

Explanatory Notes Thereof

Explanatory Notes To the Unified Customs Regulation “Law” Of the Cooperation Council for the Arab States of the Gulf

The GCC Unified Customs Regulation “Law” ,which was prepared by a technical committee of the GCC member States, has been laid down to meet the provisions relating to the customs affairs and regulate the relationship between customs and the public. The Regulation “Law” contains provisions and procedures for the importation, exportation and transit of goods through the territories of the GCC States. This Regulation “Law” also clarifies the rights of the employees of those administrations.

This Regulation “Law” aims at protecting the society through the control of the entry and exit of individuals, goods and means of transport.

This Regulation “Law” falls into 17 sections comprising 179 articles and is deemed the legal instrument regulating the duties of the customs offices and specifying the areas subject to customs control, the nature of the customs procedures at the land, marine and air ports and the postal customs offices as well applied to the various customs transactions such as importation, exportation, temporary admission, re-exportation and transit. It is the instrument by which the customs tariff is applied and the customs taxes “duties” are levied on the imported goods. All these regulations support the trend to make the GCC States an international market, encourage their national industries and projects and extend the scope of their transactions and increase their exports.

This Regulation “Law” also contains provisions specifying the stages of the clearance of the goods, exemption from customs taxes “duties”, conditions of the temporary admission of the goods without payment of the customs taxes “duties”, the documents to be produced to customs for the clearance of the goods in addition to the provisions governing the establishment of the free zones and duty-free shops and controlling the activity of the customs clearing agents (brokers) and the conditions of obtaining the licences for practising the customs clearance job and treatment of the customs offences and smuggling matters.

This regulation “Law” employs the latest customs regulations and laws of the GCC States and the Arab States in addition to the privacy of the GCC States and the nature of the role of customs therein, and the WTO Agreement as well as the WCO Conventions.

The Unified Customs Regulation “Law’ of the GCC states was adopted in the 20th Session of the Supreme Council held in Riyadh, Kingdom of Saudi Arabia in December 1999 and was agreed to implement it as a reference Regulation “Law’ for one year from the date adopted and that it would be reviewed in the light of the comments received by the Secretariat General from the member States in an attempt to have it obligatory implemented by all customs administrations of the member States by 2000.

Due to the completion of the requirements of implementation and the review of the comments of the member States and finalizing the preparation of the explanatory notes and Rules of Implementation thereof, the Secretariat General proposed in the 21st Session of the Supreme Council that the reference implementation should be extended for one more year and the Supreme Council, in its 21st Session held in Manama, Bahrain in December 2000, decided to extend the reference implementation for one more year provided that it would be obligatory implemented by all customs administrations of the GCC States in January 2002.

The objective of having a unified customs regulation “Law” of the GCC States is to unify customs procedures in all customs administrations of the GCC States and contribute to the enhancement of cooperation in the customs field and regulate the relationship between these administrations and the community of traders in the GCC States so as to ensure unification of the customs procedures in all the GCC States. This regulation “Law” regulates the relationship between the customs administrations and the other governmental administrations in the member States and supports the trade exchange between them and the other foreign countries which is one of the bases of the customs union of the GCC States.

Section (I)

Definitions and General Provisions

This Section deals with the definition of this regulation as the “Unified Customs Regulation “Law” of the Cooperation Council for the Arab States of the Gulf” and contains definitions of the terms provided for therein. It provides that the provisions of this regulation “Law” shall apply to the territories subject to the sovereignty of the State and its territorial waters and allows the establishment of free zones thereon and that all goods entering or leaving the State shall be subject to the provisions of this regulation “Law”.

Article (5) entitles the customs administration to exercise its powers in the customs offices and the customs zone and within the extent of its lands and territorial waters subject to the conditions set forth in this regulation “Law”.

As regards the setting up and the cancellation of the customs offices, this shall be issued by a decision of the competent minister to whom the customs administration reports, and the same applies to the designation of the competences and office hours of the customs offices.

