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I

FRANCESCA TRAMPUS

**FREE PORTS
OF THE WORLD**



E.U.T.

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ASSOCIATED BRITISH PORTS, Port of Goole

To my dear parents

PREFACE*

by Dott. Domenico Maltese
Proc. Gen. on. presso la Corte di Cassazione

“Free Ports of the world”, opera scritta in fluente prosa inglese, sostanzia e cristallizza le risultanze di una profonda meditazione scientifica, la cui genesi storica si rinviene nella dissertazione di laurea che l'autrice ha tenuto nel 1997.

Si tratta di un lavoro di estremo interesse.

Tanto da generare nel lettore triestino un senso di rammarico per la mancata partecipazione dell'autrice, a causa dei suoi impegni accademici, al recente dibattito sulla natura giuridica delle zone franche della nostra città.

L'indagine è suddivisa in tre parti.

La prima, di carattere didascalico, contiene l'enunciazione di concetti generali : “General concepts”.

La seconda è dedicata all'analisi dell'esistente, a raggio amplissimo, nazionale e ultranazionale, “The regulation of the Free Ports in the world”.

Nella terza si delinea la figura giuridica del Free Port, per astrazione dalle sue particolari manifestazioni storiche: “The Free Port status”.

In particolare, nella prima l'autrice descrive le forme diverse che può assumere quella certa entità genericamente definibile come “zona franca”, che si realizza, in concreto, ora come “città franca”, ora come “porto franco”, ora

* Speech held on 18 January 1999 by Dott. Domenico Maltese at the University of Trieste in occasion of the 25th anniversary of the foundation of the RIVISTA TRASPORTI, *Diritto-Economia-Politica*.

come "punto franco": momenti storici che, nello sviluppo dell'indagine, scandiscono anche la vicenda secolare del porto di Trieste, descritta nella seconda parte, ove si svolge l'analisi della struttura normativa di tutti i principali porti franchi del mondo, dalle Isole Mauritius agli Emirati Arabi Uniti, dalla Giordania a Malta, da Panama a Hong Kong, da Singapore a Trieste.

C'è stata - sottolinea l'autrice - un'autentica fioritura di porti franchi negli ultimi vent'anni. Già nel 1986 essi coprivano il 20% del traffico internazionale rispetto al 10% del 1981.

Nel libro ne vengono messe in luce le salienti caratteristiche: l'alto grado di sinergia, nelle Isole Mauritius, fra l'off-shore e il settore della zona franca, con investimenti privati per la costruzione di nuove infrastrutture su 30.000 mq di terreno; l'ampia e autonoma regolamentazione della legge federale marittima nella Federazione degli Emirati Arabi, patria di un vero e proprio impero di zone e porti franchi; la collocazione in Giordania, nell'anno 1973, del porto franco di Aqaba su un'area di 7.000.000 mq, con celle frigorifere della capacità di 6.000 tonnellate; la recente disciplina del "Malta Freeport Act" del 1989; il modello giuridico di Hong Kong, dove, dal 1984, vige il principio "One country, two systems", regime speciale, dotato di autonomia legislativa, amministrativa e giurisdizionale; e le caratteristiche di Panama, la più grande zona franca dell'emisfero occidentale, e di Singapore, al vertice di una piramide di 48 Paesi industrializzati, per quanto riguarda la rispondenza delle infrastrutture portuali alla domanda di mercato.

Di Trieste - come dicevo - è ricordata la vicenda storica: dal Porto Franco di Carlo VI e di Maria Teresa - porto franco nel senso emporiale, nel cui ambito, secondo qualche autore (S. Maurel), era possibile anche l'esenzione al consumo - ai Punti Franchi di fine secolo, col prevalere della funzione di transito sulla funzione emporiale, alla legislazione nazionale degli anni Venti sui punti franchi dell'ex Impero asburgico, all'approccio internazionalistico del periodo 1919-1939, con la stipulazione di convenzioni internazionali secondo le direttive del Trattato di pace di Saint Germain.

Si è avuta, infine, al culmine della parabola, la creazione di un nuovo, originalissimo modello giuridico di porto franco, il "Free Port", autonomo e decentrato, secondo le disposizioni dell'allegato VIII del Trattato di pace di Parigi del 1947 e del successivo Memorandum di Londra del 1954: il Free Port, del quale le Free Zones del 1939 costituivano la base territoriale.

Sono molto significative, al riguardo, le considerazioni sullo statuto internazionale dell'allegato VIII, che si leggono a pagina 155: "We cannot talk about desuetude of Annex VIII either because in the latest 50 years the contracting States didn't negotiate its abrogation, nor it doesn't correspond to reality; in particular the strategic position of the port of Trieste in international maritime trade (especially for the European land-locked states) still remains".

Si tratta, invero, di una Convenzione mai abrogata e le cui disposizioni non sono state superate dalle vicende storiche successive, data l'autonomia della "lex specialis" del Trattato di pace di Parigi rispetto alla "lex generalis posterior" dell'ordinamento europeo. Autonomia riconosciuta

anche dall'art. 134 del Trattato di Roma del 1957, istitutivo della C.E.E..

Soltanto la denuncia degli originari accordi - dei quali furono e sono parte Paesi di tutto il mondo, compresi gli U.S.A. - potrebbe estinguerne l'efficacia.

Tornerò su tale argomento, perché vorrò porre in evidenza l'indiretto ma chiaro contributo che un'attenta lettura di queste pagine porta all'impostazione del problema dello scalo triestino.

Nel soffermarmi, per ora, su alcuni aspetti della terza parte, dedicata alla figura giuridica del Porto franco, devo dir subito che, a differenza di molti scritti accademici, è sottolineata in quest'opera una fondamentale esigenza: la tendenziale sostituzione, in un modello giuridico adeguato di Porto franco, dell'organizzazione della dinamica della domanda all'offerta statica dei servizi marittimi: "In a sector rapidly changing like that of maritime law and in an international market highly competitive like the one today, a Free Port regime described so can provide a "dynamic organisation of the demand" as substitution for the "static supply of maritime services". In other words, complementary to the international discipline of the Free Ports is the supply of advanced services next to the usual port's infrastructures. Only this way the Free Port can face the challenge of international maritime trade market." (pagg. 259-260).

Il legislatore, insomma, deve tenere ben presente, secondo l'autrice, che il complemento essenziale, indispensabile delle zone franche deve essere la creazione dei moderni servizi del terziario avanzato, in aggiunta alle normali infrastrutture portuali (v. anche pagg. 19 e 20 dell'"Introduction").

Segue, sotto l'aspetto strettamente tecnico-giuridico, la definizione del Porto franco.

Per intenderne con esattezza il significato, è opportuno distinguere un duplice profilo dell'indagine, che viene condotta "a parte subiecti" e "a parte obiecti".

"A parte subiecti", la gestione affidataria è concepita quale soggetto gravato da un "munus" internazionale.

Com'è noto ad ogni studioso, nella decrittazione del fenomeno giuridico il fine dell'attività scientifica consiste nella ricerca di un predicato più ampio, che la soluzione empirica non offre.

Orbene, la scuola triestina, diretta dal professor Francesco Alessandro Querci, ha introdotto nel campo del diritto marittimo, per l'analisi e la spiegazione dei fenomeni da esso regolati, la categoria del "munus", elaborata dai cultori del diritto amministrativo.

Riallacciandosi a questi concetti, la dottoressa Trampus distingue tra "munus privatum", "munus publicum" e "munus internazionale".

Il "munus privatum" riflette un interesse alieno di carattere privato (si può fare l'esempio dell'"officium" del comandante nel perseguire il fine economico della spedizione marittima).

Il "munus publicum" riflette un interesse alieno di carattere pubblico (si può far l'esempio dell'"officium" del comandante nel perseguire il fine della sicurezza della navigazione).

Il "munus internazionale" riflette un interesse alieno che si identifica con lo stesso commercio internazionale, il libero traffico secondo i principi di libertà, uguaglianza e non discriminazione, la cui attuazione dev'essere perseguita dall'autorità preposta, gravata dal "munus": "The

Authority of the Free Port pursues international interests, i.e. the interests of the international operators; it is therefore an "International Authority". In fact, its institutional aim is not that of the state where the Free Port is situated, but that of the entire international community engaged with free international maritime trading." (pag. 263).

Rispettivamente, il Porto Franco è concepito, "a parte obiecti", come "territorio internazionale" (p. 282ss.), con particolare riferimento alla condizione giuridica di inappropriabilità dei beni che lo compongono: "all the areas, properties, means of transit, installations, works of the Free Port are inappropriate and inappropriable; in other words they are destined to serve international maritime trade, according to the general principles." (pagg. 286-287).

Qui si salda il concetto della indisponibilità oggettiva dei beni con quello del vincolo soggettivo del "munus" internazionale: "For this reason the Authority of the Free Port (that we have previously qualified as "International Authority") is entrusted with an international munus (...) and therefore carries out its functions to the interest of International Maritime Trade and of maritime international operators." (pag. 287).

Su questo terreno, l'autrice affronta anche il problema della scissione giuridica fra titolo ed esercizio della sovranità, che sta alla base della configurazione teorica del "territorio internazionale", dimostrando una piena padronanza degli strumenti della dogmatica ed una conoscenza precisa dei precedenti storici.

Ma particolarmente apprezzabile è la modulazione dell'affermazione iniziale circa la possibilità di una definizione del Porto Franco come territorio internazionale, nella ulteriore, possibile configurazione di esso quale ordi-

namento autonomo - seppure derivato - di porto libero, territorio servente i traffici marittimi internazionali, con vincolo permanente - il "munus", appunto - fino alla revoca dell'atto istitutivo, statale o internazionale, con provvedimento di pari valore formale che ne decreti la fine.

"Free Ports can be considered international territories whose discipline is given by a derivative system characterised by an absolute autonomy. (...) Once the Free Port is created, the Free Port system is marked by a normative and executive irreversibility which comes to an end only with the extinction or revocation of the institutional act." (pag. 290).

Duplici vincolo, dunque "a parte subiecti" "munus publicum" internazionale, "a parte obiecti", indisponibilità delle strutture dell'ordinamento autonomo di porto libero.

Questo, l'impianto generale dell'opera.

Accennavo al contributo che un'attenta lettura di queste pagine può offrire per un'impostazione adeguata dei temi concernenti il Free Port dello scalo triestino.

Brevemente, si ricordano qui i termini del dibattito, svoltosi negli ultimi anni.

Si sono contrapposte due concezioni del Free Port, previsto dall'allegato VIII del Trattato di pace di Parigi del 1947 e dal paragrafo 5 del Memorandum di Londra del 1954.

La prima ha la propria ascendenza nell'autorità del nostro comune Maestro, il professor Manlio Udina: il Free Port è inteso come l'insieme delle Free Zones, soggette al regime speciale internazionale della franchigia, nell'ambito di un ordinamento amministrativo, necessariamente oggi assorbito nella sfera delle competenze ministeriali e locali.

La seconda è stata elaborata dal Comitato Regionale Friuli Venezia Giulia dell'Associazione Italiana di Diritto marittimo.

Per essa, il Free Port è caratterizzato, sì, dal regime internazionale della franchigia, ma non è semplice ordinamento amministrativo dell'insieme delle Free Zones, bensì istituzione-ordinamento, nel senso chiarito da Santi Romano: ente autonomo e decentrato, dotato, cioè, di autonomia istituzionale, patrimoniale e normativa regolamentare a livello apicale.

Era questa, appunto, la briglia normativa, derivante dal paragrafo 5 del Memorandum di Londra, per il nuovo ente sovrano, lo Stato italiano, a garanzia ulteriore dell'assolvimento del "munus" internazionale nella gestione del Free Port.

Orbene, qualunque possa essere l'appropriata soluzione giuridica del problema, lo studio comparato della dottoressa Trampus contribuisce con vigoroso indirizzo pragmatico, a indicare la strada per il potenziamento dell'autonomia delle Free Zones; autonomia che sta a cuore, evidentemente, ai sostenitori di entrambe le contrapposte opinioni accennate.

C'è, infatti, in quest'opera un preciso richiamo a ciò che il legislatore dovrebbe fare al di là - ecco il punto - della cura normativa della sola componente daziaria. Terapia, quest'ultima, di per sé insufficiente e neppure adeguatamente praticata, a tutt'oggi, dagli organi statali responsabili, nonostante la continua e meritoria opera della Commissione presieduta dal professor Giorgio Conetti.

Occorre, insomma, nel quadro di un sistema ispirato ad una superiore esigenza di ordine economico-giuridico, sostituire l'organizzazione della dinamica della domanda

all'offerta statica dei servizi marittimi attraverso la creazione di strutture del terziario avanzato in aggiunta alle normali infrastrutture portuali.

Con la precisazione che questa tematica inevitabilmente si intreccia, qui a Trieste con quella concernente un assetto diverso delle aree dei punti franchi del Porto Vecchio, mediante il trasferimento di esse in altra zona dello scalo marittimo, per rendere più funzionale l'intero sistema.

Tale operazione, purché condotta nel rispetto della destinazione di quelle aree demaniali agli usi del mare, non appare in contrasto col diritto internazionale, dato il principio della sopravvenienza, che consentirebbe il mutamento del "locus" giuridico del vincolo derivante dalle Convenzioni originarie, con le opportune notifiche ai negoziatori di Londra.

Per quanto riguarda, poi, l'ordinamento interno, sarebbe necessaria una delega all'esecutivo di poteri normativi primari - se non, addirittura, una delegificazione della materia -, essendo stati i punti franchi istituiti con legge.

Si eviterebbe, così, la confusione dei poteri ministeriali a cui oggi si assiste, dopo cinque anni di inutile attesa del regolamento della legge dell'84 che, a sua volta, si è fatta attendere per cinquant'anni. Una confusione derivante dal conflitto di competenza fra il Ministero dei Trasporti e il Ministero dell'Industria, dopo la "ablatio ope legis" delle supreme potestà normative regolamentari che, secondo lo statuto internazionale, spettavano esclusivamente all'ente Free Port. I ministeri - si potrebbe dire, celiando - alla ricerca dell'autonomia perduta.

Asse portante dunque, dell'opera "Free Ports of the world" è la componente economico-giuridica di cui si è

parlato, la cui attenta disamina, offre lo spunto per una futura, auspicabile politica legislativa di rilancio del porto triestino.

Un'opera che merita particolare encomio, per il contributo, in generale, alla teoria delle zone franche e, in particolare, al dibattito concernente i punti franchi della nostra città.

La storia, crociantamente intesa, è sintesi di pensiero e di azione.

La ricerca della dottoressa Trampus è espressione del pensiero giuridico, maturato per lustri e decenni, nel divenire di questa nostra affascinante storia.

INTRODUCTION

The Italian and European doctrine and jurisprudence have not scrutinised well the function and the legal status of Free Ports. The literature on the subject (mainly journal articles and portions of books on ports and shipping) is still surprisingly deficient, and all the studies carried out by now have not displayed all the peculiar aspects of the topic.

Firstly no one has ever underlined the close connection between the frequent creation of Free Ports all over the world with the development of the international maritime business. It is therefore important to analyse and compare the statutes of the most important Free Ports of the world, pointing out their role in the affirmation, enrichment and expansion of international maritime trade.

Even though the rules and regulations on Free Ports are contained in various kind of acts (laws, decree-laws, international treaties, Customs and usage, etc.), it is still possible to single out a core of attributions, services, juridical instruments, rights and legal powers of the Free Port operators which all aim at the rationalisation and affirmation of free trade.

Today, we are witnesses of a general process of trade liberalisation, which began in the XII-XIII century with the so called "exchange affairs" and developed rapidly after the Second World War.¹ The international trade activities and transactions have always been characterised by the coexistence of a plurality of sovereign states, territorial and sectorial entities and organisations. As a result of this configura-

¹ Cf. GIULIANO, *"La cooperazione degli Stati e il commercio internazionale"*, Milan, 1972, pp. 6 *et seq.*

tion, the international movement of goods is physiologically different from the internal or national movement of goods. The international exchange of goods is conducted within an extremely diverse political, social, territorial and juridical framework, which justifies the adoption of special and autonomous devices, such as the Customs Unions, the free-trade areas and the Free Ports. In other words, the regular carrying on of the international maritime trade requires a series of favourable conditions to the international movement of goods, vessels, people, services and capital. In this context, the “Free Port’s *formula*” can be fully comprehended.

The Free Port is nowadays an international institution, whose structure and function can only be understood parallel to a modern maritime policy.

The Free Port’s choice is definitely according to the task of the challenge of a highly competitive international market, which is currently facing globalisation and internationalisation. The “free-trade way”, which requires the abolition of as many as possible trade barrier, has clearly indicated to be the best way to make our planet wealthier and better.²

The concept of Free Port adopted by most of the States diminishes its role and significance: the Free Port is often looked upon as a subject of Customs law, characterised by the application to a certain territory of a special regime of Customs exemption, generally meant as a legal fiction of extraterritoriality of the Free Port area from the rest of the Customs territory. The function of the Free Port regime is

² Thus G.A. QUERCI, “*International Trade and Economy. The race to globalisation and free trade: the predominance of Regional Agreements on “Transverse” International Agreements.*”, in *Trasporti*, Vol. No. 76, 1998, p. 91.

actually different: Free Ports are important means of free trade, of liberalisation of goods within the globalisation and internationalisation of markets, and cannot be impoverished in a mere Customs definition.

The themes of the Free Ports are strictly connected, and can be fully understood only according to the international maritime policy, which has to be re-invented in order to catch up with the international trade competitiveness.

A modern international maritime policy has to turn into the “policy of innovation”, which is the natural evolution of the traditional static maritime policy towards the dynamism of the economic system. In other words the maritime policy has to adapt to the demands of the market: it has to dynamically organise the supply of present and future services, rather than statically offering the services like in the past.

The latest twenty years have been characterised by a massive creation of Free Ports, Free Trade Zones, Airport Free Zones, all over the world. In 1986 it was estimated that Free Ports represent 20% of the world international trade, while in 1981 the figure was only 10%.³

Through the establishment of Free Ports, the states have abandoned the “static offer of services”, in order to provide a “dynamic supply of services”, which takes into consideration the fast change in the world economy and in the traffic routes, especially due to the slow but progressive industrialisation of the developing countries.⁴

In a highly competitive market, as it is today, substituting the static offer of services with the dynamic supply of services means not only establishing the Free Ports, but also

³ Figures by HELM, “*The Free Solution*”, Wallasey, 1987, p. 19.

⁴ Cf. QUERCI, “*Nuovi ruoli per il sistema marittimo-portuale negli anni '80*”, Padua, 1982, pp. 10-15.

providing them with all the necessary infrastructure⁵ and commercial immunity.

In other words, “the success of a Free Port depends on whether in its entirety it offers the right services and facilities at the right place for the right price. Reworded this means its success is influenced by its accessibility to all necessary inputs, be they in the form of transportation and communication infrastructure, labour and services, and by its competitive position relative to other zones in terms of the price and quality of its services” (SPINAGER).⁶

Essential to the international status of Free Ports is the creation of efficient road and transport infrastructure, rapid communication links, shipping registers, the development of banking and insurance, and the provision of a regime of immunities in favour of the commercial activities, acts and transaction of the Free Port.

States like Singapore, Hong Kong, Panama, United Arab Emirates, etc., can be regarded as examples of successful maritime policy, as they managed to put their Free Ports in an environment of modern and efficient structural and functional services. In order to ensure the maximum efficiency of the port operations the laws of these states pro-

⁵ The importance of the infrastructure for the successful functioning of a Free Port has been pointed out by HANS REBHAN during the 3rd working session of the 14th World Port Conference of the International Association of Ports and Harbors (IAPH) held in Hamburg, May 4-10, 1985. According to REBHAN “Free Ports are in no position to make up for a lack of basic port facilities, do the job of equipment or structures designed to ensure rapid operations or compensate for weak points in the port set-up”. Cf. REBHAN, “*The Hamburg Free Port System: Preconditions and Importance*”, in “*Proceeding of the Fourteenth Conference*”, Hamburg, May 4-10, 1985, p.129.

⁶ SPINAGER, “*Free Trade Zones and Free Ports: Overview, Role and Impact*”, in *Hansa, Special Edition IAPH/PORTEX*, April 1985, p. 650.

provide for a minimum of bureaucracy, Customs exemptions, no financial restrictions, access to offshore banking and insurance, establishment of foreign companies with 100% ownership allowed, special visas for the foreign personnel of the Free Port, legal-administrative consultation of the Free Port Authorities, etc.

Panama is home to the world's largest open shipping registry in the world; in fact, more than 14,000 ships are registered in Panama, which surpassed Liberia as the world's leader in 1993. Countries around the world use Panama as a "flag of convenience" because of its low fees, easy registration procedures and flexible labour regulations, which allow ships to employ crew members of any nationality.

Malta and Cyprus apply special fiscal regimes not only to the offshore banks and insurance companies, but also to the shipping companies.

In order to improve the offer of services, the Mauritius Free Port Authority tries to solve the logistic problems and encourages clearing and forwarding companies to provide a door-to-door service using a multimodal transport network to smooth out the routing problems.

In Jordan the companies established in the Free Zones may obtain from the Central Bank special banking facilities with regard to the import, export and transfer of capital and profits.

The United Arab Emirates is home of a Free-Trade-Zone empire and has enjoyed a chain of economic benefits and a major industrial improvement due to its flourishing Free Zones, including an Airport Free Zone, which have strengthened the reputation of a liberal economy, that the government has always promoted. The rare opportunities

and quality services which Free Zones provide have permitted the United Arab Emirates to play a pioneering role in the world of free trade.

These are only some examples. Such Free Ports possess all the attributes of a modern maritime policy and represent a patrimony for the entire maritime world.

In an up-to-date notion of Free Port both elements have to be found, which respond to the need of innovation: the technology and the free movement of goods. The latter, in particular, is today unrestrainable, becoming the markets always more global and international.

In the latest years we have been spectators of a deep change in the international maritime policy which is now concentrated on the movement of goods and goods' commercial transactions rather than on the ships like before.

The regime of the Free Port ensures perfectly the need of liberalisation of trade, which is free movement of goods in the pursuit of a maritime policy "of the innovation".

Today, all state maritime measures should respect the principle of free movement of goods, which is configured by the customary law. The demonstration of the principle of inviolability of free international maritime trade absorbs the whole second part of the "*Mare liberum*", by Dutch jurist Hugo De Groot, known with the Latin name of Grotius and mistakenly considered by the doctrine as the conceiver of the freedom of the seas. In his famous work Grotius defended the right of the Hollanders of entering into trade agreements with the East Indies against the Hispanic-Portuguese territorial claims. Grotius believed that according to the *ius gentium* freedom of navigation was an inalienable prerogative of all human beings, strictly connected with the freedom of maritime trade. For this reason Grotius

condemned the Portuguese for trying to subject the East Indies seas to their sovereignty and exclude foreigner vessels from maritime trade.

Free movement of goods is also a fundamental principle of the European Union (in fact, the Treaty of Rome, 25 March 1957, prohibits all the protectionist and discriminatory measures), and was codified by various other international agreements such as the General Agreement on Tariffs and Trade signed in Geneva on 30 October 1947 (see in particular articles XI on the suppression of trade measures restrictive of the "international" movement of goods) and the United Nations Convention on Contracts for the International Sale of Goods of Vienna, 11 April 1980 (which underlines the necessity of contributing to the removal of legal barriers in international trade as well as promoting the development of the international trade).

In conclusion, the regime of the Free Port is not only about the exemption from Customs duties, but it also comprises the free placement of goods in the Free Port and their free commercialisation and manipulation within the Free Port, without restrictions or discriminations. Therefore Free Ports can be generally regarded as very important tools in a lively international commerce.

CHAPTER ONE

GENERAL CONCEPTS

This chapter includes:

1. THE CUSTOMS TERRITORY, WITH A PRIMARY INSIGHT TO THE ITALIAN LEGISLATION. - 2. THE FREE TRADE ZONES. - 2.a The European Community legislation and the Italian Free Trade Zones. - 3. THE FREE TOWNS. - 4. THE FREE PORTS. - 4.a Historical development. - 4.b The structural features of the Free Ports. - 4.c Institutional aspects. - 4.d The economic significance of the Free Ports. - 4.e The deregulation of the Free Ports. - 4.f The Free Ports in the less developed countries.- 5. THE HARBOUR FREE ZONES. - 5.a The evolution of the Harbour Free Zones in the Italian legislation. - 5.b The Harbour Free Zones in the European Community legislation. - 6. THE FREE WAREHOUSES. - 7. THE INDUSTRIAL FREE ZONES. - 8. THE EXPORT PROCESSING ZONES.

1. THE CUSTOMS TERRITORY, WITH A PRIMARY INSIGHT TO THE ITALIAN LEGISLATION

The Customs territory is that part of the political territory of a state defined by the Customs barriers, which, according to the Italian law, are bordered by the shore, by the Italian banks of the Lugano Lake opposite to the Swiss banks, and by the frontiers of the other states.¹ The Customs territory doesn't necessarily correspond to the territory of the state, as there are parts of the lands of the state situated outside the Customs barriers, as well as territories situated inside the Customs barriers but considered as not belonging to that state. The main difference between these two types of land is that in the former it is possible to use and consume for-

¹ Cf. CUTRERA, "Dogana", in *Novissimo Digesto Italiano*, Turin, 1966, pp. 90 *et seq.*

foreign goods duty-free, while in the latter this is absolutely forbidden, where manufacturing is admitted only.

Generally the following cases can be found in Italy:

1) *Lands of a state situated outside the Customs barriers.* It is the case of the territorial waters², of the waters of the Lugano Lake between Orio and S. Margherita, as well as between Ponte Tresa and Porto Ceresio³, of the Shire of Campione d'Italia⁴ and Livigno⁵, of the warships and the civil aviation⁶.

2) *Parts of the land of a state situated inside the Customs barriers of another state.* Today there is no example of this, but before 1933 small parts of the land of Germany belonged to the Austrian Customs territory and *vice versa*; lately all the Austrian Land became part of the German Reich.

3) *Lands of two or more states forming a single Customs territory.* It is the case of the "Customs Unions", in which the territories of the states forming the Union are submitted to a single Customs jurisdiction, as they are considered to form a single Customs territory⁷.

4) *Parts of the land of the state considered outside the*

² Territorial waters belong to the State but are situated outside the Customs boundary, which is partly formed by the shore.

³ According to article 1 of the Italian Customs Law, the Customs barriers are formed by the national banks of the Lugano Lake opposite to the foreign ones.

⁴ In fact, Campione d'Italia is completely surrounded by the territory of Switzerland, so that there is no continuity with the Italian territory.

⁵ Livigno belongs geographically to the Inn basin.

⁶ See on this point BRACCI, "*Se possa la nave italiana considerarsi territorio italiano*", in *Giustizia Penale*, 1956, II, p. 608.

⁷ An example is the German Zollverein in 1834. On Customs Unions see CUTRERA, "*Principi di diritto e politica doganale*", Padua, 1941, pp. 18 *et seq.*

Customs boundary with a legal fiction. These lands are therefore not subject to the Customs Laws of that country. It is the case of the Free Zones.

Italian doctrine has named the Free Zones differently according to the extension, the nature, the location and the functional destination of the areas *de qua*: Free Trade Zones (*zone franche*), Free Towns (*città franche*), Free Ports (*porti franchi*), Harbour Free Zones (*punti franchi*), Free Warehouses (*depositi franchi*), Industrial Free Zones (*zone industriali franche*). Though it is very important to remember that all these institutions are all *species* of the same *genus*. Many legislations use the words “Free Port” or “Free Zone” or “Free Customs Zone” or “Free Trade Zone” to indicate the same concept.⁸

2. THE FREE TRADE ZONES

A Free Trade Zone is a specified area usually situated adjacent to a port, within a port, inland in an industrial area or in a city.

All the Free Trade Zones are based upon two elements: the territory and the special legal status.

As for the first of these elements, a typical Free Trade Zone would have an area of between 2 and 6 million square meters with the larger area generally found in the inland zone⁹; as for the second element, the special legal status consists in a legal fiction of extraterritoriality of the Free Trade Zone from the Customs territory of the state. Accord-

⁸ “Free Port” will be used in chapter two and three in a general sense, but primary objects of our investigation will be the Harbour Free Zones and the Free Ports.

⁹ Thus BRANCH, “*Elements of Port Operation and Management*”, London-New York, 1986, p. 109.

ing to the unanimous international doctrine, and without prejudice to what will be stated in chapter three (*infra*), Free Trade Zones are treated as Customs-Free Zones, or technically as foreign territories for tax purposes. Free Trade Zones operate within a minimum or without Customs control where goods enter the zone duty-free.

There are two types of Free Trade Zones' legal status: the first one allows goods to enter the zone, to be unloaded, stored, transhipped, processed, assembled and re-exported. This case is typical of the Free Ports, the Free Industrial Zones and the Free Warehouses. The second one permits the use and consumption of the goods introduced in the Free Trade area completely tax-free: this dates back to the Middle Age when princes were used to give special privileges to certain Communes and can be also traced later on in zones or cities due to their special location or economical troubles or just as an acknowledgement of their special autonomy. Nowadays this is very unlikely to be found in modern legislation, especially in the European Community (EC) legislation.

All over the world there are some 600 Free Trade Zones located in the following States¹⁰:

- Argentina
- Aruba
- Australia
- Austria
- Bahamas
- Bangladesh
- Chile

¹⁰ Source: LLOYD'S OF LONDON PRESS, "Ports of the world", UK, 1996, pp. 845-864.

- China, People's Republic of
- Colombia
- Costa Rica
- Croatia
- Cyprus
- Cuba
- Denmark
- Djibouti
- Dominican Republic
- Egypt
- El Salvador
- Finland
- France
- Germany
- Gibraltar
- Greece
- Guatemala
- Honduras
- Hong Kong, Special Administrative Region
- India
- Indonesia
- Iran
- Ireland
- Israel
- Italy
- Jamaica
- Jordan
- Korea, South
- Latvia
- Liberia

- Macao
- Madeira
- Malaysia
- Malta
- Mauritius
- Mexico
- Montenegro
- Morocco
- Netherlands Antilles
- Pakistan
- Panama
- Philippines
- Poland
- Portugal
- Puerto Rico
- Romania
- St. Lucia
- Senegal
- Serbia
- Singapore
- Slovakia
- Slovenia
- Spain
- Sri Lanka
- Sweden
- Syria
- Taiwan
- Thailand
- Togo
- Trinidad & Tobago

- Tunisia
- United Arab Emirates
- United Kingdom
- United States of America
- Uruguay
- Venezuela
- Yemen
- Yugoslavia, Federal Republic of

2.a The European Community legislation and the Italian Free Trade Zones.

In the past each Italian Free Trade Zone was regulated by a different law. Differences in the discipline of Free Trade Zones have been gradually mitigated by EEC Directive No. 69/75 and by EEC Directive No. 71/235¹¹, to be finally abolished with EEC Regulation No. 2504/88¹², No. 2562/90¹³ and No. 2913/92¹⁴ (establishing the EEC Customs Code), which, starting from the 1st of January 1992, represents the only real source of regulation of Free Trade Zones for all the Member States. In fact, regulations, unlike directives, apply directly and immediately in all the Member States, abrogating all the internal laws which are incompatible with them¹⁵.

Article 9 of the EEC Treaty asserts one of the most im-

¹¹ The two Directives have been introduced in Italy with *d.p.r.* 23 January 1973, No. 43 (“*Approvazione del t.u. delle disposizioni legislative in materia doganale*”).

¹² Cf. ANNEX I (*OJ No. L 225 of 15 August 1988*), *infra*.

¹³ Cf. ANNEX II (*OJ No. L 246 of 10 September 1990*), *infra*.

¹⁴ Cf. ANNEX III (*OJ No. L 302 of 19 October 1992*), *infra*.

¹⁵ For a full and penetrating investigation of the subject see DANIELE, “*Il diritto materiale della Comunità europea*”, Milan, 1995, pp. 9 *et seq.*

portant principles of the European Union: the Customs union. This has to be achieved through the gradual abolition by the Member States of all Customs duties and restrictions to import/export of goods, as well as through the adoption of a common Customs duty applicable to all non member countries¹⁶.

The possibility for each Member State to create Free Zones where goods can be imported, stored, manufactured in derogation from EEC legislation, as well as the persistence of different national laws regarding Free Trade Zones, could jeopardise the correct functioning of the EEC Custom Union. For this reason the EEC Council enacted EEC Directive No. 69/75¹⁷, in order to reduce the contrasts between different legislation systems.

Directive 69/75 allows all the Member States to establish Free Trade Zones within the EEC territory, but imposes upon them a uniform management of the areas, in order to pursue EEC aims as well as their own. EEC's biggest concern is to avoid diversions in the movement of goods as well as unfair competition.

According to the Directive, and disregarding the names given by the Member States, a "Free Trade Zone" is a bounded area established by the competent Authorities of each Member State where all the goods are considered to be outside EEC Customs barriers for fiscal purposes.

In the EEC legislation, unlike in the Italian one, the legal fiction of extraterritoriality which characterises the Free

¹⁶ Regarding this see UDINA, *"Trattato Istitutivo della Comunità Economica Europea"*, Milan, 1965, pp. 78 *et seq.*; and MURATORI, *"Riflessi della normativa comunitaria sull'ordinamento doganale italiano"*, Padua, 1969, pp. 7 *et seq.*

¹⁷ Adopted in Italy with *d.p.r.* 30 December 1969, No. 1133.

Trade Zones is not referred to the Free Zone but to the goods introduced in the Free Zone.¹⁸ For this reason Free Trade Zones in the EEC are not to be considered as foreign Customs territories: they are therefore submitted to EEC Customs Laws like all the other territories of the Member States, with the only difference that they follow special rules harmoniously within the EEC.

All the laws of the Member States ruling Free Trade Zones must follow the principles stated in Directive 69/75 regarding:

- a) limits and restrictions to the entering of goods in the Free Trade Zones;
- b) operations permitted;
- c) special prohibitions (e.g. the use and consumption of goods within the Free Zone is permitted only following the rules applicable to the rest of the country; only usual manufacturing is allowed);
- d) rateable value of goods put into consumption in the Free Trade Zones.

According to articles 7 *et seq.* of EEC Regulation 2504/88, which disciplines Free Trade Zones and Bonded Warehouses, the Free Trade Zones play a very important role in trade development as they promote transit trade and manufacturing.

Article 10, No. 2 of EEC Regulation 2504/88 confirms the prohibition of using and consuming goods tax-free within the Free Trade Zones.

EEC Regulation 2504/88 has been practically transferred into the articles 166-181 of the EEC Customs Code, introduced with EEC Regulation 2913/92.

¹⁸ See MURATORI, *op. cit. supra*; and IBID., "Dogana (Ordinamento)", in *Novissimo Digesto Italiano, Appendice*, Vol. III, Turin, 1982, p. 158.

Articles 166-168 contain general principles. The Free Trade Zones, called simply "Free Zones", are parts of the EEC Customs territory which benefit from more favourable rules basically regarding exportations. In particular, article 166 defines Free Zones as parts of the Customs territory of the Community in which:

(a) Community goods are considered, for the purpose of import duties and commercial policy import measures, as not being on Community Customs territory, provided they are not released for free circulation or placed under another Customs procedure or used or consumed under conditions other than those provided for in Customs regulations;

(b) Community goods for which such provision is made under Community legislation governing specific fields qualify, by virtue of being placed in a Free Zone, for measures normally attaching to the export of goods.

Member States may designate some enclosed parts of the Customs territory of the Community as Free Zones, defining the entry and exit points.

The perimeter and the entry and exit points of Free Zones shall be subject to supervision by the Customs authorities. Persons and means of transport entering or leaving a Free Zone may be subjected to a Customs check, and access may be denied to persons who do not provide every guarantee necessary for compliance with the rules of the Community Customs Code.

Articles 169-171 deal with the placing of both Community and non-Community goods in a Free Trade Zone.

The Customs authorities may check the goods entering, leaving or remaining in a Free Zone. To enable such checks to be carried out, a copy of the transport document, which accompanies the goods, shall be handed to, or kept at the

disposal of, the Customs authority by any person designated for this purpose by such authorities. Where such checks are required, the goods shall be made available to the Customs authorities.

The Customs authorities may require that goods which present a danger or are likely to spoil other goods or which, for other reasons, require special facilities be placed in premises specially equipped to receive them.

Goods entering a Free Zone or Free Warehouse do not need to be presented to the Customs authorities, nor need a Customs declaration be lodged. Goods shall be presented to the Customs authorities and undergo the prescribed Customs formalities only where: they have been placed under a Customs procedure which is discharged when they enter a Free Zone¹⁹; or they have been placed in a Free Zone on the authority of a decision to grant repayment or remission of import duties.

Customs authorities may require goods subject to export duties or to other export provisions to be notified to the Customs department.

At the request of the party concerned, the Customs authorities shall certify the Community or non-Community status of goods placed in a Free Zone.

Articles 171-176, regarding the operation of Free Zones and Free Warehouses, state that goods which have been placed in a Free Trade Zone may remain there without any time limits.²⁰

¹⁹ However, where the Customs procedure in question permits exemption from the obligation to present goods, such presentation shall not be required.

²⁰ The only exception is represented by the goods covered by the common agricultural policy.

Industrial, commercial or service activities shall be authorised. The carrying on of such activities shall be notified in advance to the Customs authorities, who may impose certain prohibitions or restrictions, having regard to the nature of the goods concerned or the requirements of Customs supervision.

Non-Community goods placed in a Free Zone may, while they remain in it:

(a) be released for free circulation under the conditions laid down by that procedure;

(b) undergo the usual forms of handling;

(c) be placed under the inward-processing procedure²¹ under the conditions laid down by that procedure;

(d) be placed under the procedure for processing under Customs control under the conditions laid down by that procedure;

(e) be placed under the temporary importation procedure under the conditions laid down by that procedure;

(f) be abandoned to the exchequer where national legislation makes provision to that effect;

(g) be destroyed, provided that the person concerned supplies the Customs authorities with all the information they judge necessary.²²

²¹ However, processing operations within the territory of the old Free Port of Hamburg, in the Free Zones of the Canary Islands, Azores, Madeira and overseas departments shall not be subject to economic conditions. With regard to the old Free Port of Hamburg, if conditions of competition in a specific economic sector in the Community are affected as a result of this derogation, the Council, acting by a qualified majority on a proposal from the Commission, shall decide that economic conditions shall apply to the corresponding economic activity within the territory of the old Free Port of Hamburg.

²² It is very important to remember that according to article 182, re-exportation or destruction of goods are subject to prior notification of the

Article 175 reaffirms the provision of EEC Regulation No. 2504/88 that goods placed in Free Zones shall not be consumed or used. However, it is permitted the use or consumption of goods, the release for free circulation or temporary importation of which would not entail application of import duties or measures under the common agricultural policy or commercial policy. In that event, no declaration of release for free circulation or temporary importation shall be required.²³

All persons carrying on an activity involving the storage, working or processing, sale or purchase, of goods in a Free Zone shall keep stock records in a form approved by the Customs authorities. Goods shall be entered in the stock records as soon as they are brought into the premises of such person. The stock records must enable the Customs authorities to identify the goods and must record their movements. Where goods are transhipped within a Free Zone, the documents relating to the operation shall be kept at the disposal of the Customs authorities. The short-term storage of goods in connection with such transhipment shall be considered to be an integral part of the operation.

Articles 177-181 regard the removal of goods from the Free Zones: goods leaving a Free Zone or Free Warehouse may be exported or re-exported from the Customs territory of the Community, or brought into another part of the Customs territory of the Community.

When a Customs debt is incurred in respect of non-Community goods and the Customs value of such goods is

Customs authorities, with the only exception of cases determined in accordance with the committee procedure.

²³ Such declaration is, however, required if such goods are to be charged against a *quota* or a ceiling.

based on a price actually paid or payable which includes the cost of preserving goods while they remain in the Free Zone, such costs shall not be included in the Customs value if they are shown separately from the price actually paid or payable for the goods.

If the said goods have undergone one of the usual forms of handling, the nature of the goods, the Customs value and the quantity to be taken into consideration in determining the amount of import duties shall, at the request of the declarant and provided that such handling was covered by an authorisation, be those which would be taken into account in respect of those goods, had they not undergone such handling.

Where goods are brought into or returned to another part of the Customs territory of the Community or placed under a Customs procedure, the certificate referred to in Article 170 may be used as proof of the Community or non-Community status of such goods. Where it is not proved by the certificate or other means that the goods have Community or non-Community status, the goods shall be considered to be: Community goods, for the purposes of applying export duties and export licences or export measures laid down under the commercial policy; non-Community goods in all other cases.

It is very important to remember that according to article 234 of the EEC Treaty, Free Trade Zones instituted by previous international treaties are not submitted to the EEC rules and can therefore benefit from a more favourable discipline.

3. THE FREE TOWNS

A Free Town²⁴ consist of a urban built-up area where goods can enter, be stored, manufactured and consumed duty-free by the resident population.

In the 18th century important Free Towns were Hamburg, Marseilles, Gibraltar, Zadar, Venice, Ancona, Messina and Leghorn.

A "Free City" was established in Danzig by the Versailles Treaty, but it was not a Free Town in the older sense of the term because it did not allow its population complete access to duty-free merchandise. By the creation of the Free City of Danzig, Poland was only granted free access to its port facilities.²⁵

It must be noted that Free Towns developed when public law was based on privileges, when maritime traffic was a monopoly of a few towns, when there was little trading between ports and their hinterland and consumer goods only converged at ports, when communications were difficult and expensive, and when sales could not take place for long periods of time. As a result of this, at the beginning of the 17th century important economists like Genovesi and Broggia wrote against Free Towns (while Goia, Sismondi, Mengozzi wrote in favour of them), underlining the fact that there was a discrimination between citizens of a state, as the residents of the Free Town, unlike those of the rest of the state could use up the imported provisions free of duty. Furthermore Free Towns, more than Free Ports, often

²⁴ See on the subject PISCITELLI, "Punti franchi", in *Enciclopedia del Diritto*, Vol. XXXVII, Milan, 1988, pp. 1145 *et seq.*

²⁵ In this sense THOMAN, "Free Ports and Foreign-Trade Zones", Cambridge, Maryland, 1956, p. 80. For the text of the articles of the Treaty of Versailles regarding the Free City of Danzig see ANNEX XVII, *infra*.

stimulated smuggling and could sometimes hinder the development of local industry and traffic in seaports. This happened in Marseilles in 1817, when 300 industrialists and tradesmen asked for and obtained the abolition of the immunity and instead gained the establishment of the *entrepôt réel* and the *entrepôt fictif*, which Colbert looked upon as essential to an efficient Customs system²⁶.

The same thing happened to Venice in 1692 and to Hamburg in 1888, when it became part of the *Zollverein*.

As far as transit trade is concerned, economists pointed out that Free Towns didn't attract more traffic than the Free Zones and the Free Ports, so they suggested their suppression when Free Zones and Free Ports were provided with areas spacious enough to carry out loading and unloading operations as well as manufacturing.

Following the unification, nearly all the Free Towns existing in Italy were abolished.

4. THE FREE PORTS

According to the prevailing doctrine²⁷, and without prejudice to what will be stated in chapter three, a Free Port is characterised by its whole harbour plants (sheet of water, quays, wharves, warehouses, factories, etc.) being considered by the law outside the Customs barrier. This means that within the Free Port all maritime traffic operations (importation, storage, negotiation, manufacture and reshipment of goods) take place duty-free and within a minimum

²⁶ Cf. LARIA, "*Franchigie e porti franchi*", Biblioteca Generale Università degli Studi di Trieste, 1927, pp. 109 *et seq.*

²⁷ See POLLERI, "*Porti e punti franchi*", in *Novissimo Digesto Italiano*, Vol. XIII, Turin, 1966, p. 299; and ALESSI, "*Dazi doganali*", in *Enciclopedia del Diritto*, Vol. XI, Milan, 1962, p. 707.

of Customs control.

4.a Historical Development

Free Ports are facilities that can be traced through history some 2,000 years²⁸ back to China or, according to other scholars, to the Phoenicians.²⁹

The Greeks brought the Free Port device to a level of development possibly comparable to that of modern times: within Piraeus, a plot of ground was set aside from the rest of the harbour by a stone wall, and was placed under jurisdiction of officials responsible for Customs collection.³⁰

The Romans were not without appreciation of the Free Port device: a Free port was established on the Aegean island of Delos after the Third Macedonian War, with politi-

²⁸ *Contra* MASTROPASQUA, "Considerazioni sulle zone franche esistenti nel mondo", in *Rassegna di Diritto Doganale*, 1973, pp. 145 *et seq.*: according to the Author, there are no real examples of Free Ports before the XVI century; the Free Towns of the Hanseatic League were actually independent coastal towns that, being allowed to choose the most suitable Customs system to their development, followed the free trade ever since the XIII century, entering into commercial agreements with the towns belonging to the League and with those not belonging to it and creating bonded warehouses.

²⁹ For a full survey of the historical development of Free Port see THOMAN, "Free Ports and Foreign-Trade Zones", Cambridge, Maryland, 1956, pp. 11-20. According to the Author, preceding the period of the Roman Empire, the city-states of the eastern and southern Mediterranean Sea were surrounded on land by hostile populations, so they set up landward perimeters of defence and established colonies with which communication and political affiliation were maintained via the friendly sea. Foreign merchant could access only to stipulated ports, while trade with all the other ports was prohibited. This way Carthage became a major transshipment centre. Apparently such ports were "free" only in the sense that they granted a limited freedom from bodily harm to non-local traders who were treated in a wholly different manner if they attempted direct service to the satellite ports.

³⁰ Thus THOMAN, *op. cit. supra*.

cal control of the islands placed in the hands of Athens.³¹ Such Free Port may have been a means of creating a duty-free storehouse from which to supply Roman armies in that section of the Mediterranean, but whatever the motivation, its effect was apparently that of stimulating commerce with Greece, Syria, and Egypt.³²

The centuries immediately following the defeat and the division of the Roman Empire appear to have marked a reversal of the Free Port device to its ancient form of the Free City: as such, it was preserved and developed in the Middle Ages.³³ The merchants of the Hanseatic League grew rich carving Free Ports out of the feudal hinterland in the Middle Ages. Following the Crusades with its rebirth of active trade from Europe to the Levant, the Free Ports regained their importance in the development of a lively international commerce.³⁴

In Europe some coastal towns were named "Free Ports" since the 16th century; in Italy the port of Livorno received the exemption from Customs duty in 1547, that of Civitavecchia in 1732, that of Messina in 1784, and that of Trieste in 1719 through the "licence" of Charles VI. In some cases (Livorno, Ancona, Messina) the immunity was extended to the whole town. In France Free Ports existed in Bayonne, Dunkerque and Marseilles³⁵ since the 17th century but they were suppressed to the detriment of the economy by the French Revolution in 1789, because all immu-

³¹ *Ibidem.*

³² *Ibidem.*

³³ *Ibidem.*

³⁴ *Ibidem.*

³⁵ It seems that an embryo of Free Port existed in Marseilles ever since the VI century.

nities were considered unequal privileges and therefore clashing with the revolutionary principles.

In Spain the harbour of Cadiz was declared a Free Port in 1829, but the immunity was revoked in 1832 to repress smuggling.

The German Free Ports established at the end of the 19th century (Hamburg, Bremen, Stetting) can be regarded as perfect models. Particularly interesting is the history of the Free Port of Hamburg. Hamburg was an ancient Free Town (*Freihafenstadt*) that remained completely independent from the Customs point of view until 1878, when it agreed to join the German Customs Union (*Zollverein*) of 1834. At first Hamburg wanted to stay out of the Union in order not to lose its great autonomy in the commercial relations, but this soon contrasted with the achieved national unity and with the protectionist policy of the Reich, which, among other things, caused great detriment to Hamburg enterprises, obstructing the provision of raw material as well as new opportunities of trading with the domestic market. The expedient that Hamburg found to keep its immunity was that of creating within the Free Town an enclosed area (*Zollverein Niederlage*), whose barriers were under strict surveillance. With a fiction of law, the *Zollverein Niederlage* was considered to belong to the Customs territory: goods entering the area had to pay Customs duties but could be manufactured free of duty if their final destination was a state member of the Union. Following a series of inconveniences, the *Zollverein Niederlage* was suppressed and Hamburg agreed to join the *Zollverein*³⁶ on condition that a

³⁶ Bremen tried to enter the Customs Union on the same basis as Hamburg, but received a curt refusal. At first the city had to accept a "Free Warehouse" (*Freilager*), a status soon changed to "Free District" (*Freibezirk*),

large area of the port and the town remained outside the Customs barrier.³⁷ This is the origin of Hamburg Free Port, which opened officially in 1881.³⁸ The Free Port was *Zollausland*, theoretically beyond the jurisdiction of Customs authorities, and enjoyed essentially unrestricted freedom of import, export, transit, warehousing, ship's provision, manipulating, sorting, and manufacturing (for re-export and transit purposes).³⁹ Intensive retail trade and private residences were prohibited with certain exceptions.⁴⁰ Due to the busy traffic on the river Elbe, a very important route for German trade, Hamburg Free Port developed so quickly that it even surpassed the Free Port of Antwerp, Rotterdam, Marseilles and Le Havre. It also helped Germany to become a rival of England. Even with its supremacy in international trade, England started to worry about Germany's giant steps.

subject to the Customs jurisdiction of the Union. Manufacturing and even shipbuilding were not allowed, and the principal activities were warehousing, transshipment, ships' provision, stores and ship repair. Afterwards Bremen's Free Port was granted the status of "out-of-toll territory" (*Zollausschlussgebiet*), which implied a measure of freedom from national Customs, but not also the long-sought privilege of manufacturing within the Free Zone. After Bremen's admission into the Customs Union, many other ports were granted the Free Port status: Emden, Bremerhaven, Cuxhaven, Danzig, Stettin, Kiel, etc. Danzig was internationalised after World War I and, together with Stettin, became Polish-controlled territory. In both cities the Free Port status was preserved, while Kiel gave up the major portion of its Free Port, retaining only a small enclosure around the entrance locks to the Kiel Canal. Thus THOMAN, *op. cit. supra*.

³⁷ Subsequent additions within the port of Hamburg did not enjoy the privileges of the Free Port status.

³⁸ Thus HAAS, "*Règime international des zones franches dans les ports maritimes*", in *Recueil des Cours de l'Académie de droit international de La Haye*, 1928, I, pp. 393 *et seq.*

³⁹ THOMAN, *op. cit. supra*.

⁴⁰ *Ibidem*.

An other model of Free Port is that of Copenhagen (Denmark), established in 1891. It soon became the main centre of the whole maritime and business activity of Denmark and of the Baltic Sea (so that Copenhagen was named "the key of the Baltic"), as well as one of the most important ports of Europe.

As far as Russia is concerned, under the Czars Free Zones existed in Kronstadt, St. Petersburg and Port Catherine. Odessa was a Free Port between 1817 and 1859, when trade flourished rapidly. Vladivostok, in Siberia, became a Free Port in 1862.

In Romania a Free Port was established in Constance to be suppressed a few years later and replaced with *entrepôts*.

Large Free Ports were created at the end of the 19th century in Rotterdam⁴¹, Amsterdam (Netherlands), and Antwerp (Belgium).

In Sweden the Free Port device was inaugurated in Stockolm (1919), Göteborg (1922) and Malmö (1922).

In Greece the Free Port of Salonika was inaugurated in 1923; that of Cork in Ireland was opened only in 1989, while a Free Zone adjacent to Shannon Airport had been operating since 1959.

The United States borrowed the Free Port device from Europe in order to facilitate the re-export and import com-

⁴¹ Rotterdam is the outlet in the North Sea for most of the German factories situated in Westfalia and in the Rhine basin. Today the port of Rotterdam can be described as a transit, storage and industrial port, which is not a Free port in the usual sense of the word (the bonded warehouse device takes the place of the Free Port device), but has the reputation of being "freer than a Free Port", thanks to the great flexibility of its Customs system. This is manifest in a very supple system of customs inspection and the reduction of formalities and controls to a minimum. Cf. ROTTERDAM EUROPORT YEARBOOK, "Information", Rotterdam, 1979.

merce by reducing to a legal minimum the adverse effects of the existing tariff laws.⁴² In 1846, a general Customs bonded warehouse system was established, according to which goods could be stored in approved warehouses without payment of duties if the merchandise was re-exported. In 1894, Customs bonded manufacturing warehouses were inaugurated, and in 1922, certain manipulations such as re-capping, sorting and cleaning were permitted under bond without payment of duties. In 1930 a Free Port Movement began, and on 18 June 1934 the Foreign-Trade-Zones Act received the approval of the US Congress.⁴³ In that year, the Congress enacted legislation designating an interagency entity, the Foreign-Trade Zones (FTZ) Board, with authority to license and regulate free trade zones.⁴⁴

Until the 1960's, the US FTZ program languished with only ten established zones. It was the explosive growth in world trade and investment of the late 1960's that awakened US interest in greater use of our zone program. Today there are over 200 foreign-trade zone projects dotting the United States.⁴⁵

⁴² For a deep analysis of the American Free Trade Zones, rich with historical references, see THOMAN, cit.

⁴³ In 1919 a Free Port bill was defeated primarily on the argument that it was contrary to article 1, section 9 of the Constitution ("No preference shall be given any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another". See LOMAX, *The Foreign Trade Zone*, University of Oregon, 1947, pp. 14-15.

⁴⁴ Under US FTZ law, incentives are limited to Customs duty and federal excise tax exemptions or deferrals, but additional benefits are often available in zones that are part of state/local development programs. The FTZ Act (19 USC 81a-81u) makes every US Customs port of entry eligible to apply for a Foreign-Trade Zone based on the demonstration of need and presentation of a suitable zone plan.

⁴⁵ See on this 23RD ANNUAL NAFTAZ CONFERENCE, *Variations on*

There was no trace of Free Ports in the United Kingdom in the past, though London and Liverpool created huge docks with Bonded warehouses where goods could be stored free of duty. Goods could not be processed except when it was necessary for their conservation. Even though the UK did not employ the Free Port device at home, a series of some 30 Free Ports Acts passed by Parliament between 1766 and 1822 establishing Free Ports in key colonies of the West Indies (Singapore, Hong Kong, Gibraltar, Malacca, Macao and Djibouti). According to a Law of September 1833, in the British Empire the colonial trade could only take place between Free Ports so declared by royal decrees. They were considered Free Warehousing Ports and no goods could be imported from other British dominions, with the exception of fishing products transported by English vessels.

In early 1984 the UK Government approved the provision of some seven Free Ports: Southampton, Liverpool, Prestwick, Cardiff, Belfast, Birmingham and Tilbury⁴⁶. To-

the Freeport Theme. A US Perspective", Kamuela, Hawaii, 8-12 October 1995.

⁴⁶ Tilbury applied for the Free Port status largely as a result of feedback from its customers. "The existence of the Free Port is very important to us and our customers. Not having to pay VAT and duty until the goods are consumed is very advantageous" said Tony Bryant, managing director of Transforest. Cf. WOODBRIDGE, "Tilbury feeling the benefits of status", in *Lloyd's List*, Monday July 29 1996, p. 6. See also CLEGG, "No lack of space at Tilbury", in *Lloyd's List*, Thursday July 17 1997, p. 7; the Author points out that Tilbury's Free Port status is rather different from many others Free Trade Zones as the entire port constitutes the Free Zone. No single warehouse, labour force or piece of cargo handling equipment is specifically dedicated to Free Zone work and there is no separately fenced off area. Any available space can be used for storing Free Zone goods, with the result that Tilbury does not suffer the same constraint on space availability as other Free Ports often do.

day, the following Free Ports are operational: Liverpool and Southampton, since 1985; Tilbury, since 1992; Hull, since 1993; Sheerness, since 1994. Also the Isle of Man⁴⁷ planned to have a Free Port at Ronaldsway, operational since 1988.

The success of the UK Free Ports will depend to a great extent on the types of industry they will attract. Southampton is likely to attract a high level of interest from Far Eastern and to a lesser extent North American companies, some of them new to the UK. The industries are mainly high technology, clothing and agricultural commodities.⁴⁸ At the moment the UK's largest and most successful Free Trade Zone is the port of Liverpool. Liverpool Freeport, incorporating more than 320 hectares of the port's most modern terminals and facilities both at Liverpool and Birkenhead Docks, handles over £ 5 million worth of goods a week for hundreds of companies serving in excess of 80 countries. It offers more than 100,000 square meters of property for warehousing, processing and manufacturing in the dynamic international trading environment of Britain first freighting village.⁴⁹

It is important to note that before the 19th century the so called Free Ports were actually characterised by the grant-

⁴⁷ The Isle of Man enjoys free trade with the European Union but is not a member. The Free Port is operated under European Union regulation and offers warehousing, manufacturing and distribution facilities, as well as special inducements like 100% capital allowances, 40% grants towards capital allowances, maximum income tax at 20%, training and marketing assistance, etc.

⁴⁸ Cf. BRANCH, *Elements of Port Operation and Management*, London-New York, 1986, pp. 108-109.

⁴⁹ Cf. TOR LINE, PORTS OF EUROPE, Chestergate-Macclesfield-Cheshire, 1996. The port of Liverpool and Liverpool Freeport are owned by the Mersey Docks and Harbour Company, Britain's second largest port group which is ranked among the Financial Times top 500 UK companies.

ing of international immunities to the town and the adjacent areas. The immunity allowed goods to be imported, exported, stored, handled, processed, used and consumed by the residents free of duty. Therefore it would be more appropriate to name them "Maritime Free Towns" or "Coastal Free Towns".⁵⁰ This description was particularly suitable for those emporial coastal towns, entirely dedicated to international trade, for those the port represented the major source of income. The Free Port status was so advantageous that the Customs separation with the rest of the country faded into the background.

However the political, economical and social background soon changed and the structure of the Free Port became inadequate. Due to the industrial and transportation development, the Customs isolation of the whole town became unbearable hindering the free movement of people and goods towards the inland hindered. In addition the privileges granted to the residents of the Coastal Free Towns were considered to clash with the principles of equality and national unity.

For all these reasons many Free Ports were abolished following the French Revolution: it is the case of Marseilles, Bayonne and Dunkerque. In other cases the solution was not so drastic: the immunity was limited to the area of the port and to its installations, while the urban areas remained inside the Customs barrier. This way only port operations and processing of goods were exempted from Customs formalities while consumption of goods and residency within the Free Zone were forbidden.

This is the typical configuration of contemporary Free

⁵⁰ Thus HAAS, *op. cit.*

Ports: their most important role is to boost international exportations as well as to provide revenues for the port itself and its hinterland. The primary function of a Free Port is therefore commercial, even if industrial plants are often authorised to operate within the Free Port without having to pay Customs duties on raw materials, on goods used in the production and on final products re-exported by sea.

In the 19th century the political trend of most European States was that of abolishing all the existing privileges; in modern legislation the tendency led to the suppression, apart from a few exceptions, of the Free Towns and the Free Ports, while Free Trade Zones and Free Warehouses were still admitted.⁵¹

Following the unification, in Italy the Free Port of Ancona was abolished in 1864, that of Messina in 1879, that of Civitavecchia in 1875, that of Venice in 1874.

This tendency can be criticised. If Free Towns could actually involve a discrimination between citizens, the same thing cannot be said for Free Ports, where goods can be stored, handled, processed duty-free, but not used and consumed by the population.⁵²

At the end of the First World War the attitude towards Free Ports changed as the economists fully comprehended the enormous economical advantages brought by free unhindered trade. Free Ports were no longer disciplined only by the national legislation but also by international treaties which granted the immunity to ports of great interest for the international community. Free Ports turned out to be the most convenient solution to the problem of the countries without access to the sea and of those subjected to disputes

⁵¹ Cf. POLLERI, *op. cit.*

⁵² *Ibidem.*

or changes of sovereignty. Besides it was advantageous for Free Ports to be maintained in the colonies.⁵³ Moreover, the Free Ports played an important role in certain outlying areas: it is the case of the ports at the foci of major oceanic routes (Hong Kong, Singapore and Colon), which fulfils a need for the international re-export commerce, and of the ports granting land-locked nations access to the sea (Trieste, Thessaloniki, Beirut).⁵⁴

Also the Italians started to think that the restoration of Free Ports would have stimulated international transit trade as well as the creation of new warehouses and factories, promoting this way the function of the port as emporium and storehouse next to the traditional role of place of transit. On these basis Royal Decree Law No. 2395 of 22 December 1927 was enacted. It was turned into Law No. 3115 of 2 December 1928 which authorised the issue, within thirty years, of decrees granting a total or partial immunity to fourteen Italian ports: Ancona, Bari, Brindisi, Cagliari, Catania, Fiume, Genoa, Livorno, Messina, Naples, Palermo, Savona, Trieste, and Venice.⁵⁵

According to article 2 of *R.d.l.* No. 2395 Free Ports were outside the Customs barrier *ex* article 1 of Consolidation Act No. 20 of 16 January 1896, and all commercial operations (loading, unloading, transhipment, storage, negotiation, manufacture, and processing of goods) could be carried out free from Customs requirements within the Free Port, except for a few limitations.

⁵³ See, also for examples, NOLDE, “*Droit et technique des traités de commerce*”, in *Recueil des Cours de l’Académie de droit international de La Haye*, Vol. II, 1924, pp. 358 *et seq.*

⁵⁴ In this sense THOMAN, *op. cit.*, p. 160.

⁵⁵ Cf. POLLERI, *op. cit.*

Article 3 subjected the implementation of factories and manufacturing to the concession of the Maritime Authority, with previous approval of the Minister of National Economy, if all the conditions required were met.

According to article 4 national goods of coasting trade unloaded in a Free Port or entering a Free Port to be loaded in coastal trade could not keep their nationality if not submitted to Customs controls. Customs Authorities could also require the storage of these goods in certain warehouses.

For technical and political reasons the Royal Decree Law was disregarded; in particular it was feared that granting Customs immunities to such a large number of ports if on one hand would have brought enormous economical advantages to the Free Ports and their hinterland, on the other hand it would have been useless or even detrimental to the other ports carrying out coastal trade, as it would have created limitations or diversions of traffic. This orientation is that of modern legislation which tends to prefer Free Zones to Free Ports, limiting the Customs immunity to certain areas of the port and not to the entirety, and above all to create Free Warehouses.

The latest years have been characterised by a massive creation of Free Ports and Free Trade Zones all over the world: from a handful 25 years ago to over 300 by 1980 and to some 600 nowadays⁵⁶. Although the United States, Europe and Latin America lead in their numbers, the smaller number of Far Eastern Free Ports and Free Trade Zones lead by far in their volume of activities.

⁵⁶ Figures by FRANKEL, cit.

4.b The structural features of the Free Ports

With regard to Customs treatment a seaport can be organised by two different systems, either as a Customs port with bonded warehouses or as a Free Port.⁵⁷

Within the system of Customs sheds and bonded warehouses a physical connection between the various Customs facilities is not existing.⁵⁸ When foreign trade merchandise is stored in a bonded warehouse, it is kept under control and locked by the Customs authority, and any warehouse handling can only be effected more or less under Customs supervision. In private bonded warehouses securities have to be given to the Customs authorities, and the storage of goods is permitted for a restricted period only.⁵⁹

In other words, in a Customs port the speedy and smooth dispatch of ships is delayed by Customs formalities and permanent Customs control, which cannot be fully prevented even if the Customs administration is well organised, whereas in Free Ports transport operations are not delayed by Customs regulations. Goods can be discharged immediately after the ship's arrival, they can be transported without Customs control within the Free Port area and be stored for an unlimited time in the warehousing facilities.

Free Ports may be defined differently from country to country according to respective specific economic activities but in general the following basic features will be given⁶⁰:

⁵⁷ For a distinction between Customs ports with bonded warehouses and Free Ports see HEIDELOFF, "*Port Management Textbook Containerization*", Bremen, 1985, pp. 246-247.

⁵⁸ HEIDELOFF, cit.

⁵⁹ *Ibidem*.

⁶⁰ Source of this enumeration is HEIDELOFF, cit. Thus also THOMAN, cit.

1) Reference is made to a geographically closed port region without resident population, being generally part of a port with associated handling and warehousing facilities, the frontiers of which are controlled by Customs authorities.

2) As for Customs treatment, Free Ports are separated from the Customs area of the state to which they belong by sovereign rights, that is with respect to Customs regulations and controls. Free Ports are legally considered to be outside the Customs territory⁶¹, i.e. they are locationally delineated from the rest of the economy and exempted from certain laws and regulations applied to the domestic area. In many cases Free Ports are also totally or partially exempted from income taxes, property taxes, value added, and various other taxes. Most Free Ports offer fiscal incentives to investors, as well. Furthermore commercial activity, banking and recruiting are ruled less strictly.

3) Within the Free Port, goods imported from abroad can be unloaded, stored and transported in exemption of domestic tariffs, duties or regulations until they actually leave the Free Port. If their destination is another foreign country, they are permitted to leave the Free Port without having to pay the Customs dues which they would have incurred at any point. Instead, if their destination is the host country itself, they are taxed on leaving the Free Port as if they had just arrived from abroad. Therefore, regulations of the Customs jurisdiction are only applied if commodities pass the Customs barrier and get into the Customs area, while practically no Customs treatment is applied for the transit

⁶¹ Free Ports are legally outside Customs jurisdiction in most host countries; therefore trade with the zone is exempted from Customs duties or import/export controls.

trade.

Another advantage of Free Ports is the possibility for importers to exhibit their merchandise.

4) The majority of Free Ports offer the possibility of manipulating the goods to a certain extent; this consists mainly of grading, repacking, cleaning, blending, and similar functions, which usually are permitted in addition to warehousing. Besides, some Free Ports have developed industrial activities, which are concentrated on labour intensive manufacture of goods requiring inputs from a variety of distant locations.⁶²

TABLE 1. - MAJOR FREE PORT INDUSTRIAL ACTIVITIES⁶³

1. Electrical and electronic assembly and manufacturing
2. Computer and Instrument assembly and manufacturing
3. Signals assembly and manufacturing
4. Communications equipment assembly and manufacturing
5. Toy assembly and manufacturing
6. Shoe and leather goods manufacture
7. Clothing manufacture
8. Gas and diesel engine manufacture
9. Pharmaceutical and Cosmetic manufacture
10. Utensils manufacture
11. Fire mechanics and medical engineering manufacture
12. Container manufacture
13. Packaging and packaging material manufacture
14. Plastic goods manufacture
15. Printing manufacture
16. Office machinery manufacture
17. Cameras and optical equipment manufacture
18. Musical instrument manufacture

⁶² Compare FRANKEL, "The Concept of Free Ports and Their Contribution", in *Hansa, Special Edition IAPH/PORTEX*, April 1985, p. 637; and PAWLIK, "Die rechtliche Struktur von Freihäfen und Hafenzonen", *PhD-Thesi*, Münster, 1974, pp. 1-14.

⁶³ Source: FRANKEL, "Port Planning and Development", New York-Chichester-Brisbane-Toronto-Singapore, 1976, p. 237.

19. Bicycles and motorcycle manufacture
20. Textile and special chemicals manufacture
21. Automotive parts manufacture
22. Process equipment manufacture
23. Tool machinery manufacture
24. Navigation equipment and aids manufacture
25. Detection equipment manufacture
26. Other

4.c Institutional aspects

The implementation of a Free Port has to be the result of effective strategies and resulting policies. It is not sufficient to enact “Free Port legislation” and set “Free Port areas” aside: effective establishment and operations of Free Ports require long-term commitment to the concept, adherence to the policies, effective marketing abroad, and acceptance of the concept domestically.⁶⁴

Most Free Ports arrangements are medium-to long-term and commitments are usually made for 10 to 20-year periods. This may include legal, jurisdictional and financial undertakings by the host government or authority such as tax-free status, exemption from duty, legal status, duty controls, financing arrangements, land transfer, and more.⁶⁵

Moreover, the tenants of a Free Port may undertake a certain level of investment as well as a minimum level of employment and throughput or value added over the whole time of the contract; numerous port zones have developed or incorporated Free Port zones to attract labour and transport-intensive industrial activities, primarily catering to the export market.⁶⁶

⁶⁴ FRANKEL, *ult. op. cit.*, p. 241.

⁶⁵ *Ibidem.*

⁶⁶ *Ibidem.*

4.d The economic significance of the Free Ports

The Free Ports are established in order to increase free or unhindered trade, as well as commercial and industrial activities, and to promote investment and technology transfer. However, economic advantages of this kind can only be fully exploited in ports providing sufficient infrastructural conditions and favourable traffic relations with sales areas and supply markets, besides an advantageous transport-geographic location.⁶⁷ In other words, “the success of a Free Port is influenced by its accessibility to all necessary inputs (be they in the form of transportation and communications infrastructure, labour, services etc.) and its competitive position relative to other zones in terms of the price and quality of its services”.⁶⁸

The main advantage of Free Ports or Free Trade Zones is that they permit the free unhindered import of various materials and components for assembly and manufacture for subsequent export without duties and taxes.⁶⁹

Economic benefits to the host country are usually obtained from⁷⁰:

1. increase in *entrepôt* and transshipment trade;
2. large infrastructure and other investment
3. increase in foreign capital investment;
4. increase in export competitiveness;
5. increased banking and insurance business;
6. employment generation, direct and indirect;

⁶⁷ HEIDELOFF, “*Port Management Textbook Containerization*”, Bremen, 1985, p. 248.

⁶⁸ SPINAGER, “*Free Trade Zones and Free Ports: Overview, Role and Impact*”, in *Hansa, Special Edition IAPH/PORTEX*, April 1985, p. 650.

⁶⁹ FRANKEL, *ult. op. cit.*, p. 236.

⁷⁰ The source of this enumeration is FRANKEL, *cit.*, p. 237 and p. 240.

7. training of domestic labour in new skills;
8. increase in utilisation of domestic resources, services, and capital for export generation;
9. development of marketing/sales opportunities for Free Zone and domestically manufactured products;
10. transfer of management know-how;
11. technology transfer;
12. added port and transport revenues;
13. transport cost saving;
14. foreign exchange earnings as investments, salaries, and port or transport are paid in foreign exchange.

The economic benefits to host countries vary with the type of Free Port or Free Trade Zone activities, but it is common to achieve a value added of 50% to 80%, of which about 70% is retained by the host country: in other words, a Free Port activity with a value of imports of US\$10 million will usually contribute US\$3-5 to 5-6 million to the economy of the host country.⁷¹

All these benefits indicate that Free Ports can contribute substantially to the economic development of the host countries, but experts underline that countervailing effects may also occur with view to trade and investment diversions from the regulated domestic economy, which is a problem especially for less developed countries where scarce sources of investment may not be available for a growing domestic industrial potential.⁷²

⁷¹ *Ibidem.*

⁷² There are other objections raised against Free Ports, especially by the Customs. The most frequent is the alleged danger of increased smuggling, which can be seriously reduced or even fully eliminated by appropriate precautions and regulation such as building a strong and high double fence with watchmen and guards on permanent 24 hours duty; introducing strict penalties for smuggling as a deterrent; and foreseeing in the Free Port laws a spe-

The Free Port device is very advantageous for the companies involved in the handling and processing of sea-borne trade. The economic advantage for the shipping industry resulting from a reduction of transportation cost by shorter lay-times due to transport operations without administrative interference is only one important aspect.⁷³ Foreign trade orientated firms, in particular importers and exporters, but also transit traffic and those firms engaged in processing or refining of goods profit from the absence of Customs regulations.⁷⁴ These advantages regard:

A) *Foreign trade*⁷⁵

Goods can be temporarily warehoused without payment of Customs and import duties for an indefinite period of time. Importers or foreign exporters can dispose freely of the stocks because the owner has free access to the stored goods. In addition, goods can be processed in conformity

cial procedure for valuable articles of very small size (which offer the strongest incentive for smuggling and the greatest ease of undetected removal from the Free Port's Zone) according to which Customs' dues on such articles are exceptionally high; importers should be obliged to supply to the Customs a full list of such articles introduced in the Free Port (usually not required for other goods), and they should be responsible for Customs' dues on all missing items. Regulations of this kind have been included in the draft of the Aqaba Free Zone Law, prepared by B. NAGORSKI in March 1967 (NAGORSKI, "*Port problems in developing countries*", Tokyo, 1972, pp. 264-265). An other recurrent objection to the establishment of Free Ports is the loss of control by the Government and various institutions over economic activities and transactions: that's a *sine qua non*, one cannot have the one without the other. In this regard FRANKEL, in the discussion during the Working Session III of the conference "*Free Ports: Preconditions, Systems, Importance*", Hamburg, 8 May 1985.

⁷³ HEIDELOFF, "*Port Management Textbook Containerization*", Bremen, 1985, p. 248.

⁷⁴ *Ibidem*.

⁷⁵ The source of this whole section is HEIDELOFF, cit., pp. 248-249.

with the market demand in order to improve their appearance or commercial quality.

Buyers can examine the goods on the spot. Disposable stocks of this kind improve the position of the importers on the market as, depending on movement in demand, parts of the merchandise can be delivered into the Customs area after compliance with the Customs formalities without delay.⁷⁶ This way the importer is free to determine his own level of stocks and can, at the same time, exert regulative influence on the supply and price level in the inland market.

The Free Port regulation are especially advantageous for importers who import expensive and therefore mostly high-duty goods.⁷⁷ If mainly bulk cargo is handled, the advantages of Free Ports are less evident as Customs clearance can be carried out easily, compared with general cargo. Besides, Customs dues are not high and bulk commodities are transported without storage in port to the consignee in the Customs territory.

Waste or damaged goods can be destroyed or re-exported, arising favourable sales opportunities in foreign markets, and then are not subject to Customs duty.

It is evident that Free Ports are important distributive centres for the international trade. The Free Port device is especially suitable for major world ports which act as central handling places for certain goods like tobacco, cotton, coffee, etc., where commodities are imported from the

⁷⁶ See also RIEDL, "Zollfreizonen und Freihäfen in Europa (II)", in *Verkehr* No. 6, February 1976, p. 188.

⁷⁷ In this sense REBHAN, "The Hamburg Free Port System: Pre-Conditions and Importance", in *Hansa, Special Edition IAPH/PORTEX*, April 1985, p. 642.

countries of origin, sold and partly re-exported to the various countries of destination.

Storage in the Free Port is duty-free, as Customs duties are not to be paid before the time of delivery into the Customs area. So, the available capital can be invested freely for other purposes in the meantime (Customs credit). This involves financial advantages for importers, especially minor, financially weak importers, because they may sell their merchandise already before the Customs duties become due⁷⁸.

The export of goods is also facilitated within the Free Port, even if the most benefits accrue to the import and re-export trade. Moreover, the forwarders can move the cargo freely in the port area and transport it up to the point where it is loaded onto a ship.

*B) Transit Trade*⁷⁹

Similarly to import traffic, the advantages of the Free Ports for transit traffic arise through the possibility of temporary storage in port. Furthermore the transit dealer can tranship goods from ship to ship or to other means of transport without any restrictions.

*C) Export Industries in the Free port*⁸⁰

Not all the Free Port regulations permit the manufacturing and processing of imported raw materials and primary products. Where the establishment of export industries in the Free Port area is allowed, these factories rely mainly

⁷⁸ Cf. also KAUFMANN, "Die wirtschaftliche Bedeutung eines Freihafens", in *Zentralverband der deutschen Seehafenbetriebe e.V., Seewirtschaft, Beiträge zur ökonomischen Entwicklung in Seehäfen und Seeschifffahrt*, Hamburg, 1966, p. 637.

⁷⁹ The source of this whole section is HEIDELOFF, p. 249.

⁸⁰ *Ibidem*, pp. 249-250.

upon materials and equipment imported duty-free. In any case, if companies are located within a Free Port area, their long-term sales are expected to increase.

The Free Port status can be disadvantageous for export industries only if their shares of inland materials and inland sales increase due to deteriorating international market conditions. Compared to the imported raw material inputs, manufactured goods produced in the Free Port and placed on the domestic market are representing advanced products with a higher tariff value. The result is that commodities produced within the Free Port are burdened with higher costs whereby the sales prospects on the domestic market are significantly impaired in comparison to competitors producing the same commodities in the Customs territory. In any case, before establishing a Free Port, a detailed analysis of factors and opportunities is indispensable. According to the experience of the World Bank, this critical approach must include the evaluation and definition of key factors determining the economic contribution of Free Ports, that is competitive aspects, the type of deregulation imposed, specified goals and objectives, linkages between protected domestic industries and Free Ports industries, and the location itself.

4.e The deregulation of the Free Ports

The economic advantages of Free Ports are obtained mainly through selective deregulation by lowering the level of protection of the host country; in practice such deregulation is designed to lower the cost of protection and foreign trade and increase welfare gains through the expansion of

trade.⁸¹ Other welfare effects are caused by the redistribution of tax revenues.

The Free Port deregulation is usually designed to intensify trade, employment, investment and manufacturing, but it may sometimes be looked upon as reactive. On the other hand, deregulation of banking, insurance, employment, etc., are often in response to deregulation in competing countries abroad.⁸² In other words, some Free Port deregulation is meant to counteract diversion to foreign locations, whereas these and other deregulatory measures may cause diversion from domestic locations or activities, especially in developing countries, where scarce sources of investment may then not be available for build-up of the protected domestic industrial base.⁸³

4.f The Free Ports in the less developed countries

In highly industrialised countries Free Ports were basically created to further the already existing foreign trade flows and are nowadays used as “an instrument capable of helping to revive those market forces, which have become entangled in the web of bureaucracy and well-meant social legislation woven into modern welfare states”⁸⁴.

On the other hand, the economic impact of Free Ports is of different significance in less developed countries, where they are primarily created to stimulate trade and export industries, with the aim of attracting foreign investment and

⁸¹ FRANKEL, “*Port Planning and Development*”, New York-Chichester-Brisbane-Toronto-Singapore, 1976, p. 241.

⁸² *Ibidem.*

⁸³ *Ibidem.*

⁸⁴ SPINAGER, “*Free Trade Zones and Free Ports: Overview, Role and Impact*”, in *Hansa, Special Edition IAPH/PORTEX*, April 1985, p. 650.

increasing the transfer of technology and management know-how. The economic contribution of Free Ports in less developed countries is mainly directed to generate employment, train the domestic labour, and improve the foreign exchange earnings. Besides, the implementation of Free Ports areas stimulates the economic development not only in the immediate surrounding of the port, but also in the domestic economy due to the spin-off effects caused by the accelerating industrialisation.⁸⁵

TABLE 2. - ECONOMIC CONTRIBUTION OF FREE PORTS IN LESS DEVELOPED COUNTRIES

1. Employment opportunities;
2. development of the domestic economic resources and infrastructure;
3. development of local industry;
4. training of domestic labour in new skills;
5. transfer of technology and management know-how;
6. encouragement of economic and political stability;
7. foreign investment and foreign exchange earnings;
8. increase in exports.

Such positive economic effects will only occur in those Free Ports complying with certain basic requirements with regard to transport and trade as well as the port economy: the most favourable statute is of no use unless the economic region by itself is providing the locative qualifications for a concentration of trade and traffic flows.⁸⁶

The principal requirement in this context is a favourable location of the planned Free Port with respect to trade and

⁸⁵ Thus HEIDELOFF, "*Port Management Textbook Containerization*", Bremen, 1985, pp. 250-251.

⁸⁶ KAUFMANN, "*Die wirtschaftliche Bedeutung eines Freihafens*", in *Zentralverband der deutschen Seehafenbetriebe e.V., Seewirtschaft, Beiträge zur ökonomischen entwicklung in Seehäfen und Seeschifffahrt*, Hamburg, 1966, p. 637.

transport, i.e. locations at major world shipping routes or near principal resource and/or consumption centres.⁸⁷ Today, the most successful Free Ports are located in urban agglomerations where sufficient port facilities are available and demand for services and industrial infrastructure can be fulfilled: these are usually areas where the industrialisation probably would have been otherwise profitable.⁸⁸ In other words, ports situated at the outskirts of world sea-borne trade or located on the "green field" can neither expect a dramatic increase of their trade volume as a consequence of additional foreign trade traffic nor a regional strengthening of the industrial potential.⁸⁹

The extension of a Free Port area may vary according to the presence of industrial infrastructure; in any case space for further expansion should be provided.

The provision of an adequate infra- and superstructure in the Free Port area and the adjacent economic region is required; this includes for example the construction of roads and railway siding, as well as the development of the area in compliance with the production requirements of the business firms (it is, for example, necessary to supply energy, water, buildings, etc.), as well as the construction of sufficient warehousing facilities.⁹⁰

Ample facilities for the handling of the ship and cargo traffic, a sufficient labour force for port handling, warehousing and production requirements should also be provided. Furthermore Customs must be reorganised with re-

⁸⁷ See HEIDELOFF, *ult. op. cit.*, p. 252.

⁸⁸ Compare SPINAGER, *ult. op. cit.*, p. 654.

⁸⁹ HEIDELOFF, *ult. op. cit.*, p. 252.

⁹⁰ *Ibidem.*

gard to the changes required by the Free Port concept.⁹¹

Finally, it is important to create, not only within the Free Port but also in the Customs territory, a network of banks, insurance companies, shipping agencies, forwarders, ship brokers, ship chandlers, etc.

Severe problems can arise if users are already established within the Free Port area and a restructuring process is necessary: in this case a disruption of the traditional cargo operation within a non-Free Port category must be avoided.⁹²

The implementation of Free Ports in less developed countries can involve other risks⁹³, as well.

First of all the main problem confronting developing countries, i.e. unemployment, cannot be solved completely because Free Ports generate local employment only. Besides, export industries might absorb qualified workers from other sector which are under development.⁹⁴

In addition the need of foreign exchange in order to construct and operate Free Port areas exceeds in many cases the foreign exchange earnings gained from foreign companies with respect to wages, tariffs and other revenues.⁹⁵

Last but not least, the need of developing countries of strengthening and diversifying their industrial structure through the technology and management know-how transfer offered by foreign investors is not fully satisfied so far, as foreign companies transfer such processes for the essential purpose of lowering their production cost and not to

⁹¹ *Ibidem.*

⁹² Compare GHANI, "The Free Trade Zone in Johor Port, Malaysia – a Case Study", in *Hansa, Special Edition IAPH/PORTEX, April 1985*, pp. 644-648.

⁹³ See on this HEIDELOFF, *ult. op. cit.*, p. 251.

⁹⁴ *Ibidem.*

⁹⁵ *Ibidem.*

establish linkages with local industries in the host countries. It is also important to remember that apart from unskilled or semi-skilled labour, nearly all other production factors (e.g. capital, know-how and management) are provided from abroad, i.e. from the industrialised countries.⁹⁶

In conclusion Free Ports can play an important role for the strengthening of the economy of the developing countries, but positive effects are not always achieved. A comprehensive factor analysis is therefore necessary in order to examine at an early stage whether the basic requirements for setting up Free Ports do exist or whether these requirements can only be provided by means of high capital costs, which might affect the well-being of the national economy.⁹⁷

5. THE HARBOUR FREE ZONES

The concept of Harbour Free Zone (*punto franco*) has been codified and developed mostly by the Italian doctrine.⁹⁸ An Harbour Free Zone is that part of the port which is characterised by the application of a special regime and which coexists with the remaining part of the Customs port. The Harbour Free Zone is separated by the rest of the harbour by the Custom barrier and is considered to be outside the Customs territory. Within any Harbour Free Zones all maritime traffic operations (importation, storage, negotiation, manufacture and reshipment of goods) take place duty-free and within a minimum of Customs control. The

⁹⁶ Compare HEIDELOFF, cit., p.251.

⁹⁷ *Ibidem*.

⁹⁸ See POLLERI, "Porti e punti franchi", in *Novissimo Digesto Italiano*, Vol. XIII, Turin, 1966, pp. 299 *et seq.*, and PISCITELLI, "Punti franchi", in *Enciclopedia del Diritto*, Vol. XXXVII, Milan, 1988, pp. 1147 *et seq.*

difference between Harbour Free Zones and Free Ports is only quantitative: in the case of Free Ports the whole harbour plants (sheet of water, quays, wharves, warehouses, factories, etc.) are considered by the law outside the Customs barrier, while in the case of Harbour Free Zones the peculiar regime (which characterises Free Ports, as well) is applicable only to some areas of the harbour. Anyway, both Harbour Free Zones and Free Ports are only *species* of the same *genus* of Free Trade Zones.

The Harbour Free Zones are not subject to the jurisdiction of the territorial state with respect to movement and controls on goods, Customs treatment, banking law, taxation, labour law, economical laws and transactions, etc. In this regard, they may be defined as *extraterritorial areas* or as *free economic areas*. Unfortunately, this peculiar regime is often interpreted by the doctrine merely as an exemption from custom duties.

