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JORDAN FISCAL REFORM II

VALUATION ASSESSMENT
June 2011

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VALUATION ASSESSMENT **July 2011**

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I. INTRODUCTION

The focus of the assignment has continued with the work that was done in January-February regarding the valuation practices of Jordan Customs and to ascertain which of the prioritized recommendations can be successfully implemented and by whom so that Jordan Customs fully complies with the requirements of the World Trade Organization's ("WTO") Agreement on Implementation of Article VII regarding valuation of the General Agreement on Tariffs and Trade.

This assignment follows-up on the previous report's findings and recommendations and includes joint review, discussion, and general consensus-building with a wide range of stakeholders within Jordan Customs regarding these recommendations in order to define the way forward to resolve, in a practical way, the issues, initially, identified and help Jordan Customs refine valuation practices that conform to WTO Valuation rules. In addition, valuation training sessions were conducted in Amman and Aqaba for Jordan Customs personnel selected from major customs stations. ASEZA officials were not available due to unforeseen circumstances and industrial issues.

Primary and secondary research methodologies have been utilized to re-examine customs clearance processes with an emphasis on valuation practices, clarify lingering questions, and devise solutions. Interviews have been completed with personnel at the Valuation Directorate, ASYCUDA World, ISTD officials, and Aqaba to get a basic understanding as to how customs' personnel apply the WTO Agreement on Customs Value ("ACV"). Secondary research has involved the use of reports completed by the Jordan Fiscal Reform II Component D Team and official documents such as Jordan's Customs laws.

The draft report herein is organized within the context of the preceding statements and begins again with Section II WTO Valuation Rules that summarizes WTO Valuation rules and articulates the legal framework of where Jordan's Customs processes and valuation practices should be moving towards. Section III Implementation Follow-Up comprises the prioritized recommendations and summary of the discussions with the stakeholders and presents options as to how these recommendations can be advanced in light of recent discussions/findings. Section IV Conclusions summarizes and articulates the solutions for the issues identified and way forward.

The information contained in this report will be the subject of further discussions with relevant stakeholders in the next few weeks with the result being a final consensus about the recommendations and action plan for future action.

II. WTO VALUATION RULES

A. Valuation Methodologies

Methodology 1 Transaction Value

At the heart of WTO's ACV is the requirement that transaction value be used as the basis for declaring the dutiable value of imported merchandise. Transaction value is defined as “the price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods, and includes all payments made as a condition of sale of the imported goods by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller.”¹ Transaction value is accepted if all of the following conditions have been fulfilled:

- Evidence of sale: There must be evidence of a sale for export to the country of importation (i.e. commercial invoices, contracts, purchase orders, etc.).
- There must be no restriction on the disposition or use of the goods by the buyer other than restrictions imposed or required by law in the country of importation; limited to the geographic area in which the goods may be resold; do not substantially affect the value of the goods.
- The imported merchandise is not subject to additional conditions for which a value cannot be determined with respect to the goods being valued.— the seller establishes the price of the imported goods on the condition that the declared transaction value is the full price unless part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless other additions to the price actually paid or payable can be made that consists of the following:
 - Additions to amount paid/payable:
 - Commissions and brokerage, except buying commissions packing and container costs and charges
 - Assists
 - Royalties/License fees
 - Subsequent proceeds
 - Cost of transport, insurance, and related charges up to the place of importation if valuation is based on a declared Cost, Insurance, Freight (“CIF”) calculation.

The following costs are EXCLUDED from the transaction value: costs incurred after importation (duties, transport, construction or assembly; Arm's length transactions between related buyers and sellers.²

Methodology 2 Transaction Value of Identical Goods

If methodology 1: Transaction value cannot be used, then customs is required to try to apply the next approach, which is the transaction value of identical goods if the goods are:

¹ WTO, http://www.wto.org/english/tratop_e/cusval_e/cusval_info_e.htm (accessed January 30, 2011)

² Ibid.

- The same in all respects including physical characteristics, quality, and reputation;
- Produced in the same country as the goods being valued; and produced by the producer of the goods being valued.

