

# **A Review Of Customs Administration & Procedures In Ghana**

**October, 1999**



**Sigma One Corporation**

**A Review Of Customs Administration & Procedures In Ghana**

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## **1. EXECUTIVE SUMMARY**

The review of CEPS operations has identified organization strength and weakness along with identifying some policies and practices that contribute to revenue leakage, while others frustrate legitimate importers through cumbersome administrative controls that are meant to deter fraud. Generally, the control of cargo landed in Ghana should be improved; CEPS lacks an effective valuation program; the control of trade promotion regimes should be strengthened; import procedures should be streamlined; CEPS intervention on trade should be selectively targeted; and, the law, regulations and instructions need to be updated.

Valuation and tariff classification are two of the most vulnerable aspects of revenue protection. The Government of Ghana has relied on pre-shipment inspection (PSI) to assist CEPS with these functions. However, the Ghana PSI program could have been designed to be more effective as a revenue protection instrument, and to prepare CEPS for post PSI operations.

If PSI indeed terminates at the end of 1999 when the contracts expire, in spite of considerable preparatory work by CEPS, there will be a void in the delivery of valuation information on which to accurately assess revenue. A valuable revenue protection instrument, the Clean Report of Findings (CRF), will not be available to CEPS to assist in valuing imports by matching invoice values to the value reported by PSI companies on the CRF. This will lead to under valuations by some importers since CEPS will be constrained by GATT transaction value provisions, where the onus shifts to CEPS to disprove the declared transaction values.

After January 1, 2000, the Government can expect deterioration in revenues, as well as delays to trade as imports are held while valuations are sorted out after the CRF terminates. The absence of the checks and balances provided by PSI will give rise to corrupt activities, further jeopardizing revenues. That is, unless a transition plan is formulated that protects revenues until such time which CEPS valuations are founded on a comprehensive computerized database accessible at release points. The CEPS valuation program at a minimum should match the quality of current information from PSI companies.

Many opportunities to streamline CEPS import procedures were observed. Eliminating redundant procedures and simplifying document flow will substantially improve matters. During this review, CEPS officials contributed significantly to the development and the reporting of many of these solutions; however, CEPS activities form only a portion of the import process, particularly at Tema. The activities of other agencies intrude significantly in the import process and burden trade unnecessarily.

For example, bills of entry are submitted and processed by three agencies before CEPS has the opportunity to see the documents. Several more port procedures must be

completed in order for importers to take possession of goods after CEPS has authorized the release. Modernizing CEPS in isolation will only minimally benefit trade. The activities of other agencies are dealt with in the course of the report, and the impact of the activities of these agencies must be considered in reforming the import process as a first step towards achieving the international standard.

CEPS unfortunately relies extensively on the manual manipulation of data for valuation, cargo control and the control of bonded warehousing and free zone enterprises. While some computerization capacity exists, it is limited in scope, and the ability to effectively communicate by computer between offices is non-existent. The absence of even a modestly funded capacity to perform basic computerized activities ties up resources, jeopardizes control and puts revenues at risk. The valuation activity will further increase the risk for the year 2000 since it is extremely doubtful that an effective computerized system will be in place and tested by the end of year, even if funding is found. Overall, CEPS is lacking the technological resources to carry out day to day activities.

The Free Trade Zone regime needs rationalization. About 75% of the enterprises that are licensed to operate are in fact traders, not manufacturers. Virtually all importations by this group are finished goods. These particular free zone enterprises effectively operate as bonded warehouses under the Free Trade Zone Act but receive the income tax exemptions not available to the bonded warehouse operators. The risk to Government is that bonded warehouse operators that can work around the 30% diversion restriction to the local economy could simply convert to a free zone enterprise and obtain the income tax incentives without the new investment and employment anticipated by the Government.

Poor operational practices and an absence of up to date regulations or instructions impede some officers and allow others to take a lax position with respect to their duties. In Ghana, the Inspectorate Organization, which was once tasked with monitoring operational performance and developing systems and procedures, is virtually defunct, leaving an operational policy vacuum. CEPS relies on a process of "crisis management" through ad hoc decisions when problems occur, often only to rescind the decision when it disrupts other procedures or adversely affects importers or exporters.

A significant challenge facing CEPS is the development of a modern law, regulations and procedures that meet the test as "international best practices". CEPS does not have an organization dedicated to that activity, nor is it clearly articulated in the Gateway Project or other planning documents relating to CEPS organization. Therefore, the poor condition of operational procedures and lack of legal authorities will persevere; and CEPS will continue to make operational decisions on an ad hoc basis. With the best of intentions, the Gateway Project objectives will be jeopardized without a CEPS organization tasked to research, develop and implement modern practices and concepts.

CEPS needs an internal organization charged with the responsibility to analyze operational problems, consult with the private sector, Gateway and government officials on CEPS programs and to design, recommend and implement systems and procedures based on modern practices. CEPS would also benefit from greater interface with the World Customs Organization (WCO) for information on international “best practices” and current training materials. CEPS would benefit from the assistance of a customs expert in the process of reforming the customs administration.

## **2. DIAGNOSTIC STUDY APPROACH**

Customs administration is a complicated, integrated process. The key components of customs administration cannot be considered in isolation and can be generally categorized as follows: report and control of goods; valuation and tariff classification of goods; examination of goods; bill of entry processing and collection of revenue; control of bonded warehouses; control of trade promotion regimes; audit and investigation of offenses and imposition of sanctions; and production of management information.

A diagnostic study should consider these components plus computerization initiatives. The analysis of Ghana CEPS will include these aspects, report on legal, organizational, procedural and policy weaknesses and recommend alternative measures that the Government may consider. To the extent possible, within the time provided, this review concentrates on these aspects and related issues. On all occasions, CEPS management and staff made themselves available on short notice, were open and candid in discussing operational difficulties, and were receptive to suggestions to improve operational effectiveness.

## **3. TARIFF AND VALUATION**

Customs administrations in many developing countries have lost the capacity to administer responsibilities where innovation and technology in the private sector have outpaced the public sector reaction to change. Indications include allegations of corruption by importers against officials, private sector complaints over delays to trade, poor quality balance of trade data and predictably, significant revenue leakage, and a loss of confidence in customs administration by government. The privatization of customs valuation and control activities to Pre-Shipment Inspection (PSI) companies to protect revenues and facilitate trade is usually the perceived solution.

Poorly designed and costly PSI contracts sometimes exacerbate the problems without adding the degree of control of revenue intended by government. In the meantime, customs administration deteriorates further, control of imported goods weakens, delays to trade increase the cost of doing business, corruption thrives, and staff morale tumbles. The road back to customs administration competency is a long one, requiring a

comprehensive reform plan and may include a well designed transitional PSI program that is integrated with customs procedures and contributes to capacity building in customs administration.

Pre-shipment inspection is the primary basis for valuation in Ghana on imports valued at CIF US\$5,000 and over. The PSI activity is privatized to four (4) companies, but the contracts expire at the end of 1999, and responsibility for valuations and tariff classification of imports over US\$5,000 will then return to CEPS. The timing coincides with the implementation of the GATT valuation on January 1, 2000. To achieve a smooth transition from PSI, CEPS needs to create a comprehensive valuation data base from PSI historical data on Clean Report of Findings (CRFs), information from producers and suppliers, and local market surveys. Once accumulated and analyzed, the data must be organized so that up to date valuation information may be delivered to CEPS officers at release points (i.e., Tema, KIA).

To be operationally effective and to be sensitive to facilitating legitimate trade, the CEPS valuation data base must be computerized and accessible by field officers. If CEPS implements a manual valuation system on January 1, 2000, it will create havoc for CEPS, importers and agents, and place the revenue at significant risk. Once the CRFs cease to arrive, and the GATT transaction value becomes the rule, there will not be a viable values verification procedure comparable to the CRF. Even with the present procedural flaws, PSI at least has the potential to perform better as a valuation tool.

On January 1, 2000, or at least after the delivery of the CRFs by PSI companies terminate, the Government revenues will be vulnerable to under valuations and negotiated values between importers/agents and officials. Before considering the post PSI era, it is appropriate to evaluate PSI performance, and identify the capacity of the PSI regime to perform better, particularly if the PSI services are extended beyond December 31, 1999.

### **3.1 The administration of the PSI regime in Ghana**

The Ghana PSI program has been a costly adventure for the Government and importers. While an element of revenue protection is provided by the Ghana PSI, the services are underutilized by international PSI standards developed through a World Bank study, Harvard Institute for International Development analyses, and IMF observations. The contracts lack modern provisions, and the services by the PSI companies could have been better developed. Ghana PSI is primarily a price verification activity which does not necessarily mean the PSI inspectors actually visit exporters premises. Control of goods after the PSI inspector visit is jeopardized since goods may be easily substituted or the quantities increased.

The contracts appear based on the foreign exchange oriented regimes from a decade or so ago, but adjusted to account for CEPS involvement. Many services are omitted from the

contracts in Ghana that are provided to other countries for essentially the same fee. The following weaknesses are observed with respect to the Ghana PSI program.

