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Draft Amendments to the Customs Law of the Islamic Republic of Afghanistan

(proposed amendments to the existing text are in track changes)

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Note: Review based on unofficial English translation dated March 20, 2005 (Kabul).

CHAPTER ONE
GENERAL PROVISIONS

Article 1 (Constitutional Authority)

conventions and treaties containing customs provisions to which Afghanistan is a party and relevant rules and procedures.

(10)- Customs documents [records]: means papers and documents which shall be delivered by the declarer of goods to customs for the purpose of releasing the goods.

(11)- Customs locations: means warehouses, loading facilities (in land and sea unloading facilities), airports, railway stations, premises and generally any place and location which is under customs supervision and used for keeping and storing unreleased good. Such locations include public and private customs warehouses and public cold storage facilities.

obligations (eltezamat e puli) that apply to specific goods or actions under customs legislation.

(25)- 'Customs Debtor' means any person liable for the payment of a customs debt.

(26)- Security: means Cash payment, Bank Security letter and or insurance document that are given to Customs by goods responsible or his/her legal representative for the purpose of Custom assurance and better performance of the commitments.

(27)- Obligation: means acceptance of the obligation to make payment or presentation of

- iv. processing under customs control;
 - v. temporary importation;
- (36)- "Suspensive goods" means goods placed under one or more of the suspensive processes mentioned in section 35 of this article.

(53)- Internal wrapping: means a wrapping which is deemed to be included in the goods.

Customs officers conduct necessary examinations and inspections, for the interest of the government, of the international movements, exports and imports and passenger-carried goods, to ensure the implementation of regulations on foreign trade, provision of better trade services in line with customs regulations, and to deal with customs violations within the customs territory of the country.

CHAPTER TWO CUSTOMS ADMINISTRATION

Article 8 (Organization)

- (1) Customs comprises the General Directorate, the Regional Directorates and their branches. All Customs shall work subordinate to and under the supervision of the General Directorate of Customs of the Ministry of Finance.
- (2) Directors and other civil personnel of the ACD shall be hired and appointed in accordance with the law.
- (3) The Deputy Directors General of Customs are appointed, upon the proposal of the General Director of Customs, and confirmation of the Ministry of Finance, in accordance with the law.
- (4) The other Civil Service (momorin) and auxiliary (ajir) personnel of the Customs are employed in accordance with the procedures established by the law.

Article 9 (Service Uniforms and Conditions of Service)

- (1) Customs personnel shall wear the service uniform. In the event that service needs make it necessary to work without wearing a uniform, the customs personnel must show their Identity Cards.
- (2) Customs officers are not allowed to accept directly or indirectly, rewards in cash or kind for the customs services performed.
- (3) Customs officers are not allowed to carry on any kind of business, or advising activity, that is incompatible with the faithful performance of customs duties.

Article 10 (Movement of Goods)

Goods may cross the State border, and designated custom borders at Customs warehouse, at duty free zones, in airports, and at any other facilities under Customs control, only at Customs areas staffed by Customs Officials

Article 11 (Responsibilities of Customs)

- (1) Loading, unloading, movement, and transshipment of goods through specified customs borders [lines] as well as their release from a customs process, is carried out with the permission of Customs in accordance with Customs legislation.
- (2) Customs is responsible for:
 - i. determining the value of goods and collecting the related customs debt.
 - ii. Tariff classification of goods

- iii. Supervising, detecting, reporting and preventing smuggling;
- iv. detecting and evaluating violations of this law;
- v. participating in preparing and signing international agreements and conventions in customs matters, in accordance with customs legislation;
- vi. preparing, collecting and, upon agreement of the Minister of Finance, distributing foreign trade statistical data to the Ministry of Commerce and other public institutions;
- vii. supervising customs goods, throughout the entire customs territory ~~of the state~~;
- viii. exercising customs control over customs areas,
- ix. Enforcement of customs laws and regulations, including restrictions and prohibitions.
- x. maintaining customs records
- xi. carrying out all other activities determined in customs legislation.
- xii. -
- xiii.

(3) In order to improve the enforcement of customs legislation, Customs, with the

after customs officers agree thereto, and the shipment will be inspected. Police and customs officers shall submit a written report of the issue for review by the Customs.

Article 12 (Providing information)

(1) Customs authorities may provide information free of charge to requesting parties concerning the application of customs legislation in the forms prepared by the Ministry of Finance, except when it pertains to an ongoing import or export operation or would be inconsistent with the secrecy provisions of Article 13.

(2)

- iii. is an agent of any party described in subparagraph (i);
- or
- iv. is a person whose activities otherwise require the filing of a declaration;

shall make, keep, and render for examination and inspection by the customs authority such records as pertain to any such activity and are normally kept in the ordinary course of business.

(2) The persons concerned shall keep the documents referred to in paragraph (1) for the purposes of control by the customs authorities for at least three calendar years. That period shall run from the end of the year in which:

- i. in the case of goods released for free circulation or goods declared for export, from the end of the year in which the declarations for release for free circulation or export are accepted;
- ii. in the case of goods released for at a reduced or zero rate of import duty on account of their intended use, from the end of the year in which they cease to be subject to customs supervision;
- iii. in the case of goods placed under another customs procedure, from the end of the year in which the customs procedure concerned is completed;
- iv. in the case of goods placed in a free zone or free warehouse, from the end of the year on which they leave the undertaking concerned.

2- the owner or other person, established in Afghanistan, with right to dispose of the goods; provided, however, where acceptance of goods declaration imposes particular obligations on a specific person, the declaration must be made by that person or by his representative.

(2) For purposes of this article, an owner or other person with right to dispose of goods shall include:

1. the importer of the goods, where declared for free circulation,;
2. the exporter of the goods, where declared for exportation; and
3. the carrier of the goods, where declared for transit.

(3) Notwithstanding the proviso set out in subsection (1), such persons may act as a declarant.

(4) Postal goods referenced in Article 42 of this law and goods imported by travellers mentioned in Article 45 of this law shall be an exception to this rule.