Article (8) provides that customs procedures shall be carried out only in the customs offices; these procedures mean those applied when the goods enter the customs office. This Article excludes the cases prescribed by the director general through application of the provision of Article (53) of the unified Regulation “Law”.

Section (II)

Provisions for Application of the Customs tariff

This Section contains the principles of application of the customs tariff as follows:

Article (9) provides that goods entering the State shall be subject to the taxes “duties” stated in the customs tariff and to the other taxes and fees excluding those goods excluded under the provisions of this Regulation “Law” or under the GCC Unified Economic Agreement or any other international agreement through mutual coordination among the GCC States.

The objective of limiting the exclusion from the customs Taxes “duties” to the cases covered by this Article is the setting up of the customs union among the GCC States which is based on a single point of entry and the common collection of the customs Taxes “duties” vis-à-vis the external world.

Article (10) provides for the bases for levying the taxes “duties” which could be *ad valorem* (a percentage of the value of the goods for customs purposes) or *specific* (a lump sum for each unit of the goods such as weight, number, volume, measurement or the other specifications of the goods).

This Article also provides that the customs taxes “duties” could be *ad valorem* and *specific* at one time which is based on combining both the *ad valorem* and *specific* categories for one type of goods.

Article (11) provides that the imposition, amendment or cancellation of the customs taxes “duties” shall be made according to the legal instrument and the legal and constitutional practices of each State subject to the resolutions issued by the Council in this connection and to the provisions of the international agreements in force.

The other Articles of this Section deal with the subjection of the goods to the customs taxes “duties” from the registration date of the customs declaration

and the provisions of the customs taxes “duties” relating to the clearance of the goods whose deposit period at the warehouses has elapsed and taking out these goods from the free zones and duty-free shops and the tariff to be applied to the smuggled goods or those damaged.

Section III

Prohibition and Restriction

This Section requires the importers to submit a customs declaration for any goods imported into or exported from the country. This declaration shall be the official document produced to the customs along with all the other documents relating to the goods provided that the declared goods shall be presented to the nearest customs office at the point of entry (land, sea or air). The Section also provides that anchorage of the marine means of carriage shall be according to the conditions and situations set forth in Articles (20, 21).

Article (22) deals with the arriving and departing aircrafts and the conditions of landing and takeoff according to the provisions of this Article.

Article (23) limits the entry or exit of the land means of transport to those areas within the country where customs offices exist, and Article (24) stipulates that the customs administration shall apply the conditions and procedures prohibiting the entry, exit or passage of the prohibited goods or the goods contravening this Regulation “Law” or any other Regulation “Law” or resolution.

Section IV

The Distinguishing Elements of the Goods

This Section provides clarification and description of the distinguishing elements of the goods (origin, value, type) and stipulates that imported goods shall be subject to the proof of origin according to the rules agreed on within the framework of the international and regional economic organizations. The provision of Article (26) of the regulation “Law” and the provision of Article (1)

of the Rules of Implementation are in line with the provisions of the WTO Valuation Agreement where calculation of the value of goods for customs purposes is determined according to the provisions and principles prescribed in detail in the Rules of Implementation of the Regulation "Law".

Article (27) specifies the documents to be attached with the customs declaration and the nature of these documents and the treatment of the cases where the importer fails to submit such documents to customs, whereas Article (28) provides that the value of the exported goods shall be their value prevailing at the time of registering the customs declaration plus all charges incurred until arrival of the goods to the customs office. Article (29) provides that the goods that are not mentioned in the customs tariff nomenclature and the explanatory notes thereof shall be classified according to the classification advice issued by the World Customs Organization which the approved body in respect to the international classification. However, goods falling under national subheadings of the customs tariff beyond six digits are classified within the framework of the GCC as the unified Customs Tariff for the Classification and Coding of Commodities is in line with the Harmonized System in force.

Section (V)

Importation and Exportation

This Section covers the Articles (30 to 46) of the Regulation "Law" which contain provisions of importation and exportation such as the rules, practices and procedures to be followed- at importation and exportation- by the carriers of the goods through the air, land and sea means of transportation or by post, and the documents to be produced to the customs authorities and the times of producing and the details to be contained in these documents and the controls to be observed by carriers at loading and unloading and the extent of their responsibility for the goods they carry when such goods traverse the borders of the State.

