PN-ACT-018

USAID

Technical Assistance Project for Customs Related Activities under the Africa Trade and Investment Policy Program

Diagnostic Assessment/ Plan of Action on Customs Procedures

USAID SEGIR IV GBTI
Contract No.: PCE-I-00-98-00013, Task Order 6

September 2001

BOOZ·ALLEN & HAMILTON

TABLE of CONTENTS

Executive Summary ES-1

Chapter I: Introduction I-1

Chapter II: Overview of Trade Activities in West Africa II-1

Chapter III: Overview of WAEMU Customs Activities III-1

Chapter IV: Review of Customs Policies and Procedure in Burkina Faso, Mali and Senegal IV-1

Chapter V: Trade Facilitation Issues in West Africa V-1

Chapter VI: Recommendations VI-1

Appendix A – Extracts from the WAEMU Treaty Signed on January 10,1994 ..... A-1

Appendix B – Comparative Analysis of Customs Codes Indices B-1

Appendix C – Notes on the Revised Kyoto Convention C-1

Appendix D – G7 Customs Data Harmonization Initiatives D-1

Appendix E - WCO's Arusha Declaration E-1

Appendix F – Notes on the GATT Valuation Agreement (GVA) F-1

Appendix G – Notes on the ASYCUDA Computer Software System G-1

Executive Summary

This executive summary presents the most important findings of Booz•Allen & Hamilton's (BAH) diagnostic assessment of the WAEMU Customs. Commissioned by the United States Agency for International Development (USAID) under the Technical Assistance Project for Customs-Related Activities.

A. Report's Objectives & Scope

The purpose of this assessment is primarily to:

- Provide an analysis of existing Customs framework based on a three country case-study (i.e.; Burkina Faso, Mali and Senegal);
- Review current initiatives to modernize and harmonize Customs processes;
- Assess compliance of WAEMU Customs with World Trade Organization (WTO) and World Customs Organization (WCO) standards in the areas of goods classification, valuation, declaration, inspection and clearance; and
- Develop a set of recommendations along with an action plan for implementation based on the assessment findings.

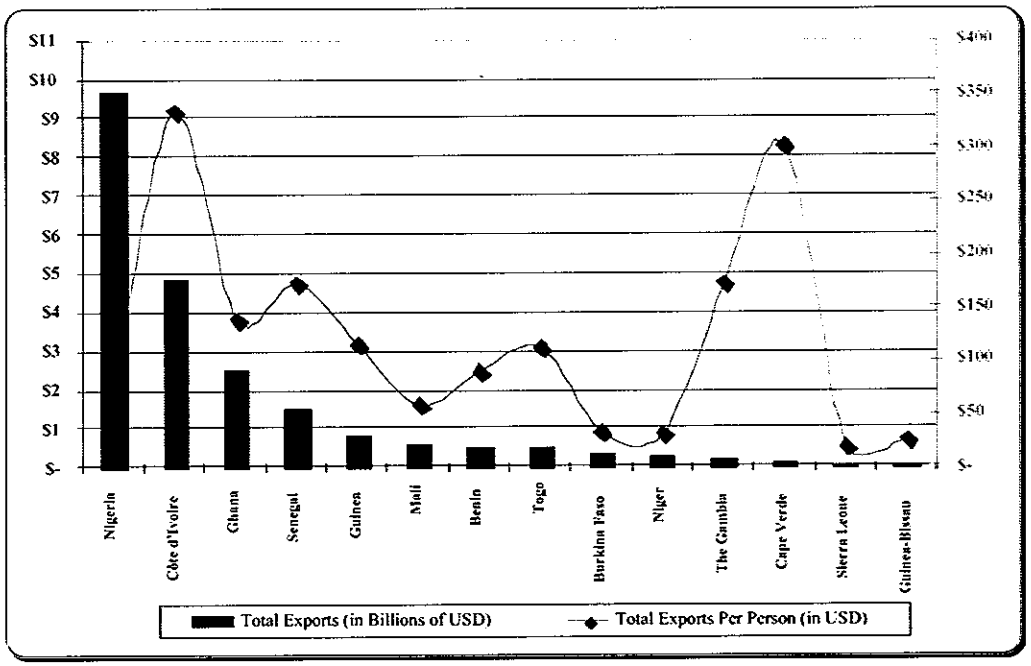
B. Overview of Trade Activities Within West Africa

Two major regional organizations bring together fifteen countries in West Africa: the oldest and largest, the Economic Community of West African States (**ECOWAS**), and the smaller and more recent organization, the West Africa Economic and Monetary Union (**WAEMU**), which consists of a subset of French-speaking countries, sharing the same currency and business culture.

B.1 Trade Activities in West Africa

In terms of figures, the fifteen countries making up the ECOWAS/WAEMU organizations had in 2000 an estimated population of 223 million people with a combined Gross Domestic Product (GDP) of 81 billion US Dollars (USD). Total trade amounted respectively to 22.4 and 27.7 billion USD in exports and imports. A country by country review of economic and trade performance reveals wide discrepancies among ECOWAS/WAEMU member countries in terms of levels of trade, investments and overall economic development (see Figure ES-1).

Trade characteristics for the entire region suggest trade flows dominated by the dynamics of global trade. In other words, the bulk of trade activity currently taking place occurs through movements in and out of Africa as opposed to significant intra-regional transactions. Additionally, products are handled by large/bulk traders or by small/regional traders. These characteristics affect significantly trade performance. Transactions are furthered weighed down by numerous local checkpoints from several enforcement agencies.



Source: World Bank
Booz•Allen & Hamilton, 2001

Figure ES-1: Export Performance for West Africa Countries (year 2000)

C. WAEMU Customs Activities and Procedures

This section summarizes customs processes within WAEMU member countries and assesses the compliance of their customs procedures with WTO and WCO's recommendations.

C.1 Customs Processes Harmonization and Simplification in WAEMU

WAEMU's trade policy is characterized by the following elements:

- Implementation of a Common External Tariff (CET);
- Elimination of customs duties for goods exchanged among WAEMU member nations and lowering of duties for defined categories of goods; and
- Implementation of a Union's Customs Code.

The WAEMU has endorsed the WTO's recommendations regarding the use of the transactional value as the basis for the valuation of goods. This endorsement is reflected in WAEMU's, soon to be adopted, Customs Code as well as in the endorsement by some member countries of the Revised Kyoto Convention designed to simplify Customs processes.

Although WAEMU's Customs Code follows the intent of the Revised Kyoto Convention, it does not challenge the current Customs processes for handling in transit goods transit which generate undue delays and unnecessary controls along the transport road. Moreover, the new

Code fails to address provisions and recommendations for trade facilitation and Customs procedure simplification stipulated in the Revised Kyoto Convention and the WTO.

Current international transit procedures in use throughout ECOWAS slow down the transit process. These procedures main drawbacks are:

1. A prohibitive cost of individual transit guarantees issued by Chambers of Commerce;
2. A questionable usefulness of these transit guarantees; and,
3. The non-discrimination between compliant and non-compliant shippers and/or good types.

Additionally, none of the West African Customs administrations possess complex computerized risk targeting systems capable of identifying non-compliant shippers. They have limited resources, hold an entrenched enforcement culture, have a primary policy goal of duty collection and are ridden by corruption.

C.2 Goods classification and Valuation Processes Harmonization

WAEMU's **Common External Tariff** (CET) is based on WCO's Harmonized Commodity Classification System, WCO's Harmonized Tariff System (HTS) and a Table of Duty Rates helping in product classification. Full to partial tariff exemptions are applied to both locally produced products (full exemption) and locally manufactured goods (partial – requires Certificate of Origin).

As of May 2001, it was our understating that none of the WAEMU and or the ECOWAS countries had started the use of Transactional Value for valuation purpose, although all of them had committed to do as signatories of the 1994 GATT agreement.

C.3 The WAEMU vis-à-vis the WTO and the WCO's Recommendations

Although the WAEMU has established a monitoring unit whose role is to ensure that member countries follow the Union customs and trade legislation, it has yet to actively challenge its members on the effective implementation of basic WCO/WTO requirements regarding trade facilitation and process simplification.

D. Review of Customs Policies and Procedures in Burkina Faso, Mali and Senegal

D.1 The Role and Objectives Customs Services

All three Customs administrations we evaluated have for primary objective to collect duties with secondary objectives including:

- Assist in the development of domestic industries by implementing effectively quotas and duties;
- Assist other Government agencies in enforcing trade laws and regulations; and,

3

- Facilitate traders' compliance with Customs regulations.

The primacy of duty collection is explained by the importance of this revenue source in local Government's budget (see Table ES-1). Developed countries' Customs administrations, on the other hands, have made of trade facilitation their primary objective.

Country	Value of Duties Collected (CFA Millions)	Value of Duties Collected (USD Millions)	Value of Duties Collected as a Percentage of Government Revenues (excluding external aid)
Burkina Faso	93,502	134	40
Mali	120,000	171	45
Senegal	180,000	257	45

Source: Burkina Faso, Mali and Senegal Customs
Booz•Allen & Hamilton, 2001

Table ES-1: Customs Administrations Duties Collection in 2000

D.2 Customs Codes

The Customs Code proposed by the WAEMU still needs to be implemented by its members. All have agreed that the provisions of the new Code will supercede any similar provisions contained in their respective national codes. Some stipulations within each national Customs codes (e.g.; transit guarantees) will remain, however, specific to each national Customs administrations.

D.3 Goods Classification Practices

Although the WAEMU has used information seminars to introduce the WCO's Harmonized Commodity Classification System (HS), additional training available through the WCO could also benefit front-line officials and brokers responsible for goods classification in all member countries.

D.4 Implementation of the Rules of Origin

The WAEMU Agreement provides for Rules of Origin for intra-regional trade and a standardized Certificate of Origin. There are currently no international standards for rules-of-origin, but the WTO, in conjunction with the WCO, is at an advanced stage of preparation of global standards for preferential rules-of-origin.

D.5 Goods Valuation Practices

The WAEMU treaty requires that all of its members adopt the GATT Valuation Agreement (GVA) for the purpose of goods valuation. The GVA is due to be put in place in Burkina Faso, Mali and Senegal before the end of the year 2002. For the time being, however, all three countries continue to use the Brussels Valuation System (BVS) that relies on pre-shipment inspections using certification/inspection companies such as SGS.

D.6 Pre shipment Inspection (PSI)

Pre shipment inspections are handled by specialized companies located in exporting countries where they conduct goods checks prior to shipment in order to issue a certificate of value to be presented to Customs administrations of the importing country. This type of procedure is supposed to alleviate Customs revenue shortfall in developing countries by bringing to bear the expertise of specialized private foreign firm in the goods valuation process. The cost of using PSI companies (e.g.; 0.8% of the value of the goods, or 5 million USD, in Mali) is, however, high in comparison to the cost of developing a similar expertise within each Customs administrations.

D.7 Customs Declaration and Clearance Processes for Home Consumption

Although a unique declaration form has been developed for the WAEMU, individual Customs administrations continue to use their own declaration forms that translate into undue burden for global traders.

D.8 Information technology

Aside from Côte d'Ivoire and Senegal who use the SYDAM and GIANDE systems, most WAEMU Customs administrations operate the United Nations' ASYCUDA automated Customs declaration system which allows for basic shipment declaration data processing and recording. These systems are operated by most Customs administrations on a stand-alone basis (i.e.; their terminals are not linked to a central database via a network) and, accordingly, do not offer such basic features as risk assessment and remote liquidation. Their costs of operation is prohibitive for resource poor Customs administrations like those of West Africa when one considers the limited volume of declarations processed every year (i.e.; less than 100,000) as well as the limited capabilities of these systems. In this context, a regional approach to the problem of computerization of West Africa Customs administrations seems to make a lot of sense, especially when the necessary skills to develop and maintain a centralized system serving multiple Customs Administrations already exist within the ECOWAS (i.e.; Computer Center Division).

D.9 Enforcement

All Customs Administration officials recognized the need for greater regional cooperation and enforcement. The bulk fraudulent activity appears to take place in the informal sector and consists of smuggling products such as cigarettes, spare tires, second hand cars, fabrics, drugs, etc.

E. Trade Facilitation Issues in West Africa

Trade facilitation involves both Customs and non-Customs dimensions.

E.1 Customs Trade Facilitation Issues

From a Customs standpoint, trade facilitation issues involve:

- Reforming goods declaration procedures;
- Simplifying goods transit procedures;
- Strengthening Customs administrations human resources; and
- Reducing Customs personnel corruption.

E.2 Non Customs Trade Facilitation Issues

Trade facilitation issues also need to be considered from a non-customs standpoint that includes:

- Ensuring proper coordination among Government agencies that deal wit regional and global trade;
- Addressing transport and telecommunications infrastructure deficiencies;
- Improving financial sector capabilities as they relate to offering a unique guarantee system for the region's traders; and
- Developing transport sector operators capabilities to adapt and comply to new Customs rules and regulations.

F. Summary of Recommendations

This Chapter presents a set of short and medium term remedies to address identified Customs issues in the context of trade facilitation. An action plan for the implementation of the proposed short-term recommendations is also suggested.

F.1 Short Term Recommendations

Within a six-month time frame, the following recommendations could be implemented:

1. Amendments to the draft of the WAEMU Customs Code.
2. Development of a WAEMU sponsored Memorandum of Understanding for anti-smuggling and trade facilitation cooperation procedures among the region's enforcement agencies.
3. Development and implementation of training courses on Customs technical matters such as the WTO valuation (GVA), rules of origin, the Harmonized Tariff System, transit procedures, enforcement techniques, commercial fraud detection, intelligence gathering, risk management and post-clearance audit.
4. Development of a common training curriculum for all Customs administration's personnel.
5. Development of a WAEMU decree regarding the phasing out of pre-shipment inspections over two years.

6

F.2 Medium Term Recommendations

From most to least important, the following measures could be take in the medium-term:

1. The development of a regional bond guarantee scheme under the auspices of the WAEMU, the ECOWAS, and the region's major insurance and banking sector.
2. The development of a WAEMU and/or ECOWAS decree for the creation of a Regional Customs Training Center and regional computer-processing center to handle in-transit Customs declaration (in association with the ECOWAS computer center).
3. The creation of in-transit trade corridors.
4. The development of specific transport and telecommunications infrastructures at major inland border crossing points.
5. The development of a single regional computerized declaration system under the leadership of ECOWAS or WAEMU.
6. The development of a common pay system to harmonize how Customs agents are remunerated with an emphasis on a performance-based pay structure only partially linked to seizure and fine activities.

F.3 Action Pan

In order to reflect the difference in the implementation complexity of each short-term recommendation, we have categorized them as follows:

- **Category 1** – those recommendations that can be readily agreed on by all parties and implemented without reservation.
- **Category 2** – those recommendations that can be agreed on in principle by all parties but that will still require further negotiation and development among these parties.
- **Category 3** – those recommendations that cannot be agreed on at this point among all parties.

Accordingly, the first set of recommendations that we are proposing to undertake (i.e.; Category 1 recommendations) does not necessarily include the recommendations that appear on the top of our list of short-term recommendation as shown in the Table below.

Short Term Recommendations	Categories	Total Level of Efforts (days)	
		Level I Personnel	Level II Personnel
1. Amendments to WAEMU Customs Code	3	125	45
2. MOU regarding trade facilitation measures among enforcement agencies	2	45	20
3. Customs training course	1	131	62
4. Customs personnel training curriculum	1	102	31
5. WAEMU's Decree on pre-shipment phasing out	2	40	25
Total	n.a.	443	183

Booz•Allen & Hamilton, 2001

Table ES 2: Level of Efforts Estimates for Implementing Short Term Recommendations

8

Chapter I: Introduction

As part of the Technical Assistance Project for Customs-Related Activities funded through the Africa Trade and Investment Program, the United States Agency for International Development (USAID) has retained the services of Booz•Allen & Hamilton (BAH) to conduct a diagnostic assessment of Customs procedures and processes within the West Africa Economic and Monetary Union (WAEMU) member countries. The purpose of this assessment is primarily to:

- Provide an analysis of existing Customs frameworks based on a three country case-study (i.e.; Burkina Faso, Mali and Senegal);
- Review current initiatives to modernize and harmonize Customs processes;
- Assess compliance of WAEMU Customs with World Trade Organization (WTO) and World Customs Organization (WCO) standards in the areas of goods classification, valuation, declaration, inspection and clearance; and
- Develop a set of recommendations along with an action plan for implementation based on the assessment findings.

Accordingly, during the month of May, a team of three consultants conducted a two-week site visit of all three countries. During their time on the ground, they met with senior Customs officials of each country, inspected various Customs operation sites, including, but not limited to, border crossing points, Customs warehouse facilities and Customs processing centers. Additionally, they had meetings with WAEMU officials in charge of Customs issues and held discussions with several freight operators and exporters (e.g.; Sitarail representatives in Ouagadougou, Air Afrique representatives in Bamako).

This report presents the findings of this assessment work and is divided in the following chapters:

- **Chapter I: Introduction** - which provides a review of the report's objectives and scope.
- **Chapter II: Overview of Trade Activities Within West Africa** – which presents the nature and intensity of trade flows within and from/to West Africa with a particular emphasis on WAEMU member countries.
- **Chapter III: Overview of WAEMU Customs Activities** – which reviews Customs processes within WAEMU member countries and assess their compliance with WTO and WCO's recommendations.
- **Chapter IV: Review of Customs Policies and Procedures in Burkina Faso, Mali and Senegal** – which assess each of the Customs services actual practices and policies and evaluate their compliance both with WAEMU and WTO/WCO standards.
- **Chapter V: Trade Facilitation Issues in West Africa** – which discusses both Customs and non-Customs free trade impediments within West Africa.
- **Chapter VI: Recommendations** – which presents a set of short and medium term remedies to Customs issues in the context of trade facilitation as well as an action plan for implement these remedies.