Rights and obligations of the Importer and Exporter:

Article 15 (B)

Custom clearance of imports and exports good shall be executed by traders, his legal representative or by custom broker licensed by Ministry of Finance in a separate procedure. The provision of postal goods of article 42 of this law and goods imported by travelers based on article 45 is an exceptional case

Article 16 (Brokerage)

- (1) Brokerage is a non-governmental business which persons may carry out upon obtaining a license from the Ministry of Finance
- (2) The conditions for obtaining the license and the rights and obligations of the customs broker shall be regulated by separate rules (loyaha) approved by the Ministry of Finance.

Article 17 (Taking of Decisions)

- (1) Customs may make a decision with regard to a particular customs transaction in accordance with customs legislation upon the request of the person concerned. The applicant must furnish and complete information and documents required by customs to make the decision.
- (2) Customs are obliged to take the decision mentioned in Section 1 within a maximum of 30 days and announce it to the applicant.
- (3) In case the customs decision mentioned in section 2 is detrimental to the interests of the applicant or any other [interested] party, Customs shall notify their decision in writing together with the reasons to the applicant and shall explain that the applicant has the right to object.

Article 17A (Revocation and Annulment of Decisions)

1. Customs shall annul a decision if it was issued on the basis of incorrect or incomplete information from the applicant.
2. Customs may revoke a decision at any time where the decision does not conform with customs legislation, or one or more of the conditions under the decision was issued were not or are no longer fulfilled.
3. Customs shall notify the person to whom the decision was issued of its annulment or revocation.
- 4.

(5)

- (3) Article 17 shall apply mutatis mutandis to decisions of the Customs Arbitration Administration.

Article 21(Finality of an opinion)

Administrative fines for smuggling agreed by the parties (tarazi tarfin) pursuant to Article 170 shall, in accordance with the relevant procedure, be submitted to the Customs Arbitration Administration which shall determine solely whether the settlement is consistent with Article 170.

Article 22(Method of Executions)

The manner of taking care of the objections sent to the Customs Arbitration

3- this chapter.

4. No customs value shall be determined under the provisions of paragraph (3) of this Article on the basis of:
 - 1- the selling price in Afghanistan of goods produced in Afghanistan;
 - 2- a system which provides for the acceptance for customs purposes of the higher of two alternative values;
 - 3- the price of goods on the domestic market of the country of exportation;
 - 4- the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of paragraph (2)(d);
 - 5- the price of the goods for export to a country other than the country of importation;
 - 6- minimum customs values; or
 - 7- arbitrary or fictitious values.
5. If the importer so requests, the importer shall be informed in writing of the customs value determined under the provisions of paragraph 3 and the method used to determine such value.

Article 23C (Related Party Sales)

1. In determining whether the transaction value is acceptable for the purposes of Article 23A, the fact that the buyer and the seller are

enumerated in Article 23D and costs incurred by the seller in sales in which he and the buyer are not related and where such costs are not incurred by the seller in sales in which he and the buyer are related.

4. The tests set forth in paragraph 2 are to be used at the initiative of the declarant and only for comparison purposes. Substitute values may not be established under the said paragraph.

Article 23D Additions to the Price Paid or Payable

1. In determining the customs value under Article 23A, there shall be added to the price actually paid or payable for the imported goods:
- (a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:
- 1) commissions and brokerage, except buying commissions,
 - 2) the cost of containers which are treated as being one, for customs purposes, with the goods in question,
 - 3) the cost of packing, whether for labor or materials;
- (b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:
- 1) materials, components, parts and similitaems incorporated in the imported goods,
 - 2) tools, dies, moulds and similar items used in the production of the imported goods,
 - 3) materials consumed in the production of the imported goods,
 - 4) engineering, development, artwork, design work, and plans and sketches

2. Additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data.
3. No additions shall be made ~~to~~ the price actually paid or payable in determining the customs value except as provided in this Article.

Article 23E Exclusions from Customs Value

Provided that they are shown separately from the price actually paid or payable, the following shall not be included in the customs value:

- 1) charges for the transport of goods after their arrival at the place of introduction into Afghanistan;
- 2) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation of imported goods such as industrial plant, machinery or equipment;
- 3) charges for interest under a financing arrangement entered into by the buyer and relating to the purchase of imported goods, irrespective of whether the finance is provided by the seller or another person, provided that the financing arrangement has been made in writing and where required, the buyer can demonstrate that:
 - a) such goods are actually sold at the price declared as the price actually paid or payable, and
 - b) the claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when, the finance was provided;
- 4) charges for the right to reproduce imported goods in Afghanistan;
- 5) buying commissions;
- 6) import duties or other charges payable in Afghanistan by reason of the importation or sale of the goods.

Article 24 (Valuation of Goods)

- (1)

Article 25 (Exchange Rate)

- (1) The value of goods according to customs legislation shall be computed in Afghan currency. When the value of goods is expressed in foreign currency and there is need to determine customs value, the value of goods shall be determined in accordance with the Da Afghanistan Bank exchange rate.
- (2) The exchange rate shall be the price announced by The Afghanistan Bank on the last working day of the month and shall be valid for a period starting from the 6th day of every month and ending on the 6th day of the following month.
- (3) Whenever the exchange rate published by the Da Afghanistan Bank differs by 5% or more from the price announced in accordance with paragraph (2) of this article, a new rate will be provided and it shall be effective from the second working day following its announcement and notification to Customs as the rate effective for the rest of that period.

Article 26 (Perishable Goods)

The customs value for perishable goods, ~~at~~ ^{at} request of the declarant, shall be determined by the Director of Customs of the area [mahal] in accordance with customs legislation.

CHAPTER FIVE FAVOURABLE TARIFF

Article 27 (Cases for Granting Favourable Tarrifs)

- (1) A favorable tariff shall be granted as provided in customs legislation in accordance with ~~Article~~ 23(3), and in the cases referred to in paragraph 2.
- (2) The following imported goods shall be exempted from paying customs duty:
 - 1.

intended for public projects funded by grants and loans or for their own use, upon authorization of relevant agencies.

