

APR 29 '97 11:24 FROM R AND R BRANCH

PAGE.003

MOA No. 2x940276

MEMORANDUM OF AGREEMENT  
BETWEEN  
THE UNITED STATES VIRGIN ISLANDS  
AND  
THE UNITED STATES CUSTOMS SERVICE  
FOR  
DETERMINING COSTS CHARGEABLE TO THE  
VIRGIN ISLAND DEPOSIT FUND FOR OPERATING  
VARIOUS CUSTOMS SERVICE ACTIVITIES  
IN AND FOR  
THE UNITED STATES VIRGIN ISLANDS

ARTICLE I - PURPOSE

To establish a formal agreement on the methodology for determining the costs chargeable to Virgin Islands Deposit Fund 20X6157, "Duties Collected for the Virgin Islands Government, United States Customs Service, Treasury Department," for operating various U.S. Customs Service (Customs) activities in and for the U.S. Virgin Islands (USVI). This document will serve as the basis for how these reimbursable costs are computed and identify those activities that are reimbursable. This document will also identify reimbursable charges not chargeable to the Virgin Islands Deposit Fund.

ARTICLE II - 1911 ACT OVERTIME AND EXCESS PRECLEARANCE COSTS

The 1911 Act was amended by Public Law 103-66 (August 10, 1993) and all references to 1911 Act overtime contained in this Memorandum of Agreement (MOA) refer to the provisions of the 1911 Act, as amended. Under this law some premium pay, as well as overtime pay, is reimbursable from the User Fee account. Both non-reimbursable 1911 Act overtime and excess preclearance costs are currently being paid by the Customs User Fee Fund. The reimbursable excess cost is the difference between the cost of examining and inspecting air travelers and their baggage upon arrival in the United States assuming no preclearance was provided, and the cost of providing preclearance for air travelers at the place of departure (19 CFR §24.18(c)). Customs will continue to pay for both non-reimbursable 1911 Act overtime and excess preclearance costs from the User Fee Fund (19 USC §58c(f)(3)) pending the outcome of a General Accounting Office (GAO) decision as to the propriety of using user fees to pay these costs. Both Customs and the USVI Government agree to abide by this GAO decision.

EXHIBIT A

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PAGE.004

- 2 -

### ARTICLE III - KEY DEFINITIONS

Activity - Work done to achieve Customs cost objective. The activities defined in activity based costing are not necessarily the same as Customs budget activities. Instead, they are cost components of actual Customs operations. Two types of activities are included:

- Line Activity - Activity or service that Customs wants to cost out for each cost objective. The USVI District conducts eight line activities.
- Support Activity - Activity conducted to sustain the Customs organization and enable the execution of its mission through its line activities. For the USVI analysis, 11 support activities are identified.

Activity Based Costing (ABC) - Management tool to track and associate costs to an organization's activities, components of actual organizational operations and processes. ABC focuses on a process view of work, showing what work causes costs (cost drivers) and how well work is done (performance indicators).

Cost Algorithm - Mechanism to associate cost with activities.

Cost Driver - Operational basis for distributing the costs of resources to activities and the costs of support activities to line activities.

Cost Objective - Any process or operation for which Customs desires a separate measurement of costs. For this MOA, the cost objective is operating the Customs USVI District.

Object Class Code - A code used by Customs to classify the identity of Customs transactions by the nature of the goods and services purchased (such as personnel compensation, supplies and materials, or equipment) without regard to the purpose of the programs for which they are used.

### ARTICLE IV - COST ALLOCATION METHODOLOGY

Customs is using the ABC methodology to develop cost models for its operations. Using this methodology will enable Customs to associate the cost of resources with line activities and the cost of line activities with management cost objectives. The activity descriptions and cost algorithms are used to develop performance measures. Performance measures are used to evaluate and refine the activities and cost objectives.

Customs will:

- Accumulate costs in terms of defined activities as well as object class codes, budget programs and appropriations to determine relevant cost drivers for distributing resource costs to activities.

APR 29 '97 11:25 FROM R AND R BRANCH

PAGE .005

- 3 -

- Capture costs only to the level of detail needed to provide meaningful information for seeking reimbursement. For example, identification of costs for time spent on specific line activities will be based on labor distribution estimates rather than actual hours charged according to time cards or daily assignment schedules. Both Customs and the USVI Government agree that Customs will determine the appropriate level of detail based on existing systems capabilities, etc.
- Distribute costs to activities on the basis of cost relationships such as cause and effect or benefit received.
- On a monthly basis, seek reimbursement based on accrual basis expenses not budgetary expenditures with the following exception: Expenditures for all costs of the USVI District will be charged to the Virgin Island Deposit Fund as costs are incurred.
- Accumulate expenses and other accounting data through its financial system, the Asset Information Management System (AIMS) or its successor. The AIMS general ledger will serve as the key source of cost data because it ties the cost data to the Customs budget hierarchy.