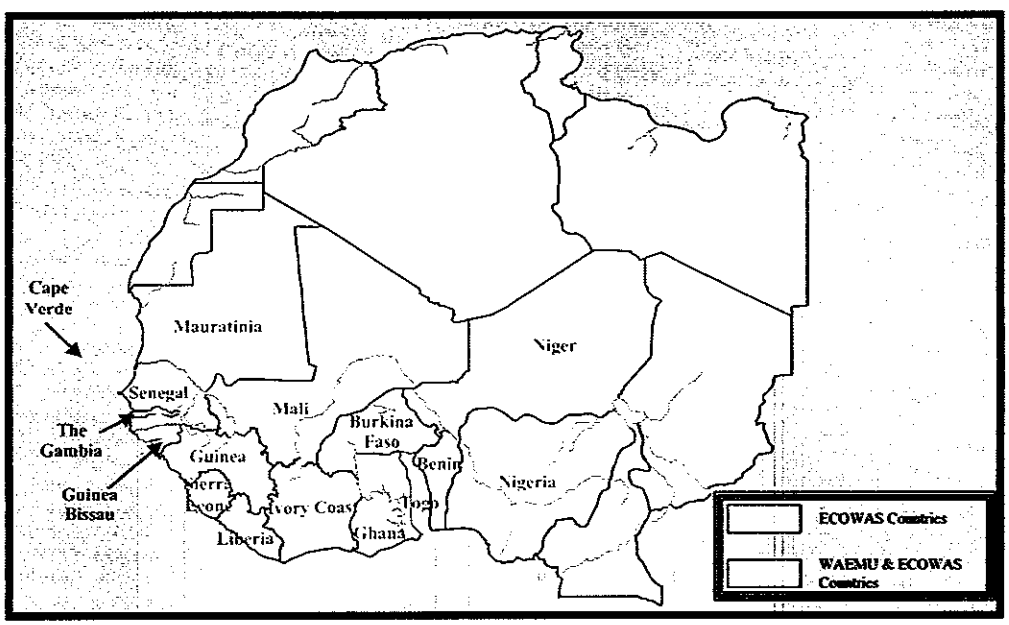
Chapter II: Overview of Trade Activities in West Africa

This Chapter presents the trade flows within the West African region, and global trade flows. A special emphasis is placed on the WAEMU member countries with a detailed review of trade characteristic specific to the region's economies

II.1 Overview of West Africa Economies

II.1.1 Existing Economic Organizations

Fifteen of the sixteen countries in West Africa belong to one or both of the two dominant regional organizations. The largest and oldest of the two, the Economic Community of West African States (ECOWAS) included all sixteen countries until January 1st, 2001. Since then Mauritania discontinued its membership in the ECOWAS (see Figure II-1). The second regional organization, the WAEMU, is a subset of countries within the ECOWAS region. While a newer organization than the ECOWAS, the WAEMU benefits from the cultural similarity of its members who, aside from Guinea Bissau, share a common language (French), common administrative and business culture and a common currency (i.e.; the Franc CFA). Likewise, under the patronage of France, the WAEMU receives significant financial aid from the European Union (EU) which explains, in part, the propensity of its members to be more keen on implementing the WAEMU's policies rather than the ECOWAS policies.



Booz•Allen & Hamilton, 2001

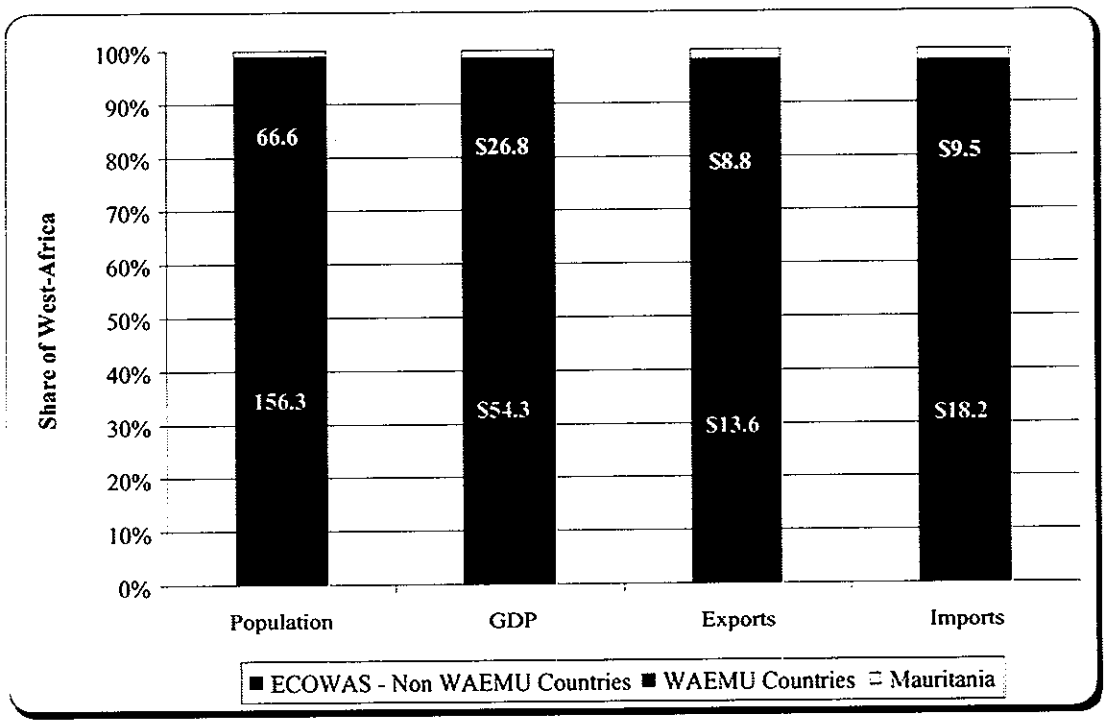
Figure II-1: Major Economic Organizations in West Africa

10

II.1.2 West- Africa Economic and Trade Data

Figure II-2 presents a set of economic statistics for West Africa. It shows that, in the year 2000, the fifteen countries of the ECOWAS/WAEMU had a combined population of 223 million people and a combined Gross Domestic Product (GDP) of 81 billion US dollars (USD), or an average GDP per capita of only 364 US dollars. In terms of their trade balance, these fifteen countries experienced in 2000 a trade deficit of 5.3 billion USD based on total exports and imports of 22.4 and 27.7 billion USD, respectively.

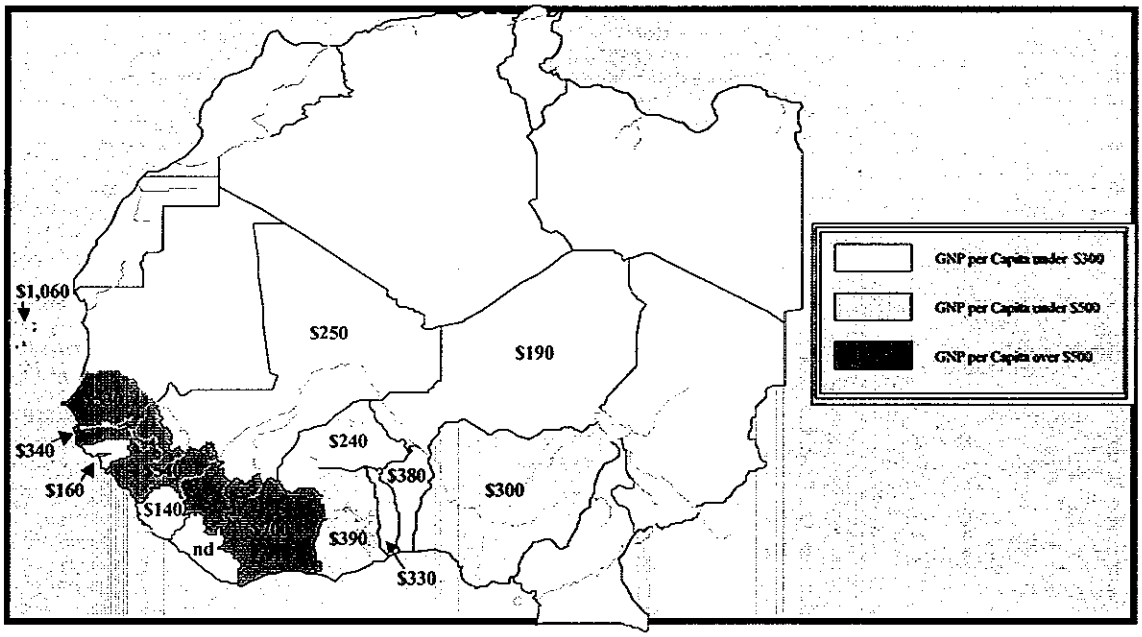
The WAEMU countries' overall share of the region's GDP stood in 2000 at about 32.6%. This number is significantly greater than its share of the region's population (i.e.; 29.5%) and translates into a higher wealth per capita of its citizens (i.e.; 402 versus 347 US dollars) compared with those of West Africa nations. Likewise, its share of the region's exports and imports was also higher (by a third in the case on its exports) than its share of population.



Note: Population in millions, GDP, Exports and Imports in Billions of US Dollars
Source: World Bank
Booz•Allen & Hamilton, 2001

Figure II-2: West Africa Economic and Trade Indicators

A country-by-country review of economic and trade data shows that both within the ECOWAS and within the WAEMU wide discrepancies exist in terms of economic wealth and trade performance. For instance, as shown in Figure II-3, the GDP per Capita of the wealthiest West Africa country, Cape Verde, is seven times higher than that of the poorest one (i.e.; Sierra Leone) due in part to expatriate workers' remittances.



Source: World Bank
Booz•Allen & Hamilton, 2001

Figure II-3: West Africa Countries GDP per Capita (year 2000)

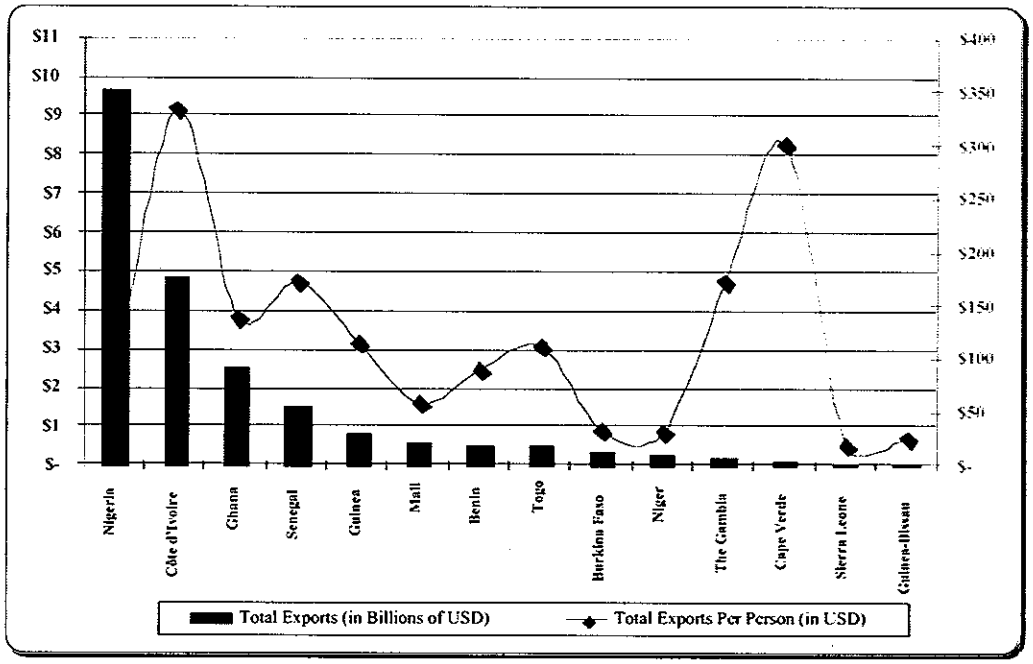
The same observation can be made when it comes to each country export performances. Figure II-4 shows that, while in absolute terms Nigeria and Côte d'Ivoire exported by far the most in 2000 (total of 14.6 billion USD or 51.6% of the region's total), smaller countries such as Cape Verde and the Gambia enjoyed better or similar export performances based on the size of their population and/or their economy (i.e.; see Figure II-5).

II.2 West Africa Trade Characteristics

Trade flows in West Africa have the following key characteristics:

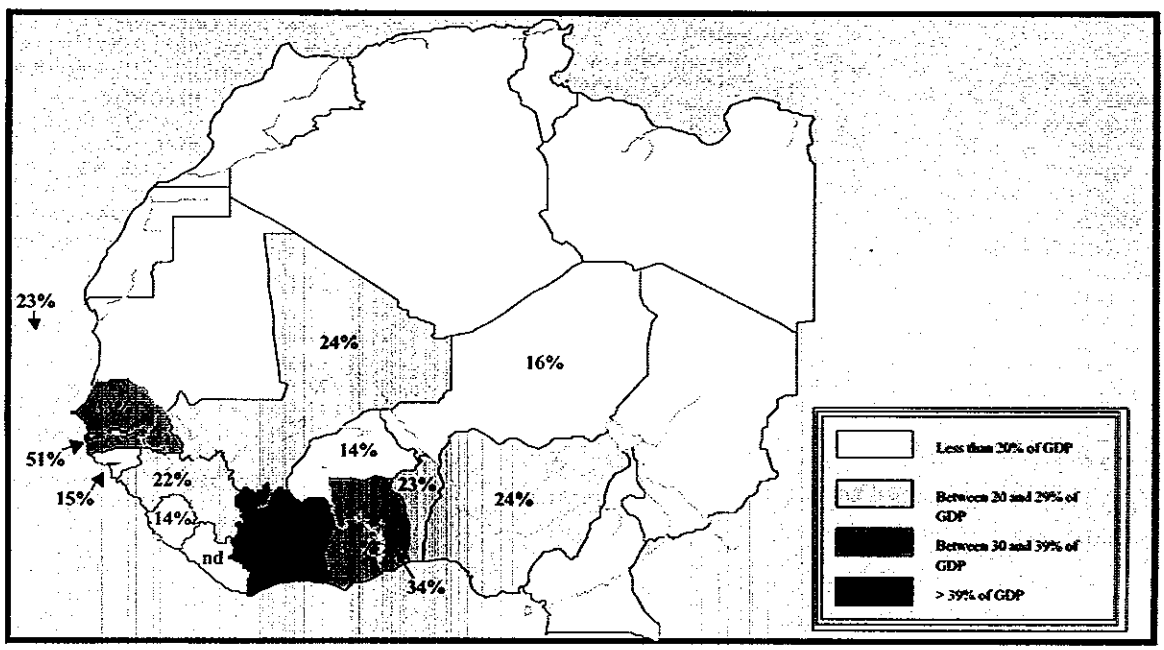
- **They are dominated by global trade flows.** In 2000, global trade flows (i.e.; exports and imports from/to West Africa) represented 73% of the value of global trade (see Figure II-6) while inter-regional trade flows accounted for only 27% of that same total.
- **They reflect the lack of development of the local economies with most of the imports being made of manufactured goods and most of the exports being constituted by raw materials (e.g.; 90% of Nigeria's exports are made of oil products).** This imbalance in the nature of traded goods explains, in part, why transport costs to/from West Africa as well as within West Africa as among the highest in the world as the share of traded goods that are containerized is unusually low (see Figure II-7).

