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# COMPARATIVE ANALYSIS OF SELECT COUNTRIES' TRADE LAWS

Recommendations for Egypt's Foreign Trade Law

December 2007

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# **COMPARATIVE ANALYSIS OF SELECT COUNTRIES' TRADE LAWS**

Recommendations for Egypt's Foreign Trade Law

TECHNICAL ASSISTANCE FOR POLICY REFORM II

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## I. Introduction

This aim of this Report is to present observations on the key elements of select countries' trade laws, how these elements are implemented and the responsible authorities. The select countries are: the European Union, India, New Zealand Australia and United States. In addition, in response to specific requests, the Report provides a summary of inspection<sup>1</sup>, penalties, the importation of used items and spare parts and fee provisions as they relate to trade laws. Finally, the Report makes recommendations for Ministry's consideration for a new trade law and provides examples of other countries laws and procedures.

Initially, the goal of the review was to assess the comprehensive trade laws of the select countries; however, none of the select countries have a comprehensive trade law. For example, while India has a law entitled *The Foreign Trade and (Development and Regulation) Act of 1992*, the law deals only with import/export, licensing, penalties and related matters. Similarly, while Australia has a law entitled the *Trade Practices Act of 1974*, this law is a commercial law and does not include imports, exports and related matters. Instead, Australia's import/export laws are contained in its customs laws.

As a result, the focus of the Report shifted to reviewing the laws that affect the import/export process of the select countries. The key areas reviewed include import/export, rules of origin and trade remedies. The report does not address substantive aspects of rules of origin or trade remedies; instead, the Report reviews the entities responsible for these functions and whether these functions are contained in the import/export law.

The review and recommendations presented in this report are designed to provide guidance and a reference framework for the Ministry's efforts to reform its trade laws. The trade law of South Africa, which can be deemed to represent a comprehensive trade law, is also included in the Appendices as a reference.

The Appendices to this report also present a compilation of reference documents used in this review as well as models for consideration in drafting a new Egyptian trade law.

The Report is organized in a manner that first provides a brief summary of the country's trade law and policy framework followed by a review of a specific key area, e.g., import/export for each select country. At the end of each area covered, the Report discusses the select countries' laws and makes recommendations.

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<sup>1</sup> TAPR 11 has done considerable work in this area and these Reports are available. For this reason, this Report only summarizes the overall policies/laws relating to inspection.

## II. Import Export

### 1. European Union

#### A. TRADE POLICY FRAMEWORK:

The institutional decision making framework of the European Union are the Council for the European Union, the European Parliament and the Commission of the European Communities (EC).

The EU does not have a comprehensive trade law or even one import/export law, instead, its trade policy and legal requirements are set out in various regulations. The EC's legal framework generally, is to issue a substantive regulation containing the legal requirements followed by an implementing regulation(s).

The EU policy permits free imports and exports except for restricted or prohibited items which require a licence. Member countries may establish procedures for issuing licences and also for registering importers and exporters so that they can be tracked as well as imports and exports.

As an example, an importer/exporter must be registered and have a Trader's Unique Reference Number (TURN) or a Pseudo TURN in order to import into and export from the United Kingdom. The TURN identification number is required by Revenue & Customs and is used on both the import and export declaration. The Pseudo TURN may be used for non-commercial imports, importing from outside the EU and other imports. A copy of the Pseudo TURN application form is contained in the Appendices. The import/export policy of the Member countries is determined by each country, consistent with its' Membership obligations.

In most cases, the import/export laws are executed by the customs authorities of the Member country.

#### B. IMPORT:

##### (i) Applicable Regulations:

Council Regulation (EC) No. 3285/94 on the *Common Rules for Imports* applies to imports from third countries of products originating in third countries, except for textile products covered by special rules for imports and products originating from third countries which are subject to that country's own import rules<sup>2</sup>. The Regulation is also complementary to the

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<sup>2</sup> The excepted countries are imports from Albania, the Commonwealth of Independent States (CIS) and certain Asian countries (North Korea, China, Mongolia and Vietnam) which are covered by Regulation (EC) No 519/94

regulations on agricultural products covered by organizations of the market.

Although the Regulation is entitled *Common Rules for Imports*, it is basically a safeguard law. It permits imports to be made freely from third countries, subject to possible safeguard measures. The Regulation sets out the procedures and processes for determining consultations, surveillance or safeguard measures, and for taking necessary taking action.

(ii) Import Restrictions and Prohibitions:

The EC prohibits and restricts imports in various regulations, some of which are detailed below. In addition, the EC implements restrictions under treaties and international conventions to which it is a signatory, and trade and economic sanctions in accordance with resolutions of the United Nations Security Council (UNSC).

Some of the import restrictions and prohibitions include:

- **Rough Diamonds** - a direct or indirect prohibition against imports of rough diamonds from Liberia as well as rough diamonds from Côte d'Ivoire, whether of Côte d'Ivoire origin or not.
- **Intellectual Property Rights** - *Council Regulation (EC) No. 1383/2003 of 22 July 2003* concerns customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights. The Regulation is included in the Appendices.
- **Genetically Modified Organisms (GMOs)** - *Council Regulation (EC) No. 1946/2003* on transboundary movements of GMOs. The Regulation requires that any GMOs placed on the market must include a full risk review that identifies and evaluates any potential negative effects of the GMO, direct or indirect, immediate or belated and the cumulative and long-term effects on human health and the environment.
- **Chemical Products** - bans the import of goods containing mercury, PCB and PCT<sup>5</sup> products, and CFC and HCFC.<sup>6</sup>

## C. EXPORT:

### (i) Applicable Regulations:

*Council Regulation (EEC) No 2603/69 of 20 December 1969* establishes the common rules for exports from the European Community (EC).<sup>3</sup>

The Regulation applies to all industrial and agricultural products covered by the EC Treaty. It is complementary to the regulations establishing common organization of agricultural markets and the special regulations for processed agricultural products.

Under the Regulations, exports are not subject to any quantitative restrictions or general licensing requirements. However, the Regulation permits the EC to take protective measures to prevent or remedy a critical situation brought about by a shortage of essential products, or allow international commitments entered into by the Community or all the Member States to be fulfilled. This means that the EU may adopt quantitative restrictions on exports.

These measures may be limited to exports to certain countries or exports from certain EU regions. In addition, the Regulation permits Member States to restrict exports to meet their policy and surveillance protective measures including bans on exports on grounds of public morality, public policy, public security, *etc.*

Licences are required before such products can be exported.

### (ii) Export Restrictions and Prohibitions:

In addition to the restriction noted above, the EC also imposes prohibitions on arms exports within the scope of the Common Foreign and Security Policy (CFSP), which supplements the arms export licensing schemes applied by its Member States. The embargoes cover the sale of arms, ammunition, military vehicles and equipment, paramilitary equipment, and spare parts. Other restrictions include:

- Import/export restrictions regarding certain equipment that could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.<sup>4</sup>
- Specific security regimes that target threats relating to:
  - Chemical and biological weapons (The Australia Group),

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<sup>3</sup> Amended by the following acts: Council Regulation (EEC) No 2604/69 of 20 December 1969 [Official Journal L 324, 27.12.1969]; Council Regulation (EEC) No 3918/91 of 19 December 1991 [Official Journal L 372, 31.12.1991].

<sup>4</sup> Council Regulation (EC) No. 1236/2005

- Nuclear weapons (Nuclear Suppliers Group), delivery systems (Missile Technology Control Regime),
- Conventional arms (The Wassenaar Arrangement).
- Regulation *EC No 1334/2000* amended by *EC No. 1183/2007*) relates to dual-use (includes software and technology) and *Regulation 304/2003* relates to dangerous chemicals.
- *Regulation EC No. 3911/92* relates prohibitions and restriction to the export of cultural goods.