For this method to be used, the goods must be sold for export to the same country of importation as the goods being valued. In cases where there are no identical goods produced by the same person in the country of production of the goods being valued, then identical goods produced by a different person/producer in the same country may be taken into account. In addition, minor differences in appearance would not preclude goods which otherwise conform to the definitions from being regarded as identical.³

Methodology 3: Transaction Value of Similar Goods

If methodology 2 is not feasible, then transaction value is calculated in the same manner on similar goods if:

- Goods closely resembling the goods being valued in terms of component materials and characteristic;
- Goods which are capable of performing the same functions and are commercially interchangeable with the goods being valued; and
- Goods that are produced in the same country as the producer of the goods in question.

For this method to be used, the goods must be sold to the same country of importation as the goods being valued. The goods must be exported at or about the same time as the goods being valued.⁴

Methodology 4: Deductive Value

If methodologies 1-3 are not feasible, value will be determined on the basis of the unit price at which the imported goods or identical or similar goods are sold to an unrelated buyer in the greatest aggregate quantity in the country of importation. The buyer and the seller in the importing country must not be related and the sale must take place at or about the time of importation of the goods being valued. If no sale took place at or about the time of importation, it is permitted to use sales up to 90 days after importation of the goods being valued.⁵

Methodology 5: Computed Value

If methodologies 1-4 cannot be applied, computed value is considered for determining customs value. Computed value is calculated on the basis of the cost of production of the goods being valued, plus an amount for profit and general expenses usually reflected in sales from the country of exportation to the country of importation of goods of the same class or kind. Computed value is the sum of the following elements: Production cost = value of materials and fabrication plus profit and general expenses.⁶

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

Methodology 6: Fallback Methodology

When the customs value cannot be determined under any of the previous methods, it may be determined using reasonable means consistent with the principles and general provisions of the Agreement and of Article VII of GATT, and on the basis of data available in the country of importation. To the greatest extent possible, this method should be based on previously determined values and methods with a reasonable degree of flexibility in their application as part of a “fallback” methodology.

Under the fall-back method, the customs value must not be based on the following:

- Selling price of goods in the country of importation (i.e. the sale price of goods manufactured in the importing country);
- A system which provides for the acceptance for customs purposes of the higher of two alternative values (the lowest should be used);
- The price of goods on the domestic market of the country of exportation
- The cost of production other than computed values which have been determined for identical or similar goods (valuation must be arrived at on the basis of data available in the country of importation).
- Minimum customs value (unless a developing country has taken the exception which allows for use of minimum values);
- Arbitrary or fictitious values (these prohibitions are aimed at systems which do not base their values on what happens in fact in the marketplace, as reflected in actual prices, in actual sales, and in actual costs, reason of the importation or sale of the goods are also to be deducted).⁷

B. Reasons to Doubt Declared Value

Customs valuation based on the transaction value method is largely based on documentary input from the importer. The WTO allows customs administrations the right to “satisfy themselves as to the truth or accuracy of any statement, document or declaration. As a first step in these instances, customs may ask the importer to provide further explanation that the declared value represents the total amount actually paid or payable for the imported goods. If the reasonable doubt still exists after reception of further information (or in absence of a response), customs may decide that the value cannot be determined according to the transaction value method. Before a final decision is taken, customs must communicate its reasoning to the importer, who, in turn, must be given reasonable time to respond. In addition, the reasoning of the final decision must be communicated to the importer in writing.

C. Dispute Resolution/Appeals

WTO valuation rules also include a provision that gives the importer the right to appeal against a valuation decision that is made by the customs administration for the goods being valued. The appeal may first be to a higher level in the customs administration but the importer shall have the right in the final instance to appeal to the judiciary.

⁷ Ibid.

III. PRIORITIZED RECOMMENDATIONS AND IMPLEMENTATION FOLLOW-UP

The following section builds on recommendations for Jordan Customs for meeting WTO valuation requirements, taking into consideration their impact on Customs and the trade community. For each recommendation, categorized into high, medium, or low priority, the Implementation Follow-Up section summarizes the discussions held to date with stakeholders.

A. High Priority

Establish Clear and Consistent Rules That Allow Importers to Address Customs “Reasons to Doubt” Declared Transaction Value.

Importers should be given the right to address customs “reasons to doubt” the transaction value without any mention about the uplifted values. Response times should be set within a specified time period to expedite clearance times. This communication must be consistently applied to all import transactions that are in question for valuation purposes along with specified time limits and expressed in writing.

