

**Achievement of Market-Friendly Initiatives and Results Program  
(AMIR 2.0 Program)**

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**A Legislation Strategy for Jordan Customs**

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### 1. EXECUTIVE SUMMARY

In an area of activity so central to Jordan's economic development and prosperity, it is crucial that customs laws serve the Government's strategic aims and policies effectively. It is therefore a fundamental aspect of customs work that the Customs Department is able to manage properly the legislation for which it is responsible.

Customs is experienced in drafting legislation and has a competent Legal Affairs Directorate. The legislation strategy proposed in this report will strengthen its capacity to manage the five stages of the legislation function, which are:

- ❑ Policy development
- ❑ Legislative drafting
- ❑ Passage of the legislation
- ❑ Promulgation and application of the legislation
- ❑ Review, appraisal and amendment.

The management of legislation is a dynamic, evolving and continuing process. There are no short cuts or quick fixes.

The key elements of the legislation strategy<sup>2</sup> will be:

- ❑ a clear publicly stated commitment to a managed legislation program
- ❑ an annual planning framework
- ❑ performance review (preferably by an external agency) of implementation of the legislation strategy
- ❑ effective intra-departmental coordination
- ❑ collaboration with affected stakeholders
- ❑ benchmarking against international best practice.

This will lead to a requirement for:

- ❑ sufficient expertise within the Legal Affairs Directorate, supplemented by a program of staff development
- ❑ improved public access to information on the law and to rulings from Customs
- ❑ staff training in the law and legal principles.

Recommendations 1 to 15 in the report set out various steps needed to develop the strategy.

The Customs Law No 20 of 1998 provides a good base for further development of the law. It is not yet perfect – and will always require improvement. Many of the criticisms levelled at the old law have been addressed in the new law, but some weaknesses remain. These are identified in the report and in Annexes E, F and G.

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<sup>2</sup> See page for a glossary of terms

The report identifies a number of matters where new law is needed or may be needed in the near future. These recommendations (numbers 16 to 25) will help the development of a legislation program for 2003. They include:

- ❑ Provisions supporting the application of Risk Management
- ❑ Legislation to support the use of IT and other electronic systems
- ❑ Powers relating to investigation of alleged offences and the use and management of information and intelligence
- ❑ Revised penalty provisions
- ❑ Provisions relating to Customs agents
- ❑ Provisions enabling compliance with the Kyoto Convention
- ❑ Review of the Customs Administration Regulation

The report proposes these next steps:

- ❑ A workshop to develop a template for managing the progress of legislation through the 5 stages of the cycle (i.e. a check list of actions to be taken for each area of legislative change identified)
- ❑ A workshop using the legislation strategy to develop the legislation plan for the next 12 months, as a prototype for future planning
- ❑ Actions to be undertaken in the short term to improve public understanding of the Law, including:
  1. An accurate translation of the Customs Law into English to remove the ambiguities and lack of clarity in the current English version.
  2. Preparation of a booklet summarizing offences, the penalty provisions and the appeals process. This would greatly assist traders to understand their obligations to Customs
  3. Making regulations and subsidiary legislation available both in hard copy and on-line
  4. Reissuing an updated version of the Import and Export Guide.

These simple measures will improve the transparency of Customs' requirements and processes. They will also help to develop a strategy of informed compliance and demonstrate the Customs' commitment to integrating Jordan into global trading patterns where English is the language of commerce. They are also consistent with the standards in the Kyoto Convention (see Annex E).

As a point of particular relevance, the EU has developed a blueprint of legislation management for the Customs administrations of countries preparing to become EU members. This EU model provides an excellent benchmark that could be used to assist Jordan meet international best practice in the development and implementation of legislation.

The implementation of the proposed legislation program and the development of the annual legislation plan should be the responsibility of the Legal Directorate, under the guidance of the Legislation Committee.

## 2. LIST OF RECOMMENDATIONS AND GLOSSARY

This is a consolidated list of the recommendations arising from Parts 7 and 8 of the Report. They are listed here for ease of reference. The argument behind each recommendation is contained in the discussion in the relevant part.

### a) Legislation Strategy

The recommendations in this section describe the measures that Customs should adopt to develop the strategy by which to manage Legislation.

**R#1: That Jordan Customs adopt a process of review, analysis, development, implementation and evaluation to be known as the Legislation Management Strategy. To begin implementing the strategy without delay, Customs should expand the ways in which it publicises the Customs Law and subsidiary legislation. This should be done in both Arabic and English, as a clear example of Customs' commitment to integrating Jordan into the global trading system.**

**R#2: That AMIR Program assists the Customs to develop a methodology and template reflecting the steps that need to be undertaken to manage legislation.**

**R#3: That Jordan Customs publicly commits itself to a long-term strategy for the development, management and review of legislation as being fundamental to the good management of Customs.**

**R#4: That Customs uses the EU model as the best international benchmark for the development of its legislation strategy. It should also include in its review of best practice around the world, an examination of the approach to legislation adopted by other Customs services. In particular, a dialogue with the European Commission may be very valuable.**

**R#5: That Customs work to develop a program of external review of its legislation strategy to provide an objective measure of its success in both developing and implementing new law.**

**R#6: That the Legislation Strategy be referred to in Strategic Planning Documents as a core strategy contributing to best practice and institutional excellence.**

**R#7: That a planning workshop be held to identify the contents and priorities of the legislation program for the next 12 months. The outcome of the workshop will be a legislation plan.**

**R#8: A Legislation plan should be developed annually and include development of new and review of existing legislation and regulations.**

**R#9: That the present division of responsibilities for legal work between the Legal Affairs and Judicial Affairs Directorates be rationalized to give the Legal Affairs Directorate responsibility for the management of the Legislation strategy.**

**R#10: That an internal Legislation Management Committee be established to coordinate the Legislation Program.**

**R#11: That an HRM strategy be put in place to ensure that suitably qualified staff are available through selection and/or training.**

**R#12: The HRD strategy for the Department should include a continuing program of education for all staff in basic legal principles. Technical training should continue to include clear analysis of relevant legislative provisions.**

**R#13: That the Customs immediately establishes the consultative committee foreseen in the Strategic Plan and begins a program of consultation with external stakeholders.**

**R#14: The Customs should continue to extend its range of Mutual Assistance Agreements and to ensure that the Customs Law reflects the commitments adopted. The Customs should participate in the WCO reconsideration of the Nairobi Convention on Mutual Assistance.**

**R#15: Customs should establish a system of binding rulings and non-binding advices through which to generate a higher level of understanding of the law. Penalties should apply when advices are ignored or disregarded and there is subsequent non-compliance.**

#### **b) Legislation Program**

The recommendations in the next part propose areas of the law which require review and/or amendment, and which would form some of the activities that would be included in the first and subsequent annual legislation plans.

**R#16: That the legislation program includes the development of provisions to reflect a risk managed approach (i.e. emphasising the concept of voluntary compliance and the means of ensuring compliance in a risk-managed context) in line with Standards in the Kyoto Convention.**

**R#17: Develop Legislation to establish in greater detail the rights and duties of citizens dealing with Customs in a risk management environment.**

**R#18: That the quantum of the penalty provisions in Title 13 be reviewed as to their adequacy, that penalties applicable in a risk-managed, self-assessment regime be established during the design of the compliance measures and that the penalties be cross-referenced to the provisions that give rise to the offence.**

**R#19: The provisions of the Customs Law relating to Brokers should be reviewed against the relevant provisions of the Kyoto Convention and strengthened where necessary to ensure that brokers recognise the need to aspire to a higher level of professionalism.**

**R#20: That Customs develop appropriate legislation to support the introduction of information technology.**

**R#21: That new provisions to give effect to revised procedures in relation to investigation and intelligence be drafted to ensure an appropriate legal basis for their implementation.**

**R#22: That Customs, in consultation with the Ministry of Trade and Industry, review the operation of the Customs Law in giving effect to obligations under WTO Agreements.**

**R#23: The legislation program should include the passage of provisions necessary to enable Jordan to comply with the Kyoto Convention by the agreed date.**

**R#24: The Administrative Organisation Regulation of the Customs Department should be amended to include provisions relating to financing and to (internal) review. Some of the provisions in Title 11 of the Customs Law should be included in the Regulation. The Regulation should be given the same public exposure as the Customs Law.**

**c) Glossary of terms**

The report uses a number of terms which are related but have different meanings. To assist clearer understanding of the terms, they have been defined below for ease of reference.

**Legislation cycle:** The 5-stage process described in Annex D which all legislation goes through: from policy determination, to drafting of the law to give effect to policy, to passage of the law through Parliament, to promulgation and application of the law, to review of the law and back to policy adjustment and legislative change.

**Legislation function:** The responsibility of an agency to manage and implement legislation delegated to it by the Government.

**Legislation strategy:** The strategy by which an agency discharges its legislative function; the practical application of management techniques to manage each stage of the legislation cycle.

**Legislation program:** The legislation that an agency needs to pass and implement as part of its legislation function.

**Legislation plan:** The annual tasks that need to be achieved to give effect to the legislation program, and which form the basis for the allocation of priorities and resources to the drafting of legislation.

### **3. THE LEGISLATION FUNCTION**

Customs services are fundamentally important departments of state. Most are responsible for the proper administration of significant amounts of Government legislation, much of it central to social and economic prosperity. The nature of customs work is such that Customs is required to give effect both to legislation for which it is directly responsible, and to legislation the primary responsibility for which rests with other Government agencies. Jordan Customs is no exception. In addition to the Customs Act, it is responsible for matters relating to foreign exchange, taxation, investment promotion, the free zone, prohibited imports and so on<sup>3</sup>. In an area of activity so central to Jordan's economic development and prosperity, it is crucial that customs laws serve the Government's strategic aims and policies. (This implies a close relationship with relevant ministries to ensure that the intent of Government is clearly understood.)

It is therefore a fundamental aspect of Customs work that the Department is able to manage effectively the legislation for which it is responsible. The strategy proposed in this report will ensure that Customs can do so.

The legislation strategy recognizes that there are several stages to the effective enactment and application of legislation. These stages, which form the legislation cycle, can be summarized as follows<sup>4</sup>:

- Stage one is the policy development leading to the requirement for legislation
- Stage two is the drafting of the legislation to give effect to policy
- Stage three is the passage of the legislation through the Parliament
- Stage four is the application of the legislation once it has become law, involving issues of its promulgation and enforcement.
- Stage five is the process of review and appraisal of the effectiveness of the law, and the determination of changes that may be required. This leads to a fresh process of legislative change to update and correct the law: in effect, a return to stage 1.

A more detailed explanation is set out in Annex D.