Article (46) of this Section provides an important element of facilitation of the customs operations which is the use of the modern technology media in the Electronic Data Interchange for the clearance of the goods according to the rules prescribed by the minister or the competent authority.

Section (VI)

Stages of the Customs Clearance

This Section elucidates in detail the stages of the customs clearance beginning with the lodgment of the customs declaration according to the forms approved within the frame of the Council and that the director general is empowered to specify the documents to be attached with the customs declarations and the details to be contained therein and the clearance cases without production of such documents gains cash or bank guarantees or undertakings according to the conditions prescribed by the director general. The regulation "Law" permits the owners of goods or their representatives to examine their goods prior to the lodgment of the customs declaration and to have access to the customs declarations and documents to which no other persons can have access except the competent judicial and official authorities.

Articles (52 to 59) deal with the right of the competent customs officer to inspect the goods wholly or partially on a case-by-case basis according to practices in force, the inspection procedures, the movement of goods and the presence of the owner of the goods during the inspection and the right of the administration to open the packages and make analysis (tests) of the goods, the discrepancy cases and the missing (incomplete) documents stating the description and specifications of the goods and the right of the administration to re-inspect the goods and the other relevant matters.

Article (60) tackles the declaration and inspection, at the customs offices, of the passengers accompanied luggage and belongings according to the practices and rules prescribed by the director general.

Article (61) discusses the formation of valuation committee composed of the administration's employees under a resolution issued by the director general. Such committee is specialized in the settlement of the disputes arising between the customs office and the importers concerning the valuation of the imported goods and the committee may seek assistance of experts according to the measures and procedures provided for in Article (26) of this regulation "Law" without prejudice of the importer's right to appeal before the court.

Article (62) deals with the disputes between the customs officer and the owner of the goods concerning the valuation of the goods and provides that the dispute shall be referred to the director general for settlement or to the Valuation Settlement Committee. This article also provides for the right of the director to release the goods against the guarantees provided for in this Article and the conditions thereof.

Articles (63 to 66) deal with the payment of the customs taxes “duties” and the other charges and the release of the goods according to the rules and conditions prescribed by the director general.

Section VII

The cases where the customs taxes “duties” are suspended and Drawback

This Section deals with cases where the goods could be released and moved from one place to another in the country without payment of the customs taxes “duties”; these are known as the cases where the customs taxes “duties” are suspended. The Section also deals with the *Drawback* (a system under which the paid the customs taxes “duties” can be refunded when the goods leave the country according to the following provisions and rules:

1. The release of the goods against submitting cash or bank guarantees in an amount equivalent to the customs taxes “duties” according to the instructions of the director general. Such guarantees shall be released upon presentation of the discharge certificates.
2. When the goods transit the territories of the GCC States according to the provisions of the international regulations and agreements in force such as the Transit Agreement of the Arab States and according to the specified routes and at the responsibility of the carrier as instructed by the director general. The routes and conditions of transport shall be prescribed by a resolution of the minister or the competent authority.
3. The placement of the goods inside the warehouses of the customs office according to the conditions and rules prescribed by the director general.
4. The free zones and duty-free shops set up by the legal instrument of each State; the rules, conditions and customs procedures thereof are to be prescribed under a resolution by the minister or the competent authority subject to the enhanced control thereof.

Article (80) designates the goods prohibited from entering the free zones and duty-free shops and Article (83) provides that goods may not be moved from one free zone to another unless in accordance with the regulations in force, whereas Article (85) provides that the goods taken out from the free zone into the country shall be treated as foreign goods.

Article (87) holds the Administration of the free zone responsible for the offences committed by its employees.

Articles (89 to 94) deals with the cases where the goods not imported for home markets can be temporarily admitted and then re-exported from the country upon completion of the purposes and expiry of the legal duration of time for their stay in the country.

