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WORLD CUSTOMS ORGANIZATION
ORGANISATION MONDIALE DES DOUANES

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Créée en 1958 sous le nom de Conseil de coopération douanière

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to Sub-Saharan countries.

Needs Assessment Mission Report, Kenya 4-6 December 2001

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**WCO/USAID Valuation Technical Assistance Programme
to Sub-Saharan countries**

**Richardt Vork
Project Manager**

**Needs Assessment Mission Report
Kenya 4-6 December 2001**

Summary

The first phase of the WCO/USAID Valuation Technical Assistance Programme to Sub-Saharan countries foresees a needs assessment mission to each of the five countries that have been selected as beneficiaries (Kenya, Lesotho, Nigeria, Senegal, and Tanzania). The Project Manager conducted the needs assessment mission to Kenya during 4 to 6 December 2001, in Nairobi. The Kenya Revenue Authority, the Customs authorities, and the business community appreciated the offer of technical assistance and confirmed their interest in the correct implementation of the WTO Agreement on Valuation.

The authorities described Kenya's legislation, policies and procedures, including how they work with Pre-Shipment Inspection companies, in relation to valuation, and explained their needs for technical assistance. The Kenya Customs Authorities provided the Project Manager with a copy of their legislation, administrative instructions, the form "Declaration of Customs Value", and a working paper "Needs Analysis for Kenya Customs and Excise".

The Kenya Customs authorities suggested to examine the possibility of including in the technical assistance programme the supply of equipment, and a visit by key officials (the "core group") of Kenya Customs to an English speaking developed country in order that they may study the implementation in practice of the WTO Valuation Agreement. The Project Manager promised to examine the question.

The needs assessment talks with the Kenya Customs resulted in agreement on a draft programme for the workshops/seminars, and a draft calendar for these technical assistance actions to be delivered in Kenya. This will serve as the basis for the establishment of the detailed work plan.

The authorities arranged visits to the Longroom in Customs Headquarters, and to the Jomo Kenyatta International Airport.

The Project Manager also had meetings with representatives of the Kenya International Freight & Warehousing Association (KIFWA), the Regional and National USAID in Nairobi, and Kenya National Chamber of Commerce.

WCO/USAID Valuation Technical Assistance Programme to Sub-Saharan countries

Report

Needs Assessment Mission
Nairobi
Kenya

Member Administration

Mr. John P. MUNGE, Commissioner General,
Kenya Revenue Authority.

Mr. S. K. CHEBII,
Commissioner of Customs and Excise,
Kenya Revenue Authority,
Forodha House,
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Location of Mission

Headquarters of the Kenya Revenue Authority and of the Customs and Excise
Department,
Nairobi.

Date of Mission

The mission was conducted from 4 to 6 December 2001.

Type of Assistance

Needs assessment in order to determine the technical assistance actions to Kenya and the calendar of the WCO/USAID Valuation Technical Assistance Programme to Sub-Saharan countries. Meetings with representatives of Kenya Revenue Authority, the Department of Customs & Excise, Kenya International Freight & Warehousing Association, USAID, and Kenya National Chamber of Commerce.

Implementation Date of the Valuation Agreement

1 January 2000. Kenya had evoked the five-year delay period granted to developing countries. Kenya has not yet notified its legislation to the WTO.

Status

Kenya is a member of the WTO. The United Nations and the WTO recognize Kenya as a developing country. Kenya is a member of the East African Community (EAC), and the Common Market for Eastern and Southern Africa (COMESA). Kenya benefits from the African Growth and Opportunity Act of the USA, and the ACP/EU Cotonou Partnership Agreement (signed in June 2000).

Objective of Mission

1. To assess the needs of Kenya for technical assistance regarding valuation, ensuring that the full picture of customs valuation is taken into consideration, including the infrastructure problems, the cooperation with other departments, and the partnership with the private sector, relating to the implementation of the WTO Valuation Agreement.
2. To lay the basis for a detailed work plan by establishing a draft programme and calendar for the technical assistance to be provided to Kenya.