12



Source: World Bank
Booz•Allen & Hamilton, 2001

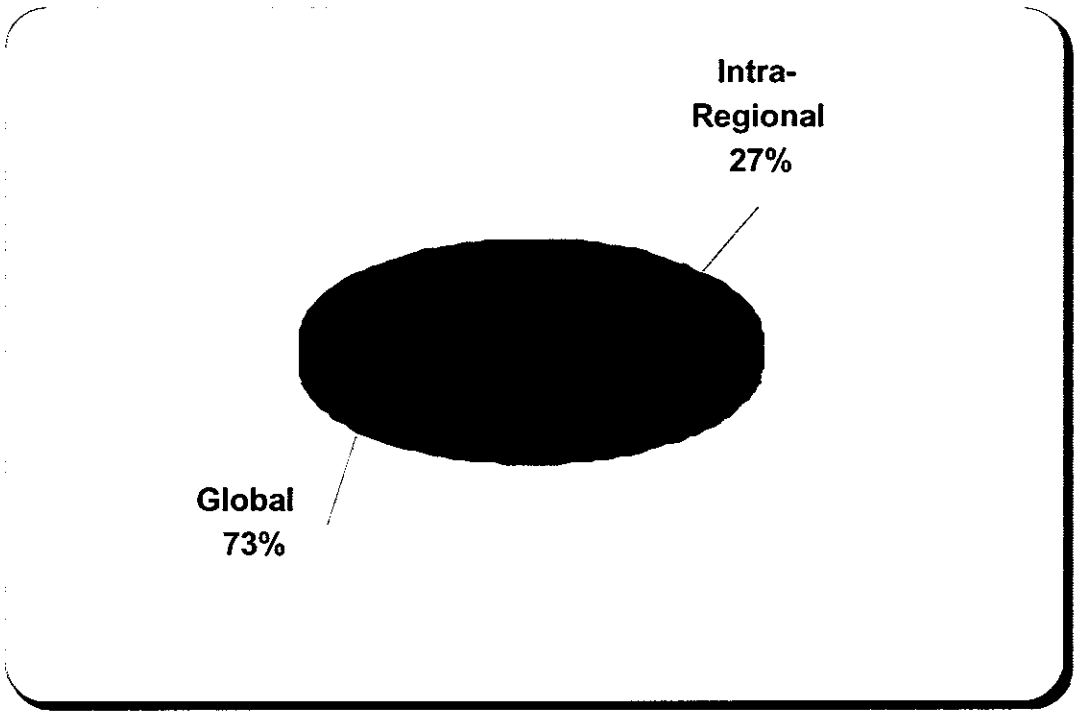
Figure II-4: Export Performance for West Africa Countries (year 2000)



Source: World Bank
Booz•Allen & Hamilton, 2001

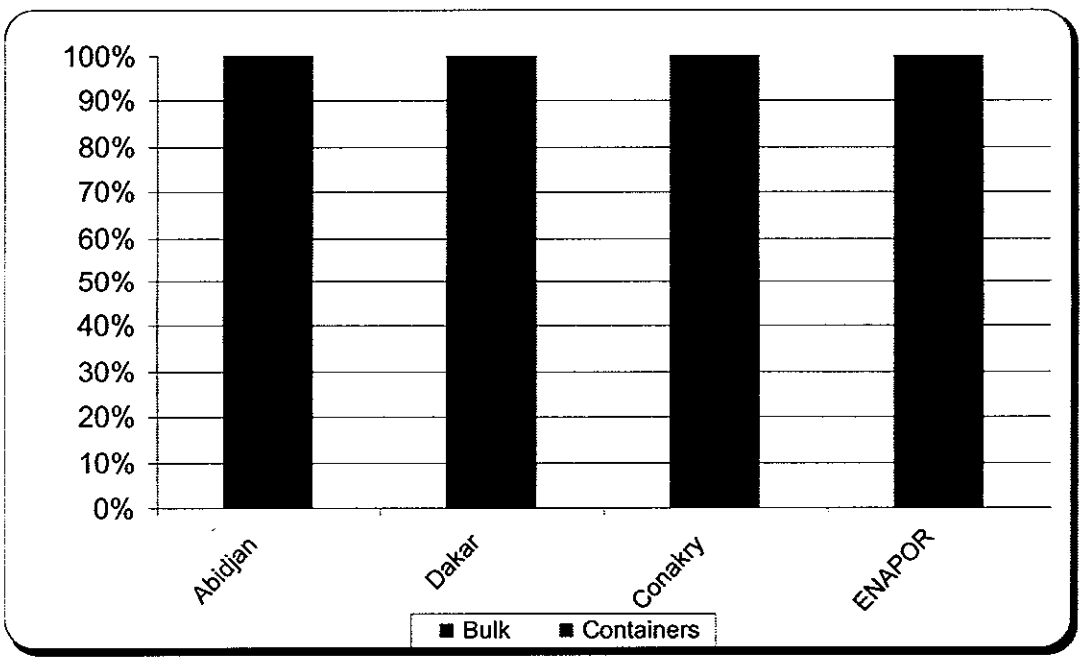
Figure II-5: Export Value as a Percentage of GDP per Capita (year 2000)

13



Source: World Bank
Booz•Allen & Hamilton, 2001

Figure II-6: Estimated Distribution of Trade by Origin (year 2000)

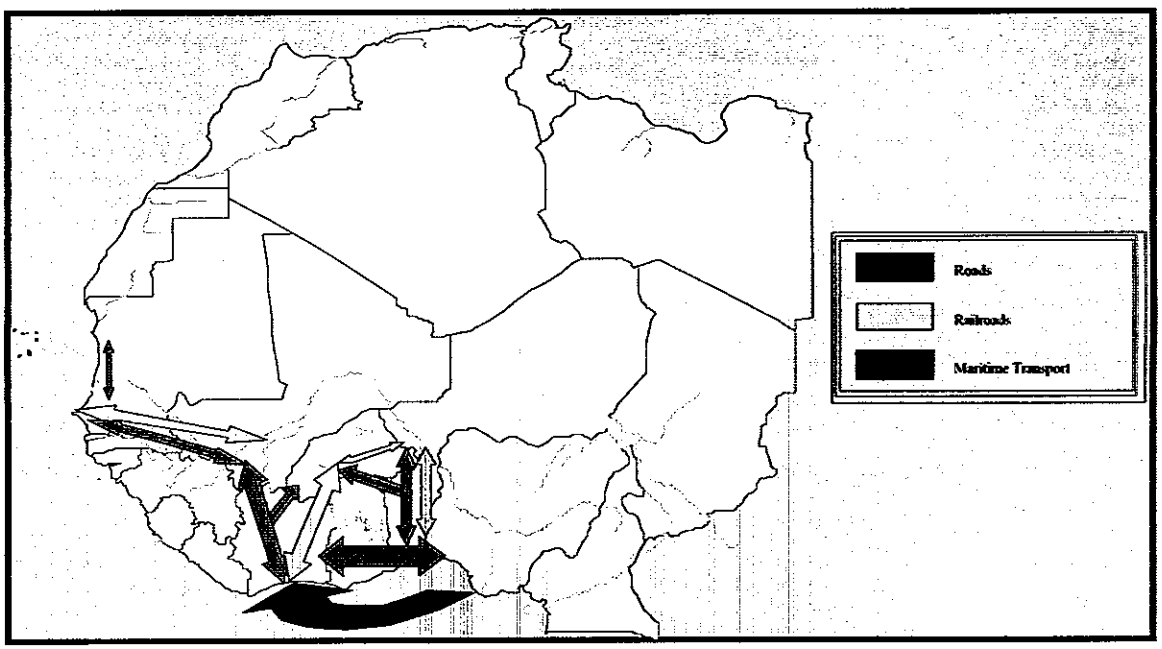


Source: World Bank
Booz•Allen & Hamilton, 2001

Figure II-7: Share of Bulk Versus Containerized Cargo at Several West African Ports

14

- **They rely on different transport modes depending on the nature of trade.** Global trade uses primarily sea transport and inter-regional trade is carried out predominantly trucks.
- **They are managed by two types of traders.** Large traders who have the resources and the skills to comply with Customs procedures as well as submit trade declarations electronically dominate global trade management. In sharp contrast with global trade, regional trade is managed mostly by so-called informal traders (meaning one person company without firm legal status who do fill out Customs declarations) whose ability or willingness to meet Customs requirements is very limited.
- **They are hampered by various enforcement agencies.** The transport of goods within the region is subjected to intense scrutiny by various enforcement agencies (i.e.; Police, Customs and military Police) because of the level of dependence of each country federal budget on duties (duties often represents more than 40% of the Government revenues) and the source of revenues (i.e.; mostly bribes) that global trade represents for these agencies officials.
- **They often necessitate the transiting of goods through numerous countries.** There are several landlocked countries in West Africa whose import and export of goods requires transit through third party countries in order to reach a seaport from which they will be exported/imported. In the case of the WAEMU, three trade corridors play an essential role for this type of trade flows: the Dakar to Bamako corridor, the Abidjan to Ouagadougou corridor and the Abidjan to Bamako corridor (see Figure II-8). In this context, the lack of harmonization and simplification of trade procedures within the region has a much greater impact on the economies of the landlocked countries than on the economies of the coastal countries.



Booz•Allen & Hamilton, 2001

Figure II-8: Primary Inter Regional Trade Routes

15

Chapter III: Overview of WAEMU Customs Activities

This Chapter reviews Customs processes within the WAEMU member countries and assesses their compliance with the WTO and the WCO's recommendations.

III.1 Customs Processes Harmonization and Simplification

WAEMU's 1994 founding treaty incorporates text relating to the development of a Customs Union (see Appendix A). One of the mainstays of the WAEMU's recent trade policy has been the implementation of a Common External Tariff (CET) and the elimination of Customs duties for most goods exchanged among member's countries. In order to compensate for the loss of Customs revenues associated with these reforms (i.e.; CET has resulted in a lowering of overall tariff levels), a compensation scheme designed to be phased out rapidly has been put in place. This scheme is financed from the WAEMU general budget thanks, in part, to grants given by the European Union (EU).

WAEMU has endorsed the WTO's recommendations regarding the use of the transactional value as the basis for the valuation of goods (i.e.; it will be featured in the WAEMU's, soon to be published, Customs Code) and is pushing for all of its members to adopt it before the end of this year. A few member countries are also already studying the Revised Kyoto Convention to simplify their Customs processes. While there is a lot of goodwill spent by each country head of Customs to ensure a proper regional alignment of Customs Codes, the path to modernization of the region's Customs administrations greatly depends on national priorities and resources. For instance, limited resources represent a real problem for the region's Customs administrations that are trying to conform to the Revised Kyoto Convention. Often, computers, phone, fax, and electricity are not available at the Customs border posts. How, then, can local Customs administrations be realistically concerned with the use of Electronic Data Interchange (EDI) systems as outlined in the Revised Kyoto Convention? The outlook for Customs process harmonization and simplification is, however, not as bleak as it seems, in part, thanks to the work of the WAEMU Customs Commission.

Our field visit provides evidences that the WAEMU has done a good job at harmonizing Customs practices inherited from the French Customs administration. As shown in Appendix B, most of the content of the Customs Codes from Burkina Faso, Mali and Senegal is similar. Such similarity extends also to the current project of a WAEMU's Customs Code that should be implemented starting January 1st, 2002.

This Customs Code is essentially a tool to harmonize Customs regimes, regulations and procedures within the Union's territory. We can notice that a special attention has been given to aligning its content with the Specific Appendices of the Revised Kyoto Convention (see Appendix B). The Code does not challenge, however, one of the most disturbing practices currently carried out by the region's Customs administrations: the handling of internal goods transit between the border and the declaration bureau. This practice generates undue delays for the release of goods and provides ample opportunity for unnecessary controls along the transit road; thus reinforcing the possibility of corrupt practices.

16

Regarding international transit procedures (section 116 of the Code), the Code endorses the processes already in use within the ECOWAS that is based upon the issuance of individual transit guarantees by each of the local Chambers of Commerce of the countries that goods have to transit through. This endorsement is problematic for three primary reasons:

1. **Chambers of Commerce transit guarantees' cost is prohibitive.** Usually, a general bond is issued by the chamber of commerce of the country where the goods have arrived and/or are exported at a cost of 0.50% ad valorem. Thereafter, any additional Customs administration of the country that the goods need to transit through, including the country of final destination, requires an additional guaranty at a cost of 0.25% ad valorem. For a shipment arriving in Abidjan and bound for Niger, this may mean the need to contract a bond guarantee equivalent to 1.00% ad valorem, which is quite high by any world standards. If we consider the total value of trade within West Africa, we can deduct that this guarantee system cost shippers and, therefore, local consumers, anywhere from 135 to 180 millions USD per year. This large sum of money goes toward the financing of the operations of the region's Chambers of Commerce whose activities are ill supervised and accounts not properly audited.
2. **Its usefulness is questionable.** We have been told by senior Customs officials that it is extremely difficult for national Customs administrations or their Treasury Boards, to collect the dues from the Chambers of Commerce when they want to receive a compensation for the eluded duties and taxes on guaranteed in-transit shipments.
3. **It does not discriminate between compliant and non-compliant shippers and/or goods types.** If actual records existed to verify shippers' compliance, it would be very difficult for the region's Chambers of Commerce to charge the same fee to issue a guarantee to a shipper who has a perfect compliance record versus for a first time shipper. Likewise, the pricing of transit guarantees should reflect the tradability of the goods exchanged in order to account for the inherent differences that exist in the level of risk associated with insuring each good.

The main problem with the proposed WAEMU's Customs Code, however, is that it fails to adequately address the recommendations made by the Kyoto Revised Convention (see Appendix C), the G7 (see Appendix D) and the WTO (see Appendix E) in the areas of trade facilitation and Customs procedures simplification. All these recommendations suggest that, in order to facilitate trade, a clear differentiation must be made between the way low risk and high-risk shipments are managed. Such approach requires the deployment of complex computerized risk targeting systems able to single out non-compliant shippers. While the G7 Customs administrations have the resources, equipment and culture to achieve an effective balance between enforcement and facilitation, West-African Customs administrations must deal with limited resources, revenues collection priorities and an entrenched enforcement culture that go fundamentally against achieving such balance. For them, compliance with the Kyoto Revised Convention will have to be a long drawn process that will not only require an internal cultural revolution, but also significant international help in the areas of training and equipment acquisition, maintenance and operations. In this context, the primary challenge that lies ahead for WAEMU Customs administrations relates to the development of a know-how in the area of shippers and shipments risk assessment analyses. The acquisition of such knowledge represents a

first essential step toward trade facilitation. In order to be successful, however, this first step would have to be accompanied by a set of measures, including, but not limited to:

- **A reform of Customs agents' salary structure.** Currently, Customs agents' largest source of income comes from harassment practices of traders and seizure activities that result in abusive enforcement practices. To combat this problem, the portion of each agents' salary that is fixed would have to be raised significantly while its variable portion (i.e.; enforcement related income) would have to be either decreased or capped so as to promote facilitation over enforcement. Productivity indicators such as the number of shipments processed per agent would also have to be utilized to calculate a portion of each agent's base salary so as to reinforce the need to facilitate trade.
- **A serious effort to combat corruption.** While all the Customs administrations we talked to claim to have specific policies to combat corruption, both internally and externally, there is little evidence that any of these policies are "actively" implemented as shown by the absence of agents' dismissal. This inability of the Customs administrations to enforce their own internal policies suggests that, in order to be successful, any serious corruption efforts would have to be led by outsiders who could conceivably report directly to the Minister of Finance, or the Prime Minister Office or, more boldly, to international organizations such as the WAEMU or the ECOWAS.
- **The implementation of effective training and recruitment policies.** Over the coming years, most of the Customs administrations within West-Africa will have to recruit heavily in order to replace a rapidly aging personnel structure inherited from years of hiring freeze. This situation will provide Customs administrations with a unique opportunity to bring into their rank new agents whose training and mindset will stress the Kyoto Revised Convention recommended Customs' practices. In order to successfully take advantage of this opportunity, West Africa Customs administrations will have to reinforce considerably the quality of the training provided to young recruits. In an environment of limited means, such effort will require the pooling of resources among administrations either through the establishment of joint training programs or, preferably, through the creation of a regional training center directed by the WAEMU and/or the ECOWAS.

III.2 Goods classification and Valuation Processes Harmonization

III.2.1 Goods Classification

The WAEMU has developed and implemented since January 1st 2001, as stated in its founding Treaty, (see Appendix A, section 76 b), a Common External Tariff (CET). This Regional Tariff has been developed according to the rules of the Harmonized Tariff System endorsed by the WCO. Within the WAEMU, 2 ECOWAS digits and 2 WAEMU digits, for a total of 10 digits complete the Harmonized Tariff System (HTS) 6 digits classification system. This HTS classification is supported by a Table of Duty Rates, which contains 4 levels of rates (ranging from 0.0% to 20%) that relate to goods classification within four categories. These rates and categories are:

- **Category 0** (duty rate of 0.0%): goods having a social character;
- **Category 1** (duty rate of up to 5.0%): first necessity, basic raw material and equipment;
- **Category 2** (duty rate of up to 10.0%): input and intermediate products; and
- **Category 3** (duty rate of up to 20.0%): final consumption goods and all goods not described in the previous categories.

In addition to these categories of tariff, a preferential tariff has also been put into place for locally produced products (e.g.; rice, mineral water, fresh milk, cereals, live stock and meat). Forty-six raw local products and thirty-two original handicraft products are per the Additional Agreement no. 04/96 exempt of all duties across the WAEMU territory. Locally manufactured goods are also targeted by this duty exemption regime since January 1st 2001. In their case, however, an official accreditation (i.e.; Certificate of Origin) has to be obtained based on an analysis of the manufacturer's request. For those goods that are not accredited and yet originate from one of the WAEMU member countries, a 5% rebate of the CET applies.

In order to compensate for the loss of revenues generated by these exemptions, two additional duties have been created. These duties which amount to an import tax equivalent to 1.5% ad valorem (i.e.; 1.0% for the statistical duty and 0.5% for the community solidarity levy) are collected by local Customs and transferred to a WAEMU's fund. Afterward, there are redistributed to member countries based on their respective share of duty losses generated by the exemptions implemented under the CET.

In spite of the implementation of the CET, we observed that goods classification remains a national issue and that very little efforts have been made by the WAEMU to verify that each country Customs administration complies with the spirit of the goods classification defined by the CET.

III.2.2 Goods Valuation

Our field visit indicates that, as of May 2001, NONE of the three countries we visited have started to use the Transactional Value for valuation purpose, although all of them had committed to do so as signatories of the 1994 GATT agreement. Likewise, it is also our understanding that very few, or maybe none, of the other WAEMU countries and/or the ECOWAS countries have indeed started to use Transactional Value. In spite of the fact that we were told by local Customs officials that their respective countries were getting ready to implement the Transactional Value within a year or less, we have to question the level of readiness of field agents to execute this new approach to goods valuation.