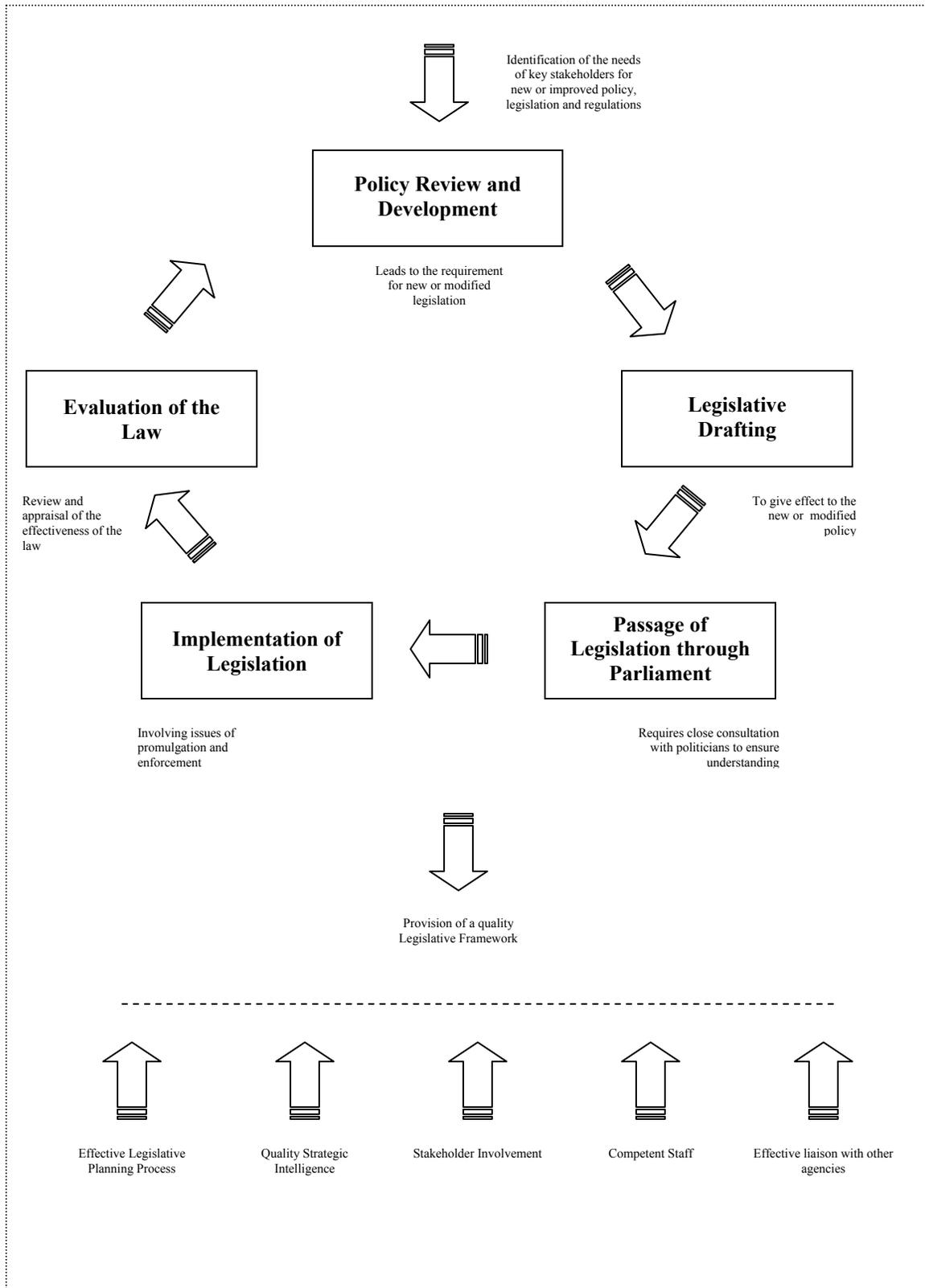
The cycle can be represented by a simple model:

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<sup>3</sup> Some of these enactments are listed in the Import and Export Guide, first edition, October 1997 at Appendix A. They are set out in greater depth in a paper prepared by the Department entitled Legislation Related to Customs Department Work and made available in August 2002. The relevant laws are listed in Annex G.

<sup>4</sup> While every country has different approaches to making laws, the model used here is generic and applicable to most modern states.

# A Legislation Strategy for Jordan Customs



From this model it can be seen that the legislative function is cyclical and dynamic. The passage of a new act is not the end result, it is merely the conclusion of a stage in the overall process. A proper legislation strategy must therefore recognize that the management of legislation is a dynamic, evolving and continuous process. There are no short cuts or quick fixes. It is important that the strategy is designed to manage each stage of the cycle properly.

The model provides a useful basis to develop a template for the management of the legislation process. The development of such a template would strengthen the Customs' corporate capability to manage the legislation function. (See Recommendation #2 below.)

#### 4. BEST PRACTICE IN LEGISLATION MANAGEMENT

It is not easy to identify international best practice in the area of legislation management. Customs services work within a particular legislative structure and with differing levels of responsibilities. Some will rely on external assistance with legislative drafting; others will face institutional problems when managing legislation through the parliamentary process; others operate within different legal traditions.

There is also only limited assistance available from key international instruments and agencies. The Kyoto Convention does provide guidance in certain areas, which is important and relevant to Jordan's aspirations to be Kyoto compliant. These will be identified in the course of the report and are summarized in Annex E.

The United States has a comprehensive legislation program in Customs, and the US Customs itself could provide a role model. However, the US context is very different from the Jordanian situation due to both the different stages of legislative development and the different legal systems. It may not provide the most appropriate benchmark for Jordan at this time.

There is another example that provides a useful benchmark. The EU has spent much time in recent years developing blueprints for the Customs administrations of countries about to become EU members.<sup>5</sup> These blueprints cover a range of Customs responsibilities and practices – e.g. Customs ethics, revenue collection, border control, investigation and enforcement and so on – but it is significant that the first of these covers legislation. The EU has recognized that the first prerequisite of any competent customs administration is the management of legislation.

While Jordan does not aspire to membership of the EU, the blueprint is a useful tool for assessing the present performance of the Jordan Customs in legislation management, and in identifying improvements that will ensure Jordan meets international best practice.

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<sup>5</sup> The full set of blueprints is set out in Customs Pre-Accession Strategy: Blueprints to improve the operational capacity of Customs Administrations of Candidate Countries, document XXI/A-4/KB D(98), Brussels, 24 November 1998. That part of the text relating to legislation is attached at Attachment A.

Its key elements are as follows.

First, its **aim** is:

To build a stable and comprehensive legal system which ensures the uniform application of EU Customs legislation, is designed to strengthen the powers and penalties available to Customs officers and which sets out in a transparent way the obligations and rights of customs officers, economic operators, and the public.

Second, the blueprint sets out a series of strategic objectives as follows:

Development of a legal base:

- ❖ Which has a stable, comprehensive and modern legal framework which ensures that EU customs legislation is directly applicable and can be implemented
- ❖ Which supports the development of a transparent customs administration and organization and demonstrates accountability and responsibility
- ❖ Which gives the customs administration the authority to make decisions on customs administrative matters
- ❖ Which provides effective powers for customs officers to administer and enforce EU customs legislation
- ❖ Which provides for customs penalties which are sufficiently strong to combat irregularities and fraud and to enforce the EU system of prohibitions and restrictions
- ❖ Which provides for an independent audit of the Customs service
- ❖ Which supports mutual assistance with other customs administrations and builds cooperation with other national enforcement agencies.

Third, the blueprint establishes a number of key indicators against which these objectives can be designed and measured.<sup>6</sup> For ease of reference, these are itemized in Annex F, together with the extent to which they are already satisfied by the Jordanian Customs Law, or would be satisfied if the recommendations of this report were adopted. Recommendation 3 below proposes that Customs adopt the EU model as a relevant benchmark.

## 5. RECENT LEGISLATIVE CHANGE IN JORDAN

The passing of the revised Customs Law<sup>7</sup> in 1998 was a major step forward. Earlier attempts to amend the Act had been the subject of considerable criticism, particularly by the World Bank<sup>8</sup>. These criticisms were still valid at the time Bert Cunningham's report was written in 1998. A subsequent reading of the Act indicates that some of these shortcomings have been fixed. Others appear still to be a problem. A checklist of improvements is provided at Annex G.

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<sup>6</sup> For a more detailed description of these key indicators, see Attachment A.

<sup>7</sup> Law No. (20) of the year 1998. All references to the Customs Act in this report are to this version of the Act. It is available on the Jordan Customs web site at [www.customs.gov.jo](http://www.customs.gov.jo) in both Arabic and English.

<sup>8</sup> See: *CUSTOMS REFORM PROGRAM: The Hashemite Kingdom of Jordan*, World Bank Appraisal Report, February 1995, at page 45-46 and at Appendix 3. While many of the concerns raised by the World Bank have been met, there are still some areas where more work could be done. These are identified as appropriate in the body of this report.

Two general points to begin with. The Customs Act of 1998 was designed to provide an umbrella piece of legislation, below which there would be subordinate legislation designed to give greater detail to the overall act. The umbrella legislation is in place. It is not clear that the subordinate legislation – regulations, directions, SOPs etc – is yet in place. An example is the Valuation provisions. Chapters 1 and 2 of Title 3 of the Act give effect to international norms relating to Rules of Origin and to Valuation. These are difficult provisions to apply, both for staff and traders. Subordinate legislation is required to provide more detailed guidance, for example by enshrining in Jordanian law the interpretative guidance that is provided by the WCO. This legislation appears not to be available.

Second, the World Bank urged the cross-referencing of related legislation to the Customs Act. This also appears not to have been done. It is not possible for example to determine from the Customs Act where the precise terms of the HS Tariff are set out in legislation, or that the policy provisions relating to anti-dumping measures are in legislation administered by the Department of Trade and Industry.

Despite this, the Law contains clear improvements. The new act has contemporary provisions in relation to Valuation, Rules of Origin, Intellectual Property and anti-dumping and countervailing (anti-subsidy) action. These were long overdue, and appear to accurately reflect the international standards required by WTO/WCO membership. The provisions on valuation mean that Jordan's law at least has moved to accept international norms and not to be arbitrary (although the proper application of these provisions is another matter). Other reforms urged by the World Bank have also been heeded: the Act gives effect to Istanbul Convention provisions on temporary admissions; exemptions have been drastically reduced and the remainder properly legislated; penalties have been itemized clearly – even if the quantum has not been reviewed; and the legislation sets out detailed judicial appeal processes to ensure that rights are protected. These are important reforms, and clearly signal Jordan's intention to adopt international best practice.

That said, there are aspects of the implementation of these provisions that are not satisfactory. There is a view in the private sector<sup>9</sup> that old practices in relation to Valuation persist, and that arbitrary valuations are fixed without regard to the Customs Law. This is not strictly an issue of legal drafting, but it is an issue of perception, implementation and interpretation.

Some changes in the 1998 Law may even have been regressive. It is the Customs' view that the provisions relating to brokers weakened Customs' ability to ensure that brokers performed to acceptable professional standards.<sup>10</sup> This issue is addressed later.

There are other provisions which the World Bank sought but which are not yet in place, including:

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<sup>9</sup> Meeting with IBLaw, 17 July 2002.

<sup>10</sup> Meeting with Director, Policy and Planning, 21 July 2002.

- Increased penalties for some offences
- Simplified review and appeal processes to speed up the finalisation of administrative decisions
- More stringent requirements for brokers to demonstrate competency
- Express provision for the electronic lodgment of documents
- Express provision to enable declarations to be made on a self-assessment basis
- Provisions enabling a post-transaction compliance approach, based on audit,
  - with the powers of customs to audit and measure compliance clearly expressed in the Act
  - and the requirements of importers and brokers to retain documents and assist the audit process also expressed
- Reduced post-transaction audit time-frames to avoid importers facing penalties up to 5 years after lodging documents.

These issues remain current.

## 6. CAPACITY TO MANAGE A LEGISLATION STRATEGY

How effective is the Customs at managing its program? Again, the scorecard here is mixed – but not bad. The Customs has demonstrated a number of important competencies, and it is experienced in the technical processes of creating legislation. But a group of competencies does not itself create a considered and coherent strategy, and it would be an exaggeration to say that such a strategy is apparent.

