

Final Report

Egypt and the GATT/WTO Customs Valuation Agreement

Prepared for

**The Ministry of Finance
and
The Ministry of Economy
and Foreign Trade**



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Preface

This report is based on a study conducted by the Development Economic Policy Reform Analysis (DEPRA) Project, under contract to the United States Agency for International Development, Cairo, Egypt, (USAID/Egypt) (Contract No. 263-C-00-96-00001-00).

The DEPRA Project is intended to encourage and support economic reform in Egypt through the provision of technical assistance and services to the Government of Egypt with particular focus on international trade and investment liberalization, deregulation, and financial sector strengthening.

The study was compiled by Dale Torrence and Irina Swift, both of Nathan Associates, Arlington, VA, USA; and John Holl of Chemonics International, Inc., Washington, DC, USA. Egyptian specialists on the team included Mohamed Hegazi who, with years of senior management experience in Egyptian Customs, was able to provide an inside perspective on Customs operations; and Karim Adel Kamel, of the law firm Adel Kamel & Associates, who provided invaluable legal advice.

The team especially thanks the Study Coordinator, Maurice Thorne, Senior Economist and Deregulation Advisor of DEPRA, for his participation and hands-on guidance in the study. The team also thanks John Varley, DEPRA Project Supervisor, for his support. Thanks are due to the DEPRA staff, particularly Dr. Suzanne Messiha, Nadia El Shafei, and Rania Mohamed.

The opinions, conclusions, and recommendations expressed in this report are those of the authors and do not necessarily reflect the opinions or policies of either the Government of Egypt or the U.S. Agency for International Development.

EXECUTIVE SUMMARY

Upon joining the World Trade Organization in 1995, Egypt became obligated to adopt the Agreement on Implementation of Article VII (concerning customs valuation) of the GATT. As authorized under GATT procedures, Egypt notified the WTO that it would delay application of the GATT Valuation Agreement for a five-year period. The five-year period will expire on June 30, 2000. This study examines Egypt's status of compliance with the provisions of the GATT Valuation Agreement and steps to be taken by Egypt in meeting the June 30 target.

As authorized by GATT rules, in January 2000 Egypt requested from the World Trade Organization a further three-year extension of time needed to apply the GATT Valuation Agreement. The World Trade Organization has not yet responded to Egypt's request.

Overall conclusion

The study concludes that there is no practical way in which Egypt can fully apply the GATT Valuation Agreement by the June 30 target. However, it can take action to begin the process of implementation of the Agreement, regardless of the WTO response concerning the time extension. The study explains how this can be done.

Changes in Law and Regulation

The customs valuation provisions of the current law, Law No. 66 of 1963, are based on the Brussels Definition of Value. The provisions are not in accordance with the GATT Valuation Agreement.

The Customs Administration is drafting a new customs law which addresses many issues, including customs valuation in accordance with the GATT Valuation Agreement. Customs officials provided the team with an informal English-language translation of the valuation and arbitration provisions of the draft law, but not of the entire law or other provisions that may be relevant to valuation, such as maintaining the confidentiality of business information or penalties for incorrect value information.

The draft valuation provisions would provide the Ministry of Finance with authority to implement the GATT Valuation Agreement. The body of the Valuation Agreement will be implemented through a decree of the Ministry of Finance and supplementary instructions of the Customs Administration. The valuation provisions in the draft law are, in themselves, consistent with the GATT Valuation Agreement. However, full implementation of the Agreement will be accomplished only when an implementing decree has been promulgated by the Ministry of Finance, and supplementary instructions are issued (and necessary training carried out) by the Customs Administration.

The study also noted some inconsistencies in Egypt's current Tariff Nomenclature under the international Harmonized System as implemented by the Customs Administration. Some changes have been made in the international Harmonized System but have not yet been carried out by Egypt, and further study is needed.

Changes in Perspective and Procedures

Under the current law, based on the Brussels Definition of Value, valuation of imported goods is determined according to the prevailing market prices, or reference prices, of the goods. For this purpose, the Customs Administration has obtained copies of price lists, catalogue offers, world commodity price quotations, and similar evidences of prevailing prices. The Customs Administration applies these reference prices as the customs value of goods, regardless of the price paid by the importer as shown in the invoice for the goods. The Customs Administration has systematically carried out the current valuation law through written and computerized procedures.

The GATT Valuation Agreement is based on the transaction value of the goods, the actual price paid or payable to the seller by the importer, regardless of prevailing market prices. The principal advantage of adopting transaction value is that importers will be able to closely estimate the duties to be collected by Customs, based on their purchase price. They will no longer have to wait until the Customs Administration determines customs value at the time of importation.

To comply with the GATT Valuation Agreement, Customs officials will have to learn to accept the transaction value of most goods, subject to verification of invoice prices on selected goods. This approach will require a new way of thinking about valuation, new verification techniques, and new procedures. Training will be a key component in making these changes.

New verification techniques will be based on obtaining supplementary information from the importer and on conducting financial audits of importers' records and accounts. Since the actual transaction value will be accepted for most goods, verification will need to be undertaken only for selected import declarations. Selection of declared values for verification will be made according to risk management criteria and techniques.

Changes in Valuation Environment

Besides the procedural changes, the GATT Valuation Agreement requires some changes in the setting for valuation. Confidential information must be protected by the Customs Administration, there must be adequate appeal procedures, and customs valuation procedures must be transparent, i.e. importers must know what they need to do in order to comply with the law. Current law contains some of these requirements, but they are not stated as clearly or comprehensively as required by the Valuation Agreement.

The Customs Administration must make significant improvements in the conditional release of goods pending the final determination of customs value. Final value determination will be more subject to delays under the GATT Valuation Agreement than under the current system based on reference prices.

The present valuation environment does not encourage cooperation between the Customs Administration and importers. The Customs Administration administers valuation based on reference prices, which appear opaque and arbitrary to most importers. Customs views invoice values declared by many importers to be mostly self-serving and suspect. This may be true in some instances, as importers try to balance making a profit in a competitive environment against high duty rates and uncertain customs valuation.

Under the GATT Valuation Agreement, Customs officials will have to learn to accept invoice prices as reflecting the transaction value, subject to selective verification. On the other hand, importers will have to learn that, in return for faster and more rational valuation of their goods, they must adjust to new customs verification procedures. Violation of the new valuation rules will subject them to increased duties and possible penalties which could erase any profits from the undervaluation of goods.

Implementation of GATT Valuation Agreement

Implementation of the GATT Valuation Agreement will require changes in:

- customs law;
- valuation perspective;
- valuation procedures;
- verification methods;
- risk management criteria and techniques;
- organization of Customs resources; and
- the Customs-importer relationship.

Actual implementation cannot begin until the necessary legal preconditions are met – enactment of the new law and promulgation of the necessary decrees. However, Egypt can begin to prepare for implementation through:

- Development of an implementation action plan;
- Establishment of a Customs-importer joint implementation group;
- Conduct of valuation overview training;
- Development of written procedures for verifying transaction values;
- Development of a plan for an audit unit; and
- Conduct of pilot tests of application of the Valuation Agreement.

1.0 INTRODUCTION

The application of the Arab Republic of Egypt for membership in the World Trade Organization (WTO) was approved in 1995. Membership in the WTO requires, among other things, adoption of the Agreement on Implementation Article of VII of the GATT (the Valuation Agreement), since that Agreement is an integral part of the General Agreement. However, Article 20 of the Valuation Agreement allows WTO developing country Members to delay application of the Valuation Agreement for a period of not more than 5 years. Egypt notified the WTO that it intended to delay application of the Agreement, and the 5-year period will expire on June 30, 2000.

Article VII of the GATT requires customs valuation to be based on the “actual value” of imported goods. However, “actual value” was never precisely defined, and in practice it permitted the use of widely different methods among contracting parties of determining the customs value of goods. The Valuation Agreement defines the “actual value” as expressed in Article VII. In general, the customs value is based on the actual price paid or payable for the imported goods, provided certain conditions are met. The purpose of the Valuation Agreement is to provide a fair, uniform, and neutral system of valuation of goods for customs purposes, conforming to commercial realities. As a result, importers of goods can more easily calculate in advance the actual cost of goods received by them, and their profit on resales, because customs duties (and sales taxes, in Egypt’s case) are based largely on the purchase price of the imported goods. This facilitates the importer’s decision whether to purchase the goods and thereby promotes trade and investment in Egypt.

1.1 REQUEST FOR ASSISTANCE

The Minister of Finance has requested the technical assistance of the USAID, through the Development Economic Policy Reform Analysis Project (DEPRA) to assist Egypt in implementing the Valuation Agreement by June 30, 2000. Specifically, the Minister requested an assessment of the needs for reform and training in valuation procedures and administration. This assessment was to include the holding of working meetings for (1) a comprehensive diagnostic of the current situation; (2) review of Egyptian laws, regulations, and other documents, and interviewing concerned persons, including government officials and importers and exporters; and (3) issuance of a report which provides the basis for further action by Egypt in meeting the June 30 target date.

Pursuant to this request, DEPRA brought together a team of international and Egyptian experts in customs matters. The team reviewed the current and proposed customs laws concerning valuation and interviewed customs and private sector officials concerned with valuation.