Indeed, no formal training courses have been developed to ensure that field agents will understand the restriction that the switch to Transactional Value will impose on their ability to contest goods valuation (by principle, they should start to accept any declaration that uses commercial invoice value as declared value). This new approach to goods valuation will challenge each agent's habit inherited from the use of the Brussels Valuation System (i.e.; Customs agents will no longer be allowed to arbitrarily contest any declared value and initiate immediately seizure actions with the associated penalties for under valuation). Additionally, the passage to the Transactional Value will defy the practice inherited from the French Customs

culture of the so called non-judiciary *contentieux* which, in French speaking Africa, represents a very significant source of income for Customs agents. These operational facts should heighten the need to adopt supporting measures within the region's Customs administrations in order to ensure that field agents will comply with the principles supporting the implementation of the Transactional Value (e.g.; monitor any tendencies to erect other means to contest goods value and compensate agents for the loss of income generated by the adoption of the Transactional Value).

III.3 The WAEMU vis-à-vis The WTO and The WCO Recommendations

The WAEMU officials know and understand both the WCO and the WTO regulations. For instance, when developing the CET, they made sure that, according to the WTO's dispositions, the rate of duties were set at the lowest maximum level already in use in all the national tariffs of the members State. Nevertheless, their ability to force their member countries to comply with basic WCO and WTO requirements regarding trade facilitation and trade processes simplification remains limited. While they have put in place a monitoring unit whose role is to ensure that member countries follow the WAEMU's Customs and trade legislation, they have yet to actively challenge their members on the effective implementation of this legislation.

Chapter IV: Review of Customs Policies and Procedures in Burkina Faso, Mali and Senegal

This chapter presents an analysis of the Customs procedures of policies of the three countries that were visited by the consultant team during the month of May. Its main goal is to provide an expert assessment of the implementation of Customs procedures in the field in order to evaluate their compliance with national Customs Codes as well as the WAEMU and the WTO/WCO standards.

IV.1 Customs Services Role and Objectives

Typically, modern Customs administrations state their roles/objectives under the following common themes (the content and order varies according to national priorities):

- To efficiently collect Customs revenue;
- To facilitate trade and the movement of people across national borders;
- To protect the community and ensure compliance with national laws;
- To administer specific Government policies related to industry and trade; and
- To collect accurate national trade statistics.

In contrast with these administrations, the Customs services of Burkina Faso, Mali and Senegal have a far more limited definition of their role, with an emphasis on collection of duties. As shown in Table IV-1, this emphasis reflects the significant proportion of Government revenues collected by these organizations.

Country	Value of Duties Collected (CFA Millions)	Value of Duties Collected (USD Millions)	Value of Duties Collected as a Percentage of Government Revenues (excluding external aid)
Burkina Faso	93,502	134	40
Mali	120,000	171	45
Senegal	180,000	257	45

Source: Burkina Faso, Mali and Senegal Customs
Booz•Allen & Hamilton, 2001

Table IV-1: Customs Administrations Duties Collection in 2000

The stated objectives of Burkina Faso and Mali Customs are essentially identical:

- Maximize receipts;
- Assist in the development of domestic industries by implementing effectively quotas and duties; and
- Assist other Government agencies in enforcing trade laws and regulations.

Those stated by Senegal Customs are slightly different. They are:

- The effective collection of revenue; and
- Provide assistance to traders.

This strong focus on revenue collection was underlined when discussing performance standards with all three Customs administrations. The Customs officials we met with reported that their Government assigned all three Customs services revenue collection targets apportioned between various Customs clearance sites. However, few, if any, performance indicators were reported to be in use and, in particular, there appeared to be very little attention given to service and facilitation standards as well as anti-corruption standards.

Many developing countries' Customs administrations have recognized that most decisions made about trade and investment in the private sector can be influenced by the perceptions held about Customs. For example, multi-national companies are faced with choices as to where they might locate manufacturing facilities. Typically, they will "shop" for the country or location offering the most advantageous business environment. Comparative delays and higher costs caused by Customs inefficiencies and/or corruption will, therefore, influence investment decisions. This mindset explains why Customs administrations must be competitive (i.e.; promotes greater transparency and facilitate trade) with those of other countries/regions if they are to contribute fully to the well being of their respective national economies. Hence, it is very important that Customs administrations be encouraged to review their roles/objectives with the aim of including references to facilitation and service standards.

IV.2 Customs Codes

A common Customs Code has been drafted by the WAEMU (see Chapter III). This code incorporates provisions related to the international standards contained in the Revised Kyoto Convention, the Harmonized Tariff Convention and the WTO Valuation Agreement. The Customs Codes of all three countries visited are currently being revised to comply with the WAEMU Code.

For instance, Burkina Faso has prepared a draft new code and expects that it will enter into force in July or August 2001. Mali and Senegal are still in the process of drafting their own new codes and are aiming to introduce them before the end of 2002.

None of the Customs officials we talked to perceive any major difficulties in adopting the common Customs code, although, in each case, some national elements will be covered by separate legislation. In particular, the "contentieux systems" (see later reference) will be retained outside the provisions of the common code. Each Customs administration acknowledge that the common Customs code will supersede any national code although some areas of the national code might remain specific to the duties assigned to each of the Customs services.

IV.3 Goods Classification Practices

Goods classification within WAEMU is carried out using the WCO Harmonized Commodity Classification System (HS). To-date, this system has been fully implemented in all the WAEMU countries with the notable and important exception of Côte d'Ivoire. The six digits HS has been extended to ten digits in order to harmonize the ECOWAS and the WAEMU standards (two additional digits for both organizations). Our discussion with Customs officials and brokers indicate that there appears to be a reasonable understanding of classification using the HS, although the WAEMU officials reported that differences still exist in the way goods are being classified. Accordingly, the WAEMU has instituted a system of checks to ensure consistent classification of goods. Providing additional regional training for front-line officials and brokers responsible for goods classification could strengthen this effort. The WCO provides such training to its members and could be approached to lend assistance in this area.

IV.4 Implementation of the Rules-of-Origin

Rules of origin are the criteria used to determine the nationality of a product. They are utilized primarily for two purposes, first, to implement preferential trading arrangements whereby importing countries have to ensure that the lower or preferential rates are made available to products originating from preference receiving country. Second, they are utilized in non-preferential commercial policy instruments such as the application of MFN treatment under GATT, the antidumping and countervailing duties, origin markings, any discriminatory quantitative restrictions or tariff quotas, and collection of trade statistics.

The WAEMU Agreement does provide for preferential rules of origin for intra-regional trade and a standardized Certificate of Origin as part of it intra-community trade liberalization and the establishment of the Permanent Preferential Tariff (PPT). These rules of origin are central to the implementation of the PPT, which consists of a 30%-60% reduction on import duties for specified industrial products, the tax-free movement of handicrafts and raw materials, and a 5% reduction on import duties for other products.

Because there are currently no international standards for rules of origin, regional and national systems vary considerably in determining the origin of products. This lack of uniformity has enabled countries to use rules of origin as a traditional non-tariff barrier to trade in order to protect domestic producer of finished goods. To address this problem, the WTO, in conjunction with the WCO, is in the final stages of preparing global standards for preferential rules of origin. The WAEMU rules of origin should be reviewed in the context of these new rules once and when they are finalized. Individual WAEMU member countries will also need to examine any other bilateral or multilateral preferential agreements in this context.

Rules of origin for goods from non-preference countries are not commonplace in other countries' legislation, mainly because under any particular goods classification, a single general substantive tariff rate will apply no matter which country of origin is nominated. In this case, there is little Customs compliance interest in the origin, unless the importing country applies anti-dumping or quota measures, which are usually applied to specific nominated countries. To

avoid such measures, importers have been known to attempt to disguise goods' true origin. In these circumstances, there is a need for some legislative base for determining "non-preferential" origin. This issue, however, was not raised during the meetings conducted for this assessment.

IV.5 Goods Valuation Practices

Under the WAEMU treaty, member countries are under obligation to adopt the GATT Valuation Agreement (GVA). Notes related to the GVA are presented in Appendix F.

The GVA is due to be put in place in Burkina Faso, Mali and Senegal before the year 2002. For the time being, all three countries continued to use the Brussels Valuation System which relies on pre-shipment inspections (see following section) but treat the certified information as indicative only. In each country we observed that a significant proportion of certified values are judged by Customs inspectors to be incorrect. This situation raises the question of the real need for company like Société Générale de Surveillance (SGS) which, under separate agreements signed with all three countries, is supposed to certify the value of any shipment exceeding 3.0 million FCFA (4,285 USD). Additionally, one of the managers we interviewed considers rightly that under the GVA, there is no longer a need for SGS services.

IV.6 Pre Shipment Inspection (PSI)

PSI is used by Governments to assist in establishing the nature and value of goods in the country of export and is widely used by countries to minimize revenue shortfall caused by inefficient Customs administration, valuation fraud and corruption. Using their offices located in exporting countries, specialist companies conduct checks of goods prior to shipment and issue a certificate that must eventually be presented by the importer to Customs. During the past few years, the World Bank and the International Monetary Fund have promoted the use of PSI companies to reduce Customs revenue shortfall in many developing countries. While this is no longer the case, numerous developing countries, such as most of the WAEMU members still rely on the services of PSI companies for valuation purpose.

WCO policy recommends against PSI, stating that its use reduces the capacity of Customs to carry out its proper functions. Many administrations report that the use of PSI to determine classifications and values has had a severe adverse impact on the skills of Customs officials although some PSI companies do provide for training of Customs officials under the terms of their contract. This is often done in conjunction with a "sunset" clause that is meant to transfer their functions to Customs. In practice, the training is minimal and little hand-over preparation is accomplished (In Mali, only 30 officials were trained by SGS in one-week courses during the past eight years.)

Another consideration is the cost of PSI relative to the investment that would be necessary to bring the Customs administration to a fully effective state. The cost of these services in Mali is said to be equivalent to 0.8% of the value of the goods. Based on that rate and the relative revenue collected by each administration, we estimate the annual cost of PSI to be

24

4.0 million USD in Burkina Faso, 5.0 million USD in Mali and about 7.5 million USD in Senegal (actual figures for Burkina Faso and Senegal are not available.). These amounts are extremely high when one considers that the annual wage bill of Mali Customs is only around 1 million USD. Therefore, there is a widely held view that West African Governments would realize better long-term benefits if they were investing these funds towards improving their respective Customs administration.

Senegal uses PSI in a slightly different manner than the other administrations. According to the Director General, SGS is used to audit enterprises and provide Customs with an assessment of the risk the enterprise poses to Customs. Customs in fact provides SGS with information to help them in their assessment. In return, Customs uses the PSI information as a basis for risk assessment of imported goods. With the soon to be introduced GVA, the Senegalese Customs intends to retain PSI services until they have had time to build their own skills and risk management capability.

It is our view that the value of PSI under GVA is limited and the costs in terms of fees and diminution of Customs skills are high. PSI should be phased out and the respective Customs administrations should resume full responsibility for the assessment of Customs declarations. This will require investment in training and technical assistance in valuation, tariff classification, intelligence analysis, audit and computer skills.

IV.7 Customs Declaration and Clearance Processes for Home Consumption

IV.7.1 Common Approach

The current standard for Customs procedures is defined in the WCO's Revised Kyoto Convention, which includes standards related to declarations and clearance processes. Notes on the Revised Kyoto Convention are included in Appendix C.

Although a standardized declaration form has been designed for the WAEMU intra-regional use, individual administrations continue to use their own forms that are not compliant with any standards. Small intra-regional consignments valued at less than 2,000 FCFA (2.85 USD), are cleared informally by "Perception Direct" while all declarations with values over 3 million FCFA (4,285 USD) must be supported by an SGS certificate.

Throughout West Africa, the capabilities of Customs computerized systems are limited mostly to statistical collection with very little benefits to the overall declaration and clearance process. The computerized systems we have observed do not offer functions such as electronic lodgment, selectivity, historical data access or payment services which are key to promoting targeted inspection of shipments and faster clearance times. Without these tools, the current practice of systemic inspection of shipments is bound to continue although there is little evidence to suggest that it yields any significant benefits both in terms of fraud prevention and declaration compliance levels.

35

IV.7.2 Burkina Faso Customs Clearance Process

Our observations are based on statistical data provided by the Customs administration as well as visual inspections of the declaration process at the rail terminal in Ouagadougou and the land border post of Fô (border with Mali).

By law, imported shipments valued at more than 250,000 FCFA ($357 USD) require the filing of a declaration. Accordingly, the Burkina Faso Customs administration processes around 32,000 formal declarations annually. The estimated time for a declaration to be processed from lodgment to final delivery is usually within the period established by law of 48 hours, although an unimpeded declaration lodged at the beginning of a working day is usually finalized by the end of the same day. Urgent clearances for perishable goods or urgent consignments can be released immediately subject to the posting of a guarantee amounting to 150% of the duties to be levied on the shipment.

At automated Customs offices, Customs agents input shipment declaration data into the ASYCUDA system based on the information provided on the paper entry submitted by the importers and/or the brokers. In the case of the rail terminal in Ouagadougou, three ASYCUDA computer terminals are available in the public area in order to enable brokers to submit directly their import declaration.

The declaration process is divided in the following three steps:

- **Step 1:** Following the entry of declaration information within ASYCUDA, the system assigns a case number, validates the data, computes the duties and taxes payable and assigns the entry to a primary checking officer whose role it to check that the data has been correctly transposed from the primary paper documentation.
- **Step 2:** A second officer conducts a documentary check of the declaration and associated documents that must accompany the declaration, and, if necessary a physical examination of the goods. Although there is a notional Red-Amber-Green system in place, all entries are subjected to a documentary check and between 50% and 70% are physically examined. All the WAEMU goods are examined compulsorily.
- **Step 3:** Following these checks, the entry is returned to another officer for computer validation of the original data or adjustment if discrepancies are found. The entry is checked once more by the Chief of Section before payment is made. Finally, a release document is issued, and a Customs officer in the warehouse releases the goods.

The level of checks and bound built in this process clearly highlights the failure of the Burkina Faso Customs administration, but also of all of the region's Customs administrations, to use the ASYCUDA system for targeted inspection and faster release. It also underscores the continued omnipresence of paper forms in an environment where almost 100% of all declarations are ultimately submitted electronically (see Figures IV-1 and IV-2).

26

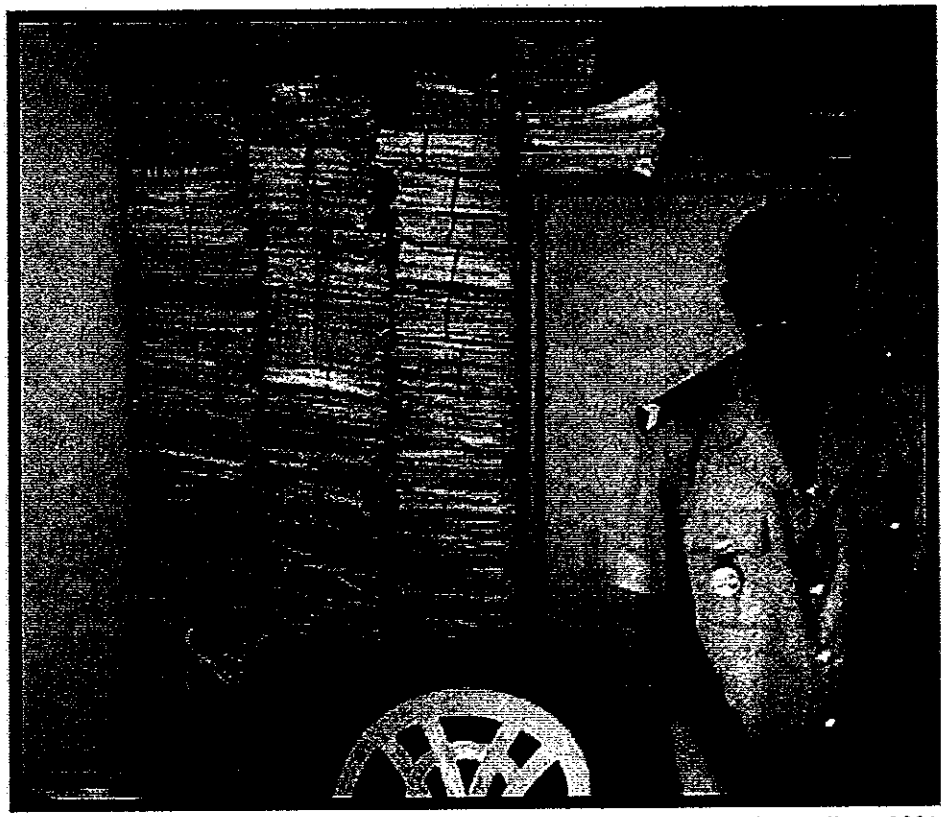
IV.7.3 Mali Customs Clearance Process

As it was the case for Burkina Faso, our observations on the Mali Customs clearance process are based on collected statistical data as well as field analyses made at the Customs offices located in Kouri (land border post with Burkina Faso) and Bamako Airport.

In Mali, as well as in other WAEMU countries, shipments whose value exceeds 3 million FCFA (4,285 USD) cannot be released at the border. The declarant who is importing goods valued at more than 3 million FCFA must, therefore, designate at the time of border crossing which in-country Customs office he wishes to use for releasing his goods.

Booz•Allen & Hamilton, 2001

Figure IV-1: Mali Customs Agent Entering Declaration Information in the ASYCUDA System at the Customs Office of the Bamako Airport – May 2001



Booz•Allen & Hamilton, 2001

Figure IV-2: Archived Customs Declarations at the Customs Office of Mali at the Port of Dakar – May 2001

Overall, the Customs clearance process in Mali is very similar to the one use in Burkina Faso with multiple levels of checks for each declaration lodged (including a physical inspection of the shipment itself). We were informed, however, that the Mali Customs administration uses a red/green selection system. Our review of this "targeting" system reveals that it could be better described as red/yellow system (i.e., all consignments are subjected to some form of documentary check regardless of their selection status, and may be physically examined).

