additional Collector of Customs MCC (Preventive), Lahore
- Mr. Javed Iqbal Butt, Former Deputy Collector of Customs (Law), MCC, Appraisalment Karachi

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

Recommendations: It is recommended that the Section 79 of the Customs Act be modified to require that Customs provide its reasons to the declarant in writing when it cannot register a declaration. A standardized format should be used for this communication.

3.27. Standard

The Customs shall permit the declarant to amend the goods declaration that has already been lodged, provided that when the request is received they have not begun to check the goods declaration or to examine the goods.

Overall Assessment: Partially Compliant

Relevant Law:

- The Customs Act; Sections 29 and 88(5)

Discussion:

Introductory Note: Although the standard does not expressly impose any requirement on the content of national legislation, the use of the word “shall” in the standard indicates that the standard can only truly be complied with if there is at least a rule requiring Customs to allow the declarant to amend the declaration - without having to provide a justification - if Customs has not yet begun to check the declaration or to examine the goods. Also relevant is Standard 1.2, which provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible.

Law: Section 29 of the Customs Act is relevant to the standard:

29. Restriction on amendment of goods declaration.- Except as provided in Section 88, no amendment of goods declaration relating to goods assessed for duty on the declared value, quantity or description thereof shall be allowed after such goods have been removed from the customs-area or assigned a Customs Reference Number electronically, as the case may be.

The relevant aspect of Section 88, which deals with the receipt of goods at a warehouse, is paragraph 5. That paragraph provides that the goods declaration *may* be modified at any time prior to the warehousing of the goods (but not subsequently) “[i]f the quantity or value of any goods has been incorrectly stated...due to inadvertence or *bona fide* error”.

One can possibly read Section 29 as permitting a declarant to amend a filed declaration prior to the commencement of the checking of the declaration or the examination of the goods, but Section 29 does not clearly provide the declarant the right to do so. Section 29 only expressly prohibits an amendment after the goods have been removed from the customs-area or assigned a Customs Reference Number (CRN) electronically, events that may actually take place after the declaration has been checked and the goods examined. Nevertheless, Section 29 does not directly provide the right required by the standard. Similarly, paragraph 5 of Section 88 allows the possible amendment of a declaration at a point in time subsequent to the checking of the declaration and the examination of the goods; but - again - it does not explicitly provide the declarant a right to amend a declaration prior to those events.

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

In PACCS, a declaration can be amended or modified at any time prior to issuance of the CRN, which is provided after the payment of the assessed duties and taxes. The Allocation of the CRN is taken as registration of the declaration before that the declaration form is being filled electronically step by step, by the declarant, as the system allows.

At this stage the importer either enters the bank particulars or he lets the system keep the process of registration pending but as soon as the declarant enters particulars of the bank account and the

system validates the same, on the appropriate command for doing so, by the declarant, the payment of duties and taxes are automatically made by deducting the corresponding amount from the bank account. On this CRN is issued, indicating the registration of the declaration.

Resource Persons:

- Mr. Humayun Zafar, General Manager, Customs Operations, PRAL, FBR, Islamabad
- Mr. Sarfaraz Warraich, Collector of Customs MCC, Sambrial, Sialkot
- Mr. Inam Rehmani, C.H.L. No.90, 608 Business Plaza, Mumtaz Hassan Road, Customs Clearing Agent, Customs House, Karachi

Conclusion: Based on the above research, it appears that the law is largely silent on the issue and that the relevant practice is not really known.

Recommendations: We recommend that Section 29 of the Customs Act be revised to explicitly add a provision that the declarant may amend a declaration that has already been lodged if the request is received by Customs before Customs has begun to check the declaration or to examine the goods. Care should be taken when including this provision not to reduce the current content of either Section 29 or Section 88(5).

<p>3.28. Transitional Standard</p>	<p>The Customs shall permit the declarant to amend the Goods declaration if a request is received after checking of the Goods declaration has commenced, if the reasons given by the declarant are deemed valid by the Customs.</p>
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Overall Assessment: Partially Compliant

Relevant Law:

- The Customs Act; Sections 29 and 88(5)

Discussion:

Introductory Note: Standard 3.28 should be compared with Standard 3.27. Standard 3.27 provides that a declarant must be given a right to amend a declaration – without having to provide a justification – as long as the request is received before the checking of the declaration or the examination of the goods has begun. Standard 3.28 provides that – after the checking of the declaration has commenced – the declarant shall also have the right to amend the declaration, but only if the declarant provides a justification that Customs deems valid.

Although Standard 3.28 does not expressly impose any requirement on the content of national legislation, the use of the word “shall” in the standard indicates that the standard can only truly be complied with if there is at least a rule specifying the conditions under which a declarant may amend a declaration after the checking of the declaration has begun. Also relevant is Standard 1.2, which provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible.

Law: Section 29 of the Customs Act, which is discussed under Standard 3.27 above, is somewhat relevant to the standard, but – again – it does not really cover the issue raised by the standard. And Section 88(5) also does not really address the situation described in the standard.

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

Resource Persons:

- Mr. Humayun Zafar, General Manager, Customs Operations, PRAL, FBR, Islamabad
- Mr. Mohammad Yaqoob Mako, Additional Collector of Customs, Karachi Airport, MCC, Karachi
- Mr. Sarfaraz Warraich, Collector of Customs MCC, Sambrial, Sialkot
- Mr. Muhammad Arif Moton, Advcoate and former Member (Judicial), Customs Appellate Tribunal, Karachi
- Mr. Muhammad Jameel Khan, Law Officer, MCC Peshawar

Conclusion: Based on the above research, it appears that the law is largely silent on the issue and that the relevant practice is not known.

Recommendations: We recommend that Section 29 of the Customs Act be revised to explicitly add a provision that the declarant may amend a declaration after the checking of the declaration has commenced if the declarant provides a justification that Customs, in the exercise of reasonable judgment, deems valid. Again, care should be taken when including this provision not to reduce the current content of either Section 29 or Section 88(5).

<p>3.29. Transitional Standard</p>	<p>The declarant shall be allowed to withdraw the Goods declaration and apply for another Customs procedure, provided that the request to do so is made to the Customs before the goods have been released and that the reasons are deemed valid by the Customs.</p>
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Overall Assessment: Marginally Compliant

Relevant Law:

- The Customs Act; Section 79(2)

Discussion:

Introductory Note: Standard 3.29 requires that the declarant must be allowed to withdraw the declaration and to apply for another Customs procedure if the request to do so is made before the goods have been released and the declarant provides a justification that Customs deems valid.

Although Standard 3.29 does not expressly impose any requirement on the content of national legislation, the use of the word “shall” in the standard indicates that the standard can only truly be complied with if there are rules allowing the declarant to withdraw the declaration and apply for another customs procedure at any time prior to the release of the goods if the reasons are, the Customs’ reasonable judgment, deemed valid. This is also indicated by Standard 1.2, which provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible.

Law: Section 79(2) of the Customs Act is the only section of that act that relates to the standard; and that section is only marginally compliant with the standard. First, section 79(2) only covers declarations for home consumption or warehousing, and does not cover other potential customs procedures. It provides that where an officer, not below the rank of Additional Collector of Customs, is satisfied that the rate of customs duty is not adversely affected and that there was no intention to defraud, he may, in exceptional circumstances and for reasons to be recorded in writing, permit substitution of a declaration for home consumption for a declaration for warehousing or *vice versa*. The scope of 79(2) is therefore limited to only two customs procedures and it also places far more restrictions on a declarant’s ability to substitute one type of declaration for another than are permissible under Standard 3.29.

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

Resource Persons:

- Mr. Aamir Ahmed, Collector of Customs, MCC PACCS, Karachi
- Syed Tanvir Ahmed, Collector of Customs, MCC Port Qasim, Karachi
- Mr. Irfan Javed, Additional Collector of Customs, MCC, Appraisal Karachi
- Mr. Sarfaraz Warraich, Collector of Customs MCC, Sambrial, Sialkot

Conclusion: Based on the above research, it appears that the law and the practice are only marginally in compliance with the Standard.

Recommendations: First, Section 79(2) of the Customs Act should be modified to allow a declarant to withdraw a declaration that has been filed under that section and to apply for *any* other customs procedure (e.g., warehousing, home consumption, transit, transshipment) if the request is made prior to the release of the goods and the declarant provides reasons that Customs, in the exercise of reasonable judgment, deems valid. Similar provisions must be added to the other sections of the Customs Act governing other procedures. Alternatively, Section 79(2) might be removed and a new

section inserted that would establish the requirements of Standard 3.29 generally for all customs procedures; however, given the current organization of the Customs Act it is not clear where such a generally applicable provision might be located.

3.30. Standard	Checking the Goods declaration shall be effected at the same time or as soon as possible after the Goods declaration is registered.
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Overall Assessment: Compliant

Relevant Law:

- The Customs Act; Section 80

Discussion:

Introductory Note: Although Standard 3.30 does not expressly impose any requirement on the content of national legislation, the use of the word “shall” in the standard indicates that the standard can only truly be complied with if there are rules requiring that the checking of the declaration be done as soon as possible after it is registered. This is also indicated by Standard 1.2, which provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible.

Law: Section 80(1) of the Customs Act seems to require that a declaration be checked immediately “on receipt”, whereas the standard uses the word “registered”. So the issue is not as clearly dealt with as it could be. Section 80 reads as follows:

80. Checking of goods declaration by the Customs: (1) On the receipt of goods declaration under Section 79, an officer of Customs shall satisfy himself regarding the correctness of the particulars of imports, including declaration, assessment, and in case of the Customs Computerized System, payment of duty, taxes and other charges thereon.

(2) An officer of Customs may examine any goods that he may deem necessary at any time after the import of the goods into the country and may requisition relevant documents, as and when and in the manner deemed appropriate, during or after release of the goods by Customs;

(3) If during the checking of goods declaration, it is found that any statement in such declaration or document or any information so furnished is not correct in respect of any matter relating to the assessment, the goods shall, without prejudice to any other action which may be taken under this Act, be reassessed to duty.

(4) In case of the Customs Computerized System, goods may be examined only on the basis of computerized selectivity criteria.

(5) The Collector may, however, either condone the examination or defer the examination of imported goods or class of goods and cause it to be performed at a designated place as he deems fit and proper, either on the request of the importer or otherwise.

Practice: It is a general practice of Customs to process the declaration as soon as it is electronically filed in the WeBOC system. The system categorizes the declaration for processing in the green, yellow or red channel on the basis of the profile of the importer and the risk management system.

- Under the green channel, the declaration is cleared through the system and a “gate out” message is sent to the terminal operator and the goods are released without examination.
- Under the yellow channel, the declaration is sent to an assessing officer who processes the goods declaration and, if he finds it in order, he endorses it and the goods are released. If the

assessing officer has issues with the declaration, the goods and the declaration are subjected to examination.

- Under the red channel, the system generates an alert as soon as the declaration is filed and the the goods and the declaration are subjected to examination.

Once the WeBOC system is operating nationwide, a declaration will be processed electronically in real time. At that time, the instructions contained in Paragraph 2(c) will only have practical relevance where a declaration must be manually processed. The One Customs system also starts the assessment process immediately after the filing of the declaration.

An “Appraiser’s Manual” has been issued by the Customs for use by its Appraising Officers. Paragraph 2(c) of Chapter II contains directions to promptly deal with the declaration, ordinarily on the same day. The paragraph reads as follows:

Prompt disposal of bills of entry: It is of great importance that Appraisers should deal with all bills of entry promptly. As far as possible, bills of entry received by them on any day should be dealt with on the same day.

Resource Persons:

- Mr. Humayun Zafar, General Manager, Customs Operations, PRAL, FBR, Islamabad
- Dr. Sarfaraz Warraich, Collector of Customs, MCC, Sambrial, Sialkot
- Mr. Muhammad Jameel Khan, Law Officer, MCC, Peshawar

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

Recommendations: Nevertheless, we suggest that the first clause of Section 80(1) be reworded as follows: *“At the same time that a goods declaration filed under Section 79 has been registered, or as soon as possible thereafter, an officer of the Customs shall....”*

3.31. Standard	For the purpose of checking the Goods declaration, the Customs shall take only such action as they deem essential to ensure compliance with Customs law.
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Overall Assessment: Compliant

Relevant Law:

- The Customs Act; Section 80

Discussion:

Introductory Note: Although Standard 3.31 does not expressly impose any requirement on the content of national legislation, the use of the word “shall” in the standard indicates that the standard can only truly be complied with if there are rules requiring that, during the checking of a declaration, Customs only take such action as they deem essential to ensure compliance with Customs law. This is also indicated by Standard 1.2, which provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible.

Law: The basic provisions regarding the checking of a declaration are provided in Section 80 of the Customs Act, which is quoted in full under Standard 3.31 above.

Practice: According to interviews with the resource persons specified below, it appears that Customs only takes such action as they deem essential to ensure compliance with the law. Also relevant is the description of the operation of the WeBOC system under Standard 3.30.

Resource Persons:

- Mr. Humayun Zafar, General Manager, Customs Operations, PRAL, FBR, Islamabad
- Mr. Nasir Chandna, Customs Clearing Agent, Customs House, Karachi
- Dr. Sarfaraz Warraich, Collector of Customs, MCC, Sambrial, Sialkot
- Mr. Muhammad Jameel Khan, Law Officer, MCC, Peshawar

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

Recommendations: No recommendations are deemed necessary at this time.

<p>3.32. Transitional Standard</p>	<p>For authorized persons who meet criteria specified by the Customs, including having an appropriate record of compliance with Customs requirements and a satisfactory system for managing their commercial records, the Customs shall provide for :</p> <ul style="list-style-type: none"> • Release of the goods on the provision of the minimum information necessary to identify the goods and permit the subsequent completion of the final Goods declaration; • Clearance of the goods at the declarant's premises or another place authorized by the Customs; and, in addition, to the extent possible, other special procedures such as : • Allowing a single Goods declaration for all imports or exports in a given period where goods are imported or exported frequently by the same person; • Use of the authorized persons' commercial records to self-assess their duty and tax liability and, where appropriate, to ensure compliance with other Customs requirements; • Allowing the lodgment of the Goods declaration by means of an entry in the records of the authorized person to be supported subsequently by a supplementary Goods declaration.
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Overall Assessment: Non-Compliant

Relevant Law:

- The Customs Act; Section 80(5)

Discussion:

Introductory Note: Although Standard 3.32 does not expressly impose any requirement on the content of national legislation, the use of the word “shall” in the standard indicates that the standard can only truly be complied with if there are rules reflecting the requirements of the standard. This is also indicated by Standard 1.2, which provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible.

Law: At present, the law does not provide for any of the facilitative processes specified in the Standard. It should be noted that Section 80(5) of the Customs Act (quoted under Standard 3.31 above) does allow a Customs Officer – but only on a case-by-case basis - to allow a goods examination to take place at a designated place other than a Customs Office; however, the standard is directed at the creation of established and transparent criteria and covering each of the five aspects of the standard.

Practice: It appears that Customs practice follows the law.

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

Recommendations: It is recommended that the Customs Act be amended to specify the basic criteria that an economic operator must meet to become an “authorized person” within the meaning of the standard. It is also recommended that the Customs Act provide for each of the specified facilitative procedures (applicable to both exports and imports), which will be available to an authorized person. Also, the Customs Rules should specify an application process that an economic operator is to use to prove that it meets the “authorized person” criteria.

3.33. Standard	When the Customs decide that goods declared shall be examined, this examination shall take place as soon as possible after the goods declaration has been registered.
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Overall Assessment: Partially Compliant

Relevant Law:

- The Customs Act; Sections 80(2) & (5), 131(2), and 198

Discussion:

Introductory Note: This standard requires that an examination of the goods must take place as soon as possible after the declaration has been registered. The standard thus establishes a requirement about the *time* within which an examination must take place.

Although Standard 3.33 does not expressly impose any requirement on the content of national legislation, the use of the word “shall” in the standard indicates that the standard can only truly be complied with if there are rules providing that, if Customs decides to examine the goods, the examination is required to take place as soon as possible after the declaration is registered. This is also indicated by Standard 1.2, which provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible.

Law: There is nothing in the law that meets the requirement of the standard.

Subsections (2) and (5) of Section 80 (see Standard 3.31 for the text of Section 80) provide, respectively, that a Customs Officer may examine any goods he deems necessary at any time after the import of the goods into the country, and that the Collector may condone or defer the examination or of imported goods or a class.

With respect to goods to be exported, a proviso in Section 131(2) provides that, where the Customs Computerized System has not been introduced, the Collector may - for reasons to be recorded in writing – “cause the examination of goods or any class of goods or goods belonging to a particular exporter or class of exporters at a designated place as he deems fit and proper.” But there is no requirement in Section 131, or elsewhere in the Customs Act, requiring that an examination take place as soon as possible after the declaration is registered.

Finally, Section 198 contains similar language as that provided in Sections 80 and 131:

198. Power to open packages and examine, weigh or measure goods. - The appropriate officer may open any package or container and examine, weigh or measure any goods brought to the customs-station for importation or exportation and may for that purpose unload any such goods from the conveyance on which they have been imported or are to be exported:

Provided that the Collector may, for reasons to be recorded in writing, defer the examination of goods or class of goods belonging to a particular importer or class of importers, exporters or class of exporters and cause it to be performed at a designated place he deems fit and proper.

Practice: According to interviews with the resource persons specified below, it appears that Customs practice follows the law, and, in practice, there is reportedly no significant time lag between the time Customs decides to examine the goods and the conduct of the actual examination. However, the standard specifically requires that the examination take place as soon as possible after the

registration of the goods declaration, not Customs' decision to examine the goods. And there is nothing in the law or practice actually requiring this.

In the PACCS system, the decision to examine goods is simultaneously transmitted to the examination staff of Customs and to the terminal operator in real time. The latter makes arrangements for examination of goods. Customs are then under some pressure to complete the examination fairly quickly as the electronic system keeps signalling the status of the pending examination. In One-Customs, the examination order is recorded on the declaration which is sent to the examination sheds physically. The terminal operator, who is the custodian of the goods, is also immediately informed; and holds the goods for examination until Customs Officers complete the examination.

Resource Persons:

- Syed Tanvir Ahmad, Collector Customs, MCC, Port Qasim, Karachi
- Dr. Asif Jah, Additional Collector of Customs, MCC (Preventive), Lahore
- Mr. Inam Rehmani, C.H.L. No.90, 608 Business Plaza, Mumtaz Hassan Road, Customs Clearing Agent, Customs House, Karachi

Conclusion: Based on the above research, it appears that the law is not compliant with the standard and the practice is at least partially in compliance with the standard.

Recommendations: It is suggested that the Customs Act be amended to include a provision establishing requiring Customs to make the decision about whether to examine the goods and – if that decision is positive – to conduct the examination as soon as possible after the declaration has been registered. It is also recommended that the Customs rules and manuals be amended to provide more detailed instructions to Customs Officers on the requirement that an examination decision and, if applicable, the examination take place as soon as possible after the declaration is registered.

3.34. Standard	When scheduling examinations, priority shall be given to the examination of live animals and perishable goods and to other goods which the Customs accept are urgently required.
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Overall Assessment: Substantially Compliant

Relevant Law:

- Customs Rules; Rules 43 to 48

Discussion:

Introductory Note: Although Standard 3.34 does not expressly impose any requirement on the content of national legislation, the use of the word “shall” in the standard indicates that the standard can only truly be complied with if there are rules requiring Customs to give priority to urgent items when scheduling examinations. This is also indicated by Standard 1.2, which provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible.

Law: There is nothing in the Customs Act dealing with the subject matter of the standard. However, there is a special procedure, “Prior Release of Urgent Consignments”, set forth in Rules 43 to 48 of the Customs Rules. Most applicable are Rules 46(2) and 47(2), which deal with, respectively, the examination of urgent imports and exports. Those provisions require that such examinations take place on a priority basis.

Also of relevance is Rule 43(1)(iv), which defines an “urgent consignment” as follows:

- “urgent consignment” means a consignment of any of the following goods imported for home consumption, or meant for export provided that the appropriate officer of Customs is satisfied that these require immediate and rapid clearance as a matter of priority, namely:-
- human body organs or any part thereof, blood and blood plasma;
 - perishable medicines e.g. insulin, etc;
 - lifesaving drugs in nominal quantities, duly supported by medical prescription;
 - live animals and live plants;
 - radioactive materials;
 - replacement parts of computers, machines and drilling equipment (e.g. drilling bits);
 - any other goods, urgently required, with the approval of the Collector of Customs, in writing, on case to case basis; and
 - fertilizer imported by the Fertilizer Import Department, Ministry of Food and Agriculture.

Rule 43(1) defines “appropriate officer” as “an officer of Customs not below the rank of an Assistant Collector appointed in this behalf”.

Practice: It is reported that the urgent consignment procedure operates 24/7 and that Customs practice follows the law.

Conclusion: Based on the above research, it appears that the law and the practice are in substantial compliance with the standard. Concerns have been raised about transparency and the large scope of the discretion afforded the Collector under Rule 43(1)(iv)(g) and the inclusion in the list of the items described under (f).

Recommendations: First, it is suggested that the definition of “urgent consignment” in Rule(1)(iv) be substantially expanded to specifically identify a large number of other goods that currently are subject to discretionary approval under item (g); e.g., fresh fruit, flowers and vegetables, fresh and frozen



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meat and fish, milk products, other perishable food products, etc. In addition, we suggest that the “appropriate officer” be substituted for the Collector in item (g).

3.35 Transitional Standard	If the goods must be inspected by other competent authorities and the Customs also schedules an examination, the Customs shall ensure that the inspections are coordinated and, if possible, carried out at the same time.
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Overall Assessment: Non-Compliant

Relevant Law:

- The Customs Act; Sections 80, 127, 129, 131 and 139
- Customs Rules; 604 and 607

Discussion:

Introductory Note: This standard, which deals with the scheduling of a coordinated examination, must be read in conjunction with the requirements of Standards 3.33 and 3.34.

Although Standard 3.35 does not expressly impose any requirement on the content of national legislation, the use of the word “shall” in the standard indicates that the standard can only truly be complied with if there are rules requiring Customs and other relevant agencies to coordinate their examinations, and to carry them out, whenever possible, at the same time. This is also indicated by Standard 1.2, which provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible.

Law: As discussed under Standard 3.33, the examination of goods by Customs is provided for in the Sections 80(2) & (5), 131(2) and 198. Additionally, Customs Rules 603-607 contain provisions governing the examination by Customs of Afghanistan transit goods.

Under various statutes, several other agencies are responsible for inspecting imported/exported goods. These include the departments of Plant Protection, Animal Quarantine, Explosives as well as several agencies such as the Anti-Narcotics Force, the Pakistan Standards and Quality Control Authority and the Federal Investigation Agency (FIA).

From our review of the law, there appears to be no set procedure for the joint examination of goods in the manner prescribed by the standard.

Practice: According to interviews with the resource persons specified below, it appears that Customs practice is to arrange a joint inspection when approached in advance by another agency. Customs generally also invites officers of other agencies to simultaneously conduct a joint inspection. But there is no evidence that such joint inspections are routinely conducted as it depends on the availability of officers from the other agency. Even when they are arranged, it does not appear that they are routinely conducted with the speed required by Standard 3.33 or, if applicable, Standard 3.34. Responses from stakeholders indicate that examinations by other agencies are often not appropriately coordinated, mainly because advance notice is not communicated to Customs and vice versa. Thus, many types of goods are subject to serial examinations with consequential costs and delays borne by the importer/exporter.

The Anti-Narcotics Force conducts independent examination of export cargo in the process of clearance without prior notice. ANF also conducts such examinations of baggage of out-going passengers at airports. Officials from the Plant Protection Department frequently visit airports/sea ports to inspect plants and plant products (whether being imported or exported) but these inspections are not coordinated with Customs except when the importer/exporter arranges a joint inspection in advance.

There have been a few initiatives recently by private sector associations to advocate to Customs to develop and implement joint examination procedures. It is reported that the Trade Development Authority of Pakistan (TDAP) has supported at least one such initiative. However, these ad hoc initiatives have not yet resulted in the adoption of system of joint examinations.

Resource Persons:

- Mr. Muhammad Yahya, Director - Customs Intelligence and Investigation, Karachi
- Mrs. Zeba Haye Azhar, Collector of Customs (Appraisalment), Lahore
- Mr. Irfan Javed, Additional Collector of Customs, Model Collectorate of Customs Appraisalment, Karachi
- Dr. Mohammad Imran, Assistant Collector, AFU Exports, Karachi
- Mr. Mohammad Zubair, Clearing Agent (CHA License No. 1453) AFU Exports Karachi
- Mr. Ijaz A. Khokhar, Chief Coordinator & former Chairman, Pakistan Ready Made Garments Manufacturers and Exporters Association (PRGMEA), Karachi (Phone: 021-34547912, Cell: 0300-8617686)
- Mr. Inam Rehmani, Clearing Agent, (CHL No. 90), Customs House, Karachi (Phone: 021-32420026)
- Mr. Saqib Altaf, Importer, Karachi (Iltaf sons, Joria Bazar, Karachi deals in plastic rasin and artificial leather)
- Mr. Mir Zaman, Inspector of Customs (remained posted at Torkuhm Customs Station, for three years), MCC Peshawar
- Dr. Sarfraz Warraich, Collector of Customs, MCC Sambrial

Conclusion: Based on the above research, it appears that neither the law nor the practice is in compliance with the standard.

Recommendations: It is recommended that Sections 80, 131, and 198 of the Customs Act be modified to require that Customs and other agencies conduct joint examinations of goods and within the timeframes indicated by Standards 3.33 and 3.34. Other relevant laws should be similarly modified. These acts include the Control of Narcotic Substances Act, the Pakistan Animals Quarantine (Import and Export of Animals and Animal Products) Ordinance, the Drugs Act, and the Pakistan Plant Quarantine Act. Furthermore, it is recommended that FBR/Customs and the other concerned agencies co-develop a set of procedures governing the timing and conduct of such joint inspections.

3.36. Standard	The Customs shall consider request by the declarant to be present or to be represented at the examination of the goods. Such requests shall be granted unless exceptional circumstances exist.
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Overall Assessment: Partially Compliant

Relevant Law:

- The Customs Act; Sections 199 and 200

Discussion:

Introductory Note: Although Standard 3.36 does not expressly impose any requirement on the content of national legislation, the use of the word “shall” in the standard indicates that the standard can only truly be complied with if there are rules requiring Customs to consider requests by the declarant to be present at the examination and to grant such requests unless exceptional circumstances exist. This is also indicated by Standard 1.2, which provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible.

Law: Section 199 of the Customs Act requires that samples be taken in the presence of the owner or his agent. However, there is nothing in the Customs Act with respect to the presence of the declarant at an examination where samples are not being taken. Section 200 of the Customs Act requires the owner to make all arrangements for, and to bear all expenses associated with, an examination. There is nothing in the Customs Rules relating to the standard.

By virtue of the operation of Section 200, it would seem that – because the owner must arrange for the presentation of the goods for examination at the appointed time at his own cost – the owner or his agent is highly likely to have the opportunity to be present during examination. Nevertheless, there is nothing in the law giving the declarant the right to make a request to be present or requiring Customs to honour that request unless exceptional circumstances exist.

Practice: According to interviews with the resource persons specified below, it appears that Customs practice is to follow Section 199 but not Section 200.

Under the PACCS (WeBOC) electronic system, the customs officer conducts the examination in accordance with the guidelines of this electronic system, which does not provide for the issuance of a notice to the declarant about the examination. PACCS thus appears to authorize examinations that are conducted without notice to the declarant and without the physical presence of the declarant or his representative.

Resource Persons:

- Mr. Wajid Ali Deputy Collector of Customs, MCC Port Qasim, Karachi
- Mr. Inam Rehmani, C.H.L. No.90, 608 Business Plaza, Mumtaz Hassan Road, Customs Clearing Agent, Customs House, Karachi
- Mr. Sarfaraz Warraich, Collector of Customs, MCC, Sambrial, Sialkot
- Mr. M. Abid. Assistant Collector, AFU, (MCC preventive), Karachi
- Mr. Ejaz khokhar, Chairman Readymade Garments Manufacturers and Exporters Association, (PRGMEA), Karachi

Conclusion: It appears that the law is partially compliant with the standard while the practice, particularly under the PACCS system, is not compliant.

Recommendations: It is suggested that Sections 199 and 200 of the Customs Act be appropriately amended to comply with the requirement of the standard. The exceptional circumstances mentioned in the standard should be specified clearly in the Act. In addition, the PACCS system appears to require modification to provide for a prior notification to the declarant that advises him of his right to request that he or his agent be present, unless defined exceptional circumstances are present.

