



**Technical Report:**

The Role of stakeholders and Pre-conditions for the  
successful implementation of the WTO Valuation Agreement

**Ranga Munyaradzi, Customs Transit Specialist**

**March 2003**

**Submitted by:  
Chemonics International, Inc.**

**Submitted to:  
Regional Center for Southern Africa,  
U.S. Agency for International Development**

**Gaborone, Botswana**

**March 2003**

**USAID Contract No. 690-I-00-00-00149-00**



## **Introduction**

Mozambique was one of two SADC Countries that had not yet implemented the World Trade Organization (WTO) Customs Valuation Agreement as of 2002. The WTO had given Mozambique until January 2003 to implement the worldwide valuation system.

In 2002, the Mozambique Customs Administration approached the USAID/RCSA Southern Africa Global Competitiveness Hub (the “Hub”), based in Gaborone, Botswana, for technical assistance in the preparation and implementation of the WTO Valuation Agreement. As the Hub’s role is, amongst others, to assist in the facilitation of trade through modernization of Customs procedures, the request was accepted. A team from the Hub visited Mozambique in August 2002 to ascertain actual needs in this technical assistance program.

In November 2002, the Hub sent three Customs Experts to assist in the preparation of the new WTO Valuation legislation and train Mozambique Customs officers in the new valuation system. This was accomplished, and Mozambique gazetted the valuation legislation, which came into force on 1<sup>st</sup> January 2003. The Hub is happy that Mozambique has joined other members of the international community in implementing the new valuation system.

The Hub is also pleased to give further technical assistance, which has facilitated this workshop and those to be held in Beira and Nampula later this week. It is hoped that these workshops, which are aimed at private sector stakeholders, will result in better understanding and cooperation in the successful implementation of the new valuation system.

## **Role of stakeholders and pre-conditions for successful implementation of the WTO Valuation Agreement**

The new WTO Valuation Agreement, which has just been implemented in Mozambique, promotes predictability, certainty, transparency and fairness, and it creates a partnership between the Customs Department and its stakeholders, who are the importers and their clearing agents (brokers). For the new valuation system to work properly, the two partners must work together as a team and consult each other whenever possible. The cooperation of all stakeholders is therefore required in order to successfully implement the new valuation system.

In order to get the cooperation of these stakeholders in the implementation of the WTO Valuation Agreement, the following pre-conditions must be met: -

### ***Transparency***

The WTO Valuation Agreement calls for each Customs Administration to administer its laws, regulations, decisions and rulings in a uniform, transparent, impartial and reasonable manner. In addition, each contracting party must maintain or institute judicial,

arbitral or administrative tribunals or procedures for the prompt review and correction of administrative action relating to Customs matters.

The key provision in the WTO Valuation Agreement covering the concept of transparency is **Article 12**, which provides that laws, regulations, judicial decisions and administrative rulings which give effect to the Agreement shall be published in conformity with Article X of the GATT 1994.

**Article 11** of the WTO Valuation Agreement provides for the right of appeal without penalty against a Customs determination of value, either administratively or to a judicial authority. This guarantees an importer the opportunity to have any valuation dispute reviewed and decided by a party other than the original deciding official.

Customs' objective should be to make well-reasoned decisions that will not be subsequently overturned by the judicial system. Defending cases at Court is a very costly and time-consuming way to fix Customs mistakes. Customs officers must therefore possess a sufficient level of technical expertise so that logical defensive decisions are made in the first place. If the technical expertise is not present in the Customs Administration, poor decisions will be issued and Court cases will be lost, resulting in the importing public not having any faith in the Customs Administration's competence and capabilities.

### ***Training and Awareness***

Whilst there are many considerations to be addressed in implementing the WTO Valuation Agreement, the training and education in the context of the Valuation Agreement is an essential ingredient in order to achieve a smooth and successful implementation.

The stakeholders are responsible for the compilation of Customs entry details and the provisions of information on which the Customs Valuation officer would make initial clearance decisions. Training directed at this group should therefore be detailed within a realistic and commercially acceptable time frame.

To ensure total benefit for the Customs Administration, the stakeholders must fully be cognizant of not only the Valuation Agreement and regional legislation, but also of their obligations and rights within the new valuation system.

In addition to training, a precise information and consultation program is critical in facilitating implementation of the new valuation system. Where stakeholders have a greater awareness and understanding of the new valuation system, the major advantages for Customs will be a greater level of compliance from the stakeholders in commercial declarations on importation. Stakeholders will have become aware of the new system and procedures as a direct result of the public information sessions and consultation. Once they possess the necessary information about the valuation system, the onus is on them to comply with the requirements of the new law.