- the PSI services do not formally provide for a transfer of valuation and tariff expertise to CEPS nor do they contribute meaningfully to reform of CEPS through a jointly administered selective examination program.
- the threshold of US\$5,000 is too high and unscrupulous importers simply split shipments into several bills of lading to avoid PSI control. This categorizes imports under CEPS control where lower values are supplied without the benefit of PSI price verification. This provides opportunity for corrupt activities to reduce revenue payments;
- there is no effective review of transactions under US\$5,000 where importers and CEPS officials can conspire to evade duties and taxes;
- many imports subject to PSI are cleared before CEPS receives a control copy of the CRF from the PSI company and can lead to underpayments;
- there is no effective matching of the PSI Clean Report of Findings (CRF) to import declarations to ensure the reports were reconciled with revenue payments; and in fact a considerable number of CRFs are never collected, which indicates that rather than pay the duty and tax, importers find alternate means to obtain their imports without payment.
- there is no requirement for PSI companies to supervise loading abroad or apply tamper proof seals to increase CEPS control and provide a basis for selective examination.
- there is no provision that PSI companies provide intelligence information on suspect fraud cases.

### **3.2 Implications for January 1, 2000**

CEPS does not have a sufficient number of trained officials to effectively implement the valuation and tariff classification discipline that will be required. Training is wasted if officers do not have access to information. Indeed, CEPS is undertaking a comprehensive training program; however, it is unlikely that CEPS can deliver and test an effective valuation data base at release locations by January 1, 2000. The development of a computerized system is planned; but the hardware, software and system specifications have not even been decided as yet, and would not be implemented in time in any event.

Under current procedures, PSI information provides CEPS the opportunity to perform fewer examinations that are more focused and selective based on risk. However, a selective examination program has not been implemented. Without PSI, the CEPS

tendency will probably be towards more scrutiny and to increase the intensity of examinations. The result will be increased delays to trade, rather than concentration on high risk imports while facilitating legitimate trade.

In the present circumstances, the year 2000 will start with confusion and loss of revenue. The concept of a destination inspection regime to “replace” PSI is ambitious. The request for proposals lacks definition, specifics and operating principles. The acquisition of a massive, and costly, x-ray unit supposedly to contribute to trade facilitation may actually have a reverse effect by tying up valuable port equipment, space and by creating yet another queue for containers. These x-ray machines were primarily designed for drugs and explosives rather than commercial goods.

In this regard it could be valuable to ask the World Customs Organization (WCO) about the performance of these machines in the few countries that use them for customs purposes. The WCO maintains an inventory of information on technological aids and has evaluated most of the costly equipment available today.

Even well trained x-ray operators still have a difficult time identifying many objects and this will probably lead to the opening of containers when images cannot be identified. A good comparison is the quality of x-ray images of suitcases at airport security that uses similar technology. Though a suitcase may have been personally packed by the traveler, it is still difficult for the operator and owners to identify the contents.

The concept of “destination inspection” leads one to question if it is an improvement over PSI if the Government enters into a costly contract with a private company to perform examinations which become the responsibility of CEPS. The concept simply exchanges foreign based examinations in favor of destination inspections, albeit it selective according to plan. If the US\$5,000 threshold is continued, revenues will still be at risk since many of the examinations will be evaded. If a comprehensive valuation data base is developed, implemented and controlled, and proper training of CEPS officials is performed, CEPS should be able to effectively administer an examination, valuation and tariff classification program. The Government could still require PSI inspection of health related commodities abroad to ensure standards are observed.

The Government should consider the options with respect to the events scheduled for January 1, 2000. Two options are described below. The primary considerations are:

- (a) Protect and increase revenues.
- (b) Provide a transition period to prepare for implementation of GATT valuation.
- (c) Build the capacity of CEPS to assume full customs responsibility for clearance activities.
- (d) Minimize the impact of CEPS activities on the private sector.

Both options assume three prerequisites, namely:

1. The Government should request a one year extension for the implementation of the GATT.
2. The Government, through the Ministry of Finance and/or Ministry of Trade and Industry should extend PSI services for one year and negotiate the new provisions.
3. The Government should delay implementation of a destination inspection regime until the impact and the costs are fully evaluated.

Options A and B are similar, but Option A restructures PSI to improve effectiveness and *generate* significant revenues beyond what is produced by the current PSI regime. Option B is a modest improvement on the current PSI regime and is designed to provide a transition period, but will not generate revenues to the extent of Option A. Option A increases the obligations of the PSI companies to contribute to CEPS reform, while Option B places more responsibility on the Government.

Either option requires a redesign of PSI services. The revised set of services should be performed primarily by the Ministry of Finance and CEPS in conjunction with PSI companies. PSI regimes are appropriately the responsibility Ministries of Finance due to the revenue implications and the need to balance revenue protection and generation with trade facilitation objectives.

Virtually all countries using PSI services have designated Ministries of Finance to be responsible for PSI as opposed to ministries for trade or commerce, which performed the task during periods of highly restricted foreign exchange regimes. In Ghana, a joint Ministerial initiative is recommended due to the short duration of an extended PSI regime. However, as PSI is a revenue protection tool, the Ministry of Finance should have primary control over the regime.

### **Option A**

Redesign PSI services and CEPS procedures as follows:

- *Reduce the threshold for PSI inspections to US\$2,000 from US\$5,000 in order to capture more valuation data and to reduce the ability of importers to split shipments to evade revenue liability.*
- *The Clean Report of Finding (CRF) fields should be captured in one format by all PSI companies so that it may be used in one consolidated data base at CEPS entry locations (i.e., Tema, KIA).*
- *The PSI companies should be required to install and operate computer terminals at high volume entry points that will manage a data base of CRFs from all the companies. The PSI companies should jointly develop the software. CRF data*

*shall be input daily to ensure the information is available when bills of entry are processed. The computer terminal(s) should be located within the CEPS ASYCUDA room before ASYCUDA processing. A printout of the CRF data should be attached to the bill of entry after comparison with the bill of entry particulars.*

- *If the revenue payable is less than the amount on the CRF, the bill of entry should be referred to CEPS management to determine why the CRF information was not applied. The bill of entry should be rejected for correction.*
- *The PSI companies should reconcile their data to actual CEPS collections and provide a consolidated reconciliation report, noting discrepancies and unclaimed CRFs. Reports should be provided to CEPS and the Ministries of Finance and Trade and Industry. **Trade statistics should be developed from the PSI data.***
- *The PSI companies should redesign their CRFs to include information on the level of inspection so that CEPS may use the information to administer a selective examination program. For example the following codes would apply for level of examination: (1) price verification only; (2) price verification and supervision of loading into container; and (3) the foregoing plus sealing with tamper proof seals (numbers recorded on the CRF).*
- *The PSI companies should be required to contribute to customs reform by:*
  1. *conducting training in specific Customs activities such as valuation, the Harmonized System, cargo control and examination techniques and selective targeting;*
  2. *providing the hardware and software to perform the reconciliation function; and*
  3. *providing intelligence information to customs on potential cases of fraud.*
  4. *The PSI companies should be required to design the specifications and program the CEPS valuation data base in cooperation with CEPS, train staff, implement and test the CEPS valuation system in preparation for January 1, 2001.*
  5. *The PSI companies should audit 25% of shipments under the US\$2,000 threshold to determine compliance and to detect splitting of shipments to avoid PSI.*

**Option A** would provide the following benefits and potential implications:

- increased control and improved revenue generation on all imports valued at

- US\$2,000 and over by administering an independent reconciliation process that improves revenue control and reduces the opportunity for corrupt practices;
- it provides a basis for a CEPS selective examination program that will facilitate trade without jeopardizing revenues;
  - the Government accomplishes much needed CEPS reforms without using public funds nor relying solely on donor assistance by utilizing the extensive private sector expertise of the multinational PSI companies;
  - the extension of GATT implementation, retention and reorganization of PSI services and implementation of a selective examination program would be well received by the private sector and be seen as leveling the playing field; and
  - the reduced threshold for PSI inspection to US\$2,000 would primarily affect companies that are currently evading PSI and would not measurably affect the importing community as a whole.

The fact that Ghana employs four PSI companies creates some coordination difficulties. However, arguments that the forgoing cannot be organized in cooperation by the companies should be rejected as the services are well within the capacities of the companies. It should be up to them to organize themselves. If there is collective objection, the Government through the Ministry of Finance should threaten to tender PSI services to one company which is prepared to meet the conditions that would become effective on January 1, 2000.

If the companies agree, a written agreement to extend the contracts under the conditions outlined should be acceptable and avoid the need for a tender process. Attempts by the companies to avoid any of the services should also be rejected as they are components of an integrated set of procedures, but suggestions to strengthen any of the components should be considered.

### **Option B**

This option retains the status quo with modest procedural improvements. It will improve control over revenue collection through better use of PSI data, but does not address revenue leakage through the faulty design of PSI services. This option applies more pressure to Government and CEPS to improve CEPS administration through the use of public funds or the time consuming alternative of obtaining donor funding.