One particularly significant piece of information relates to the practice of post clearance checks. About 100 of these checks are performed annually, resulting in about 30% of declarations being found to have been incorrect at the time of entry, often related to valuation. Such significant error rate raises once more serious questions about the quality and the value of current point of entry controls and procedures, particularly those concerning the valuation of goods.

IV.7.4 Senegal Customs Clearance Process

Our observations on the clearance process are based on collected statistical data as well as visual inspection of the work of Customs agents at the port of Dakar.

Unlike its Burkina Faso and Mali counterparts, the Customs administration of Senegal does not utilize the ASYCUDA system for goods clearance. Instead, it uses an indigenous computerized system called "GIANDE" which includes a selectivity feature based on a red/green principle regarding goods inspection. In this case, selectivity reflects a trader's status as defined by a private verification company named Intertech. In practice, however, the selectivity process is controlled by a few Customs experts who, based on their personal experience, can upgrade a shipment to a green channel and change the officers designated by the system to conduct the shipment inspection and documentary control.

Inspection statistics show that, while all shipments are subjected to visual inspection, 15% of them actually undergo physical examination. Among these 15%, the infraction rate hovers around 30% with 80% of the infractions uncovered linked to informal declarations (i.e., shipments whose value is under 3 million FCFA or 4,275 USD which represents only 20% of the number of declarations filed). Ninety percent of the infractions identified are related to incorrect valuation. These statistics mean that the infraction rate among formal declarations is well below 10%. Such numbers barely support, if at all, giving other than minimal attention to formal declarations at the point of entry, especially once the GVA will be introduced.

IV.8 Role of Information Technology

Increasing trade volumes and constant or declining Customs staffing levels have led Governments and Customs administrations to automate their Customs declaration processes. Faster processing, better access to information more and greater accuracy and reliability allows redeployment of resources from clerical processing functions to specialized operational activity. Information technology has been central to Customs modernization efforts worldwide for many years. It supports migration to risk based regimes, incorporating intelligence, results of inspections, profiling, selective targeting; post clearance audit; on-line interrogation of data; access to status of specific declarations/shipments; electronic lodgment; and ultimately, a paperless environment. It also contributes to countering corruption.

In general, developed countries Customs administrations have implemented their own systems independently, but lack of resources and technical capabilities have limited their ability to successfully follow this path. A low-cost and reasonably effective solution known as the ASYCUDA system was developed in the 1980's by the UNCTAD and is now widely used throughout the world. Notes on the ASYCUDA system are included in Appendix G.

WAEMU has recommended that member countries introduce the ASYCUDA system. At present, six of the eight member countries use version 2.7 of the ASYCUDA system. These countries are Benin, Burkina Faso, Guinea Bissau, Mali, Niger and Togo. Côte d'Ivoire has its own system (SYDAM), as does Senegal (GIANDE). Burkina Faso has also an agreement with UNCTAD to migrate to version 3.0 (ASYCUDA ++) in 2002. Mali would also prefer to migrate to the upgraded version but because of lack of funding, has no immediate plans to do so.

Other contemporary systems that could be considered include MIRSAL, a single port system introduced recently in Dubai, and TIMS, a Windows-based system designed in the UK

specifically for Customs use. The latter is in operation in Mozambique and is to be introduced into Angola in the near future.

In Burkina Faso and Mali, ASYCUDA operates stand-alone systems at each clearance point and do not support research of historical data. As a result, the assessment of risk is made purely on the basis of experience and memory about the past performance of particular importers or unusual merchandise. Data to assess risk factors related to the consignment that should be taken into account are not accessible (e.g., importer, supplier, commodity, origin, value, etc.)

The GIANDE system in Senegal is 11 years old and is suffering from continual technical breakdowns. Nevertheless, the system is more advanced than the ASYCUDA 2.7 system used in Burkina Faso and Mali, with online access by external users and the availability of electronic lodgment. Trials have begun on a new server-based system, which is expected to provide extended applications, greater stability and reliability. This system will be able to interface with another web based system recently developed by the UNDP called "Orbis". The interface between both systems should allow smaller traders who have a phone line (i.e.; can connect to the Internet) to file directly their declaration on line using.

Additionally, at the regional level, several Customs administrations are working on creating live interfaces between their systems in order to exchange declarations data about in transit shipments. For instance, this is the case between Senegal and Mali. It remains, however, that the EDI initiatives of the various Customs administrations within the region lack coordination. This observation is especially problematic because this "dispersed" approach to EDI implementation results in significant waste of scarce human and financial resources and requires traders to interface with multiple systems. There is, therefore, a strong case for integrating the region's Customs EDI systems both from the standpoint of economies of scale (it is hard to justify the existence of stand alone systems with declarations volumes as low as the one recorded in West Africa – i.e.; <100,000 declarations/year/system) as well as from the standpoint of trade facilitation (one region, one system). A drive to integrate the region's EDI systems should capitalize on the technical resources available within the ECOWAS computer center division that is at the forefront of this integration drive.

IV.9 Enforcement

The three Customs administrations we talked to, recognize that there is a need for greater regional cooperation on enforcement. While a regional enforcement database is available through the WCO's West African Regional Intelligence Liaison Office (RILO), it is widely acknowledged to be relatively ineffective. Each of the region's Customs administration has a common interest in being more effective against commercial fraud, drugs, and money laundering. For instance, Customs officials in Senegal suggested that it would be better to have a regional information center within the WAEMU structure.

Most fraud appears to take place in the informal sector, usually passing through uncontrolled border areas. The greatest needs are in the areas of exchange of intelligence data, technical resources, personnel and training.

Smuggling of tires, cigarettes and spare parts is a problem at Burkina Faso borders. Another is the control of informal traders traveling by rail – some traders virtually live on the train, buying goods at one place and selling them to passengers and at stopping points. In Mali, Customs officials identified the main smuggling problems at the borders to be second hand cars and small traders carrying fabrics, shoes and spare parts while the Bamako airport has to deal with a growing number of cases of arms and drugs smuggling. In Senegal, the enforcement effort is mainly directed at commercial fraud, artifacts, drugs, animals and money laundering.

Chapter V: Trade Facilitation Issues in West Africa

Trade facilitation issues in West Africa have both customs and non-customs dimensions. The intent of this Chapter is, therefore, to review these issues with some depth in order to separate the potential and extent of Customs modernization in trade facilitation.

V.1 Customs Trade Facilitation Issues

From a Customs standpoint, trade facilitation issues can be categorized as follows:

- Those that cover the process of goods declaration;
- Those that relate to the transit of goods;
- Those that reflect Customs administrations' human resources shortcomings; and,
- Those that illustrate corruption problems.

V.1.1 Goods Declaration

Typically, goods declaration is a straightforward exercise. It is usually divided between 1) the submission of information necessary for the entry and the release of goods for consumption and 2) the liquidation of the goods declaration once the assessment of any relevant duties and fees has been performed. In West Africa, however, this two-step approach to goods declaration, which is designed to facilitate the movements of goods, is not used. Instead, goods declaration and their release for consumption is only taking place after the goods have reached their final destination and Customs duties and related fees have been paid. For the landlocked countries of West Africa, this practice means that the goods declarations are never provided, nor available, at the time of border crossing. It also means that all goods are permanently under an "in-transit" status requiring its own set of documentation until they have reached their final destination.

Several practical reasons explain why the two-step approach commonly used for goods declaration is not used in West Africa. The first of these relates to the critical role that West African Customs administrations play in Governments revenue collection (see Chapter IV). Indeed, a change in the current goods declaration process would be contingent upon:

- The implementation of a system that would allow Customs inspectors to have access to a reliable summary goods declaration document at the time of border crossing; and
- The establishment of a credible guarantee system that would ensure the collection of duties and fees at a later time.

The implementation of such system would not only raise logistics and financial questions (i.e.; deployment of the ASYCUDA system at the border crossing points) but also human resources management questions (i.e.; training of Customs inspectors in the use of the system, redeployment of personnel at the border), as well as institutional/organizational questions (i.e.; development of risk assessment, certification, compliance/post audit capabilities and availability of a reliable system of financial guarantees). Until such questions can be successfully addressed,

the current approach used for goods declaration by West African Customs administrations is bound to survive.

The second important practical reason limiting the use of a two-step declaration process rests in the absence of a unique goods-declaration document for all of the WAEMU and/or the ECOWAS countries. Until such document is universally adopted by all Customs administrations in West Africa, the implementation of a two-step declaration process can only have a limited value for traders. For example, it would not eliminate traders' requirements to file transit documents in each and every one of the intermediary countries crossed by their goods.

Another practical reason that does not support the introduction of the two-step declaration process comes from its limited impact as a standalone solution due to the heterogeneous nature of the West African trading community. A sizeable number of West African traders, anywhere from 20% to 30% of them, are classified as "informal traders". This means that these traders are typically self employed and work by themselves outside of the formal economy. As such, they will encounter significant difficulties before being able to join the ranks of formal traders which is the only group of traders that can realistically provide Customs administrations with credible financial guarantees, transaction records and electronic filing capabilities necessary to implement the two-step declaration process.

V.1.2 Goods Transit

Most goods traded from Burkina Faso, Mali and Niger must transit through one or more third countries. In addition, a significant portion of inter-regional trade also generates transit movements within the region. The importance of this trade along with the importance of the government revenues it generates (i.e.; duties and fees), explains why it is so tightly controlled by the region's Customs administrations.

The need for most of the goods exported and imported from/to Burkina Faso, Mali and Niger to transit through one or several third countries is a mainstay of global trade flows within West Africa. In addition, a significant portion of inter-regional trade also generates transit movements within the region. The importance of this trade along with the importance of the government revenues it generates (i.e.; duties and fees), explains why it is so tightly controlled by the region's Customs administrations.

To facilitate this type of trade, landlocked countries' governments have signed bilateral agreements with their coastal neighbors in order to allow their Customs administrations to be represented at the main regional ports of entry/exist for their goods. For instance, Mali has signed bilateral agreements with both Côte d'Ivoire and Senegal so as to be able to operate Customs warehouse facilities at the ports of Abidjan and Dakar. While these agreements are designed to facilitate the transit of goods to their final destination by streamlining the transit filling process (i.e.; several copies of the transit document are used for transit purpose), their impact on transiting goods is, unfortunately, limited. Two primary causes explain this situation:

- A trader from a landlocked country who imports/exports goods through one of the region's seaport, is required to obtain a financial guarantee from each of the country's

Chamber of Commerce through which the goods will transit. This cumbersome process is a costly one, as the fee paid to each Chamber of Commerce is not reimbursable and is duplicated for each country (including the fee paid to the Chamber of Commerce of the country of final destination – See Chapter III).

- In order to prevent potential smuggling, each country through which the goods are transiting requires that every truck carrying these goods be escorted by one of its Customs agent while crossing its territory. This obligation for a Customs escort can either be provided to a single truck or, more often, to several trucks assembled into convoys (see Figure V-1). It applies to everyone regardless of the nature of the goods transported, the safety of the containment or the reputability of the trader.

Booz·Allen & Hamilton, 2001

Figure V-1: Trucks Being Assembled in a Convoy at the Mali Customs Compound in Kouri - Border Crossing Between Mali and Burkina Faso – May 2001

V.1.3 Customs Administrations' Human Resources

One of the main asset and liability of any administration is its personnel. Any effective implementation of Customs' policies relies, therefore, heavily on the capabilities of Customs' personnel to carry them out and to adjust to change. Our discussions with Customs officials as well as our own field observations, show that the Customs agents of the countries we visited are currently under significant strain to reconcile the antagonistic goals of revenue collection and trade facilitation. The situation they face is made worst by the following factors:

- Each Customs administration we studied is in the process of adopting new Customs code that will require significant re-training of its personnel. This re-training will not only have to result in a change of attitude towards traders (placing facilitation ahead of enforcement) but will also challenge existing Customs culture through, for instance, the use of the GVA. Regrettably, none of the Customs administrations surveyed have nearly enough resources to ensure the necessary re-training of their personnel, especially their front line personnel (those elements deployed at the border). Likewise, none have any programs in place to evaluate systematically their personnel capabilities and performance so as to target their meager resources to those procedures and knowledge areas that generate the greatest problems.
- The hiring freeze imposed on the Customs Administrations during the last decade due to budgetary constraints, has accelerated the "graying" process of the Customs personnel (e.g.; the average age of the Senegalese Customs personnel stood at 47 years old at the end of 2000). Accordingly, the personnel in place is proving harder to train, especially when it comes to the introduction of new technologies such as computer-based declaration processing, and as a result suffers from low morale and productivity. In addition, this lack of recruitment activities over the last couple of years is about to translate into a dramatic reduction in the number of available personnel. An internal study produced by the Senegalese Customs shows, for instance, that, if nothing is done, this administration should lose to retirement and attrition more than 70% of its existing personnel by the end of the year 2005.
- The wide discrepancies in personnel capabilities within each Customs administration will render the uniform and consistent implementation of the new Customs code and procedures hard to achieve. This problem is both the result of inconsistent recruiting standards, lack of training resources dedicated to narrowing the knowledge gap that exists among Customs agents and, in some instances, political interference (e.g.; the Mali Customs was instructed over the last couple of years to recruit agents from the northern tribes with limited formal education).
- The current policy of systemic rotation of staff both in terms of position and geographic locations that is designed to fend off corruption problems, precludes the region's Customs administrations from developing a core of experts in the various aspects of Customs procedures.

V.1.4 Customs Personnel Corruption

In the countries we visited, and without a doubt in the other WAEMU countries, the classic ingredients exist for corruption of Customs personnel. Discretionary power, opportunity and incentive (combined with lack of disincentive) create the conditions that foster corrupt practices. The perceived risks appear low for officials or traders who engage in corrupt practices. In all the countries studied, Customs officials acknowledged that not a single Customs officers had been fired over the last couple of years for engaging in corruption practices, although a score of them have been cited for engaging in such behavior.

Many of the problems identified in the current Customs processes and procedures contribute to, and in many cases are caused by, rent-seeking behavior of managers and officials in Customs and other organizations. In particular, multi-step manual processes and a generally

slow overall processing time for declaration processing and transit operations cause traders to seek ways to shortcut the process and avoid delays. Those in Customs who wish to profit from corruption, will, if incentives exist, find ways to intervene in and delay the process in order to create better opportunities to extract bribes.

The informal interviews we conducted during the course of the study, including the WAEMU officials and some senior Customs officials, confirm that bribery is widespread and accepted as the norm. Traders who believe, rightly or wrongly, that Customs agents interpretation of tariff classification and valuation is unreasonable or just too expensive for them to maintain competitiveness, openly resort to bribery to avoid duties and taxes.

The proceeds of bribery for both traders and officials, even at a relatively low level, are sufficient to overcome fear of unlikely exposure and possibly being fined or losing a fairly lowly paying job. Anecdotally, we learned that "speed money" is commonplace and is generally accepted as part of the trading process. Officials of Customs, Police and the *Gendarmerie* are all said to participate in widespread low-level corruption.

Additionally, the administrative practice inherited from the French Customs of the *contentieux* provides the kind of incentive scheme for Customs agents to find extra revenue using an over zealous approach of systemic inspection of all imported goods, greatly impeding the free movement of merchandise within the region. In the current system, part of the proceeds from the seizures made is distributed in a regulated way between those directly or indirectly involved in the seizure (includes Customs agents). Generally, about 50% of the extra revenue collected as a result of these seizures is retained by Customs agents while another part is used to fund the acquisition of Customs equipment or meet specific technical needs. While the money collected by Customs agents from seizures represents an important portion of their base salary (estimated to exceed 10% of it), the implementation of the CET as well as the overall trend towards the reduction in duty levels is contributing to a significant decrease of this income source.

V.2 Non-Customs Trade Facilitation Issues

No effective solutions to trade facilitation issues in West Africa can be solely Customs-based. While we were not specifically mandated as part of this study to analyze these non-Customs trade facilitation issues, we feel that it is important to acknowledge and discuss the most important of them briefly.