By providing an additional informal program, the Customs Department benefit by acknowledging the needs of smaller clients (e.g. one-off importers or informal traders as they are known in Mozambique Customs circles) who need only a basic level of awareness.

The Customs Department needs to work in close consultation especially with Clearing Agents, who are to the greatest extent, representatives of the larger importer client base. This should be an administrative priority. It will ensure a higher level of compliance. The relationship developed can also be of assistance in future policy consideration. Lack of compliance would result in non-expeditious release of cargo as a result of legitimate Customs queries, with market place ramifications, for example, delay in the availability of certain imported products.

### ***Consultations***

It has been laid down in the General Introductory Commentary of the Valuation Agreement that where the Customs value cannot be determined under the provisions of Article 1, there should normally be a process of consultation between the Customs Administration and the importer with a view to arriving at a basis of value under the provisions of Article 2 or 3. It may occur, for example, that the importer has the information about the Customs value of identical or similar imported goods, which are not immediately available to the Customs Administration in the port of importation. On the other hand, the Customs Administration may have information about the Customs value of identical or similar goods, which is not readily available to the importer. A process of consultation between the two parties will enable information to be exchanged, subject to the requirements of commercial confidentiality, with a view to determining a proper basis of value for Customs purposes.

### ***Post-importation verification***

Customs are required to facilitate trade and movement of goods through entry points, and in addition, to fulfill their statutory obligation of collecting revenue for the Government. In implementing this policy, it is essential that Customs adopt a system that ensure importations are processed with a minimum of delay or interference, but without compromising any of the regulatory requirements which Customs is charged with administering.

It is a known fact that some Importers and Clearing Agents only declare to Customs the information that is readily identifiable from the commercial invoice. In certain cases they do not disclose dutiable items enumerated in Article 8 of the WTO Valuation Agreement (Article 9 in the Mozambique legislation) such as insurance and freight. The significance of the finer points of Article 1 to 7 and Article 15 of the WTO Valuation Agreement sometimes do not register with Importers and Clearing Agents, whether there was/was not a sale for export, the question of price influence, royalty issues, Commissions etc. In such cases, Customs will detain the goods pending production of the required evidence of these dutiable items. This problem can take a long time to resolve, and in the meantime, the importer is denied his goods, which will be accumulating demurrage in warehouses.

The advent of post-clearance audit plus a degree of specialization associated with Risk Assessment and Management has drastically reduced Customs bureaucracy in these valuation matters. There are three Articles in the WTO Valuation Agreement, which support the concept of valuation verification post-entry: -

- **Article 13** describes circumstances where in the course of determining the value it becomes necessary to delay the final determination, the importer should be able to have the goods released from Customs by providing sufficient guarantee to cover ultimate payment of duty. Unless there are some particular compliance-based reason (suspect importer, suspect goods, deliberate under-valuation etc.) which means the goods cannot be released from Customs, Article 13 indicates that as a matter of policy, goods should not be stopped from being delivered because Customs and the importer are debating or arguing about the value.
- **Article 17** states that nothing in the Valuation Agreement shall be construed as restricting or calling into question the rights of Customs to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for Customs valuation purposes. Given this Article is not limited to goods within the immediate control of Customs; it is seen as not restraining compliance activity in a post-entry situation.
- **Article 11** provides the right for the importer to appeal a Customs determination of value to a judicial authority without penalty. This Article fosters the concept of an independent appeal authority in a post-entry environment. By their very nature, such appeal authorities take time to deliberate. To detain goods pending consideration of an appeal would compromise the facilitation goals most modern economies operate under.

If Customs adopt the post-clearance audit system, it will instill confidence with the importing fraternity, resulting in voluntary compliance and successful implementation of the new valuation system.

## **Conclusion**

From the foregoing, it is clear that for successful implementation of the WTO Valuation Agreement, there are some core elements. First there must be a well-trained Customs staff and private sector stakeholders, who understand not only Customs valuation but also the relationship of Customs valuation to other trade laws concerning imported goods. The Customs staff must have the necessary legal, analytical, and administrative support within its administration to perform its function. There must be a system of mutual consultation and transparency in all the transactions.

Finally, the public must have enough confidence in the implementation process to ensure its success. A valuation system, which promotes predictability, certainty, transparency and fairness, will go along way toward ensuring cooperation of importers.