This option calls for the following adjustment in PSI services and reforms by CEPS (some of the basic reconciliation requirements are repeated from Option A):

- *The Clean Report of Finding (CRF) fields should be captured in one format by all PSI companies so that it may be used in one consolidated data base at CEPS entry locations (i.e., Tema, KIA).*

- *The PSI companies should be required to install and operate computer terminals at high volume entry points that will manage a data base of CRFs from all the companies. The PSI companies should jointly develop the software. CRF data shall be input daily to ensure the information is available when bills of entry are processed. The computer terminal(s) should be located within the CEPS ASYCUDA room, but after ASYCUDA processing. A printout of the CRF data should be attached to the bill of entry after comparison with the bill of entry particulars.*
- *If the revenue payable is less than the amount on the CRF, the bill of entry should be referred to CEPS management to determine why the CRF information was not applied. The bill of entry should be rejected for correction.*
- *The PSI companies should reconcile their data to actual CEPS collections and provide a consolidated reconciliation report, noting discrepancies and unclaimed CRFs. Reports should be provided to CEPS and the Ministries of Finance and Trade and Industry. **Trade statistics should be developed from the PSI data.***
- *The PSI companies should audit 25% of shipments under the US\$5,000 threshold to determine compliance and to detect splitting of shipments to avoid PSI.*
- *CEPS should use the extended time (one year) to create a computerized valuation data base to deliver information to officers at entry points (i.e., Tema, KIA)*

**Option B** would provide the following benefits and potential implications:

- the Government would have better control over revenue collection on imports valued US\$5,000 and over, but the option does not specifically address revenue leakage that may be occurring on importations below that threshold;
- CEPS would benefit from the additional time to develop and implement a computerized valuation data base;
- the responsibility for the development of the data base and funding for equipment will rest with the Government and CEPS and could still lead to delays; and
- the improvements may still not be enough to satisfy the private sector that enough has been done to deter corrupt activities and to prepare for the GATT.

Ghana would realize significant benefit from **Option A**, which is the recommended course of action and it would best prepare CEPS for 2001. **Option B** is considered the minimum course of action for the transition period during the year 2000.

### 3.3 Concessionary rates of duty

CEPS authorizes a concessionary rate on certain goods to be used in manufacturing. The approval of a reduced duty rate is a common occurrence; however, the procedures to obtain beneficial rates are complicated, unnecessary and lead to added costs for importers and delays to trade. On each and every occasion where a concessionary rate is applicable, the importer must apply in writing to CEPS. The importer usually hires an expeditor who delivers the request to CEPS and follows it until it is approved at a cost of C50,000. During this time the imports remain at wharves or other clearance locations and incur demurrage charges of US\$28 per container per day. This process appears to add about five (5) days to clearance times.

International best practice permits importers to apply to customs for a concessionary rate ruling with respect to a commodity by justifying the end use. In turn, customs issues a standing tariff ruling specific to the importer outlining the commodity, the reduced rate and the end use conditions under which it is granted. A copy is provided to the importer and a copy is maintained at customs clearance locations. It remains in effect until rescinded; and importers need only supply a copy with the import bill of entry to obtain the concessionary rate.

The current practice is a burden to trade that creates costly delays.

#### 3.3.1 Recommendation

- The requirement that importers request a concessionary duty rate from the Commissioner in writing for *each* importation should be rescinded. Rather, importers should be granted a standing classification ruling which would be placed on file at release points. Importers would supply a copy with the bill of entry to obtain the concessionary rate

## 4. IMPORT PROCEDURES

An efficient import process relies on the contribution of a number of interests. Shipping lines must provide timely and comprehensive cargo information; the Ports and Harbor Authority must handle cargo effectively and quickly; importers must supply a complete and accurate customs bill of entry; and, CEPS must process bills of entry as quickly as possible, minimize intervention for verification purposes, and release the goods for delivery.

As a general rule, the customs control portion of the total import process is approximately 30-40%. CEPS should not be considered in isolation in considering reforms that affect trade.

The Ghana clearance procedures are viewed as one of the most cumbersome found anywhere, indeed if not the most cumbersome. Ministries and agencies that should not be involved in the clearance process administer requirements on importers that border on harassment, with little or no regard for the effect of these requirements on trade. CEPS currently administers policies and procedures that were discarded years ago by other customs administrations. These policies and practices continue to burden trade in Ghana, and significantly add to costs. The complicated and bureaucratic processing of imports by CEPS and Ports and Harbors severely taxes port facilities without any material gain to the Government by way of increased revenues.

Rather, delays inherent in the process can lead to payment of “speed money” to expedite procedures. A comparison with Cote d’Ivoire for example reveals that containers are cleared in a day, or two at most, while in Ghana we speak in terms of weeks.

The recommendations in this report are designed to: eliminate outside interference by other agencies; reduce the opportunity for discretion by officials that can lead to corrupt activities; streamline the import process by reducing the number of steps; significantly reduce CEPS intervention; and, streamline and rearrange CEPS work flow into a system that can position CEPS to eventually meet the accepted standard for an import process.

#### **4.1 Tema**

A review at Tema has determined that before presenting the bill of entry to CEPS, the importer/agent must present it to Ministry of Trade and Industry (MOTI) personnel. Importers are required to provide a photocopy in addition to the copy already designated for the Ministry of Trade and Industry. Including the photocopy, 12 copies are prepared. The international norm is 5. After checking in one office for the CRF and supporting documents, the bill of entry is endorsed by another officer.

The statistics gathered through this function are already supplied through a final copy of the bill of entry. If values are uplifted or the Harmonized Code changes, the Ministry of Trade and Industry officials are not aware of the amendments, therefore the MOTI procedures are considered redundant. The copy of the final bill of entry should be sufficient for MOTI purposes since CEPS performs the same basic checks.

After MOTI, the importer/agent must visit the Ghana Shippers Council offices, another two stage affair. The importer/agent completes a Shipment Notification Form and attaches it to the bill of entry where CEPS eventually will detach it and distribute the copies. This step should be eliminated as CEPS should check it and distribute copies. A suggestion will be made later to combine this form with the CEPS release and the Ports and Harbors waybill that allows importers to remove shipments from the wharves. They all contain the same information.

After Ghana Shippers Council, the importer/agent moves to Internal Revenue Service (IRS) where the clearance certificate is verified. There was consensus that the Internal

Revenue officers should be situated at CEPS to provide a “one stop service” office and eliminate the practice of importer/agents being given possession of endorsed documents. All these organizations claim that they perform their duties quickly. At KIA, CEPS checks the clearance certificate, so there is inconsistency in the IRS operations.

With the best of intentions by the three agencies mentioned, the delays are cumulative and sometimes inflated due to the occasional need to wait for officials. Just the time taken to travel through the compound to the various offices significantly adds to clearance times and increases the number of agents or expeditors needed to pursue the documents.

The next step is the payment at the bank. This is a very busy spot, creating some delays simply due to the limited space for the tellers and clients. The bank has started an ATM procedure, which has helped since it is quite fast and avoids large amounts of cash. Although in the early stages, the ATM facility is becoming popular.

Paying before presentation of documents to CEPS can result in importers/agents having to return to pay additional duty and tax if errors are found. It is much more efficient for CEPS to process the bills of entry and require corrections before payment at the bank. An analysis of extra duty collected was not performed. However, discussions with bank personnel and CEPS officials reveals that less than less than 10% of importations are subject to extra duty assessment.

Obviously, about 90% of bills of entry are passed as declared by the importer. Revenue evasion, particularly on valuations under the US\$5,000 threshold must be significant but it is not indicated by the revenue collections. In view of the high CEPS examination rate of almost 100%, the effectiveness of those examinations and the valuation procedures must be seriously questioned. A comprehensive valuation and classification review of those importations is needed to determine compliance and the degree of shipment splitting by importers to avoid PSI.

Finally, bills of entry are presented to CEPS. The review has determined that CEPS is reasonably thorough. The CEPS area is very well controlled with no unauthorized access. However, CEPS would benefit from the consolidation of some operations, elimination of many of the registers and logs used to track documents. Elimination of redundancy and a change in document flow will speed processing significantly. An explanation of the proposed system is Appendix A.

There is no parallel to the Ghana clearance process with other countries. It is a complicated, tedious process that creates the opportunity for corrupt activities due to the number of steps involved. Over 60 by some accounts, when the activities of all agencies are considered.

It was also observed that agents are presenting bills of entry up to two weeks after the vessels arrive. Port practices will need to be reviewed to determine the cause, perhaps importers are using the port for temporary storage. The high error rate for bills of entry

presented by agents also causes delays for about one half of all importations and extra CEPS processing. This rate is extremely high and serves as an impediment to trade facilitation. The performance of agents is not monitored effectively.

The benefits of any future CEPS computerization improvement will be jeopardized by sloppy document preparation. The standards for agents should be increased and their performances monitored to ensure the quality of work is acceptable before a license is issued or renewed.

Import entries should be verified at time of initial lodgment for completeness and accuracy and should proceed directly to the tariff and valuation verification. Bills of entry that are not verified as being correct should still be allowed to proceed to the CRF verification and ASYCUDA data entry before being rejected. That way, the bills of entry would not be rejected at each stage thereby increasing everyone's workload needlessly. Eventually, only after the bill of entry has been verified and all fields are correct, should the duties and taxes should be paid at the bank.

The high error rate by agents is a significant problem for CEPS and causes double, and sometimes triple handling of documents and contributes significantly to overall delays and inefficiency. The standard of agent qualifications and performance should be raised by administering a strict licensing regime. Many countries have effectively implemented procedures to improve the standard of performance by agents.

In Ghana, the high number of agents and the fact that many are ex CEPS officials mitigates against early improvement in the situation. However, unless a concerted long term strategy is developed to solve the problem, any new computerized system that CEPS may choose will be jeopardized by sloppy document preparation. The recommendations refer to a proposed set of regulations governing clearing and forwarding agents. The draft is similar to conditions implemented elsewhere. Agents should be given a period of time to comply with the standards.