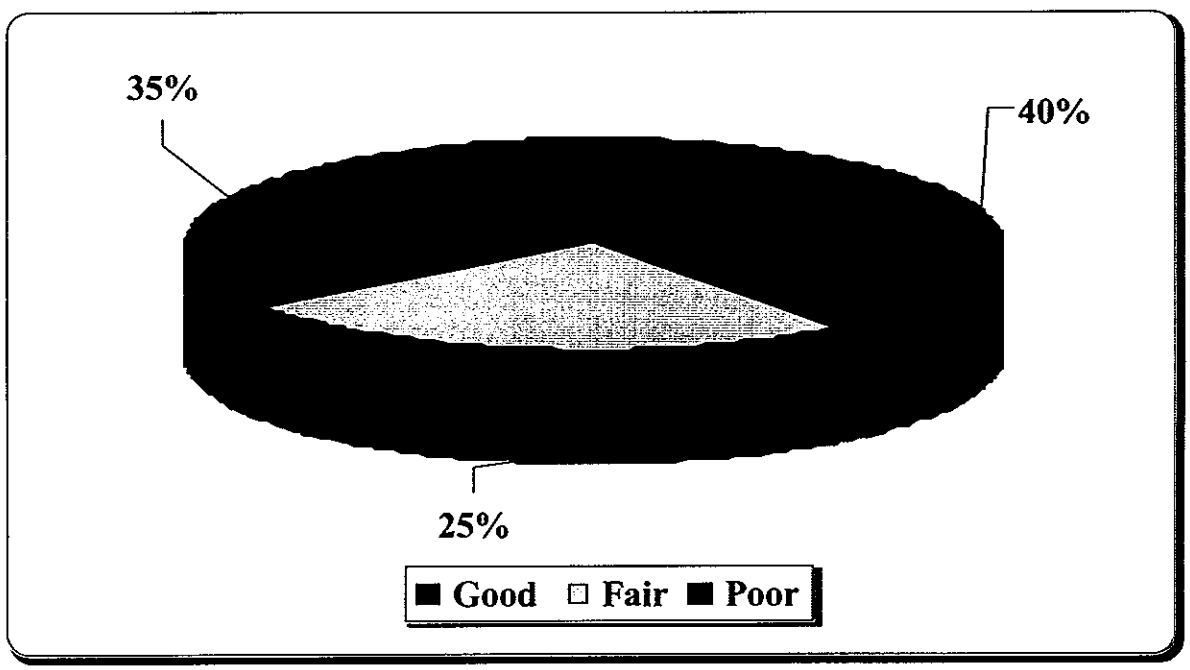
V.2.1 Coordination With Other Government Agencies

During our field visit in the region in May 2001, we elected to drive from Ouagadougou, the capital city of Burkina Faso, to Bamako, the capital city of Mali. While we were subjected to fewer than five stops by the Police and the *Gendarmerie* between Ouagadougou and the Mali border, the number of stops generated by these two institutions rose to more than twenty from the time we entered the territory of Mali to the time we arrived in Bamako (i.e.; this means that we were effectively stopped on average every 10 to 15 miles).

This kind of systemic administrative harassment is a common feature of all overland travel in West Africa. It applies both to goods and people and is carried out indiscriminately in order, first and foremost, for the representatives of these administrations to profit financially from this flow of goods and people. Customs officials even reported to us that truck convoys under Customs escort are often subjected to this type of administrative harassment and always impacted by the stops (i.e.; convoys are systematically caught in the cues created by these checkpoints). It is quite obvious, therefore, that any trade facilitation efforts made by Customs alone, can only have a very limited impact on the actual flow of goods throughout the region. As such, institutional measures must be taken to foster coordination among these administrations so as 1) reduce drastically the number of checkpoints, 2) co-locate these checkpoints (i.e.; several administrations by checkpoint) and 3) clearly delineate the respective role of each administration (i.e.; too often Customs agents take on the role of immigration officers and Police/*Gendarmerie* agents take on the role of Customs agents).

V.2.2 Infrastructure Deficiencies

The issues of trade facilitation and transport infrastructure quality and density cannot be de-associated. In West Africa, the general poor state of the transport network (ports, airports, roads and railways – see Figure V-2) contributes significantly to the problems encountered by traders. As such, any serious regional and/or trade facilitation policy needs to review and address the actual shortcomings of the region's transport network. That same policy also needs to pay careful attention to the "other" types of infrastructures, such as the communications and the electricity distribution infrastructure that are equally critical to trade facilitation.



Source: World Bank
Booz•Allen & Hamilton, 2001

Figure V-2: Quality of Roads in West Africa in 1997

37

In terms of transport infrastructure, leaving aside the problem of general quality and capacity of the transport network system, the main issue relates primarily to the inadequacies of seaport and road facilities to allow for a speed up treatment of low risk shipments. In the current environment, even if the region's Customs administrations were to decide to abandon their policy of systemic inspection of all shipments, the vehicles carrying these shipments would still be caught in the cues created by the inspection process. This problem which is due to the lack of appropriate road and seaport facilities, could be dealt with at a minimal costs by creating "reserved" road lanes and/or passageways at the inspection sites for those vehicles that carry low risks shipments.

One additional transport issue deserves to be raised in this report. During our road trip from Ouagadougou to Bamako, we encountered on the Mali side of the border a very high number of road speed bumps (i.e.; literally every five miles). While we understand that these speed bumps were originally designed to force speeding trucks to slow down before entering a village , their proliferation has now created an unnecessary burden on the flow of goods. While this problem might be specific to the roads in Mali, it is, nevertheless, worth addressing as it illustrates how any solution to a specific problem (here pedestrians and villagers safety) can sometimes create its own sets of problems unless its implementation considers the inherent linkages with other broader issues.

In terms of the other types of infrastructure, one of the main reasons why Customs administrations cannot carry out border inspections and/or release goods at the border comes from the absence of electricity and phone lines at the border crossing sites. Without this type of infrastructure, not only are Customs agents left to act independently with little or no supervision but they also cannot receive or create computerized version of custom declarations and exchange intelligence with their headquarter.

V.2.3 Financial Sector Shortcomings Effects on Trade

From a financial standpoint, two primary issues create undue hardship on global traders. The first one reflects the non-availability of a credible region-wide guarantee scheme that would allow traders to insure their shipments with a single company and/or agency. Under the current system, traders are forced to contract an insurance guarantee for their shipment on a country-by-country basis. This guarantee is issued by each country's Chamber of Commerce at a prohibitive cost to traders (see Chapter III). The problem with this scheme is, aside from the fact that it is unduly cumbersome and costly to traders, that it does not really provide the region's Customs administrations with a credible mean to recover any losses in case of a problem; hence, the Customs policy of escorting "insured" transiting shipments. Numerous Customs officials have indicated to us that chambers of commerce act more like rent seeker and rarely fulfill their guarantee obligation vis-à-vis the Customs administrations. While the Governments of West Africa are keenly aware of this problem, no solution has yet been devised to tackle it.

The other financial issue that affects seriously global trade within the region comes from the weaknesses of the region's banking system both in terms of individual bank network density and electronic payment capabilities. Such network would allows traders to pay for Customs

duties when and where their shipment enters the region and for coastal countries Customs administrations to collect these fees and duties on behalf of their landlocked partners.

V.2.4 Transport Sector Organization and Resources

Like the trading community, the transport community of West Africa combines a large number of small, capital starved, companies with a small number of big, capital intensive, companies. The distribution of these two types of companies is uneven depending on the mode of transport considered. In the maritime, airlines and railways sectors, large companies dominate the market and have the necessary resources to meet any of the existing and upcoming Customs requirements. This, in turn, is not true for the trucking sector that is made mostly of small firms (i.e.; one truck company) which have limited resources and skills. Unfortunately, these firms are the very same firms that have to bear the brunt of the Customs, Police and *Gendarmerie* administrative harassment. A policy of trade facilitation should, therefore, look into this problem at a regional level, either under the auspices of the ECOWAS and/or the WAEMU, in order to find solutions that would allow small trucking companies to pool resources together so as to be able to meet more adequately current and future Customs, Police and *Gendarmerie* requirements.

Chapter VI: Recommendations

This Chapter presents a set of short and medium term recommendations to address Customs issues related to trade facilitation as well as an action plan design to allow for the implementation of the proposed short-term recommendations. All these recommendations represent a suite of reforms necessary to bring a global improvement in the effectiveness of Customs within the WAEMU member countries and more, broadly, within West Africa Customs. If implemented selectively, their impact would be reduced significantly.

VI.1 Short-Term Recommendations

These recommendations can be implemented within a timeframe of less than 6 months. They are in order of importance (from the most to the least important):

1. Amendments to the draft of the WAEMU Customs Code in order to incorporate the following elements:
   - ✓ A bidding schedule for all the WAEMU Customs administrations to adopt the HTS goods classification system, a unique tariff schedule and the GVA;
   - ✓ The elimination of the requirement that all goods be physically entered into Customs warehouses at destination points;
   - ✓ The establishment of a two-tiered processing system so as to discriminate between compliant and non-compliant traders including a decreasing cap on the number of inspection that can be undertaken by each country Customs administration over the next five years;
   - ✓ The definition of a uniform set of applicable sanctions for traders' non-compliance;
   - ✓ The definition of appeals rules for traders;
   - ✓ The use of a unique declaration form for all shipments declaration;
   - ✓ The use of a single guarantor for in-transit shipment;
   - ✓ The definition of rules regarding the electronic exchange of declaration data among WAEMU Customs administrations;
   - ✓ The establishment of a WAEMU Customs administrations compliance unit in charge of verifying the adequate implementation of WAEMU Customs code among its members; and
   - ✓ The listing of Customs anti-corruption standards.
2. Development of a WAEMU sponsored Memorandum of Understanding (MOU) regarding anti-smuggling and trade facilitation cooperation procedures among the region's enforcement agencies (i.e.; Customs, Police and *Gendarmerie*) which includes clear goals regarding in country inspection rates and border facilities co-location.
3. Development and implementation of training courses on Customs technical matters such as the WTO valuation (GVA), rules-of-origin, the HTS, transit procedures, enforcement techniques, commercial fraud detection, intelligence gathering, risk management and post-clearance audit.
4. Development of a common training curriculum for all Customs administrations' personnel.

5. Development of a WAEMU's decree regarding the phasing out of pre-shipment inspections over two years so as to give time to the region's Customs administrations to implement necessary changes to their risk targeting procedures as well as upgrade the skills and knowledge of their personnel on the issues of goods valuation and risk assessment.

VI.2 Medium-Term Recommendations

These recommendations complete the short-term recommendations listed previously. They include in order of importance (from the most to the least important):

1. Development of a regional bond guarantee scheme under the auspices of the WAEMU, the ECOWAS and the region's insurance and banking sector.
2. Development of a WAEMU's and/or ECOWAS decree regarding the creation of a regional Customs training center and regional computer-processing center for handling in-transit Customs declarations (in association with the ECOWAS computer center).
3. The creation of in-transit trade corridors that would allow to test the soundness of:
   - ✓ A simplified bond guarantee system using a single guarantor for in-transit shipments. Bond guarantee should be available indifferently from banks, insurance companies, chambers of commerce at the importer or exporter's convenience, according to the Kyoto 2000 recommendations.
   - ✓ The elimination of the convoy system for those shipments that are properly sealed and belong to compliant traders. These shipments would have distinctive markings (e.g.; green stickers) and would be able to cross border seamlessly. Additionally, they would be exempt from scrutiny from other agencies' officials (i.e.; Police and *Gendarmerie*).
   - ✓ The use of a single electronic documentation for in-transit shipments. This would require the systemic electronic exchange of declaration data between landlocked countries' Customs administrations and coastal countries' Customs administrations. In light of the low number of declarations filed every year by traders, the electronic exchange of data between these administrations could easily occur via email.
4. The development of specific transport and telecommunication infrastructures at major inland border crossing points in order to facilitate the passage of compliant and properly sealed in-transit shipments. These infrastructures would include: 1) multi lanes roadways to allow for quick and easy border crossing of "green stickers" shipments, and 2) electricity and phone connections in order to allow for effective communications and exchange of data between main offices and border posts.
5. The development of a single regional computerized declaration system under the leadership of the ECOWAS and/or the WAEMU in order to speed up the computerization process of the region's Customs administrations, the harmonization of Customs procedures and bundle scarce local EDI resources.
6. The development of a common pay system to harmonize how Customs agents are remunerated throughout the region with an emphasis on a performance-based pay structure only partially linked to seizure and fine activities.

VI.3 Action Plan

This action plan is designed to permit a rapid implementation of the short-term recommendations presented previously. In order to reflect the difference in the implementation complexity of each recommendation, we have categorized them as follows:

- **Category 1** – those recommendations that can be readily agreed on by all parties and implemented without reservation.
- **Category 2** – those recommendations that can be agreed on in principle by all parties but that will still require further negotiation and development among these parties.
- **Category 3** – those recommendations that cannot be agreed on at this point among all parties.

Accordingly, the first set of recommendations that we are proposing to undertake (i.e.; Category 1 recommendations) does not necessarily include the recommendations that appear on the top of our list of short-term recommendation.

VI.3.1 Short-Term Recommendations: Category 1

It include the following activities:

Activity 1: Development and implementation of training courses on Customs technical matters in order to foster regional Customs compliance with the WCO/WTO recommendations:

- ✓ **Goal and Proposed Approach:** training of Customs officials on the following topics: WTO valuation (GVA), rules-of-origin, the HTS, transit procedures, enforcement techniques, commercial fraud detection, intelligence gathering, risk management and post-clearance audit. The proposed training will be provided in country and will include follow-on evaluation missions.
- ✓ **Target Audience:** Mid-level Customs officials and field Customs agents from West Africa Customs. For training targeting mid-level customs officials, five representatives from each of the ECOWAS' fifteen member countries will be selected.
- ✓ **Format:** This training courses will be delivered over a three-days workshop organized as follows:
  - Day 1:
    - *Morning Session:* Review of WTO valuation, rules-of-origin and HTS recommendations.
    - *Afternoon Session:* Workshop to train the trainees on these issues and develop training material that can be used by each trainee to train field Customs agents.
  - Day 2:
    - *Morning Session:* Review of enforcement techniques, especially in the context of in-transit shipments with an emphasis on trade facilitation techniques recommended by the WTO/WCO.

- *Afternoon Session:* Workshop to train the trainees on these issues and develop training material that can be used by each trainee to train field Customs agents.

- Day 3:
  - *Morning Session:* Course on risk management and assessment, intelligence-gathering and post-clearance audit techniques.
  - *Afternoon Session:* Workshop to train the trainees on these issues and develop training material that can be used by each trainee to train field Customs agents.

Following this training course, a team of two consultants will develop training evaluation material in order to assess the training effectiveness. Evaluation reviews will take place within three-to-six months of training package delivery and will target field agents who have been trained by Custom officials who attended the initial training courses. These evaluations will take place in four countries (to be designated at a later time) and include two trips within the Region.

✓ **Location:** Initial training package will be provided in Abuja (ECOWAS headquarter) to mid-level Customs officials from ECOWAS English speaking countries and Ouagadougou (WAEMU headquarter) to mid-level Customs officials from ECOWAS French and Portuguese speaking countries.

✓ **Timeframe:** Form the time of approval of the proposed technical assistance – 2 months to develop training package, then 2 weeks in the field to deliver it and then 3-to-6 months to evaluate in the field results of training.

✓ **Estimated Level of Efforts:**

- Development of training package materials:
  - 40 Days for a Trade Specialists Level I
  - 25 Days for a Customs Expert Level I
  - 10 Days for a Trade Specialist Level II
- Preparation and conduct of training session:
  - 24 Days for a Trade Specialists Level I
  - 12 Days for a Customs Expert Level I
  - 32 Days for a Trade Specialist II
- Follow-on evaluations:
  - 15 Days for a Trade Specialist Level I
  - 15 Days for a Customs Expert Level I
  - 20 Days for a Trade Specialist Level II
- Total estimated level of efforts:
  - 79 Days for a Trade Specialist Level I
  - 52 Days for a Customs Expert Level I
  - 62 Days for a Trade Specialist Level II

Activity 2: Development of a common training curriculum for all Customs administrations' personnel:

✓ **Goal and Proposed Approach:** Production of a training curriculum manual for Customs personnel detailing recruitment standards, length and nature of initial training, evaluation tools and techniques of trainees and yearly re-training

43

requirements. The goal is to get the ECOWAS and the WAEMU to endorse this manual in order to harmonize training requirements within the region and lay the ground for a regional Customs training school.

- ✓ **Target Audience:** Heads of training programs of each of West-Africa Customs administrations and Customs experts from the ECOWAS and the WAEMU.
- ✓ **Format:** Manual to be developed following meetings with several heads of Customs training schools in West Africa and officials from the WAEMU and the ECOWAS.
- ✓ **Location:** Review of existing training materials and courses and production of new training manual to be undertaken in the US following initial meetings with local Customs, ECOWAS and WAEMU officials in Lomé and Ouagadougou. Two field working meetings to be organized as follow-on with heads of Customs training programs in Lomé and Ouagadougou to present and get feedback on initial draft of training Manual.
- ✓ **Timeframe:** Form the time of approval of the proposed technical assistance – 3 months to develop draft training package, then two months to present it to local Customs, WAEMU and ECOWAS officials and produce its finalized version.
- ✓ **Estimated Level of Efforts:**
  - Assumes work is done in cooperation with the WCO with one expert from this organizations specialized in Customs officials training.
  - Initial review of local Customs training programs:
    - 15 Days for a Trade Specialist Level I
    - 15 Days for a Customs Expert Level I
    - 15 Days for a Trade Specialist Level II
  - Drafting of training manual:
    - 15 Days for a Trade Specialist Level I
    - 15 Days for a Customs Expert Level I
    - 5 Days for a Trade Specialist II
  - Presentation of draft training manual:
    - 6 Days for a Trade Specialist Level I
    - 6 Days for a Customs Expert Level I
    - 6 Days for a Trade Specialist Level II
  - Finalization of training manual:
    - 15 Days for a Trade Specialist Level I
    - 15 Days for a Customs Expert Level I
    - 5 Days for a Trade Specialist Level II
  - Total estimated level of efforts:
    - 51 Days for a Trade Specialist Level I
    - 51 Days for a Customs Expert Level I
    - 31 Days for a Trade Specialist Level II

VI.3.2 Short-Term Recommendations: Category 2

It include the following activities:

Activity 1: Development of a WAEMU's decree regarding the phasing out of pre-shipment inspections

- ✓ **Goal and Proposed Approach:** Help WAEMU officials draft a Decree relative to the phasing out of pre-shipments inspections in all the Union's member countries within two years. Drafting of the decree will require face-to-face meeting with local Customs and WAEMU officials as well as member countries Finance Ministry officials. Thus, we propose to organize a workshop under WAEMU's auspices in Ouagadougou to discuss this matter.
- ✓ **Target Audience:** WAEMU's heads of customs, high level Finance Ministry representatives and WAEMU officials.
- ✓ **Format:** Two-days working session on the subject in order to build a consensus on the language and scope of the draft Decree. Working session would start with an introductory note from the consultant's team on SGS's role in Customs inspection procedures within the GVA environment.
- ✓ **Location:** WAEMU's headquarter in Ouagadougou.
- ✓ **Timeframe:** Form the time of approval of the proposed technical assistance – 2 months to prepare working session in Ouagadougou, then 1 week on the field to prepare/undertake working session and 2 weeks to finalize draft Decree.
- ✓ **Estimated Level of Efforts:**
  - Preparation of working session and development of draft Decree:
    - 10 Days for a Trade Specialist Level I
    - 10 Days for a Customs Expert Level I
    - 15 Days for a Trade Specialist Level II
  - Working session:
    - 5 Days for a Trade Specialist Level I
    - 5 Days for a Customs Expert Level I
  - Final production of draft Decree:
    - 5 Days for a Trade Specialist Level I
    - 5 Days for a Customs Expert Level I
    - 5 Days for a Trade Specialist Level II
  - Total estimated level of efforts:
    - 20 Days a Trade Specialist Level I
    - 20 Days a Customs Expert Level I
    - 25 Days a Trade Specialist Level II

Activity 2: Development of a WAEMU sponsored Memorandum of Understanding (MOU) regarding anti-smuggling and trade facilitation cooperation procedures among the region's enforcement agencies (i.e.; Customs, Police and *Gendarmerie*)

- ✓ **Goal and Proposed Approach:** Help WAEMU trade officials draft an MOU to be presented to WAEMU's governments that outlined basic principles regarding domestic and regional cooperation among enforcement agencies with the stated goal to reduce drastically traders' harassment while improving effectiveness of trade laws enforcement. Specific goals will include, but will not be limited to:
  - Co-location of enforcement agencies posts at the border;
  - Commitments to eliminate within a given timeframe most inspection sites located on major trade corridors;
  - Re definition of roles among enforcement agencies;

45

- Electronic exchange domestically and regionally of intelligence;
- Training plan to ensure effective implementation of new operating rules at the field agent level; and
- Associated budgets and funding sources.