#### ARTICLE V-- USVI DISTRICT LINE ACTIVITIES

Customs will seek and is entitled to reimbursement for the costs of line activities performed in the USVI District. Customs has analyzed the USVI District operations and identified the following eight line activities:

- Passengers Inbound (Foreign Arrivals) - Processing passengers arriving by commercial aircraft, private aircraft, cruise ship, or ferry from outside the U.S., Puerto Rico, and other U.S. territories, regardless of nationality or residence. The USVI receives the duties, taxes, and fees collected.
- Passengers Outbound (Preclearance) - Processing passengers traveling via commercial aircraft from the USVI to the remainder of the U.S. The U.S. Treasury receives the duties, taxes, and fees collected.
- Cargo Inbound - Processing cargo imported from foreign countries into the USVI. The USVI receives the tonnage, wharfage, duties, taxes, and fees collected.
- Cargo Outbound - Processing cargo to be exported from the USVI. The USVI receives the tonnage, wharfage, duties, taxes, and fees collected.

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APR 29 '97 11:25 FROM R AND R BRANCH

PAGE.006

- 4 -

- Vessel and Plane Inspections - Inspecting inbound and outbound vessels and aircraft. The USVI receives any duties collected from the vessel and aircraft owner/operators.
- Seizures - Processing actual and constructive seizures of contraband, items used in illegal activities, or items for which the owner is unable or unwilling to pay USVI duties and penalties. The authority to make seizures helps assure compliance with the collections identified in the first five activities. (Those activities and collections cannot be completed without the ability to process seizures.) The U.S. Treasury receives all collections associated with this activity.  
  
(Actual seizures occur when Customs takes custody of the seized item. Constructive seizures occur when Customs allows the owner of the item to retain custody pending resolution of the case. This process includes storage of the seized item, retention for criminal proceedings, collection of any penalties, and destruction, return, or auction of the item.)
- Fines/Penalties - Processing fines/penalties assessed for a failure to comply with laws and regulations. The authority to levy fines/penalties helps assure compliance with the collections identified in the first five activities. (Those activities and collections cannot be completed without the ability to assess and collect fines/penalties.) The U.S. Treasury receives all collections associated with this activity.
- Interdiction - Undertaking proactive activities to locate and seize contraband. Interdiction is a standard USVI District activity that facilitates Customs in its collection efforts. Without proactive interdiction, the other collection activities would become more cumbersome. For example, the documentation review and inspection steps in other activities would become more intensive if individuals realized that they would not be inspected until they arrived at a port.

#### ARTICLE VI - SUPPORT ACTIVITIES CONTRIBUTING TO THE USVI DISTRICT

A number of support activities are necessary to sustain the Customs organization and to support the execution of the its line activities. The costs of the USVI District line activities will include a distributed portion of the costs of these support activities. This distribution is essential because Customs cannot undertake the line activities without the support activities sustaining the Customs infrastructure. The distribution will be based on cost drivers that approximate the level of support provided to the USVI District through each activity. Customs will seek and is entitled to reimbursement for the distributed portion of support activities attributed to the USVI.

RECEIVED: 4-29-97; 12:28PM, 011 200 0200  
APR 29 '97 11:26 FROM R AND R BRANCH

PAGE.007

- 5 -

Customs has identified the following 11 support activities:

- Customs Mission Support - Includes executive direction and guidance to ensure effective performance of the Customs mission and the effective use of resources to accomplish that mission.
- Inspection Mission Support - Includes development, implementation, and management of programs for the inspection of persons, baggage, and cargo, as well as the control of vehicles, vessels, and aircraft arriving and departing the U.S.
- Commercial Activities Mission Support - Includes development and implementation of programs, policies, and procedures pertaining to Customs commercial activities including the entry of merchandise into the U.S.
- Laboratory Support - Includes testing and reporting on contraband or other goods samples.
- Investigative Support - Includes formulation and implementation of policies and programs for detection and follow-up of law violations.
- Air and Marine Operations Support - Includes the administration and operation of tactical interdiction programs through air and marine resources.
- Acquisition Support - Includes administration of Customs procurement activities and compliance with procurement laws and regulations.
- Audit Support - Includes development and implementation of policies and programs for audits of importers, carriers, and their agents to benefit Customs operations dealing with these organizations.
- Automated Information Systems Support - Includes development, implementation, and management of Customs automated information systems.
- Internal Security Support - Includes development and implementation of programs to ensure compliance with Customs security requirements and investigate noncompliance.
- Legal Support - Includes provision of legal advice and representation to Customs Officers in matters relating to the activities and functions of the Customs Service.