#### *4.1.1 Recommendations*

- Bills of Entry should be submitted directly to CEPS which will perform all necessary document checks, sort and forward copies of documents to MOTI and the Shippers Council. Neither party should endorse import documents nor be directly involved in processing bills of entry.
- The IRS function at Tema should be performed by CEPS during the vetting phase, or the IRS officials should be resident within CEPS so as to provide a "one stop" service to importers.
- CEPS and IRS should coordinate activities so that IRS officials operate consistently at ports of entry.

- The processing of bills of entry by CEPS should be organized according to Appendix A (Proposed Document Flow).
- CEPS should improve the quality of agent performance by administering a qualification process that measures knowledge and capacity to provide service.  
**Note: Model regulations on the licensing of agents is Appendix C.**

## 4.2 Standards of performance

CEPS needs to establish reasonable performance standards for processing import bills of entry. By creating standards that are monitored by management, CEPS will promote a culture of efficiency and consistency in the import process, and eventually reduce complaints. These standards should be reasonably close to the international norm and should be supported by a selective examination policy that contributes to a reduction of dwell time for goods at ports and airports without increasing the risk to revenues.

Adoption of the proposed document flow (Appendix A) is capable of monitoring performance, as the ASYCUDA system should report the time of data input. This permits managers to estimate compliance with the established time standards.

### 4.2.1 Recommendations

- CEPS should make administrative policy that error free bills of entry should be processed and the goods released by CEPS within one working day if no examination is required.
- If an examination is required, the goods should be examined and released with two working days of the presentation of an error free bill of entry.

## 4.3 Selective examination of goods

It is often perceived that revenue collection will suffer if customs does not inspect all goods entering the country. In fact, with properly orchestrated selective inspections, revenue collection increases, as does trade facilitation. The analysis of 100% examination practices reveals that in reality all of the shipments or containers may be opened, but the degree of scrutiny varies considerably, sometimes as little as checking one box when a container is opened.

Virtually all customs administrations have successfully abandoned high examination rates in favor of a selective examination program without adding risk to revenues. In fact, fraud detection generally improves.

For example, a comprehensive container examination can take up to a day or more. It is impossible to do meaningful examinations on all shipments so the conclusion that a total examination policy is an effective deterrent to fraud is false. In the meantime, port equipment is needed to position containers, the handling gangs are organized and the importer and agent must organize their time to be present at the examination. This process takes a significant toll on trade.

This results in unnecessary container dwell times and inefficient use of CEPS resources. The port areas are taxed to the limit with an unnecessary number of containers that could have been handled more efficiently through expedited release. Ports and Harbors requires one full day, at least, to position all containers for CEPS examination.

CEPS has the opportunity to implement a more effective examination policy that will not jeopardize revenues, in fact probably increase them, and significantly reduce the costs to trade as a measure of trade facilitation. The concepts of enforcement and trade facilitation do not conflict. Good enforcement practices target high risk imports and expedite the clearance of low risk imports and legitimate trade.

It is the practice for CEPS to assign an examination to one officer at outdoor locations. This is probably brought about by the excessive number of shipments to be examined. It is extremely difficult for one officer to perform a meaningful examination, record information and watch for suspicious actions by handlers. This sort of examination is not very productive and can lead to collusion. The lack of effectiveness is reflected in the low number of extra duty collections by the bank.

Most customs administrations use the team approach, which is more thorough and reduces the opportunity for corrupt practices. These examinations are focused on the highest risk imports and are more comprehensive than the cursory level of scrutiny presently performed by CEPS for most imports.

The global customs community has concluded that a fewer number of intense examinations are more productive than trying to look at a little of every importation. A policy decision by CEPS to expedite, say 80% of trade by granting quick release will have no effect on CEPS revenue collection, since the vast majority of examinations are non-resultant anyway. CEPS would still be hard pressed to perform comprehensive examinations on the remaining 20% but such policy would be a good start towards a more realistic examination program.

**Note: Strict implementation of these policies should reduce the number of containers in the port at any given time by about 30%.**

#### *4.3.1 Recommendations*

- CEPS should immediately implement policy that a maximum examination rate of 20% will be administered at entry locations.

- The 20% examination rate will be controlled by targeting teams at long rooms created for that purpose. Bills of entry not selected for examination would receive expedited release. Appendix B describes the basics of targeting techniques, by commodity, routing of shipments, country of shipment and the compliance history of agents and importers.
- Outdoor operations will organize themselves into examination teams of at least three officers, one to verify records as the others examine goods. The objective is to perform more scrutiny on selected high risk shipments and increase the chances of uncovering offenses. The team approach will speed examinations that are performed.
- The performance of the examination teams should be monitored. By numbering the teams, the practice of the computer selecting individual officers to do examinations is avoided. Computer selection of officers is a good idea but numbering teams is easier to manage when officers are absent.

#### **4.4 KIA**

By their nature, airport operations are more streamlined than seaport operations. The premium cost of air freight, the speedy delivery and restricted facilities creates a sense of urgency for the clearance process. The CEPS operations at KIA are more efficient than at Tema. In fact, the Assistant Commissioner has proposed a streamlined processing system similar to the proposed flow in this report. However, it could go further and it is recommended that the proposed work flow in appendix A should be adopted at KIA along with the additional recommendations in the previous section.

The Ministry of Trade and Industry also intervenes at KIA, with the added burden that their offices are not at the airport which requires importers/agents to travel to a remote location for the MOTI processing. The IRS does not review the clearance certificates at KIA whereas officials are directly involved at Tema .

##### *4.4.1 Recommendation*

- The recommendations of section 4.3.1 should apply to KIA as well as Tema. The intrusion of MOTI officials in the import process should be terminated

## **5. REVIEW OF BONDED WAREHOUSE AND FREE TRADE ZONE REGIMES**

## 5.1 Bonded warehouses

The Customs, Excise and Preventive Service Law, 1993 (Part VII, Sections 123 through 152) and Departmental Instructions 1984 (Part 5, Section A, paras. 1 through 56) govern the bonded warehouse regime. The provisions are detailed and reasonably meet the standard for exercising adequate control. The regime relies on physical control of warehouses by customs staff and a cumbersome manual process of recording transactions in registers as a means of inventory control. Today's increased volume of transactions was probably not anticipated when this law was drafted.

CEPS records keeping for bonded warehouse files is computerized at Tema and appears to be an effective system, but is barely adequate at James Town where a manual system is used for over 200 bonded warehouses. Significant problems have occurred in the control of bonded goods arriving at Tema and transferred to James Town. CEPS is considering new procedures to solve this problem, but the root cause is poor communication.

For example, facsimile machines are relied upon to transmit important information to destination in order to control goods moving into warehouse. However, only one machine is installed at each location, and it is in the Assistant Commissioner's office. The one at Tema was out of order at the time of this review. Proposed new control measures will still rely on the facsimile machine for the final alert to destination. More machines are urgently needed at all operational locations, and backup machines should be supplied in case of breakdown.

For some reason, duty free goods are entered into warehouse. This aspect should be reviewed to determine the reason for such activity.

Security must be posted for movements to warehouse and from warehouse in the case of transfers or export. There is also explicit requirement for security to protect revenues while goods are in warehouse, and an appendix to the Instructions provides a sample security bond. However, the wording of the bond, as well as the wording of bonds on file do not conform to the sample, and definitely *do not* secure the Government revenues. Surety companies virtually have no liability for revenue in the present circumstances.

CEPS cannot rely on the security on file to protect revenues and instead relies heavily on physical control through convoy of goods to warehouse and checking by officers on site. In the event goods do not arrive in warehouse or are illegally removed, the ability of CEPS to recover revenue is not very good. The familiarity of CEPS officers and importers at the warehouses can result in falsification of reports to show that goods were received when they were, in fact, diverted.

Loss of control of bonded goods moving to warehouse prompted CEPS to impose additional controls. The procedures require that all importers who want to store imported goods in bonded warehouse, must apply to CEPS HQ for permission to do so. This adds up to five (5) days, or more, to dwell time for goods at CEPS release points until the authorization letter is received CEPS HQ. The letter does not add control when manual

bonded warehouse files can be manipulated. The James Town bonded warehouse problems will not be solved until all files are computerized, with direct input at Tema to avoid the manifest control problems that exist between the two offices.

The CEPS Law provides for penalties in case of offenses by warehouse operators. However, the penalties are woefully inadequate, at C5,000 for most offenses. Realistically, the those penalties should be increased to about C100,000 and others increased proportionately to provide for an appropriate deterrent. Section 136 provides penalty of an amount not exceeding three times the duty plus the duty evaded with respect to unlawful removals from bonded warehouse. The three times duty penalty is appropriate.

However, the discretion clause “ not exceeding” allows officials to subjectively reduce the penalty. The clause should be removed. A consistent, non-discretionary penalty should be enforced with a right of appeal. The more discretion that can be eliminated from operational procedures, the more level the playing field will be for trade, and the less opportunity for corrupt activities as a result of the increased visibility.