#### **D. LICENCE:**

*EC Regulation No. 738/94* sets out the general rules for obtaining both import and export licences. As noted above, The EU does not require an importer to obtain a licence in order to import or export except for sensitive or restricted products noted above.

The application for an import or export licence has to be submitted to the competent authorities of the Member State where the exporter is established. An example of the UK import licence form is included in the Appendices.

For exports, the required information includes the destination country, end-use, specifications of the product, its applications, and a technical memorandum and all information that may be useful to obtain the export authorization.

In some EU Member States, the exporter must also register with a Special Register of Exporters of Defense Material and Dual Use Items in order to apply for an export licence for restricted products under this category.

**Types of export licence** – The EC has various types of licences. The two most common types of export licences are:

- *Open Individual export licence:* This is specific to an individual exporter and covers multiple shipments of specific goods to specified destination(s) and/or, in some cases, specified consignees/end-users. The duration varies depending on the issuing Member State, although it may last for six months, which may be extended up to three years.
- *Global licence:* This allows for the export of an unlimited number of goods to one or several consignee(s) or end-user(s). Its duration varies depending on the issuing Member State. It may last for six months, which may also be extended by up to three years.

## **E. VIOLATIONS/PENALTIES:**

The EC has various regulations and the sanctions/penalties for violations are contained therein. For example, *EC No. 738/94 of March 1994* is the implementing Regulation for licences relating to imports subject to quota restrictions. The Regulation includes penalties for violation of the licence which ranges from being barred for the next allocation period and/or forfeiture of any security deposit made.

In addition, EU countries provide for civil and criminal penalties as well as seizures for violations of the import/export laws. The penalties vary according to the nature of the violation, whether the import/export is prohibited or restricted (alcohol, tobacco, infringing goods, *etc.*), and the level of culpability.

The UK provides for civil contravention of the import and export laws in the Finance Act of 2003 and its implementing regulations (Customs Regulations 2003 and the Export (Penalty) Regulations 2003). The penalties may be in fixed or incremental amounts, as in a percentage of the duty or value of the goods.

## **2. India**

### **A. TRADE POLICY FRAMEWORK:**

India's current export/import policy is set out in the Export-Import Policy, 2002-2007 (EXIM policy). This policy is issued every five years. Responsibility for formulating and implementing trade policy lies with the Department of Commerce, within the Ministry of Commerce and Industry. Trade policy is formulated in consultation with other key ministries including the Ministries of Finance, Agriculture and other Ministries relating to services.

The Foreign Trade Policy and Procedures are implemented by the Directorate General of Foreign Trade (DGFT) while the tariff Commission provides advice on tariff and related issues. Both offices are based in the Ministry of Commerce and Industry.

### **B. IMPORT/EXPORT:**

#### **(i) Applicable Law:**

*The Foreign Trade and (Development and Regulation) Act of 1992, No. 22 ("Act")* covers import, export, licensing and penalties for violations of the Act. It provides for the issuance of a licence, its suspension and cancellation. It also authorizes the search of premises and seizure of goods and documents "things and conveyances" subject to the

requirement of the law. The Code of Criminal Procedure applies to such searches and seizures.

The Act also provides that the Director General of Foreign Trade (“DG”) has the authority to grant, renew or refuse to grant licences for a class or classes of goods. Further, The Act authorizes the Government to make rules for its implementation, in particular for:

- *Conditions for issuance of a special licence*
- *Fees*
- *Class or classes of goods for which a licence may be granted*
- *Conditions, refusal, amendment, suspension, and cancellation of a licence*
- *The power to enter the premises and inspect, search and seize goods, documents, things and conveyance*
- *Confiscation and redemption of conveyance and other provisions required to implement the Act*

India’s import laws permit free imports except for restricted products which require a licence. However, unless exempt, every person must obtain an importer-exporter code (IEC) issued by the DGFT prior to importing or exporting. This IEC code must be presented with the required permits for products subject to import/export restrictions.

The IEC application is filed on a specific form (ANF 1) once with the Regional Authority (RA). The RA enters the information in a database where the information is stored so that the importer/exporter does not need to provide it again.

Appendix 39A lists exemptions from the rules/Act. These include:

- The Central Government and agencies owned or controlled by the Central Government for Defence purposes
- All Ministries/ Departments of the State Government and agencies
- Diplomatic personnel, Counselor officers in India and the officials of the UNO and its specialized agencies
- An Indian returning from/ going abroad and claiming benefit under baggage rules
- Persons/Institutions/hospitals importing or exporting goods for their personnel use not connected with trade or manufacture or agriculture
- Persons importing/exporting goods from/to Nepal provided the CIF value of a single consignment does not exceed 25000 Indian rupees

- Persons importing/exporting goods from/to Myanmar through the Indo/Myanmar border area if the CIF value of a single consignment does not exceed 25000 Indian rupees.
- The Ford Foundation
- Importers importing goods for display or use in Fairs/Exhibitions or similar event under the provision of ATA Carnet
- The Director, National Blood Group Reference Laboratory, Bombay or their authorized offices
- Individuals/Charitable Institutions/Registered NGOs importing goods, which have been exempted from Custom Duty under the notification issued by Ministry of Finance for *bonafide* use by the victims affected by natural calamity.

The Act's implementing regulations also provide for the categories of importers, including actual and non-actual user, and categories of imports. The non-actual users may be industrial or non-industrial; the actual users may be business importers or personal imports.

(ii) Import Restrictions/ Prohibitions

Import prohibitions are maintained under Section 11 of the Customs Act 1962. Under the Act, the Government may, by notification in the *Official Gazette*, impose absolute or conditional import or export prohibitions. Such measures can be maintained for security, public order and standards of decency or morality, prevention of smuggling or shortage of goods, foreign exchange and balance of payments, prevention of agricultural surpluses, standards, intellectual property, and the conservation of exhaustible resources.<sup>5</sup> Restricted imports include:

- Live animals
- Certain fertilizers
- Hides and skins
- Mineral ores and their concentrate
- Milk and baby formula
- Certain metals and their compounds

Prohibited imports include:

Tallow, fat and/or oils, rendered or otherwise of any animal origin including:

- (i) Lard stearin, oleo stearin, tallow stearin, lard oil, oleo oil and tallow oil not emulsified or mixed or prepared in any way
- (ii) Neat's-foot oil and fats from bone or water

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<sup>5</sup> Section 11(2) of the Customs Act, 1962.