In summary:

- Customs recognizes that it is a core function of its work to draft and advise on legislation
- The Customs has qualified and skilled people in the Legislation Directorate. They are technically competent with professional qualifications. The Customs has a prosecutorial team of 10 who are trained lawyers. There is a section (in the Judicial Affairs Directorate) responsible for the implementation of court decisions. The current Head of the Directorate has excellent technical knowledge of the Customs Act. The Directorate's skills were increased by the experience of the passage of the law in 1998. Resources however are few and need to be increased, particularly in the legislation-drafting group.
- The 2001-2003 corporate strategic plan contains a number of tasks that would normally be in a legislative strategy. These include tasks relating to:
  - The preparation and revision of laws, regulations, and operating procedures concerning specific areas of law<sup>11</sup>

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<sup>11</sup> E.g. Under strategy 1 to facilitate trade, there are references to developing provisions to allow declarations before importation (2-2-2), the declaration of goods while outside Jordan (2-2-3) and the

- The establishing of a committee to amend the law in a modern manner, including penalties<sup>12</sup>
- The dissemination of information about the law<sup>13</sup>
- Amending penalties applying to smuggling<sup>14</sup>

This shows that the Customs recognizes legislative matters as part of its strategic plan. However, little progress has been made in delivering against these objectives.<sup>15</sup>

- Jordan Customs has demonstrated that it understands the importance of the consultation process in the development of legislation. It worked with other government agencies and the private sector to develop the revised Act in 1998, and the strategic plan acknowledges the need for consultation. Its responsibility for the implementation of other agencies' legislation means that it is consulted by Cabinet Office whenever that legislation is reviewed.
- Legal Directorate understands the legislation process and the role of the Cabinet office in drafting and vetting legislation. It is perhaps not so clear that Customs has yet learned to prepare the Parliament for the passage of legislation.<sup>16</sup>
- There is a process in place for the internal review of decisions without having to go to court.<sup>17</sup> The concept of internal review is therefore understood – although the process could be streamlined.
- There is a strong commitment to the rule of law. There is a well-established process for the hearing of cases and appeals in smuggling matters. This is detailed in the Customs Law. As with many other countries, the exhaustion of remedies may take several years. That is a reflection of the workload faced by the courts.
- The by-law establishing the Customs was reviewed in 2000. There is consequently an up-dated piece of legislation that meets the EU requirement for a fundamental statement of the rights and duties of the Customs. There are also some basic provisions in the Customs Law.<sup>18</sup> Consideration should be given to consolidating these provisions in the one law.

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“appropriateness of customs law and issued instructions with e-trade requirements”, issues where the responsibility for action is with Legal.

<sup>12</sup> Task 2-2-1 under the Trade Facilitation strategy.

<sup>13</sup> Task 3-9, Trade Facilitation Strategy

<sup>14</sup> Task 1-9 under the Strategy to Combat Smuggling.

<sup>15</sup> Meeting with Director, Planning Directorate, 21 July 2002.

<sup>16</sup> The Customs was taken by surprise in 1998 when legislators refused to accept the initial draft of the Act and returned it for substantial amendment. See Cunningham report. The Legislative Drafting area of the Cabinet Office is responsible for delivering the legislation to the Parliament, but that should not prevent Customs from briefing the Parliament.

<sup>17</sup> This process involves the writing of a plea to go to the Director-General, referral of the matter to the Directorate responsible, and the establishment of a Committee to review. If the Committee's decision remains under challenge, an opinion can be sought from the WCO.

<sup>18</sup> Title 1. This raises the question of why some are in the by-law and some in the Act.

- ❑ The Customs understands that it is important that the Customs Act be accessible to all. It has put the Act on its web site. But there is more that can be done to publish other elements of the legislation – the regulations, the SOPs and so on. The Import and Export Guide was a useful publication and increased access to the law. It is now out-of-date. Private sector experts find Customs information hard to access.<sup>19</sup>
- ❑ The Training Plan 2002 also contains a clear commitment to a program of training in Customs Law, as well as in specific areas such as Valuation where knowledge of the Law is important.

From the above quick analysis, I draw the following conclusions:

- ❖ Jordan Customs has made considerable progress towards modernising key legislation
- ❖ The Customs is committed to a continuing legislation reform program to give effect to procedural and other reform
- ❖ Jordan is keen to implement international best practice in its daily business – and will need to continue to modernise its legislation to do so
- ❖ Jordan also wishes to apply international best practice in the way in which it manages its legislation and administration
- ❖ Jordan already has a strong commitment to the paramountcy of the law, and to the need to protect human rights in the exercise of it
- ❖ Jordan understands that, to be effective, the law must be transparent and accessible
- ❖ Jordan is prepared to involve key stakeholders in the development and review of the law
- ❖ Jordan has a core of dedicated legal officers who have good technical knowledge of the Customs Act
- ❖ Jordan customs recognises the need to maintain a high level of staff knowledge and understanding of Customs law, as evidenced by both the Strategic plan and the Training plan.

These conclusions mean that the Customs already has a good foundation on which to introduce a long-term strategy to improve the quality of its legislation, to meet international best practice standards and to deliver efficient and transparent customs processes. The remainder of this report will identify the elements of such a strategy, and the means by which to bring it to fruition.

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<sup>19</sup> Interview with IBLaw, 17 July 2002.

## 7. BUILDING A LEGISLATION STRATEGY

**R#1: That Jordan Customs adopt a process of review, analysis, development, implementation and evaluation to be known as the Legislation Management Strategy. To begin implementing the strategy without delay, Customs should expand the ways in which it publicises the Customs Law and subsidiary legislation. This should be done in both Arabic and English, as a clear example of Customs' commitment to integrating Jordan into the global trading system.**

The legislation strategy proposed in this report is designed to manage the 5 stages of the legislation cycle. The key elements are:

- ❑ a clear public commitment to a managed legislation program
- ❑ an annual planning framework and performance review
- ❑ effective departmental coordination
- ❑ collaboration with affected stakeholders
- ❑ sufficient expertise within the Legal Affairs Directorate, supplemented by a program of staff development
- ❑ improved public access to information on the law and to rulings from Customs
- ❑ staff training in the law and legal principles
- ❑ benchmarking against international best practice
- ❑ further development of Mutual Assistance Arrangements.

With a clear recognition of the need for a managed process of legislation development and implementation, the Customs will be better placed to manage these disparate elements.

There are some short term results which can be achieved through the AMIR project which will make the Customs Law more accessible and develop a template for the management of legislation.

For legislation to be effective it must be known and understood by those who are subject to it and by those who must ensure compliance with it. This is clearly stated in the Kyoto Convention in Chapter 9. It is also fundamental to the strategy adopted by the EU. Kyoto Standard 9.1 states:

The Customs shall ensure that all relevant information of general application pertaining to Customs law is readily available to any interested person.

It then goes on to make a number of suggestions as to how this standard can be achieved through means of disseminating information, the quality and clarity required of this information, the processes for consulting with the trading community, exhibitions, enquiry counters and so on. These are sound and sensible ideas that improve public understanding of the law and lead to improved compliance.

It should therefore be a key early task for Customs to look at ways in which it can expand the means by which it publicises the law. This can be done, for example, by using

- The web site
- Information and fact sheets
- Reprints of the Advice for Importers and Exporters
- On-line advice for Brokers and importers

This should include materials in both English and Arabic. English is the language of international commerce. The international trading community and foreign investors will benefit from an authoritative translation of the law and from clearly expressed advice on how the law works.

As part of this process, there are several things that can be done quickly to demonstrate Customs commitment to these Kyoto principles. It is proposed that:

- ❑ The English language version of the Customs Law should be reviewed by an English language specialist to ensure that the legal terminology used is exact and recognizable
- ❑ A new up-dated edition of the Import Export Guide be produced as a matter of priority
- ❑ A clear explanation of the offences, penalties, prosecutions and appeals procedures be produced in both languages
- ❑ Subsidiary legislation be placed on the web site and made available in hard copy as information materials for importers, exporters, brokers and others, and be regularly updated
- ❑ The information cross-reference the Customs Law to other related pieces of legislation.

This is work that could be funded by AMIR, using a bi-lingual legal specialist with a familiarity with legal concepts as expressed in English, and drawing on the assistance of the Customs with interpretation. Companies such as IBLaw also have the competence to do this work.

### **A template for managing legislation**

#### **R#2: That AMIR Program assists the Customs to develop a methodology and template reflecting the steps that need to be undertaken to manage legislation.**

The idea of the legislation cycle is explained in part 3 above. It provides the basis for a management strategy. It would not be difficult to take the framework from concept to reality by developing a template for the management of the legislation process in Customs. If developed in collaboration between the Legal Directorate and an AMIR-sponsored consultant, this would provide a useful management tool for the next series of changes to the Law, which may result from the adoption by Customs of the

recommendations coming from AMIR in relation to Customs practice and procedure. This work could be done in a workshop format with staff from the Legal Directorate.

Both of these recommendations, if implemented, would provide a relatively quick result and signal the commitment of Customs to improving its approach to the legislation function.

### General

**R#3: That Jordan Customs publicly commits itself to a long-term strategy for the development, management and review of legislation as being fundamental to the good management of Customs.**

Customs needs to commit to a legislation strategy as a formal recognition of the central importance of legislation to its core mission. This should be done through a public statement from the Director-General that the introduction of a legislation strategy is a strategic priority for Jordan Customs and that resources will be assured to maintain the strategy. The statement should recognize that the legislation management process is cyclical and long-term and represents a key element in the process of continuous improvement in Customs. The statement should be circulated to staff and external stakeholders, and should be reproduced in strategic planning documents, annual reports, and other key departmental statements of strategy and outcomes. This will all contribute to improving the transparency of Customs' work.

**R#4: That Customs uses the EU model as the best international benchmark for the development of its legislation strategy. It should also include in its review of best practice around the world, an examination of the approach to legislation adopted by other Customs services. In particular, a dialogue with the European Commission may be very valuable.**

While it would be possible to adopt a range of models based on the practices of other customs administrations, the model used by the EU best demonstrates the elements of the strategy to which Jordan should aspire. It will provide a useful benchmark for the future.

Given the fundamental nature of legislation, it is important for Customs to study best practice overseas in two respects:

- Legislation content
- Management approach

This will ensure that Jordan's own thinking continues to develop on the basis of international best practice. If Jordan adopts the EU model, a dialogue with the Commission in Brussels would be very valuable. The Director-General's visits to the USA, Australia and Malaysia will provide an opportunity to study the legislative approaches adopted there.

**R#5: That Customs work to develop a program of external review of its legislation strategy to provide an objective measure of its success in both developing and implementing new law**

Customs will commit a major effort to its legislation program. In doing so, it needs the assurance of external review that it is accomplishing the goals that it has set itself. It must recognize the desirability of external review and work with Government to establish the most appropriate form of performance audit in relation to the legislation function. The logical body to conduct such audits would be the national Audit Bureau. This would also involve the Audit bureau being brought into the consultative process.

Implementation of this recommendation will not only meet international best practice – it will help to maintain the momentum for legislative reform. It will also promote effective working relations with the Government as a whole. It is noteworthy that the EU blueprint requires external review, that it is consistent with Kyoto, and that it is now regular practice for Customs services to submit themselves to external review. The benefits are twofold: Government has an objective performance measurement, and managers adopt a disciplined approach to management to avoid the public criticism that external review can deliver.

### **Strategic Planning**

**R#6: That the Legislation Strategy be referred to in Strategic Planning Documents as a core strategy contributing to best practice and institutional excellence.**

While the Strategic Plan refers to legislative work in the action plans, there is no reference in the narrative to the importance of legislation. This should be rectified through the reiteration of the DG's statement (see R#3) and through the creation of a separate section in the strategic plan which enunciates the legislation strategy. This will assist staff to understand that an effective legislation strategy is a key part of excellence in public administration. It will also demonstrate that Customs is proactive rather than reactive in setting its legislation agenda.

**R#7: That a planning workshop be held to identify the contents and priorities of the legislation program for the next 12 months. The outcome of the workshop will be a legislation plan.**

Recommendations 17-25 suggest issues that need to be covered by legislation. They are not set out in any particular order of priority. Some can be achieved relatively easily; others may require substantial preparation. It is also essential that the Customs itself identifies those areas of highest priority and allocates resources accordingly.

This can best be done through a workshop in which Customs Senior managers identify the legislation issues of greatest concern and priority and endorse a plan to deal with those priorities. This would provide a focal point for policy Directorates to work with

Legal Affairs Directorate to breathe life into the legislation strategy. The workshop should be held as soon as possible after completion of the AMIR report.