The Harbour Free Zones are usually operated by a state, provincial, or local agency, and may also be under the management of a privately or publicly owned (profit or non-profit) corporation that provides all services (security, water, electricity, pier operation, etc.) to tenants of the Harbour Free Zone. For the management of the Harbour Free Zone there are usually two options: to create an *ad hoc* Authority, responsible of the management of the Zone, or to entrust the Custom Port Authority with the management of the Harbour Free Zone, as well. If this second option is chosen, the Authority has to keep the financial management of the Harbour Free Zone and that of the rest of the port separate.

5.a The evolution of the Harbour Free Zones in the Italian legislation

The first Harbour Free Zones were instituted in the 19th century in the Italian provinces of the Austro-Hungarian empire.

Harbour Free Zones were created in Fiume and Trieste⁹⁹ in 1981 in substitution of the total regime of immunity applied to these ports since the 18th century.

With the annexation of Fiume and Trieste to Italy, the Harbour Free Zones' device was assimilated into the Italian Customs legislation and both cities were authorised to maintain the pre-existent Harbour Free Zones (by *r.d.* No. 1356 of 15 September 1922 in Trieste and by *r.d.* No. 255 of 24 February 1924 in Fiume, while the *d.m.* of 20 December 1925 provided for their management).

The Royal Decree Law No. 2395 of 22 December 1927 (turned into Law No. 3115 of 2 December 1928) allowed the Government to declare totally or partially "free", some of the major Italian ports¹⁰⁰. The areas of the port granted with the immunity were to be defined by special decrees.¹⁰¹

As for the special regime, the Harbour Free Zones were to be considered outside the Custom barrier: within these areas all maritime traffic operations (importation, storage, negotiation, manufacture and reshipment of goods) would take place duty-free and within a minimum of Customs

⁹⁹ Cf. UDINA, "Il regime del porto franco di Trieste secondo il trattato di pace con l'Italia del 1947", in *Archivio Finanziario*, 1951, pp. 185 *et seq.*, and in *Scritti sulla questione di Trieste sorta in seguito al secondo conflitto mondiale*, Milan, 1969, pp. 181 *et seq.*

¹⁰⁰ These ports were: Ancona, Bari, Brindisi, Cagliari, Catania, Fiume, Genoa, Livorno, Messina, Naples, Palermo, Savona, Trieste, and Venice.

¹⁰¹ Cf. POLLERI, *op. cit.*

control. Manufacturing was also allowed.

In practice, Royal Decree Law No. 2395 of 22 December 1927 remained a dead letter. Only one Harbour Free Zone was established by law in the port of Genoa, but it never became operational.

In the following years, the trend in the Italian legislation was to grant the immunity to only a portion of the port and not to the whole lot. This led to a disfavour of Free Ports and consequently to a promotion of Harbour Free Zones.¹⁰²

The pre-existent Italian Customs Law No. 1424 of 25 September 1940 enumerated the Harbour Free Zones among the territories considered outside the Customs barrier by law (article 1) and allowed their creation within the most important ports of the Kingdom (article 78). In addition, according to article 78, 2nd subsection, all commercial or industrial activities to be carried out in the Harbour Free Zones had to be defined by decree.

On the basis of Law No. 1424 of 25 September 1940, many particular legislative measures were enacted in order to establish Harbour Free Zones and provide for their discipline (defining the boundaries of the areas, their Customs treatment, the activities allowed, the operation of the installations, the general management of the Harbour Free Zones, etc.). Most of these measures never came into effect.

Lately, some Harbour Free Zones were established and came into operation in Venice (*d.lg.P.R.* No. 268 of 5 January 1948, put into effect by *d.m.* 3 August 1949), Messina (Law No. 191 of 15 March 1951) and Naples (Law No. 75 of 11 February 1952). Besides, *d.m.* 30 October 1956 authorised the *Azienda generale italiana dei petroli* (AGIP)

¹⁰² In this sense PISCITELLI, "Punti franchi", in *Enciclopedia del Diritto*, Vol. XXXVII, Milan, 1988, pp. 1147-1150.

to install a liquefied gas oil refinery within the port of Brindisi.

The institution of Harbour Free Zones was also contemplated by article 12 of the Constitutional Law No. 3 of 26 February 1948, setting the regional statute of Sardinia.¹⁰³

As for the discipline of the Harbour Free Zones according to the Italian Customs Law No. 1424 of 1940, the Harbour Free Zones were considered outside the Customs barrier and had to be securely fenced in order to prevent frauds. The Customs officers were entrusted with the strictest surveillance of the Zones' boundaries.

The Harbour Free Zones were administered and managed by juridical or natural persons, whose duties were to build and maintain the Customs fence, carry out all the works commissioned by the Financial Authority and provide freely all the premises necessary for the Customs officers and for the surveillance personnel.

Within the Harbour Free Zones all the operations relative to importation, storage, negotiation, manufacture and re-shipment of goods were carried out duty-free. Under the Customs point of view, foreign goods entering the Harbour Free Zone were to be considered outside the Customs territory, while those coming from the Customs territory were considered as definitely exported. In the same way, the

¹⁰³ Competent for the Customs regime of the Italian *Regioni*, even those "a statuto speciale", is exclusively the Italian State (*arg. ex* article 12 *Statuto della Sardegna* and article 39 *Statuto della Sicilia*). Therefore, the Italian *Regioni* cannot create Harbour Free Zones or any other special regimes of Customs immunity. In this sense also the Italian *Corte Costituzionale*, see *sent. No. 18 of 25 January 1957*, in *Giurisprudenza Costituzionale 1957*, p. 335. There are, though, regional provisions regarding the concession of contributes for the instalment of Harbour Free Zones and Free Warehouses: cf. *l.r.g. Sar. No. 13 of 27 February 1950* and *l.r.g. Sic. No. 4 of 6 March 1962*.

ships coming from national Harbour Free Zones were considered as if they were coming from abroad. This peculiar regime did not apply to the use and consumption of foreign foodstuff and beverages, goods subject to monopoly, weapons, alkaloids, construction materials, precious objects, pocket-size items, and, in general, all the goods that could be easily hidden or transported. This exception did not regard the industrial consumption and the goods manufactured in the Harbour Free Zones, as these types of operations represent a fundamental object of the institution of the Harbour Free Zones.

According to Law 1424 pedlars were not allowed to enter a Harbour Free Zone and retail sale was also prohibited. Other provisions prevented goods directed to the Harbour Free Zone from being unloaded somewhere else.¹⁰⁴ For this reason, captains were not allowed, except in the case of force *majeure* or of a special permit of the Customs authorities, to hug the shore, anchor, sail with only staysails, or communicate with the mainland in order to facilitate the landing and consequently the loading or unloading of goods. Besides, captains entering or leaving a Harbour Free Zone had to handle the Customs authorities the so called manifest, that is a document showing, among others, all the landing places and the description of the transported goods. Failing the manifest or in the case of smuggling, the Customs authorities were entitled to have the goods unloaded and kept in special depots.

Criminal sanctions were also imposed on whoever violated the provisions regarding the use and consumption of goods and the introduction of prohibited goods into the

¹⁰⁴ See RIZZI, "Porti e punti franchi", in *Enciclopedia Forense*, Vol. III, Milan, 1959, pp. 716-717.

Harbour Free Zones.

All the provisions of the Customs laws, which were not incompatible with the discipline of the Harbour Free Zones *ex* Law 1424, remained in force.

The new Italian Customs Law (*D.P.R.* No. 43 of 23 January 1973 “*Approvazione del t.u. delle disposizioni legislative in materia doganale*”) was deeply influenced by the Community legislation, in particular by EEC Regulation 1964/68¹⁰⁵ and by ECC Council Directive No. 69/75 of 4 March 1969.

Unlike the Customs Law of 1940 (which contained a general reference to the Customs treatment of Harbour Free Zones, but the discipline of each one of them was given by the instituting laws), the Customs Law of 1973 contained substantial provisions common to all the Harbour Free Zone and all directed to the harmonisation of the Italian and the Community legislation on Harbour Free Zones. In other words, while in the 1940’s system Harbour Free Zones could be disciplined differently one from the other, the Law of 1973 configured a Harbour Free Zone regime which was nationally tendentially uniform and harmonious with the Community regulation of Free Trade Zones. The laws establishing the Harbour Free Zones could not contrast with the EEC legislation.¹⁰⁶

Pre-existent laws on Harbour Free Zones remained in force provided that they didn’t contrast with Law of 1973 or regulated matters which were not disciplined by the

¹⁰⁵ This Regulation provided for the necessity of an harmonisation of the national legislation on Free Trade Zones (article 4).

¹⁰⁶ See on this CORBINO, “*Porti e punti franchi*”, in *Digesto delle discipline privatistiche, Sezione Commerciale*, Vol. XI, Turin, 1995.

Customs Law¹⁰⁷ such as the delimitation of the Harbour Free Zone territory, its Customs treatment, the Customs surveillance, the enumeration of the allowed commercial and industrial activities, the management of the installations, etc.

As far as the uniform discipline of Italian Harbour Free Zones *ex* Law of 1973 is concerned, article 166, 1st subsection provided for the establishment of Harbour Free Zones by law in the major maritime towns or in other areas strategically relevant with regard to foreign trade.

According to article 166, 3rd subsection goods entering the Harbour Free Zone could be loaded, unloaded, transported and warehoused free of duty. All operations directed to the conservation or the improvement of the commercial quality of the goods¹⁰⁸ (usual forms of manipulation) were allowed without authorisation, while assembly and manufacturing were possible only if specifically permitted by each single instituting law of the Harbour Free Zone. Nevertheless, goods assembled or manufactured in the Harbour Free Zone were granted no Customs immunities. This way the Harbour Free Zone maintained his traditional function of a loading, unloading, and warehousing centre but lost that of industrial centre. This limitation was detrimental to *entrepôt* trade because warehousing activities and industrial activities are technically and economically complementary.

¹⁰⁷ This meant that in the first case the Customs Law of 1973 took priority, while in the second case the discipline of the Harbour Free Zone was given by a combination of the two disciplines: that of the pre-existent law and that of the Customs Law.

¹⁰⁸ These operations were specified by EEC Council Directive No. 71/235 of 1 June 1971. See on this CAIUCCI, "*Depositi doganali e zone franche: manipolazioni usuali*", in *Rassegna Doganale e Imposte Fabbricati*, 1971, p. 873.

In general, the whole transit trade and international trade were hindered.

With regard to the third function of Harbour Free Zones, that is the duty-free use and consumption of goods, the Customs Law of 1973 did not differ much from the Customs Law of 1940, as residents were allowed to use and consume goods only on the conditions required for the import of such goods. However, some goods like catalyzers and accelerators could be used in order to prevent merchandise to deteriorate while staying in the Harbour Free Zone.

The Customs Law of 1973 did not specify the types of goods admitted in the Harbour Free Zones (such an enumeration was provided by article 165 only relative to Free Warehouses), so the problem was left up to each instituting law. It is remarkable, though, that the EEC Directive permitted all sort of goods to enter a Harbour Free Zone, with no discrimination of quality, quantity, place of origin or destination, except for those goods whose import was banned by the law out of security or morality reasons or in order to protect animal or vegetal life, the historic, archeologic and artistic heritage, and the commercial or industrial property. Besides, the competent authorities could deny the access to the Harbour Free Zone of certain goods for "technical or administrative reasons".¹⁰⁹

As for the pre-existent Harbour Free Zones, all the limitations and exclusions of certain goods (weapons, drugs,

¹⁰⁹ This locution is more general than that of the EEC Directive on Free Warehouses (codified in article 149 of the Law of 1973), which only refers to the characteristics of the warehousing plants and the nature and conditions of the goods. The difference is probably justified by the different conditions of Customs surveillance that occur between Free Warehouses and Harbour Free Zones. Cf. MURATORI, *"Riflessi della normativa comunitaria sull'ordinamento doganale italiano"*, Part Two, Padua, 1972, p. 189.

medicinal preparations, goods subject to monopoly, alkaloids, construction materials, precious objects, pocket-size items, and, in general, all the goods that could be easily hidden or transported) set by the instituting laws remained in force.¹¹⁰ These goods had to be stored in particular depots and kept under Customs surveillance.

In general, goods within the Harbour Free Zones were not subject to Customs controls, except for the goods placed under the inward-processing procedure.

The goods entering a Harbour Free Zone could be stored free of duty for an unlimited period of time, during which they could be sold. Taxes were due only if the goods were imported into the Customs territory.

As for the Harbour Free Zones situated in the Free Port of Trieste¹¹¹ *ex* Annex VIII of the Peace Treaty of Paris (10 February 1947) between Italy and the Allied Powers, article 169 of the Customs Law of 1973 referred to the “more favourable provisions pre-existent to the Community discipline”. In fact, according to article 234 of the EEC Treaty, the rights and obligations arising from agreements concluded before the entry into force of the EEC Treaty between one or more Member States on the one hand, and one or more third countries on the other, are not affected by the

¹¹⁰ Cf. PEZZINGA, “*La legge doganale commentata*”, Piacenza, 1980, p. 343.

¹¹¹ On the particular legal condition of the Harbour Free Zones of Trieste see Chapter Two, *infra*. Cf. also UDINA, *Il regime*, cit, pp. 183 *et seq.*; TELCHINI, “*La progettata zona franca italo-jugoslava sul Carso e la normativa comunitaria*”, in *Riv. dir. intern. priv. proc.*, 1977, pp. 528 *et seq.*; CONETTI-UDINA, “*Zona Franca Italo-Jugoslava*, estratto dall’*Appendice del Novissimo Digesto Italiano*, Turin, 1987, pp. 1-6; MIATELLO, “*Les zones franches, les institutions similaires et le droit communautaire*, in *Rivista di Diritto Europeo*, 1982, pp. 123 *et seq.*”

provisions of the said Treaty.¹¹²

Both the Italian and the Community legislation did not discipline the administration and management of the Harbour Free Zones. Therefore, competent on the subject was each law setting up Harbour Free Zones, which normally opted for one of these two major administration models: entrusting the management of the Harbour Free Zones to the Port Authority (e.g. Genoa, Venice, Brindisi, Naples), or creating an independent body responsible just for the Harbour Free Zone areas. The Harbour Free Zones Authorities had to build the Customs barrier, maintain it in good conditions and provide the premises necessary for the Customs officers to carry out the required surveillance.

The Italian Customs Law of 1973 remained in force until the 1st of January 1992, when it was partially abrogated by EEC Regulation No. 2913/92, establishing the EEC Customs Code. Therefore, in Italy (like in the other Member States) the discipline of Harbour Free Zones is today provided by the EEC Customs Code; the Customs Law of 1973 is still in force for all aspects not contrasting with the EEC legislation or not disciplined by the latter.

5.b The Harbour Free Zones in the European Community legislation.

Starting from the 1st of January 1992, the EEC Customs Code (EEC Council Regulation No. 2913 of 12 October 1992)¹¹³ represents the only source of discipline of Harbour

¹¹² On the application of article 234 of the EEC Treaty in order to justify the departure from the EEC discipline see MURATORI, *op. cit.*, Part Two, pp. 181 *et seq.* and TELCHINI, *op. cit.*, pp. 532 *et seq.* For the full text of the EEC Treaty see ANNEX IV, *infra*.

¹¹³ For a complete examination of the provisions of EEC Regulation

Free Zones, Free Trade Zones and Free Warehouses for all Member States. We refer the reader to the description of the Regulation carried out with regard to the Free Trade Zones in paragraph 2.a, *supra*. In fact, the discipline of Harbour Free Zones is the same as that of Free Trade Zones, being the Harbour Free Zone just a *species* of the *genus* represented by the Free Trade Zones.

In brief, goods entering a Community Harbour Free Zone are not subject to Customs duties and may undergo the usual forms of manipulation without authorisation, while any industrial, commercial or service activity is subject to prior authorisation and shall be notified in advance to the Customs authorities, who may impose certain prohibitions or restrictions, having regard to the nature of the goods concerned or the requirements of Customs supervision. There is no limit to the length of time goods may remain in Harbour Free Zones, except for the goods covered by the common agricultural policy. The use and consumption of goods within the Harbour Free Zones is allowed only if the requirements of importation are met.

6. THE FREE WAREHOUSES

The Free Warehouses are bounded premises where goods may be placed, stored, re-exported, negotiated and eventually handled under a special regime which is basically represented by the exemption from Customs duties and Customs controls.¹¹⁴

2913/92 see ANNEX III, *infra*.

¹¹⁴ Cf. POLLERI, "Porti e punti franchi", in *Novissimo Digesto Italiano*, Vol. XIII, Turin, 1966, pp. 299 *et seq.* and DE ANGELIS, "Depositi franchi", in *Novissimo Digesto Italiano, Appendice*, Vol. II, Turin, 1981, p. 1071.

Customs duties are due only when goods are removed from the Free Warehouse to be placed into the Customs territory of the state. Under this aspect they differentiate from the bonded warehouses, where the Customs control is carried out at the entrance of the goods, save the possibility of deferring the payment of the Customs duties to the time of the goods' exit. On the contrary, in a Free Warehouse, merchandise is considered as not being on the Customs territory.

The main role of Free Warehouses is that of ensuring and promoting transit trade.

In Italy, the past provisions regarding the functioning, effects and limits of the regime of the Free Warehouses, were contained in special laws. In 1938 two fundamental laws were enacted: the "*Testo Unico sui depositi franchi*", approved by the *r.d.* No. 726 of 17 March 1938, and its enforceable regulation, approved by the *r.d.* No. 856 of 17 June 1938.

These two laws used the word "Free Warehouse" ("*deposito franco*") to indicate both the premises (and contiguous areas) where goods were placed, and the juridical or physical subjects who, through the Free Warehouse, carried out an activity of professional consignee.

As for the discipline of Free Warehouses in the European Union, according to Council Regulation (EEC) No. 2504 of 25 July 1988¹¹⁵, "Free Warehouse" means "premises situated within the Community's Customs territory, in which non-Community goods placed in them are considered, for purposes of the application of import duties and commercial policy import measures, as not being

¹¹⁵ For the text of the regulation see ANNEX I, *infra*.

within the Customs territory of the Community provided they are not released for free circulation or entered under another Customs procedure under the conditions laid down in the Regulation No. 2504/88 itself’.

Nowadays the discipline of Italian Free Warehouses, like that of all other Free Warehouses situated in the territory of the Member States of the European Union, is given by Council Regulation (EEC) No. 2913/92 of 12 October 1992 establishing the Community Customs Code¹¹⁶, which practically reproduces the discipline of Free Warehouses contained in the Regulation of 1988.

The regime is the following.

The Free Warehouses are considered to be parts of the Customs territory of the Community or premises situated in that territory and separated from the rest of it in which:

(a) Community goods are considered, for the purpose of import duties and commercial policy import measures, as not being on Community Customs territory, provided they are not released for free circulation or placed under another Customs procedure or used or consumed under conditions other than those provided for in Customs regulations;

(b) Community goods for which such provision is made under Community legislation governing specific fields qualify, by virtue of being placed in a Free Warehouse, for measures normally attaching to the export of goods.

Member States may authorise the establishment of Free Warehouses.

Free Warehouses shall be enclosed; to this extent the Member States shall define the entry and exit points of each Free Warehouse. The Customs authorities may check goods

¹¹⁶ Cf. ANNEX III, *infra*.

entering, leaving or remaining in Free Warehouse. Therefore, a copy of the transport document, which shall accompany goods entering or leaving, shall be handed to, or kept at the disposal of, the Customs authority by any person designated for this purpose by such authorities. Where such checks are required, the goods shall be made available to the Customs authorities.

Both Community and non-Community goods may be placed in a Free Warehouse without discriminations. However, the Customs authorities may require that goods which present a danger or are likely to spoil other goods or which, for other reasons, require special facilities be placed in premises specially equipped to receive them.

Goods entering a Free Zone or Free Warehouse need not be presented to the Customs authorities, nor need a Customs declaration be lodged, unless they have been placed under a Customs procedure which is discharged when they enter a Free Warehouse, or they have been placed in a Free Warehouse on the authority of a decision to grant repayment or remission of import duties.

At the request of the party concerned, the Customs authorities shall certify the Community or non-Community status of goods placed in a Free Warehouse

Goods can remain in a Free Warehouses without time limits, but the carrying out of any industrial, commercial or service activity shall be authorised and notified in advance to the Customs authorities. These activities may be subject to certain prohibitions or restrictions with regard to the nature of the goods concerned or the requirements of Customs supervision.

Non-Community goods placed in a Free Warehouse may, while they remain in a Free Warehouse:

- (a) be released for free circulation;
- (b) undergo the usual forms of handling¹¹⁷ without authorisation;
- (c) be placed under the inward-processing procedure under the conditions laid down by that procedure.
- (d) be placed under the procedure for processing under Customs control under the conditions laid down by that procedure;
- (e) be placed under the temporary importation procedure under the conditions laid down by that procedure;
- (f) be abandoned in accordance with Article 182 of the Customs Code;
- (g) be destroyed, provided that the person concerned supplies the Customs authorities with all the information they judge necessary.

The use and consumption of both non-Community goods and Community goods in Free Warehouses is not allowed. This provision does not preclude the use or consumption of goods the release for free circulation or temporary importation of which would not entail application of import duties or measures under the common agricultural policy or commercial policy. In that event, no declaration of release for free circulation or temporary importation shall be required.

All persons carrying on activities involving the storage, working, processing, sale, purchase of goods in a Free Warehouse shall keep stock records in a form approved by the Customs authorities. The stock records must enable the Customs authorities to identify the goods, and must record

¹¹⁷ The Community goods referred to in Article 166 (b) which are covered by the common agricultural policy shall undergo only the forms of handling expressly prescribed for such goods in conformity with Article 109 of the Customs Code. Such handling may be undertaken without authorisation.

their movements. For this reason goods shall be entered in the stock records as soon as they are brought into the premises of such person.

Goods leaving a Free Warehouse may be:

- 1) exported or re-exported from the Customs territory of the Community, or;
- 2) brought into another part of the Customs territory of the Community.

When a Customs debt is incurred in respect of non-Community goods and the Customs value of such goods is based on a price actually paid or payable which includes the cost of warehousing or of preserving goods while they remain in the Free Warehouse, such costs shall not be included in the Customs value if they are shown separately from the price actually paid or payable for the goods.

When the said goods have undergone, in a Free Warehouse, one of the usual forms of handling, the nature of the goods, the Customs value and the quantity to be taken into consideration in determining the amount of import duties shall, at the request of the declarant and provided that such handling was covered by an authorisation, be those which would be taken into account in respect of those, had they not undergone such handling. Derogation from this provision may, however, be determined in accordance with the committee procedure.

Community goods which are covered by the common agricultural policy and are placed in a Free Warehouse shall be assigned a treatment or use provided for by the rules under which they are eligible, by virtue of their being placed in a Free Warehouse, for measures normally attaching to the export of such goods.

Where goods are brought into or returned to another part of the Customs territory of the Community or placed under a Customs procedure, the certificate referred to in article 170 of the Regulation No. 2913/92 may be used as proof of the Community or non-Community status of such goods.

Where it is not proved by the certificate or other means that the goods have Community or non-Community status, the goods shall be considered to be Community goods, for the purposes of applying export duties and export licences or export measures laid down under the commercial policy; non-Community goods in all other cases.

7. THE INDUSTRIAL FREE ZONES

The Industrial Free Zones are generally defined¹¹⁸ as areas or industrial estates which are situated outside the Customs barrier adjacent or near a port. In fact, it would be difficult to create an industrial Free Zone if extensive tracts of land with access to the sea couldn't be found at the site of the port or couldn't be created by inexpensive reclamation.

The Industrial Free Zones offer duty free movement of goods, in or out of the Zone, as well as fiscal, regulatory and tax incentives, and are usually used to promote the establishment of export industries by domestic and foreign investors.

¹¹⁸ Cf. FRANKEL, "*The Concept of Free Ports and Their Contribution*", in *Hansa, Special Edition IAPH/PORTEX*, April 1985, p. 637. Of the same opinion is also HEIDELOFF, "*Port Management Textbook Containerization*", Bremen, 1985, pp. 246.

TABLE 3. - ECONOMIC CONTRIBUTION OF INDUSTRIAL FREE ZONES¹¹⁹

1. Employment generation, direct and indirect. Total employment generated usually exceeds direct employment by a factor of 4.
2. Foreign exchange earnings, as added value is usually of export goods.
3. Increase in export competitiveness.
4. Increase in utilisation of domestic resources, services, and capital for export generation.
5. Increase in potential for technology transfer.
6. Increase in foreign capital investment.
7. Training of domestic labour in new skills.
8. Transfer of management know-how.
9. Development of marketing/sales opportunities for the free zones and domestically manufactured products.
10. Increase in *entrepôt*/transshipment trade.
11. Increased banking business.

In Italy, the first Industrial Free Zones were disciplined by Law No. 351 of 8 July 1904, regarding the measures taken for the economic improvement of the city of Naples.¹²⁰ This law authorised the Italian Government to grant all new industrial plants the benefit of being considered outside the Customs barrier as "Industrial Free Zones". According to the Italian law, Industrial Free Zones are therefore meant to favour the economic and social development of a depressed zone; for this purpose, some industrial enterprises are granted a regime of Customs extraterritoriality so that materials and machinery may be used in the industrial production completely duty-free. The production costs are therefore considerably lowered to the benefit of the factories located in the Industrial Free Zone and with the encouragement of the installation of export industries by domestic or foreign investors.

¹¹⁹ Source: FRANKEL, *op. cit. supra*.

¹²⁰ Cf. PISCITELLI, *Punti franchi*, cit., p.1147.

Like the Free Trade Zones, the Industrial Free Zones are characterised by a situation of extraterritoriality; the difference between the two devices lays in the fact that the establishment of a Free Trade Zone aims at promoting international transit trade and eventually the industrial settlement, while the role of an Industrial Free Zone is solely that of economically and socially developing a depressed area through the installation of industries. The difference is relevant especially under the point of view of subject position of the Free Trade Zones operators and of the Industrial Free Zones operators as the first ones are entrusted by law with real rights, while the second ones only have a legitimate interest resulting from an administrative concession.

In Italy, the regime of Industrial Free Zones was unsuccessful in spite of the fact that various successive laws recalled and extended the application of the institute.¹²¹

The prevailing Italian doctrine¹²² and jurisprudence¹²³ believe that the Community legislation on Free Trade Zones

¹²¹ On the reasons of the failure of Industrial Free Zones see ANNESI, "Deposito franco (regime di)", in *Enciclopedia del Diritto*, Vol. XII, pp. 289 *et seq.* and CUTRERA, "Principi di diritto e politica doganale", Padua, 1941, pp. 132 *et seq.*

¹²² Cf. DE ANGELIS, "Depositi franchi", in *Novissimo Digesto Italiano, Appendice*, Vol. II, Turin, 1981, pp. 1072 *et seq.*

¹²³ Cf. CASSAZIONE, SEZIONI UNITE, *sentence No. 1080 of 22 March 1975*, in *Giustizia Civile*, 1975, Vol. I, p.1320; and CASSAZIONE, SEZIONE I, *sentence No. 273, of 29 January 1976*, in *Giustizia Civile*, 1976, Vol. I, p. 169. In particular, in the *sentence No. 5266 (Ministero delle Finanze contra Cartiere Timavo) of 7 October 1981*, the CASSAZIONE, SEZIONE I stated that Industrial Free Zones are completely autonomous from Free Trade Zones and Free Warehouses, as their aim is not that of ensuring foreign trade but that of promoting the industrialisation of a depressed area through the concession of Customs benefits to certain industrial plants located within that area. The fiscal benefits consist in the introduction and the utilisation, duty-free, of materials and machinery in the production. Therefore, the more re-

(ECC Regulation No. 2504/88, No. 2562/90, and No. 2913/92) does not apply to the institute of Industrial Free Zones, whose configuration is, therefore, still that of Law No. 351 of 1904.

8. THE EXPORT PROCESSING ZONES

Export processing zones¹²⁴ are duty-free zones of free enterprise, specifically delimited, within which all infrastructures, installations, building, support system and services, as well as the operating administrative functions are carried out under criterion of maximum efficiency; for the establishment therein of enterprises from all over the world whose activities are the production of goods and services for export. The immediate objective of the processing zones is to provide optimum condition of operational efficiency and of comparative advantages to guarantee the exporting companies high levels of competitiveness in the international markets.

The Export Processing Zones combine the features of the Industrial Free Zones and of the Free Trade Zones.¹²⁵

strictive discipline of Free Trade Zones contained in the Italian Customs Law of 1973 and in the EEC Customs Code of 1992 does not apply to the Industrial Free Zones.

¹²⁴ The source of the entire section is VARIOUS, "*Executive summary of laws related to economic activities and investment in the Republic of Panama*", Panama, 1996.

¹²⁵ An interesting variation of the Industrial Free Zones device consists in the practice of an exporting state of securing the privilege of using a plot of land in a foreign country, possibly located in the industrial zone of a port, where it can implement and operate the facilities necessary for the ultimately processing of its already up-graded exports, and also set up a distribution centre for the finished products. Cf. BAUDELAIRE, "*Port Administration and management*", Tokyo, 1986, p. 115. The Author takes timber and joinery as a clarifying example of this new development: timber is made into boards

The Exports Processing Zones may be private, governmental or mixed.

Promoter of the Export Processing Zone is the natural or juridical person, private or public, national or foreign, that conceives or acquires the idea, transforms it into a feasible project, invests and contacts investors to contribute capital; purchases or leases the land; defines or approves the organisation and administrative or operational systems under which the zone shall function, etc. The same natural or juridical person exercising the promoter's function may exercise those of an operator.

Operator of the Export Processing Zone is the natural or juridical person, private or public, national or foreign, that assumes the responsibility to direct, administer, operate and supervise the integral functioning of the zone.

Normally, the enterprises that can be established within the Export Processing Zones are:

a) Manufacturing Enterprises, which are those engaged in the manufacture of goods for export, by means of a process of transformation of raw materials and semi-elaborated products;

b) Assembly Enterprises, which are those engaged in the manufacture of finished or semi-elaborated products, by means of the coupling process of raw materials and half-finished parts destined for export;

c) Finished or Semi-Elaborated Products Processing Enterprises, which are those engaged in receiving finished or

and then shipped abroad where it is used for the making of furniture, under the control of national firms. The advantages of the operation are that it is less expensive to ship boards than furniture, and that the profits accrue to the exporting country which could even provide the workforce for the final processing.

semi-elaborated products, parts, components, accessories and/or spare parts, to undergo any treatment or process of tropicalizing, modification, repair, cleaning, Quality Control Tests, etc., necessary to make feasible the export of a given good;

d) Services Export Enterprises, which are those engaged in rendering services to users abroad, in other processing zones or within the same zone, but that its direct or indirect effect serves as a support or constitutes *per se* and export activity. The category of services rendered abroad includes, additionally, all international services known as "offshore", such as international marketing and commercialisation, insurance, reinsurance, banking, financing, auditing, administration, brokerage, consulting, etc.;

e) General Services Enterprises, which are those engaged in the rendering of personal services to workers and visitors, such as restaurants, laundries, pharmacies, beauty parlors, gymnasiums and other of similar nature.

CHAPTER TWO

THE REGULATION OF THE FREE PORTS IN THE WORLD

This chapter includes:

1. CHINA, PEOPLE'S REPUBLIC OF. - 1.a Xiamen Xiangyu Free Trade Zone. - 1.b The administration of Xiamen Xiangyu Free Trade Zone. - 1.c Establishment and administration of enterprises. - 1.d Banking. - 1.e Fiscal advantages. - 1.f Dalian Free Zone. - 1.g Main preferential policies. - 2. CUBA. - 2.a Establishment and control of Free Zones. - 2.b The Free Zones grantees. - 2.c The Free Zones operators. - 2.d The Free Zones special regime. - 2.e Violations committed by Free Zones grantees and operators. - 2.f The solution of conflicts. - 3. CYPRUS, NORTH - 4. HONG KONG SPECIAL ADMINISTRATIVE REGION. - 4.a The history of the port of Hong Kong. - 4.b The legislation of the port of Hong Kong. - 4.c Banking. - 4.d Insurance. - 4.e Hong Kong Shipping Register. - 4.f Hong Kong after 1997. - 5. ITALY. - 5.a The history of the Free Port of Trieste. - 5.b The international status of the Free Port of Trieste according to Annex VIII of the Paris Peace Treaty of 1947. - 6. JORDAN. - 6.a Aqaba Free Zone. - 6.b Zarka Free Zone. - 7. LATVIA, REPUBLIC OF. - 7.a Ventspils Free Port. - 7.b The history of the port of Ventspils. - 7.c The legislation of Ventspils Free Port. - 7.d Riga Commercial Free Port. - 8. MALTA. - 8.a The Malta Free Port Act. - 8.b The Free Port Authority. - 8.c Licenses. - 8.d Exemptions and incentives. - 9. MAURITIUS. - 9.a The main phases of establishing the Free Trade Zone in Mauritius. - 9.b The "Free Port Act 1992". - 9.c Relationship between the Mauritius Free Port Authority and the Mauritius Marine Authority (Port Authority of Port Louis). - 9.d Relationship between the Mauritius Free Port Authority and Customs. - 9.e The advantages of the Free Port legislation. - 9.f Financial situation and development strategy. - 10. PANAMA. - 10.a The administration of the Colon Free Zone. - 10.b The requirements to operate in the Colon Free Zone. - 10.c The advantages of the Colon Free Zone legislation. - 10.d Banking. - 10.e Insurance. - 10.f Shipping Registry. - 10.g The Future of

the Colon Free Zone. - 11. SINGAPORE. - 11.a Historical perspective. - 11.b The Free Port statute. - 11.c Relationship between the Port of Singapore Authority and the Maritime and Port Authority. - 12. UNITED ARAB EMIRATES. - 12.a Dubai-Jebel Ali Free Zone. - 12.b The Free Zone legislation. - 12.c The Free Zone incentives. - 12.d Licences. - 12.e Free Zone Establishments. - 12.f Other opportunities of the Jebel Ali Free Zone. - 12.g The Abu Dhabi Free Zone. - 12.h The Fujairah Free Zone. - 12.i The Ahmed Bin Rashid Harbour Free Zone. - 12.j The Sharjah Airport International Free Zone. - 12.k The Hamriyah Free Zone.

1. CHINA, PEOPLE'S REPUBLIC OF

China is home of many important Free Ports and Free Trade Zones, like Guangzhou, Xiamen Xiangyu, Dalian and Shekou. We will restrict our examination to the statutes of Xiamen Xiangyu Free Trade Zone and Dalian Free Zone, while a specific paragraph of this chapter will be dedicated to the Free Port of Hong Kong Special Administrative Region.

1.a Xiamen Xiangyu Free Trade Zone

Xiamen Xiangyu Free Trade Zone was established upon the approval by the State Council on 15 October 1992¹, with the purpose of taking the unique advantage of bonded goods by the Customs, borrowing the successful experiences from foreign countries in their running of the Free Trade Zones to boost their national economic development, and using to the maximum extent foreign capital and technology in the development of export-oriented economy and the enhancement of the incorporation of the Chinese market

¹ For the text of the Council Regulation see ANNEX V (internet site <http://www.china-tradeguide.com/guide/region/xm/xy.htm>), *infra*.

into the world market.²

Xiangyu Free Trade Zone covers an area of 2.36 square kilometres, and the first phase of 0.6 square kilometres was qualified by the General Customs of People's Republic Of China and put into operation on 28 November 1993.

In light of a series of preferential policies, Xiangyu Free Trade Zone encourages the development of three industries: trade industry (including international trade), domestic trade, *entrepôt* trade, and processing industry (including bonded warehousing of goods supplying and distribution centre of various materials and goods). In addition, the Free Trade Zone also encourages financing, insurance, exhibition, dock management, cargo transportation, information and so on.

Located in Xiamen Dongdu port area, Xiangyu Free Trade Zone is easily accessed by sea, land and air routes. The Free Trade Zone is equipped with fine infrastructure facilities, and provides office buildings, warehousing and processing buildings, bonded exhibition halls, water, electricity, communication and land for industrial and financial use. A special dock combining with the Free Trade Zone is under construction, and until the end of 1996, 615 enterprises have registered in the Free Trade Zone, in which 252 are foreign-funded.³

The amount of import/export is growing, and in 1996 it reached 1.1 billion US dollars. The total amount exceeds US\$ 2.3 billion, heading the 14 Free Trade Zones in China. Xiangyu Free Trade Zone now has become a growth point

²Source: internet site http://www.china-window.com/Fuian_w/city/xiamen/d-zone/xy-zone/e-intru.html

³Source: internet site http://xinhua.xmfi.cn/ftz/english/e_index.htm

of Xiamen foreign economy.⁴

The regulations of Xiamen Xiangyu Free Trade Zone, contained in the State Council Regulation of 15 October 1992, are in accordance with the basic principles of relevant state laws and with reference to international practices, and are formulated in order to step up the construction and development of Xiamen Xiangyu Free Trade Zone, promoting economic co-operation and trade between the mainland China and Taiwan or other countries and motivate the enforcement of some policies towards a free-trade port in the Xiamen Special Economic Zone. In other words, the Zone⁵ is mainly to develop international trade, Mainland-Taiwan trade, bonded storage and export processing, business of finance, insurance, futures, commodity exhibitions, dock enterprising, transportation, information, and other related businesses.

1.b The administration of Xiamen Xiangyu Free Trade Zone

The Administrative Committee of the Zone (hereinafter referred to as Administrative Committee) is an agency of the Xiamen Municipal People's Government and represents the said government to exercise the overall administration over the Zone. Its main functions⁶ are:

1. to ensure the implementation of State Council Regulation of 15 October 1992 and of state laws and regulations

⁴ *Ibidem.*

⁵ Fencing facilities are installed to separate the Zone from non bonded areas to ensure the exclusive administration of the Zone within the partition lines.

⁶ Source of this enumeration is the internet site http://xinhua.xm.fj.cn/ftz/english/e_index.htm

in the Zone;

2. to enact relevant governing rules under State Council Regulation of 1992, and to organise and implement them after the approval by the Municipal People's Government;

3. to work out overall schemes and industrial directive policies, and to organise and implement them after the approval by the Municipal People's Government;

4. to exercise the administration over plans, investments, construction, land, real estate, industry and commerce, environment protection, labour, public security, statistics, etc., in the Zone ;

5. to co-ordinate the work of the Customs and other related port units in charge of inspection and examination in the Zone;

6. to manage the overall income and expenses of the Zone;

7. to be responsible for the construction and management of the public utilities in the Zone;

8. to be responsible for the examination and approval of the applications of the Chinese personnel to leave or go abroad;

9. to exercise other rights entrusted by the Municipal People's Government. The administration concerning the issue of licences is handled by the Administrative Committee authorised and entrusted by the respective competent authorities.

The head of the Administrative Committee is the director, who is appointed by and responsible for the Municipal People's Government.

The Administrative Committee is also responsible for the

overall management of the land-use business.⁷ Any one who needs to use the land must file an application to the Administrative Committee for it.

1.c Establishment and administration of enterprises

Investors (enterprises, other economic entities and individuals), both domestic and abroad, are allowed to set up enterprises and agencies in accordance with the regulation of the Free Zone.⁸

Investors applying for the establishment of enterprises shall register directly with the Industry Commerce Division of the Administrative Committee, and go through the necessary registrations with the Customs and Tax authorities. All enterprises registered in the Zone are allowed to engage in import/export, *entrepôt* trade, wholesale and retail of imported goods on the domestic market.

In the Zone, a bonded market of means of production is established to deal with comprehensive produced goods and is also allowed to supply its goods to non-bonded areas. The enterprises may store⁹ in the Zone goods of raw and

⁷ The land-use right may be obtained for a limited term which is subject to payment of consideration. The maximum land-use term is 50 years. The development, utilisation and construction of the land in the Zone must comply with the overall plan and detailed management regulations of the Zone.

The land-use right and the related buildings obtained by the investors by law may be lawfully transferred, leased, mortgaged and inherited provided they are to register the same with the Administrative Committee and pay taxes by law. If the land has not been utilised for more than one year without the approval of the Administrative Committee or has not been utilised in accordance with the contracted term or in line with its target of development, the Administrative Committee shall withdraw the land-use right without compensation and nullify the licence to the use of land in the Zone.

⁸ Source: internet site http://xinhua.xmfj.cn/ftz/english/e_index.htm

⁹ There is no limit for the bonded storage of goods imported into the

processed materials which are vital to the national economy and the people's livelihood and domestic industrial, agricultural production unless the commodities are of prohibit entry by the State. They are also allowed to undertake the processing business of a commercial nature such as grading, packing, sub-packaging, sorting, labelling, etc.

The enterprises in the Zone may process goods for enterprises and other economic entities in non-bonded areas by contract, and consign enterprises in non-bonded areas to process goods, which shall principally be export-oriented. There is not any limit to the quantity nor requirement of deposit for imported raw materials to be processed in the Free Trade Zone or by consignees outside the Zone. Hi-tech products and other products, both domestic and abroad may be on exhibition and sale in the Zone, and can directly be negotiated and ordered in the Zone. The enterprises in the Zone can manage their own business independently by law, but they must, in accordance with relevant stipulations, pay the social, labour insurance expenses for all staff and employees. Some goods (e.g. machinery, equipment, construction materials for infrastructure, transportation means, goods in transit, etc.) are exempt from import or export licences unless otherwise stipulated by the State. In the Zone capital goods, processed materials and semi-finished goods may be in trade.

Goods shipped from the Zone to other Free Trade Zones are subject to the approval of the Customs and can be transported in accordance with relevant regulations of transit.

The goods and articles prohibited by the State to import

or export cannot be transported and carried in or out of the Zone and into the People's Republic of China Customs territory.

1.d Banking

The Free Trade Zone legislation provides for various financial benefits and incentives for investment.¹⁰

Both domestic and foreign operators may establish their financial and insurance institutions and do financial and insurance business in the Free Trade Zone. Upon the approval of the administration authorities of foreign currencies, the institutions may conduct their business of offshore banking, financial futures and other foreign currency operations. In the Zone, foreign currencies obtained from business operations by enterprises may be retained as circulating funds, and net foreign currencies obtained by the Chinese-funded enterprises may be exchanged into Chinese currency at the end of the year. The enterprises in the Zone can handle their foreign currencies independently. The investment income, other legal earnings and liquidated capital may be remitted abroad by law. The enterprises in the Zone may lawfully issue stocks, bonds, inside and outside China, raise foreign capitals outside China, and buy or sell foreign currencies in accordance with the relevant laws and regulations of the state. They are also allowed to open foreign currency accounts.

1.e Fiscal advantages

The State Council Regulation establishing the Free Trade Zone at Xiamen Xiangyu offers many fiscal advantages for

¹⁰ *Ibidem.*

investors. For example some goods¹¹ imported or exported by the enterprises in the Zone are exempt from Customs duties, VAT and consumption tax, while other products¹² are treated as goods in bond.

Goods imported from abroad into the Free Trade Zone are exempt from tariff and value-added tax.

The dealing and processing of goods and repairing as well as servicing trades in the Zone are exempt from payment of VAT and consumption tax.

10% out of the 5% business tax collected from enterprises in the Free Trade Zone are refunded by themselves.

The preferential terms of the exemption and reduction of income tax levied on the enterprises and their bases of calculation of taxes in the zone shall be handled the same way as on the foreign enterprises in the Special Economic Zone.

1.f Dalian Free Zone

The opening of Dalian Free Trade Zone was officially approved by the State Council of the People's Republic of China in June of 1992. By October 1992 infrastructural construction was started and the Free Zone began to accept

¹¹ These goods are represented by: machinery, equipment and other construction materials imported for infrastructure construction of the Zone; construction materials, fuels, equipment for production and management, office articles as well as the spare parts needed for maintenance by the enterprises for their own use in the Zone; rational amount of construction materials, equipment for management, office articles as well as the spare parts needed for maintenance by the institutions for their own use in the Zone; export products which are produced and processed by the enterprises in the Zone.

¹² They are: raw materials, parts, components, and packing material which are imported for production of the enterprises in the Zone; the transit goods; the warehouse goods; and other goods approved by the Customs.

investment.¹³

Dalian is a world-renowned port city, centre of commerce and trade of the Northeast China. The access of import and export goods of Dalian Sea Port ranks number 2 just behind that of Shanghai. Dalian Free Trade Zone¹⁴ is situated between Dalian Economic and Technological Development Zone and the Dayao Bau Port, one of the four large deep-water non-freezing port. The Free Trade Zone can count on complete facilities for transportation and communications: highways are connected to the north and to Beijing, while the airport renders direct regular lines to Hong Kong, Macao, Tokyo, Osaka, and Seoul.¹⁵

The Dalian Free Zone is the only State-level Free Trade Zone in the Northeast China and one of the comprehensive economic areas in China with the most preferential policies. It is also known as the “Non-Customs area within the territory of China”, the operation of which is in line of international practice.¹⁶

As for the current status, there are now over 500 operations in Dalian Free Trade Zone from about 20 countries and regions such as Japan, Hong Kong, United States, Korea and Taiwan. The business ranges from import and export trade, transit trade, industrial processing, storage and transportation, service, to setting up and managing all kinds

¹³ See on this the Government internet site <http://www.china123.com/government/dalian/dftz.html>

¹⁴ The total designed area of Dalian Free Trade Zone is 8 square kilometres. The infrastructural construction in the initial area of 1.6 square kilometres is already completed. The finished large storage and transportation centres, standard factories, office buildings and exhibition centres are ready for occupancy.

¹⁵ Source: internet site, cit. *supra*.

¹⁶ *Ibidem*.

of fairs for bonded commodities. Joint-ventures, co-operative ventures, and wholly-owned firms are encouraged in the fields of finance and insurance, trading (including imports and exports, transit trade, bonded commodity exhibition and sales), industrial processing (including export processing, processing with the buyer's raw materials, processing the substitutes of the same kind of the imported), commercial processing, service processing, managing fairs of bonded commodities, imported goods distribution, invest in infrastructural construction, land block development, information projects and service trade.¹⁷

1.g Main preferential policies

The Dalian Free Trade Zone enterprises enjoy a series of preferential policies¹⁸ in addition to all those preferential policies granted to the special economic areas and economic development zones by the State.

Goods entering from or leaving the Free Trade Zone for foreign countries are exempt from Customs duties, taxes in circulation links, consumption tax and no import or export licenses are required.

The non-production enterprises registered in Dalian Free Trade Zone for 10 years or more are exempt from income tax for the first year and are granted a 50% reduction for the following two years, while the processing enterprises registered in Dalian Free Trade Zone for 10 years or more are exempt from the income tax for the first two profit-making years and are allowed a 50% reduction from the third to the

¹⁷ *Ibidem.*

¹⁸ Source of this whole section is the Government internet site <http://www.china123.com/government/dalian/dftz.html>.

fifth profit-making years. From the sixth year the enterprise income tax would be levied at the rate of 15% for non-production firms and 10% for production firms.

The Dalian Free Trade Zone enterprises are exempt from the import duties and the value added tax and consumption tax in circulation links for the imported capital equipment, imported building materials for their own use and some reasonable office supplies.

The enterprises are also eligible to open foreign currency accounts in the banks in approval of the Foreign Currency Control Bureau, and can also open the foreign currency accounts in the banks outside Dalian Free Trade Zone.

The Dalian Free Trade Zone legislation provides for advantages for processing industries. The enterprises operating in the zone can purchase raw materials or components from dutiable areas for export processing. The processed products can be sold partially to the domestic market. If the products involve imported components or raw materials the Customs duties or import taxes would be calculated on the basis of the original raw materials or components rather than the finished products.

The enterprises in Dalian Free Trade Zone can purchase raw materials or components from outside the zone in order to manufacture goods to sell abroad or to the domestic market, as well.

If the processing capacity of a Dalian Free Trade Zone processing firm does not meet the demand or some processing procedures are not suitable in Dalian Free Trade Zone, the firm can, with the Customs' approval, consign the imported materials or components to enterprises outside the Free Trade Zone for processing. When the processed products are finished, the finished products and left-overs

should be shipped back to the Free Trade Zone.

With approval of pertinent authorities, Dalian Free Trade Zone enterprises can be allowed to produce the state-restricted products on the condition that the raw materials should be imported and finished products shall go abroad.

The Free Trade Zone regime provides for advantages also for trading companies, which are allowed to set up and manage the fair for bonded commodities. They are allowed to engage in the sales and exhibition of the goods produced by the foreign funded enterprises in China.

If enterprises use foreign currencies for settling accounts when they purchase goods from dutiable area in order to export the goods to the other countries, the goods should be regarded as exported when they are shipped into the bonded warehouses designated by the Customs.

With approval, Dalian Free Trade Zone enterprises are entitled to engage in any commercial business except retailing.

The Dalian Free Trade Zone warehousing enterprises can take business from outside the Zone. Big warehousing companies with good reputations are allowed to engage in shipping or transportation agency or supply bonded materials.

2. CUBA

The establishment and functioning of Cuba's Free Zones and Industrial Parks is regulated by the Decree-Law No. 165/1996, approved on the Palacio de la Revolución, City of Havana, on the 3rd of June 1996.¹⁹

¹⁹ The Decree-Law is in force as of the date of its publication in the Gaceta Oficial de la República. For the text of the Decree-Law, see ANNEX

According to the named Decree-Law, Free Zones and Industrial Parks are very important to the economic and social development of a country, as they stimulate international trade, attract foreign investment and capital, generate new jobs, incorporate a greater domestic industrial value added through the use of the country's resources, and develop new national industries through the assimilation of advanced technologies and the export of national products.

In order to achieve the aims previously mentioned, grantees and operators of the Free Zones are to be granted a special Customs banking, tax, labour, migratory and public order regime, which implies facilities and incentives for foreign investment.

2.a Establishment and control of Free Zones

The establishment of Free Zones (and of Industrial Parks) is disposed by the Executive Committee of the Council of Ministers, on its own initiative or at the proposal of the Ministry for Foreign Investment and Economic Cooperation, which is responsible for regulating and controlling the activities carried out in Free Zones. Before its approval, a Free Zone Commission draws up relevant provisions such as the frequency of its sessions, the amount of votes needed for reaching decisions and how to put these on record.

VI, *infra*. For more information on the Cuban Free Trade Zones see HARRIS, "Cuban Free Trade Zones", on the internet site <http://members.tripod.com/~CubanInvesting/cubantradezones.html>. Of great interest, also for documents, is the internet site <http://www.prensa-latina.org>.

2.b The Free Zones grantees

National legal persons and natural or legal persons domiciled abroad and having foreign capital can apply for the granting of a management concession in relation to a specific Free Zone. The application shall be submitted to the Ministry for Foreign Investment and Economic Co-operation together with a statement containing information on the name or firm name of the applicant; the description of the objectives, activities, structures and services planned; the area and location of the Free Zone, a technical, financial and economic feasibility study of the project and the prospective market; a timetable for executing the project; indications as to the composition of the capital; documents certifying his/her identity and economic solvency or, in the case of a legal person, a copy of the incorporating documents of the entity.

Once examined the documents submitted to, the Ministry for Foreign Investment and Economic Co-operation gives its opinion and refers to the Executive Committee of the Council of Ministers, which is the Authority empowered to grant the concession. The granting or the denial of the concession shall occur within 60 calendar days from the day of the application's submission and shall be notified to the person concerned.

The decision granting the concession shall indicate the grantee's identity and legal status; the location of the Free Zone; the conditions imposed on the grantee; the investment program; the project's characteristics; the activities to be carried out; the special regime applicable and the limit of the concession which cannot exceed 50 years but can be extended for successive time periods until reaching the originally set time limit. After the expiring of the time limit

the original grantee has preference for a new concession.

The grantees carry out the development, establishment and functioning of the Free Zones according to the decision of the Executive Committee which grants the concession, therefore they have the following faculties and duties:

1) FACULTIES

- developing land lots, constructing on them warehouses, depots, offices, factories, etc.;

- leasing land lots or giving surface rights²⁰ over them to carry out authorised activities, abiding by the provision of the Civil Code of the Republic of Cuba to that effect;

- offering operation services to support operators' activities;

- making all the necessary facilities to provide public services (electrical power, gas, water, telecommunications, sewerage, etc.) and building and promoting centres for technical training, medical assistance and recreation;

- building, outside the Free Zones, houses, hotels, schools and any other contributing to the good functioning of the Free Zones;

- operating airports, seaports, piers, loading and unloading places and railways, in accordance with the respective legal regulations in force.

2) DUTIES

- registering in the Official Grantees and Operators Registry within 30 days from the date the concession is granted;

- investing in the development of the Free Zone an amount no less than the one proposed in the application, beginning the investment within 180 days counted from the

²⁰ These are: setting freely the price the operator must pay for the transfer of property, the leasing of facilities or cession of rights in its favour, as well as for the services it agrees to render the latter.

day of the registration in the Official Grantees and Operators Registry;

- guaranteeing the existence and maintenance of the infrastructure and ensuring the efficiency of the Free Zones facilities;

- promoting and developing training programs;

- observing legal provision on occupational health and safety and those on environmental protection;

- drawing up the draft regulations for the Free Zone for its subsequent approval by the Ministry for Foreign Investment and Economic Co-operation;

- making the guarantee deposit if these obligations are included in the concession conditions;

- submitting an annual report of the activities carried out to the Ministry for Foreign Investment and Economic Co-operation.

2.c The Free Zones operators

The Free Zones operators are national legal persons or natural or legal persons with a foreign domicile and foreign capital, which the Ministry for Foreign Investment and Economic Co-operation, at the grantee's proposals, authorises to establish itself in the Free Zone to carry out the activities comprised within the legal framework of this occupation.

In order to obtain the authorisation from the Ministry for Foreign Investment and Economic Co-operation the operator must submit a formal request to the grantee²¹ that will

²¹ Together with the request the person concerned must submit a statement containing documented information on: the name and nationality of the natural person or, as to legal persons, the name of the enterprise, incorporation, registration, legal representative; the applicant's economic solvency; the ac-

make the proposal, submitting all the documents to the Ministry for Foreign Investment and Economic Co-operation. The latter shall decide whether to grant the authorisation or not within 45 days from the date the application was submitted.

The operator authorisation contains all the information on the operator's identity, the location of the Free Zone, the investments' program, the activities to be carried out, the special system applicable and any other relevant matters.

The grantee and the operator enter into a contract in which the former transfer to the latter through a form of property transfer (a sale, a lease, etc.) a definite part of the Free Zone facilities, as well as other rights and services that will make the operator task feasible; on the other hand the operator must pay to the grantee the price the latter has set in the contract.

Free Zones operators have the following faculties and duties:

1) FACULTIES

- carrying out the activities described in the authorisation or previously determined by the Ministry for Foreign Investment and Economic Co-operation, including production and manufacture; assembly; processing of finished and semi-finished goods, commercial, operational, agricultural, banking, financial and insurance services; technological or scientific research; general services for the workers and operators of the Free Zone such as medical assistance and restaurants; other services such as marketing, informatics and consulting services to the operators of the Free Zone or

tivities planned to be carried out; a list of machinery, accessories and raw materials which will be used; the initial and future investments; the estimated amount of jobs the project will generate, etc.

of the national territory;

- carrying out the activities specified in the corresponding resolution of the Ministry for Foreign Investment and Economic Co-operation out of the Free Zone where it is established, but with the proper Customs, fiscal and labour controls;

- the Free Zones operators carrying out activities in building, manufacturing, assembly, processing of finished or semi-finished goods, trade and agriculture, can assign up to 25% of the goods produced to the national market;

- the percentage of the incorporated national value added is not to be paid in case of imports from Free Zones to the national Customs territory²²;

- no tariffs shall be paid when into the national market are introduced goods that have undergone a transformation or improvement that contributes at least 50% of their final value.

2) DUTIES

- carrying out the activities under the terms and conditions established in the authorisation;

- keeping records of the production, services and activities;

- submitting to all inspections and verifications carried out by the competent authorities for the control of the conditions established in the authorisation;

- investing in the production an amount no less than the one indicated in the authorisation and within the scheduled time limit;

- promoting and developing training programs;

²² For all the other aspects, these imports are subject to the same tariffs as those applied to exports coming from other countries.

- submitting to the Ministry for Foreign Investment and Economic Co-operation, through the grantee, an annual report regarding jobs generated; investments made; volume, amount, type and destination of exports, may they be goods or services; production achieved, inputs used, etc.

- submitting fiscal reports to the Ministry of Finance and Prices;

- making the guarantee deposit if required.

2.d The Free Zones special regime

Grantees and operators of Free Zones enjoy a special regime (regulated by the Decree-Law No. 165/1996) which consists in special Customs, banking, taxation, labour and public order regulations which are less rigid and onerous than the common, ordinary ones.

Scope of the special regime is to boost investments and under no circumstances it can be modified to grantees' and operators' detriment.

According to the Decree-Law No. 165/1996 the Free Zones special regime consist of:

1) Special customs regulations

- grantees and operators are exempt from paying tariffs and other Customs duties for introducing in the Free Zones products used to carry out their authorised activities;

- exports made from the Free Zones are free from tariffs or other Customs duties;

- the proper controls in relation to imports and exports made by Free Zones grantees and operators are carried out by the General Customs House of the Republic; in particular, no weapons, explosives or products whose export or import is banned, suspended or restricted by current law can be introduced in the Free Zone.

2) *Special taxation regulations*

- grantees and operators are exempt from paying profits taxes and taxes covering the utilisation of the labour force: in particular those grantees and operators carrying out activities in agriculture, production, manufacturing, assembly, processing of finished and semi-finished products are granted total exemption from the corresponding payment during the first 12 years and 50% payment during the 5 following years, while those operators carrying out commercial and service-rendering activities are granted total exemption from the corresponding payment during the first 5 years and 50% payment during the 3 following years²³;

- the tax exemptions' time limits may be extended for the same time periods as the original ones.

- more favourable exemptions or other incentives are possible, according to the contribution of the specific activity to the economic development of the country.

3) *Special banking regulations*

- grantees and operators can transfer abroad, in freely-convertible currency, the net profits or dividends obtained from their activities, without having to pay taxes or any other fees related to such transference;

- foreign citizens working in a Free Zone can transfer abroad their incomes, as long as they are not permanent residents in Cuba and in accordance with the other regulations established by Banco Nacional de Cuba;

- the assessment of securities, the setting of prices, the payments for services rendered and the contracts entered

²³ Once the exemptions' time limits have expired and during the remaining period of their activities, the grantees and operators shall pay the aforementioned taxes in conformity with the provisions of Law No. 77/95, Foreign Investment Act.

into by the grantees and the operators within the Free Zones cannot be denominated or executed in national currency, except when expressly authorised;

- Banco National de Cuba can enact additional special regulations on banking services to be rendered by Free Zones operators only without their detriment.

4) *Special labour regulations*

- as a general rule, the workers²⁴ who work for the Free Zone grantees and operators are Cubans or foreigners who are permanent residents in Cuba, but for technical or top management positions, the grantees and operators may directly hire workers who aren't permanent residents in the country and also determine the labour conditions to be applied;

- grantees with Cuban or joint capital directly may directly hire Cuban workers and foreign workers with permanent residence in Cuba and also acts as the employing entity²⁵ in relation to the workers required by the operators;

- in exceptional cases and without any detriment to what is provided by the Decree-Law No. 165/1996, special labour regulations can be determined by the Executive Committee in the agreement which stipulates the creation of a Free Zone.

5) *Special public order regulations*

- public order in Free Zones is kept in conformity with the regulations that the Ministry of the Interior enacts for this purpose;

- the cost of surveillance and protection is set according to international practice and is paid for by the grantees and

²⁴ Minimum salaries are set by the Ministry of Labour and Social Security.

²⁵ The Ministry of Labour and Social Security establishes the rules the grantees must observe in their capacity as an employing entity.

operators in the proportion by themselves agreed.

2.e Violations committed by Free Zones grantees and operators

The unfulfilment by the grantees of their obligations regarding the amount and time limit of the investment undertaken may lead to the concession's revocation.

The unfulfilment by grantees and the operators of the conditions imposed in their respective deeds constitutes an administrative violation as well as a violation of the Decree-Law No. 165/1996 and of the Free Zone Regulations. The foregoing violation can cause the revocation of the respective deed²⁶ by the state institution that granted it, except when it's proven that the unfulfilment was fortuitous or due to force *majeure*.

2.f The solution of conflicts

Conflicts between Free Zone grantees and operators or between operators are resolved in the manner specified in the contracts they have subscribed.

The economic division of the People's Courts established by the Governing Council of the People's Supreme Court have jurisdiction over the litigation between grantees or operators and state enterprises or other national entities over the execution of their economic contracts.

²⁶ It consists in the total or definite annulment of the concession or the operator authorisation and the loss, in favour of the State, of the assets and rights of the violator linked to the Free Zone.

3. CYPRUS, NORTH

The Turkish Republic of Northern Cyprus²⁷ covers the northern part of the Island of Cyprus²⁸ which is situated in the Eastern Mediterranean at a distance of 64 kilometres to the southern coast of Turkey, 96 kilometres to the east of Syria, and 400 kilometres to the north of Egypt.

Famagusta Free Port and Zone is located at the cross-roads of east-west and north-south navigation routes in the Mediterranean and gateway of the three continents. Because of this advantageous location it is an ideal place for foreign businessmen.

²⁷ This is not the proper time and place to go into the "Cyprus problem", as our investigation is only meant to point out the economic advantages of Free Ports and their significance in the development of freetrade. We remind the reader, though, that since the Turkish occupation of the north part of Cyprus on 20 July 1974, the port of Famagusta has been declared an illegal point of entry by the Cyprus Government and closed to all international shipping since 3 October 1974. The existence, with respect to international law and order, of the north part of Cyprus as a "Federate Turkish State" is controversial; the United Nations Security Council in Resolution 367/1975 "regrets the unilateral decision of 13 February 1975 declaring a part of the Republic of Cyprus would become a Federate Turkish State". The invasion of Turkey and the occupation of 37% of the island's territory have been condemned by international bodies, such as the United Nations General Assembly, the Non-aligned Movement, the Commonwealth and the Council of Europe. More recently, the Resolution No. 649 of the UN Security Council calls on the parties to reach freely an acceptable solution of the problem, defining the already agreed basis as a bi-communal and bi-zonal federation. For more information on the "Cyprus problem" see internet sites <http://www.mit.edu:8001/.../info.html/overview.htm> and <http://bornova.ege.edu.tr/~ncyprus/cyproblem.html>

²⁸ For more information on the ports of Cyprus see CYPRUS PORTS AUTHORITY, "The 20th Anniversary", Nicosia, 1993; and FAIRPLAY PUBLICATIONS LTD, "Cyprus" in *Fairplay Ports Guide*, UK, 1997, pp. 806-821.

Famagusta Free Port and Zone²⁹ offers a wide range of industrial services and infrastructure such as:

- a) all kinds of manufacture, processing and construction;
- b) open sheds, warehouses, storage areas, Container Park, buildings, connecting roads and service roads;
- c) means of loading, unloading, storage and transport;
- d) all types of buildings, installations and equipment, which could be of use for the development of the Famagusta Free Port and Zone as the need arises;
- e) telecommunication infrastructure.

As for the establishment procedures in Famagusta Free Port and Zone, only “Approved Enterprises” are entitled to build and operate in the Famagusta Free Port and Zone area. An “Approved Enterprise” is defined as one which has received approval from Free Port and Zone Council in order to function in the Free Port and Zone. Applications for “Approved Enterprise” status are to be submitted to the Famagusta Free Port and Zone Directorate on the forms is supplied by this body.

Transit Trade activities, relating to the use of public open or closed warehouses and sheds within the Famagusta Free Port and Zone may not be an approved enterprise.

The local authorities are keen to encourage foreign capital investment, either in the form of joint ventures or independently. There is no limitation to the proportion of foreign capital participation.

Famagusta Free Port and Zone offers the following investment incentives³⁰:

²⁹ Cf. LLOYD'S OF LONDON PRESS, “Free Trade Zones”, in *Ports of the World*, UK, 1998, p.843.

³⁰ *Ibidem*.

- open port to all flags, ideal for all functions i.e. docking transshipment and as a feeder port;
- strategically located with convenient regional and international air links;
- hours service rendered if and when requested;
- highly qualified and very competitive operating cost;
- International Safety Standard observed;
- no port congestion problems and / or delays;
- no storage charges, for the first 7 days;
- first 15 days no storage charges for full container;
- first 30 days no storage charges for empty container;
- less formality;
- 100% foreign ownership permitted;
- 100 % local ownership permitted;
- equal treatment for local and foreign investors;
- guarantee against nationalisation;
- no limitation on the proportion of foreign capital participation;
- no limit on repatriation of profit and capital;
- exemption from corporate tax and income tax;
- exemption from Customs duties and indirect taxes.

Cyprus has also an Industrial Free Zone at Lanarca, operational since 1981. It is used for general goods and offers warehousing, manufacturing and transshipment facilities.³¹

4. HONG KONG SPECIAL ADMINISTRATIVE REGION

The Free Port of Hong Kong is strategically located, both in relation to China and the neighbouring Asian coun-

³¹ *Ibidem.*

tries. It lies at the mouth of the Pearl River Delta and is at the centre of the Asia-Pacific Rim, a region where economy is growing at a phenomenal pace.³²

Being the junction of two different forms of maritime transport, the large ocean-going vessels from the Pacific Ocean and the smaller, coastal and river trade craft from the Pearl River, and the only modern, fully developed deep water harbour between Singapore and Shanghai, Hong Kong is the focal point of all maritime trading activities in Southern China³³ and a key transportation hub for Asia as a whole.

Hong Kong is the world's busiest container port: in 1997, it handled a total of 169 million tonnes of cargo through its port and 14.5 million TEUs.³⁴ It is also an international business and financial centre and possesses one of the world's most comprehensive and versatile maritime service industries.

The ingredients of the success of the port of Hong Kong are, and always have been, its strategic geographic location, its Free Port status and its reputation for being a free enter-

³² Cf. HONG KONG GOVERNMENT MARINE DEPARTMENT, "*Port of Hong Kong*", Hong Kong, 1997, pp. 1 *et seq.* See also the Government internet site: <http://www.info.gov.hk>

³³ Some 65% of cargo passing through Hong Kong is *entrepôt* trade with China.

³⁴ About 44,000 ocean-going vessels entered Hong Kong in 1997. On an average day there are almost 250 ocean-going ships working in the port; 1,300 ocean-going and river trade craft enter or leave the port; and about 10,000 craft working and/or passing through the harbour. Ship turnaround performance is among the very best in Asia and port charges are among the lowest in the world. Container ships at terminal berths are routinely turned round in 10 hours or less, while conventional vessels working cargo at buoys are in port for only 1.9 days on average.

prise port³⁵: from a “barren rock” with no natural resources and a population of only 7,540 in 1841, Hong Kong has, nevertheless, reached today a population of about 6.2 million and has become, according to the World Trade Organisation Report 1996, the world’s 8th trading entity, the 5th largest foreign exchange market and banking centre for external financial transactions, and the 7th largest stock market.

In addition, Hong Kong International Airport is the third busiest in the world, with a total of 27,4 million passengers and 1.6 million tons of goods a year passing through.

4.a The history of the port of Hong Kong

British traders began to call at Guangzhou (often called Canton³⁶), on the south coast of China in the 18th century.³⁷ They wanted the Chinese silk and tea. In payment the Chinese merchants wanted silver currency rather than British goods, but the British didn’t comply with this request as they wanted to keep their silver. So they decided to solve the problem by importing the drug opium from India and selling it to the Chinese who paid in Chinese silver, which

³⁵ It is also due to the hard work and efficiency of the port workforce who work the port around the clock. With a 14 hour turnaround, efficiency is high, damage rates are low and pilferage practically non-existent. Skilled technicians and operators ensure that facilities and operations run smoothly.

³⁶ Canton was also a Free Port: it was actually the only Chinese port where Europeans were allowed to trade in the late 18th century. Two main categories of cargoes were imported at Canton: those brought directly from Europe (wollen goods, broadcloth, longells, camlets, lead, copper and tin), and those brought from India and the East Indies (raw cotton, piecegoods, opium from Bombay, pepper and rice from Malaya and the East Indies, and other miscellaneous goods like elephant tusks, birds’ nests, rattan and tortoise-shell).

³⁷ Cf. MOORE, “*Chinese takeaway*”, in *Guardian Education*, Tuesday 18 March 1997, p. 11.

was used by the British to buy the China silks and tea.

But China's rulers wanted to keep China closed and banned opium, considered to be "foreign mud". In 1839 China confiscated a fortune in opium and burnt it, banning British merchants from trading along their southern coast.³⁸ The reaction of Britain was to send warships and troops to China, in order to force it to open its ports to trade. It was the beginning of the so called First Opium War.³⁹ Britain won in 1841 and China was forced to give up a 35 square mile island which they could do business from. In 1860, after the outbreak of the Second Opium War, also the Kowloon peninsula came under the British flag. On 9 June 1898 China was forced to give Britain a 99-year "lease" on 946 square kilometres of land north of Kowloon (called the New Territories) and 200 small islands near Hong Kong.⁴⁰ The whole area was then called simply "Hong Kong" and its residents "expatriates".⁴¹

At the time of Hong Kong's cession to the British Government, it had been repeatedly stated that the aim of the occupation was for diplomatic, military and commercial

³⁸ *Ibidem*.

³⁹ On this see also PISU, "L'oppio di Hong Kong", in *La Repubblica Cultura*, Tuesday 10 June 1997, p. 37.

⁴⁰ *Ibidem*. For a deep analysis of the history of the port of Hong Kong see also CHIV, "The Port of Hong Kong", London, 1973, pp. 13-33; and BOXER, "Ocean Shipping in the Evolution of Hong Kong", London, 1961, pp. 1 *et seq.*

⁴¹ The Convention of 1898 under which the New Territories were leased to Britain for 99 years was not the only treaty relating to Hong Kong which Britain concluded with the then Chinese Government: the other two were the Treaty of Nanking, signed in 1842 and ratified in 1843 under which Hong Kong Island was ceded in perpetuity, and the Convention of Peking in 1860 under which the southern part of the Kowloon peninsula and Stonecutters Island were ceded in perpetuity.

purposes. However, diplomatic and military purposes were only the means to an end, which was commerce.⁴² The extortion exacted by the Chinese authorities, the humiliation imposed by stringent regulations, and the inconvenience of having to leave the factories every winter, all led to a desire for a trading-post under the British Government.

When the decision had to be made as to which island should be occupied, Hong Kong was the obvious choice in the minds of those who had first-hand knowledge of existing physical and commercial conditions.⁴³

By an official proclamation signed on 7 June 1841, the Chinese traders were openly invited to trade and stay in Hong Kong, "where they will receive full protection from the high officers of the British nation: and Hong Kong being on the shores of the Chinese Empire, neither will be any charges on imports and exports to the British Government". The Chinese people soon saw the opportunities for trade and employment offered by Hong Kong whose population rapidly increased.⁴⁴ The population increased further following the Tai P'ing Rebellion, which spread to the tea and silk-producing areas in the Yangtze provinces. The Arrow War led to the destruction of the Canton factories and to the

⁴² See CHIV, cit.

⁴³ So wrote a correspondent of the *Canton Register* in 1942: "If the lion's paw is to be put down on any part of the south side of China, let it be Hong Kong; let the lion declare it to be under his guarantee a *free port*, and in ten years it will be the most considerable mart east of the Cape. The Portuguese made a mistake: they adopted shallow water and exclusive rule. Hong Kong, deep water, and a *free port for ever!*" See CHIV, cit.

⁴⁴ The Chinese emigrants gave rise to a demand for Chinese goods and provisions on the other side of the Pacific Ocean, and ships were loaded in Hong Kong with cargoes of household goods, from stoves to stools, and of foodstuff, ranging from rice to ginger. In this sense CHIV, *op. cit.*

consequent transfer of the headquarters of foreign trade from Canton to the port of Hong Kong. From the only Chinese port open to foreign trade, Canton became a mere outpost for the port of Hong Kong.

Due to its highly strategic geographic position, Hong Kong became shortly the centre of the world *entrepôt*. It is remarkable that Hong Kong was at that time the only distribution centre for all import and export into and from China.

Hong Kong is, and always has been, a Free Port "open to all ships without discrimination", a declaration made by the first Governor, Sir Henry Pottinger in 1842. Ever since the trade policy of the Government of Hong Kong has sought a free, open and multilateral trading system. But Hong Kong's eminence as a financial, communications and manufacturing centre is undoubtedly rooted in its pre-eminence as a Free Port. Its prime clients were, and still are, the shippers, traders and manufactures: the Free Port of Hong Kong has always correctly anticipated and efficiently met their needs.

In the 1880s, a variety of local shipbuilding, ship-repairing and manufacturing industries were started. This meant the growth of a new line of economic activity, placing demands on services, facilities and space. The major reason for this industrial development was the incessant supply of labourers, craftsmen and capital from China, all in search of profitable employment.⁴⁵

⁴⁵ Thus CHIV, *op. cit. supra*, pp. 32-33. The Author points out that the increasingly important role industry played was given official acknowledgement by the Governor Des Voeux, who reported to Lord Knutsford in October 1889: "while commerce pure and simple is, and must be for a long time to come, the principal element of our prosperity, it is, I think, from manufacture that may be hoped the greatest progress of Hong Kong in the future".

In the post-war years, the dynamic drive of Hong Kong's people and their determination to survive continual challenges, enabled the territory to make rapid economic and social progress and become a leading international manufacturing, trading and financial centre.⁴⁶

4.b The legislation of the Port of Hong Kong

The entire port of Hong Kong is a Free Port and has no general tariff on imported goods except alcoholic liquors, tobacco, motor vehicles, hydrocarbon oil and methyl alcohol if they are imported into or manufactured in Hong Kong for local consumption.⁴⁷ The Customs and Excise Department is responsible for the protection and collection of the excise duties on this goods, the suppression of illicit trafficking in narcotics and other dangerous drugs, the prevention and detention of smuggling and the enforcement of licensing controls on prohibited articles.

Of the thousands of ocean-going vessels entering the Free Port of Hong Kong every year, only a small number are selected for Customs inspection. Meticulous analysis of shipping and cargo information is undertaken by the Marine Department to determine which cargo is selected for examination. Breakbulk cargo is usually examined onboard, while containerised cargo is processed at the department's cargo examination compound, container terminals, warehouse premises or other designated places nominated by the importers.⁴⁸

⁴⁶ *Ibidem.*

⁴⁷ Cf. FAIRPLAY PUBLICATIONS LTD, "*Hong Kong*" in *Fairplay Ports Guide*, UK, 1997, pp.1290-1291.

⁴⁸ HONG KONG GOVERNMENT MARINE DEPARTMENT, "*Port of Hong Kong*", Hong Kong, 1997, p. 66.

As the Hong Kong Government's trade policy is to promote an open, free, multilateral, trading system, there are no controls on exports, re-exports or imports, except these arise in relation to obligations under the World Trade Organisation or other multilateral or trade-related agreements.⁴⁹

In the Free Port of Hong Kong there is no capital gains tax and no value added tax, while the corporate profits tax is at 16.5%. In general, the tax burden is very low and the procedures simplified to the maximum.

There are no restrictions on capital flow into or out of the Free Port of Hong Kong.

The port of Hong Kong is unusual in that it does not have a port authority to provide all the port infrastructure and control it. Most of the port facilities are privately owned and operated⁵⁰, with minimal interference from the Government.

The Marine Department, headed by the Director of Marine, is responsible for the day-to-day administration of the port, including all navigational matters in Hong Kong and the safety standards of all classes and types of vessels.

The Marine Department is not a port authority, but it

⁴⁹ Hong Kong is a founding member of the World Trade Organization (WTO), which replaced the General Agreement on Tariffs and Trade (GATT), and was party to the Multi-fibre Agreement which has been replaced by the WTO Agreement on Textiles and Clothing. Hong Kong actively participates in the work of the WTO to ensure proper and full implementation of trade liberalisation agreements agreed at the Uruguay Round of negotiations, and in order to secure, maintain and improve access for Hong Kong's exports. *Ibidem*.

⁵⁰ The success of the Free Port of Hong Kong as the world's largest privately financed port is very much due to private enterprises and the close co-operation of private and public sectors.

does undertake many of the functions associated with such a role. Its stated mission is “To Promote Excellence in Marine Services”.⁵¹

The functions⁵² performed by the Marine Department are, briefly, to:

1. facilitate the safe and expeditious movement of ships, cargoes and passengers within Hong Kong waters;
2. ensure compliance of safety and environmental protection standards by Hong Kong registered/licensed ships and ships using Hong Kong waters;
3. administer the Hong Kong Shipping Register and develop relevant policies, standards and legislation in line with international conventions;
4. ensure the competency of seafarers for Hong Kong registered/licensed ships and ships using Hong Kong waters, and regulate their registration and employment;
5. co-ordinate maritime search and rescue operations;
6. combat oil pollution, collect vessel-generated refuse and scavenge floating refuse inside Hong Kong waters;
7. provide and maintain government vessels.

The Marine Department provides a wide spectrum of services⁵³ which can be broadly classified into five areas, each of which is headed by an Assistant Director:

⁵¹ “Promote” is used to emphasise encouragement, facilitation and enforcement, when appropriate, of excellence within the Department and in the community. “Excellence” refers to the highest standards of service, safety and value for money for customers and the community in general. “Marine Services” are everything provided or influenced by the Marine Department, whether in Hong Kong or elsewhere. In this sense HONG KONG GOVERNMENT MARINE DEPARTMENT, “*Port of Hong Kong*”, Hong Kong, 1997, pp. 61-63.

⁵²Source: internet site <http://www.info.gov.hk/mardep/dept/dept.ht>

⁵³ *Ibidem*.

a) Planning and services - strategic planning for port development, passenger terminals, pollution control, public cargo handling facilities, buoys and navigational aids, hydrographic services.

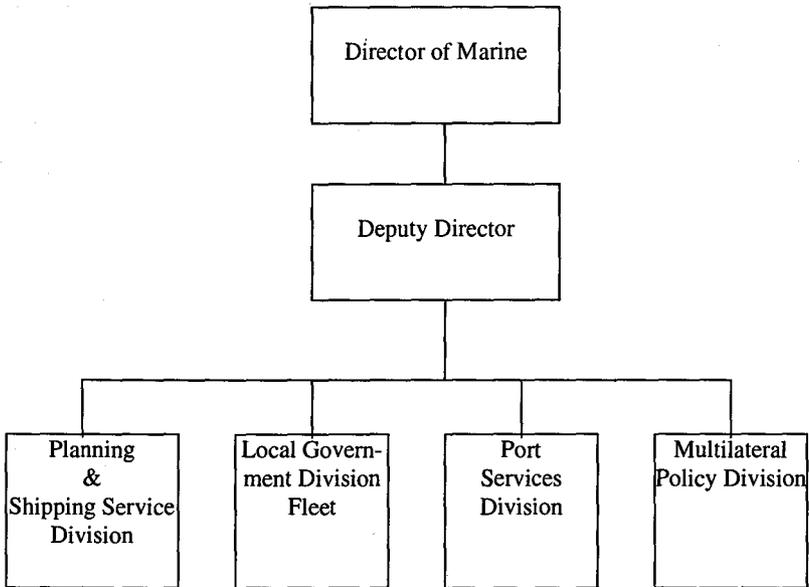
b) Port control - port operations, navigational safety, marine emergencies, search and rescue co-ordination, licensing and control of local craft.

c) Multi-lateral Policy - the Hong Kong Shipping Register, and the development of policies, standards and legislation.

d) Shipping - enforcement of ship safety standards, shipping casualty investigation, marine industrial safety, surveys of foreign-going ships and local craft, examination, certification and discipline of seafarers.

e) Government Fleet - design, procurement, operation, crewing and maintenance of government vessels.

In the carrying out of his functions, the Director of Marine lays down ordinances on pilotage, port control, merchant shipping, safety, limitation of shipowners liability, pollution control, etc.

TABLE 4 - ORGANISATION OF THE PORT OF HONG KONG⁵⁴

In April 1990 the Port Development Board (PDB) was established. It is not a port authority, but it advises the Government on all aspects of port planning and development for the port of Hong Kong (e.g. determining what port facilities will be needed in the future). This task involves assessing development needs in relation to changing demand, port capacity, performance and competitiveness in relation to other major regional ports.⁵⁵ Extremely important is, therefore, the role of the PDB in co-ordinating Government and the private sector agencies in the provision of port facilities. To make sure that the views of all parties involved in the process are taken into consideration, the members of

⁵⁴ Source: Government internet site <http://www.info.gov.hk/mardept/dept.ht>.

the Board are drawn from across the spectrum of Hong Kong's industry and commerce.⁵⁶

In order to operate within the Free Port of Hong Kong, companies need a valid licence. Where control for licences is required, the formalities are minimal, and necessary only to comply with quotas and agreements made internationally to restrict the export of certain goods (e.g. textiles).

The Free Port operators can count on a skilled and efficient workforce. Computer-linked telecommunications enable controllers to monitor shipping, wharf-side cargo movements and the coming and going of container lorries.

Unemployment is very low (less than 3%).

The Government offers operators technical, legal and financial advice on all aspects of port activities.

4.c Banking

Hong Kong has developed as an important financial centre, partly because of its geographical location creating a time zone between North America and Europe, and also because of its excellent communications with the rest of the world.⁵⁷ The absence of any restrictions on capital flow into or out of the territory have also been a major contributory factor.

Banks in Hong Kong are specialised in financing international trade in addition to servicing domestic activities. They maintain extensive credit information and a wide range of commercial services for the benefit of their clients

⁵⁵ Cf. PORT OF HONG KONG and HONG KONG GOVERNMENT MARINE DEPARTMENT, "*Port of Hong Kong*", Hong Kong, 1997, pp. 48-50.

⁵⁶ *Ibidem.*

⁵⁷ PORT OF HONG KONG, *cit.*, pp. 48-50.

and other parties wishing to establish business with Hong Kong companies. The foreign exchange and gold sectors of Hong Kong's financial markets are an integral part of the corresponding global markets.⁵⁸

Hong Kong is also an important centre for arranging international money flows, both savings and investments, and the syndication of loans and international fund management.

There are 85 of the world's top 100 banks represented in Hong Kong together with a significant number of merchant banks. At the end of 1995 there were 185 licensed banks in Hong Kong, 31 of which were incorporated locally.⁵⁹

4.d Insurance

The insurance industry in Hong Kong is regulated by the Insurance Companies Ordinance and all companies must be authorised by the Insurance Authority to transact business. At the end of 1995 there were 223 authorised companies of which 125 were overseas companies from 29 countries.⁶⁰

The Hong Kong Export Credit Insurance Corporation (ECIC) is a government owned, but autonomously operated, body which provides insurance protection for exporters against bad debts incurred abroad.

4.e Hong Kong Shipping Register

As well as being a major port, Hong Kong is a leading shipping centre.⁶¹

⁵⁸ *Ibidem.*

⁵⁹ *Ibidem.*

⁶⁰ *Ibidem.*

⁶¹ Source of this section is PORT OF HONG KONG, cit.

Hong Kong set up its own shipping register in 1990 and already it has grown to be one of the largest in the world. It is now ranked 13th amongst the principal merchant fleets of the world, with some 6 million gross registered tons of shipping.

Since 1997 the independent shipping register has been operated by the Government of the Hong Kong Special Administrative Region.

Eligibility to register a ship⁶² is open to any owner who can meet certain conditions such as being:

- 1) a body corporate in Hong Kong;
- 2) an overseas company registered in Hong Kong;
- 3) an individual who is normally resident in Hong Kong.

Surveys and certification of ships are carried out in accordance with International Maritime Organisation (IMO) Conventions.

Hong Kong is an Associate Member of IMO and has accepted all IMO Conventions, e.g. SOLAS 1974/78, MARPOL 73/78, STCW, etc. Equipment technical standards are based on IMO specifications and technical evaluation by the Hong Kong Government when necessary.

There are no nationality stipulations for master, officers or crew of Hong Kong registered ships. Masters and officers of any nationality may serve on Hong Kong registered ships, through the issuance of dispensations provided that they hold STCW certificates or, through licenses where their training and examinations are assessed as broadly comparable to Hong Kong certificates. A structure of Hong

⁶² Registration fees range from HK\$100,000 (for the first registration) to HK\$180,000 for the annual tonnage charge.

Kong Certificates of Competency is in operation which is internationally recognised and issued in accordance with the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW Convention).

All the necessary technical and commercial support services are available in the port for surveying, classification, repairing, buying, selling, chartering, insurance, P&I, etc.

One unique feature of vessels on Hong Kong Shipping Register is that since 1997 they display two flags: the Chinese flag and the flag of the Hong Kong Special Administrative Region.

4.f Hong Kong after 1997

In the early 1980s, concern⁶³ began to be evident over Hong Kong's position after the expiry in 1997 of the lease on the New Territories. Therefore, in September 1982, Britain and the People's Republic of China began the negotiations on the future of Hong Kong with the common aim of maintaining Hong Kong's stability and prosperity.⁶⁴ As a

⁶³ In particular there was increasing realisation of the problem posed by individual land lease granted in the New Territories, all of which were set to expire three days before the expiry of the New Territories lease in 1997. The main fear was that the steadily shortening span of these leases and the inability of the Hong Kong Government to grant new ones extending beyond 1997 would have deterred investment and damaged confidence.