1.2 INITIATION AND CONDUCT OF STUDY

The initial meeting of the diagnostic study was held on February 27 in the office of the Minister of Finance. The Minister led a general discussion about customs administration in Egypt. He requested the team to study the ports of Alexandria and Port Said. He asked for a description of current procedures and an opinion as

to where Egypt stands in regard to implementation of the GATT Valuation Agreement. The Commissioner of Customs was present at the meeting.

The team met with the Commissioner of Customs and members of his staff on February 28 at his office in Cairo. The team discussed its mission and what it hoped to learn during its study of valuation at the Port of Alexandria. The Commissioner confirmed that his staff would provide all of the relevant information and assured that the team would be able to review the whole valuation process. The Commissioner and his staff discussed with the team the valuation of goods under the GATT Valuation Agreement and the current valuation system, based on the Brussels Definition of Value, as it exists in Egypt.

The team subsequently reviewed Egyptian Customs laws, decrees and documents; interviewed Customs officials and importers in Cairo, Alexandria, and Port Said; and observed actual Customs operations in those ports. During the course of two days in Alexandria, interviews were held with a group of Customs officials in an open meeting, rather than through individual interviews. This was followed by observational visits to the specialized Customs complex which processes import declarations for machinery, the Customs Computer Center and Cargo X-Ray Facility. The team visited Port Said during a day trip, touring the computer input offices for both (1) general and bulk cargo and (2) containerized cargo, and one free zone factory.

1.3 REPORT AND DISCLAIMER

The foregoing reviews, interviews, and observational visits form the basis for this report and its conclusions. It must be understood that all comments made on the English-language texts of existing or draft laws and decrees, including the tariff nomenclature, are limited by the technical accuracy of the English translations of the texts as presented to the team.

2.0 STATUS OF COMPLIANCE WITH VALUATION AGREEMENT

To assess the need for valuation reform and training of Egyptian, it is first necessary to consider the legal framework of valuation, the valuation procedures, and the administrative environment within which customs valuation takes place.

2.1 LEGAL FRAMEWORK

This part of the report dealing with Egyptian Customs law is limited basically to that law as it impacts customs valuation established under the Agreement on Implementation of Article VII of GATT 1994. There are many other areas of the overall GATT Agreements that may be impacted by the Egyptian customs laws and decrees, but these are outside the scope of this project and are not necessarily addressed in this report.

2.1.1 Current Laws

2.1.1.1 Background

Egypt, using a Latin legal system, legislates the basic provisions of law and promulgates the details by way of decrees that have the status of law. These can be Presidential as well as Ministerial Decrees or other decrees, depending on the enabling legislation.

The legislative process is for a draft law to be prepared (Customs does this for customs laws) and this draft is submitted to a Legislative Committee chaired by the Ministry of Justice. This Committee reviews and, perhaps, revises the draft before submitting it to the Council of Ministers. After approval by the Council of Ministers the draft is forwarded to the President for submission to the Parliament (the People's Assembly) where it is discussed, perhaps amended, and then approved. Once a law has been approved by the Parliament it is promulgated by Presidential Decree to give it full legal status. It is also possible for the President to issue a Decree implementing a law without it having been acted upon by the Parliament. However, legislating a new customs valuation law is done by the People's Assembly.

2.1.1.2 Basic Provisions of Current Law

The basic law in existence today was published by Presidential Decree as Law Number 66 of 1963. This law has been amended, supplemented, or interpreted numerous times, the latest being by Ministerial Decree (MD) 695 issued June 7, 1999. The basic law consisted of 131 articles; however, one of them, Article 8 dealing with countervailing duties, has been deleted and another, Article 124 bis, dealing with the penalties for trading in or possession of smuggled goods, has been added.

2.1.1.3 Specific Provisions of Current Law

The current law covers:

1. Introductory Provisions (Articles 1 – 4)
2. Customs Duties (Articles 5 – 12)
3. Prohibitions and Restrictions (Articles 13 – 18)
4. Distinctive Features of the Goods (Articles 19 – 24)
5. Customs Officials (Articles 25 – 30)
6. Customs Formalities (Articles 31 – 58)
 - Manifests
 - Customs Statement
 - Inspection and Withdrawal of the Goods
 - Arbitration (dispute settlement)
7. Special Customs Schemes (Articles 59 – 106)
 - General Provisions
 - Transit Goods

- Warehouses
 - Free Zones
 - Temporary Exemption
 - Temporary Release
 - Drawback
8. Customs Exemptions (Articles 107 – 110)
 9. Service Charges (Articles 111 – 113)
 10. Customs Contraventions (Articles 114 – 120)
 11. Smuggling (Articles 121 – 125)
 12. Selling of Goods (Articles 126 – 130)
 13. Distribution of Compensations, Fines and the Value of Confiscation Objects (Article 131)

2.1.1.4 Valuation Provisions in Current Law

The current Customs Valuation provisions are found in Article 22, which reads as follows (in English translation):

Article 22:

“The value which should be declared in the case of the incoming goods, shall be the price which they cost at the date of registering the customs statement submitted therefore at the customs office if they are offered for sale in a free competitive market between a purchaser and a seller independent from one another on the basis of the goods being delivered to the purchaser at the port or place of entry in the importing country and on the assumption that all costs, duties, dues and expenses pertaining to the goods until the date of delivery at the port or place being incurred by the seller. This price shall not include the internal duties, dues and expenses incurred by the purchaser in the importing country.”

“The expenses shall be taken to mean the cost of transport, freight, insurance, commission, brokerage and otherwise until the port of discharge, excepting the expenses which become due for the transport of parcels arriving by post or by air, expenses which shall be calculated on the basis of the rates which shall be determined by the Director General of the Customs Administration.”

“If the value is indicated in foreign currency or in the accounts of trade agreements or in non-resident accounts, it shall be assessed on the basis of the actual value denominated in Egyptian currency at the port or place of destination in accordance with the terms and conditions to be decided by the Minister of Treasury.”

This is basically the Brussels Definition of Value, which must be replaced by the GATT Valuation Agreement provisions by all WTO Members.

2.1.2 GATT Requirements and Work Preparatory to GATT Implementation

2.1.2.1 Basic GATT Valuation Agreement Requirements

In addition to the specific requirements concerning the various methods of Customs valuation, i.e., transaction value, identical goods, like or similar goods, deductive value and computed value (Articles 1 through 7) to be included in the legislation to implement the Agreement, the laws of Egypt must provide for:

1. The additions and inclusions or exclusions set out in Article 8;
2. Publication of the official rate of exchange for currency conversion set out in Article 9;
3. Confidentiality of information set out in Article 10;
4. The right of appeal set out in Article 11;
5. Publication of the laws, regulations, judicial and administrative rulings of general application as set out in Article 12;
6. Release of the goods involved in a delayed value determination upon deposit of a sufficient guarantee (Article 13);
7. Publication and application of the Explanatory Notes found in Annex I to the Agreement (Article 14);
8. Definitions set out in Article 15 of the Agreement;
9. The right of the importer, upon written request, to receive an explanation in writing as to how the customs valuation of his imported goods was determined (Article 16);
10. The right of Customs to satisfy themselves as to the truth or accuracy of any statement, document or declaration (Article 17).

In addition to the above, there are a number of other requirements not set out in the Agreement *per se* which should also be addressed in national legislation and include, e.g.:

1. The right of Customs to fine importers for failure to maintain proper records;
2. The right to examine importer records at the discretion of Customs;
3. The right to claim duties found to be due through audits;
4. Reduction or elimination of penalties for minor infractions and valuation disputes;
5. The treatment of lost or damaged goods; and
6. Valuation of free zone goods brought into the Customs territory.

The legal requirements for legislation as noted in Items 1-4 above are further discussed in Section 2.3.5 of this report.

2.1.2.2 GATT Implementation Delay and Reservations

The Government of Egypt is, as a member of the World Trade Organization, obligated to implement Article VII of the 1994 General Agreement on Tariffs and Trade. They have, like most other developing countries, taken advantage of the five-year period allowed for implementation and at present the agreement is scheduled to enter into force on July 1, 2000.

However, the Government of Egypt, on January 10, 2000, formally requested a three year delay in implementing the GATT Valuation Agreement. This request is pursuant to Paragraph 1, Annex III, Agreement on Implementation of Article VII. In their request (WTO Document G/VAL/W/56, 13 January 2000) Egypt set forth the following as the main justifications for their request:

1. “to complete the technical training of the personnel responsible for the application of the Agreement’s provisions and the obligations therein;
2. to ensure the completion of the material preparations required for the effective and efficient follow-up of the world prices and economic changes (i.e. modern means of communications and information technology as well as the computerized system);
3. to improve the awareness and knowledge of the business sector (public and private sector) concerning the provisions and the main problems of the Agreement to achieve the effective participation between both the customs authorities and the importers;
4. to establish a system for the review of documents after the clearance of the imported goods to be applied in collaboration between the customs authorities with other taxes authorities. This system will be an important element for the customs administration to accept the documentations of the contractual value; and
5. to finalize the National Customs Legislation regulating the valuation procedures in conformity with the Agreement.”

It is not known at this time what period of delay, if any, will be granted to Egypt. It does appear though that they will not be able, nor will even attempt, to implement the Agreement on July 1, 2000. The Minister of Finance did, however, state that, if necessary, the Government could quickly amend just that part of the current Customs Code that deals with valuation and then start applying the GATT Valuation Agreement.

