



Chemonics International, Inc.
1133 20th Street, NW
Washington, DC 20036
Telephone: (202) 955-3300
Fax: (202) 955-7540

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Amendments to Customs Law #20 of 1998

By

Ben Irvin

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EXECUTIVE SUMMARY

The AMIR Program is assisting the Kingdom of Jordan in their quest to become a Member of the World Trade Organization (WTO). In preparing for accession, Jordan is making efforts to amend and adopt laws that will be in conformity with Agreements of the WTO.

An area of major concern to most WTO Member countries is an acceding country's Customs Law. The AMIR Program focused on amendments to the Jordanian Customs Law with the result that five WTO related areas were targeted for immediate attention. The identified areas are (1) customs valuation; (2) rules of origin; (3) border enforcement of intellectual property rights; (4) authority to collect and refund anti-dumping and countervailing duties (but not conduct investigations); and (5) conformity of Jordanian fees to GATT Article VIII.

Customs Law # 20 of 1988 took effect on 1 January 1999. However, the AMIR Program identified anomalies and omission in the law that needed to be revised for WTO conformity purposes. Much to their credit, the Customs Department formed a Customs Law Amendments Committee to work with the AMIR Program in drafting amendments to the Customs Law. An AMIR Customs Law team was created including an international customs law expert, a Jordanian customs specialist and a lawyer from the office of the legal advisor to AMIR. Excellent cooperation and rapport was established, and progress and positive results were accomplished.

In mid-August, the joint Jordanian Customs and AMIR team efforts resulted in draft amendments to the Customs Law. Specific language amending the five above-identified WTO related areas was finalized. Amendments to the Customs Law will be forwarded to the Parliament for approval.

A discussion of the five WTO areas is set forth in this Report. Draft language is contained Annexes to the Report.

Customs Law Amendments Project

I. Background

An acceding country's customs laws and regulations are of great interest and importance to WTO Working Party Groups and WTO Member countries. Since Jordan is in the "accession pipeline" towards WTO Membership, the Jordanian Government and the AMIR Program identified conformity of the Jordanian Customs Law to WTO requirements as a high priority.

In order to facilitate attaining the Jordanian Government's goal, a team of experts from the AMIR Program and the Jordanian Customs Department were assigned to the task. Annex A to this Final Report lists members of the Customs Law amendments team. The team met on a regular basis to identify areas in the Customs Law that needed amending, and to discuss specific and acceptable language changes. The Director General of the Customs Department should be commended for his selection and assignment of knowledgeable and experienced Jordanian Customs officials to this task.

The Customs Law Amendments Team identified five areas needing law changes to conform to WTO Agreements requirements. The five areas are: (1) customs valuation; (2) rules of origin; (3) border enforcement of intellectual property rights; (4) customs fees (GATT Article 8); and, (5) a provision for collecting and refunding anti-dumping and countervailing duties.

Each of the five areas will be briefly discussed and suggested draft amendments to the Customs Law will be set forth in the appropriate Annexes.

II. Customs Valuation

Law #20 of 1998 – Customs Law took effect on January 1, 1999. Articles 28 to 31 of the Customs Law contain the Jordanian legal provisions for valuing goods imported into the Kingdom. Although the Jordanian Customs Department performed a creditable job of aligning the valuation provisions (Articles 28 – 31) with the WTO Customs Valuation Agreement requirements, certain modifications and amendments were required.

- a. Article 28-paragraph (a) needed to be amended to align the Jordanian definition of transaction value of the imported goods with the Customs Valuation Agreement (CVA) definition of transaction value of imported goods.
- b. Article 28-paragraph c was amended to provide that the Department shall inform the importer, in writing, upon the latter's request, with the grounds for considering that the relationship influenced the price, and the importer shall be given a reasonable opportunity to respond.