6. Personal effects used by Afghan delegations or Afghan international workers and their family members while abroad.
7. Personal luggage and goods of individual passengers, in accordance with the regulation
8. Commercial samples and advertising gifts.
9. Post parcels not exceeding Afs 10,000 in value. Incoming parcels for one person will be exempt only twice a year.
10. honorary decorations or awards;
11. samples sent to organizations protecting copyrights or industrial or commercial patent rights;
12. .Movable used goods owned by returnees, pursuant to relevant act.
13. Shipments not exceeding Afs 5,000 in total value.
14. Pure-bred animals and insects intended for breeding, laboratory animals, biological materials necessary for scientific researches, upon authorization by relevant agencies.
15. Materials used in medical treatments and those used to determine blood groups and tissues, upon authorization of relevant agencies
16. Materials used in pharmaceuticals quality control, upon authorization by relevant agencies
17. Fuels, lubricants and equipments carried with and

- i. quotas, when the stipulated limit on the volume of imports is reached;
 - ii. Tariff ceilings, according to specific provisions in the law.
- (3) The manner, and the conditions on which a favorable tariff is granted, any quantitative or value-based limits on imported goods or benefits based on their origin, nature, or end-use, shall be determined in a separate procedure.

CHAPTER SIX ORIGIN OF GOODS

Article 29 (Production of Goods in a Country)

- (1) When goods are wholly originated or produced in a country, that country shall be known as the origin of those goods. Such goods includes:
- i. mineral products extracted within that country;
 - ii. vegetable products harvested therein;
 - iii. live animals born and raised therein;
 - iv. products derived from animals raised therein;
 - v. products of hunting or fishing carried on therein;
 - vi. products of sea fishing and other products taken from the sea outside a country's territorial waters by vessels flying the flag of that country and registered or recorded therein;
 - vii. goods obtained or produced from the products referred to in subparagraph (6) on board factory ships which fly the flag of that country and are registered or recorded therein;
 - viii. products taken from the seabed or subsoil beneath the seabed outside the territorial waters provided that the country has exclusive rights to exploit that seabed or subsoil;
 - ix. waste and scrap products derived from manufacturing operations and from used articles, provided that they were collected therein and are fit only for the recovery of raw materials;
- (2) Goods, which are obtained or produced wholly from

CHAPTER SEVEN
PRESENTATION OF GOODS AT CUSTOMS

Article 34 (Entry and Exit of Goods)

- (1) The time of entry or exit is considered to take place when goods, cross the State border to enter or leave the customs territory of the State
- (2) The driver of a commercial means of transport entering or leaving the customs territory of the State, must submit to the customs a manifest of the goods carried on the means of transport before:
 - i. the captain of an aircraft or vessel, when the goods can

(2)

- (4) The provisions of paragraphs (1), (2) and (3) of this article, shall also be applicable whenever an aircraft is departing to a destination outside the country.

Article 40 (Exemption from Obligations to Present a Manifest)

The following shall not present a manifest to the customs:

- i. aircraft flying from one airport to another in Afghanistan unless they have any stops at an airport outside Afghanistan or transport goods subject to the customs control and supervision;

Article 41 (Aircraft's Forced Landing)

If, in cases of emergency ~~force majeure~~, an aircraft has to land at an airport not authorized for receiving international air traffic, the captain of the aircraft must, immediately after landing and stopping, inform the nearest customs authority, which shall place the aircraft, cabin, flight crew, travelers and goods under customs supervision.

Article 42 (Customs Declaration for Postal Goods)

- (1) All postal goods containing consignments for commercial purposes as well as postal goods containing consignments of an

Article 44 (Export Postal Shipments)

Pursuant to export provisions of this Law and international regulations, the Directorate of Customs may prescribe restrictions and special conditions on postal shipments sent abroad.

Article 45 (Customs Control of Travelers Luggage)

- (1) When entering or leaving Afghanistan, travelers are obliged to declare goods in their possession to Customs, and show them upon request.
- (2) Customs authority may inspect the goods for the purpose of verifying the declaration referred to in paragraph 1 with the goods.
- (3) Goods carried by diplomatic couriers, and certified in writing by their relevant agencies shall not be subject to the provisions of Articles 42 to 44.

Article 46 (Presentation of Goods at the Determined Location to Customs)

Goods which arrive at the place of presentation of goods at customs shall be presented, without delay, except for delay due to no fault of the person presenting the goods. Any person who makes a presentation of goods at customs shall provide within the time limit prescribed any required declaration, documents, or information, and shall provide all necessary assistance as may be requested by the customs.

Article 47 (Goods Verification and Taking of Samples)

- (1) During presentation of goods at customs, an officer of the Customs may take a sample of the goods and assign them a tariff classification, or customs designation. The taking of samples may also be made at the request of the owner of goods or his agent.
- (2) The importer, exporter or the agent shall be entitled to be present when samples are taken, and are obliged to be present when instructed by customs authority;
- (3) The sample shall be examined in a place designated and during the hours prescribed by the General Directorate of Customs; where the samples are not destroyed during the examination, they will be returned to the owner or his agent, otherwise the Customs shall not be liable for the payment of compensation.
- (4) The owner or agent responsible for the goods shall be responsible to pay the cost of transferring to the examination sites, unpacking, weighing, repacking and any other operation involved in the sampling and examination process.