Implementation Follow-up

The Valuation Directorate has acknowledged that importers should be given the opportunity to prove transaction value before the other methodologies and valuation uplifts are applied. Written notice is given to importers in cases where there is “reason to doubt” the declared value but the formal process is not consistently applied as the importer just tells customs verbally to apply other methodologies and uplift the values. The process for notification of “reasons to doubt” can be specified by Jordan Customs in the notice. For importers that do not respond in the stated timeframe, Jordan Customs officials should apply the second valuation methodology, Transaction Value of Identical Goods, and consider the others in strict hierarchical order if warranted. Jordan Customs should attempt to use as much as possible valuation information in the ASYCUDA system rather than relying on the Internet and other valuation databases that might have obsolete information. In any event, the minimum values in any type of system are for reference only, not used in lieu of the price paid or payable unless the importers fails or refuses to provide proof of the transaction value

Provide Training Focused on Documentary Proof to Substantiate Transaction Value

Training should be considered to help identify documents and data that can confirm or refute importers assertions regarding transaction value. This might entail practical, “hands-on” workshops that look at documents that can confirm sales transactions, invoices, other documents and introduce other information sources that can support values of identical and similar goods. This would help valuation specialists confirm that a sale had actually occurred and that transaction value is applicable.

Implementation Follow-Up

The valuation director requested tailored training workshop sessions that will cover additions to the amount paid or payable which comprises transaction value methodology 1 and deductive and computed valuation methodologies 4 and 5. Two sessions, in Aqaba and Amman customs houses, addressed the theoretical and practical aspects of these issues and the manner in which merchandise is valued. Training with practical exercises was given to

the basics of transaction value, additions to transaction value, and the application of other valuation methodologies such as deductive and computed methodologies.

Many Jordan Customs officials are familiar with the theoretical aspects of Article VII of the WTO Agreement on Valuation, but there appear to be problems with the appropriate application of the methodologies in strict hierarchical order. Several participants claimed that under-invoicing or false invoicing, together with incomplete or missing documentation, makes the practical application of valuation rules challenging. Moreover, information in their systems at Aqaba and elsewhere are often insufficient to facilitate use of methodologies 2 and 3, transaction value of identical and similar merchandise which, in turn, eliminates the use of deductive value, leaving the use of methodology 6, fallback.

Impose Stiffer Penalties for False Invoicing and Certificates of Origin

Penalties must be re-evaluated and strengthened to deal with proven cases of negligence, gross negligence, and, more importantly, fraud. There appears to be too many cases of importers that knowingly provide false invoices to customs and the penalties for negligence and fraud are not severe enough to deter this action from happening again. Decisions to impose stiffer penalties should be phased in over a period of a few months to give importers and brokers an opportunity to improve their clearance practices and comply better with valuation requirements. During this period, Jordan Customs Service may consider an outreach campaign that informs traders and answers questions.

Implementation Follow-up

Jordan Customs has acknowledged that there is widespread false invoicing and under-valuation. Penalties are not stiff enough to deter these practices even though the penalty for fraud has been increased to the value of the declared merchandise. The burden of proof in fraud cases is quite high and often very hard to substantiate. To reduce this burden and still affect behavior change, Jordan Customs could implement a customs penalties system that introduces other levels of culpability that do not require the burden of proof that is necessary for substantiating fraud. Instances of negligence and/or gross negligence are easier to prove and could yet still involve higher penalties that could deter future cases of false invoicing/under-valuation.

US Customs, for example, has defined penalties for these levels of culpability and provides for the assessment of penalties against the alleged violator at a maximum of:

- The domestic value of the merchandise in the case of fraud violations;
- Four times the loss of lawful duties, taxes, and fees deprived the government, or the domestic value or, if the violation did not affect the assessment of duties 40 percent of the dutiable value if the violation did not affect the assessment of duties (but in no case to exceed the domestic value of the merchandise), in the case of gross negligence violations; and
- Two times the loss of lawful duties, taxes, and fees deprived the government or 20 percent of the dutiable value if the violation did not affect the assessment of duties (but in no case to exceed the domestic value of the merchandise), in the case of negligence violations.