⁶⁴ Following a meeting between the English Prime Minister and Chairman Deng Xiaoping on 24 September 1982 the following joint statement was issued: "Today the leaders of both countries held far-reaching talks in a friendly atmosphere on the future of Hong Kong. Both leaders made clear their respective positions on the subject. They agreed to enter talks through diplomatic channels following the visit with the common aim of maintaining the stability and prosperity of Hong Kong."

result of this negotiation, an agreement, namely the Sino-British Joint Declaration on the Question of Hong Kong, was signed on 19 December 1984 in Beijing by the Prime Ministers of the two countries.⁶⁵ On 27 May 1985, instruments of ratification were exchanged signifying the completion on both sides of the legal process necessary to allow the agreement to enter into force.⁶⁶

The Joint Declaration, with its annexes, provided for the restoration of Hong Kong to the People's Republic of China and the establishment of the Hong Kong Special Administrative Region (SAR) in 1997⁶⁷, the mechanism to ensure a smooth "transfer of governance"⁶⁸ in 1997, and the

⁶⁵ The agreement consists of a Joint Declaration and three annexes. The Joint Declaration consists in part of linked declarations by Her Majesty's Government and the Chinese Government. In Annex I the Chinese Government elaborated its basic policies towards Hong Kong in 14 sections; Annex II sets out the terms of reference and the working arrangements of a Joint Liaison Group which will operate up to the year 2000; Annex III provides for the protection of rights and for the future land leases in Hong Kong and establishes a joint Land Commission. For the full text of the Joint Declaration see ANNEX VII (internet site http://www.tdc.org.hk/beyond97/hongkong/jd_ax1.ht), *infra*. As for the Basic Policies Regarding Hong Kong, cf. ANNEX VIII (internet site <http://www.hkbu.edu.hk/~pchksar/JD/jd-full1.htm>), *infra*.

The British and Chinese governments have, since the entry into force of the Joint-Declaration been involved in consultations on the implementation of it at the Joint Liaison Group and the Land Commission.

⁶⁶ For an interesting picture of the background to the negotiations and their course see internet site: <http://www.hkbu.edu.hk/~pchksar/JD/jd-full1.htm>. Other fundamental documents on Hong Kong can be found in the *Internet Law Library* at <http://law.house.gov/64.htm>

⁶⁷ On 1st July 1997 Britain handed over sovereignty of Hong Kong to the People's Republic of China and the last British Governor, Chris Patten, was replaced by Tung Chee-hwa, a businessman elected by a committee of 400 Chinese. Hong Kong is now a Special Administrative Region with its own currency, police, legal System, regional flag, and administration.

⁶⁸ It is a disputed question, whether a real "transfer of sovereignty" or only a resuming of the exercise of a still existing sovereignty occurred. For a fuller

continuation of Hong Kong's capitalist systems and lifestyle for 50 years after 1997 under the guiding principles of "One Country, Two Systems".

The Joint Declaration is an international treaty (despite the name "Declaration"⁶⁹) with interesting and even unique elements which might also serve as a model for other non-self-governing territories (e.g. Gibraltar and the Falkland

treatment of this subject we refer the reader to the study carried out by G. RESS, "*The legal status of Hong Kong after 1997. The consequence of the transfer of sovereignty according to the Joint Declaration of December 19, 1984*", in *Abhandlungen*, pp. 647 *et seq.* As the Author points out, the word "cession", which was used in the Nankig Treaty and the first Peking Convention was carefully avoided. An idea has been put forward in doctrine, that the United Kingdom renounced unilaterally on the exercise of sovereignty, thus leaving for a logical second a *terra nullius* before the People's Republic of China established its own sovereignty (see article 1, section 1 of the Hong Kong Act 1985 which states that "As from 1st July 1997 Her Majesty shall no longer have sovereignty or jurisdiction over any part of Hong Kong"), but this thesis does not meet the substance of the procedure because the United Kingdom "restores" the Hong Kong area to the People's Republic of China. Nevertheless, A. DICKS (cf. DICKS, "*Treaty, Grant, Usage or Suffrance? Some Legal Aspects of the Status of Hong Kong*", in *The China Quarterly*, 1983) remarks that the People's Republic of China has for all practical purposes not objected to the exercise of British sovereignty of Hong Kong, describing the Chinese attitude "as one of acquiescence". In fact, even if the Chinese legislation has always avoided to refer to Hong Kong as a foreign country, the United Kingdom has often signed treaties or other international agreements which applied to Hong Kong; Hong Kong as a separate territory has specifically been mentioned (e.g. in the GATT); the Hong Kong Government has directly entered into agreements with foreign states or with the Provincial Government of Guangdong; the People's Republic of China has treated the boundary between Hong Kong and China "as an international boundary" for fiscal and administrative purposes and has "recognised in the normal way in China" air traffic rights and regulations, rules on the flying of ship flags, legal and judicial acts under the law of Hong Kong (DICKS, *ibidem*).

⁶⁹ In fact, the name given to the document does not matter with regard to the international legal effects of treaties.

Islands).⁷⁰ Each part of the agreement has the same status. The whole makes up a formal international agreement representing the highest form of commitment between two sovereign states.

In Particular⁷¹:

- the Hong Kong Special Administrative Region (HKSAR) is established as a part of the national territory of the People's Republic of China⁷² which enjoys a "high degree of autonomy". Consequently, the PRC has assumed responsibility for defence and foreign affairs while Hong Kong retains responsibility in most other areas including economic, social and legal matters;

- Hong Kong's legislative, executive, legal and judicial systems are maintained. In particular the agreement preserves Hong Kong's familiar legal system and the body of laws in force in Hong Kong, including the common law;

- civil rights, private property, ownership of enterprises, legitimate rights of inheritance and foreign investment, etc., are protected by law;

- HKSAR determines its own shipping policies;

- Hong Kong retains its status as a *Free Port* and separate customs territory, and the continuing right of free entry and departure from Hong Kong is guaranteed;

- HKSAR has autonomy in economic, financial and monetary fields. Therefore, the free flow of capital is safeguarded, there is no exchange control and the Hong Kong

⁷⁰ In this sense DICKS, cit.

⁷¹ Cf. JOHNSON STOKES & MASTER, "*Hong Kong after 1997. The legal position.*", in *Business Monitor*, 20 November 1995.

⁷² Therefore, the HKSAR cannot be considered an "internationalised territory". On the notion of international territories we refer the reader to chapter three, *infra*.

Dollar continues to circulate and is freely convertible;

- the central government of the People's Republic of China shall not levy taxes on Hong Kong;

- HKSAR is able, authorised as necessary by the central People's Government of China, to negotiate agreements and participate in international organisations. It continues to participate in the GATT.

The policies set out in the Joint Declaration were stipulated in a Basic Law which was passed by the National People's Congress of the People's Republic of China in 1990 and became effective on 1st July 1997.⁷³ The Basic Law is now Hong Kong's main constitutional document and contains detailed legal provisions, including those stating that the previous capitalist system and way of life in Hong Kong shall remain unchanged for 50 years.⁷⁴

⁷³ The drafting of the Basic Law began in 1985. The first complete draft of the Basic Law was published in April 1988, followed by a five-month public consultation exercise in which a large variety of views were expressed. The second draft of the Basic Law (February 1989), which reflected many of these views, was amended. The final draft was enacted and promulgated on 4 April 1990.

⁷⁴ The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China consists of a preamble, 9 chapters (General Principles; Relationship between the Central Authorities and the Hong Kong Special Administrative Region; Fundamental Rights and Duties of the Residents; Political Structure; Economy; Education, Science, Culture, Sports, Religion, Labour and Social Service; External Affairs; Interpretation and Amendment of the Basic Law; Supplementary Provisions), 3 annexes (Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region; Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures; National Laws to be Applied in the Hong Kong Special Administrative Region) and an appendix (Proposal by the Drafting Committee for the Basic Law of the Hong Kong Special Administrative Region on the Establishment of the Committee for the Basic Law of the Hong Kong Special Administrative Region Under the Standing Committee of the National People's Congress). For the text of se-

The Basic Law confirms the provisions of the Joint Declaration that the Hong Kong Special Administrative Region shall maintain the status of a Free Port and shall not impose any tariff unless otherwise prescribed by law (article 114); shall pursue the policy of free trade and safeguard the free movement of goods, intangible assets and capital (article 115); and shall be a separate customs territory (article 116). Section III of chapter V is dedicated to shipping:

- the Hong Kong Special Administrative Region shall maintain Hong Kong's previous systems of shipping management and shipping regulation, including the system for regulating conditions of seamen and the HKSAR Government shall, on its own, define its specific functions and responsibilities in respect of shipping (article 124);

- the Hong Kong Special Administrative Region shall be authorised by the Central People's Government to continue to maintain a shipping register and issue related certificates under its legislation, using the name "Hong Kong, China" (article 125);

- with the exception of foreign warships, access for which requires the special permission of the Central People's Government, ships shall enjoy access to the ports of the Hong Kong Special Administrative Region in accordance with the laws of the Region (article 126);

- private shipping businesses and shipping-related businesses and private container terminals in the Hong Kong Special Administrative Region may continue to operate freely (article 127).

Her Majesty's Government was fully satisfied of the Joint Declaration and strongly commended it to the people of Hong Kong and to Parliament, being confident that it provides the necessary assurances about Hong Kong's future to allow the territory to continue to flourish, and to maintain its unique role in the world as a major trading and financial centre. In particular, the continuation of the free enterprise system, the free trade policies and the *Free Port* are safeguarded, which are the essentials of Hong Kong's consistent and successful economic policies

On the future of Hong Kong the observers are confident that Hong Kong's territory will continue to flourish, and will maintain its unique role in the world as a major trading and financial centre.

5. ITALY

Italy has an extensive history of Free Ports and Free Trade Zones, but we will concentrate our investigation on the Free Port of Trieste, considering its peculiar history, geographic and economic significance.

5.a The history of the Free Port of Trieste

“La storia di Trieste è nei suoi porti.”

SCIPIO SLATAPER

The city of Trieste finds its origins in a port of call used in the exchanges between the Adriatic populations and those of the hinterland.

In the 1st century AC Rome strengthened the port of Trieste, situated on very important *vie consolari*, like the *Gemina*, the *Flavia*, and indirectly the *Postumia*.

The shore, naturally formed by a beach, lapped the foothill of San Giusto and San Vito, along the route of the present Via del Teatro Romano, Via di Cavana, Via Torino and Via Lazzaretto Vecchio. Historians believe that the Roman port was built on the pre-historic one in the area between Cavana and the Roman Theatre: in that zone big calcareous blocks have been found, which used to be utilised that time for the construction of wharves and quays.⁷⁵

After the fall of the Western Roman Empire, Trieste was ruled by different populations until it became a sovereign commune after the 9th century.

Later on, and all through the Middle Ages, a small harbour was developed right outside the walls of the city in the area of the present Piazza dell'Unità. The basin was delimited by two piers which after 1500 were defended by bastions and cannons. This port used to be called Mandracchio and could hold only a limited number of ships, due to its shoal.

The expansion of trade through the port of Trieste was soon obstructed by the city of Venice, which, due to the great wealth accumulated during the Crusades, monopolised all the exchanges with the East and acted like the owner of the Adriatic Sea. Anyone who wanted to navigate or enter into commercial agreements with the seafaring people of the Adriatic had to pay toll and obtain the authorisation of the Venetian authorities. The sailors who failed the granting of the permit, were considered smugglers or pirates and therefore punished. The historiography of that time is rich with episodes describing the continuous acts of tyranny to whom the vessels transiting the Adriatic

⁷⁵ Thus CANNARELLA, "*Conoscere Trieste*", Trieste, 1985, p. 149.

Sea were submitted: during the frequent and piratical perquisitions, merchant ships found without the receipt of the toll payment were conducted to the nearest Venetian port and seized together with the cargo. Sometimes, the crew was bullied and locked up in the Venetian prisons.⁷⁶

The situation was unbearable for the people of Trieste and extremely in contrast with their innate spirit of business and seafaring expansion. For this reason, Trieste entered into war with Venice in 1275, coming out of it in 1291 with great losses.⁷⁷

In the second half of the 14th century Trieste, exhausted by the frequent wars, was ruled first by Venice (1369), then by Friuli and finally by the Habsburgs. In the "act of devotion"⁷⁸ contained in the Graz Agreements of 30 September 1382, Trieste asked the archduke Leopold of Austria for the protection necessary to ensure its maritime trade and its autonomy.

Fights with Venice on the Adriatic Sea went on during the next century, as well, but Trieste, strong with its imperial protection, tried to impose its presence in the Adriatic as well as in the international maritime trade. In the Commons Conference of 1563, the jurist and bishop of Trieste, Andrea Rapicio, asserted that the sea is "free and common to everybody", on the basis of an interpretation of the

⁷⁶ See on this point DE ANTONELLIS MARTINI, *Porto franco e Comunità etico-religiose nella Trieste Settecentesca*, Milan, 1968, pp. 1 *et seq.*

⁷⁷ Cf. SACCARI, *Trieste una città così*, Trieste, 1976, p. 193. According to the Author, the Venetians, knowing that the city walls represented part of the pride of Trieste's citizens, imposed the demolition of those walls overlooking the sea, so that the main square of the city was exposed.

⁷⁸ Many historians actually believe it was more an imposition than a request of the city itself.

Worms and Bologna Treaties and without a thorough investigation of the customary principles that were later on developed by the Dutch Hugo De Groot, known with the Latin name of Grotius.⁷⁹

Between the end of 1600 and the beginning of 1700, the Habsburgs took a great interest in the port of Trieste, in order to strengthen their domains and to bring about their plans of commercial expansion in accordance with the mercantilist policies that were widespread all over Europe at the time. Austria considered trade development to be the main source of prosperity for the country and tried to achieve it through the creation of a new line of communication and the control of merchant navigation in the Adriatic.

On the other hand, Venice was going through a period of political and economic decadence, so that it had to put a good face upon the "Sovereign Licence" of 2 June 1717, in which Charles VI proclaimed the freedom of navigation of the Adriatic Sea, and upon the trade agreement with Sultan Ahmed Han, which stated: "*pro utrisque imperii subditis, liberum commercium fluvis, terra, marique*".⁸⁰ In his "Sovereign Licence", Charles VI affirmed in particular: "We Charles VI (...) grant our imperial favour to all the inhabitants of our hereditary States, coasts and seaports and to those intending to elect domicile there. We are letting them know that it is our intention to promote and discipline trade in our sovereign territories and in particular in the

⁷⁹ See AGNELLI, "*Una storia di confine*", in *Quassù Trieste*, Bologna, p. 54.

⁸⁰ Cf. BABUDIERI, "*La nascita dell'emporio commerciale e marittimo di Trieste*", in *Atti dell'Accademia Nazionale di Marina Mercantile*, Genoa, 1964.

ports of South Austria, making the seas safe while ensuring the freedom of navigation. In this respect, the granting of franchises is indispensable. We therefore permit our subjects to fit out vessels and ply free trade (...) and to fly the imperial and archducal flag; we grant the necessary licences (...), and we promise to defend the crew, the ships and the cargo from any occurring prejudice, wrong or tyrannical act (...). We grant our imperial and archiducal immunity to those foreign ships entering our ports in order to carry out trade in the Adriatic. (...) We will examine and amend the Exchange Code. We will improve all our routes to the sea-ports in order to make them suitable for big carts and free of thieves and ill-intentioned vagabonds. (...) It is also our intention to increase manufacturing through the granting of immunities. We will make sure that the manufacturers live in appropriate houses (...).⁸¹

Once the sea was made safer, the Emperor decided to promote the export of Austrian goods and to create a base for Mediterranean and Oceanic trade, that, since 27 May 1719, was monopolised by the Imperial Privileged Eastern Company.⁸²

On the 6th of November 1717, all Austrian political authorities were invited to express their opinion on the fu-

⁸¹ CAMERA TRIESTINA DI COMMERCIO ED INDUSTRIA, *“Il porto franco di Trieste”*, in *Memoria dedicata all'Eccelso Consiglio dell'Impero*, Trieste, 1863, All. I, pp. 1-3. Translation by the writer.

⁸² Charles VI granted the Company with a lot of privileges (e.g. the monopoly of trading with Turkey), being his main shareholder. The same did England with the Indian Company, Holland with the Maatscappy and France with the companies established by Law. Anyway, the Imperial Privileged Eastern Company ceased to exist when Emperor Maria Theresa ascended the throne, as she didn't confirm the privileges that the Company was granted by Charles VI.

ture of the seaports of the Empire: Trieste and Fiume were chosen to become Free Ports and so declared in the "Sovereign Licence" of 18 march 1719.⁸³

In its 13 articles the Licence of 1719 declared the ports of Trieste and Fiume "clemently and temporarily" free; granted the freedom of trade and manufacturing to all foreign ship-owners and manufacturers, who could also buy land within the Free Port area; ordered the construction of new roads on which free transit was allowed; instituted a Tribunal for the exchanges and an insurance office; allowed foreigners to build freely; abolished the right of the Treasury and of any subjects to gain possession of the goods salvaged after a shipwreck; exempted the tradesmen from military service; abolished all the controls on the vessels entering the Free Ports, but stated that certain documents had to be shown on request.

In the first ten years of its life, the Free Port of Trieste didn't work as well as thought, mainly because of all privileges granted to the Imperial Privileged Eastern Company by Charles VI and notwithstanding the fact that the latter kept increasing the immunities of the Free Port of Trieste: in the Licence of 19 December 1725 Charles VI announced that he had widened the roads, built the *lazaretto* and warehouses, granted total immunity to the goods travelling by sea and reduced Customs duties for those travelling by land; in the Licences of 7 June and 11 November 1730 Customs duties were definitely abolished, but the import of copper, steel, mercury, iron, glass, salt and tobacco was not permitted. Once a year it was also possible to hold trade

⁸³ Historians didn't fail to notice that Charles VI granted Trieste and Fiume with the immunity in response to the concession of the privilege to the port of Marseilles and Livorno, as well as to the other Italian Free Ports.

fairs within the Free Port for tradesmen to show all sorts of merchandise.⁸⁴

The efforts of Charles VI were eventually rewarded and the Free Port of Trieste took off and revealed its natural outlet function for the regions without access to the sea. The Free Port advantages became evident especially after 1766, when Maria Theresa extended the Free Port immunities to the city of Trieste, as well.

With the mercantile *epopea* of Maria Theresa, the bond between Trieste and Austria became closer and Trieste played an important role of Adriatic emporium.

The possibility of exchanges of manufactured goods with the hinterland and the enlightened politic of the Habsburgs, with all its administrative reforms, measures in favour of craftsmen and tradesmen, privileges granted to certain categories, and the total liberalisation of other sectors, led the city of Trieste to an economical boom: in less than 40 years the number of its habitants grew from 17,000 to 160,000.⁸⁵

In the first decade of 1800 the Generali Insurance Company, the Austrian Lloyd with the annexed arsenal, the *Riunione Adriatica di Sicurtà*, and a myriad of companies specialised in trade, navigation and insurance were founded.

In 1809, following the 3rd French occupation, Austria had to cede Trieste to France, which abolished the Free Port and introduced the French Customs legislation. In 1813 Trieste was given back to Austria which restored the Free Port the year after.

The steam navigation and the inauguration, in 1869, of

⁸⁴ Cf. SAIN, "*La soppressione del porto franco del 1891*", in *Biblioteca Generale dell'Università degli Studi di Trieste*, 1921, pp. 1-3.

⁸⁵ See SACCARI, "*Trieste*", *op. cit.*, p. 193.

the Suez Canal⁸⁶ increased the traffic through the port of Trieste further: situated right in the heart of Europe, the port represented the link between the Western and the Eastern countries.⁸⁷

In 1878 Austria undertook a massive process of Customs reforms. Article IV of Law 21 June 1878, containing the Customs agreement between Austria and Hungary, stated that: "*Die bestehende Zollausschüsse sollen aufgehoben werden*". In fact in 1879 the Customs immunity of Istria and Dalmatia were abolished and in 1883 the Government of Vienna discussed the opportunity of suppressing the Free Port of Trieste (and Fiume), while creating a Free Zone with annexed bonded warehouses instead. With the Law of 23 June 1891 Austria abolished the extension of the Customs immunity to the city of Trieste. Nevertheless, Trieste was already a lively and thriving emporium centre.⁸⁸

In the following years, Trieste developed its harbour infrastructure and its railway clearing park even though railway transport remained inadequate until 1910, when the Pontebbana Line came into operation and formed a link between Trieste and Vienna.

The Lloyd knew its maximum expansion, with a fleet of 69 steamboats serving 17 routes that used to connect Trieste with the Mediterranean, the Black Sea, India and the Far East.

⁸⁶ The first vessel to go through the Suez Canal, when works were still in progress, was the Triestine steamboat "*Primo*".

⁸⁷ See the interesting educational videotape realised by CONFCOM-MERCIO and IL PICCOLO, "*Trieste, un porto e la sua città 1719-1980*", 1997.

⁸⁸ In 1891 new trade associations were established: e.g. the Association of Coffee Tradesmen and the Association of Retail Businessmen.

The I World War paralysed the Free Port activities as well as the whole international trade. In the Post-War period, Trieste was annexed to Italy and had to face the effects of the fall of the Austrian-Hungarian Monarchy with the consequent fragmentation of the hinterland of Trieste into six different States and the beginning of a ruthless competition of the Northern ports, above all Hamburg.⁸⁹

The twenties involved a revival of the port activities, though it was stopped by the advent of the Second World War.

After the withdrawal of the German troops in May 1945, Trieste was occupied by Yugoslavian military and partisan formations, but after 40 days the Anglo-American detachments took over. The Allied Military Government lasted until the 26th October 1954, when Trieste was returned to Italy.

The Peace Treaty of Paris⁹⁰ of 10 February 1947 between Italy and the Allied Powers imposed on the one hand (Annex VI) the creation of the Free Territory of Trieste, on the other (Annex VIII) defined the status of the Free Port of Trieste.⁹¹ In Italy the Treaty entered into force by the

⁸⁹ Cf. TAMARO, *“L’Adriatico Golfo d’Italia – L’italianità di Trieste”*, Milan, 1915.

⁹⁰ Regarding the Peace Treaty see VEDOVATO, *“Il Trattato di Pace di Parigi, 10 febbraio 1947”*, Firenze, 1971, pp. XL-624. For the preliminary works See *“Paris Peace Conference, Selected Documents”*, Washington, 1947; and *“Recueil des Documents de la Conférence de Paris”* (Palais du Luxembourg, 29 July-15 October 1946), Vol. IV, Paris, 1951. Cf. as well the documents collection by CIALDEA and VISMARA, *“Documenti della pace italiana”*, Rome, 1947 and by GIANNINI and TOMAJOLI, *“Il Trattato di pace con l’Italia”*, Milan-Rome, 1948.

⁹¹ In the bulletin divulged in London on the 19th of September 1945 during the first session of the Council of the Foreign Affairs Ministers, the substitutes of the Ministers themselves were charged with studying the interna-

D.L.C.P.S. No. 3054 of 28 November 1952.

The constitution of the Free Territory, and the following nomination and installation in office of its Governor and the other organs (Council of Government, Assembly, etc.) could not take place because of the *veto* on the nomination of the Governor (first and essential act) put by the ex-USSR for 7 years in the UN Security Council.

Notice of the impossibility of creating the Free Territory of Trieste was given in the Memorandum of understanding⁹² signed after 8 months of negotiations in London on the 5th of October 1954⁹³ by Italy, Great Britain, USA and

tional status of the city of Trieste (apart from its political situation) which could ensure that the port and transit facilities of Trieste would be available for use on equal terms by all international trade, in particular by Italy, ex-Yugoslavia and the States of Central Europe, in the manner that is customary in other Free Ports of the world. See *INTERNATIONAL AFFAIRS*, 1946, No. 27 *bis*, p. 2.

⁹² The Memorandum disposed the return of Zone A to Italy (a series of decrees of the Government General Commissioner led gradually to the pacification of the administrative and normative situation of zone A with the rest of the Italian territory) after the withdrawal of the allied troops, while Zone B remained under Yugoslavian administration (that was no longer a military but a civilian one). The boundary line was marked by an Annex paper. The two States had to move their residents from one zone to the other in one year's time, but direct agreements were possible in order to facilitate the traffic of people and goods. According to the Italian jurisprudence, the Italian sovereignty over Trieste persisted also after the 15th of September 1947 (date when the Peace Treaty came into force), as its cessation should have been conditioned by the constitution of the new territorial community called Free Territory of Trieste. For the text of the Memorandum of London see ANNEX XI (UDINA, "*Scritti sulla questione di Trieste sorta in seguito al secondo conflitto mondiale ed i principali atti internazionali ad essa relativi*", Milan, 1969), *infra*.

⁹³ On The same day, the Italian Ambassador Manlio Brosio was writing a note to the Yugoslav Ambassador Vladimir Velebit, inviting him to participate with other interested Governments in a meeting at an early date with the purpose of working out the necessary arrangements to apply articles 1-20 of

ex-Yugoslavia.

Nevertheless, paragraph 5 of the Memorandum preserved the provision of Articles 1-20 of Annex VIII of the Paris Treaty, regarding the Free Port of Trieste (“The Italian Government undertakes to maintain the Free Port at Trieste in *general accordance* with the provision of Articles 1-20 of Annex VIII of the Italian Peace Treaty”).

5.b The international status of the Free Port of Trieste according to Annex VIII of the Paris Peace Treaty of 1947

The Free Port⁹⁴ of Trieste was internationalised by the Peace Treaty of Paris of 10 February 1947, in particular by articles 34 and 35 of Annex VI (“Permanent Statute of the Free Territory of Trieste”) and by articles 1-26 of Annex VIII (“Instrument for the Free Port of Trieste”).⁹⁵

The Free Port of Trieste, like the never-constituted Free Territory of Trieste, is a typical example of *international territory*, conforming with the defining principles pointed out by a renowned doctrine (QUERCI, QUADRI, CAPO-

Annex VIII in order to assure the *fullest possible use of the Free Port in accordance with the needs of international trade*. The text of the note is reproduced in ANNEX XII (UDINA, *ult. op. cit.*).

⁹⁴ According to article 3, the area of the Free Port includes the territory and installations of the Free Zones of the port of Trieste within the limits of the 1939 boundaries, but it is possible to increase the Free Port area further. The Free Zones in question are two general commercial Free Zones named “Punto Franco Vecchio” (Porto Vittorio Emmanuele III) and “Punto Franco Nuovo” (Porto Duca d’Aosta) and three particular Free Zones for timber in Servola, mineral oils in San Sabba and industrial activities in the Canal of Zaule.

⁹⁵ For the text of Annex VI and VIII of the Paris Peace Treaty see ANNEX X (UDINA, *ult. op. cit.*), *infra*.

TORTI).⁹⁶ In it all the characteristics of the international territories can be found: the international source (international treaty), the international composition of its government organ (see articles 21-26 on the International Commission of the Free Port, though annulled by the Memorandum of 1954), and, above all, the bond of an *international function* (see article 1 “In order to ensure that the port and the transit facilities of Trieste will be available for use on equal terms by all international trade ...”). The concept of *international territory* will be analysed in chapter three (*infra*).

The discipline of the international territory of the Free Port of Trieste is given by a non-derivative but completely autonomous system, as it doesn't origin from the Italian State. For this reason the activities carried out within the Free Port of Trieste should be only submitted to those limitations and controls required by that international trade and not by the Italian State.⁹⁷ The autonomy of the Free Port of Trieste is due to international public law, precisely from a treaty of the first constitutional rank, that being a ratified peace treaty.

The key rule of the Treaty, establishing the international regime of the Free Port of Trieste is article 2, 2nd subsection, of Annex VIII: “All Italian state and para-statal property within the limits of the Free Port which, according to the provisions of the present Treaty, shall pass to the Free Territory, shall be transferred, without payment, to the

⁹⁶ See in particular QUADRI, “*Diritto internazionale pubblico*”, Palermo, 1949, pp. 460 *et seq.*; and ROUSSEAU, “*Droit international public*”, Paris, 1953, pp. 170 and 178.

⁹⁷ Thus QUERCI, “*Limiti di giurisdizione nel porto franco di Trieste*”, in *Trasporti*, No. 72/73, Modena, 1997.

Free Port". Therefore the port, its premises, its means of transport, its installations and works, are reserved to international maritime trade, in such manner as is customary in the other Free Ports of the world.⁹⁸ These goods are inappropriable as they are submitted exclusively to the international function.

As a corollary, article 3, 2nd sub-section, states that "the establishment of special zones in the Free Port under the exclusive jurisdiction of any State is incompatible with the status of the Free Territory and the Free Port", otherwise the general functionality of the Free Port would be hindered to the detriment of international operators.⁹⁹ Therefore, in the exercise of the international function, the Free Port can exclusively dispose of all state property transferred to the Free Port *ex* article 2, 2nd sub-section of the Peace Treaty.

It would be appropriate now to examine other aspects of the international legislation of the Free Port of Trieste.

The port and transit facilities of Trieste shall be available for use on equal terms (article 1) in the sense that the immunities contemplated in article 34 of the Permanent Statute of the Free Territory of Trieste (Annex VI) have to be meant as a sort of "essential public service", suitable to ensure that all international operators can use the port and the transit facilities on equal terms, in such manner as is customary in the other Free Ports of the world (Singapore, Hong Kong, etc.) and "crystallised" in the various written

⁹⁸ Cf. QUERCI, "*Il porto di Trieste come territorio internazionale*", in *Trasporti*, No. 69-70, Modena, 1996.

⁹⁹ In this sense CAMERA DI COMMERCIO INDUSTRIA E AGRICOLTURA DI TRIESTE, "*Il porto franco di Trieste, commento all'Allegato VIII del Trattato di pace in relazione all'art. 5 del Memorandum d'intesa firmato a Londra il 5 ottobre 1954*", Trieste, November, 1954.

statutes. This reference to custom has to be interpreted as a permanent receptive reference.

International custom enters the Italian legal system in accordance with article 10, 1st sub-section of the Italian Constitution: "The Italian legal system conforms to those rules which are generally recognised" (*i.e.* general law principles recognised by civil Nations, Customs, and, according to many, also the declaration of the UN Assembly).¹⁰⁰

The adaptation to general international law is therefore automatic: PERASSI¹⁰¹ (who formulated article 10 of the Italian Constitution among the members of the Constituent Assembly) spoke about a "permanent transformer of general international law into internal law", unlike adapting to international contractual law, which requires a writ of execution contained in a constitutional, state or regional law, depending on the subject.¹⁰²

¹⁰⁰ See CONFORTI, "*Diritto Internazionale*", Naples, 1992; and MORELLI, "*Nozioni di diritto internazionale pubblico*", Padua, 1967, pp. 95 *et seq.*

¹⁰¹ Cf. PERASSI, "*La Costituzione italiana e l'ordinamento internazionale. Scritti giuridici*", Milan, 1958, pp. 429 *et seq.* and "*Lezioni di diritto privato internazionale II, Introduzione al diritto internazionale privato*", Padua, 1962, pp. 27 *et seq.*

¹⁰² Quadri tried to apply to treaties also the mechanism of adaptation and the provision of article 10 of the Italian Constitution regarding international custom, on the basis of an exclusively logical argumentation: because among the "generally recognised" international rules there is the customary principle "*pacta sunt servanda*", article 10, 1st sub-section of the Constitution directly applies to treaties, as well. The majority of doctrine and jurisprudence does not agree with Quadri, as the interest connected to the observance of a treaty can vary according to the content of the obligations which it contains and to the concrete circumstances existing in the international community. It cannot be stated, for example, that a commercial treaty has the same rank of a peace treaty. On the contrary, the observance of international customary laws responds to a constitutional interest of the legal system and therefore customary

The adaptation procedure is instituted directly by the Constitution: we can therefore say that it applies also to customary laws, ensuring their operation within the internal legal system. With regard to these rules, article 10 of the Italian Constitution attributes the effectiveness typical of the constitutional norms.¹⁰³

It follows that all international Customs on Free Ports, "crystallised" in various statutes which contemplate the freedom of maritime international trade and the free freight traffic are applied to the Italian legal system *ex* article 10, 1st sub-section of the Constitution and therefore to the Free Port of Trieste, as well.

An other important principle inspiring the Free Port system is that of article 35 of Annex VI ("Freedom of transit shall, in accordance with customary international agreements, be assured by the Free Territory and the States whose territories are traversed to goods transported by railroad between the Free Port and the States which it serves, without any discrimination and without Customs duties or charges other than those levied for services rendered."), reprised by article 5 and 16 of Annex VIII. This basically means that the States gravitating round the port of Trieste have to facilitate its traffic.

According to article 5 of Annex VIII, merchant vessels and goods of all countries shall be allowed unrestricted ac-

laws are enforced by giving them a constitutional rank.

¹⁰³ See CANNIZZARO, "*Trattato internazionale (adattamento al)*", in *Enciclopedia del Diritto*, Vol. XLIV, Milan, 1958, pp. 1413 *et seq.* In this sense also CONFORTI, *Diritto*, *cit.*, according to whom article 10 of the Constitution prescribes the adaptation of Italian law in its totality to general international law, excluding therefore any possibility of subordination of customary law to constitutional law, except when the safeguard of fundamental values inspiring the Constitution is involved.

cess to the Free Port for loading and discharge. In connection with import into or export from or transit through the Free Port, no Customs duties or charges other than those levied for services rendered shall be imposed.

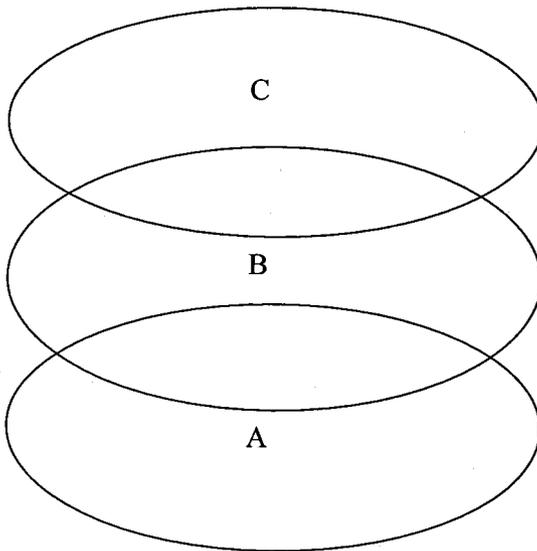
Article 16 of Annex VIII impresses the principle of freedom of transit by stating that: "Freedom of transit shall, in accordance with customary international agreements, be assured by the Free Territory (*read*: Italy) and the States whose territories are traversed to goods transported by railroad between the Free Port and the States which it serves, without any discrimination and without Customs duties or charges other than those levied for services rendered. The Free Territory and the States assuming the obligations of the present Instrument through whose territory such traffic passes in transit in either direction shall do all in their power to provide the best possible facilities in all respects for the speedy and efficient movement of such traffic at a reasonable cost, and shall not apply with respect to the movement of goods to and from the Free Port any discriminatory measures with respect to rates, services, Customs, sanitary, police and other regulations. The States assuming the obligations of the present Instrument shall take no measures regarding regulations or rates which would artificially divert traffic from the Free Port for the benefit of other seaports (...)"

Traffic of goods in transit through the Free Port of Trieste is, therefore, absolutely free in order to ensure free international maritime trade (article 1).

With reference to the free transit of goods through the Free Port of Trieste, the relationship between Italian jurisdiction and that of the other countries can be represented in

the following graphic¹⁰⁴, where the three circles (A, B, C) stand for partially interfering zones:

- zone A marks the final destination of the goods, under Italian or foreign jurisdiction;
- zone B corresponds to the zone of the international regime of the Free Port of Trieste, where all commercial activities regarding the goods in transit are exempt from the Italian jurisdiction or that of any other state;
- zone C marks the foreign jurisdiction of the country of origin of the goods, may it be inside or outside the European Union:



¹⁰⁴Cf. QUERCI, "Limiti di giurisdizione nel porto franco di Trieste", in *Trasporti*, No. 72/73, Modena, 1997, p. 22.

As the reader can see, in the Free Port of Trieste there is freedom from any Customs duty (with regard to all loading, unloading, transshipment, storage, manufacturing and processing operations) and free circulation of goods, for the benefit of international maritime trade and consequently international commercial operators.

As far as the administration of the Free Port of Trieste is concerned, article 19 and article 20 of Annex VIII empower the Director of the Free Port¹⁰⁵ with the most extensive powers: he shall take all reasonable and necessary measures for the administration, operation, maintenance and development of the Free Port as an efficient port adequate for the prompt handling of all the port traffic. In particular the Director shall be responsible for the execution of all kinds of port works in the Free Port, direct the operation of port installations and other port equipment, establish conditions of labour in the Free Port, and shall also supervise the execution in the Free Port of orders and regulations of the Free Territory's Authorities regarding navigation (article 19). Besides, the Director of the Free Port shall issue rules and bye-laws which he considers necessary in the exercise of his functions as prescribed in article 19 and prepare the autonomous budget of the Free Port (article 20).

In carrying out his institutional tasks, the Director of the Free Port must exclusively keep to the *international function*, i.e. he must promote international maritime trade and free movement of goods. He is therefore entrusted with an *international munus*: for a fuller treatment of this please re-

¹⁰⁵ According to article 18 of Annex VIII the Director of the Free Port is appointed by the Governor among a list of qualified candidates for the post of Director of the Free Port. He shall not be a citizen of ex-Yugoslavia or Italy. The Director of the Free Port represents it as a juridical person.

fer to chapter three (*infra*).

Articles 21-26 of Annex VIII, abrogated by the Memorandum of 1954, provided for the establishment of an "International Commission" consisting of representatives from 12 States. The named Commission should have had its seat in the Free Port and its offices should have been exempt from local jurisdiction. The primary function of the International Commission should have been consultative (investigating and considering all matters relating to the operation, use and administration of the Free Port or the technical aspects of transit between the Free Port and the States which it serves, including unification of handling procedures; communicating its views or recommendations on such matters to the Director of the Free Port or to the State or States concerned; etc.), even if the nature of its recommendation should have been considered legally binding.¹⁰⁶

The description of the international status of the Free Port of Trieste is completed with those provisions of the Peace Treaty which grant, in accordance with customary international agreements, freedom of postal, telegraphic and telephonic communications between the Free Port area and any country for such communications as originate in or are destined for the Free Port area (article 17).

Therefore in the Free Port of Trieste international operators can freely carry out financial, banking, insurance and trading activities, as well as establish international shipping firms and factories.¹⁰⁷

¹⁰⁶ See UDINA, "*Scritti...*", cit., Milan, 1969, and "*Il regime giuridico del Porto Franco di Trieste secondo il Trattato di pace con l'Italia del 1947*", in *Archivio finanziario*, Padua, 1951.

¹⁰⁷ Cf. ROSOLEN, "*Il vecchio Ente porto e l'Ezit hanno degradato i Punti franchi*", interview to F.A. QUERCI, Professor of Maritime and Trans-

The international provisions of the Peace Treaty are still binding the Italian State legally.

The persistence of the international obligation regarding the Free Port of Trieste is confirmed by various internal acts¹⁰⁸ enacted by the Italian State in the years following 1947 which refer to Annex VIII as the Free Port's source of discipline still in force.

With the Memorandum of London, in 1954 the Peace Treaty was modified with *erga omnes* effects for the contracting States but also for the States eventually beneficiary of its provision so that the Italian State has become internationally responsible for the fulfilment of the obligations imposed by the Peace Treaty with regard to the port of Trieste. Naturally the content and significance of these obligations are to be re-defined in relation to the changed circumstances: articles 21-26 of Annex VIII are annulled but articles 1-20 are nowadays still topical.

We cannot talk about desuetude of Annex VIII either because in the latest 50 years the contracting States didn't negotiate its abrogation, or it doesn't correspond to reality; in particular the strategic position of the port of Trieste in international maritime trade (especially for the European land-locked states) still remains.

Following the Memorandum of London, the fulfilment of the obligation of Annex VIII is internationally relevant to the relations between Italy on one side, and the contracting States of the Peace Treaty and other European States (Austria, Czechoslovakia, Poland, Switzerland, Hungary)

portation Law at the University of Trieste, in *Trieste Oggi*, 10-11 December 1995.

¹⁰⁸ They are: article 169 of *D.P.R.* 23 January 1973, No. 43; Article 32 of *D.P.R.* 30 December 1969, No. 1133; and Law 13 March 1988, No. 153.

on the other.¹⁰⁹

In the Conference held in Rome between the 14th and the 19th November 1955 some Central European States (Austria, Czechoslovakia, etc.) expressed their point of view on how the Italian State should comply with the provision of Annex VIII in order to obtain the best functioning from the Free Port of Trieste.

Today, Italy is still failing to fulfil the obligations imposed by the Peace Treaty: all the recurring discriminatory measures regarding regulations, rates, services, Customs, health and police violate article 16 of Annex VIII as well as the autonomy of the Free Port's derivative system, hindering free international maritime trade and free movement of goods.¹¹⁰

The Italian State violates the Vienna Convention of 23 May 1969, too, in particular article 27 that states that a State party (Italy) to a treaty "may not invoke the provision of its internal law as justification for its failure to perform the treaty".¹¹¹

The Free Port of Trieste still keeps its original legal status due to article 234 of the Rome Treaty establishing the European Economic Community (1952), in order not to prejudice rights and obligations deriving from previous treaties signed by member States with States not belonging

¹⁰⁹ Cf. CONETTI-LONGBARDI, "*Per Trieste progetto porto*", in *Ente autonomo porto di Trieste*, Trieste, 1986, pp. 7-12.

¹¹⁰ In this sense QUERCI, during the conference held on the 10th of April 1996 at the Chamber of Commerce of Trieste and organised by the Italian Maritime Law Association (Aidm).

¹¹¹ See BADIALI, "*Testi e documenti per un corso di diritto internazionale*", Rimini, 1992, p. 31. For the Convention of Vienna see ANNEX XXII, *infra*.

to the European Community.¹¹² For this reason, any attempt to alter the European Community Free Trade Zones legislation to the detriment of the Free Port of Trieste should be condemned.

Italy has ratified the Peace Treaty and has enacted the Decrees No. 29 of 19 January 1955 and No. 4 of 5 February 1962, which apply some principles of Annex VIII (freedom of transit, prohibition of discriminatory measures with respect to regulations, rates, services and Customs) but fail to fulfil the Statute of the Free Port entirely.¹¹³ Consequently, in the Italian legal system there are rules directly invocable by the citizens against the public administration in case of violations of the fundamental principles of the Free Port. In order to determine concretely these principles, the said Decrees refer to the international treaties on international transit and above all to the customary laws existing in the other Free Ports of the world, which are *crystallised* in various statutes and finally refer to the principle of free international trade and free movement of goods.

¹¹² See CAMPAILLA, "*Il regime giuridico delle zone franche del porto di Trieste*", in *Diritto dei Trasporti*, 1998.

¹¹³ Law No. 84 of 1994 on the reorganisation of Italian ports missed the opportunity of putting an end to 50 years of violations of the Italian State to Annex VIII. In fact the said law considers the Free Port legislation only in terms of Customs exemptions and empowers the Minister of Transportation and Navigation with the widest powers, so that the activity of the Authority of the Free Port is seriously hindered and its function becomes merely consultative. In this sense MALTESE, during the Conference of 8 November 1996 held at the Starhotel Savoia Excelsior of Trieste and organised by the Italian Maritime Law Association (Aidm). Of MALTESE see also "*I punti franchi del porto di Trieste. Attuali problematiche, prospettive di soluzione e interrogativi irrisolti*", in *Il Foro Italiano*, No. 4, April 1998, pp. 1318 *et seq.*

6. JORDAN

Two interesting Free Trade Zones exist in Jordan: one in the port of Aqaba, and one in the Zarqua region.¹¹⁴

The Jordanian Free Zone areas were established in order to incentive investments, to promote export-oriented industries and transit trade. In general, commodities and goods of various origins and natures are deposited in the Free Zones for the purpose of storage and manufacturing, without having to pay the usual excise fees and other taxes, since they are treated like goods outside Jordan.

6.a Aqaba Free Zone

The Aqaba Free Zone is operational since 1973. It covers an area of one million square meter. It is equipped with high level infrastructure and advanced goods handling equipment.

The Free Zone offers a wide range of facilities including transit sheds, open storage areas and storage yards, manufacturing units, and a modern 6,000 ton capacity cold store for meat, fish, poultry and all kinds of food stuffs and perishable goods.¹¹⁵ An additional area of 2.5 million square meters in the south of Aqaba is currently being developed into an extension of commercial and industrial facilities for the Free Zone, similar to that of Jebel Ali in the United Arab Emirates.

Trading companies complying with the requisite regula-

¹¹⁴ Projects for the establishment of two Free Zones in Sahab city and Queen Alia International Airport are being planned. In addition, plans promoting the establishment of private Free Zones in Jordan and for setting up a trilateral Free Zone encompassing Jordan, the PNA territories, and Israel are currently being studied.

¹¹⁵ Cf. BRANCH, "*Elements of Port Operation and Management*", London-New York, 1986, pp. 109-111.

tions may use the Free Zone storage yards, sheds or warehouses, or construct their own facilities. Rental rates are very reasonable and the first year rental dues are waived in favour of companies hiring sites for at least 10 years.¹¹⁶

Aqaba Free Zone is served by modern overland routes forming the hub of the cross-roads of the Middle East and the three continents of Africa, Asia and Europe and it is also served by a modern natural deep-water port and a busy international airport.¹¹⁷

The workforce is skilled and low cost. The economic stability and growth, as well as a wide range of tax and other special inducements, make the Aqaba Free Zone a perfect environment for foreign investors.

As for the incentives¹¹⁸ of the Free Zones, we must distinguish between:

A) Incentives for trading companies:

- exemption from rental dues on leased sites for a period of one year;
- exemption from Customs duties, taxes and fees on goods and equipment entering the Free Zone;
- exemption from income tax for twelve years;
- exemption from income and social affairs taxes for salaries and allowances payable to non-Jordanian employees;
- exemption from taxes and other fees on all building and structures created by the investors;
- special banking facilities with regard to the import, ex-

¹¹⁶ *Ibidem.*

¹¹⁷ *Ibidem.*

¹¹⁸ On this point see LLOYD'S OF LONDON PRESS, "Free Trade Zones" in *Lloyd's World Ports Atlas*, Abu Dhabi, 1994, p. 851; and BRANCH, *Elements, ult. op. cit.*, p. 110.

port and transfer of capital and profits;

- exemption from building licences and building or tax law;
- facilities for part shipment of goods, mixing, blending and packaging with no restrictions.

B) Incentives for industrial¹¹⁹ companies

- exempting products manufactured in the Zone for the domestic market from Customs fees limited to the value of local materials, costs and expenditures involved in the manufactured products;
- exemption from rental dues for two years;
- exemption from building licences and building or tax law;
- full repatriation of foreign exchange of all profits and capital without restriction;
- exemption from income tax for twelve years;
- exemption from income and social affairs taxes for salaries and allowances payable to non-Jordanian employees;
- existence of laws and regulations very favourable to the private sector and to private ownership;
- transfer of capital;

6.b Zarka Free Zone

Zarka Free Zone consists of an area of 5.5 million square meters situated 35 kilometres north-east of Amman, along an international cross-roads which connects Jordan with neighbouring countries. About 34 industries have been

¹¹⁹ The major industrial activities carried out within Aqaba Free Trade Zones include the production of steel, machinery, transport equipment, chemical, electrical and electronics, textile, ship and aircraft services, etc.

licensed including the manufacturing of garments, fire extinguishers, vegetable oils, furniture, and pre-fab houses, printing and publication, and the assembly of electrical pumps, plastic bags, automotive spare parts, construction equipment and computer mother-boards. In addition, more than 175 warehouses and numerous paved and levelled yards are available as storage facilities.

There are more than 700 commercial trading and industrial projects based in the operating Free Zone areas. They comprise storing, repackaging, mixing, blending, and manufacturing operations.

The Zarka Free Zone legislation provides for incentives and exemptions¹²⁰ for foreign and local companies established in the Zone. Among others are:

- exemptions of profits from income and social services tax for a period of 12 years from commencement of operations;
- exemption from income tax and social services tax for salaries of non-Jordanian employees working in the Free Zone;
- exemption from Customs duties, import fees and sales taxes for goods imported in the Free Zone are. Goods exported thereof are exempted from all taxes and fees as well;
- exemption of local market consumption of goods manufactured in the Free Zone from Customs duties to the extent that they contain local components;
- exemption of buildings constructed therein from licensing fees and real estate taxes;

¹²⁰ Cf. LLOYD'S OF LONDON PRESS, "Free Trade Zones" in *Lloyd's World Ports Atlas*, Abu Dhabi, 1994, p. 851; and the internet site <http://amon.nic.gov.jo/work/economics/invest/340.html>

- free repatriation of invested capital and earned profit;
- freedom of currency transfer;
- availability of land and buildings in the Free Zone for rent at concessionary prices.

7. LATVIA, REPUBLIC OF

The Republic of Latvia has established two Free Ports, one at Ventspils and the other at Riga.

7.a Ventspils Free Port

The unique geographical location of Ventspils Free Port, in Latvia on the eastern shores of the Baltic Sea, has shaped the historical role of Ventspils as the leading Russian export port since the 18th century. As an intermediary in the economic relations between the West and the East, Ventspils Free Port continues this long-standing tradition.¹²¹

Ventspils Free Port is recognised world-wide in the transportation and trading community as the leading ice-free Port in the Baltic's and as an efficient and important regional centre for oil, oil product, industrial chemical products, potash, metal and general cargo transshipment on the Baltic region.¹²²

Ventspils Free Port provides modern and infrastructure, skilled management, motivated manpower, flexible tariff system and planned capacity to expand. To this must be added political and government support as well as excellent relations with Russia. In this context, one must bear in mind

¹²¹ Source: internet site http://www.kenpubs.co.uk/investguide/baltic_states/Ventspils/index.html, and <http://sun.lcc.org.lv/engl/hansa.business.days/ventspils.html>

¹²² *Ibidem.*

not only the competitiveness of Ventspils Free Port, but also, and most importantly, the role that Latvia and Ventspils Free Port will play in the future as a centre of international transport.¹²³

Referring to performance statistics, with total transshipments of 36.8 million tons in 1997, Ventspils Free Port ranked first among all ports on the Baltic Sea in terms of total cargo throughput. This volume of cargo could easily increase to 50 million tons annually under favourable economic and political conditions.¹²⁴

7.b The history of the port of Ventspils

Ventspils was actually an ancient port town founded in 1341.¹²⁵

In the XVI century Ventspils was a member of the Hanseatic League. In 1642 the development of Ventspils Port began during the rule of Duke Jacob of Kurland.

After the construction of the Ribinsk-Moscow-Ventspils railway (1887-1904) Ventspils Port claimed its fame as one of the largest in the Russian Empire.

In 1970 the largest Potash Terminal became operational; in 1973 Ventspils Port began to handle ammonia and other liquid chemical cargo; in 1974 the largest oil terminal on Baltic Sea Region started operations. By 1980 Ventspils Port was the seventh largest port in Europe.

In 1997 the Law on Ventspils Free Port comes into force.

¹²³ *Ibidem.*

¹²⁴ *Ibidem.* For general information on the port of Ventspils see FAIRPLAY PUBLICATIONS LTD, "Latvia, Republic of", in *Fairplay Ports Guide*, UK, 1997, pp. 1842-1845.

¹²⁵ Cf. BRIEFINGS ON USSR SEA PORTS, Moscow, 1968, p. 155

7.c The legislation of Ventspils Free Port

Ventspils Free Port is regulated by the Law of 19/12/1996 ("Law on Ventspils Free Port")¹²⁶, which has taken effect on the 1st of January 1997.

The Law establishes the principles of the Ventspils Free Port activity and procedures of the management, in order to achieve participation of Latvia in international commerce, increase of investments, development of production and services, as well as employment generation.

According to the Law, the Free Port is a part of the Republic of Latvia territory which corresponds to borders of the Port of Ventspils determined by the Cabinet of Ministers.

Customs alleviation's and special measures for Customs control established by the Law are applied to entrepreneurial associations (enterprises) which have signed the contract with the Free Port Management (Authority) on entrepreneurial activity in the regime of the Free Customs Zone and have received the permit for such activity in the procedure established by the Law, as well as to the Free Port Management.

Goods and other articles can be imported into the Free Customs Zones located in the Free Port from other Customs territory of the Republic of Latvia and can also be exported from above mentioned zones to other Customs territory of the Republic of Latvia only through the Customs border crossing points in the procedure established by the Customs Code, laws and the Cabinet of Ministers regulations.

¹²⁶ See the translation of the Law carried out by the Latvia Law Institute in 1997. For the text of the Law see ANNEX XIII (*internet site http://www.kenpubs.co.uk/investguide/baltic_states/Ventspils/index.html*), *infra*.

If goods produced anew or processed in the Free Port are exported from the Free Port and the anew added value of these goods corresponds to 40 percent or exceeds 40 percent of the total value of the commodity, then the above mentioned goods shall be recognised as goods made in Latvia.

The Law on Ventspils Free Port provides for land legal relations in the territory of the Free Port; in particular article 4 states that the land area owned by the State in the territory of the Free Port cannot be sold, presented or alienated in other way. The land area of the Free Port owned by physical persons or legal entities may be, sold, presented, exchanged or alienated in other way only for the benefit of the State or local government.

The personal easement for the benefit of the Free Port Management is established by the Law to the land owned by physical persons or legal entities occupied by the Free Port. The Free Port Management is entitled to use the land owned by physical persons and legal entities in its territory for needs of the Port, as well as to lease it to entrepreneurial associations (enterprises) operated in the territory if the Free Port without rights to transfer it to sublease.

The user of the easement can construct the buildings and structure, which are necessary for the Port's activities, or allow their construction to entrepreneurial enterprises.

Upon termination of the easement rights, the land owner cannot demand the restitution of the land prior to payment of compensation for buildings and structures.

The managing of the Free Port is performed by the Management (Authority) of the Port of Ventspils, which competence is established by the Law of 19/12/1996, the Law on Ports of 1994, the Regulations of the Ventspils Free

Port Management, and the Regulations of the Ventspils Free Port, regulating the internal regime of the Free Port.

The Free Port Management is a legal entity which belongs the same Customs alleviation's as the licensed entrepreneurial associations.

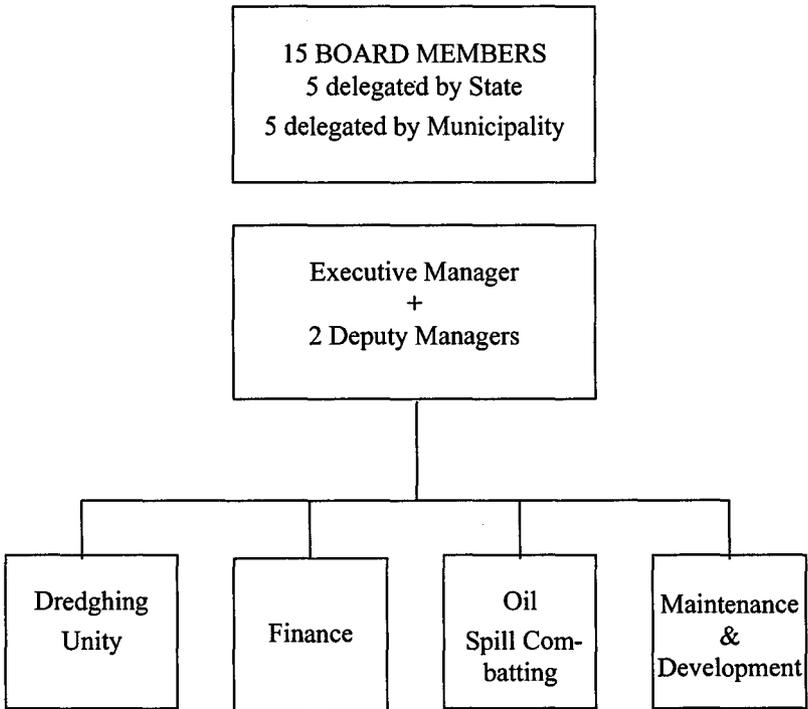
The superior decision-making institution of the Free Port Management is the Board of the Free Port. Its members are appointed to the post and dismissed in the procedure established by Article 8 of the Law on Ports of 1994.

The executive body of the Board of the Free Port is guided by the Free Port Manager, appointed to the post and dismissed by the Board of the Free Port after compliance with the Minister of Transportation.

The main responsibilities of the Ventspils Free Port Authority are the following:

- landlord function;
- maintenance of Sea and River Navigation Channels;
- maintenance of breakwater, quaywalls and berth;
- environmental protection;
- enforcing port regulations;
- port dues;
- issue of Free Zone licences.

TABLE 5. - ORGANISATION CHART OF VENTSPILS FREE PORT AUTHORITY¹²⁷



As far as the Customs regime in the Free Port is concerned, the provisions of the Republic of Latvia Customs laws (as well as other business restrictions and prohibitions) are applied only to goods which are exported from the territory of the Free Port to other Customs territory of the Republic of Latvia and to goods which are imported in the territory of Free Port from other Customs territory of the Republic of Latvia.

¹²⁷ Source: internet site http://www.kenpubs.co.uk/investguide/baltic_states/Ventspils/index.html

Physical persons when entering the territory of the licensed entrepreneurial association and leaving it are subject to Customs controls.

As for the tax payment regime, goods and services delivered or rendered to the licensed entrepreneurial association in the Free Port or to the Free Port Management by the person taxable with the value-added tax, are imposed with the value-added tax according to 0 per cent rate according to Paragraph 3 of Part I of Article 7 of the Law "On value-added Tax".

Goods brought into the territory of the licensed entrepreneurial association or for the needs of the Free Port Management from abroad, or brought out from it to abroad are exempt from the Customs tax and excise tax.

Retail trade, excluding the duty free stores and rendering of services in the territory of the licensed entrepreneurial associations is imposed with taxes anticipated by law in the procedure stipulated by the Cabinet of Ministers.

To sum up, Ventspils Free Port incentives comprise:

- 0% Customs Duty;
- 0% Excise Tax;
- 0% VAT.

Articles 12 *et seq.* provide for the regulations for entrepreneurial activity in the Free Port. Services of goods (cargo) loading, storing, processing and other services and production of goods in the Free Port shall be performed by entrepreneurial associations (enterprises) which are registered in the Republic of Latvia, have signed the contract on entrepreneurial activity in the free Customs regime and received permit for performing such an activity.

The Free Port Management arranges the register of licensed entrepreneurial associations. Those entrepreneurial

associations (enterprises) which are located in the territory of the Free Port but have failed to sign the contract on the entrepreneurial activity in the free Customs zone regime and to receive permit for such an activity, may perform the entrepreneurial activity without alleviation's determined for licensed entrepreneurial associations and being subject to control of the Free Port Management in the frame of its competence.

The regime of the Free Port is applied only to those entrepreneurial associations whose territory is bounded by one or several Customs crossing points and the guarding arranged appropriately by ensuring the movement of goods and individuals to the territory of the licensed entrepreneurial association and from it in compliance with the Customs requirements. Any licensed entrepreneurial associations shall ensure guarding of its territory. The entrepreneurial activities cannot be carried out outside the Free Port territory, with the exception of :

- 1) location of the management institution or representative (according to Article 8 of the Law "On Entrepreneurial Activity") of the entrepreneurial association outside of the bounded territory;
- 2) performing negotiations and signing contracts outside of the bounded territory;
- 3) other activities without features of execution commercial transactions;
- 4) transit of goods through the bounded territory.

The regime of the Free Port shall be applied to entrepreneurial associations if they bring out for free circulation to other territory of the Republic of Latvia not more than 20 per cent of the produced goods.

The entrepreneurial association, which is already estab-

lished or will be established in future (the claimant is a founder), is entitled to claim the signing the contract and receiving of permit considering the following preconditions:

1) the type of the entrepreneurial association's activity and future development shall correspond to program of the Free Port development approved by the Board of the Free Port;

2) founders and members of the entrepreneurial association shall have a good reputation, stable financial condition and experience in the entrepreneurial activity.

The Free Port signs contracts on the entrepreneurial activity concerning specific types of activity (for example, loading, producing of goods, storing). The contract can be signed concerning several types of activity.¹²⁸

The contract on the entrepreneurial activity in the Free Port's regime is signed for a period of time not less than five years and is a basis for issuance of the permit for entrepreneurial activity in the Free Port. The permit is issued

¹²⁸ The applicant shall submit for signing of contract and permit to the Board of the Free Port the following documents:

- 1) application;
- 2) the copy of the registration certificate issued by the Enterprise Register and certified by the notary;
- 3) the copy of the statutes certified by the notary;
- 4) annual account for two years approved by the sworn auditor (or according to the consent of the Board of the Free Port the copy of the abridged account);
- 5) the program of activity, including the investment program;
- 6) other essential information about the entrepreneurial association and its founders according to decision of the Board of the Free Port.

The decision on signing the contract with the applicant are passed by the Board of the Free Port within three months after the filling of the documents above indicated.

for the term of validity of the contract after examining the readiness of the entrepreneurial association for activity in the Free Port. The Free Port Management ensures the enumeration of permits.

The contract on the entrepreneurial activity in the Free Port can be terminated before expiration of the term (early termination) by the decision of the Free Port Management if it is stated that the licensed entrepreneurial association violates the laws, other normative acts on the signed contract. Simultaneously with the decision on the early termination of the contract, the Board of the Free Port passes the decision on annulment of the permit and determines the date for fulfilment of the decision.

The entrepreneurial association, whose permit for the entrepreneurial activity in the regime of the free Customs zone is annulled, is entitled to perform the entrepreneurial activity according to general provisions if the entrepreneurial activity is not prohibited to it at all in the procedure stipulated by law due to nature of the violations.

Disputes on the early termination of contracts, annulment of permits and compensation of losses are reviewed by the court of arbitration or by a foreign court, according to jurisdiction or by mutual agreement of parties.

The Free Port Management is entitled to issue the certificate of the general type (non preferential) in the procedure stipulated by the Cabinet of ministers. The certificate attests the producing or processing of goods in the licensed entrepreneurial association and certifies that the goods transported through the territory of the licensed entrepreneurial association located in the Free Port are not processed in this territory.

7.d Riga Commercial Free Port

On 21 November 1996 the President of the Republic of Latvia declared the Law on Riga Commercial Free Port.¹²⁹ The Law provides for a specific economic regime within the Free Port area: tax benefits, flexibility of Customs regime, high level of autonomy of the administration make Riga Commercial Free Port an advantageous business environment for foreign investors. In this framework the development of international trade, manufacturing and services, as well as the acquisition of modern technologies and personnel training are guaranteed.

The fiscal incentives to the activities carried out within the Free Port area comprise the exemption from Customs tax, excise tax and value added tax for cargo import into the Free Port area from foreign countries and export to foreign countries. Customs, value added and excise taxes are due only if the cargo arrives in the Latvian Customs territory.¹³⁰

Riga Commercial Free Port is managed and administered by the state shareholders company “Riga Commercial Port”. Among the main functions of the Company are the conclusion of land lease agreements with the companies performing entrepreneurial activities within the Free Port; the provision for collection of the lease charges for the Free Port facilities; the setting of the tariff levels for the most

¹²⁹ The port of Riga was founded in 1201. At the time of the occupation of the city by fascists the port was destroyed and the city sustained serious damages, but the port was soon reconstructed and expanded. In this sense, BRIEFINGS..., cit., pp. 147-148. Today, Riga Commercial Free Port occupies a land area of 438 hectares. For general information on the port of Riga see FAIRPLAY PUBLICATIONS LTD, “*Latvia, Republic of*”, in *Fairplay Ports Guide*, UK, 1997, pp. 1842-1845. On the internet see <http://www.rto.lv/RigaCommercialFreePort.htm>

¹³⁰ *Ibidem*.

important port services for the vessels using the berths under the Free Port possession; and the conclusion of agreements with the companies for operating within the Free Port.¹³¹

The movement of goods and other items, into and out of the Customs Territory of the Republic of Latvia may be performed only through Customs check-points at the Free Port as is provided by the legislative acts of the Republic of Latvia.¹³²

The storage of goods at Riga Commercial Free Port is subjected to no time limit.

According to the Law of 1996, within the Free Port areas are permitted various business activities such as cargo (goods) handling, manufacturing of goods, storage and handling services¹³³, rendering of services as a committed Free Port licensed business activity. In order to operate in the Free Port, it is necessary to receive a license and conclude an agreement with the Company.

Riga Free Port offers a wide range of port facilities (berths; quays; warehouses and open stores) and support facilities (marine service fleet; portal, floating and container cranes; tug masters and other cargo handling equipment.

8. MALTA

Malta's strategic location has always been considered as

¹³¹ *Ibidem.*

¹³² *Ibidem.*

¹³³ Riga Free Port is specialised in the handling of aggregate, sand, coal and other bulk cargo; grain; raw sugar; containers; loose boxes and palletised; rolled ferrous metals and scrap metal; perishable cargo; bagged cargo; cotton in bales, timber in bundles; cars; etc.

a very important trading point.¹³⁴ Its convenient position on the main sea routes between Europe and the East, the increasing use of the Suez Canal and the high volumes of liquid fuel trading and shipping in the Mediterranean have been important factors in the development of a new point in Marsaxlokk harbour to handle exclusively Free Port facilities.

8.a The Malta Free Port Act

With the Malta Free Port Act (Act No.26 of 1989) the Maltese government established the Malta Free Port and provided for its discipline (Authority, fiscal regime, licensed companies, offences and penalties).¹³⁵

The Malta Free Port is a Customs-free area located around the well developed harbour of Marsaxlokk. It is made up of three elements, all geared to enhance its function as a distribution centre in the Mediterranean¹³⁶:

1. two main terminals, container and break bulk;
2. a mineral oil terminal;
3. extensive modern warehousing facilities.

Within the Free Zone goods can be stored without entering Malta's Customs territory. The Free Port can act as a depot for handling operations such as sorting, labelling, packing, re-packing, as well as assembling and distribution

¹³⁴ Malta was a British colony for 150 years until it became an independent country on 21 September 1964 as well as a member of the Commonwealth. On 13 December 1974 Malta was declared a republic by an act of Parliament.

¹³⁵ For the full text of the "Malta Freeport Act" see ANNEX XIV (AQUILINA-HONS, "A list of Maltese Maritime Legislation", Malta, 1992 and internet site <http://www.freeport.com.mt/lbmfa.html>), *infra*.

¹³⁶ Cf. VAROIOUS, "Malta", in *Fairplay Ports Guide*, pp. 1932 et seq., UK, 1997, pp. 1932 *et seq.*

of the product¹³⁷. All these operations are carried out free of duties.

Companies operating in the Free Port are provided with the necessary facilities, including ground storage areas, warehouses, factories, sheds, tanks, pipelines and other commercial and industrial equipment as may be necessary.¹³⁸

8.b The Free Port Authority

The development, management and promotion of Marsaxlokk as a Free Port Zone has been entrusted by the Maltese Government to the Malta Free Port Corporation Ltd., established in 1988.¹³⁹ This is a government owned company which acts as the sole Authority of the Free Port, administering the affairs of the Free Port with a view to foster the economic development of Malta by encouraging the establishment of industrial and economic enterprises therein.

The new legislation converts the company into a public body while allowing it to function with maximum efficiency and minimum bureaucracy.

The Malta Free Port Corporation Ltd. offers specific incentives for companies setting up and operating in the Free Port, including tax and fiscal privileges, exemption from

¹³⁷ Some of these valued-added activities may qualify the product for a certificate of origin which will be issued by the Freeport Authority provided certain criteria are met. See on this EUROPEAN FREEPORTS, "Successful Malta moves ahead", in *Lloyd's List*, Monday, 29 July 1996.

¹³⁸ Cf. MALTA CHAMBER OF COMMERCE, "Malta Ports and shipping handbook 1989-1990", Norfolk, 1989, pp. 20-25. See also internet site <http://www.metcowww.com/co/sg/home.htm>.

¹³⁹ The company was registered under the Commercial Partnerships Ordinance on 25 January 1988.

Customs duty, swift procedures, benefits for expatriate employees.

The Authority is empowered to do all such acts as may be necessary or conducive to the attainment of the objectives, duties and obligations of the Authority; to enter into agreements with companies which seek to become licensed to operate in a Free Port; to allocate areas, spaces, factories, wharves, and any other facility or structure which may be available in a Free Port on such terms as the Authority determines appropriate.

The Authority may not by title of sale¹⁴⁰ or any other similar title alienate any immovable property situate within a Free Port.

The Authority determine the rents, charges, dues and other levies to be paid in or in connection with any aspect of a Free Port or of the services and facilities made available thereunder. It also makes sure that the Free Port is provided with utilities like electric power supply, potable and other water; postal services; telecommunications; banking and insurance services; fire fighting services; waste disposal arrangements; adequate road systems; wharves, jetties and other similar structures; transport for goods and passengers to and from the Free Port; security systems including adequate public lighting.

In the carrying out of its functions, Malta Free Port Corporation Ltd has established 3 major companies: Free Port Terminal (Malta) Ltd., Free Port Industrial Storage Malta Co. Ltd., and Oiltanking Malta Ltd. The said companies focus on distinct activities, all geared to establish the Free

¹⁴⁰ A temporary emphyteusis for not more than fifty years shall not be considered to be a title similar to sale.

Port as a major maritime logistic centre.

Free Port Terminal (Malta) Ltd. is a joint venture between Malta Free Port Corporation Ltd. and Appledore Harbours Ltd. (UK) and is responsible for running the Container Terminal which is used for the handling of containers and break bulk cargo.

Free Port Industrial Storage Malta Co. Ltd. operates the warehousing facilities within Malta Free Port. Each warehouse has an area of 2,400 square meters, including water and electricity services, a security system, communication and other essential infrastructure.¹⁴¹

Oiltanking Malta Ltd. is a joint venture between Malta Free Port Corporation Ltd. and Oiltanking GmbH of Germany and is in charge of the running of the terminal for the storage and blending of oil products. Besides, Oiltanking Malta Ltd. provides other services such as butanizing, injection of additives, circulation, tank to tank transfer, ship to ship transfer and leading.

The Free Port Authority has successfully invested also in other fields such as coastal management and engineering, and training¹⁴² of the Free Port personnel.

8.c Licenses

Companies operating within the Free Port require li-

¹⁴¹ The regulating law is attuned with the European Union rules on the subject. Malta aims to become a full member of the European Union in the next few years, at which point Malta Freeport will be able to compete on an equal footing with its counterparts in the Community.

¹⁴² Responsible is the Freeport Training Centre that operates in close collaboration with the Port of Rotterdam College for Transport and Shipping. The Freeport Training Centre's services and programmes are conducted to international entities, as well

censing by the Authority. Only companies which have been incorporated in accordance with the Maltese company Law are eligible to obtain a licence to carry out activities within Malta Freeport.

The licensable trade or business activities consist principally in:

(a) the labelling, packaging, sorting, warehousing, storage, exhibition or assembly of any goods, materials, commodities, equipment, plant or machinery;

(b) any activity concerned solely with the conduct of a Free Port including, but not limited to, stevedoring, wharfage, operation of terminals and container handling;

(c) the rendering of services analogous or complementary to the activities referred to in paragraph (a), and the status as a licensed company shall be evidenced by the issue of a licence for this purpose by the Authority.

The company's activities must be wholly or mainly carried on or exercised within the Malta Free Port.

The Authority shall revoke the licence of any company which carries on any activity, or has income accruing to it or derived by it, which consists of or originates from any transaction, operation or other activity which is a criminal offence against the law of Malta, or would be such an offence if carried out in Malta, or has received or has in its possession or control money or other property the receipt, ownership, possession or control of which is, or would be, such an offence as aforesaid.

In issuing licences for operations in a Free Port, the Authority shall ensure that *the Free Port shall be open to all goods, irrespective of their nature, quantity and country of origin, consignment or destination*; nor shall there be any limit of time during which goods may be retained in a Free

Port. However the Government and the Authority have power to impose such prohibitions or restrictions as to them may seem justified on grounds of public morality, public policy or public security, the protection of human, animal or plant health and life, the protection of national treasures of artistic, historic or archaeological value, or the protection of industrial or commercial property. Furthermore the Authority has the power to require that goods which are dangerous or likely to spoil other goods or which, for any other reason whatsoever, require special facilities, be placed in premises specially equipped to receive them.

8.d Exemptions and incentives

The Malta Free Ports Act provides for a number of substantial incentives, of fiscal as well as of non-fiscal nature, which are available to companies licensed by the Free Port Authority. Such incentives are applicable only in relation to those activities carried out by the company in terms of the licence granted to it by the Free Port Authority and are guaranteed against claw-back for a period of 15 years from the original licensing date or the date of the use of the Authority's discretion whichever is applicable. It is remarkable that licensed companies or other beneficiaries are given the option to refrain from benefiting from any incentive otherwise available.

The FISCAL INCENTIVES¹⁴³ provided by the Malta Free Ports Act are:

¹⁴³ Source: HUGH PERALTA & CO, "*Malta. An International Financial Services Centre. The 1994 Legislative Package*", in *Business Monitor*, 21 February 1996. For a complete examination of the fiscal benefits provided by the Malta Free Port Act see ANNEX XIV, *infra*.

- *Tax holiday*

An indefinite tax holiday (i.e. an exemption from income tax) is granted in relation to those gains or profits arising to the licensed company from its licensed activities.

- *Tax free dividends*

Dividends distributed by a licensed company out of profits which have been exempted from income tax are also tax free in the hands of its shareholders, provided they are not ordinarily resident or domiciled in Malta. In case of corporate shareholders, this tax exemption extends up to the ultimate non-corporate shareholders.

- *Tax free interest or royalty payments*

Interest or royalty payments effected by a licensed company, in relation to operations exempt from tax in terms of the Tax Holiday, are tax free in the hands of the recipient provided the latter is a person who is not ordinarily resident or domiciled in Malta.

- *Exemption from custom duties*

The following goods imported by a licensed company into the Free Port are exempt from customs duty:

a) goods imported in connection with structural work (construction, alteration, reconstruction or extension) to an industrial building or structure within a Free Port;

b) equipment, spare parts, machinery or plant required for Free Port operations;

c) raw materials, components, intermediate products, by-products, unfinished goods, or other goods imported by a company in relation to its licensable activities.

- *Exemption from value added tax*

The Valued Added Tax Act provides for an exemption from the payment of VAT on the importation of goods into

the Free Port, to the extent that the said importation is also exempt from the payment of customs duty in terms of the Act.

- *Exemption from duty on documents*

The documents in relation to which there is an exemption from the payment of duty include those relating to the allotment of newly issued shares of a licensed company as well as documents relating to eventual transfers of such shares.

- *Exemption from transfer duty*

No duty is payable upon certain transmission of shares in a licensed company occurring upon the event of the death of a shareholder thereof.

- *Expatriate employees*

Maximum individual income tax rate is reduced from 35% to 30%. Such employees may also opt to be exempt from the obligation to pay social security contributions in Malta. Expatriate employees may also import their used personal belongings into Malta free from customs duty and, in terms of the VAT Act, also free from VAT.

The NON-FISCAL INCENTIVES¹⁴⁴ available under the Malta Free Ports Act include:

- *Exchange control*

Licensed companies which do not have more than 40% of the nominal values of their issued share capital owned by Maltese citizens or companies are exempt from a substantial amount of Exchange Control regulations (Exchange Control Act, 1972).¹⁴⁵

¹⁴⁴ *Ibidem.*

¹⁴⁵ The advantages of this exemption are:

a) free and unrestricted foreign exchange transfers by licensed companies;

• *Certificates of origin and non-manipulation*

The Free Port Authority may, in those cases where the identity of goods or articles has been substantially transformed or in relation to which there has been value added through any processing or other operation carried out in a Free Port, release a certificate indicating that Malta is the origin of any such goods or articles. The Authority may also, where it is so satisfied, release a certificate to the effect that any goods or articles which have been transhipped through a Free Port have not suffered any manipulation in the Free Port so as to transform their identity.¹⁴⁶

9. MAURITIUS

Mauritius is the central island of the Mascarene group, situated in the Indian Ocean about 500 miles east of Madagascar. The capital is Port Louis, on the north-west coast. Mauritius is an independent state, member of the Com-

b) unlimited holding of shares in licensed companies by persons not resident in Malta;

c) unrestricted repatriation of dividends paid by licensed companies where the dividends are exempt from income tax;

d) free transfers of shares in licensed companies;

e) unrestricted repatriation of the proceeds of liquidation of licensed companies;

f) right of free management by licensed companies of their foreign currency;

g) the unrestricted repatriation of any sum due as wages or salaries to expatriate employees.

¹⁴⁶ It is not lawful for any person unless a certificate has first been obtained from the Authority to indicate in any manner that goods or articles which have been subjected to any process or other transformation whatsoever in a Free Port have Malta as their origin, and that any goods or articles transhipped through a Free Port have not suffered any manipulation in the Free Port.

monwealth of Nations. Its exports in 1992 consisted in US\$ 1,291.5 millions (all food items 30.9%; manufactured goods 66.2%; textile 54.1%), while its imports amounted US\$ 1,472.5 millions (manufactured goods 74.6%; all food items 13.2%)¹⁴⁷

Since the 1970's the Mauritius Government has taken some concrete initiatives in order to promote international trade¹⁴⁸. The Government has developed a number of institutions with the objective of stimulating and diversifying the economy, among those the Mauritius Export Development and Authority (MEDIA), whose main role is to promote the export of goods and services from Mauritius; the Export Processing Zone Development Authority (1990), which gives technical assistance and advice to Export Processing Zone companies; the Mauritius Offshore Business Activities Authority (1992), established to promote Mauritius as a centre for offshore business activities.¹⁴⁹

The general intentions of the Government are clearly stated in this declaration of the Finance Minister of Mauritius: "The Government has an integrated approach. We have a pool of qualified labour, of professionals crying out for better jobs. We have removed all taxes on computer

¹⁴⁷ See UNCTAD, "*Handbook of International Trade and Development Statistic*", 1993.

¹⁴⁸ Source: UNCTAD/IAPH, "*Freeport development: the Mauritius experience*", in *UNCTAD MONOGRAPHS ON PORT MANAGEMENT*, Vol. 13, New York-Geneva, 1996.

¹⁴⁹ Major incentives for offshore companies are: a zero tax on corporate profits; free repatriation of profits; exemption from duties and taxes on imported equipment, cars and household equipment for expatriates; no withholding tax on dividends and benefits paid by offshore companies; no deduction on interest payments earned from deposits in offshore banks; exemption from stamp duties on all documents relating to offshore business transactions.

equipment, and we have an educational master plan which aims at upgrading our work force. We are gearing ourselves to build an economy increasingly based on service industries. The development of Mauritius as an offshore centre is a vital component of this strategy. We expect a high level of synergy between the offshore and Free Port sectors (...). The Mauritius Offshore Business Activities Authority acts as one-stop shop in the processing of applications for the setting up of offshore companies, which greatly facilitates the development of that sector, and it will help the Free Port achieve faster growth".¹⁵⁰

As a result of all these initiatives Mauritius has developed industry, as well as trade and financial services. Today, Mauritius has reached full employment (government services 29%; agriculture and fishing 27%; manufacturing 22%).

In this scenario the creation of the Free Trade Zone adjacent to the port of Port Luis¹⁵¹ was a logical step of the policy to develop further export of goods and services.

9.a The main phases of establishing the Free Trade Zone in Mauritius

The setting up of the Mauritius Freeport was characterised by the following phases¹⁵²:

¹⁵⁰ UNCTAD/IAPH, cit., p. 3.

¹⁵¹ Port Luis is a natural and well protected port which has served Mauritius for centuries and has played an important role under the rule of the Dutch, French and British. These consecutive colonisers have developed the harbour from a mere port of call to a *Free Port*, a naval base and a sugar port in response to the exigencies of their times. Cf. MAURITIUS MARINE AUTHORITY, "*Port Luis Harbour Magazine*", Port Luis, June 1995, pp. 13 *et seq.*

¹⁵² The source of the entire section is UNCTAD/IAPH *op. cit. supra.*

MAY 1991: a seminar on Free Ports is organised jointly by the Mauritius Marine Authority and the Ministry of Finance. Experts from Singapore and Italy are invited to explain the concept of Free Ports.

SEPTEMBER 1991: a White Paper¹⁵³, containing the Government's proposals on the Free Port project, is prepared to open discussion with interested parties. In the preamble Sir Anerood Jugnauth, Prime Minister and Minister of Finance, underlines the importance of a properly conceived, planned and commissioned Free Port project. Once operational, the Free Port will promote international trade, giving a boost to the offshore sector and to the economy in general.

The White Paper sets out the broad concept on the type of Free Port, its scope, its institutional framework and other features relating to its operation.

The type of Free Port proposed for Mauritius is a *Commercial Free Port*¹⁵⁴ engaged in such activities as storage, warehousing, repackaging, labelling, sorting, grading, cleaning, mixing, bulk breaking and minor processing. This approach has been preferred in view of the existence of a successful Export Processing Zone sector in Mauritius. The Free Port will encourage more transshipment activities and re-export trade, thus developing Mauritius as the focal point for trading with Africa, Indian Ocean islands and the Far

¹⁵³ For the text of the White Paper cf. ANNEX XV (UNCTAD/IAPH, "Freeport development: the Mauritius experience", in *UNCTAD MONOGRAPHS ON PORT MANAGEMENT*, Vol. 13, New York-Geneva, 1996), *infra*.

¹⁵⁴ There are basically two main categories of Free Ports: INDUSTRIAL FREE PORTS where goods are imported, processed and manufactured for export, and COMMERCIAL FREE PORTS, where goods are imported, stored and re-exported.

East.

Critical conditions for an efficient Free Port are the formulation of a proper legal, institutional and regulatory framework, the provision of modern infrastructure and equipment facilities, the simplification of administrative procedures and training of manpower, the provision of an attractive and competitive package of incentives and the launching of an aggressive marketing and promotional campaign.

JUNE 1992: a draft Free Port Bill, similar on many points to the Free Port Act 1992 and enclosed in the White Paper, is passed in Parliament and therefore the Mauritius Free Port Authority (MFA) is established.

JANUARY-JUNE 1993: the Director General and other members of the staff (Marketing Manager, Operations Manager, Administrative Managers, etc.) are recruited.

SEPTEMBER 1993: the first operations are started and the Free Port regulations are published.

1994: a Free Port Development Strategy Study, commissioned by the Mauritius Ministry of Economic Planning and Development and financed by the World Bank, is carried out by Portia Management Services in association with Shannon IDI and with inputs from local consultancy firms in Mauritius (Coopers & Lybrand Mauritius, Hooloomann & Associates). The main purpose of the study is to assess the strengths and weaknesses of MFA as well as the market opportunities for future development.

1995: new facilities are built within the Free Trade Zone area.

10.b The “Free Port Act 1992”

The first requirement to set up a Free Port consists in an

appropriate legislation for controlling the licensing and monitoring of Free Port activities.

The "Free Port Act 1992" (Act No. 13 of 1992)¹⁵⁵ is the legal framework formulated to develop the Free Port in accordance with the principles of trade liberalisation of the new GATS agreement. The Mauritius Free Port is one of the instruments through which the Government is implementing its purpose of progressive liberalisation of the economy of Mauritius.

The Free Port Act regulates the main aspects of the functioning of the Free Port: administration, operations, offences and enforcement.

A) ADMINISTRATION

The management of the Free Port is entrusted to a new body corporate named Mauritius Free Port Authority (MFA), which is under the authority of the Minister of Finance.

The objects of the Authority are to control and manage the Free Port Zones, to promote and encourage external trade, to provide infrastructural, storage and ancillary facilities to the licensees in the Free Port zones, to advise the Minister of Finance on the development of Free Port zones in Mauritius.

To this end MFA has the power to issue licenses to operators to carry out authorised activities¹⁵⁶ within Free Port zones; to allocate areas, spaces, wharves and any other facility or structure which may be available in the Free Port on such terms as the Authority deems appropriate; to levy

¹⁵⁵ For a complete examination of the provisions of the Freeport Act see ANNEX XVI (UNCTAD/IAPH, "*Freeport development...*", cit.), *infra*.

¹⁵⁶ They include warehousing and storage, breaking bulk, sorting, grading, cleaning, mixing, labelling, packing and minor processing.

rents, charges and other dues to be paid by licensees; to enter into an agreement with another person for the performance or provision by that person of any service or facility which MFA is empowered to perform or provide.