Article 48 (Submission of a Summary

- (2) Good referred to in paragraph (1) shall not be subject to any form of handling. The provisions of article 47 of this law and such forms of handling as are designed to ensure their preservation in the original (state ~~without~~without modifying their appearance or technical characteristics) shall be an exception to this rule.
- (3) The customs authorities may require ~~the owner of the goods or his agent~~ person holding the goods to provide security with a view to ensuring payment of any customs debt and fulfillment of his obligations provided for by this law

Article 51 (Removing **G**)

- (2) Customs may, for reasons of public morality, public security, protection of environment, health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value or the protection of industrial and commercial property and other state policies, ~~may~~ adopt prohibitions or restrictions in accordance with relevant legislative

Article 56 (Acceptance of the Declaration)
(1) Declarations

1. release of the goods on the provision of the minimum information necessary to identify the goods and permit the subsequent completion of the final goods declaration;
 2. clearance of the goods at the declarant's premises or another place authorized by the Minister;
 3. allowing a single goods declaration for all imports or exports in a given period where goods are imported or exported frequently by the same person;
 4. use of the authorized persons' commercial records to self-assess their duty and tax liability and, where appropriate, to ensure compliance with other customs laws; or
 5. allowing the lodgement of the goods declaration by means of an entry in the records of the authorized person to be supported subsequently by a supplementary declaration.
- (2) The Ministry of Finance shall by regulation adopt measures necessary for implementation of this Article, including rules in respect of the following:
- i. the granting of any authorizations referred to in paragraph (1);
 - ii. the cases in which review of the authorizations is to be carried out and the conditions under which their use is to be monitored by the Customs;
 - iii. the conditions under which the authorizations are granted;
 - iv. the conditions under which a person may be authorised to carry out certain customs formalities which should in principle be carried out by the Customs, including the self-assessment of import and export duties, and to perform certain controls under customs supervision;
 - v. the conditions under which the authorizations may be suspended or revoked; and,
 - vi. the form of, and any time limit for, the completion of formalities.

CHAPTER TEN CUSTOMS PROCESSES

Article 65 (Release of Goods for Free Circulation)

- (1) Non-Afghan goods shall be deemed Afghan goods after release for free circulation.
- (2) Release for free circulation shall be subject to application of commercial policy measures (when in effect), completion of all requirements for importation of goods, and the collection of the customs debt incurred on the imported goods

the procedure will be properly conducted and when Customs are able to supervise the process.

- (3) The conditions under which the process with economic impact in question is used shall be set out in the authorization.
- (4) The holder of the authorization shall be obliged to notify the ~~ustomsef~~Customs of all factors arising after the authorization was granted which influence its continuation or contents.

Article 71 (Security)

The ~~customs may~~customs may make the placing of goods under a suspensive process conditional upon the provision of security. The conditions concerning the provision of security shall be provided in the relevant procedure.

terminates is called the customhouse of idation. Conditions related to internal and external transit shall be regulated in the relevant procedures.

(2)- The transit process is the procedure applied to goods that.

- 3- operations carried out by a railway company of the State;
- 4-

Article 81(CustomsWarehousing)

(1)

- (2) Conditions for granting authorization and conditions for the operation of warehouses shall be regulated in a separate procedure.
- (3) For public and private warehouses operated within customs areas, on land leased for this purpose, no demurrage charges shall be collected, and the area leased will remain under the control of the warehouse keeper. Duties on goods stored in such a warehouse will be postponed until goods are placed under customs process and shall be paid by the declarant who declares the goods for a process involving release of the goods from the customs area.

Article 85 (Transfer of Rights and Responsibilities)

The rights and obligations of a customs warehouse keeper may, with the agreement of the authorized customs, be transferred to another person who is eligible pursuant to the relevant procedure.

Article 86 (Distinctive Cases)

- (1) Where an economic need exists and customs supervision is not adversely affected thereby, the customs may allow the storage of the following goods in customs warehouses:
- i. Afghan goods other than those referred to in Article 81 (2) (2). In this case the conditions of the customs warehousing process shall not apply.
 - ii. Non-Afghan goods to be processed on the premises of a customs warehouse under the inward clearing process or processing under customs control, and the conditions provided for by those processes be complied with. The relevant exceptions in this context shall be determined in accordance with the related procedures.
- (2) The warehouse keeper shall be obliged, on request of the customs, to enter the goods referred to in Paragraph 1, in the stock records in

- (ii). goods that are placed under a drawback system and are exported in the form of compensating products from the customs territory of the state goods released for free circulation with repayment or remission of the import duties chargeable on such goods if they are exported from the customs territory in the form of compensating products (the drawback system).

Article 93 (Inward Processing Operations)

- (1) “processing operations”: In connection with the inward processing of goods shall mean:
- i. The working of goods, including erecting or assembling them or fitting them to other goods;
 - ii. The processing of goods;
 - iii. The repair or restoration of goods; and
 - iv. The use of certain goods defined in the relevant procedures, which are not to be found in the compensating products but which allow or facilitate the production of those products;

Article 94 (Application for Approval of Inward Processing)

Approval (uaz) of the inward processing process shall be granted, upon submission of a written application, by the Ministry of Finance in accordance with the relevant procedure and under the following conditions:

- i. The applicant shall be established in Afghanistan,
- ii. When the suspensive imported goods can be identified in(1)sthmpen products, except as provided inicles93 (1)4
- iii. TD .the process for inward processing best serves the economic interests of the country.

Article 95 (Time Period for Exportation of Compnesating Products)

Customs shall specify the period within which the compensating products must be exported, or assigned another customs designation, provided such period shall be sufficient to carry out the processing operations and to otherwise prepare the compensating products for a new customs designation.

Customs may grant an extension at the request of the holder of the Approval.

Article 96 (Rate of Yield of Inward Processing)

- (1) Customs shall set either the rate of yield of the operation or the method of determining such rate based on the actual circumstances in which the processing operation shall be carried out.
- (2) The standard rate of yield shall be determined in the

Article 97 (Release for Free Circulation from Inward Processing)

In case goods in the inward processing process, whether in an unaltered state or as compensating products, are missing at the period provided in Article 95, they shall be deemed to have been released for free circulation and the holder of an inward processing Approval shall be obliged to submit a customs declaration for such missing goods and shall be liable for the customs debt.

Article 98 (Compensating Products of Inward Processing)

- (1) Compensating products that are re-imported after being exported are subject to customs duty.
- (2) The customs debt on goods mentioned in paragraph one shall, at the request of the importer, be calculated in accordance with Article 97.

