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21871

DP/ID/SER.A/1784
2 June 1997
ORIGINAL: ENGLISH

SUPPORT TO YEMEN FREE ZONES DEVELOPMENT

DP/YEM/95/004

YEMEN

**Technical report: Customs regime for the free port and
free zone in Aden**

Prepared for the Government of Yemen
by the United Nations Industrial Development Organization
acting as an executing agency of the
United Nations Development Programme

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* This document has not been edited

TABLE OF CONTENTS

	<u>PAGE</u>
COMMENTS	1
TERMS OF REFERENCE	4
ADEN FREE ZONE - AN OUTLINE OF THE CUSTOMS REGIME	5
Introduction	5
Terminology	7
Arrival and departure of vessels	8
Free port goods	8
Goods destined to the home market	9
Free zone goods	10
Removal of goods from Customs Area to Free Port	14
Temporary transfer of goods into Free Zone	14
Temporary transfer of goods out of Free Zone	14
Other activities in the Free Zone	14
Trade statistics	15
CUSTOMS LAW RELATING TO ADEN FREE ZONE	16
I. INTRODUCTION	16
II. COMMENT ON EXITING PROVISIONS	17
III. ADDITIONAL PROVISIONS NEEDED	19
General	19
Free Port goods	19
Free Zone goods	19
IV. SUMMARY OF LEGAL POWERS OF CUSTOMS IN RESPECT OF ADEN FREE ZONE	21
Free Port	21
Free Zones	21
V. SUMMARY OF LEGAL OBLIGATIONS RELATING TO THE OPERATION OF ADEN FREE ZONE	22
Ship's agent	22
Port operator	22
Free Zone operator	23
Free Zone trader	23

VI.	REGULATION CONCERNING CUSTOMS FUNCTIONS (Draft)	24
	Definitions	24
	Arrival and departure of vessels	25
	Free Port and Free Zones - general provisions	26
	Removal of goods from the Free Port to the Customs Area	26
	Removal of goods from the Free Port to a Free Zone	27
	Removal of goods to other places in the Republic of Yemen	27
	Removal of goods from a Free Zone to the Free Port	28
	Removal of goods from Customs Area to Free zone	28
	Temporary removal of goods from the Free Port or a Free Zone	28
	Right of Customs to receive additional information	29
	Right of entry by Customs	29
	Offences	30
	ADEN FREE ZONES: CUSTOMS ADMINISTRATION ORGANIZATION WITH THE PORT OPERATOR, THE FREE ZONE OPERATOR AND FREE ZONE TRADERS, AND CUSTOMS TRAINING NEEDS	31
	Introduction	31
	Free Zone Directorate	31
	Customs Area Directorate	33
	SUMMARY OF MAIN DUTIES	34
	General Director, Free Zone Customs	34
	General Director, Customs Area	34
	TRAINING	35
	General	35
	Free Zone Training for customs officials	35

COMMENTS

1. This report covers the second phase of the work of the Customs Adviser in the Republic of Yemen working in accordance with the terms of reference reproduced as an Annex to this report. The first phase mission took place in November - December 1996, and was the subject of an Interim Report dated 20 January 1997. Material which was the subject of that Interim Report, or contained in the papers attached to it, is not repeated in this report. The second phase mission took place in March - April 1997.
2. Some small difficulties were experienced concerning terminology. Under the Free Zone Law, Aden Free Zone includes Aden Free Port and a number of Free Zones, but in practice it is necessary to distinguish between the different functions of the port and the zones. Aden Port Authority has found it necessary to make a similar distinction between the two in its documents, including the unnumbered draft law concerning the Port of Aden approved by the Aden Port Development Committee. Care has been taken to clarify this necessary distinction in the attached Regime and Legal papers.
3. There were also some difficulties concerning the proposed institutional arrangements for operation of the Free Port, viz the future roles of the Port Authority, the Yemen Free Zones Public Authority (YFZPA), and any future concession holders, but these questions were duly resolved during the mission, and it was possible to clarify the likely interface between Customs and other interested parties for the purpose of the Regime and Legal papers which form part of this report.
4. The YFZPA clearly wished to have no involvement of Customs in the Free Port and the Free Zones. Their reasons for wanting to keep Customs out, only hinted at and not stated explicitly, may include fear of delay caused by customs inefficiency, and fear of unco-operative excessive zeal by some officers, possibly motivated by attempts to supplement their low earnings. Discussion of the pay and conditions of customs officials is outside the scope of this report, but an aim of the proposals contained in this report is to make Customs efficient in their dealings with Aden Free Zone operations.
5. During this second mission, it became apparent that the Customs administration was prepared to accept a much lower involvement in Aden Free Zones than found in free zones elsewhere. However, whilst some activities in Aden Free Zone can be regarded as not subject to customs law, it cannot be accepted that the port operator, the YFZPA, or free zone traders operating under licence granted by the FZPA would be above the law. Their activities must therefore be subject to some scrutiny by Customs.

6. It is clear that the YFZPA accepts that the port operator, free zone operator and free zone traders must be accountable under the law in case of infringements of customs law, eg smuggling from the Free Port or illicit removal of goods from a Free Zone. The YFZPA has also fully accepted that Customs should be provided with information about Free Port and Free Zone activities for statistical and other purposes. Use of that information by Customs for monitoring of Free Port and Free Zone activities is proposed in this report.

7. The question of duty free materials for use in free zone construction was raised again during the second mission. It is not appropriate to ask whether Customs would allow them duty free. Apart from the general provisions of Article 169 of Law No. 14 of 1990 concerning Customs, which do not cover the case in question, goods can be allowed duty free in one of two ways, neither of which require Customs to make any decision:

- (a) the appropriate authority (eg the Investment Board) grants duty free admission, and informs the Ministry of Finance which issues instructions to the Customs administration; or
- (b) if the Free Zone already exists in law, in common with other goods, materials can be admitted free of duty because neither the Free Zone law nor the Customs law make any exception for materials.

In both cases, the Customs administration simply follows its instructions and admits the goods free of duty.

8. This report contains the general conclusions reached as a result of both phases, and which are covered in the following attached papers:

**ADEN FREE ZONE
AN OUTLINE OF
THE CUSTOMS REGIME**

**CUSTOMS LAW RELATING
TO ADEN FREE ZONE**

ADEN FREE ZONES
CUSTOMS ADMINISTRATION ORGANIZATION, RELATIONS
WITH THE PORT OPERATOR, THE FREE ZONE OPERATOR,
AND FREE ZONE TRADERS, AND CUSTOMS TRAINING NEEDS

9. In addition, a confidential paper entitled

CUSTOMS MONITORING AND CONTROL
OF ADEN FREE ZONES OPERATIONS

has been supplied to the Customs administration. An important part of the customs monitoring and control will be checking on the activities of the port operator, the free zone operator and free zone traders. It is not considered to be in the public interest to supply a copy, describing in detail how their activities will be monitored, to YFZPA. Therefore the paper is not included with this report.

