

GOVERNMENT OF MONGOLIA

**REPORT
ON THE IMPLEMENTATION BY MONGOLIA
OF THE
WTO VALUATION AGREEMENT**

**USAID
ECONOMIC POLICY SUPPORT PROJECT
(DEVELOPMENT ALTERNATIVES INC)**

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1. INTRODUCTION

This Report presents an analysis and recommendations concerning the implementation by the Government of Mongolia of the provisions of WTO Article VII dealing with Customs valuation. The Report is based on the study of the provisions of the Customs Law and the Customs Tariff Law as well as from a series of interviews, on-site visits, workshops and seminars carried out by the consultant with government officials, in particular Customs administrators and officials, and a wide spectrum of the business community. Although the principle objective of the consultant mission was to focus on WTO issues regarding valuation, and these issues are covered in depth in the sections dealing with legislation development and administration, the organization of the mission allowed for a more comprehensive look at how valuation was currently being administered and observations and recommendations in that regard have been formulated as a consequence.

2. CURRENT SITUATION

a) On 29 January 1997, Mongolia joined the World Trade Organization. As is the case for Mongolia, membership in the WTO requires that Members adopt, by reason of their accession, all of the previously negotiated Agreements that existed under the GATT. The Valuation Agreement is one of these.

b) The Customs Tariff Law implementing the Valuation Agreement has been in effect since 1997 and during 1997 and 1998 actual application of valuation under the provisions of the Agreement was begun. A Customs Valuation declaration form was introduced in September, 1998. As a result of the liberal trade policy adopted by the Government, Mongolia has abolished most import duties. Duties and excise taxes are imposed on four types of products: tobacco, alcohol, oil products and automobiles. Only alcohol and petrol have *ad valorem* duty rates; the other products are covered by specific duties. However, the border responsibilities of the Customs includes the assessment and collection of sales taxes (VAT) and this, of course, is done on the basis of the Customs value.

c) The Customs General Administration is led by the Director General Mr. Z Munkhbat. The DG is appointed directly by the Government and reports *de facto* to the Prime Minister. The role of the Customs in Mongolia is set out in Article 50 of the Customs Law and it follows the traditional model mandate attributed to most Customs Administrations. The transparency demonstrated in detailing the full responsibilities of the DG in the Customs Law is a laudable initiative by the Government. To exercise the Customs mandate, there are some 850 Customs personnel (500 inspectors, 350 support staff) operating from 43 Customs offices (external borders and internal points). Several seminars/workshops were held with Customs personnel over the course of the visit to provide information and to discuss the WTO Valuation Agreement and its application in Mongolia. A more detailed review of the organization of the valuation function will be found in the section dealing with Administration/Organization considerations.

d) Ulaanbaatar Customs is the principal Customs office in Mongolia. This office, with its 180 employees, handles 70% of the import volume of goods into Mongolia. The large proportion of the goods arrives by rail and the Customs house is located at the railyards. In fact, rail traffic would appear to be the principal means of entry of goods into Mongolia. During the mission, visits were also undertaken to Ulaanbaatar airport Customs and to the Customs facility in Zamen-Uud, an

office on the Mongolian-Chinese border. Eight of the Customs offices are supported by automated entry processing (ASYCUDA - version 2.6).

e) Although outside of the scope of the mission objective, several useful discussions were held with representatives of the business community. The Mongolian Chamber of Commerce and Industry has a membership of some 600 companies. These represent virtually every producer of goods in the country. Most of these companies are both importers and exporters of their products. The Chamber is one of the principal groups in Mongolia in representing the interests of its members to government authorities. One of its most important counterparts in this regard is the Customs administration. Although the business sector noted a number of infrastructure difficulties influencing business opportunity in Mongolia, the main issues raised in respect of Customs during the various interviews had to do with what were perceived as undue delays occurring at the time of entry due to excessive formalities in the entry process and the general lack of understanding by businesses of Customs laws and procedures. Excessive bureaucratic requirements were cited as a source of frustration and additional cost.

On a positive note, the Chamber of Commerce cited good cooperation and opportunities for consultation with the Customs administration. Joint training programmes have been undertaken; business/government seminars are held; progress in the process of problem resolution is apparent. All these point to positive efforts on the part of the government to deal with any issues and/or problems which are identified.