Participants

The Commissioner General of the Kenya Revenue Authority, the Deputy Commissioner, middle to senior managers of the Customs & Excise Department and of the Jomo Kenyatta International Airport, USAID, and representatives of the business community. Annex 1 contains a list of persons encountered during the mission.

WCO Representative

Mr. Richardt Vork – Project Manager, WCO/USAID Valuation Technical Assistance Programme to Sub-Saharan countries.

Opening Ceremony

Mr. Francis M. THURANIRA, Deputy Commissioner, chaired the first meeting on 4 December 2001. He welcomed the offer of technical assistance and felt that it came at the right time. He promised his full support to the project.

On behalf of the WCO and the USAID, the Project Manager thanked the Kenya Revenue Authority and the Customs & Excise Department for the words of welcome. He explained the content of the draft programme and the draft calendar for the technical assistance. Mr. Thurania took note and introduced the members of the "Core Group" that would participate in the analysis discussions.

Mr. Francis M. Thurania said that Kenya had implemented the WTO Valuation Agreement on 1.1.2000. The implementation had been preceded by some technical assistance from the WCO. The Finance Bill had enjoyed the support of the Minister of Finance and the Parliament, although the latter had introduced a few amendments to the bill. The implementation had not encountered any substantial problems or resistance. Section 127 E of the adopted law foresaw the establishment of an Appeals Tribunal to settle valuation disputes, but the Minister of Finance had not yet appointed its members. Until the Tribunal becomes operational, the courts of the ordinary judicial system deal with disputes. Mr. Thurania expected that the members of the Appeals Tribunal would be appointed before June 2002.

Mr. Thurania confirmed that Kenya has recourse to Pre-Shipment Inspection, using two companies, Cotecna Inspections S.A. and Intertek Testing Services International Limited. Their contracts are valid until February 2003. The companies have a liaison office in Kenya, but their operations are in the exporting countries where they examine those consignments of a value exceeding USD 5000, that are subject to such inspections. The PSI companies seal full container loads. The PSI companies also provide valuation training, although their efforts have suffered from lack of qualified staff.

The document of the Kenya Revenue Authority in Annex 3, page 4-10, contains details concerning the PSI arrangements.

Programme

Annex 2 contains the formal programme established by the Kenya Authorities. The program was adapted to include meetings with USAID and Kenya National Chamber of Commerce & Industry.

Closing Ceremony

On the last day of the mission, Mr. John P. MUNGE, Commissioner General of the Kenya Revenue Authority received the Project Manager. Mr. Munge said that he was delighted that Kenya had been selected as a beneficiary country. He was well aware of the importance of international cooperation, and the need for all WTO Member Countries to apply the WTO rules. He mentioned in particular his strong interest in the good cooperation that exists in the framework of the East African Community (EAC) - a regional agreement that has been in operation for three years now between Kenya, Tanzania and Uganda – and he asked whether the WCO/USAID Valuation Technical Assistance Programme to Sub-Saharan countries would be extended to benefit Uganda (the programme already covers Tanzania). Mr. Munge was confident that he had a serious team in the Customs & Excise Department. He said that the Customs Training Facility in Mombasa would be revamped, and that the budget for training would be increased. Mr. Munge said that he attached great importance to enhancing the interaction between the Kenya Revenue Authority and taxpayers, not only for educating the taxpayers on their obligations, but also to enable them to understand the important benefits that result from the correct implementation of the taxation and customs rules.

On behalf of the WCO and the USAID, the Project Manager thanked the Kenya Revenue Authority for the support shown to WCO/USAID technical assistance programme. The Project Manager informed Mr. Munge of the results obtained during the mission.

The Project Manager explained which countries the current programme covered. Uganda was not covered. However, if Uganda sent officers to the Kenya Customs Training Facility in Mombasa, these officers might benefit indirectly from the programme, as “training the trainers” of the Kenya Customs was foreseen as part of the technical assistance programme.

The Project Manager underlined the importance for treasuries and traders that the WTO Valuation Agreement be applied in a uniform, predictable and transparent manner. In this way it would be possible to ensure a level playing field for the business community, to avoid distortion of competition, and to ensure the correct collection of import duties. Mr. Munge agreed.

