

## CHAPTER-II: TAXES ON SALES, TRADE ETC.

### 2.1 Results of audit

Test check of the records of sales tax assessments and other records, conducted during the year 2007-08 revealed irregular/incorrect exemption/concession, short assessment, non-deposit of tax and other irregularities amounting to Rs. 82.45 crore in 239 cases, which fall under the following categories:

(Rupees in crore)

Sr. No.	Particulars	Number of cases	Amount
1.	Irregular/incorrect exemption/concession etc. to industrial units	10	66.35
2.	Evasion of tax due to suppression of sales/purchases	24	5.37
3.	Underassessment of tax	103	3.09
4.	Non-deposit of sales tax	04	1.09
5.	Non-levy of tax due to non-registration of dealers	04	0.79
6.	Other irregularities	94	5.76
<b>Total</b>		<b>239</b>	<b>82.45</b>

During 2007-08, the department accepted under assessments of Rs. 1.26 crore involved in 17 cases which had been pointed out in audit in earlier years.

A few illustrative cases involving Rs. 68.24 crore are mentioned in the succeeding paragraphs.

## **2.2 Acceptance of defective statutory forms**

Under the Central Sales Tax (CST) Act, 1956, and the rules framed thereunder, declaration form 'C' marked 'original' and complete in all respect i.e. bearing registration number and date of issue by the purchasing dealer, purchase order, number and date etc., should be furnished to avail concessional rate of CST. It has judicially been held<sup>1</sup> that production of declaration form is mandatory and second evidence such as duplicate form cannot be permitted to replace the lost one. It has also been held<sup>2</sup> that production of original 'C' form for claiming concessional rate of tax is mandatory to prevent the forms being misused for the commission of fraud and collusion with a view to evade payment of tax. Further under the CST Act, sale of goods made by one registered dealer for export are to be allowed as deduction from turnover of the selling dealer on his furnishing form 'H' duly filled in and signed by the exporter alongwith the evidence of export of such goods. Similarly, to claim exemption on branch transfer/consignment sales, description of goods, railway receipt, goods receipt, name of railway/transport company etc. should be recorded on declaration in form 'F'. Form 'F' may cover transfer of goods effected during a period of one calendar month by a dealer to any other place of his business or his agent or principal outside the State, as the case may be.

Test check of the records of five districts between March 2008 and May 2008 revealed that the assessing authorities (AAs) accepted defective/incomplete declaration forms in the case of 69 industrial units and allowed concessional rate/exemption on their turnover. This resulted in short levy of tax of Rs. 30.20 crore as mentioned below:

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<sup>1</sup> Commissioner Sales Tax V/s Prabhu Dayal Prem Narayan (1988) 71 STC 1 (SC).

<sup>2</sup> Delhi Automobile Pvt. Ltd. V/s Commissioner of Sale Tax (1997) 104 STC 75(SC).

(Rupees in crore)

Sr. No.	Name of AETC	Number of industrial units	Assessment year/month	Nature of irregularities	Total turnover	Tax leviable	Tax levied	Short levy
1.	Kangra, Mandi, Solan and Una	36	1999-2000 to <u>2004-05</u> April 2002 to December 2007	Defective declaration forms 'C', 'H' and 'F'	255.87	25.96	Nil	25.96
2.	Sirmour and Solan	14	2001-02 to <u>2004-05</u> March 2004 to September 2007	Duplicate/ photocopy of 'C' forms	23.28	2.54	0.23	2.31
3.	Sirmour and Solan	6	1998-99 to <u>2003-04</u> October 2005 and February 2008	Invalid 'F' forms	5.90	0.62	Nil	0.62
4.	Kangra, Mandi and Una	5	2002-03 to <u>2006-07</u> April 2003 to March 2007	Without 'F' forms	3.55	0.23	Nil	0.23
5.	Kangra, Sirmour and Solan	8	2002-03 to <u>2006-07</u> September 2006 to February 2008	The goods were transferred to places not specified in the registration certificate	9.05	1.08	Nil	1.08
<b>Total</b>		<b>69</b>			<b>297.65</b>	<b>30.43</b>	<b>0.23</b>	<b>30.20</b>

The matter was reported to the department and the Government in June 2008; their reply has not been received (September 2008).