U.S. Customs allows for these penalties to be mitigated and reduced as per the following:

- Fraud—from a minimum of 5 times to a maximum of 8 times the total duty loss, or 50 percent to 80 percent of the dutiable value in non-revenue loss cases, but never to exceed the domestic value of the merchandise;

- Gross negligence—from a minimum of 2.5 times to a maximum of 4 times the total duty loss, or 25 percent to 40 percent of the dutiable value in non-revenue loss cases, but never to exceed the domestic value of the merchandise; or
- Negligence—from a minimum of 0.5 times to a maximum of 2 times the total duty loss or 5 percent to 20 percent of the dutiable value in non-revenue loss cases, but never to exceed the domestic value of the merchandise.

And, a person who discloses the circumstances violation, before or without knowledge of the commencement of a formal investigation can receive substantially reduced penalties as per the following:

- In case of negligence or gross negligence violations, if there is an actual revenue loss (i.e., loss of duties, taxes or fees after Customs already has liquidated the entries as final), the reduced penalty is an amount equal to interest from the date of liquidation until the duties are paid.
- In case of negligence or gross negligence violations, if there is a potential revenue loss (i.e., loss of duties, taxes or fees prior to Customs liquidation of the entries as final), the penalty is remitted in full.
- In case of fraud violations, the reduced penalty always equals one times the actual and potential revenue loss (or 10 percent of the dutiable value, if the violation did not affect the assessment of duties).⁸

Other customs administrations also have very strict penalties in place. For example, Japan's customs service in January 2010 implemented stricter penalties to curb violations of importers evading customs duty by imprisonment of up to 10 years or a fine of not more than 10 million yen (JOD 86,000), or both.⁹

In Thailand, “any person who makes or allows others to make or submits or arranges for others to submit a shipment entry, declaration, certificate, record or other instruments to the competent official in relation to this Act or required by this Act, which is false, incomplete, or misleading in any particular statement, or if any person required by this Act to answer any question put to him by the competent official does not truthfully answer such question, or any person who refuses or neglects the up-keep of any record, register, account book, document or other instruments required by this Act, or any person who counterfeits or makes any transaction relating to this Act, or alters any instrument of record or other instruments after it has been officially issued, or any person who counterfeits the seal, signature, initials, or other mark of or used by any official of the Customs Department for any purpose relating to this Act, such person shall be liable to imprisonment for a term not exceeding six months or a fine not exceeding five hundred thousand Baht (JOD 11,607) or both the fine and imprisonment.”

The Valuation Directorate thinks that penalties should be stricter but is not sure about the best approach to the problem. It believes that the legal affairs department has to agree and support any proposed change to penalties. A meeting was held with the legal affairs department to discuss imposing stiffer penalties. Individuals interviewed in legal affairs said that there are special provisions in the penalties' clauses of the customs law that assesses higher penalties of 50 percent of the customs duties to importers that commit fraud and even includes jail sentences is deemed necessary. The definition of fraud covers importers/traders that

⁸ http://www.cbp.gov/linkhandler/cgov/trade/legal/informed_compliance_pubs/icp052.ctt/icp052.pdf

⁹ <http://japantradecompliance.blogspot.com/2010/02/enhancement-of-customs-penalty-in-japan.html>

continuously under-value merchandise or submit false invoices. The legal affairs department believes that penalties are strict enough for those who commit fraud but the courts will not enforce these laws for reasons that could not be adequately explained.

The most obvious solution would be to revise the risk management profile so that all consignments of importers that continually under-value goods or use false invoices are red flagged for inspection. Repeat offenders could be scheduled for regular audits or even blacklisted so that they lose their import privileges. These measures can be implemented through Jordan Customs' existing administrative powers. Jordan Customs can utilize ASYCUDA's selectivity module to flag the importer identification numbers of all importers that make a habit of under-valuing goods or submitting false invoices.

Introduce a Post-Entry Amendment System

With the introduction of stricter penalties, importers should also be given an opportunity to amend entries that are not the subject of an ongoing customs inquiry. A post entry amendment system can be used to mitigate penalties and encourage importers to declare the real transaction values.