**R#8: A Legislation plan should be developed annually and include development of new, and review of existing, legislation and regulations.**

The outcome of the workshop will be a prototype legislation plan for the next 12 months. There should be a legislation plan developed every year. This needs to be effectively integrated with the corporate plan. It should form the annual basis for the work of Legal Directorate. It should be able to be broken down into tasks to be performed by the sections within the Directorate and by individual officers. It also signals the timing of input from external sources e.g. external review. From this plan, Directorate Staff will be able to identify the tasks for which they are responsible. The plan should be developed by the Legal Directorate and signed off by the Legislation Committee. Either Internal audit or an external review body should measure the Directorate's performance against the outcomes anticipated in the plan.

### Structure and Resources

**R#9: That the present division of responsibilities for legal work between the Legal Affairs and Judicial Affairs Directorates be rationalized to give the Legal Affairs Directorate responsibility for the management of the Legislation strategy.**

The current responsibilities of the Judicial Affairs and Legal Affairs Directorates should be rationalized, along the lines proposed in the Cunningham report. If there continues to be two Directorates, the Legal Affairs Directorate should be dedicated to managing legislation strategy. It should have three principal areas:

- Legislative Drafting – responsible for preparation of legislation and its passage through Parliament and for the preparation of regulations and other subordinate legislation.
- Legislation Application Section - responsible for preparation of SOPs and instructions, public guidance materials, web site access; responsible for drafting of advices and rulings in liaison with policy area and for management of rulings system (see R# 16); responsible for providing internal advice on the law and for advice to other agencies on Customs-related laws; responsible for clearance of training materials with legal content.
- Legislation Review and Evaluation Section: - responsible for managing the program of legislative review; liaison with external bodies; secretariat for the Legislation and Consultative Committees; overseeing performance management for the Directorate, including external/internal audit.

To enable the Directorate to handle the high workload that it already has – and the additional work proposed in this and other reports – its numbers need to be lifted from the

present 4 officers, and supplemented with officers who have legal training and drafting skills. (See Recommendation #12 below.)

(Under this structure, the Judicial Affairs Directorate would become responsible for all aspects of the judicial functions, including management of prosecutions, conduct of cases and implementation of decisions. The Directorate's current functions relating to temporary admission of vehicles and distribution of incentive payments could be performed elsewhere, subject to the provision of proper legal advice by the Directorate and, in the case of motor vehicles, the conduct of prosecutions by the Directorate.)

**R#10: That an internal Legislation Management Committee be established to coordinate the legislation program.**

An internal legislation committee is essential to ensure that there is departmental wide coordination of the legislation program, to facilitate the input of policy advice into the legislation drafting and review process and to ensure that adequate resources are being applied to the legislation program. This Committee should be chaired at senior (Deputy Director-General level) to ensure that it has effective senior management ownership and control. The Legislation Directorate should provide the Secretariat for the Committee. The two Directors from the Legal Directorate and Judicial Affairs Directorates should be members. Policy areas should be represented as required, as should client directorates e.g. enforcement, risk management and intelligence.

**R#11: That an HRM strategy be put in place to ensure that suitably qualified staff are available through selection and/or training.**

The Customs should maintain a program of recruitment to ensure an adequate cadre of legally qualified staff is available. The skills and expertise of the current resources should be recognized and opportunities identified for further staff development, whether through assistance with further legal education, study tours or exchange arrangements with private sector legal firms. Ensure appropriate professional training for staff recruited into the Legal Affairs Directorate – in areas such as legal policy, legislative process, and drafting technique.

**R#12: The HRD strategy for the Department should include a continuing program of education for all staff in basic legal principles. Technical training should continue to include clear analysis of relevant legislative provisions.**

A core element of any long-term training strategy for Customs staff should include continuation of the Customs Law course. This should be revised constantly to maintain relevance and accuracy. Where appropriate, training courses involving application of the Customs Law should contain clear and accurate information about the relevant provisions of the Act. This material should be cleared by the Legal Affairs Directorate.

The legislation plan should form the basis for performance review of the Directorate and of its staff.

### **Establish consultative processes**

**R#13: That the Customs immediately establishes the consultative committee foreseen in the Strategic Plan and begins a program of consultation with external stakeholders**

The Strategic Plan talks about the creation of a committee to consult with external stakeholders on legislation matters. This is an essential step in managing the legislative program and should be given high priority. The committee should include an appropriate range of external stakeholders from both the private and public sectors - brokers, chamber of commerce, Law society, government agencies. In putting this committee in place Customs will be implementing standard 1.3 of the General Annex to the Kyoto Convention.

**R#14: The Customs should continue to extend its range of Mutual Assistance Agreements and to ensure that the Customs Law reflects the commitments adopted. The Customs should participate in the WCO reconsideration of the Nairobi Convention on Mutual Assistance.**

As part of its consultative approach to legislation management – and in line with EU benchmarks – Customs should continue to develop its range of mutual assistance agreements. These provide an essential basis for the exchange of information and assistance in strengthening compliance. The Customs Law must reflect appropriate legal principles in enabling Customs to exchange data. Substantial guidance in this area is available under Chapter 6 of the General Annex to the Kyoto Convention, particularly Standard 6.7 and the associated guidelines under part 8.6 of Chapter 6.

The WCO is considering a revision of the Nairobi Convention on Mutual Assistance. This has the potential to modernize and make more effective the Convention. Jordan should engage in this review to assist the Convention re-drafters to make the agreement one from which Jordan could benefit. In this respect, Jordan could exercise leadership on behalf of regional Customs agencies.

### **System of rulings – IT support**

**R#15: Customs should establish a system of binding rulings and non-binding advices through which to generate a higher level of understanding of the law. Penalties should apply when advices are ignored or disregarded and there is subsequent non-compliance.**

An important means of increasing compliance is to provide clients with reliable information to assist with the lodgement of properly completed documents. This advice can be prepared in several forms:

- Advice in response to a particular query relating to a particular instance, that advice being relied on by both Customs and the importer as the basis upon which a transaction is to be handled (binding ruling)
- More general advice on administrative interpretations to assist clients to understand the operation of provisions relating to valuation, tariff, rules of origin, intellectual property and so forth (non-binding advices)
- Reports and analysis of Court decisions relating to the Customs Law
- Access to WCO explanatory materials on key conventions.

The Kyoto Convention at Chapter 9<sup>20</sup> of the General Annex provides guidance on the implementation of procedures to enable Customs' clients to obtain advice from the Customs to assist them to behave in a compliant way. The Chapter also provides guidance on how to implement a system of binding rulings.<sup>21</sup>

Advice can be provided in hard copy but should also be accessible through an on-line database, which contains a full record of Customs Law decisions and interpretations. Kyoto draws attention to 3 different systems that provide on-line rulings and advice. The three examples are EBTI (European Union), BERTI (UK) and the Australian TAPIN system. In light of the forthcoming visit to Australia, it would be desirable if the delegation could study how TAPIN works.

Brokers should be actively encouraged to seek advice before lodging entries. Where advice is sought and then either disregarded or flouted, penalties should be applied. But Customs should also demonstrate that where advice is given and acted upon, the broker or client is not held responsible if the advice should be shown to have been incorrect.

## 8. DEVELOPING A LEGISLATION PLAN

### What elements could be in the legislation plan?

The previous recommendations have focused on steps necessary to manage the legislative strategy. Recommendation #8 proposed a workshop to develop a legislation plan for the next 12 months, following completion of the AMIR report. In this section, the report will examine some areas of the law that might be included in that plan. Some of these recommendations are designed to meet Standards set out in the Kyoto Convention. Others are aimed at filling gaps identified in the Customs Law. Others anticipate the

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<sup>20</sup> See in particular Standards 9.1 to 9.8. These provisions provide a thorough framework for the trading community to operate knowledgeably in a self-assessment environment, with a clear understanding of Customs requirements and a high degree of certainty that they are acting in compliance with the law.

<sup>21</sup> Standard 9.9

results of project work yet to be done. This section of the report is therefore, of necessity, indicative only. The workshop will need to review them in the light of recommendations from the project team, some of which are likely to require legislative change. These recommendations have not been included in the action plan in Part 9 below.

### Legislating for Risk Management

**R#18: That the quantum of the penalty provisions in Title 13 be reviewed as to their adequacy, that penalties applicable in a risk-managed, self-assessment regime be established during the design of the compliance measures and that the penalties be cross-referenced to the provisions that give rise to the offence.**

The next recommendation is founded on the premise that the AMIR project will recommend a new approach to risk management within Customs, to reflect the approach set down in Chapter 6 of the General Annex to the Kyoto Convention. Section 8 of Chapter 6 sets down a number of legislative requirements fundamental to establishing the infrastructure for a risk management approach. As the Guidelines to the Annex point out:

...Customs administrations need legislation which will allow their officers powers to carry out the controls deemed necessary to ensure compliance with the laws and regulations which they are responsible for enforcing.<sup>22</sup>

The Annex then goes on to list a series of measures that Customs needs to be able to work risk management effectively (together with the relevant Standard from the Convention). These include:

- ❑ Examination (Standard 3.3) – express powers to enable officers to examine goods
- ❑ Right of Access – powers setting out the rights of Customs to access premises, vehicles, vessels and aircraft and to access business records, computer systems etc
- ❑ Sampling – powers to enable officers to take samples
- ❑ Detention – powers to detain goods under customs control to establish their compliance with Customs Laws and regulations
- ❑ Post clearance audit – powers to enable Customs to conduct a retrospective audit of business records etc
- ❑ Exchange of information – power to exchange information with other Customs Services (see also MAAs below)

Some of these requirements already exist in the Customs Law. The Law contains extensive provisions relating to the power of Customs to inspect and analyse (sample) goods.<sup>23</sup> Similar powers in relation to searching means of transport and persons are

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<sup>22</sup>General Annex, Chapter 6, Paragraph 8.1. The paragraph goes on to note that “the adequacy of powers available to Customs Administrations under national law needs to be kept under review and powers should be strengthened where necessary to deal with new threats or facilitation requirements.

<sup>23</sup> Title 5, Chapter 2.

contained in the anti-smuggling provisions.<sup>24</sup> Less well defined, however, are provisions relating to audit and post-transaction activity and to the rights of access to premises. This reflects the Customs existing practice of concentrating enforcement activity on the goods as they enter the Kingdom. If Jordan is to move to a more contemporary facilitation approach, where compliance is measured after the event, it will need to establish more extensive provisions to support that activity. Recent legislative change in Australia is one model to look at, in light of the guidance in Kyoto.

To make these provisions transparent and accessible they should be included in a single Title in the Customs Law, dedicated to setting out the powers of Customs to verify and enforce compliance under risk management.

### **Obligations on Citizens**

#### **R#17: Develop Legislation to establish in greater detail the rights and duties of citizens dealing with Customs in a risk management environment.**

Kyoto Chapter 8 also stipulates that risk management provisions should spell out the requirements that Customs needs to impose on importers, exporters and others to retain documents for verification purposes as well as establishing the rights of traders and others to operate in a self-assessment environment.<sup>25</sup> In tandem with setting out these rights, the legislation also needs to stipulate penalties that will apply for failure by the trader to fulfill his part of the “compliance bargain”.

Again, the recent Australian legislation is a relevant example. It contains provisions relating to the obligations of traders to retain documents, to produce them on request, to allow access to records and to systems, to answer questions and to provide such other assistance as may be necessary for the conduct of the audit. The legislation also provides for compensation in the event of damage, for the right to refuse consent to access (in which case a warrant must be sought) and so on. That is not to suggest that the Australian legislation is directly applicable in Jordan – it is not. But it does demonstrate that expression in domestic legislation of the principles set down in Kyoto, and is a useful guide to the measures necessary to enable customs to operate risk management effectively.

The Customs Law has some relevant provisions but they are not sufficient to allow Customs to operate effectively. For example, Article 170 stipulates that customs brokers shall maintain a register of transactions and gives the Customs the power to inspect those records at any time. These provisions are backed by penalties for failure by the broker to perform their duties properly<sup>26</sup>. There is also a general penalty for obstructing officers in the course of their duty.<sup>27</sup> But the legislation is unclear about the requirements on brokers

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<sup>24</sup> Title 12, Chapter 2.