Evaluation

The first phase of the WCO/USAID Valuation Technical Assistance Programme to Sub-Saharan countries foresees a needs assessment mission to each of the five countries that have been selected as beneficiaries (Kenya, Lesotho, Nigeria, Senegal, and Tanzania). The Project Manager conducted the needs assessment mission to Kenya during 4 to 6 December 2001, in Nairobi. The Kenya Revenue Authority, the Customs authorities, and the business community appreciated the offer of technical assistance and confirmed their interest in the correct implementation of the WTO Agreement on Valuation.

The authorities provided all the necessary documents, including legislation and departmental instructions, and information for the needs analysis to be carried out. At the

end of the talks, a draft programme and draft calendar were agreed. The Project Manager undertook to examine the Administration's request for the technical assistance to comprise a study visit to a developed country (e. g. the United Kingdom) and equipment.

Meetings held

Meeting with "Core Group "

Senior Assistant Commissioner Mr. T. W. NAMUTILA chaired the "Core Group". He had also been designated as the Project Contact. The Project Manager presented the draft programme and the draft calendar to the "Core Group". Mr. Namutula and his colleagues made available to the Project Manager the following documents:

1. Programme for the mission.
2. Needs analysis for Kenya Customs and Excise.
3. Kenya's law and departmental instructions on the determination of value of imported goods.
4. Draft of Kenya's reply to the WTO Checklist of Issues.
5. Form C52 "Declaration of Customs Value".

Mr. Namutula asked whether the WCO would pay for the travel costs and per diem of the participants in the technical assistance actions. The Project Manager replied that the WCO would pay the costs incurred by the WCO facilitators, and the printing and shipping of the training materials. The beneficiary administrations would be expected to bear the costs of the training room and the costs of the participants, including their travel and per diem expenses. Mr. Namutula agreed with this general policy.

The Core Group and the Project Manager examined the needs for technical assistance. The meeting with the Core Group resulted in consensus on the following draft programme and calendar:

Technical Assistance Action	Time period	Number of	
		Days	participants
Train the trainers seminar	3-5.06.2002	3	+/- 20
Business Community seminar	6-7.06.2002	2	+/- 40
Valuation Workshop for Customs officers	10-14.06.2002	5	+/- 20
Workshop on ACV Art. 11 to 18	8-12.8.2002	5	+/- 20
Valuation WS - middle/senior	28.10-1.11.2002	5	+/- 20
Post Import Audit Seminar	4-8.11.2002	5	+/- 20
Risk Assessment Seminar	13-17.1.2003	5	+/- 20

The Core Group suggested to examine the possibility of including in the technical assistance programme a visit by key officials (the Core Group) of Kenya Customs to an English speaking developed country in order that they may study the implementation in practice of the WTO Valuation Agreement. The Chairman of the Core Group suggested that the study trip, if it were approved, should be foreseen for one week in July 2002. He confirmed that the participants would be prepared to travel economy class.

The Chairman underlined the need for equipment and for a computer network. He agreed that the cost of all the needed equipment would exceed the limits of the current WCO/USAID programme. He hoped that funding from other sources would become available. He expressed the hope that the budget of the WCO/USAID programme would allow the procurement of some equipment, e. g. for training purposes. The Project Manager promised to examine these questions. With regard to the communication problem, as an inexpensive interim solution, the Project Manager suggested to equip the stand-alone computers with a modem, in order to enable connection to the Internet, and to the customs server in Nairobi on a dial-up basis, using the existing telephone lines.

The Core Group underlined the importance of using practical examples in the Workshops and promised to provide the Project Manager with some such examples for integration in the workshop training material.

The Core Group said that the contracts with the PSI companies foresee that these companies must provide training. In this framework, one of the PSI companies would be prepared to sponsor the participation of a Kenya Customs Official in the WCO Fellowship Programme. The Core Group asked whether that would be possible. The Project Manager promised to put this question to the competent Directorate of the WCO.

Detailed information.