APR 29 '97 11:26 FROM R AND R BRANCH

PAGE.008

- 6 -

#### ARTICLE VII - RESOURCES ATTRIBUTABLE TO USVI DISTRICT LINE OR SUPPORT ACTIVITIES

Based on its organizational structure and the line and support activities identified, Customs has identified the following three levels of resources that support the USVI District:

- USVI District level resources that support only the USVI District (Note: Throughout this MOA, the term USVI District refers to the District and the ports within the USVI District.)
- Southeast Regional level resources that support the Districts within the Southeast Region.
- National level resources that support all districts through the Regions (excluding investigative support and air/marine support).

#### ARTICLE VIII - USVI DISTRICT LEVEL RESOURCES

All USVI District level resources contribute to the line activities discussed in Article VI. For example, the Office of Inspection and Control conducts all passenger and cargo inspections. The Office of Commercial Operations reviews and follows up on all cargo entries. The Office of Enforcement fulfills two major roles in the USVI District: investigations and arrests resulting from the activities of these Offices (as part of passenger, cargo, or vessel/aircraft processing activities) as well as interdiction. The Office of Regulatory Audit audits importers.

Total USVI District level costs will be distributed to USVI District line activities based on USVI District full-time equivalents (FTE) distribution and using the following algorithm:

$$\frac{\text{District Level Costs}}{\text{Attributable to Line Activity}} = \frac{\text{Total District Costs}}{\text{Total District FTEs}} \times \frac{\text{FTEs assigned to Line Activity}}{\text{Total District FTEs}}$$

#### ARTICLE IX - NATIONAL AND REGIONAL LEVEL RESOURCES

The sole purpose of the Regional and National level resources is to support the USVI District and the Office of Enforcement in implementing the Customs mission through the line activities. Therefore, the entire cost of those resources will be distributed to districts based on an assessment of what causes work and what determines the level of effort that a resource provides to a District's activities. To develop a full cost of each line activity within the USVI District, the USVI District's portion of the support activity costs will be distributed to each line activity.

APR 29 '97 11:27 FROM R AND R BRANCH

PAGE.009

- 7 -

Support activities fall into three categories:

- Costs directly attributable to the USVI District - The entire amount would be directly charged to the USVI District.
- Costs attributable to a subset of the Customs Southeast Districts - These costs will be distributed among the Districts supported by that resource. For example, the Internal Affairs Field Office in San Juan, Puerto Rico, supports only the Puerto Rico and USVI Districts. The cost of that field office will be distributed only between the Puerto Rico and USVI Districts.
- Costs attributable to all Districts - These costs will be distributed to all Regions and Districts supported using the following algorithms:

$$\begin{array}{l} \text{REGIONAL Level} \\ \text{Resource Cost} \\ \text{Attributable to} \\ \text{the USVI District} \end{array} = \begin{array}{l} \text{Total Resource} \\ \text{Cost} \end{array} \times \frac{\text{Driver Units (DU) Attributable to USVI District}}{\text{DU's for Southeast Region}}$$

$$\begin{array}{l} \text{NATIONAL Level} \\ \text{Resource Cost} \\ \text{Attributable to} \\ \text{the USVI District} \end{array} = \begin{array}{l} \text{Total Resource} \\ \text{Cost} \end{array} \times \frac{\text{DU's for Southeast Region}}{\text{DU's for All Regions}} \times \frac{\text{USVI District DU's}}{\text{DU's for Southeast Region}}$$

To determine the full cost of each line activity, the cost of each support activity cost attributable to the USVI District will be distributed to the USVI District line activities using the following algorithm:

$$\begin{array}{l} \text{Support Activity Costs} \\ \text{Attributable to Line Activity} \end{array} = \begin{array}{l} \text{Total Support} \\ \text{Activity Costs} \\ \text{Attributable to} \\ \text{the VI District} \end{array} \times \frac{\text{DU's Attributable to Line Activity}}{\text{Total DU's for Line Activities}}$$

**ARTICLE X - SUBSIDIZED COSTS FOR ENFORCEMENT EMPLOYEES**

Customs agrees to provide eight employees, seven enforcement officers and one support position, in the USVI to support enforcement-related activities. Three of these positions will be filled with candidates living in the USVI. The USVI Government agrees to pay 50 percent of the full cost of these employees as determined by Customs using the ABC methodology. Customs agrees to bear the remaining 50 percent of the full cost of these employees. The USVI will not use the Virgin Islands Deposit Fund nor USVI collections to reimburse Customs for the USVI portion of the full cost of these employees.