- (iii) Poultry fats, rendered or solvent extracted
- (iv) Fats and oils of fish/marine origin, whether or not refined, excluding cod liver oil, squid oil containing Eicosapentaenoic acid and Docosahexaenoic acid
- (v) Margarine, imitation lard and other prepared edible fats of animal origin
- (vi) Degras (residues from the treatment of fatty substances or animal or vegetable waxes)

The implementing regulations provide conditions for granting an import licence include the following conditions that:

- (a) the goods covered by the licence must be disposed of in accordance with the provisions of the Policy, or in the manner specified by the licensing authority in the licence;*
- (b) the licence applicant be required to execute a bond for complying with the terms and conditions of the licence.*

Further,

- (a) no person shall transfer or acquire by transfer any licence issued by the licensing authority except in accordance with the provisions of the Policy;*
- (b) the goods for the import of which a licence is granted shall be the property of the licensee at the time of import and up to the time of clearance through customs;*
- (c) the goods for the import of which a licence is granted shall be new goods, unless otherwise stated in the licence;*
- (d) the goods covered by the licence for import shall not be exported without the written permission of the Director General*

Under the implementing regulations and Notifications, India has classes or types of imports which include:

1. Items that require a licence and can be imported only by actual users. These can be industrial and non-industrial users
2. Canalised items – (restricted for import/export). Items under this category can be imported only by specified public-sector agencies. These include:

- Petroleum products (to be imported only by the Indian Oil Corporation)
- Nitrogenous phosphatic, potassic and complex chemical fertilizers (by the Minerals and Metals Trading Corporation)
- Vitamin- A drugs (by the State Trading Corporation)
- Oils and seeds (by the State Trading Corporation and Hindustan Vegetable Oils)
- Cereals (by the Food Corporation of India)

### **C. EXPORT RESTRICTIONS/ PROHIBITIONS:**

India's export controls may be product-specific, end-use, end-user or by the ultimate country of destination. The export restricted list is maintained under the Customs laws. India also maintains a control export list, SCOMET, (Special Chemicals, Organisms, Materials, and Technologies) which is also subject to the export laws under the Act. India's export policy is also governed, in part, by its own laws including:

- The Atomic Energy Act of 1962 (No. 33 of 1962) and the various public orders issued pursuant to the Act
- The Chemical Weapons Convention Act of 2000
- The Environment Protection Act of 1986
- The Arms Act of 1959 and the Arms Rules of 1962
- The Weapons of Mass Destruction and Their Delivery Systems (Prohibition of Unlawful Activities) Act of 2005

#### **(i) Restricted/prohibited exports include:**

- All form of wild animals including their parts & products
- Dress materials/ ready made garments fabrics/ textile items with imprints of excerpts of verses of the holy Koran
- Special chemicals, organisms, materials, equipment and technologies as specified
- Exotic birds, cattle, camel, horses
- Beef
- Certain aqua products
- Human skeletons
- Pulses, onions, paddy, seeds
- Certain plants
- Fodder,
- Chrome ores, rare earths ores, radioactive material, iron ore
- Crude oil, kerosene
- Blood plasma & products derived from human blood, except gamma globulin & human Serum
- Chemical fertilizers
- Wood & wood products
- Silkworms, silkworm seeds and silkworm cocoons

- Vintage motors cars & motorcycles, parts & components thereof manufactured prior to 1/1/1950
- Arms & ammunition

The conditions for granting export licences for restricted products, are provided in the implementing regulations which impose the following conditions that:

- (i) *the licence maybe transferred or acquired only in accordance with the provisions of the Policy;*
- (ii) *the goods for the export of which the licence is granted must be property of the licensee at the time of the export.*

#### **D. LICENCE:**

Licence applications are submitted to the Directorate General of Foreign Trade (DGFT), which issues licences, including licences for export controls products.

#### **E. VIOLATIONS/PENALTIES:**

The Customs Act of 1962 grants the relevant agencies enforcement power and establishes civil and criminal liability. Civil liability penalties include fines as well as suspension or debarment from further imports and exports. Criminal penalties include imprisonment, fines, or both.

Under the Act, the DGFT may suspend or cancel the Importer/ Exporter Code Number if the Director General of Foreign Trade has reason to believe that:

- (a) *the exporter has committed an economic offence as specified by the Government; or*
- (b) *any person has made an export/import in a manner gravely prejudicial to the trade relations of India with any foreign country or to the interests of other persons engaged in imports or exports or has brought disrepute to the credit or the goods of the country.*

### **3. New Zealand**

#### **A. TRADE POLICY FRAMEWORK:**

The New Zealand Ministry of Foreign Affairs and Trade formulates New Zealand's trade policy. In doing so, the Ministry works in close cooperation with other key ministries including the Ministry of Economic Development and other stakeholders, including business, unions, consumer representatives, local government, and other non-governmental organizations.

## **B. IMPORTS/EXPORTS:**

### **(i) Applicable law**

New Zealand's import/export laws are contained in the customs laws. New Zealand does not have import licensing requirements but maintains an approval system. Certain imports are prohibited or restricted for health and safety reasons or in compliance New Zealand's laws as well as international conventions to which New Zealand is party. Approvals are required for such imports or exports.

New Zealand requires a client (importer) code as part of the import entry documentation for shipments in excess of NZ\$1,000. A client code is a unique number that identifies the importer.

Application for client code is made on the Application for Client Code form provided to Customs authorities. It requires varying information including a passport or a driver's licence or Certificate of Incorporation for applications from companies.

New Zealand maintains electronic customs filing and all importers may register with Customs in order to file electronic imports. Commercial imports require electronic filing. Upon approval, the importer is issued a Customs Declarant Code and a unique user identifier (UUI), which identifies the person responsible for lodging an electronic entry.

A registered user may only have one current client code and one current UUI. The UUI may be transportable when an individual moves from business to business.

New Zealand customs law provides for both private and commercial importation. Revenue is not collected for private importation if the total amount owing for the imported goods is less than NZ \$50. However, this revenue waiver does not apply to alcohol or tobacco products.

### **(ii) Import Restriction/Prohibition**

New Zealand restricts or prohibits imports for public health and safety reasons as well implementing its international obligations. The restrictions/prohibitions are governed by the concerned Ministries or Agencies and are implemented by the Customs Service at the border.

New Zealand's list of prohibited/restricted imports and the responsible agencies is included in the Appendices.

### **C. EXPORTS RESTRICTIONS/PROHIBITIONS**

Export prohibitions are maintained for health and safety reasons, but also regarding some agricultural exports including kiwifruit, dairy products, horticultural products and products relating to national security. Such items require approval from a Government Department or concerned Agency before they can be exported.

The export prohibitions and restrictions are covered by alerts on the New Zealand Customs Service computerized entry system, CusMod. Approval numbers are required for the items listed in CusMod.

New Zealand's list of prohibited/restricted exports and the responsible agencies is included in the Appendices.

### **D. LICENCE/APPROVALS**

New Zealand Customs maintains the list of products requiring approvals and provides the Ministry or Agency responsible for issuing the approvals.

### **E. VIOLATIONS/PENALTIES**

Violation of the approval or false declaration is punishable under the Customs Service.

## **4. Australia**

### **A. TRADE POLICY FRAMEWORK:**

The Department of Foreign Affairs and Trade (DFAT), together with the Australian Trade Commission (Austrade), have administrative responsibilities for all international treaties and trade related activities. The Australian Customs Service also has trade related responsibilities and is responsible for implementing the import/export and related laws.

In formulating trade policy, the DFAT consults with other concerned Ministries and other branches of government, advisory bodies, businesses, non-governmental organizations (NGOs), and other stakeholders thus resulting a transparent trade policy formulation.

## **B. IMPORTS/EXPORTS**

### **(i) Applicable law:**

Australia's import/export laws are contained in the customs laws. Australia does not require an import licence. Instead, Australia requires a permit for certain products for health, safety and security reasons. A list of these items is maintained by Customs.<sup>6</sup> The permits are issued by the Ministries/Agencies responsible for the specific areas or items.

Australia requires importers and exporters to register with Customs to obtain an Evidence of Identity (EOI). Customs conducts Evidence of Identity (EOI) checks to verify the identity of the parties with which it deals.

In addition, the law requires that organizations or individuals that export must also register as a client in the Integrated Cargo System (ICS). This is necessary so that Customs can process the export declarations. This is a one time process whereby the client is provided with a client reference number. This may be their Australian Business Number (ABN) or if they do not have an ABN, they will be assigned a unique Customs client identifier (CCID). This identifier number must be included on all transactions with Customs.