The Authority is administered by a Board¹⁵⁷ composed of representatives of both public and private sectors; in particular: a Chairman, appointed by the Minister of Finance, the Director-General¹⁵⁸ of MFA, the Permanent Secretary of the Prime Minister's Office or his representative, the Permanent Secretary of the Ministry of Trade and Shipping or his representative, the Director-General of the Mauritius Marine Authority or his representative, the Comptroller of Customs or any officer authorised by him to act on his behalf, not more than three other persons to be appointed by the Minister of Finance. A member of the National Assembly is not qualified to be appointed as a member; if a member of the Board becomes a member of the National Assembly, he must vacate his office. All the members of the Board, except the ex-officio members, hold office for a period not exceeding two years and are eligible for re-appointment. Their allowance is determined by the Minister of Finance.

The Board meets at such place as the Chairman thinks fit not less than once a month or every time is requested by not less than three members. Five members are enough to con-

¹⁵⁷ The Board gathers all interested parties in the functioning of the Free Port (Customs, Port Authority, Maritime Administration, representatives of the Government); its main role is to decide on the policy of the Free Port but not on the day-to-day operations.

¹⁵⁸ The Director-General is responsible for the execution of the policy of the Board and for the control and management of the day-to-day operation of the Authority. In the exercise of his functions he must act in accordance with the directions he may receive from the Board.

stitute a quorum. A member having a personal or direct interest in any matter before the Board shall declare such interest and shall not take part in any deliberation or decision of the Board relating to that matter.

The Board may delegate to the Director-General or to a committee composed by two or more members such of its powers under the Free Port Act other than the power to borrow money, to make investments, to enter into any transaction in respect of capital expenditure exceeding 50,000 rupees.

The Board appoints the Director-General subject to the approval of the Minister of Finance, as well as all other employees as may be necessary for the proper discharge of its functions.

All the employees are under the administrative control of the Director-General.

The conditions of service of staff (appointment, dismissal, discipline, pay and leave, appeals against dismissal or other disciplinary measures) are governed by the Board's provisions.

No civil or criminal liability is attached to any member or employee¹⁵⁹ or to the Authority in respect of loss arising from the exercise in good faith by a member, an employee or the Authority of his or its functions under the Free Port Act.

The Authority is empowered with a General Fund into which all money received by the Fund shall be paid and out of which all payments required to be made by the Fund shall be made. MFA may as well establish other funds if

¹⁵⁹ For the purposes of the Public Officers' Protection Act, every employee is deemed to be a public officer.

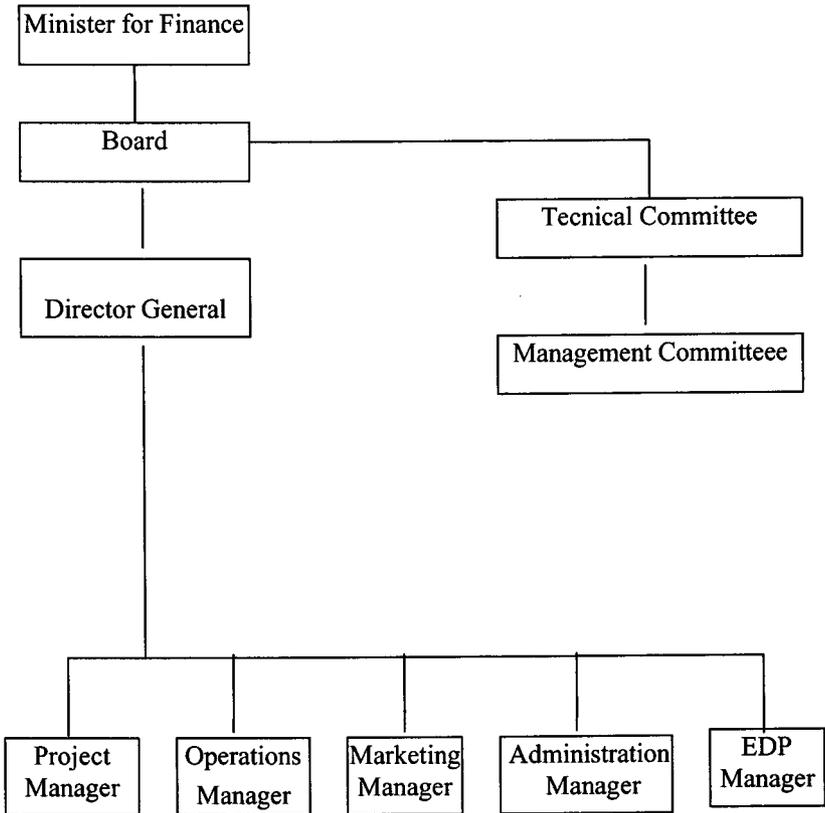
required.

With the approval of the Minister of Finance, the Authority may raise funds on such terms and conditions and in such manner as the Board may determine; invest any money which is not immediately required to be expended in any investments, securities or loans; and realise any investments, securities or loans in order to finance its operations or for the purpose of reinvestment.

Notwithstanding any other enactment, the Authority is exempt from the payment of any duty, levy, rate or tax.

The Minister of Finance may, in relation to the exercise of the powers of MFA under the Free Port Act, give such specific and general directions to the Authority, not inconsistent with the Free Port Act, as he considers necessary in the public interest and MFA shall comply with such directions. The Minister of Finance may also require the Authority to furnish information on its activities and the Director-General to furnish copies of documents, including the minutes of proceedings of the Board and the accounts of MFA. The Authority shall submit to the Minister of Finance an annual report of its activities together with its audited accounts not later than three months after such accounts have been certified. The annual report and the accounts are laid before the National Assembly.

TABLE 6. - ORGANISATION CHART OF MAURITIUS FREEPORT¹⁶⁰



B) OPERATIONS

The activities authorised in the Free Port are: warehousing and storage, breaking bulk, sorting, grading, cleaning and mixing, labelling, packing and repackaging, minor processing, simple assembly and such other activities as the Minister of Finance, on the advice of the Authority, may

¹⁶⁰ Source: UNCTAD/IAPH, "Freeport development: the Mauritius experience", Vol. 13, in UNCTAD MONOGRAPHS ON PORT MANAGEMENT, New York-Geneva, 1996, p.11.

prescribe.

No operation can be carried out in the Free Port without a licence issued by MFA. A company which applies for a licence is required to provide information¹⁶¹ on its activities¹⁶². Licensees have to pay an annual licence fee and are required to keep records to the satisfaction of the Authority. Licences are transferable only with the approval of the Authority, which may also issue temporary licences in such circumstances as it may deem justified.

Licences are revoked by the Authority when a licensee fails within a reasonable time to carry out any activity authorised by the licence, ceases permanently his activity or contravenes any provision of the Free Port Act or any conditions attached to the licence. When the Authority revokes a licence, it shall inform the licensee, who shall cease to carry out any activity forthwith and may, within 10 days of the date of the notice of revocation, make representation to the Authority. MFA shall analyse the licensee's reasons and take a decision.

All licensees are exempted from the payment of Customs duty, import levy and sales tax on all machinery, equipment and materials imported into the Free Port for exclusive use within the Free Port under their licence, and on all goods

¹⁶¹ According to the policy of the Free Trade Zones, type of information required may vary: company background, planned activities and projections, financial capability, development and investment plans, employment policy, etc.

¹⁶² The process is rather flexible in order to encourage companies to apply: a standard form is supplied to the applicant by the Authority; then MFA management, through a steering committee, reviews the application according to the principles enacted in the Freeport Act. Finally, the decision is submitted to a Technical Committee linked to the MFA Board and empowered by the Board to approve the granting of licences.

destined for re-export. Where Customs duty, import levy and sales tax has been paid in respect of any goods upon their importation into the Customs territory, no refund is allowed solely on the ground that such goods are later transferred into a Free Port zone.

The Excise Act does not apply to any goods produced in a Free Port zone unless such goods are entered for consumption in the Customs territory.

When a person is licensed to carry out any activity in a Free Port zone, income tax shall be calculated on the person's chargeable income in relation to that activity at the rate of zero per cent.¹⁶³

Every licensee shall keep proper and sufficient records to the satisfaction of the Authority, submit such declaration as the Authority may require, and permit the Authority or the Customs at all reasonable times to inspect the said records and have access to any premises of the licensee for the purpose of examining any goods.

The Comptroller may, on application and at the expense of the owner, reassess the value of goods which have deteriorated or have been lost or destroyed; if the Comptroller makes sure that the owner is not responsible for the deterioration, loss or destruction, duty, import levy and sales tax shall be reassessed accordingly.

Movable goods imported for the purpose of providing or improving the facilities required by a licensee inside a Free Port may, unless exported by a licensee, be sold or otherwise disposed of within Mauritius outside a Free Port, on payment of duty, import levy and sales tax as prescribed. Goods imported exclusively for the activities authorised by

¹⁶³ This way article 58 of the Income Tax Act has been amended.

a licence may, unless they are exported, be sold or otherwise disposed of to the Authority or another licensee without payment of duty, import levy or sales tax provided that the other licensee is authorised to deal in such goods by his licence, or to any person in Mauritius outside the Free Port, on payment of duty, import levy or sales tax.

The Authority takes such measures to prevent evasion of Customs duty, import levy and sales tax by ensuring that the Free Port zone is properly enclosed and the enclosure is properly maintained and guarded to the satisfaction of the Comptroller, and by determining the appropriate entry and exit points. The Comptroller may at any time stop and search any person or vehicle entering or leaving the Free Port. The Authority may issue passes for access to the Free Port and deny access to any unauthorised person.

| | 30/06/95 | 30/06/95 | 31/12/95 |
|-----------------------------------|-----------|-----------|-----------|
| Trading | 42 | 51 | 71 |
| Minor processing/ simple assembly | 2 | 11 | 13 |
| Ship repair | 1 | 1 | 1 |
| Total | 45 | 63 | 85 |

C) OFFENCES AND ENFORCEMENT

An offence is committed by any person who, without lawful excuse, fails to comply with any condition attached to a licence; or refuses to furnish any information or produces any document which is false or misleading in a material particular; or obstructs any officer of the Authority or

¹⁶⁴ Source: UNCTAD/IAPH, *op. cit. supra*.

of the Mauritius Marine Authority or a public officer in the performance of his functions under the Free Port Act; or otherwise contravenes any provision of the Free Port Act or any regulations made under it. A person who commits an offence under the Free Port Act shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 5 years, and to the payment of all duty, import levy, sales tax and related penalties and interests due.

Notwithstanding section 114 of the Courts Act and section 72 of the District and Intermediate Courts (Criminal Jurisdiction) Act, a Magistrate shall have jurisdiction to try an offence under the Free Port Act or any regulations made under the Free Port Act and may impose any penalty provided by the Free Port Act.

9.c Relationship between the Mauritius Free Port Authority and the Mauritius Marine Authority (Port Authority of Port Louis)

Although the Free Port area is located within the port premises, a separate body from the Mauritius Marine Authority, named Mauritius Free Port Authority, has been created by the Mauritius Government to manage the Free Trade Zone.¹⁶⁵ The Mauritius Free Port Authority is exclusively responsible for managing and marketing the Free Port and it is under the responsibility of the Ministry of Finance.

The advantages of having an authority distinct from the

¹⁶⁵ The source of this section is UNCTAD/IAPH, "*Freeport Development: the Mauritius Experience*", Vol. 13, in *UNCTAD MONOGRAPHS ON PORT MANAGEMENT*, New York–Geneva, 1996, p.12.

port authority to manage the Free Port are numerous. First of all, a cost-centre is created which is an efficient means to measure its profitability. Secondly, an independent and small entity can focus on the management of the Free Port without the pressures and sometimes conflicting interests of a larger company responsible for several activities.

There are some countervailing effects, though. The Free Port relies on port facilities for much of its services; a lack of co-ordination between the two entities could therefore lead either to a waste of resources or to a sacrifice of the interests of one of the two bodies. It is important to choose among one of these two arrangements taking into account the objectives of the overseeing body and also the local environment. For example, although there are different bodies, a relatively small local economy may be likely to produce co-operation between managers. Also Ministries may firmly encourage co-operation between the distinct entities.

The Free Port Act emphasises that the success of a Free Port relies on co-operation between developers of port facilities and the Mauritius Free Port Authority: for this reason the general manager of the Mauritius Marine Authority is a member of the Mauritius Free Port Authority Board.

9.d Relationship between the Mauritius Free Port Authority and Customs

The success of a Free Port is influenced by the possibility of transshipping or warehousing goods with no or very little administrative and Customs interference. Only those Free Ports that ensure maximum operational efficiency and security as well as minimum bureaucracy meet the market

needs of international trade.¹⁶⁶ A close collaboration between MFA and Customs Authorities¹⁶⁷ is therefore necessary.

Customs ensure the control of cargo transfer at the reception point and for its transfer to the Free Port.¹⁶⁸ For this purpose, an officer designated by the Customs for Free Port traffic secures the cargo for the short transit to the Free Port, e.g. by placing a seal on containers. For re-export, a seal is placed on export containers at the Free Port for delivery to the port and loading onto the ship.

Among the powers of Customs is that of entering licensees premises to examine goods within the Free Port area and stopping and searching vehicles and persons entering and leaving the Free Port.

9.e The advantages of the Free Port legislation

The Free Port offers an enormous series of advantages to its operators, to the host country and to the other countries.

Goods enter the Free Port without formal Customs entry, payment of duties or furnishing of a bond. All finished goods, machinery, equipment and materials imported into the Free Port are exempted from Customs duty, import duty and sales tax.¹⁶⁹

In order to minimise bureaucracy and maximise effi-

¹⁶⁶ In other words, the facilitation of trading procedures to enter and leave the Free Port plays a key role to the success of a Free Port.

¹⁶⁷ The importance of Customs is reflected in the composition of the Board, which gathers all interested parties in the functioning of the Free Port: Customs, Port Authority, Maritime Administration, representatives of the government.

¹⁶⁸ UNCTAD/IAPH, *op. cit.*, p. 12.

¹⁶⁹ *Ibidem.*

ciency in clearing goods, the MFA has developed an innovative single goods-in-goods-out document, also called "Free Port Bill", which covers all movements of goods and includes information which can be used for operational, statistical and marketing purposes. It is a form supplied by the MFA at the cost of 100 rupees and in three copies¹⁷⁰: the top copy is completed by the licensee or his agent and presented to MFA, the second is presented to the Mauritius Marine Authority at the port to secure release of the cargo, and the third is retained by the Customs Officers at the Free Port.

The Free Port legislation has provided a liberal and comprehensive incentive package, advisory services and other tangible benefits for companies looking for a cost-effective storage, assembly, and redistribution location.¹⁷¹ The major fiscal incentives to companies established within the Free Port are:

- exemption from company tax;
- exemption from income tax on dividends for the first 20 years;
- possibility of selling 20% of the total annual turnover on the local market;
- access to offshore banking facilities;
- no foreign exchange control;
- 100% foreign ownership allowed.

In order to improve flexibility and ease of entry, companies operating within the Free Port area are authorised to carry out *ad hoc* operations, without having to rent a space

¹⁷⁰ There has been a simplification of the document that used to be drawn up in five copies.

¹⁷¹ UNCTAD/IAPH, *op. cit.*, p. 9.

during the whole year. More advantages of the Free Port are represented by the possibility of warehousing imported goods for re-export to other countries within the Free Port without time limit and without having to pay duties or providing a bond. Preferential rates for warehousing storage are also offered to encourage companies to set up their activities. Goods transiting through the Free Port in order to be re-exported benefit from a 50% reduction of port charges, too.

Temporary work and residence permits are granted to expatriates operating in the Free Port if they meet the conditions required by the Authority.

In order to improve the offer of services, the Free Port Authority is trying to solve problems of logistic and encouraging clearing and forwarding companies to provide a door-to-door service using a multimodal transport network to smooth out the routing problems.¹⁷²

It is remarkable that sometimes the country where the Free Port is located has signed free trade agreements¹⁷³ with neighbouring countries: in these cases the Free Port legislation provides for the extension of the advantages contemplated in the free trade agreement to the goods in transit through the Free Port. As for Mauritius, the country is a member of the Common Market for Southern and Eastern Africa (COMESA)¹⁷⁴. The main advantages of such membership consist on reduced duties payable on imports

¹⁷² *Ibidem.*

¹⁷³ *Ibidem.*

¹⁷⁴ Other COMESA member states are: Angola, Burundi, Comoros, Djibouti, Ethiopia, Eritrea; Kenya, Lesotho, Madagascar, Malawi, Mozambique, Namibia, Rwanda, Seychelles, Somalia, Sudan, Swaziland, Tanzania, Uganda, Zambia, Zimbabwe.

from member countries, as well as the central bank clearing house system, that permits settlement of trade bills without the need to use scarce hard currency resources. The current duty reduction stands at 60% but one of the clauses of the Treaty of the COMESA provides for the gradual reduction of Customs duties with a view to their complete elimination by the year 2000.

9.f Financial situation and development strategy

Mauritius Free Port¹⁷⁵ has two main sources of revenues: annual licence fees (fixed at 10,000 rupees) and rental of land and facilities. At the moment these revenues are not sufficient to cover the administrative, marketing, operations, capital repayment and interests expenses that MFA had to bear in order to create the Free Port. Therefore, the Government has provided a grant in 1993 and 1994 to support the Free Port project during its creation and development phases, while the Ministry of Economic Planning and Development has commissioned a Free Port development strategy study¹⁷⁶.

A comprehensive marketing plan has been carried out for the years 1995 to 1998. It includes a wide range of activities like market surveys and other studies, buyer/sellers meetings and promotion missions, participation in trade fairs and in regional conferences related to port/Free Port activities, creation of a trade information data base to assist Free Port operators in penetrating markets, invitation to potential buyers to visit the Free Port facilities.

¹⁷⁵ Source of the entire section is UNCTAD/IAPH, *op. cit.*, p. 17.

¹⁷⁶ The study has been financed by the World Bank and carried out by Portia Management Services in association with Shannon IDI and with inputs from local consultancy firms in Mauritius.

Mauritius Free Port Authority is actually encouraging private investors to invest in the creation of new infrastructure facilities and in the further development of the already existing ones. In this respect, two private consortiums (Mauritius Free Port Development Co.Ltd. and Free Port Operations Mauritius Ltd.) will build approximately 30,000 square metres of warehousing facilities, cold storage and offices by the end of June 1997.

10. PANAMA

The Republic of Panama is located in the centre of the Western Hemisphere and borders on the Caribbean Sea in the north, the Pacific Ocean in the south, Colombia in the east and Costa Rica in the west. Panama constitutes then a connecting link between Central and South America, with about 80 kilometres 50 miles wide in its narrowest part.

The Panama Canal¹⁷⁷, considered as the Eight Wonder of

¹⁷⁷ As early as the 16th century the Spanish conceived the idea of constructing a canal across the Isthmus of Panama. In 1534 Charles I of Spain ordered the first survey. More than three centuries passed before the first construction was started. The French laboured 20 years, beginning in 1880, but disease and financial problems defeated them.

On 18 November 1903, the Neo-Republic of Panama and the United States signed the Hay-Bunau-Varilla Treaty by which the United States undertook to construct an interoceanic ship canal across the Isthmus of Panama. In return the Republic of Panama granted the United States the right to the use, occupation and control of the Canal Zone "in perpetuity" for the "construction, maintenance, operation, sanitation and protection" of the interoceanic canal. It was stated that the Canal was a neutral territory where international right of passage was guaranteed. Two Free Ports were established at each extremities of the Canal area. In 1901 the United Kingdom and the United States had already signed a treaty (the Hay-Pauncefote Treaty of 18 November 1901) by which the United Kingdom gave up its interest in an isthmian canal in return for agreement by the US that a canal built by the US

the world, allows vessels to transit from one ocean to the other.

Panama's economy is primarily structured around a well developed service sector, which accounts for 70% of total Gross National Product: it is the importance of services that essentially distinguishes Panama's economy from that of the other Central American countries and accounts for its reluctance to enter into the regional integration process.¹⁷⁸ Services include Panama Canal, offshore and domestic

would be "free and open" to the vessels of commerce and war of all nations, which observed the rules established by the Convention of Constantinople of 1888, by which the Suez Canal was made a corridor for all ships of all nations in peace and war. The Treaty of 1901 also provided that there shall be "entire equality" in the treatment of ships of all nations with respect to "conditions and charges of traffic".

In 1904, the United States purchased from the French Canal Company its rights and properties and began construction, which was completed in 1914 with an unparalleled engineering triumph. Since then, the Panama Canal has provided service to international shipping (more than 700,000 vessel have been transiting through the water way) and has also played an important strategic role during both World Wars, the Vietnam War and the Cold War.

The constant interference of the United States in the internal politics and economy of Panama led to Panama's declaration of sovereignty over the Canal Zone so that in 1948 the US totally withdrew their troops. The collaboration between the two countries started again in 1951. In 1977 the Panama Canal Treaties (Torrijos-Carter Treaties) between Panama and the United States were agreed upon. The Treaties deal with the Canal's permanent neutrality and international status, the modalities of operation and defence of the Canal until noon on December 31, 1999 (when Panama will gain total control on the Canal), and the establishment of a US agency called the Panama Canal Commission to operate the Canal during the 20-year transition period. A policy making board of five US citizens and four Panamanians serves as the Commission's board of directors.

For more information on the Panama Canal see VARIOUS, "*Panama Canal*", in *Encyclopaedia Britannica*, Vol. XIII, pp. 945-947.

¹⁷⁸ Cf. VARIOUS, "*PRO PANAMA, Panama Profile*", Panama, 1996, pp. 23-30.

banking, insurance, government, the Transisthmian Oilduct, and the Colon Free Zone (CFZ).

Around these services, an upsurge of other activities have risen creating the right infrastructure such as port facilities, airports, transportation, airlines, telecommunications, hotels, insurance and reinsurance centre, stock exchange and other professional services provided by Law-firms, accountants, and financial consultants used to service local and international Corporations.¹⁷⁹

In existence since 1948, the Colon Free Zone is the largest Free Trade Zone in the Western Hemisphere and the second largest in the world after Hong Kong. Located in the City of Colon, 5 kilometres from the Port of Cristobal on the Atlantic side of Panama and 90 kilometres from Panama city, the Colon Free Zone represents the trade centre for Latin America, the Caribbean, the United States, Europe and the Far East.

The Colon Free Zone is a wholesale distribution centre where goods of any kind (including raw materials and machinery) may be imported, stored, modified, distributed, processed, assembled, repackaged, and then re-exported without being subject to custom duties and with the absolute minimum of controls (merchandise entering and leaving the Free Zone requires only the filling of one form!).

About 80% of Panama's trading activities are carried out in the Zone. Efficient Customs, processing, transport and financial services have ensured the growth of the re-export business in the zone.

¹⁷⁹ Cf. VARIOUS, "*Executive summary of laws related to economic activities and investment in the Republic of Panama*", Panama, 1996, p. 1 and p. 11.

In 1995 imports¹⁸⁰ into the Colon Free Zone totalled US\$ 5.1 billion, while re-exports¹⁸¹ were US\$ 5.7 billion.

Presently, there are more than 500 firms from all over the world operating within the Colon Free Zone which can be surely defined as “*el corazon del comercio mundial*”.

10.a The administration of the Colon Free Zone

The Colon Free Zone was founded through Law No. 18 of 17 June 1948 and it became operational in 1953.

The Colon Free Zone Administration is an autonomous government agency responsible for the operation and efficient development of the Zone. It functions under clearly defined laws and precedents.

The Administration has a labour force of 500 people from security personnel to lawyers, architects, accountants and other professionals whose ability make it possible a government operation which uses private enterprise to produce the most successful organisation in Panama. Among its functions is also that of administering the flow of imports and export, as well as that of keeping statistics.

The Colon Free Zone Administration relies primarily on private investment. According to Decree Law 18 of 1948, a national corporation may establish operations in the Colon Free Zone.¹⁸² A foreign corporation may also operate in the Free Zone as long as it is duly registered in the Public Registry of Panama. For a corporation to start operations in the

¹⁸⁰ The CFZ's largest suppliers in 1995 were: Hong Kong (27%), Japan (13%), United States (11%), South Korea (10%), Taiwan (8%), Italy (5%).

¹⁸¹ The CFZ's largest markets in 1995 were: Colombia (27%), Ecuador (9%), Panama (6%), Venezuela (5%), United States (5%), Chile (4%).

¹⁸² Cf. internet site http://www.panamainfo.com/tables/cfz_cfz_regs.htm

Colon Free Zone the following documents are required¹⁸³:

- application form duly completed and signed by the Legal Representative of the corporation;
- copy of the Articles of Incorporation and By-laws as well as any amendments, if any;
- incumbency certificate certifying the corporation's existence, date of incorporation, Members of the Board of Directors, Dignitaries, and its Legal Representative;
- two Commercial and Banking references including, among others, information about type of commercial and banking relationship, length of relationship, knowledge of Legal Representative, offices, and Directors of the Corporation seeking to do business in the Free Zone;
- copy of the ID or Passport of the Legal Representative;
- affidavit subscribed by the Legal Representative and its officers;
- any other information that the Colon Free Zone Administration may require from time to time.

As for the types of operation, a company can set up operations in the Colon Free Zone in four different ways¹⁸⁴:

1) THROUGH A LAND LEASE CONTRACT

According to Article 38, of Decree Law 18 of 1948, the Colon Free Zone Administration can lease parcels of land to local or foreign corporations to build warehouses and office space for their own use, or to lease to third parties. Lease agreements with third parties must be approved by the Administrations General Manager.

Land leases are stipulated for a minimum of 5 years to a

¹⁸³ *Ibidem.*

¹⁸⁴ Source of the enumeration is the internet site [http:// www.panamet.com/zolicol /fzest.ht](http://www.panamet.com/zolicol/fzest.ht)

maximum of 20 years, and may be renewed for a similar period. The cost of the lease is established, from time to time, by the Board of Directors of the Free Zone, and it varies according to the area where the land is located.¹⁸⁵

Those companies that enter into land leases have to pay a deposit equivalent to three months' rent, as well as a trash collection fee¹⁸⁶.

Costs of development for these areas must be assumed by the corporation building the structure. Said costs include building roads and installing water and electrical facilities for each private warehouse or office that is built.

Those companies which enter into land leases have to pay a deposit equivalent to three months' rent.

In order to promote the development of new areas, the Administration of the Free Zone has in place a "lease-back program", through which those who construct a warehouse or office in an undeveloped area, and who must consequently bear costs of developing roads and electrical facilities, are compensated by reducing the leasehold fees until the total amount of the investment is repaid.

2) THROUGH A BUILDING LEASE CONTRACTS

Article XL, Law 18 of 1948, authorises the Colon Free Zone to lease its own building space to corporations that wish to set up operations in the area.

Leases are granted for a minimum of 1 year and up to 20 years. The cost of the lease is established, from time to time, by the Board of Directors of the Free Zone, and it varies accordingly to the area where the building is located.

¹⁸⁵ Currently, rates fluctuate between US\$ 0.50 per meter per month for developed areas and US\$ 0.20 per meter per month for undeveloped areas.

¹⁸⁶ Said fees ranges from US\$ 25 to a maximum of US\$ 100.00 a month, depending on the space rented.

A deposit equivalent to three months' rent and a trash collection fee must be paid.

Company can also lease buildings from the private sector, in fact Article XL, Law 18 of 1948 allows corporations to rent building space from private parties already established in the Colon Free Zone, and are either leased building space from the Administration, or their own building. In this case, the company has to request permission from the Colon Free Zone Administration de Colon, by presenting a copy of the intended lease contract.

The operation in the area is governed by an Operating Permit Contract subscribed between the lessor, lessee, and the Colon Free Zone Administration.

Lease costs depend on free market conditions. Also the companies renting a building from privates must pay a deposit equivalent to three months' rent and a trash collection fee.

3) THROUGH A CONTRACT OF REPRESENTATION

Colon Free Zone regulations, including Decree-Law 18 of 1948, allow companies to be represented by another company already established in the Colon Free Zone. This is particularly advantageous for Corporations that are commencing operations and do not want to incur any heavy operating expenses such as leasing or purchasing building space.

The contracted services are warehousing, invoicing, shipping of the merchandise according to the instructions given.

The user generally charges between 1 and 2% of the value of the merchandise to provide this service. On top of that a trash collection fee must be given.

In order to enter into a Representation Contract both corporations must be authorised by the Colon Free Zone Administration. The company seeking a representation must also provide the original copy of a letter requesting representation to another company already established in the Colon Free Zone and the original copy of a letter from the company already established in the Free Zone, accepting to represent the petitioner.

4) THROUGH THE USE OF PUBLIC WAREHOUSE

The Colon Free Zone provides Public Warehouse Services to those corporations which want to do business in the Free Zone, but which choose not to lease land or building space, or be represented by another corporation. Corporations interested in utilising the Colon Free Zone warehouse must subscribe a warehouse contract with the Administration. This contract establishes the rights and obligations of the corporation. The fee for using the public warehouse is 0.5% of the F.O.B. value of the merchandise; the trash collection fee varies from US\$ 25 to US\$ 100 a month.

10.b The requirements to operate in the Colon Free Zone

According to Law 18 of 1948, companies established in the Colon Free Zone have to comply with the following rules¹⁸⁷:

- employ a minimum of 5 local people;
- export a minimum of 60% of the imported goods;
- pay the rent within the first 20 days of the month. The

¹⁸⁷ Cf. VARIOUS, *“Executive summary of laws related to economic activities and investment in the Republic of Panama”*, Panama, 1996, pp. 1 *et seq.*

Administration will assess a 10% surcharge on the rent, for late payment, to corporations leasing land or buildings directly from it. If the client is in arrears for more than two months, his Operating Code "Clave" will be suspended. While said suspension is in place, the company is unable to operate in the Colon Free Zone;

- report, in the appropriate form, all imported and exported merchandise;
- submit the yearly Income Tax Return and pay the corresponding taxes to the Ministry of Treasury and Finance;
- pay an Operating Code "Clave" of US\$ 200, irrespective of the method of operation selected;
- in general, comply with all the laws of the Republic of Panama.

10.c The advantages of the Colon Free Zone legislation

The Colon Free Zone legislation offers various benefits (geographical, fiscal, monetary, etc.) to those who intend to do business in the Colon Free Zone¹⁸⁸:

A) GEOGRAPHIC ADVANTAGES

The strategic geographical position of the Colon Free Zone at the Atlantic entrance of the Panama Canal, the existence of 3 ports on the Atlantic and 1 in the Pacific, the existence of excellent transport facilities have all contributed to the development of commercial activities within the Colon Free Zone. Through the Panama Canal, one of the most important maritime routes in the world cross 13,000

¹⁸⁸ Source: LLOYD'S OF LONDON PRESS, "Free Trade Zones" in *Lloyd's World Ports Atlas*, Abu Dhabi, 1998, p. 850, and also internet site: <http://www.panamet.com/zolicol/fzvent.ht>

ships a year with a used cargo capacity of 80%, the excess of which alone represents an opportunity.

Both domestic and international telecommunications services are managed by a state-run company, soon to be privatised, which provides international phone, fax, teletext, mobile phone and "call-back" facilities. The Colon Free Zone owns an internet site as well.

B) FISCAL ADVANTAGES

Companies established in the Colon Free Zone are exempted from Customs duty, Customs tariffs and quotas on imports and re-exports, municipal taxes, sales taxes, production tax, import duties on raw materials, equipment or machinery for production.

New companies that initiate operation in the Colon Free Zones, during its first year of operation are subject to a special treatment which basically consists in a 95% discount of taxes if they comply with local conditions; in the exemption from the advance tax for offshore operations, while the tax caused in the correspondent sworn tax declaration of said first year of operations or fraction of same, will pay a tariff of 15% for offshore operations.

Free Zone users are granted a preferential income tax rate (15%, which is half of the rate applied in the territory of Panama) on overseas operations (re-exports), net of expenses and deductions.

C) MONETARY ADVANTAGES

Due to the long and special relationship between the Republic of Panama and the US, the legal tender in Panama is the US Dollar. As a result of this, inflation is very low.

Panama's economy is based on the service sector and in the Colon Free Zone are established 22 of the 130 renowned world-wide banks installed in Panama's territory.

In the Colon Free Zone there are no restrictions or taxes on foreign capital investment or on repatriation of capital and profits. No capital gains tax is due on assets held for a minimum of 2 years.

Laws have been enacted to impose strict measures against thwart money laundering and to protect the industrial and intellectual property rights.

D) ADVANTAGES FOR EXPORTERS

Due to the privileged location of the Colon Free Zone at the entrance of one of the most important maritime routes of the world, all manufacturers, from any part of the world can, through the Colon Free Zone, place their products in it and access the Latin American Market as well as other markets in North America, Europe, Asia and the Far East.

E) ADVANTAGES FOR IMPORTERS

The importers are able to buy a whole range of products in different establishments and consolidate them in containers for their country of origin.

Indeed, companies interested in buying in the Colon Free Zone can access a variety of products allowing the company to use its capital in a more efficient manner, acquiring an interesting assortment of goods for their clients. Besides, if the company has a good record, the Free Zone users¹⁸⁹ might give company a line of credit.

¹⁸⁹ The users of the Colon Free Zone are united and represented by the Colon Free Zone Colon Free Zone Users Association(AU), whose objectives are, among others, to provide the associates legal support, information, advice, training; to actively participate in studies, commissions and work groups in order to improve the socio-economic conditions of the country and in particular the Province of Colon; to maintain close relations with international institutions and a permanent and constructive dialogue with government authorities and especially with the ones of the Colon Free Zone to better and increase the services it offers, etc.

F) ADVANTAGES FOR TOURISTS

The show rooms of Colon Free Zone are visited every year by thousand of tourists who can buy all sort of products free of duty. The buyers can also dispose for the merchandise to be sent by the store directly to the port or the airport.

10.d Banking

The banking legislation¹⁹⁰ guarantees the CFZ's investors a vast number of benefits such as:

- free flow of funds with little or no controls;
- complete banking secrecy protected by law;
- no taxes or restrictions on time deposits or saving deposits;
- no controls for repatriation on capital gains;
- no monetary controls on transfer of capitals
- no restrictions or taxes in transfers of capitals within or outside the country
- low impositive incidences or exception on operation for non residents;
- high-tech and efficient communications systems.

Panama has no Central Bank and the National Bank of Panama acts as such. The banking Law of July 1970 doesn't impose restrictions on foreign banks, which are permitted to operate along similar lines as local banks and are not limited in the number of branches. Of the 130 banks registered in Panama(whose deposits has reached US\$ 26,3

¹⁹⁰ Cf. VARIOUS, "*Executive summary of laws related to economic activities and investment in the Republic of Panama*", Panama, 1996, pp. 3-4; and VARIOUS, "*PRO PANAMA, Panama Profile*", Panama, 1996, pp. 20-21.

in 1995), 22 are established in the Colon Free Zone.

In 1991 Panama subscribed with the United States of America the mutual legal assistance treaty, and has done the same with Great Britain, in order to make more difficult the laundering of money that is the product of drug traffic.

10.e Insurance

The Insurance and Reinsurance sector is regulated by Law No. 55 of 20 December 1984 and has achieved an accelerated growth in the past decade with more than 30 Insurance companies, 200 insurance brokerage companies and 900 independent insurance brokers operating in the Republic of Panama.¹⁹¹

A companies dedicated to the insurance business must obtain from the Superintendency of Insurance and Reinsurance, the authorisation to operate and must have a paid-up capital or assigned stock capital of no less than one-million dollars.

10.f Shipping Registry

Panama is home to the world's largest open shipping registry in the world: in fact, more than 14,000 ships are registered in Panama, which surpassed Liberia as the world's leader in 1993.¹⁹² Countries around the world use Panama as a "flag of convenience" because of its low fees¹⁹³ and flexible labour regulations, which allow ships to

¹⁹¹ *Ibidem*.

¹⁹² See on this VARIOUS, "PRO PANAMA, *Panama Profile*", Panama, 1996, p.32; and internet site: [http:// www.panamainfo.com/ tables/industry_reg.htm](http://www.panamainfo.com/tables/industry_reg.htm)

¹⁹³ Shipowners registering 3 or more ships with total gross registered tonnage of 50,000-100,000 tons may receive a 20% discount in registration fees,

employ crew members of any nationality.

To enhance this position, the Shipping Registry has cut fees and overhauled regulations and procedures to facilitate registrations. Ships registered in Panama are exempt from taxes on traffic outside the country.

Any person or company, regardless of nationality and location of incorporation, is eligible to register ships under the Panamanian flag.

The registration procedure begins with the application for provisional registration by the owner of the vessel or his legal representative. Panama's diplomatic consulates worldwide accept registry applications. The application is then forwarded to the Panamanian Consul abroad or the Registrar of Ships in Panama. Upon receipt of a series of documents and fees, the Consulate Office or the Register in Panama will issue a provisional patent, while the permanent patent will be issued at the Registrar in Panama after all documents have been presented and the title deed of the vessel has been registered.

Law No. 11 of 1973, amended by Law No. 83 of 1973 established the dual registration which allows a foreign vessel that is bareboat chartered for two years to be registered in Panama for the same period without losing her previous registration. This is of great advantage especially to European shipowners faced with the high cost of operating under most European flags. A Certificate of Consent is re-

while shipowners registering one or more vessels representing more than 100,000 tons may receive a 50% discount. A shipowners transferring to the Panamanian flag from another registry one vessel or more representing a gross registered tonnage over 100,000 tons may obtain a discount in registration fees equivalent to the registration fees paid to the foreign registry if the shipowner guarantees to maintain Panamanian registration for at least 4 years.

quired from the country where the vessel was originally registered.

10.g The Future of the Colon Free Zone

The Colon Free Zone was established to revive the economy of the city of Colon which, after the Second World War, was left without much economic activity, and to import duty-free goods from around the world and sell them to tariff-bound Latin America.

In the past, the Colon Free Zone has enjoyed a virtual monopoly on free trade in Latin America for most of its existence because governments almost everywhere else imposed high tariffs on foreign goods to protect inefficient domestic industries. But in the global economy of the 1990s, many of the old protectionist barriers have fallen, and the process is expected to accelerate, too.

With that business basis no longer relevant as Latin tariff barriers fall, the Colon Free Zone has to modernise and expand its business according to the ground rules now prevalent world-wide: trade globalisation, efficient and speedy transit and competitive prices.

In the framework of globalisation and increase of commercial exchange between the different markets the role of the Colon Free Zone will be that of a future Hemispheric Commercial Distribution Centre, which will centralise all hemispheric products and redistribute them to other markets as well as to import other markets products to redistribute them in the Hemisphere. The plans foresee the construction of new modern warehouses, show rooms, ports, airports and multimodal facilities to serve the world.¹⁹⁴

¹⁹⁴ See on this the internet site of the Colon Free Zone: <http://>

11. SINGAPORE

Singapore is a small island state¹⁹⁵ strategically situated at the southern tip of the Malay Peninsula, at the cross-road of the major shipping routes.¹⁹⁶ Singapore is a major world trading centre and still maintains itself as the busiest Free Port in the world in terms of shipping tonnage and tonnes of bunkers. It is also the third world largest oil refining centre.

Singapore's reputation as a global hub is also due to excellent infrastructure, good banking and financial services, an efficient telecommunications network, a stable government and a skilled and disciplined work force.

In the World Competitiveness Report 1995, compiled by the Swiss-based International Institute for Management Development and the World Economic Forum, Singapore was ranked top for "port access" among 48 developed and

www.panamet.com/zolicol/. For more readings on the Colon Free Zone see THE WASHINGTON TIMES ADVERTISING DEPARTMENT, "*Panama, a Special International Report*", Washington, 1996, p.2-6; and MCLAUGHLIN, "*Manzanillo shows the way ahead*", in *Lloyd's List*, Monday 21 October 1996, pp. 8 *et seq.*

¹⁹⁵ Singapore became an English colony in 1867. After the Second War began a movement for independence which was reached on 9 August 1965. However, Great Britain had already granted Singapore the self-government and the new Constitution in force since 30 May 1959 indicated Singapore as a Self-governing State within the Commonwealth, with a legislative Assembly and a Council of Ministers responsible of all political questions except foreign affairs and defence. Singapore joined the federation of Malaysia on its formation in 1963 but left the federation after two years as friction developed between the Malay-dominated central government and the Chinese-dominated Singapore administration.

Since 1965 Singapore is a republic with a parliamentary system of government.

¹⁹⁶ Cf. VARIOUS, "*Singapore*", in *Encyclopaedia Britannica*, Vol. XVI, Chicago, 1974, pp. 784-789.

newly-industrialised nations, in terms of the extent to which port access infrastructure meets business requirements.

The Free Port advantages are extended also to the zone of the international airport, one of the busiest of the world.¹⁹⁷

11.a Historical perspective

The earliest mention of Singapore is said to be in a Byzantine map of the Indian Ocean drawn around AD 1100 when the island was believed to have been called “Sabena” (which means “emporium” or a place where trade is conducted under government auspices) and was situated at the tip of the Aurea Chersonnesus, the legendary “Land of God” stretching from the Isthmus of Kra down to the entire length of the Malayan Peninsula.¹⁹⁸ In the 5th century Singapore was the site of a town called Temasek or “sea town”, situated at the mouth of the Singapore River; by the second half of the 13th century Singapore had its name changed into Singapore and was a city-port familiar to Arab seafarers who were making increasing use of the Singapore Strait on their voyages between the Malacca Straits and the South China Sea.¹⁹⁹

In 1380 the settlement was destroyed by the Javanese and the island remained almost uninhabited until the 28 January 1819, when Sir Stamford Raffles (1781-1826) and his party arrived with the intention of establishing a trading station for the East India Company.

In 1820 the East India Company issued the first of its

¹⁹⁷ PSA, “*Singapore. The global port*”, Singapore, 1996, p. 1.

¹⁹⁸ Cf. PSA, “*A port’s story, a Nation’s success*”, Singapore, 1990, p. 49.

¹⁹⁹ Thus PSA, “*Singapore: portrait of a port (1819-1984)*”, Singapore, 1984.

charts of Singapore Harbour. Admiralty charts of Singapore waters began to appear in 1840 and, as the Singapore Strait gained increasing importance as the main shipping channel between the Indian Ocean and the South China Sea,

The East Indiamen and Opium Clippers from India, the assortment of Chinese Junks from Fukien, Hainan and Kiangsu, the Wangkang and Tope from Thailand and Indo-China, the Palari, Golekkan, Lambo and Leteh-ieteh from the Indonesian Archipelago and the Tongkang and Pinas from the Malay Peninsula, they all came to their respective anchorage off the Singapore River.²⁰⁰

Although Singapore possessed virtually no natural resources and produced no manufactured goods, the exports of Singapore mounted to over \$6 million within 5 years after the port was established. Singapore became a mart for the exchange of the produce from Indo-China, Thailand, the Malay Peninsula and the Indonesian Archipelago for the merchandise of India, China and Europe.²⁰¹

The Port of Singapore thus established itself as the *entrepôt* port for the region and it served in this role for over a hundred years.

The administration of the Port was vested in the Master Attendant (Harbour Master) and the first appointment being that of Francis Bernard on 6 February 1819. The office also functioned as registrar of imports and exports and as post master in charge of overseas mail.

In 1823 the first regulations for the administration of the port were issued and the city and port of Singapore were granted with the Free Port status. In the preamble Raffles

²⁰⁰ PSA, "Singapore Port History", 1987, text by Eric R. Alfred, Curator, Maritime Museum.

²⁰¹ *Ibidem*.

declared that "(...) the Port of Singapore is a *Free Port* and the Trade thereof is open to Ships and Vessels of every Nation free of duty equally and alike to all (...)"²⁰²

Besides laying down the procedures for reporting the arrivals and departures of ships and their passengers and cargoes, the regulations also specified the charges for boat hire, watering, wooding and ballasting, and the fees for anchorage and port clearance. Provision was also made for a register of Singapore cargo vessels.

By 1866 practically all port infrastructure belonged to the Tanjong Pagar Dock Co. which was expropriated by the Government in 1905 and the administration and the control of its facilities passed over to the Singapore Harbour Board which was constituted under the Straits Settlement Ports Ordinance of 1912.

During the Pacific War (1941-45) about 70% of the warehouses in the port suffered damage from bombing raids and much of the machinery and equipment in the dockyards fell into a state of disrepair. Port waters became encumbered with sunken craft and maintenance of port installations and ancillary facilities came to a standstill. However, the restoration of port facilities and the resumption of passenger and cargo services were achieved in only two decades and the Free Port of Singapore became soon one of the most important in the world.

The rise of the Port of Singapore was due to three main factors.²⁰³ The first factor was its strategic geographic position on the natural shipping route between India and China²⁰⁴. The second factor was its status as a *Free Port*,

²⁰² *Ibidem.*

²⁰³ *Ibidem.*

²⁰⁴ Other factors were its role as a bunkering station for steamships, which

there being no harbour, port, dock, town or light dues, while Customs duties were levied only on opium, alcohol, tobacco and petroleum. The third factor was a result of the favourable commercial policy of the Government which permitted the mercantile interests a complete freedom of trade.

On 27 December 1963 Singapore's Head of State granted formal assent to legislation for establishing a new Port Authority. On 1 April 1964, the Port of Singapore Authority (PSA) was formed to take over the functions, assets and liabilities of the Singapore Harbour Board. Provision was also made for the establishment of the dockyards as a separate entity. This way, a new era in the history of the port of Singapore had begun.

11.b The Free Port statute

In general, Singapore has one of the most liberal trading regimes in the world. Singapore maintains very few trade barriers and restrictions.

Since the Free Port Declaration of 1823 all the legislation relative to the Free Port of Singapore has always guaranteed the free access of all ships to the port on equal terms. Restrictions relative to certain ships or goods are not permitted as discriminatory, but the Singapore Port Authority has provided very strict rules with regard to the handling of dangerous goods, petroleum and explosives. Under the Dangerous Goods, Petroleum and Explosives Regulation of 1977 and its amendment regulations of 1987, no person

were no longer required to follow the tortuous route round the Cape, following the construction of the Suez Canal in 1869, and the establishment of direct telegraphic communication with Europe.

should handle, import, export, load, discharge or deal with petroleum except in accordance with the regulations.²⁰⁵ All vessels carrying dangerous goods, whether in bulk or packaged form, must inform the port master 12 hour before arrival. Written notice should also be given when any vessel leave the port with Class A or B petroleum. Vessels carrying petroleum may only anchor at special areas designated by the Singapore Port Authority and petroleum may only be loaded and discharged at designated places or oil terminals.

In general, all vessels planning to remove, load or discharge dangerous goods at a PSA wharf must inform the traffic manager, as well as the port master, of all movements.²⁰⁶ No tanker can conduct tank cleaning or gas - freeing operations without the written permission of the port master. No repairs, hot work, high speed drilling or similar activities can be carried out during the handling and transporting of petroleum.²⁰⁷

The first Free Trade Zone in the port of Singapore was established in 1965 to facilitate trade and promote the handling of transshipment cargo. Singapore has now eight Free Trade Zones²⁰⁸, seven for seaborne cargo (Jurong Port²⁰⁹,

²⁰⁵ For a detailed description of the port of Singapore, including all information on Customs, regulations, navigation, storage, port dues, etc., see FAIRPLAY PUBLICATIONS LTD, "Singapore", in "Fairplay Ports Guide", UK, 1997, pp. 2472-2488. Cf. also UNITED NATIONS ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC (ESCAP), "Singapore Safety Code for port operations", in *ESCAP Port Development Series No. 2, "Port training: the Singapore Experience"*, Singapore, October, 1978, pp. 139 *et seq.*

²⁰⁶ In this sense FAIRPLAY PUBLICATIONS LTD "Singapore", in "Fairplay Ports Guide", UK, 1997, p. 2474.

²⁰⁷ *Ibidem.*

²⁰⁸ Cf. LLOYD'S OF LONDON PRESS, "Free Trade Zones" in *Lloyd's World Ports Atlas*, Abu Dhabi, 1994, pp. 854-855.

Sembawang Terminal²¹⁰, Tanjong Pagar Terminal²¹¹, Pasir Panjang Terminal²¹², Brani Terminal²¹³, Keppel Terminal²¹⁴ and Keppel²¹⁵) and one for air cargo (Changi Airfreight Centre²¹⁶), within which a wide range of facilities and services are provided for storage and re-export of dutiable and controlled goods. Goods can be stored within the zones without any Customs documentation until they are released in the market. They can also be processed and re-exported with minimum Customs formalities.

The Free Trade Zones are administered by the Singapore Port Authority, which is responsible for the provision and maintenance of port services and facilities, the regulation and control of the navigation in port waters, and the promotion of the use and development of the port.

²⁰⁹ Jurong Port is the first Free Trade Zone established in Singapore. It is operational since 1965 and used for industrial and bulk cargo.

²¹⁰ Sembawang Terminal is operational since 1972 and it is used for transshipment of general cargo and containers.

²¹¹ Tanjong Pagar Terminal was also established in 1972. It is used for container handling and offers full container handling facilities.

²¹² Pasir Panjang Terminal is operational since 1974 and it is used for transshipment of general goods.

²¹³ Brani Terminal was established in 1991 and is used for containers. It provides transshipment and containers facilities.

²¹⁴ Keppel Terminal is operational since 1991 and provides transshipment and container handling.

²¹⁵ Keppel Distripark is the most recent Free Zone established in Singapore (1993) and offers warehousing and distribution facilities as well as a comprehensive range of supporting facilities.

²¹⁶ Changi Airfreight Centre is situated within Singapore Changi International Airport. It is operational since 1981 and is used for general goods, hazardous cargo and livestock. It offers various users facilities (automated storage handling and mechanised material handling, special storage rooms for vulnerable cargo and live animals, security vaults for high valued cargo, and freighter aircraft parking bays) and special inducements (no duty or Customs documentation, clearing and delivery within one hour of urgent shipments).

In order to facilitate and promote the *entrepôt* trade and the handling of transshipment cargo the Free Trade Zones at the port of Singapore offer free 72-hour storage for import/export of conventional and containerised cargo and 14-day free storage for transshipment/re-export cargo.

The free storage begins from the time of completion of discharge of the vessel.²¹⁷ The 72 hours free storage period for breakbulk cargo is calculated from the time of completion of unstuffing. If the free storage period is exceeded, a charge (calculated from the time of completion of unstuffing to the time the cargo is delivered) is applied. If the breakbulk cargo unstuffed is not taken delivery within 72 hours on completion of unstuffing, the PSA, also at the request of the port user, can remove the cargo applying a removal charge.

Free storage is not possible for empty containers, but if the container is subsequently shipped, 48 hours free storage is given and calculated from the time of completion of unstuffing to the time the vessel berths. If the free storage period is exceeded, the store rent is calculated from the time of completion of unstuffing to the time vessel berths.²¹⁸

Within the Free Trade Zones, the Port of Singapore Authority provides more than two million square meters of covered and open storage space. Outside the Free Trade Zones, the PSA has 420,000 square meters of covered warehouse space. The PSA operates the Pasir Panjang Distripark, Alexandra Distripark and Keppel Distripark.

Within the Free Trade Zones all operations relative to the movement of goods are carried out free from Customs du-

²¹⁷ Thus FAIRPLAY PUBLICATIONS LTD "*Singapore*", in "*Fairplay Ports Guide*", UK, 1997, p. 2486.

²¹⁸ *Ibidem*.

ties and import/export levies.

Singapore relies on a very modern and advanced industrial infrastructure especially due to the exemption from duties on the raw materials used in the production.²¹⁹

To sum up, the principal advantages²²⁰ of Singapore Free Zones are:

- free 72-hour storage for import/export conventional cargo and import containerised cargo;
- free 7-day storage for export containerised cargo;
- free 28-day storage for transshipment/re-export cargo;
- free of Customs duty and Customs control documentation while goods remain in the zones;
- extended storage of goods until market conditions are favourable for re-export or local use;
- possibility of exhibiting or sampling goods;
- possibility of effecting sales at the zones;
- possibility of goods to be stored, bulk-broken, graded, repacked or remarked for the local or export markets;
- possibility of exporting goods by parcel post;
- supply of dutiable ship stores of liquor, cigarettes and tobacco direct to vessels;
- excellent maintenance, with sufficient modern equipment and experienced personnel to handle vessels and goods;
- strategically located warehouses close to the wharves as well as the commercial and industrial areas, resulting in minimum transportation and costs;

²¹⁹ Cf. VARIOUS, "Singapore", in *Dizionario Enciclopedico Italiano*, Vol. XI, Rome, 1970, p. 326.

²²⁰ Cf. BRANCH, "Elements of Port Operation and Management", London-New York, 1986, pp. 111-112.

- adequate covered and open areas for storage;
- a common-user repackaging area for the reconditioning and consolidation of cargo meant for export;
- *entrepôt* cabinets (including an air conditioned cabinet for the storage of confectionery and other commodities that require low temperature) for lease to *entrepôt* traders for storage, repackaging and re-export activities;
- maximum round-the-clock security for goods stored;
- economical ordinary warehousing (i.e. not connected with import/export, re-export or transshipment) storage rentals;
- reasonable removal charges and equipment hire rates.

11.c Relationship between the Port of Singapore Authority and the Maritime and Port Authority

The Port of Singapore Authority has achieved the distinction of being the best port operator in Asia with a record of successful planning, development and effective port management. It is constantly searching for ways to create more value and offer more competitive services to its customers and is ready to adopt joint ventures overseas with key partners in the industry.

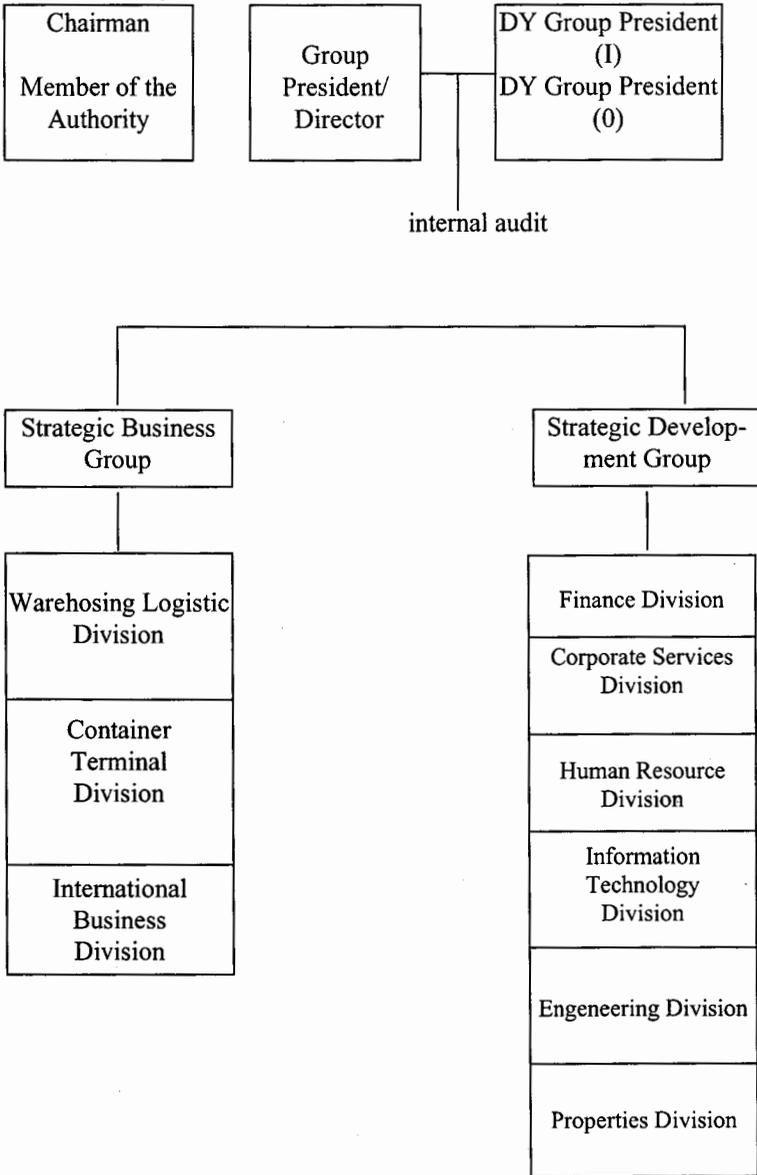
On 2 February 1996, Singapore's port and maritime history entered a new era with the inauguration of the Maritime and Port Authority of Singapore (MPA), a new independent statutory board which is the sole regulatory body responsible for all port and maritime affairs of Singapore. It is formed with the merger of the National Maritime Board, the Marine Department and the regulatory divisions of PSA. The functions of MPA are to protect Singapore's strategic maritime interests and promote the republic as a

world-class port and international maritime centre, and to act as the government's adviser on matters relating to sea transport, marine and port services and facilities, and be the national representative internationally in these matters.²²¹

PSA is now responsible for providing and maintaining efficient and adequate port services and facilities.

²²¹ Cf. VARIOUS, "*Singapore, the global port*", Singapore, 1996, p. 1.

TABLE 8. - PSA ORGANISATION CHART²²²



²²² Source: PORT OF SINGAPORE AUTHORITY.

12. UNITED ARAB EMIRATES

The United Arab Emirates (UAE)²²³ extends along the coast of the Gulf, from the base of the Qatar peninsula to a short way beyond Ras Al Khaimah and across the Mussandam peninsula to the Gulf of Oman. The United Arab Emirates is home of a free-trade-zone empire and has enjoyed a chain of economic benefits and a major industrial improvement due to its flourishing Free Zones²²⁴, which have strengthened the reputation of a liberal economy, that the government has always promoted. The UAE has a free trade policy and no protective duties are imposed.

The rare opportunities and quality services which Free Zones provide have permitted the UAE to play a pioneering role in the world of free trade.

The Federal Maritime Law²²⁵ enacted in 1981, which codifies the maritime law applicable throughout the Emirates, provides that the provision thereof may not conflict with any international agreement²²⁶ to which the Emirates is a signatory. In the event of *causus omissus*, the Law states the prevalence of maritime Customs not in conflict with Islamic Shari'a and of principles of justice and equity.²²⁷

The UAE comprise the following Free Ports and Free

²²³ The federation comprises the seven emirates of Abu Dhabi (the capital), Dubai (the thriving commercial capital), Sharjah, Umm Al Quwain, Ajman, Ras Al Khaimah and Fujairah. In all, the UAE spreads over an area of 41,000 square miles.

²²⁴ See internet site <http://www.ecssr.ac.ae/00uae.2industry.html#>

²²⁵ The Law is similar to the maritime codes prevailing in neighbouring jurisdictions except Saudi Arabia.

²²⁶ The UAE has signed a number of conventions like the Hague Rules and the International Convention on Limitation of Liability.

²²⁷ CHAKRADARAN, "Ship finance in the United Arab Emirates", Dubai, 1990, p.165-167.

Trade Zones:

- Dubai-Jebel Ali Free Zone
- Abu Dhabi Free Zone
- Sharjah Airport International Free Zone
- Fujairah Free Zone
- Umm Al Qaiwain Free Zone

12.a Dubai-Jebel Ali Free Zone

Due to its strategic location²²⁸, Dubai has always been a convenient stopping-off point for global trade traffic and an ideal international hub. For over six centuries its creek has provided a safe haven for the merchant vessels laden with goods from Dubai's traditional trading partners in the Far East, Indian subcontinent and Africa. These goods were sold to the camel caravan trails in the vast desert hinterland.²²⁹

In the past Dubai was also one of the world's foremost pearling centres. The advent of Japanese cultured pearls in the 1930s could well have devastated the economy of Dubai it wasn't for its capacity of quick diversifying. By the end of World War II, the entrepreneurial city had a reputation as a world centre for trading in gold and other precious metals, as it still does today. In 1966 Dubai first struck oil; the oil boom started in the early Seventies and Dubai was ready to capitalise on the opportunities offered. Dubai started building an infrastructure of roads, ports and warehouses, which represented the basis for the future development of

²²⁸ Dubai is located closed to the Gulf entrance, midway between East and West.

²²⁹ JEBEL ALI FREE ZONE AUTHORITY, "*Business Guide*", Dubai, 1997, p. 25.

the country.²³⁰

The Jebel Ali Free Zone is the fulfilment of a dream for His Highness Shaikh Rashid Bin Said Al Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai. In fact he realised the full potential of what was just barren desert until work started on the US\$ 2.5 billion project in 1975.²³¹ The super-port (67-berth port) of Jebel Ali, only 35 kilometres from the city of Dubai, opened for business in 1979 and the highly acclaimed Jebel Ali Free Zone (a 100-square-kilometre Free Zone and industrial complex) followed in 1985. Described as “the city of merchants”, “the Middle East’s Hong Kong”, or “the Gulf’s trading capital”, Dubai has grown into the most important regional transshipment centre for container traffic, serving other states in the Gulf and also the Indian subcontinent. In this respect, the Jebel Ali Free Zone has been of vital importance in generating local traffic and reducing dependence on transshipment activities.

12.b The Free Zone legislation

Jebel Ali Free Zone was established by Government Decree of 9 February 1985 which disciplines the Free Zone and creates a Government body, the Jebel Ali Free Zone Authority (JAFZA), charged with the supervision and administration of the Jebel Ali Free Zone. JAFZA’s responsibilities include providing companies wishing to operate within the Free Zone appropriate licenses to operate, lease facilities such as land sites or pre-built offices and warehouses, administration, engineering and utility services, an

²³⁰ *Ibidem.*

²³¹ Cf. JEBEL ALI PORT & FREE ZONE HANDBOOK, 1991, p. 7.

interface with the Dubai Ports Authority for its services and a continually improving service by investing in upgrading and updating its equipment, infrastructure and facilities.²³² Besides, JAFZA is always available to give practical and legal advice on various aspects of its competence (e.g. company planning and implementing, power supply installing, dealing with trade licenses and obtaining visas).

Dubai's trading image, established over many years, is based upon a free economy and Jebel Ali Free Zone extends that immeasurably further still: there are no taxes, either personal or corporate, and 100% repatriation of both profit and capital is permitted.²³³

Companies²³⁴ holding a licence within the Free Zone can import and export the goods indicated in the licence free of duty; establish branches in the Free Zone; be partner in more than one company; and recruit non-local labour force provided that the correct immigration procedures have been followed.

Responsible of clearing cargo through Customs are the consignees holding a UAE federal or Dubai Economic Department licence or any Free Zone licences, and the agents holding a Dubai Economic Department Clearing and Forwarding (C&F) licence, on behalf of consignees. Documents required are²³⁵:

²³² For more information see the Jebel Ali Free Zone Authority home page at <http://www.jafza.com/>

²³³ Thus JEBEL ALI FREE ZONE AUTHORITY, "*Business Guide*", Dubai, 1997, p. 5.

²³⁴ In 1990 the companies located in the Free Zone were 250, today they are almost 1,000, from more than 70 countries. Big name multinationals like Sony, Aiwa, Black&Decker, Nissan, Honda and Coleman all have a presence in the Free Zone.

²³⁵ See JEBEL ALI FREE ZONE AUTHORITY, "*Business Guide*",

a) the Delivery Order, issued by the shipping agent upon receipt of freight charges and either the original bill of lading or a bank guarantee;

b) the Original Invoice, produced by the original exporter and legalised by a recognised authority in the country of export. It is a document used by Customs for duty charges and statistical purposes;

c) the Certificate of Origin, produced by the original exporter and legalised by a recognised authority in the country of export. This document is used by Customs to confirm the country of origin and equally needs to be seen by the office which ensure that any trade boycotts are enforced;

d) the Bill of Entry, which must be completed by the consignee or C&F agent. Free Zone bills of entry are used for cargo declared for the zone. Cargo bound for Dubai is entered on a standard bill of entry;

e) the Customs Duty Receipt, issued by Customs if duty is payable. Certain importers are able to operate a credit facility with Customs;

f) the Duty Exemption Certificate, held either by companies importing cargo which do not attract duty, or by the agents acting on their behalf.

12.c The Free Zone incentives

The Free Zone legislation offers many incentives, not only fiscal, to the industrial, commercial and services companies operating in the Free Zone. Among these incentives²³⁶ are:

Dubai, 1997, p. 23.

²³⁶ For a detailed list of the incentives see JEBEL ALI FREE ZONE

- 100% foreign ownership;
- no import duties;
- no personal income taxes;
- no corporate taxation for 15 years, renewable for an additional 15 years;
- no currency restriction;
- 100% repatriation of capital and profits;
- ready-made factories and warehouses (322,700 square meters of storage space;
 - access to a market of over 1.5 billion consumers in the surrounding markets of Iran, GCC, CIS, South Africa and the Indian sub-continent;
 - legal and administrative support from the Free Zone Authority;
 - easily obtainable licences;
 - simple and efficient recruitment procedure which can readily provide a highly-skilled, inexpensive work force;
 - abundant energy;
 - unparalleled road, sea and air links;
 - excellent support services from Dubai Ports Authority's two modern terminals;
 - modern and efficient communication and telecommunication system;
 - computer interfaces with all local ports and Government departments.

12.d Licences

No operation or activity can be carried out within the

AUTHORITY, "*Business Guide*", p.4-6; LLOYD'S OF LONDON PRESS, "*Free Trade Zones*", in "*World Ports Atlas*", Abu Dhabi, 1994, p.858; and internet site <http://www.jafza.com/10.htm>

Free Zone without a valid licence. Licences are issued by the Jebel Ali Free Zone Authority and each is valid for the period during which the company holds a Lease from JAFZA. Licences are renewable annually while the Lease is in force.²³⁷

On January 1, 1996, the Jebel Ali Free Zone licensing system was streamlined to endorse the Authority's commitment to minimising red tape and documentation²³⁸. As a result, there are today three new licences (Trading, Industrial and Service Licences) next to the existing National Industrial Licence.

The new licences are categorised by the nature of the activity. Licences whose activities span different activities are issued with a separate licence for each category.

Trading licences allow the holder to import, export, sell, distribute and store all the goods specified in the licence. However, sales in the UAE must be carried out through a distributor or agent. Trading licences are granted to companies holding a valid licence issued by the Dubai Economic Department or an equivalent authority in the UAE, and to companies incorporated outside the UAE. In each case, the permitted activities on the Free Zone licence must conform to those on the existing licence. Trading licences are also issued to Free Zone Establishments (FZE).

²³⁷ See JEBEL ALI FREE ZONE AUTHORITY, *ult. op. cit.*

²³⁸ Documents required are: the original or a notarised copy of the certificate of registration and certificate of good standing or valid commercial registration; a notarised copy of the memorandum and article of association of the company; a notarised copy of a list of board of directors with their personal details; a notarised copy of a board resolution calling for establishment of a branch in Jebel Ali Free Zone appointing the manager in charge and guaranteeing full financial commitment of Jebel Ali Free Zone operation; and a notarised specimen of the manager's signature and a copy of his passport.

Industrial licences allow the holder to import raw materials, carry out the manufacture of specified products and export the finished product to any country. Licensees' manufactured products can be sold in the UAE through a distributor or agent. Industrial licences are issued to companies incorporated outside the UAE and to Free Zone Establishments.

Service licences allow the holder to carry out the services specified in the licence within the Free Zone. The type of service must conform with the parent company's licence, issued by the Economic Department or Municipality of the relevant Emirates in the UAE. Service licences are only granted to companies holding a valid UAE licence.

National Industrial Licences are issued to industrial companies registered within or outside the UAE, provided they meet the conditions of having at least 51% AGCC²³⁹ equity and their local production accounting for at least 40% value added. Such companies must obtain the provisional approval of the UAE Ministry of Finance and Industry.

A National Industrial Licence allows the holder to import raw materials, carry out the manufacture of specified products and export the finished products to any country.²⁴⁰

This licence grants its holder the same rights as those of national and AGCC companies, and products exported to AGCC states will be exempted from Customs duties.

If a company wishes to practise more than one of the

²³⁹ AGCC stands for Arabian Gulf Cupertino Council, which gathers Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates.

²⁴⁰ The activity must conform with the National Industrial Production Certificate, issued by the Ministry of Finance and Industry on behalf of the company.

above mentioned activities, it must obtain a separate licence for each category of activity.

Companies holding a Free Zone licence are permitted to operate in the Jebel Ali Free Zone and outside the UAE. Operation within the UAE can be undertaken either by a commercial agent, representative, distributor, or the mother company licensed by the relevant UAE authority. Any company holding a Free Zone licence can itself purchase goods or services within the UAE.

12.e Free Zone Establishments

Free Zone Establishments (FZE) were introduced at Jebel Ali Free Zone in 1992. They are not licences but registration procedures which allow reputable companies to establish themselves in Dubai through registration in Jebel Ali.²⁴¹ In other words, a Free Zone Establishment is an establishment formed and registered in Jebel Ali and regulated solely by the Free Zone Authority.

FZEs are separate legal entities which can play an important role in international tax planning.

Such establishments must have a capital of at least Dh 1 million and the liability of a single shareholder is limited to the amount of paid-up share capital.

Application and regulatory Systems are straight forward and unbureaucratic.²⁴² Any company, organisation or individual wishing to form a FZE must submit a completed application form to the FZE Department of the Free Zone

²⁴¹ Cf. JEBEL ALI FREE ZONE AUTHORITY, "*Business Guide*", 1997, p. 10.

²⁴² For a complete examination of the procedures for registering a FZE see DUBAI HANDBOOK 1998.

Authority.²⁴³ A decision on whether permission has been granted will be given within 30 days of receipt of the application and any other information and documentation required.

If permission is granted, the Authority will record all relevant details in the FZE Register and issue a Certificate of Formation. This will specify the date of registration after which the FZE will be free to conduct any such business as is permitted in its Special Licence.

12.f Other opportunities of the Jebel Ali Free Zone

The status of the Jebel Ali Free Zone offers the investors the following opportunities:

1) OPPORTUNITIES FOR TRADE²⁴⁴

Dubai ranks as one of the world's leading trading centres as it offers the gateway to a market of more than one billion people, covering the Gulf states, Middle East, CIS, East Africa and Asian sub-continent; well established trading links throughout the AGCC, Iran and other neighbouring markets; a buoyant and prosperous domestic market; strong commercial tradition and wide choice of potential trading partners; a rapidly developing manufacturing sector producing a wide range of high quality, competitive export

²⁴³ The following documents are required by the Jebel Ali Free Zone Authority in order to register a company as a FZE:

- if the applicant is an individual: personal details of the owner, banker's reference (original), appointment and authorisation of the negotiator (notarised), and signature of the authorised negotiator (notarised);

- if the applicant is a company: Certificate of Registration of the company (notarised) or Original Certificate of Good Standing of the company (notarised), appointment and authorisation of the negotiator (notarised), and signature of the authorised negotiator (notarised).

²⁴⁴ Cf. DUBAI, *ult. op. cit.*

products from aluminium ingots to electronics; port and airport facilities unrivalled in the region in terms of size, flexibility and efficiency; and finally a strong shipping and transportation sector-leading regional and international freight forwarders, shipping companies, insurers etc.

2) OPPORTUNITIES FOR REGIONAL OFFICES²⁴⁵

Dubai is an ideal location for a regional headquarters office with its pro-business government policies and one of the most liberal regulatory environments in the region. The city offers: no taxation on profits or incomes; no foreign exchange controls and a stable, freely convertible currency; a sophisticated services sector-major international hotels, banks, lawyers, accountancy firms, advertising agencies, consultants etc.; quality office accommodation and well qualified, competitively priced staff readily available; the major regional conference and exhibition venue in the Middle East; air links via 65 airlines to over 100 cities worldwide; time zone bridge between the Far East and Europe, with efficient local and global telecommunications; international lifestyle; tolerant, virtually crime-free environment.

3) OPPORTUNITIES FOR SETTING UP A BRANCH OF A FOREIGN COMPANY²⁴⁶

Any company wishing to set up a project in Jebel Ali Free Zone must first complete a simple questionnaire. From the information provided, the Free Zone Authority can make a first assessment of whether the company's needs can be met. After consideration of this questionnaire, the company will be provided with: a licence application including

²⁴⁵ *Ibidem.*

²⁴⁶ *Ibidem.*

an appendix with details of the documents required concerning the company's legal status; a *pro forma* of information required for planning; and a consumer request for electricity supply.

On receipt of these documents, the Free Zone Authority will consider the proposal. If provisional approval is given, the company will be asked to prepare and submit the documents called for in the appendix to the licence application.

After the checking of these documents, a meeting will be called to discuss and finalise the project details. If everything is satisfactory, the Authority will issue conditional approval for the project. Thereafter, a lease agreement and, if required, a personnel secondment agreement will be prepared by the Authority for signature by the company.

At the time of signing, the applicant will be required to provide the insurance policies called for in the agreements and should pay the agreed rental and licence fee prior to collection of the licence.

If the company wishes the Free Zone Authority to sponsor employees on its behalf, applications for entry permits may be submitted once the licence has been issued. The bank guarantee called for in the personnel secondment agreement will be required at this stage together with visa charges.

If the company's project involves the erection of a structure, detailed plans must be submitted after the lease has been signed. When the plans have been agreed, a building permit will be issued.

Administrative work, such as importing equipment or engaging labour for installation of equipment, may proceed in parallel with construction work. But application for entry permits for operatives to be sponsored by the Free Zone

Authority will not normally be accepted until a completion certificate for the construction has been issued.

4) OPPORTUNITIES FOR TRANSPORT AND DISTRIBUTION²⁴⁷

Dubai is a key centre in the global transport and distribution system due to its strategic location mid-way between the Far East and Europe and its highly developed and efficiently managed transportation infrastructure, equipped with the latest cargo handling facilities.

Dubai Ports Authority, combining Port Rashid (35 berths) and Jebel Ali Port (67 berths), ranks among the world's top ten in terms of berths and top fifteen in terms of container throughput.

Dubai's ports are served by a large and growing number of international lines with world-wide links, combined with feeder services to Iran and other regional markets. An acknowledged leader in the growing intermodal freight trade, Dubai's state-of-the-art air cargo village helps ensure the world's fastest sea-air transfers in as little as four hours.

The Jebel Ali Free Zone offers also unlimited low cost warehousing and storage facilities, including purpose built cold stores and excellent regional road transport links via a modern highway network.

5) OPPORTUNITIES FOR INDUSTRIAL INVESTMENT²⁴⁸

The Jebel Ali Free Zone offers unbeatable incentives to investors. These include: 100% foreign ownership (N.B. outside the Free Zone, 51% local participation is required unless the business is 100% AGCC owned); exemption

²⁴⁷ *Ibidem.*

²⁴⁸ *Ibidem.*

from all import duties; 100% repatriation of capital and profits; freedom from corporate taxation, as applied throughout Dubai, with the added bonus of a renewable 15 year guarantee in the Free Zone; abundant inexpensive energy; simple and efficient recruitment procedures ensuring the availability of a skilled and experienced workforce at competitive cost; a high level of administrative support from the Free Zone Authority; and a rapidly growing domestic demand which offers good opportunities for joint venture manufacturing and processing operations outside the Jebel Ali Free Zone.

12.g The Abu Dhabi Free Zone

The Emirate of Abu Dhabi is the largest of the seven emirates, and its main city, Abu Dhabi, is the capital of the United Arab Emirates.²⁴⁹ The port of Abu Dhabi is one of the largest ports in the Gulf, with shipping links to Europe, North America, the Far East and Australia.

The Emirate of Abu Dhabi is the richest emirate of the Federation as around 95% of the UAE's oil reserves are situated on its territory: the oil industry and the service industry operate in offshore regime.

On July 1996, the Government of Abu Dhabi announced the establishment of a \$3 billion Free Zone on Sadiyat Island, 7 kilometres south of Abu Dhabi city.

The Free Zone will include the building of huge storage facilities, a new port, airport and commodities' trading exchanges on.

A Law forming the Board of Directors of the Free

²⁴⁹ VARIOUS, "*Abu Dhabi Shipping Handbook 1989*", Norfolk, 1989, p. 8-16.

Zone Authority has already been enacted and the board has already decided to build a 6 kilometres long bridge, to link the Free Zone with the mainland.

Abu Dhabi's Free Zone doesn't intend to be in competition with Dubai's Jebel Ali Free Zone since the former will be a trading and storing facility while the latter is specialised in container handling.

It has been stipulated that all materials imported or exported from the Free Zone will be exempted from any taxes and Customs duties and that the Free Zone Authority will become a globally competitive enterprise and will be established and run as a private sector company that will be floated for private investors.

During the first official meeting of the Board, its Chairman pointed out that the creation of the Free Zone not only encourages investment in the region's industrial sector, through exporting to local and external markets at competitive prices, but also places Abu Dhabi on the map of international business with all world's competitive enterprises.²⁵⁰

The Free Zone's regime will attract international investors, who will rely on a market of 3.5 billion people, and will also benefit banks and insurance companies. Some major Swiss companies have already shown interest in the Free Zone, due to its strategic position in the heart of the international trade routes between the Middle East and East Asia.

²⁵⁰ See internet site: <http://www.ecssr.ac.ae/00uae.2industry.html>

12.h The Fujairah Free Zone

The Fujairah Free Zone²⁵¹ was established by the Emiri Decree No. 6 of 1987 and officially started to operate in November of that year.

The Zone is located in the most northern Emirates of the UAE and on the coast of the Indian Ocean.²⁵² The Free Zone is incorporated into the Fujairah port and is also close to the Fujairah International Airport.

The port can handle containers and bulk cargo. The FFZ offers facilities and equipment for industrial, trading and storage operations.

The Free Zone is administered by the Fujairah Free Zone Authority that issues the operational licences. The activities permitted are warehousing, manufacturing, assembly and distribution.

Presently, there are 46 resident companies engaged in projects such as ready-made garments, textiles, perfumes, chemicals, animal fodder, precious stones, tobacco etc. The foreign companies established within the Free Zone can recruit labourers from their country even if expatriate labourers are locally available.

The Fujairah Free Zone also has easy legal arrangements for sponsorship of the managers and employees and can incorporate new societies as Free Zone Enterprises.

Corporations and establishment doing business in the Free Zone do not have to be owned by UAE Nationals and Customs regulations as well as taxation are similar to the

²⁵¹ See LLOYD'S OF LONDON PRESS, "Free Trade Zones", in *Lloyd's World Atlas*, Abu Dhabi, 1994, p. 858.

²⁵² The Zone covers an area of 400,000 sq. meters but the Zone is currently engaged in an expansion phase through the construction of new buildings to provide more facilities.

other UAE Free Zones. The Free Zone Authority encourages the establishment of new companies in the Free Zone and the setting up of industrial projects through the following incentives²⁵³:

- 100% foreign ownership;
- 100% repatriation on capital and profit;
- no import or export duties;
- no personal tax;
- no currency transfer restrictions.

12.i The Ahmed Bin Rashid Harbour Free Zone

The port of Ahmed Bin Rashid is situated on the west coast of the UAE, about 30 miles north east of the emirate of Dubai, in Umm Al Qaiwain.²⁵⁴

The Ahmed Bin Rashid Free Zone was set up within the confines of Ahmed Bin Rashid Port by Decree No. 2/87 of His Highness Sheikh Rashid Bin Ahmed Al Moalla, ruler of the Emirate of Umm Al Qaiwain.

The Harbour Free Zone is operational since the 1st of April 1988 and consists of 845 meters of quay wall, 400 meters of which can handle ocean going vessels and 118,000 sq. meters of land reserved for light industrial development.

The Zone is managed by the Ahmed Bin Rashid Free Zone Authority which provides warehousing services and administrative support to the resident companies as well as incentives such as:

- 100% foreign ownership;
- no custom charges;

²⁵³ *Ibidem.*

²⁵⁴ *Ibidem.*

- no currency restrictions;
- no Corporate Taxes up to a minimum of 15 years;
- no export taxes;
- no import duty;
- 100% repatriation of capital;
- no sponsorship restrictions;
- no work permit restrictions.

12.j The Sharjah Airport International Free Zone

The Sharjah Airport International Free Zone (SAIF) was officially established on the 8th of May, 1995, following the Sharjah government's decree No. 2 for that year.

The Free Zone's setting up is the result of careful planning and organisation by the competent authorities.

The Free Zone benefits from a strategic location nearby the Sharjah Airport, only twenty five minutes away from the emirate of Dubai and a mere ten minutes away from downtown Sharjah.

SAIF provides rare opportunities for business investors²⁵⁵, including:

- easy Access to an International Airport²⁵⁶ service;
- access to both East and West Coasts of the UAE since Sharjah has a port on each coast (Port Khalid and Khorfakkan Port);

²⁵⁵ Cf. internet site: <http://www.ecssr.ac.ae/00uae.2industry.html>

See also FAIRPLAY PUBLICATIONS LTD, "United Arab Emirates", in *Fairplay Ports Guide*, UK, 1997, pp. 2756-2786.

²⁵⁶ Sharjah International Airport is currently the largest cargo handling base in the UAE today with Lufthansa selecting it as its Middle East base. Cargo routed by sea-air from the Far East to Frankfurt via Sharjah can cut up to 40% off the cost of pure airfreight, while reducing a third of the time taken by sea.

- access to quality services and infrastructure of Sharjah;
- foreign ownership;
- simplified Customs procedure for goods;
- guaranteed tax-free operation;
- full repatriation of capital and profit;
- availability of the Zone's simplified administrative, recruitment and registration.

12.k The Hamriyah Free Zone

The Hamriyah Free Zone is located in the Emirate of Sharjah²⁵⁷ and is the most recent Free Zone created in the United Arab Emirates, currently under development.

The Free Zone development was announced in the Emiri Decree No. 6 dated 12th November, 1995.

The vision of the Hamriyah Free Zone Authority (HFZA) is to provide the International Business Investor with a unique investment opportunity in a free market environment. To be able to offer a strategic business advantage

²⁵⁷ The Emirate of Sharjah offers extensive transportation links to the Gulf states, Indian subcontinent and the emerging markets in Asian and African nations. These services are made possible by the "SHARJAH LINK" which gives the Investor access to a trade bridge which creates a significant cost and time savings advantage. This LINK is created by Khor Fakkan container port on the East Coast / Indian Ocean, Hamriyah and Khalid ports on the West Coast / Arabian Gulf, and the Sharjah International Airport. All ports are connected by a super highway and will exempt goods from tax which are shipped to the Hamriyah Free Zone. This link can save up to 48 hours in sailing time and reduce insurance costs.

Companies operating in Sharjah do not have to be situated within the Free Zone area in order to avail of the emirate's liberal and attractive incentives, including zero rated corporate and personal taxes, 100 per cent foreign ownership plus full repatriation of profit and capital. It is not surprising that this policy has led to a 12 per cent annual growth rate in its industrial base.

to the Investor, the HFZA is currently developing first class services and facilities that will complement it's 14 meter deep water port.

The Free Zone development was announced As the Free Zone is designated as a "Green Zone", it is the intention of the HFZA to attract environmentally friendly industries.

Land is allocated for heavy, light, service and commercial industries.

The Hamriyah Free Zone (an area of approximately ten million square meters of prime industrial and commercial land and the 14 meter deep water harbour which includes room for expansion) will be managed by the Hamriyah Free Zone Authority.

The advantages offered by the Hamriyah Free Zone are:

- unique strategic location between three continents²⁵⁸, serving a growing market of one billion people;
- access to the largest cargo hub in the UAE at Sharjah International Airport;
- well-developed infrastructure, geared to industry at all levels, and to service Gulf, regional and international markets;
- more than 10,000,000 square metres of prime industrial and commercial land, complete with a unique 14 metre deep harbour with alongside berths;
- ample transportation and shipping linkages;
- abundant and inexpensive energy supply source;
- attractive investment incentives;
- Customs privileges for goods destined for the Hamri-

²⁵⁸ Sharjah is the only one of the seven emirates with ports on the Arabian Gulf's West and East coasts with direct access to the Indian Ocean, and an international airport which connect to 230 countries.

yah Free Zone;

- other fiscal advantages like: 100% foreign company ownership, 100% import and export tax exemption, 100% exemption from all commercial levies, 100% repatriation of capital and profits²⁵⁹, no corporate profits tax, no personal income tax;

- land for lease for investor development;

- 15 year leases available, renewable for a further 15 years;

- quick and simple procedure for approval of license applications;

- purpose built office accommodation, warehousing and factory units;

- broad range of technology and communication-intensive services;

- low labour costs;

- recruitment and sponsorship of personnel, and procurement of visas;

- access to Internet and e-mail services, secretarial services, postal address, vehicle registration services, driving licences, etc.;

- stable currency - the UAE Dirham is linked to the US Dollar 1 US\$= 3.67 Dirhams, etc.²⁶⁰

²⁵⁹ Through the Emiri Decree establishing the Hamriyah Free Zone, investors are guaranteed security of investment and full repatriation of profits and capital. The UAE is member of the World Trade Organisation and the Berne Convention on intellectual property rights protection, demonstrating the national commitment to the integrity of foreign investments. The same respect that is embodied in the UAE's participation in these accords at the international level, is also translated down to the 'micro' level of each investment.