3.37. Standard	If the Customs deems it useful, they shall require the declarant to be present or to be represented at the examination of the goods to give them any assistance necessary to facilitate the examination.
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Overall Assessment: Substantially Compliant

Relevant Law:

- The Customs Act; Sections 199 and 200
- The Customs Rules; Rule 433

Discussion:

Introductory Note: This Standard provides that Customs, if it finds it useful, shall require the declarant to be present or to be represented at the examination of the goods to give them any assistance necessary to facilitate the examination. Although Standard 3.37 does not expressly impose any requirement on the content of national legislation, the use of the word “shall” in the standard indicates that the standard can only truly be complied with if there are rules that allow Customs to require the presence of the declarant or his representative at an examination of the goods whenever Customs deems it useful. The need for a written rule on this matter is also indicated by Standard 1.2, which provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible.

Law: Section 199(1) of the Customs Act requires the declarant to be present if samples are to be drawn.

199. Power to take samples of goods. - (1) The appropriate officer may, on the entry or clearance of any goods or at any time while such goods are being passed through the customs-area, take samples of such goods in the presence of the owner thereof or his agent or where the Customs Computerized System is operational in the presence of the custodian of the goods, for examination or testing or for ascertaining value thereof or for any other necessary purpose.

However, Section 200 is more directly relevant to the standard:

200. Owner to make all arrangements and bear all expenses. - Any opening, un-packing, weighing, measuring, repacking, bulking, sorting, letting, marking, numbering, loading, unloading, carrying, or lading of goods or their containers for the purposes of, or incidental to, the examination by an officer of customs, removal or warehousing thereof shall be done, and any facilities or assistance required for any such examination shall be provided, *by or at the expense of the owner of goods:* [Italics added.]

Provided that at customs-stations with the operational Customs Computerized System all the above functions shall be performed by the custodian of the cargo and the importer shall bear all expenses.

The first part of Section 200 authorizes Customs to require the presence of the owner (not the declarant as specified in the standard) or the owner’s representative to be present at the examination to provide assistance and the facilities needed to conduct the examination. However, the proviso to Section 200 does not permit Customs to require the presence of the declarant or his representative, only the custodian of the cargo, where the customs station has the Customs Computerized System.

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

Resource Persons:

- Mr. Sarfaraz Warraich, Collector of Customs, MCC Sambrial, Sialkot
- Syed Tanvir Ahmad, Collector Customs, MCC Port Qasim, Karachi
- Mr. Irfan Javed, Additional Collector of Customs, MCC Appraisement, Karachi
- Mr. Qurban Ali Khan, Additional Collector of Customs AFU, MCC, Islamabad

Conclusion: Based on the above research, it appears that the law and the practice are substantially in compliance with the Standard; however, the proviso to Section 200 appears not to be in compliance.

Recommendations: It is recommended that Section 200 of the Customs Act be amended to permit Customs to require the presence of the declarant or his representative at an examination to provide any assistance necessary to facilitate the examination even where the customs station has the Customs Computerized System.

3.38. Standard	Samples shall be taken only where deemed necessary by the customs to establish the tariff description and/or value of goods declared or to ensure the application of other provisions of national legislation. Samples drawn shall be as small as possible.
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Overall Assessment: Partially Compliant

Relevant Law:

- The Customs Act; Section 199
- Import Examination Manual (1996, Public Notice Number 37/95(A) dated 12-7-1995 issued by Model Collectorate of Customs (Appraisalment), Karachi)

Discussion:

Introductory Note: This standard provides that Customs is only to take samples if it is deemed necessary to establish the tariff classification and or value of the goods or to ensure the application of other elements of national legislation. The standard also requires that samples be as small as possible. Although Standard 3.38 does not expressly impose any requirement on the content of national legislation, the use of the word “shall” in the standard indicates that the standard can only truly be complied with if there are rules specifying the purposes for which Customs may take samples and limiting the size of the samples taken to the minimum necessary to accomplish the purpose. The need for written rules on this matter is also indicated by Standard 1.2, which provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible.

Law: Section 199 of the Customs Act provides as follows::

199. Power to take samples of goods.- (1) The appropriate officer may, on the entry or clearance of any goods or at any time while such goods are being passed through the customs-area, take samples of such goods in the presence of the owner thereof or his agent or where the Customs Computerized System is operational in the presence of the custodian of the goods, *for examination or testing or for ascertaining value thereof or for any other necessary purpose.* [Italics added].

(2) After the purpose for which a sample was taken is carried out, such sample shall, if practicable, be restored to the owner, but if the owner fails to take delivery of the sample within one month of the date on which he is asked in writing to take its delivery, it may be disposed of in such manner as the Collector of Customs may direct.

(3) In the case of goods which consist of drugs or articles intended for consumption as food, and in respect of which the taking of samples for the purposes of this sub-section may have been authorised by a general or special order of the Provincial Government, the appropriate officer may also in like circumstances take samples thereof for submission to, and examination by, such officer of Government or of a local authority as may be specified in such order.

There are no restrictions in the Customs Act or the Customs Rules regarding the size of samples that may be taken. And, other than the last italicized clause of Section 199, no restrictions are present in the Customs Act or the Customs Rules regarding the acceptable purposes for which samples may be taken. The phrase “for any other necessary purposes” in 199(1) is a bit too general and could readily be interpreted as permitting samples to be taken for purposes outside the scope of Standard 3.38.

The Import Examination Manual (1996, Public Notice Number 37/95(A) dated 12-7-1995 issued by Model Collectorate of Customs (Appraisalment), Karachi) specifies the number of samples, the size and the volume of the particular goods and has fixed an upper limit of 1 kg for solids, 1 Liter for liquids generally and 100 ml for solvent, essential oils and vegetable oil and 1 linear yard full width of paper and textiles. The Manual provides that samples are to be drawn in duplicate (instructions on page 11). It must be noted that the Manual appears to apply only to imports and does not specify the purposes for which samples may be taken.

Practice. According to interviews with the resource persons specified below, Customs draws samples only when deemed necessary and otherwise follows the instructions in the Import Examination Manual.

Resource Persons:

- Mr. Qurban Ali Khan, Additional Collector of Customs, MCC, Islamabad
- Mr. Saeed Khan Jadoon, Additional Collector of Customs, MCC, Peshawar

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

Recommendations: It is suggested that Section 199(1) be amended to reflect the requirements of the standard. In addition the Manual should be similarly amended and be made applicable, if it is not already, to goods being exported or subject to another customs procedure. The purposes for which a sample may be taken need to be fully described. Detailed rules should be issued to ensure that the power to take samples is not misused.

3.39. Standard	The Customs shall not impose substantial penalties for errors where they are satisfied that such errors are inadvertent and that there has been no fraudulent intent or gross negligence. Where they consider it necessary to discourage a repetition of such errors, a penalty may be imposed but shall be no greater than is necessary for this purpose.
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Overall Assessment: Not compliant

Relevant Law:

- The Customs Act; Sections 32 and 156(1)&(14)

Discussion:

Introductory Note: First, the standard specifies the basic rule that substantial penalties shall not be imposed for errors except when there is evidence that the errors resulted from fraudulent intent or gross negligence. Errors caused by simple negligence or inadvertent mistakes are not to give rise to substantial penalties. However, even where an error is the result of inadvertence or simple negligence, the standard does permit the imposition of penalties that are deemed necessary to discourage the repetition of such errors, but such penalties shall be no greater than is necessary for this purpose.

Although Standard 3.39 does not expressly impose any requirement on the content of national legislation, the use of the word “shall” in the standard indicates that the standard can only truly be complied with if there are rules imposing the requirements of the standard. The need for written rules on these matters is also indicated by Standard 1.2, which provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible.

Law: Section 32 of the Customs Act deals with false statement and errors, though it distinguishes – in paragraphs (2) and (3) - an error made knowingly or by reason of some collusion from an error made inadvertently or through misconstruction. However, the only consequence is that a notice of the penalty with respect to a purposeful misstatement may be served within five years of “the relevant date” (defined in paragraph (5)), while a notice of penalty for an inadvertent error must be served within three years of the relevant date.

The actual penal provision for a violation of Section 32 is specified in item 14 of Section 156(1) of the Customs Act, which does not differentiate between a purposeful misstatement and an inadvertent error. The punishment for both categories is the same and can be extremely severe. Item 14 reads as follow:

14. If any person commits an offence under section 32. such person shall be liable to a penalty not exceeding twenty five thousand rupees or three times the value of the goods in respect of which such offence is committed, *whichever be greater*; and such goods shall also be liable to confiscation; and upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding three years, or to fine, or to both.

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

Resource Persons:

- Mr. Muhammad Nasir Khan, Collector of Customs (Appeals), Islamabad
- Mr. Qurban Ali Khan, Additional Collector of Customs MCC, Islamabad
- Mr. Saeed Khan Jadoon, Additional Collector of Customs MCC, Peshawar

- Mr. Arif Moton, Former Member, Customs Appellate Tribunal, Karachi
- Mr. Issac Ali Qazi, Advocate Supreme Court, Peshawar

Conclusion: Based on the above research, it appears that neither the law nor the practice is in compliance with the standard.

Recommendations: It is recommended that item 14 of Section 156(1) be modified to provide a different level of penalties for errors resulting from inadvertence or misconstruction and falling within the scope of Section 32(3). We suggest that the appropriate level of penalties for such errors might be set at a level not exceeding 25,000 rupees or 1% of the value of the goods, *whichever is less*. However, as permitted by the standard, it is also recommended that the new provision might include an element specifying a higher level of penalties for a declarant who commits repeated inadvertent errors. That element might provide, for example, that if a given declarant has made such inadvertent on more than three occasions in any 12 month period, such declarant shall be subjected to a fine of up to the 100,000 rupees or 1% of the value of the goods, whichever is greater.

3.40. Standard	<p>Goods declared shall be released as soon as the customs have examined them or decided not to examine them, provided that:</p> <ul style="list-style-type: none"> – No offense has been found; – The import or export license or any other documents required have been acquired; – All permits relating to the procedure concerned have been acquired; and – Any duties and taxes have been paid or that appropriate action has been taken to ensure their collection.
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Overall Assessment: Substantially Compliant

Relevant Law:

- [None]

Discussion:

Introductory Note: The standard is specifically directed at ensuring the goods are released immediately after the examination or the decision not to examine, unless one of the four specified reasons justifying holding the goods exists. The focus of the standard is on the timing of the release. This standard has some relevance to the first item of Standard 3.32, which requires a process for authorized persons permitting the release of goods on the provision of the minimum information necessary, and Standards 3.33 – 3.35, which impose requirements on the timing of the decision to examine/not examine and the conduct of the examination.

Although Standard 3.40 does not expressly impose any requirement on the content of national legislation, the use of the word “shall” in the standard indicates that the standard can only truly be complied with if there are rules imposing the requirements of the standard. The need for written rules on these matters is also indicated by Standard 1.2, which provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible. And it is difficult to see how routine and uneventful compliance with the standard can be achieved unless transparent rules on the subject of the standard are set forth in the Customs Act or Customs Rules.

Law: There is no explicit provision in the Customs Act or the Customs Rules requiring the immediate release of the goods after the examination or decision not to examine unless one of the four specified reasons justifying holding the goods exists.

Practice: According to interviews with the resource persons specified below, once the assessment of the declaration has been completed by Customs, with or without an examination of the goods, and the assessed duties and taxes have been paid or secured (reportedly as per a prescribed procedure), the goods are approved as “out-of-charge” by the Customs and released to the owner. .

Resource Persons:

- Mr. Muhammad Nasir Khan, Collector of Customs (Appeals), Islamabad
- Mr. Qurban Ali Khan, Additional Collector of Customs MCC, Islamabad
- Mr. Saeed Khan Jadoon, Additional Collector of Customs MCC, Peshawar
- Mr. Arif Moton, Former Member, Customs Appellate Tribunal, Karachi
- Mr. Issac Ali Qazi, Advocate Supreme Court, Peshawar

Conclusion: Based on the above research, it appears that the law is silent on the subject of the standard; however, the practice appears to be in compliance.

Recommendations: It is suggested that amendments to the Customs Act be made to reflect the requirements of the standard. In particular, amendments to Sections 81 and 131 appear advisable.

<p>3.41. Standard</p>	<p>If the Customs are satisfied that the declarant will subsequently accomplish all the formalities in respect of clearance they shall release the goods, provided that the declarant produces a commercial or official document giving the main particulars of the consignment concerned and acceptable to the Customs, and that security, where required, has been furnished to ensure collection of any applicable duties and taxes.</p>
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Overall Assessment: Partially Compliant

Relevant Law:

- The Customs Act; Section 81

Discussion:

Introductory Note: The standard requires that Customs release the goods if the declarant produces an acceptable official or commercial document giving the main particulars about the goods and provides any required security, and Customs is satisfied that the declarant will subsequently accomplish all formalities in respect of clearance. This standard relates to the first item of Standard 3.32, which requires a process for authorized persons permitting the release of goods on the provision of the minimum information necessary. Note that Standard 3.41 only mentions the provision of the required security but not actual payment.

Although Standard 3.41 does not expressly impose any requirement on the content of national legislation, the use of the word “shall” in the standard indicates that the standard can only truly be complied with if there are rules imposing the requirements of the standard. The need for written rules on these matters is also indicated by Standard 1.2, which provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible. And it is difficult to see how routine and uneventful compliance with the standard can be achieved unless transparent rules on the subject of the standard are set forth in the Customs Act or Customs Rules.

Law: Section 81 of the Customs Act is the provision relevant to the standard. Section 81 reads as follows:

81. Provisional determination of liability: (1) Where it is not possible for an officer of Customs during the checking of the goods declaration to satisfy himself of the correctness of the assessment of the goods made under section 79, for reasons that the goods require chemical or other test or a further inquiry, an officer, not below the rank of Assistant Collector of Customs, may order that the duty, taxes and other charges payable on such goods, be determined provisionally:

Provided that the importer, save in the case of goods entered for warehousing, pays such additional amount on the basis of provisional assessment or furnishes bank guarantee or pay order or a post-dated cheque of a scheduled bank along with an indemnity bond for the payment thereof as the said officer deems sufficient to meet the likely differential between the final determination of duty over the amount determined provisionally:

Provided further that there shall be no provisional assessment under this section if no differential amount of duty and tax is paid or secured against bank guarantee [or pay order] or post-dated cheque.

(2) Where any goods are allowed to be cleared or delivered on the basis of such provisional determination, the amount of duty, taxes and charges correctly payable on those goods shall be determined within six months of the date of provisional determination:

Provided that the Collector of Customs or, as the case may be, Director of Valuation, may in circumstances of exceptional nature and after recording such circumstances, extend the period for final determination which shall in no case exceed ninety days.

Provided further that any period, during which the proceedings are adjourned on account of a stay order or for want of clarification from the Board or the time taken through adjournment by the importer, shall be excluded for the computation of aforesaid periods.

(3) On completion of final determination, the amount already paid or guaranteed shall be adjusted against the amount payable on the basis of final determination, and the difference between the two amounts shall be paid forthwith to or by the importer, as the case may be.

(4) If the final determination is not made with the period specified in sub-section (2), the provisional determination shall, in the absence of any new evidence, be deemed to be the final determination.

Explanation: Provisional assessment means the amount of duties and taxes paid or secured against bank guarantee or post-dated Cheque.

(5) On completion of final determination under sub-section (3) or (4), the appropriate officer shall issue an order for adjustment, refund or recovery of amount determined, as the case may be.

Section 81(1) authorizes an officer not below the rank of Additional Collector to permit the provisional determination of duties, taxes and other charges. The decision as to whether to allow the provisional determination of duties is discretionary, not mandatory, and this is inconsistent with the standard's mandatory language, "...Customs...*shall* release the goods..." Furthermore, except with respect to goods to be warehoused, the first proviso to Section 81 requires the "importer" to actually pay the amounts provisionally assessed and – with respect to the potential additional liability that may arise on final assessment – permits the importer to either pay such additional amount or provide security therefor. Section 81 does not permit the furnishing of security to ensure the collection of "any applicable duties and taxes", as required by the standard. Section 81 only permits the furnishing of security to cover an amount equalling the difference between the amount provisionally determined and the likely amount of any additional liability that may arise on final assessment.

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

Resource Persons:

- Mr. Muhammad Nasir Khan, Collector of Customs (Appeals), Islamabad
- Mr. Qurban Ali Khan, Additional Collector of Customs, MCC, Islamabad
- Mr. Saeed Khan Jadoon, Additional Collector of Customs, MCC, Peshawar
- Mr. Arif Moton, Former Member, Customs Appellate Tribunal, Karachi
- Mr. Issac Ali Qazi, Advocate Supreme Court, Peshawar

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

Recommendations: One element of the standard provides that Customs must first be satisfied that the declarant will accomplish all formalities in respect of clearance after the release of the goods. Therefore, it would be possible to satisfy the standard by making the "security only" release process required by the standard available only to those economic operators who have been designated as "authorized persons" within the meaning of Standard 3.32. Therefore, it is recommended that Section 81 be amended to permit such an authorized person to simply furnish security to cover all potential liability for duties, taxes and charges (not just the differential) if the authorized person provides Customs with an acceptable official or commercial document giving the main particulars about the goods; the types of "official or commercial documents" that are acceptable should also be specified.

3.42. Standard	When the Customs decide that they require laboratory analysis of samples, detailed technical documents or expert advice, they shall release the goods before the results of such examination are known, provided that any security required has been furnished and provided they are satisfied that the goods are not subject to prohibitions or restrictions.
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Overall Assessment: Partially Compliant

Relevant Law:

- The Customs Act; Section 81

Discussion:

Introductory Note: The focus of the standard is on ensuring that Customs release the goods while they Customs is waiting for test results, detailed technical documents or expert advice if the required security has been furnished and there is no evidence that reasonably indicates that the goods are prohibited or subject to restrictions.

Although Standard 3.42 does not expressly impose any requirement on the content of national legislation, the use of the word “shall” in the standard indicates that the standard can only truly be complied with if there are rules imposing the requirements of the standard. The need for written rules on these matters is also indicated by Standard 1.2, which provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible. And it is difficult to see how routine and uneventful compliance with the standard can be achieved unless transparent rules on the subject of the standard are set forth in the Customs Act or Customs Rules.

Law: Section 81 of the Customs Act, the text of which is provided under the discussion of Standard 3.41, is of some relevance to this standard, and the critique of Section 81 provided under Standard 3.41 is also applicable here.

Standard 3.42 focuses on the timing of the release of the goods, and requires that – if the required security is provided – that the goods be released while Customs is waiting for any test results, technical documentation or expert advice. However, as discussed under the previous standard, Section 81 does not *require* such release as provided in the standard. Section 81 instead makes the decision to allow the provisional assessment of duties a discretionary act of a customs officer not below the rank of Additional Collector.

The standard also indicates that only the required security is to be furnished, while Section 81 – also as discussed under the previous standard – requires the actual payment of the provisionally assessed duties.

Practice: According to interviews with the resource persons specified below, it appears that Customs practice follows the law established by Section 81, and it is reported that the system has operated without difficulty to importers and without revenue loss to the exchequer.

Resource Persons:

- Mr. Muhammad Nasir Khan, Collector of Customs (Appeals), Islamabad
- Mr. Qurban Ali Khan, Additional Collector of Customs, MCC, Islamabad
- Mr. Saeed Khan Jadoon, Additional Collector of Customs, MCC, Peshawar
- Mr. Arif Moton, Former Member, Customs Appellate Tribunal, Karachi
- Mr. Issac Ali Qazi, Advocate Supreme Court, Peshawar

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

Recommendations: In addition to the modifications to Section 81 recommended under Standard 3.41, that section should be further amended to require the release of goods to *any* importer while Customs is waiting for test results, detailed technical documentation or expert advice if the required security is furnished; unless, of course, there is good reason to believe the goods are prohibited or subject to other restrictions that justify non-release.

3.43 Standard	When an offense has been detected, the Customs shall not wait for the completion of administrative or legal action before they release the goods, provided that the goods are not liable to confiscation or forfeiture or to be needed as evidence at some later stage and that the declarant pays the duties and taxes and furnishes security to ensure collection of any additional duties and taxes and of any penalties which may be imposed.
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Overall Assessment: Non-compliant

Relevant Law:

- The Customs Act; Sections 81, 156, and 179 -186

Discussion:

Introductory Note: The Standard requires that when an offense of is detected, Customs is nevertheless required to release the goods as long as several conditions are met: (1) the goods are not subject to confiscation or forfeiture; (2) the goods are not needed as evidence; (3) the declarant actually pays the normally applicable duties and taxes; and (4) the declarant posts sufficient security to ensure the collection of any additional duties, taxes and penalties that may be imposed in the future.

Although Standard 3.43 does not expressly impose any requirement on the content of national legislation, the use of the word “shall” in the standard indicates that the standard can only truly be complied with if there are rules imposing the requirements of the standard. The need for written rules on these matters is also indicated by Standard 1.2, which provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible. And it is difficult to see how routine and uneventful compliance with the standard can be achieved unless transparent rules on the subject of the standard are set forth in the Customs Act or Customs Rules.

Law: The Customs Act contains no provisions meeting the requirements of the standard. Goods must therefore remain under detention, regardless of the seriousness of the offense, until the case is adjudicated. Offences are specified in Section 156(1) of the Customs Act, and all concerned goods are generally liable to confiscation and the declarant has the option of obtaining the release of the goods by paying a fine in lieu of having Customs maintain the confiscated goods. This is not compliant with the standard which requires that a declarant be afforded the opportunity to immediately obtain the release of the goods by actually paying the normally applicable duties and taxes and posting security in sufficient amount to cover any additional duties, taxes and penalties that can reasonably be expected to be imposed if the declarant loses the case.

Section 181 of the Customs Act is of particular relevance:

181 Option to pay fine in lieu of confiscated goods: Whenever an order for the confiscation of goods is passed under this Act, the officer passing the order may give the owner of the goods an option to pay in lieu of the confiscation of the goods such fine as the officer thinks fit.

Explanation: Any fine in lieu of confiscation of goods imposed under this section shall be in addition to any duty and charges payable in respect of such goods, and of any penalty that might have been imposed in addition to the confiscation of goods.

Provided that the Board may, by an order, specify the goods or class of goods where such option shall not be given:

Provided further that the Board may, by an order, fix the amount of fine which, in lieu of confiscation, shall be imposed on any goods or class of goods imported in violation of the provisions of section 15 or of a notification issued under section 16, or any other law for the time being in force.

It is obvious that Section 181 is inconsistent with the standard in that the owner is only afforded an opportunity to obtain the release of the goods after the adjudication and the issuance of a confiscation order.

We also note, even though this issue is of less relevance to Standard 3.43, that Section 181 allows the officer issuing the order the general authority to specify “such fine as the officer thinks fit”, which affords the officer a very broad and highly unusual level of discretion. In addition, there are other aspects of Section 181 that apparently have been argued to be in contradiction to Section 223 and have created some confusion.

223. Officers of Customs to follow Board’s order, etc: All officers of customs and other persons employed in the execution of this Act shall observe and follow the orders, instruction and direction of the Board:

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the appropriate officer of customs in the exercise of their *quasi-judicial* function.

From our reading the confusion seems to arise from the proviso of Section 223, which seems to prohibit what is expressly provided by the last two provisos of Section 181. However, applying the fundamental rules of statutory interpretation, which require that effect be given to the apparently contradictory provisos in accordance with their most reasonably ascertainable purpose, we believe the last proviso of Section 223 is meant to prohibit the FBR from interfering with an officer’s conduct of his quasi-judicial function *in the context of a specific case*. When read in this manner, the last proviso of Section 223 does not contradict the FBR’s authority under Section 181 to issue generally applicable rules or instructions that are to be implemented by all officers when carrying out their quasi-judicial functions in any case. In any case, clear statutory language is far preferable to legal argument over ambiguous meaning, and the proviso of Section 223 should be modified to clarify its meaning.

Special Note on Terminology: The standard does not require the release of the goods if they are otherwise subject to “confiscation” or “forfeiture” or they are needed for evidence. However, when it uses the terms “confiscation” or “forfeiture” the standard clearly is referring to a situation where the goods are of a type that are *generally* subject to confiscation or forfeiture (such as prohibited goods), not goods that become subject to “confiscation” (as that term is used in the Customs Act) or forfeiture solely by reason of the customs offense. This difference in terminology will need to be addressed by appropriate amendments to the above-referenced sections of the Customs Act.

Practice: It appears that Customs practice follows the law, although there is reportedly confusion about the apparent conflict between the proviso of Section 223 and the last two provisos of Section 181.

Conclusion: Based on the above research, it appears that the law and practice is not in compliance with the Standard.

Recommendations: It is suggested that a new Section 157A be added to the Customs Act incorporating the requirements of the standard. The provision should require that when an offense of is detected, Customs is nevertheless required to release the goods as long as the following conditions are met: (1) but for the alleged offense, the goods would not otherwise normally be subject to confiscation or forfeiture; (2) there is no compelling reason to hold the goods as evidence; and – if there is such a reason – only that portion of the goods truly needed for such evidentiary purposes are

to be detained; (3) the declarant pays the normally applicable duties, taxes and other charges assessable on the goods to be released; and (4) the declarant posts sufficient security to ensure the collection of any additional duties, taxes, charges and penalties that can reasonably be expected to be imposed in the future, assuming the declarant does not ultimately prevail in the adjudication of the offense.

It is also recommended that the words “in the context of a specific case” be inserted at the end of the proviso to Section 223.

Finally, amendments should be made to the above-referenced sections of the Customs Act to replace the word “confiscation” with the word “detention” whenever the goods are not prohibited. And, if the period of detention exceeds a certain period, e.g., 20 days, and the declarant has not redeemed the goods, the goods would then become subject to forfeiture.

3.44. Standard	<p>When goods have not yet been released for home use or when they have been placed under another Customs procedure, and provided that no offense has been detected, the person concerned shall not be required to pay the duties and taxes or shall be entitled to repayment thereof:</p> <ul style="list-style-type: none"> • When, at his request, such goods are abandoned to the Revenue or destroyed or rendered commercially valueless under Customs control, as the Customs may decide. Any costs involved shall be borne by the person concerned; • When such goods are destroyed or irrecoverably lost by accident or force majeure, provided that such destruction or loss is duly established to the satisfaction of the Customs; • On shortages due to the nature of the goods when such shortages are duly established to the satisfaction of the Customs. • Any waste or scrap remaining after destruction shall be liable, if taken into home use or exported, to the duties and taxes that would be applicable to such waste or scrap imported or exported in that state.
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Overall Assessment: Compliant

Relevant Law:

- The Customs Act; Sections 27, 27A and 201

Discussion:

Introductory Note: Standard 3.44 does not expressly impose any requirement on the content of national legislation; however the use of the word “shall” in the standard indicates that the standard can only truly be complied with if there are rules imposing the requirements of the standard. The need for written rules on these matters is also indicated by Standard 1.2. And it is difficult to see how routine and uneventful compliance with the standard can be achieved unless transparent rules on the subject of the standard are set forth in the Customs Act or Customs Rules.

Law: Section 27(1) of the Customs Act stipulates that on request of declarant a competent authority may examine and reduce the value of goods if the same have been damaged or their value has diminished due to deterioration.

27. Abatement allowed on damaged or deteriorated goods: (1) If before the examination of any imported goods the owner thereof informs an officer of Customs not below the rank of Assistant Collector in writing that the value of the goods as declared in the goods declaration has diminished as a result of some damage or deterioration sustained by them before or during unloading at the port of destination, an officer of Customs not below the rank of Assistant Collector may appraise the value of the damaged or deteriorated goods in the manner given in sub-section (2) and the owner shall be allowed abatement of duty in proportion to the diminution of value so appraised, whether duty is leviable ad valorem or otherwise.

(2) For the purposes of this section, the value of damaged or deteriorated goods may be ascertained by either of the following methods at the option of the owner:-

- (a) Value may be appraised by an Officer of Customs not below the rank of Assistant Collector on the basis of physical examination of the goods; or
- (b) Such goods may be sold by public auction or by tender or, with the consent of the owner, in any other manner and the gross sale proceeds shall be deemed to be the value of such goods inclusive of duties.

Section 27A of the Act provides that if goods are destroyed or scraped or otherwise rendered without commercial value, duty shall be collected on the sale of the waste or scrape left behind as if such waste or scrape was imported.

Section 201 of the Act provides that abandoned goods may be auctioned or sold in a manner to which the owner agrees and that the sale proceeds be applied first to the cost of transportation and sale, then to the applicable duties and taxes. If there are then any surplus proceeds (the “balance”), Section 201 requires that these be given to the owner.