3. CUSTOMS VALUATION - STATUS AND ISSUES

A. LEGISLATION, REGULATIONS AND ADMINISTRATIVE PRACTICE

When Mongolia signed the WTO Agreement in 1997, it accepted, as a condition of joining, all of the previously agreed Agreements of the GATT, including the Agreement on Customs Valuation. One of the requirements for Members of the WTO is that their legislation, which puts into effect the terms of the Valuation Agreement, be notified to the WTO Secretary General in order that the provisions of the legislation can be examined by other Members for consistency with the Agreement. The body responsible for carrying out this process is the Committee on Customs Valuation. In light of the fact that Mongolia is now applying the Agreement, it must respect its obligation to notify its legislation to the WTO and it should do this with a minimum of delay.

To assist members in this regard, the Committee has prepared a so-called "Checklist of Issues" which is intended to underline the points in the Agreement that are considered to be key in ensuring that Members' rights are not infringed in any way by the manner in which a Member may have framed its legislation. The checklist focuses both on the technical aspects of the rules for determining value (Articles 1-8 of the Agreement) as well as the equally important administrative provisions (Articles 9-17). A principle objective of the consultant mission was to review fully the Mongolian law in this respect.

i) Legislation and Regulations

The Mongolian laws which cover the main provisions of the Agreement (as noted above) are the **Customs Law of Mongolia (CL)** and the **Customs Tariff Law of Mongolia (CTL)**. Although it is the latter which captures the technical rules on Customs valuation and, consequently, the main aspects of the Valuation Agreement, both pieces of legislation needed to be reviewed since the Customs Law contains many of the administrative provisions necessary for implementation. I found both laws to be quite well constructed and to be thorough in their coverage of topics necessary to administer the mandate assigned to the Customs administration by the government. With respect to the valuation area *per se*, there are several areas in both laws which will need amendment to conform with the requirements of the Agreement. The specific issues are set out in the Appendix to this Report.

Recommendations with respect to Legislation

1. Complete the amendments to the Customs Tariff Law as set out in the Appendix to this report.
2. For greater clarity, add cross-references in the Customs Tariff Law, where appropriate, to Articles in the Customs Law on issues of complementary application.
3. Ensure that the Mongolian legislation giving effect to the WTO Valuation Agreement is notified to the Secretary General of the WTO with minimum delay.

ii) Administrative Practice

With respect to the administrative requirements of the Agreement, the status is, at best, mixed. Although most of the issues are covered to a certain extent, neither the law nor the administrative policy or practice of the Customs goes far enough in many cases.

One important omission from the legislative or administrative base is the Interpretative Notes. Article 14 of the Agreement provides that the Notes “form an integral part of this Agreement and the Articles..... are to be read and applied in conjunction with their respective notes.” It is not imperative that the Notes be included in the legislation as such. They may, for example, be taken up as part of the administrative policy directives issued by the Customs administration; the important thing is that they be used as basis for guiding the administration and the business community (the declarant) on the provisions of the Agreement and, consequently, the law.

Two other areas where there is a need to issue policy direction to assist the administration of the Agreement are in respect of the Decisions of the WTO Valuation Committee and in the instruments of the WCO Technical Committee on Customs Valuation which give guidance to all Customs services on what are “best practices” under the Agreement. The purpose of the latter are to foster uniformity and standardization among all Members of the WTO in their administration of valuation. The Decisions referred to above have to do with a direction issued by the WTO Committee on how Members should treat the importation of software and on what to do when faced with an importation of goods where part of the value is the result of charge for interest resulting from a monetary loan provided by the seller to the buyer. Procedures in respect of both these cases have been provided by the Committee.

The instruments of the Technical Committee on Customs Valuation are prepared through the collaboration of the Customs experts in valuation from all of the Members. Although, in themselves, they have no force of law, because of the source of these interpretations of the Agreement, representing a consensus derived from extensive study and consultation among experienced practitioners, they are highly persuasive. Mongolia needs to review these and adopt those it deems to meet national requirements (I would recommend all) and, then, publish them for the benefit of the officers administering valuation and the importers.

Concerning the WTO Article 9-17 provisions, these are covered in either or both the CL and the CTL and, for the most part, fairly adequately. There are two main provisions of the administrative requirements of the Agreement which will require more work to fully achieve the objective for which they were designed.