The Departmental Instructions (Part 5, Section A, para. 9) describe goods which *may not* be warehoused. This list is not very extensive and should be updated to include commodities that do not lend themselves to control, such as automobile spares, machinery spares, cosmetics, clothing, confectioneries and office supplies. Although, an administrative directive reduced the time of warehousing from two (2) years to one (1), the directive has no legal basis and CEPS cannot force compliance. The CEPS Law needs to incorporate the change through amendment or redrafting of the law.

The Departmental Instructions 1984 still reference the Customs Code 1972, not the CEPS Law, 1993 so, at a minimum Departmental Instructions need updating to reference the most recent Law.

#### *5.1.1 Recommendations*

- The initiative to computerize James Town bonded warehouse files should be an immediate priority by inputting all manual data files as soon as possible. The Tema LAN system should be directly linked to James Town to provide immediate advice on shipments destined to bonded warehouses under James Town jurisdiction and the warehousing entry data can be entered at Tema to avoid control problems associated with the transit to James Town.
- The requirement to obtain a letter of authority to move goods to bonded warehouse should be rescinded. Importers should be advised to ensure that private bonded warehouses are prepared to receive their goods before lodging the bill of entry identifying a specific bonded warehouse as the destination.

- CEPS should consider raising the amounts of penalties for negligence and consider making all penalties for fraud non-discretionary. Since these are provisions in law, the CEPS Law would need amendment, or a new law should be drafted. The law should not include reference to specific financial penalties since currency fluctuations have a direct impact on the deterrent intended. Rather, penalties should be included in Regulations or Instructions which are easier to amend.
- CEPS should ensure facsimile machines are provide all key operational locations along with a backup machine in the event of breakdown.
- CEPS should look into the warehousing and ex-warehousing of duty free goods.
- An amendment or a new CEPS Law should reduce time in bonded warehouse to one year.

**Note: The number of bonded warehouses should be reduced. The following recommendations would achieve the desired result and improve control.**

- The list of goods that may not be warehoused should be examined by CEPS with a view to extending the list to goods which are perishable or which do not lend themselves to control, such as cosmetics; consumable goods, such as confectioneries and office supplies since very small lots of numerous articles are involved; clothing, since the values of individual pieces vary so much; and, automobile or machinery spares, which are numerous and difficult to control.
- A security bond format should be developed with help from Government lawyers. The bond should completely secure the Government and provide for immediate payment on demand by the Commissioner.
- The practice of accepting surety company bonds or insurance company bonds should be discontinued in favor of bank bonds. *Banks are more restrictive in securing commercial enterprises and consider the reputation and solvency of applicants. They will not secure a high risk applicant, which works to CEPS advantage.*

### **Recommendations with respect to Controls**

- The Commissioner should consider creating an elite audit team of very experienced officers that will select and audit high risk bonded warehouses unannounced. The team should be fully equipped to perform the duties to send a

signal to unscrupulous operators that abuse will be met with strong sanctions up to and including cancellation of licenses.

- Offenses should be dealt with severely by applying the high range of penalties to signal that CEPS is serious about curtailing bonded warehouse fraud.

The recommendation to restrict bonds to bank securities will generate a considerable outcry from traders who cannot qualify to the bank standard. If banks do not want to take the risk neither should CEPS. These measures should constrict the number of bonded warehouses and reduce revenue risk.

## **5.2 Administration of the Free Trade Zone Act**

The review of the CEPS bonded warehouse program has implications for the administration of the Free Trade Zone Act. In turn, the administration of the Free Trade Zone Act has resulted in the approval of enterprises that more resemble bonded warehouses, but which receive the tax incentives of the Free Trade Zone Act. The potential for impact on the Internal Revenue Service tax base warrants examination by the Government.

The intent of the Free Trade Zone Act needs to be rationalized. The internationally accepted motivation for Free Trade Zones and Export Processing Zones is the creation of export trade and local employment through new investment by generating production for export that is differentiated from existing manufacturing and trade regimes. A review of the CEPS bonded warehouse regime reveals a distinct overlap with the licenses issued under the Free Trade Zone Act. The blurring of the distinction between the two regimes may give rise to manipulation of the Free Trade Zone Act which could erode the Internal Revenue tax base without generating the additional manufacturing for export and new employment benefits intended by the Act.

It is observed that about 75 free zone licenses are active. These single factory enterprises are not within the usual Free Trade Zone areas administered by other countries, but rather, individually licensed warehouses scattered throughout industrial areas. Only about 25% of these enterprises are actually producing goods for export, while several have converted their operations from manufacturing under bond to free zone enterprise licenses.

The remaining 75% of the enterprises are traders importing finished goods of all sorts including foodstuffs, confectioneries, electronics, liquor and cigarettes among others. Virtually no further processing or manufacturing occurs. These importations do not meet the intent of “production for export” in the sense intended for Free Trade Zones. The practice of licensing enterprises as single factory zones further blurs the distinction between them and bonded warehouses since warehouses approved pursuant to the two regimes are located close to each other in many cases.

The controls on free zone enterprises are no doubt even weaker than the problematic bonded warehouse controls. Traders operating as free zone enterprises can avoid measures taken by the Commissioner of CEPS to tighten the bonded warehouse regime, thereby creating yet another potential avenue for revenue leakage. The sale of goods from the free zone enterprises to the national customs territory is also a concern. The application of CEPS controls to ensure the revenue is collected appear very weak since controls rely on the performance of the CEPS officer on site. Collusion to delay or avoid revenue payment altogether should be a concern of CEPS.

### 5.3 Analysis of the Free Trade Zone Act

A review of the Free Trade Zone Act reveals that, either it is not clear on the intent of the law, or the administration is being liberally interpreted. Therefore, administration provides considerable discretion to officials for the approval of free zone licenses. There is no opportunity for oversight by the Ministry of Finance, nor the tax administrations, so that revenue implications and operational aspects may be considered before a license is granted.

For example, subsection 13(1) specifies that “a free zone enterprise shall have the right to *produce* any type of goods and services *for export*”. This implies that the intent of the authority is the production of goods for export.

However, paragraph 13(2)(a) is vague as to the activities that may be performed by the free zone enterprise. Subsection 13(1) states “A free zone enterprise shall have the right to *produce* any type of goods and services for export etc.” Subsection 13(2), and paragraph (a) state “A free zone enterprise shall be free to: (a) store, warehouse, pack, unpack and re-pack, divide, sub-divide, group etc.” The question arises as to whether these individual activities are considered separate and distinct production activities pursuant to the Act.

It can be argued that the section is crafted in such a manner that the function “store” is a free zone activity rather than a component of the manufacturing process. The law could have been more appropriately worded to say, “manufacturing for export includes the following activities”, etc. That is, of course, if the intent of the Free Trade Zone Act is to limit license approvals to those enterprises actually manufacturing for export.

Unfortunately, the terms *trade*, *business*, *industry* and importantly, *produce for export* are also not defined in the Act. Administration of the Act is not helped by Section 21. The Section states that “the laws for the time being in force relating to the importation and exportation of goods and services other than *consumer goods* for commercial purposes shall not apply etc.” This seems to exclude traders of finished goods from free zone approval. However, such approvals are indeed occurring.

The Free Zone Regulations incorporate separate license applications for; *manufacturing* (FZB Form 4); *commercial* (FZB Form 5); and, *service* (FZB Form 6). There are no

definitions for these activities to accurately identify those activities which may be performed under license.

The relationship between bonded warehouses and free zone enterprises gives rise for concern with the provision of Section 23, subsection (1) which authorizes the sale of up to 30% of the *annual production* to the national customs territory. This seems to exclude the traders in finished goods once again, but in practice they are not excluded once they acquire a license. The diversion allowance of 30% is quite excessive by international standards in relation to Free Trade Zone operations.

Regulations usually permit such diversions only in extenuating circumstances, since domestic manufacturers may suffer a competitive disadvantage. On the other hand, traders of finished goods with free zone licenses may divert 30% to the domestic market with a tax advantage over other importers who are not licensed by the Free Trade Zone Board. It is only a matter of time before these disparities give rise to private sector complaints.

The following section is potentially troublesome as well. Section 24, subsection (1) provides that “sales of goods from a domestic enterprise from the national customs territory to enterprises in the free zone and single-factory zone shall be considered as exports”. According to this provision, goods may be transferred from a bonded warehouse to the free zone enterprise that is subject to fewer controls.

The question arises whether reverse sales or transfers to bonded warehouses are considered part of the 30% limitation. If not, traders may “launder” free goods through the bonded warehouse regime while enjoying the incentives pursuant to the Free Trade Zone Act.

Section 26, subsection (2) should be of concern to the Minister of Finance and Commissioner of CEPS. It provides that the Minister of Trade and Industry may make any regulations relating to customs procedures *after consultation*. This implies that the Minister may make such regulations without the concurrence of the Minister of Finance or the Commissioner. While that probably would not happen, the wording could create a situation for a double standard in the sanctions applied to importers depending on the regime.

#### **5.4 Implications for Free Trade Zone activities**

- Bonded warehouse operators that are traders may structure their activities to meet the 30% diversion restriction and convert to free zone enterprises to obtain tax incentives.
- The principles of bonded warehouse firms may start free trade enterprises to obtain tax incentives without creating any new investment or employment for Ghana.

- The effectiveness of MOTI controls with respect to controlling the 30% “restriction” and the control of imported inventories should be independently evaluated.
- There is no provision for free zone enterprises to post security for uncustomed goods within the enterprise. The Government is not secured against illegal diversions.