APR 29 '97 11:27 FROM R AND R BRANCH

PAGE.010

- 8 -

#### ARTICLE XI - PAYMENT FOR CUSTOMS SERVICES

The USVI Government will, in accordance with applicable laws, pay Customs for the full cost of operating the USVI District. Customs has determined that the entire District operation, excluding non-reimbursable 1911 Act overtime and excess preclearance costs (pending the outcome of a GAO decision) as well as the eight enforcement employees referenced in Article X, is related to USVI collections, and, accordingly, the full cost of these operations is reimbursable from the Virgin Islands Deposit Fund.

Both USVI Government and Customs agree that in the event the full cost of Customs operations exceeds USVI collections for any given quarter, that the USVI Government shall remit immediate payment for any outstanding balance to the Customs without waiting for subsequent collections to offset the deficit. Both the USVI Government and Customs agree that the USVI Government will be billed quarterly and shall remit immediate payment each quarter for the USVI portion of the full cost of the eight enforcement employees referenced in Article X. Customs shall not, under any circumstances, subsidize any USVI operations or activities unless these operations or activities to be subsidized are specifically identified in this MOA.

#### ARTICLE XII - REPORTING REQUIREMENTS

Customs will prepare and provide the USVI Government the Monthly Virgin Islands Deposit Fund Report reflecting the following information:

- Current month and year-to-date amounts.
- Collections will be reported by the following classifications:
  - (1) duties;
  - (2) tonnage and wharfage;
  - (3) other receipt accounts (excluding Fines, Penalties and Forfeitures); and
  - (4) reimbursable service bills.
- Disbursements will be classified as follows:
  - (1) operational costs to include district level costs, support level costs (national and regional levels) and rental costs (charged by GSA) for the VI District;
  - (2) refunds and drawbacks;

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APR 28 '97 11:28 FROM R AND R BRANCH

PAGE.011

- 9 -

(3) transfers of monies to the USVI; and

(4) user fee reimbursements.

- Available funds as of month end.
- The transfer of funds calculation.
- Explanatory footnotes.

Customs shall also prepare and provide the USVI Government a quarterly disclosure of charges for the USVI reimburseable portion of the full cost of the eight enforcement employees (see Article X).

ARTICLE XIII - AUTHORITIES

- 48 USC §1406h "Taxes, duties and fees as funds for benefit of municipalities; appropriations"
- 48 USC §1406i "Taxes and fees; power to assess and collect; ports of entry; export duties"
- 48 USC §1469c "Availability of services, facilities, and equipment of agencies and instrumentalities of the United States; reimbursement requirements"
- 19 USC §58c "Fees for certain customs services"
- 19 USC §267 "Compensation for overtime services; fixing working hours"
- P.L. 103-66 §13811 "Overtime and premium pay for Customs officers"
- E.O. 2620 Executive Order 2620, dated May 15, 1917, signed by President Woodrow Wilson

ARTICLE XIV - AMENDMENTS

Any change required by the USVI Government or Customs in the provisions of this MOA shall be initiated by the requesting party in a written statement setting forth the exact nature and reason for the change. Both parties agree that the attachments to this MOA are not static representations of organizational groupings, data sources, cost drivers, etc., and that should Customs determine a change is merited and justified (e.g., the change would provide a better representation of the full cost of a particular activity, internal reorganizations have occurred,

RECEIVED: 4-28-97; 12:02PM; 011 230 0200  
APR 29 '97 11:28 FROM R AND R BRANCH

PAGE.012

- 10 -

etc.), this change will be acceptable to the USVI and become effective subject to written notification of the change.

ARTICLE XV - IMPLEMENTATION AND REVOCATION

The provisions of this agreement are effective upon the signature of the duly authorized representatives of the USVI Government and Customs and, with the exception of obligations of a continuing nature, will remain in effect until completed or the agreement is superseded. The parties acknowledge that actions directly affecting this agreement have already been instituted and hereby approve and ratify all such activities. This MOA may be revoked by either party upon providing written notice to the other party 180 days prior to the proposed revocation date.

This MOA is effective immediately upon date of final signature, and continues indefinitely, subject to modification as provided herein. This MOA supersedes all verbal and written agreements pertaining to the determination of costs chargeable to the Virgin Island Deposit Fund for operating various Customs activities in and for the USVI Government. The attachments to this MOA are also approved and ratified by both parties.

\* \* \* \* \*

United States Department of the Treasury  
United States Customs Service

George W. Wain  
Commissioner of Customs

5/13/94  
Date

Government of the  
United States Virgin Islands

Alexander E. Landry  
Governor

8/8/94  
Date

Attachments

- A Overview of District Activity Based Model
- B Headquarters and Southeast Regional Level Cost Organization Grouping
- C Data Sources
- D Support Activity Drivers
- E Line Activity Drivers