The Core Group provided the following information:

1. Customs Headquarters are in Nairobi. The Customs Service has a total number of staff of around 1400. The Customs Service is divided into regions: Headquarters Nairobi, Western Region, North Region, and Mombasa Region. The most important Customs Houses are in Mombasa, Nairobi, and Jomo Kenyatta International Airport. Annex 2 contains a description of the Kenya Revenue Authority and of Kenya Customs & Excise.

The Border Customs port locations include:

Bukwa	Busia	Isebania
Kilifi	Kisumu	Kiunga
Lamu	Liboi	Lokichogo
Lunga Lunga	Malaba	Malindi
Mandera	Mombasa	Moyale
Muhuru	Namanga	Olpitokitok
Shimoni	Taveta	Usenge

The Customs Inland port locations include:

Eldoret	Gerissa	Jomo Kenyatta International Airport, Nairobi
Nairobi	Nakuru.	

2. Customs Clearance Audit is decided locally in Nairobi, Mombasa, and in Jomo Kenyatta International Airport. Kenya does not have a computer network that would allow Headquarters to be informed in real time of valuation decisions made locally. The Customs offices have stand-alone computers without modems. On a stand-alone computer, the Valuation Officers have access to a database on imports that have been carried out in the last three months, with an option to include imports in the last six months. Diskettes are supplied to the Valuation Officers once a month for the update of the database on imports. Import statistics are collected from the ports via diskettes.

The clearance procedure is as follows: When an import entry (8 copies) has been lodged, it is passed to a customs officer who controls that all supporting documents are present, and assigns the entry to a customs officer for verification of the declaration. The verifying customs officer conduct a risk analysis on the basis of his knowledge of the importers, and submits the entry to a Valuation Officer who verifies the value as stated in the declaration, on the invoice, and on the PSI Clean Report of Findings (if available). The Valuation Officer may have recourse to the import data base held on a stand-alone computer. The Valuation Officers do not have access to the Internet for price comparison. When the entry has been processed, the Customs Broker or the importer must pay the import duty in cash, by banker's check, or by a banker guaranteed private check, before the goods can be released. It is not possible to postpone the payment until after the release of the goods.

Customs maintains a list of regular importers. 80 % of import duty revenue comes from the biggest importers.

There are a limited number of valuation officers:

Headquarter Longroom:	4 valuation officers
Nairobi Customs:	6 valuation officers
Jomo Kenyatta International Airport:	1 valuation officer
West Region:	2 valuation officers
Mombasa:	4 valuation officers

The Core Group was of the opinion that not all of the Valuation Officers were fully trained valuation specialists.

Imports are processed as follows:

20 % of imports on a "green line" basis; mostly raw materials with low or specific duties.

50 % of imports on a "red line basis; mostly electronics, TVs, motor vehicles, car spare parts; experience has shown that the quantity actually present often is superior to the quantity declared.

30 % of imports on an "amber line" basis.

3. Related parties: Declaration officers are to check whether there is any relationship between the buyer and the seller, and if there is a relationship, whether it influenced the price of the imported goods. Officers in the Longroom must confirm whether the

transaction value of the goods closely approximates to the test value of the goods as found in the commodity databases.