Australia customs laws require that all consignments valued over \$1,000 be entered on an "Import Declaration".

### **(ii) Prohibited/Restricted Imports:**

As noted above the list is maintained at Customs. Prohibited items include:

- Embryo clones
- Suicide devices
- Diamonds - from Liberia
- Embryo clones

## **C. EXPORT:**

Currently, all goods intended for export from Australia with a value of \$2,000 or more must be declared to Australian Customs Service (Customs) on an export declaration (currently called an export entry), unless exempt. Goods that are exempt from requiring an export declaration include:

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<sup>6</sup> <http://www.customs.gov.au/site/page.cfm?u=4369>

- Personal effects
- Goods with a value of less than A\$ 2,000
- Goods temporarily imported under section 162A of the *Customs Act 1901*
- Australia Post or diplomatic bags of mail
- Australian aircraft and vessel spares
- Military goods of any value that are the property of Australian Government, for use overseas by Australian Defense Forces.

(i) Prohibited exports include:

- Exports of acetic anhydride to Afghanistan
- Certain cultural and heritage goods and suicide devices.

(ii) Restricted exports include:

- Asbestos
- Biological agents – Permit issued by Minister for Defence
- Cat and dog fur products;
- Cetaceans (whales, dolphins, and porpoises)
- Chemical compounds
- Counterfeit credit cards; some cultural and heritage goods; defence and strategic goods
- Diamonds (Kimberley process)
- Drugs
- Endangered animal and plant species (subject to the CITES)
- Firearms, parts, accessories, and ammunition
- Hazardous waste
- Human blood and other body fluids, organs and tissue
- Human embryos
- Ozone depleting substances
- Pornography and other objectionable material
- Precursor substances listed in relevant regulations (as these can be converted to other substances that may affect public health)
- Prescription medicines
- Over-the-counter medicines and complementary medicines, unless exempt;
- Radioactive substances, radioactive waste
- Toothfish
- Wine and brandy (bulk consignments of wine, brandy, grape spirit, and wine-derived products over 100 litres); as well as exports to Afghanistan, Liberia, Rwanda, and Sierra Leone (Customs online information<sup>7</sup>).

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<sup>7</sup> <http://www.customs.gov.au/site/page.cfm?u=4381>

#### **D. LICENCE:**

Australia uses a permit system for restricted imports. The permits are issued by the concerned Ministry.

#### **E. VIOLATIONS/PENALTIES:**

Violations for the import export laws are found in the customs laws. Australia's customs laws impose strict liability for non-compliance with customs legislation. Under the law, in most cases, Customs may pursue a penalty action or issue a notice.

Customs has the discretion to employ the best means for deterring non-compliance and may use a variety of approaches including warning letters, imposition of penalties (20% of the value of the import) and/or prosecution.

## **5. United States**

#### **A. TRADE POLICY FRAMEWORK:**

US trade Policy is formulated within the Executive Office of the President, in the Office of the United States Trade Representative (USTR). Similar to the other countries selected in this Report, the United States does not have a comprehensive trade law. US trade laws are found under title 19 of the United States Code. This includes the customs laws, the antidumping, safeguard and other related trade laws.

In formulating US trade policy, USTR consults with other government agencies on trade policy matters through the Trade Policy Review Group and the Trade Policy Staff Committee, administered and chaired by USTR and composed of 19 federal agencies and offices.

#### **B. IMPORTS:**

##### **(i) Applicable Law**

The US does not require a licence for import or export except for restricted or controlled items. Other agencies may require a permit, licence, or other certification, depending on the item being imported.

Similar to the other select countries, the US tracks all importers by the importer ID number. This is generally the Internal Revenue Service (IRS) business registration number, the EIN (Employer ID Number) or if the business is not registered with the IRS or is a non-business, the social security number is used. For non-resident companies, Customs & Border Protection issues an importer ID number.

(ii) Import Prohibitions/Restrictions:

- Alcoholic beverages
- Animal and animal products
- Certain drugs
- Firearms and ammunition
- Fruits, nuts
- Meat and meat products
- Milk, dairy, and cheese products
- Plants and plant products
- Poultry and poultry products
- Petroleum and petroleum products
- Vegetables
- Certain trademarked and copyrighted articles.

In addition, the following items must comply with applicable regulations of other agencies:

- Art materials
- Cultural property
- Hazardous/toxic/flammable materials
- Household appliances
- Some electronics products
- Toys and children's articles

**C. EXPORTS:**

Export restrictions and controls are maintained for national security or foreign policy purposes, or to ensure sufficient domestic supply. Exports controls may be a result of U.S. domestic policy decisions, U.S. participation in non-binding export control regimes, or United Nations embargoes.

The governing legal provisions on control exports are contained in the Export Administration Act (EAA) of 1979, as amended. Export controls for nuclear materials, facilities, and equipment used for civil purposes are contained in the Atomic Energy Act of 1954, as amended (AEA). These controls are administered by the U.S. Nuclear Regulatory Commission (NRC).

The Bureau of Industry and Security (BIS) within the US Department of Commerce (USDOC) is responsible for formulating and implementing U.S. export control policy on dual-use items (with commercial and possible military use), software, and technology.

The BIS issues regulations setting forth licensing policy and requirements for the export and re-export of dual-use items and related services. The U.S. participates in four non-binding export control regimes:

- The Wassenaar Arrangement, which focuses on controls of conventional arms and dual-use exports
- The Missile Technology Control Regime (MTCR)
- The Nuclear Suppliers Group (NSG), and
- The Australia Group (AG, chemical and biological non-proliferation), as well as in the context of United Nations embargoes.

The United States also participates in the Chemical Weapons Convention (CWC). Export controls are implemented through a licensing system; they also cover re-exports.

#### **D. LICENCE:**

Licences for export control items are issued by the responsible agencies:

- The BIS maintains the Commerce Control List of dual-use items. It also issues Special Comprehensive Licences (SCLs) in place of individual export licences to exporters that routinely participate in export and/or re-export transactions involving multiple destinations. Under an SCL, exports are approved for a four-year period.
- In addition, the BIS maintains "catch all" controls for items not specifically listed on the CCL but shipped to a sensitive end-use or end-user, such as a nuclear weapons programme. Exporters in these cases must apply for a licence for all items shipped, regardless of their classification.
- The BIS is responsible for:
  - determining whether it is necessary to restrict the export of commodities in short supply
  - implementing the EAA policy
  - administering certain export controls<sup>8</sup>
  - administering export controls on domestically produced crude oil and certain unprocessed timber harvested from federal and state lands are controlled for short supply reasons
- **The Department of State** controls the export of defense articles, services, and related technological data under the Arms Export Control Act.
- **The NRC** is responsible for licensing exports of nuclear materials, facilities and equipment used for civil purposes pursuant to the Atomic Energy Act of 1954, as amended.

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<sup>8</sup> Under the Energy Policy and Conservation Act, the Mineral Leasing Act, the Naval Petroleum Reserves Production Act, the Outer Continental Shelf Lands Act, and the Forest Resources Conservation and Shortage Relief Act, as amended.

## **E. Violations/Penalties:**

Civil penalties for violation of US import laws are contained, in part, under section 1592 of title 19 USC 1592 of the United States Code. Criminal penalties are found, in part, under title 18 of the United States Code.

## **6. Observations**

The Report makes no recommendation for adopting *carte blanche* any of the select countries import laws. The Report recommends that instead of adopting any one law, that the Ministry consider key elements of the select and other countries law in formulating a new trade law. As a reference, the South Africa's trade law is included as an appendix for reference.