Article 99 (Customs Duties on Compensating Products of Inward Processing)

- (1) The compensating products shall be dutiable at the same rate as identical imported goods;
- (2) In case a favorable tariff is applied by virtue of the intended use of the identical imported goods, the same favorable tariff shall also be applicable on compensating products.
- (3) In case the identical goods imported in accordance with article 27 of this law become duty free, the compensating products shall also be exempted from paying duty.
- (4) The Ministry of Finance may designate the duty rate for compensating products in those situations where the duty rate on a compensating product would be less than the duty rate on the related suspensive goods.

Article 100 (Compensating Products of Inward Processing After Outward Processing)

Some or all of the compensating products or goods in unaltered state may be temporarily exported for further processing in a foreign country if the customs authority so authorizes in accordance with the provisions governing outward processing in Articles 116-121 and the relevant procedures.

Article 101 (Drawback Cases)

- (1) An Approval under Article 94 may authorize use of the drawback system, except for goods the importation of which is subject to quantitative import restrictions.
- (2) No drawback amount will be refunded in excess of duties actually paid in accordance with the drawback system.

Article 102 (DrawbackDeclaration)

The customs declaration for free circulation shall indicate the use of drawback system and a copy of the Approval granted under Article 102 must be attached.

Article 103 (TemporaryExportations Pursuant to Drawbacks)

Temporary exportation of compensating products carried out as provided for in Article 100 shall be considered as exported within the meaning of Article 104 where such products are not re-imported into Afghanistan within the period prescribed

Article 104 (Drawback Refunds)

- (1) The import duty shall be refunded to the holder of the Approval described in Article 102 when compensating products are exported, provided that all conditions for use of

- ii. the standard rate of yield as described in Article 96;
- iii. The date by which the compensating products shall be assigned a new customs designation.

Article 108 (Debt Amount if Processing Under Customs Control is Not Completed)

For goods in unaltered state or are at an immediate stage of processing, the amount of the debt shall be determined as if these goods had been presented for free circulation at

- viii. The period for the temporary exportation process shall be up to 12 months, and may be extended up to an additional 12 months for justifiable cause;

Article 118 (Contents of Outward Processing Approval)

The approval for outward processing shall include:

- i. The date by which the compensating products must be re-imported, taking into account the time required to carry out the processing operations.
- ii. The standard rate of yield.
- iii.

Article 125 (Free Zones Designation)

- (1) The Ministry of Finance shall be authorized to designate parts of the customs territory ~~of the State~~ as free zones and approve construction of any building in a free zone.
- (2) The geographical boundaries and the entry and exit points of each free zone and free warehouse shall be determined exactly by the Ministry of Finance. The holder of approval is obliged to wall off the related zone or warehouse.
- (3) The Ministry of Finance may authorize opening of duty free shops in the customs territory ~~of the State~~ for the sale of goods with exemption from import duty. The method of using free duty shops shall be regulated in the relevant procedures.

Article 126 (Customs Supervision in Free Zones)

- (1) Free zones, duty free shops, and free warehouses, and their borders and entry and exit points shall be subject to customs supervision and control.
- (2) Persons and means of transport entering or leaving a free zone or free warehouse shall be subjected to a customs inspection.
- (3) Persons who do not provide the security required by Customs legislation and procedures cannot use free zones or free warehouses.
- (4) When goods enter or leave a free zone or free warehouse, a copy of the transport document shall accompany the goods and be provided to the customs.

Article 127 (Conditions for Entrance and Exit of Goods)

- (1) Prohibited goods and goods that pose a threat to public safety or health shall not be admitted to duty free zones, free warehouses, and free shops.
- (2) Goods entering and exiting a duty free zone, free warehouse, or free shop shall first be presented to the customs, ~~but the~~ person responsible for goods need not accompany them by a customs declaration unless the goods are placed into a customs process. The value of goods placed into a customs process shall be calculated in accordance with Article 24.
- (3) When goods enter a duty free zone, free warehouse, or free shop from another part of the customs territory ~~of the State~~, Customs shall release the goods from a previous customs process, and place Afghan goods into the export process, unless otherwise provided in customs legislation:
- (4) The Customs debt on Afghan goods exiting the free zone, free warehouse, or duty free shop into another part of the customs territory ~~of the State~~ shall be calculated in accordance with Article 119.

- (5) Goods may exit a duty free zone, free warehouse, or free shop for export from the customs territory of the State in accordance with the relevant procedures.

Article 128 (Customs Status of Goods in Duty Free Zones)

- (1) The customs may provide, on request of the person responsible for goods, a certificate stating the customs status of goods placed in a duty free zone, free warehouse, or free shop.
- (2) If the certificate, or other documents that prove the customs status of the goods, cannot be presented, the goods shall be considered to be Afghan goods, for the purposes of export from the customs territory of the State and Non-Afghan goods in case of entry into another part of the customs territory of the State.

Article 129 (Time Limits)

There shall be no limit to the length of time goods may remain in free zones free warehouses, or duty free shops, unless otherwise provided in the relevant procedures.

Article 130 (Authorized Activities)

- (1) Carrying out any industrial, commercial, or service activity shall, under the conditions laid down in Customs Legislation, be authorized in a free zone, warehouse or duty free shop without complying with the provision of Article 88.
- (2) All **nationally** enforced laws, including those for the protection of patents, trademarks, and copyright are applicable to free zones.
- (3) The customs may impose necessary prohibitions or restrictions on the activities referred to in paragraph 1, having regard to the nature of

having been consumed in the free zone, free warehouse, or free shop and Paragraph 1 shall be applied.

Article 133 (Abandonment or Destruction of Goods in Free Zones)

Customs may designate for abandonment, destruction, under Article 134 of Non-Afghan goods placed in a free zone or free warehouse while they remain in a duty free zone, free warehouse or free shop.