10. The writer wishes to express his appreciation of the very high degree of co-operation received from the Customs administration throughout both missions.

TERMS OF REFERENCE

(COVERING BOTH PHASES)

1. Review the operation of existing duty free regimes in the Republic of Yemen and the difficulties, if any, experienced by users of the regimes;
2. Based on international experience of customs practices in free ports and free zones set out the main elements of a customs regime for the free port and free zone in Aden;
3. In consultation with the Yemen Customs Administration and the YFZPA, prepare recommendations covering legislation, regulations, documentation and operating procedures for free zones in the Yemen. In preparing the recommendations the consultant should take account of the objective of promoting trade and business between the free zone and the rest of the Yemenii economy;
4. Propose an organization structure for the operation of the free zone customs and outline the relationship which should exist between the Customs Administration, the Developer, and the Authority;
5. Develop proposals for the computerization of free zone customs operations and in consultation with the Customs Administration, the Authority, and the Information Specialist, consider the extent to which the system could be linked to the Authority's information system;
6. During the course of the project, provide training and advice for relevant Customs and Authority staff;

Outline the need for further training and technical advice in relation to the operation of the free zone customs regime.

ADEN FREE ZONE AN OUTLINE OF THE CUSTOMS REGIME

Introduction

1. This document describes in outline the customs regime to operate in Aden Free Port and the Free Zones. The document is not intended to constitute a legal text. To promote the use of the facilities, it is important that all procedures be kept as simple as possible, and the level of necessary controls and their impact on the user be minimized.

NOTE. For ease of reference, page numbers of this document are prefixed with the letter "R" (Regime paper).

2. The proposals in this document for the role of Customs have been developed with reference to the following:

- (a) Free Zone Law No. (4) for the Year 1993;
- (b) Law No. 14 of 1990 concerning Customs;
- (c) an unnumbered Resolution of the Prime Minister concerning Executive Regulation of Law No. (4) of 1993 Concerning the Free Zone;
- (d) an unnumbered draft Customs Regulation approved several months ago by a Committee comprising representatives of the Port Authority, the Yemen Free Zone Public Authority (YFZPA), the Ministry of Transport, and Customs;
- (e) an unnumbered draft law concerning the Port of Aden approved by the Aden Port Development Committee;
- (f) recommendations in the International Convention on the Simplification and Harmonization of Customs Procedures, Kyoto, 1973, relating to the operation of free zones;
- (g) practical experience of free zone operations elsewhere;
- (h) the views of the Legal Adviser to the YFZPA as expressed in a December 1996 note and at a follow-up meeting; and
- (ij) the views of the General Director of Aden Customs expressed at several meetings with him.

3. It is clear from (c), (d), (h) and (ij) above that the agreed intention is to minimize the role of Customs in respect of the Aden Free Zones. The YFZPA will be responsible for administration of the Free Zones, including the licensing of traders, approval of the types of activity that may take place in the Free Zones, what types of goods may be introduced into the Free Zones, and monitoring of activities within the Free Zones. The role of Customs will be limited to receipt of information about Free Zone goods and activities, and carrying out external controls such as perimeter and gate control. Customs would intervene in a Free Zone only in exceptional circumstances.

4. Nevertheless, Customs have a duty to ensure that Government revenue does not suffer as a result of Free Zone goods irregularities. So that Customs can comply with their legal obligations and responsibilities concerning Government revenue, the following will be essential:

- (a) normally, each Free Zone should have only one gate for use both as entrance and exit, although another secured access may be provided for emergency use;
- (b) perimeter fences must be constructed to a standard acceptable to Customs;
- (c) unimpeded patrol of perimeter fences must be possible;
- (d) suitable facilities must be provided for a customs presence at the entrance and exit of all Free Zones;
- (e) the information given to Customs must be in the most convenient form for use by the Customs administration and the Central Statistical Office;
- (f) the information given to Customs must be complete and accurate; and
- (g) the flow of information to Customs must be timely, regular, and reliable.

These requirements will be incorporated in amendments to be made to the draft Regulation mentioned in paragraph 2(d) above. Revenue control and monitoring of Free Port and Free Zone activities being heavily dependent on the information received by the Customs administration, enforcement provisions for each aspect of the information flow need to be included in the Aden Free Zone Regulation relating to Customs functions.

5. What is presented in this document is considered by the writer to be the minimum acceptable role for Customs, but nothing in this document is intended to prevent Customs from granting more favourable facilities in particular circumstances in which they are able to do so without risk to the revenue and without prejudice to statistical requirements.

Terminology

6. In this document, the term "port operator" means the party responsible for, and having custody of, the goods after they pass over the ship's rail, and before custody is transferred to the owner or agent of the owner. This may be a company operating in the port under concession: for example, a container terminal operator. The term "free zone operator" means the party responsible for the administration and management of the free zone in question, ie the YFZPA, or other party authorized by YFZPA to perform those functions in a particular zone.

7. In this document, the terms "transshipment" and "transit" are used in accordance with the definitions given in the Kyoto Convention (see paragraph 2(f) above). Transshipment means that the goods arrive at, and are shipped from, a place or places under the control of the same customs office without passing through customs territory. Transit means that the goods pass through customs territory under customs control, and the control passes from one customs office to another.

8. Introduction of goods into a free zone does not constitute importation into the country, and this distinction is strictly observed in a country's foreign trade statistics. If the goods are subsequently sent abroad again from the free zone, they are not re-exported because they were never imported. This technicality is often ignored in everyday usage, but to avoid any possible confusion, in this document the terms used are:

arrival of goods in the Free Port;

shipment of goods from the Free Port;

introduction of goods into a Free Zone; and

removal of goods from a Free Zone.

9. For free zones which are enclaves within the customs territory of a country, control by Customs of the movement of goods to and from the zones through customs territory is required. For this reason, and because the Free Port has a secure perimeter that can be more effectively controlled, some distinction is made in this document between customs control relating to Free Port goods and Free Zone goods.

Arrival and departure of vessels

10. The movement and berthing of vessels of less than 200 tons will continue to be restricted by the Port Authority in accordance with present legal provisions.

11. Not later than 24 hours after arrival, the ship's agent will submit to Customs copies of the cargo manifest showing which cargo is destined to the Free Port and that which is destined to the Customs Area for the home market. Cargo manifests are to be submitted earlier if possible, and before arrival of the vessel whenever possible.

12. Within two weeks of discharging of the vessel, the ship's agent will submit to Customs a declaration of the cargo actually unloaded together with an explanation of any shortage or surplus. If not immediately available, such explanation must be submitted within six months.