The team was told by the Customs Administration that the Government of Egypt has entered several reservations to specific parts of the Agreement, which would delay implementation of these provisions.

Article 21 of the Agreement provides that “Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members”. However, Article 20 allows developing country members to delay implementation for five years and also allows developing countries to delay implementation of paragraph 2 (b) (iii) of Article 1 (the Customs value of identical or similar goods, as determined under Article 6, in a sale between related parties), and Article 6 for a period not exceeding three years following their application of all other provisions of the Agreement. Further, Decision 7.1 by the WTO Valuation Committee at its first meeting in 1995 decided that: “Where a developing country makes a reservation to retain officially established minimum values within the terms of paragraph 2 of Annex III and shows good cause, the Committee shall give the request for the reservation sympathetic consideration”. Thus, there are legal bases in the Agreement for the reservations entered by the Government of Egypt and it is their view that they are entitled to enter each of the following reservations.

It is possible that the Government of Egypt could withdraw these reservations, if they are granted an extension of time in which to implement the Agreement. The specific reservations mentioned by the Customs as being already entered are:

1. Maintaining officially established minimum values on some products;
2. Postponement of the computed value for 3 years;
3. Restricting the importer’s right to request reversal of the sequential order of application of Articles 5 and 6; and
4. Restricting Article 5.2 of the convention by acknowledging the Customs’ right to apply this paragraph whether the importer requests it or not.

The first reservation, based on paragraph 2, Annex III of the GATT Valuation Agreement, relates to officially established minimum values but must be on a limited and transitional basis under terms and conditions to be agreed to by the Members. The second reservation is a right under paragraph 2, Article 20, of the Agreement and allows for a delay in the implementation of the computed value method of valuation for three years after expiration of the five year delay allowed under paragraph 1 of Article 20. The third reservation is one suggested by the WTO in paragraph 3, Annex III, for countries which consider that reversal of the sequential order at the request of the importer may give rise to difficulties. If a country makes such a reservation it is to be accepted under Article 21 of the Agreement. The fourth reservation, concerning deductive value, is also suggested by the WTO in paragraph 4, Annex III. It can be made only with the consent of the other Members, as provided in Article 21.

The status and disposition of these reservations is unclear at present, and so is the intended date of implementation of the legal requirements of the GATT Valuation Agreement. Planning future steps would be easier if clearer and more complete information were available concerning the various reservations.

2.1.2.3 Redrafting of Egyptian Customs Code

On the other hand, the Government of Egypt has taken significant steps towards being in basic legal compliance with the GATT Valuation Agreement, if and when it is implemented.

The Customs Administration has prepared a complete re-draft of the existing Customs Code in order to update it and bring it into compliance with GATT Valuation requirements. This draft, which originated in Customs, has been forwarded to the Legal Committee, the next step required after drafting a new law. This Committee, chaired by the Ministry of Justice, will review and perhaps revise the new Customs Code draft and then forward it to the Council of Ministers as the next step in the legislative process.

The Council of Ministers then forwards the approved draft to the Office of the President for presentation to the Parliament. Following Parliamentary approval of the proposed law it is promulgated by way of a Presidential Decree. However, the Parliament will be in recess for vacation for several months in mid-year, and if the legislation has not been passed by July 1, 2000, it is unlikely that it will be passed in 2000 because there are parliamentary elections later in the year.

The new draft code (a full copy of which we could not obtain) will update the Customs Code, incorporate the new GATT Valuation provisions, and add a new Article 132 concerning duty free shops, according to its drafters.

2.1.2.4 Redrafting of Egyptian Valuation Law

The Customs translation of the new draft provisions relating to Valuation (Articles 22 and 23) and Arbitration (dispute resolution) (Articles 57 and 58) read as follows:

“Article 22

Without contravening the provisions of the Agreements that Egypt has acceded to, the Declared Value for Customs purposes is the actual value added to it the costs and charges needed to reach the value in the port or place of entry in the country of importation. When the

value is expressed in foreign currency, the conversion rate to be used shall be that in effect at the time of registration of the Customs Declaration – and according to the conditions and regulations issued by the Minister of Finance.”

“Article 23

The importer has to present purchase contracts and all documents related to the transaction, notarized by an authority accepted by Customs. In case of doubts in these documents or in the information they include, or the conditions needed for accepting those documents were not fulfilled, the Customs can reject them,¹ - and according to conditions and regulations issued by the Minister of Finance.”

“Article 57

In case of disputes between Customs and the importer regarding the kind of goods, its origin, or its value, and the importer or his representative requested transferring the dispute to arbitration, and Customs agrees, this dispute will be transferred to an Arbitration Committee which includes:

1. Delegate of Customs
2. Delegate of Importer
3. A statutory member from the Department of Laws in Customs.

After examining the dispute, the Committee shall take its decision by majority. If the decision has been taken by full majority (100%), it will be a final decision.

The importer has the right of appeal to a higher level Arbitration Committee which includes a permanent delegate hired by the Minister of Finance, delegate of the Chamber of Commerce, delegate of the importer, delegate of Customs and a statutory delegate from the Department of Law in Customs.²

This Committee could consult the members of the previous Committee, as well as any of the technical staff. Its decision is taken by the majority, and considered final, and is not subject to further appeal, unless for reasons stated in Article 52 and following Articles of the Law No. 27/1994 concerning General Arbitration. The decision should specify the person paying the charges of the appeal.

¹ Under GATT Valuation, a customs administration would not reject a document provided by an importer on the basis of its doubts. However, it may find that the information in the document fails to verify the value claimed by the importer. The customs value is the transaction value, unless specified conditions are not met.

² The draft revision of this Article 57 could raise constitutional questions, as further referred to in Section 2.3.2 of this report.

A Decree of the Minister of Finance should be issued specifying the number of committees, their locations, the area they cover, the payments to their delegates, the charges of appeal, the dates, the procedures to be fulfilled without opposition to the right of self defense of each party.”

“Article 58

Arbitration according to the previous Article is only assigned to goods remaining under Customs control. When the importer requests the release of goods before the arbitration procedures take place this will be in compliance with the conditions and terms stated in a Decree issued by the Minister of Finance.”

The provisions set out above, which are in the new Customs Code draft, would appear, from the English translation, to be GATT compliant, except that the arbitration procedure does not provide for an appeal to the court system as noted in Section 2.3.2 of this report. The provisions represent an improvement to similar provisions found in the current code in that they allow for a representative of the importer to be included in the further appeals procedure.

2.1.2.5 Egyptian Plans for Implementation of GATT Article VII

The Egyptian officials we have met with have repeatedly assured us that it is their intention to include the full text of Articles 1 through 7 of the Rules on Customs Valuation in an implementing Decree following enactment of the basic Customs law, that they will implement by decree the requirements of Articles 8 through 17 of the Agreement, and that they will also implement the Notes Explanatory to the GATT Valuation Agreement by decree.

If they do this, they will basically be GATT-compliant with respect to customs valuation procedures. The problem is that this will not be known until such time as the request for an extension has been acted on, the basic legislation enacted, and the implementing decrees published.

As earlier noted, if pushed to amend the law prior to the June 30 expiration date, the Egyptian Government could put enact an amendment of just Articles 22, 57 and 58, and then start applying the GATT Valuation Agreement.

2.1.3 Conclusions

Current Egyptian Customs Law is deficient in GATT legal requirements and procedures and the new Customs Law will have to be much broader in scope, more specific in coverage, and more precise in the inclusion of GATT Value requirements to be GATT compliant.

The provisions of the current revision of the Customs law appear to be GATT compliant but they are insufficient. They must be complemented by other decrees which are described in Section 2.1.2.1.

In conversations with Customs officials, including two meetings with the Chief Legal Officer of Customs and the official responsible for drafting the new Customs Code, assurance was given time and time again that, after enactment of the basic law, the totality of the Agreement would be implemented by decree.

The Government's request for an extension of three years in which to implement, if granted in whole or part, will delay implementation beyond July 1, 2000. In addition, if the reservations prove to be real and to have been lodged with the WTO, this could further delay implementation of those parts of the agreement against which reservations have been taken.

With respect to the legislation, if the Government of Egypt enacts legislation in the manner and scope they have described, then their legislation will be basically GATT compliant. However, this cannot be ascertained until such time as they actually enact the legislation and issue the implementing decrees.

The time of implementation cannot be determined until the request for an extension and the issues regarding reservations have been resolved.

2.1.4 Nomenclature/Harmonized System Issues

We were informed on several occasions by the private sector that they frequently experience difficulties with the Customs Administration over nomenclature issues, that is, misclassifications in the Customs Nomenclature which result in erroneous value assessments. While this is not a Customs Valuation problem per se, it does significantly affect the importing community and the Customs Administration. The following is a brief summary of our review of this aspect of the Customs operation.

The Harmonized System developed by the World Customs Organization is the Customs Nomenclature used by the Government of Egypt for classifying goods imported into and exported out of Egypt. It was officially adopted by Presidential Decree 38 of 1994 on February 13, 1994. Several amending decrees have been issued but they relate to duty rates, not to the structure or wording of the nomenclature.

The Egyptian Customs Nomenclature does follow the international system in that it contains all of the General Rules for Interpreting the Harmonized System in proper order and full content, the Sections and Chapters, the Section and Chapter Legal Notes, and the four digit headings and the six digit subheadings. Egypt has expanded the six digit subheadings to eight digits for duty purposes.