CHAPTER TWELVE
CUSTOMS DESIGNATIONS

Article 134 (Destruction or Abandonment)

- (1) A destruction or abandonment designation shall be made as described in the relevant procedures. The declarant, or other person responsible for the goods, must provide a customs declaration requesting the relevant designation.
- (2) The destruction or abandonment designation shall be denied if it entails an expense for the State.

Article 135 (Destruction of Goods)

- (1) The destruction designation shall be carried out by prior notification to Customs. The notification shall state with specificity the goods to be destroyed, the time, the place, the means of destruction, and the reason for destruction.
- (2) Customs may supervise the destruction process and require presentation by the person responsible for the goods of related customs documents and a copy of the notification provided in Paragraph 1.
- (3) Any waste or scrap resulting from such destruction shall retain the status of non-Afghan goods and shall remain under customs control until such time as it is released to another customs designation or process.

Article 136 (Proceeds From Abandoned Goods)

Proceeds from the sale of transfer [disposal] of goods designated as abandoned to the state shall be deposited to the relevant account in accordance with the procedure for payment of customs debts. The Director General of Customs may provide for transfer of abandoned goods to a state institution or administrations when the cost of disposal does not merit the relevant expenses.

CHAPTER THIRTEEN
CUSTOMS DEBT

Article 137(Form of Security)

- (1) Unless otherwise provided by the relevant procedures, security required under this law for payment of a customs debt shall be provided at the choice of the customs debtor by the means of cash deposit or a guarantee by a guarantor approved by Customs in accordance with Article 141.~~reliable person or institution~~
- (2) Where security is not required under this law, Customs may in any case~~if the customs are~~ not sure that the customs debt ~~mentioned in paragraph 1 is to~~ will be paid within the prescribed period, ~~they may~~ submit an appropriate proposal to the relevant authority justifying the provision of a security.
- (3) The mentioned authority of paragraph 2 may order a customs debtor to provide security ~~as a~~ necessary for satisfying the customs debt.

Article 138 (Single Security for Several Actions)

- (1) The customs may al(b)-7II*1*1I

Article 140 (Cash Deposits)

A cash deposit shall be made in Afghan currency. The following shall also be deemed a cash deposit:

- i. Submission of a check, the payment of which is guaranteed by the institution on which it is drawn which is approved by relevant rule.
- ii. Submission of any other financial instrument accepted by the customs as a means of payment.

Article 141 (Guarantor)

Any person who meets the following criteria may be accepted as a guarantor:

- i. Must be a third-party person established in Afghanistan, unless provided otherwise in the international agreements to which

Article 145 (Lawful Activities Which Cause Customs Debts)

- (1) ~~A customs duty on lawful importation or exportation of goods may shall be incurred when goods have been released for free circulation in accordance with this law by the filing of an accepted acceptance of customs declaration for:~~
- i. ~~the release for free circulation of goods liable to import duty in accordance with Article 65(2);~~
 - ii. ~~the placing of goods under the temporary importation process with partial relief from import duty.~~
 - iii. ~~the placing of goods in conditional release of goods under customs supervision;~~
 - iv. ~~the placing of goods in the export process;~~
 - v. ~~placing of goods in any other customs process or designation involving payment of duty (tarifa), charges (haqulzamat), dues (awarez), penalties (jerima), or other ~~many~~ obligations (eltezamat e-puli).~~
- (2) Customs dues, other than custom duty, on the lawful importation or exportation of goods shall be incurred on acceptance of a declaration placing goods subject to such dues under a customs process or designation.
- ~~(3) A customs debt shall be incurred after customs notifies the customs debtor, whether upon acceptance of the declaration, or assessment of penalties in accordance with this law.~~
- (3) The declarant shall be the debtor.
- (4) Where a customs declaration in respect of one of the procedures referred to in paragraph (1) is drawn up on the basis of information which leads to all or part of the duties not being collected, the person who provided the information required to draw up the declaration and who knew, or who ought reasonably to have known, that such information was false shall also be a debtor.

Article 146 (Unlawful Activities Causing a Customs Debt)

For goods liable to customs dues a customs debt with respect to unlawful activities shall be incurred by violation of:

1. one of the legal obligations referenced Articles 166 (2) and 170 of this law concerning the introduction of goods into, or exit of goods from the customs territory, or the movement, storage, processing, temporary admission or disposal of goods;
2. a condition governing the placing of non-Afghan goods under a customs procedure or the granting, by virtue of the end use of the goods, a duty exemption or reduced rate of customs duty, or
3. the conditions under which goods were allowed to leave the customs territory with total or partial relief from customs duties. .

Article 147 (Customs Debt on Removal of Goods from Supervision Without Permission)

A customs debt shall also be incurred on goods removed from customs supervision without permission. And, the customs debtor shall be:

1. the person who removed the goods from customs supervision without permission,
2. any persons who participated in such removal and who had prior awareness that the goods were being removed from customs supervision.
3. any persons who acquired or held the goods subject to customs supervision or control and who were aware at the time of acquiring or receiving the goods that they had been removed from customs supervision.

Article 148 (Non Occurrence of Debt)

No customs debt shall be deemed to be incurred in respect of goods under customs supervision that were:

- i. lost ~~or destroyed~~ due to force majeure
- ii. placed in a destruction or abandonment designation under Article 134;
- iii. lost to evaporation or other natural process; or
- iv. were out of the control of the person when they were the subject of Article 146 and 147, and that person proves it.

Article 149 (responsibility of Partnerships)

Where a partnership has guaranteed a customs debt, the general partners shall be jointly and severally liable for such debt. The penalty portion of the debt shall be an exception from this rule.

Article 150 (Date of Determining Customs Debt)

Where it is not possible to determine precisely when the customs debt is incurred due to the fault of the declarant, the highest rate of customs duty applicable during the period in question shall be applied.