13. Not later than 24 hours after departure, the ship's agent will submit to Customs a copy of the cargo manifest showing all goods loaded in Aden Free Port.

Free Port goods

14. Free Port goods are those which arrive for transshipment (ie the onward routing is known when the goods arrive), or for re-shipment after storage in the Free Port. No customs declaration relating to their arrival or shipment, nor customs examination, will be required for such goods. Customs will not directly control these goods, nor impose any time limits or other restrictions or conditions concerning their stay in the Free Port.

15. Customs will control possible illicit removal of goods from the Free Port by exercising strict physical control of the Free Port perimeter. At the request of the General Director, Free Zone Customs, or a customs official authorized by him for that purpose, the port operator may be required to give information to Customs in the event of apparent discrepancies, etc, failing which Customs may take reasonable action to safeguard the revenue. Customs will intervene directly in the Free Port to examine goods, etc, only on rare occasions if there is good reason to suspect a serious irregularity. Any such intervention must be specifically approved in writing by the General Director of Aden Customs, or an officer authorized by him for that purpose. Port operator employees may be present throughout the intervention.

16. If Free Port goods are removed for shipment from a place other than Aden Free Port, eg Aden International Airport or another port, they will be transferred under a customs transit control procedure (see paragraphs 23 - 24 below).

Goods destined to the home market

17. Goods destined to the home market will normally be transferred from the Free Port as soon as possible to the Customs Area, where they will be cleared under the normal import procedures, and delivered direct from the Customs Area. In due course, in addition to the Customs Area at Ma'alla Wharf, a second Customs Area will be constructed on the north side of the harbour.

18. Because of the small size of the Customs Area at Ma'alla Wharf, by standing agreement with the YFZPA and the port operator, to facilitate Yemen's international trade some bulk goods for the home market will continue to be cleared by Customs in the Free Port. Goods such as rice, cement, timber, sugar, steel rods and frozen food will, as at present, be examined by Customs at the ship's side, and cleared for direct delivery from the Free Port to the home market via the most convenient gate. Similarly, if any other consignment cannot be readily moved to the Customs Area for clearance because of congestion or other difficulty in moving the goods, the YFZPA/port operator will allow it to be cleared by Customs in the Free Port.

Free Zone goods

19. Article 8 of the Free Zone Law prescribes the activities which are permitted in the Free Zone under licence issued by the YFZPA. Articles 9 and 10 prescribe goods and activities which are prohibited in the Free Zone.

20. It is expected that the activities normally allowed in free zones will be allowed in Aden Free Zone. These include storage, handling, processing and destruction. Handling covers simple operations:

- to preserve the goods;
- to improve their presentation or merchantable quality;
- to prepare them for distribution or resale.

Processing means any operation which changes the condition of goods, and includes both manufacture and assembly. In order to control the perimeter intelligently, and to understand the data supplied to them, Customs need to be aware of the nature of permitted Free Zone activities. Either the information about the grant and cancellation of licences will be published regularly in an official "Free Zone Gazette", or Customs will be supplied with copies of the licences issued.

21. To facilitate improved efficiency in Customs administrations (including computerization), the World Customs Organisation recommends use of a common document design for all information supplied to Customs. The Republic of Yemen will adopt this practice in the near future using a document known as YEMSAD.

22. The zone operator will advise Customs of details of the movement of goods into a Free Zone from the Free Port. The YEMSAD, completed by the free zone trader, should be used as the customs advice document supplied by the free zone operator. The information to be supplied on it must be kept to the minimum needed for Customs to calculate duties and taxes on the goods if they become chargeable. Only this essential data should be required on the form, other boxes being left blank. Customs will advise on how the form should be completed. The information supplied will include:

container no. (or marks and numbers of other packages),		
trader,	description of goods,	country of origin,
tariff code,	CIF value,	net weight.

23. For goods to be moved to a Free Zone not adjoining the Free Port, the simplest possible customs transit procedure will be used. A transit declaration, completed by the trader, may be required by Customs to control the movement. Customs will not normally need to examine the goods, but if this is deemed necessary, Customs can conduct the examination at the most convenient place for the trader, ie inside or outside the Free Port, outside or inside the Free Zone. The goods will be transferred under customs transit control to the Free Zone. For short distances, a customs escort is usually the simplest method.

24. For removal to distant free zones which may be set up, the usual methods of customs transit procedure will apply. A form of guarantee that duty will be paid in the event of irregular diversion of the goods to the home market may be required, and the goods may be moved under seal without escort. On arrival at the Free Zone gate, Customs will check the seals, etc, before releasing the goods into the Zone.

25. The zone operator will advise Customs of details of goods to be moved from a Free Zone into the Free Port as for goods moved into a Free Zone (see paragraph 22 above). For goods to be moved to the Free Port from a non-adjoining Free Zone, the simplest possible customs transit procedure will be used, as mentioned in paragraphs 23 - 24 above. On arrival at the Free Port gate, Customs will check the seals, etc, before releasing the goods into the Free Port.

26. With possible preferential tariff and quota advantages, goods which have been processed in the Free Zone may qualify as goods of Yemeni origin in industrialized countries. This will be determined in accordance with the rules of origin of the importing country. The rules of origin of some importing countries require a certificate of origin to be issued by the Customs administration of the exporting country. Otherwise, the YFZPA would seem to be the most appropriate body to certify origin for which the form of certificate of origin required by the importing country must be used. Under normal international practice, the importing country will select some certificates for verification. They will be sent by the foreign administration to the Yemeni Customs administration for the latter to check the zone trader's production records to ensure that the relevant criteria were met, and that the certificate was properly issued.

27. Some free zones are set up primarily for the processing of goods for foreign markets, but it is understood that the policy in the Republic of Yemen will be for the home market also to benefit from Aden Free Zone. How Free Zone goods removed for the domestic market will be valued for customs purposes therefore needs to be considered further. Under the existing customs law, the customs value of processed goods will be their total value at the time of removal from the Free Zone including the cost of foreign components and the value added in the Free Zone. However, the Government may wish to modify this to allow the local market to benefit more from Free Zone operations.

28. As proposed in the draft Executive Regulation of Law No.(4) of 1993 Concerning the Free Zone, duty and tax could be levied on the value of the foreign components only. In this case, after examining the production records, the zone operator would have to issue a materials certificate showing this value, and Customs would use it in determining the value. Following normal practice, Customs would occasionally select some materials certificates for verification from the zone trader's production records.

29. The second possibility is to establish origin criteria under which goods manufactured in the Free Zone might qualify for admission as Yemeni products without liability to import duty. Frequently used origin criteria are:

- (a) a certain minimum percentage value added; and/or
- (b) undergoing a process which changes the classification under the International Harmonized Commodity Description and Coding System (HS).