The Report recommends that the Ministry does not adopt India's Foreign Trade Act as this Act also needs legal reform, in particular, the provisions where an importer/exporter code may be cancelled or suspended if the government has reason to believe that the import or export has brought disrepute to the country.

Other than India, none of the select countries have such a provision, and countries do not generally inspect exports to ensure that they meet required standards or quality control. This is generally the responsibility of the exporter, importer, distributor, and the government of the importing country to ensure that such products meet the requirements.

Also, India's law provides broad discretion insofar that it allows for the implementing regulations to issue licences that require onerous conditions and less transparency. These include conditions that mandate imports for categories of importers, categories of products and category of uses (there is no category of exporters).

None of the other select laws have similar provisions. Such conditions foster fraud, lack of transparency, lack predictability, and cause undue administrative burdens and trade restrictions. Such conditions are contrary to the notion of free imports and exports as India promotes its trade policy.

In addition, as noted in Section II.2. C, Import restrictions/ Prohibitions of the India section, India requires that goods imported under a licence must be disposed of according to the licence, that the goods must be new unless otherwise stated in the licence, and that the goods may not be exported or licence transferred without permission. These are more restrictive import licensing requirements than the other select countries.

The select laws, except for the India restrictions noted above, all provide that anyone can import or export freely without a licence except for restricted or sensitive products which may require a licence. This also means that an importer or exporter does not have to belong to any category, as for exporters in

Article 4 of Egypt's Law No. 118 of the Year 1975, or for an importer to be limited to a category of goods that can be imported.

The select countries provide for both private/personal and commercial importers, with an informal entry for personal imports.

Each country also requires that importers/imports and exporters/exports be tracked. This is achieved by requiring that the importer or exporter register to obtain an identification number. In some cases, an importer/exporter identification number might not be needed for private imports in some countries. However, such importers/exporters are required to provide information that can be used as tracking system. Obtaining an identification number is an easy, one step process in each country.

The select countries all require an entry or export declaration. Thus, together with the importer/exporter identification, the authorities can identify the importers and exporters as well as the products being imported or exported.

In the case where an import licence or permit is required for restricted or sensitive commodities, in all countries the Ministry, Agency or Department responsible for the particular commodity issues the required permit or licence. The underlying policy is that the concerned Ministry, Agency or Department is generally responsible for proposing laws and issuing regulations and requirement, including those relating to inspection for products under their jurisdiction. Thus, they are best informed regarding the imported product and its requirements.

## **7. Recommendations:**

### **1. Registration:**

As noted above, all the select countries have some type of system whereby imports/importers and exports/exporters can be tracked.

**Recommendation:** That the new trade law provide for a registration procedure that tracks importers/exporters without undue burden. This would require coordinating with other relevant Ministries and Customs to devise and implement an importer/exporter tracking system that is a one stop shop and not a duplicative process.

This would facilitate trade, ease the administrative burden, result in a more efficient tracking system and reflect the best practices of the import/export laws and procedures.

### **2. Import Licenses:**

All of the select countries permit importation of non-restricted items without the need for obtaining a licence. However, even when a licence is not required, the import of certain items require a certificate or some type of documentation from the applicable Ministry, Department or Agency stating that the import of the specific item is permitted and meets the requirements.

**Recommendation:** That the new trade law eliminates the requirement for a licence for unrestricted products. This would reduce business costs and facilitate trade. The above registration procedure would track importers. A licence or permit should be required for sensitive or restricted imports.

To combat potential abuse, negligence and fraud, the laws should provide strong penalty provisions as a disincentive.

### **3. Export Controls and Licences:**

All of the countries reviewed have an export declaration process which tracks exports as well as the exporter. In addition, depending on the commodity, a licence or permit may be required.

Countries track exports for trade protective measures, policy and security concerns, and to meet international obligations. The policy for export controls for trade protective measures are generally made within the Ministry of Trade and implemented by Customs.

In the wake of the current global security threats, most countries have become more diligent in tracking exports, particularly exports relating to national security matters. In addition, countries that are Members of the various organizations or conventions have a responsibility to track certain exports, for example, exports subject to restrictions and prohibitions under the Australia Group, the Wassenaar Arrangement or UN Conventions.

There is no one agency or department that is fully responsible for tracking all exports or making policy export control decisions in most countries, including the select countries, except for India where the DGFT is responsible for issuing all export permits/licences. Generally, such controls and policy decisions are made by the Ministry, Agency or Department having jurisdiction over the commodity and for issuing the required permits, as illustrated above in New Zealand, Australia, the UK and the United States.

**Recommendation:** That the new trade law include a provision providing authorization to issue regulations, directives or decrees prohibiting imports and exports for reasons of national security, protective measures, and other policy concerns within its jurisdiction. This should be coordinated, as necessary, with other concerned Ministries and implemented by Egyptian customs, similar to the select countries' procedures.

The implementing regulations, directives or decrees should provide for the list of prohibited/restricted items as these are subject to change and changing decrees and directives is more easily done than amending legislation.

Taiwan's *Foreign Trade Act February 5, 1993, Amended on May 7, 1997* is provided as a sample provision:

### **Article 6**

*Under any of the following circumstances, the competent authority may temporarily suspend import from or export to specific countries or territories or import/export of specific goods or take any other necessary measures:*

- 1. when any natural disaster, incident, or war occurs;*
- 2. when national security is endangered or protection of public safety is hindered;*
- 3. when the domestic or international market suffers a serious shortage of a specific material or the price thereof drastically fluctuates;*
- 4. when serious imbalance is caused or threatened in international payments;*
- 5. when any international treaty, agreement, the United Nations Resolution or international cooperation calls for it; and*
- 6. when a foreign country impedes import/export with measures violating international agreements or principles of fairness and reciprocity.*

*Application of subparagraphs 1 through 4 or subparagraph 6 of the preceding paragraph shall be limited only to circumstances when there is an adverse impact or a threat thereof upon the normal development of the economy and trade of this country.*

*Before suspending import/export or taking any other necessary measures pursuant to subparagraph 4 or 6 of paragraph 1 above, the competent authority shall try to settle trade disputes through consultation or negotiation.*

*Suspension of import/export enforced or other necessary measures taken by the competent authority shall be lifted when causes therefor cease to exist.*

The ratification requirement provided for in the preceding Article shall also be applicable for the purpose of this Article.

In addition, the EC's *Council Regulation (EEC) No 2603/69 of 20 December 1969*, discussed above, could serve as a starting point of for export provisions and modified to meet the Ministry's import/export policy goals.

Also, the new law should generally or specifically, depending on the policy goals authorize the issuance of regulations directives or decrees to meet those goals. This is commonly done in legislation as it permits a government to take action as needed, and not be limited to specifics in legislation.

For this reason, it is recommended that specific licence fee amounts and penalties, unless tied to a parameter and incremental levels, should not be contained in legislation but in regulations and decrees. In other words, the authority to assess licence fees and penalties should be in the trade law, but specific LE amounts should be tied to percentages of the value of goods, *etc.* This is further discussed in the penalties section of the Report.

#### **4. Licensing Fees:**

Many countries assess a fee for issuing a licence or permit to cover administrative costs. Some laws include a statutory amount for the licencing fee while others provide for the authority to issue regulations, directives or decrees setting forth the details for determining the fee amount and the procedures for obtaining the licence.

**Recommendation:** That the new trade law include authority for the collection of licencing fees, determining penalties (discussed below) and the issuance of regulations, directives or decrees for its implementation.

This approach, rather than include statutory amounts for the licensing fees in the law would enable the Ministry to have more flexibility in determining fees in the long tem without the need for amending legislation. However, the Ministry might want to consider a statutory cap for licences to be contained in the law.