Article 151 Entry of debt into accounts:

(1)-The Customs duty shall be calculated by Customs simultaneously with the acceptance of a customs declaration which entails payment of duty. If additional information is required by Customs to determine the value of goods, Customs shall calculate the customs duty no later than 48 hours after the customs declarations is accepted, or for such other period of time as may be fixed in the Procedure Regulation (tarzulamal muqarara) for Customs Valuation. The amount of the customs duty shall be entered into the accounts without delay after it has been calculated,

(2)-Unless otherwise provided for in this law and its procedures, the customs duty must be calculated and entered prior to the release of the goods for free circulation, or for another process that entails payment of customs duty, in accordance with Article 62

(3)- A customs debt incurred after the goods have been placed under a customs process shall be entered in the accounts within 48 hours after customs has information sufficient to calculate the customs debt, and determine the debtor.

(4)- The customs officials shall adequately explain any delays in making the entry of a customs debt. .

Article 151A(New Article) Post release inspection of Goods:

(1) Customs authorities may inspect declarations and commercial records related to

(2) (2) If the Customs tariff rate changes for an commodity, this change is only applicable

(2) Customs may collect a charge (haqulzamat) for providing the service of postponement of payment of .01% of the deferred amount per day, or such other amount as is fixed by the relevant procedures.

(3) The amount of charge (haqulzamat) referred to in paragraph 2 shall be determined by the Ministry of Finance so as to be comparable to similar charges in the domestic money or financial market

Article 157 (Manner of Payment)

(1) A person other than the customs debtor may pay the customs debt.

(2)

Article 160 (Remission or Refund for Defective Goods)

- (1) For the goods that have been damaged before their release, or which don't match with the import specifications and the declarant returns them, or which belong to the group of legal goods subject to authorizations and has been rejected and returned by the relevant government agency, re-funding of customs duties paid will be made under these conditions:
1. the goods have not been used except for such initial use as may have been necessary to establish that they are defective; and
 2. The goods are exported, or placed in a process or designation that does not entail payment of customs duty.

(1)

2. Smuggling of goods, in accordance with chapter 14 of this law.

Article 166(Administrative Violations and Sanctions)

Administrative violations shall be classified in the following three categories:

(1) category one violations are as follows:

1. Delay

For delays in violation of Articles 36(2), 39(3), 51(1), 54(1), 80, 87, 95, 112,

- If the official has committed such violation for the first time, s/he shall be punished by 25% reduction of salary for one month.
- If the official has committed such violation for the second time, s/he shall be punished by 50% reduction of salary for up to two months. In such case, a written warning shall also be issued to him by the customs in charge.
- If the official has committed such violation for the third time, s/he shall be punished, upon consideration of mitigating or aggravating circumstances, by suspension from duty for 15 days to one month.
- When the violation is serious due to which a loss of at least a million AFN has been inflicted on customs revenues, or has been committed for the fourth time by the violator, then the violator shall be dismissed from duty and referred to justice and judicial authorities.

- (2) In accordance with the ACD management decision, those who commit violations of 3 category enumerated in paragraph 3 of article 166 of this law, are required, pursuant to article 20 of this law, to pay % 5-10 of the value of their goods, in cash.
- (3) .Customs officers who commit violations of both second and third categories elaborated in article 166 of this law, are introduced to judicial agencies according to article 20 of this law for 6

- (4) The seized goods and the violator shall be released from customs control immediately after the customs verify that all the conditions and obligations referred to in paragraphs 1 and 2 of this Article are fulfilled by the violator.
- (5) This provisions of paragraphs (1, 2,3) and 4 shall not apply when:
- i. the act is committed by a customs employee, a customs broker, or any other person whose activity is connected to that of customs in any way
 - ii. the violator possesses any smuggled smuggling object as a consequence of another criminal act; or
 - iii. the goods are prohibited or restricted goods, as referred to in Article 53 (2)
 - iv. the person is repeatedly a violator.
- (6) Any Class 3 offense shall be referred directly to the competent authorities for prosecution if committed together with any of the conditions mentioned in paragraph 5 of this article.
- (7) In cases where section (5) or (6) applies, the report mentioned in paragraph 1Article 184 shall be attached to the decision of the customs regarding the fulfillment of the conditions mentioned in that article.

Article 171 (License Revocation)

The Ministry of Finance may revoke licenses granted pursuant to Articles 16, and 70 for repeated or serious violations of the conditions under which they are granted.

Article 172 (Smuggling of Goods)

- (1) Carrying out the following activities is deemed to be smuggling and the offender shall be punished in accordance with this law and:
- i. Introduction of goods into the customs territory of the State or the exit of goods, in violation of the provisions of this Law and other customs legislation, with the intent of avoiding (hab) customs control or supervision.
 - ii. To carry prohibitedly TD us

- iv. purchase, sell, store, and possess imported goods with knowledge that they are smuggled goods. Such knowledge will be presumed in the case of a warehouse keepers who stores imported goods without copies of the related customs declarations.
 - v. Break the seal or substitute or change other security verifications placed on the means of transport or goods.
 - vi. Load, unload, or move goods, travelers or their luggage, from one means of transport to another without permission from the customs, in an unauthorized place.
- (3) Smuggling is considered to have been committed by the Captain of an aircraft who:
- i. transports goods without the relevant manifest, or with a manifest that misrepresents the goods on board;
 - ii. has not presented goods to customs which were brought into the customs territory of the State according to the manifest but are not on board at the time of departure ,
 - iii. Lands out of a customs airport, and does not notify its landing to the customs or other relevant authorities within the shortest time.