Some rules of origin require a minimum percentage local ownership of the zone trader. Certificates of origin would be issued by the YFZPA, and would be subject to occasional verification by Customs as mentioned above.

30. Goods permitted to be removed from the Free Zone for the local home market must be transferred to the Customs Area for importation in accordance with the normal import procedures. A customs transit procedure may be needed if this transfer is through customs territory. If goods are removed from the Free Zone for a distant home market, and if deferment of the payment of duty and taxes is allowed until the goods have arrived there, a form of guarantee that duty will be paid in the event of irregular diversion of the goods to the home market may be required. The goods may then be moved under seal without escort. However, the Customs regulation may provide that certain goods cannot be moved without escort.

31. Customs are not to delay Free Zone goods even when there are minor documentary irregularities: these should be remedied, if necessary, after movement of the goods.

32. Surplus Free Zone goods may, with any necessary free zone operator prior approval, be:

- (a) destroyed in the Free Zone under supervision (if the destruction is not supervised by Customs, a certificate of destruction will be required from the zone operator); duty may be chargeable on any scrap or waste delivered to the home market;
- (b) by arrangement with Customs, abandoned to Customs at the Free Zone gate, without payment of duty, for disposal in accordance with Customs regulations; or
- (c) removed under Customs supervision to the Customs Area for importation in accordance with the normal import procedures.

33. On request of the General Director of Aden Customs, or an officer authorized in writing by him for that purpose, the free zone trader or zone operator may be required to give information to Customs in the event of apparent discrepancies, etc, failing which Customs may take reasonable action to safeguard the revenue. Customs will intervene directly in a Free Zone only on rare occasions if there is good reason to suspect a serious irregularity, and then only when the intervention has been specifically approved in writing by the General Director of Aden Customs, or an officer authorized in writing by him. When customs officials enter a Free Zone, zone operator employees may accompany them. If goods which have been introduced into a Free Zone cannot be accounted for, either the trader or the free zone operator may, depending on the circumstances, be liable to pay duty on them.

Removal of goods from Customs Area to Free Port

34. Goods will be considered as exported when moved from the Customs Area to the Free Port or Free Zone. Export formalities including documentary requirements, duties, drawback, prohibitions and restrictions apply at that stage.

Temporary transfer of goods into Free Zone

35. Goods may be transferred temporarily via the Customs Area to the Free Zone or Free Port for repair, maintenance, processing, assembly, etc, and will be dealt with under a simple customs temporary export procedure. On return of the goods from the Free Zone, duty may be payable on the cost of the repairs, etc. Article 168(2) of Law No. of 1990 provides for 25% duty to be charged on the cost of such repairs.

Temporary transfer of goods out of Free Zone

36. Free Zone goods may be transferred temporarily out of the Free Zone (including the Free Port) via the Customs Area for repair, maintenance, assembly, etc. They will be dealt with under a simple customs temporary import procedure. Financial security to cover the duties and taxes potentially payable on the goods may be required.

Other activities in the Free Zone

37. Operations such as the provision of duty free ships' stores in the Port of Aden will continue, and the relative present procedures will continue to apply, *mutatis mutandis*. Any minor variations which may be found necessary are not dealt with in this paper.

38. No one will be allowed to reside permanently within the Free Zone.

39. Except for deliveries from Ma'alla Wharf under paragraph 18 above, and transfers of Free Zones goods in accordance with paragraphs 22 - 25 above, goods may enter and leave the Free Port only via the Customs Area.

40. With the agreement of Customs, retail outlets may be established within the Free Port for the sale of domestic and foreign goods. Goods for consumption in the Free Port will not be sold duty free. The area at present used by passenger vessels is outside the limits of the Free Port. If a duty free shop is established in an area of the Free Port used by passengers, free goods may be purchased only by passengers and crew, and not by port employees.

Trade statistics

41. The Republic of Yemen uses the special trade system which means that goods are not regarded as imported until they are cleared by Customs. Goods introduced into a free zone are not included in import statistics unless and until they are subsequently removed for the home market. The Central Statistical Office will keep separate statistics for the introduction and removal of free zone goods. The data required by the Central Statistical Office can be obtained from the documents referred to in paragraphs 10, 12, 21, 22 and 24 above.

CUSTOMS LAW RELATING TO ADEN FREE ZONE

I - INTRODUCTION

This document relates to the English translation of an unnumbered draft Customs Regulation approved several months ago by a Committee comprising representatives of the Port Authority, the Yemen Free Zone Public Authority (YFZPA), the Ministry of Transport, and Customs.

In addition to this Introduction, this document also contains the following:

- II Comment on the provisions of the existing draft Regulation as they appear in the English translation;

- III Additional provisions that need to be added to the existing draft;

- IV A summary of the necessary legal powers of Customs in respect of Aden Free Zone;

- V A summary of necessary legal obligations relating to the operation of Aden Free Zone; and

- VI At the request of the General Director of Aden Customs, a complete draft Regulation. This is not included as a proposed definitive text, but being a draft which includes all the suggestions made elsewhere in this paper it is thought that it will assist drafting of the final text. Revenue control and monitoring of Free Port and Free Zone activities is heavily dependent on the information received by the Customs administration. Enforcement provisions have therefore been included for each aspect of the information flow.

For ease of reference, page numbers of this document are prefixed with the letter "L" (Legal paper).

II - COMMENT ON EXISTING PROVISIONS

The draft Regulation relates only to the Free Port. It does not contain necessary provisions relating to the operation of Free Zones. The draft contains a number of provisions not appropriate to customs law, including some descriptive material which was probably included at the time by way of explanation of how the Free Port would operate.

Article 1(i)

This provision is restrictive and therefore not appropriate in a Regulation introduced at a time when the objective is simplification. In view of short sea routes from Djibouti, etc, it should be dropped. Customs should not delay vessels if 72 hours advance notice is not given.

Article 1(ii)

This needs clarification. Steamer Point, for example, is not in the Free Port and a vessel arriving there should not be shown as arriving in the Free Port.

Article 1(iii)

Cargo manifests are available much earlier now than previously. They can now often be provided before the ship arrives. It is therefore suggested that the cargo manifest should be submitted to Customs within 24 hours of arrival of the vessel.

Article 4(a) and (b)

These practical working arrangements should operate by standing, preferably written, agreement between YFZPA, the port operator and Customs. They do not need to be included in the law.

Article 5(ii)

It needs to be clarified that this refers to goods shipped from the Free Port to foreign markets. The clarification is perhaps needed only in the English translation.

Article 10(b)

Provision is made for certain goods to be excluded from inland transit, presumably where the risk to the revenue is considered to be especially high. The exceptions appear to be unduly restrictive, and the need for them should be reconsidered. However, pending further consideration they have been retained in the new draft Regulation in this document.