Practice: According to interviews with the resource persons specified below, it appears that Customs practice follows the law. The practice therefore appears to be compliant with the standard.

The grant of abatement due to deterioration and disposal of abandoned goods is reportedly governed by a written procedure that has not posed caused difficulties for Customs, owners or buyers. Despite several inquiries, however, the extent of abatement given in such consignments at any given customs station could not be ascertained. One case was mentioned by a resource person and involved the Model Collectorate of Customs, Appraisal, Karachi. The case involved damage to the wind-screens of a shipment of cars and was ascertained to be 30%; therefore, the declared transaction value of the consignment was appraised to have been diminished proportionately resulting in a commensurate abatement in the assessed duties and taxes.

Resource Persons:

- Syed Tanvir Ahmad, Collector of Customs, MCC, Port Qasim, Karachi
- Mr. Moeenuddin Wani, Additional Collector of Customs, MCC, Islamabad
- Mr. Humayun Zafar, General Manager, Customs Operations, PRAL, FBR, Islamabad
- Mr. Javaid Iqbal Butt former Deputy Collector Customs (Legal), MCC Appraisal Custom House, Karachi

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

Recommendations: The law is compliant but in our opinion further clarity is nevertheless advisable. It is therefore recommended that the fact of deterioration or destruction of the goods should be further elaborated in the law so that it does not leave excessive discretion with customs officers to make such determinations. This will also help the trade in that they will have a clearer understanding of their rights. Furthermore, the law should also be amended to explicitly cover a situation where the deterioration or destruction takes place after the goods have been examined.

<p>3.45. Transitional Standard</p>	<p>When the customs sell goods which have not been declared within the time allowed or could not be released, although no offense have been discovered, the proceeds of the sales, after deduction of any duties and taxes and other charges and expenses incurred, shall be made over to those persons entitled to receive them or, when this is not possible, held at their disposal for a specified period.</p>
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Overall Assessment: Compliant

Relevant Law:

- The Customs Act; Section 201(2)

Discussion:

Introductory Note: The standard requires that when Customs sells goods that have not been declared within the time allowed or could not be released, although no offense has been discovered, the proceeds of the sale - after the payment of duties, taxes and other charges and expenses – must be transferred to those persons entitled to receive them or, when this is not possible, held at their disposal for a specified period.

Standard 3.45 does not expressly impose any requirement on the content of national legislation; however the use of the word “shall” in the standard indicates that the standard can only truly be complied with if there are rules imposing the requirements of the standard. The need for written rules on these matters is also indicated by Standard 1.2. And it is difficult to see how routine and uneventful compliance with the standard can be achieved unless transparent rules on the subject of the standard are set forth in the Customs Act or Customs Rules.

Law: Section 201 of the Customs Act is directly relevant to the standard as it specifies the order for the application of the proceeds of a sale. Section 201 reads as follows.

201 Procedure for sale of goods and application of sale proceeds.--(1) Where any goods, other than confiscated goods, are to be sold under any provision of this Act, they shall be sold after due notice to the owner or his agent or custodian of the goods by public auction or by tender or by private offer or, with the consent of the owner or his agent or custodian of the goods in writing, in any other manner.

(1A) The goods may be sold under sub-section (1) through electronic means, as prescribed by the Board under the rules.

(2) The sale proceeds shall be applied to the following purposes in their respective order, namely:--

- (a) first to pay the expenses of the sale;
- (b) then to pay the freight or other charges, if any, payable in respect of the goods, if notice of such charges has been given to the person holding the goods in custody;
- (c) then to pay the customs-duty, other taxes and dues payable to the Federal Government in respect of such goods;
- (d) then to pay the charges due to the person holding such goods in custody.

(3) The balance, if any, shall be paid to the owner of the goods, provided he applies for it within six months of the sale of the goods or shows sufficient cause for not doing so.

Practice: According to interviews with the resource persons specified below, it appears that Customs practice follows the law and the sale proceeds are applied in the order specified in Section 201. However, despite several inquiries, specific examples of cases where Section 201 was followed at any given customs station could not be ascertained. One specific case, however, has become the subject of public interest. A container load of relief goods for the victims of the 2010 flood was

sent by US donors, but was abandoned by the consignee due to delays in the clearance process. When auctioned by Customs, and after adjustment for sales expenses, duties, taxes and port charges, there was no surplus of sale proceeds.

Resource Persons:

- Mr. Irfan Javaid, Additional Collector of Customs, MCC (Appraisalment), Karachi
- Mr. Javed Iqbal Butt, Former Deputy Collector of Customs (Law), MCC (Appraisalment), Karachi
- Mr. Tod Shea, CEO, Comprehensive Disaster Response Services (CDRS) F-11/2, S. No.26, H No. 80, Islamabad, Pakistan

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

Recommendations: No recommendations are deemed necessary at this time.

Chapter 4: Duties and Taxes

4.1. Standard	National legislation shall define the circumstances when liability to duties and taxes is incurred.
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Overall Assessment: Partially Compliant

Relevant Law:

- The Customs Act; Sections 18,18A, 18C, 30, 104, 131, 139 and 145
- Sales Tax Act; Sections 3, 5 and 6
- Income Tax Ordinance; Section 148
- Federal Excise Act; Section 3

Discussion:

Introductory Note: The standard requires that national legislation clearly define the circumstances *when* the liability for the payment of duties and taxes arises. The Guidelines to Standard 4.1 state:

Such circumstances arise when goods are cleared for home use after their arrival in the Customs territory or when they are cleared for home use from a free zone or a warehouse. Similarly other circumstances may also arise in administrations that have export duties and taxes when the goods are exported from the Customs territory.

Law: With respect to customs duties, Section 18(1) of the Customs Act specifies the goods on which customs duties are to be levied, but it does not define the circumstances when the liability to pay customs duties arises as required by the standard. Nor does any other provision of national legislation define the circumstances *when* the liability to pay customs duties arises in the manner prescribed by the standard. Instead, according to the annotations to Section 18 on pages 221-222 of “The Customs Act, 1969”¹³ the questions as to when a good can be said to be “imported” and when import duties become leviable have become the subject of various court decisions, presumably because of the absence of clear statutory provisions dealing with these issues.¹⁴

With respect to taxes, Section 3(1)(b) of the Sales Tax Act 1990 imposes a sales tax on goods imported into Pakistan; and Section 6 provides that sales tax will be collected and paid in the same manner and at the same time as customs duties are imposed under the Customs Act. Section 148(1) of the Income Tax Ordinance 2001 imposes an advance tax on the importer of goods calculated on the value of the goods at rates specified in Part II of the First Schedule to the Customs Act; and Section 148(5) provides for the advance tax to be collected at the same time and in the same manner as customs duty, including on goods exempt from customs duty. Finally, Section 3(1) of the Federal Excise Act imposes an excise duty on goods imported into Pakistan; and Section 3(2) of that act provides that such excise duty is to be levied and collected in the same manner and at the same time as if they were a customs duty. So the same issue regarding the lack of statutory clarity about when – exactly - the liability for customs duties arises also applies to the liability for taxes.

Practice: The standard imposes an obligation on the content of national legislation and is not directly relevant to practice issues. Nevertheless, we note that according to the interviews with the resource

¹³ N.A. Choudry & T.N. Choudry (23rd ed.; 2012-2013).

¹⁴ Passengers entering Pakistan are required by Section 139 of the Customs Act to make a verbal or written declaration for their baggage, and are made liable for duties by Section 140. And, Section 145 m makes goods entering Pakistan via the postal services liable for duties. However, again, there is no clear provision as to exactly when the liability for duties arises in the manner required by the standard.

persons specified below, it appears that Customs practice follows the law, which is only partially complaint.

Resource Persons:

- Mr. Ghulam Mustafa Malik, Tax Manager, Naubahar Bottling Company, Gujranwala
- Mr. M. Amin Bhatti, General Manager Finance, Haideri Beverages Industrial triangle, Kahuta Road, Islamabad
- Mr. Wajid Ali, Deputy Collector of Customs, MCC Port Qasim, Karachi

Conclusion: Based on the above research, it appears that the law is in partial compliance with the standard. The standard is not directly relevant to practice issues..

Recommendations: It is suggested that Section 18 of the Customs Act be amended to clearly specify the moment when the liability to pay customs duties arises. Given the rulings in the cases mentioned in annotations to Section 18, which might be read as indicating that an “import” occurs at the moment a good enters the territorial waters, it is suggested that statutory language be added to clearly specify that an import occurs at the moment a good crosses the customs frontier and enters the *customs territory* of Pakistan. And clear definitions for the terms “import/importation” and “customs territory” should be included in Section 2, the definitional section of the Customs Act. The actual legal liability to pay duties and taxes for legal imports should arise at the moment the goods are cleared for home consumption, even though using the PACCS system a payment may have been made prior to the moment of clearance. Statutory clarity on these matters is far preferable to leaving them for judicial interpretation.

Chapter 2 of the RKC defines “customs territory” as the territory of a Contracting Party in which its customs laws apply. This definition is necessary because a country’s “customs territory” is normally not completely contiguous with its sovereign borders. The concept should not be confused with “customs control”, which generally may be exercised anywhere within the country’s sovereign borders, even the areas lying outside the country’s customs territory.

4.2. Standard	The time period within which the applicable duties and taxes are assessed shall be stipulated in national legislation. The assessment shall follow as soon as possible after the Goods declaration is lodged or the liability is otherwise incurred.
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Overall Assessment: Not Compliant

Relevant Law:

- Customs Act; Section 79(1)(b), 80 and 82
- Sales Tax Act; Section 6(1)
- Federal Excise Act; Section 3(2)
- Income Tax Ordinance; Sections 148(5) and 148(6)

Discussion:

Introductory Note: The standard imposes an obligation on the content of national legislation. It requires that national legislation stipulate the time period within which the applicable duties and taxes must be assessed and that such assessment occur as soon as possible after the declaration is filed or the liability is otherwise incurred. The Guidelines for this standard provide:

Contracting Parties must ensure that their national legislation describes the point in time when duties and taxes are assessed. The assessment must follow as soon as possible after the Goods declaration is submitted or the liability is otherwise incurred. The final assessment must clearly indicate the total amount of duties and taxes owing for the transaction(s)."

Law: Section 79(1) of the Customs Act provides that the owner of imported goods shall file a declaration within fifteen days of the arrival of the goods. The declaration includes a self-assessment by the owner of the amount of duties, taxes and charges payable. Section 80 of the Customs Act provides that upon receipt of the declaration, Customs shall confirm the correctness of the declaration and assessment of the goods made under Section 79. No time limit is given for Customs to complete its confirmation of the assessment even though Section 82 provides that goods not cleared for home-consumption or otherwise removed from the port within 20 days of their arrival may be auctioned by Customs.

The Sales Tax Act, the Federal Excise Act and the Income Tax Ordinance all provide that the taxes or duties provided for therein are to be assessed and collected at the same time and in the same manner as customs duties. Therefore, the same time limit issue that applies to the assessment of customs duties also applies to the taxes and duties provided for under these three pieces of legislation.

Practice: Eighty per cent of imports are cleared through the Pakistan Computerized Customs System (PACCS) where the importer assesses and pays his duties and taxes online, and the system confirms the correctness of the self-assessment and payment virtually simultaneously.

Conclusion: The standard requires that national legislation specify the time limit for the assessment of duties and taxes. No such time limit is specified in national legislation. Therefore, the law is not in compliance with the standard. The standard is not directly concerned with practice issues.

Recommendations: It is suggested that Section 80 of the Customs Act be amended to:

- Require Customs to complete the assessment of all applicable duties and taxes as soon as possible but in no case more than five days after the declaration is filed unless there are compelling reasons as to why the assessment cannot be completed with five days;

- Provide that, if Customs cannot complete the assessment within the specified five day period, Customs is required to utilize, if the declarant is willing and able to post the required security, a provisional assessment under Section 82; and
- Provide that, if it is not possible, for whatever reason, for Customs to utilize a provisional assessment under Section 82; the 20-day removal deadline specified in Section 83 shall be extended by the number of days beyond five that it takes Customs to complete the assessment.

4.3. Standard	The factors on which the assessment of duties and taxes is based and the conditions under which they are determined shall be specified in national legislation.
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Overall Assessment: Compliant

Relevant Law:

- The Customs Act; Chapter V, in particular Sections 18C and 25
- Pakistan Customs Tariff
- Customs Rules; Chapter IX
- Rules of Origin; 1973 (S.R.O 2(13)/71 GATT; dated 27 February 1973);
- Sales Tax Act; Section 6(1)
- Federal Excise Act; Section 3(2)
- Income Tax Ordinance; Sections 148(5) and 148(6)

Discussion:

Introductory Note: The standard imposes an obligation on the content of national legislation. The standard requires that national legislation specify (1) the factors on which the assessment of duties and taxes will be based, and (2) the conditions under which those factors will be determined.

The Guidelines provide that assessment of duties and taxes are generally based on the following criteria: tariff classification; value and/or quantity; and country of origin. Customs Administrations must ensure that these criteria are specified in national legislation. The rules for determining these factors should be set out in explanatory notes drawn up by the competent authorities. National legislation must also specify the point in time when duty liability is incurred and the point in time to be used for determining the exchange rate.

Law: Tariff Classification: The Rules of Interpretation in the Pakistan Customs Tariff (PCT) provide that the PCT be interpreted in accordance with the WCO's Explanatory Notes to the Harmonized Commodity Description and Coding System (2012 version).

Value: Consistent with the WTO Agreement on Customs Valuation, the value of the goods is based on the declared transaction value or, if that is not relevant, then other methods of valuation applied in a sequential manner (see Section 25 of the Customs Act and Chapter IX of the Customs Rules).

Country of Origin: Section 18C of the Customs Act provides that the rates specified in the PCT may be reduced according to the provisions of any free trade agreement entered into between the Government of Pakistan and the Government of the exporting country. And The Rules of Origin set out documentary requirements and other evidence necessary for the importer to demonstrate country of origin.

As discussed under Standard 4.2, the Sales Tax Act, the Federal Excise Act and the Income Tax Ordinance all provide that the taxes or duties provided for therein are to be assessed and collected at the same time and in the same manner as customs duties.

Practice: The standard imposes an obligation on the content of national legislation and is not directly relevant to practice issues. Nevertheless, we note that, despite the advanced and elaborate legal framework for determining the classification, origin and value of goods, implementation has been difficult. Consistency of application has not been achieved. It is reported that, on several occasions, the determination of the transaction value of different shipments of similar goods from the same country by the same supplier had materially different outcomes. Importers, clearing agents and advocates/consultants (who deal with the disputes regarding assessment) consider that the authorities exercise their powers in a wide band of discretion, sometimes being very strict in application of law and sometimes overly flexible.

From our discussions with stakeholders and the resource persons below, it is apparent that the business community has insufficient knowledge of applicable laws and procedures, and that importers need to improve their understanding of the rules governing the assessment of duties and taxes. Likewise, Customs should arrange training for Customs officers on these matters.

Resource Persons:

- Mr. Ghulam Mustafa Malik, Tax Manager, Naubahar Bottling Company, Gujranwala
- Mr. M. Amin Bhatti, General Manager Finance, Haideri Beverages Industrial triangle, Kahuta Road, Islamabad
- Mr. Wajid Ali, Deputy Collector of Customs, MCC Port Qasim, Karachi

Conclusion: Based on the above research, it appears that the law is in compliance with the standard. Although the standard does not speak to practice issues, it is important to note serious implementation issues have been identified.

Recommendations: To promote consistency of application, Customs should arrange training for Customs officers on the proper methods for determining the various factors affecting the assessment of duties and taxes. Furthermore, trade associations could develop new training and public outreach activities to explain valuation, classification and rules of origin to their members.

4.4. Standard	The rates of duties and taxes shall be set out in official publications.
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Overall Assessment: Compliant

Relevant Law:

- Customs Act; Section 18(1)
- Pakistan Customs Tariff
- The Sales Tax; Section 3(1)
- The Income Tax Ordinance; Section 148(1) and Part II of the First Schedule
- The Federal Excise Act; Section 3(1) and the First Schedule

Discussion:

Law: Section 18 (1) of the Customs Act provides that rates of duties are prescribed in the PCT. Section 3(1) of the Sales Tax Act sets the rate of sales tax at 16 per cent of the value of the imported goods. Section 3(1) of the Federal Excise Act sets the rate of excise at 15 per cent except on goods listed in the First Schedule of that Act. Section 148(1) of the Income Tax Ordinance provides that the rates of advance income tax are prescribed in Part II of the First Schedule to the Ordinance.

Practice: Legislation and schedules of duties and taxes have been published in the official gazette; are available as printed reports sold by Customs and private sector publishers; and are available online on the FBR/Customs website www.fbr.gov.pk. For example, the Tariff Schedule is available on the FBR website at <http://download1.fbr.gov.pk/Docs/201210916104244605CustomsTariff.pdf>. Rates of duties and taxes are amended in the budget law (Finance Act) and announced in the National Budget. Such amendments are published in the official gazette and placed on FBR's web-site. A number of institutions and business associations arrange seminars on changes in rates and duties in which Customs participate to explain the impact and import of the changes.

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

Recommendations: No recommendations are deemed necessary at this time.

4.5. Standard	National legislation shall specify the point in time to be taken into consideration for the purpose of determining the rates of duties and taxes.
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Overall Assessment: Compliant

Relevant Law:

- Customs Act; Sections 30, 30A, 140 and 145
- Sales Tax Act; Section 5(b)
- Federal Excise Act; Section 3(2)
- Income Tax Ordinance; Section 148(5)

Discussion:

Introductory Note: The standard imposes an obligation on the content of national legislation.

Law: Section 30 of the Customs Act, 1969 provides that the rate of duty to be applied to any goods imported into Pakistan shall be the rate in force on the day the declaration is filed with Customs, whether entered for home consumption or entered from a bonded warehouse. If the declaration is filed in advance of arrival of the conveyance, then the rate of duty is dated as of the date the conveyance manifest is filed with Customs. If the declaration is filed through the Customs Computerized System, Section 30A of the Customs determines the rate of duty at the date of payment of the duty.

Section 140 of the Act determines the rate applicable to baggage as the rate in force on the day the relevant baggage declaration is filed. In case of parcel post, Section 145 specifies the rate to be the rate in force on the date on which the postal authorities declare the contents of the parcel to Customs.

Section 3(2) of the Federal Excise Act and Section 148(5) of the Income Tax Ordinance subject all assessment and collection of relevant taxes to the manner and timing set out in the Customs Act. Section 5(b) of the Sales Tax Act defines the same dates to determine the rate of sales tax as are defined in the Customs Act for the rate of applicable duties, i.e. date of filing of the declaration.

Practice: Although the standard does not directly apply to practice issues, we note that it appears that the referenced provisions are regularly applied, have acquired wide acceptance, and have been reviewed in detail by Superior Courts.

On the day(s) when the rates of duties taxes are likely to change (i.e. annual budget announcement) the government takes necessary measures to obtain additional security from importers to cover any increase in rates. In general, the rate payable in case of a tariff change is the rate payable as of midnight on the date the change is announced.

Conclusion: The law is in compliance with the standard. The standard does not directly apply to practice issues.

Recommendations: No recommendations are deemed necessary at this time.

4.6. Standard	National legislation shall specify the methods that may be used to pay the duties and taxes.
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Overall Assessment: Partially Compliant

Relevant Law:

- The Customs Rules; Rules 532 – 534
- Sales Tax Act; Section 6(1)
- Federal Excise Act; Section 3(2)
- Income Tax Ordinance; Sections 148(5) and 148(6)

Discussion:

Introductory Note: The standard imposes an obligation on the content of national legislation. The Guidelines for the standard provide:

All forms of payment of the duties and taxes accepted by a Contracting Party and the criteria applicable to each must be identified in national legislation. To facilitate the accounting procedure, Customs should accept payment of duties and taxes in forms other than cash, such as travellers cheques, money orders, certified cheques, uncertified cheques (in specified circumstances), bonds, credit cards, securities, etc.

The Guidelines also highly recommend electronic funds transfer.

Law: National legislation does not specify every method that may be used for the payment of duties and taxes. It appears that only electronic funds transfer via the Pakistan Customs Computerized System (PACCS) is provided for in legislation, i.e. Customs Rules 532 to 534. As discussed under Standard 4.2, the Sales Tax Act, the Federal Excise Act and the Income Tax Ordinance all provide that the taxes or duties provided for therein are to be assessed and collected at the same time and in the same manner as customs duties.

Practice: The standard imposes an obligation on the content of national legislation and is not relevant to practice issues. Nevertheless, we note that over 80% of imported goods are now cleared through PACCS with payment of duties and taxes made upon submission of the declaration. Payments via PACCS appear to be functioning smoothly. Customs also permits importers to maintain credit at the Customs Collectorate account at the National Bank of Pakistan in Karachi. Payments can be made in advance of submitting the declaration or upon final assessment by Customs.

Resource Persons:

- Mr. Zulfiqar Ahmad Kazmi, Collector of Customs, MCC, Peshawar
- Mohammad Akram Chaudary, Additional Collector, MCC, Faisalabad
- Dr. M. Asif Jah, Additional Collector, MCC, Preventive, Lahore
- Agha Shahid Majeed, Additional Collector, MCC PACCS, Karachi
- Mr. Shanshah Husnain, Additional Collector MCC Port Qasim, Karachi

Conclusion: Based on the above research, it appears that the law is in partial compliance with the standard. The standard is not directly relevant to practice issues.

Recommendations: It is suggested that a new provision be added to the Customs Rules specifying all acceptable methods of payment other than electronic funds transfer, which is already covered for PACCS by Customs Rules 532-534.

4.7 Standard	National legislation shall specify the person(s) responsible for the payment of duties and taxes.
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Overall Assessment: Substantially Compliant

Relevant Law:

- The Customs Act; Sections 79, 81, 83, 104 and 131
- The Sales Tax Act; Section 3(3)(b)
- Excise Act Section; Section 3(5)(b)
- Income Tax Ordinance; Sections 148(5) and 148(6)

Discussion:

Introductory Note: The standard imposes an obligation on the content of national legislation. The Guidelines for the standard state that national legislation should stipulate whether it is the *importer, agent, broker, or transporter* who is accountable for the payment of duties and taxes; this is to provide clarity for Customs and the trading community. The Guidelines also provide that In some instances two or more persons may be held jointly responsible.

Law: Section 79(1)(b) specifies that the “owner” of the imported goods is responsible for the payment of duties, taxes and other charges if the owner is “a registered user of the Customs Computerized System.” While over 80% of goods are cleared through the PACCS system, Section 79 does not specify who is liable for payment when the owner is not so registered. Section 83(1) states that the goods shall be released when the “owner” of any goods for home consumption has paid “the import duty and other charges, if any, in respect of the same.” Similarly, Section 104 provides that goods under bond may be cleared for home consumption if the “owner,” or a manufacturer-cum-exporter duly authorized by the owner, pays the applicable duties and charges. Section 131 permits goods to be exported if the “owner” has paid the applicable duties, taxes and other charges.

Section 81 of the Customs Act adds a degree of uncertainty by stating that the “importer” shall be responsible for paying any provisional duties if the goods cannot be timely valued or classified because the goods require testing or further inquiry. An obligation imposing the payment responsibility on the “importer” is also found in Section 3(3)(b) of the Sales Tax Act and Section 3(5)(b) of the Excise Act. Section 148(1) of the Income Tax Ordinance requires that the advance tax be collected from the “importer”; and Section 148(6) provides that the provisions of the Customs Act shall, in so far as relevant, apply to the collection of advance income tax.

Practice: Although the standard is not directly relevant to practice issues, we note that, according to interviews with the resource persons specified below, it appears that Customs practice is to place the liability for payment on the owner.

Resource Persons:

- Mr. Tanvir Ahmad, Collector of Customs, MCC, Port Qasim, Karachi
- Dr. Sarfaraz Waraich, Collector of Customs, MCC, Sambrial, Sailkot

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

Recommendations: In order for the Customs Act to be fully compliant with Standard 4.7, it is necessary for the above cited sections of national legislation to be MODIFIED and to expressly provide that the *declarant* is liable for any duties, taxes and charges applicable to the importation/exportation of goods. We note that the use of the term “owner” will be problematic where the named declarant is not the owner. Standards 3.7 (requiring that any person having the authority



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to dispose of the goods must be permitted to act as declarant) and 3.8 (requiring that the declarant be responsible for payment) are clearly implicated here.

4.8. Standard	National legislation shall determine the due date and the place where payment is to be made.
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Overall Assessment: Partially Compliant

Relevant Law:

- The Customs Act; Sections 79 and 83
- The Customs Rules; Rules 532 to 534

Discussion:

Introductory Note: The standard imposes an obligation on the content of national legislation.

Law: Neither the Customs Act nor the Customs Rules specify the due date for payment for all importers. Section 79(1)(b) of the Customs Act provides that registered users of PACCS are required to pay their self-assessed duties and taxes through an electronic funds transfer when filing their declaration through the PACCS system. Section 79(1)(b) does not specify the due date for importers not registered with PACCS. Section 83 indirectly provides some clarification by requiring that any payment made later than ten days after the date of assessment shall be subject to a penalty interest rate. This indirectly indicates that the due date is ten days after the assessment is completed. Nevertheless, as the discussion of Standard 4.2 above indicates, the due date for Customs to confirm assessment of duties and taxes is not yet specified in national legislation.

As regards the place where payment is to be made, the Pakistan Treasury Rules have authorized the National Bank of Pakistan (NBP) – a state-owned commercial/retail bank - to be a collecting agent. The State Bank of Pakistan (SBP) – the central bank - has nominated over 250 branches of NBP in the country where payment of customs duties, taxes and surcharges can be made. However, it is questionable as to whether the Treasury Rules constitute an element of “national legislation” within the meaning of that term as used in the RKC.

As discussed under Standard 4.6 above, most declarations are filed through the PACCS system and the taxes and duties are paid online to the National Bank of Pakistan under Customs Rules 532 to 534. However, for persons not registered with PACCS the situation is not as clearly provided for in national legislation as required by the standard.

Practice: The standard is not directly relevant to practice issues.

Resource Persons:

- Mr. Mohammad Yaqoob Mako, Additional Collector of Customs, Karachi Airport, MCC Karachi
- Mr. Zahid Ali Baig, Additional Collector of Customs, MCC, Islamabad
- Mr. Abdul Waheed Khan (former Collector of Customs), Consultant (Customs) Karachi
- Mr. Javed But, Former Deputy Collector of Customs, MCC Appraisalment, Karachi

Conclusion: Neither the Customs Act Law nor the Customs Rules clearly specify the payment due date for all importers, but only for importers registered with PACCS. And neither the Customs Act nor the Customs Rules specify the place of payment for importers not registered with PACCS.

Recommendations: Section 79 of the Customs Act should be amended to provide the required due date for non-PACCS users. And the Customs Rules should be amended to refer to the Treasury Rules authorizing the NBP to collect duties and taxes, and to provide a regularly updated list of the NBP branches where payment may be made.

4.9. Standard	When national legislation specifies that the due date may be after the release of the goods, that date shall be at least ten days after the release. No interest shall be charged for the period between the date of release and the due date.
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Overall Assessment: Substantially Compliant

Relevant Law :

- The Customs Act; Section 83(2)
- The Customs Rules; Rule 46(6)

Discussion:

Introductory Note: It is necessary to note that the standard does not impose an obligation on national legislation. Instead it provides that *if* national legislation allows the release of goods before the due date for payment *then* the due date must be at least ten days after the release is authorized. The Guidelines state:

Duties and taxes must usually be paid at the time when a Goods declaration is lodged or accepted or before the goods are released. When national legislation specifies that duties and taxes may be paid after the release of the goods, the period allowed for payments must be at least ten days.

So it is clear from the language of the standard and the Guidelines that the standard only applies if national legislation allows the release of goods before the due date for payment; in which case national legislation must also specify a due date for payment that is *at least* ten days after the release date. And no interest may be charged between the date of release and the due date for payment.

This standard therefore relates to situations where post-release payment of duties and taxes is possible under national legislation, a facility that is often provided by certain customs administrations, especially to large importers with an on-going volume of transactions.

Law: The Customs Act does not provide for a due date for the payment of duties and taxes to occur after the release of goods. However, Rule 46(6) of the Customs Rules provides that “the importer of urgent consignment shall, at the time of the prior release of such goods, present a bill of entry for home consumption and other necessary documents to the appropriate officer and shall pay the whole or differential amount of leviable duties, if any, within ten days of the prior release on the basis of which the appropriate officer shall finalize the provisional assessment.” Rule 43(1)(iv) defines “urgent consignment” (See discussion under Standard 3.34 above).