In general, the codes and texts are fully compliant with the international system but there are some exceptions, some of which appear to be merely

mistranslations. For example, Heading 11.07 covers Malt, whether or not roasted, whereas the subheadings cover “Hot” roasted (instead of “Not”) and “Roasted”. Subheading 0511.10.00 covers “Brine” semen and it should be Bovine Semen.

There are other headings which appear to be simple errors. Heading 01.05 covers Live Poultry but subheading 0105.11.00 covers “Fowls and cocks”. A cock is a fowl and this may well be a misapplication or miscoding of the international system. And there are headings in which more significant errors have been made. For example, Subheadings 6301.20, 30 and 40 should be 6301.21, 22 and 23 instead. This type of error occurs in several places. There are some terms used in Chapter 87, Motor Vehicles, which appear to be different from those used in the international Harmonized System, e.g., “Mini-agriculture tractors”, “Jeep cars of military type” “pick-up cars of double-cabin” and “mines cars”.

However, the nomenclature version in use in Egypt is not the latest version which incorporates amendments made in 1996 and subsequently. The Government is aware of this situation and intends to take corrective action in the near future.

In addition to the above noted problems, we were informed by the trade community on numerous occasions that there were significant problems with Customs in determining the proper tariff heading in the Customs Nomenclature (the Harmonized System). This leads to disagreements as to the proper rate of duty to be assigned to an imported product. If, for example, birds’ eggs imported for hatching are misclassified as other eggs the duty would go from 10% to 40%. If a tinned preparation of pasta, e.g., ravioli containing 20% meat is classified in Heading 1902.20.00 as stuffed pasta instead of Heading 1602.10.20 as a preparation of meat the duty difference would be 30% vs. 40%. Proper classification within the Customs Nomenclature is necessary to ensure proper collection of revenue, as well as statistical accuracy, and also avoids manipulation of the nomenclature by importers.

2.1.5 Recommendations

Egypt could lead the way in the Arab World in implementing the GATT Valuation Agreement. In order to become compliant with the Agreement, legislative steps need to be taken according to the following recommendations.

1. The Government of Egypt must include in its legislation the full text of the agreement with respect to Articles 1 through 7 of the basic Agreement, either in the basic legislation or in the implementing decrees/regulations.
2. The Government of Egypt must also provide in its legislation, or in the implementing decrees, for those requirements of the Agreement which are found in Articles 8 through 17 of Part I of the basic Agreement.

3. The Government of Egypt must also provide, either in its legislation, in its implementing decrees, or in its officially published regulations, for the full text of the Interpretative Notes found in Annex I to the Agreement.
4. The Government of Egypt should begin work immediately on drafting the necessary Presidential or Ministerial or other decrees which will be necessary to fully implement the GATT Valuation Agreement in order to be prepared when the time comes to actually implement it.
5. The Government of Egypt should include the 1996 and subsequent Harmonized System amendments in its tariff nomenclature at the earliest possible date.
6. The Government of Egypt should request technical assistance from the World Customs Organization and the international community for assistance in training its staff in the proper application and interpretation of the international Harmonized System Nomenclature which they use as their Customs tariff.

2.2 VALUATION PROCEDURES

The General Introductory Commentary of the GATT Valuation Agreement stresses the significance of valuation procedures through a number of premises under which WTO member countries adopt the Agreement. In doing so, the member countries recognize:

1. the importance of the provisions of Article VII of the GATT 1994 and the desirability of elaborating rules for their application in order to provide greater uniformity and certainty in their implementation;
2. the need for a fair, uniform, and neutral system for the valuation of goods for customs purposes that precludes the use of arbitrary or fictitious customs values;
3. that the basis for valuation of goods for customs purposes should, to the greatest extent possible, be the transaction value of the goods being valued.
4. that customs value should be based on simple and equitable criteria consistent with commercial practices and that valuation procedures should be of general application without distinction between sources of supply.

A review of current procedures for valuation of goods in Egypt was conducted to determine if Egyptian Customs is prepared to implement the GATT Valuation Agreement and to identify any impediments resident within the current process that would hinder the implementation.

2.2.1 Background

The Egyptian Customs Administration maintains an extensive database of values based on market prices, price lists, catalogue offers, and world

commodity prices. Many such prices have been developed with the help of commercial attaches stationed at various embassies around the world, and also through the use of the Internet. These prices are published semiannually, in January and June, through a general administrative directive, but are updated periodically through individual administrative directives. These values are used in establishing the value of the majority of imports entering the commerce of Egypt. In such cases, the price paid or payable, i.e. the transaction value, is not considered. In some cases, the price paid may be accepted if it falls within the framework of a previously approved price, and that price may become the reference price for identical goods entering the commerce. The frame of reference for goods is similarity in specifications.

The Customs authorities stated that their major concerns are the undervaluation of goods, the trustworthiness of documents, and the ability to verify the invoice value. Besides duty, Customs also collects sales tax, service charges, and other fees based on the value of the goods. Thus, the significance of goods valuation extends beyond the duty assessment process.

Based on this information, it became apparent that the transaction value of the instant goods is rarely considered unless there was a previously approved price list value that reflects the invoice value. Also, the declared value set by Customs may reflect an appropriate value for the goods that may have existed in the past or for another importer, but it may not be, and often is not, the price paid or payable for the goods. There is no current process to determine whether or not transaction value exists, only whether the invoice value is consistent with the approved price.

2.2.2 Valuation Process in Port of Alexandria

The team's review of the port of Alexandria provided a better understanding of how goods are processed and valued.

2.2.2.1 Declaration Process

The team was briefed on the necessary steps for filing a declaration with Customs. A prudent importer of a new item provides Customs with all the specifications on the item and requests a determination concerning nomenclature and approved value. The Customs response will provide the importer with the nomenclature and the approved value to be used in the Customs declaration. This process provides a greater degree of predictability for the importer and precludes a possible penalty situation.

If the importer has access to the Customs computerized network, he has the option of electronically transmitting the declaration in whole or in part from his office. In cases where the importer knows the approved value and nomenclature, he can transmit the final declaration. The network can be accessed for transmission of the declaration or for review of current approved Customs values. It is available for an annual fee.

If the importer does not have direct access to the Customs network, there are computer terminals available, at no cost, at Customs sites for an importer to input declaration information. A third option is to have the Customs officer key the data into the terminal from the written declaration. Whether the information is transmitted or delivered to Customs for keying data, the declaration and all documents in paper form must be brought to the Customs site for registration and processing.

2.2.2.2 Declaration Review and Examination of Goods

Alexandria Customs has eight dedicated areas specific to commodities. The team reviewed the site dedicated to Customs clearance of machinery and similar products. At these sites there exists a certain degree of expertise in the classification, valuation, and examination of goods. Customs officials referred to as evaluators review the documents for correctness of the nomenclature, value, and additional requirements. The Customs network has a listing of the document filing requirements for each nomenclature. This information is provided to the trade at the time of the declaration transmission.

The process begins when the importer or his clearing agent presents the declaration and related documents to the Customs site. The information is reviewed as to accuracy of the nomenclature, value and documentary requirements.

During the valuation review process, the evaluator identifies the goods on the invoice and values the goods according to an order of preference: (a) price lists applicable on the date of examination according to information published in the applicable semiannual or individual administrative directive; (b) prices of the same merchandise shown on invoices of other importers within the previous six months; (c) invoices submitted by the manufacturer and authorized by the counselor representative abroad and the invoice value is within the parameter of the price lists; or (d) the invoice of the exporting government or the public sector when that value is within the parameters of the price list.

In the absence of an acceptable price covering the goods, the evaluator will review the invoice and use his expertise to determine value. He can use resources available to him and consult with the Office of the Director of Tariffs at the Customs complex, or seek the advice of the Office of the General Director of Valuation at the Customs Headquarters level. Once the value research is performed and the value is determined, the declarer is advised of the determined value and has the option to accept the decision by signing the documents indicating his approval or to not sign and submit a complaint.

When the declaration is accepted, a permit to examine the goods is initiated. The examination occurs in the presence of the importer or his agent. All items that are designated for examination are noted on the

inventory designation sheet and the examination is conducted for purposes of verifying invoice and declaration information.

2.2.2.3 Release of Goods

If the declarer accepts the value, and the examination of goods does not identify any discrepancies, the documents pass for review and collection of duties and fees. Should there be a dispute as to classification or value, the declarer has the option to post a cash deposit or bank certificate and gain release of the goods pending the resolution of the dispute. Under ideal circumstances the goods could be released within 3 hours of initiating the declaration process but it could take as long as 24 to 48 hours.

The team asked the Customs authorities in Alexandria as to the percentage by total value of imports, by number of transactions, when invoice values are accepted. The approximate percentage based on the value of total goods imported was stated as 50%. This percentage may represent previously-verified prices paid by major compliant importers that are currently included in the reference price list.

The review of the processing and valuation procedures again provided the same information that the customs values are not arbitrary or fictitious prices but are based on previously-approved prices that may or may not be consistent with the price paid or payable. In the current environment there is no attempt to verify the transaction value or determine if all elements of value are present in the price, but only to compare it to a previously-approved price to determine acceptability.

The fact that the importer, in his ruling letter from Customs, is provided an acceptable value to use in the declaration is contrary to the concept of accepting the price paid or payable, which often varies according to market conditions.