#### **5. Penalties:**

In cases where there are separate laws for the issuance of a licence, penalties for violations of the terms of the licence are generally found in the laws issuing the licences. Penalties for breach of the licencing terms may include a loss of the licence, forfeiture of the deposit, if any, and other penalties.

Penalties for breach of import/export laws are generally contained in the customs or finance code of many countries.

In considering whether and what penalties should be included in a new trade law, it is important to coordinate/consult with the customs laws to ensure that they are not duplicative, contradictory or in conflict, and that such penalties meet policy goals.

**Recommendation:** Under best practices, the law should contain a statutory maximum and minimum for the penalties, tied to the value of the

goods in incremental amounts, and/or forfeiture, depending on the nature of the violation, the particular import, repeat offenders and level of culpability.

Best practices for penalties include transparency, clear guidelines with possibility for discretion and mitigation, and due process.

Section 1592, the civil penalty provisions of the US Customs Code, is included for reference in the Appendices.

## **6. Authority for Import Prohibitions/Restrictions:**

In most countries, including the select countries, the policy for prohibited or restricted imports is generally made by the concerned Ministries responsible for oversight of those products. Even in the case where the product is prohibited or restricted by the Presidential Order or the highest levels of government, the concerned Ministry, Agency or Department generally still has oversight for that product.

For example, imports subject to safeguard laws would be a trade policy matter handled by the Ministry of Trade, while drugs and narcotics would be the [Ministry] Department of Health as in the case of Australia. The Customs authorities are responsible for implementing and enforcing the import prohibitions and restrictions in most countries, including the select countries.

**Recommendation:** That the Ministry consult with the relevant Ministries in determining overall policy regarding the rules that apply to prohibited and restricted imports and exports, and identifying such items. This should be done to ensure that policy and procedures are not in conflict, and identifying such products.

In working/consulting with other Ministries, key elements to consider include common goals, streamline procedures (with customs working together with the concerned Ministry as the implementing body), transparency, lack of duplicative processes and requirements, and trade facilitation.

## **7. Categories of importers:**

The select countries have formal commercial entry and informal customs entry for private importers. The determining factor is usually the value of the entry.

Other than India, the laws do not provide for special or select classes or categories of importers or goods, *e.g.*, *Import for Retail*, *Import for Private Use*, etc<sup>9</sup>. However, it is well established and common practice for countries to provide duty exemptions for certain imports based on policy needs or for economic reasons.

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<sup>9</sup> The HS has use provisions.

In the case of private importers or personal items, the laws and implementing regulations clearly set out the monetary limit for such imports. Violations of such provisions are subject to penalties under the customs laws.

**Recommendation:** That the new trade law provide for personal and commercial importation using a value amount to determine the type of importation.

Generally, for most countries, all imported items are subject to duty unless exempt. If, for policy or economic reasons, the Ministry's policy is to provide legitimate benefits to certain groups or categories of imports, these benefits should be conferred in the form of duty exemptions and not special categories of importers or uses.

In adopting this approach, the new trade law should provide the authority for such exemptions, and the details should be provided in the implementing regulations.

This would accomplish the same goals, decrease the administrative costs, lessen the possibility for circumvention, fraud and abuse, and facilitate trade. This would also reflect the best practices for the most countries' laws.

## **8. Duties on Exports:**

Of the select countries, India is the only country that currently imposes duties on exports. It is commonly accepted practice that countries may have legislation in place that permits the assessment of duties on exports to meet policy goals when deemed necessary.

However, export duties are not tied to the exporter level of profits as in Article 8 of Egypt's Law No. 118 of the Year 1975. Generally, export duties, if any, are set to meet specific needs such as shortages or public policy needs and apply to all exports of the particular commodity. It is unique for a government to use a reasonable profit margin for the exporter as a basis for determining applicable duties. In addition, this practice raises WTO concerns as this may be construed a benefit to select exporters, as well as raising a subsidy issue.

**Recommendation:** That the Ministry consider including a provision authorizing collection of duties on exports for identified or general policy reasons in new trade law. The duties should not be tied to the exporter's level of profits.

## **9. Inspection Requirements:**

Inspection requirements are not generally found in a trade law. These requirements are generally found in related laws under the jurisdiction of the relevant Ministry or Agency. These are usually set to meet health and safety

needs and cover a range of products including food, cosmetics, toys, live animals, equipment *etc.*

Inspections may be required depending on the level of risk and need for inspection to verify conformity with relevant standards and requirements. For example, imports of meats, poultry, and dairy and fishery products must undergo inspection at the Border Inspection Post on arrival in the UK. In most countries, these requirements are found in the laws applicable to the Ministries, agencies or Departments responsible for such products.

**Recommendation:** The Report recommends that previous work done on this topic be reviewed. Any specific concerns that have not been previously addressed may be addressed in a subsequent undertaking.

## 10. Importation of Used Items:

Countries are permitted to restrict or prohibit the importation of used items to meet legitimate policy goals. In fact, many countries impose restrictions on the importation of certain used items because of health and or safety concerns. These may consist of an outright prohibition on the importation of certain items, *e.g.*, used vehicle tires, clothing and items which may contain dangerous materials (asbestos, mercury, *etc.*). Or they may require a certificate of worthiness for used aircrafts (the UK) and other equipment, including medical equipment. Some countries may require a special licence for such imports. National policy goals may include:

- Concerns for health/safety reasons
- Prevent serving as a dumping ground for other countries' used items
- Consumer protection

For example, India imposes several restrictions on the import of used equipment. Second hand capital goods with a minimum residual life of 5 years can be imported by actual users of such equipment without a license. However, the importer is required to furnish a declaration to the Customs Department specifying the residual life of the second hand capital goods.

Used automobiles are also restricted in many countries, including the United States, and India. Further, if permitted, such imports must meet safety and environmental requirements.

Some countries have quotas on used clothing while others prohibit it entirely, and others require a certification notarized in the place of origin showing that the used clothing had been sanitized.

In addition used goods may present a customs valuation issue as the possibility for undervaluation and fraud exist. This has caused concern in some countries. For example, India requires that the importer of used capital equipment furnish a certificate from an internationally reputable inspection and certification agency

that the purchase price of the equipment is reasonable. In addition, the second hand equipment cannot be transferred, sold or otherwise disposed of within a period of 5 years from the date of import, except with prior permission of India's Director General of Foreign Trade.

**Recommendation:** That the Ministry consider its policy goals for importing used articles and provide for this in the new trade law in a transparent, predictable way.

#### **11. Use of Banks in The Arab Republic Of Egypt To Collect Administrative Expenses** (as provided in Article 10, Decree No. 770 of the Year 2005).

Usually, a country might require payment of administrative fees and duties at designated banks for the following reasons:

- Administrative ease
- Prevent undervaluation and avoidance of duty
- Reduce corruption of customs officials
- Control foreign exchange
- Ensure proper VAT is collected
- Ensure that there really is an importation and that money is not leaving the country for false reasons.

In India, customs duties can be paid in the designated banks using a designated form.

Generally, customs collects fees for administrative costs which it incurs in processing an entry. Under the WTO rules, such fees must bear a direct relationship to the actual costs of the service provided and not be used as a revenue raiser.

If the Ministry incurs administrative costs for imports and exports, or if the customs administrative fees are due to the Ministry, the same rules apply, *i.e.*, such fees must bear a relationship to the actual cost of the service provided.