Section 83(2) of the Act generally provides that interest only begins to accrue after 10 days have passed since the date of *assessment*.

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

Resource Persons:

- Mr. A.C AFU, MCC (Preventive), Karachi
- Mr. Farooque Tehsin, Former Superintendent AFU, MCC (Preventive), Lahore
- Mr. Muazzam Jah, Deputy Collector of Customs, AFU, MCC (Preventive), Lahore
- Mohammad Asrar Khan, Principle Appraiser AFU, MCC, Islamabad

Conclusion:

The standard is only applicable to Rule 46(6) and Section 83(2). Rule 46(6) is in compliance with the standard as it provides for the payment of duties up to ten days after release of goods. However, Section 83(2) requires the accrual of interest during that ten day period, which creates an issue under the standard if the release date occurs after the assessment date but before the payment due date.

Recommendations: It is recommended that Section 83(2) be modified to provide that interest on any outstanding duties and taxes owed on an urgent consignment that has been released does not begin to accrue until ten days after release.

4.10. Standard	National legislation shall specify the period within which the Customs may take legal action to collect duties and taxes not paid by the due date.
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Overall Assessment: Substantially Compliant

Relevant Law :

- The Customs Act; Sections 82 and 202
- The Customs Rules; Rules 138 and 139

Discussion:

Introductory Note: The standard imposes an obligation on the content of national legislation. The Guidelines provide as follows:

When duties and taxes are not paid by the due date, it may be necessary for Customs administrations to take legal action to collect the duties and taxes. The period within which they may do so must be indicated in national legislation. Indication of this period within which legal action must be taken ensures that Customs take action in a timely manner and also provides certainty to the trade such as the period for retention of records. In addition legislation may provide that this time period shall not apply if there has been a criminal or illegal intent and empower the Customs to take legal action to collect the duties and taxes beyond this period.

In essence the standard requires that national legislation specify a limit on the time available to Customs to take legal action to collect unpaid duties and taxes. And if Customs fails to take legal action within that specified period, the collection action is time-barred.

Law: As discussed under Standard 4.8 above, the Customs Act and Customs Rules do not clearly specify a payment due date for all importers.

Section 82 of the Customs Act provides that if any goods are not cleared for home consumption etc. within twenty days of arrival at a customs station, Customs may auction the goods after due notice to the owner/agent or shipping agent.

Section 202(1) provides that any unpaid duties, taxes or other charges may be deducted from any money owed to the defaulter or any security or the proceeds of any goods owned by the defaulter and under the control of Customs, Central Excise or the Sales Tax Authorities. Rule 138(4) requires Customs to give the defaulter written notice 30 days before deducting such arrears. If arrears cannot be recovered under Section 202(1) of the Customs Act, Sections 202(2) and 202(3) and Rule 139 provide for the Initiation of recovery proceedings. But neither Section 202 nor Rule 139 or any other rule relating to the recovery proceedings specifies the period “within which the Customs may take legal action to collect duties and taxes not paid by the due date” as required by the standard.

Practice: The standard is not directly concerned with practice issues. However, according to interviews with the resource persons specified below, it appears that Customs practice follows the law.

Resource Persons:

- Mr. Saeed Jadoon, Additional Collector of Customs, MCC, Peshawar
- Mr. Javed Iqbal Butt, Former Deputy Collector of Customs (Law), MCC (Appraisal), Karachi
- Dr. Muazzam Jah, Additional Collector of Customs, AFU Lahore, MCC (Preventive), Lahore

Conclusion: Based on the above research, it appears that that the law is substantially in compliance. But neither Section 202 nor Rule 139 or any other rule relating to the recovery proceedings specifies the period “within which the Customs may take legal action to collect duties and taxes not paid by the due date” as required by the standard.

Recommendations: It is suggested that Section 202 of the Customs Act and Rule 139 of the Customs Rules be modified to specify a three year limitation period within which Customs must initiate legal action to collect unpaid duties and taxes. There should, however, be a proviso – as indicated in the Guidelines – expanding this limitation to five years if the non-payment is the result of criminal conduct. These limitation periods align with those provided in Section 32(2) and (3) for intentional and inadvertent misstatements.

4.11. Standard	National legislation shall determine the rate of interest chargeable on amounts of duties and taxes that have not been paid by the due date and the conditions of application of such interest.
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Overall Assessment: Compliant

Relevant Law:

- Customs Act; Sections 83 and 202A
- Sales Tax Act; Section 34(a)
- Excise Tax Act; Section 8

Discussion:

Introductory Note: The standard imposes an obligation on the content of national legislation.

Law: Section 83(2) of the Customs Act imposes a surcharge on the owner of the goods at the rate of KIBOR plus three percent per annum on duties and charges not paid within 10 days of the finalization of assessment. Section 202A similarly requires a surcharge to be paid, determined in the same manner as provided in Section 83(2), on the total arrears of all duties, surcharges, penalties and other amounts demanded under Section 202(2) or an adjudication order and not paid within the requested period of time.

Section 34(a) of the Sales Tax and Section 8 of the Excise Tax Act impose a similar surcharge (KIBOR plus three percent) on unpaid tax.

Practice: The standard is not directly concerned with practice issues. However, according to interviews with the resource persons specified below, it appears that Customs practice follows the law.

Resource Persons:

- Mr. Saeed Jadoon, Additional Collector of Customs, MCC, Peshawar
- Mr. Javed Iqbal Butt, Former Deputy Collector of Customs (Law), MCC, (Appraisalment), Karachi
- Dr. Muazzam Jah, Additional Collector of Customs, AFU Lahore, MCC (Preventive), Lahore

Conclusion: Based on the above research, it appears that the law is in compliance with the standard.

Recommendations: No recommendations are deemed necessary at this time.

4.12. Standard	When the duties and taxes have been paid, a receipt constituting proof of payment shall be issued to the payer, unless there is other evidence constituting proof of payment.
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Overall Assessment: Compliant

Relevant Law:

- The Customs Rules; Rules 204 and 532-534

Discussion:

Introductory Note: Although Standard 4.12 does not expressly impose any requirement on the content of national legislation, the use of the word “shall” in the standard indicates that the standard can only truly be complied with if there are rules imposing the requirements of the standard. The need for written rules on this matter is also indicated by Standard 1.2, which provides that the conditions and formalities for all “procedures” and “practices” covered by the RKC annexes must be included in national legislation and be as simple as possible. And it is difficult to see how routine and uneventful compliance with the standard can be achieved unless transparent rules on the subject of the standard are set forth in the Customs Act or Customs Rules.

Law: The Customs Law does not expressly provide for a receipt to be issued to all payments of duties and taxes. Rule 204 provides that a receipt shall be given for all payments of arrears. Customs Rules 532 to 534 provide for online payment of duties and taxes by importers registered with PACCS.

Practice: All payments in connection with duties, taxes, and surcharges to Customs are made through banks which issue receipts in acknowledgement of the payments. Customs recognizes such payment receipts as proper discharge of liability of payment of duties and taxes. This system of bank transfers has been working smoothly for many years.

Conclusion: Standard 4.12 does not apply to the content of national legislation. And Customs practice is in compliance with this Standard.

Recommendations: No recommendations are considered necessary at this time.

4.13 Transitional Standard	National legislation shall specify a minimum value and/or a minimum amount of duties and taxes below which no duties and taxes will be collected.
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Overall Assessment: Compliant

Relevant Law:

- The Customs Act; Section 19C.

Discussion:

Introductory Note: The standard imposes an obligation on the content of national legislation.

Law: Section 19C of the Customs Act sets a *de minimis* value of duties and taxes payable for a single Goods declaration at one hundred rupees.

Practice: The standard is not directly concerned with practice issues. However, according to the interviews with the resource persons specified below, it appears that Customs practice follows the law.

Resource Persons:

- Mr. Saeed Khan Jadoon, Additional Collector of Customs, MCC, Peshawar.
- Mr. Javed Iqbal Butt, Former Deputy Collector of Customs (Law), MCC (Appraisalment), Karachi.
- Dr. Muazzam Jah, Additional Collector of Customs, AFU Lahore, MCC (Preventive), Lahore.

Conclusion: The law is in compliance with this Standard.

Recommendations: Despite the compliance of the law, we suggest that Section 19C be amended to increase the one hundred rupee *de minimis* to a bit higher amount, e.g., 500 or 1,000 rupees

4.14. Standard	<p>If the Customs find that errors in the Goods declaration or in the assessment of the duties and taxes will cause or have caused the collection or recovery of an amount of duties and taxes less than that legally chargeable, they shall correct the errors and collect the amount underpaid. However, if the amount involved is less than the minimum amount specified in national legislation, the Customs shall not collect or recover that amount.</p>
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Overall Assessment: Compliant

Relevant Law:

- The Customs Act; Sections 19C, 32(3) and 206.
- The Sales Tax Act; Section 36
- Federal Excise Act; Section 14

Discussion:

Introductory Note: This standard requires Customs to collect any underpayment of duties and taxes if it is discovered that the importer completed the declaration in error without intent to defraud or alternatively Customs assessed the required duties and taxes in error.

Law: Section 206 provides that Customs may correct clerical errors in any decision or order of the Federal Government, Board or Customs at any time. Section 32(3) of the Customs Act requires Customs to send the owner a notice demanding payment of a shortfall when the shortfall has been caused by an error that was inadvertent or caused by misconstruction; but the notice must be issued within three years of the “relevant date”, as defined in Section 32(5), except where the error is discovered through an audit, in which case Section 32(3A) provides that the time period for issuing the notice is five years from the relevant date . If the error was made knowingly, section 32(2) provides that the period for issuing the notice is five years. Section 36 of the Sales Act provides for the same time periods except no provision is made for underpayments discovered through an audit. Section 14 of the Federal Excise Act provides a three year period to collect underpayments in error.

Sections 32(3) and (3A) of the Customs Act explicitly provides that Customs shall not seek to recover underpayments of duties and charges resulting from inadvertent errors having a value of less than one hundred Rupees. Section 19C limits the value of any duties and taxes payable under a single declaration to greater than 100 Rupees.

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

Resource Persons:

- Mr. A.C AFU MCC (Preventive), Karachi.
- Mr. Farooque Tehsin, Former Superintendent AFU, MCC (Preventive), Lahore.
- Mr. Muazzam Jah, Deputy Collector of Customs, AFU, MCC (Preventive), Lahore.
- Mr. Mohammad Asrar Khan, Principle Appraiser AFU, MCC, Islamabad.
- Mr. Javed Iqbal Butt, Former Deputy Collector of Customs (Law), MCC (Appraisalment), Karachi.
- Mr. Muhammad Jamel Khan, Law Officer, MCC, Peshawar.

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

Recommendations: No recommendations are considered necessary at this stage.

4.15. Standard	Where national legislation provides for the deferred payment of duties and taxes, it shall specify the conditions under which such facility is allowed.
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Overall Assessment: Substantially Compliant

Relevant Law:

- The Customs Act; Section 21A
- The Customs Rules; Rules 314-324

Discussion:

Introductory Note: The standard imposes an obligation on the content of national legislation, but only if national legislation provides for the deferred payment of duties and taxes.

Law: Section 21A(1) of the Customs Act authorizes the FBR to prescribe rules governing the deferment of the collection of customs duties either in whole or in part. That section authorizes the FBR to prescribe “such conditions, limitations and restrictions as it thinks fit to impose.” Section 21A(2) of the Act imposes a surcharge on the deferred amount at an annual rate not to exceed KIBOR plus three per cent from such date and in the manner as the Board may by rules prescribe. However, Section 21A(2) does not specify how to determine which of the various KIBOR rates to use (there are various KIBOR rates in effect at any one time, and these vary depending on the term of the credit).

Customs Rules 314-321 set out the procedures and conditions for deferred payment on imports of machinery by industry and ships intended to be broken-up for scrap. Under those rules, a deferred payment is allowed for up to 50% of the assessed duty and the period of deferment is three years. Rule 317 provides that a surcharge at the annual rate of 14% shall be payable on the deferred amount; which appears to be inconsistent with the KIBOR plus three percent (3%) rule established by Section 21A(2) of the Customs Act. And there are other inconsistencies in the rules; e.g., between the proviso of Rule 314 and Rules 315 and 316. Rules 318 and 319 require that Customs be provided with a bank guarantee for the deferred amount.

Rules 322 to 324 set out the procedures and conditions for the deferred payment of duties on ships imported for breaking-up. Rule 322 contains the definitions applicable to these rules, and defines the term “initial payment” as the payment due within fifteen days of the filing of the declaration; however, that definition is inconsistent with the payment schedule of Rule 323. Under Rule 323, forty percent (40%) of the applicable duties on such ships is payable at the time the declaration is filed; thirty percent (30%) is payable thirty days later, and the remaining thirty percent (30%) is payable 30 days after the second payment. There are also problems with Rule 324: paragraph (4) refers to “rule 4”, but there is no “rule 4”, so this must mean Rule 323. And Rules 322-324 make no provision for the imposition of a surcharge on the deferred payment of duties on such ships; and this may be inconsistent with Section 21A(2), which provides that “a surcharge not exceeding KIBOR plus three per cent per annum *shall* also be payable on the deferred amount from such date and in the manner as the Board may by rules prescribe.” If the FBR desires that the surcharge not be applicable for the first 60 days of the deferment period, this should be made clear in the rules.

Practice: The standard does not concern practice issues. Nevertheless, it is reported that importers are having difficulty in obtaining a release of their security by Customs after the deferred duties have been paid.

Resource Persons:

- Mr. Tanvir Ahmad, Collector of Customs, MCC, Port Qasim, Karachi.

- Mr. Fazal Yazdani, Collector of Customs, MCC (Preventive), Lahore.
- Dr. Arsalan Subaktageen, Collector of Customs, MCC, Gwadar.

Conclusion: Based on the above research, it appears that the law is in substantial compliance with the standard.

Recommendations: The reference in Section 21A(2) to KIBOR needs to be further elaborated to better identify the method required for choosing the applicable KIBOR rate. And the internal inconsistencies and the definitions in the Rules need to be clarified, as does the inconsistency between Rules 317 and the requirement of Section 21A(2) of the Customs Act. Finally, Rules 322 - 324 need to be more explicit that the surcharge required by 21A(2) will not apply for the first 60 days of the deferred period.

4.16. Standard	Deferred payment shall be allowed without interest charges to the extent possible.
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Overall Assessment: Partially Compliant

Relevant Law:

- The Customs Act; Section 21A (2).
- The Customs Rules; Rules 317, and 322 to 324.

Discussion:

Law: The discussion under Standard 4.15 above describes the current provisions on the deferment of customs duties. Rule 317 appears to require the application of the surcharge immediately, beginning on the date the declaration is filed. However, Rules 322-324 are silent on the imposition of the surcharge, which – as pointed out above - may be inconsistent with Section 21A(2) of the Customs Act.

Practice: Practice appears consistent with the law. The high level of the surcharge on deferred payment of duties on machinery is discouraging importers deferring payment of duties on such imports.

Conclusion: Rule 317 is not consistent with the standard as it does not allow any interest-free period with respect to the deferred amount. Rules 322-324 are not inconsistent with the standard, but should nevertheless be clarified as provided in the recommendations under Standard 4.15.

Recommendations: Rule 317 should be modified to provide for a 15 or 30 day interest free period on the deferred amount.

4.17. Standard	The period for deferred payment of duties and taxes shall be at least fourteen days.
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Overall Assessment: Compliant

Relevant Law:

- The Customs Act; Section 21A
- The Customs Rules; Rules 316 and 323

Discussion:

Introductory Note: This standard must be read in conjunction with Standards 4.15 and 41.6. Particularly, Standard 4.15 makes it clear that deferments are not required; that standard only provides that, if deferments are allowed, the terms and conditions must be specified in national legislation.

Law: As discussed under Standard 4.15 above, Section 21A of the Customs Act authorizes the FBR to defer the collection of customs duties either in whole or in part “subject to such conditions, limitations and restrictions as it thinks fit to impose.” Rules 314-324 of the Customs Rules set out the procedures and conditions for deferred payment on imports of industrial machinery and ships to be broken. Rule 316 provides for a three year deferred payment on fifty percent of the total duty assessed on imported machinery, and therefore complies with Standard 4.17. And Rule 323 provides a schedule for the deferred payment of up to 60% of the duties on ships imported for breaking. Rule 323 provides that the first payment of the deferred amount is due 30 days after the filing of the declaration, and therefore complies with the standard.

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

Resource Persons:

- Dr. Arslan Subatetageen, Collector of Customs, MCC, Gawadani.
- Mr. Shehanshah Husnain, Additional Collector of Customs, MCC Port Qasim, Karachi.
- Mr. Javed Iqbal Butt, Former Deputy Collector of Customs (Law), MCC (Appraisalment), Karachi.
- Mr. Muhammad Jameel Khan, Law Officer, MCC, Peshawar.

Conclusion:

While Section 21A of the Customs Act gives FBR the discretion to set any period of deferred payment to be less than fourteen days, in practice the FBR has exercised this discretion to set periods for longer than fourteen days. Therefore, the legislation and the practice are in compliance with this standard.

Recommendations: No recommendations are deemed necessary at this time.

4.18 Standard	Repayment shall be granted where it is established that duties and taxes have been overcharged as a result of an error in their assessment.
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Overall Assessment: Not Compliant

Relevant Law:

- Customs Act; Sections 33 and 19A
- Federal Excise Act, Section 44
- Sales Tax Act, Section 66

Discussion:

Introductory Note: The implementation of Standard 4.18 is mandatory for Pakistan, and the standard admits of no exceptions. It requires that, where it is established that duties and taxes have been overpaid as a result of an error in their assessment, those duties and taxes *shall* be repaid.

Law: Section 33(1) of the Customs Act provides that no duty or charges claimed to have been paid or over-paid through inadvertence, error or misconstruction shall be allowed unless claimed within one year of the date of payment. And a proviso to Section 33(1) provides that repayment shall not be allowed “if the sanctioning authority is satisfied that the incidence of customs duty and other levies has been passed on to the buyer or the consumer.” Section 19A of the Customs Act establishes a presumption that the full incidence of such customs duty and other levies has been passed on the buyer as part of the price of such goods; and the Section 19A places the burden on the person who has paid the duty and other levies to prove that they have not been so passed on.

The proviso was inserted in Section 33(1) by the Finance Act, 2009, following the decision of the Supreme Court in *Fecto Belarus Tractor Limited v. Government of Pakistan*, PLD 2005 SC 65, which held that an importer could not unjustly enrich itself by obtaining a refund of overpaid duties and taxes if the incidence of the overpayment had been passed on to consumers.

With respect to excise duties, Section 44 of the Federal Excise Act provides that a refund claim for duty accrued under the Act must be filed within one year of their accrual. And Section 66 of the Sales Tax Act provides that no sales tax paid or over-paid through inadvertence, error or misconstruction shall be allowed unless the refund is claimed within one year of the date of payment.

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

Resource Persons:

- Dr. Arslan Subatetageen, Collector of Customs MCC, Gwadar.
- Mr. Shehanshah Husnain, Additional Collector of Customs, MCC Port Qasim.

Conclusion: This proviso in Section 33(1) and the presumption established by Section 19A are contrary to the standard. Compliance with Standard 4.18 is an obligation imposed by an international legal agreement. Standard 4.18 is clear, simple and admits of no exceptions, whatever the reason. Therefore, there is a clear and unavoidable conflict between the requirements of this international obligation and the decision of the Supreme Court in *Fecto* and the provisions of Sections 19A and 33(1) of the Customs Act.

Recommendations: The non-compliance of the Customs Act with a mandatory obligation created by an international legal agreement due to a decision of the Supreme Court raise a number of complex legal issues. It is beyond the scope of this report to fully brief these issues, and to suggest a way of resolving the conflict. However, we note that, from our review of the *Fecto* case, the facts of that case all occurred prior to 3 February 2006, the date the RKC came into effect for Pakistan; and it

does not appear as if the Supreme Court was aware of or took into account the requirement of Standard 4.18 when it heard the case in January of 2005. Furthermore, it also appears as if the Court's ruling was significantly influenced by the very specific circumstances of that case, and may not have been intended to create a general rule governing all refund applications. We recommend that a thorough and professional legal review of the case, the legislative history of the concerned provisions, and the other relevant law of Pakistan be performed with an eye to determining the most legally appropriate course of action to bring Pakistan into compliance with the international legal obligation created by Standard 4.18.

4.19 Standard	<p>Repayment shall be granted in respect of imported or exported goods which are found to have been defective or otherwise not in accordance with the agreed specifications at the time of importation or exportation and are returned either to the supplier or to another person designated by the supplier, subject to the following conditions :</p> <ul style="list-style-type: none"> • The goods have not been worked, repaired or used in the country of importation, and are re-exported within a reasonable time • The goods have not been worked, repaired or used in the country to which they were exported, and are re-imported within a reasonable time. <p>Use of the goods shall, however, not hinder the repayment if such use was indispensable to discover the defects or other circumstances which caused the re-exportation or re-importation of the goods.</p> <p>As an alternative to re-exportation or re-importation, the goods may be abandoned to the Revenue or destroyed or rendered commercially valueless under Customs control, as the Customs may decide. Such abandonment or destruction shall not entail any cost to the Revenue.</p>
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Overall Assessment: Not Compliant

Relevant Law:

- [None]

Discussion:

Introductory Note: The Guidelines state that “Standard 4.19 of this Chapter is about repayment of duties and taxes for goods that are found to be defective or otherwise not in accordance with the agreed specifications at the time of importation/exportation.” The standard covers both imports and exports. Although Pakistan does not currently impose duties and taxes on exports, there is no guarantee that such duties and taxes will not be imposed in the future; therefore national legislation must contain provisions implementing the standard for both imports and exports, but it is only possible today to review the practice with respect to imports.

Law: There is no provision in the Customs Act to repay duty and taxes already collected on imported goods which are later re-exported to the supplier or his designated person when such goods are found to be defective or not in accordance with specifications.

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

Resource person:

- Syed Tanvir Ahmad, Collector of Customs, MCC, Port Qasim, Karachi.
- Mr. Fazal Yazdani Khan, Collector of Customs, MCC (Preventive), Lahore.
- Mr. Javed Iqbal Butt, Former Deputy Collector of Customs (Law), MCC (Appraisalment), Karachi.
- Mr. Muhammad Jameel Khan, Law Officer, MCC, Peshawar.
- Dr. Arsalan Subaktageen, Collector of Customs, MCC, Gwadar.

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

Recommendations: It is suggested that a new provision be added, e.g., as new Section 22B, in the Customs Act to implement the requirements of Standard 14.19.

<p>4.20. Transitional Standard</p>	<p>Where permission is given by the Customs for goods originally declared for a Customs procedure with payment of duties and taxes to be placed under another Customs procedure, repayment shall be made of any duties and taxes charged in excess of the amount due under the new procedure.</p>
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Overall Assessment: Partially Compliant

Relevant Law:

- The Customs Act; Section 33
- The Customs Rules; Rule 538-545.

Discussion:

Introductory Note: The Guidelines state that Standard 4.20 applies to situations where goods are originally declared under one Customs procedure and are then placed under another that either reduces or eliminates the amount of duties and taxes chargeable. Normally, such permission would be sought within a short time of the original declaration, for example because an error was made in indicating the Customs procedure to be applied to the goods.

Standard 3.29 is implicated here. That standard requires that the declarant must be allowed to withdraw the declaration and to apply for another customs procedure if the request to do so is made before the goods have been released and the reasons for the request are deemed valid by the Customs.

Law: Section 33 is of some relevance (but not the proviso in Section 33(1) because the goods would not have yet been released in the situation covered by Standard 4.20). The Supreme Court in *Pfizer Laboratories v Federation, PLD 1998 SC 64* interpreted Section 33 of the Customs Act as being applicable to repayments of duties paid in error, inadvertence or misconception, but only in situations when duties were otherwise payable. Section 33 is therefore not applicable where the Customs permits the goods to be placed a different procedure, the situation covered by the standard.

If the change in procedure involves the cancellation of the original declaration, Customs and Rule 542 directs Customs to refund duties, taxes and other charges, if any, except income tax and processing charges, when the cancelled declaration has been filed through PACCS.

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

Resource Persons:

- Mr. Fazal Yazdani, Collector of Customs, MCC (Preventive), Lahore.
- Mr. Javed Iqbal Butt, Former Deputy Collector of Customs (Law), MCC (Appraisalment), Karachi.
- Mr. Muhammad Jameel Khan, Law Officer, MCC, Peshawar.

Conclusion: Based on the above research, it appears that the law and practice are in partial compliance with the standard. First, the exception for income taxes in Rule 542 is not in compliance with the standard. Second, Rule 542 only applies when the declaration has been filed through PACCS.

Recommendations: It is recommended that Section 33 of the Customs Act be amended to add a provision requiring that, if Customs permits the goods to be placed under a customs procedure other than the one for which the declaration was originally filed, Customs must refund any duties and taxes charged in excess of the amount due under the new procedure. It is further recommended that Rules 538 – 545 be amended to comply with the new provision of Section 33 of the Customs Act.

4.21 Standard	Decisions on claims for repayment shall be reached, and notified in writing to the persons concerned, without undue delay, and repayment of amounts overcharged shall be made as soon as possible after the verification of claims.
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Overall Assessment: Marginally Compliant

Relevant Law:

- The Customs Act; Section 33
- The Customs Rules; Rules 538-545
- Federal Excise Act; Section 44A
- Sales Tax Act; Section 66

Discussion:

Law: The Customs Act does not set a time limit for Customs to refund payments of duties and charges after receiving a request for repayment. Neither the Customs Act nor the Customs Rules explicitly direct Customs to notify the claimant in writing of their decision to issue the refund, nor provide any direction for Customs to refund payments promptly. And Rule 541 provides only that Customs shall inform, via “online” communication, the Collectorates of Sales Tax and Federal Excise of the approved refunds of tax and excise. Rule 541 does not require notice to the claimant.

Section 44A of the Excise Act provides for payment of interest (at the rate of KIBOR per annum) on late refunds of any payment under the Act. Section 66 of the Sales Tax Act requires all claims for refund of overpayments to be decided within 90 days.

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

Resource Persons:

- Mr. Abdul Waheed Khan, Former Director General Training (Customs) and Former Member (Technical) Customs Appellate Tribunal, Karachi.
- Mr. Arif Moton, Former Member (Judicial) Customs Appellate Tribunal, Islamabad.
- Dr. Sarfraz Warachi, Collector of Customs, MCC, Port Qasim, Karachi.

Conclusion: Based on the above research, it appears that the law and practice are in marginal compliance with the standard. Neither the Customs Act, nor the Customs Rules nor the Excise Act provide for a prompt decision or notice to the claimant as required by the standard. The Sales Tax Act, however, does require a decision within 90 days; however, even that seems significantly longer than the period required by the standard's “without undue delay” language.

Recommendations: It is suggested that Section 33 be amended to require Customs to reach a decision and to notify the claimant in writing of that decision – with an explanation if the claim is denied in whole or in part - within 30 days after the refund claim is submitted. Section 33 should also be amended to require Customs, if the claim has been accepted in whole or in part - to actually pay the refund within ten days after the decision is reached. Customs should also be required to pay interest – at the then applicable one week KIBOR rate plus three percent - if the repayment is not made within the ten day period. Similar adjustments should be made to the Sales Tax Act and the Excise Act.

4.22. Standard	Where it is established by the Customs that the overcharge is a result of an error on the part of the Customs in assessing the duties and taxes, repayment shall be made as a matter of priority.
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Overall Assessment: Partially Compliant

Relevant Law:

- The Customs Act; Sections 33 and 206
- The Sales Tax Act; Section 57

Discussion:

Law: Neither the Customs Act nor the Customs Rules provide for Customs to expedite repayment of duties and taxes overcharged due to a Customs' error. Section 206 of the Customs Act only covers clerical and arithmetical errors by Customs, but not every type of assessment error. And Section 206 only provides that such clerical and arithmetical errors may be corrected the FBR, the Government or a Customs officer.

Section 57 of the Sales Tax Act provides similarly for the correction of clerical errors relating to sales tax. There is no applicable provision in the Excise Act.

Practice: It is a matter of general practice that such cases are given priority for early adjustment or repayment. This has been confirmed by our resource persons. It is also a matter of common knowledge that such cases occur infrequently and, therefore, these are expeditiously settled.

Resource Persons:

- Mr. Tanvir Ahmad, Collector of Customs, Port Qasim, Karachi.
- Mr. M. Ibrahim Vighio, Collector of Customs, MCC, Quetta.
- Mrs. Zeba Haye, Collector of Customs, MCC, Appraisement, Lahore.