Article 173 (Sanctions Applicable to Smuggling)

- (1) The violators referred to article 172 shall be punished with:
- i. Confiscation of the smuggled goods;
 - ii. A fine from two to five times the amount equal to the applicable customs debt of the smuggled goods; and
 - iii. Punishment in accordance with Article 179.
- (2) In case of committing a violation by more than one person, each one shall be fined proportionate to that person's participation in the violation. If one of the parties pays the full amount, the others are free of any obligation to Customs for the fine in question.
- (3) When the same violator commits at the same time several violations seferd05 Tc (t)s 1 01.5.0 Tce5.10a62.08-1eed1-5.49e can013 (ap)3.9(pd9.1(v

Article 174 (Smuggling Objects)

- (1) “Smuggling objects [means] any objects ~~wa (saie)~~ involved directly in the act of smuggling, including arms, and the means of transport and other objects used to transfer or to hide smuggling goods. Smuggling objects will be seized by the customs and, upon decision of the competent courts may be confiscated and treated as abandoned goods. The means [objects] mentioned in paragraphs 3 and 4 are an exception to this rule.
- (2) The seizure of smuggled goods will take place regardless of the amount and the degree in which the owner of the goods took part in the smuggling action.
- (3) Where the person convicted of smuggling took possession of the seized objects as a consequence of a criminal act, the objects will be returned to the owner.
- (4) Means of transport are exempted from the seizure, whenever:
1. on the basis of evidence, the owner is not proven to be involved in the act of smuggling;
 2. The owner provided the means of transport in good faith in the ordinary course of business. (Without knowledge of its use for smuggling or other illegal activities).
- (5) The court, is obliged to take a decision ordering the confiscation of the means of transport and other objects of smuggling within 5 days of referral of the case. The transporting vehicle and other objects of smuggling shall be put up for ~~au~~ in accordance with the order of court in accordance with the Customs Procedures for Auction.

Article 175 (Vehicles)

The owner, or driver, of the vehicle transporting smuggled goods shall be punished as follows:

1. If the owner of the vehicle carrying smuggled goods seized together with the vehicle and there is proof that the owner of the vehicle is aware of the existence of smuggled goods, the owner of the vehicle shall be sentenced to the punishment of a cash fine equal to the cost of the smuggled goods.
- 2.

- i. the act of smuggling is being witnessed,
- ii. the goods are in movement,
- iii. the goods are in an insecure public place,

Except in the case where smuggling is witnessed, seizure of goods from private property shall take place only upon the prior order of the authorized court.

(2) The smuggled goods and the means thereof, when seized, shall be delivered promptly against receipt to the customs administration or to the district administration office in places where there are no customs organizations.

(3) In case of a dispute concerning prohibited or smuggled goods, the goods will be retained

5. For 3 months to 6 months imprisonment if the smuggled goods are conditionally permissible goods and cost 50000 to 100000 AFN. If the cost of the goods exceeds 100000 AFN, then imprisonment, as the case may require, for 1 – 3 years.

Article 180 (Aggravating Circumstances)

- (1) The maximum penalty included in article 179 of this law shall be imposed if the act of smuggling is committed with the help of two or more persons, or in case of repetition of the crime,
- (2) If smuggling is committed through a network of smugglers the organizer of the network of perpetrators shall be penalized by an imprisonment of two times the punishments allowed by Article 179.
- (3) In cases where the smuggler shows armed resistance to the customs, whether injury results or not, the perpetrator shall be imprisoned for a period of 15 to 20 years.
- (4) If the smuggler kills a customs official and / or other persons who assist them in their duties, the smuggler shall, in addition to the

Article 184 (Report and Collection of Evidence)

- (1) The written report of evaluation prepared and signed in triplicate, shall contain:
1. the place, the date and the time where the violation occurred
 2. the names of the persons who sign the report and their position;
 3. the name and address and other identifying information of those accused of a violation;
 4. the classification of the violations mentioned in this law
 5. 4.

provisions of this law, and inform the relevant implementing bodies about the said decisions

Article 186 (Appeal Against the Decision for Payment of a Fine)

- (1) A customs decision to impose a fine under this law has to be delivered and notified to the person accused within 24 hours from the time of the decision by customs officials.
- (2) The person responsible for paying the fine may object to the decision of the customs imposing a fine in accordance with Article 18.
- (3) In case of appeal in accordance with Article 18(4) the appellant must deposit, in addition to the customs debt deposited in accordance with Article 18(2) an amount equal to 40% of the total amount of the fine, provided that the total amount of the deposit shall not exceed the value of the goods subject of the violation.
- (4) If the decision of the Customs Arbitration Administration is unacceptable to the appellant, the appellant shall deposit the remaining 60% of the fine prior to appealing from the opinion of the Customs Arbitration Administration which has been issued in accordance with article 18.
- (5) In accordance with articles 20 and 21 of this law, the deposit shall be returned within 5 days after any decision, customs opinion or order of court rendered in favor of the appellant becomes final.
- (6) Provisions of paragraphs 1, 2, 3, 4 &5 of this Article shall also apply to customs officials who have committed such administrative violations.

CHAPTER FIFTEEN

i.

CHAPTER SIXTEEN
MISCELLANEOUS PROVISIONS

ARTICLE 191 (Assisting Customs Administrations)

- (1) Policing agencies in the Ministry of the Interior and other civil (mulki) and military institutions, are obliged to assist the customs in all aspects in its enforcement of this law and other customs legislation.
- (2) Any person is bound to assist in the pursuit of persons accused of smuggling and in the seizure of smuggled goods, if those responsible for **preventing** smuggling seek help from that person.

CHAPTER XXX
ELECTRONIC RECORDS

Article xxx (Definitions)

- i. "Electronic" means relating to technology having electrical, digital, magnetic, wirelessoptical, electromagnetic, or similar

Article xxx. (Signature Requirements)

If a person is required to sign any form under this Law and that form is submitted by means of an electronic record, it shall have such electronic signature as the Minister shall prescribe.

Article xxx. (Electronic Record-Keeping)

Subject to the authorization and such conditions and restrictions as the Minister may otherwise prescribe by regulation-

- i. where this Law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:
 - accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and
 - remains accessible for later reference.
- ii. A requirement to retain a record in accordance with subparagraph (i) does not apply to any information whose sole purpose is to enable the record to be sent, communicated, or received.
- iii. A person may satisfy subparagraph (i) by using the services of another person if the requirements of that paragraph are satisfied.
- iv. Where this Law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, the requirement is satisfied by an electronic record retained in accordance with subparagraph (i).