**Recommendation:** That the government should assess collection methods and determine the most effective means to do so, even if this includes using designated banks. If it is decided that the Government wants to follow this course of action, the following is recommended:

- It should be considered whether the authority for activity should be a specific provision or come under an umbrella provision that permits the government to take needed administrative action to fulfill its policy goals;
- The details of this activity should be spelled out in the regulations and not in the law.
- Administrative fees that the Ministry intends to collect relating to an entry or export must be based on the cost for the particular service, and not as a revenue raiser.

## **12. Importation of Spare Parts**

The importation of spare parts usually depends on several factors. Some spare parts have a separate HS code and are treated just like any other importation; some are considered to be normal accessories when the main item is imported and no separate treatment is given (spare tire with an imported car, for example).

There is no uniform approach to the importation of spare parts as countries set policy on spare parts to promote investment, protect public safety and meet other policy goals.

**Recommendation:** That the Ministry consider legitimate goals regarding the importation of spare parts and set its policy accordingly. This could include duty exemptions for spares up to a certain value of the capital equipment, encouraging foreign investment and ensuring public safety. Such policy should also take into consideration non-originating spare parts.

In addition, in considering future trade agreements, the Ministry should consider including the treatment of spare parts.

## **III. Rules of Origin**

### **1. The EU Rules of Origin**

The EC applies both non-preferential and preferential rules of origins (ROO). Its non-preferential ROO are contained in the customs code (CC) and corresponding implementing regulations<sup>10</sup>, the preferential ROO are set out in the relevant preferential trade agreements/arrangements (in the implementing provisions of the customs code for autonomous/non-reciprocal preferential arrangements)

Below is the EC's non-preferential origin<sup>11</sup>

#### **Article 22**

*Articles 23 to 26 define the non-preferential origin of goods for the purposes of:*

- (a) applying the Customs Tariff of the European Communities with the exception of the measures referred to in Article 20 (3) (d) and (e);*
- (b) applying measures other than tariff measures established by Community provisions governing specific fields relating to trade in goods;*
- (c) the preparation and issue of certificates of origin.*

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<sup>10</sup> The legal basis for non-preferential rules of origin are contained in Articles 22-27 of the CC, and Articles 35-65 and Annexes 9-11 of the IPC (Commission Regulation No. 2454/93).

<sup>11</sup> Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code

### **Article 23**

1. Goods originating in a country shall be those wholly obtained or produced in that country.

2. The expression 'goods wholly obtained in a country' means:

(a) mineral products extracted within that country;

(b) vegetable products harvested therein;

(c) live animals born and raised therein;

(d) products derived from live animals raised therein;

(e) products of hunting or fishing carried on therein;

(f) products of sea-fishing and other products taken from the sea outside a country's territorial sea by vessels registered or recorded in the country concerned and flying the flag of that country;

(g) goods obtained or produced on board factory ships from the products referred to in subparagraph (f) originating in that country, provided that such factory ships are registered or recorded in that country and fly its flag;

(h) products taken from the seabed or subsoil beneath the seabed outside the territorial sea provided that that country has exclusive rights to exploit that seabed or subsoil;

(i) waste and scrap products derived from manufacturing operations and used articles, if they were collected therein and are fit only for the recovery of raw materials;

(j) goods which are produced therein exclusively from goods referred to in subparagraphs (a) to (i) or from their derivatives, at any stage of production.

3. For the purposes of paragraph 2 the expression 'country' covers that country's territorial sea.

### **Article 24**

Goods whose production involved more than one country shall be deemed to originate in the country where they underwent their last, substantial, economically justified processing or working in an undertaking equipped for that purpose and resulting in the manufacture of a new product or representing an important stage of manufacture.

### **Article 25**

Any processing or working in respect of which it is established, or in respect of which the facts as ascertained justify the presumption, that its sole object was to circumvent the provisions applicable in the Community to goods from specific countries shall under no circumstances be deemed to confer on the goods thus produced the origin of the country where it is carried out within the meaning of Article 24.

The Customs Code defines substantial transformation in broad terms. This criterion is vague and leaves broad discretion to national custom authorities. Therefore, additional tests are used to define substantial transformation more precisely:

- **A technical test**, prescribing that the product must undergo specific processing operations in the originating state and determined on a case by case basis. For example, it may be stated that the product has been substantially transformed if it has some properties that it did not have before;
- **A domestic content test**, requiring a minimum percentage of local value added in the originating State or setting the maximum percentage of value originating in non-member States;
- **A change in tariff classification**, requiring the product to change its tariff heading under the Harmonized Commodity Description System in the originating State. In such cases a significant qualitative change in its characteristics is essential to determine a change in the origin. In assembly operations, the importance of the transformation has to be assessed within the entire production process. The assembly can be more than simple, but not substantial, or it can be the decisive stage of the process which gives the product its specific character: in this case the assembly confers origin.

The EU also applies detailed rules of origin to several products categories: textiles, clothes, meat, grape juice, wine, vermouth, leather clothes, shoes, ball bearings, tape-records, magnetic discs, television sets, integrated circuits, copier machines, watch bands, and ceramic articles.

## **2. India: Rules of Origin**

India generally applies preferential rules of origin under its bilateral and regional trade agreements through a combination of minimum local content and value addition, and a change in the HS tariff heading. India does not have formal non-preferential rules of origin but issues certificates of origin for products qualifying as originating in India.

## **3. New Zealand: Rules of Origin**

New Zealand has preferential rules of origin under its bilateral agreements, and grants unilateral preferences similar to its preferential rules to Forum Island countries. New Zealand does not maintain formal rules of origin for non-preferential purposes.

## **4. Australia: Rules of Origin**

Australia's preferential rules of origin are contained in Customs Act 1901 Section 4 (definition of "unmanufactured raw products") and the implementing regulations.

Australia does not have formal non-preferential rules of origin. Instead, Australia provides non-reciprocal preferential tariff access to imports originating in developing countries and LDCs under certain conditions.

## **5. United States: Rules of Origin**

The US applies both non-preferential rules of origin. Preferential rules of origin are maintained under free-trade agreements and unilateral tariff concessions.

The non-preferential rules of origin are contained in the customs law under title 19 of the United States Code. The US also maintains separate rules of origin for textile and textile products. The general non-preferential rules of origin are as follows:

***Rules of Origin § 102.11 General rules (19 CFR 102.11):***

*The following rules shall apply for purposes of determining the country of origin of imported goods other than textile and apparel products covered by § 102.21.*

*(a) The country of origin of a good is the country in which:*

- (1) The good is wholly obtained or produced;*
- (2) The good is produced exclusively from domestic materials; or*
- (3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in § 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.*

*(b) Except for a good that is specifically described in the Harmonized System as a set, or is classified as a set pursuant to General Rule of Interpretation 3, where the country of origin cannot be determined under paragraph (a) of this section:*

- (1) The country of origin of the good is the country or countries of origin of the single material that imparts the essential character to the good, or*
- (2) If the material that imparts the essential character to the good is fungible, has been commingled, and direct physical identification of the origin of the commingled material is not practical, the country or countries of origin may be determined on the basis of an inventory management method provided under the appendix to part 181 of this chapter.*

*(c) Where the country of origin cannot be determined under paragraph (a) or (b) of this section and the good is specifically described in the Harmonized System as a set or mixture, or classified as a set, mixture or composite good pursuant to General Rule of Interpretation 3, the country of origin of the good is the country or countries of origin of all materials that merit equal consideration for determining the essential character of the good.*

*(d) Where the country of origin of a good cannot be determined under paragraph (a), (b) or (c) of this section, the country of origin of the good shall be determined as follows:*

- (1) If the good was produced only as a result of minor processing, the country of origin of the good is the country or countries of origin of each material that merits equal consideration for determining the essential character of the good;*
- (2) If the good was produced by simple assembly and the assembled parts that merit equal consideration for determining the essential character of the good are from the same country, the country of origin of the good is the country of origin of those parts; or*
- (3) If the country of origin of the good cannot be determined under paragraph (d)(1) or (d)(2) of this section, the country of origin of the good is the last country in which the good underwent production.*

## 6. Issuance of Certificate of Origin

There is no consensus as to how certificates of origin (CoO) are issued in the various countries. In some countries, these are issued by the private sector such as Chambers of Commerce, by the producer/manufacturer, by entities designated by the government (New Zealand) or by the government itself. In some cases, a trade agreement may provide how the CoO should be issued. Some countries are also using e-country of origin of origin certificates provided by the manufacturer/producer. This has the benefit of facilitating trade, easing administrative costs and holding the manufacturer/producer liable in the case of a false CoO.