- c. Article 28-paragraph d was amended by deleting a specific 90-day time period and inserting “goods sold for exportation to the Kingdom at or about the same time.”
- d. Article 28-paragraph e concerns “test value” and was amended by inserting the language that “such values shall only be used for the purposes of comparison and shall not be adopted as substitute values.”
- e. Article 28-paragraph f was amended by adding subparagraph 9 that reads “Considerations which may pass from the buyer to the seller in the form of specified goods or services, rather than in the form of money.”
- f. Article 28-paragraph h that concerned the authenticity of produced documents was amended by adding the phrase “and/or the information therein.”
- g. Article 28-paragraph i, concerning certain charges or costs that should not be included in the customs value, was amended by adding a subparagraph 4 that provided “Flow of dividends or other payments from the buyer to the seller that are not related to the imported goods.”
- h. Article 29 was amended by deleting the phrase “and subject to the Department’s approval.” This amendment removed the Department discretion when an importer requested application of deductive value or computed value. The WTO CVA permits the importer to choose whichever of these two valuation method he prefers
- i. Article 29-paragraph c, subparagraph 1 was amended by replacing the word and with or between commissions and profit and general expenses. The CVA permits the deduction from deductive value for commissions or profits and general expenses but not both.
- j. Article 29-paragraph d was amended by adding subparagraph 2 concerning computed value and information obtained outside the Kingdom. The insertion reads:

It is not required from any person not resident in the Kingdom to produce for examination, or to allow access to, any account or other record for the purposes of determining a computed value. However, the Department may verify information provided by the producer of the goods for the purposes of determining the customs value under the provisions of this Article in another country with the agreement of the producer and provided sufficient advance notice is given to the government of the country in question and that the government does not object to the investigation.

- k. Article 31 was amended by adding paragraph a that sets forth the seven prohibited methods for determining customs valuation, as specified in the CVA.

l. Article 31 was amended by adding a paragraph i which reads:

Other conditions and provisions necessary for the implementation of Articles 28 to 31 shall be determined according to instructions issued by the Minister.

m. Article 32 concerns the valuation of exports and is amended by adding paragraph b “other conditions and provisions necessary for the implementation of this Article shall be determined according to instructions issued.”

Annex B of this Report is the English language version of the amendments to Articles 28 to 32 of Law No. () for the Year 1999, A Law amending the Customs Law.

III. Rules of Origin

As stated previously, Law #20 – Customs Law took effect on January 1, 1999. Articles 24 to 26 of the Customs Law contain the Jordanian legal provisions for rules of origin, or the origin of goods. The Rules of Origin provisions in the current Jordanian Customs Law are inadequate and not in conformity with the WTO “Rules of Origin Agreement” or the World Customs Organization “Kyoto Convention” that contains a new annex (Annex K) dealing with Rules of Origin.

Significant changes were recommended to Articles 24 to 26 of the Customs Law.

Article 24 A sets forth the principle of origin based on goods wholly produced or obtained from materials originating in that country. The “wholly produced or obtained” criteria was aligned with the new Kyoto Convention Annex K language.

Article 24 B sets forth the principle of “substantial transformation.” That is where goods by more than one country shall be considered of the origin where the last substantial transformation occurred, transformation was considered substantial in the following situations:

- a. A shift in tariff classification for goods, at the 6-digit level;
- b. When the value added amounts to at least 40 percent of the value of the good, at the ex-factory level; and
- c. A combination of both of the above-mentioned criterion when one of them fails to apply.

Article 25 A sets forth a description of operations or processes which do not confer origin.

Article 25 B sets forth provisions wherein a concerned party, upon written request, made ask the Customs Department for a determination of the origin of goods imported into the Kingdom.

Annex C of this Report is the English language version of the amendments to Articles 24 to 26 of the current Customs Law, and when enacted shall be called Law No. () for the Year 1999, A Law Amending the Customs Law.

IV. Border Enforcement of Intellectual Property Rights

Law # 20 of 1998 – Customs Law took effect on January 1, 1999. Article 41 of the Customs Law contains the Jordanian legal provision of the so-called “border enforcement of intellectual property rights. The current Article 41 is not sufficiently clear as to the role and responsibility of the Customs department in administering this authority.