Articles 12 and 15

These health, safety, security and intellectual property rights provisions are apposite, but they should not be in a Customs regulation - it is not for the Customs administration to legislate on these matters in a free port.

III - ADDITIONAL PROVISIONS NEEDED

GENERAL

1. Revenue control and monitoring of Free Port and Free Zone activities being heavily dependent on the information received by the Customs administration, enforcement provisions for each aspect of the information flow need to be included in the Regulation.

FREE PORT GOODS

2. The ship's agent will be required to lodge an outward cargo manifest with Customs within 24 hours of the sailing of the vessel.

3. The ship's agent must comply promptly with any request for information about goods which arrived on a vessel for which the agent acts, such request to be made by the General Director, Free Port Customs, or an officer duly authorized by the General Director, Free Port Customs to make such requests.

4. The port operator must comply promptly with any request in writing for information about Free Port goods made by the General Director of Aden Customs, or by an officer authorized in writing by the General Director of Aden Customs to make such requests.

5. If requested in writing by the General Director of Aden Customs, or by an officer authorized in writing by the General Director of Aden Customs, when serious irregularities or discrepancies are being investigated, the port operator must promptly admit Customs officials to the Free Port to inspect goods or examine documents. In any such instance, the port operator may accompany the customs officials.

FREE ZONE GOODS

[NOTE 1. The draft Customs Regulation covers Free Port activity only, and some additional provisions are needed relating to Free Zone goods.]

6. The free port operator must supply to Customs a daily list of goods removed from the Free Port to a Free Zone without being subject to a customs transit procedure.

7. The free port operator must supply to Customs a daily list of goods received in the Free Port from a Free Zone without being subject to a customs transit procedure.

8. The free zone operator must provide within 24 hours information in the prescribed form to Customs about all goods received from the Free Port in a Free Zone without being subject to a customs transit procedure.

9. The free zone operator must provide within 24 hours information in the prescribed form to Customs about all goods removed from a Free Zone to the Free Port without being subject to a customs transit procedure.

[NOTE 2. Given the nature of the customs control of Free Zone goods, the receipt of information about the movement of goods between the Free Port and adjacent Free Zones is of crucial importance. Customs have no way of checking that the zone operator actually supplies the information without the list independently supplied by the port operator.]

10. On behalf of the free zone trader, the free zone operator must lodge with Customs the stipulated customs transit document for goods to be moved across customs territory between the Free Port and a Free Zone or between two Free Zones.

11. The free zone operator must make available, either publicly or by direct advice to Customs, information about licences issued for operations in Free Zones, including particulars of the free zone trader, period of validity, the types of permitted activities, and extensions and cancellations of such licences.

11. The free zone operator must comply promptly with any request for information about Free Zone goods made by the General Director of Aden Customs or by an officer authorized in writing by the General Director of Aden Customs to make such requests.

12. If requested in writing by the General Director of Aden Customs, or by an officer authorized in writing by the General Director of Aden Customs for the purpose of making such requests, when serious irregularities or discrepancies are being investigated, the free zone operator must promptly admit Customs officials to the Free Zone to inspect goods or to examine documents. In any such instance, the free zone operator may accompany the customs officials.

IV - SUMMARY OF
LEGAL POWERS OF CUSTOMS
IN RESPECT OF ADEN FREE ZONE

Free Port

1. Regularly and routinely to receive complete information about the goods carried on vessels arriving in the Free Port and which of those goods are destined to the Customs Area.
2. Regularly and routinely to receive information about the goods carried on vessels leaving the Free Port.
3. In compliance with the procedure laid down, to obtain additional information from the port operator in the event of suspicion of irregular conduct or serious unexplained discrepancies.
4. In compliance with the procedure laid down, to inspect goods and documents in the Free Port if investigating serious irregularities or discrepancies.

Free Zones

5. Regularly and routinely to receive detailed information about goods introduced into Free Zones.
6. Regularly and routinely to receive detailed information about goods removed from Free Zones.
7. Regularly and routinely to receive information about licences issued for operations in Free Zones, including particulars of the free zone trader, period of validity, types of permitted operations, and extensions and cancellations of such licences. The free zone operator must make this information available either publicly or by direct advice to Customs.
8. In compliance with the laid down procedure, to obtain additional information from free zone operator (or free zone trader via the free zone operator) in the event of serious unexplained discrepancies or suspicion of irregular conduct.
9. In compliance with the laid down procedure, to enter a Free Zone to check documents and stock of a free zone trader in the event of suspicion of irregular conduct.

V - SUMMARY OF
LEGAL OBLIGATIONS
RELATING TO THE OPERATION OF
ADEN FREE ZONE

Ship's agent

1. To lodge an inward goods manifest with Customs within 24 hours of arrival of vessel, the manifest showing which goods are to remain in the Free Port and which goods are destined to the Customs Area.
2. To lodge an outward goods manifest with Customs within 48 hours of departure of vessel, showing all goods loaded in Aden Free Port.
3. To comply promptly with any request for information about goods which arrived on a vessel for which the agent acts. Such request to be made by the General Director, Free Zone Customs, or a more senior customs official.

Port operator

4. To move goods destined for the Customs Area from the Free Port to the Customs Area within 24 hours of unloading from the vessel.
5. To supply to Customs within 24 hours of removal from the Free Port a list of all goods moved from the Free Port into an adjacent Free Zone without being subject to a customs transit procedure.
6. To supply to Customs within 24 hours of receipt into the Free Port a list of all goods moved from an adjacent Free Zone into the Free Port without being subject to a customs transit procedure.
7. To comply promptly with any request for information about Free Port goods made by the General Director of Aden Customs, or by an officer authorized in writing by the General Director of Aden Customs for the purpose of making such requests.
8. To admit customs officials without delay in response to a request duly signed by the General Director of Aden Customs, or by an officer authorized in writing by the General Director of Aden Customs for the purpose of making such requests.

Free zone operator

9. To provide within 24 hours information to Customs in the prescribed form about all goods received from the Free Port in a Free Zone adjacent to the Free Port without being subject to a customs transit procedure.

10. To lodge with Customs the prescribed customs transit goods declaration for goods to be moved across customs territory between the Free Port and a Free Zone or between two Free Zones.

11. To make available, either publicly or by direct advice to Customs, information about licences for operations in Free Zones issued, extended or cancelled, including the type of permitted activities.

12. To comply promptly with any request for information about Free Zone goods made by the General Director of Aden Customs or by an officer authorized in writing by the General Director of Aden Customs for the purpose of making such requests.