2.2.3 Automation at Port of Alexandria

The team was able to see the Alexandria Customs computer center and review some of the information concerning the records and database. There are currently about 80,000 value records resident in the database. The records are identified by the tariff item, country of production, producer, and commercial description. They can be accessed on-line through several search criteria from general to the specific. The producer is identified by name and by a code starting with the country of origin code and followed by a sequential computer-assigned number. Records are maintained on-line until the General Manager for Valuation Research deems them to be no longer relevant and they are removed.

The declaration data is archived annually to off-line tapes. The current system will be upgraded shortly to include greater security. The declaration information contains fields for both the invoice value and the approved

Customs value and the applicable rates of duty and fees charged. Customs authorities can perform analyses of the resident data and would be able to estimate revenue loss should the basis of valuation change from Customs-approved value to transaction value based on invoice price.

Customs has plans to expand information available on the network and add the tariff schedule. Customs also maintains an Intranet that is available to Customs officers to review value and other information that is available for internal use. The Customs declaration system is a proprietary database, but we were told it is similar to the automated system used in France.

Customs authorities should consider using the data resident in the declaration database to perform analysis and identify commodities and importers that present a low level of risk, and move towards selective processing and acceptance of documents without the need for in-depth review or examination of goods. Random checks can provide Customs authorities with a level of confidence concerning the compliance of the importer. There is little reason to treat every transaction with the same level of scrutiny regardless of risk. It is a time-consuming process which is expensive for the importer. It degrades Customs officer expertise and initiative, and does not reward importer compliance.

2.2.4 Port Said Valuation Procedures

The team spent a few hours looking at the Port Said value processing procedures. We had the opportunity to review the input of the declaration information, and speak to several officers about the methodology used in valuation and processing of goods. We reviewed one transaction for which the declared value was the actual invoice price of the goods. Port Said Customs authorities stated that they do at times accept the invoice price as the declared value of goods. Once again this price may be a previously researched and approved price.

In Port Said the procedures are to present documents to Customs for review and keying of the data. The goods are examined and value ascertained and then upon payment of duties and fees the goods are released. The Customs authorities stated that 40% of all goods are cleared in one day. There are about 3,000 Customs officers assigned to Port Said and the port receives about 50,000 to 60,000 import transactions annually.

2.2.5 Importer Concerns

To gain a better understanding of importers' perceptions of the current value processing environment, the team interviewed several importers and clearing agents during meetings held at the American Chamber of Commerce in Egypt and the Egyptian Businessmen's Association. We asked about their concerns and problems with customs valuation and whether there was an association of importers that regularly meets with Customs authorities to discuss issues of common concern.

They stated that there is no association of importers that regularly meets with Customs on any level to resolve general issues of common concern. During our meetings it became apparent that there appears to be an attitude of mistrust between the importers and the Customs authorities.

One discussion focused on the area of standardization of valuation procedures that importers do not believe currently exist. The consensus was that the procedures and approved prices vary from place to place and from day to day. They were of the opinion, based on their experience, that one port may value goods one way and another port may use a different value within the same time period for the same product. They felt that procedures not only differ from port to port but sometimes from officer to officer and certain ports are better for clearing certain types of goods.

One importer was of the opinion that, particularly at seaports, there were too many Customs officers involved in each transaction. He stated that the declaration filing and release procedures at Cairo Airport were much more efficient, partially because the airlines put pressure on Customs to improve efficiency of cargo release. He felt the same efficiencies could be adopted at the seaports.

A representative from a multi-national company stated that it took Customs several months to verify current price lists presented by his company. In the interim, Customs continued to value the goods based on previously accepted higher prices. Another importer stated that he imports low-grade lumber for which his invoice price is not accepted. For this lumber, the approved and declared Customs value is based on the list price of a much higher grade of lumber. Of course all these costs are passed to the consumer market.

One question the team asked concerned the Customs ruling letter and, if an importer had a such a letter stating that a certain nomenclature and value would be accepted for a product, whether this would prevent the assignment of some other value. The answer was “not always”, particularly in the case of a change in the reference price. Ruling letters are not considered binding upon the Customs Administration, so that they may not be accepted or followed by all Customs officials.

Finally, importers strongly stated their need for training in the GATT Valuation Agreement if they are to support the change and be able to operate under it. They are very interested in the appeals features of the Valuation Agreement so it will be clear how, and to whom, to file appeals.

2.2.6 Issues Identified

Egyptian Customs has relied on their database of reference prices and has dedicated many resources to updating those records. They are comfortable that they can assess one value for any specific product at a particular time. After many years of using this system, the fact that transaction value represents the price paid or payable, but can vary from purchaser to purchaser for the same product and still be considered valid, is somewhat disturbing to

Customs officials and there are many questions as to how to properly verify such transactions.

This appears to be one of several impediments to the smooth adoption of the GATT Valuation Agreement. These impediments need to be removed for the successful implementation of the new valuation procedures. In the current environment there is no attempt to verify whether or not the invoice value is actually the price paid or payable or to determine that an element of value is missing and consider another basis of valuation according to the alternative methods indicated in the Agreement. It is understood that the invoice or transaction value is accepted when a previously-approved price reflects that value.

A second impediment is that the use of reference prices has precluded the need to develop expertise or a methodology for invoice value verification. Even though evaluators have a certain level of expertise in their commodity area, they have never been trained to look beyond the scope of the current value environment. They are unfamiliar with the verification process, and are not in the habit of requesting information or consulting importer records to determine whether the price paid or payable reflects all elements of value, and have not had to understand how sales prices are determined in international business. The Internet can be a useful tool for educational purposes. It can provide information on market conditions. However, under the GATT Valuation Agreement, the price paid or payable is the price to be considered for goods being valued under transaction value. Prices encountered on the Internet should not be used if they merely reinforce the current reference price methodology.

A third impediment is the atmosphere of mistrust between the Customs authorities and the importers. There is no current structure that provides for Customs authorities and importers to regularly consult with one another in a spirit of cooperation towards common goals. Often importers can provide useful information about market conditions to help Customs officers ascertain whether or not prices are fluctuating in particular commodities. They are able to outline the steps involved in placing an order for a product and explain market conditions. Customs authorities in turn can provide the importer with information as to what an officer requires to properly verify the price paid or payable.

Those reliable importers that work with Customs to promote compliance should be identified and rewarded by benefiting from expedited release of goods with minimum document scrutiny. They should not be placed in the same processing environment and under the same level of scrutiny as importers who are reluctant to provide information or those who are suspected of violating Customs requirements.

2.2.7 Conclusions

It is important that the Customs Administration of Egypt begin the transition toward an environment of accepting the invoice price as the price paid or

payable. This will require training by international valuation experts who can provide both an excellent structure on the steps involved in administering the Agreement and practical exercises to develop the skill level of the officers. That knowledge should also be shared with importers to help them integrate their own practices and procedures into the process.

In addition, Customs and importers need to start a dialogue to develop a better working relationship and work towards common goals for creating a predictable and uniform environment. In this environment both parties will gain. An importer who demonstrates his compliance will gain by having a greater degree of predictability about the costs involved for clearing his goods. Customs will benefit from gaining a greater degree of certainty that the importer is providing accurate and complete information about the transaction.

2.3 VALUATION ENVIRONMENT

The actual process of customs valuation takes place within an environment which can either facilitate or impede its implementation. The environment is principally formed through the law and its implementing regulations and procedures, as previously reported. However, some components of the valuation environment are worth emphasizing as key ingredients of implementation.

These key environmental factors are set forth in the GATT Valuation Agreement:

Confidentiality of proprietary business information given by importers to customs administrations (Article 10 of the Agreement);

Right to appeal customs decisions on valuation (Article 11);

Transparency in procedures as demonstrated by the furnishing by the customs administration of information needed by importers to comply with valuation requirements (Articles 12 and 16; also Articles 1, paragraph 2(a); and 7, paragraph 3);

Conditional release of goods to importers pending the final determination of customs value, including resolution of disputes as to the customs value (Article 13); and

Verification by Customs of truth or accuracy of value information provided by importers (Article 17).

These environmental factors were examined by the team in its study of Egyptian customs valuation laws, decrees, and implementing procedures.

2.3.1 Confidentiality of information

There is currently no requirement in Law 66 of 1963 requiring Customs officials to maintain the confidentiality of business information supplied by importers or other parties. Egyptian Customs officials have indicated that

they plan to include the confidentiality requirement in a decree to implement its new Customs law, or at least in an administrative directive.

Irrespective of the absence of this requirement in the current customs law, Customs officials stated in interviews that they are nevertheless required to maintain confidentiality. Article 77 of Law 47 of 1978, dealing with the regulation of civilian employees of the Government of Egypt, prohibits government employees from divulging confidential information obtained through their work. Law 47 sets a penalty of reduction of pay for 5 to 45 days. The law does not provide for the disclosure of confidential information with the permission of the person who provided it, nor for disclosure in the context of judicial proceedings.

Interviews with importers indicated they had little knowledge or evidence of any confidentiality obligation placed on customs officials. They believe there is little evidence of confidential treatment of business information, and had never heard of a Customs official being punished for violation of confidentiality requirements. However, they had no concrete evidence of disclosure by customs officials of confidential information. This was because they could not distinguish who leaked such information – whether it was done by customs officials, clearing agents, or other individuals. Some said that, even if they knew that confidential information had been disclosed by customs officials, they would not register a complaint for fear of reprisal.