²⁶⁰ For a more detailed list of the advantages and incentives of the Hamriyah Free Zone cf. internet site <http://www.hamriyahfz.com/index1.htm>

CHAPTER THREE

THE FREE PORT STATUS

This chapter includes:

1. THE CONCEPT OF THE FREE PORT. - 2. THE ADMINISTRATION OF THE FREE PORTS. - 3. THE SOURCES OF REGULATION OF THE FREE PORTS. - 4. THE ROLE OF THE FREE PORTS IN INTERNATIONAL MARITIME TRADE WITH PARTICULAR REGARD TO INTERNATIONAL TRANSIT TRADE. - 5. THE FREE PORTS AS INTERNATIONAL TERRITORIES. - 6. THE JURIDICAL EFFECTS OF THE LEGAL STATUS OF FREE PORTS: THE SPECIAL CLASS OF "IMMUNE JURIDICAL EFFECTS" COMMON TO ALL THE FREE PORTS OF THE WORLD.

1. THE CONCEPT OF THE FREE PORT

The recognition operated in chapter two has shown the discipline of some major Free Ports¹ as described by state laws or international treaties. In this section various systems of Free Port world-wide will be compared and their special significance with regard to the development of international maritime trade will be underlined. In other words, our intention is to analyse all Free Ports' legislation in order to draw the juridical nature of a common notion of Free Port, despite all operational and legal differences in the regulation.

¹ The main object of the investigation has been the discipline of the Free Ports located outside the European Union, because in the countries of the European Union the establishment of all types of Free Zones is burocratically complicated and encumbered by the existence of both national and European laws and regulations.

This investigation will emphasise the close connection between the ever more frequent creation of Free Ports all over the world with the development of the international maritime business.

The comparison between the statutes of the most important Free Ports of the world will point to their role in the affirmation, enrichment and expansion of international maritime trade.

Even though the rules and regulations on Free Ports are contained in various kind of acts (laws, decree-laws, international treaties, Customs and usage, etc.), it is still possible to single out a core of attributions, services, juridical instruments, rights and legal powers of the Free Port's operators, all aiming at the rationalisation and affirmation of free trade.²

The Free Port is nowadays an international institution, whose structure and function can only be understood parallel to a modern maritime policy. The concept of the Free Port is that of ensuring free international trade, attracting investment which will also stimulate the domestic economy.³ Therefore, the Free Port's device is definitely ac-

² Cf. NAGORSKI, *"Port problems in developing countries"*, Tokyo, 1972, p. 258. According to the Author there is no uniform pattern for Free Zones in various ports of the world, as rules and regulations governing various zones, and even their very purpose, vary greatly from one country to another. However, NAGORSKI outlines a classification of Free Ports, which we agree with, in accordance with their main functions: 1) Free Ports intended predominantly for transit and intermediate trade (e.g. Beirut and Latakia); 2) Free Ports used both for transit and for major part of imports of the country, occasionally for export (e.g. Hamburg, Bremen and Copenhagen); 3) Free Ports for transit, commerce and industries (Colon, Jurong, Port Said).

³ The Free Ports attract foreign goods to receiving centres located within them, at which inspection, packaging, sorting, labelling and reshipment will take place. Overseas traders and manufacturers are therefore stimulated to set

ording to the task of the challenge of a highly competitive international market, which is currently facing globalisation and internationalisation⁴.

The role of Free Ports is to ensure free transit trade, free international maritime trade and, above all, free movement of goods. The latter represents actually the inner nature of the Free Ports world-wide and the foundation of a modern and effective maritime policy.⁵ The free movement of

up businesses in Free Ports. Thus BRANCH, *"Elements of Port Operation and Management"*, London-New York, 1986, p. 107.

⁴ The importance of the internationalisation with regard to maritime law has been lucidly acknowledged by E.O. QUERCI: *"Il sistema marittimo ha così tratto la ragione di autonomia dall'irretrattabile internazionalismo, e poi dalla ormai saldamente innervata sua unificazione nell'ambito di ciascuno Stato, in contrasto molte volte con le differenze giuridiche persistenti. Questi due dominanti aspetti e caratteri essenziali, l'internazionalismo da un lato e l'unificazione dall'altro, che sono sostanzialmente connessi e si riportano entrambi alla possibilità di una disciplina marittimistica unitaria, in un ambito territoriale sempre più vasto, sino a ricomprendere e coprire aree economiche della globalizzazione dei mercati e i luoghi logico giuridici costituiti dalla dinamica e dal sistema dei traffici marittimi.*

*L'unità del sistema giuridico marittimo, la sua edificazione ed elevazione al superiore rango di ordinamento giuridico internazionale, la sua cospirante internazionalizzazione, la sua precipua e marcata impronta eminentemente consuetudinaria, la tecnica e la particolarità della natura dei rapporti marittimi nell'ambito degli affari internazionali, l'unificazione della sua disciplina, delle sue irrelate datità positive promananti da distinte e plurali fonti normative, si riferiscono alla concreta situazione propria della struttura e della funzione del commercio marittimo, e non vengono posti e risolti simili caratteristiche essenziali del diritto marittimo sub specie aeternitatis, ma trovano la propria giustificazione tecnica in uno stesso ideale di libero progresso e di continuo superamento di posizioni acquisite. Cf. E.O. QUERCI, "Analisi del diritto marittimo. Definizione e concetti giuridici fondamentali", vol. IV, in *Monografie di Diritto della Navigazione raccolte da F.A. Querci, Direttore della Rivista Trasporti Diritto-Economia-Politica*, Trieste, 1999, pp. 234-235.*

⁵ In this sense QUERCI, *"Nuovi ruoli per il sistema marittimo portuale"*, Padua, 1982, p. 9.

goods consists basically in a series of prohibitions for the state where the Free Port is situated. These prohibitions regard essentially the control on:

- 1) the origin and property of the goods;
- 2) the nature, quantity, quality and other features of the goods;
- 3) the purposes of the utilisation of the goods;
- 4) the destination of the goods.

The only competent for all these controls is the state of destination of the goods; if they were carried out also by the territorial state, the free movement of goods would be seriously hindered while causing great damage to international maritime trade.⁶

Freedom of maritime trade is a principle⁷ related to populations that were indissolubly devoted to maritime navigation: i.e. the Chaldees, the Egyptians and the Carthaginians. This principle specifies in that of free movement of goods (storage, labelling, re-packaging manufacturing, etc.).

⁶ Free Ports are therefore open to all goods irrespective of their nature, quantity and country of origin, consignment or destination. Nevertheless states do impose prohibitions or restrictions justified on grounds of public morality, public policy or public security, the protection of human, animal or plant health and life, the protection of national treasures of artistic, historic or archaeological value, or the protection of industrial or commercial property.

Normally, Customs authorities have also the right to require that goods which present a danger or are likely to spoil other goods or which, for other reasons, require special facilities are placed in premises specially equipped to receive them.

⁷ The doctrine (ZUNARELLI) has often identified the customary principle of free international maritime trade with the principle according to which the foreign vessels have the right of entering national ports without discriminations in order to carry out maritime trading. Actually, the second principle concerns exclusively the juridical condition of foreign vessels in national ports.

It is now hightime to analyse the elements which constitute the juridical nature and status of the Free Ports in the world. According to the American doctrine⁸, Free Ports and Free Trade Zones may be defined as *extraterritorial areas* or as *free economic areas*, as they are not subject to the jurisdiction of the territorial state with regard to movement and controls on goods, Customs treatment, banking law, taxation, labour law, economical laws and transactions, but not necessarily all criminal laws. This peculiar regime, too often interpreted by the doctrine merely as an exemption from Customs duties, is applicable to the whole harbour plants (sheet of water, quays, wharves, warehouses, factories, etc.) as in the case of Free Ports, or only to some port's areas as in the case of Harbour Free Zones. The difference is only quantitative.

Free Ports may be defined differently⁹ from country to

⁸ Cf. FRANKEL, "*Port Planning and Development*", New York, Chichester, Brisbane, Toronto, Singapore, 1976, p. 237.

⁹ The most picturesque definition of Free Ports is that of American Congressman E. CELLER: "A Trade Zone (Free Port) is a neutral, stockaded area where a shipper can put down his load, catch his breath, and decide what to do next" (THOMPSON, "*Role of Foreign-Trade-Zones in World Trade Significantly Enlarged*", in *Foreign Commerce Weekly*, 26 June 1950, p. 1). Among the many other definitions are those of E. SIEGERT: "Out-of-Customs places (*Zollausschluesse*) are the portions of seaports excluded from Customs territory; they carry designation, free ports (*Freihäfen*)" (SIEGERT, "*Zollgesetz und Zolltarifgesetz*", Berlin, 1953, p. 26), and of MONNET: "From the commercial viewpoint, a free port is a neutral, denationalised, extraterritorialized plot of ground that is considered to be foreign territory, pushing back, in effect, the action of customs and placing it behind a given line, to which may enter freely all vessels, whatever be their nationality, and all merchandise, whatever be their nation of origin, for purposes of warehousing, manipulation, and exportation without unnecessary formalities and restrictions and without customs requirements, as long as the goods do not move into the interior of a country" (MONNET, "*La Création de Zones*

country according to respective specific economic activities but in general certain basic features are given.¹⁰

Geographically, reference is made to a strategically located¹¹ closed port region, without resident population, and with associated handling and warehousing facilities.

The frontiers of the Free Port coincide with the Customs barrier and are controlled by the Customs authorities. Therefore, the area of the Free Port must be securely fenced in order to offer the maximum guarantee against frauds and evasions. It is normally the task of the Authority of the Free Port to build the Customs barrier and maintain it in good conditions while carrying out all the necessary works (e.g. providing and maintaining the premises destined to host the Customs authorities). It is important to remind the reader that the Customs surveillance cannot be exercised *within* the Free Port area, as it is considered to be *outside* the Customs territory.¹² For this reason, the Customs authorities have the right to be put in the best conditions to carry out the surveillance and the controls at the entrance/exit points

Franches dans nos Ports Maritimes, est-elle desirable?, Lyon, 1905, p. 17.) On the subject see THOMAN, "Free Ports and foreign-trade zones", Cambridge, Maryland, 1956, pp. 6-9.

¹⁰ THOMAN, *cit.*, pp. 6-9. Thus also HEIDELOFF, *op. cit.*, p. 247.

¹¹ In fact, Free Ports are to be recommended where, owing to their geographical location and other local conditions such as space, labour and power, the ports are in a position to serve a number of countries either by sea or by land. Cf. BAUDELAIRE, "Port administration and management", Tokyo, 1986.

¹² As remarked in chapter one (*supra*), the political territory and the Customs territory of a state not always coincide. The separation of the Free Port zone from the Customs territory is not, as the doctrine often says, a "*fictio iuris*", but a legal reality wanted by the state, which, within the territory subject to its sovereignty, follows historical, economical, geographical, political *criteria* or fulfils international law obligations.

of the Free Port zone. A close collaboration between the Authority of the Free Port and the Customs authorities is necessary in order to ensure the transshipping or warehousing goods with no or very little administrative and Customs interference. Only those Free Ports that offer maximum operational efficiency and security as well as minimum bureaucracy, meet the market needs of international trade.

The area of the Free Port is destined to free international trade, according to the customary principles of equality, freedom and non-burdensomeness. All ships are admitted into the Free Port on equal terms and without discriminations, disregarding of their flag, provenance or destination. Restrictions relative to certain ships or goods are not permitted as discriminatory, but all Free Port Authorities have enacted very strict rules in regard to the handling of dangerous goods, like petroleum and explosives. In Singapore, for example, the Dangerous Goods, Petroleum and Explosives Regulation of 1977 and its amendment regulations of 1987, requires that all vessels carrying dangerous goods, whether in bulk or packaged form, must inform the port master 12 hour before arrival, anchor at special areas designated by the Singapore Port Authority, and load and discharge the petroleum only at designated places or oil terminals.

As for Customs treatment, Free Ports are separated from the Customs area of the state to which they belong by sovereign rights, that is with respect to Customs regulations and controls. Free Ports are legally considered to be outside the Customs territory¹³, i.e. they are locationally alienated

¹³ Free Ports are legally outside Customs jurisdiction in most host countries; therefore trade with such ports is exempted from Customs duties or import/export controls.

from the rest of the economy and exempted from certain laws and regulations applied to the domestic area. In many cases Free Ports are also exempt in total or part from income taxes, property taxes, value added, and various other taxes. Most Free Ports offer fiscal incentives to investors, as well. Furthermore, commercial activity, banking and recruiting are ruled differently and generally less strictly.

In Free Ports, all Customs formalities are avoided: goods do not need to be presented to Customs officials, declared or placed under a Customs procedure. This is a decisive factor which provides shipping traffic and trade in merchandise in Free Ports with what amounts to virtually unrestricted freedom of operations and represents the basis for the liberality and attractiveness which distinguishes Free Ports.¹⁴

Within the Free Port, foreign goods are considered as being still abroad, although they are generally subject to existing laws and regulations pertaining to safety, sanitary requirements or illegal transactions.¹⁵ Domestic goods brought into the Free Port from inland are treated as exported from the country with respect to the rules of foreign trade regulations.¹⁶ Merchandise imported from abroad can be unloaded, stored and transported with exemption of domestic tariffs, duties or regulations (e.g. making a Customs'

¹⁴ REBHAN, "The Hamburg Free Port System: Pre-Conditions and Importance", in IAPH, *Proceedings of the Fourteenth Conference*, Hamburg, 4-10 May, 1985, p. 126. The Author points out that the freedom which exists within Free Ports is, however, subject to limits, e.g. when goods represent an endangering of public safety and order or of the health of people, plants and animals.

¹⁵ In this sense NAGORSKI, "Port problems in developing countries", Tokyo, 1972.

¹⁶ *Ibidem*.

declaration or providing guarantees) until they actually leave the Free Port. If their destination is another foreign country, they are permitted to leave the Free Port without having to pay the Customs dues which would have incurred at any point. Instead, if their destination is the host country itself, they are taxed on leaving the Free Port as if they had just arrived from abroad.¹⁷ Therefore, regulations of the Customs jurisdiction are applied only if the commodities pass the Customs barrier and get into the Customs area, while practically no Customs treatment is applied for the transit trade.

Free Ports are especially suited for transit trade¹⁸ and develop a particular country's international shipping and air services. Singapore and the United Arab Emirates stand as examples.

The Free Port status encourages the *entrepôt* trade as merchandise can be temporarily stored without payment of Customs and import duties for an indefinite period of time.

Another advantage of Free Ports is the possibility for importers to exhibit their merchandise.

Importers or foreign exporters can dispose of the stocks freely because the owner has free access to the stored goods. This includes also a processing of commodities in conformity with the market demand in order to improve their appearances or commercial qualities.

The majority of Free Ports offer the possibility of manipulating the goods to a certain extent; this consists mainly

¹⁷ BRANCH, "Elements of Port Operation and Management", London-New York, 1986, p. 107.

¹⁸ In fact, transit traffic can be handled without administrative controls, except for reasons of safety or health. Also the procedures of loading and discharging are simplified by the lack of Customs' formalities.

of grading, repackaging, cleaning, blending, and similar functions, which usually are permitted in addition to warehousing. Besides, some Free Ports have developed industrial activities, which are concentrated on labour-intensive manufacture of goods requiring inputs from a variety of distant locations.¹⁹ The industrial plants located within the Free Port are exempt from the payment of Customs duties on the raw materials and the goods (including machinery) involved in the production, as well as on the finished and semi-finished products re-exported *via* sea.

It is remarkable that Free Ports and Free Trade Zones have made substantial contributions to the development of modern export-oriented industries in countries like Singapore, Korea, Taiwan, Ireland, Malaysia, Mexico, Sri Lanka, and Hong Kong.²⁰

In general, the statutes of the modern Free Ports do not allow the use and consumption of goods by residents within the Free Port, except for industrial consumption.

In order to operate within a Free Port it is necessary to obtain a licence from the Free Port Authority. Licences vary according to the type of activity carried out, but in general licences can be:

A) TRADING LICENCES, which allow the holder to import, export, sell, distribute and store all the goods specified in the licence;

B) INDUSTRIAL LICENCES, which allow the holder to import raw materials, carry out the manufacture of speci-

¹⁹ FRANKEL, "The Concept of Free Ports and Their Contribution", in *Hansa, Special Edition IAPH/PORTEX*, April 1985, p. 637. Compare also HEIDELOFF, *op. cit.*, p. 247 and PAWLIK, "Die rechtliche Struktur von Freihäfen und Hafensfreizonen", PhD-Thesi, Münster, 1974, pp. 1-14.

²⁰ In this sense HEIDELOFF, *op. cit.*

fied products and export the finished product to any country;

C) SERVICE LICENCES, which allow the holder to carry out the services specified in the licence within the Free Zone.

Licences are normally revoked by the Authority when a licensee fails within a reasonable time to carry out any activity authorised by the licence; ceases permanently his activity; or contravenes any provision of the Free Port Act or any conditions attached to the licence.

An other peculiar aspect of the status of Free Ports in the world is represented by the provision of a series of offences and enforcement, differently disciplined by the various statutes. Among the most common offences configured by the Free Port Acts are: the failing to comply with any condition attached to a licence without lawful excuse; the refusal to furnish the information required by the Authority; the production of a false or misleading document in a particular material; the obstruction of any officer of the Authority or public officers in the performance of their functions under the Free Port Acts; or any other contravenences of any provision of the Free Port Acts or any regulations made under them. A person who commits an offence under the Free Port Acts can, on conviction, be liable to fines or even imprisonment, and to the payment of all duty, import levy, sales tax and related penalties and interests due.

A special jurisdiction is often provided to try an offence under the Free Port Acts or any regulations made under them and to impose any penalty provided by the Free Port Acts.

In a sector rapidly changing like that of maritime law and in an international market highly competitive like the one

today, a Free Port regime described so can provide a “dynamic organisation of the demand” as substitution for the “static supply of maritime services”. In other words, complementary to the international discipline of the Free Ports is the supply of advanced services next to the usual port’s infrastructures. Only this way the Free Port can face the challenge of international maritime trade market.

2. THE ADMINISTRATION OF THE FREE PORTS

The Free Port zone is usually operated by a state, provincial, or local agency, and may also be under the management of a privately or publicly owned (profit or non-profit) corporation which provides all services (security, water, electricity, pier operation, etc.) to tenants of the Free Port.

In the case of the Harbour Free Zones, the Authority entrusted with management of the port or a company created *ad hoc* is responsible of the management of the zone. The difference between the two options lays in the fact that only in the first case the Authority has to keep the financial management of the Harbour Free Zone and the rest of the port separately.

As for Free Ports, the only major Free Port not run by a Port Authority is Hong Kong; the Marine Department of the Government of the Hong Kong Special Administrative Region is responsible for all navigational matters and most of the port facilities are privately owned and operated, with minimum interference from the government.

The Authority of the Free Port carries out its functions in complete autonomy and in fulfilment of an *international munus*.

The autonomy doesn't involve any problems of sovereignty: this one surely belongs to the state where the Free Port is situated, but in carrying out its activities the Authority of the Free Port is not subject to any authoritative measures of the territorial state neither under the point of view of the controls on goods and operations nor the concrete organisation of the Free Port.

The objects of the Authority are to control and manage the Free Port Zones, to promote and encourage external trade, to provide infrastructural, storage and ancillary facilities to the licensees in the Free Port zones, etc. To this end the Free Port Authority has the power to issue licenses to operators to carry out authorised activities²¹ within Free Port zones; to allocate areas, spaces, wharves and any other facility or structure which may be available in the Free Port on such terms as the Authority deems appropriate; to levy rents, charges and other dues to be paid by licensees; to enter into an agreement with another person for the performance or provision by that person of any service or facility which the Authority is empowered to perform or provide.

As far as the international *munus* is concerned, the concept ought to be explained first of all from a dogmatic point of view. The Italian administrative doctrine (M.S. GIANINI) has individuated five figures, next to the natural person, which are commonly utilised by the legislator: the *munus* (or *officium* in the subjective sense), the *de facto entity di fatto*, the *officium* (or *officium* in the objective sense) and

²¹ They normally include warehousing and storage, breaking bulk, sorting, grading, cleaning, mixing, labelling, packing and processing.

the *body*.²² Our examination will be limited only to the concept of *munus*.²³

The *munus* is the most ancient figure: it was already known in the pre-roman and roman time. Its morphology is extremely simple: the legal system entrusts a physical or juridical person with the protection of someone else's interest.

From a dynamic viewpoint, the activity of the *munus* is strictly directed towards a certain aim (the best care of the interest assigned): for this reason it materialises a function. The aims pursued by the *munus* are someone else's, so its activity protects general interests, i.e. helps the entire community.²⁴ As a consequence the person entrusted with the *munus* has duties and obligations, and therefore also powers.

The *munus* can be private or public according to the holder of the protected interest, who is a natural person or a determined group of natural persons (private *munus*), or the collectivity (public *munus*).²⁵ In the last case the *munus*

²² Cf. QUERCI, "*Diritto della Navigazione*", Padua, 1989, pp. 326 *et seq.*

²³ See also GIANNINI, "*Diritto amministrativo*", Vol. I, Milan, 1993, p. 127 *et seq.* The denomination "*munus*" comes from the Codex iuris canonici and is purely conventional. It is useful for avoiding eventual ambiguities with the word "*officium*"; as a matter of fact some jurists would rather talk about "*officio*" (see FROSINI "*Osservazioni sulla struttura giuridica dell'ufficio*", in *Rivista di diritto civile*, 1964, p. 139). In the Roman Republican law *munera* in a technical sense were only the offices intermediate between the *honores* and the *officia*, even if there was already a notion of *officium* in a broad sense, which became general later on (see CANCELLI, "*Saggio sul concetto di officium in diritto romano*", in *Rivista italiana per le scienze giuridiche*, Vol. IX, 1957-58, p. 551.)

²⁴ See again QUERCI, "*Diritto...*", *op. cit.*, p. 326.

²⁵ A typical example of private *munus* is the sea-captain as leader of the expedition and of the sailing community, while the public *munera* can be professional (e.g. notary), inherent to professional activities (e.g. the legal and

may safeguard private interests as well, but the protection of the public ones remains primary. On the contrary, the private *munus* is entrusted with the direct and immediate protection of private interests, even if the general public interests are always involved in it.

Also the Authority of the Free Port is entrusted with a *munus*: this is not a private or public *munus* but an international *munus*. In fact, the aim pursued by the Authority is someone else's because it belongs to international maritime trade, free movement of goods and finally to the commercial international operators involved in trading within the Free Port. The activity of the Authority is still a function so the Authority is entrusted with various powers, but it is also obliged to make sure that free international maritime trade and free movement of goods are inviolable and intangible within the Free Port.

The Authority of the Free Port pursues international interests, i.e. the interests of the international operators; it is therefore an "International Authority". In fact, its institutional aim is not that of the state where the Free Port is situated, but that of the entire international community engaged with free international maritime trading.

As far as the structure and internal organisation of the Authority is concerned, in all the Free Ports it is very likely to find a Board, often composed of representatives of both public and private sectors; a Chairman; a Director-General, responsible for the execution of the policy of the Board and for the control and management of the day-to-day operation of the Authority; a Permanent Secretary; and a Comptroller.

sanitary functions of the captain), or assigned (e.g. commercialists, technical professionists, etc.).

All Free Ports statutes contain rules regarding the conditions required to be appointed, the regime of incompatibilities²⁶, the length of the office, the financial treatment, etc.

The objects of the Authority are to:

- 1) control and manage the Free Port Zones;
- 2) promote and encourage external trade;
- 3) provide infrastructural, storage and ancillary facilities to the licensees in the Free Port zones;
- 4) issue licenses to operators to carry out authorised activities within Free Port zones;
- 5) allocate areas, spaces, wharves and any other facility or structure which may be available in the Free Port on such terms as the Authority deems appropriate;
- 6) levy rents, charges and other dues to be paid by licensees;
- 7) enact ordinances relative to pilotage, safety, personnel recruitment, control of pollution, etc.

Generally speaking, flexibility is the key word as regard to the management of Free Ports: attractive investments terms, lower profit taxes, extended leases if advanced technology is involved, are among the incentives to attract foreign investment.²⁷

3. THE SOURCES OF REGULATION OF THE FREE PORTS

The primary source of regulation of the Free Ports is customary, i.e. the ancient general principle of the freedom

²⁶ Some statutes prevent members of the National Assembly from being appointed as members of the Board.

²⁷ Cf. BAUDELAIRE, "*Port administration and management*", Tokyo, 1986, p. 116.

of maritime trade²⁸, associated to the name of some populations who were indissolubly devoted to maritime navigation: i.e. the Chaldees, the Egyptians and the Carthaginians. In particular the Chaldees and the Egyptians sailed down the Tigris, the Euphrates and the Nile. The vessels of the Phoenician used to leave from Sidon and Tyre heading for Cyprus, Crete, Ustica, Sardinia, Marseilles and even Cadiz.²⁹

The “non-written” maritime law, which modern legislation often refer to, is nothing but the principle of inviolability of free international maritime trade³⁰, whose demonstration absorbs the whole second part of the “*Mare liberum*”,

²⁸ Other jurists (GIULIANO, SINGH, DUPUIS, ODEKE, SPASIANO) deny the existence of a real principle of international customary law on free international maritime trade, pointing out that on the subject there is only a fairly widespread practice. Actually, the whole international maritime traffic seems to be inspired by the said customary principle. In confirmation of this the institutional treaty (Geneva, 6th March 1948) of the Intergovernmental Maritime Consultive Organization (IMCO), now International Maritime Organization (IMO), cites among the purposes of the organisation that of “encouraging the removal of discriminatory actions and unnecessary restrictions by Governments affecting shipping engaged in international trade so as to promote the availability of shipping services to the commerce of the world without discrimination”. It is also remarkable that the principle can be traced also in the arbitrator’s award regarding the controversy between the shipping company Aramco and the Government of Saudi Arabia; in fact it is stated that: “according to a great principle of public international law, the ports of every state must be open to foreign merchant vessels, and can only be closed when the vital interests of the state require so.” Cf. COLOMBOS, “*International Law of the Sea*”, London, 1967.

²⁹ For a full and penetrating investigation of the history of maritime law cf. E.O. QUERCI, “*Introduzione alla scienza giuridica marittima. Storia del concetto del diritto marittimo.*”, vol. III, in *Monografie di Diritto della Navigazione raccolte da F.A. Querci, Direttore della Rivista Trasporti Diritto-Economia-Politica*, Trieste, 1999, pp. 108 et seq..

³⁰ Cf. QUERCI, “*Diritto marittimo fenicio*”, in *Rivista di Diritto della Navigazione*, 1963.

by Dutch jurist Hugo De Groot, known with the Latin name of Grotius and mistakenly considered by the doctrine as the conceiver of the freedom of the seas. In his famous work Grotius defended the right of the Hollanders of entering into trade agreements with the East Indies against the Hispanic-Portuguese territorial claims. Grotius believed that according to the *ius gentium*, freedom of navigation was an inalienable prerogative of all human beings, strictly connected with the freedom of maritime trade. For this reason Grotius condemned the Portuguese for trying to subject the East Indies seas to their sovereignty and exclude foreigner vessels from maritime trade.³¹

Because in the end the principle of inviolability of free international maritime trade is represented by the free movement of goods, we can therefore assume that in all Free Ports the free movement of goods originates from customary law. For this reason, the content of the customary principles regarding Free Ports given in all features that are common to all Free Ports of the world which we tried to gather in the first part of this chapter. The core of the Free Port system is represented by the freedom of transit, the free movement of goods (and the following prohibition of

³¹ See ZUNARELLI, "Trasporti marittimi (organizzazione internazionale dei)", in *Enciclopedia del Diritto*, Vol. XLIV, Milan, 1988, pp. 1133-1135. In the *Mare liberum* the demonstration of the freedom of international maritime trade is even more accurate than that of the freedom of the high seas. Grotius assumes that the source of the freedom of international maritime trade, as well as the freedom of the high seas, is represented by the natural law. The reference to the natural law characterised all the most inspired pages of Grotius' most notorious work. It is remarkable that Grotius believes that freedom of navigation and maritime trade refer to the human beings and not to the states. On this subject see also CONFORTI, "Il regime giuridico dei mari", Naples, 1957.

syndicating their quantity, quality, destination of place of origin), the prohibition of discriminatory measures and of imposing Customs duties, the internationality of the Free Port territory, its complete autonomy and the international *munus*.

International custom is the most important source of the international law, "being it scarcely organised in institutional forms and dominated by the principle of parity and decentralisation".³² In international law there are no sources of general rules so that such rules are formed outside proper proceedings and they only manifest themselves in the facts.³³

The role of custom in the international system emphasises the fact that original law is superior to derivative law.

³² In this sense ZICCARDI, "*Consuetudine, d)Diritto internazionale*", in *Enciclopedia del Diritto*, Vol. IX, Milan, 1961, p. 476. In his "*Vita giuridica internazionale*" (Milan, 1992), Ziccardi underlines the fact the custom is not a source of rules but it is a rule itself. If the rule is conceived as a concrete manifestation of a socially acceptable rule of behaviour, then there is no difference between the rule and the fact in which the rule is manifested.

³³ Of great interest is the study of the maritime science and of the hierarchy of sources, carried out by E.O. QUERCI. The Author correctly writes: ". . . generale per il diritto marittimo è la partizione tra fonti-atto e fonti-fatto alla quale corrisponde quella tradizionale tra *ius scriptum* e *ius non scriptum* . . . Nell'ordinamento giuridico marittimo generale, gli esempi di relatività dogmatica del concetto di fonte sono dati dalla consuetudine, dall'uso della prassi mercantile . . ., ove, in teoresi, non v'ha concordia sulla determinazione dei loro requisiti costitutivi. Di conseguenza, la consuetudine, quale figura dogmatica e fonte formale dell'ordine giuridico marittimo, finisce per identificarsi con la nozione teoretica della consuetudine in generale." Thus E.O. QUERCI, "*Evoluzione nel diritto marittimo. Sistemática e dogmatica giuridica marittima*", vol. V, in *Monografie di Diritto della Navigazione raccolte da F.A. Querci, Direttore della Rivista Trasporti Diritto-Economia-Politica*, Trieste, 1999, pp. 156-157.

It is of great importance for the interpreter to recognise the elements revealing the existence of a custom so that he can be able to declare the rule every time that the facts attest its existence. Modern doctrine utilises the most various methods to prove the existence of custom and refuses firmly to circumscribe its nature. This is partially to react to the positivistic theories which assimilated international custom to a tacit encounter of wills on a certain rule of behaviour. An international custom is the expression of society as a whole and it exists even if not recognised by all the states.³⁴ Relevant evidences of the existence of an international custom are the constant and general observance of the non-written rule, the explicit mention of such rule in formal acts or in the praxis as attestation of *ius receptum*, in the conventional codification of customary rules (disregarding the fact that they will be turned into written rules later on, as this may occur only in some states or may not happen at all), in the projects of general conventions, in the internal legislation of the states and finally in their praxis.

In the majority of the Free Ports which have been studied in chapter two (Hong Kong, Singapore, Panama, Malta, Abu Dhabi, etc.), the legal discipline is given by the internal legislation of the state (laws, decree-laws, etc.). As far as the management and administration of the Free Port is concerned, all the institutive acts entrust the Authority of the Free Port with the most extensive normative powers. These internal legislative acts only crystallise those customary principles of free international maritime trade which

³⁴ See ZICCARDI, "*Vita giuridica internazionale*", Milan, 1992, pp. 365 *et seq.*

are common to all the Free Ports of the world and constitute the core of the Free Port system.

The status of the Free Port of Trieste is peculiar, or better said, unique as the international customary rules on free international trade are not crystallised by an act of the Italian state but by a multilateral peace treaty which configures the Free Port of Trieste as a real “international servitude”, which is able to ensure that the port and transit facilities of Trieste are available for use on equal terms by all international commercial operators, in such manner as is customary in the other Free Ports of the world (Singapore, Hong Kong, etc.). For a full picture of the Free Port of Trieste we refer the reader to chapter two (*supra*).

The attitude of the states towards an international custom can be an evidence of the existence of such custom, but of great significance is also the position of the organs of the international institutions, especially the international tribunals. In fact, Article 38 of the Statute of the International Court of Justice¹ considers international custom “as evidence of a general practice accepted as law” and positions it at the second place of the sources ladder, when the Court has to take a decision over a dispute in accordance with international law. Article 38 mentions, next to the international custom, also the “international conventions, whether general or particular, establishing rules expressly recognised by the contesting states”, and the “general principles of law recognised by civilised nations”. The last two instruments do not constitute a third source of international law but are only auxiliary means of determination for law in case both sources of international law (custom and treaty)

¹ Cf. ANNEX XXIV, *infra*.

are unable to fill the “application’s technical gaps” of the international treaties or the customs.³⁶

In conclusion, we must be aware that all enumeration of elements revealing the existence of an international custom is merely illustrative. International law does not discipline the forms of manifestation of original law, while in other legal systems there is the tendency of classifying the natural expression of legal rules into rigorous formulas. In any case no legal system can deny the spontaneous forming of new original law, that is of new custom.³⁷

4. THE ROLE OF THE FREE PORTS IN INTERNATIONAL MARITIME TRADE WITH PARTICULAR REGARD TO INTERNATIONAL TRANSIT TRADE

In the Community Law Free Ports are meant to promote, because of the Customs facilities available in them, all activities related to external trade and in particular the redistribution of goods within the Community and elsewhere.³⁸ In the “Whereas” introducing Council regulation (EEC) No. 2504 of 25 July 1988³⁹ we can see the philosophy of the Community legislator: Free Ports are only instruments of the Community’s commercial policy, essentially intended

³⁶ Cf. QUERCI, “*Limiti di giurisdizione nel porto franco di Trieste*”, in *Rivista Trasporti*, No. 70, Modena, 1997.

³⁷ See ZICCARDI, “*Vita.*”, *op. cit.*

³⁸ For a full and penetrating investigation of the subject see LONGO-BARDI “*Il porto libero di Trieste nel regime convenzionale internazionale dei porti marittimi*”, in *Studi in onore di Antonio Lefebvre*, Rome, 1995, pp. 583-593.

³⁹ Council regulation (EEC) No. 2504 of 25 July 1988 was practically transfused in the Community Customs Code established by Council regulation (EEC) No. 2913/92 of 12 October 1992. For the text of the Regulations see ANNEX I and ANNEX III, *infra*.

for promoting exports and therefore deprived of a far-reaching significance.

Completely different is the approach towards Free Ports of the International Legislator, that is the League of Nations in the past, and the United Nations today.⁴⁰ In International Law, the Free Port is regarded as a fundamental means of ensuring the accomplishment of the customary principle of free international trade, free transit of goods and ships and free access to the sea for the land-locked states.

The Peace Treaty of Versailles of 28 June 1919⁴¹ obliged Germany not to modify or suppress the Harbour Free Zones still existing in the German ports on the 1st August 1914, beginning of the First World War. The intention was to safeguard the Free Port regime, seen as a fundamental instrument for the realisation of the principle of free international trade.

Article 311 of the Peace Treaty of Saint-Germain of 10 September 1919 provided for the possibility of the states of negotiating the forms of utilisation of the Free Ports. In consequence the agreements with Czechoslovakia (1922), Austria (1923), Hungary (1927) for the utilisation of the Free Port of Trieste, followed by those of 1955 and 1985 with Austria and 1987 with Hungary.

The end of the First War War witnessed the establishment of the League of Nations, which endeavoured to codify various matters of maritime law, especially in time of peace. An important clause was inserted in article 23 of the Covenant of the League that "subject to and in accordance with the provisions of international Conventions existing or

⁴⁰ Cf. LONGOBARDI, *op. cit. supra*.

⁴¹ See ANNEX XVII, *infra*.

hereafter to be agreed upon, the members of the League will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all members of the League".⁴² Following this clause, a Conference was held in Barcelona (10 March-20 April 1921). The Conference constituted a missed opportunity for the League of Nations for defining an international regulatory scheme for all Free Ports, thus crystallising the customary rules existing in Free Ports like Hong Kong, Gibraltar, Hamburg, etc.

The outcome of the Barcelona Conference were two Conventions and Statutes relative to "Freedom of Transit" and the "Regime of Navigable Waterways of International Concern, and a "Declaration"⁴³ in which the Contracting States recognised the right of the land-locked states to enter ports and register their vessels under the national flag. In particular, the Convention and Statute on Freedom of Transit (1921)⁴⁴ set fundamental principles for the development of international trade. According to article 1, "persons, baggage and goods, and also vessels, coaching and good stock, and other means of transport, shall be deemed to be in transit across territory under the sovereignty or authority of one of the Contracting States, when the passage across such territory, with or without transshipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey, beginning

⁴² Cf. COLOMBOS, *"The International Law of the Sea"*, London, 1967, p. 21.

⁴³ See on this QUENEUDEC, *"Conventions Maritimes Internationales"*, Paris, 1979, p. 515.

⁴⁴ For the text of the Convention of Barcelona see ANNEX XVIII (*Treaty Series*, No. 7, 1921-1922, pp. 13 *et seq.*).

and terminating beyond the frontier of the state across whose territory the transit takes place". Besides the Contracting States shall facilitate free transit in accordance with the customary conditions and with no distinction between the nationality of persons, the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods or of vessels, coaching, goods stock or other means of transport (article 2).

Article 3 states that the traffic in transit shall not be subject to any special dues in respect of transit except for those dues intended solely to defray expenses of supervision and administration entailed by such transit.

As for article 4, the Contracting States are entitled to deny the transit for passengers whose admission into their territories is forbidden, or for goods of a kind for which the importation is prohibited, either on grounds of public health or security, or as a precaution against diseases of animals and plants.

Article 5 recognises the right of the Contracting States of taking measures in pursuance of signed general international Conventions, particularly Conventions concluded under the auspices of the League of Nations, relating to the transit, export or import of particular kinds of articles, such as opium or other dangerous drugs, arms or the product of fisheries, or in pursuance of general Conventions intended to prevent any infringement of industrial, literary and artistic property, or relating to false marks, false indications of origin, or other methods of unfair competition.

As previously said, the Barcelona Conference did not lead to an international discipline of the Free Ports, but discussed over a project proposed by a Study-Commission of the League of Nations in 1920 and regarding the application of

an international regime to a complex of ports of great international interest (Danzica, Memel, Dedeagac), which fell before the Second World War (Danzica and Memel), or never had any concrete applications (Dedeagac).

The idea of configuring for certain maritime ports a legal regime more favourable to the development of international trade reflected an objective necessity, still felt nowadays, which justified the application to determined ports of those rules and rights which the international law has disciplined in sectors which may be different from that of the regime of maritime ports.⁴⁵

The codification of the Conference of Barcelona was continued at the Geneva Conference of 1923, which was likewise convened under the auspices of the League of Nations. The necessity of a uniform regime for all maritime ports, which ensured the freedom of international maritime trade through the free and indiscriminate access to the ports, led the Conference to draw up an important Convention and Statute on the "International Regime of Maritime Ports"⁴⁶, signed at Geneva on 9 December 1923.

The Convention doesn't apply to all maritime ports, but only to those which are normally frequented by sea-going vessels and used for foreign trade, and above all to Free Ports. The Convention obliges the Contracting State, on a basis of reciprocity, to grant the other Contracting States freedom of access to the port, the use of the port, and the full enjoyment or benefits relating the navigation and commercial operations which they affords to vessels and their cargoes and passengers (article 1). The equality of treat-

⁴⁵ In this sense LONGOBARDI, cit., pp. 588-589.

⁴⁶ For the text of the Convention see ANNEX XIX (*Treaty Series*, No. 24, 1925), *infra*.

ment thus established covers facilities⁴⁷ of all kinds, such allocation of berths, loading and unloading facilities, as well as dues⁴⁸ and charges of kinds levied in the name or for the account of the Government, public authorities concessionaires or undertakings of any kind (article 2).

In any case, Port Authorities can take all the measures necessary for the proper conduct of the business of the port provided that these measures comply with the principle of equality of treatment (article 3).

In order to prevent that the principle of equal treatment in maritime ports may be rendered ineffective in practice by the adoption of other methods discriminating against the vessels of a Contracting State using such ports, article 6 imposes the Contracting State to undertake the application of the provisions of Articles 4, 20, 21 and 22 of the Statute annexed to the Convention on the International Regime of Railways, signed Geneva on December 9, 1923, so far as they are applicable to traffic to or from maritime port, whether or not such Contracting State is a party to the said Convention on the International Regime of Railways.

If, for special reasons, a Contracting State grants special Customs facilities on other routes for the importation or ex-

⁴⁷ The Convention does not entail in any way the withdrawal of facilities which are greater than those provided for in the Statute and which have been granted in respect of the use of maritime ports under conditions consistent with its principles, also entails no prohibition of such grant of greater facilities in the future.

⁴⁸ The Customs duties levied in any maritime port situated under the sovereignty or authority of a Contracting State may not exceed the duties levied on the other Customs frontiers of the said State on goods of the same kind, source or destination, unless there are special reasons justifying an exception, such as those based upon special geographical, economic, or technical conditions.

portation of goods, it shall not use these facilities as a means of discriminating unfairly against importation or exportation through the maritime ports situated under its sovereignty or authority.

A deviation from the provision of the Convention is possible, for as short time as possible, only when the Contracting State is obliged to take measures of a general or particular character in case of an emergency affecting the safety of the state or the vital interests the country (Article 16).

According to article 17, in any case the Contracting States can deny transit to passengers whose admission to their territories is forbidden, or of goods of a kind which the importation is prohibited, either on grounds of public health or security, as a precaution against diseases of animals or plants. Each Contracting State is then entitled to take the necessary precaution measures in respect of the transport of dangerous goods or goods of a similar character, as well as general police measures, including the control of emigrants entering or leaving its territory, it being understood that such measures must not result in any discrimination contrary to the principles of the Convention.

Finally, the Contracting States may take all the measures in pursuance of signed general international conventions, in particular the conventions concluded under the auspices of the League of Nations, relating to the traffic in women and children, the transit, export or import of particular kinds of articles such as opium or other dangerous drugs, arms, or the produce of fisheries, or in pursuance of general conventions intended to prevent any infringement of industrial, literary or artistic property, or relating to false marks, false

indications of origin or other methods of unfair competition.

To the Free Zones is dedicated a provision of the Convention on Transit Trade of Land-Locked States, done at New York on 8 July 1965⁴⁹. In fact, article 8 provides that for the convenience of traffic in transit⁵⁰, Free Zones or other Customs facilities may be provided at the ports of entry and exit in the transit states by agreement between those states and the land-locked states. Facilities of this nature may also be provided for the benefit of land-locked states in other transit states which have no sea-coast or seaports.

In general, the Convention recognises "the need of land-locked countries for adequate transit facilities in promoting international trade"⁵¹ and therefore accords them, on a basis of reciprocity, free transit through the territory of the contracting states, in accordance with the principles of customary international law or applicable international conventions and with their internal regulations, as well as equal treatment in ports.

The Convention reaffirms the principle adopted by the United Nations Conference on Trade and Development, according to which the goods transported by the vessels

⁴⁹ For the text of the Convention see ANNEX XX (*Treaty Series*, No. 597, 1968, pp. 43-63).

⁵⁰ For the purpose of the Convention, the term "traffic in transit" means the passage of goods including unaccompanied baggage across the territory of a Contracting State between a land-locked State and the sea when the passage is a portion of a complete journey which begins or terminates within the territory of that land-locked State and which includes sea transport directly preceding or following such passage (article 1).

⁵¹ The recognition of the right of each land-locked State of free access to the sea is considered an essential principle for the expansion of international trade and economic development.

flying the flag of the land-locked states are free to enter the regional and international markets, on a basis of reciprocity but without the need of a specific agreement (principle IV).

The contracting states shall take all measures in order to avoid delays in or restrictions on traffic in transit, except in cases of *force majeure*.

No discrimination shall be exercised which is based on the place of origin, departure, entry, exit or destination or any circumstances relating to the ownership of the goods or the ownership, place of registration or flag of vessels, land vehicles or other means of transport used (article 2).

Article 1 allows the trans-shipment, warehousing, breaking bulk, and change in the mode of transport of the goods as well as the assembly, disassembly or reassembly of machinery and bulky goods, provided that such operations are undertaken solely for the convenience of transportation. This provision is not to be intended that the contracting states are obliged to establish or permit the establishment of permanent facilities on its territory for such assembly, disassembly or reassembly, but the Convention also does not preclude the grant of greater facilities in the future (article 9).⁵²

Goods in transit are not subject to any Customs duty, and means of transport in transit are not subject to special taxes or charges higher than those levied for the use of means of transport of the transit country (principle IV).

The Contracting States shall apply administrative and Customs measures permitting the carrying out of free,

⁵² The conditions of storage of goods in transit at the point of entry and exit, and at intermediate stages in the transit state may be established by conditions of storage at least as favourable as those granted to goods coming from or going to their own countries (article 6).

uninterrupted and continuous traffic in transit: e.g. simplified documentation and expeditious methods in regard to Customs, transport and other administrative procedures relating to traffic in transit for the whole transit journey, including any trans-shipment, warehousing, breaking bulk, and changes in the mode of transport (article 5).

Article 11 deals with the regime of exceptions to the Convention on grounds of public health, security, and protection of intellectual property. In fact no Contracting State shall be bound by the Convention to afford transit to persons whose admission into its territory is forbidden, or for goods of a kind of which the importation is prohibited, either on grounds of public morals, public health or security, or as a precaution against diseases of animals or plants or against pests. The contracting states are also entitled to take reasonable precautions and measures to ensure that persons and goods, particularly goods which are the subject of a monopoly, are really in transit, and that the means of transport are really used for the passage of such goods, as well as to protect the safety of the routes and means of communication.

Nothing in the Convention affects the measures taken by the contracting state in pursuance of provisions of a signed general international convention, whether of a world-wide or regional character, and related to the export or import or transit of particular kinds of articles such as narcotics, or other dangerous drugs, or arms; or to protection of industrial, literary or artistic property, or protection of trade names, and indications of source or appellations of origin, and the suppression of unfair competition. Nothing in the Convention also prevents any contracting state from taking

any action necessary for the protection of its essential security interests, like its political existence or its safety.

Unlike the Convention of Barcelona and Geneva, the Convention of New York applies also in time of war, as long as it does not prescribe the rights and duties of belligerents and neutrals (article 13).

At the request of either party, any dispute arising with respect to the interpretation of application of the provisions of the Convention is settled, if not by negotiation or by other peaceful means of settlement within a period of nine months, by an arbitration commission (article 19).

At last, also the United Nations Convention on the Law of the Sea, signed in Montego Bay on 10 December 1982⁵³, deals with the freedom of transit and with the right of the land-locked states of access to the sea, removing the obstacles of the previous agreement and of reciprocity, which characterised the past Conventions on the subject.

Article 125 provides for the right of land-locked states of access to the sea in order to exercise the rights recognised by the Convention; therefore they are granted with the freedom of transit through the territory of the transit states with every means of transport. Only the modalities of the exercise of the freedom are to be set by agreements.⁵⁴

⁵³ See ANNEX XXI (UN DIVISION FOR OCEAN AFFAIRS, "*The Law of the Sea*", New York, 1997.), *infra*.

⁵⁴ Cf. TREVES, "*La Convenzione delle Nazioni Unite sul diritto del mare del 10 dicembre 1982*", in *Studi e documenti sul diritto internazionale del mare*, Vol. XIII, Milan, 1983, p. 72. On the problems of the land-locked states see TABIBI, "*The Right of Access of Land-Locked Countries; a Study of Legal and International Development of the Right of Free Access to the Sea*", Kabul, 1970 and CAFLISCH, "*Land-locked and Geographically Disadvantaged States and the New Law of the Sea*", in *Thesaurus Acroasium*, Vol. VII, Tesseloniki, 1977, pp. 304-341. Cf. also HAFNER, "*Die Gruppe*

According to article 127, the goods in transit (and the relative means of transport) are not subject to Customs duties or other levies, except for those due for services effectively rendered. The transit states shall take all measures in order to avoid delays to the transit traffic caused by technical reason but also, to our mind, by arbitrary measures (controls on the goods, restrictions, etc.) taken by the transit state.

Article 131 reaffirms the general principle of equality of treatment in the maritime ports.

These rules met very little resistance during the Conference (while a lot of problems were caused by the provisions of fishing rights of the land-locked and geographically disadvantaged states): this indicates that freedom of transit is today a consolidated usage and the customary character of some of its aspects (in particular the non-necessity of the reciprocity) is now confirmed.

With a brief locution, article 128 of the Convention of Montego Bay, likewise the Convention of New York, sees the main role of the Free Trade Zones in the development of international maritime trade.⁵⁵

An Author (LONGOBARDI) has effectively pointed out that the effort of elaborating a global discipline of Free Ports, interrupted by the League of Nations (Conference of Barcelona of 1921) and never continued by the United Nations, saw its successful completion in Annex VIII of the Paris

der Binnen-und Geographisch benachteiligten Staaten in der dritten Seerechtskonferenz der Vereinten Nationen", in *Zeitschrift ausl. öff. Recht u. Völkerrecht*, Vol. 38, 1978, pp. 568-613.

⁵⁵ Article 128 ("Free Zones and other Customs facilities") states: "For the convenience of traffic in transit, free zones or other Customs facilities may be provided at the ports of entry and exit in the transit states, by agreement between those States and the land-locked States".

Peace Treaty of 1947. Unfortunately this global project, fully coherent with the customary principles on free international maritime trade and free transit trade, is still very little known and scarcely exploited by the competent government (see *supra*, chapter two).

5. THE FREE PORTS AS INTERNATIONAL TERRITORIES

All the Free Ports of the world are characterised by two components: the *dynamic element* and the *static-material element*.

The *dynamic element* is represented by the international function of Free Ports (free international maritime trade and free movement of goods).

The *static-material element* consists of all the properties, buildings, installations, warehouses, factories, naval dock-yards, berths, etc., which are situated in the Free Port area and serve the Free Port activities. All the premises situated in a Free Port are restrained in the sense that they are subdued to the international function aimed at the development of international maritime trade within the Free Port.

It is very interesting to determine the nature of such real estates which are necessary to the existence of the Free Port and to the carrying out of the international function.

It is remarkable that there is a correlation between the establishment of the Free Port and the properties existing within the Free Port area. In other words the original nature and function of such goods is modified by the institution act of the Free Port and as long as this is in force. This modification represents their new legal nature.

The investigation on the legal nature of the premises situated within Free Ports has led an authoritative doctrine (QUERCI, QUADRI, CAPOTORTI) to the conclusion that Free Ports can be classified as international territories⁵⁶.

⁵⁶ Not very different from the notion of international territories is that of *objective territories*, which has been extensively studied by the doctrine. The comparison between the two devices is very interesting for our investigation on the legal effects of the Free port status. The objective territories are created by international treaties which can be defined as "territorial" because they set obligations attached to certain territories. The effects of these obligations are *erga omnes*, in the sense that submitted to them is the entire international community and not only the States part of the agreement. This can be considered as an exception to the axiom *pacta tertiis neque nocent neque prosunt*, justified by the geographic, historical, political or economical significance of the territories *de quibus*. Typical international treaties establishing objective territories are the demilitarisation or neutralisation treaties, which internationalise a certain territory, establishing a sort of "international servitude" for the benefit of the international community and, above all, of the international free trade. As a result of this, the sovereignty of the territorial state is limited to the fulfilment of the "international servitude".

One of the most interesting example of objective territory is the Svabald Territory, whose original status was that of a *terra nullius*. At the beginning of this century, a long debate started on the future of the Svabald islands, extremely rich in mineral and natural resources. Two main options were delineated: totally internationalising the region in perpetuity preventing its annexation to whatsoever state (in this sense the Conference of Christiana of 1912), or attributing the sovereignty to Norway, but with certain limitations. The latter was the solution adopted by the Svabald Act of Paris of 9 February 1920, which imposes Norway to administer the territory granting the most extensive freedom to all the states, on an equal basis and without discriminations, in terms of free access to the territory, freedom of carrying on commercial activities, freedom of exploitation of the natural resources, fishing, scientific research, etc. The treaty is very peculiar because it is stipulated in perpetuity (while the project of Christiana configured a validity of 18 years) and there are no extinction, denunciation or withdrawal clauses. It is therefore possible to state that the regime of the Svabald is independent from the Paris Treaty of 1920 and can persist even if the treaty is abrogated. There is no need to underline the similarities of the Svabald regime with the Free Port of Trieste: the key word for both of them is the *general interest of the interna-*

We preliminarily remind the reader that the issue is not if international territories are sovereign territories or not; classifying a territory as "international" doesn't necessarily involve the loss of sovereignty of the territory by the state to which the territory belongs to.

A typical example of international territory of the past confirms our point of view: we refer to the so called "provisional government of the Saar basin", whose discipline is provided by articles 45 *et seq.* of Versailles Treaty of 1919.⁵⁷ The international territory of the Saar basin was created for economic reasons and precisely to ensure France the reparation of war expenses through the utilisation of the coal mines of such basin. On the one hand this goal would have been very difficult to achieve if the basin had been administered exclusively by Germany, on the other hand the conquering powers regarded as excessive the assignment of the sovereignty of the basin to France. Thus the conquering powers opted for a provisional government so configured: the international territory was managed by a Government Commission composed by 5 international members (a French citizen, a German citizen of the Saar, three citizens not belonging to France or Germany) appointed by the Security Council of the League of Nations, which nominated the President of the territory and supervise permanently his activities, as well.

tional community.

For a fuller treatment of the regime of the Svabald, rich with historical references and general notions, see E. MORELLI, "*Il regime giuridico dello Svabald e il nuovo diritto del mare*", Milan, 1988.

⁵⁷ See QUADRI, "*Diritto internazionale pubblico*", Naples, 1978. For the text of articles 45 *et seq.* see ANNEX XVII, *infra*.

The Versailles Treaty legally granted Germany the sovereignty of the Saar basin but considered the League of Nations as fideicommissary. With regard to this international doctrine spoke of a splitting between the right of territorial sovereignty (*ius nudum*), which was to remain to Germany, and its exercise, which belonged to the League of Nations.⁵⁸ In substance, this sort of "international usufruct" involved for the League of Nations the exercise of a provisional and limited territorial sovereignty as well as the prohibition of handing it over to others and the obligation of giving it back to Germany (like it actually happened) after 15 years in case of positive outcome of a plebiscite.⁵⁹

In the example of the Saar basin there is no conflict between the concept of sovereignty and that of international territory; an international territory is not characterised by being sovereign but by its function, which is international.

In all the classical example of international territories (Provisional Government of the Saar basin, Free City of

⁵⁸ As far as the Free Territory of Trieste is concerned, this was planned in order to solve various problems such as the conflict of claims on the city of Trieste between Italy and ex-Yugoslavia; the creation of a free access to the sea for the states of the European hinterland; the establishment of a democratic and impartial regime for the benefit of the citizens of Trieste; etc. During the Paris Conference of 1946 and during that of the four Ministers of Foreign Affairs in New York, two different solutions were put forward: on the one hand that of the Anglo-American group which pointed out the necessity of making of Trieste an international state characterised by the existence of an international body (Governor) entrusted with the widest powers with respect to public order, police and protection of fundamental rights, on the other hand that of ex-Soviet Union which wanted to turn Trieste into a fully or at least partially independent state.

⁵⁹ Alternatives to the plebiscite were the consolidation of the international status or the annexation of the basin to France; the outcome of the plebiscite was favourable for Germany and so the League of Nation decided to hand back the territory to Germany.

Danzig, Zone of Tangier, European Commission of the Danube, Free Territory of Trieste) studied by ROLANDO QUADRI, the internationality of the territory was essentially referred to the international composition of the governing body and to the source (international treaty) of the institution and discipline of the international territory; but we think that attention should be paid only to the function of the territory within international law.

As for Free Ports, we must conclude that according to their nature and their role in international law all Free Ports are international territories. This is not because their governing bodies are appointed by the international community or are composed by international members⁶⁰, but it is because their specific function, provided for by international custom and crystallised in various written documents (state laws, international treaties, etc.), requires the subjection of the Free Port to the needs of free international trade.

Therefore there is a minimum of freedoms and a sphere of autonomy from the territorial state, which are co-essential to the nature and existence of the Free Port, because its function is that of promoting international maritime trade. This means that all the areas, properties, means of transit, installations, works of the Free Port are inappropriate and inappropriable; in other words they are destined

⁶⁰ This was the solution chosen by Annex VIII of the Paris Peace Treaty of 1947 for the Free Port of Trieste, but it is not the structure of the Free Ports of Singapore, Hong Kong, Panama, Dubai, Malta, etc., where the Authorities are normally composed by local citizens, often members of the Government, while the licensee and the port economical operators in general may as well be foreigners.

to serve international maritime trade, according to the general principles.⁶¹

For this reason the Authority of the Free Port (that we have previously qualified as “International Authority”) is entrusted with an international *munus* (see *supra*) and therefore carries out its functions to the interest of International Maritime Trade and of maritime international operators.

The Authority is not allowed to dispose of the territory and the goods and properties of the Free Port if not to the *alieno* advantage of the entire community of port operators practising free international maritime trade.

It follows that the territory and properties of the Free Port can only be disposed according to the international function, that is in order to facilitate international maritime trade, otherwise they must be considered illegal.

In actual fact, the Free Port Authority cannot sell the areas, installations, warehouses and factories of the Free Port as they have become inappropriable with the institution of the Free Port. The Authority can only dispose of such properties by granting temporary licenses to international operators on equal terms. Also the works of the Free Port are bound by the international function so it will be legal to build quays, warehouses, factories but not, to use a banal example, a fun-fair!

The freedom and autonomy of the Free Port system involves free access on equal terms for all goods and ships from all over the world; free movement of goods with the following prohibition of controls on their place of origin, destination, quantity and quality; freedom of transit and

⁶¹ To this encumbrance is submitted not only the Authority of the Free Port but also the state where the Free Port is situated.

telecommunication, freedom of setting up shipping companies, banks, insurance and trading companies, etc.

The Free Port system is autonomous. Autonomy is a characteristic of all derivative systems, while the original and independent systems (states) are sovereign. Sovereignty involves three fundamental powers: the legislative power, the executive power and the jurisdictional power.

Free Ports are ruled by a particular objective law which is completely autonomous, except for its origin which can consist of an agreement, an international treaty, international Customs (like in the Free Ports), etc.⁶²

In the international territories the "title" is not typical⁶³, i.e. it is not provided for by a complex of rules as an ab-

⁶² Cf. QUERCI, "*Limiti di giurisdizione nel porto franco di Trieste*", in *Trasporti*, n.70, Modena, 1997.

⁶³ Typical is the "title" and the discipline of the territories subject to the international trusteeship system: this is the main difference between the two types of international territories. The United Nations international trusteeship system is disciplined in articles 73-91 of the United Nation Charter and it is meant to administrate and supervise territories whose peoples have not yet attained a full measure of self-government. The basic objectives of the trusteeship system are to further international peace and security; to promote the political, economic, social, and educational advancement of the inhabitants of the these territories, and their progressive development towards self-government or independence; to encourage respect for human rights and for fundamental freedoms; and to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals.

The trusteeship system is applicable, by means of trusteeship agreements, to territories held under mandate, or detached from enemy states as a result of the Second World War, or voluntarily placed under the system by states responsible for their administration. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment shall be exercised by the Security Council. The trusteeship agreement shall in each case include the terms under which the trust territory will be administered and designate the author-

stract case bringing about determinate effects. Each international territory receives from the institutional act (international agreement, law of the state, etc.) its own configuration; in the case of the Free Port the source of discipline of the derivative system of the Free Port is the international custom crystallised in the statutes.

Free Ports can be considered international territories whose discipline is given by a derivative system characterised by an absolute autonomy. For this reason limitations

ity which will exercise the administration of the trust territory. Such authority may be one or more states or the Organisation itself.

The Trusteeship Council has an international composition as it consists of the following Members of the United Nations: those Members administering trust territories; such of those Members mentioned by name in Article 23 as are not administering trust territories; and as many other Members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations which administer trust territories and those which do not.

As for the functions and powers of the Trusteeship Council, the General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may: consider reports submitted by the administering authority; accept petitions and examine them in consultation with the administering authority; provide for periodic visits to the respective trust territories at times agreed upon with the administering authority; and take these and other actions in conformity with the terms of the trusteeship agreements. The Trusteeship Council has the power to adopt its own rules of procedure, including the method of selecting its President.

Despite some objections of the doctrine, also for the territories under the trusteeship international systems it is possible to configure a *fuction*, as the powers of the administrator do not guarantee his own interests but those of the administered community, of the entire international community and of the members of the United Nations *uti singuli*. See on this CAPOTORTI, "Amministrazione fiduciaria di territori", in *Enciclopedia del Diritto*, Vol. II, Milan, 1958.

For the full text of the articles of United Nations Charter Declaration regarding non-self-governing territories see ANNEX XXIII, *infra*.

and controls on international trade through the Free Ports oughtn't be those of the territorial state, but those required by the international custom, crystallised in the Free Port acts or statutes.

It follows that the exercise of a function of the legislative, executive, jurisdictional powers by the territorial state can occur only without prejudice of the international function of the Free Port. Detrimental to such function are, for example, all state acts introducing duties or discriminatory measures for determinate ships or vessels. The autonomy of the Free Port is also prejudiced by all the controls on the place of origin, destination, quantity and quality of goods in transit through the Free Port or processed within the Free Port. These controls are legitimate only if made at the final destination of the goods: this means that the state where the Free Port is situated can carry out such controls exclusively if the goods transiting the Free Port are to be imported into the Customs territory of that state.

Once the Free Port is created⁶⁴, the Free Port system is marked by a normative and executive irreversibility which comes to an end only with the extinction or revocation of the institutional act.

We can therefore conclude that the investigation on the juridical nature of Free Ports can lead us to go beyond the solution of the international territories yet given by a significative international doctrine; it is probably more advantageous to utilise the thesis of SANTI ROMANO and developed by GIANNINI and PIRAS. According to these Authors, Free Ports are derivative, but autonomous legal

⁶⁴ As discussed before, the institutional act is not typical, as it may consist of a state law, an international treaty, etc.

systems, characterised by the existence of all requirements of the legal systems, that is organisation, legislation and pluri-subjectivity. Free Ports are characterised by a peculiar organisation, by a complex of autonomous rules and by all international economic operators who carry out Free Port activities. This dogmatic approach to the subject examines more deeply the juridical nature of Free Ports, their international function, as well as the static nature of the premises existing within Free Port areas.

Finally, this new solution to the complex and fascinating problem of the role and nature of Free Ports is very satisfactory because it allows us to prescind from all disputations on the sovereignty of the territory of the Free Port.

6. THE JURIDICAL EFFECTS OF THE LEGAL STATUS OF FREE PORTS: THE SPECIAL CLASS OF "IMMUNE LEGAL EFFECTS" COMMON TO ALL THE FREE PORTS OF THE WORLD

The investigation on Free Ports carried out this far has led us to the definition of the legal nature of Free Ports.

It is now time to integrate our approach to the subject with the individualisation of the juridical effects of the legal status of Free Ports.

We have already underlined the importance of the *function*, which is the dynamic element of the Free Port system.

Despite all the varieties of positive discipline of Free Ports world-wide, all Free Ports' statutes are characterised by a core of juridical subjective and objective attributes, by a complex of land lots and installations bonded in their utilisation by acts and facts all directed to the promotion of free international maritime trade.

The investigation on the *ratio* of the legal status of the Free Port involves the *ratio* of the international customary rules which represent the indefectible content of the Free Port.⁶⁵ The study of the *ratio* of the statutes establishing the Free Ports has to lead to a synthesis of hermeneutic knowledge, so that the doctrinal debate on Free Ports would involve only the definition of the principles and therefore the object of such synthesis. In other words the *ratio* of the state and customary discipline of Free Ports is given by the search of the rules constituting the framework of the international system of the Free Port or, to say better, by the individualisation of the principal, complementary and secondary effects of the Free Port's legal status.

Therefore the theme of the legal nature of the principal effect of the Free Port's system involves the problem of the qualification of the active subjective positions connected to the complex of rights and interests involved in the free movement of goods. In particular the question is if these subjective positions are real subjective rights internationally explicable and what sort of protection can be activated in the case of their violation.

Our investigation wouldn't be complete if we didn't analyse the JURIDICAL EFFECTS of the Free Ports' legal status, which involve the contractual discipline of the various acts related to trading within the Free Ports.

The result of the establishment of a Free Port in a certain area is, in terms of juridical effects, the creation of a "special" class of effects which can be looked upon as

⁶⁵ In fact, all the statutes containing the discipline of the Free Ports of the world constitute nothing but the crystallisation of the international customary rules regarding the ancient and inviolable principle of free international trade and free movement of goods.

“*immune legal effects*” as they exempt the transactions within the Free Port from the jurisdiction of the state on whose territory the Free Port is situated. The *immune juridical effects* can be regarded as a subclass of the “preclusive” juridical effects and they represent the result of the “mechanist” application of the inviolable principle of free movement of goods set by international custom and by the statutes regulating the legal position of all Free Ports of the world.

The “special” class of the *immune legal effects*, as well as that of the *preclusive effects*, individuated and masterly theorised by FALZEA, represents a *novum* for the Italian juridical literature, or at least for that studying the Substantive Law. CHIOVENDA, MORTARA, CARNELUTTI and PIERO CALAMANDREI, who were experts on trial law, had foreseen the significance and peculiarity of the so called preclusive facts, which they studied with regard to the *res judicata*, one of the most fascinating chapter of the general theory of law and identifiable with the more general debate of the juridical science.

With a view to our investigation it is necessary to make a preliminary examination of some key-concepts of the general theory of law such as the JURIDICAL EFFECT, regarded as VALUE or as INTEREST.

To a certain extent, the problem of the JURIDICAL EFFECT is that of the science of law. The Roman sources contained phrases which outlined the idea of a production of juridical effects (MAIORCA); nevertheless the theory of the juridical effect, so as it is nowadays configured, dates back only to the last century. It originated from the first attempts conducted by doctrine in the second half of the 18th century or better from the studies of the Pandectists on the

transformations (constitution, modification, extinction) of the rights and of the obligations. At that time it was already clear that the transformations *de quibus* were caused by certain natural or human acts, the so called JURIDICAL FACTS (JURISTISCHE TATSACHEN) whose occurrence constantly involved determined juridical situations (duties, powers, rights), connected to the juridical facts by a specific causality relation.

This way the concepts of JURIDICAL FACT, JURIDICAL EFFECT, and LEGAL CASUAL CONNECTION were gradually explained (FALZEA).¹

Of the two terms of the legal casual connection, the first one, that is the JURIDICAL FACT, does not stand out from the other facts which can be observed in the (real and material) physical world, while the second term, the JURIDICAL EFFECT, exists only in the legal dimension as it cannot be materially determinable, unlike the effect of a whatsoever physical cause (MAIORCA).

The JURIDICAL EFFECT, unlike the JURIDICAL FACT, doesn't have any sense if we prescind from their legal meaning, e.g. the concepts of obligation, ownership, power, which exist only in the legal world.

Being the JURIDICAL EFFECT a merely juridical phenomenon, the problem of the JURIDICAL EFFECT is that of the juridical nature in general and, in the final analysis, of the law itself. The problems of the JURIDICAL EFFECT have been studied by the doctrine from the methodological point of view as well as from the dogmatic point of view.

¹ Cf. FALZEA, "*Efficacia giuridica*", in *Enciclopedia del Diritto*, Vol. XIX, Varese, 1956, pp. 432 *et seq.*

a) As for the **methodological** viewpoint, we think it is important to recall Kelsen's critical remarks and the four theories of the law as a value.

Kelsen criticised the axiom according to which so as the physical laws express relations of physical causality, likewise the juridical laws express relations of juridical causality. Actually, the Austrian philosopher believed that the concepts of effect and causality are restricted to the physical laws, which rule the so called *Sein*, and it is impossible to extend them to the juridical laws, which express the so called *Sollen*.

A physical law expresses a real relation of causality between the *Sein* of two phenomena, e.g. between the heat of the sun and the thaw: in this example the effect is real because the thaw actually follows the heat of the sun. On the contrary, a juridical law involves a relation of causality between the *Sein* of a phenomenon and the *Sollen* of another one: e.g. the conclusion of a binding contract of sale and purchase originates the juridical duty of payment but this one might as well not follow. In this case the consequence is strictly theoretical: it is something that has to be or has to be done, but doesn't necessarily correspond to something effectively carried out.

Unlike the physical law, which implies a real necessity and affect the material world, the juridical rule regards the world of values (PUGLIATTI). Consequently, the physical laws involve conditional relations between two facts, while the juridical laws express conditional relations between a fact of the real world and a value of the human behaviour: the JURIDICAL EFFECT is therefore a conditional value⁶⁷.

⁶⁷ The value of a certain human act (e.g. payment) is conditioned by a de-

A lot of philosophers followed the theory of the law as a system of values (FASSO', COTTA).⁶⁸ The law intended as a value was also the object of four axiological conceptions: the *substantial-ideal conception*, which regarded the law as an ethical-material value with the result of an unlimited resort to ideal standards of equity in order to solve the problems of positive law; the *formal-ideal conception*, according to which the law is a formal value so that the jurist is always tied to the form (codes or written laws); the *real-subjective conception*, which sees the law as a real subjective value, or better as a value imposed by the human will through an authoritative command so that the interpreter has to stick to the intention of the legislator; and finally the *real-objective conception*, which considers the law as a real objective value that man finds in his life and defines in his language and culture. This last conception of the Law is the one which gives us the most satisfactory theoretical and methodological results; it refuses the conception of law as

terminated fact (e.g. binding contract of sale and purchase): if the fact takes place, the act gains value. The conditioning, though, is not physical but only ideal because while the happening of the fact belongs to reality, the act operates only on the values' level.

⁶⁸ DEL VECCHIO G. asserted that the law represents a higher truth which tends to impose itself on the reality of the phenomena; in a world, a criterion of evaluation ("il diritto rappresenta una verità superiore alla realtà dei fenomeni, un modello ideale che tende ad imporsi a questa realtà; in breve, un principio di valutazione"); BATTAGLIA F. believed that the law is, in all its different aspects, a value ("il diritto nei suoi momenti e nei suoi aspetti, nelle sue articolazioni, comporta ed è...valori"); CAMMARATA regarded the essence of the rule as an abstract evaluation, as a *criterion* of evaluation in terms of regularity, as a *quid* that must be: the value is therefore the juridical consequence ("...una valutazione astratta, un criterio di valutazione in termini di regolarità, un quid che deve essere: valore è appunto la conseguenza giuridica.").

completely detached from reality and it considers the INTEREST as its fundament (NATOLI).

As positively perceived, the law is a system of interests, that is objective values, which derives substantially from a common life and manifests itself, more or less formally, in a common experience and culture (A. PIRAS).

The principle of causality between the fact and effect can be so configured: while the fact implies a general problem of real life involving different individual or collective interests, the effect represents at the same time an adequate solution to the problem and a harmonious balance of all interests involved (ALLORIO).

We cannot share the opinion expressed by the traditional doctrine, that the effect must be looked for inside every single rule: in fact, the effect lies within the entire system of codes, laws, customs, etc. For each juridical rule, may it be of law, regulation, or customs, there is a correspondent juridical value reflecting the interest of the community (MODUGNO).¹

The reference to these general principles is not redundant because they apply as well to the complex themes of the juridical nature and discipline of the Free Ports. In fact, the establishment and discipline of the legal system of the Free Port both comply with an INTEREST which is legally and internationally safeguarded. This interest is innate in the inviolable principle of free movement of goods and has been received by the customary rules which are the primary source of discipline of Free Ports, while the various statutes existing in the majority of the modern Free Ports of the

¹ There is, for example, the interest of the juridical community for individual freedom, equality of citizens, fulfilment of contracts, civil and criminal sanctions, etc.

world represent only the “crystallisation” of such customary principles. The value-interest subtended to the free movement of goods represents all the international trade communities who deal with Free Ports.

The concept of the Free Port is a modern and very effective instrument of international harbour and maritime policy as the interest at the basis of the Free Port choice is far-reaching international. The international interest of free movement of goods justify the more favourable regime applied to the acts of commercialisation within the Free Port.

We anticipate that the legal effects of these acts can be configured as “immunity effects” in the sense that the commercial activities carried out within the Free Port are exempt (“immune”) from the jurisdiction of the territorial state and are on the contrary subject exclusively to the customary rules of free international trade and free movement of goods.

b) As far as the **dogmatic** point of view is concerned, the studies carried out on the legal effect have dealt with the following themes: the *concept of legal effect*, which is the value attributed to the fact and is therefore set against the concept of fact⁷⁰; the *concept of the obligation and power*, which are the two situations in which the legal effect is polarised with regard to the activity of the subjects; the *concept of the time of the effect*, which is not the time of its actual realisation but that which is logically and chronologically prior of its perspective position; and *the concept of the legal transformations* (constitution, modification, ex-

⁷⁰ Legal effect is therefore every conditional juridical value, that is every juridical value that the law assumes on the condition of a preceding concrete situation. The effect of a law or customary rule is therefore a value and therefore it distinguishes from the fact.

tion), which are the transformation of the effect through time (CANELUTTI).

The doctrine of the transformations of the JURIDICAL EFFECT finds its origins in the reflections of the Pandectist on the mutations of the private subjective rights. It is very important for our analysis, but previously we have to come to a general theory of the LEGAL EFFECT which is characterised by the utilisation of certain fundamental categories in sectors which are different from the private sector where they originated: for example in the public and international law (M.S. GIANNINI, R. QUADRI, P. ZICCARDI).

The modern doctrine distinguishes between three types of LEGAL EFFECT: *constitutive*, *declarative* and *preclusive*.

The *constitutive legal effect* is a synonym of innovative legal effect: it comprises the three figures of legal transformation of the juridical situations (constitution, modification, extinction). The *declarative legal effect* regards transformations⁷¹ which affect a legal situation but without modifying its structural and substantial content. The *declarative* (or *conservative*) *effects* do not innovate in any way the pre-existing legal position and have, consequently, the function of keeping firm the juridical positions which they affect. Therefore they shouldn't be mistaken for the facts legally irrelevant as the latter do not produce any legal

⁷¹ The external transformations, which regard the subject or the object of the juridical situations or the modalities of behaviour, do not exhaust all the eventualities of legal transformation: they set against the class of internal developments which operates on a legal situation without ever causing a modification of the structural elements or of the substantial content of the legal situation itself.

effect, while the *declarative legal effects* do introduce a novelty in the legal system, even if different from that typical of the constitutive legal effects. Subspecies of the declarative legal effect are the reinforcement, the specification, and the diminution of rights.

The *preclusive legal effect* concerns external transformations or internal developments (of legal positions) which do not necessarily imply either the conservation or the innovation of the pre-existing legal condition. In fact, the preclusive legal effects, which originate such transformations, are configured by the law so that they can absorb and preclude every further effect of the previous legal positions.

The *preclusive legal effect* is an expression of the general interest of certainty and has two primary functions: on the one hand it removes the uncertainty caused by time, ensuring time consolidated *de facto* positions; on the other hand it removes the uncertainty due to disputes, that is to all the disputes and conflicts which prevent the realisation of legal positions. Among the first class of preclusive facts are the usurpation and the prescription, while among the second class are the juridical investigation and determination of facts and the transaction (FALZEA).

Within the class of the *preclusive legal effect* particularly relevant is the "special" class, by now unknown to the doctrine, of the so called "*immune legal effects*". The identification of such a class of effects allows us to implant the most refined deciphering "*scepsi*" of the legal regime of the Free Ports in the world (QUERCI).

The *immune legal effects* ensure the "mechanical" application of the inviolable principle of free maritime trade, indissolubly related to the names of the Chaldees, Phoenician, the Egyptians and the Carthaginians. As underlined in the

third paragraph of chapter three (*supra*), the principle of the inviolability of freedom of international maritime trade involves, in the final analysis, exclusively the free movement of goods. The principle of free movement of goods operates through the typical expression of a complex of so called "rules of immunity", which, in brief, cause the commercial acts within a Free Port to be immune. The rules *de quibus* can be contained in state laws or regulations but they can also derive from custom, in particular that of free movement of goods. When a state creates a Free Port, it gives up a significant part of territorial jurisdiction on it.

The effects of the application of the rules of immunity to the commercial acts carried out by the operators of the Free Port consist basically in some prohibitions for the territorial state like the prohibition of controlling the nature, quantity, quality, country of origin, consignment or destination of the goods, as well as other complementary prohibitions and restrictions like the prohibition of discrimination, levying of Customs duties, etc. The meaning of these restrictions of the jurisdiction of the state where the Free Port is situated is that of ensuring the free transit trade and the free movement of goods. This is what the concept of "commercial activities" is about, in particular the concept of "commercial acts" and "commercial transactions".

The *immunity* has to be meant in the international sense of exemption from the jurisdiction of the territorial state and therefore in the sense of freedom in the commercial activities and labour contracts, in application of the United Nations Vienna Convention on the International Sales Law

of 11 April 1980, entered into force on the 1 January 1988.⁷²

The *immune legal effects* involve the exemption of the commercial acts carried out in the Free Port from the Customs laws, banking and insurance laws, labour laws, etc., of the territorial state, which can no longer exercise its jurisdiction on the commercial activities and transactions within the Free Port, imposing Customs duties, prohibitions, controls and restrictions. Similarly, exempt from the jurisdiction of the territorial state are also the labour contracts regarding services to be rendered within the Free Port areas. In this sense, the *immune legal effects* constitute a sub-class of the more general class of the *preclusive legal effects*: like these ones the *immune legal effects* on the one hand fully ensure the realisation of consolidated *de facto* positions, like the freedom of commercial transactions within the Free Port, contemplated by the international Customs; on the other hand they remove the uncertainty caused by all the disputes and conflict which jeopardise the realisation of the legal positions.

All things considered, the existence of the *immune legal effects* is not internationally unknown: the principle of free movement of goods, which derives from the “mechanical” application of such effects, was codified by various international conventions, like the aforementioned Vienna Convention of 1980 and the common law legislation on the jurisdictional exemption of foreign states.⁷³ We refer, in par-

⁷² On this see BIANCA-BONELL, “*Commentary on the International Sales Law. The 1980 Vienna Sales Convention*”, Milan, 1987.

⁷³ For a deep analysis of the subject *de quo*, see MARTINO, “*L’immunità giurisdizionale degli Stati stranieri tra regionalismo ed universalismo*”, Salerno, 1990.

ticular, to the United States of America Foreign Sovereign Immunities Act (1976), to the Canadian State Immunity Act (1982), to the United Kingdom State Immunity Act (1978), to the Singapore State Immunity Act (1979), to the Pakistani State Immunity Ordinance (1981), to the South Africa Foreign States Immunities Act (1981), and to the Australian Foreign States Immunities Act (1985).

All these laws set the limits of the complex regime of “immunity-jurisdiction” with regard to foreign states, and are influenced by factors of “economic advantage”. In fact, it is clear that a legislation capable of ensuring private operators effective trial guarantees respect to foreign public bodies represent a strong appeal of a determined national market and comply with the general need of keeping up with the market competitiveness.⁷⁴

The concepts of commercial activity, commercial act and commercial transaction represent a salient point of the regime of “immunity-jurisdiction”: they can be very divers in the various laws, depending on the fact that some legislators (USA, Canada) give a synthetical or generical definition of the acts *de quibus*, while other legislators (Singapore, Pakistan, South Africa) prefer their analytical enumeration⁷⁵.

Also labour law contracts are comprised in the vast class of the commercial acts, while the recruiting of the diplo-

⁷⁴ *Ibidem*

⁷⁵ In the enumeration, figure the contracts for the rendering of services, the loans and other guarantees given in relation to these operations or any other financial activity, and any other transaction or activity, whether of a commercial industrial, financial, professional or other similar character, into which a state enters or in which it engages otherwise than in the exercise of sovereign authority.

matic agents, of the military and of the public administration are excluded.

The analysed laws have codified “rules of immunity”, which cause some acts to be immune from the jurisdiction of a certain state, in order to pursue determined interests.

The principle of free movement of goods pursues the interest of trade development in the context of globalisation and internationalisation of the markets; it is also a principle of customary nature.

The concept of the Free Port is an instrument of maritime and harbour policy, meant to encourage and develop international maritime trade: the INTEREST is therefore not only that of economical development of the Free Port area, but also the interest, which belongs to the entire international trade community, of free movement of goods, without restrictions, controls or Customs duties impositions. The safeguard of this interest involves that the territorial states gives up a significant part of jurisdiction, and precisely, the jurisdiction relative to commercial acts, labour law, banking, insurance, shipping, shipping register, establishment of companies of any nature, etc.

Disregarding the provisions of the law, decree-law, international treaty, establishing the Free Port, there are some immunities which are innate in the existence of every Free Port: we refer to the immunity from Customs duties; import/export duties; VAT; personal and corporate income; controls on the nature, quality, quantity, country of origin, consignment and destination; banking and insurance legislation, etc.

The regime of immunity is the sole able to ensure the interest which leads to the creation of Free Ports and Free Trade Zones, that is the interest of economical development

of a certain harbour zone as well as the general interest of free international trade.

The statutes of the most advanced and modern Free Ports of the world (Singapore, Hong Kong, Panama, United Arab Emirates, etc.) have codified the "rules of immunity", which contain the immunities innate in the principle of free movement of goods. Other states have enacted more restricted internal laws that do not fully guarantee the immunity of the commercial activities carried out within the Free Port. In these cases we believe that *lex minus dixit quam voluit*; in other words these laws should be extensively interpreted, making sure that full realisation is given also to the immunities which are not contemplated by the laws, but that constitute a *minimum* that necessarily ought to be found in every modern Free Port of the world.

Again we remind the reader that the statutes of the Free Ports configure the mere "crystallisation" of customary rules; therefore, all the legislative deficiencies peculiar to the Free Port legislation are filled through the application, during the extensive interpretation, of the customary principles on the subject. Typical example is represented by the actual discipline of the Free Port of Trieste: the Italian state, in violation of the Annex VIII of the Peace Treaty of Paris of 1947, have given up its jurisdiction only from a "Customs" point of view. It is therefore necessary to go beyond the actual saying of the Italian laws regarding the discipline of the Free Port of Trieste, in order to endow the Free Port system with all the other immunities in the international sense of exemption of all commercial activities, acts and transactions from the jurisdiction of the Italian state, or of whatsoever other state. Only this way the Free Port of Trieste will be able to fully exploit its strategical lo-

cation and its exceptional depth, and to be up to the economical challenge of globalisation and internationalisation of the market, dynamically organising the demand instead of statically supplying its services as it has done in the past.

In conclusion, with regard to the regime of Free Ports, the close relation between immunity and jurisdiction involves necessarily the implicit renunciation of the territorial state of a significant part of its jurisdiction on the Free Port. In the system of the Free Port, the jurisdiction excludes the immunity and *viceversa*: the persistence of the jurisdiction is, in fact, incompatible with the existence of the immunity.

ANNEXES

ANNEX I

COUNCIL REGULATION (EEC) NO. 2504/88 OF 25 JULY 1988 ON FREE ZONES AND FREE WAREHOUSES

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas Free Zones and Free Warehouses are parts of, or premises within, the Community Customs territory, separate from the rest of that territory, in which there is generally a concentration of activities related to external trade; whereas, because of the Customs facilities available in them, these Free Zones and Free Warehouses ensure the promotion of the aforesaid activities and, in particular, that goods are redistributed within the Community and elsewhere; whereas, therefore, the provision concerning them forms an essential instrument of the Community's commercial territory;

Whereas Directive 69/75/EEC, as last amended by the Act of accession of Spain and Portugal, laid down the rules to be incorporated in Member States' provisions governing Free Zones; whereas the importance of those zones in the context of the Customs union calls for provisions relating to them to be applied uniformly throughout the Community; whereas the rules currently in force should therefore be supplemented and clarified and enacted in a form directly applicable in the Member States, thus affording greater legal security for individuals;

Whereas Free Zones and Free Warehouses should not be given any competitive advantage where the application of import duties is concerned; whereas, on the other hand, the Customs formalities in such zones or warehouses should, in view of the special circumstances, be simpler than those applying in other parts of the Community Customs territory;

Whereas non-Community goods placed in Free Zones or Free Warehouses should be allowed to remain there for an unlimited period without the payment of import duties or the application of such

duties and measures, the goods in these Free Zones or Free Warehouses should therefore be considered as not being within the Customs territory of the Community;

Whereas it should be borne in mind that Community goods placed in Free Zones or Free Warehouses qualify for certain benefits normally attaching to their export; whereas it is also necessary to determine the consequences of placing in a Free Zone or Free Warehouse Community goods which are subject in infra-Community trade to charges imposed under the common agricultural policy for such time as such charges are applied; whereas it should also be possible to place other Community goods in a Free Zone or Free Warehouse; whereas, where such goods are liable to domestic taxes, it is for the Member State to decide on the conditions for, and consequences of, placing them in Free Zones or Free Warehouses without prejudice to Community fiscal provisions;

Whereas it is necessary to lay down certain rules for the charging of duties where a Customs debt arises in respect of goods placed in a Free Zone or Free Warehouse; whereas it should be provided that, in certain circumstances, value added within the Customs territory of the Community is not to be included in the Customs value of such goods;

Whereas the uniform application of this Regulation must be ensured and accordingly a Community procedure for the enactment of implementing rules should be established; whereas close and effective co-operation in this area between the Member States and the Commission should be organised through the Committee on Customs Warehouses and Free Zones established under Council Regulation (EEC) No. 2503/88 of 25 July 1988 on custom warehouses,

HAS ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1

1. This Regulation lays down the rules governing Free Zones and Free Warehouses.

2. In a Free Zone or Free Warehouse:

(a) non-Community goods shall be subject neither to import duties nor, save as otherwise provided, to commercial policy measures;

(b) Community goods for which specific Community rules so provide, shall benefit, as a result of being placed in a Free Zone, from measures normally attaching to the export of such goods;

(c) no Customs formalities or controls shall apply to the entry, holding or removal of goods other than as provided in this Regulation.