These Articles also refer to the temporary admission of tourist vehicles under the Temporary Admission System subject to the international agreements made in this connection.

Article (97) deals with the cases where the customs taxes “duties” levied on the foreign goods are wholly or partially refunded (drawback) at re-exportation according to the conditions set forth in the Rules of Implementation.

Section VIII

Exemptions

This Section contains provisions for the exemption from the customs taxes “duties” (Articles 98 to 106). Exemption covers the following commodities and items:

1. The commodities exempted in the Unified Customs Tariff of the GCC States.
2. The commodities imported for the diplomatic and consular bodies and the international organizations, the heads and members of the diplomatic and consular missions approved by the country according to the international agreements, laws and practices in force subject to the reciprocity principle and subject to the provisions of Article (100) concerning the conditions and procedures relating to the goods exempted under Article (99) of this Regulation “Law”.
3. Imports by all sectors of the Armed Forces and the Internal Security Forces such as ammunition, arms,...etc.
4. The personal effects and used household appliances belonging to the citizens residing abroad or those brought with the foreigners (expatriates) upon their first arrival for residence in the country according to the conditions prescribed by the director general.
5. Personal effects and gifts brought by passengers according to the conditions of the Rules of Implementation.
6. Imports of the philanthropic societies (Charities) according to the conditions set forth in the Rules of Implementation of this Regulation “Law”.
7. The cases provided for in Article (105) exempted from the customs taxes “duties” such as the returned goods of national origin that were exported to outside of the country as well as the foreign goods returned to the country which are proved to have been previously re-

exported to outside of the country and the goods temporarily exported for completion of processing or repair.

Section IX

Service Charges

Article (107) provides that the goods placed in the yards and warehouses belonging to the customs office shall be subject to the storage, handling and insurance charges and the fees of the other services required for the storage and inspection of the goods according to the specified rates. However, In no case shall the storage charge exceed half the estimated value of the goods, in the event such warehouses are managed by other entities, these fees shall be collected according to the provisions and rates prescribed in this respect. This Article permits the collection of charges for the sealing and analysis (testing) of the goods and all the other rendered services and that the services mentioned in this Article and the conditions of collection shall be prescribed by a resolution to be issued by the minister or the competent authority.

Section X

Customs Brokers

This section defines the customs broker and his capacity (Article 108) and Article (109) entitles the natural and legal nationals of the GCC States the right to exercise this profession (activity) after obtaining the necessary licence from the Administration.

Section XI

The rights and duties of the Customs officers of the Administration

This section outlines two important aspects of the nature of the job of the customs officers; the security aspect which is to prevent the entry of the smuggled goods and contraband into the country via the customs ports and the economic aspect being to collect the customs taxes “duties”. The section regulates the rights and duties of the officers of the Administration and the incentives given to them and this Regulation “Law” entitles them the power of judicial arrest. The section does also permit the customs officers to carry guns provided that such officers shall be nominated by a resolution of the minister or the competent authority and it requires the civil and military authorities and the Internal Security Forces to help them carry out the duties assigned to them when so requested.

Section XII

Customs Zone (Boundary)

This section contains provisions of the Customs zone (boundary):

Article (121) states that there are provisions of the customs boundary as provided for in para. 9 of Article (2) of this Regulation (Law) which states that the marine customs boundary covers the area of the sea located between the seashores and the ending of the territorial waters. The land customs boundary covers the lands located between the shores or the land borders on the one hand and an internal line to be specified by a resolution by the minister or the competent authority on the other. This provision provides that prohibited and restricted goods as well goods subject to high customs taxes “duties” shall be subject to the provisions of the customs zone. So the presence of such goods within these areas requires their subjection to the provisions of the customs

zone and the movement of such goods is usually subject to special provisions in order to avoid their smuggling into the country.

Section XIII

Customs Matters

This section deals with the customs matters which are an important aspect of the provisions of this Regulation “Law”.