<sup>25</sup> See in particular paragraph (g) and (h) in Section 8.1 of Chapter 6 of the General Annex.

<sup>26</sup> Article 199, paragraph S.

<sup>27</sup> Article 199, paragraph Q

to answer questions, for example, or to produce documents other than the register. How, for example, can Customs verify the register against documents held by the broker?

Similarly, Article 183 provides for the powers of officers to examine and seize bills of lading, correspondence, contracts etc, and requires that these documents be retained for 3 years. Article 199, paragraph R provides for penalties if documents are not retained or produced on request. These provisions will become very important in a post-transaction environment, but as presently drafted leave a number of questions unanswered. What, for example, is the status of electronic documents and the systems on which they reside? What powers does the Customs have to verify the authenticity of what is recorded in the registers? What rights does the importer or broker have to ensure that Customs verification activity does not unduly interfere with the legitimate operations of his business?

It will be necessary for legislation to be passed to express rights and duties of the trading community more fully if Customs is to operate on a risk-management basis in accordance with Kyoto.

As with the powers of Customs, the rights and obligations of citizens should be set out in a single Title of the Customs Law so that they can be easily identified and complied with.

### Penalty system

**R#18: That the quantum of the penalty provisions in Title 13 be reviewed as to their adequacy, that any necessary penalties for a risk-managed self-assessment regime be established during the design of the compliance measures and that the penalties be cross-referenced to the provisions that give rise to the offence.**

In the context of risk management, the issue of penalties becomes crucial. Clear, easy-to-apply penalties underpin any effective post-transaction compliance program. Penalties attracted considerable criticism in the World Bank report, which questioned both their adequacy, the factors which should determine the extent of any penalty applied and the transparency of the penalties. This latter point was addressed by the inclusion in the Act of Articles 198 to 207 which spell out the offences and the penalties which attach to them. To that extent, there is now a clear expression of the penalty system in Title 13.

There are, however, three aspects of the penalty regime that warrant further review:

- ❑ The adequacy of penalties was criticized by both the World Bank and Bert Cunningham, and it is not clear that the quantum for some offences would constitute an adequate deterrent or compensate the revenue adequately for the consequences of the offence;
- ❑ The risk management environment is likely to impose obligations and duties on the trading community which are not yet articulated in the Law and which may themselves require penalties to ensure compliance (for example, provisions penalizing failure to provide documents on request);

- Regardless of the need for change arising from risk management, the present provisions would benefit from a clear cross-reference to the substantive provision of the Law which gives rise to the offence to which the penalty applies. It is clear for example that the penalty in Article 199 R relates to a breach of Article 183. It is not clear on the face of the Law what provision Article 199U refers to. This cross-referencing, which can be done quickly and easily, will greatly assist the transparency of the law.

### **Broker capability**

**R#19: The provisions of the Customs Law relating to Brokers should be reviewed against the relevant provisions of the Kyoto Convention and strengthened where necessary to ensure that brokers recognise the need to aspire to a higher level of professionalism.**

In a risk-managed environment, the broker is a crucial intermediary between the importer and Customs. The broker will be expected to assume responsibilities for valuation and tariff classification that were previously the responsibility of the Customs. In return for assuming the responsibility of self-assessment, brokers enjoy a significantly higher level of facilitation. But they should also face, the prospect of penalties if they fail to exercise their responsibilities with due care and diligence. The modern broker will require:

- Higher education standards
- Higher levels of accountability
- Improved IT capability
- Greater professionalism.

The present provisions in Title 10 of the Customs Law are unlikely to be adequate for these circumstances. This was an issue addressed by the World Bank report<sup>28</sup> and supported by Bert Cunningham. It is unlikely that the amendments in the Customs Law relating to clearance agents will deliver the quality control systems that Customs is entitled to expect of customs agents. The Law does not contain sufficient powers for Customs to be able to penalize poor performance, either through the imposition of administrative (as opposed to judicial) penalties or the cancellation of licences. These sanctions need to be introduced, together with legislated requirements that brokers attain professional qualifications through Customs-sanctioned training before they become eligible for a brokers licence.

The starting point for a review of the provisions of Title 10 is Chapter 8 of the general Annex of the Kyoto Convention. Chapter 8 lays down seven fundamental Standards which apply to the relationship between brokers and the Customs. As part of Jordan's move to Kyoto Compliance it would be desirable for Title 10 to be reviewed in light of Chapter 8. In addition, the operation of the Title since 2002 should be reviewed to determine whether the provisions are effective and what measures are needed to strengthen them. This review will be most effective if conducted with the assistance of

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<sup>28</sup> pp79-80

brokers who have demonstrated a commitment to professionalism and high quality in their dealings with Customs.

### **Requirements for Provisions relating to IT**

#### **R#20: That Customs develop appropriate legislation to support the introduction of information technology.**

Central to the reform agenda for Jordan Customs is the implementation of IT capability as a means of facilitating trade and assisting with the implementation of risk management. The Customs Law is largely silent on the role of IT, and ASYCUDA in particular. It is not necessary that the Law contains detailed technical provisions about the use of IT, but it is important that some basic rules be stated in the law.

Chapter 7 of the General Annex to the Kyoto Convention provides most useful guidance in this respect, particularly through Part 10, headed “Legal Issues”. This provides a brief blueprint of the legal issues that Customs needs to work through when introducing IT systems. This should be carefully considered by Jordan, particularly with regard to the five areas identified in paragraph 10.3 of Chapter 7: EDI legal issues; security linked legal issues; data protection legal issues; related issues such as confidentiality; and, if relevant in Jordan’s context, how to introduce the new system by agreement. Other issues arising from the use of IT also need to be considered including electronic signature<sup>29</sup>, admissibility of computerized data in legal hearings<sup>30</sup>, and issues relating to data protection and privacy.<sup>31</sup>

These issues have been confronted by other Customs services – or soon will be. The intended visit to Australia and Malaysia will be to two countries at different stages of computerization. The Australian Cargo Management Re-engineering (CMR) project provides one legislative model worth studying. Malaysia is moving to a new IT system and its experience from a legislative perspective will also be relevant to Jordan.

This should not be seen as a difficult or complex task. As Kyoto points out, “when a Customs procedure is to be computerized, the vast majority of existing legislation is unlikely to require amendment”. The important point is that as Jordan introduces modern systems to carry out its functions, so too it will need modern legislation to provide the necessary legal framework.

### **Investigation and Intelligence**

#### **R#21: That new provisions to give effect to revised procedures in relation to investigation and intelligence be drafted to ensure an appropriate legal basis for their implementation**

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<sup>29</sup> para 10.4

<sup>30</sup> para 10.5

<sup>31</sup> para 10.6

The AMIR project will make recommendations to Customs on ways to improve the management of investigations and the application of intelligence. It is likely that these recommendations will require some legislative change to underpin them, in areas such as:

- Powers of officers
- Confidentiality and security of intelligence holdings
- Maintenance of records on investigation activity
- Surveillance
- Anti-smuggling activity
- Use of new technology
- Rights of individuals

Some of these may correspond to similar provisions required for the verification of informed compliance in a risk managed environment, and they should be developed together to ensure that they are compatible.

### **Reviewing Recent Legislation**

**R#22: That Customs, in consultation with the Ministry of Trade and Industry, review the operation of the Customs Law in giving effect to obligations under WTO Agreements.**

It is now more than two years since the Customs Law came into force. It contains many important new provisions in relation to matters such as Valuation, Tariff and Rules of Origin. As noted earlier, there is a view in industry that the provisions have not yet had the desired effect and are not being properly implemented. It is not too early for these important provisions to be reviewed to measure the extent to which they have been successful in giving effect to Jordan's international obligations. In these areas Customs has a particular responsibility to the Ministry of Trade and Industry to ensure that WTO obligations are being observed. A joint review of the legislation would help to establish any legislation changes that need to be made and would feed into the legislation cycle.

### **Kyoto compliance**

**R#23: The legislation program should include the passage of provisions necessary to enable Jordan to comply with the Kyoto Convention by the agreed date.**

Important work has been done in the Legal Directorate to measure Customs compliance with the Kyoto Convention. To enable Customs to become a party to the Convention it will be necessary for any shortcomings to be remedied through the passage of appropriate legislation. It is the strong expectation of Customs that it will be in a position to become a party to the Convention by mid-2003. It is therefore highly desirable that this task be given a high priority to meet that timetable.

### Administrative Organisation

**Regulation R#24: The Administrative Organisation Regulation of the Customs Department should be amended to include provisions relating to financing and to (internal) review. Some of the provisions in Title 11 of the Customs Law should be included in the Regulation. The Regulation should be given the same public exposure as the Customs Law.**

Regulation No 43 of 2000 sets out the modern constitutional basis upon which the Customs Department is based. It establishes the organisation's structure, its aims, the role and functions of the Planning and Coordination Committee and the Minister's powers to enforce the Regulations. This meets the EU benchmark of providing in legislation "a modern legal base...for the customs administration setting out its organization and structure". But it does not meet other EU benchmarks such as requiring that the financing of the Customs be determined in the legal provisions, or that investigation and audit services be established in them. While a good start has been made, there is scope for the Regulations to be expanded to meet these benchmarks.

There are also provisions in the Customs Law setting out the "Rights and Obligations of the Department's Officials".<sup>32</sup> Many of these provisions should be in the Administration Regulations. It would appear desirable therefore for the Regulations to be reviewed for completeness and for the rationalization of provisions between the Customs Law and the Regulation.

The Regulations are an important public document, which establishes the Customs as a Department of State, and determines its authority and its structure. It should be widely available, including as a cornerstone document on the web site.

### Rulings and Advices

If Customs accepts Recommendation #15, it is likely that some legislative change would be necessary to underpin a system of rulings, particularly if IT systems are involved. This too would need to be factored in to the legislation plan.

### Mutual Assistance Agreements

Customs may need to consider adding provisions to the Customs Law to give effect to the obligations it is assuming under Mutual Assistance Agreements. Recommendation #16 refers.

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<sup>32</sup> Title 11. Provisions relate to authorizations, carriage of weapons, ranks and badges, confidentiality and so on.

**9. NEXT STEPS**

An action plan for the next 12 months and three years is set out below. The immediate action proposed is:

- ❑ Development of an improved translation of key legislation and information materials to express the law accurately in English (Recommendation #1)
- ❑ Conduct of a workshop to develop the template for the legislation management strategy
- ❑ Conduct of a workshop to develop the legislation plan for the next 12 months (Recommendation #8). This is dependent on the completion of all aspects of the AMIR Customs project so that legislation needs have been identified before the workshop begins.