Conclusion: Despite the apparent compliant practice of expediting refunds for the overpayment of duties and taxes resulting from a Customs' error, there is no requirement in national legislation to do so. The practice appears therefore to be compliant with the standard, but the law is silent on the issue.

Recommendations: It is recommended that Section 33 of the Customs Act, Section 57 of the Sales Tax Act, and Section 44A of the Excise Act be amended to add a provision reflecting the requirement of the standard and requiring the refund of overpayments caused by an error in Customs' assessments within no more than ten days after Customs determines that its responsibility for the error. Customs should also be required to pay interest – at the then applicable one week KIBOR rate plus six percent - if the repayment is not made within the thirty day period. Care should be taken to ensure that these provisions do not diminish the generally applicable requirements of the provisions recommended under Standard 4.21.

4.23. Standard	Where time limits are fixed beyond which claims for repayment will not be accepted, such limits shall be of sufficient duration to take account of the differing circumstances pertaining to each type of case in which repayment may be granted
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Overall Assessment: Compliant

Relevant Law:

- The Customs Act; Sections 33 and 224
- The Sales Tax Act; Section 66
- Federal Excise Act; Section 44

Discussion:

Law: Section 33 provides that claims for the refund of overpayments made through inadvertence, error or misconstruction must be filed within one year of the date of payment. Claims shall be filed with Customs within one year after, as applicable: (1) the date of payment, (2) the date of the final adjustment of provisional duties under Section 81, or (3) the date of the decision or judgment by the appropriate officer of Customs, the FBR, the Appellant Tribunal or a Court requiring the refund.

And Section 224 of the Customs Act provides as follows:

The Federal Government, the Board or the appropriate officer of customs, may, upon being approached by an aggrieved party if satisfied that the delay was beyond the control of the applicant and that by granting such extension there is a possibility of some loss or hardship to the applicant being mitigated or prevented, condone the delay and extend the time limit laid down in this Act or the rules made thereunder.

The appropriate Customs officer has the discretion to extend the one year time limit specified in Section 33 “if satisfied that the delay was beyond the control of the applicant and that by granting such extension there is a possibility of some loss or hardship to the applicant being mitigated or prevented.”

Section 66 of the Sales Tax Act contains time limit provisions that are similar to those in Section 33 of the Customs Act. Section 44 of the Federal Excise Act provides for the filing of claims for refunds of excise duty accrued under the Act for within one year after their accrual.

Practice: According to interviews with the resource persons specified below, it appears that Customs practice follow the law. In practice refund claims are normally filed within one year. A delay in filing a claim for refund after one year is rare.

Resource Persons:

- Mr. Syed Tanvir Ahmad, Collector of Customs Port Qasim, Karachi
- Mt. Irfan Javed, Additional Collector Customs, MCC, PACCS, Karachi

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

Recommendations: No recommendations are considered necessary.

4.24. Standard	Repayment shall not be granted if the amount involved is less than the minimum amount specified in national legislation.
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Overall Assessment: Compliant

Relevant Law:

- The Customs Act; Sections 19B and 19C

Discussion:

Introductory Note: The standard is ambiguously worded, so it is not clear whether the standard requires that such a minimum be specified in national legislation. And the Guidelines indicate that the repayment may be made by Customs even if it is lower than the statutory minimum.

Law: Section 19C of the Customs Act provides that Customs may not demand payment of cumulative duties and taxes under any declaration if the cumulative value is less than one hundred rupees. However, Section 19B of the Customs Act, which requires the rounding of amounts to the nearest 100 rupees, does set a minimum amount refunds. Section 19B provides that

The amount of duty, interest, penalty, fine or any other sum payable and the amount of refund, draw back or any other sum due under the provisions of this Act shall be rounded to the nearest one hundred rupees. For this purpose, where such amount is fifty rupees or more it shall be increased to one hundred rupees and if such sum is less than fifty rupees, it shall be ignored.

Therefore, Section 19B indicates that refund amounts of less than 50 rupees are to be ignored, i.e. not paid.

Practice: Based on interviews with the resource persons, the requirement in Section 19B that an amount owed that is less than 50 rupees is to be ignored is being observed only occasionally. However, this cannot be said to be non-compliant with the standard as elaborated in the Guidelines.

Resource persons:

- Mrs. Zeba Haye, Collector of Customs, MCC, Appraisement, Lahore.
- Dr. Arsalan Subaktagin, Collector of Customs, MCC, Gwadar.
- Mr. M. Iqbal Muneeb, Additional Collector of Customs, MCC, Appraisement Karachi.

Conclusion: The law and the practice are in compliance with the standard.

Recommendations: No recommendations are deemed necessary at this time.

Chapter 5: Security

5.1. Standard	National legislation shall enumerate the cases in which security is required and shall specify the forms in which security is to be provided.
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Overall Assessment: Substantially Compliant

Relevant Law:

- The Customs Act; Sections 34, 57, 81, 86, 101, 102, 108, 121 and 132.
- The Customs Rules; Rules 45, 54, 318, 328, 343(f), 537 and 619-629.
- General Order; 12/2012 (Order number 11 (shipping containers) and Order Number 12 (transshipment of liquid bulk cargo))
- Government of Pakistan Model Customs Collectorate, Customs House Karachi. Public Notice No.1/2010 dated 25 January 2010.
- Government of Pakistan Model Customs Collectorate Port Muhammad Bin Qasim, Karachi. Public Notice No.1/2010 ESTT (PQ) dated 1 February 2010.

Discussion:

Introductory Note: The standard imposes an obligation on the content of national legislation. It requires that national legislation specify when security is required and the form in which the security is to be provided.

Law: The Customs Act, the Customs Rules, and notifications and general orders issued thereunder provide for a number of situations, as well as the form of security required in each situation, where security is required from traders, warehouse operators and transport operators.

Sections 34 and 57 permit a customs officer to allow the furnishing of security in lieu of actual payment in the circumstances specified in those sections. Section 81 permits the provisional determination of duties, taxes and other charges if the importer provides a bank guarantee, pay order, or post-dated check of a scheduled bank along with an indemnity bond. Section 86 requires owners of goods entered into warehouses to post an indemnity bond and a post-dated check. Section 101 requires persons moving goods between warehouses to post a bond; a person regularly moving goods between warehouses may be permitted by the Collector of Customs to post a general bond under Section 102. If goods in a warehouse are damaged, Section 108 permits the owner to replace the original bond with a new bond. Section 121 permits Customs to require importers to post a bond on goods being transhipped between customs stations. Section 132 requires certain exports to be covered by a bond until exported.

Customs Rules also require the following persons to post a security with Customs: Rule 45 (pre-release); Rule 54 (auctioneers); Rule 318 (deferment of duties on machinery); Rule 328 (bonded carriers); Rule 343(f) (bonded warehouse owners); Subchapter IV of Chapter XXV (importer and transport operator conducting transit trade with Afghanistan); Rule 537 (deposits in PACCS accounts). Templates for surety bonds are provided in a Schedule to Rule 54 and appendices to Rules 313, 328 and 343 provide templates for other forms of security.

Order number 11 of General Order; 12/2012 requires a bank guarantee equivalent to the duties and taxes payable on shipping containers remaining in Pakistan longer than six months. Order Number 12(1) requires a bond or general bond for unloading and storing liquid cargo at Karachi and 12(4) requires a bank guarantee equivalent to duties and taxes for transporting the liquid cargo inland.

SRO 678(I)/2004 dated 07-08-2004 678/2004 has no form but does provide for a corporate guarantee when machinery import exemptions are under dispute. The forms of the bank guarantee

and Indemnity Bond are also prescribed in the following SRO's: 538(I)/1992 dated 01-06-1992; 27(I)/1998 dated 17-01-1998; and 727(I)/2011 dated 01-08-2011

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

Resource Persons:

- Mr. Muhammad Adnan, Supply Chain Manager, Schlumberger, I-10, Islamabad.
- Mr. Nasir Chandna, Customs House Agent, Karachi.
- Irfan Javed, Additional Collector of Customs, MCC Appraisement, Karachi
- Qurban Ali Khan, Additional Collector of Customs, AFU, Islamabad.

Conclusion: While customs legislation specifies the situations when security is required, there is variation among provisions specifying the type of security required. Sections 34 and 57 of the Customs Act refer to "such security as such officer deems sufficient" without specifying what type of security. However, all other provisions enumerating the situations when security is required also specify the form of security required.

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

Recommendations: Sections 34 and 57 of the Customs Act are amended to specify the type of security required in each situation. All other provisions enumerating the situations when security is required are reviewed and amended where necessary to ensure the type of security required is clearly specified.

5.2 Standard

The Customs shall determine the amount of security.

Overall Assessment: Partially Compliant

Relevant Law:

- The Customs Act; Sections 34, 57, 81, 86, 101, 102, 108, 121 and 132.
- The Customs Rules; Rules 45, 54, 313, 328, 343(f), 537 and Subchapter IV of Chapter XXV Pakistan-Afghanistan Trade Transit Rules
- Customs General Order 12/2002.
- Public Notice/Letters:
 - Government of Pakistan Model Customs Collectorate Customs House Karachi. Public Notice No.1 /2010 dated 25-01-2010.
 - Government of Pakistan Model Customs Collectorate Port Muhammad Bin Qasim, Karachi. Public Notice No.1/2010 ESTT (PQ) dated 1-02-2010.

Discussion:

Law: The amount of security is determined by Customs based on value of the duties and taxes at risk. Section 34 requires an importer to post security, of sufficient value in the opinion of Customs, when settling duty and tax liabilities with Customs on a monthly basis. Section 57 permits transport operator agents to post a security in support of permission for the conveyance to depart the customs controlled area. Section 81 requires the importer to pay the likely difference between the provisional and final determinations of duties and taxes or furnish a guarantee or bond. Section 86 requires a bond and post-dated cheque equivalent to the duty assessed. Section 101(2) requires a bond of at least the value of the duties. Section 102 permits a general bond for such amount as the Collector approves. Section 108 permits a new bond for twice the amount of diminished duty of the damaged goods. Section 121 permits Customs, at its discretion, to impose a security or bond on goods transhipped. Section 132 requires a bond not exceeding twice the duties on certain exports.

Rule 45 (guarantee or pay order for duties assessed on pre-release); Rule 54 (auctioneers shall furnish a surety bond and a bank guarantee of 50,000 rupees); Rule 343(f) (a warehouse operator shall furnish a general bond); Rule 313 (requires a bank guarantee for the deferment of duties and taxes on the importation of machinery); Rule 328 (bonded carriers shall provide a bank guarantee, Defence Savings Certificates with a value of five million rupees or at the discretion of Customs a revolving insurance guarantee); Rule 537 (enable deposits in Pre-Pact to be used as security); Rule 619 (transit transport operators to lodge a bank guarantee or revolving guarantee equivalent to ten percent of duties and taxes).

Practice: In practice, following the legal provisions, Customs determines the amount of security, corresponding to the duties and taxes involved. In PACCS/ WeBOC, the amounts are calculated by the system and are sent through Yellow channel. In One-Customs, assessment is done by assessing officers. It appears that in any situation where Customs legislation is unclear as to the value of the security to be posted, Customs calculates the value to be equivalent to the value of the duties and taxes at risk.

Resource Persons:

- Syed Tanvir Ahmed, Collector of Customs, Karachi.
- Mr. Nasir Chandna, Customs House Agent, Karachi.
- Mr. Muhammad Adnan, Supply Chain Manager, Schlumberger, I-10, Islamabad.
- Mr. Nasir Chaandna, Customs House Agent, Karachi.
- Mr. Irfan Javed, Additional Collector of Customs, MCC Appraisalment, Karachi.
- Mr. Qurban Ali Khan Additional Collector of Customs, AFU Islamabad.

Conclusion: Law and practice comply with the first test of the Standard but not the second test. Each provision of the Customs legislation discussed above, provides that Customs shall determine the value of security required in each situation. However, the majority of provisions do not clearly specify the method to calculate the value of a security. Sections 34, 57, 102 and 121 do not specify any method for calculation – leaving determination of value to the opinion of the Customs officer. In practice, when legislation is unclear, Customs appears to apply a default method of calculation equivalent to the value of duties and taxes at risk. The law and practice are in partial compliance with the standard.

Recommendations: All provisions requiring a security to be posted with Customs shall clearly specify the method Customs shall apply to calculate the value of the security. In particular, Sections 34, 57, 102 and 121 of the Customs Act and Customs Rule 343(f).

5.3. Standard	Any person required to provide security shall be allowed to choose any form of security provided that it is acceptable to the customs.
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Overall Assessment: Partially Compliant

Relevant Law:

- Customs Act; Sections 81 and 121
- Customs Rules; 45, 619 and 537

Discussion:

Law: Rule 537 of the Customs Rules permits any registered user of PACCS the discretion to deposit the cash equivalent of any security required by Customs in the user's Pre-Pact account. Otherwise, the Customs Act and Customs Rules only permit a choice of security in a limited number of situations. Section 81 requires the importer to pay the likely difference between the provisional and final determinations of duties and taxes or furnish a guarantee or bond. Section 121 permits Customs to impose a security or bond on goods transhipped. Rule 45 permits a guarantee or pay order for duties assessed on pre-release. Rule 619 permits transit transport operators to lodge a bank guarantee or revolving guarantee.

Section 34 requires an importer to post security, of sufficient value in the opinion of Customs, when settling duty and tax liabilities with Customs on a monthly basis. Section 57 permits transport operator agents to post a security in support of permission for the conveyance to depart the customs controlled area. However, neither section specifies the type of security that is acceptable to Customs in each situation.

Practice: According to the resource persons specified below, the practice follows the law:

Resource Persons:

- Syed Tanvir Ahmed, Collector of Customs, MCC Port Qasim, Karachi.
- Mr. Nasir Chaandna, Customs House Agent, Karachi.
- Mr. Javed Iqbal Butt, Former Deputy Collector of Customs (Law), MCC (Appraisalment), Karachi.
- Mr. Muhammad Jameel Khan, Law Officer, MCC, Peshawar.

Conclusion: PACCS users have a choice to credit sufficient funds in their account to cover the value of the security required or provide the type of security specified for each particular situation in the legislation. However, crediting their accounts with the cash equivalent may not be financially viable for many importers. Non-PACCS users have few opportunities to choose the type of security. The law and practice are only in partial compliance with the standard.

Recommendations: A new general provision is added to the Customs Act specifying all the types of security that a person may furnish to Customs in every situation when security is required under the Act or Customs Rules. The provision shall also set out criteria when Customs may restrict the types of security applicable in any situation.

5.4. Standard

Where national legislation provides, the Customs shall not require security when they are satisfied that an obligation to the customs will be fulfilled.

Overall Assessment: Non-Compliant

Relevant Law:

- The Customs Act; Sections 121(2)
- SRO Number 400(I)/97 dated 13-05-1997.
- SRO Number 678(I)/2004 dated 07-08-2004.

Discussion:

Introductory Note: This Standard provides if national legislation gives Customs such authority, then Customs shall waive the requirement for security in situations where Customs is satisfied that a trader's obligation to Customs will be fulfilled. This waiver facility may be provided, for example, to public agencies, for certain goods or means of transport or where the security required is disproportionate to any harm from not meeting the obligation.

Law: The Customs Act and the Customs Rules do not provide Customs the authority to waiver any security requirement. Only Section 121(2) of the Act provides for Customs, at its discretion, to permit transshipment without any security or bond, but provides no criteria for this decision. Paragraph 5(4) of SRO Number 678(I) 2004 exempts certain manufacturers importing machinery – if the exemption is in doubt Customs will release the good immediately, against a corporate guarantee from the importer, valid for nine months. This is not a waiver since the corporate guarantee is a form of security.

Practice: In practice, goods are not released without adequate security, as required under the relevant enactment.

Conclusion: Strictly interpreted, since national legislation does not authorize Customs to waiver security requirements, then Customs' lack of providing waiver is not in conflict with this Standard. However, the Standard seeks to encourage customs authorities to provide security waivers where appropriate. This does not happen in Pakistan and so law and practice are not in compliance with the Standard.

Recommendations: The new general provision recommended under the discussion of Standard 5.3 above shall also provide that Customs shall waive a security requirement if the person meets criteria listed in the Act satisfying Customs that the person will fulfil their obligation to Customs.

<p>5.5. Standard</p>	<p>When security is required to ensure that the obligations arising from a customs procedure will be fulfilled, the customs shall accept a general security, in particular from declarants who regularly declare goods at different offices in the customs territory.</p>
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Overall Assessment: Partially Compliant

Relevant Law:

- The Customs Act; Sections 102.
- The Customs Rules; Rules 343(f) and 619.
- Order number 12 of General Order; 12/2012

Discussion:

Introductory Note: This Standard provides for Customs to accept a general security instead of separate securities in each instance, in particular, from traders who regularly declare goods at different offices in the Customs territory. This means one revolving guarantee would be acceptable for imports at all Customs stations.

Law: The Customs Act and Customs Rules do not provide the opportunity for all importers and other persons to provide a general security whenever Customs requires security. Section 102 permits persons removing goods from a warehouse to post a general bond for such amount as the Collector approves. Rule 343(f) requires warehouse operators to post a general bond. Rule 619 requires transit transport operators to lodge a bank guarantee or revolving guarantee equivalent to ten percent of duties and taxes. Order number 12(iv) of General Order; 12/2012 permits a general bond to be posted on inland movement of liquid cargo.

Practice: According to the interviews with the resource persons specified below, without the necessary legislative authority in place Customs does not accept a general security.

Resource Persons:

- Syed Tanvir Ahmed, Collector of Customs, MCC Port Qasim, Karachi.
- Mr. Irfan Javed, Additional Collector of Customs, MCC Appraisalment, Karachi.

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

Recommendations: A new provision is added to the Customs Act providing for Customs to accept a general security when stated conditions are satisfied by the declarant.

5.6. Standard	Where security is required, the amount of security to be provided shall be as low as possible and, in respect of the payment of duties and taxes, shall not exceed the amount potentially chargeable.
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Overall Assessment: Partially Compliant

Relevant Law:

- The Customs Act; Sections 108, 132
- Customs Rules; Rule 328(6)

Discussion:

Introductory Note: This Standard provides that the amount of required security shall be as low as possible and in no case more than the amount of duties and taxes involved.

Law: Most of the provisions of customs legislation discussed under Standards 5.1 – 5.5 above require the value of the security to equal the amount of duties and taxes at risk. However, there are instances where the security is *twice* the amount of duties and taxes chargeable. For example, Section 108 of the Customs Act requires a security equal to the value of twice the duty payable and Section 132 requires security no greater than twice the value of the duties and taxes payable. Rule 328(6) requires a bank guarantee or savings certificates valued at five million rupees.

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

Resource Persons:

- Dr. Sarfaraz Warraich, Collector of Customs, MCC Sambrial, Sialkot.
- Mr. Shehanshah Husnain, Additional Collector of Customs, MCC Port Qasim, Karachi.
- Muahammad Saleem, Collector Appraisement (West)
- Syed Naeem Akhtar, Additional Collector, MCC Appraisement (West)
- Muhammad Nayyer Shafiq, Deputy Collector MCC Appraisement (West)
- Najeeb Abbassi, Collector of Customs Appraisement East
- Majid Ali, Deputy Collector of Customs Appraisement East
- Abdul Majid Yousfani, Director Reforms and Automation
- Syed Aftab Haider, Additional Director Reforms and Automation

Conclusion: Based on the above research, it appears that the law and practice are only partially in compliance with the Standard. In particular, Sections 108 and 132 of the Customs Act are obviously contrary to the standard.

Recommendations: Sections 108 and 132 of the Customs Act, 1969 should be amended so that the amount of the relevant security required does not exceed the amount of potentially chargeable duties and taxes. In addition, the amount of security required by Rule 328(6) needs to be modified. There should also be a new general provision in the Customs Act specifying that the amount of any required security shall not exceed the duties and taxes potentially chargeable; this will ensure that rules are not issued that violate the standard.

5.7 Standard	Where security has been furnished, it shall be discharged as soon as possible after customs is satisfied that the obligations under which the security was required have been duly fulfilled.
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Overall Assessment: Partially Compliant

Relevant Law:

- Customs Rules, Rule 537

Discussion:

Law: The only legislative provision referring to the timing of release of security is Rule 537 that provides that deposits in PACCS treated as security shall be “released or en-cashed as soon as the matter is settled”. This is likely useful for high volume importers who maintain significant balances in their Pre-PACT account, but maintaining cash balances equivalent to the value of duties and taxes at risk is likely a costly form of security for smaller importers.

Practice: In practice, there are often long delays in the discharge of security, due to lengthy procedures.

Resource Persons:

- Mr. Qurban Ali Khan, Additional Collector of Customs, AFU, Islamabad.
- Mr. Irfan Javed, Additional Collector of Customs, MCC, Appraisement, Karachi.

Conclusion: The law and practice are partially compliant with the standard.

Recommendations: A new provision is added to the Customs Act: requiring Customs to discharge any security within five days of the obligation being fulfilled. of securities/ guarantees/ bonds etc. and imposing a penalty against any Customs official responsible for holding security without valid cause.

Chapter 6: Customs Control

6.1. Standard	All goods, including means of transport, which enter or leave the Customs territory, regardless of whether they are liable to duties and taxes, shall be subject to Customs control.
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Overall Assessment: Compliant

Relevant Law:

- Customs Act; Sections 15, 16, 42, 43, 129A, 140, 144, 145, 158-192, 197
- Customs Rules; 225- 236,
- Tracking and Monitoring of Cargo Rules, 2012
- Customs General Order (CGO) 2002; 12
- Customs General Order, 2007; 4
- Imports and Exports (Control) Act, 1950

Discussion:

Law: More than twelve chapters of the Customs Act provide for Customs control over goods and their conveyance entering and leaving the country. To illustrate:

- Section 197 of the Act provides that the appropriate Customs officer shall, for the purpose of this Act, have control over all conveyances and goods in a Customs-area.
- Section 15 of the Act prohibits the import and export of certain goods and categories or classes of goods, while Section 16 empowers the Federal Government to prohibit or restrict taking in, or taking out, of Pakistan any specified goods.
- Section 42 of the Act requires the person in charge of a carrier to only land in Pakistan at a customs station and to give advance notice before arrival. Customs control commences when the carrier files the Import General Manifest under section 43 of the Act and concludes when the landed goods are fully accounted for in Customs records.
- Section 129A of the Act provides that a transit fee may be levied on any goods or class of goods in transit across Pakistan to a foreign territory at such rates as the Board may, by notification in the official Gazette, prescribe;
- Sections 139 and 140 require the baggage of passengers entering or leaving the country to be subject to physical examination and duties and taxes;
- Sections 144 and 145 of the Act regulate parcel post - the label or declaration in respect of goods imported or exported by post is treated as the declaration;
- Powers of Customs for prevention of smuggling are given in Sections 158-192 of the Act. These provisions cover search and arrest of persons, search of carriers and premises, seizure of goods and conveyance and, investigation of cases, prosecution of accused, and adjudication of cases;
- Rules 225 to 236 regulate the entry and exit of goods into and out of export processing zones.
- The monitoring of all types of goods, except goods under transit by the US/ISAF, is provided for under the *Tracking and Monitoring of Cargo Rules*;
- *Customs General Order (CGO) No. 12 of 2002* – serial number 105 regulates off-dock and inter-port movement of goods;
- *Customs General Order No. 4 of 2007* establishes procedures for sealing/de-sealing containers and locked carriers of goods in transit from a port to a Land Customs Station;
- *The Imports and Exports (Control) Act, 1950* controls the entry and exit of certain categories or

classes of goods and is enforced by Customs

Practice: According to interviews with the resource persons below, it appears that in practice these controls are being exercised comprehensively at ports and Customs stations. However in exercise of these controls over transit consignments to Afghanistan some serious irregularities have come to light. Similarly, controls have not been exercised vigilantly at bonded warehouses and manufacturing bonds, resulting in litigation.

Resource Persons:

- Mr. Yahya, former Collector of Customs, MCC (Preventive) and now Director of Customs Intelligence & Investigation, Karachi.
- Mr Sarfraz Waraich, Collector of Customs, MCC, Sambrial.
- Mr. Irfan Javed, Additional Collector of Customs, MCC (Appraisalment), Karachi.
- Mr. Inam Rehmani, Clearing Agent, Karachi.
- Mr. Zaman, Inspector of Customs, MCC, Peshawar.

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

Recommendations: No recommendations are considered necessary at this time.

Note that Customs are addressing the irregularities highlighted in the practice discussion above. USAID and other donors are assisting this work.

6.2. Standard

Customs control shall be limited to that necessary to ensure compliance with the Customs law.

Overall Assessment: Compliant

Relevant Law:

- The Customs Act; Section 197
- Customs Rules; 500, 509, 523, 526, 600, 637(12)

Discussion:

Introductory Note: The General Annex Guidelines to Standards 6.2 and 6.3 explain that the principle of Customs control is the proper application of Customs laws and compliance with other legal and regulatory requirements, with maximum facilitation of international trade and travel. Customs controls should therefore be kept to the minimum necessary to meet the main objectives and should be carried out on a selective basis using risk management techniques to the greatest extent possible. Application of the principle of Customs controls will allow Customs administrations to: (i) focus on high-risk areas and therefore ensure more effective use of available resources; (ii) increase ability to detect offences and non-compliant traders and travellers; (iii) offer compliant traders and travellers greater facilitation and (iv) expedite trade and travel.

Law: Section 197 provides that the appropriate officer shall, for the purpose of this Act, have control over all conveyance and goods in a customs-area. Within this general authority, customs rules are providing more guidance as to how customs control should be exercised, particularly to operations that are relatively more time and cost sensitive for traders, i.e. exports, free zones, transit and transhipments.

- Rule 509 states that “No export consignment in transhipment from inland customs-stations shall be subjected to either risk management system or examination at the final port of exit, unless...seals...are broken...or the container has been damaged”, etc.
- Rule 526 repeats similar language for transhipment from free zones.
- Rule 500 and 523 apply the risk management system under PACCS to all goods under transhipment to inland destinations or free zones.
- Rule 524 exempts such goods at the port of arrival from examination unless they are weapons or classified as risky and have not been claimed within 72 hours of arrival.

Chapter XXV of the Customs Rules sets out the Afghanistan-Pakistan Transit Trade Rules. These are a recent amendment to the Customs Rules and include risk management principles. Examples of such principles include:

- Rule 600 defines examination of goods as “the process of physical ascertainment by Customs of nature, origin, condition, quantity and value with reference to transit documents submitted, with understanding that this definition is applicable to only up to five percent of the consignments of transit goods under risk management system;”
- Rule 637(12) provides that only five percent of Afghan transit trade consignments arriving at Karachi, Qasim or Gwadar Ports shall be subject to examination under the risk management system.
- Rule 603(5) provides that up to five percent of Afghan transit trade containers departing Pakistan shall be selected for examination through risk profiling or the risk management system.

Practice: According to interviews with the resource persons specified below, it appears that the application of information technology to cargo at Karachi and Port Qasim over the past ten years has

significantly enhanced processing time, minimizing physical contact and substantially improving credibility and certainty. The joint Pakistan-US Customs operation called 'IC3' at Port Qasim, Karachi is a computerized clearance operation of containerized export cargo to the USA. The system has reportedly transformed Customs control and goods processing, almost eliminating the risk of offending goods being cleared for export. Besides these tangible benefits, IC3 has helped Customs gain invaluable experience of joint operations with another Customs administration. Completing the application of information technology and risk management to remaining Customs operations will further improve trade facilitation.

Resource Persons:

- Mr. Mohammad Yahya, Chief Collector of Customs, (South), Custom House, Karachi.
- Mr. Tanvir Ahmad, Collector of Customs, MCC Port Qasim, Karachi.
- Mr. A.W. Marwat, Departmental Representative Customs Appellate Tribunal, Islamabad.
- Mr. Shehansha Husnain, Additional Collector of Customs, MCC, Port Qasim, Karachi.

Conclusion: While the Customs Act is silent as to the objective of Customs to enhance trade facilitation, more recent Customs Rules apply a trade facilitation objective in their application of the risk management system and in limiting the number of physical examinations to transshipments, transit trade and free zone movements. Furthermore, in practice Customs is implementing a risk management system through new information technology across all operations. In practice it appears that Pakistan Customs is limiting customs control to that necessary to ensure compliance with the law. Law and practice are in compliance with the Standard.

Recommendations: It may be appropriate for a new section to be added to the Customs Act setting out the role of Customs is to collect the duties and taxes as directed by the Act and prevent entry of prohibited goods in a manner that minimizes the compliance costs incurred by traders.