Articles (122 to 128) relate to the investigation of smuggling according to the controls and powers set forth in these Articles such as the inspection of the goods and the means of transport and the search of persons, seizure of the goods, examining the documents, records, correspondence and other documents and the right to detain any suspect according to the rules prescribed by a resolution issued by the minister or the competent authority. Para (3) of Article (126) states that the exercise of work outside of the two customs zones shall be within the borders of the State.

Articles (129 to 134) deal with the seizure report and the main elements to be contained therein. This report is deemed as a pretext (proof) of the material facts and the incompleteness of the report shall not render it null.

Those Articles allow the customs office to seize the contravening or smuggled goods and the items used for concealing them as well as the various means of transport excluding those intended for the transport of persons unless such means are specially designed for the purpose of smuggling. The Administration has the right to dispose the goods smuggled or being smuggled if such goods are narcotics and the like according to the regulations and laws in force in the country.

Articles (135 to 137) deal with the provisional seizure of the smuggled goods and the things used for concealment thereof and the mean of transport and the seizure of all documents to ensure the customs taxes “duties”. These Articles also authorize the director general – when necessary- to obtain an order from the competent authorities to effect the provisional attachment of the properties of the offenders and those involved in smuggling. The director general may, when necessary to ensure the rights of the public treasury, impose a customs security on the properties of the tax “duty” payers or their partners. The Articles have specified the arrest cases in the smuggling crimes in the act, the resistance of the customs officers or the security officers and the other matters regulating the arrest process provided that the arrested persons shall be brought to the competent court within 24 hours following the time of arrest.

Article (138) provides that the offenders and the persons accused of smuggling shall be prevented from travel by a decision of the director general in the event the value of the seized items is not sufficient to cover the customs

taxes “duties” and fines. This decision can be cancelled if the offender submits a guarantee in an amount equivalent to the claimed amounts or if the value of the seized items turn to be sufficient to cover the claimed amounts.

Articles (139 to 141) deal with the customs offences and the penalties thereof and regard the collected customs fines and confiscations provided for in the Regulation “Law” as a civil compensation to the Administration and not subject to amnesty. These Articles also provide that a penalty shall be imposed on each offence separately provided that the higher (sterner) penalty shall be sufficient if the penalties are inseparable.

Except for the cases deemed as smuggling which are provided for in Article (143) of the Regulation “Law” and without prejudice to the provision of the international agreements in force, a fine shall be imposed on the offences referred to in Article (141) of this Regulation “Law” according to the rules set forth in the Rules of Implementation.

Articles (142, 143) deal in detail with the subject of smuggling, its definition and the cases deemed as smuggling. Para. “14” of Article (143) defines such case as those goods prohibited for exportation to outside of the country, but were exceptionally allowed to be exported provided that they shall be re-imported into the country and the non-compliance with this requirement shall be deemed as smuggling, while Article (144) defines the penal liability and those deemed penally liable.

Article (145) provides for the penalties imposed on the customs smuggling or attempted smuggling (the fines provided for in Article 145).

Articles (147 to 149) deal with the administrative prosecution “pursuit” and entitle the director general to issue the necessary decisions for the collection of the taxes “duties” and the measures of such collection and allow for the complaint before the minister or the competent authority against the penalization judgments. Within a specified period and that the minister or the competent authority may confirm, amend or cancel such judgments.

Article (151) provides that smuggling cases (actions) can only be activated by a written request from the director general.

Article (151) provides for the rules of reconciliatory settlement and entitles the director general or his representative to make a reconciliation (compromise) of the smuggling actions whether prior to bringing out the actions or during trial and before the issuance of the first instance judgment which shall be in lieu of the penalties and fines provided for in Article (145) of this Regulation “Law” provided that a manual of reconciliatory settlements shall be issued by a resolution of the minister or the competent authority.

Article (152) provides in detail for the amount of reconciliation subject to the provisions of Article (151).

Article (153) provides that the action (claim) shall be settled after reconciliation and Articles (154 to 160) deal with the subject of liability and joinder in the smuggling matters and the rules thereof, while Article (155) holds the investors of the private shops and premises where the goods ,subject of the offence or smuggling, are stored responsible for such premises; whereas the investors of the public shops and premises and the employees, the owners of the means of transport and drivers and their assistants shall be held responsible unless they prove their ignorance of the presence of such infringing goods or contraband and that they have got no direct or indirect good in them.