**Notional Plan for the Phased Introduction of the Legislation strategy**

<b>Recommendation</b>	<b>Year 1</b>	<b>Year 3</b>	<b>Responsibility</b>
<b>#1</b> Develop public materials for dissemination of the law	Identify best means of expanding dissemination of the law  Develop agreed materials and media for dissemination  Revise and improve English translations.	Maintain program of dissemination while updating materials to reflect legislative and procedural change	Legislation Committee  Legal Affairs Directorate  Planning and Organisation Directorate  AMIR
<b>#2</b> Establish Template for Development of Legislation	Conduct workshop as a matter of priority	Ensure template applied in practice.  Review Template to ensure continuing relevance	AMIR  Legal Affairs Directorate
<b>#3</b> Public commitment to a legislation strategy	Draft and issue statement	Ensure statement clearly articulated in strategic and other planning documents	Director-General Planning and Organisation Directorate

## A Legislation Strategy for Jordan Customs

<p><b>#4</b> Adopt EU Model and study other overseas experience</p>	<p>Ensure that Legislation strategy is mapped against EU objectives to ensure compatibility (see Annex E as starting point). Establish dialogue with EU Commission</p> <p>Monitor approaches taken by other Customs Service when visiting them.</p>	<p>Continue to review the legislation strategy to ensure that Jordan maintains EU benchmarks. This should be done as part of performance measurement.</p> <p>Maintain effective dialogue</p>	<p>Policy and Planning</p> <p>Internal Review</p> <p>Legal Affairs Directorate</p>
<p><b>#5</b> Establish performance review</p>	<p>Ensure that the legislation function is included in external performance audit strategy</p>	<p>Maintain effective external review</p>	<p>Planning and Organisation Directorate Planning and Coordination Committee</p>
<p><b>#6</b> Review the Administrative Organisation Regulation</p>	<p>Consider other matters relating to the establishment of the Customs that should be included in the Regulations.</p> <p>Examine provisions in the Customs Law that should be included in the Administrative Regulation.</p> <p>Disseminate information about the Regulation.</p>	<p>Review and amend the Regulation as required to ensure that it continues to meet Customs emerging needs.</p> <p>Ensure that it is widely accessible.</p>	<p>Legislation Committee.</p> <p>Legal Affairs Directorate.</p>
<p><b>#7</b> Inclusion in Strategic Plan</p>	<p>Revise strategic plan to include legislation strategy.</p>	<p>Continue to express the legislation strategy in planning documents</p>	<p>Planning and Organisation Directorate</p>
<p><b>#8 and #9</b> Legislation Planning</p>	<p>Conduct legislation planning workshop.</p> <p>Develop annual legislation plan.</p> <p>Incorporate legislation</p>	<p>Produce annual legislation plan.</p> <p>Review performance against plan.</p>	<p>Legal Affairs Directorate. Planning and Organisation Directorate. Policy Directorates.</p>

## A Legislation Strategy for Jordan Customs

	plan into corporate strategic plan and disseminate widely		
<b>#10</b> Organisational Restructure	Restructure the two Legal Directorates.  Ensure Legal Affairs Directorate structure reflects legislation strategy needs.	Review effectiveness of revised structure.	Planning and Organisation Directorate
<b>#11</b> Establish Legislation Committee	Prepare terms of Reference and agenda for inaugural meeting. Establish lines of reporting to Director-General and Minister if required.  Establish regular pattern of meetings. Ensure secretariat adequately resourced	Operate as a Standing Committee on a regular schedule.	Deputy Director-General
<b>#12</b> HRM strategy	Develop and implement procedures relating to recruitment and professional training of legal staff. Develop appropriate programs with law schools. Create exchanges between Customs and Law firms.	Monitor resources and capabilities. Anticipate requirements for new and qualified staff.	Legal Affairs Directorate Human Resources Directorate
<b>#13</b> HRD Strategy	Maintain effective teaching programs for staff in legal principles and in the legal aspects of technical work. Ensure accurate legal content of training courses	Maintain long-term approach to the development of staff legal knowledge and skills.	Training Centre. Legal Affairs Directorate
<b>#14</b> Establish consultative mechanisms	Implement the strategic plan objective. Establish secretariat for Committee within Legal	Operate as a Standing Committee on a regular schedule.	Deputy Director General Planning and Organisation

## A Legislation Strategy for Jordan Customs

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	Affairs.		Directorate
<b>#15</b> Mutual Assistance Agreements	Identify needs for further agreements.  Participate in Review of Nairobi Convention	Maintain program of MAAs	
<b>#16</b> Advices and Binding Rulings	Establish policy on provision of advice and rulings in light of Kyoto Convention.  Assess suitable IT support.  Consult with importing and broking community over operation of such a system.  Develop necessary legal support in Customs Law	Establish system of advices and binding rulings, in the context of informed compliance.  Pass and implement legislative provisions required.	Planning and Organisation. Legal Affairs Directorate. Computer Directorate.

### ANNEX A: SCOPE OF WORK

This report has been written against the scope of work, the key elements of which are set out below:

...develop a national legal and regulatory strategy that will include application of international best practice. This will include addressing strategic questions like:

- ❑ Division of legal responsibilities within Customs and between Customs and other authorities
- ❑ An achievable program to bring current legislation up to agreed standards
- ❑ Development of a proactive capacity to maintain best practice standards in this area.

It may also provide tactical and operational advice where appropriate.

2. Perform an analysis of current legal and regulatory capacity and from that produce a draft development program for staff, equipment and training needs for roll out over the short term (one year) and the long-term (three-years). This task will not be limited to Customs staff involved directly in legal and regulatory activity and it may in some cases extend beyond Customs if appropriate.

3. Establish the needs of legal and regulatory personnel for infrastructure and training (i.e. computer hardware, software, training in legal principles etc) and develop a schedule for their introduction that will include any prerequisite support, training or infrastructure requirements over the short term (one year) and the long term (three years). These will be incorporated in the Customs Center of Excellence arrangements wherever possible.

In all tasks the needs of the ASEZA free trade zone should be included although if appropriate these should be itemized separately

Further guidance was provided both in correspondence and in discussion by Glenn Wood of the AMIR project, who raised a number of issues which he felt fell within the SOW. These included, but were not limited to issues such as:

- Broker licensing provisions
- Conformity with international obligations under instruments such as the Kyoto Convention and the US Free Trade Agreement
- Introduction of post-entry compliance programs
- Customs rulings
- Appeals and review processes
- Division of responsibilities for legal matters within the organizational structure
- Mutual Assistance Agreements with other countries.

The SOW has been interpreted widely to enable me to explore a range of matters which go beyond the legal framework and into areas of policy, organizational structure, performance measurement and, to some extent, assessment against international best practice. I have been prepared to do so because I have been struck by the strong sense of commitment within Jordan Customs to a long-term program to achieve best practice – a goal which will only be achieved if there is a constant and rigorous appraisal of its progress towards that goal.

## **A Legislation Strategy for Jordan Customs**

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Due to developments after the drafting of the SOW, this report does not discuss issues relating to ASEZA. These will need to be reviewed in the light of recommendations in the report from Alan Wilson on the relationship between the two Customs agencies.

It is suggested that a separate study be done of ASEZA legislation as a component of the next Scope of Work.

It should also be noted that the SOW does not take account of discussions and recommendations arising from other aspect of the AMIR Customs Project.

**ANNEX B: LIST OF VISITS AND DISCUSSIONS**

I made two visits to Jordan from 11-21 July, 2002, and 8-18 August 2002. While in Jordan, I visited the Customs Department Headquarters, the Customs post at Jaber on the Syrian Border, and ASEZA. I held consultations with officers from the Customs Service, with Customs experts from the private sector and with other consultants working within the AMIR project.

I would like to record at this point my thanks for the kindness and openness with which I was assisted by all parties concerned. In particular, the assistance provided by Eng. Marwan Gharaibeh of Customs made the research for this report not only possible, but a pleasure. Any mistakes, misapprehensions or misjudgments are therefore all my own work and not attributable to others.

**Schedule of Visits and Meetings**

15 July 2002	Mr Marwan Gabzardieh	Director, Policy and Planning Directorate
16 July	Mr Adnan Mr Salah Mr Marwan also present	Director, Judicial Affairs Directorate Director, Legislative Affairs Directorate
18 July	Mr Hazeem	Director, Jabelh Customs Post
18 July	Ms Nissreen Haram Ms Rand Hannun	Managing Director, International Business Legal Associates Advocate, International Business Legal Associates
21 July	Mr Marwan Gabzardieh	
11 August	Meeting with Jim King and Vince Ruddy from ASEZA and Rand Hannun from IBLaw (team meeting)	
12 August	Meeting with Mr Salah and Mr Marwan (Team meeting)	
14 August	Meeting with Mr El-Hanouï, Director, ASEZA Customs and staff (team meeting)	
15 August	a.m. Jim King p.m. Rand Hannun	ASEZA/TSG Advocate, IBLaw
18 August	Ms Nissreen Haram Ms Rand Hannun	Managing Director, International Business Legal Associates Advocate, International Business Legal Associates

**ANNEX C: REFERENCE MATERIALS**

Baseline Efficiency Study of Jordanian Customs, Bert Cunningham, 4 May 1998

Customs Reform Program: the Hashemite Kingdom of Jordan, World Bank Appraisal Report, February 1995, particularly Annex 3

Customs Law, Law No. (20) of the year 1998

Administrative Organisation Regulation of the Customs Department, Regulation No (43) for the Year 2000

Legislation Related to Customs Department's Work, paper prepared by Mohammad Al-Jaloudy, Head, Consultations and Legislation Section

Strategic Plan 2001-2003, Customs Department

Training Plan 2002, Customs Department

Customs Pre-Accession Strategy, Directorate XXI, European Commission, Brussels, 24 November 1998 (doc. XXI/A-4/KB D(98))

Draft Report on Training Centre of Excellence, prepared for AMIR by John Knott and Alan Wilson, July 2002

Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2001, Parliament of the Commonwealth of Australia, 2001 and accompanying Explanatory Memorandum

Revised Kyoto Convention on the Simplification and Harmonisation of Customs Procedures, Brussels, 2000

I drew heavily on the expertise and wisdom of the report entitled Baseline Efficiency Study of Jordanian Customs<sup>33</sup>, written by Mr Bert Cunningham, a Canadian expert in Customs matters. This excellent work provided many useful insights into the development of the current Customs Act, its successes and its shortcomings, and provided me with a very valuable historic perspective. Despite the passage of time since it was written, it remains a relevant and insightful work.

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<sup>33</sup> This report, dated 4 May 1998, was prepared by Mr Cunningham on behalf of Chemonics International, for the US Agency for International Development.

## **ANNEX D – THE LEGISLATIVE CYCLE**

Part 3 of the paper briefly sets out the legislative cycle that needs to be managed by an agency if it is to retain control of its legislative program. This paper sets out the elements of the cycle in more detail, and provides the theoretical framework against which a template for the management of legislation can be developed.

### **Stage 1 – The determination of Policy**

Legislation exists to give effect to Government policy. It must reflect accurately the wishes of the Government, the policy intent, and the international obligations taken on by the government. In preparing legislation, the first step is usually the development of drafting instructions by the relevant policy area. These instructions set out in detail the desired policy results expected from the legislation. They tell the draftsman what the law should achieve, but leave it to the draftsman to find the language needed to deliver those results.

The process of drafting legislation involves therefore a relationship between the policy area and the legislative drafting area. Effective legislation also needs the support of the agency's constituency, so the drafting process should involve community input, particularly from professionals working in the area of the legislation. In genuinely democratic systems non-government bodies are increasingly influential in both policy development and the expression of policy through law. It is important too that those areas of Government which may be affected by the law or indeed be able to improve their delivery of government services through the law are involved in its preparation. Overarching constitutional matters such as human rights also need to be properly protected, requiring effective input from the appropriate Government body, such as the ministry of justice or its equivalent. Other Government "filters" may also need to be satisfied that the legislation is satisfactory.<sup>34</sup>

The development of policy underpinning legislation is therefore fundamentally a process of consultation between the areas of the ministry concerned, its constituency, and related Government agencies. This process must be well managed to ensure that the legislation as presented to parliament has the support of those most affected by it. International Organisations responsible for establishing benchmarks for the operation of domestic agencies – such as the WCO is through the Kyoto Convention – also have an interest in ensuring that legislation meets the international standards that have been set. If they do not, there is a risk of non-compliance with treaty obligations.

These then are all stakeholders in the new legislation:

- Government policy makers
- The Parliament

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<sup>34</sup> In Australia, for example, all legislation before parliament must have a Regulation Impact Statement, which sets out the extent to which the new law will either ease the existing regulatory burden on citizens, or increase it. This statement must be cleared through the Office of Regulatory Review.

- The relevant business community (and often the wider community)
- Other government agencies
- International organizations
- Staff.

Legislation will be successful if it takes proper regard of the stakeholders interests. And the stakeholders' interests can only be defined and catered for through a program of consultation.