✓ **Target Audience:** Heads of Finance Ministries, Customs, Police and *Gendarmerie* along with relevant WAEMU officials.

✓ **Format:** One three-days working meetings in one of the region's capital city.

✓ **Location:** Working meeting to take place in a landlocked country (we propose Bamako) as land locked countries are the one whose global and regional trade suffer the most from the lack of coordination among enforcement agencies.

✓ **Timeframe:** Form the time of approval of the proposed technical assistance – one month to develop draft MOU, then one week to present it and get feedback from target audience then two weeks to finalize draft MOU.

✓ **Estimated Level of Efforts:**

- Initial draft of MOU:
  - 10 Days for a Trade Specialist Level I
  - 10 Days for a Customs Expert Level I
  - 5 Days of a Lawyer Level I
  - 10 Days for a Trade Specialist Level II
- Working session:
  - 5 Days for a Trade Specialist Level I
  - 5 Days for a Customs Expert Level I
  - 5 Days for a Trade Specialist II
- Finalization of MOU:
  - 5 Days for a Trade Specialist Level I
  - 5 Days for a Customs Expert Level I
  - 5 Days for a Trade Specialist Level II
- Total estimated level of efforts:
  - 20 Days for a Trade Specialist Level I
  - 20 Days for a Customs Expert Level I
  - 5 Days for a Lawyer Level I
  - 20 Days for a Trade Specialist Level II

VI.3.3 Short-Term Recommendations: Category 3

It include the following activity:

Activity 1: Amendments to the draft of the WAEMU's Customs Code

✓ **Goal and Proposed Approach:** Propose a set of amendment to WAEMU's Customs codes in order to make it more bidding to member countries. Amendments will cover the following topics:

- A bidding schedule for all the WAEMU Customs administrations to adopt the HTS goods classification system, a unique tariff schedule and the GVA;
- The elimination of the requirement that all goods be physically entered into Customs warehouses at destination points;

- The establishment of a two-tiered processing system so as to discriminate between compliant and non-compliant traders including a decreasing cap on the number of inspection that can be undertaken by each country Customs administration over the next five years;
- The definition of a uniform set of applicable sanctions for traders' non-compliance;
- The definition of appeals rules for traders;
- The use of a unique declaration form for all shipments declaration;
- The use of a single guarantor for in-transit shipment;
- The definition of rules regarding the electronic exchange of declaration data among WAEMU Customs administrations;
- The establishment of a WAEMU Customs administrations compliance unit in charge of verifying the adequate implementation of WAEMU Customs code among its members; and
- The listing of Customs anti-corruption standards

✓ **Target Audience:** WAEMU officials in charge of Customs policies, Finance Ministries officials, heads of Customs, trade community leaders.

✓ **Format:** The consultant team, in cooperation with WAEMU officials in charge of Customs issues, will develop the set of proposed amendments to the Custom Code. These amendments will then be presented to a wider audience for comments. In addition to in-region meetings, the proposed amendments will be published on the Internet (assumes on WAEMU's website) for public comments. Finalized proposed amendments will then be submitted for review to WAEMU's Executive Directorate for inclusion in WAEMU's Customs code.

✓ **Location:** Initial meeting between the consultant team and WAEMU officials will take place in Ouagadougou. We propose that subsequent meetings design to obtain comments and feedback from Finance Ministry officials and trade community leaders take place in the following three cities: Abidjan, Dakar and Bamako.

✓ **Timeframe:** Form the time of approval of the proposed technical assistance – 3 months to develop draft of proposed amendments (including one week working session in Ouagadougou with WAEMU officials), then one months to get feedback and comments from interested parties (including three one day working meeting within the region) and one month to finalize proposed amendments.

✓ **Estimated Level of Efforts:**

- Drafting of proposed amendments:
  - 25 Days for a Trade Specialists Level I
  - 25 Days for a Customs Expert Level I
  - 10 Days of a Lawyer Level I
  - 25 Days for a Trade Specialist Level II
- Presentation of proposed amendments and feedback collection:
  - 12 Days for a Trade Specialists Level I
  - 12 Days for a Customs Expert Level I
  - 12 Days for a Lawyer Level I
  - 10 Days for a Trade Specialist II
- Finalization of proposed amendments:
  - 10 Days for a Trade Specialist Level I

47

  - 10 Days for a Customs Expert Level I
  - 5 Days for a Lawyer Level I
  - 10 Days for a Trade Specialist Level II
- Total estimated level of efforts:
  - 49 Days for a Trade Specialist Level I
  - 49 Days for a Customs Expert Level I
  - 27 Days for a Lawyer Level I
  - 45 Days for Trade Specialist Level II

Appendix A – Extracts from the WAEMU Treaty Signed on January 10,1994

Note: The following is a *free translation* of a few Sections of the Treaty to which we need to refer in our study of the WAEMU Customs administrations.

PREAMBLE

The Government of the Benin Republic,
The Government of Burkina Faso,
The Government of the Côte d'Ivoire Republic,
The Government of the Mali Republic,
The Government of the Niger Republic,
The Government of the Senegal Republic,
The Government of the Togo Republic,
The Government of the Guinea Bissau Republic,

- Respectful of the respective objectives of the Afican Economic Community and of the Economic Community of the West African States (ECOWAS);
- Aware of the advantages to gain by belonging to the same Monetary Union and of the need to reinforce its cohesion;
- Convinced of the need to expand to the economic area, the solidarity which is already binding them in the monetary area;
- Asserting the need to favor the economic and social development of the State members throughout an harmonization of their respective legislation, the unification of their internal markets, and the implementation of common sector policies in the essential sectors of their economies;
- Acknowledging the interdependency of their economic policies and the need to their merging;
- Committed to comply with the principles of a competitive open market economy and prioritizing a maximum input of resources;
- Willing to thus complement the West African Monetary Union (WAMU), by consenting additional sovereignty transfers and to transform this Union into the West African Economic and Monetary Union (WAEMU), to be equipped with new abilities;
- Asserting the need to increase the complementarity of their production systems and to reduce the gap between the development levels of the State members;
- Highlighting the fact that their initiative is in line with the regional integration efforts ongoing in Africa and, inviting the rest of West African countries sharing the same objectives to join their efforts;

agree on the following:

Section 1-
Definitions:
First Title: About the Principles and Objectives of the Union;

49

Section 2-

By the present Treaty, the High Contracting Parties are adding to the WAMU (UMOA) that they have instituted among themselves, in such a way that they convert it into a West African Economic and Monetary Union (WAEMU), further called " the Union ";

Section 3-

Throughout its actions, the Union respects the fundamental rights as stated in the Universal Human Rights Declaration of 1948 and the African Charter of Human and Nations Rights of 1981;

Section 4-

Without prejudice to the objectives stated in the WAMU Treaty, the Union, respecting the conditions stated in the present Treaty, tries to fulfill the following objectives:

a) to increase the competitiveness of State members in their economic and financial activities, through an open and competitive market and, through a rationalized and harmonized judicial environment;
b) to ensure a merging of the economic performance and politics of the State members by creating a multilateral monitoring process;
c) to create among the State members a common market to be built on the free flow of persons, goods, services, capitals and, for the people working on their own or for a salary the right to settle, as well as known : a common external tariff and a common commercial policy;
d) to coordinate the national sector policies, by implementing common actions and eventually, common politics in the following sectors : human resources, land tenure, transports and telecommunications, environment, agriculture, energy, industries and mines;
e) to harmonize, as much as needed for a good operation of the common market, the legislation and more specifically, the fiscal legislation of the State members .

Section 5-

In order to support the enforcement of the normative powers attributed by this Treaty to the instances of the Union for the fulfillment of their objectives, they are formulating a minimum number of prescriptions and rely mostly on the national framework regulations that the State members promulgate as needed, in line with their own constitutional rules.

Section 6-

The Acts adopted by the Union instances for the achievement of the objectives of this Treaty, according to the rules and procedures so instituted, are enforced in each State member territory *nonobstant* any past or future opposing national legislation.

Section 7-

The State members bring their contribution for the achievement of the Union's objectives, by adopting all general or specific measures, of such a nature as to fulfill the obligations included in the present Treaty and the actions supporting its application.

Section 8-

As soon as the Treaty starts to be implemented, the Conference of the Chiefs of States decides on the general orientation for the realization of the Union's objectives. At a specific frequency, it monitors the progress of the economic and monetary integration and, if needed, gives new orientations.

PART III: ABOUT THE COMMON MARKET

Paragraph 1: General Provisions

Section 76-

In order to put into place the Common Market as stated in Section 4 c) of the present Treaty, the Union undertakes the progressive achievement of the following objectives:

a) the elimination, on exchanges between State members, of Customs duties, of inward and outward quantitative restrictions, of taxes having a similar effect and of all other measures having a similar effect of hindering the said transactions, respectful of the Union's rules of origin, to be specified in an additional protocol;
b) to set up a Common External Tariff (CET);
c) creation of common competition rules, applicable to public and private societies as well as to public assistance;
d) to convert into actions the principles of: the free flow of people, the right to settle and to supply services, as well as the free flow of the needed capitals for the development of the regional financial market;
e) the harmonization and mutual recognition of technical norms as well as the homologation procedures and the certification control of their observation.

Paragraph 2: About the free flow of goods

Section 77-

In order to achieve the objective as stated in Section 76 a), as soon as the Treaty comes into force, the State members refrain from:

a) introducing between them any new importation or exportation Customs right as well as any tax having a similar effect and increasing the duties and taxes already applicable in their mutual commercial exchanges;
b) introducing between them new import or export quantitative restrictions or other measures of similar effect, as well as increasing the restrictions such as quotas, norms and any other provision having a similar effect.

Paragraph 3: About the commercial policy

Section 82-

In order to achieve the objectives as defined in Section 76 a) and b) of the present Treaty, the Council adopts with a majority of two thirds (2/3) of its members, on a proposition of the Commission:

a) the measures regarding the harmonization of the legislative, regulatory and administrative provisions of the State members which are essential to the operation of the Customs union;
b) regulations regarding the common external tariff (CET);
c) regulations defining the commercial regimes with external States;
d) the Customs regime applicable to the union bound raw products and to the union made handcraft products.

Section 83-

To achieve the objectives defined in section 76 of the present Treaty, the Union respects the principles of the General Agreement on Trade and Tariff (GATT) regarding the Preferential Trade Regime. It takes into consideration the need to contribute to the development of harmonious trade into Africa as much as worldwide, to favor the development of production capacities into the Union, to protect the Union's products against the dumping and subsidies of competing countries.

Appendix B – Comparative Analysis of Customs Codes Indices

CUSTOMS CODE INDEX	WAEMU,(2001 PROJECT)	SENEGAL (1989)	MALI (2001 PROJECT)	BURKINA FASO (1993)
SECTION I- GENERAL PRINCIPLES OF CUSTOMS REGIMES				
Chapter 1 : General information and Applications	sect. 1-8	✓	✓	✓
Chapter 2 : Tariff	9-12	✓	✓	✓
Chapter 3 : Tariff application	13	✓		✓
designation of goods	14	✓	✓	✓
origin	15	✓	✓	✓
value	16	✓	✓	✓
Chapter 4 : Prohibitions	18-21	✓	✓	✓
Chapter 5 : External trade and Change	22	✓	✓	✓
SECTION II- ORGANIZATION AND OPERATION OF CUSTOMS SERVICE				
Chapter 1 : Limits of Customs authority	23-24	✓	✓	✓
Chapter 2 : Organization of Offices, Brigades and Outports	25-27	✓	✓	✓
Chapter 3 : Customs Agents immunity, protection and obligations	28	✓	✓	✓
Chapter 4 : Powers of Agents :	29-33			
the right to search goods, conveyances and persons	29	✓	✓	✓
the visit of real properties	30, 30bis	✓	✓	✓
the control of special operations (WAEMU)	31			
the communication of support/complementary documentation		✓	✓	✓
the control of postal shipments	32	✓	✓	✓
the persons identity control	33	✓	✓	✓
SECTION III- ARRIVAL OF GOODS IN A CUSTOMS ENVIRONMENT				
Chapter 1 : Importation	34-54			
Introduction of goods on the Union's territory	55-57			
arriving by the sea	34-41	✓		
arriving by the river	42-45		✓	
arriving by land	46-47	✓	✓	✓
arriving by the air	48-53	✓	✓	✓
common concern	54			
Presentation of goods to Customs	58-59			
preliminary/summary declaration and goods unloading	60-62		✓	
obligation to designate a destination to goods	63-64			
Chapter 2 : Customs warehouses, compounds and containers terminals	65	✓	✓	✓
Chapter 3 : Exportation	66-67		✓	✓

53

CUSTOMS CODE INDEX	WAEMU,(2001 PROJECT)	SENEGAL (1989)	MALI (2001 PROJECT)	BURKINA FASO (1993)
SECTION IV- CLEARANCE FOR HOME USE				
Chapter 1 : Detailed declaration	68-84			
the obligation to declare in details	68-71	✓	✓	✓
the authorized declarants	72	✓	✓	✓
the acceptable format, presentation and registration of the declaration	73-74	✓	✓	✓
documentation and goods controls	75-79	✓	✓	✓
contestation of the designation, origin and value of goods	80	✓	✓	✓
results of the control	81-84	✓	✓	✓
Chapter 2 : Accounting, payment and release of goods	85-97			
principle	85-86	✓	✓	✓
cash payment	87-88	✓	✓	✓
credit on release	89	✓	✓	✓
duties and taxes credit systems	90	✓	✓	✓
duties and taxes refund	91-92	✓	✓	✓
release of goods	93	✓	✓	✓
Customs acountants responsibility	94-95	✓	✓	✓
loading and shipping of goods for export	96-97	✓	✓	✓
SECTION V- DEFERRED PAYMENT PROCESSING, PRE-EXPORT, DRAWBACK, TEMPORARY EXPORT				
Chapter 1 : SURETY/BOND GENERAL REGIME				
Principle	98-100	✓	✓	✓
discharge process	101	✓	✓	✓
Chapter 2 : TRANSIT				
general provisions	102-108	✓	✓	✓
national transit	109-112	✓	✓	✓
port to port transit, after a summary declaration	113-115	✓	✓	✓
international transit	116	✓	✓	✓
Chapter 3 : CUSTOMS WAREHOUSING				
A- CUSTOMS SUFFERANCE WAREHOUSE				
definition and enduse of warehouses	117	✓	✓	✓
acceptable and excluded goods	118-119	✓	✓	✓
public warehouse	120-122	✓	✓	✓
private warehouse	123-124	✓	✓	✓
special warehouse	125	✓	✓	✓
provisions applicable to all the sufferance warehouses	126-131	✓	✓	✓

54

CUSTOMS CODE INDEX	WAEMU,(2001 PROJECT)	SENEGAL (1989)	MALI (2001 PROJECT)	BURKINA FASO (1993)
provisions applicable to all the sufferance warehouses	126-131	✓	✓	✓
B- INDUSTRIAL WAREHOUSE	132-137	✓	✓	✓
Chapter 4 : TEMPORARY ADMISSION	138-143	✓	✓	✓
inward processing	-	✓	✓	✓
common provision	-	✓	✓	✓
Chapter 5 : BONDED SHOP	144-146	✓	✓	✓
Chapter 6 : DUTY FREE SUPPLYING	147-148	✓	✓	✓
Chapter 7 : DRAWBACK	149-151	✓	✓	✓
Chapter 8 : TRAVELLERS PERSONAL BELONGINGS				
temporary importation	152	✓	✓	✓
temporary exportation	153	✓	✓	✓
Chapter 9 : OUTWARD PROCESSING	154	✓	✓	✓
Chapter 10 : FREEPORT/ FREE AREA	-	✓	✓	✓
SECTION VI- CUSTOMS DEPOT	156-161	✓	✓	✓
SECTION VII- SPECIAL TREATMENTS				
travellers personal luggage	162-163	✓	✓	✓
ships and planes supplying	-	✓	✓	✓
TRANSITORY PROVISIONS cf. (WAEMU code implementation)	164-165			
SECTION VIII- GOODS FLOW AND DETENTION INTO THE CUSTOMS AREA	-	✓	✓	✓
SECTION IX- MISCELLANEOUS				
PRESHIPMENT INSPECTION			✓	
INTERNATIONAL AGREEMENTS PREVALENCE	164	✓	✓	✓
CORRUPTION	-	✓	✓	✓
EDI COMMERCIAL PROCESSING	-	✓	✓	✓
CUSTOMS BROKERS ACCREDITATION	-	✓	✓	✓
SECTION X- CUSTOMS LAW ENFORCEMENT -(CONTENTIEUX)	-			
sharing of fines and confiscation		✓	✓	✓
SECTION XI- CUSTOMS ADJUDICATION COMMISSION		✓	✓	
SECTION XII- SPECIAL MEASURES FOR MONETARY INFRACTIONS		✓		
DRUGS SMUGGLING		✓		
SECTION XIII- FINAL PROVISIONS	165	✓	✓	✓

53

Appendix C – Notes on the Revised Kyoto Convention

The International Convention on the Simplification and Harmonization of Customs Procedures (the Kyoto Convention) was revised by a Protocol of Amendment made at Brussels on 26 June 1999. The principle reasons for the amendments were to take account of major changes in business and administrative methods and techniques; and to provide that the core principles of the Convention were made obligatory on Contracting Parties.