13. In response to a request duly signed by the General Director of Aden Customs or by an officer authorized in writing by the General Director of Aden Customs for the purpose of making such requests, to admit customs officials to a Free Zone without delay for the purpose of investigating serious discrepancies or suspicion of irregular conduct.

Free zone trader

[NOTE. The following requirements should be embodied in the appropriate legislation or terms of licence granted by the YFZPA].

14. The free zone trader will supply to the port operator all information necessary for compliance with 4 above.

15. The free zone trader will supply to the free zone operator all information necessary for compliance with 9, 10, and 12 above.

VI
THE REPUBLIC OF YEMEN
ADEN FREE ZONE

REGULATION CONCERNING CUSTOMS FUNCTIONS

(DRAFT)

Definitions

For the purpose of this Regulation:

- (a) the term "Aden Free Zone" includes Aden Free Port and the Free Zones established in accordance with the Free Zone Law No.(4) for the Year 1993; having regard to their different functions, for clarity, in this Regulation a distinction is made between the Free Port and the Free Zones;
- (b) the term "Customs Area" means any enclosed area under customs control designated as a place at which goods will be held pending customs clearance;
- (c) the term "customs territory" means the geographic area of the Republic of Yemen which does not fall within the Free Port or any Free Zone established in accordance with the Free Zone Law No.(4) for the Year 1993;
- (d) the term "carrier's agent" means the party authorized to act for or on behalf of the carrier;
- (e) the term "port operator" means the party responsible for, and having custody of, the goods after they pass over the ship's rail, and before custody is transferred to the owner or the agent of the owner;
- (f) the term "free zone operator" means the party responsible for the administration and management of the particular Free Zone in question;
- (g) the term "free zone trader" means any trader duly licensed to store, handle or process goods in a Free Zone;
- (h) the term "goods declaration" means a statement made in the form prescribed by Customs by which the persons interested indicate the customs procedure to be applied to the goods and furnish the particulars which the Customs require to be declared for the application of that procedure;
- (ij) the term "person" means both natural and legal persons, unless the context otherwise requires;
- (k) the term "customs transit" means the customs procedure under which goods are transported under customs control through customs territory from one customs office to another;

- (l) the term "customs control" means measures applied to ensure compliance with the laws and regulations which the Customs are responsible for enforcing;
- (m) the term "security" means that which ensures to the satisfaction of the Customs that an obligation to the Customs will be fulfilled.

Arrival and departure of vessels

Article 1

(i) The carrier's agent shall lodge with Customs a properly completed inward cargo manifest within 24 hours of the arrival of the vessel. The manifest shall include particulars of all cargo carried by the vessel, and shall show which cargo is destined to the Customs Area, that which is destined to the Free Port, and that which will remain on board on the vessel.

(ii) A carrier's agent who fails to lodge a cargo manifest within 24 hours of arrival of the vessel shall be liable to a penalty of ... per day until such time as the manifest is duly lodged.

Article 2

(i) Within two weeks of the unloading of the cargo, the carrier's agent shall submit to Customs a declaration of the cargo unloaded, both that destined to the Customs Area and that destined to the Free Port, showing details of cargo unloaded which did not appear on the manifest submitted under Article 1(i), and showing details of cargo which appeared on the manifest submitted under Article 1(i) which was not unloaded.

(ii) For any surplus or deficit reported under Article 2(i), the carrier's agent or the master of the vessel must submit an explanation within three months. If such explanation is not submitted within that period, or is deemed by Customs to be unsatisfactory, the carrier's agent shall be liable to a penalty of ...

Article 3

The carrier's agent shall lodge with Customs a properly completed outward cargo manifest within 48 hours of the departure of the vessel. The manifest shall include particulars of all cargo carried by the vessel, and shall show which cargo was loaded in Aden Free Port and that which remained on board during the vessel's stay in port. A carrier's agent who fails to lodge an outward cargo manifest within 48 hours shall be liable to a penalty of ... per day until such time as the manifest is duly lodged.

Article 4

(i) The restrictions on the cargoes, course in the port, and the berthing of vessels whose gross tonnage is less than 200, which are laid down in Articles 25 and 26 of Law No. 14 of 1990 concerning Customs shall apply in the Free Port.

(ii) Vessels of gross tonnage of 200 or more may be supplied in the Free Port with spare parts, tools, foodstuff, cigarettes, liquor, fuel and oil free of duty under existing customs procedures.

Free Port and Free Zones - general provisionsArticle 5

(i) With the exception of the consumable goods mentioned in Annex A, all goods in the Free Port or a Free Zone shall be free of duty and taxes.

(ii) Except in accordance with any written agreement with the port operator or zone operator, or under the powers granted under Article 17 of this Regulation, Customs officials shall not be present in the Free Port or Free Zone.

(iii) The port operator may, with the agreement of the Customs administration, open retail or wholesale outlets in the Free Port for the sale of goods to passengers and crew.

(iv) Permanent residence in the Free Port or a Free Zone shall not be permitted.

(v) Except for vehicles passing between the Free Port and an adjacent Free Zone, unless specifically authorized by the General Director of Aden Customs to use another entrance or exit, vehicles loaded with goods shall enter and leave the Free Port only through the Customs Area.

(vi) The free zone operator shall make available to the Customs administration, either by direct advice or by means of public announcement, information about licences issued for operations in the Free Zones, the information to include particulars of the free zone trader, the type of activity permitted, the period of validity, and extensions and cancellations of such licences.

Removal of goods from the Free Port to the Customs AreaArticle 6

(i) The port operator shall transport goods destined to the Customs Area from the Free Port to the Customs Area within 24 hours of unloading from the vessel. In the event of unavoidable delay, the port operator shall inform Customs and explain the reason for the delay. If the port operator fails to inform Customs of the delay, or is unable to submit a satisfactory explanation, a penalty of ... will be payable.

(ii) The port operator shall supply to Customs a daily list of all goods removed from the Free Port to the Customs Area. Such goods will on arrival in the Customs Area be subject to all normal import controls.

Removal of goods from the Free Port to a Free Zone

Article 7

Goods removed from the Free Port through customs territory to a Free Zone must be transported under customs control. The owner or agent shall submit a properly completed goods declaration to Customs before the goods are removed. The normal customs requirements relating to transit goods, such as escort and security, will apply.

Article 8

- (i) The port operator shall submit to Customs a daily list of all goods removed from the Free Port to a Free Zone if the goods are removed without being subject to a customs transit procedure.
- (ii) Within 24 hours of receipt in the Free Zone, on behalf of the free zone trader concerned, the free zone operator shall submit to Customs a properly completed goods declaration for all such goods received in the Free Zone from the Free Port.

Removal of goods to other places in the Republic of Yemen

Article 9

Goods removed from the Free Port or a Free Zone without payment of duties and taxes in transit through customs territory to other places in the Republic of Yemen must be transported under customs control. The owner or agent of the owner shall submit a properly completed goods declaration to Customs before the goods are removed. The normal customs requirements relating to transit goods, such as escort and security, will apply.