### **Stage 2: Legislative drafting**

The preparation of legislation is both a core function of an agency and a skill. The agency's strategic planning should reflect the specialized nature of this work both in its structure and in its HRD programs. Any organization responsible for the preparation of legislation requires a cadre of skilled legislative drafters, with knowledge of the law and of drafting technique. In many countries, a specialized drafting department exists to turn drafting instructions into legislation that conforms to approved practice,<sup>35</sup> but in Jordan the primary drafting responsibility lies with the agency. A legislation strategy must therefore ensure that this skilled body of people is available. This group should have a strong understanding of the laws for which the agency is responsible. In summary therefore, Stage two of the process requires a departmental structure and skill level which delivers an effective legislative drafting capability.

### **Stage 3: The Parliamentary Process**

The process of parliamentary scrutiny of legislation is at the heart of the legislative process. The ability of Government agencies to control this process is sometimes limited – parliamentarians will often approach legislation from a very different perspective from that of the agency. The smooth passage of legislation therefore depends in part on the agency's ability to anticipate the reactions of parliamentarians, to provide them with clear and helpful information about the objectives and content of the new legislation and to make sure that the Minister or person sponsoring the legislation has clear and persuasive arguments to support it. The legislation strategy should include an effective approach to managing the passage of the law through the parliamentary process. This needs to be carefully managed if a Legislation Plan is to work, i.e. it is necessary to contain the potential for delay and rejection.

### **Stage 4: Promulgation and application**

The passage of legislation is only the beginning. Once the law has been passed, the responsible agency faces the issue of making the law effective, and thereby delivering to Government on the law's objectives. This stage involves several elements.

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<sup>35</sup> In Australia, the Office of Parliamentary Counsel is responsible for the drafting of all statutes put before the Parliament.

The first is that of **transparency**. To be effective, the law must first be known and understood by those who are directly affected by it, both the agency itself and the citizens, individual and corporate, whose behaviour is regulated by the Law. (Because Customs legislation is generally regulatory in nature, the discussion here will use the terminology of regulation rather than service delivery.) The strategy must therefore identify and implement the way in which the law will be made accessible - through publication, information programs, training, and so on.

The second element is **elaboration**. Significant legislation, particularly something as wide-ranging as a Customs Act, requires secondary and tertiary legislative materials to support it. These may take the form of regulations, by-laws, official instructions, rulings, standard operating procedures and so on. As with the main Act, these should also be transparent, but above all they must be consistent with the Act and each other, and assist affected parties to understand and apply the law correctly.

The third element is ensuring **compliance**. Laws are only effective if they are observed. Compliance is a two-way process. It requires that the agency enforcing the law does so in ways which are provided for by the law, or, if not expressly provided, are implicitly consistent with the law. This requires staff and processes which reflect the law accurately. The knowledge and training of staff should ensure that decisions taken, actions taken and procedures implemented are all contributing to compliance. Above all, for the regulatory authority to maintain its authority and the authority of the law, it must administer the law impartially, objectively and consistently.

Likewise, citizens should also observe the law and comply with it. (Indeed, good law will make clear to all what are the penalties for failure to comply.) The legislation management strategy must therefore be closely related to the compliance strategy adopted by the agency. This is particularly relevant in the Jordanian context, where compliance strategy is presently under review. Any legislation strategy must reflect the approach taken to compliance.

The fourth element is access to **administrative and judicial review**. All Customs legislation should contain adequate provision for the review by appropriate courts and tribunals of Customs' decisions. This reflects the regulatory nature of the legislation, the fact that the exercise of it is often discretionary, and that both private and corporate interests can be affected substantially by Customs decisions. The legislative program must therefore recognize the importance of providing for judicial review, and responding to judicial decisions. Court decisions will do much to influence the interpretation of provisions. They need to be analysed and explained to staff applying the law and to citizens whose dealings may be affected by court interpretation of the act.

### **Stage 5: Review and appraisal**

Legislation begins to age from the day that it is passed. Many factors will become apparent over time that will require the law to be changed. Any legislation strategy must recognize this fact and be designed to enable the agency to review and appraise

legislation in an orderly manner. An agency should not seek to change the law constantly. Frequent change is unsettling for everybody, because it creates uncertainty, confusion and expense. But nor should necessary change be put off indefinitely. The skill is to develop a program of review and appraisal which enables orderly legislative reform.

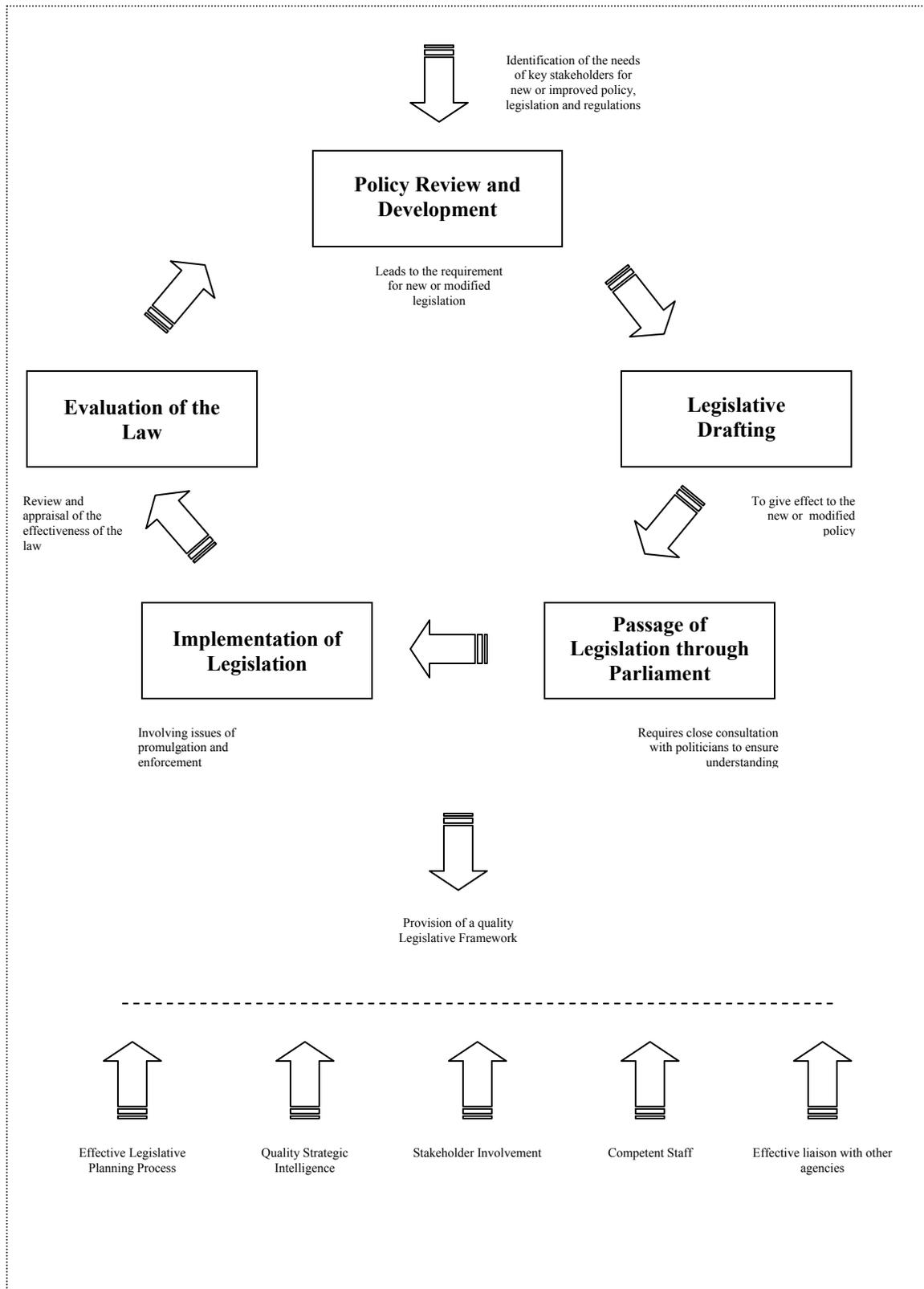
Many factors need to be brought into consideration when identifying the need for reform. These include, but are not limited to:

- Policy change
- Adoption of new international standards and obligations
- Identification of weaknesses in existing legislation – ambiguity of obligation, impossibility of compliance, weaknesses in enforcement
- Conflict with other legislation
- Judicial interpretations
- Community opposition/concern
- Developments in technology leading to new processes and procedures
- External review of the agency's performance
- Growth in the agency's administrative maturity and capability.

The challenge for the agency is to develop a mechanism whereby these different forces can be identified, evaluated and responded to. In this respect, the agency must be prepared to listen to its stakeholders. Consultative processes are important in identifying flaws in legislation as well as in preparing the legislation in the first place. The agency structure should include a capacity to manage these review processes, through resources dedicated to internal audit and review and through effective consultation. This process of review is akin to the first stage of the cycle – policy development.

Having identified the need for legislative change – and the changes that need to be made - the agency is again involved in the stage of preparing legislation, with the tasks of identifying and consulting with stakeholders, bringing technical drafting expertise to bear, and managing the reform program through the Parliament. And so on through the next phases of the cycle.

The cycle is represented by the diagram on the following page:



**ANNEX E: RELEVANT KYOTO CONVENTION PRINCIPLES**

This report contains references to a number of provisions of the Kyoto Convention. These provisions have been identified because they provide an international benchmark against which Customs can measure its legislation. They also provide guidance and reassurance that Customs legislation strategy is on the right track and will contribute to Jordan’s vision of excellence in Customs administration. The table below summarises the Kyoto provisions in question and the relevant recommendation in the report.

<b>Relevant Provision in the Convention</b>	<b>Related recommendation</b>	<b>Issue addressed</b>
Standard 1.3	#14	Working with the trading community to establish an effective relationship leading to improved compliance.
Standard 6.7	#15	Developing Mutual Assistance Agreements with other Customs to facilitate information exchange.
General Annex Chapter 6 Part 8	#19, #20	Provisions to underpin the proper use of risk management, self-assessment and post-transaction audit
Standard 9.1	#1	Providing information on Customs law to interested persons
Standards 9.4 to 9.8 and Appendix 1 to Chapter 9	#17	Provision of advice to interested persons, and IT support for such a practice
Standard 9.9	#17	System of binding rulings
General Annex Chapter 7 and Standard 7.4	#23	Issues to be considered when introducing EDI and computer-based systems to automate Customs procedures

**ANNEX F: COMPARISON WITH THE EU ENTRY REQUIREMENTS**

The following table measures the extent to which Jordan meets relevant aspects of the EU blueprint for Customs legislation. The table does not show all of the key indicators because some of them relate specifically to EU membership. Others have been adjusted to make them more relevant to Jordan.

<b>Objective</b>	<b>Key Indicator</b>	<b>Whether in place in Jordan</b>	<b>Appropriate Action</b>
1 A stable, comprehensive and modern legal framework	1.1 National Customs legislation is consistent with constitutional requirements	New Law establishes sound constitutional base as does the Administrative Organisation Regulation.	None.
	1.2 National Customs legislation is reviewed to identify overlaps with, or gaps in its interfaces with other relevant national legislation	Jordan Customs is consulted on all Customs-related legislation.	Important aspect of external consultation process to be built into legislation strategy (R#14)
	1.3 Inconsistent Legislation is amended or repealed	Old Customs Law repealed.	To be incorporated into review aspects of legislation cycle.
	1.4 A modern legal base is established for the Customs Administration	See Administrative Organisation Regulation No. 43 of 2000 (and Regulation #9 of 2001 for the Aqaba Special Economic Zone)	Law in place. Regular review advisable.
	1.5 Sufficient authority is assigned to the customs administration to enable it to administer all Customs systems	Issue complicated in Jordan by existence of two customs agencies (National and ASEZA) and police and other border units. But essential Customs work is largely assigned to Customs.	Roles and responsibilities of the two Customs agencies must be rationalized.
	1.6 Financing of the customs administration is determined and set out in the legal provisions.	Not in the law. Some fees are covered, but budget provisions generally are not available.	To be considered in review of the Administrative Organisation Regulation
	1.7 Investigation and Audit services are established.	Investigation and Audit Directorates exist.	Functions of Directorates to be strengthened under AMIR Program.
	1.8 National Prosecution procedures for customs offences are reviewed	New Law contains detailed provisions on conduct of cases and penalties. Separate	Issue of effectiveness of court processes raised by Cunningham report.