4. Section 187 of the Customs Act lays down the penalty regime for customs offences. The maximum penalty is a fine of 1.5 million Kenyan Shillings, 3 years imprisonment, or both. Imprisonment sentence may be pronounced also against the Director of the importing company and the Director of the Customs Broker Company.
5. Section 127 B of the Customs Act contains rules on the provision of a guarantee. An importer may remove goods pending final determination of the value thereof, upon payment of a cash deposit equivalent to the assessed duty. Any excess shall be refunded within thirty days from the date of final determination of duty payable.
6. Burden of proof: the Core Group Members said that the burden of proof was on the importer.
7. In general, the recourse to customs brokers is obligatory. The Customs Broker and the importer are jointly responsible for the customs declaration. There are, however, some companies that have been authorized to lodge entries themselves.
8. Customs Brokers are competent. It is possible to revoke the license of a Customs Broker who is found to have broken the law.
9. Traders must keep their commercial documents for 5 (five) years. Customs keep the documents for 10 (ten) years or more.
10. Sections 177 and 218 of the Customs Act give officers power to visit the importer's premises without prior authorization by a court. Customs may require production of books of account and any other documents relating to an importation. See also the Departmental Instructions No. 7, point 4-16. If necessary, Customs may call upon the police to gain access to the premises.
11. When there are difficulties in determining the customs value, the customs officer, using the database on a stand-alone computer, compares the declared value with values of similar goods that have been imported during the last 3 or six months. When the Valuation Officer cannot determine the customs value, a report is submitted to the Assistant Commissioner Valuation, or the Head of the Region, who decides on the customs value. However, if a PSI Clean Report of Findings (CRF) is available for the importation, the customs value cannot be lower than the value indicated in the CRF, unless expressly authorized by the Commissioner of Customs on the basis of a report in each case. The valuation decision is notified to the importer who must pay the assessed amount of duty before the goods can be released. The importer may lodge an appeal to the Commissioner of Customs, to the Appeals Tribunal (when it becomes operational) and subsequently, to the Courts. The importer will receive a refund of any amount paid in excess of the duty due as established at the end of the appeal process. The number of disputes has increased since the implementation of the WTO Valuation Agreement. There are now 10-20 disputes a week.
12. The customs staff has access to relevant information on stand-alone computers, but no Internet access, and there is no wide area customs network. There is a small local area network in the Longroom in Headquarters.
13. The most prevalent types of valuation fraud are undervaluation and misdescription of quantity.
14. Verification of the declared customs value is essentially done through the records of the importer, the PSI document, and the data base on actual imports carried out during

the last 3 (6) months. Kenya Customs receives no export information from the Customs of the exporting countries.

Meeting with Kenya International Freight & Warehousing Association KIFWA

The Core Group participated in the meeting.

KIFWA has 800 companies as members. The representatives of KIFWA welcomed the Project Manager and said that it was an appropriate time to consider further training in the area of customs valuation. KIFWA fully recognized the importance of empowering the business community through better understanding of the WTO rules and the customs procedures. Difficulties were encountered in particular with regard to the valuation of used goods.

KIFWA considered that a lack of knowledge on customs valuation was a huge problem, especially for small companies, but also for medium sized companies. The level of knowledge in the multinational companies was generally good, but there was a need for training of new staff. KIFWA hoped that the Customs Officers that would take part in the "train the trainers" action would later train industry trainers. Mrs. Akinyi GIKONYO said that Kenya Customs was interested in providing industry managers with training on the WTO Valuation Agreement. Customs is preparing the training programme for next year and expects to train companies' core people. A letter of invitation is being prepared. Mrs. Gikonyo said that customs would have trainers in each region, and that training would be conducted in the regions.

KIFWA would appreciate a seminar for the business community giving an overview of the WTO Valuation Agreement, and training sessions on customs valuation. KIFWA could accept to pay the cost of the seminar venue. KIFWA would expect the number of participants to be within the limits of "class size". KIFWA could accept the date envisaged in the draft calendar, 9-10 June 2002.

Mr. Namutula said that he would examine the possibility of industry trainer participation in the "train the trainers" seminar foreseen for 6-8 June 2002. He would remain in contact with KIFWA.

Whilst recognizing the limits of the WCO/USAID Valuation Technical Assistance Programme, KIFWA also suggested that training by Kenya Customs would be desirable in a number of other fields relating to customs:

- how to fill in the new single entry document;
- customs procedures in general in order to keep industry up to date;
- modern warehousing procedures;
- procedures for e-commerce;
- rules of origin;
- Kyoto Convention;

KIFWA had plans to establish a Training Institute for industry representatives on all customs issues, working with approved training materials. The Institute would issue certificates to graduates.

KIFWA suggested that the website of Kenya Customs could be expanded to make more information and training material available to industry.

Meeting with USAID

The Project Manager informed the USAID representatives of the WCO/USAID Valuation Technical Assistance Programme to Sub-Saharan countries. They were interested in the programme, especially in the concept of "train the trainers". They said that COMESA might be given a role in training customs officers. The USAID representatives suggested that the Project Manager might wish to contact the Foreign Commercial Service in Nairobi, EAC in Arusha, and ECOWAS in Botswana.