Article 10

- (i) The routes on which transit movements can take place shall be limited to those between Aden Free Port, Aden Free Zones and Aden International Airport, and between Aden Customs Directorate and the following customs directorates: Hodeida Port, Mukhalla Port, Mocha Port, Nashtoon Port, Haradh Customs, Shahan Customs, Sana'a Airport and Hodeida Airport.
- (ii) Except for movements between Aden Free Port, Aden Free Zones and Aden International Airport, the following goods may not be moved under customs transit procedure:

Electronic goods, watches, electrical appliances, spare parts, textiles, ready made dresses, other small high value goods, at the discretion of the General Director, Free Zone Customs.

Article 11

The owner of goods subject to a customs transit movement may at any time change the destination of his goods to Aden Free Port without the need for a new transit procedure.

Removal of goods from a Free Zone to the Free PortArticle 12

(i) On behalf of the free zone trader concerned, within 24 hours of the removal of the goods, the free zone operator shall submit to Customs a properly completed goods declaration for goods removed from a Free Zone to the Free Port without being subject to a customs transit procedure.

(ii) The port operator shall submit to Customs a daily list of all goods received in the Free Port from a Free Zone without being subject to a customs transit procedure.

Removal of goods from Customs Area to Free ZoneArticle 13

(i) Permanent removal of goods from customs territory to the Free Port or a Free Zone will be regarded as exportation. A properly completed goods declaration will be required for the removal, and all normal export controls will apply before such removal.

(ii) Goods which were previously temporarily imported into customs territory shall be regarded as re-exported when removed from the Customs Area into the Free Port or a Free Zone.

(iii) When the law provides for drawback to be paid on goods, it will be paid when they are removed from customs territory to the Free Port or a Free Zone.

(iv) Goods which are removed to the Free Port or a Free Zone from customs territory for purposes such as repair, assembly or temporary use will be subject to a customs temporary export procedure.

Temporary removal of goods from the Free Port or a Free ZoneArticle 14

Goods which are removed from the Free Port or a Free Zone into customs territory for purposes such as repair, assembly or temporary use will be subject to a customs temporary import procedure.

Right of Customs to receive additional informationArticle 15

On receipt of a request from the General Director, Free Zone Customs, or an officer authorized in writing by the General Director, Free Zone Customs, to make such requests, the carrier's agent shall provide further information and explanation, as required, about goods carried on a vessel for which the agent acts. If the carrier's agent fails to give such information, or the explanation is considered by Customs to be unsatisfactory, Customs may, having regard to the circumstances, take reasonable action to safeguard the revenue.

Article 16

In the event of an apparent serious discrepancy or other irregularity concerning Free Port operations, on receipt of a request from the General Director of Aden Customs, or by an officer authorized by the General Director of Aden Customs in writing for the purpose of making such requests, the port operator shall provide further information and explanation to Customs, as required. If the port operator fails to give such information, or the explanation is considered by Customs to be unsatisfactory, Customs may, having regard to the circumstances, take reasonable action to safeguard the revenue.

Article 17

In the event of an apparent serious discrepancy or other irregularity concerning Free Zone operations, on receipt of a request from the General Director of Aden Customs, or by an officer authorized by the General Director of Aden Customs in writing for the purpose of making such requests, the free zone operator or a free zone trader shall provide further information to Customs, as required. If the free zone operator or free zone trader fails to give such information, or the explanation is considered by Customs to be unsatisfactory, Customs may, having regard to the circumstances, take reasonable action to safeguard the revenue.

Right of entry by CustomsArticle 18

On receipt of a written request from the General Director of Aden Customs or by an officer authorized by the General Director of Aden Customs in writing to make such request, the port operator shall admit customs officers to the Free Port to investigate reported or suspected irregularities. Such investigations may include the examination of goods and the examination of documents. The port operator shall have the right to be present during such activities in the Free Port.

Article 19

On receipt of a written request from the General Director of Aden Customs or by an officer authorized by the General Director of Aden Customs in writing to make such request, the free zone operator shall admit customs officers to the Free Zone to investigate reported or suspected irregularities. Such investigations may include entry to the premises of a free zone trader, the examination of goods, the checking of stocks of goods, and the examination of documents. The free zone operator shall have the right to be present during such activities in the Free Zone.

OffencesArticle 20

(i) The port operator shall be jointly and severally liable with any of its employees who commit a customs offence, including smuggling of duty free goods from the Free Port to customs territory.

(ii) The free zone operator shall be jointly and severally liable with any of its employees who commit a customs offence, including smuggling of duty free goods from the Free Zone to customs territory.

(iii) The free zone trader shall be jointly and severally liable with any of its employees who commit a customs offence, including smuggling of duty free goods from the Free Zone to customs territory.

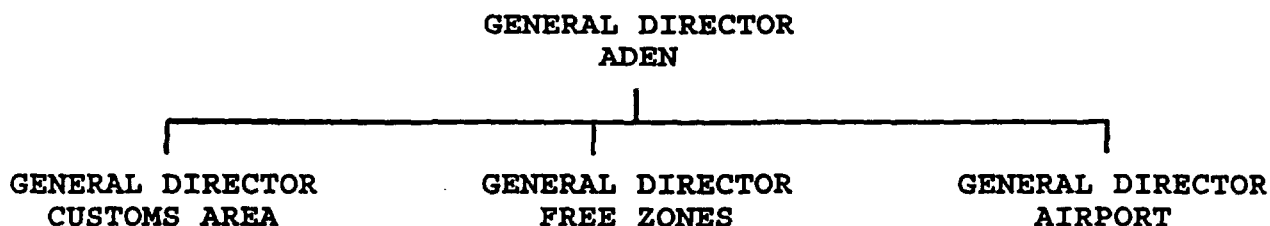
Article 21

Failure to supply to Customs any information required under Articles 6(ii), 8, 12(i), 12(ii), 15 or 16 of this Regulation will be punishable by a maximum penalty of ... in respect of each and every consignment for which the person concerned is in default.

**ADEN FREE ZONES
CUSTOMS ADMINISTRATION ORGANIZATION, RELATIONS
WITH THE PORT OPERATOR, THE FREE ZONE OPERATOR,
AND FREE ZONE TRADERS, AND CUSTOMS TRAINING NEEDS**

Introduction

1. This document deals with the organisation of that part of the Customs administration concerned with the Free Port and the Free Zones, Customs training requirements, and the relationships of Customs with the port operator, the free zone operator and free zone traders. For ease of reference, the pages of this document are prefixed with the letter "C" (Customs organisation paper).
2. Two Directorates in the Customs administration, each headed by a General Director working to the General Director of Aden Customs, will deal with the work of the Free Port and the Free Zones: the Free Zones Customs Directorate (FZD) and the Customs Area Directorate (CAD). There should be no misunderstanding of the respective roles of these General Directors, the main responsibilities of whom are summarised in this document.
3. A third General Director will be responsible for Aden International Airport (AIA) excluding any free zones located at the airport. The way in which the airport might operate as a free port in the future has not yet been the subject of discussions, but the same pattern of division of responsibilities established for the seaport would in general apply to the airport.