As an example, in India, certain authorized Indian government agencies issue both preferential and non-preferential CoOs, the latter mainly for export purposes. These designated authorized agencies also issue preferential CoOs. Exporters wishing to obtain a non preferential CoO may apply to any of designated agencies with the following documents:

- (a) Details of quantum/origin of the inputs/ consumables used in the export product;
- (b) Two copies of invoices
- (c) Packing list in duplicate for the concerned invoice
- (d) Packing list in duplicate for the concerned invoice

The Australian Chamber of Commerce and Industry and affiliated bodies, the Australian Industry Group, and any body authorized by the Government of Australia, subject to the agreement of the Parties, may issue CoOs.

## 7. Observations and Recommendations

There is no clear consensus whether a country should have formal non-preferential rules of origin. As noted in the review of the select countries, the EU and the United States have formal rules for non-preferential origin. India, New Zealand and Australia follow the WTO Agreement on the Rules of Origin and have indicated that they are awaiting a final rule from the WTO Committee on Rules of Origin.

However, lack of formal non-preferential rules of origin can cause uncertainty among importers and exporters and may not be transparent. For example, countries have several different preferential rules of origin, depending on the particular agreement.

Selective application of a preferential rule to certain imports can create uncertainty with exporting community as the exporter may not always know which preferential rules apply to his/her exports. In addition, this may result in lack of transparency as well as provide opportunities for fraud.

While it is commendable that countries are awaiting a final rule from the WTO Committee on Rules of Origin, it is unclear when such a rule will be issued as it was scheduled to be completed several years ago.

It is also noteworthy that Vietnam, the most recent WTO acceding country, enacted non-preferential rules origin. For consideration, Vietnam's non-preferential rule of origin is contained in the Appendices.

**Recommendation** – that the Ministry include non-preferential rules of origin in its new trade law. While non-preferential rules of origin are found in the Customs laws in all of the above countries, the new trade law can and should authorize Customs the responsibility for its implementation.

## 5. Trade Remedies:

### 1. EU

The European Commission initiates anti-dumping as well as subsidies and safeguard proceedings and the Directorate-General for Trade conducts the investigation. The Safeguard law is found in *EC Regulation (EC) No. 3285/94. EC Regulation 384/96*, as amended<sup>12</sup>, provides the main legal basis for the EC's anti-dumping measures.<sup>13</sup>

### 2. India

Safeguard legislation is contained in Sections 8B and 8C of the Customs Tariff Act, 1975, with Section 8C relating specifically to imports from China. The Customs Tariff (Identification and Assessment of Safeguard Duty) Rules 1997 and the Customs Tariff (Transitional Products Specific Safeguard Duty) Rules 2002, describe the procedures to be followed for the application of safeguard measures.

Investigations on safeguards are carried out by the Director General of Safeguards, based in the Department of Revenue, Ministry of Finance.

Anti-dumping measures are contained in the Customs Tariff Act, 1975, as amended by the Customs Tariff (Amendment) Act, 1995, and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995.<sup>14</sup>

Countervailing measures are also contained in the Customs Tariff Act, 1975 (Part 9) and the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995.

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<sup>12</sup> A 2002 amendment formally recognized Russia as a market economy in the context of anti-dumping. The March 2004 amendments cover streamlining of the EC's internal decision-making procedure, the introduction of mandatory deadlines in review investigations, and some improved rules on enforcement of measures.

<sup>13</sup> Amended by the following Acts: Council Regulation (EC) No. 2331/96, OJ L 317, 6 December 1996; Council Regulation (EC) No. 905/98, OJ L 128, 30 April 1998; Council Regulation (EC) No. 2338/2000, OJ L 257, 11 October 2000.

<sup>14</sup> WTO documents G/ADP/N/1/IND/1, 15 August 1995; G/ADP/N/1/IND/2/Corr.1, 9 January 1996; and G/ADP/N/1/IND/2/Suppl.1, 23 December 1996.

### **3. New Zealand**

Trade remedies determination are made by the Trade Remedies Group in the Ministry of Economic Development and are implemented by New Zealand Customs.

New Zealand safeguard laws are contained in the Temporary Safeguards Authority Act, 1987, amended in 1994. The law is administered by Trade Remedies Group in the Ministry of Economic Development and is implemented by New Zealand Customs.

The Dumping and Countervailing Duties Act 1988 (the Act) is also administered by the Trade Remedies Group of the Ministry of Economic Development.

### **4. Australia**

Australia's legislation includes: the Customs Act 1901, which sets out the general inquiry process; the Customs Tariff (Anti-Dumping) Act 1975, which provides for the imposition of anti-dumping and countervailing duties; and the Customs Administration Act 1985, which establishes some administrative matters and associated regulations.<sup>15</sup>

Australia has no specific legislation for the imposition of safeguard measures.<sup>16</sup> The Productivity Commission is the investigating authority. Following consideration by the Australian Government, the Treasurer may refer matters to the Productivity Commission for inquiry.

### **5. United States**

The US has several laws that authorize trade remedies. The anti-dumping and countervailing laws are contained under Title VII of the Tariff Act of 1930 (title 19 of the US Code), as amended by the Trade Agreements Act of 1979. The International Trade Administration (ITA) in the U.S. Department of Commerce (USDOC) and the United States International Trade Commission (USITC) are responsible for the administration of laws and agreements with respect to anti-dumping (AD) and countervailing duty (CVD) measures.

The ITA determines whether there is dumping and subsidy in AD and CVD and the margins, and USITC determines whether there is material injury or threat to the domestic industry resulting from imports of the dumped or subsidized products.

The safeguard law is also contained under title 19 of the US Code and is administered by the ITC.

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<sup>15</sup> Customs (2005e).

<sup>16</sup> Procedures for safeguard investigations are contained in *Gazette* No. S297 of 25 June 1998. Also see WTO documents G/SG/N/1/AUS/2, 2 July 1998, and G/SG/N/1/AUS/2/Suppl.1, 16 December 2005.

## 6. Observation and Recommendation:

There is no consensus whether a trade remedy law should be contained in a comprehensive trade law or separately and whether or not they should be referenced in the import/export laws or regulations. Best practices are that there is independence and transparency in making determinations and findings of whether there is dumping, a subsidy and material injury.

In some countries, including the United States, the investigations and determinations are made by different Agencies. This ensures transparency, lack of conflict of interests and independence. In most countries, including the select countries, Customs is responsible for implementing the findings.

South Africa, which has a comprehensive law, includes trade remedies in its trade law and customs is responsible for its implementation.

**Recommendation:** That if Egypt's trade remedies laws are not merged in the new trade law, that they be cross referenced in the new trade law or its implementing regulations. This would enable the importing/exporting public to more easily identify these laws and would facilitate trade.



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