Meeting with Kenya National Chamber of Commerce & Industry KNCCI

Ms. Noelle M. KAYAYWA, Acting Assistant Commissioner, Valuation, and Mrs. Akinyi GIKONYO, Acting Assistant Commissioner, Nairobi, participated in the meeting. The Project Manager informed the KNCCI representatives of the WCO/USAID Valuation Technical Assistance Programme to Sub-Saharan countries.

The KNCCI representatives welcomed this initiative. They confirmed that they would be interested in the training and that they would like to participate. KNCCI has 69 branches in Kenya. The KNCCI would find participants for the business-training seminar, and would coordinate closely with Kenya Customs, KIFWA and Kenya Association of Manufacturers.

The Assistant Commissioners said that when KNCCI organized a seminar, Kenya Customs would be prepared to send a trainer on customs valuation.

Field visits

Field visits were conducted to the Longroom in Customs Headquarters and to Jomo Kenyatta International Airport. The officers in charge of the Longroom and the Assistant Commissioner responsible for the Customs Offices of the Airport explained the procedures and work practices.

Recommendation

1. That the content of this report be noted.

Forwarded.

Richardt Vork
Project Manager

List of annexes:

Annex 1. List of persons encountered during the needs assessment mission.

Annex 2. Formal programme established by the Kenya Customs & Excise Department

Annex 3. Information on KENYA:

- extract of WCO country database
- Kenya Revenue Authority (*source K.R.A. website*)
- Kenya (*source: "The World Factbook"*)
- Kenya (*source: U.S. Department of State, background notes*)

Annex 4. Kenya Customs legislation and administrative instructions regarding valuation.

Annex 5. Declaration of Customs Value, form C52.

Annex 6. Kenya's draft reply to the WTO Checklist of Issues.

Annex 7. Needs analysis for Kenya Customs and Excise established by Kenya Customs & Excise Department.

List of persons encountered during the needs assessment mission.

Kenya Revenue Authority

Mr. John P. MUNGE, Commissioner General.

Ms. Karen K. NGINA, Personal Assistant to Mr. Munge, Operations Manager.

Kenya Revenue Authority, Customs and Excise Department

Mr. Francis M. THURANIRA, Deputy Commissioner.

Mr. T. W. NAMUTILA, Senior Assistant Commissioner, Project Contact Point, Chairman of the Core Group.

Ms. Noelle M. KAYAYWA, Acting Assistant Commissioner, Valuation, Member of the Core Group.

Mrs. Ebby I. KHAGULI, Acting Principal Revenue Officer, Valuation, Member of the Core Group.

Mr. Charles Esonga ONDUSO, Acting Assistant Commissioner, Excise and Local Industries, Member of the Core Group.

Mrs. Akinyi GIKONYO, Acting Assistant Commissioner, Nairobi, Member of the Core Group.

Mrs. R. W. NAMU, Senior Assistant Commissioner, Jomo Kenyatta International Airport.

Mr. Charles M. KINUSU, Principal Revenue Officer, Jomo Kenyatta International Airport.

Mr. Patrick W. NDEGWA, Chief Preventive Officer, Jomo Kenyatta International Airport.

Kenya International Freight & Warehousing Association

Mr. Samson M. NJOROGE, Chairman.

Mr. Enock M. SABWA, National Secretary.

Mr. J. K. MATHENGE, Executive Officer.

USAID

Mr. Greg HOWELL, Regional Economic Development Services (REDSO), Office of East and Southern Africa, Regional Private Sector Advisor, Food Security.

Mr. Mulinge MUKUMBU, REDSO, Senior Regional Agr. Economist.

Mr. Julius K. KILUNGO, Ph. D., USAID Kenya, Agriculture Program Specialist, Economist.

Kenya National Chamber of Commerce & Industry

Mr. Titus G. RUHIU, Acting Chief Executive.

Mr. James M. NJOROGE, Secretary, Administration & Information.

Mr. Peter MEIIREERI, Public Relations Officer.