Implementation Follow-Up

Jordan Customs has a mechanism for adjusting entries that are still in progress and not the subject of an ongoing inspection or investigation. However, there should be some way for an importer to change completed entries so that they can avoid the imposition of higher penalties if they make a good-faith effort to change under-valued consignments. ASYCUDA World system has the ability to adjust completed transactions after entry in the case of under-valuation and should be used accordingly to correct under-value merchandise. If stricter penalties are applied in the future, importers should be encouraged to voluntarily disclose under-valuation or other compliance errors within a specified timeframe for which, in return, they are exempt from penalties.

Revise the Importer Registration System

Importers with reputations for non-compliance are often aware that Customs is monitoring their importations and avoid the scrutiny by importing goods under other importer identification numbers that have been easily issued for family members or friends while others establish dummy companies and acquire importer registration numbers for those entities. The importer registration process should be re-evaluated to determine how it can be strengthened to prevent fraud of this type. One possible solution would be to red flag in ASYCUDA World, all importers with importer registration numbers that are less than 18 months old. As an extreme measure, Jordan Customs can hold these importers' merchandise until the importers substantiate declared values. Another option would be to release the goods under bond and monitor future shipments of these importers with the threat that import privileges can be suspended for repeat offenders.

Implementation Follow-up

The procedure for obtaining importer identification numbers was clarified by ISTD. The Ministry of Trade and Industry establishes the conditions for getting a tax identification number (Same used as importer number and would be instrumental in tightening those conditions as well. From January 2011, ISTD has been receiving monthly reports from Jordan Customs about import consignments so that they can track sales and VAT payments. This information has helped increase the tax collections by 40 percent, but more can be accomplished to collect these taxes after imported goods are sold into the domestic economy because the ISTD claims that VAT for the sale of imported goods domestically is going

largely uncollected. ISTD wants closer cooperation with Jordan Customs to ensure better revenue collection. Furthermore, a good number (est. 80 percent) of the uncollected VAT liability claims can be attributed to imports that have been cleared under the import identification numbers of brokers. Information about these transactions can be tracked through the use of ASYCUDA.

ASYCUDA World has the capability to flag new importer identification numbers and could be used to direct transactions of new importers to the yellow or red lane for a certain number of transactions and/or a specified timeframe. The risk management unit does red lane the first transaction of a new importer but only for a single or limited number of transactions. Red lane treatment should be applied for more transactions over a longer time period. ASYCUDA World can identify brokers and can be used to modify the risk management profile to include brokers. Further cooperation with Jordan Customs, ISTD, and risk management unit has been suggested.

Refine the Risk Management Profile System

Risk profiles should be adjusted in ASYCUDA World's selectivity module in which shipments with the country of origin of China and United Arab Emirates can be flagged red or yellow for valuation. Additionally, risk profiles should be redefined to allow for the inclusions of importers with identification numbers that are less than 18 months old and all shipments for such importers should also be flagged as high risk for valuation purposes.

Implementation Follow-up

The risk management unit claims to focus on import consignments that have country of origin and/or export China and the United Arab Emirates. Their main concern is about various types of compliance infractions that pertain to imports from these countries of merchandise such as textiles, garments, shoes, and furniture. These types of consignments are directed to the red lane for full inspection. Other imports from these countries are directed to the yellow or green lanes. Thus, some aspects of this recommendation are already in practice.

The risk management unit is particularly concerned about consolidated consignments of high duty items that are not accurately described in the customs entries and invoices. Line item entry and invoice requirements are either vague or non-existent and represent a legal loophole that allows importers to under-value merchandise. Jordan Customs and ASYCUDA are aware of these issues and require importers to prepare line item entries for warehouse entries but that has not yet been applied to entries that are being presented for consumption (4) with the exception of wheels (Chapter 40) which is part of a pilot program. The Valuation Directorate is aware of these issues but does not believe that the cost of compelling importers to comply with detailed invoicing and line item entry is worth the benefit of detecting these under-valued items. The Valuation Directorate thinks that detailed documentation and line item requirements should be applied selectively to certain types of merchandise such as those from Chapters 84-85 that are intrinsically of higher declared values and duty rates.