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	<p>to ensure that they are efficient and effective.</p> <p>1.9 Legal base for customs laboratories is established</p>	<p>Court structure exists for Customs offences.</p> <p>Status of laboratory established under Administrative Regulation</p>	<p>Include as an issue in future review.</p> <p>None required.</p>
2 Powers of Customs Officers	<p>2.1 Customs Legislation provides powers of questioning, examination, arrest, seizure and search in respect of persons, goods, means of transport, documents and commercial records, including those held on computer.</p> <p>2.2 Conditions under which customs officers powers are to be used are clearly drafted.</p> <p>2.3 Customs powers recognize the absolute importance of human rights.</p> <p>2.4 Customs powers reflect the guidelines published by the WCO</p> <p>2.5 National customs legislation contains sanctions against abuse</p>	<p>Customs Law contains powers applying to officers in respect of all functions. But some powers are only briefly expressed, and situation with regard to computer records is unclear.</p> <p>See above.</p> <p>Customs Law provides for processes of review and appeal. Is a recognition of the importance of human rights. Issue is more one of implementation than law.</p> <p>Generally, Customs powers are compliant with WCO requirements.</p> <p>Customs Law sets out procedures for disciplinary action against officers, but</p>	<p>Following completion of project work on investigation, intelligence and compliance management, powers will need to be reviewed and may be redrafted. Law needs to contain powers of officers in a single Title, not scattered through the Law.</p> <p>See above</p> <p>Powers will need to be expressed clearly to ensure that rights of citizens are protected, e.g. investigations powers will need to respect citizens' rights</p> <p>Kyoto accession will assist definition of customs powers.</p> <p>An area warranting further action. Is linked to HR policy which is</p>

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	of powers.	Law is not clear on sanctions that may be applied, or what acts by officers are seen to be unacceptable	also under review.	
3	Customs Offences and Penalties	<p>3.1 Customs Penalties reflect the concept of proportionality</p> <p>3.2 A system of administrative penalties is established</p> <p>3.3 Offence and Penalty Banding is in place</p> <p>3.4 A system for delegation of offence procedures to regional and local offices is developed</p> <p>3.5 A system for seizure, restoration and disposal of goods exist</p> <p>3.6 The system for dealing with arrested persons respects human rights and democratic principles.</p> <p>3.7 An appeals procedure, with time limits, is established and made public</p>	<p>Generally, offences provisions aim to attach the appropriate penalty to the offence.</p> <p>Penalties can be imposed administratively. If trader chooses to dispute penalty, matter goes to Customs Court.</p> <p>Clear differentiation between penalties and offences on the face of the law.</p> <p>Extent of delegation not known. Regions are able to issue penalties, but may require discussion with HQ first.</p> <p>Customs Law provides for this.</p> <p>Generally, law is sound. Issue of proper application of the law has been raised by private sector.</p> <p>Customs law establishes extensive appeals procedures. These are publicized and well known. There are time limits in which to lodge appeals, but total process may take several years in complicated cases.</p>	<p>Penalties to be reviewed.</p> <p>Penalty approach may vary in light of risk management, self-assessment system</p> <p>Keep under review.</p> <p>Issue for review.</p> <p>Generally, meets requirements, but query operation of incentives system in relation to payment of some proceeds of sale of seized goods to staff.</p> <p>Keep under review, particularly in light of investigation review.</p> <p>Keep under review. Issue is one of court resourcing rather than legal process.</p>
4	Information	4.1 Clear and timely information is regularly provided to the public on proposed changes to customs legislation, customs	<p>Some information readily available. Other information not easily accessible. Some yet to be drafted.</p> <p>Priority action for the legislation strategy.</p>	

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	<p>procedures and customs documentation.</p> <p>4.2 The powers and obligations of Customs officers, the Customs penalties and the appeals procedure re contained in books of instruction to all staff and are published in the information available to the public.</p> <p>4.3 Books of instructions and public information are regularly reviewed and updated</p>	<p>Not in place.</p> <p>No structured approach. Some good ad hoc publications. Web site available.</p>	<p>To be included in action under the legislation strategy (R#1 supra)</p> <p>See above.</p>
5 Mutual Assistance	<p>5.1 Where appropriate, conclude agreements on cooperation and provision of information to combat smuggling and criminal activity, and to improve the effectiveness of Custom</p> <p>5.2 A legal base is established for the provision and receipt of information specified in mutual assistance agreements</p>	<p>Program of MAAs already in place.</p> <p>No formal legal base in Customs Law</p>	<p>See R#15 (supra).</p> <p>Review as part of the legislation strategy (and investigation/intelligence project)</p>
6 Independent Audit	<p>A legal base is established for a national audit service to audit the customs administration.</p>	<p>Not contained in Customs Law.</p>	<p>Important element of legislation strategy. Included in R#4 (supra).</p>

**ANNEX G: BASELINE EFFICIENCY STUDY OF JORDAN CUSTOMS – ACHIEVEMENTS**

In his 1998 report, Bert Cunningham identified a number of issues requiring legislative action. Some of these had previously been identified by the World Bank. The criticisms were based on a reading of the first draft of the new Customs Law. When the Law was first presented to Parliament, it was returned to the Customs for redrafting. When eventually passed, the Law had taken account of some of the criticisms. The following table summarises those areas identified by the Cunningham report and the action taken, if any, to remedy those issues. Some of the recommendations in this report are aimed at fixing the weaknesses identified in the earlier reports. Those are identified where appropriate. It is important to note that there is a consistent thread through all three reports about the areas most needing legislative reform.

<b>Issue</b>	<b>Action Taken</b>	<b>Action Proposed</b>
Introduction of the WTO Valuation Agreement (BC p.11)	Included in the 1998 Customs Law.	Supporting legislation, procedures, rulings etc need to be made more widely available to interested parties. (Recommendation #1 supra)
Evaluate impact of the WTO agreement (BC p.13)	None yet.	Part of legislation review (R#22 supra)
Preparation of SOPs, distribution of Import/Export Guide (BC p.14 and 15)	Appears none yet.	R#1 supra
Penalties for Customs transit offences are not a deterrent BC p.21) Ensure new law adequately strengthens penalties/sanctions related to transit/transfer offences (BC p.23).	Fines for breaches of transit provisions increased to JD50-500.	To be reviewed with other penalties (R#18)
Ensure that the new Customs Law and regulations sufficiently regulates the licensing and on-going professionalism of Customs brokers (BC p.27).	Some improvements in new Law.	Further improvements desirable. R#19 supra.
Ensure that the draft Customs Law adequately supports the EDI/TDI features of ASYCUDA (BC p.27)	No apparent coverage in new Customs Law	See R#20 supra.
Ensure that the law allows the GST Division to issue refunds of GST paid on domestically sourced inputs which are subsequently exported (BC p.37)	Would not appear to be covered by Title 6, Chapter 7 (Refund of Duties and Taxes). May be covered under GST Law.	Issue for legislation Review.
Consideration should be given to abolishing all exemptions within the proposed new Customs Law and the GST Law...(BC p.40)	New Law contains revised exemptions provisions (Title 8). These appear to reflect the approaches taken in other countries, and the Vienna Conventions on Diplomatic	Could be another issue for legislation review. Not urgent.

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	and Consular Privileges and Immunities. Abolishing all exemptions not possible.	
Ensure the goods permitted entry under the Temporary Importation Scheme are in conformity with international norms dictated by the WCO's Istanbul Convention on Temporary Admission (BC p.41)	Provisions set out in Title 6, Chapter 6. Focus on motor vehicles, but other Convention items covered.	Review of operation of new Law desirable.
Current method of Valuation not in conformity with WTO Agreement (BC p.42)	WTO Valuation provisions included in new Law.	Review of operation of provisions recommended (R#22 supra)
The penalty structure for undervaluation is less than transparent, is not an effective deterrent and is cause of antagonism. (BC p.44)	Revised penalty provisions included in new law.	To be reviewed with other penalties (R#18)
Current valuation appeals mechanisms are inefficient and ineffective (BC p.45).	No change in the Law.	Issue is one of operation of the rights of appeal, rather than the nature of the rights, which are generally transparent. System of rulings would considerably reduce disputes over valuation leading to goods being held pending resolution of the dispute.
The period allowed Customs to reassess declarations is too long and should be reduced in the new Customs Law (BC p.46)	No change in the law.	Issue relates to risk management environment and use of post-transaction audit. Should be considered in light of project recommendations (See R#16 and #17 supra)
Ensure that the new Law has a Grace period for the introduction of the Valuation provisions (BC p.46)	No longer an issue.	
Ensure administrative fines/penalties related to Valuation have been strengthened and reflected in the new Customs law and regulations. (BC p.47)	Penalties provisions reformed.	Penalties provisions to be reviewed R#18 supra).
Introduce a formal, structured tariff classification rulings system for reference by Customs and traders to ensure greater uniformity in the interpretation and application of the tariff (BC p.51).	Not yet in place.	Recommended as part of the binding rulings and informal advices (R# 16 supra)
Strengthen the tariff classification appeal mechanism to ensure there is consistency with international tariff rulings (BC p.51)	Appears no action taken.	Problems will be greatly reduced through rulings system and data base.
Review and if necessary participate in the re-negotiation of all existing bilateral tariff		Part of inter-agency consultative process (R#14 supra)

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agreements (BC p.51)		
Undertake a thorough review of all Customs penalties and incorporate into the new Customs legislation (BC p.57)	New Law has wide-ranging penalty regime.	Penalties to be reviewed (R#18 supra)
Enact new Customs legislation/regulations and undertake a training and public information (sic) for Customs and the Trade community (BC p.59)	Legislation enacted.	Training and public information strategy to be developed and implemented (R#1 supra)
Restructure Legal Department to include Prosecutions Section (responsible for the application of Customs Law, including prosecution of cases) and Legal Section (all issues related to the interpretation of the Law, maintenance etc) (BC p.62)	Two Directorates in place but division of responsibilities not as proposed.	Directorates to be reorganized along lines proposed by BC (R#10 supra)
Review draft Customs Law in detail to ensure that it fully supports all ASYCUDA (and Customs Reform Program) related requirements. (BC p.74)	Not done.	See R#20 (supra)

**ANNEX H: LEGISLATION RELATED TO CUSTOMS DEPARTMENT'S WORK**

The Report refers to a range of legislation for which Customs is responsible. The main Acts are listed below, based on information provided by the Legal Directorate.

Law of Unification of Duties and Taxes Collected on Imported or Re-exported Goods, No 7 of 1997 – sets out duties, taxes and fees payable on imported goods

Importation Law – includes provisions relating to importation of goods under permit

General Sales Tax Law

Public Health Law

Specifications and Standards Law

Traffic Law – relates to foreign vehicles entering Jordan

Communication Law – controls importation of communications systems

Press and Publications Law – prevent importation of prohibited publications

Author Protection and Trademarks Law – enforcement of intellectual property rights

Drugs and Mental Effects Law – prevention of illicit drugs

Weapons and Ammunition Law – prohibition on entry and trafficking in weapons

Investment Promotion Law – granting of Customs exemptions to promote investment

Law of Agriculture

National Production Protection Law No 4 of 1998

Food Control Law No 79 of 2001

Drugs and Pharmaceuticals Law No 80 of 2001

Aqaba Special Economic Zone Law No 32 of 2000