For these reasons, Article 41 of the original Law shall be repealed and replaced with the following provisions:

Article 41:

- a. The importation or exportation of goods infringing the intellectual property rights provided for in the related Laws and Regulations shall not be permitted;
- b. The Department, upon request from the competent authority, shall withhold the customs clearance procedures and seize the imported or exported goods suspected to be in violation of the intellectual property rights provided for in the related Laws and regulations:
- c. The Department may, upon its own initiative, withhold the customs clearance procedures and seize imported or exported goods, when it is demonstrated to its satisfaction based on *prima facie* evidence that such goods are infringing the following intellectual property rights:
 1. copyrights, without the related rights; and
 2. trademarks.
- d. The Department shall not compensate the importer or the owner of the goods for any damages resulting from holding release of the goods according to paragraphs b. and c. of this Article.
- e. Pursuant to paragraph c, where the Department decides to seize goods on its own initiative, it must notify:
 1. the Competent Authority;
 2. the importer; and ,
 3. the intellectual property right holder (if the address is known to the Department.

If the Department does not receive notification from the Competent Authority within 10 working days from the date of their notifying the Competent Authority, concerning their intention of taking official or judicial measures to verify the infringement or pirating, then the Department shall release the goods and proceed with the customs clearance unless there was any other reason to prevent that.

- f. The importer, the owner of the goods or the right holder has the right to inspect the goods while in the customs premises and under the supervision of the Department.
- g. The border measures related to the protection of intellectual property rights provided for in this Article shall not apply to personal effects, gifts brought by travelers, or any non-commercial goods.
- h. The Minister shall issue necessary instructions specifying the detailed procedures for the implementation of the provisions of this Article.

V. Anti-dumping, countervailing Duty and Safeguard Measures

Law #20 of 1998 – Customs Law took effect on January 1, 1999. Article 15 of the Customs Law contained certain Jordanian legal provisions applying to countervailing duty and so-called safeguard measures. With the enactment with the National Production Protection Law, which took effect on 1 October 1998, the Customs Department’s responsibility in these three functional areas is merely to implement the appropriate decision of the competent authority (the Cabinet).

Article 15 was redrafted to reflect the legal provisions of the National Production Protection Law of 1998 and limit the Customs Department’s actions to only implementing decisions by the Cabinet.

Annex D of this Report is the English language version of the amendments to Article 15.

VI. Fees (GATT Article 8)

Law # 20 of 1998 – Customs Law took effect on January 1, 1999. Article 161a of the Customs Law concerned “Allowances for Services” (commonly referred to as Customs fees). The current law provided only for a base amount, or a standard, allowance or fee.

Article 161a was redrafted to provide for a standard allowance or fee, as well as a minimum and a maximum.

Amendment E of this Report is the English language version of the amendments to Article 161 a.

Annex A

Customs Law Amendments Project Team

AMIR Program

Farhat Y. Farhat
Policy Component Director

Ben L. Irvin, Esq.
Customs and Trade Attorney

Jamal Olaimat
Customs Specialist

Lana Habash, Esq.
International Business Law Associates

Jordan Customs Department – Customs Law Amendments Committee

Marwan Moh'd. Gharaibeh
Director of Planning and Development

Fareed Al-Banna
Director, Legal Affairs

Salah Maghairah
Section Head, Legal Division

Mahmoud Al-Rawashdeh
Director, Valuation and Risk Analysis

Yahya Al-Dabbagh
Tariff & International Affairs Section

Annex B

Amendments to Articles 28 to 32

Article 28 of the original Law shall be amended as follows:

1. By repealing the introductory Paragraph (a) and replacing it with the following:
 - a. the customs value for goods imported to Jordan shall be the transaction value, i.e. the price paid or payable for goods when being sold for exportation to the Kingdom after adjustment according to the provisions of paragraph (f) of this Article, and according to the following conditions
2. By adding the following phrase at the end of paragraph b:
 - b. In such case, the Department shall inform the importer in writing, upon the latter's request, with the grounds for considering that the relationship influenced the price, and the importer shall be given a reasonable opportunity to respond.
3. By repealing the phrase "for goods which are imported before or after 90 days from the date of importation of the said good" in the introductory of paragraph d and replacing it with the following:

Goods sold for exportation to the Kingdom at or about the same time
4. By adding the phrase "and the quantity levels" after the phrase "commercial levels" in paragraph c and by adding the following phrase to the end of the paragraph:

Such values shall only be used for the purposes of comparison and shall not be adopted as substitute values.
5. By adding the phrase "apportioned as appropriate" and "selling it for exportation to the Kingdom" to the introductory of subparagraph 4 of paragraph f of this Article.
6. By adding subparagraph 9 at the end of paragraph f:
 9. Considerations which may pass from the buyer to the seller in the form of specified goods or services, rather than in the form of money.
7. By adding the phrase "and/or the information therein" after the phrase "the authenticity of the produced documents: in paragraph h of Article 28.

- 8 By adding paragraph i to Article 28 as follows:
- i. The customs value shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:
 1. charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;
 2. the cost of transportation after importation;
 3. duties and taxes imposed in the Kingdom; and
 4. flow of dividends or other payments from the buyer to the seller that are not related to the imported goods.
8. Article 29 of the original Law shall be amended by deleting the phrase “and subject to The Department approval” from the end of it.
9. Article 30 of the original Law shall be amended by adding the word “and exported” after the word “Kingdom” in paragraphs a and b of this Article.
10. Article 30 of the original Law shall be amended by adding the word “imported” preceding the phrase “greatest aggregate quantity”, and by deleting the word “and” preceding the word “additions” and replacing it with the word “or” in paragraph c of this Article.
11. Considering the introductory of paragraph d of this Article as subparagraph 1 and considering the subparagraphs 1, 2, and 3 therein as “a, b and c” and by adding subparagraph 2 as follows:
- d.
 2. It is not required from any person not resident in the Kingdom to produce for examination, or to allow access to, any account or other record for the purposes of determining a computed value. However, the Department may verify information provided by the producer of the goods for the purposes of determining the customs value under the provisions of this Article in another country with agreement of the producer and provided sufficient advance notice is given to the government of the country in question and that the government does not object to the investigation.
12. Article 31 of the original Law shall be amended as follows:
- a. If the customs value is not determinable according to the provisions of Articles 28, 29 and 30, it shall be determined based on data available in the Kingdom using reasonable methods consistent with the provisions of the above-mentioned Articles, so the customs value shall not be determined based on the following:

1. the selling price in the Kingdom for identical or similar goods locally produced;
5. the higher or highest value among several values;
6. the price of the goods in the domestic market of the country of exportation;
7. the price of the identical or similar goods sold for exportation to a third country “other than Jordan”;
8. arbitrary or fictitious values;
9. the cost of production, other than the computed value determined for identical or similar goods according to the provisions of paragraph d of Article 30; and
10. a minimum value.

13. By adding paragraph i to this Article as follows:

- i. other conditions and provisions necessary for the implementation of Articles 29 through 31 shall be determined according to instructions issued by the Minister.

14. Article 32 of the original Law shall be amended by considering the introductory of this paragraph as paragraph a and paragraphs a and b as subparagraphs 1 and 2.

15. Article 32 of the original Law shall be amended by adding paragraph b to this Article as follows:

- b. other considerations and provisions necessary for the implementation of this Article shall be determined according to instructions issued.