The first of these has to do with Article 11 of the Agreement (Article 89 of the CL). As mentioned in the Appendix, there are certain deficiencies in the Law in that there is no requirement stated to inform an importer fully of his rights to further appeals, once an appeal has been rejected. Although important, this aspect of the matter is relatively minor. More important is for the Customs to develop and publish a complete guideline on how the appeal process is to operate. Issues such as the various levels of appeal available to review a case, delegation of authority, regional or central responsibility, time limits for filing and response times, internal procedure for dealing with appeals which progress to the court system, etc. This is an important transparency issue fundamental to the proper application of the Agreement.

The other area has to do with the release of goods - Article 13 of the Agreement (Article 19.5 & 6 of the CTL). Although the provision exists in the Law, it is, in reality, rarely, if ever, used. Discussions with Customs and the business community point to several areas of difficulty that need to be overcome in order to fully implement this provision. The basic principle is that goods should never be held by Customs for the sole reason that there is an impediment to completing the valuation formalities for the goods. In such circumstances, an importer need only guarantee to Customs by way of the payment of surety or security an amount sufficient to cover the eventual duties or taxes owing. On the basis of such a guarantee, Customs is able to release the goods to the importer, with the final determination of value to be completed when whatever further information which had been required is provided. From the business side, it would appear that there exists very few facilities in Mongolia as sources of security. Banks, insurance companies or other financial institutions make it either difficult or expensive (or both) to obtain the service. It seems also that brokers have not added this facility to the list of services which they could provide to their customers.

From the Customs perspective, the concept of releasing goods from Customs control without having finalized the value and collected the duties and/or taxes owing is new. Follow-on review of entries is carried out more for quality control purposes than from the point of view of reassessment. This provision in the Agreement is one of its main facilitation provisions and the Customs will need to take steps to implement it. This does, however, represent a fundamental change in the way Customs carries out its business and there are many issues involved which will require resolution. Many of these are addressed in the later recommendations of this Report.

The final issue to be dealt with concerns Article 17 of the Agreement. This Article provides a *quid pro quo* to the facilitation provisions by asserting the requirement that declarations must be defensible on the basis of objective and quantifiable data and supported by documentation which is an adequate demonstration of its truth and accuracy. The introduction of this valuation system places considerable emphasis on facilitation. The consequent effect is that greater trust and reliance must need to be placed on voluntary compliance with national laws on the part of the importing community. Many administrations around the world have had to address issues similar to those being faced by Mongolia today. Invariably, they have found that their business communities have enjoyed considerable benefit from a change in the way in which the control function has been exercised by Customs. Equally, however, there must be a significant disincentive to deter those who would not comply with national Customs laws and regulations and this is provided by the penalty provisions of the Customs Law.

The penalties for non-compliance applied in Mongolia are to be found in Chapter 8 of the CL. Those that would apply to the most common of valuation offenses, e.g. under-valuation, are contained in Article 82. A review should be made of this provision with a view to bolster the deterrent effect of committing a Customs infraction of this type.

Recommendations concerning Administrative Practice (WTO)

4. *The Interpretative Notes to the Agreement are an integral part thereof. These must be included in Mongolia's application of the Agreement, either in regulation or in administrative policy.*
5. *The decisions of the WTO Valuation Committee and the instruments of the WCO Technical Committee should be used as the basis to develop Customs administrative policy and instructions to officers.*
6. *Detailed procedures must be developed which set out in full the steps to be followed by both Customs and an appellant in lodging and dealing with an appeal against a Customs decision.*
7. *Administrative changes must be introduced into the entry processing system to enable the procedures allowing the release of goods from Customs control to operate where there is a need to delay the final determination of Customs value.*
8. *A full review of the penalty provisions of the CL must be undertaken to update and possibly amend the current penalty provisions as they relate to valuation infractions.*

B. Organization/Administration Issues

The release provision analyzed to some extent in the preceding section of this report and mentioned specifically in Recommendation 7 above has, if it is to be fully implemented, far-reaching implications for the administration of Customs in Mongolia. Mongolia, of course, has its own unique set of circumstances and, as a consequence, its own operational requirements. It must decide and identify these national requirements in relation to the balance it wishes to maintain between facilitation and compliance as this will impact on the way the administration of the WTO Agreement is organized.