3. For such time as Community goods are subject in intra-Community trade to charges imposed under the common agricultural policy, such charges shall not apply in a Free Zone or Free Warehouse.

4. For the purposes of this Regulation:

(a) "Free Zone" means parts of the Customs territory of the Community, separate from the rest of that territory, in which non-Community goods placed in them are considered, for purposes of the application of import duties and commercial policy import measures, as not being within the Customs territory of the Community provided they are not released for free circulation or entered under another Customs procedure under the conditions laid down in this Regulation;

(b) "Free Warehouse" means premises situated within the Community's Customs territory, in which non-Community goods placed in them are considered, for purposes of the application of import duties and commercial policy import measures, as not being within the Customs territory of the Community provided they are not released for free circulation or entered under another Customs procedure under the conditions laid down in this Regulation;

(c) "Community goods" means goods:

- entirely obtained in the Customs territory of the Community without the addition of goods from third countries or territories which are not part of the Customs territory of the Community;

- from countries or territories not forming part of the Customs territory of the Community which have been released for free circulation in a Member State;

- obtained in the Customs territory of the Community either from the goods referred to exclusively in the second indent or from goods referred to in the first and second indents;

(d) "non-Community goods" means goods other than those referred to in (c).

Without prejudice to the agreements concluded with third countries for the implementation of the Community transit arrangements,

goods which, while fulfilling the conditions laid down in (c), are re-introduced into the Customs territory of the Community after export therefrom are also considered as non-Community goods;

(e) "import duties" means Customs duties and charges having equivalent effect, agricultural levies and other import charges laid down under the common agricultural policy or under the specific arrangements applicable to certain goods resulting from the processing of agricultural products;

(f) "export duties" means agricultural levies and other export charges laid down under the common agricultural policy or under the specific arrangements applicable to certain goods resulting from the processing of agricultural products;

(g) "Customs authority" means any authority competent to apply Customs rules, even if that authority is not part of the Customs administration;

(h) "person" means:

- a natural person, or
- a legal person, or
- when this possibility is provided for in the rules in force, an association of persons recognised as having legal capacity but lacking the legal status of a legal person.

Article 2

1. Member States may designate parts of the Customs territory of the Community as Free Zones or authorise the establishment of Free Warehouses.

2. Member States shall determine the area covered by each Free Zone. Premises which are to be designated as Free Warehouses must be approved by Member States.

3. Member States shall ensure that Free Zones are enclosed and shall determine the entry and exit points of Free Zones and Free Warehouses.

4. The construction of any building in a Free Zone shall require the prior authorisation of the Customs authority.

Article 3

1. The perimeter and the entry and exit points of Free Zones and Free Warehouses shall be subject to supervision by the Customs authorities.

2. Persons and means of transport entering or leaving a Free Zone or a Free Warehouse may be subjected to a Customs check.

3. Access to a Free Zone or a Free Warehouse may be denied to persons who do not provide every guarantee necessary for compliance with the rules provided for in this Regulation.

4. The Customs authority may check goods entering, leaving or remaining in a Free Zone or Free Warehouse. To enable such checks to be carried out, a copy of the transport document, which must accompany goods entering or leaving, must be handed to, or kept at the disposal of, the Customs authority by any person designated for this purpose by such authority. Where these checks are required, the goods must be made available to the Customs authority.

TITLE II

PLACING OF GOODS IN FREE ZONES OR FREE WAREHOUSES

Article 4

1. Free Zones and Free Warehouses shall be open to all goods irrespective of their nature, quantity and country of origin, consignment or destination.

2. Paragraph 1 shall not preclude:

(a) the imposition of prohibitions or restrictions justified on grounds of public morality, public policy or public security, the protection of human, animal or plant health and life, the protection of national treasures of artistic, historic or archaeological value, or the protection of industrial or commercial property;

(b) the right of the Customs authority to require that goods which present a danger or are likely to spoil other goods or which, for other reasons, require special facilities be placed in premises specially equipped to receive them.

Article 5

1. Without prejudice to Article 3 (4), goods entering a Free Zone or Free Warehouse need not to be presented to the Customs authority, nor need a Customs declaration be lodged.

2. Goods need to be presented to the Customs authority only where:

(a) they have been placed under a Customs procedure which is discharged when they enter a Free Zone or Free Warehouse; however,

where the Customs procedure in question permits exemption from the obligation to present goods, such presentation need not to be required;

(b) they have been placed in a Free Zone or Free Warehouse on the authority of a decision to grant repayment or remission of import duties:

(c) a request has been made for advance payment of export refunds on the goods under the common agricultural policy.

3. The Customs authority may require that goods subject to export duties or to other export provisions shall be notified to the Customs authority.

4. At the request of the party concerned, the Customs authority shall certify that the goods placed in a Free Zone or Free Warehouse are either Community goods or non-Community goods.

TITLE III

OPERATION OF A FREE ZONE OR FREE WAREHOUSE

Article 6

1. There shall be no limit on the length of time goods may stay in Free Zones or Free Warehouses.

2. Specific time limits imposed in accordance with Article 17 of Council Regulation (EEC) No. 2503/88 shall apply to certain goods.

Article 7

1. Subject to Articles 8 and 9, any industrial, commercial or service activity shall be authorised in a Free Zone or Free Warehouse subject to the conditions laid down in this Regulation .

2. However, the Customs authority may impose certain prohibitions or restrictions on such activities, having regard to the nature of the goods concerned or the requirements of Customs supervision.

3. The Customs authority may prohibit persons who do not provide the necessary guarantees for the correct application of this Regulation from carrying on an activity in a Free Zone or Free Warehouse.

Article 8

Where an activity referred to in Article 7 involves working of non-Community goods, the following provisions shall apply:

(a) without prejudice to Article 13, no authorisation shall be required for usual forms of handling within the meaning of Article 18 of Council Regulation (EEC) No. 2503/88;

b) processing operations other than usual forms of handling shall be carried out in accordance with Council Regulation (EEC) No. 1999/85 of 16 July 1985 on inward processing relief arrangements. Member States may, however, insofar as is necessary to take into account conditions of operation and Customs supervision in Free Zones and Free Warehouses, adapt the relevant methods of control. The formalities which may be dispensed with in a Free Zone or Free Warehouse will be determined in accordance with the procedure laid down in Article 31 of Regulation (EEC) No. 1999/85.

By way of derogation from the first subparagraph, processing operations within the territory of the Old Free Port of Hamburg shall not be subject to conditions of an economic nature.

However, if conditions of competition in a specific economic sector in the Community are affected as a result of this derogation, the Council, acting by a qualified majority on a proposal from the Commission, shall decide that the economic conditions laid down for the Community with regard to inward processing shall apply to the corresponding economic activity within the territory of the Old Free Port of Hamburg;

(c) processing under Customs control shall be carried out in accordance with Council Regulation (EEC) No. 2763/83 of 26 September 1983 on arrangements permitting goods to be processed under Customs control before being put into free circulation, as last amended by Regulation (EEC) No. 4151/87. Member States may, however, insofar as is necessary to take into account conditions of operation and Customs supervision in Free Zones and Free Warehouses, adapt the relevant methods of control. The formalities which may be dispensed with in a Free Zone or Free Warehouse will be determined in accordance with the procedure laid down in Article 31 of Regulation (EEC) No. 1999/85.

Article 9

Where an activity referred to in Article 7 involves the working of Community goods, the following provisions shall apply:

(a) the Community goods referred to in Article 1 (b) which are covered by the common agricultural policy may undergo only the forms of handling expressly referred to in respect of these goods in Article 18 (2) of Regulation (EEC) No. 2503/88. Such handling may be undertaken without authorisation;

(b) the Community goods referred to in Article 1 may undergo without authorisation the usual forms of handling referred to in Article 18 (1) of Regulation (EEC) No. 2503/88 or be destroyed in accordance with the fourth indent of Article 10.

Article 10

1. Without prejudice to Article 8, non-Community goods placed in a Free Zone or Free Warehouse may, while they remain in a Free Zone or Free Warehouse, be:

- put into free circulation;
- entered under temporary importation procedure;
- abandoned to the Exchequer, where national regulations provide for this possibility;
- destroyed, provided that the person concerned provides the Customs authority with all the information it considers necessary; the scrap and waste resulting from such destruction may be dealt with as described in one of the preceding indents or in Article 8. The abandoning or destruction of goods must not give rise to any expense to the Exchequer.

2. Where paragraph 1 is not applied, the non-Community goods and the Community goods referred to in Article 1 (2) (b) and (3) may not be consumed or used in Free Zones or in Free Warehouses.

3. Without prejudice to the provisions applicable to supplies of stores, where the procedure concerned so provides, paragraph 2 shall not preclude the use or consumption of goods the release for free circulation or temporary importation of which would not entail application of import duties, measures under the common agricultural policy or the commercial policy or the charges referred to in Article 1 (3). In that event, no declaration of release for free circulation or temporary importation shall be required. A declaration shall, however, be required if such goods are to be charged to a quota or a ceiling.

Article 11

1. Persons carrying on an activity involving the storage, working or processing, or sale or purchase, of goods in a Free Zone or Free Warehouse must keep stock accounts in a form approved by the Customs authority. Goods must be entered in the stock accounts as soon as they are brought on to such persons' premises. The stock accounts must enable the Customs authority to identify the goods, and must re-

cord their movements. The stock accounts must be kept at the disposal of the Customs authority to enable it to carry out such controls as it considers necessary.

2. Where goods are transhipped within a Free Zone, the documents relating to the operation must be kept at the disposal of the Customs authority. The short-term storage of goods in connection with such transshipment shall be deemed to be an integral part of the operation.

TITLE IV

REMOVAL OF GOODS FROM A FREE ZONE OR A FREE WAREHOUSE

Article 12

Without prejudice to special provisions adopted under specific Customs arrangements, non-Community goods being removed from a Free Zone or Free Warehouse may be:

- exported out of the Customs territory of the Community; or
- moved, in accordance with Community rules, to another part of the Customs territory of the Community.

Article 13

1. Where a Customs debt arises in respect of non-Community goods, the Customs value of such goods shall be determined in accordance with Regulation (EEC) No. 1224/80 (1), as last amended by the Act of Accession of Spain and Portugal.

Where the Customs value is based on a price actually paid or payable which includes the cost of warehousing or of preserving goods while they remain in the Free Zone or Free Warehouse, such costs need not be included in the Customs value if they are distinguished from the price actually paid or payable for the goods.

2. Where the said goods have undergone, in the Free Zone or Free Warehouse, one of the usual forms of handling within the meaning of Article 18 of Regulation (EEC) No. 2503/88, the nature of the goods, the value for Customs purposes and the quantity to be taken into consideration in determining the amount of import duties shall, at the request of the declarant and provided that such handling was covered by an authorisation issued in accordance with Article 18 of that Regulation, be those which would be taken into account if the goods concerned had not undergone such handling. Derogations from this provi-

sion may, however, be adopted in accordance with the procedure laid down in Article 28 of Regulation (EEC) No. 2503/88.

Article 14

1. Community goods covered by the common agricultural policy and referred to in Article 1 (b) must be dealt with, when placed in a Free Zone or Free Warehouse, in one of the ways provided for by the rules under which they are eligible, because they are placed in a Free Zone, for measures normally attaching to the export of such goods.

2. Should such goods be returned to another part of the Customs territory of the Community, or if no application to have them dealt with in one of the ways provided for in paragraph 1 has been made by the expiry of a time limit set pursuant to Article 6, the Customs authority shall take the measures described by the specific rules concerned relating to the case of failure to deal with the goods in the specified way.

Article 15

Community goods referred to in Article 1 placed in a Free Zone or a Free Warehouse may be dealt with in any of the ways allowed for such goods.

Article 16

1. Where goods are to be returned to another part of the Customs territory of the Community, or placed under a Customs procedure, the certificate referred to in Article 5 may be used as proof of the Community or non-Community status of the goods as the case may be.

2. Where no such certificate or other evidence of the Community or non-Community status of the goods is available, the goods shall be deemed to be Community goods, for the purposes of applying export duties and export certificates or export measures laid down under the commercial policy; non-Community goods in all other cases.

Article 17

The Customs authority shall ensure that rules governing the export or consignment of goods from Member States are complied with where such goods are exported or consigned from a Free Zone or Free Warehouse.

TITLE V
FINAL PROVISIONS

Article 18

The Committee on Customs Warehouses and Free Zones set up under Article 26 of Regulation (EEC) No. 2503/88 may examine any matter concerning the implementation of this Regulation raised by its chairman either on his own initiative or at the request of a representative of a Member State.

Article 19

The provisions required to implement this Regulation shall be adopted in accordance with the procedure laid down in Article 28 of Regulation (EEC) No. 2503/88.

Article 20

This Regulation shall be without prejudice to the adoption of special provisions relating to the common agricultural policy, which remain subject to the rules governing the establishment of that policy.

Article 21

Where specific Community rules refer to Free Zones, that reference shall be taken to include a reference to Free Warehouse.

Article 22

This Regulation shall apply without prejudice to Council Regulation (EEC) No. 1736/75 of 24 June 1975 on the external trade statistics of the Community and statistics of trade between Member States, as last amended by Regulation (EEC) No. 1629/88.

Article 23

Nothing in this Regulation shall affect the provisions of Council Regulation (EEC) No. 353/79 of 5 February 1979 laying down the conditions for coupage and wine making in the Free Zones within Community territory for wine products originating in third countries.

Article 24

1. This Regulation shall enter into force on the third day following its publication in the Official Journal of the European Communities.

It shall be implemented one year after the date of entry into force of the implementing provisions adopted in accordance with the procedure laid down in Article 19.

2. Directive 69/75/EEC and the provisions of Directive 71/235/EEC which are adopted for the application thereof shall be re-

pealed on the date on which this Regulation is implemented. References to those Directives shall be deemed to be references to this Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 25 July 1988.

For the Council

The President

Th. PANGALOS

ANNEX II

COMMISSION REGULATION (EEC) NO. 2562/90 OF 30 JULY 1990 LAYING DOWN PROVISIONS FOR THE IMPLEMENTATION OF COUNCIL REGULATION (EEC) NO. 2504/88 ON FREE ZONES AND FREE WAREHOUSES

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation (EEC) No. 2504/88 of 25 July 1988 on Free Zones and Free Warehouses, and in particular Article 19 thereof;

Whereas supervision and Customs control should not normally be carried out within a free-zone or Free Warehouse; whereas appropriate arrangements should be made to enable the Customs authority to carry out supervision and control at the boundaries of such zones and warehouses; whereas certain provisions should therefore be adopted concerning the enclosure of Free Zones and the premises constituting Free Warehouses;

Whereas Article 3 of Regulation (EEC) No. 2504/88 provides that a copy of the transport document, which must accompany goods entering or leaving a Free Zone or Free Warehouse, must be made available to the Customs authority; whereas entry or removal of goods should not normally give rise to Customs formalities and in particular should not give rise to presentation of the goods or of a declaration to the Customs authority, except in particular cases where this is in the

interest of the operator; whereas implementing provisions must be adopted for the entry and removal of goods;

Whereas the general absence of Customs controls within free zones and Free Warehouses must not prevent the Customs authority from carrying out controls in particular cases and must be accompanied by a situation in which the operators carrying on activities in such zones or warehouses and the nature of the activities carried on in them offer the greatest possible guarantees that goods are not consumed or used under conditions other than those laid down for other parts of the Customs territory; whereas certain provisions must be adopted concerning the construction of buildings in Free Zones and operators must be required to fulfil certain obligations before starting their activities in a Free Zone or Free Warehouse, in particular concerning approval of their stock accounts; whereas rules must be laid down concerning the keeping of stock accounts;

Whereas it should be laid down that Commission Regulation (EEC) No. 3787/86, as last amended by Regulation (EEC) No. 1325/89, shall apply *mutatis mutandis* to the cancellation and revocation of approval of the stock accounts; whereas provision should be made for the modification or revocation of such approval in other cases, in particular where it is repeatedly found that goods have disappeared from the Free Zone or Free Warehouse without satisfactory explanation;

Whereas no limits should be placed on the carrying on in a Free Zone or Free Warehouse of usual forms of handling intended to conserve the goods, improve their presentation or trade quality or prepare them for distribution or resale, in order not to obstruct activities in Free Zones and Free Warehouses; whereas the fact that operations under the Customs warehousing arrangements may be carried on in a Free Zone or Free Warehouse must not give rise to unjustified advantages regarding import duties; whereas to that end particular rules should be laid down concerning application for prior authorisation to carry out usual forms of handling;

Whereas the procedure for entry for free circulation of goods within a Free Zone or Free Warehouse must be laid down; whereas all particulars needed for the control of this procedure are to be found in the operator's stock accounts; whereas a simplified procedure should therefore be used for entry of such goods for free circulation;

Whereas procedures should be laid down for Community goods which specific Community rules provide are to benefit, upon their entry into a Free Zone or Free Warehouse, from measures relating in principle to the export of the goods;

Whereas Article 24 of Regulation (EEC) No. 2504/88 provides that it shall be implemented one year later the date of entry into force of the present Regulation; whereas this date should be fixed as 1 January 1991; whereas this Regulation should therefore be implemented on 1 January 1992;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Committee on Customs Warehouses and Free Zones,

HAS ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1

For the purposes of this Regulation:

(b) operator means any person carrying on an activity involving the storage, working, processing, sale or purchase of goods in a Free Zone or a Free Warehouse;

(c) supervision means action taken in general by Customs authorities to ensure compliance with the legislation applicable to Free Zones or Free Warehouses:

(d) control means the performance of specific act such as examining goods, verifying the existence and authenticity of documents, examining the accounts and other records of undertakings, checking means of transport, checking persons and carrying out administrative investigations and similar as with a view to ensuring compliance with legislation applicable to Free Zones and Free Warehouses:

(e) agricultural goods means goods covered by the Regulations referred to in Article 1 of Council Regulation (EEC) No. 565/80/80 of 4 March 1980 on the advance payment of export refunds in respect of agricultural goods. Goods covered by Council Regulation (EEC) No. 3033/80 (goods resulting from the processing of agricultural products) or (EEC) No. 3033/80 (agricultural products exported in the form of goods not covered by Annex 11 to the Treaty) shall be treated as agricultural goods;

(f) advance payment means the payment of an amount equal to the export refund before the goods are exported where such payment is provided for in Regulation (EEC) No. 565/80;

(g) prefinanced goods means any goods intended for export in the unaltered state which are the subject of an advance payment, however described in the Community rules permitting such payment;

(h) prefinanced basic product means any product intended for export after processing more extensive than the handling referred to in Article 20 in the form of a processed product which is the subject of an advance payment;

(i) processed goods means any product or goods resulting from the processing of a prefinanced basic product, however described in the Community rules permitting advance payment.

Article 2

1. The commercial policy measures referred to in Article 1 (a) of the basic Regulation are non-tariff measures adopted as part of the common commercial policy.

2. Where Commission acts provide that such measures are to apply to:

(a) the release for free circulation of goods, they shall not apply when the goods are placed in a Free Zone or Free Warehouse nor for such time as the goods remain there;

(b) the importation (introduction into the Customs territory of the Community) of goods, they shall apply when non-Community goods are placed in a Free Zone or Free Warehouse;

(c) the exportation of goods, they shall apply when Community goods in a Free Zone or Free Warehouse are exported from the Customs territory of the Community of Community goods. Such goods will be subject to supervision by the Customs authorities.

Article 3

Any person may apply for a part of the Customs territory of the Community to be designated a Free Zone or for a Free Warehouse to be set up. The Free Zones in existence in the Community and in operation on the date of adoption of this Regulation are listed in Annex 1. The Member States shall notify the Commission of the Free Zones they have designated or which start to operate having already been designated and of the Free Warehouses whose creation and operation

they have authorised, whatever the titles of those zones or warehouses may be. The Commission shall publish this information in the Official Journal of the European Communities C-series.

Article 4

The boundaries of Free Zones and the premises of Free Warehouses must be such as to facilitate supervision by the relevant Customs authority outside the Free Zone or Free Warehouse and prevent any goods being removed irregularly from the Free Zone or Free Warehouses.

The area immediately outside the boundary must be such as to permit adequate supervision by the Customs authority. Access to the said area shall be subject to the agreement of the Customs authority.

Article 5

1. Authorisation to build in a Free Zone must be applied for in writing.

2. The application referred to in paragraph 1 must specify the activity for which the building will be used and give any other information that will enable the Customs authority to evaluate the grounds for the authorisation.

3. The Customs authority shall grant authorisation in cases where the implementation of Customs legislation would not be impeded.

4. Paragraphs 1, 2 and 3 shall also apply where a building in a Free Zone or building constituting a Free Warehouse is converted.

Article 6

Without prejudice to the supervision referred to in Article 3 of the basic Regulation, the Customs authority shall carry out the controls referred to in Article 3 and only at random or whenever it has reasonable doubts concerning compliance with the relevant rules.

TITLE II

ACTIVITY CARRIED ON IN A FREE ZONE OR FREE WAREHOUSE AND APPROVAL OF STOCK ACCOUNTS

Article 7

Without prejudice to Article 7 and of the basic Regulation, the exercise of any activity, including transshipments, referred to in Article 7 of the basic Regulation must be notified in advance to the Customs authority. In the case of activities referred to in Article 11 of the basic

Regulation, notification shall take the form of presentation of the application for approval of the stock accounts referred to in Article 10.

Article 8

The operator must take appropriate precautions to ensure that the persons he employs to carry on his activities comply with Customs legislation.

Article 9

1. Before commencing activities in a Free Zone or a Free Warehouse, the operator must obtain the Customs authority's approval of the stock accounts referred to in Article 11 of the basic Regulation.

2. The approval referred to in paragraph 1 shall be accorded only to persons offering all the necessary guarantees concerning the application of the provisions on Free Zones and Free Warehouse.

Article 10

1. The application for approval referred to in Article 9, hereinafter referred to as the "application", must be submitted in writing to the Customs authority designated by the Member State where the Free Zone or Free Warehouse is located. Member States shall notify the Commission of the Customs authorities they have designated. The Commission shall publish this information in the Official Journal of the European Communities C series.

2. The application must specify which of the activities referred to in Article 11 of the basic Regulation is envisaged. It must include a detailed description of the stock accounts kept, or to be kept, the nature and Customs status of the goods to which these activities relate, and any other information needed by the Customs authority in order to ensure the correct application of the provisions governing Free Zones and Free Warehouse.

3. Applications and related documents shall be kept by the Customs authority for at least three years from the end of the calendar year in which the operator ceases activity in the free zone or Free Warehouse.

Article 11

Approval of the stock accounts shall be issued in writing and dated and signed. The applicant shall be notified of approval. A copy shall be kept for the period referred to in Article 10.

Article 12

1. Regulation (EEC) No. 3787/86 shall apply *mutatis mutandis* to the annulment and revocation of approval of the stock accounts.

2. Approval shall be modified or withdrawn by the Customs authority if the latter prohibits the person to whom it was issued from exercising an activity in the Free Zone or Free Warehouse pursuant to Article 7 (2) or (3) of the basic Regulation.

3. Approval shall be withdrawn if the Customs authorities find repeated disappearances of goods, which cannot be explained to their satisfaction.

4. Once approval has been withdrawn the activities to which the stock accounts relate may no longer be exercised in the Free Zone or Free Warehouse.

TITLE III

ENTRY OF GOODS INTO A FREE ZONE OR A FREE WAREHOUSE

Article 13

Without prejudice to Articles 15 and 16 and Title VI, goods entering a Free Zone or Free Warehouse shall be subject neither to presentation nor to the lodging of a Customs declaration on entry.

The entry of any goods into the premises used for the activity shall be recorded immediately in the stock accounts referred to in Article 9.

Article 14

The transport document referred to in Article 3 of the basic Regulation shall be any document relating to the transport, such as a waybill, delivery note, manifest or dispatch note, as long as it gives all the information necessary for identification of the goods.

Article 15

1. Without prejudice to any simplified procedures laid down for the Customs procedure to be discharged, where goods placed under a Customs procedure need to be presented to the Customs authority pursuant to Article 5 (a) of the basic Regulation, the relevant Customs document must be presented with the goods.

2. Where inward processing relief arrangements or temporary importation arrangements are discharged by placement of the compensating products or import goods under the Community transit ar-

rangements (external procedure), followed by entry into a Free Zone or a Free Warehouse with a view to export from the Customs territory of the Community, the Customs authority shall carry out random controls to ensure that the particulars referred to in Article 19 (f) are entered in the stock accounts. The Customs authority shall also ensure that where goods are transferred from one operator to another within a Free Zone this is entered in the stock accounts of the operator receiving them.

Article 16

Where goods have been the subject of a decision to grant repayment or remission of import duties authorising the placing of these goods in a Free Zone or a Free Warehouse, the Customs authority shall issue the certificate referred to in Article 8 of Commission Regulation (EEC) No. 1574/80 of 20 June 1980 laying down provisions for the implementation of Articles 16 and 17 of Council Regulation (EEC) No. 1430/79 on the repayment or remission of import or export duties .

Article 17

Without prejudice to Article 27, the entry into a Free Zone or a Free Warehouse of goods subject to export duties or other export provisions for which the Customs authority requires notification to the Customs service in accordance with Article 5 (3) of the basic Regulation, shall not give rise to presentation of a document on entry nor to systematic and general controls on all goods entering.

Article 18

When a request is made in accordance with Article 5 of the basic Regulation, the Customs authority shall certify the Community or non-Community status of the goods placed in Free Zone or a Free Warehouse on a form conforming to the model and provisions in Annex II.

TITLE IV

OPERATION OF A FREE ZONE OR A FREE WAREHOUSE

Article 19

1. The operator keeping the approved stock accounts in accordance with Article 9 must enter therein all information necessary to control the correct application of Customs rules.

2. If the operator discovers that goods have disappeared other than by natural cause he must notify the Customs authority thereof.

3. Without prejudice to Article 29, the stock accounts must include:

(a) particulars concerning marks, identifying numbers, number and kind of packages, the quantity and usual commercial description of the goods and, where relevant, the identification marks of the container;

(b) particulars enabling a check to be kept on the goods, in particular their location;

(c) particulars of the transport document used on entry and exit of the goods;

(d) reference to the Customs status and, where relevant, the document certifying this status referred to in Article 16;

(e) particulars of usual forms of handling;

(f) where the entry into a Free Zone or a Free Warehouse discharges either inward processing relief or temporary importation arrangements, or Community transit arrangements (external procedure) which themselves discharged one of these arrangements, the indications referred to in:

- Article 71 of Council Regulation (EEC) No. 3677/86 of 24 November 1986 laying down provisions for the implementation of Regulation (EEC) No. 1999/85 on inward processing relief arrangements,

- Article 17 of Commission Regulation (EEC) No. 1751/84 of 13 June 1984 laying down certain provisions for the application of Council Regulation (EEC) No. 3599/82 on temporary importation arrangements;

(g) goods which would not be subject upon release for free circulation or temporary importation to import duties or commercial policy measures and for which the use or destination must be controlled.

4. Where accounts have to be kept for the purposes of a Customs procedure, the information contained in those accounts need not appear also in the stock accounts referred to in paragraph 1.

Article 20

1. The usual forms of handling referred to in Article 8 (a) of the basic Regulation are those set out in Annex IV of Commission Regulation (EEC) No. 2561/90.

2. Where handling could give rise to an advantage in terms of the import duties applicable to non-Community goods after handling compared with those applicable before handling, it may be carried out only on condition that the request referred to in Article 13 of the basic Regulation is made at the same time as the lodging of the application for authorisation, in accordance with Article 35 and of Regulation (EEC) No. 2561/90.

3. Where handling would result in higher import duties on the goods than those applying to the goods before handling, handling shall be carried out without authorisation and the party concerned may no longer make the request referred to in Article 13 of the basic Regulation.

Article 21

Where non-Community goods are placed under the inward processing relief arrangements or the arrangements for processing under Customs control in a Free Zone or a Free Warehouse, the following provisions respectively shall apply: Council Regulation (EEC) No. 1999/85 of 16 July 1985 on inward processing relief arrangements, Council Regulation (EEC) No. 2763/83 of 26 September 1983 on arrangements permitting goods to be processed under Customs control before being put into free circulation, as well as those provisions adopted in accordance with Article 8 (b) and (c) of the basic Regulation.

Article 22

Member States shall notify the Commission of any changes in the control methods for inward processing and processing under Customs control that they propose pursuant to Article 8 (b) and (c) of the basic Regulation.

Article 23

1. Without prejudice to Article 10 of the basic Regulation, where non-Community goods are released for free circulation within a Free Zone or a Free Warehouse, the procedure referred to in Article 48 (c) of Regulation (EEC) No. 2561/90 shall apply without prior authorisation from the Customs authority. In this case approval of the stock accounts referred to in Article 11 must cover also the use of the said stock accounts for the control of the simplified procedure for release for free circulation.

2. The Community status of the goods released for free circulation in accordance with paragraph 1 shall be certified by the document referred to in Annex II, to be issued by the operator.

TITLE V

REMOVAL OF GOODS FROM A FREE ZONE OR A FREE WAREHOUSE

Article 24

Removal of goods from the premises used for the activity must be recorded immediately in the stock accounts referred to in Article 9 in order to provide a basis for the Customs controls referred to in Article 26.

Article 25

Without prejudice to the procedure applicable in cases where exports are subject to export duties or commercial policy measures or to the provisions of Title VI, the direct removal of the goods from the Customs territory of the Community shall be subject neither to presentation of the goods nor to the lodging of a Customs declaration.

Article 26

Without prejudice to Article 31, to ensure compliance with the provisions on export or dispatch applicable to goods leaving a Free Zone or Free Warehouse referred to in Article 24, the Customs authority shall carry out random controls on the operator's stock accounts.

TITLE VI

SPECIAL PROVISIONS CONCERNING COMMUNITY AGRICULTURAL GOODS

Article 27

1. Refinanced goods placed in a Free Zone or a Free Warehouse pursuant to Article 5 of Regulation (EEC) No. 565/80 shall be presented and a Customs declaration lodged.

2. The declaration referred to in paragraph 1 shall be made in accordance with Article 57 of Regulation (EEC) No. 2561/90.

Article 28

The stock accounts referred to in Article 9 shall include, in addition to the particulars referred to in Article 19, the date on which the

refinanced goods were placed in the Free Zone or the Free Warehouse and particulars of the entry.

Article 29

Article 59 of Regulation (EEC) No. 2561/90 shall apply to the handling of refinanced goods.

Article 30

The processing of refinanced basic products in a Free Zone or a Free Warehouse shall be carried out in accordance with Article 4 of Regulation (EEC) No. 565/80

Article 31

1. Refinanced goods must be declared for export and leave the Customs territory of the Community within the time limits laid down in Community agricultural rules.

2. The declaration referred to in paragraph 1 must be made in accordance with Article 62 of Regulation (EEC) No. 2561/90.

3. Without prejudice to Council Regulation (EEC) No. 386/90 of 12 February 1990 on the monitoring carried out at the time of export of agricultural products receiving refunds or other amounts, the Customs authority shall carry out random controls on the basis of the stock accounts in order to ensure that the time limits referred to in paragraph 1 are observed.

TITLE VII

TRANSITIONAL AND FINAL PROVISIONS

Article 32

A victualling warehouse may be set up in a Free Zone or a Free Warehouse in accordance with Article 38 of Commission Regulation (EEC) No. 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products.

Article 33

1. Article 5 shall not apply to buildings which, on the date of adoption of this Regulation, are located in Free Zones or which constitute Free Warehouses, provided the buildings used permit adequate supervision by the Customs authority.

2. Operators who already carry on activities in Free Zones and Free Warehouses must present their application for approval of the stock accounts referred to in Article 9 before 1 January 1992.

Article 34

This Regulation shall enter into force on 1 January 1991.

It shall apply from 1 January 1992.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 30 July 1990.

For the Commission

Christiane SCRIVENER

Member of the Commission

ANNEX III

COUNCIL REGULATION (EEC) NO. 2913/92 OF 12 OCTOBER 1992 ESTABLISHING THE COMMUNITY CUSTOMS CODE

(...)

CHAPTER 3

OTHER TYPES OF CUSTOMS-APPROVED TREATMENT OR USE

Section 1

Free Zones and Free Warehouses

A. General

Article 166

Free Zones and Free Warehouses shall be parts of the Customs territory of the Community or premises situated in that territory and separated from the rest of it in which:

(a) Community goods are considered, for the purpose of import duties and commercial policy import measures, as not being on Community Customs territory, provided they are not released for free circulation or placed under another Customs procedure or used or con-

sumed under conditions other than those provided for in Customs regulations;

(b) Community goods for which such provision is made under Community legislation governing specific fields qualify, by virtue of being placed in a Free Zone or Free Warehouse, for measures normally attaching to the export of goods.

Article 167

1. Member States may designate parts of the Customs territory of the Community as Free Zones or authorise the establishment of Free Warehouses.

2. Member States shall determine the area covered by each zone. Premises which are to be designated as Free Warehouses must be approved by Member States.

3. Free Zones shall be enclosed. The Member States shall define the entry and exit points of each Free Zone or Free Warehouse.

4. The construction of any building in a Free Zone shall require the prior approval of the Customs authorities.

Article 168

1. The perimeter and the entry and exit points of Free Zones and Free Warehouses shall be subject to supervision by the Customs authorities.

2. Persons and means of transport entering or leaving a Free Zone or Free Warehouse may be subjected to a Customs check.

3. Access to a Free Zone or Free Warehouse may be denied to persons who do not provide every guarantee necessary for compliance with the rules provided for in this Code.

4. The Customs authorities may check goods entering, leaving or remaining in a Free Zone or Free Warehouse. To enable such checks to be carried out, a copy of the transport document, which shall accompany goods entering or leaving, shall be handed to, or kept at the disposal of, the Customs authority by any person designated for this purpose by such authorities.

Where such checks are required, the goods shall be made available to the Customs authorities.

B. Placing of goods in Free Zones or Free Warehouses

Article 169

Both Community and non-Community goods may be placed in a Free Zone or Free Warehouse.

However, the Customs authorities may require that goods which present a danger or are likely to spoil other goods or which, for other reasons, require special facilities be placed in premises specially equipped to receive them.

Article 170

1. Without prejudice to Article 168 (4), goods entering a Free Zone or Free Warehouse need not be presented to the Customs authorities, nor need a Customs declaration be lodged.

2. Goods shall be presented to the Customs authorities and undergo the prescribed Customs formalities only where:

(a) they have been placed under a Customs procedure which is discharged when they enter a free zone or Free Warehouse; however, where the Customs procedure in question permits exemption from the obligation to present goods, such presentation shall not be required;

(b) they have been placed in a Free Zone or Free Warehouse on the authority of a decision to grant repayment or remission of import duties;

(c) the quality for the measures referred to in Article 166 (b).

3. Customs authorities may require goods subject to export duties or to other export provisions to be notified to the Customs department.

4. At the request of the party concerned, the Customs authorities shall certify the Community or non-Community status of goods placed in a Free Zone or Free Warehouse.

C. Operation of Free Zones and Free Warehouses

Article 171

1. There shall be no limit to the length of time goods may remain in Free Zones or Free Warehouses.

2. For certain goods referred to in Article 166 (b) which are covered by the common agricultural policy, specific time limits may be imposed in accordance with the committee procedure.

Article 172

1. Any industrial, commercial or service activity shall, under the conditions laid down in this Code, be authorised in a Free Zone or Free Warehouse. The carrying on of such activities shall be notified in advance to the Customs authorities.

2. The Customs authorities may impose certain prohibitions or restrictions on the activities referred to in paragraph 1, having regard to the nature of the goods concerned or the requirements of Customs supervision.

3. The Customs authorities may prohibit persons who do not provide the necessary guarantees of compliance with the provisions laid down in this Code from carrying on an activity in a Free Zone or Free Warehouse.

Article 173

Non-Community goods placed in a Free Zone or Free Warehouse may, while they remain in a Free Zone or Free Warehouse:

(a) be released for free circulation under the conditions laid down by that procedure and by Article 178;

(b) undergo the usual forms of handling referred to in Article 109 (1) without authorisation;

(c) be placed under the inward-processing procedure under the conditions laid down by that procedure.

However, processing operations within the territory of the old Free Port of Hamburg, in the Free Zones of the Canary Islands, Azores, Madeira and overseas departments shall not be subject to economic conditions.

However, with regard to the old Free Port of Hamburg, if conditions of competition in a specific economic sector in the Community are affected as a result of this derogation, the Council, acting by a qualified majority on a proposal from the Commission, shall decide that economic conditions shall apply to the corresponding economic activity within the territory of the old Free Port of Hamburg;

(d) be placed under the procedure for processing under Customs control under the conditions laid down by that procedure;

(e) be placed under the temporary importation procedure under the conditions laid down by that procedure;

(f) be abandoned in accordance with Article 182;

(g) be destroyed, provided that the person concerned supplies the Customs authorities with all the information they judge necessary.

Where goods are placed under one of the procedures referred to in (c), (d) or (e), the Member States may, in so far as is necessary to take account of the operating and Customs supervision conditions of the Free Zones or Free Warehouses, adapt the control arrangements laid down.

Article 174

The Community goods referred to in Article 166 (b) which are covered by the common agricultural policy shall undergo only the forms of handling expressly prescribed for such goods in conformity with Article 109 (2). Such handling may be undertaken without authorisation.

Article 175

1. Where Articles 173 and 174 are not applied, non Community goods and the Community goods referred to in Article 166 (b) shall not be consumed or used in Free Zones or in Free Warehouses.

2. Without prejudice to the provisions applicable to supplies or stores, where the procedure concerned so provides, paragraph 1 shall not preclude the use or consumption of goods the release for free circulation or temporary importation of which would not entail application of import duties or measures under the common agricultural policy or commercial policy. In that event, no declaration of release for free circulation or temporary importation shall be required.

Such declaration shall, however, be required if such goods are to be charged against a quota or a ceiling.

Article 176

1. All persons carrying on an activity involving the storage, working or processing, or sale or purchase, of goods in a Free Zone or Free Warehouse shall keep stock records in a form approved by the Customs authorities. Goods shall be entered in the stock records as soon as they are brought into the premises of such person. The stock records must enable the Customs authorities to identify the goods, and must record their movements.

2. Where goods are transhipped within a Free Zone, the documents relating to the operation shall be kept at the disposal of the Customs authorities. The short-term storage of goods in connection with such

transshipment shall be considered to be an integral part of the operation.

D. Removal of goods from Free Zones or Free Warehouses

Article 177

Without prejudice to special provisions adopted under Customs legislation governing specific fields, goods leaving a Free Zone or Free Warehouse may be:

- exported or re-exported from the Customs territory of the Community, or;
- brought into another part of the Customs territory of the Community.

The provisions of Title III, with the exception of Articles 48 to 53 where Community goods are concerned, shall apply to goods brought into other parts of that territory except in the case of goods which leave that zone by sea or air without being placed under a transit or other Customs procedure.

Article 178

1. Where a Customs debt is incurred in respect of non Community goods and the Customs value of such goods is based on a price actually paid or payable which includes the cost of warehousing or of preserving goods while they remain in the Free Zone or Free Warehouse, such costs shall not be included in the Customs value if they are shown separately from the price actually paid or payable for the goods.

2. Where the said goods have undergone, in a Free Zone or Free Warehouse, one of the usual forms of handling within the meaning of Article 109, the nature of the goods, the Customs value and the quantity to be taken into consideration in determining the amount of import duties shall, at the request of the declarant and provided that such handling was covered by an authorisation granted in accordance with paragraph 3 of that Article, be those which would be taken into account in respect of those goods, at the time referred to in Article 214, had they not undergone such handling. Derogation from this provision may, however, be determined in accordance with the committee procedure.

Article 179

1. Community goods referred to in Article 166 (b) which are covered by the common agricultural policy and are placed in a Free Zone or Free Warehouse shall be assigned a treatment or use provided for by the rules under which they are eligible, by virtue of their being placed in a Free Zone or Free Warehouse, for measures normally attaching to the export of such goods.

2. Should such goods be returned to another part of the Customs territory of the Community, or if no application for their assignment to a treatment or use referred to in paragraph 1 has been made by the expiry of the period prescribed pursuant to Article 171 (2), the Customs authorities shall take the measures laid down by the relevant legislation governing specific fields relating to failure to comply with the specified treatment or use.

Article 180

1. Where goods are brought into or returned to another part of the Customs territory of the Community or placed under a Customs procedure, the certificate referred to in Article 170 (4) may be used as proof of the Community or non-Community status of such goods.

2. Where it is not proved by the certificate or other means that the goods have Community or non-Community status, the goods shall be considered to be:

- Community goods, for the purposes of applying export duties and export licences or export measures laid down under the commercial policy;

- non-Community goods in all other cases.

Article 181

The Customs authorities shall satisfy themselves that the rules governing exportation or re-exportation are respected where goods are exported or re-exported from a Free Zone or Free Warehouse.

*Section 2**Re-exportation, destruction and abandonment**Article 182*

1. Non-Community goods may be:

- re-exported from the Customs territory of the Community;
- destroyed;

- abandoned to the exchequer where national legislation makes provision to that effect.

2. Re-exportation shall, where appropriate, involve application of the formalities laid down for goods leaving, including commercial policy measures. Cases in which non-Community goods may be placed under a suspensive arrangement with a view to non application of commercial policy measures on exportation may be determined in accordance with the committee procedure.

3. Save in cases determined in accordance with the committee procedure, re-exportation or destruction shall be the subject of prior notification of the Customs authorities. The Customs authorities shall prohibit re-exportation should the formalities or measures referred to in the first subparagraph of paragraph 2 so provide. Where goods are placed under an economic Customs procedure when on Community Customs territory are intended for re-exportation, a Customs declaration within the meaning of Articles 59 to 78 shall be lodged. In such cases, Article 161 (4) and (5) shall apply. Abandonment shall be put into effect in accordance with national provisions.

4. Destruction or abandonment shall not entail any expense for the exchequer.

5. Any waste or scrap resulting from destruction shall be assigned a Customs-approved treatment or use prescribed for non-Community goods. It shall remain under Customs supervision until the time laid down in Article 37 (2).

ANNEX IV

TREATY OF ROME OF 25 MARCH 1957, ESTABLISHING THE EUROPEAN COMMUNITIES.

(...)

Article 234

The rights and obligations arising from agreements concluded before the entry into force of this Treaty between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of this Treaty.

To the extent that such agreements are not compatible with this Treaty, the Member State or States concerned shall take all appropri-

ate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude.

In applying the agreements referred to in the first paragraph, Member States shall take into account the fact that the advantages accorded under this Treaty by each Member State form an integral part of the establishment of the Community and are thereby inseparably linked with the creation of common institutions, the conferring of powers upon them and the granting of the same advantages by all the other Member States.

(...)

ANNEX V

STATE COUNCIL REGULATION OF 15 OCTOBER 1992, ESTABLISHING XIAMEN XIANGYU FREE TRADE ZONE

CHAPTER I

GENERAL PROVISIONS

Article 1

These Regulations are, in accordance with the basic principles of relevant state laws and with reference to international practices, formulated in order to step up the construction and development of Xiamen Xiangyu Free Trade Zone, also known as the Bonded Zone (hereinafter referred to as the Zone), promote economic co-operation and trade between the mainland China and Taiwan or other countries and motivate the enforcement of some policies towards a free-trade port in the Xiamen Special Economic Zone.

Article 2

Fencing facilities are installed to separate the Zone from non bonded areas to ensure the exclusive administration of the Zone within the partition lines.

Article 3

The Zone is mainly to develop international trade, Mainland-Taiwan trade, entrepot trade, bonded storage and export processing, Business of finance, insurance, futures, commodity exhibitions, dock

enterprising, transportation, information and other related business are also allowed to develop.

Article 4

Enterprises, other economic entities and individuals, (hereinafter referred to as investors), both domestic and abroad, are allowed to establish enterprises and agencies in accordance with these regulation.

Article 5

The enterprises, economic entities, agencies and individuals inside the Zone must abide by the laws and regulations of the People's Republic of China and these regulations. Their lawful rights and interests shall be protected by law.

CHAPTER 2

ADMINISTRATION ORGANISATION

Article 6

The Administrative Committee of the Zone (hereinafter referred to as Administrative Committee) is an agency of the Xiamen Municipal People's Government and represents the said government to exercise the overall administration over the Zone.

Article 7.

The Administrative Committee performs the following functions:

1. to ensure the implementation of state laws and regulations and these regulations in the Zone;
2. to enact relevant governing rules under these regulations, and to organise and implement them after the approval by the Municipal People's Government;
3. to work out overall schemes and industrial directive policies, and to organise and implement them after the approval by the Municipal People's Government;
4. to exercise the administration over plans, investments, construction, land, real estate, industry and commerce, environment protection, labours, public security, statistics, etc., in the Zone;
5. to co-ordinate the work of the Customs and other related port units in charge of inspection and examination in the Zone;
6. to manage the overall income and expenses of the Zone;
7. to be responsible for the construction and management of the public utilities in the Zone;

8. to be responsible for the examination and approval of the applications of the Chinese personnel to leave or go abroad;

9. to exercise other rights entrusted by the Municipal People's Government. The administration concerning the issuance of licences shall be handled by the Administrative Committee authorised and entrusted by the respective competent authorities.

Article 8

The head of the Administrative Committee is the director, who is appointed by and responsible for the Municipal People's Government.

Article 9

The Customs sets up its agency in the Zone to supervise and control the entering and leaving of transportation means, goods, and personal belongings in accordance with the laws.

Article 10

The principles of handling related business in the Zone under its authority shall be simplicity, efficiency, transparency and best service.

CHAPTER 3

ESTABLISHMENT AND ADMINISTRATION OF ENTERPRISES

Article 11

Investors applying for the establishment of enterprises shall register directly with the Industry Commerce Division of the Administrative Committee, and go through the necessary registrations with the Customs and Tax authorities. In establishing enterprises of special lines, their establishment subject to the examination and approval of the competent department of the Xiamen Municipal People's government, shall, in accordance with relevant laws and decrees, be subject to the examination and approval of the Administrative Committee, the authority of which is granted by the said departments.

Article 12

In case the enterprise in the Zone needs to modify its items of registration or to merge or separate with other economic entities, or to terminate its business, the Administrative Committee, the Customs and Tax authorities are to be concerned for the modification.

Article 13

In the Zone, a bonded market of means of production is established to deal with comprehensive produced goods and is also allowed to supply its goods to non-bonded areas.

Article 14

The enterprises in the Zone may store in the Zone goods of raw and processed materials which are vital to the national economy and the people's livelihood and domestic industrial, agricultural production unless the commodities are of prohibit entry by the State.

Article 15

The enterprises in the Zone are allowed to undertake the processing business of a commercial nature such as grading, packing, sub-packaging, sorting, labelling, etc.

Article 16

The enterprises in the Zone may process goods for enterprises and other economic entities in non-bonded areas by contract, and consign enterprises in non-bonded areas to process goods, which shall principally be export-oriented.

Article 17

Hi-tech products and other products, both domestic and abroad may be on exhibition and sale in the Zone, and can directly be negotiated and ordered in the Zone.

Article 18

The enterprises in the Zone can manage their own business independently by law. The enterprises in the Zone must, in accordance with relevant stipulations, pay the social, labour insurance expenses for all staff and employees.

Article 19

The enterprises in the Zone shall set up standard accounting books and submit their reports of statistics results in time as stipulated to the Administrative Committee.

Article 20

The establishment of enterprises with pollution endangering the environment or high consumption of energy are prohibited in the Zone.

Article 21

The environment protection work of specific projects in the Zone shall, in accordance with the Regulations of Environment Protection of Xiamen to carry out regional control of the approved overall volume, be subject to the examination, approval and supervision of the Administrative Committee.

CHAPTER 4

SUPERVISION AND CONTROL OF ENTRY AND EXIT

Article 22

The following goods are exempt from import or export licences unless otherwise stipulated by the State: 1. machinery, equipment, construction materials for infrastructure, transportation means, vehicles for production and office articles which are imported from abroad but used within the Zone. 2. raw materials, parts, components and device, fuels and packing materials which are imported from abroad with the purpose of manufacturing and processing products for enterprises in the Zone; 3. goods which are imported from abroad but stored in the Zone; 4. goods which are processed or manufactured for export by the enterprises in the Zone; 5. goods in transit.

Article 23

The consigners, consignees, their agents or the owners of the goods or articles entering or leaving the Zone shall, as stipulated by law, declare to the Customs the said goods or articles and produce relevant documents. The goods transported from the Zone to non-bonded areas shall be treated as imported goods, while goods transported from non-bonded areas into the Zone shall be treated as exports. They shall respectively be subject to import or export formalities in accordance with relevant laws and regulations of the state.

Article 24

In the Zone capital goods, processed materials and semi-finished goods, etc. may be in trade.

Article 25

Goods shipped from the Zone to other free trade zones shall, be subject to the approval of the Customs and be transported in accordance with relevant regulations of transit.

Article 26

The goods and articles prohibited by the State to import or export shall not be transported and carried in or out of the Zone.

Article 27

Ships from Taiwan may anchor and operate in the special dock of the Zone with an entrance permit issued by the Administrative Committee at a designated entrance, subjected to the examination of the Customs.

Article 28

The means of transport and other traffic vehicles shall enter and leave the Zone with an entrance permit issued by the Administrative Committee at a designated entrance, subjected to the examination of the Customs.

Article 29

The individuals shall enter and leave the Zone with a valid credential accepted by the Administrative Committee at a designated entrance with their personal articles subject to the examination of the Customs.

Article 30

Without a permit of the Administrative Committee, no individual is allowed to reside in the Zone.

CHAPTER 5 BANKING

Article 31

Upon the approval of the People's Bank of China, financial, and insurance institutions and other investors, both domestic and abroad may establish their financial and insurance institutions and operate businesses of financial and insurance in the Zone, Upon the approval of the administration authorities of foreign currencies, the institutions may conduct their business of offshore banking, financial futures and other foreign currency operations.

Article 32

In the Zone, foreign currencies obtained from business operations by enterprises may be retained by enterprises as circulating funds. Net foreign currencies obtained by the Chinese-funded enterprises in the Zone may be exchanged into Chinese currency at the end of the year.

Article 33

The enterprises in the zone can handle their foreign currencies independently. The investment income, other legal earnings and liquidated capital may be remitted abroad by law. The legal earnings of aliens in the Zone may be remitted abroad by law.

Article 34

The enterprises in the Zone may lawfully issue stocks, bonds, inside and outside China, and raise foreign capitals outside China.

Article 35

The enterprises in the Zone may buy or sell foreign currencies in accordance with the relevant laws and regulations of the state.

Article 36

The dealings, warehousing, storage and transportation of goods among the enterprises in the Zone and goods entering and leaving the Zone may be priced and settled in terms of foreign currencies in the banks or financial institutions which are allowed to conduct businesses of foreign currencies in the Zone. Upon approval of People's Bank of China, the new Taiwan dollar may be exchanged in financial institutions in the Zone.

CHAPTER 6

TAX PREFERENCES

Article 37

The following goods imported or exported by the enterprises in the Zone are exempt from Customs duties, VAT and consumption tax: 1. machinery, equipment and other construction materials imported for infrastructure construction of the Zone; 2. construction materials, fuels, equipment for production and management, office articles as well as the spare parts needed for maintenance by the enterprises for their own use in the Zone; 3. rational amount of construction materials, equipment for management, office articles as well as the spare parts needed for maintenance by the institutions for their own use in the Zone; 4. export products which are produced and processed by the enterprises in the Zone.

Article 38

The following products shall be treated as goods in bond: 1. raw materials, parts, components, and packing material which are im-

ported for production of the enterprises in the Zone; 2. the transit goods; 3. the warehouse goods; 4. other goods approved by the Customs.

Article 39

When goods enter the Zone from non-bonded areas, the value-added tax paid can be drawn back, unless otherwise stipulate by the state. However, goods among them, imported from outside China the taxes of which were already paid, no drawn back of the taxes can be allowed. Goods sold from the Zone to non-bonded areas shall pay taxes in accordance with the laws.

Article 40

The dealing and processing of goods and repairing and servicing trades in the Zone are exempt from payment of VAT and consumption tax.

Article 41

The preferential terms of the exemption and reduction of income tax levied on the enterprises and their bases of calculation of taxes in the zone shall be handled the same way as on the foreign enterprises in the Special Economic Zone.

CHAPTER 7

LAND ADMINISTRATION

Article 42

Such system shall be implemented with the land in the Zone. The land-use right may be obtained for a limited term which is subject to payment of consideration. The maximum land-use term is 50 years.

Article 43

The Administrative Committee is responsible for the overall management of the land-use business. Any one who needs to use the land must file an application to the Administration to the Administrative Committee for it.

Article 44

The development, utilisation and construction of the land in the Zone must comply with the overall plan and detailed management regulations of the Zone.

Article 45

The land-use right and the related buildings obtained by the investors by law may be lawfully transferred, leased, mortgaged and inherited provided they are to register the same with the Administrative Committee and pay taxes by law.

Article 46

In one of the following cases, the Administrative Committee shall withdraw the land-use right without compensation and nullify the licence to the use of land in the Zone: 1. the land has not been utilised for more than one year without the approval of the Administrative Committee; 2. the land has not been utilised in accordance with the contracted term or in line with its target of development.

**CHAPTER 8
SUPPLEMENT PROVISION**

Article 47

Illegal activities such as smuggling are strictly prohibited in the Zone. Whoever violates the regulation is to be punished according to the laws and regulations of the State.

Article 48

The Xiamen Municipal People's Government is responsible for the explanation of these Regulations with respect to the problems arising from their specific applications.

Article 49

The present Regulations shall come into force on the date of promulgation.

**ANNEX VI
CUBA DECREE-LAW NO. 165/1996 ON FREE ZONES AND
INDUSTRIAL PARKS**

**CHAPTER I
PRELIMINARY PROVISIONS**

Article 1

1. The object of this Decree-Law is to enact the regulations in relation to the establishment and functioning of Free Zones and Industrial Parks.

2. The provisions of this Decree-Law concerning Free Zones are likewise applicable to Industrial Parks.

3. The establishment of Free Zones and Industrial Parks contributes to economic and social development, stimulates international trade and, besides attracting foreign capital, has the following specific aims:

a) generating new jobs and raising the workers' skills;

b) incorporating a greater domestic industrial value added, making use of the country's resources; and

c) developing new national industries through the assimilation of advanced technologies and the export of national products.

4. This Decree-Law also includes the regulations of a special Customs, banking, tax, labour, migratory and public order regime, which imply facilities and incentives for foreign investment.

CHAPTER II DEFINITIONS

Article 2

1. For the sake of brevity, the following terms are used in this Decree-Law:

Free Zone, meaning Free Zone and Industrial Park.

Executive Committee, meaning Executive Committee of the Council of Ministers.

Commission, meaning Free Zone Commission.

2. In the same text, the following terms are used, with the meaning indicated in each case:

Free Zone: a space within the national territory, duly limited, without any residing population, with free import and export of goods, not linked to the Customs demarcation, where industrial, commercial, agricultural, technological and service-rendering activities are carried out with the application of a special regime.

Industrial Park: a space within the national territory with similar characteristics to those of the Free Zone, but where industrial activities and those service-rendering activities that serve to support them are predominantly carried out.

Special Regime: rules related to Customs, banking, taxation, labour, migratory and public order systems, less onerous and rigid than

common or ordinary ones, applicable to grantees and operators of Free Zones as an incentive for investment.

Concession: a unilateral act by the Government of the public of Cuba by which a natural or legal person is granted the faculty to develop and exploit a Free Zone, subject to compliance with certain conditions.

Grantee: the natural or legal person, with a foreign domicile and foreign capital, or the national legal person which, in the exercise of the corresponding concession and with its own resources, promotes and develops the necessary, sufficient infrastructure for the establishment and functioning of the Free Zone and subsequently assumes the government and management of it.

Operator: the natural or legal person, with a foreign domicile and foreign capital, or the national legal person which the ministry for Foreign Investment and Economic Co-operation, at the grantee's proposal, authorises to establish itself in the Free Zone to conduct one or various activities comprised within the legal framework of this occupation

Official Registry: books or magnetic supports which the ministry for Foreign Investment and Economic Co-operation establishes and organises for the registration of the grantees and operators.

CHAPTER III THE ESTABLISHMENT AND CONTROL OF FREE ZONES

Section One *The establishment of Free Zones*

Article 3

The Executive Committee of the Council of Ministers, on its own initiative or at the proposal of the Ministry for Foreign Investment and Economic Co-operation disposes the establishment of Free Zones.

Section Two *Control of Free Zones*

Article 4

1. The Ministry for Foreign Investment and economic Co-operation is the State Central Administrative body responsible for regulating and controlling the activities carried out in Free Zones.

2. To this end, it is incumbent to him:

a) fundamentally, to propose to the Executive Committee the creation of Free Zones and the granting of concessions;

b) to propose to the Executive Committee the politic to follow with respect to the Free Zones and the programs of development of these;

c) to dictate the regulation of each frank zone to proposal of the respective concessionaire or in his defect, by own initiative;

d) to organise and to co-ordinate the relations with other organisations whose activities are compatible with which they are effectuated in the Free Zones;

e) to establish, of assembly with the Ministries of Finances and Prices, Foreign trade, Economic and Planning, Work and Social Security, and the Interior, act like with the National Bank of Cuba, the General Customs of the Republic and other state organisations, a system by means of which the management or the transactions that there are to make by the concessionaires and the operators of Free Zones before such, are effectuated from a unique point or central office, in the own Free Zones;

f) to create, to organise and to regulate the Official Registry, for the inscription in same of the concessionaires and the operators;

g) to receive the requests of authorisation of operator of Free Zones, to know the same ones and to dictate the corresponding resolutions;

h) to fix the amounts and to establish the form in which the concessionaires must carry out the deposits of guarantees to assure the observance the conditions of the concession;

i) to fulfil demise duties that legally come taxes to him in relation with the Free Zones.

Article 5

1. The Ministry for the Foreign Investment and the Economic Collaboration, with the purpose of assuring the continuity and effectiveness the activities of the Free Zones, acts also like regulating body of these, and as so it corresponds to him to guard by the observance of the conditions imposed to the respective concessionaires and operators, and react suitably before any breach.

2. The concessionaires and the operators must offer the information and make the acts that the Ministry for the Foreign Investment

and the Economic Collaboration, within its faculties, requires of them for the best execution of its obligations of supervision.

CHAPTER IV THE COMMISSION OF FREE ZONES

Article 6

1. The Commission of Free Zones is created like advisory body of the Ministry for the Foreign Investment and the Economic Collaboration, with the competence and functions ahead indicated.

2. The Commission of Free Zones integrated by the Minister for the Foreign Investment and the Economic Collaboration, like president, and by a representative of each one of the following organisms, like vowels: - Ministry of Economy and Planning - Ministry of Finances and Prices - Ministry of Foreign trade - Ministry of Work and Social Security - Ministry of the Revolutionary Armed Forces - Department of the Interior - Ministry of Science, Technology and Media Environment - Ministry of the Transport - National Bank of Cuba - General Customs of the Republic.

3. In the case that, by the nature of the question, it is considered of utility to count on bodies or organisms not included in the enumerated ones in the previous section of this article, the president must solicit the director of the same to designate a representative, who will act as a vowel of the Commission.

4. The attributions of the Commission are:

a) collaborating with the Ministry for the Foreign Investment and the Economic Collaboration in the writing of the Integral Program of Development of Free Zones;

b) passing judgement on proposals for the setting up of Free Zones and the granting of concessions; and

c) recommending, among other matters, the decisions and actions that it deems useful for the development of Free Zones.

2. The Commission itself, prior to the approval of the ministry for Foreign Investment and Economic Co-operation, shall draw up the Regulations which it will have to follow, in which the frequency of its sessions, the amount of votes needed for reaching decisions and how to put these on record shall be established, as well as all other relevant provisions.

CHAPTER V THE FREE ZONE GRANTEES

Section One

Authority empowered to grant the concession

Article 7

The granting of management concessions in relation to specific Free Zones is a responsibility of the Executive Committee.

Section Two

Application for concession and its processing

Article 8

1. The granting of a management concession in relation to a specific Free Zone can be applied for by natural or legal persons domiciled abroad and having foreign capital or national legal persons.

2. The application is submitted to the Ministry for Foreign Investment and Economic Co-operation together with a statement containing the following information:

- a) name or firm name and address of the applicant;
- b) description of the objectives, activities, structures, organisation and services planned, in accordance with the development plan of the territory concerned;
- c) area and location of the Free Zone;
- d) a technical, financial and economic feasibility study of the project and the prospective market;
- e) indication as to the composition of the capital;
- f) timetable for executing the project, including the initial investment and a plan of future investments;
- g) documents certifying his/her identity and economic solvency, and in the case of a national or foreign legal person, a copy of the incorporating documents of the entity and of the documents which attest the powers of the appearing party as its legitimate representative, duly legalised; and
- h) other data and information required by the Ministry for Foreign Investment and Economic Connotation in specific cases.

Article 9

The Ministry for Foreign Investment and Economic Co-operation, once it has examined the documents submitted to it and consulted

with other bodies or entities if need be, will send what has been done to the Commission so that, taking these elements into consideration, it gives its opinion and finally refers the file prepared to this effect to the Executive Council for decision.

Section Three

Granting of the concession

Article 10

The concession shall be granted or denied within a term of sixty (60) calendar days, counted from the day the application is submitted, and the government decision reached shall be notified to the person concerned through the Ministry for Foreign Investment and Economic Co-operation.

Article 11

1. The decision granting the concession shall contain the following data:

- a) the grantee's identity and legal status;
- b) geographical location of the Free Zone being authorised;
- c) conditions imposed on the grantee;
- d) investment program;
- e) characteristic of the project;
- f) activities to be carried out;
- g) special regime applicable;
- h) time limit of the concession; and
- i) any other data whose inclusion is deemed convenient.

2. The time limit of the concession shall not exceed fifty (50) years and it can be extended for successive time periods until reaching the originally set time limit.

3. Once the time limit of the concession and its extension or extensions, as the case may be, expire, the original grantee shall have preference for a new concession over other interested parties having the same conditions.

Section Four

Faculties and duties of the grantee

Article 12

1. The development, establishment and functioning of the Free Zones are carried out by the grantees, who for this purpose perform

the activities described in the decision of the Executive Committee which grants the concession. which comprise the following:

a) developing land lots, constructing on them buildings for offices, factories, warehouses, depots, rendering of services and other complementary activities, as well as any infrastructure necessary and convenient for carrying out the latter, both for their own use and that of third parties who may establish themselves therein;

b) leasing land lots or giving surface rights over them for carrying out authorised activities;

c) offering start-up and partial or full plant operation services to support or carry out operators' activities;

d) building, promoting and developing centres for technical training, medical assistance, sports and recreation, as well as public services establishments, including transportation, for the use of operators and their workers;

e) making all the necessary facilities to provide public services such as electric power, gas and water, local and intentional communications, safety, sewerage, treatment of residuals and rubbish, as well as any other required to achieve the objectives of the Free Zones;

f) carrying out, outside the Free Zones and in the areas eventually selected, the construction of houses, hotels and other lodging facilities, hospitals, schools and as many others as may contribute to the good functioning of the Free Zones;

g) operating airports, seaports, piers, loading and unloading places, railway stations or railways, in accordance with the respective legal regulations in force; and

h) any other included in the grant by the Executive Committee.

2. The grantee, when entering into the leasing contract or the contract granting surface rights, will abide by the provisions of the Civil Code of the Republic of Cuba to that effect.

3. The rest of the activities previously mentioned shall also be carried out observing the rules that exist in relation to them.

Article 13

The grantee, once the concession has been granted, must:

a) invest in the development of the Free Zone an amount no less than the one proposed in the application and ratified in the decision whereby the concession was granted, and within the scheduled time limit;

b) begin the investment referred to in the foregoing paragraph within a period no greater than one hundred and eighty (180) days, counted as of its registration in the Official Grantees and Operators Registry;

c) guarantee the existence and maintenance of the infrastructure, according to what was specified in the concession, allowing for proper working conditions and the rendering of basic and indispensable services, including urban greening and areas for recreation in conformity with intentional practices;

d) promote and develop training programs which will contribute to the technical and professional upgrading of the workers, whenever this is required;

e) ensure the efficiency of the Free Zone facilities, in such a way that the operators have the necessary conditions for carrying out their activities;

f) comply and make others comply with the regulations in force or those which are enacted in relation to environmental protection, the elimination of pollution, the preservation of soils, urban greening, the sea, the wildlife, as well as with veterinary and phytosanitary control;

g) observe legal provisions on occupational health and safety;

h) draw up the draft regulations for the Free Zone for its subsequent approval by the Ministry for Foreign Investment and Economic Co-operation;

i) make the guarantee deposit if these obligations are included in the concession conditions; and

j) submit an annual report of its activities to the Ministry for Foreign Investment and Economic Co-operation and any other report that Ministry requests.

Article 14

The grantee can freely set the price the operator must pay for the transfer of property, the leasing of facilities and the cession of rights in its favour, as well as for the services it agrees to render the latter.

Article 15

The grantee, with the prior authorisation of the Ministry for Foreign Affairs and Economic Co-operation, can carry out its functions through an agent or proxy, who would always act in the name and under the responsibility of the former.

Article 16

The grantee, in order to begin his operations and activities, must register in the Official Grantees and Operators Registry within a period of thirty (30) days as of the date the concession is granted.

CHAPTER VI
THE FREE ZONE OPERATORS

*Section One**The Authority empowered to authorise the operator**Article 17*

The Ministry for Foreign Investment and Economic Co-operation is the one in charge of authorising, on the grantee's proposal, the establishment of operators in the Free Zone facilities.

*Section Two**The operator authorisation application and its proceeding**Article 18*

Natural or legal persons with foreign domicile and foreign capital or national legal persons interested in this sort of activity can be Free Zone operators.

Article 19

1. To procure the operator authorisation, the persons concerned must submit a formal request to the grantee together with a statement containing the following information:

a) as to natural persons: full name, nationality, passport data and home address;

b) as to legal persons: name of the enterprise, company or corporation, corporate purpose, country under whose laws it has been incorporated, information concerning its registration in the corresponding public registry, as well as the full name of its legal representative. A copy of its incorporation documents and certification which attests the capacity of the legal representative appointed, which will be duly legalised in conformity with Cuban law.

2. The following information, duly documented, shall be submitted with the application in relation to the following paragraphs:

a) the applicant's economic solvency;

b) the activities it is planning to carry out;

c) a list of the main machinery, equipment and accessories, and of the raw materials and other means which will be used;

d) the estimated amount of jobs the project will generate according to the financial economic and market studies made;

e) initial and future investments, including a timetable of the project execution; and

f) other data and information required by the grantee in each concrete case.

3. Once the proceedings specified in the foregoing paragraphs have been fulfilled, the grantee shall submit the completed file to the Ministry for Foreign Investment and Economic Co-operation to its effects.

Section Three

The operator authorisation

Article 20

The Ministry for Foreign Investment and Economic Co-operation, once it has examined and evaluated all the documents submitted, and also made all the consultations with the pertinent bodies of the Central Administration of the State, shall act accordingly within a period of no more than forty-five (45) days, counted from the date the application was submitted.

Article 21

The operator authorisation should contain all the information relating to the operator's identity, the Free Zone where he shall carry out his tasks, the program of immediate and future investments, the carefully detailed activities within his scope of operations, the special system applicable and any other relevant or convenient matters.

Article 22

The operator, in order to begin his operations, must register in the Official Grantees and Operators Registry within a period of thirty (30) days from the date the authorisation is granted.

Section Four

The operators' powers and duties

Article 23

A Free Zone operator can carry out the activities described in the authorisation, comprised within the following framework:

- a) production and manufacture, i.e., the transformation of raw materials and semi-finished goods;
- b) assembly, i.e., the manufacturing of finished or semi-finished goods by the assembly and fitting of spare parts, parts, components and accessories;
- c) processing of finished and semi-finished goods, i.e., finished or semi-finished goods, spare parts, components, accessories or parts to be submitted to some process necessary for making viable the commercialisation of the product concerned;
- d) commercial, i.e., handing, packing and repackaging, storage, deposit and buying and selling of the products;
- e) operational, i.e., the use of seaports, airports, piers, loading and unloading places, railroad stations and railways, for loading and unloading on land and other similar activities;
- f) banking, financial and insurance services, i.e., the rendering of these services in the Free Zone in which it is established, in other Free Zones or abroad;
- g) general services, i.e., rendering of services to Free Zones and to the operators and their workers, such as restaurants, laundries, pharmacies, beauty parlors, gyms, medical assistance and other similar ones;
- h) other services, i.e., rendering of marketing, auditing, management, information, consulting and similar services to the operators established in that same Free Zone or others of the national territory or for export;
- i) technological or scientific research, i.e., research for the improvement of the technological level of industrial and agroindustrial activities;
- j) agricultural, i.e., crop raising and husbandry; and
- k) other activities previously determined by the Ministry for Foreign Investment and Economic Co-operation.

Article 24

Any application that the operators have to submit to state entities and institutions or any proceeding that they have to carry out in relation to them must be done through the single place or central office of the Free Zone.

Article 25

For reasons of labour supply, transportation, raw material management and other important reasons, and with the previous and express authority of the Ministry for Foreign Investment and Economic Co-operation, the operator can carry out the activities specified in the corresponding resolution of the aforementioned Ministry out of the Free Zone where it is established, but with the proper Customs, fiscal and labour controls.

Article 26

1. The Free Zone operator carrying out activities in building, manufacturing, assembly, processing of finished or semi-finished goods, trade and agriculture, can assign up to twenty-five percent (25%) of the goods it produces to the national market.

2. In the event that the operator requests to introduce more than twenty-five percent (25%) of its goods in the national market, the matter shall be decided by the Ministry for Foreign Investment and Economic Co-operation and the Ministry of Foreign Trade.

3. Imports from Free Zones to the national Customs territory are subject to the same regulations and the payment of the same tariffs as those applied to exports coming from other countries, excluding from this payment the percentage of the incorporated national value added.

4. No. tariffs shall be paid when goods that have undergone a transformation or improvement (value added in its costs) that contributes at least fifty percent (50%) of their final value are introduced into the national market.

Article 27

Operators must comply with the following obligations:

a) keeping records of their production, services and other activities, according to universally accepted principles;

b) investing in their projects an amount no less than that indicated in the application and in the terms and time limits expressed in the corresponding authorisation;

c) promoting and carrying out training programs that will allow for the technical and professional training and upgrading of the workers when necessary;

d) sending to the Ministry for Foreign Investment and Economic Co-operation, through the grantee, an annual report with the following

information: jobs generated, investment made, volume, amount, type and destination of exports (goods and services), production achieved, inputs used (amount, origin and type) and any other that the aforementioned Ministry indicates;

e) submitting fiscal reports to the Ministry of Finance and Prices with all the data indicated by that Ministry;

f) taking the necessary measures in order for the inspections and verifications stipulated by the competent authorities to be efficiently made for the control of the conditions established in the authorisation;

g) making the guarantee deposits in the required cases; and

h) carrying out their activities under the terms and conditions established in the authorisation granted.

CHAPTER VII

OTHER PROVISIONS CONCERNING GRANTEES AND OPERATORS

Article 28

The grantee can carry out the activities of the operator concurrently with its own, being applicable in that event, the corresponding regulations for both occupations.

Article 29

The grantee and the operator enter into a contract which includes, among other stipulations, those in which the former transfers to the latter through a sale, a lease or any other form of property transfer, a definite part of the Free Zone facilities, the rights that the former cedes and the services it agrees to render the latter to make his task feasible, as well as those which set the amount, the form and the conditions of the price to be paid.

Article 30

The grantee and the operator can purchase, in the national territory outside the geographic area where they are established, goods or services offered by the enterprises based in the country.

CHAPTER VIII SPECIAL REGIME

Section One

Scope of the Special Regime

Article 31

1. The special regime mentioned in previous rules of this Decree-Law and defined in Article 2.2 of same, applicable to grantees and operators of Free Zones as an incentive for investment, consists of Customs, banking, taxation, labour and public order regulations which are also special, i.e., more appealing and less rigid and onerous than common, ordinary ones. Regarding migratory regulations, these will be consigned in a resolution that the governing body shall enact within a period of 90 days after this Decree-Law goes into force.

2. The grantees and operators enjoy the special regime that this Decree-Law stipulates. and under no circumstances can it be modified to their detriment.

Section Two

Special customs regulations

Article 32

1. Grantees and operators are exempt from paying tariffs and other Customs duties for introducing in the Free Zones products intended for carrying out their authorised activities.

2. Exports made from Free Zones are not encumbered by tariffs or other Customs duties.

Article 33

No weapons, explosives or products whose export or import is banned, suspended or restricted by current law can be introduced in the Free Zone.

Article 34

The General Customs House of the Republic shall establish the necessary mechanisms and the proper controls in relation to imports and exports made by Free Zone grantees and operators.

*Section Three**Special taxation regulations**Article 35*

1. Free Zone grantees and operators, benefited by the special regime shall be exempt from paying the following fiscal obligations:

- a) profits tax; and
- b) tax covering the utilisation of the labour force.

2. These exemptions are granted in the following manner.

In relation to grantees and operators who carry out activities in production, manufacturing, assembly, processing of finished and semi-finished products, and agriculture:

- a) total exemption from the corresponding payment during the first twelve years; and
- b) fifty percent (50%) payment during the five following years.

In relation to operators who carry out commercial and service-rendering activities:

- a) total exemption from the corresponding payment during the first five years; and
- b) fifty percent (50%) payment during the three following years.

Article 36

When the concessions are granted and the operator authorisations are approved, more favourable exemptions than those established in the first Article of this Section may be granted or other incentives may be agreed upon, according to the benefits that the specific activity involved can bring to the economic development of the country, the nature of the investment projected and the regulation applicable to the different sectors of the national economy.

Article 37

1. The time limits of the tax exemptions stipulated in the foregoing paragraphs may be extended for the same time periods as the original ones.

2. Once the time limits of the established exemptions have expired and during the remaining period of their activities, the grantees and operators of Free Zones benefited by the special regime shall pay the aforementioned taxes in conformity with what is stipulated in this respect in Law No. 77/95, Foreign Investment Act.

*Section Four**Special banking regulations**Article 38*

1. Free Zone grantees and operators can transfer abroad, in freely convertible currency, the net profits or dividends which they obtain from their activities, without having to pay taxes or any other fee related to such transference.

2. Foreign citizens working in a Free Zone, as long as they are not permanent residents in Cuba, have the right to transfer abroad the income they receive, within stipulated amounts and in accordance with the other regulations established by Banco Nacional de Cuba.

Article 39

The operators authorised to render banking and financial services in Free Zones, shall only be able to carry out their activities within the boundaries of the Free Zone in which they are established, in other Free Zones of the country and abroad, in accordance with the regulations set down by Banco Nacional de Cuba.

Article 40

Transactions within the boundaries of Free Zones and those referred to in Articles 25 and 30 of this Decree-Law, shall be made by the grantees and operators in freely-convertible currency.

Article 41

Neither the assessment of securities, the setting of prices nor the payments for services rendered can be denominated or executed in national currency, except when expressly authorised. The same applies for contracts entered into by the grantees and operators within the Free Zones.

Article 42

Without detriment to what has been stipulated in foregoing Articles, Banco Nacional de Cuba shall enact the additional special regulations which may be required for operators authorised to render banking services in the Free Zones to carry out their activities.

*Section Five**Special labour regulations**Article 43*

1. The workers who work for Free Zone grantees and operators shall be, as a general rule, Cubans or foreigners who are permanent residents in Cuba

2. For certain technical or top management posts, the Free Zone grantees and operators may directly hire natural persons who are not permanent residents in the country and in those cases also determine the labour conditions to be applied and the rights and obligations of those workers, previously procuring the corresponding working permit.

Article 44

The Ministry of Labour and Social Security shall set the minimum salaries by occupations that are to be paid to Cuban workers and foreign workers with permanent residence in Cuba who work for Free Zone grantees and operators.

Article 45

1. The grantee with Cuban or joint capital directly hires Cuban workers and foreign workers with permanent residence in Cuba and also acts as the employing entity in relation to the workers required by the operators.

2. The employing entity referred to in the foregoing paragraph hires the workers concerned individually, pays their emoluments and maintains the work link with them.

3. The Ministry of Labour and Social Security, establishes the rules the grantees must observe units capacity as an employing entity.

4. Cuban workers and foreigners permanently residing in the country work for the Free Zone grantees and operators whose capital is totally foreign through a contract which they enter into with an employing entity proposed by the Ministry for Foreign Investment and Economic Co-operation and approved by the Ministry of Labour and Social Security.

Article 46

Without any detriment to what is provided for in the foregoing Articles, the Executive Committee, in the agreement which stipulates the creation of a Free Zone, can determine that, in relation to said Free

Zone and in exceptional cases, special labour regulations be established.

Section Six

Special public order regulations

Article 47

1. Public order in Free Zones will be kept in conformity with the regulations that the Ministry of the Interior enacts for this purpose.

2. Cost of surveillance and protection shall be set according to intentional practice and shall be paid for by the grantees and operators in the proportion that they themselves agree.

CHAPTER IX

VIOLATIONS COMMITTED BY FREE ZONE GRANTEES AND OPERATORS

Article 48

The unfulfillment by the grantees of their obligations as to amount and time limit of the investment they must make, may be sufficient cause for the concession to be revoked.

Article 49

The unfulfillment by grantees and operators of the conditions imposed in their respective deeds constitute an administrative violation. It also constitutes a violation of this Decree-Law or of the Free Zone Regulations, in what applies to them.

Article 50

1. The violations by grantees and operators referred to in the foregoing articles can bring about the revocation of the respective deed by the state institution which granted it, except if it is proven that the unfulfillment was fortuitous or due to force *majeure*.

2. The revocation of the deed shall consist in the total or definitive annulment of the concession or the operator authorisation and the loss, in favour of the State, of the assets and rights of the violator linked to the Free Zone.

CHAPTER X THE SOLUTION OF CONFLICTS

Article 51

1. The conflicts that may arise between Free Zone grantees and operators shall be resolved in the manner specified in the contracts they have subscribed.

2. The same applies when the conflict arises between the operators.

Article 52

The litigations over the execution of economic contracts between grantees and operators on the one hand and state enterprises or other national entities on the other, are the jurisdiction of the economic division of the People's Courts established by the Governing Council of the People's Supreme Court.

SPECIAL PROVISIONS

FIRST: The provisions for better executing this Decree-Law shall be enacted by the competent bodies of the Central Administration of the State within a time limit no greater than ninety (90) days after it goes into effect.

SECOND: The different bodies of the Central Administration of the State and other governmental institutions shall take the necessary measures so that the applications for authorisations, consultations and other Free Zone related services can be resolved within a time limit no greater than forty (40) days in all cases, counted as of the date the application was accepted.

FINAL PROVISION

SINGLE: All legal provisions of equal or lower hierarchy, opposing what is established in this Decree-Law, are hereby repealed. This Decree-Law shall be in force as of the date it is published in the Gaceta Oficial de la República.

APPROVED on the Palacio de la Revolución, City of Havana, on the third day of the month of June of the year nineteen ninety-six.

Fidel Castro Ruz.

ANNEX VII**JOINT DECLARATION OF THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA ON THE QUESTION OF HONG KONG**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China have reviewed with satisfaction the friendly relations existing between the two Governments and people in recent years and agreed that a proper negotiated settlement of the question of Hong Kong, which is left over from the past, is conducive to the maintenance of the prosperity and stability of Hong Kong and to the further strengthening and development of the relations between the two countries on a new basis. To this end, they have, after talks between the delegations of the two Governments, agreed to declare as follows:

1. The Government of the People's Republic of China declares that to recover the Hong Kong area (including Hong Kong Island, Kowloon and the New Territories, hereinafter referred to as Hong Kong) is the common aspiration of the entire Chinese people, and that it has decided to resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997.

2. The Government of the United Kingdom declares that it will restore Hong Kong to the People's Republic of China with effect from 1 July 1997.

3. The Government of the People's Republic of China declares that the basic policies of the People's Republic of China regarding Hong Kong are as follows:

(1) Upholding national unity and territorial integrity and taking account of the history of Hong Kong and its realities, the People's Republic of China has decided to establish, in accordance with the provisions of Article 31 of the Constitution of the People's Republic of China, a Hong Kong Special Administrative Region upon resuming the exercise of sovereignty over Hong Kong.

(2) The Hong Kong Special Administrative Region will be directly under the authority of the Central People's Government of the People's Republic of China. The Hong Kong Special Administrative Re-

gion will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government.

(3) The Hong Kong Special Administrative Region will be vested with executive, legislative and independent judicial power, including that of final adjudication. The laws currently in force in Hong Kong will remain basically unchanged.

(4) The Government of the Hong Kong Special Administrative Region will be composed of local inhabitants. The chief executive will be appointed by the Central People's Government on the basis of the results of elections or consultations to be held locally. Principal officials will be nominated by the chief executive of the Hong Kong Special Administrative Region for appointment by the Central People's Government. Chinese and foreign nationals previously working in the public and police services in the government departments of Hong Kong may remain in employment. British and other foreign nationals may also be employed to serve as advisers or hold certain public posts in government departments of the Hong Kong Special Administrative Region.

(5) The current social and economic systems in Hong Kong will remain unchanged, and so will the life-style. Rights and freedoms, including those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, of strike, of choice of occupation, of academic research and of religious belief will be ensured by law in the Hong Kong Special Administrative Region. Private property, ownership of enterprises, legitimate right of inheritance and foreign investment will be protected by law.

(6) The Hong Kong Special Administrative Region will retain the status of a free port and a separate customs territory.

(7) The Hong Kong Special Administrative Region will retain the status of an international financial centre, and its markets for foreign exchange, gold, securities and futures will continue. There will be free flow of capital. The Hong Kong dollar will continue to circulate and remain freely convertible.

(8) The Hong Kong Special Administrative Region will have independent finances. The Central People's Government will not levy taxes on the Hong Kong Special Administrative Region.

(9) The Hong Kong Special Administrative Region may establish mutually beneficial economic relations with the United Kingdom and other countries, whose economic interests in Hong Kong will be given due regard.

(10) Using the name of "Hong Kong, China", the Hong Kong Special Administrative Region may on its own maintain and develop economic and cultural relations and conclude relevant agreements with states, regions and relevant international organisations.

The Government of the Hong Kong Special Administrative Region may on its own issue travel documents for entry into and exit from Hong Kong.

(11) The maintenance of public order in the Hong Kong Special Administrative Region will be the responsibility of the Government of the Hong Kong Special Administrative Region.

(12) The above-stated basic policies of the People's Republic of China regarding Hong Kong and the elaboration of them in Annex I to this Joint Declaration will be stipulated, in a Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, by the National People's Congress of the People's Republic of China, and they will remain unchanged for 50 years.

4. The Government of the United Kingdom and the Government of the People's Republic of China declare that, during the transitional period between the date of the entry into force of this Joint Declaration and 30 June 1997, the Government of the United Kingdom will be responsible for the administration of Hong Kong with the object of maintaining and preserving its economic prosperity and social stability; and that the Government of the People's Republic of China will give its co-operation in this connection.

5. The Government of the United Kingdom and the Government of the People's Republic of China declare that, in order to ensure a smooth transfer of government in 1997, and with a view to the effective implementation of this Joint Declaration, a Sino-British Joint Liaison Group will be set up when this Joint Declaration enters into force; and that it will be established and will function in accordance with the provisions of Annex II to this Joint Declaration.

6. The Government of the United Kingdom and the Government of the People's Republic of China declare that land leases in Hong Kong

and other related matters will be dealt with in accordance with the provisions of Annex III to this Joint Declaration.

7. The Government of the United Kingdom and the Government of the People's Republic of China agree to implement the preceding declarations and the Annexes to this Joint Declaration.

8. This Joint Declaration is subject to ratification and shall enter into force on the date of the exchange of instruments of ratification, which shall take place in Beijing before 30 June 1985. This Joint Declaration and its Annexes shall be equally binding.

Done in duplicate at Beijing on 19 December 1984 in the English and Chinese languages, both texts being equally authentic.