Free Zone Directorate

4. The FZD will handle the limited responsibilities of Customs relating to what happens inside the Free Port, mainly control of the perimeter and handling of information relating to Free Port goods, and have similar responsibilities in relation to the Free Zones. The Directorate will operate almost entirely outside the Free Port and Free Zones. It will control the transit of uncustomed goods between the Free Port and non-adjointing Free Zones. For customs transit operations between Aden and other places it will control the Aden end of the movement.

5. As described in more detail in the Regime and Legal papers which also form part of this report, information about the arrival of goods in the Free Port, the shipment of goods from the Free Port, the removal of goods from the Free Port to a Free Zone, and the removal of goods from a Free Zone to the Free Port will be supplied to Customs regularly and routinely by the port operator or free zone operator, as appropriate. Goods removed between the Free Port and non-adjacent Free Zones will be subject to a customs transit procedure for which a goods declaration must be supplied to Customs.

6. Detailed arrangements must be agreed by the FZD with the port operator and the zone operator for the receipt of documents relating to transfers of Free Zone goods between the Free Port and adjoining Free Zones. The FZD will be responsible for safe custody and use of these documents.

7. Staff of the FZD will liaise on a daily basis with the staff of the port operator and the zone operator. FZD responsibilities will start the outside the perimeter, and port operator and YFZPA staff responsibilities will be within the perimeter. In these circumstances, there should be no difficulty in identifying the demarcation between the two. YFZPA have indicated that it expects to appoint Inspectors who have previous experience of customs work, and this should help to promote a harmonious and co-operative working relationship.

8. Requests for additional information to that mentioned in paragraph 5 above, and any need for the entry of customs officials to the Free Port or a Free Zone must be handled at a high level as described in the Regime and Legal papers which also form part of this report.

9. There may be occasions when YFZPA staff will call for the assistance of customs officials in identifying suspect substances or otherwise dealing with prohibited goods, and the Customs administration should issue clear instructions that in such circumstances FZD staff must extend the fullest possible co-operation to YFZPA staff.

10. The FZD will be responsible for monitoring the shipment of Free Port (transshipment) goods, and for monitoring the receipt and disposal of Free Zone goods, functions which are described in more detail in the confidential paper entitled "CUSTOMS MONITORING AND CONTROL OF ADEN FREE ZONES OPERATIONS".

11. In this connection, Customs access to the Free Port and Free Zone computer systems, which are expected to be developed in due course, for the purpose of interrogation and audit could involve a worthwhile reduction in the resources that Customs have to devote to the tasks of monitoring and control, and improved efficient operation by Customs. Regard should be paid to this when those systems are developed so that the necessary facilities may be provided.

12. Appropriate training for customs officials will be necessary. It will not be possible to develop this approach to monitoring and control further until more information is available on the nature of the systems to be provided to the Free Port and Free Zones Authority.

13. In due course, when Customs have a computer system to assist their tasks of monitoring and control, resources will be saved if data can be input electronically as opposed to manually from documents. At that stage, a direct link with the Free Port and Free Zones systems should be considered.

Customs Area Directorate

14. The CAD will have a role much more familiar to customs officials. It will cover the equivalent to the present main customs functions in the port, functions which will be moved out of the port itself and into the adjacent Customs Area. The General Director will be responsible for security of Customs Area, the examination and clearance of imports in the Customs Area, and the examination and clearance of exports in the Customs Area. Detailed responsibilities such as ensuring that the goods correspond with the declared tariff code are not elaborated here, because they will remain the same as the present customs responsibilities in the port (a possible exception is control of transit movements which will be a FZD responsibility).

SUMMARY OF MAIN DUTIES

General Director, Free Zone Customs

- (a) Patrols of port perimeter and zone perimeters
- (b) Staffing of customs offices at Free Port and Free Zone gates
- (c) Control of goods which are moved in transit between Free Port and Free Zones
- (d) Collection and custody of information relating to Free Port goods
- (e) Monitoring of Free Port goods
- (f) Collection and custody of information relating to Free Port goods
- (g) Monitoring of Free Zone goods
- (h) Liaison with Central Statistical Office on documents and data relating to Free Port goods and Free Zone goods

General Director, Customs Area

- (a) Security of Customs Area
- (b) Examination and clearance of imports in the Customs Area
- (c) Examination and clearance of exports in the Customs Area

NOTE. The Custom House will retain its present responsibility for the processing of goods declarations, and the completion of bonds and other financial securities.

TRAINING

General

The General Director of Aden Customs stressed the need for general training of his staff, many of whom have had no formal training and know little about customs work. Training is needed on customs procedures generally, including:

- a) attitudes to the public/dealing with the public.
- b) processing of goods declarations;
- c) examination and checking of commercial documents;
- d) commodity classification;
- e) valuation theory and practice;
- f) selecting goods for examination;
- g) examination techniques, including dealing with containerized goods.

Training on some of these topics may be provided in the near future through the IMF national customs project.

Free Zone training for customs officials

Customs staff working in the FZD will need to be trained in a number of subjects. However, not all the staff of the Directorate need training in all subjects. For example, officers whose main duty is to guard gates need little technical training. They need basic knowledge of the legal position of the Free Port and Free Zones, awareness of the extent and limitations of their legal powers, and guidance on how to act in particular circumstances. The following list includes all relevant subjects, but not all FZD staff would need to be trained in all these subjects.

1. The concept of free zones.
2. Reasons for establishing free zones (customs and other reasons), and the benefits to the national economy.
3. The law relating to Aden Free Zone - to include all relevant free zone, customs and port operations legislation.
4. Customs legal powers, restrictions on customs legal powers and action in respect of the Free Zone; legal obligations of others.
5. Monitoring and control of Free Port operations.
6. Monitoring and control of Free Zone activities.

7. Transit procedures - processing of transit declarations, alternative methods of transit control, rules for escorting transit consignments, seals, bonds, guarantees and other forms of security.
8. Verification of certificates of origin and materials certificates: understanding production and other commercial records.
9. An introductory course to the use of microcomputers.
10. The techniques needed to audit a suspect zone trader.
11. Working relationships with port operators, zone operators, zone traders.
12. Case studies of problem situations (what to do in particular circumstances)