#### 5.4.1 Recommendations

- The Free Trade Zone regime should be evaluated to determine if the new investment and employment benefits anticipated by the Government have been realized. The effects of the “tax holiday” associated with the regime should be considered. If the Auditor General staff have the capacity to perform such a review, they should be requested to do so.
- The Free Trade Zone concept needs to be clarified with respect to the 30% diversion provision and the activities that may be performed by the enterprises. For example, is it the intention of the Government that traders in finished goods are eligible for free zone enterprise licenses under the Act.
- The principles of record for free zone enterprises and bonded warehouse operations should be reviewed and analyzed to determine if traders are simply converting bonded warehouse activities to free zone enterprises, or creating new companies to gain tax exemptions.
- The effectiveness of the MOTI controls and audit program should be individually evaluated for effectiveness, preferably by the Auditor General..
- The duty and taxes on uncustomed goods in free zone enterprises should be secured by bond posted with CEPS.

## 6. CONTROL OF IMPORTED GOODS (MANIFEST CONTROL)

The accurate reporting of goods is extremely important to the control of imported goods by CEPS. The report forms the basis of an accounts receivable for the Republic of Ghana. The information provided by shipping line, airlines and transport companies must be detailed and accurate. CEPS should insist on source documents, such as ocean bills of lading and airway bills, on which to establish computerized control. Subsection 97(1) of the CEPS Law states that the Commissioner may prescribe the form and manner of the report. However, the Departmental Instructions only refer to general consolidated manifests.

At the time the Instructions were written, Ghana was not facing the fraud threats of today. The general manifests report each importation on a line on the manifests ideally providing the names of the importer, exporter, bill of lading or airway bill number, description of goods, number of pieces and weights and measures. This information is the basis for ASYCUDA manifest control.

## 6.1 Weaknesses

Several weaknesses were observed:

- the general manifests lack sufficient information in many cases, sometimes omitting the names of the importers and exporters, and only providing a vague description of goods, i.e., general merchandise or commercial goods;
- there is no means of verifying the bill of lading number, it could be fictitious with the intent of evading CEPS altogether;
- there is no means of verifying the particulars against the bill of lading or airway bill containing the complete information. CEPS controls at KIA do, in fact, receive copies of the airway bills, so the controls are more effective than at Tema port, but that policy needs to be strengthened since some airlines are lax about it;
- there are amendments to the general manifest at Tema that change the conditions on the general manifest without a means of verifying the details against original documents;
- the first time CEPS sees the bills of lading is at the stage where the bill of entry is lodged. However, only one copy is received and may not be from the original set;
- if lines on the general manifest are not closed out by a bill of entry, it is not probable that the shipment can be traced and located from vague information; and
- consolidated shipments should be broken down into the various importers by house bills by the deconsolidator but that is not occurring.

In the present circumstances, manifest control at Tema is regarded as a good focus for improved procedures that can prevent the potential loss of revenue. The recommended measures to improve control are not difficult to accomplish and are operational in other customs administrations. The basis is the bill of lading or airway bill that is the contract between the shipper and the consignee. It is generally produced in set of about 12 copies by the shipping line, but there is always one copy in the international set specifically identified for customs (CEPS). However, CEPS is not receiving the copy.

In order to regain control, CEPS should demand that the customs copy of all bills of lading are attached to the general manifest. The CEPS manifest control unit should verify

each bill of lading against the lines on the general manifest to ensure all bills of lading have been received. When all lines are accounted for, the general manifest may be filed and the individual bills of lading become the input to the ASYCUDA manifest control system.

#### 6.1.1 Recommendations

- The Commissioner of CEPS should advise all shipping companies and airlines that the customs copies of bills of lading and airway bills shall be submitted with the general manifests.
- Deconsolidators should be required to submit customs copies of house bills immediately to cancel the prime document, the bill of lading or airway bill.
- The bill of lading and airway bill should be the basis for computerized (or manual) manifest control.
- CEPS should advise importers that a copy of the original set of the bill of lading and airway bill shall be submitted with the bill of entry for comparison purposes.
- Amendments to bills of lading or airway bills *should not* be accepted unless an amended original document is issued by the shipping line or airline.

## 7. COORDINATION OF CEPS AND PORTS AND HARBORS ACTIVITIES

It was not possible to undertake a detailed review of port operations, but some opportunity to streamline procedures was observed. As previously mentioned, the Shippers Council requires importers or their agents to complete a form called the Shipment Notification Form. The basic information is the same as that on bills of lading, bills of entry and the waybills prepared by Ports and Harbors that allow importers to collect and remove their goods.

International best practice provides for a port release order that is prepared by the importer or agent, giving the particulars of the shipment. It should be submitted with the bill of entry in sufficient copies so that CEPS can endorse the release and the Ports and Harbors Authority can use the form to collect charges and endorse a copy as authority to remove the goods. Coordination amongst the three interested parties could combine three forms into one to reduce the number of documents, preparation and the handling time for CEPS and the Ports and Harbors Authority.

The Ports and Harbors Authority should do everything possible to amalgamate functions into a “one stop” operation for importers.

## **7.1 Recommendations**

- CEPS, Ports and Harbors Authority and the Shippers Council should decide on one consolidated form that provides the required information for the three organizations. The form should be completed by the importer/agent and submitted with the bill of entry.
- The form should be used as the CEPS release, the Ports and Harbors release and the Shippers Council notification form. It should be produced in a set with enough copies to satisfy all parties
- Ports and Harbors should offer a one-stop service to importers by consolidating activities.

## **8. CEPS REFORMS**

This review has identified many opportunities to streamline CEPS operations and create better procedures and controls. Discretionary practices and weak controls jeopardize revenues. The recommendations in this report address the fundamentals of customs administration and should be considered a first step towards reforming CEPS and moving it closer to the international standard for customs administration. The recommendations to streamline the import process in particular will bring CEPS into line with international best practices, but only if all components are implemented. Picking and choosing which of the recommendations to adopt and which to dismiss will not achieve the desired results.

The World Customs Organization (WCO) is a valuable resource for determining international best practices, modern customs techniques and for training and development of customs officials. The WCO provides an advisory service to prepare Customs administrations for WTO implementation. CEPS has not fully benefited from the opportunities of WCO membership. Seldom do CEPS representatives attend important committee meetings, workshops or seminars at the WCO headquarters in Brussels where there is access to considerable information. CEPS should be more active in WCO activities and avail itself of the benefits of membership.

The ambitious Gateway Project is a significant opportunity for CEPS to accelerate reforms and achieve the international standard for customs administration. The Gateway Project objectives have provided a focus for this review and the recommendations are

intended to assist CEPS to meet the commitment to the Gateway Project. To achieve the Gateway objectives, CEPS will require further refinement of programs, elimination of redundancy and streamlining of operational procedures.

This review has concluded that organizational weakness in operational policy and systems development will mitigate against effective implementation of Gateway objectives by CEPS. The lack of access to international “best practices” and a lack of operational know-how will impede CEPS development in this regard.

Indeed, CEPS has the potential to significantly improve capacity through strong leadership and a good nucleus of motivated managers and officers, which augers well for the future. The experience of other customs administrations in successfully managing change should benefit Ghana.

One example could be the use of an internationally experienced customs expert to assist CEPS capacity building efforts by helping to develop modern systems and procedures and the drafting of law, regulations and instructions. In future, training on investigative and audit techniques will be an important feature of CEPS activities. As processes are relaxed in a selective approach to customs intervention, CEPS needs to employ modern investigative techniques and the imposition of sanctions as a deterrent to fraud.

## **8.1 Recommendations**

- CEPS needs an internal organization charged with the responsibility to analyze operational problems, consult with the private sector, Gateway and government officials on CEPS programs. The organization should have responsibility to design, recommend and implement systems and procedures based on modern practices.
- The Ministry of Finance, in cooperation with CEPS, should request the IMF to recruit and post a customs expert acceptable to the Government to Ghana for a period of at least one year to assist CEPS reforms and contribute to achieving Gateway Project objectives.
- CEPS should be more active in WCO activities by attending meetings of the committees on Valuation, Enforcement and Technique. CEPS should request the WCO to provide a listing of all training modules and training programs that are available.
- WCO fellowship programs are available, and funded, for customs officials of member countries. CEPS should inquire about the assignment of an experienced operational manager for the fellowship program. This official could determine the opportunities that exist at the WCO for Ghana to improve CEPS capacity.

## 1. PROPOSED DOCUMENT FLOW

The following steps form the recommended processing for bills of entry. This is consistent with processes found in other customs administrations.