ANNEX VIII

ELABORATION BY THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA OF ITS BASIC POLICIES REGARDING HONG KONG

The Government of the People's Republic of China elaborates the basic policies of the People's Republic of China regarding Hong Kong as set out in paragraph 3 of the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong as follows:

I

The Constitution of the People's Republic of China stipulates in Article 31 that "the state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by laws enacted by the National People's Congress in the light of the specific conditions." In accordance with this Article, the People's Republic of China shall, upon the resumption of the exercise of sovereignty over Hong Kong on 1 July 1997, establish the Hong Kong Special Administrative Region of the People's Republic of China. The National People's Congress of the People's Republic of China shall enact and promulgate a Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (hereinafter referred to as the Basic Law) in accordance with the Constitution of the People's Republic of China, stipulating that

after the establishment of the Hong Kong Special Administrative Region the socialist system and socialist policies shall not be practised in the Hong Kong Special Administrative Region and that Hong Kong's previous capitalist system and life-style shall remain unchanged for 50 years.

The Hong Kong Special Administrative Region shall be directly under the authority of the Central People's Government of the People's Republic of China and shall enjoy a high degree of autonomy. Except for foreign and defence affairs which are the responsibilities of the Central People's Government, the Hong Kong Special Administrative Region shall be vested with executive, legislative and independent judicial power, including that of final adjudication. The Central People's Government shall authorise the Hong Kong Special Administrative Region to conduct on its own those external affairs specified in Section XI of this Annex.

The government and legislature of the Hong Kong Special Administrative Region shall be composed of local inhabitants. The chief executive of the Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People's Government. Principal officials (equivalent to Secretaries) shall be nominated by the chief executive of the Hong Kong Special Administrative Region and appointed by the Central People's Government. The legislature of the Hong Kong Special Administrative Region shall be constituted by elections. The executive authorities shall abide by the law and shall be accountable to the legislature.

In addition to Chinese, English may also be used in organs of government and in the courts in the Hong Kong Special Administrative Region.

Apart from displaying the national flag and national emblem of the People's Republic of China, the Hong Kong Special Administrative Region may use a regional flag and emblem of its own.

II

After the establishment of the Hong Kong Special Administrative Region, the laws previously in force in Hong Kong (i.e. the common law, rules of equity, ordinances, subordinate legislation and customary law) shall be maintained, save for any that contravene the Basic

Law and subject to any amendment by the Hong Kong Special Administrative Region legislature.

The legislative power of the Hong Kong Special Administrative Region shall be vested in the legislature of the Hong Kong Special Administrative Region. The legislature may on its own authority enact laws in accordance with the provisions of the Basic Law and legal procedures, and report them to the Standing Committee of the National People's Congress for the record. Laws enacted by the legislature which are in accordance with the Basic Law and legal procedures shall be regarded as valid.

The laws of the Hong Kong Special Administrative Region shall be the Basic Law, and the laws previously in force in Hong Kong and laws enacted by the Hong Kong Special Administrative Region legislature as above.

III

After the establishment of the Hong Kong Special Administrative Region, the judicial system previously practised in Hong Kong shall be maintained except for those changes consequent upon the vesting in the courts of the Hong Kong Special Administrative Region of the power of final adjudication.

Judicial power in the Hong Kong Special Administrative Region shall be vested in the courts of the Hong Kong Special Administrative Region. The courts shall exercise judicial power independently and free from any interference. Members of the judiciary shall be immune from legal action in respect of their judicial functions. The courts shall decide cases in accordance with the laws of the Hong Kong Special Administrative Region and may refer to precedents in other common law jurisdictions.

Judges of the Hong Kong Special Administrative Region courts shall be appointed by the chief executive of the Hong Kong Special Administrative Region acting in accordance with the recommendation of an independent commission composed of legal judges, persons from the legal profession and other eminent persons. Judges shall be chosen by reference to their judicial qualities and may be recruited from other common law jurisdictions. A judge may only be removed for inability to discharge the functions of his office, or for misbehaviour, by the chief executive of the Hong Kong Special Administrative Region acting in accordance with the recommendation of a tribunal

appointed by the chief judge of the court of final appeal, consisting of not fewer than three local judges. Additionally, the appointment or removal of principal judges (i.e. those of the highest rank) shall be made by the chief executive with the endorsement of the Hong Kong Special Administrative Region legislature and reported to the Standing Committee of the National People's Congress for the record. The system of appointment and removal of judicial officers other than judges shall be maintained.

The power of final judgment of the Hong Kong Special Administrative Region shall be vested in the court of final appeal in the Hong Kong Special Administrative Region, which may as required invite judges from other common law jurisdictions to sit on the court of final appeal.

A prosecuting authority of the Hong Kong Special Administrative Region shall control criminal prosecutions free from any interference.

On the basis of the system previously operating in Hong Kong, the Hong Kong Special Administrative Region Government shall on its own make provision for local lawyers and lawyers from outside the Hong Kong Special Administrative Region to work and practise in the Hong Kong Special Administrative Region.

The Central People's Government shall assist or authorise the Hong Kong Special Administrative Region Government to make appropriate arrangements for reciprocal juridical assistance with foreign states.

IV

After the establishment of the Hong Kong Special Administrative Region, public servants previously serving in Hong Kong in all government departments, including the police department, and members of the judiciary may all remain in employment and continue their service with pay, allowances, benefits and conditions of service no less favourable than before. The Hong Kong Special Administrative Region Government shall pay to such persons who retire or complete their contracts, as well as to those who have retired before 1 July 1997, or to their dependants, all pensions, gratuities, allowances and benefits due to them on terms no less favourable than before, and irrespective of their nationality or place of residence.

The Hong Kong Special Administrative Region Government may employ British and other foreign nationals previously serving in the

public service in Hong Kong, and may recruit British and other foreign nationals holding permanent identity cards of the Hong Kong Special Administrative Region to serve as public servants at all levels, except as heads of major government departments (corresponding to branches or departments at Secretary level) including the police department, and as deputy heads of some of those departments. The Hong Kong Special Administrative Region Government may also employ British and other foreign nationals as advisers to government departments and, when there is a need, may recruit qualified candidates from outside the Hong Kong Special Administrative Region to professional and technical posts in government departments. The above shall be employed only in their individual capacities and, like other public servants, shall be responsible to the Hong Kong Special Administrative Region Government.

The appointment and promotion of public servants shall be on the basis of qualifications, experience and ability. Hong Kong's previous system of recruitment, employment, assessment, discipline, training and management for the public service (including special bodies for appointment, pay and conditions of service) shall, save for any provisions providing privileged treatment for foreign nationals, be maintained.

V

The Hong Kong Special Administrative Region shall deal on its own with financial matters, including disposing of its financial resources and drawing up its budgets and its final accounts. The Hong Kong Special Administrative Region shall report its budgets and final accounts to the Central People's Government for the record.

The Central People's Government shall not levy taxes on the Hong Kong Special Administrative Region. The Hong Kong Special Administrative Region shall use its financial revenues exclusively for its own purposes and they shall not be handed over to the Central People's Government. The systems by which taxation and public expenditure must be approved by the legislature, and by which there is accountability to the legislature for all public expenditure, and the system for auditing public accounts shall be maintained.

VI

The Hong Kong Special Administrative Region shall maintain the capitalist economic and trade systems previously practised in Hong Kong. The Hong Kong Special Administrative Region Government shall decide its economic and trade policies on its own. Rights concerning the ownership of property, including those relating to acquisition, use, disposal, inheritance and compensation for lawful deprivation (corresponding to the real value of the property concerned, freely convertible and paid without undue delay) shall continue to be protected by law.

The Hong Kong Special Administrative Region shall retain the status of a free port and continue a free trade policy, including the free movement of goods and capital. The Hong Kong Special Administrative Region may on its own maintain and develop economic and trade relations with all states and regions.

The Hong Kong Special Administrative Region shall be a separate customs territory. It may participate in relevant international organisations and international trade agreements (including preferential trade arrangements), such as the General Agreement on Tariffs and Trade and arrangements regarding international trade in textiles. Export quotas, tariff preferences and other similar arrangements obtained by the Hong Kong Special Administrative Region shall be enjoyed exclusively by the Hong Kong Special Administrative Region. The Hong Kong Special Administrative Region shall have authority to issue its own certificates of origin for products manufactured locally, in accordance with prevailing rules of origin.

The Hong Kong Special Administrative Region may, as necessary, establish official and semi-official economic and trade missions in foreign countries, reporting the establishment of such missions to the Central People's Government for the record.

VII

The Hong Kong Special Administrative Region shall retain the status of an international financial centre. The monetary and financial systems previously practised in Hong Kong, including the systems of regulation and supervision of deposit taking institutions and financial markets, shall be maintained.

The Hong Kong Special Administrative Region Government may decide its monetary and financial policies on its own. It shall safe-

guard the free operation of financial business and the free flow of capital within, into and out of the Hong Kong Special Administrative Region. No exchange control policy shall be applied in the Hong Kong Special Administrative Region. Markets for foreign exchange, gold, securities and futures shall continue.

The Hong Kong dollar, as the local legal tender, shall continue to circulate and remain freely convertible. The authority to issue Hong Kong currency shall be vested in the Hong Kong Special Administrative Region Government. The Hong Kong Special Administrative Region Government may authorise designated banks to issue or continue to issue Hong Kong currency under statutory authority, after satisfying itself that any issue of currency will be soundly based and that the arrangements for such issue are consistent with the object of maintaining the stability of the currency. Hong Kong currency bearing references inappropriate to the status of Hong Kong as a Special Administrative Region of the People's Republic of China shall be progressively replaced and withdrawn from circulation.

The Exchange Fund shall be managed and controlled by the Hong Kong Special Administrative Region Government, primarily for regulating the exchange value of the Hong Kong dollar.

VIII

The Hong Kong Special Administrative Region shall maintain Hong Kong's previous systems of shipping management and shipping regulation, including the system for regulating conditions of seamen. The specific functions and responsibilities of the Hong Kong Special Administrative Region Government in the field of shipping shall be defined by the Hong Kong Special Administrative Region Government on its own. Private shipping businesses and shipping-related businesses and private container terminals in Hong Kong may continue to operate freely.

The Hong Kong Special Administrative Region shall be authorised by the Central People's Government to continue to maintain a shipping register and issue related certificates under its own legislation in the name of "Hong Kong, China".

With the exception of foreign warships, access for which requires the permission of the Central People's Government, ships shall enjoy access to the ports of the Hong Kong Special Administrative Region

in accordance with the laws of the Hong Kong Special Administrative Region.

LX

The Hong Kong Special Administrative Region shall maintain the status of Hong Kong as a centre of international and regional aviation. Airlines incorporated and having their principal place of business in Hong Kong and civil aviation related businesses may continue to operate. The Hong Kong Special Administrative Region shall continue the previous system of civil aviation management in Hong Kong, and keep its own aircraft register in accordance with provisions laid down by the Central People's Government concerning nationality marks and registration marks of aircraft. The Hong Kong Special Administrative Region shall be responsible on its own for matters of routine business and technical management of civil aviation, including the management of airports, the provision of air traffic services within the flight information region of the Hong Kong Special Administrative Region, and the discharge of other responsibilities allocated under the regional air navigation procedures of the International Civil Aviation Organisation.

The Central People's Government shall, in consultation with the Hong Kong Special Administrative Region Government, make arrangements providing for air services between the Hong Kong Special Administrative Region and other parts of the People's Republic of China for airlines incorporated and having their principal place of business in the Hong Kong Special Administrative Region and other airlines of the People's Republic of China. All Air Service Agreements providing for air services between other parts of the People's Republic of China and other states and regions with stops at the Hong Kong Special Administrative Region and air services between the Hong Kong Special Administrative Region and other states and regions with stops at other parts of the People's Republic of China shall be concluded by the Central People's Government. For this purpose, the Central People's Government shall take account of the special conditions and economic interests of the Hong Kong Special Administrative Region and consult the Hong Kong Special Administrative Region Government. Representatives of the Hong Kong Special Administrative Region Government may participate as members of delegations of the Government of the People's Republic of China in air

service consultations with foreign governments concerning arrangements for such services.

Acting under specific authorisations from the Central People's Government, the Hong Kong Special Administrative Region Government may: renew or amend Air Service Agreements and arrangements previously in force; in principle, all such Agreements and arrangements may be renewed or amended with the rights contained in such previous Agreements and arrangements being as far as possible maintained; negotiate and conclude new Air Service Agreements providing routes for airlines incorporated and having their principal place of business in the Hong Kong Special Administrative Region and rights for overflights and technical stops; and negotiate and conclude provisional arrangements where no Air Service Agreement with a foreign state or other region is in force.

All scheduled air services to, from or through the Hong Kong Special Administrative Region which do not operate to, from or through the mainland of China shall be regulated by Air Service Agreements or provisional arrangements referred to in this paragraph.

The Central People's Government shall give the Hong Kong Special Administrative Region Government the authority to: negotiate and conclude with other authorities all arrangements concerning the implementation of the above Air Service Agreements and provisional arrangements; issue licences to airlines incorporated and having their principal place of business in the Hong Kong Special Administrative Region; designate such airlines under the above Air Service Agreements and provisional arrangements; and issue permits to foreign airlines for services other than those to, from or through the mainland of China.

X

The Hong Kong Special Administrative Region shall maintain the educational system previously practised in Hong Kong. The Hong Kong Special Administrative Region Government shall on its own decide policies in the fields of culture, education, science and technology, including policies regarding the educational system and its administration, the language of instruction, the allocation of funds, the examination system, the system of academic awards and the recognition of educational and technological qualifications. Institutions of all kinds, including those run by religious and community organisations,

may retain their autonomy. They may continue to recruit staff and use teaching materials from outside the Hong Kong Special Administrative Region. Students shall enjoy freedom of choice of education and freedom to pursue their education outside the Hong Kong Special Administrative Region.

XI

Subject to the principle that foreign affairs are the responsibility of the Central People's Government, representatives of the Hong Kong Special Administrative Region Government may participate, as members of delegations of the Government of the People's Republic of China, in negotiations at the diplomatic level directly affecting the Hong Kong Special Administrative Region conducted by the Central People's Government. The Hong Kong Special Administrative Region may on its own, using the name "Hong Kong, China", maintain and develop relations and conclude and implement agreements with states, regions and relevant international organisations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, touristic, cultural and sporting fields. Representatives of the Hong Kong Special Administrative Region Government may participate, as members of delegations of the Government of the People's Republic of China, in international organisations or conferences in appropriate fields limited to states and affecting the Hong Kong Special Administrative Region, or may attend in such other capacity as may be permitted by the Central People's Government and the organisation or conference concerned, and may express their views in the name of "Hong Kong, China". The Hong Kong Special Administrative Region may, using the name "Hong Kong, China", participate in international organisations and conferences not limited to states.

The application to the Hong Kong Special Administrative Region of international agreements to which the People's Republic of China is or becomes a party shall be decided by the Central People's Government, in accordance with the circumstances and needs of the Hong Kong Special Administrative Region, and after seeking the views of the Hong Kong Special Administrative Region Government. International agreements to which the People's Republic of China is not a party but which are implemented in Hong Kong may remain implemented in the Hong Kong Special Administrative Region. The Central

People's Government shall, as necessary, authorise or assist the Hong Kong Special Administrative Region Government to make appropriate arrangements for the application to the Hong Kong Special Administrative Region of other relevant international agreements. The Central People's Government shall take the necessary steps to ensure that the Hong Kong Special Administrative Region shall continue to retain its status in an appropriate capacity in those international organisations of which the People's Republic of China is a member and in which Hong Kong participates in one capacity or another. The Central People's Government shall, where necessary, facilitate the continued participation of the Hong Kong Special Administrative Region in an appropriate capacity in those international organisations in which Hong Kong is a participant in one capacity or another, but of which the People's Republic of China is not a member.

Foreign consular and other official or semi-official missions may be established in the Hong Kong Special Administrative Region with the approval of the Central People's Government. Consular and other official missions established in Hong Kong by states which have established formal diplomatic relations with the People's Republic of China may be maintained. According to the circumstances of each case, consular and other official missions of states having no formal diplomatic relations with the People's Republic of China may either be maintained or changed to semi-official missions. States not recognised by the People's Republic of China can only establish non-governmental institutions.

The United Kingdom may establish a Consulate-General in the Hong Kong Special Administrative Region.

XII

The maintenance of public order in the Hong Kong Special Administrative Region shall be the responsibility of the Hong Kong Special Administrative Region Government. Military forces sent by the Central People's Government to be stationed in the Hong Kong Special Administrative Region for the purpose of defence shall not interfere in the internal affairs of the Hong Kong Special Administrative Region. Expenditure for these military forces shall be borne by the Central People's Government.

XIII

The Hong Kong Special Administrative Region Government shall protect the rights and freedoms of inhabitants and other persons in the Hong Kong Special Administrative Region according to law. The Hong Kong Special Administrative Region Government shall maintain the rights and freedoms as provided for by the laws previously in force in Hong Kong, including freedom of the person, of speech, of the press, of assembly, of association, to form and join trade unions, of correspondence, of travel, of movement, of strike, of demonstration, of choice of occupation, of academic research, of belief, inviolability of the home, the freedom to marry and the right to raise a family freely.

Every person shall have the right to confidential legal advice, access to the courts, representation in the courts by lawyers of his choice, and to obtain judicial remedies. Every person shall have the right to challenge the actions of the executive in the courts.

Religious organisations and believers may maintain their relations with religious organisations and believers elsewhere, and schools, hospitals and welfare institutions run by religious organisations may be continued. The relationship between religious organisations in the Hong Kong Special Administrative Region and those in other parts of the People's Republic of China shall be based on the principles of non-subordination, non-interference and mutual respect.

The provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall remain in force.

XIV

The following categories of persons shall have the right of abode in the Hong Kong Special Administrative Region, and, in accordance with the law of the Hong Kong Special Administrative Region, be qualified to obtain permanent identity cards issued by the Hong Kong Special Administrative Region Government, which state their right of abode: (a) all Chinese nationals who were born or who have ordinarily resided in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region for a continuous period of 7 years or more, and persons of Chinese nationality born outside Hong Kong of such Chinese nationals; (b) all other persons who have ordinarily resided in Hong Kong before or after the establishment of

the Hong Kong Special Administrative Region for a continuous period of 7 years or more and who have taken Hong Kong as their place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region, and persons under 21 years of age who were born of such persons in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region; (c) any other persons who had the right of abode only in Hong Kong before the establishment of the Hong Kong Special Administrative Region.

The Central People's Government shall authorise the Hong Kong Special Administrative Region Government to issue, in accordance with the law, passports of the Hong Kong Special Administrative Region of the People's Republic of China to all Chinese nationals who hold permanent identity cards of the Hong Kong Special Administrative Region, and travel documents of the Hong Kong Special Administrative Region of the People's Republic of China to all other persons lawfully residing in the Hong Kong Special Administrative Region. The above passports and documents shall be valid for all states and regions and shall record the holder's right to return to the Hong Kong Special Administrative Region.

For the purpose of travelling to and from the Hong Kong Special Administrative Region, residents of the Hong Kong Special Administrative Region may use travel documents issued by the Hong Kong Special Administrative Region Government, or by other competent authorities of the People's Republic of China, or of other states. Holders of permanent identity cards of the Hong Kong Special Administrative Region may have this fact stated in their travel documents as evidence that the holders have the right of abode in the Hong Kong Special Administrative Region.

Entry into the Hong Kong Special Administrative Region of persons from other parts of China shall continue to be regulated in accordance with the present practice.

The Hong Kong Special Administrative Region Government may apply immigration controls on entry, stay in and departure from the Hong Kong Special Administrative Region by persons from foreign states and regions.

Unless restrained by law, holders of valid travel documents shall be free to leave the Hong Kong Special Administrative Region without special authorisation.

The Central People's Government shall assist or authorise the Hong Kong Special Administrative Region Government to conclude visa abolition agreements with states or regions.

(...)

ANNEX IX

THE BASIC LAW OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA, ADOPTED ON 4 APRIL 1990 BY THE SEVENTH NATIONAL PEOPLE'S CONGRESS OF THE PEOPLE'S REPUBLIC OF CHINA AT ITS THIRD SESSION

PREAMBLE

Hong Kong has been part of the territory of China since ancient times; it was occupied by Britain after the Opium War in 1840. On 19 December 1984, the Chinese and British Governments signed the Joint Declaration on the Question of Hong Kong, affirming that the Government of the People's Republic of China will resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997, thus fulfilling the long-cherished common aspiration of the Chinese people for the recovery of Hong Kong. Upholding national unity and territorial integrity, maintaining the prosperity and stability of Hong Kong, and taking account of its history and realities, the People's Republic of China has decided that upon China's resumption of the exercise of sovereignty over Hong Kong, a Hong Kong Special Administrative Region will be established in accordance with the provisions of Article 31 of the Constitution of the People's Republic of China, and that under the principle of "one country, two systems", the socialist system and policies will not be practised in Hong Kong. The basic policies of the People's Republic of China regarding Hong Kong have been elaborated by the Chinese Government in the Sino-British Joint Declaration. In accordance with the Constitution of the People's Republic of China, the National People's Congress hereby enacts the Ba-

sic Law of the Hong Kong Special Administrative Region of the People's Republic of China, prescribing the systems to be practised in the Hong Kong Special Administrative Region, in order to ensure the implementation of the basic policies of the People's Republic of China regarding Hong Kong.

CHAPTER I GENERAL PRINCIPLES

Article 1

The Hong Kong Special Administrative Region is an inalienable part of the People's Republic of China.

Article 2

The National People's Congress authorises the Hong Kong Special Administrative Region to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of this Law.

Article 3

The executive authorities and legislature of the Hong Kong Special Administrative Region shall be composed of permanent residents of Hong Kong in accordance with the relevant provisions of this Law.

Article 4

The Hong Kong Special Administrative Region shall safeguard the rights and freedoms of the residents of the Hong Kong Special Administrative Region and of other persons in the Region in accordance with law. Article 5 The socialist system and policies shall not be practised in the Hong Kong Special Administrative Region, and the previous capitalist system and way of life shall remain unchanged for 50 years.

Article 6

The Hong Kong Special Administrative Region shall protect the right of private ownership of property in accordance with law.

Article 7

The land and natural resources within the Hong Kong Special Administrative Region shall be State property. The Government of the Hong Kong Special Administrative Region shall be responsible for their management, use and development and for their lease or grant to

individuals, legal persons or organisations for use or development. The revenues derived therefrom shall be exclusively at the disposal of the government of the Region. Article 8 The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene this Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region.

Article 9

In addition to the Chinese language, English may also be used as an official language by the executive authorities, legislature and judiciary of the Hong Kong Special Administrative Region.

Article 10

Apart from displaying the national flag and national emblem of the People's Republic of China, the Hong Kong Special Administrative Region may also use a regional flag and regional emblem. The regional flag of the Hong Kong Special Administrative Region is a red flag with a bauhinia highlighted by five star-tipped stamens. The regional emblem of the Hong Kong Special Administrative Region is a bauhinia in the centre highlighted by five star-tipped stamens and encircled by the words "Hong Kong Special Administrative Region of the People's Republic of China" in Chinese and "HONG KONG" in English.

Article 11

In accordance with Article 31 of the Constitution of the People's Republic of China, the systems and policies practised in the Hong Kong Special Administrative Region, including the social and economic systems, the system for safeguarding the fundamental rights and freedoms of its residents, the executive, legislative and judicial systems, and the relevant policies, shall be based on the provisions of this Law. No law enacted by the legislature of the Hong Kong Special Administrative Region shall contravene this Law.

(...)

CHAPTER V ECONOMY

Section 1

Public Finance, Monetary Affairs, Trade, Industry and Commerce

Article 105

The Hong Kong Special Administrative Region shall, in accordance with law, protect the right of individuals and legal persons to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property. Such compensation shall correspond to the real value of the property concerned at the time and shall be freely convertible and paid without undue delay. The ownership of enterprises and the investments from outside the Region shall be protected by law.

Article 106

The Hong Kong Special Administrative Region shall have independent finances. The Hong Kong Special Administrative Region shall use its financial revenues exclusively for its own purposes, and they shall not be handed over to the Central People's Government. The Central People's Government shall not levy taxes in the Hong Kong Special Administrative Region.

Article 107

The Hong Kong Special Administrative Region shall follow the principle of keeping expenditure within the limits of revenues in drawing up its budget, and strive to achieve a fiscal balance, avoid deficits and keep the budget commensurate with the growth rate of its gross domestic product.

Article 108

The Hong Kong Special Administrative Region shall practise an independent taxation system. The Hong Kong Special Administrative Region shall, taking the low tax policy previously pursued in Hong Kong as reference, enact laws on its own concerning types of taxes, tax rates, tax reductions, allowances and exemptions, and other matters of taxation.

Article 109

The Government of the Hong Kong Special Administrative Region shall provide an appropriate economic and legal environment for the

maintenance of the status of Hong Kong as an international financial centre.

Article 110

The monetary and financial systems of the Hong Kong Special Administrative Region shall be prescribed by law. The Government of the Hong Kong Special Administrative Region shall, on its own, formulate monetary and financial policies, safeguard the free operation of financial business and financial markets, and regulate and supervise them in accordance with law.

Article 111

The Hong Kong dollar, as the legal tender in the Hong Kong Special Administrative Region, shall continue to circulate. The authority to issue Hong Kong currency shall be vested in the Government of the Hong Kong Special Administrative Region. The issue of Hong Kong currency must be backed by a 100 per cent reserve fund. The system regarding the issue of Hong Kong currency and the reserve fund system shall be prescribed by law. The Government of the Hong Kong Special Administrative Region may authorise designated banks to issue or continue to issue Hong Kong currency under statutory authority, after satisfying itself that any issue of currency will be soundly based and that the arrangements for such issue are consistent with the object of maintaining the stability of the currency.

Article 112

No foreign exchange control policies shall be applied in the Hong Kong Special Administrative Region. The Hong Kong dollar shall be freely convertible. Markets for foreign exchange, gold, securities, futures and the like shall continue. The Government of the Hong Kong Special Administrative Region shall safeguard the free flow of capital within, into and out of the Region.

Article 113

The Exchange Fund of the Hong Kong Special Administrative Region shall be managed and controlled by the government of the Region, primarily for regulating the exchange value of the Hong Kong dollar.

Article 114

The Hong Kong Special Administrative Region shall maintain the status of a free port and shall not impose any tariff unless otherwise prescribed by law.

Article 115

The Hong Kong Special Administrative Region shall pursue the policy of free trade and safeguard the free movement of goods, intangible assets and capital.

Article 116

The Hong Kong Special Administrative Region shall be a separate customs territory. The Hong Kong Special Administrative Region may, using the name "Hong Kong, China", participate in relevant international organisations and international trade agreements (including preferential trade arrangements), such as the General Agreement on Tariffs and Trade and arrangements regarding international trade in textiles. Export quotas, tariff preferences and other similar arrangements, which are obtained or made by the Hong Kong Special Administrative Region or which were obtained or made and remain valid, shall be enjoyed exclusively by the Region.

Article 117

The Hong Kong Special Administrative Region may issue its own certificates of origin for products in accordance with prevailing rules of origin.

Article 118

The Government of the Hong Kong Special Administrative Region shall provide an economic and legal environment for encouraging investments, technological progress and the development of new industries.

Article 119

The Government of the Hong Kong Special Administrative Region shall formulate appropriate policies to promote and co-ordinate the development of various trades such as manufacturing, commerce, tourism, real estate, transport, public utilities, services, agriculture and fisheries, and pay regard to the protection of the environment.

*Section 2**Land Leases**Article 120*

All leases of land granted, decided upon or renewed before the establishment of the Hong Kong Special Administrative Region which extend beyond 30 June 1997, and all rights in relation to such leases, shall continue to be recognised and protected under the law of the Region.

Article 121

As regards all leases of land granted or renewed where the original leases contain no right of renewal, during the period from 27 May 1985 to 30 June 1997, which extend beyond 30 June 1997 and expire not later than 30 June 2047, the lessee is not required to pay an additional premium as from 1 July 1997, but an annual rent equivalent to 3 per cent of the rateable value of the property at that date, adjusted in step with any changes in the rateable value thereafter, shall be charged.

Article 122

In the case of old schedule lots, village lots, small houses and similar rural holdings, where the property was on 30 June 1984 held by, or, in the case of small houses granted after that date, where the property is granted to, a lessee descended through the male line from a person who was in 1898 a resident of an established village in Hong Kong, the previous rent shall remain unchanged so long as the property is held by that lessee or by one of his lawful successors in the male line. Article 123 Where leases of land without a right of renewal expire after the establishment of the Hong Kong Special Administrative Region, they shall be dealt with in accordance with laws and policies formulated by the Region on its own.

*Section 3**Shipping**Article 124*

The Hong Kong Special Administrative Region shall maintain Hong Kong's previous systems of shipping management and shipping regulation, including the system for regulating conditions of seamen. The Government of the Hong Kong Special Administrative Region

shall, on its own, define its specific functions and responsibilities in respect of shipping.

Article 125

The Hong Kong Special Administrative Region shall be authorized by the Central People's Government to continue to maintain a shipping register and issue related certificates under its legislation, using the name "Hong Kong, China".

Article 126

With the exception of foreign warships, access for which requires the special permission of the Central People's Government, ships shall enjoy access to the ports of the Hong Kong Special Administrative Region in accordance with the laws of the Region.

Article 127

Private shipping businesses and shipping-related businesses and private container terminals in the Hong Kong Special Administrative Region may continue to operate freely.

Section 4

Civil Aviation

Article 128

The Government of the Hong Kong Special Administrative Region shall provide conditions and take measures for the maintenance of the status of Hong Kong as a centre of international and regional aviation.

Article 129

The Hong Kong Special Administrative Region shall continue the previous system of civil aviation management in Hong Kong and keep its own aircraft register in accordance with provisions laid down by the Central People's Government concerning nationality marks and registration marks of aircraft. Access of foreign state aircraft to the Hong Kong Special Administrative Region shall require the special permission of the Central People's Government.

Article 130

The Hong Kong Special Administrative Region shall be responsible on its own for matters of routine business and technical management of civil aviation, including the management of airports, the provision of air traffic services within the flight information region of the Hong Kong Special Administrative Region, and the discharge of other

responsibilities allocated to it under the regional air navigation procedures of the International Civil Aviation Organization.

Article 131

The Central People's Government shall, in consultation with the Government of the Hong Kong Special Administrative Region, make arrangements providing air services between the Region and other parts of the People's Republic of China for airlines incorporated in the Hong Kong Special Administrative Region and having their principal place of business in Hong Kong and other airlines of the People's Republic of China.

Article 132

All air service agreements providing air services between other parts of the People's Republic of China and other states and regions with stops at the Hong Kong Special Administrative Region and air services between the Hong Kong Special Administrative Region and other states and regions with stops at other parts of the People's Republic of China shall be concluded by the Central People's Government. In concluding the air service agreements referred to in the first paragraph of this Article, the Central People's Government shall take account of the special conditions and economic interests of the Hong Kong Special Administrative Region and consult the government of the Region. Representatives of the Government of the Hong Kong Special Administrative Region may, as members of the delegations of the Government of the People's Republic of China, participate in air service consultations conducted by the Central People's Government with foreign governments concerning arrangements for such services referred to in the first paragraph of this Article.

Article 133

Acting under specific authorisations from the Central People's Government, the Government of the Hong Kong Special Administrative Region may: (1) renew or amend air service agreements and arrangements previously in force; (2) negotiate and conclude new air service agreements providing routes for airlines incorporated in the Hong Kong Special Administrative Region and having their principal place of business in Hong Kong and providing rights for over-flights and technical stops; and (3) negotiate and conclude provisional arrangements with foreign states or regions with which no air service

agreements have been concluded. All scheduled air services to, from or through Hong Kong, which do not operate to, from or through the mainland of China shall be regulated by the air service agreements or provisional arrangements referred to in this Article.

Article 134

The Central People's Government shall give the Government of the Hong Kong Special Administrative Region the authority to: (1) negotiate and conclude with other authorities all arrangements concerning the implementation of the air service agreements and provisional arrangements referred to in Article 133 of this Law; (2) issue licences to airlines incorporated in the Hong Kong Special Administrative Region and having their principal place of business in Hong Kong (3) designate such airlines under the air service agreements and provisional arrangements referred to in Article 133 of this Law; and (4) issue permits to foreign airlines for services other than those to, from or through the mainland of China.

Article 135

Airlines incorporated and having their principal place of business in Hong Kong and businesses related to civil aviation functioning there prior to the establishment of the Hong Kong Special Administrative Region may continue to operate.

ANNEX X

PEACE TREATY OF PARIS OF 10 FEBRUARY 1947 BETWEEN ITALY AND THE ALLIED POWERS

(...)

Annex VI ("Permanent Statute of the Free Territory of Trieste")

(...)

Article 34. Free Port

A Free Port shall be established in the Free Territory and shall be administered on the basis of the provisions of an international instrument drawn up by the Council of Foreign Ministers approved by the Security Council and annexed to the present Treaty (Annex VIII). The Government of the Free Territory shall enact all necessary legislation

and take all necessary steps to give effect to the provisions of such instrument.

Article 35. Freedom of transit

Freedom of transit shall, in accordance with customary international agreements, be assured by the Free Territory and the States whose territories are traversed to goods transported by railroad between the Free Port and the States which it serves, without any discrimination and without customs duties or charges other than those levied for services rendered.

(...)

Annex VIII (“Instrument for the Free Port of Trieste”)

Article 1

In order to ensure that the port and transit facilities of Trieste will be available for use on equal terms by all international trade and by Yugoslavia, Italy and the States of Central Europe, in such manner as is customary in other free ports of the world:

(a) There shall be a customs free port in the Free Territory of Trieste within the limits provided for by, or established in accordance with Article 3 of the present Instrument.

(b) Goods passing through the Free Port of Trieste shall enjoy freedom of transit as stipulated in Article 16 of the present Instrument.

2. The international regime of the Free Port shall be governed by the provisions of the present Instrument.

Article 2

1. The Free Port shall be established and administered as a State corporation of the Free Territory, having all the attributes of a juridical person and functioning in accordance with the provisions of this Instrument.

2. All Italian state and para-statal property within the limits of the Free Port which, according to the provisions of the present Treaty, shall pass to the Free Territory, shall be transferred, without payment, to the Free Port.

Article 3

1. The area of the Free Port shall include the territory and installations of the Free Zones of the port of Trieste within the limits of the 1939 boundaries.

2. The establishment of special zones in the Free Port under the exclusive jurisdiction of any State is incompatible with the status of the Free Territory and of the Free Port.

3. In order, however, to meet the special needs of Yugoslav and Italian shipping in the Adriatic, the Director of the Free Port on the request of the Yugoslav or Italian Government and with the concurring advice of the International Commission provided for in Article 21 below, may reserve to merchant vessels flying the flags of either of these two States the exclusive use of berthing spaces within certain parts of the area of the Free Port.

4. In case it shall be necessary to increase the area of the Free Port such increase may be made upon the proposal of the Director of the Free Port by decision of the Council of Government with the approval of the popular Assembly.

Article 4

Unless otherwise provided for by the present instrument, the laws and regulations in force in the Free Territory shall be applicable to persons and property within the boundaries of the Free Port and the authorities responsible for their application in the Free Territory shall exercise their functions within the limits of the Free Port.

Article 5

1. Merchant vessels and goods of all countries shall be allowed unrestricted access to the Free Port for loading and discharge both for goods in transit and goods destined for or proceeding from the Free Territory.

2. In connection with importation into or exportation from or transit through the Free Port, the authorities of the Free Territory shall not levy on such goods customs duties or charges other than those levied for services rendered.

3. However, in respect of goods, imported through the Free Port for consumption within the Free Territory or exported from this Territory through the Free Port, appropriate legislation and regulations in force in the Free Territory shall be applied.

Article 6

Warehousing, storing, examining, sorting, packing and repacking and similar activities which have customarily been carried on in the free zones of the port of Trieste shall be permitted in the Free Port under the general regulations established by the Director of the Free Port.

Article 7

1. The Director of the Free Port may allow permit the processing of goods in the Free Port.

2. Manufacturing activities in the Free Port shall be permitted to those enterprises which existed in the free zones of the port of Trieste before the coming into force of the present Instrument. Upon the proposal of the Director of the Free Port, the Council of Government may permit the establishment of new manufacturing enterprises within the limits of the Free Port.

Article 8

Inspection by the authorities of the Free Territory shall be permitted within the Free Port to the extent necessary to enforce the customs or other regulations of the Free Territory for the prevention of smuggling.

Article 9

1. The authorities of the Free Territory will be entitled to fix and levy harbour dues in the Free Port.

2. The Director of the Free Port shall fix all charges for the use of the facilities and services of the Free Port. Such charges shall be reasonable and be related to the cost of operation, administration, maintenance and development of the Free Port.

Article 10

In the fixing and levying in the Free Port of harbour dues and other charges under Art. 9 above, as well as in the provision of the services and facilities of the Free Port, there shall be no discrimination in respect of the nationality of the vessels, the ownership of the goods or on any other grounds.

Article 11

The passage of all persons into and out of the Free Port area shall be subject to such regulations as the authorities of the Free Territory shall establish. These regulations, however, shall be established in

such a manner as not unduly to impede the passage into and out of the Free Port of nationals of any State who are engaged in any legitimate pursuit in the Free Port area.

Article 12

The rules and bye-laws operative in the Free Port and likewise the schedules of charges levied in the Free Port must be made public.

Article 13

Coastwise shipping and coastwise trade within the Free Territory shall be carried on in accordance with regulations issued by the authorities of the Free Territory, the provisions of the present Instrument, not being deemed to impose upon such authorities any restrictions in this respect.

Article 14

Within the boundaries of the Free Port, measures for the protection of health and measures for combating animal and plant diseases in respect of vessels and cargoes shall be applied by the authorities of the Free Territory.

Article 15

It shall be the duty of the authorities of the Free territory to provide the Free Port with water supplies, gas, electric light and power, communications, drainage facilities and other public services and also to ensure police and fire protection.

Article 16

I. Freedom of transit shall, in accordance with customary international agreements, be assured by the Free Territory and the States whose territories are traversed to goods transported by railroad between the Free Port and the State which it serves without any discrimination and without customs duties or charges other than those levied for services rendered.

2. The Free Territory and the States assuming the obligation of the present Instrument through whose territory such traffic passes in transit in either direction shall do all in their power to provide the best possible facilities in all respects for the speedy and efficient movement of such traffic at a reasonable cost, and shall not apply with respect to the movement of goods to and from the Free Port any discriminatory measures with respect to rates, services, customs, sanitary, police or any other regulations.

3. The States assuming the obligations of the present Instrument shall take no measures regarding regulations or rates which would artificially divert traffic from the Free Port for the benefit of other sea-ports. Measures taken by the Government of Yugoslavia to provide for traffic to ports in southern Yugoslavia shall not be considered as measures designed to divert traffic artificially.

Article 17

The Free Territory and the States assuming the obligations of the present Instrument shall, within their respective territories and on non-discriminatory terms, grant in accordance with customary international agreements freedom of postal, telegraphic, and telephonic communications between the Free Port area and any country for such communications as originate in or are destined for the Free Port area.

Article 18

1. The administration of the Free Port shall be carried on by the Director of the Free Port who will represent it as a juridical person. The Council of Government shall submit to the Governor a list of qualified candidates for the post of Director of the Free Port. The Governor shall appoint the Director from among the candidates presented to him after consultation with the Council of Government. In case of disagreement the matter shall be referred to the Security Council. The Governor may also dismiss the Director upon the recommendation of the International Commission or the Council of Government.

2. The Director shall not be a citizen of Yugoslavia or Italy.

3. All other employees of the Free Port will be appointed by the Director. In all appointments of employees preference shall be given to citizens of the Free Territory.

Article 19

Subject to the provisions of the present Instrument, the Director of the Free Port shall take all reasonable and necessary measures for the administration, operation, maintenance and development of the Free Port as an efficient port adequate for the prompt handling of all the traffic of that port. In particular, the Director, shall be responsible for the execution of all kinds of port works in the Free Port, shall direct the operation of port installations and other port equipment, shall establish, in accordance with Legislation of the Free Territory, conditions of labour in the Free Port, and shall also supervise the execution

in the Free Port of orders and regulations of the authorities of the Free Territory in respect to navigation.

Article 20

1. The Director of the Free Port shall issue such rules and bye-laws as he considers necessary in the exercise of his function as prescribed in the preceding Article.

2. The autonomous budget of the Free Port will be prepared by the Director, and will be approved and applied in accordance with legislation to be established by the popular Assembly of the Free Territory.

3. The Director of the Free Port shall submit an annual report on the operations of the Free Port to the Governor and the Council of Government of the Free Territory. A copy of the report shall be transmitted to the Intentional Commission.

Article 21

1. There shall be established an International Commission of the Free Port, hereinafter called "the International Commission", consisting of one representative from the Free Territory and from each of the following States: France, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, the United States of America, the People's Federal Republic of Yugoslavia, Italy, Czechoslovakia, Poland, Switzerland, Austria and Hungary, provided that such State has assumed the obligations of the present Instrument.

2. The representative of the Free Territory shall be the permanent Chairman of the International Commission. In the event of a tie in voting, the vote cast by the Chairman shall be decisive.

Article 22

The International Commission shall have its seat in the Free Port. Its offices and activities shall be exempt from local jurisdiction. The members and officials of the International Commission shall enjoy in the Free Territory such privileges and immunities as are necessary for the independent exercise of their functions. The International Commission shall decide upon its own secretariat, procedure and budget. The common expenses of the International Commission shall be shared by member States in an equitable manner as agreed by them through the International Commission.

Article 23

The Intentional Commission shall have the right to investigate and consider all matters relating to the operation, use, and administration of the Free Port or to the technical aspects of transit between the Free Port and the States which it serves, including unification of handling procedures. The International Commission shall act either on its own initiative or when such matters have been brought to its attention by any State or by the Free Territory or by the Director of the Free Port. The International Commission shall communicate its views or recommendations on such matters to the State or States concerned or to the Free Territory, or to the Director of the Free Port. Such recommendations shall be considered and the necessary measures shall be taken. Should the Free Territory or the State or States concerned deem however, that such measures would be inconsistent with the provisions of the present Instrument, the matter may at the request of the Free Territory or any interested State be dealt with as provided in Article 24 below.

Article 24

Any dispute relating to the interpretation or execution of the present Instrument, not resolved by direct negotiations, shall, unless the parties mutually agree upon another means of settlement, be referred at the request of either party to the dispute to a Commission composed of one representative of each party and a third member selected by mutual agreement of the two parties from nationals of a third country. Should the two parties fail to agree within a period of one month upon the appointment of the third member, the secretary-general of the United Nations may be requested by either party to make the appointment. The decision of the majority of the members of the Commission shall be the decision of the Commission, and shall be accepted by the parties as definitive and binding.

Article 25

Proposals for amendments to the present Instrument may be submitted to the Security States represented on the International Commission. An amendment approved Council by the Council of Government of the Free Territory or by three or more by the Security Council shall enter into force on the date determined by the Security Council.

Article 26

For the purposes of the present Instrument a State shall be considered as having assumed the obligations of this Instrument if it is a party to the Treaty of Peace with Italy or has notified the Government of the French Republic of its assumption of such obligations.

**ANNEX XI
MEMORANDUM OF UNDERSTANDING OF LONDON, 5 OCTOBER 1954**

(...)

5. "The Italian Government undertakes to maintain the Free Port at Trieste in general accordance with the provision of Articles 1-20 of Annex VIII of the Italian Peace Treaty").

**ANNEX XII
NOTE OF THE ITALIAN AMBASSADOR TO THE YUGOSLAVIAN AMBASSADOR, LONDON, 5 OCTOBER 1954**

ITALIAN EMBASSY
4166

London, 5th October, 1954

Excellency,

In view of the inapplicability of the provisions of Annex VIII of the Italian Peace Treaty relating to an international regime of the Free Port of Trieste and in pursuance of paragraph 5 of the Memorandum of Understanding initialled this day, the Italian Government invites your Government to participate with other interested Governments in a meeting at an early date to consult regarding the working out of the necessary arrangements to apply Articles 1-20 of Annex VIII of the Italian Peace Treaty under present conditions in order to assure the fullest possible use of the Free Port in accordance with the needs of international trade.

Pending the above-mentioned consultation, the Italian Government will issue preliminary regulations to govern the administration of the Free Port.

Please accept, Excellency, the assurance of my highest consideration.

MANLIO BROSIO

His Excellency
Dr. Vladimir Velebit,
Yugoslav Ambassador.

ANNEX XIII

LAW ON VENTSPILS FREE PORT OF 19 DECEMBER 1996

The Saeima has adopted and the President of State promulgates the following Law:

CHAPTER I GENERAL REGULATIONS

Article 1. Terms used in the Law

The following terms are used in the Law:

- 1) Regime of Free Customs Zone - according to this Law: an aggregate of alleviation's and special Customs measures what shall be applied to entrepreneurial associations (enterprises) which territories have acquired the status of free Customs zones in the Free Port, as well as to management of the Free Port;
- 2) licensed entrepreneurial associations - according to this Law: entrepreneurial associations which have signed the contract with the management of the Free Port on entrepreneurial activity in the regime of the free Customs zone and received the permit from the management of the Free Port for such activities;
- 3) territory of licensed entrepreneurial association - according to this Law: territory where the land is used by the licensed entrepreneurial association on the basis of ownership rights, lease contract or other legal basis;
- 4) clients of the port - according to this Law: consignees, consignors and other who/which utilises services of the management of the Free Port and entrepreneurial associations located in the Free Port but who/which has not the territory in the Free Port with the status of Free Customs Zone;

5) special measures for Customs control - according to this Law: special measures for Customs control according to the Republic of Latvia Customs Code determined by the Cabinet of Ministers.

Article 2. Objective of the Law

The Law establishes the principles of the Ventspils Free Port (henceforth - Free Port) activity and procedures of the management to promote participation of Latvia in intentional commerce, attaching of investments, developing of production and services, as well as create the new jobs.

Article 3. Territory, structure and basic regulations of the Free Port's activity

(1) The Free Port is a part of the Republic of Latvia territory which shall correspond to borders of the Port of Ventspils determined by the Cabinet of Ministers.

(2) Licensed entrepreneurial associations, as well as entrepreneurial associations which have not received permit for performing the entrepreneurial activity in the regime of the free Customs zone may perform the entrepreneurial activity in the territory of the Free Port.

(3) Customs alleviation's and special measures for Customs control established by this Law shall be applied to entrepreneurial associations signed the contract with the Free Port Management (Authority) on entrepreneurial activity in the regime of the Free Customs Zone and have received the permit for such activity in the procedure established by this Law as well as to the Free Port Management. Territories of indicated entrepreneurial associations (enterprises) shall be the free Customs zones.

(4) It is allowed to import goods and other articles into the Free Customs Zones located in the Free Port from other Customs territory of the Republic of Latvia and export (bring out) them from above mentioned zones to other Customs territory of the Republic of Latvia only through the Customs border crossing points in the procedure established by the Customs Code, laws and the Cabinet of Ministers regulations.

(5) If goods produced anew or processed in the Free Customs Zones located in the Free Port are exported from the free Customs zones and the anew added value of these goods corresponds to 40 per-

cent or exceeds 40 percent of the total value of the commodity, then above mentioned goods shall be recognised as goods made in Latvia.

Article 4. Land legal relations in the territory of the Free Port

(1) The land area owned by the State in the territory of the Free Port can not be sold, presented or alienated in other way.

(2) Area of inland waters of the Free Port territory (port waters) is a property of the State.

(3) The land area of the Free Port owned by physical person or legal entity may be, sold, presented, exchanged or alienated in other way only for the benefit of the State or local government.

(4) The personal easement for the benefit of the Free Port Management is established by this Law to the land owned by physical persons or legal entities occupied by the Free Port according to this Article. The Free Port Management is entitled to use the land owned by physical persons and legal entities in its territory for needs of the Port, as well as to lease it to entrepreneurial associations operated in the territory if the Free Port without rights to transfer it to sublease.

(5) The user of the easement can construct the buildings and structures on the land in his/her territory, necessary for the Port's activities, as well as to allow their construction to entrepreneurial associations (enterprises) transferred the land for lease determining the disposing of these buildings and structures in the case of termination of the land lease contract.

(6) Upon termination of the easement rights the land owner can not demand the restitution of the land prior to payment of compensation for buildings and structures.

(7) The Free Port Management shall pay taxes and cover expenses connected with the land maintenance but other encumbrances failed upon the land shall be bearded and carried out by the land owners.

(8) The land user shall pay the compensation to its owner for the easement according to agreement but not more than five per cent annually of the cadastral value of the land.

(9) The plot of land subject to easement established by this Article shall be determined at any individual case by the Cabinet of Ministers after establishing the land ownership rights. The Free Port Management is entitled to record with the Land Book the established easement rights in the unilateral procedure.

CHAPTER II

ORGANISATION OF THE FREE PORT MANAGEMENT

Article 5. The Free Port Management

(1) Managing of the Free Port is performed by the Management (Authority) of the Port of Ventspils (henceforth - the Free Port Management), whose competence is established by this Law, the Law on Ports, the Regulations of the Ventspils Free Port Management, and the Regulations of the Ventspils Free Port, regulating the internal regime of the Free Port.

(2) The Free Port Management is a legal entity. It shall belong the same Customs alleviation's as the licensed entrepreneurial associations.

Article 6. The Free Port Board

(1) The superior decision - making institution of the Free Port Management shall be the Board of the Free Port. Its members shall be appointed to the post and dismissed in the procedure established by Article 8 of the Law on Ports.

(2) The executive body of the Board of the Free Port is guided by the Free Port Manager, appointed to the post and dismissed by the Board of the Free Port after compliance with the Minister of Transportation.

CHAPTER III

CUSTOMS REGIME IN THE FREE PORT

Article 7. The Customs offices' activities in the Free Port

The Customs offices shall perform their functions in accordance with the Republic of Latvia Customs Code and other laws considering provisions of this Law.

Article 8. Export of goods from the territory of licensed entrepreneurial associations

To goods which are exported (brought out) from the territory of the licensed entrepreneurial associations (Free Customs Zones) to other Customs territory of the Republic of Latvia provisions of the Republic of Latvia laws and other normative acts on importing of goods from the abroad (import), corresponding import Customs duty (tax) rates, as well as other business restrictions and prohibitions shall be applied.

Article 9. Import of goods in the territory of the licensed entrepreneurial associations

To goods which are imported (brought in) in the territory of the licensed entrepreneurial association located in the territory of the Free Port (Free Customs Zone) from other Customs territory of the Republic of Latvia provisions of the Republic of Latvia laws and other normative acts on exporting the goods to abroad (export), as well as business restrictions and prohibitions shall be applied.

Article 10. Enumeration (stock taking) of goods in the Free Port
Licensed entrepreneurial associations shall ensure the enumeration of goods brought in and produced in their territory and goods brought out from it in the procedure determined by the Cabinet of Ministers.

Article 11. Subjection of physical persons to Customs offices

Physical persons when entering the territory of the licensed entrepreneurial association and leaving it shall be subject to the Customs control.

CHAPTER IV

ENTREPRENEURIAL ACTIVITY IN THE FREE PORT

Article 12. Regulations for entrepreneurial activity in the Free Port

(1) Services of goods, (cargo) loading, storing, processing and other services and production of goods in the Free Customs Zone regime shall be performed by entrepreneurial associations which are registered in the Republic of Latvia, have signed the contract on entrepreneurial activity in the free Customs regime and received permit for performing such an activity.

(2) The Free Port Management shall arrange the register of licensed entrepreneurial associations.

(3) Other entrepreneurial associations located in the territory of the Free Port but failed to sign the contract on the entrepreneurial activity in the free Customs zone regime and to receive permit for such an activity, may perform the entrepreneurial activity without alleviation's determined for licensed entrepreneurial associations and being subject to control of the Free Port Management in the frame of its competence.

Article 13. Preconditions for application of the Free Port regime

(1) The regime of free Customs zone shall be applied only to those entrepreneurial associations whose territory is bounded by one or several Customs crossing points and the guarding arranged appropriately which shall ensure the movement of goods and individuals to the territory of the licensed entrepreneurial association and from it in compliance with the Customs requirements. Any licensed entrepreneurial associations shall ensure guarding of its territory.

(2) Entrepreneurial associations to which the free Customs zone regime is applied may not perform the entrepreneurial activity outside the territory corroborated to them and bounded appropriately, excluding activities indicated in Part 3 of this Article.

(3) The following activities shall not be considered as the entrepreneurial activity outside the territory of the licensed entrepreneurial association:

1) location of the management institution or representative (according to Article 8 of the Law "On Entrepreneurial Activity" of the entrepreneurial association (enterprise) outside of the bounded territory;

2) performing negotiations and signing contracts outside of the bounded territory;

3) other activities without features of execution commercial transactions;

4) transit of goods through the bounded territory.

(4) The regime of Free Customs Zone shall be applied to entrepreneurial associations if they bring out for free circulation to other territory of the Republic of Latvia not more than 20 per cent of the produced goods.

Article 14. Procedures by which the contract on the entrepreneurial activity in the Free Port shall be signed and permit shall be issued

(1) The entrepreneurial association which has already established or will be established in future (the claimant is a founder) is entitled to claim the signing the contract and receiving of permit considering the following preconditions:

1) the type of the entrepreneurial association's activity and future development shall correspond to program of the Free Port development approved by the Board of the Free Port;

2) founders and members of the entrepreneurial association shall have a good reputation, stable financial condition and experience in the entrepreneurial activity (above mentioned information shall not be required about the local governments and the State as the founders and members, but may be required about the state and local government enterprises).

(2) The Free Port signs contracts on the entrepreneurial activity concerning specific types of activity (for example, loading, producing of goods, storing). The contract can be signed concerning several types of activity.

(3) The applicant shall submit for signing of contract and permit to the Board of the Free Port the following documents:

1) application;

2) the copy of the registration certificate issued by the Enterprise Register and certified by the notary;

3) the copy of the statutes certified by the notary;

4) annual account for two years approved by the sworn auditor (or according to the consent of the Board of the Free Port the copy of the abridged account);

5) the program of activity, including the investment program;

6) other essential information about the entrepreneurial association and its founders according to decision of the Board of the Free Port.

(4) The decision on signing the contract with the applicant (claimant) shall be passed by the Board of the Free Port within three months after filing of documents indicated in Part 3 of this Article. The application of the claimant is rejected if the preconditions mentioned in Part I of this Article are not met.

(5) If the claimant for signing of contract is a founder of the newly established entrepreneurial association the decision on signing the contract can be passed by the Board of the Free Port on the basis of the draft founding documents and draft programs of activity, submitting the temporary permit simultaneously. The decision on signing the contract shall be in force for six months. If the entrepreneurial association is not established within this period of time, the decision shall be recognised as null and void.

(6) The contract on the entrepreneurial activity in the regime of Free Customs Zone shall be signed for the period of time not less than five years.

(7) The contract on the entrepreneurial activity in the regime of free Customs zone shall be a basis for issuance of the permit for entrepreneurial activity in the Free Port. The permit shall be issued for the term of validity of the contract after examining the readiness of the entrepreneurial association for activity in the Free Port. The Free Port Management shall ensure the enumeration of permits.

Article 15. Procedure by which the contract on the entrepreneurial activity in the Free Port shall be terminated and the permit cancelled

(1) The contract on the entrepreneurial activity in the Free Port can be terminated before expiration of the term (early termination) by the decision of the Free Port Management if it is stated, that the licensed entrepreneurial association violates the laws, other normative acts on the signed contract.

(2) Simultaneously with the decision on the termination of the contract before the expiration of the term the Board of the Free Port shall pass the decision on annulment of the permit and determine the date for fulfilment of the decision.

(3) The entrepreneurial association which permit for the entrepreneurial activity in the regime of the free Customs zone is annulled is entitled to perform the entrepreneurial activity according to general provisions if the entrepreneurial activity is not prohibited to it in the procedure stipulated by law due to nature of the violations.

Article 16. Liability for early termination of the contract and reviewing of disputes

(1) The Free Part Management shall be liable for groundless early termination of contract and annulment of permit in accordance with the Civil Law.

(2) Disputes on the early termination of contract, annulment of permit and compensation of losses shall be reviewed by the court according to jurisdiction or by mutual agreement of parties - by the court of arbitration or foreign court.

Article 17. Duty free stores

In the territory of the licensed entrepreneurial associations the duty free stores may be arranged in the procedure stipulated by the Cabinet of Ministers.

Article 18. Issuing of certificate on the origin of goods

The Free Port Management is entitled to issue the certificate of the general type (non preferential) in the procedure stipulated by the Cabinet of ministers which certifies the producing or processing of goods in the licensed entrepreneurial association as well as the certificate what certifies that the goods transported through the territory of the licensed entrepreneurial association located in the Free Port are not processed in this territory.

Article 19. The tax payment regime

(1) Goods and services delivered or rendered to the licensed entrepreneurial association in its territory or to the Free Port Management by the person taxable with the value-added tax shall be imposed with the value-added tax according to 0 per cent rate according to Paragraph 3 of Part I of Article 7 of the Law "On value-added Tax".

(2) Bringing in of goods into the territory of the licensed entrepreneurial association or for the needs of the Free Port Management from abroad (import) or bringing out from it to abroad (export) shall be exempt from the Customs tax and excise tax, excluding the established by Part 3 of this Article.

(3) Retail trade, excluding the duty free stores and rendering of services in the territory of the licensed entrepreneurial associations shall be imposed with taxes anticipated by law in the procedure stipulated by the Cabinet of Ministers.

TRANSPORTIONAL PROVISION

By approval of the Ventspils Free Port regulations the Regulations of the Port of Ventspils shall be applied.

The Law takes effect as of January I, 1997.

The Law was adopted by the Saeima on December 19, 1996.

The President of State

G. Ulmanis

Riga, January 3, 1997

ANNEX XIV**MALTA FREE PORTS ACT, 1989 (ACT NO. XXVI OF 1989)**

AN ACT to provide for the establishment of a Free Port system in Malta and to regulate its operation.

Enacted by Act XXVI of 1989, as amended by Legal Notice 103 of 1995 and by Act X of 1997.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

PART I**PRELIMINARY***Article 1. Short title.*

(1) This Act may be cited as the Malta Free Ports Act, 1989.

(2) The provisions of this Act, other than the provisions of this section and of section 4 thereof, shall come into force on such date as the Prime Minister may by notice in the Gazette establish, and different dates may be so established for provisions and different purposes of this Act.

Article 2. Interpretation.

(1) In this Act, unless the context otherwise requires:

"Authority" means the Free Port Authority constituted under section 5 of this Act; "body of persons" means any partnership, fellowship, society or other association of persons, whether vested with legal personality or not; "certified public accountant and auditor" means an individual who holds a warrant to act in this capacity issued under the Accountancy Profession Act, 1979, or a partnership of such individuals duly registered under the said Act; "company" means a limited liability company constituted under laws of Malta and which does not issue shares to bearer; "Comptroller" means the Comptroller of Customs and includes any other person having an express or implied authority to act for the said Comptroller in carrying out the provisions of this Act; "Customs duty" means duty charged or chargeable under the Import Duties Act, 1976; "excise laws" mean : Act XXII of 1993; the Beer (Excise Duty) Act, 1993; Act XVI of 1995; the Excise Duty Act, 1995; the Machine Made Cigarettes (Excise Duty) Act; and the

Colour Televisions (Excise Duty) Act, 1982; "Free Port" means any area of Malta comprised within a Free Port zone in accordance with the provisions of section 3 of this Act; "income tax" means tax charged or chargeable under the Income Tax Act and the Income Tax Management Act, 1994. "Income Tax Acts" means a collective reference to the Income Tax Act and the Income Tax Management Act, 1994; "licensed company" means a company licensed by the Authority to operate within a Free Port under section 11 of this Act; "Minister" means the Minister responsible for Free Ports; "person" includes a body of persons; "prescribed" means prescribed by regulation under this Act.

(2) Any reference in this Act to any law or provision thereof, shall be construed as a reference to that law or provision as from time to time in force and shall include a reference to any enactment replacing such law or provision (including the imposition of any taxes whatsoever analogous to or in substitution to those contained in such enactment provisions) and to any subsidiary legislation made thereunder.

(3) Words and expressions used in this Act with reference to another law shall, so far as necessary to give effect to this Act, and consistently with the provisions thereof, have the same meaning as they have in the law with reference to which they are used in this Act.

(4) Any reference in this Act to a criminal offence committed abroad, or against the law of another country other than Malta, or to an act which if committed in Malta would be a criminal offence against the law of Malta, shall be construed as limited to offences which are extractable for the purposes of section 5 of the Extradition Act, 1978.

(5) In this Act and in any regulations made thereunder, if there is any conflict between the English and Maltese texts, the English text shall prevail.

PART II FREE PORTS

Article 3. Declaration of Free Ports.

(1) The areas of Malta shown on the plan enrolled by the Secretary General of the Government of Malta in the records of the chief Notary to Government, Dr. Franco Pellegrini, of the 25th April, 1989, shall, for all intents and purposes of this Act and of any other law, consti-

tute Free Port zones. The said areas are indicated in the plan shown in the Schedule to this Act.

(2) The Prime Minister may by Order approved by resolution of the House of Representatives, and published in the Gazette, amend the Schedule to this Act, provided that the provisions of section 27 of this Act shall apply to any amendment to the Schedule whereby any such area or part thereof ceases to be a Free Port zone; provided further that no land shall be included in a Free Port unless such land shall immediately prior to its inclusion be held by Government under title of absolute ownership, or be in the process of acquisition by Government under such title in terms of the Land Acquisition (Public Purposes) Ordinance; and in the latter case the provisions of section 32 of the said Ordinance shall not apply; provided also that where land has been included in a Free Port zone as aforesaid it shall vest in the Authority by operation of this Act, without the need of any further formality, under the same title under which it was held by the Government, and where the land is still in the process of acquisition as aforesaid, the acquisition shall be continued by the Government and on its acquisition it shall vest in the Authority by operation of this Act without the need of any further formality.

Article 4. Exemption from certain legislation.

(1) The provision of the Disposal of Government Land Act, 1976, shall not apply to any land as defined in section 2 of the said Act when such land is situated within a Free Port.

(2) The provisions of the Carriage of Goods by Sea (Regulation) Act, 1980 shall not apply to goods landed or loaded in a Free Port.

PART III

FREE PORT AUTHORITY

Article 5. Free Port Authority.

(1) Malta Free Port Corporation Limited, a limited liability company (No. C 9353) registered under the Commercial Partnerships Ordinance, on the 25th day of January 1988 shall be deemed to be constituted under this Act and shall constitute the Free Port Authority, hereinafter in this Act referred to as "the Authority".

(2) All rights and obligations of whatever nature of the said Malta Free Port Corporation Limited constituted and registered under the

Commercial Partnerships Ordinance as aforesaid, and all acts done by the said company shall, after the coming into force of this section, be deemed to be rights and obligations of, and acts done by, the Authority.

(3) It shall be the duty and function of the Authority:

(a) to administer the affairs of Free Ports with a view to fostering the economic development of Malta by encouraging the establishment of industrial and economic enterprises therein;

(b) to liaise with all Ministries and Departments of Government and all bodies and other authorities established by law in the application of the provisions of subsection (2) of section 6 of this Act;

(c) to advise Government on all matters relating to Free Ports;

(d) to do all such other acts as may be necessary or conducive to the attainment of any or all of the said objectives.

(4) Without prejudice to the generality of the provisions of subsection (3) of this section, the Minister may vest the Authority with such supervisory and executive powers, and may impose on the Authority such conditions, obligations and restrictions as to him may seem necessary for the proper and fruitful establishment, development, maintenance, operation, management, control and conservation of Free Ports.

(5) Subject to the other provisions of this Act, the Authority shall continue to be regulated by its Memorandum and Articles of Association, and by the Companies Act, 1995, so however that:

(a) the Authority shall not be dissolved or merged with another company;

(b) The Authority shall not alter its Memorandum or Articles of Association, unless such alteration is first approved by resolution of the House of Representatives; and

(c) no share in the Authority shall be allotted except to the present members of the company, and no change in ownership of shares in the Authority carrying a right to vote in a general meeting or otherwise to appoint directors shall be effected unless such allotment or such change is authorised by a resolution of the House of Representatives.

(6) The Authority shall each year publish in the Gazette and in two daily newspapers in Malta its Profit and Loss Account and Balance Sheet, audited by a certified public accountant and auditor, together with any notes thereto, by not later than six months after its account-

ing date. Such report shall, together with a copy of a report of the Board of Directors of the Authority be placed by the Minister on the Table of the House of Representatives, not later than two months after they are made; so however if the House is not in sitting on the lapse of the said two months, these shall be laid on the Table of the House not later than one week after it next meets.

(7) The Authority shall afford to the Minister full facilities for obtaining information with respect to its property and activities, and shall furnish him with returns, accounts and other information with respect thereto, and afford him facilities for the verification of the information so furnished in such manner and at such times as the Minister may request.

(8) The Minister may, after consultation with the Authority, give to the Authority directions of a general character not inconsistent with the provisions of this Act, and the Authority shall give effect to any such directions.

Article 6. Powers of the Authority.

(1) Without prejudice to the generality of the powers conferred upon the Authority by this Act, the Authority may:

(a) do all such acts as may be necessary or conducive to the attainment of the objectives, duties and obligations of the Authority;

(b) enter into agreements with companies that seek to become licensed to operate in a Free Port;

(c) allocate areas, spaces, factories, wharves, and any other facility or structure which may be available in a Free Port on such terms as the Authority determines appropriate: provided that the Authority may not by title of sale or any other similar title alienate any immovable property situate within a Free Port; provided further that a temporary emphyteusis for not more than fifty years shall not be considered to be a title similar to sale;

(d) exercise, perform, and discharge all such powers, duties and functions as are by or under this Act vested in or assigned or delegated to the Authority;

(e) determine the rents, charges, dues and other levies to be paid in or in connection with any aspect of a Free Port or of the services and facilities made available thereunder;

(f) by notice in the Gazette, make rules for the control and management of a Free Port and all activities carried on therein or connected therewith;

(g) do all such other acts as are incidental to or consequential upon the exercise, performance and discharge of its powers, duties, and functions under this Act.

(2) The Authority shall notwithstanding any other law but subject to the provisions of this Act be the centre and channel wherein and through which all Ministries and Departments of Government and all bodies or other authorities established by law shall act in all matters with respect to all Free Ports and all activities related thereto, and with respect to companies which are licensed, or which seek to be licensed by the Authority, and as the centre and channel through which any such company shall apply for and obtain any permit, licence or other authorisation, or any other thing it may require, and through which it shall communicate with any of the authorities aforesaid:

Provided that this subsection shall not be construed to mean that any investigation, inspection or other similar act which any such authority may deem expedient to have carried out and any information such authority may require, for the purposes of any of its functions under the law, with respect to a licensed company, shall be carried out or obtained by the Authority;

Provided further that this subsection shall not be construed to derogate from the powers and duties of any Ministry, Department of Government or any body or other authority established by law with respect to matters relating to defence, public order and health.

(3) It shall be the duty of the Authority to carry out the functions conferred on it by subsection (2) of this section promptly and efficiently; and it shall be its particular duty to ensure that any act or thing to be done by virtue of the aforesaid subsection is done to the satisfaction of the Ministry, Department, body or other authority for which it is required to act.

Article 7. Agreements entered into by Authority.

Every agreement which the Authority enters into under paragraph (b) of subsection (1) of section 6 of this Act shall be reduced to writing, and every such agreement shall constitute a binding contract for the purposes of section 27 hereof.

Article 8. Provision of industrial structures, etc.

Where the Authority is satisfied that in the case of a company licensed to operate in a Free Port it would be consistent with the aims and objectives of the policy under which the Free Port was constituted, the Authority may provide for the company industrial buildings, structures and land in the Free Port including, on such terms as may be agreed, industrial buildings and structures constructed or altered according to the requirements of the relative company:

Provided that immovable property in a Free Port shall not be transferred to a licensed company under any title for a term beyond the term of the licence, original or extended, of the company to which it is so transferred and that the title under which any such immovable property is transferred shall terminate automatically on the termination of the licence of the company to which it is so transferred.

(2) The industrial buildings and structures contemplated in subsection (1) of this section shall include especially factories, warehouses (whether refrigerated or not), storage areas, sheds, tanks, pipelines and such commercial and industrial equipment as may be necessary.

(3) The Authority shall also make available such immovable property in a Free Port under such conditions as may be appropriate for the purposes of section 9 of this Act.

Article 9. Provision of utilities.

(1) Subject to the provisions of the applicable laws, if any, it shall be the duty of the Authority to ascertain that every Free Port shall be provided with the following utilities, that is to say:

- (a) electric power supply;
- (b) potable and other water;
- (c) postal services;
- (d) telecommunications;
- (e) banking and insurance services;
- (f) fire fighting services;
- (g) waste disposal arrangements;
- (h) adequate road systems;
- (i) wharves, jetties and other similar structures;
- (j) transport for goods and passengers to and from the Free Port;
- (k) security systems including adequate public lighting;

(2) Nothing in this section shall be deemed to impede the Authority from procuring the provision of such other utilities as may be required for the proper operation of any Free Port, or to exonerate it from its duty of procuring the provision thereof.

Article 10. Certificates of origin and of non-manipulation.

(1) The Authority may, having regard to a substantial transformation achieved in the identity of goods or articles and to the value added through any processing or other operation carried out in a Free Port, release a certificate indicating that Malta is the origin of any such goods or articles.

(2) The Authority may, where it is so satisfied, release a certificate to the effect that any goods or articles which have been transhipped through a Free Port have not suffered any manipulation in the Free Port so as to transform their identity.

(3) It shall not be lawful for any person unless a certificate has first been obtained from the Authority under the provisions of this section to indicate in any manner that:

(a) goods or articles which have been subjected to any process or other transformation whatsoever in a Free Port have Malta as their origin;

(b) any goods or articles transhipped through a Free Port have not suffered any manipulation in the Free Port.

PART IV

LICENSED COMPANIES

Article 11. Licensed companies.

(1) The Authority may grant licences to companies to carry out in a Free Port a trade or business being principally:

(a) the labelling, packaging, sorting, warehousing, storage, exhibition or assembly of any goods, materials, commodities, equipment, plant or machinery; or

(b) any activity concerned solely with the conduct of a Free Port including, but not limited to, stevedoring, wharfage, operation of terminals and container handling; or

(c) the rendering of services analogous or complementary to the activities referred to in paragraph (a) of this section, and the status as

a licensed company shall be evidenced by the issue of a licence for this purpose by the Authority.

(2) No company shall be granted a licence contemplated by this Act unless its activities are, in the opinion of the Authority, wholly or mainly carried on or exercised within a Free Port.

(3) For the purpose of subsection (2) of this section, the following activities carried on or exercised outside a Free Port by a licensed company shall not be deemed to infringe the rule therein set out:

(a) the management and administration of a company, its trade, business or property and the holding thereof;

(b) the execution of instruments, transactions, negotiations or agreements relative to a company's trade or business;

(c) the transit of goods or other commodities to and from a Free Port.

(4) The Authority shall have the exclusive right to license companies to operate in a Free Port. Licences and the relative benefits shall only be granted to companies which engage in activities that advance the objectives of Free Ports.

Article 12. Company ceasing to be a licensed company for illegal activities.

(1) The Authority shall revoke the licence of any company which carries on any activity, or has income accruing to it or derived by it, which consists of or originates from any transaction, operation or other activity which is a criminal offence against the law of Malta, or would be such an offence if carried out in Malta, or has received or has in its possession or control money or other property the receipt, ownership, possession or control of which is, or would be, such an offence as aforesaid.

(2) All income, money or other property as is referred to in subsection (1) of this section shall be liable to seizure and shall be forfeited in favour of the Authority and become its property absolutely:

Provided that any person wishing to challenge any such seizure or forfeiture may sue the Authority before the first Hall of the Civil Court and the provisions of section 73 of the Customs Ordinance shall apply to such an action, so however that any reference in that section to the Comptroller and to the Ordinance shall be read and construed as a reference to the Authority and to this Act, respectively.

Article 13. Goods in Free Ports.

(1) In issuing licences for operations in a Free Port, the Authority shall ensure that a Free Port shall be open to all goods, irrespective of their nature, quantity and country of origin, consignment or destination; nor shall there be any limit of time during which goods may be retained in a Free Port.

(2) Notwithstanding the provisions of subsection (1) of this section:

(a) the Government and the Authority shall have power to impose such prohibitions or restrictions as to them may seem justified on grounds of public morality, public policy or public security, the protection of human, animal or plant health and life, the protection of national treasures of artistic, historic or archaeological value, or the protection of industrial or commercial property;

(b) the Authority shall have power to require that goods which are dangerous or likely to spoil other goods or which, for any other reason whatsoever, require special facilities, be placed in premises specially equipped to receive them.

Article 14. Reserved operations in Free Ports.

(1) The Authority shall not issue a licence to any company for the purpose of section 11 of this Act if the company, in the opinion of the Authority, is engaged in any operations connected with alcoholic spirits, tobacco products or those commodities as the Authority may from time to time determine by notice in the Gazette, unless the relative operations are conducted by a recognised manufacturer of the commodities.

(2) The Authority shall not allow any part of a Free Port to be utilised as a bonded store for Customs duty purposes in relation to goods which are or which will be imported into Malta but outside a Free Port.

(3) The Authority shall not issue a licence to any company unless it is satisfied that the said company is occupying, under any title valid at law, or is being allowed by the Authority to make use of immovable property in a Free Port whether on its own or in conjunction with other licensed companies.

(4) The Authority may permit any person whomsoever to have access to and operate in a Free Port, even if such person cannot, for any

reason whatsoever, be a licensed company for the purposes of section 11 of this Act if, in the opinion of the Authority -

(a) it would be useful, necessary or conducive to the better development or functioning of a Free Port that such person be granted such access and be allowed to operate in the Free Port; or

(b) permission and access as aforesaid are necessary pursuant to the provisions of section 9 of this Act.

Article 15. Certificates and fees.

(1) The Authority may from time to time release certificates as it may deem appropriate attesting that a company, or a company in the process of formation, is, or will be, a licensed company pursuant to the provisions of this Act, and such certificates shall be conclusive evidence for the purposes of section 24 and for all purposes of this Act, and for all related, corollary or ancillary matters, to the effect that the said company is, or will be, so licensed.

(2) A licensing fee of Lm1,000 shall, unless otherwise prescribed by the Minister on or after the fifth anniversary of the enactment hereof, be payable to the Authority by every company to whom a licence is issued pursuant to the provisions of this Act; and an annual fee of like amount shall thereafter be payable upon each anniversary of the company being granted a licence, provided that no alteration to the licence fee shall have effect before the expiration of one year from the publication of such alteration in the Gazette.

PART V

FISCAL REGIME

Article 16. Exemption from Customs duty and the excise laws.

(1) Subject to the provisions of this Act, all goods imported into a Free Port by a licensed company or by the Authority shall be exempt from Customs duty, provided that:

(a) such goods are imported exclusively for the construction, alteration, reconstruction or extension of an industrial building or structure within a Free Port or for any extension thereof, or for the purpose of effecting repairs to such an industrial building or structure or the extension thereof, or constitute equipment, spare parts, machinery or plant, contained in any such industrial building or structure or extension thereof, or are intended to replace any equipment, machin-

ery or plant in any such industrial building or structure or extension thereof, and in all cases for the purposes of the Authority or of the trade or business carried on or intended to be carried on by the company; or

(b) such goods are raw materials, components, intermediate products, by-products, unfinished goods, or other goods imported for the purposes for which a company has been granted a licence by the Authority under the provisions of this Act.

(2) Every company which imports into a Free Port any goods free of Customs duty under subsection (1) of this section shall:

(a) keep proper and sufficient records of the goods which it so imports; and

(b) permit the Authority at all reasonable times to inspect the said records and to have access to any premises of the company for the purpose of examining any such goods which it may believe to be therein and of satisfying itself of accuracy of the said records.

(3) No goods imported into a Free Port by the Authority or by a licensed company free of Customs duty under the provisions of subsection (1) of this section shall be sold, given away or otherwise disposed of other than to the Authority or another licensed company except:

(a) through re-export from Malta, whether in the same state as when imported, or otherwise, or, subject to such restrictions as to importation as would be applicable had such goods been imported from outside Malta, by transfer into Malta outside a Free Port on the payment of Customs duty in accordance with the provisions of subsection (6) of this section; or

(b) in the case of an industrial building or structure for the construction, alteration, reconstruction, extension or equipment of which such article was imported into a Free Port to the person for whom such industrial building or structure was constructed; or

(c) in the case of materials, components or imported into a Free Port for any purpose referred to in subsection (1) of section 11 of this Act:

(i) if incorporated in the goods or commodities in respect of which they were imported; or

(ii) subject to such restrictions as to importation as would be applicable had such goods been imported from outside Malta, by trans-

fer into Malta outside a Free Port payment of the amount of Customs duty which would have been payable upon the importation of such materials or components but for subsection (1) hereof.

(4) When goods imported into a Free Port by the Authority or by a licensed company free of Customs duty are sold, given away or otherwise disposed of to the Authority or a licensed company in terms of subsection (3) of this section, then such goods shall for the purposes of this Act be deemed to have been imported by the Authority or by the company to which they are sold, given away or otherwise disposed.

(5) Subject to such conditions and the giving of such security as he may determine, the Comptroller:

(a) allow any goods destined for a Free Port to be landed in Malta free of Customs duty: provided that in all cases, the said goods shall (unless otherwise permitted by the Comptroller) be transferred into the Free Port within seven working days of have been landed;

(b) allow the transit of any goods destined for export from a Free Port to any port or airport in Malta without Customs duty thereon, provided that the said goods shall (unless otherwise permitted by the Comptroller) be loaded on a ship or aircraft within seven working days of having exited from the Free Port.

(6) Whenever any goods which have entered a Free Port free of Customs duty in accordance with the provisions of this section are transferred out of a Free Port and remain in Malta otherwise than for the purpose contemplated at paragraph (b) of subsection (5) hereof or, if owned by the Authority, for use by the Authority in pursuance of its duties or functions hereunder outside a Free Port, such goods shall as soon as transferred be deemed to have been imported into Malta and subject to Customs duty under the relative provisions of the Import Duties Act, 1976 where applicable.

Provided that in the case of any goods which have been processed in a Free Port and qualify for certification as having been made in Malta pursuant to the provisions of section 10 of this Act, the nature of the goods, the value and the quantity to be taken in consideration in determining Customs duty shall, at the request of the person liable to pay duty, be those which would be taken into account had the goods not been processed as aforesaid.

(7) Where Customs duty has been paid in respect of any goods upon their importation into Malta, no claim for refund of such duty shall be competent solely on the grounds that such goods are later transferred into a Free Port.

(8) The excise laws shall not apply to any goods produced in a Free Port unless such goods are entered for consumption in Malta outside a Free Port.

Article 17. Safeguards for Customs and excise duties.

(1) The Authority shall:

(a) ascertain that every Free Port is equipped with adequate control systems to prevent evasion of Customs and excise duties that would be payable to the Government but for the provisions of this Act;

(b) ensure that every area designated as a Free Port pursuant to the provisions of this Act is properly enclosed; and

(c) determine the entry and exit points thereof, and in every such matter the Authority shall conform with any requirements of the Comptroller in respect thereof, unless the Prime Minister otherwise directs.

(2) Any person entering a Free Port from any place in Malta outside a Free Port zone or leaving a Free Port other than to a destination outside Malta with any goods shall answer such questions as the Comptroller may put to him with respect to the said goods and shall, if required by the said Comptroller, produce those goods for examination at such place as the Comptroller may direct.

(3) At the time when a vehicle is entering or leaving a Free Port, the Comptroller may board the vehicle and search any part of it.

(4) The Authority shall not permit any person to take up residence within a Free Port.

(5) The Authority may deny access to a Free Port to any person who does not provide such guarantees as it may deem necessary regarding the proper application of any rules, regulations or orders in respect thereof.

(6) Every licensed company shall make available to the Authority such records in writing relating to the goods it is importing or will be importing into a Free Port as may be necessary to identify their nature, quantity and country of origin, consignment or destination which records shall be available for inspection by the Comptroller.

(7) The Minister may, with the advice of the Authority, by regulations published in the Gazette, make provisions with respect to the movement of goods into, and the removal of goods from any Free Port, and the keeping, securing and the treatment of goods which are within a Free Port.

(8) Without prejudice to the generality of subsection (7) of section, regulations made thereunder may make provisions -

(a) permitting goods in a Free Port to be destroyed without payment of Customs or excise duties, in such circumstances and subject to such conditions as the Authority may determine;

(b) requiring that specified operations within a Free Port are to be carried out in such manner and subject to such restrictions as may be imposed by or under the regulations;

(c) establishing the penalty which may be imposed by any court in the event of non compliance with any conditions or restrictions imposed in virtue of paragraph (b) hereof: provided such penalty shall not exceed a fine of Lm 5,000 together with the forfeiture of the goods to which the offence refers;

(d) specifying the information to be given to the Authority in respect of goods imported into a Free Port and the form in which, persons by whom, and time within which, such information must be given.

Article 18. Exemption from income tax.

(1) A licensed company shall be exempt from paying income tax on the gains or profits arising to it from a trade or business exercised in a Free Port pursuant to the provisions of section 11 of this Act.

(2) For the purposes of the Income Tax Acts, the income or part thereof of any company for any year of assessment in respect of which exemption from income tax operates under the provisions of this section shall be computed in the manner set out in the said Act and in accordance with its provisions, provided that the provisions of the Income Tax Act, shall be superseded or replaced as necessary by the provisions of this Act.

(3) Interest and royalties paid by a licensed company in respect of or related to operations or transactions exempt from income tax under the provisions of subsection (1) of this section shall also be exempt from income tax: provided that such exemption shall not operate

where interest or royalties are paid to a person ordinarily resident or domiciled in Malta.

Article 19. Tax free dividends.

(1) Any dividends (or part thereof) distributed by a licensed company out of its gains or profits, or part thereof, which, under the provisions of this Act, have been relieved from the payment of income tax, shall be exempt from income tax in the hands of the members of the company in receipt of such distribution, provided that the provisions of this subsection shall not apply to a dividend distributed to a person ordinarily resident or domiciled in Malta.

(2) Where a dividend to which subsection (1) of this section applies is distributed to a member which is also a company (in this subsection referred to as "the second company"), the said dividend shall likewise be distributable by the second company to its own members in the form of dividends exempt from income tax in the hands of the recipients, and where a member of the second company is again a company, the preceding provisions of this subsection shall apply *mutatis mutandis* as though references to the first company were references to that member, and the principle set out in this subsection shall continue to be applied for as long as the gains or profits or part thereof to which this section applies are distributed by way of dividends, provided that the provisions of this subsection shall cease to operate where a dividend is distributed to a person ordinarily resident or domiciled in Malta.

Article 20. Exemption from stamp duties.

(Act XVII of 1993)

Notwithstanding the provisions of the Duty on Documents and Transfers Act, 1993, no duty shall be payable thereunder in respect of:

(a) the allotment of any newly issued shares or stock of a licensed company;

(b) the purchase, transfer, assignment or negotiation of any share or stock of such a company;

(c) the purchase, sale or other transfer of any asset by a licensed company or by the Authority, other than a sale or other transfer to a person domiciled or ordinarily resident in Malta unless such person is the Authority or another licensed company;

- (d) the transfer of any hypothec, mortgage or other charge over any asset of a licensed company or of the Authority;
- (e) valuations made on behalf of a licensed company or of the Authority;
- (f) receipts given by a licensed company or by the Authority;
- (g) any application filed by a licensed company or by the Authority;
- (h) insurance policies issued in favour of a licensed company or other Authority.

Article 21. Exemption from exchange control.

(Cap 233).

(1) Subject to the provisions of subsection (2) of this section, licensed companies shall be exempt from the provisions of the Exchange Control Act, 1972, to the extent that such exemption shall ascertain:

- (a) free and unrestricted foreign exchange transfers by licensed companies;
- (b) that no limits shall be set regarding the holding of shares in licensed companies by persons not resident in Malta;
- (c) unrestricted repatriation of dividends paid by licensed companies where the dividends are exempt from income tax under the provisions of section 19 of this Act;
- (d) free transfers of shares in licensed companies;
- (e) unrestricted repatriation of the proceeds of liquidation of licensed companies;
- (f) right of free management by licensed companies of their foreign currency;
- (g) the unrestricted repatriation of any sum due as wages or salaries to expatriate employees referred to in section 22 of this Act:

Provided that such exemptions shall not apply (except for normal banking transactions) in respect of transactions and operations carried out with persons resident in Malta.

(2) The exemptions granted by this section shall only be due to licensed companies in which Maltese citizens (including companies) are entitled to less than forty per cent of the nominal value of the issued share capital, excluding any part thereof which, neither as regard dividends nor as regard capital, carries any right to participate in any distribution of profits beyond a specified amount.