Article (156) provides that sponsors “guarantors” shall be held responsible within the extent of their guarantees upon payment of the customs taxes “duties” an fines while Article (157) provides that customs brokers shall be responsible for the offences and smuggling crimes they commit in the customs declarations and Article (158) holds the owners of the goods, employers and the carriers responsible for the acts of their employees and those working for them.

With respect to the customs taxes “duties”, fines and confiscations, Article (159) provides that heirs shall not be responsible for the payment of the fines imposed on the deceased unless they are partners in the smuggling.

Article (160) provides that the applicable customs taxes “duties” and fines shall be jointly paid by the offenders or smugglers according to the practices adopted for the collection of the property of the Government Treasury and that the seized goods and means of transport, if any, shall be a security for the payment of the claimed amounts.

Articles (161 to 165) provide for the formation of first instance customs courts at the Administration and the customs offices according to the legal instrument applicable in each State. The competences and judgments’ finality of such first instance customs courts and appeal courts as well as the collection of fines and the methods and means of executing attachment on the movable and unmovable property of the offenders have been set forth in these Articles. Article (165) empowers the minister or the competent authority to order that a sufficient amount of such property shall be retained for the payment of the claimed amounts.

Section XIV

The Sale of Goods

This section contains provisions relating to the sale of the goods in possession of the Administration provided for in Articles (166 o 172) and the

rules to be followed for the sale of goods as set forth in Article (166) whereas Article (167) entitles the Administration, after expiry of the period specified by the minister or the competent authority, the right to sell the goods stored in the customs warehouses or placed in the yards and wharves or the goods left out in the customs offices.

Article (168) provided for the goods to be sold by the Administration and Article (169) provides that the Administration shall not be responsible for any damage caused to the goods sold by the Administration under the provisions of this Regulation “Law” unless it is proven that the Administration had committed an obvious error in the sale process. Article (170) contains some provisions relating to the sale process described in detail in this Article.

Article (171) deals with the controls under which the disposition of the proceeds of the sale of the permitted, prohibited and restricted goods.

Article (172) provides that the portion due to the Government Treasury of the proceeds of the customs fines and the value of the confiscated or abandoned goods and means of transport shall be 50% after deducting the customs taxes “duties” and charges and contains provisions for the disposition of the remaining portion.

Section XV

Privilege of the Customs Administration

This section grants the customs administration a general privilege over the movable and unmovable property of the taxes “duties” payers in case of bankruptcy through precedence over all debts excluding the legal expenses in order to collect the customs taxes “duties” and other charges and the fines, compensations, confiscations and redemptions.

Section XVI

Prescription

This section contains provisions of prescription. Article (174) provides that any claim or action for the refund of the customs taxes “duties” that have been paid since more than three years shall not be accepted, and Article (175) empowers the administration to destroy the records, receipts, customs declarations and the other documents after five years following the finalization of the customs procedures thereof and the administration shall not be required

to produce them to any entity or give copies or duplicates thereof after the expiry of that period.

Article (176) provides that, without prejudice to the other regulations and laws applicable in the State, specifies the prescription time, in respect to customs, if no pursuit “prosecution” has been initiated.

Section XVII

Final Provisions

This section contains final provisions as follows:

Article (177) empowers the director general to:

1. exclude the ministries, governmental departments and official and public institutions from certain procedures for facilitation of their business, and
2. sell the confiscated goods to the ministries and official departments and public institutions belonging to the government at the price he deems appropriate if they indicate their need of such goods, or to abandon such goods free of charge by a resolution of the minister or the competent authority.

Article (178) entitles the Financial and Economic Cooperation Committee of the GCC States the right to adopt the Rules of Implementation of this Regulation “Law” and Article (179) provides that this Regulation “Law” shall, after implementation, supersede the customs regulations and laws in force in the member states subject to and without contradiction to the regulations and constitutional rules in each State.