To enable release to take place without finalization of valuation requires confidence in the operation of the guarantee system, knowledge of and confidence in the client importer, systems for

the registration of taxpayers, good Customs broker-Customs relations, post-entry verification capabilities, trained staff, sound record-keeping and, likely, an up-graded electronic capability.

Although the review which follows goes somewhat beyond simply an examination of Mongolia's WTO obligations with respect to the Valuation Agreement, the recommendations which are made, if accepted, will assist the Administration in the long term to derive the full benefits from its introduction of modern Customs practices and procedures.

Let me state at the outset that, based on my meetings and discussions with Customs managers, the business community and other officials, the Customs organization is already on sound footings. There are many areas for improvement, but nowhere did I hear any reluctance to take on and solve problem areas. The staff is generally well-educated and trained and I noticed several examples of work performance which demonstrated initiative and perseverance. As far as valuation is concerned the administrative model adopted provides a proper structure to achieve sound valuation administration, placing considerable responsibility on the field offices to accommodate the long borders and many entry points which are the reality in Mongolia while, at the same time, maintaining a degree of control at HQ.

One of my observations is that the whole of the entry processing function needs to be re-engineered. There are multiple difficulties with the procedure as it currently exists.

- Declarations are not presented to Customs in a fully-completed form. Several steps are required during which the declarant maintains possession of the entry declaration. This allows the possibility of unauthorized amendment to be made.
- Valuation officers have too much contact with declarants. Declarants should present the full information necessary to allow valuation. Officers would request additional information where they deem it necessary, perhaps on a post-entry basis, when the goods have already been released.
- There has been little done to establish a system based on risk analysis or on establishing selection criteria. This comment applies both to the work in valuation as well as to the physical inspection carried out on imported goods. Considerable unnecessary inspection is done with no evidence or report of results or reasons for the inspection. This latter activity is the source of considerable delays for the release of goods, much more than valuation in my observation.
- Important entry points have a computer capability (ASYCUDA vers.2.6) to facilitate the processing of entries. The system is used primarily to compile the entry information for data base and statistical purposes.

i) Headquarters functions

The headquarters valuation unit has functional responsibility over teams of valuation personnel strategically located at the main entry points for goods. These valuation officers have been especially trained in the WTO system and certified on completion of their training to carry out

valuation responsibilities. Only these officers, of which there are currently 12 in the field, may be tasked for this work.

To properly administer valuation under the organization model employed in Mongolia, the headquarters must assume, to a large degree, the prime responsibility for programme administration and delivery. At present, the potential of the valuation capability is limited due to the lack of resources to undertake the considerable work required to put the basic infrastructure for sound administration into place. If the allocation of additional resources is not possible, this drawback can be overcome through the judicious delegation of project work to the field personnel. The following recommendations, set out in approximate order of priority, are intended to describe the work on valuation which is critical to the programme now and those which visualize the ideal situation for the future.

Recommendations with respect to the Headquarters function for Valuation

9. *It would be important, at an early stage, to conduct a full review of the HQ valuation function to ensure that the scope and content of the work meets programme requirements. Representative activities would include:*

- the preparation and maintenance of laws and regulations
- international contacts on valuation issues, particularly the work of the WTO and WCO Committees
- review of appeals (DG level)
- deal with difficult cases (other than transaction value or fall back method)
- exercise functional responsibility over valuation officers in the field, including reviewing the quality and quantity of their valuation decisions
- development and conduct of training programmes
- public information responsibilities
- development of standard operating procedures for valuation staff and instructions for importers
- liaise with other government ministries and departments to coordinate related activities

10. *initiate and administer an administrative ruling programme to deal with regular, low risk importers*

11. *initiate and administer post entry verification and audit programmes, drawing on field resources as necessary*

12. *undertake national risk analysis and selection criteria, develop importer profiles for enforcement action and prepare a price data base from import data and other sources (e.g. internet) to assist field staff in risk assessment*