Article 22. Expatriate employees.

(Cap 217).

(1) The Authority may certify that an individual who is not an exempt person under the Immigration Act, 1970 would, if granted a licence under the said Act to be employed with a licensed company, or with the Authority, contribute through his technical or managerial knowledge and experience towards the proper and fruitful establishment, development, maintenance, operation, management, control or conservation of a Free Port or the Authority, and of their operations.

(2) Where subject to the provisions of the Immigration Act 1970 an individual who is not domiciled in Malta or who, if so domiciled, is not ordinarily resident therein, is employed with a licensed company or with the Authority, the income tax on the chargeable income of such an individual shall be charged at the rates contemplated by the Income Tax Act, so however that any rate of tax in excess of 30 cents on every Maltese lira shall be reduced to 30 cents.

(3) Individuals referred to in subsection (2) hereof who are employed with a licensed company or with the Authority, and such licensed company and the Authority in respect of such individuals, shall be entitled to be exempt from the provisions of the Social Security Act, 1987 and of any enactment replacing the law.

(4) The used personal belongings, including one motor car suitable for family use, of any individual referred to in subsection (2) of this section, imported into Malta not later than six months after his first taking up residence in Malta, may be so imported free of Customs duty, provided that duty shall be payable on anything imported free of duty under this subsection if and when such thing is sold, assigned or otherwise transferred to a person resident in Malta.

Article 23. Exemption from death and donation duties.

(1) Notwithstanding anything contained in the Death and Donation Duty Act, 1973, no duty shall be payable thereunder in respect of interest in a licensed company possessed by any person when:-

(a) such interest is comprised in a chargeable transmission under the said Act, and

(b) the former owner thereof before the happening of the chargeable transmission and the new owner after its happening are both persons not domiciled in Malta, and

(c) the interest is an interest to which the provisions of this section apply.

(2) The provisions of this section apply to an interest in a licensed company being -

(a) any share in or debenture thereof;

(b) any dividend distributed or due to be distributed by the said company;

(c) any money loaned or advance to the company, and any other credit whatsoever, irrespective of the way in which the loan or advance has been made, or has resulted, and of the security granted therefor;

(d) any interest on money or other income paid or due to be paid by the company before the happening of the chargeable transmission.

Article 24. General rule regarding exemptions.

The exemptions contemplated by this Part shall only apply to transactions and operations which are relevant to the purposes for which the Authority has been appointed pursuant to the provisions of subsection (1) of section 5, or for which a company has been or will be licensed pursuant to the provisions of subsection (4) of section 11 of this Act.

PART VI

ADMINISTRATIVE ARRANGEMENTS

Article 25. Records and certification.

(1) No exemption or other benefit which may be granted or obtained under this Act shall be so granted or obtained, and no entitlement thereto shall exist notwithstanding anything contained in this Act unless:

(a) proper and sufficient records and accounts, including appropriate supporting documentation, have been maintained for the relative period, by the relative licensed company;

(b) separate accounts have been kept as may be necessary to identify and quantify the exemption or benefit;

(c) such computations, returns, statements particulars or documents as may be necessary to establish clearly the entitlement to an exemption or benefit are submitted as appropriate, including submission to the Authority.

(2) No claim, statement, account or document whatsoever that is in any way connected with the entitlement or presumed entitlement to any exemption or benefit contemplated under the provisions of this Act shall be considered or taken into account unless certified by a certified public accountant and auditor to the same effect that the balance sheet and profit and loss account of a company are to be certified under the provisions Companies Act, 1995, and for the purposes of this subsection the provisions of sections 179 and 181 of the said Act shall apply.

Article 26. Information required by the Authority.

Any licensed company or other person purporting or seeking to obtain or enjoy any exemption or other benefit under the provisions of this Act, or who has obtained such an exemption or other benefit, shall -

(a) furnish to the Authority and to any other authority such information, accounts, statements and other documents which the Authority or that other authority may deem to be necessary for the purposes of this Act;

(b) attend or send a representative to attend before the Authority or other authority and answer any question lawfully made in connection therewith;

(c) provide the Authority or other authority with reasonable access to all premises, places, books and other documents, and allow copies to be made thereof.

Article 27. Guarantee of exemptions and benefits.

(1) Where a licensed company or its officers or employees are granted or become entitled to an exemption or other benefit under the provisions of this Act, there shall be deemed to have come into existence a contract between the company or its officers or employees and the Government, or the Authority, as the case may be, guaranteeing for a period of fifteen years from the grant of the relative licence, the grant and enjoyment of the relative exemption or other benefit in accordance with the provisions of this Act.

(2) Where any exemption or other benefit is not due as of right under the provisions of this Act to any beneficiary, but depends on the use of discretion vested in any person or authority, the use by such person or authority of the discretion so vested in him in favour of a

beneficiary shall constitute a contract between the beneficiary and the Government, or the Authority, as the case may be, guaranteeing for a period of fifteen years from the use of such discretion, the grant and enjoyment of the exemption or other benefit in accordance with the provisions of this Act.

(3) The guarantees given by this section shall apply also against retrospective action, whether by legislation or otherwise, as would nullify any rights, exemptions or privileges so guaranteed.

(4) The provisions of this section shall be without prejudice to the controlling and regulatory provisions laid down in this Act.

(5) A licensed company or other beneficiary may, at any time, by notice in writing, elect not to be granted or to take any incentive or benefit otherwise due to it or him under the provisions of this Act. Such notice shall specify the date from which its election shall be operative, which date shall invariably be the first day of a year, or of a year of assessment or of any other financial period, and shall be irrevocable and indefinite in respect of the matters on account of which it has been made.

Article 28. Revocation for non-compliance.

(1) Where a licensed company fails to comply or cause compliance with any of the conditions attached to the grant of any exemption with any of the conditions attached to the grant of any exemption or other benefit under this Act or engages in activities inconsistent with the objectives of a Free Port, the Authority may either revoke the grant of the exemption or other benefit or by notice in writing require such company within thirty days of such notice:

(a) to comply or cause compliance with such conditions or to terminate any activity inconsistent with a Free Port; or

(b) to establish to the satisfaction of the Authority that failure to comply or cause compliance with such conditions was due to some cause beyond its control and that there are actual prospects of complying or causing compliance with such conditions, within such time as the Authority may consider reasonable.

(2) Where a company establishes to the satisfaction of the Authority that failure to comply or cause compliance with any conditions attached to the grant of any incentive or benefit under this Act was due to some cause beyond its control, and that there are actual prospects of complying or causing compliance with such conditions within a

reasonable time, the Authority may authorise such reasonable postponement for the purpose of compliance with such conditions, as it thinks fit.

(3) Where a licensed company:

(a) having been required so to do by notice subsection (1) of this section, fails to establish to the satisfaction of the Authority that its failure to comply or cause compliance with any conditions attached to the grant of any exemption or other benefit was due to some cause beyond its control and that there are actual prospects of complying or causing compliance with such conditions within a reasonable time; or

(b) having been allowed a postponement under subsection (2) of this section, fails within the period of such postponement to comply or cause compliance with such conditions, the Authority may revoke any exemption or other benefit granted to the company under this Act, and such revocation shall be operative from such date as may be determined by the Authority.

(4) Where the grant of any exemption or other benefit to a licensed company under this Act is revoked in accordance with the provisions of this section, such company shall pay to the Government or to the Authority, as the case may be, any sums which it would have paid to the Government or the Authority but for the provisions of this Act.

Article 29. Procedure regarding disputes.

(1) The Authority shall not:

(a) revoke any licence granted under section 11 of this Act; or

(b) revoke any grant or exemption or other benefit under this Act, unless the company in question has:

(a) been notified in writing of the action the Authority proposes to take; and

(b) has had an opportunity for a hearing before the Authority.

(2) Any dispute relating to the interpretation of the provisions of any agreement under this Act or the right of any party under this Act or the exercise by the Authority of any powers vested in it by this Act (except for the matters contemplated in sections 8, 9, 10, 11, and 14) shall, unless the parties agree otherwise, be referred for arbitration and settlement to the Appeals Board constituted under section 28 of the Industrial Development Act, 1988, provided that no appeal shall lie from any award made by the said Board and provided further that proceedings before the Board shall be regulated, *mutatis mutandis*, as

if reference under this section were an appeal filed to the Board under the said Act.

(3) Except for the purpose or in execution of a judgement given in pursuance of any action mentioned in subsection (5) of this section, no property of any kind belonging to a licensed company shall be subject to any precautionary or executive act or warrant as is mentioned in the Code of Organisation and Civil Procedure.

(4) No director or other officer of any licensed company, and no person being a member of or having an interest in any such company, shall be subject to any precautionary or executive act or warrant as aforesaid in respect of any obligation or other liability of the company.

(5) An action referred to in subsection (3) of this section is either:-

(a) an action for the enforcement of an obligation or other liability of the company; or

(b) an action for the recovery of any property acquired or held by the company, or otherwise in its possession or control, and originating from any transaction, operation or activity referred to in subsection (2) of section 12 of this Act.

(6) Notwithstanding the foregoing provisions of this section, no warrant or other act shall be issued by the court unless the applicant first satisfies the court that the warrant or other act may be issued under this section.

Article 30. Power to make regulations.

(1) The Minister may from time to time make regulations generally for carrying out or putting into effect the provisions of this Act and may, in particular, by those regulations prescribe for any such matters as are authorised by this Act to be prescribed.

(2) Regulations made by the Minister or rules made by the Authority, as the case may be, under any of the provisions of this Act may be made in the English language only.

PART VII
OFFENCES AND
PENALTIES

Article 31. Penalty for making incorrect statements, etc.

Any person who without reasonable excuse prepares any incorrect statement or gives any incorrect information in relation to any matter or thing falling under this Act, shall be guilty of an offence and shall on conviction be liable to a fine (multa) of not less than Lm 5,000 and not exceeding Lm 5,000.

Article 32. Provisions relating to fraud, etc.

Any person who wilfully with intent to obtain any incentive or benefit under this Act or to assist any other person to do so -

(a) omits from a return or any other document or statement made, prepared or submitted for the purposes of or under this Act, any matter which should be included therein; or

(b) makes any false statement or entry in any return or other document or statement prepared or submitted for the purposes of or under this Act; or

(c) gives any false answer, whether verbally or in writing, to any question or request for information asked or made in accordance with the provisions of this Act; or

(d) prepares or maintains or authorises the preparation or maintenance of any false books of account or other records or falsifies or authorises the falsification of any books of account or records; or

(e) makes use of any fraud, art or contrivance whatever or authorises the use of any such fraud, art or contrivance, shall be guilty of an offence, and shall for each such offence be liable on conviction to a fine (multa) of not less than Lm1,000 and not exceeding Lm10,000 or to imprisonment for any term not exceeding two years, or to both such fine and imprisonment.

Article 33. General penalty.

If any person contravenes or fails to comply with any of the requirements of this Act or of any regulations made thereunder, in respect of which no special punishment is provided, such person shall be guilty of an offence and shall for each offence be liable, on conviction, to a fine (multa) of not less than Lm100 and not more than Lm500.

Article 34. Provisions with respect to offences.

The provisions of this Act establishing offences and punishments in respect thereof shall not affect the operation of any other law establishing offences and punishments in respect of the same acts or omissions and shall not, in particular, affect the application of any higher punishment under any other law.

Article 35. Prescription for proceedings.

Proceedings for an offence under this Act may be commenced at any time within five years from the date of the commission of the offence.

ANNEX XV

WHITE PAPER ON MAURITIUS FREEPORT

Preamble by Sir Anerood Jugnauth
Prime Minister and Minister of Finance

Introduction

1. As part of its strategy to develop Mauritius as a Regional Trade Centre in this part of the Indian Ocean, Government proposes to establish a Freeport in Mauritius.

2. The Freeport Project can offer tremendous opportunities if properly conceived, planned and commissioned. Once operational, it will facilitate international trade, giving a boost to the offshore sector and to the economy in general.

3. In our endeavour to establish a Freeport in Mauritius, we have adopted a three-phase approach, namely a conceptualisation phase; a planning phase; and an implementation phase.

4. In the first phase, it was considered useful to learn from the experience of other countries in the establishment, operation and administration of Freeports so as to come up with a model appropriate to the Mauritian concept. Consequently, a fact-finding mission was undertaken in a few Freeports of Europe and South-East Asia. The Port Autonome de Rouen was also commissioned to carry out a study. A National Seminar on the Establishment of Freeport was organised in May 1991. The objective of the seminar was to arrive at a consensus on the most suitable type of Freeport for Mauritius.

5. This White Paper sets out the broad concept on the type of Freeport, its scope, its institutional framework and other features relating to its operation. All these aspects are embodied in a draft Freeport Bill.

The Freeport Concept

6. What is a Freeport ? A Freeport is a well-defined geographical area or zone normally within a port or airport where goods are generally introduced free from payment of any duties or taxes, and thus considered as being outside the Customs territory and not subject to the usual Customs formalities. There are basically two main categories of Freeports:

- (a) Industrial Freeports where goods are imported, processed and manufactured for export;
- (b) Commercial Freeports where goods are imported, stored and re-exported.

7. The type of Free Port which is being proposed for Mauritius will be a Commercial Freeport engaged in such activities such as storage, warehousing, repacking, labelling, sorting, grading, cleaning, mixing, bulk breaking and minor processing. This approach has been preferred in view of the existence of a successful EPZ sector in Mauritius. Our Freeport will aim at encouraging more transshipment activities and re-export trade, thus developing Mauritius as the focal point for trading with the African continent, Indian Ocean islands and the Far East.

Critical Factors for an Efficient Freeport.

8. In order to ensure the successful implementation of our Freeport project, it is vital that a number of critical conditions be met, namely:

- (a) the formulation of a proper legal, institutional and regulatory framework;
- (b) the provision of modern infrastructure and equipment facilities;
- (c) the simplification of administrative procedures and training of manpower;
- (d) the provision of an attractive and competitive package of incentives; and
- (e) the launching of an aggressive marketing and promotional campaign.

The Legal and Institutional Framework

9. A draft bill has been prepared to make provision for the establishment of Freeport zones in Mauritius and to regulate their operations.

10. Provisions have been made for well-defined areas to be declared as Freeport zones.

11. Management of the Freeport will be entrusted to a new body to be known as the Mauritius Freeport Authority. The Authority will be a statutory body administered by a Board composed of representatives of both public and private sectors. The Authority will issue licences to operators to carry out authorised activities.

12. Authorised activities will include warehousing and storage, breaking bulk, sorting, grading, cleaning, mixing, labelling, packing, repacking and minor processing.

Provision of Modern Infrastructure and Equipment

13. An ambitious port development plan has already been approved for the modernisation of the port facilities for the year 2015 and beyond. The main development projects include the construction of Quay A, rehabilitation of the peninsular area, the strengthening of Quays 3 and 4, the installation of two quay cranes for the handling of specialised container vessels, the relocation of Shed No. 3 and the creation of a marine terminal in Mer Rouge.

14. Major dredging and reclamation works have recently been completed in Mer Rouge and Les Salines. In fact, 98 hectares of land have been reclaimed in Mer Rouge for future development, out of which about 30 hectares have been earmarked for the Freeport activities.

15. Action is also being taken to improve the overall port efficiency and to increase port productivity in particular.

16. As regards the infrastructure required for the Freeport activities, appropriate warehouses, open storage areas, proper fencing and handling equipment will be provided to cater for safe storage and efficient handling of goods. However, at initial stage, the Freeport activities will start with facilities available, especially at the Flour Shed and Fort George.

Administrative Procedures and Training

17. Goods will be admitted into the Freeport and cleared for re-export with a minimum of formalities so as to reduce red-tape and delays. A simple declaration made to the Mauritius Freeport Authority will be sufficient for admission and exit of goods from the Freeport. No Customs formalities will be required for movement of goods from time of importation to time of re-export within the Freeport zones. Only goods intended for local consumption will become liable to Customs facilities.

18. A computerised system will be put in place to ensure efficient running of the Freeport and monitoring of activities. Appropriate training programmes will also be devised for the staff of the Authority at all levels.

Incentives

19. To attract potential operators into the Freeport the following incentives are being proposed:

(i) machinery, equipment and materials imported by any licensed operator for exclusive use in the Freeport will be exempted from duties and other taxes;

(ii) all goods destined for re-export in the Freeport will qualify for reduced port charges at trans-shipment rates;

(iii) warehousing and storage fees will be at preferential rates;

(iv) licensed operators will have access to offshore banking facilities;

(v) companies engaged exclusively in re-export may also apply for Offshore Status Certificates and benefit from reduced income tax rate of 5 per cent and other incentives normally provided to Offshore Companies.

Marketing

20. A campaign with the collaboration of MEDIA will be launched to promote the Freeport. Advertisements to that effect will be made in specialised international publications. Participation in specialised fairs is also being envisaged.

Conclusion

21. This White Paper contains Government's proposals on the Freeport project. In line with our policy of constant dialogue, we in-

vite interested parties to submit their views and suggestions on the White Paper. These should be submitted to the Ministry of Finance, Government House, Port Louis by the 31st October 1991. The Bill will be finalised in the light of the suggestions received.

September 1991.

Sir Anerood Jugnauth

Prime Minister and Minister of Finance

ANNEX XVI

THE (MAURITIUS) FREE PORT ACT 1992 (ACT NO. 13 OF 1992)

An Act To provide for the establishment of Freeport zones in Mauritius and to regulate their operations
ENACTED by the Parliament of Mauritius, as follows -

PART I - PRELIMINARY

Article 1. Short title

This Act may be cited as the Freeport Act 1992.

Article 2. Interpretation

In this Act "Authority" means the Mauritius Freeport Authority established under section 3; "Comptroller" means the Comptroller of Customs or any officer authorised by him to act on his behalf; "Customs" means the Customs and Excise Department; "Customs duty" means duty charged or chargeable under the Customs Act 1988; "Customs territory" means the territory of the State of Mauritius over which Customs authority is exercisable excluding a Freeport zone; "Freeport zone" has the meaning assigned to it under section 19; "licensee" means any person licensed under Part III of the Act; "Mauritius Marine Authority" has the same meaning as in the Ports Act; "Minister" means the Minister to whom responsibility for the subject of finance is assigned.

PART II - ADMINISTRATION

Article 3. Establishment of the Authority.

(1) There is established for the purposes of this Act the Mauritius Freeport Authority.

(2) The Authority shall be a body corporate.

Article 4. Objects of the Authority

The objects of the Authority shall be:

- (a) to control and manage the Freeport zones;
- (b) to promote and encourage external trade;
- (c) to provide infrastructure, storage and ancillary facilities to the licensees in the Freeport zones;
- (d) to advise the Minister on the development of Freeport zones in Mauritius.

Article 5. Powers of the Authority

The Authority shall have the power to:

- (a) issue licences to operate in a Freeport zone;
- (b) allocate areas, spaces, wharves and any other facility or structure which may be available in the Freeport zones on such terms as the Authority deems appropriate;
- (c) levy rents, charges and other dues to be paid by a licensee;
- (d) enter into an agreement with another person for the performance or provision by that person of any service or facility which the Authority is empowered to perform or provide.

Article 6. The Board

- (1) The Authority shall be administered by a Board.
- (2) The Board shall consist of-
 - (a) a Chairman to be appointed by the Minister;
 - (b) the Director-General of the Authority;
 - (c) the Permanent Secretary of the Prime Minister's Office or his representative;
 - (d) the Permanent Secretary of the Ministry of Trade and Shipping or his representative
 - (e) the Director-General of the Mauritius Marine Authority or his representative;
 - (f) the Comptroller or his representative;
 - (g) not more than 3 other persons to be appointed by the Minister.
- (3) A member of the National Assembly shall not be qualified to be appointed as a member.
- (4) Every member other than an ex-officio member, shall-
 - (a) hold office for a period not exceeding two years and shall be eligible for reappointment; and

(b) vacate his office if he becomes a member of the National Assembly.

(5) Every member shall be paid such allowance as the Minister may determine.

Article 7. Meetings of the Board

(1) The Board shall meet at such place as the Chairman thinks fit-

(a) not less than once a month; and

(b) at such other times as may be requested by not less than 3 members.

(2) 5 members of the Board shall constitute a quorum.

(3) Where a member has a personal or direct interest in any matter before the Board he shall declare such interest and shall not take part in any deliberation or decision of the Board relating to that matter.

Article 8. The Director-General

(1) There shall be a chief executive officer of the Authority who shall be known as the Director-General.

(2) The Director-General shall be responsible for the execution of the policy of the Board and for the control and management of the day-to-day operation of the Authority.

(3) In the exercise of his functions the Director-General shall act in accordance with such directions as he may receive from the Board.

Article 9. Delegation of powers.

The Board may delegate to a committee consisting of two or more members or to the Director-General, such of its powers under this Act other than the power-

(a) borrow money;

(b) to make investments;

(c) to enter into any transaction in respect of capital expenditure which exceeds 50,000 rupees or such other amount as may be prescribed.

Article 10. Powers of the Minister

(1) The Minister may:

(a) in relation to the exercise of the powers of the Authority under this Act, give such specific and general directions to the Authority, not inconsistent with this Act; as he considers necessary in the public interest and the Authority shall comply with such directions;

(b) require the Authority to furnish such information with respect to the activities of the Authority, in such manner and at such times, as he may specify;

(c) require the Director-General to furnish such returns or copies of such documents, including the minutes of proceedings of the Board and the accounts of the Authority, as he may specify.

Article 11. Annual Reports

(1) The Authority shall submit to the Minister an annual report of its activities together with its audited accounts not later than 3 months after such accounts have been certified.

(2) the annual report and the accounts shall be laid before the National Assembly.

Article 12. Appointment of employees

(1) The Board:

(a) shall, subject to the approval of the Minister, appoint a Director-General; and

(b) may employ such other employees as may be necessary for the proper discharge of its functions on such terms and conditions as it thinks fit.

(2) Every employee shall be under the administrative control of the Director-General.

Article 13. Conditions of service of Staffs.

The Board may make provision, in such form as it may determine, to govern the conditions of service of employees and, in particular, to deal with:

(a) the appointment, dismissal, discipline, pay and leave of, and the security to be given by, employees; and

(b) appeals by employees against dismissal or other disciplinary measures.

Article 14. Protection of members and employees

(1) No liability, civil or criminal, shall attach to any member or employee or to the Authority in respect of loss arising from the exercise in good faith by a member, an employee or the Authority of his or its functions under this Act.

(2) Every employee shall, for the purposes of the Public Officers' Protection Act, be deemed to be a public officer.

Article 15. General Fund

(1) The Authority shall establish a General Fund-

(a) into which all money received by the Fund shall be paid;

(b) out of which all payments required to be made by the Fund shall be made.

(2) The Authority may establish such other funds as may be required.

Article 16. Raising of funds

Subject to the approval of the Minister, the Authority may raise funds on such terms and conditions and in such manner as the Board may determine.

Article 17. Investments

The Authority may, subject to approval of the Minister:

(a) invest any money which is not immediately required to be expended in any investments, securities or loans; and

(b) realise any investments, securities or loans in order to finance its operations or for the purpose reinvestment under this section.

Article 18. Exemption of Authority from taxation

Notwithstanding any other enactment, the Authority shall be exempt from the payment of any duty, levy, rate or tax.

PART III - OPERATIONS*Article 19. Delimitation*

The areas specified in the Schedule shall be the Freeport zones.

Article 20. Licence to operate in a Freeport zone

(1) No person shall carry out any activity in the Freeport zones without a licence from the Authority.

(2) An application for a licence shall be made in such form as the Authority may require.

(3) The Authority may call for such supplementary information as it may require.

(4) A licence issued under this section shall be subject to such conditions as the Authority may impose.

(5) The holder of a licence shall pay such licence fee as may be prescribed

(6) No licence granted by the Authority shall be transferable except with the approval of the Authority.

(7) The Authority may issue temporary licences in such circumstances as it may deem justified.

Article 21. Revocation of licences

(1) The Authority may revoke a licence where the licensee-

- (a) fails within a reasonable time to carry out any activity authorised by the licence;
- (b) ceases permanently his activity; or
- (c) contravenes any provision of this Act or any conditions attached to the licence.

(2) Where the Authority revokes a licence under subsection (1):

- (a) It shall inform the licensee accordingly;
 - (b) the licensee shall cease to carry out any activity forthwith;
- (3) The licensee may, within ten days of the date of the notice of revocation, make representations to the Authority.

(4) The Authority shall consider any representations made under subsection (3) and take a decision.

Article 22. Authorised Freeport activities

The activities that may be authorised in a Freeport zone shall be:

- (a) warehousing and storage;
- (b) breaking bulk;
- (c) sorting, grading, cleaning and mixing;
- (d) labelling, packing and repacking;
- (e) minor processing;
- (f) simple assembly;
- (g) such other activity as the Minister, on the advice of the Authority, may prescribe.

Article 23. Exemption of licensee from taxation

(1) A licensee shall be exempted from the payment of Customs duty, import levy and sales tax:

- (a) on all machinery, equipment and materials imported into a Freeport zone for exclusive use in the Freeport under his licence;
- (b) on all goods destined for re-export.

(2) Where Customs duty, import levy and sales tax has been paid in respect of any goods upon their importation into Customs territory, no refund shall be allowed solely on the ground that such goods are later transferred into a Freeport zone.

(3) The Excise Act shall not apply to any goods produced in a Freeport zone unless such goods are entered for consumption in the Customs territory.

Article 24. Books and records

Every licensee shall:

(a) keep proper and sufficient records to the satisfaction of the Authority;

(b) submit such declaration as the Authority may require;

(c) permit the Authority or the Customs at all reasonable times to inspect the said records and have access to any premises of the licensee for the purpose of examining any goods.

Article 25. Revaluation of goods

(1) The Comptroller may, on application and at the expense of the owner, reassess the value of goods which have deteriorated or have been lost or destroyed.

(2) Where the Comptroller is satisfied that the owner is not responsible for the deterioration, loss or destruction, duty, import levy and sales tax shall be reassessed accordingly.

Article 26. Conditions for disposal of goods

(1) Goods imported for the purpose of providing or improving the facilities required by a licensee inside a Freeport zone which are movable may, unless exported by a licensee, be sold or otherwise disposed of within Mauritius outside a Freeport zone, on payment of duty, import levy and sales tax as prescribed.

Goods imported exclusively for the activities authorised by a licensee may, unless they are exported, be sold or otherwise disposed of to:

(a) the Authority or another licensee without payment of duty, import levy or sales tax provided that the other licensee is authorised to deal in such goods by his licence; or

(b) any person in Mauritius outside the Freeport zone, on payment of duty, import levy or sales tax.

Article 27. Safeguards for Customs duty and other taxes

(1) The Authority shall take such measures to prevent evasion of Customs duty, import levy and sales tax by:

(a) ensuring that a Freeport zone is properly enclosed and the enclosure is properly maintained and guarded to the satisfaction of the Comptroller, and

(b) determining the appropriate entry and exit points.

(2) The Comptroller may at any time stop and search any person or vehicle entering or leaving a Freeport zone.

(3) The Authority may:

(a) issue passes for access to a Freeport zone;

(b) deny access to any unauthorised person.

PART IV - OFFENCES AND ENFORCEMENT

Article 28. Offences and penalties

(1) Any person who-

(a) without lawful excuse, fails to comply with any condition attached to a licence;

(b) refuses to furnish or furnishes any information or produces any document which is false or misleading in a material particular;

(c) obstructs any officer of the Authority or of the Mauritius Marine Authority or a public officer in the performance of his functions under this Act; or

(d) otherwise contravenes any provision of this Act or any regulations made under it shall commit an offence.

(2) A person who commits an offence under this Act shall, on conviction, be liable to-

(a) a fine not exceeding 50,000 rupees and to imprisonment for a term no exceeding 5 years; and

(b) payment of all duty, import levy, sales tax and related penalties and interests due.

Article 29. Jurisdiction of Magistrates

Notwithstanding- (a) section 114 of the Courts Act; and (b) section 72 of the District and Intermediate Courts (Criminal Jurisdiction) Act, a Magistrate shall have jurisdiction to try an offence under this Act or any regulations made under this Act and may impose any penalty provided by this Act.

PART V - MISCELLANEOUS*Article 30. Regulations*

(1) The Minister may:

(a) make such regulations as he thinks fit for the purposes of this Act;

(b) by regulations, amend the Schedule.

(2) Any regulations made under subsection (1) may provide for the destruction of goods in a Freeport zone under Customs supervision and without payment of Customs duty, import levy and sales tax.

Article 31. Savings

(1) Nothing contained in this Act shall in any way affect :

(a) the Ports Act;

(b) The Customs Act, 1988.

(2) The Landlord and Tenant Act and the Non-Citizens (Property Restriction) Act shall not apply to any lease under this Act.

Article 32. Transitional provisions

(1) For the operation of the Freeport zones during such initial period of time as the Minister may determine, employees of the Mauritius Marine Authority or public officers may be seconded to the Authority under such terms and conditions as may be determined by the Minister.

(2) For the purpose of section 6, the Board shall be deemed to be properly constituted notwithstanding the fact, that, when it is first constituted, the Director-General has not been appointed.

Article 33. Consequential amendments

(1) The Statutory Bodies (Accounts and Audit) Act is amended in Part II of the Schedule by inserting the following item in its proper alphabetical order Mauritius Freeport Authority.

The Income Tax Act is amended:

(a) in Section 2(1) by adding the following definition in its proper alphabetical order-"Freeport zone" has the meaning assigned to it in the Freeport Act 1992;

(b) by inserting immediately after section 58 the following new section- *58A. Freeport activities*. Where a person is licensed to carry out any activity in a Freeport zone, income tax shall be calculated on the person's chargeable income in relation to that activity at the rate of zero per cent.

Article 34. Commencement

This Act shall come into operation on a date to be fixed by Proclamation.

Passed by the National Assembly on the second day of June one thousand nine hundred and ninety-two

ANDRE POMPON

Clerk of the National Assembly

ANNEX XVII**TREATY OF VERSAILLES OF 28 JUNE 1919**

(...)

SECTION IV**SAAR BASIN***Article 45*

As compensation for the destruction of the coal-mines in the north of France and as part payment towards the total reparation due from Germany for the damage resulting from the war, Germany cedes to France in full and absolute possession, with exclusive rights of exploitation, unencumbered and free from all debts and charges of any kind, the coal-mines situated in the Saar Basin as defined in Article 48.

Article 46

In order to assure the rights and welfare of the population and to guarantee to France complete freedom in working the mines, Germany agrees to the provisions of Chapters I and II of the Annex hereto.

Article 47

In order to make in due time permanent provision for the government of the Saar Basin in accordance with the wishes of the populations, France and Germany agree to the provisions of Chapter III of the Annex hereto.

Article 48

The boundaries of the territory of the Saar Basin, as dealt with in the present stipulations, will be fixed as follows. On the south and south-west: by the frontier of France as fixed by the present Treaty.

On the north-west and north: by a line following the northern administrative boundary of the Kreis of Merzig from the point where it leaves the French frontier to the point where it meets the administrative boundary separating the commune of Saarholzbach from the commune of Britten; following this communal boundary southwards and reaching the administrative boundary of the canton of Merzig so as to include in the territory of the Saar Basin the canton of Mettlach, with the exception of the commune of Britten; following successively the northern boundaries of the cantons of Merzig and Haustedt, which are incorporated in the aforesaid Saar Basin, then successively the administrative boundaries separating the Kreise of Sarrelouis, Ottweiler, and Saint-Wendel from the Kreise of Merzig, Treves (Trier), and the Principality of Birkenfeld as far as a point situated about 500 metres north of the village of Furschweiler (viz., the highest point of the Metzberg). On the north-east and east: from the last point defined above to a point about 3 1/2 kilometres east-north-east of Saint-Wendel: a line to be fixed on the ground passing east of Furschweiler, west of Roschberg, east of points 418, 329 (south of Roschberg) west of Leitersweiler, north-east of point 464, and following the line of the crest southwards to its junction with the administrative boundary of the Kreis of Kusel thence in a southerly direction the boundary of the Kreis of Kusel, then the boundary of the Kreis of Homburg towards the south-south-east to a point situated about 1000 metres west of Dunzweiler; thence to a point about 1 kilometre south of Hornbach- a line to be fixed on the ground passing through point 424 (about 1000 metres south-east of Dunzweiler), point 363 (Fuchs-Berg), point 322 (south-west of Waldmohr), then east of Jagersburg and Erbach, then encircling Homburg, passing through the points 361 (about 2-1/2 kilometres north-east by east of that town), 342 (about 2 kilometres south-east of that town), 347 (Schreiners-Berg), 356, 350 (about 1-1/2 kilometres south-east of Schwarzenbach), then passing east of Einod, south-east of points 322 and 333, about 2 kilometres east of Webenheim, about 2 kilometres east of Mimbach, passing east of the plateau which is traversed by the road from Mimbach to Bockweiler (so as to include this road in the territory of the Saar Basin), passing immediately north of the junction of the roads from Bockweiler and Altheim situated about 2 kilometres north of Altheim, then passing south of Ringweilerhof and north of point 322, rejoining the frontier of France

at the angle which it makes about 1 kilometre south of Hornbach (see Map No. 2 scale 1/100,000 annexed to the present treaty). A Commission composed of five members, one appointed by France, one by Germany, and three by the Council of the League of Nations, which will select nationals of other Powers, will be constituted within fifteen days from the coming into force of the present Treaty, to trace on the spot the frontier line described above. In those parts of the preceding line which do not coincide with administrative boundaries, the Commission will endeavour to keep to the line indicated, while taking into consideration, so far as is possible, local economic interests and existing communal boundaries. The decisions of this Commission will be taken by a majority, and will be binding on the parties concerned.

Article 49

Germany renounces in favour of the League of Nations, in the capacity of trustee, the government of the territory defined above.

At the end of fifteen years from the coming into force of the present Treaty the inhabitants of the said territory shall be called upon to indicate the sovereignty under which they desire to be placed.

Article 50

The stipulations under which the cession of the mines in the Saar Basin shall be carried out, together with the measures intended to guarantee the rights and the well-being of the inhabitants and the government of the territory, as well as the conditions in accordance with which the plebiscite herein before provided for is to be made, are laid down in the Annex hereto. This Annex shall be considered as an integral part of the present Treaty, and Germany declares her adherence to it.

(...)

SECTION XI
FREE CITY OF DANZIG.

Article 100

Germany renounces in favour of the Principal Allied and Associated Powers all rights and title over the territory comprised within the following limits:

(...)

Article 101

A Commission composed of three members appointed by the Principal Allied and Associated Powers, including a High Commissioner as President, one member appointed by Germany and one member appointed by Poland, shall be constituted within fifteen days of the coming into force of the present Treaty for the purpose of delimiting on the spot the frontier of the territory as described above, taking into account as far as possible the existing communal boundaries.

Article 102

The Principal Allied and Associated Powers undertake to establish the town of Danzig, together with the rest of the territory described in Article 100, as a Free City. It will be placed under the protection of the League of Nations.

Article 103

A constitution for the Free City of Danzig shall be drawn up by the duly appointed representatives of the Free City in agreement with a High Commissioner to be appointed by the League of Nations. This constitution shall be placed under the guarantee of the League of Nations. The High Commissioner will also be entrusted with the duty of dealing in the first instance with all differences arising between Poland and the Free City of Danzig in regard to this Treaty or any arrangements or agreements made thereunder. The High Commissioner shall reside at Danzig.

Article 104

The Principal Allied and Associated Powers undertake to negotiate a Treaty between the Polish Government and the Free City of Danzig, which shall come into force at the same time as the establishment of the said Free City, with the following objects:

(1) To effect the inclusion of the Free City of Danzig within the Polish Customs frontiers, and to establish a free area in the port;

(2) To ensure to Poland without any restriction the free use and service of all waterways, docks, basins, wharves and other works within the territory of the Free City necessary for Polish imports and exports;

(3) To ensure to Poland the control and administration of the Vistula and of the whole railway system within the Free City, except such street and other railways as serve primarily the needs of the Free City,

and of postal, telegraphic and telephonic communication between Poland and the port of Danzig;

(4) To ensure to Poland the right to develop and improve the waterways, docks, basins, wharves, railways and other works and means of communication mentioned in this Article, as well as to lease or purchase through appropriate processes such land and other property as may be necessary for these purposes;

(5) To provide against any discrimination within the Free City of Danzig to the detriment of citizens of Poland and other persons of Polish origin or speech;

(6) To provide that the Polish Government shall undertake the conduct of the foreign relations of the Free City of Danzig as well as the diplomatic protection of citizens of that city when abroad.

Article 105

On the coming into force of the present Treaty German nationals ordinarily resident in the territory described in Article 100 will ipso facto lose their German nationality in order to become nationals of the Free City of Danzig.

Article 106

Within a period of two years from the coming into force of the present Treaty, German nationals over 18 years of age ordinarily resident in the territory described in Article 100 will have the right to opt for German nationality. Option by a husband will cover his wife and option by parents will cover their children less than 18 years of age. All persons who exercise the right of option referred to above must during the ensuing twelve months transfer their place of residence to Germany. These persons will be entitled to preserve the immovable property possessed by them in the territory of the Free City of Danzig. They may carry with them their movable property of every description. No export or import duties shall be imposed upon upon them in this connection.

Article 107

All property situated within the territory of the Free City of Danzig belonging to the German Empire or to any German State shall pass to the Principal Allied and Associated Powers for transfer to the Free City of Danzig or to the Polish State as they may consider equitable.

Article 108

The proportion and nature of the financial liabilities of Germany and of Prussia to be borne by the Free City of Danzig shall be fixed in accordance with Article 254 of Part IX (Financial Clauses) of the present Treaty. All other questions which may arise from the cession of the territory referred to in Article 100 shall be settled by further agreements.

(...)

CHAPTER II
FREE ZONES IN PORTS

Article 328

The free zones existing in German ports on August 1, 1914, shall be maintained. These free zones, and any other free zones which may be established in German territory by the present Treaty, shall be subject to the regime provided for in the following. Goods entering or leaving a free zone shall not be subjected to any import or export duty, other than those provided for in Article 330. Vessels and goods entering a free zone may be subjected to the charges established to cover expenses of administration, upkeep and improvement of the port, as well as to the charges for the use of various installations, provided that these charges shall be reasonable having regard to the expenditure incurred, and shall be levied in the conditions of equality provided for in Article 327. Goods shall not be subjected to any other charge except a statistical duty which shall not exceed 1 mille ad valorem, and which shall be devoted exclusively to defraying the expenses of compiling statements of the traffic in the port.

Article 329

The facilities granted for the erection of warehouses, for packing and for unpacking goods, shall be in accordance with trade requirements for the time being. All goods allowed to be consumed in the free zone shall be exempt from duty, whether of excise or of any other description, apart from the statistical duty provided for in Article 328 above. There shall be no discrimination in regard to any of the provisions of the present Article between persons belonging to different nationalities or between goods of different origin or destination.

Article 330

Import duties may be levied on goods leaving the free zone for consumption in the country on the territory of which the port is situated. Conversely, export duties may be levied on goods coming from such country and brought into the free zone. These import and export duties shall be levied on the same basis and at the same rates as similar duties levied at the other Customs frontiers of the country concerned. On the other hand, Germany shall not levy, under any denomination, any import, export or transit duty on goods carried by land or water across her territory to or from the free zone from or to any other State.

Germany shall draw up the necessary regulations to secure and guarantee such freedom of transit over such railways and waterways in her territory as normally give access to the free zone.

ANNEX XVIII**CONVENTION AND STATUTE ON FREEDOM OF TRANSIT,
DONE AT BARCELONA ON 20 APRIL 1921**

(...)

Article 1

The High Contracting Parties declare that they accept the Statute on Freedom of Transit annexed hereto, adopted by the Barcelona Conference on April 14th, 1921. This Statute will be deemed to constitute an integral part of the present Convention. Consequently they hereby declare that they accept the obligations and undertakings of the said Statute in conformity with the terms and in accordance with the conditions set out therein.

Article 2

The present Convention does not in any way affect the rights and obligations arising out of the provisions of the Treaty of Peace signed at Versailles on June 28th, 1919, or out of the provisions of the other corresponding Treaties, in so far as they concern the Powers which have signed, or which benefit by, such Treaties.

Article 3

The present Convention, of which the French and English texts are both authentic, shall bear this day's date and shall be open for signature until December 1st, 1921.

Article 4

The present Convention is subject to ratification. The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations who will notify the receipt of them to the other Members of the League and to States admitted to sign the Convention. The instruments of ratification shall be deposited in the archives of the Secretariat. In order to comply with the positions of Article 18 of the Covenant of the League of Nations, the Secretary-General will register the present Convention upon the deposit of the first ratification.

Article 5

Members of the League of Nations which have not signed the present Convention before December 1st, 1921, may accede to it. The same applies to States not Members of the League to which the Council of the League may decide officially to communicate the present Convention. Accession will be notified to the Secretary-General of the League, who will inform all Powers concerned of the accession and of the date on which it was notified.

Article 6

The present Convention will not come into force until it has been ratified by five Powers. The date of its coming into force shall be the ninetieth day after the receipt by the Secretary-General of the League of Nations of the fifth ratification. Thereafter the present Convention will take effect in the case of each Party ninety days after the receipt of its ratification or of the notification of its accession. Upon the coming into force of the present Convention, the Secretary-General will address a certified copy of it to the Powers not Members of the League which are bound under the Treaties of Peace to accede to it.

Article 7

A special record shall be kept by the Secretary-General of the League of Nations, showing which of the Parties have signed, ratified, acceded to or denounced the present Convention. This record shall be open to the Members of the League at all times; it shall be published as often as possible in accordance with the directions of the Council.

Article 8

Subject to the provisions of Article 2 of the present Convention, the latter may be denounced by any Party thereto after the expiration of five years from the date when it came into force in respect of that Party. Denunciation shall be effected by notification in writing addressed to the Secretary-General of the League of Nations. Copies of such notification shall be transmitted forthwith by him to all the other Parties, informing them of the date on which it was received. The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying Power.

Article 9

A request for the revision of the present Convention may be made at any time by one-third of the High Contracting Parties.

In faith whereof the above-named Plenipotentiaries have signed the present Convention.

Done at Barcelona the twentieth day of April, one thousand nine hundred and twenty-one, in a single copy which shall remain deposited in the Archives of the League of Nations.

STATUTE ON FREEDOM OF TRANSIT

Article 1

Persons, baggage and goods, and also vessels, coaching and good stock, and other means of transport, shall be deemed to be in transit across territory under the sovereignty or authority of one of the Contracting States, when the passage across such territory, with or without transshipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey, beginning and terminating beyond the frontier of the State across whose territory the transit takes place. Traffic of this nature is termed in this Statute "traffic in transit".

Article 2

Subject to the other provisions of this Statute, the measures taken by Contracting States for regulating and forwarding traffic across territory under their sovereignty or authority shall facilitate free transit by rail or waterway on routes in use convenient for international transit. No distinction shall be made which is based on the nationality of persons, the flag of vessels, the place of origin, departure, entry, exit or destination,

or on any circumstances relating to the ownership of goods or of vessels, coaching or goods stock or other means of transport. In order to ensure the application of the provisions of this Article, Contracting States will allow transit in accordance with the customary conditions and reserves across their territorial waters.

Article 3

Traffic in transit shall not be subject to any special dues in respect of transit (including entry and exit). Nevertheless, on such traffic in transit there may be levied dues intended solely to defray expenses of supervision and administration entailed by such transit. The rate of any such dues must correspond as nearly as possible with the expenses which they are intended to cover, and the dues must be imposed under the conditions of equality laid down in the preceding Article, except that on certain routes, such dues may be reduced or even abolished on account of differences in the cost of supervision.

Article 4

The Contracting States undertake to apply to traffic in transit on routes operated or administered by the State or under concession, whatever may be the place of departure or destination of the traffic, tariffs which, having regard to the conditions of the traffic and to considerations of commercial competition between routes, are reasonable as regards both their rates and the method of their application. These tariffs shall be so fixed as to facilitate international traffic as much as possible. No charges, facilities or restrictions shall depend, directly or indirectly, on the nationality or ownership of the vessel or other means of transport on which any part of the complete journey has been or is to be accomplished.

Article 5

No Contracting State shall be bound by this Statute to afford transit for passengers whose admission into its territories is forbidden, or for goods of a kind of which the importation is prohibited, either on grounds of public health or security, or as a precaution against diseases of animals or plants. Each Contracting State shall be entitled to take reasonable precautions to ensure that persons, baggage and goods, particularly goods which are the subject of a monopoly, and also vessels, coaching and good stock and other means of transport, are really in transit, as well as to ensure that passengers in transit are in a position to

complete their journey, and to prevent the safety of the routes and means of communication being endangered. Nothing in this Statute shall affect the measures which one of the Contracting States may feel called upon to take in pursuance of general international Conventions to which it is a party, or which may be concluded hereafter, particularly Conventions concluded under the auspices of the League of Nations, relating to the transit, export or import of particular kinds of articles, such as opium or other dangerous drugs, arms or the produce of fisheries, or in pursuance of general Conventions intended to prevent any infringement of industrial, literary or artistic property, or relating to false marks, false indications of origin, or other methods of unfair competition. Any haulage service established as a monopoly on waterways used for transit must be so organised as not to hinder the transit of vessels.

Article 6

This Statute does not of itself impose on any of the Contracting States a fresh obligation to grant freedom of transit to the nationals and their baggage, or to the flag of a non-Contracting State, nor to the goods, nor to coaching and goods stock or other means of transport coming or entering from, or leaving by, or destined for a non-Contracting State, except when a valid reason is shown for such transit by one of the other Contracting States concerned. It is understood that for the purposes of this Article, goods in transit under the flag of a Contracting State shall, if no transshipment takes place, benefit by the advantages granted to that flag.

Article 7

The measures of a general or particular character which a Contracting State is obliged to take in case of an emergency affecting the safety of the State or the vital interests of the country may in exceptional cases, and for as short a period as possible, involve a deviation from the provisions of the above Articles; it being understood that the principle of freedom of transit must be observed to the utmost possible extent.

Article 8

This Statute does not prescribe the rights and duties of belligerents and neutrals in time of war. The Statute shall, however, continue in force in time of war so far as such rights and duties permit.

Article 9

This Statute does not impose upon a Contracting State any obligations conflicting with its rights and duties as a Member of the League of Nations.

Article 10

The coming into force of this Statute will not abrogate treaties, conventions and agreements on questions of transit concluded by Contracting States before May 1st, 1921. In consideration of such agreements being kept in force, Contracting States undertake, either on the termination of the agreement or when circumstances permit, to introduce into agreements so kept in force which contravene the provisions of this Statute the modifications required to bring them into harmony with such provisions, so far as the geographical, economic or technical circumstances of the countries or areas concerned allow. Contracting States also undertake not to conclude in future treaties, conventions or agreements which are inconsistent with the provisions of this Statute, except when geographical, economic or technical considerations justify exceptional deviations therefrom. Furthermore, Contracting States may in matters of transit enter into regional understandings consistent with the principles of this Statute.

Article 11

This Statute does not entail in any way the withdrawal of facilities which are greater than those provided for in the Statute and have been granted, under conditions consistent with its principles, to traffic in transit across territory under the sovereignty or authority of a Contracting State. The Statute also entails no prohibitions of such grant of greater facilities in the future.

Article 12

In conformity with Article 23 (e) of the Covenant of the League of Nations, any Contracting State which can establish a good case against the application of any provision of this Statute in some or all of its territory on the ground of the grave economic situation arising out of the acts of devastation perpetrated on its soil during the war 1914-1918, shall be deemed to be relieved temporarily of the obligations arising from the application of such provision, it being understood that the principle of freedom of transit must be observed to the utmost possible extent.

Article 13

Any dispute which may arise as to the interpretation or application of this Statute which is not settled directly between the parties themselves shall be brought before the Permanent Court of International Justice, unless, under a special agreement or a general arbitration provision, steps are taken for the settlement of the dispute by arbitration or some other means. Proceedings are opened in the manner laid down in Article 40 of the Statute of the Permanent Court of International Justice. In order to settle such disputes, however, in a friendly way as far as possible, the Contracting States undertake, before resorting to any judicial proceedings and without prejudice to the powers and right of action of the Council and of the Assembly, to submit such disputes for an opinion to any body established by the League of Nations as the advisory and technical organisation of the Members of the League in matters of communications and transit. In urgent cases a preliminary opinion may recommend temporary measures intended in particular to restore the facilities for freedom of transit which existed before the act or occurrence which gave rise to, the dispute.

Article 14

In view of the fact that within or immediately adjacent to the territory of some of the Contracting States there are areas or enclaves, small in extent and population in comparison with such territories, and that these areas or enclaves form detached portions or settlements of other parent States, and that it is impracticable for reasons of an administrative order to apply to them the provisions of this Statute, it is agreed that these provisions shall not apply to them. The same stipulation applies where a colony or dependency has a very long frontier in comparison with its surface and where in consequence it is practically impossible to afford the necessary Customs and police supervision. The States concerned, however, will apply in the cases referred to above a regime which will respect the principles of the present Statute and facilitate transit and communications as far as practicable.

Article 15

It is understood that this Statute must not be interpreted as regulating in any way rights and obligations inter se of territories forming part or placed under the protection of the same sovereign State, whether or not these territories are individually Members of the League of Nations.

ANNEX XIX**CONVENTION AND STATUTE ON THE INTERNATIONAL REGIME OF MARITIME PORTS, DONE AT GENEVA, ON 9 DECEMBER 1923**

(...)

Article 1

The Contracting States declare that they accept the Statute on the International Regime of Maritime Ports, annexed hereto, adopted by the Second General Conference on Communications and Transit which met at Geneva on November 15, 1923. This Statute shall be deemed to constitute an integral part of the present Convention. Consequently, they hereby declare that they accept the obligations and undertakings of the said Statute in conformity with the terms and in accordance with the conditions set out therein.

Article 2

The present Convention does not in any way affect the rights and obligations arising out of the provisions of the Treaty of Peace signed at Versailles on June 28, 1919, or out of the provisions of the other corresponding Treaties, in so far as they concern the Powers which have signed, or which benefit by, such Treaties.

Article 3

The present Convention of which the French and English texts are both authentic, shall bear this day's date, and shall be open for signature until October 31, 1924, by any State represented at the Conference of Geneva, by any Member of the League of Nations and by any States to which the Council of the League of Nations shall have communicated a copy of the Convention for this purpose.

Article 4

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the League of Nations, who shall notify their receipt to every State signatory of or acceding to the Convention.

Article 5

On and after November 1st, 1924, the present Convention may be acceded to by any State represented at the Conference referred to in Article 1, by any Member of the League of Nations, or by any State to

which the Council of the League of Nations shall have communicated a copy of the Convention for this purpose. Accession shall be effected by an instrument communicated to the Secretary-General of the League of Nations to be deposited in the archives of the Secretariat. The Secretary-General shall at once notify such deposit to every State signatory of or acceding to the Convention.

Article 6

The present Convention will not come into force until it has been ratified in the name of five States. The date of its coming into force shall be the ninetieth day after the receipt by the Secretary-General of the League of Nations of the fifth ratification. Thereafter, the present Convention will take effect in the case of each Party ninety days after the receipt of its ratification or of the notification of its accession. In compliance with the provisions of Article 18 of the Covenant of the League of Nations, the Secretary-General will register the present Convention upon the day of its coming into force.

Article 7

A special record shall be kept by the Secretary-General of the League of Nations showing, with due regard to the provisions of Article 9, which of the Parties have signed, ratified, acceded to or denounced the present Convention. This record shall be open to the Members of the League at all times; it shall be published as often as possible, in accordance with the directions of the Council.

Article 8

Subject to the provisions of Article 2 above, the present Convention may be denounced by any Party thereto after the expiration of five years from the date when it came into force in respect of that Party. Denunciation shall be effected by notification in writing addressed to the Secretary-General of the League of Nations. Copies of such notification shall be transmitted forthwith by him to all the other Parties, informing them of the date on which it was received. A denunciation shall take effect one year after the date on which the notification thereof was received by the Secretary-General, and shall operate only in respect of the notifying State.

Article 9

Any State signing or acceding to the present Convention may declare at the moment either of its signature, ratification or accession,

that its acceptance of the present Convention does not include any or all of its colonies, overseas possessions, protectorates, or overseas territories, under its sovereignty or authority, and may subsequently accede, in conformity with the provisions of Article 5, on behalf of any such colony, overseas possession, protectorate or territory excluded by such declaration. Denunciation may also be made separately in respect of any such colony, overseas possession, protectorate or territory, and the provisions of Article 8 shall apply to any such denunciation.

Article 10

The revision of the present Convention may be demanded at any time by one-third of the Contracting States.

In faith whereof the above-named plenipotentiaries have signed the present Convention.

Done at Geneva the ninth day of December, one thousand nine hundred and twenty-three, in a single copy which shall remain deposited in the Archives of the Secretariat of the League of Nations.

STATUTE

Article 1

All ports which are normally frequented by sea-going vessels and used for foreign trade shall be deemed to be maritime ports within the meaning of the present Statute.

Article 2

Subject to the principle of reciprocity and to the reservation set out in the paragraph of Article 8, every Contracting State undertakes to grant the vessels of e other Contracting State equality of treatment with its own vessels, or those of any other State whatsoever, in the maritime ports situated under its sovereignty or authority regards freedom of access to the port, the use of the port, and the full enjoyment or benefits as regards navigation and commercial operations which it affords to vessel their cargoes and passengers. The equality of treatment thus established shall cover facilities of all kinds, such allocation of berths, loading and unloading facilities, as well as dues and charges o kinds levied in the name or for the account of the Government, public authorities concessionaires or undertakings of any kind.

Article 3

The provisions of the preceding article in no way restrict the liberty of competent Port Authorities to take such measures as they may deem expedient for proper conduct of the business of the port provided that these measures comply with the principle of equality of treatment as defined in the said article.

Article 4

All dues and charges levied for the use of maritime ports shall be duly published before coming into force. The same shall apply to the by-laws and regulations of the port. In each maritime port, the Port Authority shall keep open for inspection all persons concerned a table of the dues and charges in force, as well as a copy of the laws and regulations.

Article 5

In assessing and applying Customs and other analogous duties, local consumption duties, or incidental charges, levied on the importation or exportation goods through the maritime ports situated under the sovereignty or authority of Contracting States, the flag of the vessel must not be taken into account, accordingly no distinction may be made to the detriment of the flag of any Contracting State whatsoever as between that flag and the flag of the State under whose sovereignty or authority the port is situated, or the flag of any other State whatsoever.

Article 6

In order that the principle of equal treatment in maritime ports laid down in Art. 2 may not be rendered ineffective in practice by the adoption of other method discrimination against the vessels of a Contracting State using such ports, contracting State undertakes to apply the provisions of Articles 4, 20, 21 and 22 of Statute annexed to the Convention on the International Regime of Railways, signed Geneva on December 9, 1923, so far as they are applicable to traffic to or from maritime port, whether or not such Contracting State is a party to the said Convention on the International Regime of Railways. The aforesaid Articles are to be interpreted in conformity with the provisions of the protocol of Signature of the said Convention (See Annex).

Article 7

Unless there are special reasons justifying an exception, such as those based upon special geographical, economic, or technical conditions, the Customs duties levied in any maritime port situated under the sovereignty or authority of a Contracting State may not exceed the duties levied on the other Customs frontiers of the said State on goods of the same kind, source or destination. If, for special reasons as set out above, a Contracting State grants special Customs facilities on other routes for the importation or exportation of goods, it shall not use these facilities as a means of discriminating unfairly against importation or exportation through the maritime ports situated under its sovereignty or authority.

Article 8

Each of the Contracting States reserves the power, after giving notice through diplomatic channels, of suspending the benefit of equality of treatment from any vessel of a State which does not effectively apply, in any maritime port situated under its sovereignty or authority, the provisions of this Statute to the vessels of the said Contracting State, their cargoes and passengers. In the event of action being taken as provided in the preceding paragraph, the State which has taken action and the State against which action is taken, shall both alike have the right of applying to the Permanent Court of International Justice by an application addressed to the Registrar; and the Court shall settle the matter in accordance with the rules of summary procedure. Every Contracting State shall, however, have the right at the time of signing or ratifying this Convention, of declaring that it renounces the right of taking action as provided in the first paragraph of this article against any other State which may make a similar declaration.

Article 9

This Statute does not in any way apply to the maritime coasting trade.

Article 10

Each Contracting State reserves the right to make such arrangements for towage in its maritime ports as it thinks fit, provided that the provisions of Articles 2 and 4 are not thereby infringed.

Article 11

Each Contracting State reserves the right to organise and administer pilotage services as it thinks fit. Where pilotage is compulsory, the dues and facilities offered shall be subject to the provisions of Articles 2 and 4, but each Contracting State may exempt from the obligation of compulsory pilotage such of its nationals as possess the necessary technical qualifications.

Article 12

Each Contracting State shall have the power, at the time of signing or ratifying this convention, of declaring that it reserves the right of limiting the transport of emigrants accordance with the provisions of its own legislation to vessels which have been granted special authorisation as fulfilling the requirements of the said legislation; exercising this right, however, the Contracting State shall be guided, as far as possible by the principles of this Statute.

The vessels so authorised to transport emigrants shall enjoy all the benefits of this Statute in all maritime ports.

Article 13

This Statute applies to all vessels, whether publicly or privately owned controlled. It does not, however, apply in any way to warships or vessels performing police administrative functions, or, in general, exercising any kind of public authority, or a other vessels which for the time being are exclusively employed for the purposes of Naval, Military or Air Forces of a State.

Article 14

This Statute does not in any way apply to fishing vessels or to their catches.

Article 15

Where in virtue of a treaty, convention or agreement, a Contracting State has granted special rights to another State within a a defined area in any of its maritime ports for the purpose of facilitating the transit of goods or passengers to or from the territory of the said State, no other Contracting State can invoke the stipulations of this Statute in support of any claim for similar special rights. Every Contracting State which enjoys the aforesaid special rights in a maritime port of another State, whether Contracting or not, shall conform to the provisions this Statute in its treatment of the vessels trading with it, and

their cargoes a passengers. Every Contracting State which grants the aforesaid special rights to a non-Contracting State is bound to impose, as one of the conditions of the grant, obligation on the State which is to enjoy the aforesaid rights to conform to the provisions of this Statute in its treatment of the vessels trading with it, and their cargo and passengers.

Article 16

Measures of a general or particular character which a Contracting State is obliged to take in case of an emergency affecting the safety of the State or the vital interests the country may, in exceptional cases, and for as short a time as possible, involve deviation from the provisions of Articles 2 to 7 inclusive; it being understood that the principles of the present Statute must be observed to the utmost possible extent.

Article 17

No Contracting State shall be bound by this Statute to permit the transit passengers whose admission to its territories is forbidden, or of goods of a kind which the importation is prohibited, either on grounds of public health or security, as a precaution against diseases of animals or plants. As regards traffic other than traffic in transit, no Contracting State shall be bound by this Statute to permit the transport of passengers whose admission to its territories is forbidden, or of goods which the import or export is prohibited, by its national laws. Each Contracting State shall be entitled to take the necessary precaution measures in respect of the transport of dangerous goods or goods of a similar character, as well as general police measures, including the control of emigrants entering or leaving its territory, it being understood that such measures must not result in any discrimination contrary to the principles of the present Statute. Nothing in this Statute shall affect the measures which one of the Contracting States is or may feel called upon to take in pursuance of general international Conventions to which it is a party, or which may be concluded hereafter, particularly conventions concluded under the auspices of the League of Nations, relating to the traffic in women and children, the transit, export or import of particular kinds of articles such as opium or other dangerous drugs, arms, or the produce of fisheries, or in pursuance of general conventions intended to prevent any infringement

of industrial, literary or artistic property, or relating to false marks, false indications of origin or other methods of unfair competition.

Article 18

This Statute does not prescribe the rights and duties of belligerents and neutrals in time of war. The Statute shall, however, continue in force in time of war so far as such rights and duties permit.

Article 19

The Contracting States undertake to introduce into those Conventions in force on December 9, 1923, which contravene the provisions of this Statute, so soon as circumstances permit and in any case on the expiry of such conventions, the modifications required to bring them into harmony with such provisions, so far as the geographical, economic or technical circumstance of the countries or areas concerned allow. The same shall apply to concessions granted before December 9, 1923, for the total or partial exploitation of maritime ports.

Article 20

This Statute does not entail in any way the withdrawal of facilities which are greater than those provided for in the Statute and which have been granted in respect of the use of maritime ports under conditions consistent with its principles. This Statute also entails no prohibition of such grant of greater facilities in the future.

Article 21

Without prejudice to the provisions of the second paragraph of Article 8, disputes which may arise between Contracting States as to the interpretation or the application of the present Statute shall be settled in the following manner:

Should it prove impossible to settle such dispute either directly between the Parties or by any other method of amicable settlement, the Parties to the dispute may, before resorting to any procedure of arbitration or to a judicial settlement, submit the dispute for an advisory opinion to the body established by the League of Nations as the advisory and technical organisation of Members of the League for matters of communications and transit. In urgent cases a preliminary opinion may be given recommending temporary measures, including measures to restore the facilities for international traffic which existed before the act or occurrence which gave rise to the dispute. Should it prove impossible to settle the dispute by any of the methods of proce-

dure enumerated in the preceding paragraph, the Contracting States shall submit their dispute to arbitration, unless they have decided or shall decide, under an agreement between them, to bring it before the Permanent Court of International Justice.

Article 22

If the case is submitted to the Permanent Court of International Justice, it shall be heard and determined under the conditions laid down in Article 27 of the Statute of the Court. If arbitration is resorted to, and unless the Parties decide otherwise, each Party shall appoint an arbitrator, and a third member of the arbitral tribunal shall be elected by the arbitrators, or, in case the latter are unable to agree, shall be selected by the Council of the League of Nations from the list of assessors for Communications and Transit cases mentioned in Article 27 of the Statute of the Permanent Court of International Justice; in such latter case the third arbitrator shall be selected in accordance with the provisions of the penultimate paragraph of Article 4 and the first paragraph of Article 5 of the Covenant of the League. The arbitral tribunal shall judge the case on the basis of the terms of reference mutually agreed upon between the Parties. If the Parties have failed to reach an agreement, the arbitral tribunal, acting unanimously, shall itself draw up terms of reference after considering the claims formulated by the Parties; if unanimity cannot be obtained, the Council of the League of Nations shall decide the terms of reference under the conditions laid down in the preceding paragraph. If the procedure is not determined by the terms of reference, it shall be settled by the arbitral tribunal.

During the course of the arbitration the Parties, in the absence of any contrary provision in the terms of reference, are bound to submit to the Permanent Court of International Justice any question of international law or question as to the legal meaning of this Statute the solution of which the arbitral tribunal, at the request of one of the Parties, pronounces to be a necessary preliminary to the settlement of the dispute.

Article 23

It is understood that this Statute must not be interpreted as regulating in any way rights and obligations inter se of territories forming

part of or placed under the protection of the same sovereign State, whether or not these territories are individually Contracting States.

Article 24

Nothing in the preceding Articles is to be construed as affecting in any way the rights or duties of a Contracting State as Member of the League of Nations.

(Annex and Protocol of Signature of Convention omitted).

ANNEX XX

CONVENTION ON TRANSIT TRADE OF LAND-LOCKED STATES, DONE AT NEW YORK ON 8 JULY 1965

(Adopted by the Conference at its 35th plenary meeting held on 8 July, 1965)

PREAMBLE

The States Parties to the present Convention,

RECALLING that Article 55 of its Charter requires the United Nations to promote conditions of economic progress and solutions of international economic problems,

NOTING General Assembly resolution 1028 (XI) on the land-locked countries and the expansion of international trade which, "recognising, the need of land-locked countries for adequate transit facilities in promoting international trade", invited "the Governments of Member States to give full recognition of the needs of land-locked Member States in the matter of transit trade and, therefore, to accord them adequate facilities in terms of international law and practice in this regard, bearing in mind the future requirements resulting from the economic development of the land-locked countries",

RECALLING article 2 of the Convention on the High Seas which states that the high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty and article 3 of the said Convention which states;

"1. In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea-coast should have free access to the sea. To this end States situated between the sea and a State having no

sea-coast shall by common agreement with the latter and in conformity with existing international conventions accord:

(a) to the State having no sea-coast, on a basis of reciprocity, free transit through their territory; and

(b) to ships flying the flag of that State treatment equal to that accorded to their own ships, or to the ships of any other States, as regards access to seaports and the use of such ports.

2. States situated between the sea and a State having no sea-coast shall settle, by mutual agreement with the latter, and taking into account the rights of the coastal State or State of transit and the special conditions of the State having no sea-coast, all matter relating to freedom of transit and equal treatment in ports, in case such States are not already parties to existing international conventions."

REAFFIRMING, the following principles adopted by the United Nations Conference on Trade and Development with the understanding that these principles are interrelated and each principle should be construed in the context of the other principles:

Principle I

The recognition of the right of each land-locked State of free access to the sea is an essential principle for the expansion of international trade and economic development.

Principle II

In territorial and on internal waters, vessels flying the flag of land-locked countries should have identical rights and enjoy treatment identical to that enjoyed by vessels flying the flag of coastal States other than the territorial States.

Principle III

In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea-coast should have free access to the sea. To this end States situated between the sea and a State having no sea-coast shall by common agreement with the latter and in conformity with existing international conventions accord to ships flying the flag of that State treatment equal to that accorded to their own ships or to the ships of any other State as regards access to seaports and the use of such ports.

Principle IV

In order to promote fully the economic development of the land-locked countries, the said countries should be afforded by all States, on the basis of reciprocity, free and unrestricted transit, in such a manner that they have free access to regional and international trade in all circumstances and for every type of goods. Goods in transit should not be subject to any Customs duty. Means of transport in transit should not be subject to special taxes or charges higher than those levied for the use of means of transport of the transit country.

Principle V

The State of transit, while maintaining full sovereignty over its territory, shall have the right to take all indispensable measures to ensure that the exercise of the right of free and unrestricted transit shall in no way infringe its legitimate interests of any kind.

Principle VI

In order to accelerate the evolution of a universal approach to the solution of the special and particular problems of trade and development of land-locked countries in the different geographical areas, the conclusion of regional and other international agreements in this regard should be encouraged by all States.

Principle VII

The facilities and special rights accorded to land-locked countries in view of their special geographical position are excluded from the operation of the most-favoured-nation clause.

Principle VIII

The principles which govern the right of free access to the sea of the land-locked State shall in no way abrogate existing agreements between two or more contracting parties concerning the problems, nor shall they raise an obstacle as regards the conclusions of such agreements in the future, provided that the latter do not establish a regime which is less favourable than or opposed to the above-mentioned provisions.

HAVE AGREED AS FOLLOWS:

Article 1 - Definitions

For the purpose of this Convention,

(a) The term "land-locked State" means any Contracting State which has no sea-coast;

(b) the term "traffic in transit" means the passage of goods including unaccompanied baggage across the territory of a Contracting State between a land-locked State and the sea when the passage is a portion of a complete journey which begins or terminates within the territory of that land-locked State and which includes sea transport directly preceding or following such passage. The trans-shipment, warehousing, breaking bulk, and change in the mode of transport of such goods as well as the assembly, disassembly or reassembly of machinery and bulky goods shall not render the passage of goods outside the definition of "traffic in transit" provided that any such operation is undertaken solely for the convenience of transportation. Nothing, in this paragraph shall be construed as imposing an obligation on any Contracting State to establish or permit the establishment of permanent facilities on its territory for such assembly, disassembly or reassembly;

(c) the term "transit State" means any Contracting State with or without a sea-coast, situated between a land-locked State and the sea, through whose territory "traffic in transit" passes;

(d) the term "means of transport" includes;

- (i) any railway stock, seagoing and river vessels and road vehicles;
- (ii) where the local situation so requires porters, and pack animals;
- (iii) if agreed upon by the Contracting States concerned, other means of transport and pipelines and gas lines when they are used for traffic in transit within the meaning of this article.

Article 2 - Freedom of transit

1. Freedom of transit shall be granted under the terms of this Convention for traffic in transit and means of transport. Subject to the other provisions of this Convention, the measures taken by Contracting States for regulating and forwarding traffic across their territory shall facilitate traffic in transit on routes in use mutually acceptable for transit to the Contracting States concerned. Consistent with the terms of this Convention, no discrimination shall be exercised which is based on the place of origin, departure, entry, exit or destination or any circumstances relating to the ownership of the goods or the ownership, place of registration or flag of vessels, land vehicles or other means of transport used.

2. The rules governing the use of means of transport, when they pass across part or the whole of the territory of another Contracting State, shall be established by command agreement among the Contracting

States concerned, with due regard to the multilateral international conventions to which these States are parties.

3. Each Contracting State shall authorise, in accordance with its laws, rules and regulations, the passage across or access to its territory of persons whose movement is necessary for traffic in transit.

4. The Contracting States shall permit the passage of traffic in transit across their territorial waters in accordance with the principles of customary international law or applicable international conventions and with their internal regulations.

Article 3 - Customs duties and special transit dues

Traffic in transit shall not be subjected by any authority within the transit State to Customs duties or taxes chargeable by reason of importation or exportation nor to any special dues in respect of transit. Nevertheless on such traffic in transit there may be levied charges intended solely to defray expenses of supervision and administration entailed by such transit. The rate of any such charges must correspond as nearly as possible with the expenses they are intended to cover and, subject to that condition, the charges must be imposed in conformity with the requirement of non-discrimination laid down in article 2, paragraph 1.

Article 4 - Means of transport and tariffs

1. The Contracting States undertake to provide, subject to availability, at the points of entry and exit, and as required at points of trans-shipment, adequate means of transport and handling equipment for the movement of traffic in transit without unnecessary delay.

2. The Contracting States undertake to apply to traffic in transit, using facilities operated or administered by the State, tariffs or charges which, having regard to the conditions of the traffic and to considerations of commercial competition, are reasonable as regards both their rates and the method of their application. These tariffs or charges shall be so fixed as to facilitate traffic in transit as much as possible, and shall not be higher than the tariffs or charges applied by Contracting States for the transport through their territory of goods of countries with access to the sea. The provisions of this paragraph shall also extend to the tariffs and charges applicable to traffic in transit using facilities operated or administered by firms or individuals, in cases in which the tariffs or charges are fixed or subject to control by the Contracting State. The term "facilities" used in this paragraph shall comprise means of trans-

port, port installations and routes for the use of which tariffs or charges are levied.

3. Any haulage service established as a monopoly on waterways used for transit must be so organised as not to hinder the transit of vessels.

4. The provisions of this article must be applied under the conditions of non-discrimination laid down in article 2, paragraph 1.

Article 5 - Methods and documentation in regard to Customs, transport, etc.

1. The Contracting States shall apply administrative and Customs measures permitting the carrying out of free, uninterrupted and continuous traffic in transit. When necessary, they should undertake negotiations to agree on measures that ensure and facilitate the said transit.

2. The Contracting States undertake to use simplified documentation and expeditious methods in regard to Customs, transport and other administrative procedures relating to traffic in transit for the whole transit journey on their territory, including any trans-shipment, warehousing, breaking bulk, and changes in the mode of transport as may take place in the course of such a journey.

Article 6 - Storage of goods in transit

1. The conditions of storage of goods in transit at the point of entry and exit, and at intermediate stages in the transit State may be established by conditions of storage at least as favourable as those granted to goods coming from or going to their own countries

2. The tariffs and charges shall be established in accordance with Article 4.

Article 7 - Delays or difficulties in traffic in transit

1. Except in cases of force majeure all measures shall be taken by Contracting States to avoid delays in or restrictions on traffic in transit.

2. Should delays or other difficulties occur in traffic in transit, the competent authorities of the transit State or States and of the Land-locked State shall co-operate towards their expeditious elimination.

Article 8 - Free Zones or other Customs facilities

1. For convenience of traffic in transit, Free Zones or other Customs facilities may be provided at the ports of entry and exit in the transit States by agreement between those States and the land-locked States.

2. Facilities of this nature may also be provided for the benefit of land-locked States in other transit States which have no sea-coast or seaports.

Article 9 - Provision of greater facilities

This Convention does not entail in any way the withdrawal of transit facilities which are greater than those provided for in the Convention and which under conditions consistent with its principles, are agreed on between Contracting States or granted by a Contracting State. The Convention also does not preclude such grant of greater facilities in the future.

Article 10 - Relation to most-favoured-nation clause

1. The Contracting States agree that the facilities and special rights accorded by this Convention to land-locked States in view of their special geographical position are excluded from the operation of the most-favoured-nation clause. A land-locked State which is not a Party to this Convention may claim the facilities and special rights accorded to land-locked States under this Convention only on the basis of the most-favoured-nation clause of a treaty between that land-locked State and the Contracting State granting such facilities and special rights.

2. If a Contracting State grants to a land-locked State facilities or special rights greater than those provided for in this Convention, such facilities or special rights may be limited to that land-locked State, except in so far as the withholding of such greater facilities or special rights from any other land-locked State contravenes the most-favoured-nation provision of a treaty between such other land-locked State and the Contracting State granting such facilities or special rights.

Article 11 - Exceptions to Convention on grounds of public health, security, and protection of intellectual property

1. No Contracting State shall be bound by this Convention to afford transit to persons whose admission into its territory is forbidden, or for goods of a kind of which the importation is prohibited, either on grounds of public morals, public health or security, or as a precaution against diseases of animals or plants or against pests.

2. Each Contracting State shall be entitled to take reasonable precautions and measures to ensure that persons and goods, particularly goods which are the subject of a monopoly, are really in transit, and that

the means of transport are really used for the passage of such goods, as well as to protect the safety of the routes and means of communication.

3. Nothing in this Convention shall affect the measures which a Contracting State may be called upon to take in pursuance of provisions in a general international convention, whether of a world-wide or regional character, to which it is a party, whether such convention was already concluded on the date of this Convention or is concluded later, when such provisions relate:

(a) to export or import or transit of particular kinds of articles such as narcotics, or other dangerous drugs, or arms; or

(b) to protection of industrial, literary or artistic property, or protection of trade names, and indications of source or appellations of origin, and the suppression of unfair competition.

4. Nothing in this Convention shall prevent any Contracting State from taking any action necessary for the protection of its essential security interests.

Article 12 - Exceptions in case of emergency

The measures of a general or particular character which a Contracting State is obliged to take in case of an emergency endangering its political existence or its safety may, in exceptional cases and for as short a period as possible, involve a deviation from the provisions of this Convention on the understanding that the principle of freedom of transit shall be observed to the utmost possible extent during such a period.

Article 13 - Application of the Convention in time of war

This Convention does not prescribe the rights and duties of belligerents and neutrals in time of war. The Convention shall, however, continue in force in time of war so far as such rights and duties permit.

Article 14 - Obligations under the Convention and rights and duties of United Nations Members

This Convention does not impose upon a Contracting State any obligation conflicting with its rights and duties as a Member of the United Nations.

Article 15 - Reciprocity

The provisions of this Convention shall be applied on a basis of reciprocity.

Article 16 - Settlement of disputes

1. Any dispute which may arise with respect to the interpretation of application of the provisions of this Convention which is not settled by negotiation or by other peaceful means of settlement within a period of nine months shall, at the request of either party, be settled by arbitration. The arbitration commission shall be composed of three members. Each party to the dispute shall appoint one member to the commission, while the third member, who shall be the Chairman, shall be chosen in common agreement between the parties. If the parties fail to agree on the designation of the third member within a period of three months, the third member shall be appointed by the President of the International Court of Justice. In case any of the parties fail to make an appointment within a period of three months the President of the International Court of Justice shall fill the remaining vacancy or vacancies.

2. The Arbitration commission shall decide on the matter placed before it by simple majority and its decisions shall be binding on the parties.

3. The Arbitration commission or other international bodies charged with settlements of disputes under this Convention shall inform, through the Secretary-General of the United Nations, the other Contracting States of the existence and nature of disputes and of the terms of their settlements.

Article 17 - Signature

This present Convention shall be open until 31 December, 1965 for signature by all States Members of the United Nations or of any of the specialised agencies or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention.

Article 18 - Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 19 - Accession

The present Convention shall remain open for accession by any State belonging to any of the four categories mentioned in article 17. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 20 - Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of the deposit of the instruments of ratification or accession of at least two land-locked States and two transit States having a sea-coast.

2. For each State ratifying or acceding to the Convention after the deposit of the instruments of ratification or accession necessary for the entry into force of this Convention in accordance with paragraph 1 of this article, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 21 - Revision

At the request of one third of the Contracting States, and with the concurrence of the majority of the Contracting States, the Secretary-General of the United Nations shall convene a Conference with a view to the revision of this Convention.

Article 22 - Notifications by the Secretary-General

The Secretary-General of the United Nations, shall inform all States belonging to any of the four categories mentioned in article 17:

(a) of signatures to the present Convention and of the deposit of instruments of ratification or accession, in accordance with articles 17, 18 and 19;

(b) of the date on which the present Convention will enter into force, in accordance with article 20;

(c) of requests for revision, in accordance with article 21.

Article 23 - Authentic texts

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in article 17.

IN WITNESS WHEREOF THE undersigned Plenipotentiaries, being duly authorised there to by their respective Governments, have signed the present Convention.

ANNEX XXI**UNITED NATIONS CONVENTION ON THE LAW OF THE SEA, SIGNED AT MONTEGO BAY ON 10 DECEMBER 1982**

(...)

PART X**RIGHT OF ACCESS OF LAND-LOCKED STATES TO AND FROM THE SEA AND FREEDOM OF TRANSIT***Article 124. Use of terms*

1. For the purposes of this Convention:

- (a) "Land-locked State"- means a State which has no sea-coast;
- (b) "transit State" means a State, with or without a sea-coast, situated between a land-locked State and the sea, through whose territory traffic in transit passes;

(c) "traffic in transit" means transit of persons, baggage, goods and means of transport across the territory of one or more transit States, when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk or change in the mode of transport, is only a portion of a complete journey which begins or terminates within the territory of the land-locked State;

(d) "means of transport" means:

- (i) railway rolling stock, sea, lake and river craft and road vehicles.
- (ii) where local conditions so require, porters and pack animals.

2. Land-locked States and transit State may, by agreement between them, include as means of transport pipelines and gas lines and means of transport other than those included in paragraph 1.

Article 125. Right of access to and from the sea and freedom of transit

1. Land-locked States shall have the right of access to and from the sea for the purpose of exercising the rights provided for in this Convention including those relating to the freedom of the high seas and the common heritage of mankind. To this end, land-locked States shall enjoy freedom of transit through the territory of transit States by all means of transport.

2. The terms and modalities for exercising freedom of transit shall be agreed between the land-locked States and transit States concerned through bilateral, subregional or regional agreements.

3. Transit States, in the exercise of their full sovereignty over their territory, shall have the right to take all measures necessary to ensure that the rights and facilities provided for in this Part for land-locked States shall in no way infringe their legitimate interests.

Article 126. Exclusion of application of the most-favoured-nation clause

The provisions of this Convention, as well as special agreements relating to the exercise of the right of access to and from the sea, establishing rights and facilities on account of the special geographical position of land-locked States, are excluded from the application of the most-favoured-nation clause.

Article 127. Customs duties, taxes and other charges

1. Traffic in transit shall not be subject to any customs duties, taxes or other charges except charges levied for specific services rendered in connection with such traffic.

2. Means of transport in transit and other facilities provided for and used by land-locked States shall not be subject to taxes or charges higher than those levied for the use of means of transport of the transit State.

Article 128. Free zones and other customs facilities

For the convenience of traffic in transit, free zones or other customs facilities may be provided at the ports of entry and exit in the transit States, by agreement between those States and the land-locked States.

Article 129. Co-operation in the construction and improvement of means of transport

Where there are no means of transport in transit States to give effect to the freedom of transit or where the existing means, including the port installations and equipment, are inadequate in any respect, the transit States and land-locked States concerned may co-operate in constructing or improving them.

ANNEX XXII**VIENNA CONVENTION ON THE LAW OF TREATIES (1969)****PART III****OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES****SECTION 1. OBSERVANCE OF TREATIES***Article 26. Pacta sunt servanda*

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Article 27. Internal law of States, rules of international organizations and observance of treaties

1. A State party to a treaty may not invoke the provisions of its internal law as justification for its failure to perform the treaty.

2. The rules contained in the preceding paragraphs are without prejudice to article 46.

ANNEX XXIII**CHAPTER XI OF THE UNITED NATIONS CHARTER
DECLARATION REGARDING NON-SELF-GOVERNING
TERRITORIES***Article 73*

Members of the United Nations which have or assume responsibilities for the administration of territories whose people have not yet attained a full measure of self-government recognise the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

a. to ensure, with due respect for the culture of the people concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;

b. to develop self-government, to take due account of the political aspirations of the people, and to assist them in the progressive development of their free political institutions, according to the particular

circumstances of each territory and its people and their varying stages of advancement;

c. to further international peace and security;

d. to promote constructive measures of development, to encourage research, and to co-operate with one another and, when and where appropriate, with specialised international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and;

e. to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

Article 74

Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good-neighbourliness, due account being taken of the interests and well-being of the rest of the world, in social, economic, and commercial matters.

Article 75

The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements. These territories are hereinafter referred to as trust territories.

Article 76

The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

a. to further international peace and security;

b. to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its

people and the freely expressed wishes of the people concerned, and as may be provided by the terms of each trusteeship agreement;

c. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the people of the world; and

d. to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

Article 77

1. The trusteeship system shall apply to such territories in the following categories as may be placed thereunder by means of trusteeship agreements:

a. territories now held under mandate;

b. territories which may be detached from enemy states as a result of the Second World War; and

c. territories voluntarily placed under the system by states responsible for their administration.

2. It will be a matter for subsequent agreement as to which territories in the foregoing categories will be brought under the trusteeship system and upon what terms.

Article 78

The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality.

Article 79

The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the states directly concerned, including the mandatory power in the case of territories held under mandate by a Member of the United Nations, and shall be approved as provided for in Articles 83 and 85.

Article 80

1. Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79, and 81, placing each territory un-

der the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any people or the terms of existing international instruments to which Members of the United Nations may respectively be parties.

2. Paragraph 1 of this Article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system as provided for in Article 77.

Article 81

The trusteeship agreement shall in each case include the terms under which the trust territory will be administered and designate the authority which will exercise the administration of the trust territory. Such authority, hereinafter called the administering authority, may be one or more states or the Organization itself.

Article 82

There may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the trust territory to which the agreement applies, without prejudice to any special agreement or agreements made under Article 43.

Article 83

1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment shall be exercised by the Security Council.

2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.

3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas.

Article 84

It shall be the duty of the administering authority to ensure that the trust territory shall play its part in the maintenance of international peace and security. To this end the administering authority may make

use of volunteer forces, facilities, and assistance from the trust territory in carrying out the obligations towards the Security Council undertaken in this regard by the administering authority, as well as for local defence and the maintenance of law and order within the trust territory.

Article 85

1. The functions of the United Nations with regard to trusteeship agreements for all areas not designated as strategic, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the General Assembly.

2. The Trusteeship Council, operating under the authority of the General Assembly shall assist the General Assembly in carrying out these functions.

COMPOSITION

Article 86

1. The Trusteeship Council shall consist of the following Members of the United Nations:

- a. those Members administering trust territories;
- b. such of those Members mentioned by name in Article 23 as are not administering trust territories; and
- c. as many other Members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations which administer trust territories and those which do not.

2. Each member of the Trusteeship Council shall designate one specially qualified person to represent it therein.

FUNCTIONS AND POWERS

Article 87

The General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may:

- a. consider reports submitted by the administering authority;
- b. accept petitions and examine them in consultation with the administering authority;

c. provide for periodic visits to the respective trust territories at times agreed upon with the administering authority; and

d. take these and other actions in conformity with the terms of the trusteeship agreements.

Article 88

The Trusteeship Council shall formulate a questionnaire on the political, economic, social, and educational advancement of the inhabitants of each trust territory, and the administering authority for each trust territory within the competence of the General Assembly shall make an annual report to the General Assembly upon the basis of such questionnaire.

VOTING

Article 89

1. Each member of the Trusteeship Council shall have one vote.
2. Decisions of the Trusteeship Council shall be made by a majority of the members present and voting.

PROCEDURE

Article 90

1. The Trusteeship Council shall adopt its own rules of procedure, including the method of selecting its President.
2. The Trusteeship Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

Article 91

The Trusteeship Council shall, when appropriate, avail itself of the assistance of the Economic and Social Council and of the specialized agencies in regard to matters with which they are respectively concerned.

ANNEX XXIV**STATUTE OF THE INTERNATIONAL COURT OF JUSTICE**

(...)

Article 38

1. The Court whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

(a) international conventions, whether general or particular, establishing rules expressly recognised by the contesting States;

(b) international custom, as evidence of a general practice accepted as law;

(c) the general principles of law recognised by civilised nations;

(d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono* if the parties agree thereto.

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