Annex C

Amendments to Articles 24 to 25

1. Article 24 of the original Law shall be repealed and replaced with the following:

Article 24: The origin of goods is the country where such goods were produced or obtained, and shall be determined according to the following rules:

- A. Goods are considered to be of an origin of a country when those goods are obtained entirely from that country or made from several materials originating therefrom, and shall include:
 1. Mineral products extracted from the country's soil, from its territorial waters or from its sea-bed;
 2. Vegetable products harvested or gathered in that country;
 3. Live animals born and raised in that country;
 4. Products obtained from live animals in that country;
 5. Products obtained from hunting or fishing conducted in that country;
 6. Products obtained by maritime fishing and other products taken from the sea, outside a country's territorial water, by means of fishing boats registered in, and raising the said country's flag;
 7. Products produced or procured aboard manufacturing ships from amongst the goods listed in item 5 of this paragraph, and whose origin is the aforementioned country, provided such ships are registered in, and raise the flag of the said country's flag;
 8. Products taken from the sea-bed or the subsoil thereof outside territorial waters provided that the country has special rights to exploit the sea-bed or its subsoil;
 9. Items produced from the wastes of manufacturing processes and raw materials used therein, provided the wastes are collected there, and are fit only to be recovered as raw materials;
 10. Goods produced in the said country exclusively from goods referred to in items 1 to 9 or from the derivatives thereof, and at any production stage.
- B. Goods produced by more than one country shall be considered of the origin where the last substantial transformation occurred, transformation shall be considered substantial in the following situations:
 1. the change in the tariff classification for the good – from six digits – that it becomes different than the tariff classification for each of its components;
 2. when the added value amounts to at least 40 % of the value of the good at the ex-factory level; and
 3. a combination of both of the above-mentioned criterion when one of them fails to apply.

2. Article 25 of the original Law shall be repealed and replaced with the following:

Article 25:

- A. No one or several of the following operations shall confer an origin:
1. Operations or processes to insure the preservation of products in good condition during transport and storage;
 2. Operations or processes to facilitate shipment and transportation;
 3. Operations or processes related to packing or putting goods for sale;
 4. Ventilation, spreading out, drying (dehydration), cooling, removal of damaged parts, greasing or rust removal, washing, cleaning, sifting or screening, storing or classifying, testing or calibration, packaging or breaking up of assembly packages or repackaging, affixing marks, labels and other distinguishing signs on products packaging, dilution by water or any other aqueous solution, ionization, salting, peeling, crushing, removal of seeds from fruits, slaughter of animals;
- B. Upon written request from the concerned party supported by all the necessary information, the Customs Department shall determine the origin of the goods to be imported according to the provisions of this Chapter and subject to the following conditions:
1. the written request must be supported by all necessary information as to enable the Department to determine the origin, such information shall be specified in instructions issued for this purpose;
 2. the Department shall issue a decision determining the origin within a period of time not exceeding 150 days from the date of submitting the request;
 3. the decision determining the origin shall be valid for 3 years, provided that the facts and conditions on which the determination was made remain the same; and
 4. any decision made by the Department shall supercede any previous decision contrary to it, provided that all concerned parties are notified in advance.
- C. When applying new or amended rules of origin, such application shall not be retroactive.
- D. Goods imported from a source other than the country of origin, and which are put for domestic consumption in the source, shall be subject either to the customs tariffs applicable to the goods from the source, or to tariffs applicable to goods from the origin, whichever is higher.

Annex D

Anti-dumping, Countervailing Duty and Safeguard Measures

Article 15 of the original Law shall be repealed and replaced with the following:

Article 15: The Customs Department, upon a decision made by the component authorities issued pursuant to the related Laws and regulations, shall:

1. collect or refund anti-dumping duties and countervailing duties on certain imported goods from certain countries; and
2. take necessary measures, including the imposition of import quotas, to counteract measures taken by other countries which are harmful to the national economy of Jordan.

Annex E

Allowances (Fees) for Services

Paragraph a of Article 161 of the original Law shall be repealed and replaced with the following:

- A. The following allowances shall be levied from the owners of goods for the benefit of officials of the Customs Department and other departments working therewith:
- 1 - 0.20 % of the value of the imported goods and sold in the domestic market provided that this percentage is not less than 10 JDs and not higher than 250 JDs.
 - 2 - 20 JDs for each re-export declaration.
 - 3 - 15 JDs for each transit declaration.
 - 4 - 7 JDs for each export declaration.
 - 5 - 3 JDs for each traveler dutiable luggage receipt.