Under the terms of the Revised Convention, an acceding country must implement all the Standards in the General Annex, and in the Specific Annexes and Chapters that it has accepted, within 36 months of their coming into force for that country. (the Protocol will come into force 3 months after 40 Contracting Parties have accepted the Protocol. At present, less than ten countries have accepted.) In the case of Transitional Standards, implementation must take place within 60 months of entry into force. In effect, this means that there is substantial lead-time to comply with the implementation provisions of the Revised Convention.

In order to meet obligations of acceptance, fundamental changes are required in practices common in developing countries, for example:

- Reduction of physical examinations to less than 100% (with, say, a target over three years to reduce them globally to a maximum of around 20%);
- Introduction of post-clearance audit and risk management principles*;
- protection for Customs officials when making legitimate decisions based on risk;
- training and recruitment personnel to meet new skill level requirements;
- high reliance on automation of procedures and processes;
- introduction of administrative penalties for incorrect declarations;
- introduction of appeals provisions;
- streamlined procedures to:
  - provide faster, cheaper and more predictable service to clients;
  - reduce opportunities for corruption;
  - focus Customs attention on results rather than processes; and
- promotion of voluntary compliance by traders dealing with Customs by:
  - offering incentives for complying with the laws and established procedures;
  - penalizing those who do not comply;
  - providing open and transparent information to traders about current and future procedures, requirements and problems.

** Post clearance audits are a means by which Customs can conduct checks at the importer's premises to verify and investigate declarations that have been made over a period of time. They usually will involve checks of records of correspondence, accounts and payments related to import transactions. They may be in the form of routine checks of past imports or targeted to investigate serious Customs infractions that have occurred or are suspected. They may also be carried out to support special import arrangements for categories of traders whose past performance and accounting systems satisfy Customs that fast track processing and release at the time of entry present a low risk.*

Auditing and associated risk management are functions that require specific expertise. Customs administrations must decide whether to train existing Customs officials in these skills or trecruit already qualified personnel and train them in the Customs specialization.

56

Customs administrations face several major restraints to the successful application of the Revised Kyoto Convention. Priority attention needs to be given to:

- Clear and precise legislation;
- Co-ordination of legislation, policies and procedures;
- Internal and external communication mechanisms;
- The development of skilled personnel (supported by appropriate pay structures); and
- Improved management capacity to meet the modern trading and administrative environment.

Appendix D – G7 Customs Data Harmonization Initiatives

Introduction

The G7 heads of government, in meetings at Lyon and Denver, and the G7 Finance Ministers at the Birmingham and Kyushu-Okinawa Summits, agreed to standardize and simplify customs data requirements of the G7 countries and to standardize the format in which data are to be reported electronically, in order to facilitate international trade, reduce costs for businesses and governments, and promote economic growth. Therefore, the G7 Customs Group has sought to simplify customs data requirements to the minimum consistent with effective administration of customs responsibilities, standardize the data requirements and standardize the format for reporting that data.

The G7 Customs Group has standardized the data and format for the most common customs procedures. For imports, this includes the Cargo Report (manifest report by the carrier), and the Declarations required for the release of goods and/or the settlement of duties and taxes (reports filed by the importer or his agent). For exports, this includes the carrier's Export Cargo Report and the Declarations.

Statement of Principles

The G7 Customs Group has agreed to establish standard data sets and electronic formats that can be used for most commercial declarations. It is intended that the data sets and the electronic format may always be used by a trader filing electronically to report the information that customs administrations normally require. In many cases (involving goods for which a government does not require additional health, safety or other regulatory information), customs administrations concerned intend to release and fully process goods solely on the basis of the agreed data sets. In other cases (involving goods for which a government does require additional health, safety or other regulatory information), additional data may be required.

Any customs administrations concerned may, of course, demand additional information whenever more information is required for compliance measurement reasons and/or concerns about fraud or noncompliance. More specifically and in addition:

1. Use of Standardized and Simplified Customs Data Elements

The G7 Customs Group has agreed that for ordinary shipments (see definition below), provided that they are transmitted pursuant to the specified electronic format (see Appendix), customs administrations concerned will require only the data elements they have listed for each customs procedure in the data sets. These self-imposed limits discourage future increases in data requirements and the commensurate burden on traders.

The intent of the G7 Customs Group was agreement to accept, for ordinary shipments, submissions of the data elements listed in the data sets transmitted using the specified electronic format. However, although a trader may initially submit only the data elements required for a

particular customs procedure, the G7 Customs Group has agreed that a customs administration concerned may on occasion require additional information (outside the scope of the data sets) and/or physical examination for compliance measurement reasons or concerns about fraud and/or noncompliance.

2. Reduced Customs Data Requirements

A customs administration concerned may always require fewer data elements than it has listed for a particular customs procedure. In other words, a customs administration concerned may require as few data elements as it chooses. Such situations usually occur with particular types of shipments or traders.

3. Transmission of Data

Even though no customs administration concerned requires all of the data elements for any particular customs procedure, the intent of the G7 Customs Group was that the customs administration concerned will accept the relevant portion of the data set for any particular customs procedure provided that all required data elements are received using the specified electronic format. This would allow traders the ability to transmit to any customs administration concerned without resetting their computer format. To reduce the burden on traders the G7 goal was creation of the minimal data set needed to complete customs processing. At this time, however, the goods declaration data sets are too large to implement this objective.

The G7 Customs Group has committed itself to create a paperless environment for the processing of customs declarations.

The G7 Customs Group has agreed that common coding for designating places, parties and procedures be used to the maximum degree possible.

4. Core Data Elements

Some data elements are listed in the data sets as "mandatory" or "conditional". If a data element is listed as "mandatory" by a customs administration, that customs administration concerned may require that data element for any ordinary shipment. Data elements listed as "conditional" by a customs administration concerned will only be required under the circumstances specified (e.g., a data element relevant only for merchandise subject to an antidumping or countervailing duty).

5. Optional Data Elements

Some data elements are listed in the data sets as "optional". These are data elements which a customs administration concerned will not require, but will accept for the convenience of the trader, in order to calculate customs value or provide other services for the trader. Omission or inclusion of optional data elements will not affect the procedure or time for clearing goods. Traders from all countries concerned will be able to obtain the services that may be provided in connection with the submission of optional data elements.

6. Common Electronic Protocol

The G7 Customs Group has developed message implementation guidelines (see Appendix) based on the UN/EDIFACT standard customs messages.

7. Commercial Invoices and Additional Information

The G7 Customs Group has agreed that customs administrations concerned will not require, for ordinary shipments, commercial invoices or additional information relating to valuation, or pro forma invoices prior to the release of goods.

8. Implementation

The G7 Customs Group has agreed to test and evaluate these data sets and electronic formats by operating prototype systems on their respective schedule.

9. Progress Review

The G7 Customs Administrations have agreed to meet with other concerned parties on, at a minimum, an annual basis to evaluate the progress of participating customs administrations in implementing the data sets and the electronic formats.

10. Amendments and Possible Expansion

The G7 Customs Group encourages other countries and organizations outside the G7 Customs Group to adopt the data sets and the electronic formats for ordinary shipments.

Amendments or additions to the data sets and the electronic formats will take effect upon consensus.

11. Ordinary Shipments

The G7 Customs Group has agreed that these principles will apply to "ordinary shipments" transmitted using specified electronic formats. The G7 Customs Group defines ordinary shipments as commercial shipments of ordinary goods which are not subject to physical and/or documentary examination for compliance measurement reasons or which raise concerns about fraud and/or noncompliance.

12. Ordinary Goods:

Ordinary goods are those goods for which a government does not require additional health, safety or other regulatory information at the time of the declaration. Each government concerned may require, for non-ordinary goods, additional health, safety or other regulatory information.

13. Commercial Shipments:

Commercial shipments do not include declarations, reports or procedures of a non-commercial or specialized nature. Such declarations,
reports or procedures will not usually be processed using the data sets and common electronic protocol.

Appendix E - WCO's Arusha Declaration

The Arusha Declaration: Declaration of the Customs Co-Operation Council Concerning Integrity in Customs

The Customs Co-operation Council

NOTING that Customs is an essential instrument for the effective management of an economy and that it performs simultaneously the vital roles of combating smuggling and facilitating the flow of legitimate trade.

ACKNOWLEDGING that:

- corruption can destroy the efficient functioning of any society and diminish the ability of the Customs to accomplish its mission;
- a corrupt Customs
  - ✓ will not deliver the revenue that is properly due to the State,
  - ✓ will not be effective in the fight against illicit trafficking, and
  - ✓ will obstruct the growth of legitimate international trade and hinder economic development;
  - ✓ the Customs has no right to public recognition or trust if its staff break the law habitually.
  - ✓

CONSIDERING that corruption can be combated effectively only as part of a comprehensive national effort;

DECLARES that a top priority for all Governments should be to ensure that Customs is free of corruption.

This requires a firm commitment at the highest political and administrative levels to maintaining a high standard of integrity throughout the civil service and particularly in the Customs.

DECLARES that a national Customs integrity programme must take account of the following key factors:

1. Customs legislation should be clear and precise. Import tariffs should be moderated where possible. The number of rates should be limited. Administrative regulation of trade should be reduced to the absolute minimum. There should be as few exemptions to the standard rules as possible.

2. Customs procedures should be simple, consistent, and easily accessible, and should include a procedure for appealing against decisions of the Customs, with the possibility of recourse to independent adjudication in the final instance. They could be based on the Kyoto Convention and should be so framed as to reduce to a minimum the inappropriate exercise of discretion.

3. Automation (including EDI) is a powerful tool against corruption, and its utilization should have priority.

4. In order to reduce the opportunities for malpractice, Customs managers should employ such measures as strategic segregation of functions, rotation of assignments and random allocation of examinations among Customs officers and, in certain circumstances, regular relocation of staff.

5. Line managers should have prime responsibility for identifying weaknesses in working methods and in the integrity of their staff, and for taking steps to rectify such weaknesses.

6. Internal and external auditing are essential, effective internal auditing being a particularly useful means of ensuring that Customs procedures are appropriate and are being implemented correctly. The internal auditing arrangements should be complemented by an internal affairs unit that has the specific task of investigating all cases of suspected malpractice.

7. The management should instil in its officers loyalty and pride in their service, an "esprit de corps" and a desire to co-operate in measures to reduce their exposure to the possibility of corruption.

8. The processes for the recruitment and advancement of Customs officers should be objective and immune from interference. They should include a means of identifying applicants who have, and are likely to maintain, a high standard of personal ethics.

9. Customs officers should be issued with a Code of Conduct, the implications of which should be fully explained to them. There should be effective disciplinary measures, which should include the possibility of dismissal.

10. Customs officers should receive adequate professional training throughout their careers, which should include coverage of ethics and integrity issues.

11. The remuneration received by Customs officers should be sufficient to afford them a decent standard of living, and may in certain circumstances include social benefits such as health care and housing facilities, and/or incentive payments (bonuses, rewards, etc.).

12. Customs administrations should foster an open and transparent relationship with Customs brokers and with the relevant sectors of the business community. Liaison committees are useful in this respect.

Made at Arusha, Tanzania on the 7th day of July, 1993 (81st/82nd Council Sessions)

For more info on the World Customs Organisation's Integrity related efforts please contact the Secretariat, Human Resources Development Services: 30, rue du Marché, B-1210 Bruxelles, Belgique Tel: +32-2-2099445, Fax: +32-2-2099496, or by e-mail: janos.nagy@wcoomd.org

S/integrit/forum98/docs/arusha4e.doc

Appendix F – Notes on the GATT Valuation Agreement (GVA)

The GVA sets international rules for Customs valuation that are designed to be fair, uniform and neutral, and it precludes the use of arbitrary and fictitious Customs values. Through its precise methodology, it assists the trading community and Customs authorities to determine the Customs values and the amount of duties payable with more certainty, and therefore contributes to the facilitation of trade. The main characteristics of this agreement are:

- a positive system of Customs valuation based on the price actually paid or payable for the imported goods.
- intended to provide a fair, uniform and neutral system for the valuation of goods for Customs purposes, conforming to commercial realities and outlawing the use of arbitrary or fictitious Customs values.
- recognizes that Customs valuation should, as far as possible, be based on the actual price of the goods to be valued which is generally shown on the invoice. This price, subject to certain adjustments, is known as transaction value.
- for a large majority of imported goods, the transaction value will be the Customs value. Use of the transaction value of the imported goods, therefore, constitutes the first, and most important method referred to in the Agreement.

For cases in which there is no transaction value, or where the transaction value is not acceptable as the Customs value because the price has been distorted as a result of certain conditions or restrictions, the Agreement lays down five other methods of Customs valuation, to be applied in the prescribed order.

A Protocol to the 1979 Agreement, deemed to form an integral part of it, contains provisions concerning the special problems and trading needs of developing countries, permitting them some flexibility in applying the Agreement. The Protocol is located in Annex III of the GATT 1994 Valuation Agreement. The Agreement also provides for technical assistance by the developed countries to the developing countries.

The GVA does not merely set out a methodology to value goods. Apart from its overall purpose to permit freer trade, there are aspects of GVA that require certain fundamental procedural considerations that are designed to add certainty and transparency to the Customs process. One is that the onus of proof in establishing the value rests with the declarant. Another is that the final determination of value should not impede the release of goods. Whichever of the methods available is used, Customs has right to demand proof from the declarant to support the valuation declared. In practice, the declarant will often have difficulty in producing evidence immediately, but Customs, under GVA, cannot delay release for this reason. It is therefore necessary to release the goods, under security if necessary, pending the final determination of the value.

In this context, there are practical procedural requirements for the effective management of GVA, which include post clearance audit, reduced physical examinations (physical examination has little bearing on establishing the value), intelligence-led risk management and profiling. See attachment on "Revised Kyoto Convention."

Appendix G – Notes on the ASYCUDA Computer Software System

ASYCUDA (known as SYDONIA in French speaking countries) is a computerized Customs management system that supports commercial goods processing. It was developed and marketed by the UNCTAD in Geneva in the 1980's in response to a need identified in the ECOWAS states for the support of its Trade Liberalization Scheme. Approximately 60 developing countries now use the ASYCUDA in its various forms of release. Although marketed by the UNCTAD as a means of Customs reform and modernization, it does not of itself, provide the degree of change necessary to align developing country administrations with the demands of the modern Customs environment.

The most widely used version is 2.7 (upgraded from 2.6 to address Y2K). In a contemporary Customs context, this version is limited in its usefulness. At best, it is an effective replacement for the manual capture and collation of Customs commercial data. In this respect, it has provided a useful starting point for many developing countries to provide timely data on trade statistics and revenue collections and to some extent, speed up clearance times.

Limitations:

- In general, it aims at trade facilitation without addressing the enforcement information needs of Customs administration.
- No selectivity – the system does not provide a capacity to identify risk consignments based on intelligence-based profiles.
- Paper-based – Paper Customs declarations, supported by relevant documents must be lodged for all shipments.
- A number of administrations have reported an inability by the UNCTAD to respond effectively to support and maintenance demands.
- There are cases where administrations have reverted to total manual Customs processing, inputting to the ASYCUDA at the end of the process for statistical collection only.

The Version 3.0, known as the ASYCUDA ++, has been installed in 27 countries. It addresses many of the shortcomings of earlier versions, in particular, electronic lodgment, relationship database management and interface with commercial systems.

A key advantage of the ASYCUDA is that is widely used internationally, making it a logical means to meet regional standardization and harmonization objectives.