Compliance with GATT Valuation Agreement: Egypt currently complies only partially with Article 10 of the Valuation Agreement, although it has been indicated that the law will be changed to make it fully compliant. It would be advisable that a change in law and its implementing procedures to maintain the confidentiality of business information also, among other things, (1) assure that violations by Customs officers are properly investigated and the offenders punished, and (2) fully inform importers of their right to confidential treatment and their recourse when they suspect violations.

2.3.2 Appeals

Articles 57 and 58 of Customs Law 66 of 1963 provide for the right of importers to appeal a decision by a customs official, including a decision on the customs value, first to a two-member panel consisting of one person appointed by customs and one person appointed by the importer. If the two persons cannot agree on the decision, the dispute is submitted to another panel consisting of (1) a permanent delegate of the Minister of Finance, (2) a delegate appointed by the Director General of Customs, and (3) a delegate appointed by the President of the Chamber of Commerce.

However, Article 57 has been declared unconstitutional by the Egyptian Supreme Court, in part because it does not provide for the right to appeal to the court system, as specified in the Egyptian constitution (and also in Article 11 of the GATT Valuation Agreement). Therefore, Article 57 is not currently being used. In its place, the Customs Administration has

established a substitute arbitration procedure by administrative decree. Under the substitute procedure, an importer can make a claim against a Customs Claim Committee, consisting of three Customs officials. An appeal against the decision of the Claim Committee is made directly to the courts.

The draft law resembles the current Article 57, but would increase the number of members at the first level of appeal to three by adding a statutory delegate from the legal department of the Customs Administration. The number of members at the second level would be increased to five by adding a representative of the importer and a statutory delegate from the legal department of the Customs Administration.

Neither Law 66 of 1963 nor the draft law regarding arbitration mention a further appeal to the court system; however the right to take a complaint to the courts is understood to be guaranteed by Article 68 of the Egyptian constitution. It is understood that such an appeal can be heard in either a Civil Court or an Administrative Court. If the case is refused by one court system, it can be brought before the other court system. Many importers prefer to bring their case before the Civil Court, because their burden of evidentiary proof is lower. Customs generally prefers the Administrative Court, which requires the highest level of proof. Decisions of these courts can be further appealed to the Egyptian Supreme Court. In either court system, judges are generally unfamiliar with the customs code, so they appoint an independent expert from a list prepared by the Minister of Justice. The independent expert hears both sides of the case and prepares an opinion, which as a matter of practice is usually approved and signed by the judge.

Importers indicated that they can and do appeal Customs decisions, with a fair degree of success in winning the appeals. Their principal complaint is that appeals take too much time, and that by the time the appeal decision is issued, it is too late to be useful for the goods under appeal, which have already been resold or used in manufacturing. However, the decision may be useful for subsequent shipments of goods. They also complained that decisions by Customs officials at the first level of appeal are not issued in writing.

Compliance with GATT Valuation Agreement: Egypt is not in compliance with Article 11 of the GATT Valuation Agreement in that Egyptian legislation does not provide for the appeal of valuation decisions to the courts. It would be preferable if the jurisdiction of the Civil and Administrative Courts were better defined, so as to fix which court hears appeals of customs decisions. It would also be preferable if there were a specialized court to hear appeals of government decisions concerning customs and other importation matters. These changes would lead to more certainty and consistency of judicial decision-making.

2.3.3 Transparency of information

Laws and decrees concerning valuation are published in an Official Gazette. Customs officials consider importers to have been officially notified of a law or decree upon publication in the Official Gazette. Judicial decisions are not published because they are not considered to have any effect as precedent under the Egyptian legal system. Each court case is judged separately on its own merits under the law.

Administrative circulars with instructions of general application are published by Customs and are issued to trade and business associations for distribution to their members. Customs also prints a monthly publication which includes administrative rulings. Importers complain of not receiving timely information, indicating gaps in schemes of distribution of information, either by Customs or by business associations which receive administrative circulars.

An individual importer who does not receive an administrative circular through one of the foregoing methods may request a copy from Customs. Importers stated that some of these circulars are poorly printed and difficult to read. Importers said some customs officials have displayed a poor attitude toward their requests for information to which they believed they had a right and need to know.

Importers indicated that they can obtain a written ruling from Customs on a specific issue including valuation matters, and that such a ruling is usually followed in all ports. However, there is no specific mention in Law 66 of 1963 of an importer's right to obtain such a ruling or an explanation as to how the customs value of imported goods was determined.

Much information can be disseminated through training courses. The Customs Administration has Institutes and training facilities in its principal ports.³ Some officials have stated that the facilities could be made available for training seminars for importers, although it is not clear that they have actually done so in the past.

There are various businessmen's associations in Cairo and Alexandria. Some of them meet regularly with Customs officials to discuss issues of joint concern, including the obtaining of explanations and clarification of administrative requirements. These associations have Customs Committees; however there is no association which specifically represents importers or clearing agents as a group before Customs. The existence of an importers' association could improve the obtaining and distribution of current information to importers and clearing agents.

Senior Customs officials appear to have a degree of knowledge of the GATT Valuation Agreement, although they lack confidence in their ability to

³ Customs Institutes are responsible for testing and certifying the competence of Customs officials and clearing agents. They also develop training courses, which are carried out, not by the Institutes, but by separate Training Offices within the Customs Administration.

administer it and, specifically, to verify transaction value, the price paid or payable for goods.

Importers do not appear to have as much knowledge of the Valuation Agreement and its implications as Customs officers do. In discussing reforms of Customs valuation, they were inclined to suggest reforms in the way the reference pricing is administered, rather than having Customs officials accept the price they actually paid for imported goods. Some fear was expressed of competition from under-priced, low-quality imported goods if Customs were to simply accept the transaction value as customs value.

Compliance with GATT Valuation Agreement: Egyptian Customs appears to be making a bona fide effort to comply with Article 12 of the Valuation Agreement and Article X of the GATT. However, it needs to improve its ability to fully inform importers of their rights and responsibilities under the law. Article 16 of the Valuation Agreement is not followed, since the customs value is always determined by the prevailing reference price; no further explanation to importers is currently required. Improvement in transparency will be particularly needed to implement and administer the Valuation Agreement. Training will be needed to fully inform both Customs officers and importers of their rights and responsibilities in respect to valuation.

2.3.4 Conditional release of goods

There is no mention in Law 66 of 1963 of the right to conditional release pending the final determination of customs valuation, although the draft revision of Article 58 would confer such a right as noted in Section 2.1.2.4 of this report. Egyptian Customs does have an administrative provision for the release of goods to importers pending the final determination of customs value, the resolution of a valuation dispute, or certain other reasons, such as the results of laboratory analysis of certain goods. Such a release is given upon payment of duties and taxes based on the value estimated by Customs. If the dispute is resolved in favor of the importer, the importer is issued a refund. The payment may be made in the form of cash or a bank certificate. The bank will issue a certificate upon deposit of the amount of duties and taxes estimated by Customs.

Customs does not accept a bank guarantee for such releases, although it accepts guarantees for other purposes. For instance, it accepts guarantees for temporary importations; the bank issues the guarantee to Customs upon payment by the temporary importer of a percentage of the amount of the guarantee. The percentage for such guarantees may range from 0 to 10% or higher depending on the creditworthiness of the customer. Thus, acceptance by Customs of a guarantee of payment is less costly to importers and enables them to more freely exercise their rights under the law without sacrificing Customs ability to collect duties and taxes.

Under Article VIII of the GATT, contracting members recognize the need to minimize the incidence and complexity of import formalities, including those for conditional releases for valuation purposes. A model for the simplification of import formalities is the Kyoto Convention on the Simplification and Harmonization of Customs Procedures.⁴

Compliance with GATT Valuation Agreement: Egypt does not really comply with Article 13 of the Valuation Agreement. First, the right of conditional release is not stated in Law 66 of 1963. Furthermore, the Egyptian Customs administrative procedure appears to comply only nominally with Article 13, in that an importer can withdraw his goods pending the final determination of customs value. However, payment of the estimated duties is not a guarantee of payment, but rather amounts to payment itself. Egyptian Customs does accept guarantees for other customs regimes, so it would appear possible for it to accept a genuine guarantee also for the purposes of Article 13. Customs acceptance of a guarantee covering multiple importations would further assist importers in having access to their goods, while assuring Customs of its ability to receive all duties and taxes due. Such general guarantees, or security, are provided for as Standards in the Kyoto Convention.⁵ Bank guarantees, and particularly general bank guarantees, are vitally important to application of the Valuation Agreement, since verification requires a period of time to obtain supplementary information, as noted below.

2.3.5 Verification of truth and accuracy of value information.

Article 17 of the GATT Valuation Agreement gives full authority for customs administrations to verify the truth and accuracy of any statement or documentation presented for customs valuation purposes. The method of verification is left wholly to customs authorities, so long as the method does not violate any other provision of the GATT Valuation Agreement or other portions of the GATT.