13. *in the longer term, introduce a research and analysis group to develop strategic and tactical analyses and risks.*

ii) Valuation in the field offices

Due to the lack of adequate communications e. g. linked computer network, the field offices work quite autonomously, even to the point of developing their own risk criteria e.g. pricing information. With respect to risk, it appeared that virtually no distinction is made between importers as all

entries were being reviewed in detail by the valuation staff. In fact, the valuation activity in the entry processing system is located at the front end of the process. Valuation staff receive declarations directly from importers and decide value before even the full declaration has been prepared by the Customs broker. This type of process is not effective in determining value. It is overly dependent on confirming the invoice price and does not focus on the total price actually paid or payable. Disputes with importers result in frustration and dissatisfaction on both sides since often the Customs will have no reliable basis to challenge what they believe to be undervalued imports. Post-entry verification is the only reliable method to obtain a full view of the facts of the transaction. As well, brokers have little appreciation of the new law and are not in a position to advise their clients on compliance issues.

I was informed that in the case of the major importers, transaction value was the principal method for valuation. It would appear that this was not the case for smaller importers, importing commercial goods on a personal basis. Although this latter Customs client represents a sizable proportion of the traffic at borders, their significance in terms of total value is quite small (3-4%). Furthermore, these so-called "suitcase" traders as a matter of course present substantiation for declarations which has little commercial significance or reliability. I discussed this issue at some length with the Customs valuation personnel. The Agreement itself presents no solution to what becomes essentially a problem to be solved in a reasonable and practical way and exercising a great deal of flexibility. Specific public education programmes directed specifically at this type of trade could go some way to providing a long-term solution.

During the course of my visit, I had the opportunity to visit the cargo handling and Customs facility at the Ulaanbaatar airport. There I found a quite modern, efficient operation. The airport operation is moving towards an entry procedure which will provide for direct trader input electronically and, although this process is not yet in place, the procedure followed in the Customs clearance process already observes this process. I understand that this is a pilot site for reengineered procedures at all the main goods entry points. Although time did not permit a full discussion of the change with the Customs personnel, the manager of the airport operation said that he was well pleased with the new procedure and system. Although the quantity of declarations (and, consequently, the pressure of work) at the airport does not measure up to what can be seen at the Zamen-Uud border point, for instance, the efficiency of the operation was apparent, with release times being measured in minutes, if the importer has the necessary documentation in order.

Recommendations concerning Valuation Activities in the Field

14. significant changes are required to the entry processing system to make better use of the automated system (see later item on this topic). Valuation staff should not be placed in position of having direct contact with importers. Once a fully-documented Customs declaration is tendered, Customs must retain full control of the entry document to prevent later unauthorized amendment or change.

15. risk and selection criteria for valuation purposes need to be established independently of those for physical inspection (although, at times, inspection may be necessary for valuation purposes). Problem areas which cannot be dealt with by field officers should be referred to HQ for post-entry review.

16. *while the general organizational concept for carrying out the work of valuation in the field is good (specialist staff and team approach are excellent initiatives), better communication is needed between the field and HQ to enable a closer monitoring of work and evaluation of performance.*

17. *the development of new procedures along the lines of those being piloted at the airport operation should be vigorously pursued with a view to quickly extending the change to other offices.*

iiii) Use of Automated Systems

Mongolia currently has installed an automated entry processing system using the ASYCUDA (2.6 version) system developed by UNCTAD. Although this is a viable and reliable system, currently being used by many Customs administrations in the world, its potential is not being fully utilized here. It was not made clear what the reason for this was although I understood that the Customs was itself in the process of designing a software base which would better respond to its present needs. Should this not materialize, there is also a more recent version of ASYCUDA (version 3 or ++) which could be explored. It is clear that the present version has limitations e.g. lack of selectivity module, which a ++ version does have.

Certainly, an immediate requirement is to improve communication between the HQ and field offices. Computer links could greatly improve that process. Generally, the principal needs for Mongolia which it should seek to acquire from an automated system would be

- on-line entry processing capability, integrated messaging on tariff treatment, excise and VAT taxes, import restrictions, etc.
- full calculation of declaration information
- value parameters (statistical)
- selection criteria input
- selection parameters based on risk eg red, green, orange channel
- random assignment of inspection
- data base which allows for the extraction of information
- collect statistics

Recommendations concerning Automation

18. *there is a need to undertake a comprehensive review of present needs with a view to developing a long-term strategy for the computerization of the Customs administration*