The arguments of the Valuation Directorate are valid but line item entries should be applied to a greater range of merchandise because Jordan Customs is still not fully aware of what goods are being imported and how much under-valuation continues to exist unless there is greater disclosure on the entries of all merchandise being imported. Finally, the risk management unit has a broader set of compliance challenges that go beyond valuation and might be more interested in line item entry and detailed invoicing requirement.

For valuation purposes, there are several different risk management profile options:

- Apply yellow lane designation to all imports with country of origin and/or country of export China and/or United Arab Emirates, or
- Apply red lane designation to all imports with country of origin and/or country of export China and/or United Arab Emirates AND new importer (tax identification number), or
- Apply red lane designation to all imports of textiles, apparel, shoes, furniture, computers, electronics with country of origin and/or country of export China and/or United Arab Emirates, or
- Apply red lane designation to all imports of consolidated entries such as those that say “Assorted Items,” or
- Apply red lane designation to all imports of new importer identification numbers (tax identification number), or
- Apply yellow lane designation to imports that are cleared under broker identification numbers, or
- Apply red lane designation to importers who consistently (more than 3 times) under-value merchandise, fail to provide invoices, or present false invoices.

B. Medium Priority

Work With Information Technology Department and UNCTAD to Enable Better Use of Deductive and Computed Valuation Methodologies

Depending on the needs of customs, there might be rare instances when transaction value related methodologies 1-3 cannot be used, which leaves the importer with the option of using either deductive or computed valuation methodologies. To use the deductive valuation methodology effectively, valuation specialists at each station (desktop) should be able to manipulate ASYCUDA data to generate reports showing the range of quantities of merchandise of identical or similar type sold for importation into Jordan at about the same time at various prices, thus enabling the specialist to choose the price paid for the most number of units. Specialized ASYCUDA training in this type of data manipulation and in the application of deductive valuation methodology is suggested.

Computed valuation methodology might be implemented with the assistance of specialized industrial and trade data sources that would help valuation specialists to perform production and profit calculations. Training in the use of the available data models and computed valuation methodology is suggested.

Implementation Follow-Up

ASYCUDA World has the capability to find entries of identical and similar merchandise imported into Jordan at the time of importation and up to 90 day after the date of importation of merchandise in question to find the prices paid for largest quantities of aggregated units. Deductions from the prices paid have to be done separately with any data available while additions to value are the same as for transaction value methodologies. ASYCUDA World is willing to provide demonstrations as to how this might be possible. However, this application will have to wait until the legacy valuation systems used by Jordan Customs can be merged with the new valuation module that ASYCUDA World has just developed because, presently, Jordan Customs does not use ASYCUDA for valuation purposes and uses its own system.

C. Low Priority

Streamline the Protest Process

Prepare and implement a protest process that establishes clear timelines for disputing valuation issues. This should entail tight deadlines for filing protests and adjudicating decisions of valuation decisions from the time of initial examination of entries and through each of the higher levels of customs and to the judiciary. Presently, there are no time limits and this allows disputed entries to linger for long periods of time. While this need is categorized as a low priority, it can also be considered a high priority because disputed entries can linger for a long time and become a burden on the system.

IV. CONCLUSION

Overall, Jordan Customs personnel do have a good working knowledge of valuation concepts and rules. Full implementation and enforcement is hampered because of the widespread under-valuation and false invoicing practices of importers. These practices continue unabated as the authorities usually will not impose severe penalties as prescribed under the law. In the absence of severe penalties, Jordan Customs is challenged in its efforts to change the behavior and attitudes of importers.

However, Jordan Customs does have a number of administrative powers at its disposal that can be used to influence importers behavior. For example, the ASYCUDA selectivity module can be used to monitor and scrutinize a wide range of shipments and importers that are more likely to be intentionally under-valued. Some of these shipments and importers are those that are importing goods with the country of origin/export of China and United Arab Emirates, customs brokers, new importers, and those importers that have a reputation for repeatedly under-valuing and false invoicing. Jordan Customs can direct these shipments to the red lane as part of an effort to influence better compliance on the part of suspect importers and brokers. The application of strict penalties is up to the courts but Jordan Customs is showing an increasing willingness to apply risk management techniques to focus on higher risk shipments that may warrant greater scrutiny which may result in full inspections, audits, and, even, possible blacklisting or loss of import privileges. The key for Jordan Customs in the future will be to fully implement these measures in a consistent manner.