1. Bills of entry shall be submitted directly to the face vetting operation for scrutiny of the documents, and bill of entry particulars. If there are errors the bill of entry *should not* be rejected at this stage.
2. Bills of entry are passed to the ASYCUDA room for PSI control that the information on the CRF has been applied properly. Non PSI imports will be checked for tariff and value at this stage.
3. Bills of entry that have been accepted at step 1 shall have the CRF particulars verified by the PSI computerized reconciliation procedure outlined in Options A or B, section 3.2 of the report. If the tariff classification shows a lower rate of duty than the CRF data, the valuation is lower than the CRF or, if the CRF submitted is fraudulent the bill of entry will be passed to CEPS management, and rejected or referred for investigation. Non PSI imports will be rejected to correct value or tariff information.
4. Once bills of entry are passed by step 3, they will be entered into the ASYCUDA system. In the event of errors, the documents will be rejected for correction.
5. Once a bill of entry is accepted by ASYCUDA, it is ready for payment. A copy of the ASYCUDA printout should be given to the importer to take to the bank for payment. The printout and bank receipt should be returned to the accounts officer who will pend the bills of entry until payment.
6. *After payment has been verified, the bills of entry will be referred to the selective targeting unit where 80% of the imports shall receive expedited release without examination. The 80% does not include free zone enterprises or diplomatic imports..*
7. The bills of entry are numbered and hologram sealed.
8. The bills of entry are split and sorted
9. The shipments designated for examination are sent to the Outdoor office

The Assistant Commissioner, Tema is considering stopping the manual cargo control procedure which is parallel to the computerized control. In the event that the manual procedure is continued, it should be performed off line from a copy of the bill of entry, *after* the documents have been processed.

## **2. FUNCTION RELOCATION**

All steps in the import process at Tema should be located on the ground floor at the Long Room.

Face vetting, and IRS if necessary, should be situated at the present counter location. The ASYCUDA room should contain the data processing activity, the valuation and tariff scrutiny, the PSI reconciliation, cargo control and bonded warehouse data input.

The accounts function should be located at the Long Room counter so that importers and agents may collect documents for bank payment, and the accounts officer holds the bills of entry files awaiting proof of payment.

The selective targeting function should be located next to the accounts, so that documents may move quickly and the numbering, sealing splitting and sorting activities should be organized in an orderly flow.

If there is insufficient space, the manual cargo control activity should move upstairs to the room presently used by the sealing and numbering officers.

## **3. ADVANTAGES**

- More effectively protects revenues.
- Extra duty payments are reduced.
- CEPS responsibility for processing time only starts once an acceptable document is lodged, rather than when revenue is paid which is the current practice.
- CEPS has better control over the bills of entry.
- The majority of the redundant registers can be discontinued.

## Appendix B

### SELECTIVE EXAMINATION

#### Basic Principles

The approach to selective targeting and risk analysis should be based on each transaction being assessed against clear and pre-defined criteria in order to exempt certain transactions from physical examination. In this document, the compliance history of the exporter and the importer are very important. The targeting function considers exporters, suppliers, importers, agents, commodities, and country of origin/supply and routing. However, there is no substitute for the first hand knowledge of CEPS officers about importers, agents and their habits. While random selections should be performed so as not to focus too narrowly, the normal factors used for assessing risk are as follows:

#### (a) Importers

The selection criteria for exemption from inspection will be the historical records built up over a long period in respect of individual importers. These historical records will consist of what is generated by the PSI companies. This information should be supplemented by CEPS experience with specific importers, and the results of CEPS examinations, offenses or informant information.

#### (b) Exporters

Some exporters supply traditionally poor invoices that are vague in describing the goods or in reporting values. Past CEPS experience with importers with bad habits should be a basis for selective examination, since the tendency for the exporter to collude with importers is strong

#### (c) Category of Goods

It will be necessary to concentrate examination on certain categories of goods that are prone to abusive practices with respect to either quality or price (such as pharmaceuticals and capital goods). The risk criteria should be developed jointly with the PSI companies who have some experience in this regard. Generally, high duty rate goods are the most prone to under valuation, false description or enclosed. CEPS targeting teams should develop profiles of the highest risk imports and importers.

#### (d) Country of Origin/Supply

It may be necessary to influence the risk analysis towards certain goods where the country of origin or supply has a record of supplying false values, counterfeit or inferior quality products or where the dumping of products is practiced.

(e) Routing of Shipments

The routing of shipments can often provide an indicator of the of fraudulent practices. Transshipment can be a clue to the misrepresentation of the origin of goods. Be on the lookout for “paper” transshipment through COMESA countries to obtain a beneficial tariff rate when the goods were never cleared into the country, but an invoice is created. Check the shipping documents for the point of original shipment.

(f) Manifest Information

Information on bills of lading or airway bills can provide indications of false declarations. For example, the cost of insurance could indicate that the true value of the goods is higher than declared. The weight of the shipment sometimes does not match the value or type of commodity declared.

## Appendix C

### CUSTOMS CLEARING AND FORWARDING AGENTS LICENSING REGULATIONS

1. These Regulations may be cited as the customs clearing and forwarding agents licensing Regulations.

#### Interpretation

2. In these Regulations,

"Law" means the Customs, Excise and Preventive Service Law, 1993;

"chief officer of customs", with respect to a customs clearing and forwarding agent, means the manager of a local customs office or customs station that serves the area in which the clearing and forwarding agent transacts business, or proposes to transact business;

"license" means a license to transact business as a customs clearing and forwarding agent authorized to have a license issued pursuant to Section -- of the Law.

#### Prescribed Qualifications for Customs Clearing and Forwarding Agents

3. (1) An individual is qualified under these Regulations if the individual:
- (a) is a citizen or permanent resident of The Republic of Ghana;
  - (b) is of good character, and at least twenty one (21) years of age;
  - (c) has sufficient financial resources to conduct his business in a responsible manner; and
  - (d) has a sufficient knowledge of the laws and procedures relating to importation's and exportation's determined in accordance with Section 4 of these regulations.
- (2) A partnership is qualified under these Regulations if the partnership:
- (a) in the case of a partnership composed of individuals:
    - (i) is composed of individuals each of whom meets the qualifications prescribed in paragraphs (1)(a) to (c);
    - (ii) has sufficient financial resources to conduct its business in a responsible manner; and

(iii) has at least one partner who has a sufficient knowledge of the laws and procedures relating to importation's and exportation's, determined in accordance with Section 4 of these regulations; and

(3) A corporation is qualified under these Regulations if:

(a) the corporation:

(i) is incorporated in The Republic of Ghana;

(ii) is of good reputation; and

(iii) has sufficient financial resources to conduct its business in a responsible manner.

(b) all of the directors of the corporation are of good character;

(c) a majority of the directors of the corporation are citizens or permanent residents of The Republic of Ghana; and

determined (d) at least one officer of the corporation has a sufficient knowledge of the laws and procedures relating to importation's and exportations, in accordance with Section 4.

4. (1) Subject to subsection (2), a sufficient knowledge of the laws and procedures relating to importation's and exportation's is established, for the purposes of these regulations if the individual, partner or officer has:

(a) first attained a grade of at least 60 per cent on the customs clearing and forwarding agents qualifying examination given pursuant to Section 15; and

(b) attained a grade of at least 60 per cent on the customs clearing and forwarding agents professional examination pursuant to Section 15, if:

(i) the examination was written not more than six months before the date of the application for a license, or

(ii) where the examination was written more than six months before the date of the application for a license, the individual, partner or officer transacted business as a customs clearing and forwarding agent, whether on his own behalf or on behalf of a licensee, from within six months after the date on which the examination was written until not more than six months before the date of the application for a license.

(2) For the purposes of these Regulations, a sufficient knowledge of the laws and procedures relating to importation's and exportation's is established, if the individual, partner or officer:

and (a) prior to the coming into force of these Regulations, met the requirement under the custom clearing and forwarding agents Licensing Regulations of having a sufficient knowledge of the law relating to customs matters to discharge the obligations of a customs clearing forwarding agent; and

(b) transacted business as a customs clearing and forwarding agent, whether on his own behalf or on behalf of a person to whom a license was issued.

**Prescribed Qualifications for Persons Transacting Business as Customs Clearing and Forwarding Agents on Behalf of Persons so Licensed**

5. (1) An individual who is not a licensed customs clearing and forwarding agent who transacts business as a customs clearing and forwarding agent on behalf of an individual who is a licensed customs clearing and forwarding agent must be an employee of the licensed customs clearing and forwarding agent, and

(a) meet the qualifications prescribed in paragraphs 3(1)(a) to (c); and

(b) have a sufficient knowledge of the laws and procedures relating to importation's and exportation's, determined in accordance with Section 6.

(2) An individual who is not a licensed customs clearing and forwarding agent who transacts business as a customs clearing and forwarding agent on behalf of a partnership composed of individuals that is a licensed customs clearing and forwarding agent must be:

(a) a partner of the partnership and

(i) meet the qualifications prescribed in paragraphs 3(1)(a) to (c); and

relating (ii) have a sufficient knowledge of the laws and procedures to importation's and exportation's, determined in accordance with Section 4; or

(b) a partner or an employee of the partnership, and

(i) meet the qualifications prescribed in paragraphs 3(1)(a) to (c); and

(ii) have sufficient knowledge of the laws and procedures relating to importation's and exportation's determined in accordance with Section 6.

(4) An individual who is not a licensed customs clearing and forwarding agent who transacts business as a customs clearing and forwarding agent on behalf of a corporation that is a licensed customs clearing and forwarding agent must be:

(a) an officer of the corporation; and

(i) meet the qualifications prescribed in paragraphs 3(1)(a) to (c); and

relating  
accordance with (ii) have a sufficient knowledge of the laws and procedures to importation's and exportation's, determined in Section 4; or

(b) an employee of the corporation ;and

(i) meet the qualifications prescribed in paragraphs 3(1)(a) to (c); and

relating  
accordance with (ii) have a sufficient knowledge of the laws and procedures to importation's and exportation's determined in Section 6.