19. *systematic training of staff in the use of computer technology has to be maintained*

20. *examine the possibility of obtaining assistance from UNCTAD to conduct an evaluation of needs*

C. Training

The level of training required by officers in Mongolia will depend on need. The system adopted for the administration of valuation in which a specialist cadre working in units at each entry point dictates to a certain extent the amount of training to be given at all levels. The specialist teams will require extensive training to develop a high level of competence. The effectiveness of this training

can have a significant impact on the organization. While formal study of the Agreement and on-the-job can provide satisfactory benefits, the officers assigned to specialist tasks would undoubtedly benefit from any opportunity to receive international exposure to their valuation responsibilities.

As the administration of valuation matures, training in more specialized areas such as post-entry audit may be required. Possibilities for technical training could exist through universities and colleges, accounting firms or associations in Mongolia, etc.. In fact, the Mongolian Chamber of Commerce and Industry noted that it conducted courses in business and trade practices.

Recommendations concerning Training

21. training on the principles and concepts of WTO valuation should be based on the analysis of the operational needs of Customs personnel. Given that training is a resource-intensive activity, it is important to keep cost/benefit factors in view.

22. opportunities should be sought for the officers specialized in valuation to obtain more extensive training, particularly on post-entry audit and verification techniques. International seminars and workshops would be particularly beneficial in expanding sources of knowledge and information.

23. specialist officers in the field should be considered for use as trainers for other staff as well as for the brokerage and importing community. Such interface could greatly assist in improving on compliance levels.

24. recruitment policies may need to be reviewed to obtain skill sets which would be most desirable for officers doing valuation work.

D. Public Information Programmes

The transparency provisions of the WTO Agreement place an onus on the administration to publish laws, regulations and administrative policy in order that the importing public can fully know and understand the expectations which the Customs will have of them in their dealings together. At present, there seems to be a sound basis for cooperation between the trading community and the Customs. For example, the interest shown by the Chamber of Commerce in sponsoring information seminars and the like must be fully exploited as they can assist in disseminating information and relieve some of the burden of government in this regard.

Some of the other types of initiatives mentioned earlier in the Report such as setting up formal Committees to hold consultations with the brokerage and importing community, speaking engagements and other similar outreach programmes can be quite effective in sensitizing the public to their obligations under the Agreement. I was informed that the Customs administration has a pro-active policy to consult regularly with its client community to resolve differences and improve relations. These regular contacts are important to achieve departmental objectives.

Recommendations concerning Public Information

25. a comprehensive programme consisting in publication of rules and policies on valuation, administrative rulings programmes, regular meetings with interest groups and other similar

actions will help to improve compliance with all Customs laws and achieve Departmental objectives.

E. Other Issues

i) Inspection Policy

Most Customs administrations struggle with the need to balance two competing goals: the need to maintain effective control over the import process of goods and the pressure to facilitate the conduct of international trade. A practical definition of modern Customs control would include such concepts as

- placing a focus on high risk areas ensuring a more effective use of available resources;
- increasing the ability to detect offenses and non-compliant traders and travelers;
- offer compliant traders/travelers greater facilitation
- expedite trade and travel flows and movements

The observations made at the different Customs posts which I visited combined with the comments received from the business community outlining problems experienced in importing goods lead me to conclude that more effort needs to be made by Customs to improve its methods in this area. A greater weight seems to be given to the need to carry out inspections of goods than on the importance of releasing the goods for trade as quickly as possible. Also the manner in which inspections are carried out needs to be evaluated. Such evaluations would be based on such criteria as

- inspection reports prepared by officers explaining the reasons for carrying out the inspection,
- the findings of the inspection and recommendations for inclusion in importer profiles
- managers in the field must monitor and report to HQ to establish and maintain benchmarks on success rates and other similar statistical information

Recommendations in respect of Inspection Policy

26. senior management must establish an overall risk management philosophy; there is a need to assign a senior manager to be specifically responsible for the risk management initiative.

27. Customs should develop and document a corporate policy and framework for managing risks that is endorsed by senior management before being implemented throughout the organization.

ii) Customs/Trade Cooperation

The trade community must be made aware of Customs requirements/obligations if it is to voluntarily comply. In addition, risk assessment means that those traders with a proven track record of compliance can accrue significant benefits from expedited procedures/facilities. Therefore, risk assessment is in the interests of both Customs and legitimate traders.