6.3. Standard	In the application of Customs control, the Customs shall use risk management.
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Overall Assessment: Partially Compliant

Relevant Law:

- The Customs Act; Section 3BBB
- Customs Rules; 500, 509, 523, 526, 600, 637(12)

Discussion:

Law: As discussed under Standard 6.2 above, Customs Rules explicitly apply risk management principles to some but not all Customs processes. Rules 500, 509, 523, 526, 600 and 637(12) require Customs to apply its risk management system to exports, transshipments to free zones and inland destinations, and Afghan transit trade. The Government's commitment to implement risk management throughout Customs has been demonstrated by the amendment to the Customs Act under the last National Budget (June, 2012). A new Section 3BBB provides for the establishment of a Directorate General of Risk Management – one of eight directorate generals in Customs.

Practice: According to interviews with the resource persons listed below, it appears from the establishment of the new risk management division and the on-going WeBOC developments that risk management is in a state of evolution. WeBOC software is the basis of the rapidly evolving Customs computerization and is being upgraded to enhance its capacity and depth for use in selectivity as a risk management tool. Computerization is shortly to be extended to most locations and all Customs processes throughout the country, and so is likely to further strengthen the existing system of risk management.

Resource Persons:

- Syed Tanvir Ahmed, Collector of Customs MCC, Port Qasim, Karachi.
- Mr. Aamir, Collector of Customs PACCS MCC Karachi.

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

Recommendations: The Directorate General of Risk Management is operationalized by FBR/Customs as soon as possible; the strengthening of WeBOC System be given top priority; and all risk management personnel be trained in risk management and provided annual refresher courses to update their knowledge.

6.4. Standard	The Customs shall use risk analysis to determine which persons and which goods, including means of transport, should be examined and the extent of the examination.
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Overall Assessment: Partially Compliant

Relevant Law:

- Customs Act, 1969; Section 80(4)
- Customs Rules; Rules 500, 509, 523, 526, 600

Discussion:

Law: As discussed under Standard 6.2 above customs legislation is providing more guidance on the application of risk management to customs control. Examples include:

- Section 80(4) of the Customs Act requires that only computerized selectivity criteria may be used to check a declaration where PACCS is operational.
- Rule 500 and 523 apply the risk management system under PACCS to all goods under transshipment to inland destinations or free zones.
- Rule 509 and Rule 526 exclude exports and transshipments from free zones to any examination or application of the risk management system unless their seals are broken, etc.
- Under the Afghanistan-Pakistan Transit Trade Rules - Rule 600 defines examination of goods as "the process of physical ascertainment by Customs of nature, origin, condition, quantity and value with reference to transit documents submitted, with understanding that this definition is applicable to only up to five percent of the consignments of transit goods under risk management system;"

Practice: Customs incorporates risk analysis elements into One-Customs and has developed risk profile models in WeBOC. However, the majority of Customs officials and processes do not apply or incorporate a comprehensive system of risk management. Significant retraining and further information technology development is required through the Customs Computerized System. The newly established Directorate General of Risk Management is expected to approach risk analysis in this modern perspective. It should be made fully operational at the earliest so that it starts playing the pioneering role as an agent of change.

Resource Persons:

- Mr. Mohammad Yahya, Chief Collector of Customs, (South), Custom House Karachi.
- Syed Tanvir Ahmad, Collector of Customs, MCC Port Qasim, Karachi.
- Mr. A.W. Marwat, Departmental Representative Customs Appellate Tribunal, Islamabad.
- Mr. Shehansha Husnain, Additional Collector of Customs, MCC, Port Qasim, Karachi.
- Mr. Sanaullah Abro, Deputy Director of Customs Intelligence and Investigations, Karachi.

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

Recommendations: Training is arranged for customs officers in new techniques of risk management; the risk management analysis component of WeBOC is strengthened; the Directorate General of Risk Management is made fully operational with sufficient resources and personnel as soon as possible; and all IT applications/WeBOC are based on the principles of Compliance (Risk) Management

6.5. Standard	The Customs shall adopt a compliance measurement strategy to support risk management.
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Overall Assessment: Non-Compliant

Relevant Law:

- The Customs Act; Sections 3B and 3BBB

Discussion:

Introductory Note: the Guidelines to the General Annex state that “Compliance measurement” is a phrase used when statistically valid random sampling techniques are used to determine the degree to which traders, carriers, imported goods, etc. conform to Customs rules and procedures. When designed in a systematic and appropriate manner, compliance measurement methodologies provide objective and statistically valid results. Compliance measurement can be used as a diagnostic tool to identify areas of noncompliance.

Compliance measurement as a diagnostic tool for Customs administrations should be used in conjunction with risk assessment, profiling and other targeting procedures. Used strategically, compliance measurement and targeting can provide the necessary balance to focus resources effectively in areas of concern to Customs. In addition, results of initial compliance measurements can provide important information to enhance the risk assessment methodologies.

Law: At present no rules have been approved directing the work of the Directorate General Risk Management, nor any rules requiring Customs to adopt a compliance measurement strategy.

Practice: DG Internal Audit has had some form of compliance measurement interest but this has not been used to support risk management.

Resource Persons:

- Mr. Mohammad Yahya, Director Intelligence and Investigation (Customs), Karachi.
- Mr. Abdul Rasheed Sheikh, Collector of Customs, MCC (Preventive), Karachi.
- Mr. Iqbal Muneeb, Additional Collector of Customs, MCC Appraisement, Karachi.

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

Recommendations: The Director General of Risk Management should become operational as soon as possible; the development of a risk management system and a compliance measurement strategy should be made priority tasks for the Directorate General, Risk Management; and the Director General of Risk Management should identify the business and technical requirements for the IT application to be developed for the risk management. It will be useful to study the audit reports of DG I & I, DG Post Clearance Audit and DG Internal Audit as source material for designing risk management techniques and for compliance management.

6.6. Standard

Customs control systems shall include audit-based controls.

Overall Assessment: Partially Compliant**Relevant Law:**

- The Customs Act; Section 2(bba), 3B, 26, 26A, 26B, 155L, 155M
- The Manual of Post Clearance Audit

Discussion:

Law: The Customs Act has been amended appropriately to comply with this standard. By section 3B of the Act, a Directorate General of Internal Audit has been established by FBR/Customs. By section 3DD a Directorate General of Post-Clearance Audit has been established. These Directorates, together with Directorate General of Risk Management System (established by section 3BBB in June 2012) are expected to redesign and implement the audit based control function.

Section 2(bba) defines an audit to be the examination of any document, etc. of any trader, etc. to determine compliance with relevant laws and rules. Sections 26 and 26A of the Customs Act authorize Customs to examine any document, summon any person, etc. in the course of an audit. Section 26A of the Act, the appropriate officer of Customs is authorized to audit the record of such person. Section 26B authorizes Customs to access the premises, assets and documents relating to an audit. Under Section 155L and 155M of the Act, similar powers of audit exist in relation to PACCS.

Practice: According to interviews with the resource persons specified below, it appears that with the creation of a reasonable framework for audit-based control and risk management, the Customs are close to attaining the stage of compliance with the Standard. At present Customs are applying the Manual of Post Clearance Audit. However, this manual needs to be improved with reference to best international practices and the personnel involved in audit have to be retained.

Resource Persons:

- Mr. Ibrahim Vighio, Collector of Customs, MCC, Quetta.
- Dr. Saeed Jadoon, Additional Collector of Customs, MCC, Peshawar.
- Mr. Qurban Ali Khan, Additional Collector of Customs, AFU, Islamabad.

Conclusion: While the law gives Customs sufficient audit powers, until the Customs audit function capacity building program is complete compliance of this standard is considered as partial.

Recommendations: As the General Annex Guidelines explain audit-based controls are an essential tool for Customs to ensure compliance. In order to build the capacity of Customs audit function the following operational and organizational activities are recommended: Appropriate training is provided to audit personnel in relevant techniques and analysis and use of information technology; install and maintain appropriate audit information technology; develop an audit based customs control system jointly between Director General Risk Management and Audit; upgrade the Post-Audit Manual according to appropriate international practice i.e. RKC Standards and Guidelines.

6.7. Standard	The Customs shall seek to co-operate with other Customs administrations and seek to conclude mutual administrative assistance agreements to enhance Customs control.
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Overall Assessment: Compliant

Relevant Law:

- Pakistan Iran Customs Cooperation Agreement
- Agreement between India and Pakistan on Cooperation and Mutual Assistance in Customs Matters
- Afghanistan-Pakistan Transit Trade Agreement

Discussion:

Introductory Note: This Standard envisages that Customs shall seek to co-operate with other Customs administrations and conclude mutual administrative assistance agreements for further enhancing Customs control. Inter-governmental cooperation for mutual collaboration in Customs controls is now an essential element of customs control in any country, particularly relating to obtaining pre-arrival information.

Law: Pakistan has signed customs co-operation agreements with Iran (Pakistan Iran Customs Cooperation Agreement) and India (Agreement between India and Pakistan on Cooperation and Mutual Assistance in Customs Matters). Both agreements are in operation – under the agreement with Iran a joint committee has been established to design and implement joint border control. Customs has also implemented joint programs with US and UK Customs, for example the Pakistan-US program that scans all USA bound containerized cargo at Port-Qasim. Pakistan has also signed a new transit agreement with Afghanistan.

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

Resource Persons:

- Mr. Ibrahim Vighio, Collector of Customs, MCC, Quetta.
- Dr. Saeed Jadoon, Additional Collector of Customs, MCC, Peshawar.
- Mr. Qurban Ali Khan, Additional Collector of Customs, AFU, Islamabad

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

Recommendations: In order to further enhance Customs Control, FBR/Customs may seek to co-operate further with other Customs administrations and seek through the Ministry of Commerce and the Ministry of Foreign Affairs to conclude/mutual administrative assistance agreements to enhance Customs control. To begin with, FBR may develop a roadmap towards negotiating such agreements with other customs administrations.

6.8. Standard	The Customs shall seek to co-operate with the trade and seek to conclude Memorandum of Understanding to enhance Customs control.
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Overall Assessment: Partially Compliant

Relevant Law:

- [None]

Discussion:

Introductory Note: The Guide to the General Annex explains that good communication, consultation and co-operation between the trade and Customs are vital to achieve a satisfactory balance between effective control and facilitation. Customs should share information and expand cooperation through, for example, official gazettes, notices and bulletins, online websites, formal consultative committees and memoranda with companies or organizations.

Law: There are no legislative provisions requiring Customs to consult with the private sector or enter into MOUs with the trading community.

Practice: FBR/Customs liaises closely with the business community, participating in their trade-related moots, conferences and seminars and inviting trade delegates for formal deliberations on tax matters, budget proposals, tax compliance, tax management and trade facilitation. Information is shared through the FBR/Customs website and publications.

Resource Persons:

- Mr. Mohammad Yahya, Director Customs Intelligence and Investigation, Karachi.
- Mr. Tanvir Ahmad, Collector of Customs, MCC, Port Qasim.
- Dr. Arslan Subaktagin, Collector of Customs, MCC, Gwadar.

Conclusion: Based on the above research, Customs does seek to cooperate with the business community, but it has yet to seek to enter into MOUs with the community. Existing consultation between Customs and the business community is irregular, not subject to any rules and is generally used to publicize changes to Customs processes rather than exchange views and concerns. Therefore, law and practice are in partial compliance with the Standard.

Recommendations: FBR/Customs may seek to further cooperate with the trading community by concluding Memoranda of Understanding on cooperation for enhancing Customs control. Recommendations in this regard include: developing a roadmap identifying the scope, steps, activities and tasks and their expected benefits to the business community and Customs; amending the Customs Act to authorize Pakistan Customs to enter into MOUs with trade bodies and other legal entities for cooperation over Customs controls; and drafting rules under Section 219 of the Customs Act for an MOU template.

6.9. Transitional Standard	The Customs shall use information technology and electronic commerce to the greatest possible extent to enhance Customs control.
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Overall Assessment: Substantially Compliant

Relevant Law:

- Customs Act; Sections 80(4), 139, 155A, 155Q,

Discussion:

Law: The law implicitly acknowledges, in a number of sections, that information technology and electronic commerce will be used in preference to former paper based systems.

- Chapter XI-A (Section 155) of the Customs Act provides for the application of PACCS to customs operations, in particular:
 - Section 155A of the Customs Act states that the provisions of Chapter XI-A may be applied at different times in different customs stations “so as to bring the provisions relating to the Customs Computerized System in force throughout Pakistan progressively.”
 - Section 155Q simplifies the burden of proof for delivery of documents by deeming any document to have been required, delivered, provided or done under this Act when communicated electronically through the Customs Computerized System.
- Section 80(4) requires that only computerized selectivity criteria may be used to check a declaration where PACCS is operational.
- Section 139 requires all passenger-related declarations and communications to be electronic where PACCS is operational.

Practice: FBR/Customs have been gradually applying IT to Customs operations since 1983. Currently over 70% of cargo by volume is covered in on-line clearance processing. WeBOC has been rolled out to almost all customs stations in Pakistan. By mid-2014, IT applications and e-commerce in Customs operations are expected to cover almost the entire spectrum of the country's cargo, transport and passenger movement.

Resource Persons:

- Syed Tanvir Ahmed, Collector of Customs, MCC, Port Qasim, Karachi.
- Mr. Humayun Zafar, Director Automation (Customs), PRAL Islamabad.

Conclusion: Based on the above research, Customs practice is currently substantially-compliant with this Standard, and expects to be fully compliant by the end of 2014.

Recommendations: We recommend further expansion of IT in accordance with international practice to all processing of the movement of goods, ships, carriers/ transport and passengers with applications of risk management techniques, in order to raise the level of Customs control and to protect revenues. IT relating to transit trade, particularly the scanning and sharing of scanned images of containers and goods, and to transshipment be enhanced; Where possible, electronic trace and track technology be applied to carriers/vehicles loaded with transit/transshipment cargo between Karachi and Torkham and Chaman; IT relating to rail carriage of goods be enhanced as per the RKC Guidelines on ICT.

6.10. Standard	The Customs shall evaluate traders' commercial systems where those systems have an impact on Customs operations to ensure compliance with Customs requirement.
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Overall Assessment: Non-Compliant

Relevant Law:

- Customs Act, 1969; Sections 211, 211A

Discussion:

Law: The Customs Act permits Customs to require traders Section 211 requires traders to maintain and keep records and correspondence concerning their trade for at least five years in a form determined by the FBR. Section 211A authorizes Customs officials enter the premises of any trader and “inspect the goods, stocks, documents or records, data etc.” However, this does not likely extend to permitting Customs to evaluate the entire commercial system of a trader.

Practice: Customs currently has little capacity to review the commercial systems of traders to ensure their compatibility and compliance with Customs requirements. The DG Internal Audit and DG Post Clearance Audit as well as DG Intelligence have begun studying the trading records of traders to develop appropriate risk profiles. However, such work needs to be expanded to examine the commercial systems of traders.

Resource Persons:

- Mr. Nazim Saleem, Director General Internal Audit, Islamabad.
- Mr. Iftikhar Ali Malik, CEO, Guard Group of Companies, Lahore.

Conclusion: Based on the above research, it appears that Pakistan Customs has limited legal authority and no current capacity to evaluate traders’ commercial systems and so is non-compliant.

Recommendations: A new provision, 211B, is added to the Customs Act requiring traders conducting a certain volume of trade each year to maintain an accounting system in compliance with requirements set by the Customs Rules; A new provision, 211C, is added to the Customs Act authorizing Customs to audit the accounting systems of traders required under Section 211B.; FBR/Customs request DG RM or consultants to prepare risk profiles to keep a watch on commercial practices as a preventive measure against violations; and DG, RM may create a Research and Development Cell which could conduct studies for refinement of risk profiling on a regular basis.

Chapter 7: Application of Information Technology

7.1. Standard	The Customs shall apply information technology to support Customs operations, where it is cost-effective and efficient for the Customs and for the trade. The Customs shall specify the conditions for its application.
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Overall Assessment: Compliant

Relevant Law:

- The Customs Act; 155A to 155R

Discussion:

Practice. Since 1980, FBR/Customs has gradually introduced application of new information technology in the Customs processes. During the period up to 2004, the IT applications at different customs stations were performed through localized equipment and monthly historical data was fed into the mainframe at Karachi Customs House resulting in a national level data base for classification, valuation as well as administrating exemptions and concessions. This also enabled the FBR/Customs to embark upon new programs of comprehensive applications of IT in Customs operations across the board i.e. B2B and B2C range of services to be performed in a paperless environment. PACCS (Pakistan Computerized Customs System) was introduced in 2005 as an on-line operation. Since 2005, with modification and a switch over to the homegrown WeBOC system (made fully operational in June 2012), this paperless computerized system now applies to over 80% of Pakistan's import and export cargo.

The new computerized system (PACCS) is run on WeBOC software and is applied to all customs operations including receiving of arrival intimation of ships, filing of Import General Manifest (IGM) and Export General Manifest (EGM), goods clearance, adjudication, generation of statistical data and related analytical processes. For drawbacks of duty, a stand-alone computerized system has been developed and is operating in Karachi. In this manner it has become an effective tool in tax management and strategy. PACCS is one of the most interactive IT systems in the country having unmatched outreach to trade and Industry and inter departmental connectivity within the government and in the corporate sector as well as with other stake holders such as State Bank of Pakistan, National Bank of Pakistan (functioning as Treasury), commercial banks, shipping lines, port/terminal operators and airlines.

The process of IT application has been cost effective generally as it has helped reduce the average time needed for filing and processing of a Goods declaration from ten days in 1980 to less than four days (80% of declarations). The Trade can file declarations from their respective offices; 43% of which get cleared the same day and another 36% in the next 3 days. Customs control has become more efficient, productive and hassle-free. Management of Customs securities, recovery of arrears and statistical analysis of revenues and duty remission has become far more meaningful and efficient. The Information Technology applications are thus fairly cost effective and efficient.

Conclusion: Compliant.

Recommendations: No recommendations are deemed necessary at this time.

7.2. Standard	When introducing computer applications, the Customs shall use relevant internationally accepted standards.
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Overall Assessment: Non-Compliant

Relevant Law:

- [None]

Discussion:

Practice. FBR/Customs have developed a Custom's solution which is operating at Karachi port and Mohammad Bin Qasim Port, Karachi. It functions on B2B and B2C lines with compatible connectivity protocols and interactive capacity. Examples are: Customs to other Government regulatory authorities (such as Ministry of Commerce, livestock Development Board, Plant Protection Department, shipping lines, airlines, State Bank of Pakistan, National Bank of Pakistan (also functioning as a sub-Treasury), commercial banks, Civil Aviation Authority and Port authorities while B2C examples are Customs to importers, exporters' rebates, refunds, clients, passengers, post parcel receivers/ senders etc.).

No electronic system/ architecture of such large coverage and functional connectivity can be designed, configured, structured and operated smoothly and successfully without the application of standards. To date, Customs has been trusted to have adopted a master strategy in selecting best internationally accepted standards for application in development of the system.

However, no internationally accepted standards have been found institutionalized or certified within the environment. Although aspects of these standards may be incorporated into the daily work none are officially incorporated.

There are two sets of standards that should be considered but neither has been applied:

- Technology standards specific to the environment and,
- Technology standards specific to the nature of the application which is customs.

In December of 2011 a "System Audit of One Customs and WEOC" was completed. This audit documents the lack of standards in both the generic technology and the customs specific technology.

Conclusion: Adherence to internationally accepted standards is non-compliant.

Recommendations: The Guidelines provided by RKC/ WCO need to be studied and implemented. A more current audit of the environment should occur to create a gap analysis between current activities and the application of international standards.

7.3. Standard	The introduction of information technology shall be carried out in consultation with all relevant parties directly affected, to the greatest extent possible.
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Overall Assessment: Partially Compliant

Relevant Law:

- [None]

Discussion:

Practice. Before the introduction of the initial customs system called One-Customs, very detailed consultations took place with stakeholders over an extended period of time, covering most functional and geographical points. Meetings, seminars and workshops were held before and after launching the system. Stakeholders included trade bodies, Chambers of Commerce, Shipping Agents Association, Freight Forwarders, Customs Agents, Terminal Operators, National Bank, Income Tax and sales tax wings of FBR. After meaningful but lengthy deliberations, most of their concerns were addressed and their business needs duly accommodated. Sister revenue organizations were also closely associated as the ultimate users/beneficiaries and as the major repositories of wisdom on business design as tax managers and strategists. Renowned importers and exporters were consulted/associated at different stages of the process. Associated with all the requirement gatherings were experts in Information technology such as Software Export Board, Systems Ltd, experts in universities of Karachi, Institute of Business Administration Karachi, University of Engineering and Technology Lahore etc.

In 2005 the transition from aspects of One-Customs to PACCS was based on M/s Agility software and the experience of One-Customs but no extensive discussions, meetings or seminars were held before it was launched. When PACCS was redesigned on WeBOC software after 2010, wide-ranging discussions with trade and operational stake holders as well as in-house deliberations were conducted. PRAL management is cognizant of the need for such consultations and is regularly responding to feedback from stakeholders in rolling-out the system. Since WeBOC became operational, consultation and feedback from the private sector have led to 700 changes to the system which indicates some of the consultations did not initially result in agreement on how WeBOC should function.

The ongoing development/enhancement of WeBOC is supported by a continuous activity. In the roll out plan, FBR/Customs are fully on board and supportive as per discussions with management. It appears that the WeBOC practice for collecting requirements occurs although it could benefit from institutionalization and some level of adherence to standards.

Conclusion: Based on the above research, it appears more work has to be done to reach full compliance with this standard.

Recommendations: Further effort has to be applied to make this standard fully compliant. This includes applying international standards for the collection and tracking of requirements.

7.4. Standard	<p>New or revised national legislation shall provide for:</p> <p>Electronic commerce methods as an alternative to paper-based documentary requirements; electronic as well as paper-based authentication methods; the right of the Customs to retain information for their own use and, as appropriate, to exchange such information with other Customs administrations and all other legally approved parties by means of electronic commerce techniques.</p>
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Overall Assessment: Partially Compliant

Relevant Law:

- Customs Act; (Chapter XVI-A) 155A – 155R

Discussion:

Introductory Note: The standard imposes an obligation on the content of national legislation. It requires that national legislation provide for the application of electronic commerce techniques and the sharing of information with other Customs administrations and all other legally approved parties. Electronic Commerce techniques revolve around all kind of sale purchase transactions. One example is searching web-based information on products, negotiations on internet with short listed suppliers, concluding a deal on Internet and then confirming it by exchange of notes on internet. Another is sales and purchases in auctions on Internet. Third are retail purchases from outlets such as Amazon. Giving legal authenticity to such sale/purchase documentation is required so that the same have validity as a signed document under the law is vital. These deals have also to be supported by validation of financial transactions through credit/debit cards, other emerging forms of money transfer through internet as equivalent equipment of conventional financial transactions. Once fullest legal validity is given to these dealings, the interests of buyers and sellers will be safeguarded and they will be encouraged to conduct business electronically.

Law: The relevant provisions of the Customs Act, (Chapter XVI-A) on computerization, the same are briefly stated below:

- 155A: Application of the Customs Computerized System (shall be by notification).
- 155B: Access to the Customs Computerized System. No person shall transmit to, or receive information from, the Customs Computerized System unless that person is registered by the Collector as a user of the Customs Computerized System.
- 155C: Registered users (Procedure of registration).
- 155D: Registered users to be allocated unique user identifier.
- 155E: Use of unique user identifier.
- 155F: Cancellation of registration of registered user.
- 155G: Customs to keep records of transmissions.
- 155-I: Makes unauthorized access to or improper use of the Customs Computerized System and knowingly accessing such information or using it, an offence under the Customs Act.
- 155J: Makes interference with the Customs Computerized System, an offence –
- 155K: Offences in relation to the security of or unauthorized use of unique user identifiers.
 - 1) A registered user of the Customs Computerized System who fails to comply with or acts in contravention of any condition imposed by the Collector relating to the security of that registered user's unique user identifier commits an offence.
 - 2) A person who commits an offence-
 - a) not being a registered user, uses a unique user identifier; or
 - b) being a registered user, uses the unique user identifier of any other registered user;
 - c) to authenticate a transmission of information to the Customs Computerized System,
- 155L: Customs may audit or examine records of any registered person (importer/exporter).

155M: Customs may requisition documents from registered person.

155N: Customs may require English translation of any document in foreign language.

155O: Authorized officer may take possession of and retain documents and records of registered person.

155P: Makes acts of obstructing access to, altering, concealing or destruction of, record, an offence.

155R: Makes correction of clerical errors permissible, if Collector is satisfied and he allows it.

These provisions need to be supplemented by new provisions accepting validity of internet correspondence as the basis of a commercial transaction for purposes of valuation and assessment. This may require changes in laws relating to foreign exchange, income tax and sales tax Qanoon-e-Shahadat PPC (Pakistan Penal Code) and the Import and Export (Control) Act etc. As the following notes show, electronic commerce techniques will bring a number of features to trading transactions which will promote documentation and thus strengthen the foundations of the economy.

It will need to be refined to protect confidentiality of data relating to any one transaction and to the data which relate to only one trader. Sharing of data as aggregates, as denominators of broad trends alone could be considered for sharing with other Customs administrations and legally approved parties. The Customs law has this confidentially provision in place.

Internationally approved standards which are used in such projects in Pakistan, already exist worldwide which software scientists/engineers apply appropriately as per requirements of the software programs being developed and configured. In the normal course this is the responsibility of the State Bank of Pakistan and Ministry of Commerce. But FBR/Customs, are preparing to shoulder expanded responsibilities in relation to the new mode of commercial and financial transactions. It has, therefore, to trigger the processes for the laying down the regulatory framework by the Government. The usage of internationally accepted standards in these processes cannot be effectively realized unless FBR/Customs takes a pro-active position. FBR and these organizations are in the best position to work towards internationally accepted standards.

It is worthwhile to note that a major advantage in properly developed e-commerce architecture is that all such transactions will have to use legal channels, thus making them easy to track and amenable to tax. It will also discourage and eventually replace a major chunk of cash-based transactions, thus minimizing the sweep of black economy.

- The new or revised legislation on e-commerce methods as an alternative to paper-based methods has fairly developed worldwide. The values of e-commerce businesses have already crossed U.S. Dollar 3 trillion during 2010. These applications also underscore use of internationally accepted standards with regards to various aspects of B2B or B2C communications which terminate in commercial transactions creating obligations and rights on either side and involve paperless money transactions and cross border money transfers. Communication security and confidentiality have to be fully addressed to keep the integrity of the communications intact at both ends.
- Authentication methods have to be reliable so that e commerce is accomplished smoothly in secure and integrated environment.
- The issues of rights over information, the confidentiality thereof and its sharing with other governments, for any purpose, are important but sensitive issues which FBR/Customs have to address. Public concern on this matter is likely to grow. International developments in legislation and changing practices in other countries have also be studied to further refine and improve the design of IT related law.

- The law on these aspects is in a nascent phase even in the developed world, As such, more serious questions regards framing of new legal frameworks are expected to arise in the future. Therefore, national legislation formulation has to be an on-going process in consultation with stake holders and experts.

The Customs law as briefly stated above is for the present, in partial compliance with the Standard. But it has to be expanded, refined and amended as electronic commerce techniques are put in wider use and as Customs consider to share its computerized data with other Customs administrations and/or other legally approved parties. For this reason some recommendations are made in this regard.

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

Resource persons:

- Syed Tanvir Ahmed, Project Director Customs House, Karachi.
- Mr. Imtiaz Ali Khan, CEO, PRAL, FBR, Islamabad.
- Mr. Humayun Zafar, Director Automation (Customs PRAL), Islamabad.
- Mr. Zahid Ali Baig, Additional Collector of Customs, MCC, Islamabad.

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

Recommendations: FBR/Customs may consider initiating a dialogue with SBP (State Bank of Pakistan), Ministry of Commerce and other stake holders for accelerating the process of laying down wider procedural and regulatory framework for facilitating use of electronic commerce techniques in Pakistan as a part of preparing the operative platform for paper less system of goods processing through Customs. Authentication Techniques/methods of electronic commerce may be adopted for use in validation/ verification of transaction values of various types. In retail transactions of exports/imports, the procedure relating to customs clearance and value assignment reviewed so as to modify the existing provisions of the Customs Act, 1969, to give proper legal cover to all such transactions. Law on sharing of information with other Customs administrations and other legally approved parties may be developed in context of the law as it is evolving globally but giving fullest consideration to protecting confidentiality of information of individuals (legal and natural person).

Chapter 8: Relationship between the Customs and Third Parties

8.1. Standard	Persons concerned shall have the choice of transacting business with the customs either directly or by designating a third party to act on their behalf.
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Overall Assessment: Compliant

Relevant Law:

- The Customs Act; Sections 207 and 208(2)

Discussion:

Law: This Standard requires that persons concerned with Customs shall have the choice of transacting business with Customs either directly or by designating a third party to act on their behalf.