6. For the purposes of paragraphs 5(1)(b), (2)(b), (3)(b) and (4)(b), an individual has a sufficient knowledge of the laws and procedures relating to importation's and exportation's if the person:

(a) attained a grade of at least 60 per cent on the Customs Clearing and forwarding agents Qualifying examination given pursuant to Section 15;

(b) meets the knowledge requirement determined in accordance with subsection 4(2); or

(c) establishes that:

(i) prior to the coming into force of these Regulations, he had successfully passed a qualifying examination for Customs clearing and forwarding agents; and

(ii) has been continuously employed since passing the examination referred to in subparagraph (i) in the transaction of business

as a  
person to  
Law.

customs clearing and forwarding agent on behalf of a  
whom a license was issued under Section --- of the

### **Application for License or Renewal**

7. An application for a license must be made in the prescribed form and be submitted in duplicate to the chief officer of customs for the area in which the applicant proposes to transact business as a customs clearing and forwarding agent.

8. (1) On receipt of an application for a license and before a license is issued, the chief officer of customs to whom the application is made shall display, for a period of two weeks in the customs office, a public notice of the application, setting out:

(a) where the applicant is an individual, the applicant's full name and address and the business name to be used;

(b) where the applicant is a partnership composed of individuals;

(i) the full name and address of each partner;

(ii) the name of each partner who meets the knowledge requirement determined in accordance with Section 4; and

(iii) the business name to be used;

(c) where the applicant is a corporation:

(i) the legal name of the corporation;

(ii) the head office address of the corporation;

(iii) the name and address of each officer or director;

(iv) the name of each officer or director who meets the knowledge requirement determined in accordance with Section 4; and

(v) the business name to be used if other than the legal name of the corporation;

(d) the name of the individual who will manage each business office;

(e) the name of each individual who will transact business on a full-time basis as a customs clearing and forwarding agent at a business office

maintained in the area served by that customs office and meets the knowledge requirement determined in accordance with Section 6; and

(f) in respect of each individual referred to in paragraph (e), the business office of the applicant at which the individual will transact business.

(2) The notice referred to in subsection (1) shall invite written comments or information from the public regarding the application.

9. An application for the renewal of a license must be made in the prescribed form and must be submitted in duplicate to the chief officer of customs at the customs office located at the place specified in the license not later than 30 days preceding the day on which the license will expire.

### **Security**

10. (1) Before authority for a license is issued or renewed, the customs clearing and forwarding agent shall, in respect of the license to be issued or renewed, deposit security with the CEPS in the amount of C1,000,000 (example) to protect the CEPS against loss while the license or renewal thereof is in effect.

(2) The security deposited under subsection (1) shall be in the form of:

(a) cash;

(b) a certified cheque;

(c) a transferable bond issued by the Government of The Republic of Ghana; or

(d) a bond issued by

(i) a company that is registered and holds a certificate of registry to carry on the fidelity or surety class of insurance business and that is approved by the Republic of Ghana as a company whose bonds may be accepted by the Government of The Republic of Ghana, or

(ii) a bank.

11. (1) A fee of C 500,000 (example) must be paid to the chief customs officer at each customs office where the customs clearing and forwarding agent will conduct business before a license is issued.

(2) A renewal fee of C250,000 (example) must be paid before a license is renewed.

## **Duration**

12. A license, including a license that has been renewed, expires on the 31st day of December next following the date on which the license or its renewal is expressed to be effective.

## **Terms and Conditions**

13. (1) Subject to subsection (2), a license authorizes the holder to transact business as a customs clearing and forwarding agent:
  - (a) at the customs office specified in the license, if the holder maintains at least one business office in the area served by that customs office;
  - (b) at any customs office located at a place set out in the schedule; and
  - (c) at any other customs office, through a qualified customs clearing and forwarding agent whose license specifies that customs office, if the business originates within the area referred to in paragraph (a).
- (2) A license only authorizes the transaction of business as a customs clearing and forwarding agent at a business office referred to in paragraph (1)(a) if at least one individual who transacts business on a full-time basis as a customs clearing and forwarding agent at the business office meets the knowledge requirement determined in accordance with Section 4, if the individual transacts business on his own behalf, or in accordance with Section 6, if the individual transacts business on behalf of another person.

## **Transaction of Business as a Customs Clearing and Forwarding Agent**

14. Every customs clearing and forwarding agent shall:
  - (a) display prominently at each business office at which he transacts business as a customs clearing and forwarding agent:
    - (i) where the customs clearing and forwarding agent is a partnership or a corporation, a sign bearing the name under which the partnership or corporation is authorized to transact business as a customs clearing and forwarding agent; and
    - (ii) the license or a copy thereof;
  - (b) immediately notify in writing the chief officer of customs of change:
    - (i) in the address of a business office at which he transacts business as a customs clearing and forwarding agent;

(ii) in the legal or business name of the partnership or the corporation, where the customs clearing and forwarding agent is a partnership or a corporation;

(iii) in the membership of the partnership, where the customs clearing and forwarding agent is a partnership;

(iv) in the officers or directors of the corporation, where the customs clearing and forwarding agent is a corporation;

(v) of a manager of a business office;

(vi) in the ownership of the business or corporation, where the customs clearing and forwarding agent is an individual or corporation; and

(vii) in the individuals meeting the knowledge requirement determined in accordance with Section 4 who are employed on a full-time basis by the holder of the license;

(c) furnish to the importer or exporter in respect of each transaction made on his behalf a copy of the customs accounting documents pertaining thereto, bearing the customs accounting number and official customs stamp; and

(d) promptly account to a client importer or exporter for funds received:

(i) for the client from the Republic of Ghana; and

(ii) from the client in excess of the duties or other charges payable in respect of the client's business with the CEPS.

### **Examinations**

15. (1) The customs clearing and forwarding agents professional examination and the customs clearing and forwarding agents qualifying examination shall be given at least twice a year at such times as the Minister or a person designated by him for the purposes of these regulations may direct.

(2) Notice of the time and place of an examination shall be posted in the office of the chief officer of customs and shall be mailed to all individuals who have expressed an interest in taking the examination, not less than 60 days prior to the date set for the examination.

16. Every individual proposing to write an examination must:

the date (a) file an application therefor in the prescribed form with the chief officer of customs at the nearest customs office at least 30 days prior to set for the examination; and

(b) at the time the application is made, pay a fee of:

(i) C50,000, in the case of the customs clearing and forwarding agents professional examination, or

(ii) C25,000, in the case of the customs clearing and forwarding agents qualifying examination.

### **Records**

17. (1) Every customs clearing and forwarding agent shall keep:

agent; (a) records and books of account indicating all financial transactions made while transacting business as a customs clearing and forwarding agent;

(b) a copy of each customs accounting document made while transacting business as a customs clearing and forwarding agent and copies of all supporting documents as prescribed by the Minister by regulation;

(c) copies of all correspondence, bills, accounts, statements and other papers received or prepared by him that relate to the transaction of business as a customs clearing and forwarding agent; and

(d) separately, all of the records, books of account and copies of transactions referred to in paragraphs (a) to (c) relating to business transacted pursuant to paragraph 13(1)(c).

(2) Every customs clearing and forwarding agent shall retain the records, books of account and copies mentioned in paragraphs (1)(a) to (d) for a period of ten years from the end of the calendar year:

(a) in respect of which the records and books of account are kept;

(b) in which the customs accounting document is made; or

papers (c) in which the correspondence, bills, accounts, statements or other were received or prepared by the Customs clearing and forwarding agent.

### **Cancellation or Suspension**

18. (1) The Minister or a person designated by the Minister for the purposes of these regulations may suspend or cancel the license of a Customs clearing and forwarding agent if the Customs clearing and forwarding agent:
- (a) contravened the provisions of the Law or a regulation made thereunder relating to the importation or exportation of goods;
  - (b) acted to defraud the CEPS or a client;
  - (c) suggested a plan for the evasion of any duties or other debts due to the CEPS in right of The Republic of Ghana that involves the contravention of the provisions of the Law a regulation made thereunder;
  - (d) failed to comply with these Regulations;
  - (e) becomes insolvent or bankrupt;
  - (f) engaged in any dishonest conduct while transacting business as a Customs clearing and forwarding agent;
  - (g) ceased to carry on business as a Customs clearing and forwarding agent or failed to carry out his duties and responsibilities as a Customs clearing and forwarding agent in a competent manner; or
  - (h) is no longer qualified under these Regulations;
  - (i) has been convicted of a criminal offense.
- (2) Before a license is canceled or suspended the Minister or a person designated by him for the purposes of these regulations shall cause to be given to the customs clearing and forwarding agent:
- (a) 30 days notice of the proposed cancellation or suspension;
  - (b) reasonable information concerning any allegations with respect to any of the grounds referred to in paragraphs (1)(a) to (h) on which the Minister proposes to cancel or suspend the license; and
  - (c) a reasonable opportunity to respond and make representations as to why the license should not be canceled or suspended.
- Surrender of License**
19. Every customs clearing and forwarding agent shall forthwith surrender his license to the chief officer of customs at the customs office specified in the license if:

- (a) the license has been canceled; or

(b) the customs clearing and forwarding agent has ceased to transact business as a customs clearing and forwarding agent.

### **Schedule**

20. List CEPS offices