Customs in Mongolia should establish and maintain formal consultative committees with traders, carriers, banks, airport authorities to discuss control requirements, identify difficulties in complying with these procedures/requirements and arriving at mutually acceptable solutions to problems. this

collaboration needs to exist at the local/regional/national level. Cooperation is particularly important for Customs in drug interdiction, CITES and dangerous goods and hazardous waste control wherein Customs services are encouraged to sign Memoranda of Understanding (MOU) with trade organizations to enlist them as partners in information exchange, training and communications appropriate for each sector. Such MOU's encourage the business sector to collaborate in preventing and combating Customs offenses.

4. CONCLUSION

Mongolia's experience in operating valuation under the terms of the WTO Valuation Agreement is rather new, given the date of its accession to the WTO. It has made considerable progress in such a short time. Throughout the mission, I could not fail but to be impressed by the enthusiasm and dedication of the management and staff of the Customs administration, who were my principal collaborators in this study. I was provided with full cooperation by everyone concerned and this considerably facilitated the work.

As concerns the fulfillment of Mongolia's obligations in the implementation and application of the WTO Agreement, the recommendations will show that, while much has been covered, there is still much to be done in preparing the legislation, regulations and administrative practice for notification to the WTO Secretary General. It would be important that Mongolia establish a target date of no later than year-end completion for this, given the imminent initiation of another trade negotiation later in 1999.

The recommendations pertaining to general administration have been made to highlight the effect that this change in the manner in which valuation is to be carried out under Mongolia's relatively new laws has on Customs practice generally. The schedule and meetings, seminars and workshops arranged for the visit permitted a closer examination of the way in which the valuation function was operating in practice and of the other Customs procedures which influenced this important Customs function. This revealed many positive aspects of the administration of Customs in Mongolia and also the many challenges which the administration has to overcome. The recommendations made in this regard attempt more to reflect good Customs practice rather than to identify particular deficiencies, which, of course, in so short a time, I would have difficulty in analyzing fully. Many of the recommendations will, no doubt, already be well in hand by Customs.

I have related many of my recommendations to reaction received from the business sector. Obviously, all comments could only be accepted at face value. However, my own observations in the Customs facilities and in the inspection yards could enable me to extrapolate conclusions which are likely to be fairly accurate.

My overall conclusion is that, with Mongolia's commitment to modernization and reform in all sectors of government together with the intelligence and industriousness of its people, it will succeed quite well in any endeavor.

**DEFICIENCIES, OMISSIONS AND ERRORS
OF THE CUSTOMS TARIFF LAW
OF MONGOLIA IN RELATION TO
THE WTO VALUATION AGREEMENT**

A complete review of the Customs Tariff Law (CTL), the major law of Mongolia dealing with elements of Customs Valuation, was undertaken. The following deficiencies, omissions and errors in the law, as it compares with the international Agreement, were identified as a result of the review.

CUSTOMS TARIFF LAW

1. **ARTICLE 3 DEFINITIONS**

Article 15 of the WTO Agreement and its Interpretative Note contains a number of definitions not taken up specifically in the CTL. The most important of these are the definitions of “goods of the same class or kind” and “related persons”. There is also an important reference to the treatment of sole agents and similar traders which should also be taken up.

2. **ARTICLE 12 VERIFICATION OF CUSTOMS VALUE**

The purpose of paragraphs 1 and 2 of Article 12 in the CTL is to establish that the declarant has the burden of supporting, on the basis of objective and quantifiable data, the substance of any declaration made to Customs in respect of the importation of goods. This principle is supported by the decision adopted by the WTO Valuation Committee at its first meeting on 12 May 1995.

There is an omission in the CTL in that it does not provide, as stated in the above-mentioned Decision, that the customs administration communicate its reasons for rejecting the value declared to the declarant, allow the declarant the opportunity to respond by providing further information and, finally, communicate to the importer in writing its decision and the grounds therefor for rejecting the declaration. This is an important transparency issue

Paragraphs 3 and 4 of Article 12 deal with rights of appeal. Although this issue is also covered elsewhere in the Report, a key requirement to inform the importer that he has the right to further appeals, where this is the case, has not been placed in the CTL. This right is provided for in Article 11 of the international agreement

3. ARTICLE 13 TRANSACTION VALUE METHOD

This Article of the CTL encompasses the provisions of Articles 1 and 8 of the international Agreement. Generally, the CTL covers this important section of the WTO Agreement quite well, utilizing language that, while not exactly mirroring the drafting in the Agreement, captures the intent and meaning necessary to apply the provision correctly.