Section 207 of the Customs Act permits a person to act on behalf of a principal to transact customs related business provided the person holds a valid license issued by Customs. 208(2) of the Customs Act expressly provides the right of the principle to transact business directly with Customs without using an agent licensed under Section 207.

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

Resource Persons:

- Mr. Ibrahim Vighio, Collector of Customs, MCC, Quetta.
- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical) Customs Appellate, Tribunal, Karachi.
- Dr. M. Syed Jadoon, Additional Collector, MCC, Peshawar.
- Mr. Wajid Ali Deputy Collector of Customs Port Qasim.

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

Recommendations: No recommendations are deemed necessary at this time.

8.2. Standard

National legislation shall set out the conditions under which a person may act for and on behalf of another person in dealing with the Customs and shall lay down the liability of third parties to the Customs for duties and taxes and for any irregularities.

Overall Assessment: Compliant

Relevant Law:

- The Customs Act; Sections 207 and 209.
- The Customs Rules; (Notification Number SRO 450(1)2001 dated 18-06-2001: Rules 90 to 106 (Chapter VIII).
- Customs General Order 12/2002

Discussion:

Introductory Note: The Standard requires national legislation to set out the conditions under which a person may act on behalf of another person dealing with Customs and to specify the agent's liability for any duties and taxes and any irregularities in compliance with customs requirements.

Law: Section 207 of the Customs Act requires any person acting on behalf of a principal for the transaction of any business requiring customs clearance to be licensed according to the conditions and procedures set out in the Customs Rules.

Chapter VIII of the Customs Rules, 2001 set out the licensing conditions for customs clearing agents and customs shipping agents.

- Rule 90 defines terms used in the Chapter
- Rule 91 lists the documents required to apply for a license
- Rule 92 sets out eligibility conditions
- Rule 93 requires applicants to pass an examination to be set by Customs
- Rule 94 describes the security to be furnished by an agent
- Rule 95 specifies the terms and conditions of the license, e.g. term and transfer of license
- Rule 96 describes the procedure and conditions for renewal
- Rule 97 permits the agent to authorize three persons to sign documents on their behalf
- Rule 98 specifies the terms for authorizing staff of the licensee to transact with Customs
- Rule 99 requires an agent to attend a six-day mandatory training course once in every two years
- Rule 100 *ibid* requires him to maintain records.
- Rule 101 prescribes Agent's responsibilities from (a) to (u).
- Rule 102 sets out the reasons for suspending or revoking a licence and forfeiture of security
- Rule 103 provides for an agent's right of appeal
- Rule 104 specifies conditions for repayment of the security
- Rule 105 deals with other conditions when license shall stand revoked

Section 209(2) of the Customs Act provides for the vicarious liability of traders for their authorized employees and representatives. Section 209(3) provides that the agent shall be deemed to be the principal for any purpose under the Act – thus liable in place of the principal – provided that duty shall not be recovered from the agent if the agent did not act wilfully, negligently or in default. Section 210 goes farther and provides that any person who represents themselves as a transport owner's agent to Customs is liable for all obligations relating to any transaction, including penalties, of the principal.

Practice: Most traders contract customs agents to clear their goods for export and import. Agents normally conduct business on behalf of shipping companies and owners of goods in accordance with the Act and the rules made thereunder. According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

Resource Persons:

- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical) Customs Appellate Tribunal, Karachi.
- Mr. Nasir Chandana, Custom Clearing Agent, Custom House, Karachi.

Conclusion: Customs legislation imposes the entire liability of the principle on the customs agent for fees, actions and penalties etc. except any mistaken underpayment of duties, i.e. the underpayment is not due to the wilful act, negligence or default of the agent.

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

Recommendations: The term “Customs practitioner”, which was earlier defined (since 1977) under Section 2 of the Customs Act, 1969 and had later on omitted (in 2006), may be re-introduced in the Act, in order to make Pakistan's Customs regime fully compliant with this Standard. This will entitle, on one hand, a Customs practitioner to appear before the Customs authorities and to act for and on behalf of another person, if engaged by that person and, on other hand, will enable the Customs authorities to regulate his conduct as a Customs practitioner. If above recommendation is agreed to, Customs General Order 12/2002 (the CGO) may also be modified by adding a general order, for regulating the conduct of business by a Customs practitioner.

8.3. Standard

The Customs transactions where the person concerned elects to do business on his own account shall not be treated less favourably or be subject to more stringent requirements than those Customs transactions which are handled for the person concerned by a third party.

Overall Assessment: Substantially Compliant

Relevant Law:

- The Customs Act; Section 208(2)

Discussion:

Law: This Standard requires that if a person wants to conduct business directly with Customs, he should not be treated less favourably or subjected to more stringent conditions than an agent would receive from Customs.

Section 208(2) of the Customs Act expressly permits the principal to choose to transact business directly with Customs without using an agent. However, no provision of customs legislation either permits or prohibits Customs to discriminate in favour of either the principal or the agent.

Practice: This has been discussed with Customs officials at different Customs stations, airports and at sea ports. They have been unanimous in subscribing to the view that a person doing business with Customs on his own account is treated the same way as an agent or third party is treated. He is not discriminated against in any manner.

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

Resource Persons:

- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical) Customs Appellate, Tribunal, Karachi.
- Dr. Asif Jah, Additional Collector of Customs, MCC (Preventive), Lahore.
- Mr. Qurban Ali Khan, Additional Collector of Customs, MCC Islamabad.
- Mr. Yaqoob Mako, Additional Collector of Customs, MCC, (Preventive), Karachi.

Conclusion: Based on the above research, it appears that practice is in compliance with the Standard but the law should be strengthened to preclude any discrimination.

Recommendations: Section 208 of the Customs Act 1969 is amended to include a new subsection, 208(3) providing that Customs shall not discriminate in favour or against a principal acting directly without an agent.

8.4. Standard

A person designated as a third party shall have the same rights as the person who designated him in those matters related to transacting business with the customs.

Overall Assessment: Compliant

Relevant Law:

- The Customs Act; Section 209(3)

Discussion:

Introductory Note: Similar to Standard 8.3, this standard guarantees third parties the same rights as their principals, e.g. the right to use automated systems and access to information. Customs should also not impose requirements on any unrelated records of the agent.

Law: Section 209(3) deems an agent to be the principal of any goods for which he has been duly authorized by the principal to be an agent of under the Customs Act.

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

Resource Persons:

- Mr. Zulfiqar Kazmi Collector of Customs, MCC, Peshawar.
- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical) Customs Appellate, Tribunal, Karachi.
- Mr. Iqbal Muneeb, Additional Collector of Custom MCC, Appraisalment.
- Mr. Nasir Chandana, Custom Clearing Agent, Custom House, Karachi.

Conclusion: The law imposes the same rights and obligations on the agent as are enjoyed or incurred by the principal – except agents are not liable for mistaken underpayment of duties. Based on the above research, it appears that the law and practice are in compliance with the Standard.

Recommendations: No recommendations are considered necessary at this time.

8.5. Standard

The Customs shall provide for third parties to participate in their formal consultations with the trade.

Overall Assessment: Partially Compliant**Relevant Law:**

- [None]

Discussion:

Law: There are no provisions in the customs legislation providing the right or obligation for the trade to formally consult with Customs.

Practice: Presently customs clearing agents and customs shipping agents are consulted by Collectors of Customs regarding classification of goods, valuation, clearance procedures, hardship cases and facilitation. Customs also consults with the Customs Agents Associations (shipping/clearing). FBR also consults with the associations over tariff changes and transport policy and in meetings with the Federation of Pakistan Chambers of Commerce and Industry and with regional Chambers of Commerce and Industry, such as Karachi Chambers of Commerce and Industry or KCCI and Lahore Chambers of Commerce and Industry or LCCI.

Resource Persons:

- Mr. Muhammad Yahya, Director Intelligence and Investigation, Karachi (Now Chief Collector of Customs).
- Mr. Ibrahim Vighio Collector of Customs, MCC, Quetta.
- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical) Customs Appellate, Tribunal, Karachi.

Conclusion: Based on the above research, it appears that the law and practice are only in partial compliance with the Standard. Customs could consider developing more formal relationships with the Customs Agents Associations, regularly seeking comments on policy and procedure and development of codes of conduct and performance goals.

Recommendations:

- FBR/Customs consider executing formal MOUs with Associations of Customs Clearing Agents (Brokers) and Customs Shipping Agents to improve trade facilitation and to develop professional and ethical standards.

8.6. Standard	The Customs shall specify the circumstances under which they are not prepared to transact business with a third party.
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Overall Assessment: Compliant

Relevant Law:

- The Customs Act; Section 207 and 208
- The Customs Rules; (Notification Number SRO 450(1)2001 dated 18.06.2001: Rules 102 and 105

Discussion:

Law: Section 207 of the Customs Act prohibits any person acting as an agent without a valid license. Section 208(1) provides that a Customs officer may refuse an agent permission to transact any business if the agent cannot produce written authority from the principal.

Rule 102 provides 15 reasons for Customs to suspend or revoke an agent's license ranging from making false statements, conviction to a previous customs record of "reasonable doubt".

Rule 105 provides three further reasons to revoke a license based on insolvency, tax fraud or persistent failure to renew the license.

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

Resource Persons:

- Mr. Muhammad Yahya, Director Intelligence and Investigation Karachi (Now Chief Collector of Customs).
- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical) Customs Appellate, Tribunal, Karachi.
- Mrs. Zeba Hayee, Collector of Customs MCC, Lahore.

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

Recommendations: No recommendations are considered necessary at this time.

8.7. Standard	The Customs shall give written notification to the third party of a decision not to transact business.
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Overall Assessment: Compliant

Relevant Law:

- The Customs Rules; (Notification Number SRO 450(1)2001 dated 18-06-2001: Rule 102.

Discussion:

Law: Rule 102 sets out the reasons and procedure for revoking or suspending the license of an agent. Rule 102(3) provides that the agent shall be “informed in writing regarding the allegations and opportunity of hearing is afforded” before the Collector or licensing authority may revoke a permit. Rule 102(2) requires Customs to issue a “show cause notice” to the agent before forfeiting the agent’s security for settlement of any duties, taxes, penalties, etc.

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

Resource Persons:

- Mr. Muhammad Aamir, Collector of Customs, MCC PaCCS, Karachi.
- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical) Customs Appellate, Tribunal, Karachi.

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

Recommendations: No Recommendations are considered necessary at this time.

Chapter 9: Information, Decisions and Rulings Supplied by Customs

9.1. Standard	The Customs shall ensure that all relevant information of general application pertaining to customs law is readily available to any interested person.
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Overall Assessment: Substantially Compliant

Relevant Law:

- The Customs Rules; (Notification No. 450(I)/2001 dated 18-06-2001: Rule 530.
- Customs General Order (CGO) No.1 of 2010 dated 24-02-2010.
- The Freedom of Information Ordinance; Section 7

Discussion:

Introductory Note: The Guidelines to Standard 9.1 state that Customs must ensure that relevant information of general application is readily made available to all interested parties. The interested parties are trade and industry groups, forwarding agents, freight forwarders, shipping agents and major companies who transact business regularly with the Customs. Information of general application should also be furnished to other national authorities who are associated with the movement of goods to and from a Customs territory and who work in partnership with the Customs in the clearance of goods, i.e. the port, civil aviation, health and other authorities. Information on Customs requirements that is of interest to the general public, namely travellers and persons who send or receive postal articles, should be easily available.

Law: There is no general provision in any legislation directing Customs to ensure that all relevant information of general application pertaining to customs law shall be readily available to any interested person. Section 7 of the Freedom of Information Ordinance 2002 provides that policies and guidelines, the grant of licenses and final orders and decisions of any public body are public record. Various customs rules and orders establish or require information dissemination relating to specific customs topics. For example:

- Rule 530 requires regulatory agencies to update PACCS at source with any changes to legislation, procedures, quota debits, tariff changes, etc.
- The Customs General Order (CGO) No.1 of 2010 dated 24-02-2010 establishes a valuation website providing updated information to the public, customs agents and Customs officers.

Practice: The FBR/Customs publishes legislation, forms, guides and procedures online. Some of this material is available in hard copy. Relevant websites are described below:

- FBR Website: www.fbr.gov.pk The website publishes all relevant laws, rules, orders and circulars relating to customs, income tax, excise and sales tax. Guides, forms and access to various e-government portals are also made available.
- Customs Website: www.cbr.gov.pk The Customs website contains updated information and text of the Customs Act 1969 and the rules made thereunder, Pakistan Customs Tariff, Notifications, General orders, revenue collection figures, forms and FAQ's etc. The website also contains relevant information which is generally required by the users. However, comparison of this website with another country's website indicates that it needs to be made more user friendly and its coverage/links be widened.
- PRAL's Website: www.pral.com.pk Pakistan Revenue Automation Ltd (PRAL), the software Technology arm of FBR/Customs, also maintains an interactive web-site. It provides a wide variety of information for tax-payers.

The FBR publishes information about customs legislation, procedures, tariff rates and notifications each year in hard copy after passing the Annual National Budget. The Customs Act, 1969 and the Pakistan Customs Tariff are only available at FBR headquarters for the public. Public access to the

FBR building is restricted. The Baggage Rules and other passenger related information are also displayed at airports, land Customs stations and at sea ports. Pakistani missions in foreign countries also provide information in the form of brochures and booklets to the interested persons/overseas Pakistanis.

The Act and Tariff are also published and sold by private companies. The FBR/Customs Pakistan Customs Tariff comprises two volumes:

- Volume 1 contains full tariff schedule, the Import Policy Order of the Government, descriptions of duty and tax exemptions and the concessions available under various Free Trade Agreements.
- Volume II contains information about relevant notifications and rules, including baggage rules.

According to interviews with the resource persons specified below, it appears that Customs practice follows the law. Hard copies of the law and tariff schedule are only available from FBR headquarters while websites need to be expanded and regularly updated.

Resource Persons:

- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical), Customs Appellate, Tribunal 3 at Karachi.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Legal), MCC Appraisalment, Karachi.
- Mr. Muhammad Jamil Khan, Law Officer, MCC, Peshawar.

Conclusion: Based on the above research, although legislation does not require Customs to publish general information and hard copy publications are not readily available, Customs is making significant effort to maintain updated information on its website. The FBR/Customs website is the most efficient means of communication given that agents and traders have to be online in any case to access PACCS. The law and practice are in substantial compliance with the Standard.

Recommendations: It is recommended that the CGO 12/2002 be amended, or a new CGO is issued, adding an Order providing for the following actions: The Printing and Publication Section of Customs publish, in adequate volume, all customs legislation (Customs Act, 1969 and sub-ordinate legislation, i.e. Notifications and Rules), administrative guidelines, procedures and practices (Orders/Circulars, Standing Orders etc.). All publications, including G.D. forms, should be readily available at all Customs Stations and book stalls. All publications be updated when necessary and published online and in hard copy. Since the term "relevant information" includes information on other laws administered by Customs, thus the relevant laws need to be linked with the website. Information of general interest may also be put on the website, e.g.:

- Chassis and engine numbers of vehicles cleared by Customs each month for the public and agencies to confirm the legal status of vehicles
- FBR/Customs annual budget and expenditure
- Customs related decisions of the Supreme Court of Pakistan

9.2. Standard	When information that has been made available must be amended due to changes in Customs law, administrative arrangements or requirements, the Customs shall make the revised information readily available sufficiently in advance of the entry into force of the changes to enable interested persons to take account of them, unless advance notice is precluded.
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Overall Assessment: Non-Compliant

Relevant Law:

- [None]

Discussion:

Introductory Note: The Standard requires that Customs, following amendments to legislation or practice, make revised information readily available sufficiently in advance of the entry into force of the changes to enable interested persons to take account of these, unless advance notice is precluded.

Law: No provision in the Act or Rules requires Customs to give advance notice of any amendment or revision to customs policy and practice.

Practice: According to interviews with the resource persons specified below, it appears that Customs practice follows the law. Revised information is generally not made available in advance of the amendment or changes coming into force.

Resource persons:

- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical), Customs Appellate, Tribunal 3 at Karachi.
- Mr. Qurban Ali Khan, Additional Collector of Customs, AFU, Islamabad.
- Dr. Imran, Assistant Collector, Customs, AFU Exports, Karachi.

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

Recommendations: CGO 12/2002 is amended, or a new CGO is issued, to require FBR/Customs to publish any amendments to legislation, procedures, forms, etc. through print/electronic media at least 15-20 days in advance of the date the changes take effect. Longer periods of advance notice will be appropriate for changes requiring greater compliance investment by traders. Budget changes and changes having retrospective effect or those having revenue implications may be excluded from such advance notice.

9.3. Transitional Standard	The Customs shall use information technology to enhance the provision of information.
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Overall Assessment: Substantially Compliant

Relevant Law:

- Customs General Order (CGO) No.1 of 2010 dated 24-02-2010.
- The Customs Act; Sections 155A to 155R.
- The Customs Rules; (Notification Number SRO 450(I)/2001 dated 18-06-2001: Rules 422 to 556.

Discussion:

Law: A limited number of provisions require Customs to maintain and update information online. Sections 155A-155R (Chapter XVI-A) of the Customs Act, 1969, and Rules 422 to 556 of the Customs Rules regulate the online computerization of customs clearance procedures (PACCS). Of these, Rule 530 requires regulatory agencies to update PACCS at source with any changes to legislation, procedures, quota debits, tariff changes, etc. Further, Customs General Order (CGO) No.1 of 2010 dated 24-02-2010 establishes a valuation website providing updated information to the public, customs agents and Customs officers.

Practice: As discussed under Standard 9.1, FBR/Customs provides information on legislation, procedures, forms and guidelines online, i.e. the FBR website, Customs website and PRAL's website. Comparison with websites of similar countries indicates that the Customs website can be made further user friendly and its coverage/links be widened. The automated customs clearance system, PACCS, clears over 70 percent of all imports and also generates statistics on revenue and trade. However, the statistics are reported on the FBR website.

Resource Persons:

- Syed Tanvir Ahmad Collector of Customs, MCC, Port Qasim, Karachi
- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical), Customs Appellate, Tribunal 3 at Karachi.
- Mr. Ahmad Atif, CEO, Person Force (Pvt.) Limited, 510, st. 9 F-10/2, Islamabad.

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

Recommendations:

The FBR/Customs websites be updated to include:

- An Urdu version of the website.
- A list of Customs defaulters as well as compliant tax payers.
- A facility to post questions and receive responses using SMS or email.
- A comprehensive and updated contact list of senior FBR officers and all Collectorates i.e. Assistant Collector and above.
- A customs duty calculator for the benefit of importers and in-coming passengers.
- Update taxpayer guides on a monthly basis.
- All draft SROs/Customs General orders be placed on the website seeking comments from the general public.
- Trade Statistics.

9.4. Standard	At the request of the interested person, the Customs shall provide, as quickly and as accurately as possible, information relating to the specific matters raised by the interested person and pertaining to Customs law.
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Overall Assessment: Partially Compliant

Relevant Law:

- [None]

Discussion:

Law: The Standard requires that on request of an interested person Customs shall provide information or decisions about specific Customs activities as quickly and as accurately as possible.

Practice: Customs has established telephone help-lines, websites and customer centers at various Customs stations. However, Customs response time to requests for information is not always rapid and information provided is not always accurate. No formal mechanisms exist for the public to ask questions or seek information and for Customs to respond.

Stakeholders and resource persons comment that Customs officials do respond to requests, but often in less than a professional manner. Sometimes officials believe that requests must be lodged directly with the office dealing with the matter. Given the lack of explanation of organizational responsibility, the requesting person has to visit many offices and officials to gain an answer. Added to this is a lack of motivation to provide good customer service and a fear of potential disciplinary action if incorrect information is provided.

Resource Persons:

- Mr. Amir Muhammad Khan Marwat, Chief Collector of Customs (South), Custom House, Karachi.
- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical), Customs Appellate, Tribunal 3 at Karachi.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Legal), MCC Appraisement, Karachi.

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

Recommendations: A provision should be added to the Customs Act requiring Customs to provide information relating to the specific matters raised by an interested person within a stated time period. A Customs General Order is issued setting out Standard Operating Procedures (SOP) for relevant officers to respond to public requests for Customs-related information promptly, to provide accurate information and to ensure proper compliance with the provisions of the Freedom of Information Ordinance, 2002. The Customs General Order also requires Customs to publish responses and to monitor the performance of Customs in their responses. Customs officials are provided training on communications skills and customer service.

9.5. Standard	The Customs shall supply not only the information specifically requested but also any other pertinent information which they consider the interested person should be made aware of.
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Overall Assessment: Non-Compliant

Relevant Law:

- [None]

Discussion:

Introductory Note: This Standard requires that the Customs shall supply not only the information specifically requested but also any other pertinent information which they consider the interested person should be made aware of.

Law: Pakistan has neither legislation nor procedure giving effect to this Standard.

Practice: Customs authorities have no formal arrangements to respond to requests and provide further relevant information. The result is that an interested person may or may not receive necessary information as well as other relevant information.

Resource Persons:

- Dr. Sarfraz Waraich, Collector of Customs, MCC, Sambrial.
- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical), Customs Appellate, Tribunal 3 at Karachi.
- Dr. Asif Mehmood Jah, Additional Collector of Customs, MCC, Preventive (Lahore)

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

Recommendations: See Recommendations under Standard 9.4

9.6. Standard	When the Customs supply information, they shall ensure that they do not divulge details of a private or confidential nature affecting the Customs or third parties unless such disclosure is required or authorized by national legislation.
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Overall Assessment: Substantially Compliant

Relevant Law:

- The Customs Act; Section 155H

Discussion:

Law: Section 155 H of the Customs Act, 1969 provides for the confidentiality of all trade information gathered by Customs during clearance of goods. It shall only be used for statistical purposes, to compare to other imports or exports or as evidence before a legal forum.

Unauthorized disclosure of confidential information is an offense punishable under Section 156(1)(100) of the Act, making a person liable to a penalty not exceeding 200,000 Rupees and, on conviction before a special judge, to imprisonment for a term not exceeding three years or both. The FBR/Customs have the discretion to proceed against delinquent officials and abettors administratively or to prosecute them in the Court of the Special Judge having jurisdiction under section 185A of the Act.

Practice: It is the policy of Customs that confidential or private information is not shared with unauthorized persons. Customs officials may only provide non-confidential information to traders in the ordinary course of business.

According to interviews with the resource persons specified below, it appears that Customs practice follows the law. There are instances of confidential information relating to an exporter or importer being leaked by Customs officials to competitors.

Resource Persons:

- Dr. Sarfraz Waraich, Collector of Customs, MCC, Sambrial
- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical), Customs Appellate, Tribunal 3 at Karachi.
- Mr. Asif Mehmood Jah, Additional Collector, MCC, Preventive (Lahore)
- Mr. Saeed Jadoon, Additional Collector, MCC, Peshawar.

Conclusion: Based on the above research, it appears that the law and practice are substantially compliant with the Standard.

Recommendations:

- FBR/Customs trains all staff on the importance of information privacy and confidentiality.
- FBR/Customs monitors communications between Customs officials and takes strict administrative action to penalize disclosure confidential information.
- FBR/Customs prosecutes the offenders in the court of Special Judge having jurisdiction.

9.7. Standard	When the Customs cannot supply information free of charge, any charge shall be limited to the approximate cost of the services rendered.
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Overall Assessment: Compliant

Relevant Law:

- The Customs Act; Sections 18D and 204.

Discussion:

Law: Section 18D of the Customs Act authorizes Customs to charge a fee or service charge for any service at rates specified in the official Gazette. Section 204 authorizes Customs to charge a fee of no more than 100 Rupees for a certificate or duplicate of a certificate or other document.

Practice: According to interviews with the resource persons specified below, it appears that Customs practice follows the law. As discussion of Standard 9.1 explained, Customs supplies information free of charge on its website. However, a nominal fee is charged for publications and books. Forms and guides are provided at no extra cost to registered users of PACCS and WeBoc.

Resource Persons:

- Dr. Sarfraz Waraich, Collector of Customs, MCC, Sambrial.
- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical), Customs Appellate, Tribunal 3 at Karachi.
- Mr. Saeed Jadoon, Additional Collector, MCC, Peshawar.
- Mr Nasir Chandna, Customs Clearing Agent, Customs House, Karachi.

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

Recommendations: No Recommendations are considered necessary.

9.8.Standard	At the written request of the person concerned, the Customs shall notify their decision in writing within a period specified in national legislation. Where the decision is adverse to the person concerned, the reasons shall be given and the right of appeal advised.
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Overall Assessment: Compliant

Relevant Law:

- The Customs Act; Sections 179 (3), 193(1), 193A(4)(5), 194A(3), 194B(1)(3) and 195C(2)(3A)(4)

Discussion:

Introductory Note: The W.C.O. Guidelines to General Annex Standard 9.8 state that “National legislation must include deadlines for Customs to furnish decisions under normal circumstances. When a decision is requested, Standard 9.8 requires Customs to furnish it in writing and within the specified period. If decisions are adverse, the reasons for the decision and, where necessary, the legal basis must be included. Customs are also required to notify interested parties of their right of appeal. Full details of the appeals procedure are contained in Chapter 10 to the General Annex.”

Law: Sections 179(3) of the Customs Act read with 193(1), 193A(4)(5), 194A(3), 194B(1)(3), 195C(2)(3)(4) provide for a decision in writing, within a specified period, to be communication to the concerned party.

- Section 179(3) requires that cases heard by Customs officials are decided within 120 days of the issuance of show cause notice, extendable for a further 60 days.
- Section 193(1) permits any person to appeal any decision or order of a Customs official to the Collector of Customs, Appeals, within 30 days of communication of such decision.
- Section 193A(4) requires the decision of the Collector, Appeals, to be in writing and stating the reasons for the decision.
- Section 193A(5) requires the decision of the Collector, Appeals, to be communicated to the appellant, adjudicating authority and the Collector of Customs.
- Section 194A(3) permits the appellant to file an appeal to the Appellate Tribunal within 60 days of the date of communication of the decision.
- Section 194B(1) requires the appeal to be decided within 60 days of filing with the Tribunal.
- Section 194B(3) requires the Tribunal to send copies of every order to Customs and the other party to the appeal.
- Section 195C(2) provides that an aggrieved person may apply to the Board to appoint a dispute resolution committee within 30 days of the application to examine the issue.
- Section 195C(3) requires the committee to make its recommendations within 90 days of the committee being formed
- Section 195C(4) permits the Board to make any order within 45 days of receipt of the recommendations of the committee

Appeals from certain Customs administrative actions or omissions are not available under customs legislation. For example, in cases of omission to approve an order, refusal to grant duty and tax remission for exports, denial of a license application (e.g. a clearing agent license) and in various types of administrative representations. Yet such decisions or omissions can be contested before a High Court through a constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. Furthermore, anyone can object to a Customs decision or omission before the Federal Tax Ombudsman under the provisions of section 9 of “The Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000 (XXXV of 2000)” and “Federal Tax Ombudsman

Investigation and Disposal of Complaints Regulations, 2001" made there under. The following alternate courses for relief are also available but are a matter of last resort:

- Representation to Chairman, FBR under FBR Act, 2007.
- Filing a Complaint to Federal Tax Ombudsman

Practice: Written requests to Customs are responded to depending on their substance and merit. Where a request creates or extinguishes a substantive right, the person is given opportunity of explaining his defence before an adverse order is passed. In such matters the order is in writing, duly communicated to the person and, if there is no provision in law for appeal, the person may represent against such decision to the next senior officer. But there is inertia against reversing a decision of the immediate subordinate and it is rarely done.

Resource Persons:

- Mr. Amir Muhammad Khan Marwat, Chief Collector of Customs (South), Custom House, Karachi.
- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical), Customs Appellate, Tribunal 3 at Karachi.
- Mr. Muhammad Nasir Khan, Collector of Customs (Appeals), MCC, Islamabad
- Mr. Javed Iqbal Butt, Former Deputy Collector (Legal), MCC Appraisement, Karachi.

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

Recommendations: It is recommended that in matters where an appeal or some other statutory remedy is not provided, a new forum of "departmental appeal/revision" be created. Decisions of officers up to additional collector would be subject to revision by the Collector of Customs of the same Model Collectorate of Customs, provided that such act or omission contravenes any statutory provision or rules, instructions or orders. Similarly, an order or omission to pass an order, by a Collector of Customs may be made subject matter of revision before the respective Chief Collector

In order to give effect to this recommendation the following amendments in the Customs Act, 1969 may be considered: After section 195 of the Customs Act, 1969, a new provision may be inserted, providing for revision as discussed in the preceding paragraph; or, as an alternate recommendation, such orders may be made appealable before the Collector of Customs (Appeals) having jurisdiction. FBR/Customs should set up contact points in each office for receiving requests from interested persons, and getting these responded to or disposed of by concerned authorities and to report progress on disposal/pendency.