2.3.5.1 Methods of verification

In accordance with its existing law in Articles 22 and 23 of Law 66 of 1963, Egyptian Customs verifies the valuation information shown by the

⁴ The International Convention on the Simplification and Harmonization of Customs Procedures was signed at Kyoto, Japan, on May 18, 1973, hence the name "Kyoto Convention". It was revised by the World Trade Organization and opened for signature on June 16, 1999, and will be open for accession on June 30, 2000. It has not yet entered into force. Egypt did not accede to the original convention, and has not signed or acceded to the revised Convention. However, the customs procedures of the Convention serve as a measure of compliance with Article VIII of the GATT so as not to allow procedural requirements to become a non-tariff trade barrier. All of the citations to the Convention in this section refer to the Convention as revised in June 1999.

⁵ Definition E26 of Chapter 2 of the General Annex to the Kyoto Convention defines the term *security* as "that which ensures to the satisfaction of Customs that an obligation to the Customs will be fulfilled. Security is defined as 'general' when it ensures that the obligations arising from several operations are fulfilled." Standard 5.5 of Chapter 5 (Security) of the General Annex provides that: "When security is required to ensure that obligations arising from a Customs procedure will be fulfilled, the Customs shall accept a general security, in particular from declarants who regularly declare goods at different offices in the Customs territory."

importer on the declaration by comparing it with the prevailing price (reference price) level for the goods, as shown in price lists, invoices certified by Egyptian consuls in exporting countries, invoices of the government or public sector, and other evidences of prevailing prices. The verification is not specifically of the truth of the invoice value, but of the relationship of the invoice price to the reference price. If the reference price is higher, the invoice value is raised to the reference price to establish the customs value. If the reference price is lower, importers complain that the invoice price is accepted as the customs value, not lowered to match the reference price. If the importer wishes to avoid a possible penalty and expedite the release of his goods, he can obtain the reference price from Customs in advance and declare it as the value on the declaration.

As previously noted, Egyptian Customs officials are concerned with their ability to verify transaction value or alternative bases of value under the GATT Valuation Agreement. They have begun the formation of an audit unit to verify declared value, but have indicated they will need assistance in establishing audit procedures. They also believe that computerization would help in verification through improved access to the Internet and more information on world prices.

The WTO Committee on Valuation, in its interpretation of Article 17 of the Agreement, has affirmed the right of customs administrations to request a further explanation, in the form of documents or other evidence, of the value declared by the importer. If it does not receive a response or the response is inadequate, a customs administration may determine that there is no transaction value, and proceed to determine customs value under one of the other alternative valuation methods.

The WTO Committee on Valuation decision does not preclude the right to audit importers' records, and the Kyoto Convention encourages audit-based controls.⁶ Egypt does have in place some of the fundamentals necessary to use audits as a means of verification of valuation. Article 30 of Law 66 of 1963 gives Customs the right to have access to the papers and records of importers, although it limits such access to suspicion of a violation. Article 30, as well as Article 26 of Trade Law 17 of 1999, requires importers to retain such documents for a period of 5 years. In addition, Egyptian businesses are reported to be in the process of accepting a set of Generally Accepted Accounting Principles, which would provide a common understanding of the way accounts are kept and commercially audited. However, there is no clear authority in the law to allow Customs to (1) issue a fine to importers for failure to properly maintain records, (2) conduct an audit in the absence of a

⁶ Under Definition E3 of Chapter 2 of the General Annex, audit-based controls are "measures by which the Customs satisfy themselves as to the accuracy and authenticity of declarations through the examination of the relevant books, records, business systems and commercial data held by persons concerned." Standard 6.6 of Chapter 6 (Customs Control) of the General Annex provides that: "Customs control systems shall include audit-based controls."

suspected violation, or (3) assess and collect duties and taxes found to be due as a result of an audit.

2.3.5.2 Valuation enforcement

Under the current Egyptian Customs law, if the declared value is lower than the reference price by less than 20%, the declaration is adjusted and the importer pays the duties and taxes based on the increased value. Under Article 118 of Law 66 of 1963, if the declared value is lower than the reference price by more than 20%, the importer pays, in addition to the increased duties and taxes, a fine of 10% to 100% of the duty on the increased value. The amount of the fine is at the discretion of the Customs official who discovered the undervaluation; however, the fine may be appealed to the Director of Customs and, ultimately, the court.

If the importer presents a false invoice or other false evidence of valuation, the undervaluation is treated as smuggling under Article 122 of Law 66 of 1963. Article 123 subjects the smuggling violator to a fine of 20 to 1000 Egyptian pounds, payment of compensation of twice the duties on the undervalued goods, and imprisonment.

A false invoice is regarded as an invoice that does not correctly show the actual price paid for the goods. It is not necessary to discern the intent or negligence of the importer in order for an incorrect invoice to be considered false. Therefore, there is no gradation in the amount of fines or penalties issued for violations due to negligence as opposed to deliberate intent. Neither does there appear to be a distinction made between legitimate disputes as to the interpretation of a valuation law or regulation and violations of the law. These factors may, however, be taken into account by Customs authorities in determining the amount of the fine or other penalty.

Under the present law, some invoices may actually be false but not be a matter of attention for Customs officials. Since customs value is set by the reference price, there is no need to check whether an invoice is false.

Article VIII of the GATT includes the following provision in paragraph 3:

“No contracting party shall impose substantial penalties for minor breaches of customs regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in customs documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.”

Egypt became obligated to apply Article VIII of the GATT upon becoming a member of the World Trade Organization. This provision is not subject to the various delays in application and reservations permitted under the GATT Valuation Agreement.

The Kyoto Convention also provides that Customs will not impose substantial penalties for inadvertent errors committed without fraudulent intent or negligence.⁷ These provisions avoid penalizing importers for human factors beyond their control and save Customs time and effort in collecting fines which have little revenue impact or deterrent effect.

Compliance with GATT Valuation Agreement: There is really no question of compliance with Article 17 of the Valuation Agreement, since that article fully authorizes customs administrations to verify the truth and accuracy of any statement, document, or declaration presented for customs valuation purposes. However, the present system of verification will not enable Customs officials to verify valuation under the Agreement, since it is based on reference prices and not on the transaction value. Egypt is obligated to comply with the provisions of Article VIII of the GATT, specifically in the case of penalties for omissions or mistakes made without fraudulent intent or gross negligence.

It is important to note that, under the GATT Valuation Agreement, the invoice value is accepted; there is no need to verify most shipments. Risk management techniques enable customs officials to determine which declarations need value verification. Where verification is needed, an uncertain amount of time may be needed for verification. Therefore, an effective guarantee system is needed to allow goods to be withdrawn pending final value determination.

Egyptian Customs officials have expressed concern as to how they will be able to verify the value declared by the importer under the Valuation Agreement. The Customs Administration will need to design and implement different verification methods suitable to the Valuation Agreement based on (1) the supplying of additional verifying documentation to Customs officials by importers and (2) audits of importers' records by Customs authorities. The Customs law will need to be updated to provide the necessary authority to conduct audits and implement audit findings. The Customs Administration will also need to establish procedures for requesting additional documentation; organize an audit unit; and establish procedures for conducting audits.

Investigations of false invoices can be expected to become a more significant matter for Customs officials, since valuation is based on the actual price paid. Customs will no longer have the option of ignoring the issue by making the reference price the customs value. On the other hand, inadvertent errors by importers and clearing agents, committed with no fraudulent intent, should not be subject to a fine or other penalty, when there is no evidence of negligence by the importer, as indicated in both Article

⁷ Standard 3.39 of Chapter 3 (Clearance and Other Formalities) of the General Annex provides that "The Customs shall not impose substantial penalties for errors when they are satisfied that such errors are inadvertent and that there has been no fraudulent intent or gross negligence. Where they consider it necessary to discourage a repetition of such errors, a penalty may be imposed but shall be no greater than is necessary for this purpose."

VIII of the GATT and the Kyoto Convention. Neither should genuine differences of opinion between the importer and Customs as to a particular element of customs value. Thus, the focus of investigations would need to be increased for false documentation, but decreased for minor irregularities and disputes.

3.0 CONCLUSIONS

After reviewing Egypt's customs laws, regulations, and written procedures, and interviewing Customs officials and representatives of the import trade, the team has come to the following general conclusions, in light of the findings described in the previous Part of this report.

3.1 STATUS OF COMPLIANCE

Egypt joined the World Trade Organization in 1995, thereby becoming obligated to accept and put into place the GATT Valuation Agreement. Egypt notified the WTO that it would delay application of the Valuation Agreement until June 30, 2000.

Egypt has taken some significant preliminary steps toward application of the Agreement, in the form of drafting a new general customs law which would give authority to the Egyptian Government to issue a decree to implement the Valuation Agreement. Furthermore, a few areas of existing law are already in compliance with the Valuation Agreement. Egyptian Customs already has in place a system of written procedures and computerized systems which could be adapted to implement the Agreement.

However, Egypt needs to do a great deal more to implement the Agreement. We do not see any way in which the additional needed changes could be made by the target date of June 30, 2000. Furthermore, as noted on Section 2.1 of this report, implementation of the Agreement is dependent on (1) the WTO decision on acceptance of an extension to the original 5-year period for implementation of the Valuation Agreement and (2) enactment of legislation to implement the Agreement.

3.2 AREAS FOR FURTHER ACTION

There are two kinds of actions that Egypt needs to take to implement the GATT Valuation Agreement. The first consists of those that are necessary for legal compliance with the terms of the Agreement. The second are those that are necessary for the Agreement and the Egyptian valuation system to successfully function. These two kinds of actions are so intricately intermingled that it is difficult to separate them.