There are a few issues associated with the CTL Article, most minor, one of greater importance, which need to be reviewed and possibly amended.

The first (minor) is in respect of 13.2.(2). There is no mention that “buying commissions” are excepted from inclusion in the Customs value. The sub-paragraph refers to the “price” for containers and packing materials rather than their cost.

Art. 13.2.(4) is incomplete in that the phrase “related to the goods being valued” is omitted. The Article also states that the addition occurs when the royalty is a condition of the “resale” of the goods rather than the “sale”.

There are major difficulties in respect of Article 13.4.(4) dealing with trade between related parties. This is one of the key areas of the WTO Valuation Agreement, providing a balanced mechanism to deal with what is an important sector of international trade: commerce between related companies. The Agreement recognizes that there may be factors in such trade that result in the transaction value not being a true reflection of the “actual” value of goods. The Agreement provides safeguards for both the Customs and the trade in dealing with these cases by allowing an examination to occur of the circumstances of the sale to determine if the price actually paid or payable between the related companies has been influenced by the relationship. Furthermore, the importer is provided with the opportunity, in accordance with the international Agreement, to provide “test values” to demonstrate the absence of influence, should this be the case. All of these provisions are covered extensively in paragraph 2 of Article 1 of the WTO Agreement and these must be reflected in the CTL. (*Checklist issue*)

Related to the above is the absence, either in legislation, regulation or administrative policy of any of the content of the Interpretative Notes to the Agreement, which form an integral part of the Agreement, and must be reflected in national laws. For example, in connection with the above, the Notes contain a comprehensive definition of who should be considered as related under the Agreement. The absence of the provisions of the Interpretative Notes affects all of the content of Chapters 4 and 5 (Articles 10-18) of the CTL. (*Checklist issue*)

4. ARTICLE 14 THE TRANSACTION VALUE METHOD FOR IDENTICAL GOODS

Article 14.5 refers to the inclusion of the “payments provided for in paragraph 2 of article 13”. The Identical Goods Method utilizes the transaction value of previously entered goods as a substitute value for the goods being valued. The only adjustment to be made, other than those referred to in 14.4 (CTL), is for differences in costs and charges arising from differences in distances and modes of transport (Art. 2.2 WTO). The reference in the CTL should be to para.2.1 of the CTL only. The same comment applies, of course, to Article 15 of the CTL.

5. ARTICLE 16 THE DEDUCTIVE VALUE

The drafting of this Article does not capture the intent nor the content of the WTO Agreement. The purpose of the method is to base the value on the price at which goods have been resold in the country of importation and to deduct from that value all of the costs, charges, expenses and profit occurring after the goods were imported in order to arrive at what the value would have been at the time of importation. The method is explained in great detail in both Article 5 itself and in the Interpretative Notes. Very little of this has been captured in the CTL.

6. ARTICLE 17 THE COMPUTED METHOD

The same comments made above with respect to Article 16 apply to this Article as well. In addition, Article 6.2 of the Agreement contains an important direction with respect to the administration of this Article dealing with how information for the use of this method is to be treated. This direction does not appear in the CTL. (*Checklist issue*)

7. ARTICLE 18 THE FALL-BACK METHOD

Article 7 of the international Agreement provides a final method to determine value when the other 5 methods cannot be applied for whatever reason. The fall-back method provides for the determination of value using “reasonable means”, i.e. flexibly applying one of the previous methods.

Although the standard of “reasonable means” is not expressly defined, the Agreement gives considerable guidance in declaring that the principles and general provisions of the WTO Agreement and those of Article VII of the General Agreement should be taken into account. It is important that administrations acknowledge these principles in applying this method to give additional certainty to traders.

Article 7 also sets out the methods of valuation which are prohibited by the Agreement. There are 7 such methods and the CTL has only taken up 4 of these. (*checklist issue*)