9.9.Standard	The Customs shall issue binding rulings at the request of the interested person, provided that the Customs have all the information they deem necessary.
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Overall Assessment: Substantially Compliant

Relevant Law:

- Customs General Order 12/2002; Chapter-II

Discussion:

Law: Chapter-II of Customs General Order 12 of 2002 sets out the process for Customs to issue advance rulings on Customs classifications. The provisions of Chapter II of the CGO correspond to the major elements of the W.C.O. Guidelines of Standard 9.9 of the General Annex. The CGO establishes a Classification Center and authorizes the Collector of Customs, Appraisement, to establish a Classification Committee inviting subject matter experts and nominees of the trade community as may be required. Importers apply in writing for an advance ruling. Upon a ruling decision being made by the Committee the importer and relevant customs stations are notified. The ruling is valid for one year and may be annulled because of subsequent tariff changes, judicial decisions, etc.

Practice: According to interviews with the resource persons specified below, it appears that Customs practice follows the law. This procedure has been working effectively and transparently. This system of collective deliberation has also helped in improving understanding of personnel in relation to matters of classification of goods.

Resource Persons:

- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical), Customs Appellate, Tribunal 3 at Karachi.
- Mr. Javed Iqbal Butt, former Deputy Collector (Legal), MCC Appraisement, Karachi.

Conclusion: The scope of the Classification Committee is restricted to rulings on classification of goods under the Pakistan Customs Tariff. The General Annex Guidelines to Standard 9.9 states that “Although tariff classification is the most common area for binding rulings, origin and valuation rulings are also common.” Therefore, although closely following the guidelines, Pakistan’s binding rulings regimes could be expanded to provide greater service to importers.

Recommendations: Chapter-II of Customs General Order 12 of 2002 is amended to provide for binding rulings on valuation and origin.

Chapter 10: Appeals in Customs Matters

10.1.Standard	National legislation shall provide for a right of appeal in Customs matters.
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Overall Assessment: Substantially Compliant**Relevant Law:**

- The Customs Act; 193, 193-A, 194,194-A, 195-C and 196.

Discussion:

Introductory Note: This standard requires that the national legislation shall clearly sets out a right of appeal in any Customs matter. It is important that the procedure for appeals must clearly be outlined in the legislation, and the legal requirements and procedures for filing an appeal must be made readily available to the trade community and the general public.

Law: Section 193 provides the procedure wherein, any person including an officer of Customs aggrieved by any decision or order passed under Sections 33, 79, 80 and 179 by an officer of Customs below the rank of Additional Collector can file an appeal before Collector (Appeals) within thirty days of the date of communication of the order or decision. Appeal under 193 could also be filed after the expiry of thirty days' time period, if the Collector (Appeals) is satisfied that the applicant has sufficient cause for not preferring the appeal within the time period provided under the Act.

Under Section 193-A, the Collector (Appeals) after making inquiries as necessary pass an order in writing within one hundred and twenty days of filing an appeal. The Collector (Appeals) has a power to confirm, modify or annul the decision made by the Additional Collector.

Section 194 provides that, the Government shall constitute an Appellate Tribunal to be called the Customs Appellate Tribunal to hear the Appeals against determinations made by the Customs authorities. The Customs Tribunal consists of a judicial member who has been judge of the High Court or a District judge and is qualified to be judge of the High Court. The Technical members are officers of Customs and Excise Group equivalent to that of a Member of the Board or Chief Collector of Customs.

Section 194-A provides the procedure for appeals to the Appellate tribunal established by the Federal Government wherein any person aggrieved of the orders of the Collector (Appeals) can file an appeal. It is also provided that appeal can be filed within sixty days from the date on which the decision has been made by the Collector (Appeals). Section 194-B provides that the Appellate Tribunal, after giving ample opportunity of being heard to the parties may pass order and also record additional evidence. It also provides that the appeal shall be decided within sixty days of filing the appeal or within such extended period as the tribunal fix after recorded the reasons in writing.

Under Section 196 an aggrieved party can further file an appeal before the High Court with ninety days of the date an order has been made by the Appellate Tribunal. It is important to mention that the appeal filed before the High Court must set out the facts, the determination of the Appellate Tribunal and the question of law arising out of the decision.

Simultaneously, under Section 195-C, when an appeal is in progress, the appellant can file application with FBR for an out-of-court option for alternate dispute resolution. It is further provided that parties can avail this opportunity only in the case where criminal proceedings have not been initiated or where interpretation of question of law having larger revenue impact in the opinion of the Board is not involved.

Practice: Customs Act provides a clear mechanism for appeal and the tax payer has multiple layers of appellate authorities available for providing legal remedies. As an addition, the WeBOC system gives the importers two 'rights of review'. He can request a review of the assessment made by the appraising officer, and if is not satisfied by the Principal Appraiser's decision, can file a final request electronically to the Assistant Collector. Appeal against the Assistant Collector's decision is heard by the Collector (Appeal). According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

Resource Persons:

- Mr. Ishtiaque Ahmed, Advocate, Peshawar (Former Assistant Collector, Law, RTO, Peshawar and at present practicing law in the field of customs, excise and sales tax).
- Mr. Muhammad Arif Moton, Advocate, Karachi (Former Member (Technical), Customs Appellate, Tribunal 3, Karachi).

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

Recommendations: It is recommended that where an appeal is not provided against an act or omission of a customs authority, the said act or omission may be made subject to revision by statutory forum of revision authority. A decision made by the Additional collector is made subject to revision by a forum of two or three additional collectors in the same Model Collectorate of Customs or a Collector of Customs Appeals and an act or omission by a Collector of customs may be made subject to revision by the Chief Collector, having jurisdiction.

10.2.Standard	Any person who is directly affected by a decision or omission of the Customs shall have a right of appeal.
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Overall Assessment: Substantially Compliant

Relevant Law:

- The Customs Act; Sections 25D, 193, 194,194A, 195C and 196.

Discussion:

Introductory Note: This standard ensures the right of appeal to any person directly affected by a decision or omission of Customs. The national legislation must set forth the specific types of decisions and omissions that are subject to appeal. Usually this includes decisions on valuation and classification matters and rules of origins, as well as matters effecting travelers.

Law: Where a customs value has been determined under Section 25A by the Collector of Customs or Director of Valuation, a revision petition (Appeal) can be filed before Director-General of valuations within thirty days from the date of determination of Customs value, under Section 25D of the Act.

Section 193 provides the procedure wherein, any person including an officer of Customs aggrieved by any decision or order passed under Sections 33, 79, 80 and 179 by an officer of Customs below the rank of Additional Collector can file an appeal before Collector (Appeals) within thirty days of the date of communication of the order or decision. Appeal under 193 could also be filed after the expiry of thirty days' time period if the Collector (Appeals) is satisfied that the applicant has sufficient cause for not preferring the appeal within the time period provided under the Act.

Section 194 provides that the Government shall constitute an Appellate Tribunal to be called the Customs Appellate Tribunal to hear the Appeals against determinations made by the Customs authorities. The Customs Tribunal consists of a judicial member who has been judge of the High Court or a District judge and is qualified to be judge of the High Court. The Technical members are officers of Customs and Excise Group equivalent to that of a Member of the Board or Chief Collector of Customs.

Section 194-A provides the procedure for appeals to the Appellate tribunal established by the Government, wherein any person aggrieved of the orders of the Collector (Appeals) can file an appeal. It is also provided that appeal can be filed within sixty days from the date on which the decision has been made by the Collector (Appeals). Section 194-B provides that the Appellate Tribunal, after giving ample opportunity of being heard to the parties may pass order and also record additional evidence. It also provides that the appeal shall be decided within sixty days of filing the appeal or within such extended period as the tribunal fix after recorded the reasons in writing.

Under Section 196 an aggrieved party can further file an appeal before the High Court with ninety days of the date an order has been made by the Appellate Tribunal. It is important to mention that the appeal filed before the High Court must set out the facts, the determination of the Appellate Tribunal and the question of law arising out of the decision.

Simultaneously, under Section 195-C, when an appeal is in progress, the appellant can file application with FBR for an out-of-court option for alternate dispute resolution. It is further provided that parties can avail this opportunity only in the case where criminal proceedings have not been initiated or where interpretation of question of law having larger revenue impact in the opinion of the Board is not involved.

Practice: According to interviews with the resource persons specified below, it appears that Customs

practice follows the law.

Resource Persons:

- Mr. Muhammad Nasir Khan, Collector of Customs (Appeals), Islamabad.
- Mr. Ishtiaque Ahmed, Advocate, Peshawar (Former Assistant Collector, Law, RTO, Peshawar and at present practicing law in the field of customs, excise and sales tax).
- Mr. Muhammad Arif Moton, Advocate, Karachi (Former Member (Technical), Customs Appellate, Tribunal 3 at Karachi).

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

Recommendations: After section 195 of the Customs Act a new provision may be inserted, providing for revision in matters where an appeal or any other statutory remedy is not provided. A new forum of “departmental revision” may be created making such decisions of officers up to Additional Collector subject to revision by a Collector of the same Model Collectorate of Customs. Similarly, an order or omission to pass an order, by a Collector of Customs may be made subject matter of revision before the respective Chief Collector.

FBR/Customs may issue a Customs General Order specifying the number of days (for instance within fifteen days or so) in which an order for grant of ‘remission of duties and taxes-, grant of license for ‘Customs House Agent’, for ‘Bonded Transport’, for ‘Bonded Ware House’ or similar other matters, may be passed.

10.3.Standard	The person directly affected by a decision or omission of the Customs shall be given, after having made a request to the Customs, the reasons for such decision or omission within a period specified in national legislation. This may or may not result in an appeal.
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Overall Assessment: Substantially Compliant

Relevant Law:

- The Customs Act; 193, 193-A, 194-A, 194-B and 196.

Discussion:

Introductory Note: This standard provides that upon request, those persons directly affected by a decision or omission should be provided with a full explanation and reasons for the decision or omission within a reasonable time specified in the national legislation. This standard is important so that the affected person is able to lodge a timely and effective appeal.

Law: Section 193 and 193-A provides the procedure wherein any person including an officer of Customs aggrieved by any decision or order passed under Sections 33, 79, 80 and 179 by an officer of Customs below the rank of Additional Collector can file an appeal before Collector (Appeals) within thirty days of the date of communication of the order or decision. Appeal under 193 could also be filed after the expiry of thirty days' time period if the Collector (Appeals) is satisfied that the applicant has sufficient cause for not preferring the appeal within the time period provided under the Act.

Section 194-A provides the procedure for appeals to the Appellate tribunal established by the Federal Government of Pakistan wherein any person aggrieved of the orders of the Collector (Appeals) can file an appeal. It is also provided that appeal can be filed within sixty days from the date on which the decision has been made by the Collector (Appeals). Section 194-B provides that, the Appellate Tribunal, after giving ample opportunity of being heard to the parties may pass order and also record additional evidence. It also provides that, the appeal shall be decided within sixty days of filing the appeal or within such extended period as the tribunal fix after recorded the reasons in writing.

Under Section 196 an aggrieved party can further file an appeal before the High Court with ninety days of the date an order has been made by the Appellate Tribunal. It is important to mention that the appeal filed before the High Court must set out the facts, the determination of the Appellate Tribunal and the question of law arising out of the decision. Under the rules and procedures of the High Courts, an entitled person may apply for a certified copy and he gets the same within a limited time (normally within a week).

Practice: Although no parallel provision exists in the Act, under the rules and procedures of Courts, an entitled person may apply for a certified copy and may get the same within a limited time (normally within a week). In case of a regular appeal under sections 194-A of the Act a copy of the decision is usually sent to all parties to the appeal (even without making request). However, that time period is not provided in the national legislation. According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

Resource Persons:

- Mr. Muhammad Arif Moton Advocate and Former Member, Customs Appellate Tribunal, Karachi.
- Mr. Javed Iqbal Butt, former Deputy Collector (Legal), MCC Appraisement, Karachi.

Conclusion: Based on the above research, it appears that the law and practice are substantially in

compliance with the Standard.

Recommendations: Sections 193, 194A and 196 of the Act may be amended so as to provide distinction between terms “*decision*” and “*order*” including the definitions of “*decision*” and “*order*” to be added in section 2 of the Act. A provision may also be added in Chapter XIX of the Act to provide the time frame within which any party can obtain decision of the Appellate body.

10.4.Standard	National legislation shall provide for the right of an initial appeal to the Customs.
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Overall Assessment: Compliant

Relevant Law:

- The Customs Act; 25D and Section 193.

Discussion:

Introductory Note: This standard provides that an affected person be provided with an opportunity to address a decision or omission initially within Customs at the administrative level without first having to proceed to an independent judicial authority. This may result in more expeditious resolution of the matter and at less cost and time to both the Customs and the affected person.

Law: Where a customs value has been determined under Section 25A by the Collector Customs or Director of Valuation, a revision petition or appeal can be filed before Director-General of valuations within thirty days from the date of determination of Customs value under Section 25D of the Act. In the case where revision petition/ appeal is filed before the Director-General valuation, any proceedings pending before any court or tribunal are also be referred back to the Director-General valuation for decision.

Section 193 of the Customs Act provides for appeal before Collector of Customs (Appeals). Any person including the officer of Customs aggrieved by the decision can file an appeal to the Collector (Appeals) against the decision made by the officer of Customs below the rank of Additional Collector within thirty days of the date of communication of any such order to him. Furthermore, aggrieved person can also file an appeal after expiry of any such period if that person satisfies the Collector (Appeals) that there has been sufficient cause for not preferring the appeal within such period.

Practice: It appears that Customs practice follows the law.

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

Recommendations: It is recommended that a provision may be added in Chapter XIX of the Act that in situation where an importer is aggrieved by the decision of the frontline officer. The initial recourse should be to appeal to a supervisory officer, to the head of the local Custom office or to the Regional office.

10.5.Standard	Where an appeal to the Customs is dismissed, the appellant shall have the right of a further appeal to an authority independent of the Customs administration.
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Overall Assessment: Partially Compliant

Relevant Law:

- The Customs Act; Sections 194, 194A, 194B and 196

Discussion:

Introductory Note: The standard provides that there must be a right to appeal to an authority independent of the Customs administration which initially examined the appeal. There must be an independent judicial body or a special tribunal with power to settle Customs disputes.

Law: Section 194 provides the formation of Appellate Tribunal by the Government. Section 194-A provides the procedure for appeals to the Appellate tribunal established by the Government, wherein any person aggrieved of the orders of the Collector (Appeals) can file an appeal. It is also provided that appeal can be filed within sixty days from the date on which the decision has been made by the Collector (Appeals). Section 194-B provides that the Appellate Tribunal, after giving ample opportunity of being heard to the parties may pass order and also record additional evidence. It also provides that the appeal shall be decided within sixty days of filing the appeal or within such extended period as the tribunal fix after recorded the reasons in writing.

It is important to note that the under Section 194 (3) it is provided that the Federal Government also appoint technical member in the Appellate Tribunal from the Customs and Excise Group equivalent in rank to that of a Member of the Board or Chief Collector of Customs or Director General or a senior Collector with five years' experience in that position. This formation of Appellate Tribunal with member from the Customs officer raises the question on independence of Tribunal as independent authority must not be under the control of customs.

Under Section 196 an aggrieved party can further file an appeal before the High Court with ninety days of the date an order has been made by the Appellate Tribunal, which is the only independent body that is not in control of Customs administration.

Practice: It appears that the practice is as per law.

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

Recommendations: All appointments must be made through transparent process and to make Appellate Tribunals more independent and law substantially compliant with the standard technical members must not be serving officers from the Customs and Excise Group.

- Like 'Appellate Tribunal Inland Revenue' (ATIR), the appointments of members not already in regular government service should be appointed through the 'Federal Public Service Commission', to ensure their independence.
- There should be fixed tenure for the members from FBR, at least for three years.

10.6 Standard	In the final instance, the appellant shall have the right of appeal to a judicial authority.
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Overall Assessment: Compliant

Relevant Law:

- The Customs Act; Sections 185 and 196.

Discussion:

Introductory Note: The standard requires that the appellant have the legal right to appeal ultimately to an independent judicial authority.

Law: The Customs Act provide distinction between the Criminal offenses committed and the illegalities made during the Customs proceedings. Under Section 185 the Federal Government can appoint Special Judges with territorial limits within which he shall exercise jurisdiction under this Act. A special judge can upon a report written made by an officer of customs can issue summon or warrant for appearance of the person to hold inquiry in accordance with the provisions of section 202 of the Code of Criminal Procedure.

Under Section 196 any aggrieved party can file an appeal before the High Court of the competent jurisdiction, which is independent of customs administration, within ninety days of the date on which that party was served with order of the Appellate Tribunal. An appeal filed before the High Court must be in a prescribed form along with a statement of the case, 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:

- Mr. Muhammad Arif Moton Advocate and Former Member, Customs Appellate Tribunal, Karachi.
- Mr. Javed Iqbal Butt, former Deputy Collector (Legal), MCC Appraisement, Karachi.
- Mr. Isaac Ali Qazi, Advocate Supreme Court of Pakistan, Peshawar.

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

Recommendations: No recommendations are considered necessary at this time.

10.7.Standard	An appeal shall be lodged in writing and shall state the grounds on which it is being made.
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Overall Assessment: Substantially Compliant

Relevant Law:

- The Customs Act; Sections 193(2), 194-A(6),195-C(2) and 196
- The Customs, Excise and Sales Tax Appellate Tribunal Procedural Rules.

Discussion:

Introductory Note: It is required that appellant lodge appeals in writing and state with particularity the grounds on which the appeal is being made. The matter must be based on clear facts and not submitted to subjective interpretations. The intention of the legislature is not to set unreasonable or unnecessary requirement for the form in which an appeal must be lodged.

Law: Section 193 (2) provides that an aggrieved person can file appeal before the Collector (Appeals) in such form and shall be verified in such manner as may be prescribed by rules made in this behalf. However, it is important to mention here that the rules for filing an appeal are not provided in the Act. Generally, the appeal procedure is provided internally in the Customs offices and the practice is also established that a written application must be submitted including all the relevant evidence and material.

Under 194-A (6) an aggrieved party of the decision of Collector (Appeals) can file another appeal before Appellate Tribunal in a manner which is specified in rules made by the tribunal. The Appellate Tribunal issue its internal rules approved by the Government. Those rules are strictly followed while filing any appeals before the Appellate Tribunal. It is however important to mention here that the Act is not provided with any such provision wherein it is clearly provided as how and in what manner appeal is filed before the Appellate Tribunal.

Under 195-C (2) any party can file a written application before the Board for appointment of committee for resolution of dispute in appeal, except in the cases where first information reports (FIR's) 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.

Under Section 196 any aggrieved party can file an appeal before the High Court of the competent jurisdiction, which is independent of customs administration, within ninety days of the date on which that party was served with order of the Appellate Tribunal. An appeal filed before the High Court must be in a prescribed form along with a statement of the case, 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:

- Mr. Nasir Ali Khan, Collector (Appeals), Islamabad.
- M/s Muhammad Wazir and Sajjad Haider, Assistant Registrars, Customs Appellate Tribunal, Islamabad, and Karachi.
- Mr. Muhammad Arif Moton Advocate and former Member, Customs Appellate Tribunal, Karachi.

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

Recommendations: No recommendations are considered necessary at this time.

10.8. Standard	A time limit shall be fixed for the lodgment of an appeal against a decision of the Customs and it shall be such as to allow the appellant sufficient time to study the contested decision and to prepare an appeal.
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Overall Assessment: Compliant

Relevant Law:

- The Customs Act; Section 25D, 193, 194-A and 196.
- The Customs, Excise and Sales Tax Appellate Tribunal Procedural Rules

Discussion:

Introductory Note: The standard requires that prescribed periods be set that provide an adequate and reasonable amount of time for lodging an appeal against a customs decision. It is also to ensure that that the appellant must have sufficient time to prepare an appeal.

Law: Where a customs value has been determined under Section 25A, a revision petition can be filed before Director-General of valuations within thirty days from the date of determination of Customs value under Section 25D of the Act.

Section 193 provides the procedure wherein any person including an officer of Customs aggrieved by any decision or order passed can file an appeal before Collector (Appeals) within thirty days of the date of communication of the order or decision. Appeal under 193 could also be filed after the expiry of thirty days' time period if the Collector (Appeals) is satisfied that the applicant has sufficient cause for not preferring the appeal within the time period provided under the Act.

Section 194-A provides the procedure for appeals to the Appellate tribunal wherein any person aggrieved of the orders of the Collector (Appeals) can file an appeal. It is also provided that appeal can be filed within sixty days from the date on which the decision has been made by the Collector (Appeals). Section 194-B provides that the Appellate Tribunal shall decide an appeal within sixty days of filing the appeal or within such extended period as the tribunal fix after recorded the reasons in writing.

Under Section 196 an aggrieved party can further file an appeal before the High Court with ninety days of the date an order has been made by the Appellate Tribunal.

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

Resource Persons:

- Mr. Nasir Ali Khan, Collector (Appeals), Islamabad.
- M/s Muhammad Wazir and Sajjad Haider, Assistant Registrars, Customs Appellate Tribunal, Islamabad, and Karachi.
- Mr. Muhammad Arif Moton Advocate and former Member, Customs Appellate Tribunal, Karachi.

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

Recommendations: No recommendations deem necessary at this stage.

10.9. Standard	Where an appeal is to the Customs they shall not, as a matter of course, require that any supporting evidence be lodged together with the appeal but shall, in appropriate circumstances, allow a reasonable time for the lodgment of such evidence.
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Overall Assessment: Compliant

Relevant Law:

- The Customs Act; Section 25D and 193.

Discussion:

Introductory Note: The standard requires that the appellant must be provided with an adequate and reasonable amount of time in which to gather evidence in support of his appeal after that has been lodged.

Law: Appeals against the decisions of the customs can be filed under Section 25D and 193 details of which is provided under Standard 10.8 above. It is noted that although not clearly provided under the Act all such appeals are made in writing before the customs authorities with relevant information and evidence.

Practice: In practice also, in appeals before Customs and in the second appeal before the Customs Appellate Tribunal, the appellant is not required to file supporting evidence at the time of filing the appeal and a reasonable time is generally provided for filing, where appropriate such supporting evidence as may be required. Therefore, according to interviews with the resource persons specified below, it appears that Customs practice follows the law.

Resource persons:

- Mr. Nasir Khan, Collector of Customs (Appeals), Islamabad.
- Mr. Muhammad Arif Moton, Advocate, Karachi, Former Member (Technical), Customs Appellate, Tribunal 3 at Karachi.

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

Recommendations: A provision may be added in Chapter XIX of the Act to provide the guidelines as how to file an appeal before the Customs to make it compliant with the standard.

10.10.Standard	The Customs shall give its ruling upon an appeal and written notice thereof to the appellant as soon as possible.
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Overall Assessment: Compliant

Relevant Law:

- The Customs Act; Sections 193-A (3) and 193-A (5)
- Customs General Order 12 of 2002; Paragraph 79.

Discussion:

Introductory Note: The standard requires that the customs provide its decision as soon as possible also notify the appellant in writing as soon as possible of the decision taken on the appeal.

Law: Under Section 193A (3) Collector (Appeals) after hearing the appeal within one hundred and twenty days may pass an order with all the reasons recorded in writing extend, confirm, modify or annul the decision or order of the customs. The provision of section 193A (5) further provides that after adjudication, the appellate authority shall send a copy of his decision/ruling to the appellant, the adjudicating authority and the Collector of Customs.

In this regard FBR/Customs also issues instructions from time to time through Customs General Orders. A note given in an Order-in-Appeal is reproduced below for reference:

NB: Any person or an officer of Customs dissatisfied with this order may file an appeal under section 194 of Customs Act, 1969 to the Customs, Excise and Sales Tax Appellate Tribunal, Islamabad Bench, Rafi Centre, Zero Point, Islamabad within 60 days of the date of issuance of this order. Any such appeal should be addressed to the Assistant Registrar of the Appellate Tribunal, Islamabad Bench, Islamabad bearing Court Fee of Rs. 1000/- (rupees one thousand only) in terms of the provisions of section 194 of Customs Act, 1969. The appeal must be accompanied by this order or an attested copy thereof bearing court fee stamp of Rs. 2.50 (rupees two and apaisas fifty only) prescribed under Schedule I, item 6 of the Court Fee Act, 1870. A copy of such an appeal should also be sent to this office for information and record.

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

Resource Persons:

- Mr. Nasir Khan, Collector of Customs (Appeals), Islamabad
- Mr. Muhammad Arif Moton, Advocate, Karachi, Former Member (Technical), Customs Appellate, Tribunal 3 at Karachi.

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

Recommendations: No recommendations are considered necessary at this time.

10.11 Standard	Where an appeal to the Customs is dismissed, the Customs shall set out the reasons therefor in writing and shall advise the appellant of his right to lodge any further appeal with an administrative or independent authority and of any time limit for the lodgement of such appeal.
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Overall Assessment: Substantially Compliant

Relevant Law:

- The Customs Act; Section 193-A.
- Customs General Order 12 of 2002; Paragraph 79

Discussion:

Introductory Note: The standard requires that the customs are required to indicate the specific reasons in writing to an appellant for denying an appeal. It also provides that in its order the authorities must also advise the appellant in writing of his right to lodge an additional further appeal against the decision and also specify the time limit for lodging such appeals.

Law: So far as the provisions of sections 193-A is concerned; the Customs Act is compliant to the extent that a reasoned written order is passed, after hearing the parties. The result of the appeal is conveyed to the parties as soon as the Collector (Appeals) made its determination. Under Section 193-A (5), the Collector (Appeals) must communicate the order passed by him to the appellant, the adjudicating authority and the Collector of Customs.

However, it is noted that the authorities do not advise the appellant in writing of his right to further appeal against the decision of the Collector (Appeals) and also do not specify the time limit for lodging such appeals. The time limit for lodgment of further appeal is provided in Section 193, 194-A and 196 of the Act wherein the next forum for appeal is provided.

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

Resource Persons:

- Mr. Muhammad Arif Moton Advocate and former Member, Customs Appellate Tribunal, Karachi.
- Mr. Nasir Khan, Collector of Customs (Appeals), Islamabad.

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

Recommendations: It is recommended that a provision may be added under 193 where it may be provided that all decision made by the customs must also indicate/ advise the appellant of his right to further appeal against the decision of the Collector (Appeals) and also specify the time limit for lodgment of any such appeals.

10.12.Standard	Where an appeal is allowed, the Customs shall put their decision or the ruling of the independent or judicial authority into effect as soon as possible, except in cases where the Customs appeal against the ruling.
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Overall Assessment: Substantially Compliant

Relevant Law:

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

Discussion:

Introductory Note: This standard provides that when an appeal has been decided in favor of the appellant, the customs administration must implement the decision expeditiously without any delay. Customs cannot stall in implementing a decision which is not in their favor.

Law: The provisions of sections 193-A, 194-B and 196 of the Act provides that, the decisions of the appeals may be provided in writing with all the logic and reasoning as mentioned in the discussion above however, it is important to note that the time frame for implementation of the decisions of the judicial authorities are not provided in the Act.

Under 193-A (5) it is indicated that on disposal of the appeal, the Collector (Appeals) must communicate the order passed by him to the appellant, the adjudicating authority and the Collector of customs. However, still the time frame for implementation of the decision is not provided.

Under Section 196 (5) of the Act the High Court after decision on the question of law shall send a copy of the judgment under the seal of the Court to the Appellate Tribunal. Under Section 196 (6), it is provided that, in the case a reference is made before the High Court and the duty is reduced by the Court, the Collector must decide within thirty days of receiving any such order if he want to file petition for leave to appeal to the Supreme Court against the decision of the High Court. The Collector can only postpone the refund in this case but again only until the matter is pending adjudication before the Supreme Court.

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

Resource Persons:

- Mr. Muhammad Arif Moton Advocate and former Member, Customs Appellate Tribunal, Karachi.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Legal), MCC Appraisement, Karachi.
- Mr. Muhmamad Jamil Khan, Law Officer, MCC Peshawar.

Conclusion: Based on the above research, it appears that the law and practice are in substantial compliance with the Standard

Recommendations: It is recommended that clear provisions be added in Sections 193, 194 and 196 wherein the timeframe for implementation of the decision of the appellate body is also provided to make law more compliant with the standard.