The principal areas in which action is needed are as follows.

- 1. Legal requirements.** The current law does not meet the requirements of the GATT Valuation Agreement. The draft law, as it was presented to the team,

seems to be consistent with the Agreement, but it has not yet been enacted. The full legal requirements of the Valuation Agreement will not be met until the law is enacted and the implementing decrees issued.

2. **Valuation philosophy.** The existing valuation procedures are based on a reference price system, which must be abandoned in favor of the GATT Valuation Agreement. There will be no need to compile information on prevailing world prices, even if obtained from the Internet, for determining the customs value of goods.
3. **Valuation procedural requirements.** The existing written and computer procedures were designed for the reference price system. They cannot be used for implementation of the GATT Valuation Agreement without a substantial re-design.
4. **Verification methods.** The existing methods of verifying declared valuation will not be able to verify the actual price paid or payable, as specified in the GATT Valuation Agreement. New methods, techniques, and training are needed.
5. **Expansion of risk management principle.** Although Egyptian Customs has begun to adopt risk management techniques, they have not used them as extensively as will be required for new verification and conditional release methods under the GATT Valuation Agreement.
6. **Reorganization of Customs resources.** The Egyptian Customs Administration is organized and staffed to carry out the existing valuation law. The GATT Valuation Agreement will require some reorganization and redeployment of staff and other resources to support the new legal, procedural, and verification requirements.
7. **Customs-importer relationship.** The use of reference pricing under the existing valuation law has engendered an unnecessarily adversarial relationship between Egyptian Customs and importers. The GATT Valuation Agreement requires a more mutually-supportive relationship for proper application of its provisions and verification of transaction value.
8. **Implementation plan.** The Egyptian Customs Administration does not yet have a plan or strategy for implementing the GATT Valuation Agreement which takes into account the foregoing requirements.

3.3 Change in Valuation Perspective

The change in the customs valuation method from a system based on reference prices, as required in current Egyptian law, to a system based primarily on the price actually paid or payable by importers, as specified in the GATT Valuation Agreement, is a large philosophical change for Customs officials, importers, and clearing agents.

The existing computer programming and human resources devoted to maintaining and applying a reference price file will have to be diverted to other uses consistent with the GATT Valuation Agreement. There is no need or use for reference prices or other evidence of world price levels under the Valuation Agreement.

On the other hand, more computer resources are needed for data analysis to support risk management as needed for proper value verification. Similarly, more human resources are needed for an audit program, expanded risk management, and supplying information to and receiving information from importers.

It can be expected that this change will be resisted in various quarters. Any change of this magnitude is uncomfortable, even while it is recognized to be needed. Some Customs officers will find it difficult to adjust to the necessary changes in valuation methods and systems. Some importers may fear increased competition from a perceived general lowering of customs value. Other importers may confuse acceptance of transaction value as a license to undervalue their merchandise. Customs collections of duties and taxes may be reduced, although the precise effect on revenue collections of adopting the GATT Valuation Agreement is difficult to predict. Collections may well increase, especially in the long term.

However, the forces propelling the adoption of the Valuation Agreement are powerful. It would be well for government and public officials, businessmen, and the general public to understand and remember the positive benefits of the GATT Valuation Agreement throughout the difficult process of change:

1. Egypt has already obligated itself to adopt the GATT Valuation Agreement now or later. If it does not, it will ultimately face complaints from trading partners and possible retaliation under GATT rules.
2. The GATT Valuation Agreement will enable Egyptian importers to estimate their costs much more quickly and accurately when they make their purchases in foreign markets, instead of waiting until the presentation of their import declarations. This will enable them to improve the predictability of their business plans, reduce prices to consumers, and compete more effectively in the world market.
3. The current valuation method is unreliable if used as an instrument for protection of Egyptian industry, since reference prices bear little relationship with the amount of protection needed. Elimination of the current valuation method as a quasi-protective instrument will allow Egypt to measure and apply economic protection more accurately and effectively through their tariff rates.
4. In itself, the GATT Valuation Agreement will mitigate the adversarial nature of the relationship between importers and Customs by removing the perceived arbitrariness of the use of reference prices.

4.0 RECOMMENDATIONS

Based on the foregoing analysis and conclusions, it is recommended that Egypt take the following steps to apply the GATT Valuation Agreement, consistent with its obligations to the World Trade Organization.

4.1 LEGAL REQUIREMENTS

The Government of Egypt should:

1. Include in its laws the full text of the GATT Valuation Agreement with respect to Articles 1 through 7 of the basic Agreement, either in the basic legislation or in the implementing decrees or regulations.
2. Provide, either in its legislation or in the implementing decrees, for the requirements which are found in Articles 8 through 17 of Part I of the basic Agreement.
3. Provide either in its legislation, implementing decrees, or officially published regulations for the full text of the Interpretative Notes found in Annex I of the Agreement.
4. Begin work immediately on drafting the decrees necessary for fully implementing the Valuation Agreement in order to be prepared when the time comes to actually implement it.
5. Include the 1996 and subsequent Harmonized System amendments in its tariff nomenclature at the earliest possible date.
6. Request technical assistance from the World Customs Organization and the international community for assistance in training its staff in the proper application and interpretation of the international Harmonized System Nomenclature which they use as their Customs tariff.

4.2 PROCEDURAL REQUIREMENTS

The Customs Administration should:

1. Rewrite its procedures for declaring, verifying, and determining the customs value in a manner consistent with the GATT Valuation Agreement.
2. Re-program its computerized procedures for declaring, verifying, and determining the customs value in a manner consistent with the Valuation Agreement.
3. Improve national uniformity in valuation through greater development of automated history files and the use of analysts who will review and identify areas where uniformity is lacking.

4. Integrate into its procedures risk management techniques that will minimize procedural requirements for honest and dependable importers and clearing agents.
5. In accordance with risk management practices, integrate into its procedures verification techniques based on the supplying of supplementary information by importers, including special value declarations.
6. Train and develop evaluators to give them greater expertise in business and international trade through continuing contact and consultation with importers and business associations.
7. Establish audit units for the verification of valuation through reviews of the books and records of importers, clearing agents, and other parties to importations.
8. Issue a decree or directive authorizing Customs officials to accept an individual or general bank guarantee, in lieu of a cash deposit or a bank certificate, for the conditional release of goods to importers when the final value of the goods has not yet been determined.

4.3 IMPLEMENTATION REQUIREMENTS

The Customs Administration should:

1. With international assistance, develop an action plan for implementation of the Valuation Agreement, taking into account the uncertainties in timing of WTO approval of the extension in application of the Agreement and enactment of the required Customs law, as described in Part I of this report.
2. With international assistance, train selected Customs officers and importers in a broad overview of the Valuation Agreement. As the time of promulgation of the implementing decree approaches, a comprehensive training effort should be undertaken to train all Customs valuation officials and all importers and clearing agents in the Valuation Agreement and other valuation matters included in the decree.
3. Establish an implementation group to plan and manage the actual transition from the current valuation system to that of the Valuation Agreement. The team should include Customs officials with high qualifications in the fields of law, valuation, training, and overall management of change. The team should also include representatives of importers, clearing agents, and business associations.
4. Before actual implementation, conduct pilot tests of application of the Valuation Agreement, parallel to the existing valuation system, to allow evaluators to get the “feel” of how the new valuation system will work in actual practice.

5. Implement the Valuation Agreement on a staged basis by industry sector or port, so that the entire Customs organization and import trade need not change all at once. Each stage should be monitored, so that lessons learned during each stage can be applied to following stages. However, implementation should be completed within a year after promulgation of the implementing Decree.
6. Carry out a broad information campaign to inform the public and the trade, in general terms, of the coming implementation, and prepare brochures explaining how the GATT Valuation Agreement works. The campaign should provide a wide distribution of information to Customs officials, importers, clearing agents, and inquirers from the public. As the time of promulgation of the implementing Decree approaches, Customs should prepare detailed written information for importers and clearing agents as to how value is to be declared, determined, and verified.

4.3.1 Estimated Sequence of Implementation

1. Before enactment of Customs Code:
 - Develop initial action plan;
 - Conduct valuation overview training;
 - Develop written procedures for value verification by evaluators;
 - Develop plan to organize an audit unit and written procedures for the conduct of audits;
 - Conduct pilot tests of application of the Valuation Agreement;
 - Issue directive on conditional release under bank guarantees.
2. Complete drafting and enact Customs Code
3. Draft and promulgate implementing Decree
4. Plan and carry out public information program
5. Prepare and distribute detailed instructions for Customs and importers
6. Reprogram computers
7. Conduct and complete comprehensive training program
8. Reorganize and redeploy Customs resources
9. Establish and deploy audit unit
10. Stage I of implementation for low-risk goods imported by low and medium-risk importers;
11. Stage II of implementation for medium-risk goods imported by low and medium-risk importers – beginning 3 months later

12. Stage III of implementation for all goods and importers – beginning 6 months later

When the timing of implementation is known, the foregoing recommendations and implementation steps should be organized into a comprehensive action plan with a timetable which will assure the prompt and orderly application of the GATT Valuation Agreement in Egypt. Although such a plan cannot be fully carried out before June 30, 2000, it could be substantially completed by March 31, 2001, if the new law and decree are timely promulgated.