### 2.3 Incorrect exemption

According to item 66 of Schedule B of Himachal Pradesh General Sales Tax (HPGST) Act, 1968, sale of electronic goods assembled by the existing<sup>3</sup> electronic industrial unit is exempt from levy of sales tax under certain conditions. One of the conditions prescribed is that value addition in the assembling is 25 per cent or more. In respect of new<sup>4</sup> electronic industrial unit and electronic assembly unit, exemption is admissible, if the value addition in assembling is more than 14 per cent. It has judicially been held<sup>5</sup> that the word 'in' used in "material used in generation, distribution of electrical energy" was defined for those goods which are directly used for power generation and distribution. The Excise and Taxation Department did not bring out any explanation to the effect that as to what kind of expenses are to be taken for determining the value addition and left the same at the discretion of the AAs.

<sup>3</sup> Units which came into production between 31 July 1992 and 30 September 1996.

<sup>4</sup> Units which came into production between 1 October 1996 and 31 March 1999.

<sup>5</sup> Spedding Dinga Singh Co. V/s the Government of Punjab.

Test check of the records of Assistant Excise and Taxation Commissioner (AETC), Solan in March 2008 and April 2008 revealed that during the years 1998-99 to 2001-02, sale valued as Rs. 62.75 crore in respect of an electronic assembling<sup>6</sup> unit which came into production in May 1995, was exempted by the AA between May 2001 and March 2005 from payment of sales tax. The value addition in assembling during these years, as disclosed by the unit, was between 14.23 and 14.82 *per cent* which was less than 25 *per cent*. The AA while granting exemption, treated the unit as new electronic assembling unit instead of an existing electronic assembling unit. This resulted in underassessment of tax of Rs. 8.17 crore including interest.

In another case of an electronic assembling<sup>7</sup> unit, which came into production from January 1998, it was noticed that the unit claimed exemption of sale valued as Rs. 84.61 crore which was allowed in July 2005 as exempted from tax by the AA. However, the value addition in this case worked out as 2.53<sup>8</sup> *per cent*, on the basis of judicial pronouncement, which was less than the prescribed value addition of 14 *per cent*. In the absence of suitable explanation by the department, the AA could not determine the value addition correctly. This resulted in underassessment of tax of Rs. 13.14 crore.

The matter was reported to the department and the Government in June 2008; their reply has not been received (September 2008).

## 2.4 Irregular concession

Under the HPGST Act, exemption/concession is available to the industrial units if the units file with the AA concerned, a certificate of genuineness in Form 1<sup>9</sup> prescribed by the Excise and Taxation Department.

Test check of the records of five<sup>10</sup> districts between March 2008 and May 2008 revealed that the AAs while finalising between November 2002 and November 2007, assessments for the years 1999-2000 to 2005-06, allowed exemption/concession in 70 cases on turnover of Rs. 231.26 crore without obtaining certificate of genuineness from the Industries Department. This resulted in irregular grant of concession of Rs. 9.36 crore.

The matter was reported to the department and the Government in June 2008; their reply has not been received (September 2008).

## 2.5 Underassessment due to irregular set off

Under section 42 C of the HPGST Act, a dealer is entitled to set off of tax from the sale of final product equal to the amount of tax already paid on the purchase of raw materials used by him in the manufacture of finished goods.

<sup>6</sup> M/s Proview Electronics Ltd. Parwanoo.

<sup>7</sup> M/s Okaya Industries, Parwanoo.

<sup>8</sup> (a) Raw material consumed: Rs. 63.95 crore  
 (b) Factory related expenses incurred in manufacturing: Rs. 1.62 crore  
 Percentage of value addition:  $\frac{b}{a} \times 100 = 2.53 \text{ per cent}$

<sup>9</sup> Form 1 containing the details of deployment of bonafide Himachalis.

<sup>10</sup> Kangra, Mandi, Sirmour, Solan and Una.

There is no provision under the CST Act to allow set off of tax, as is applicable under the HPGST Act.

Test check of the records of AETC Solan in March 2008 and April 2008 revealed that the AAs while finalising between April 2006 and February 2008 assessments of two industrial units for the period 2001-02 to 2003-04, incorrectly allowed adjustment of set off of tax of Rs. 1.76 crore under the CST Act. This resulted in under assessment of Rs. 1.76 crore.

The matter was reported to the department and the Government in June 2008; their reply has not been received (September 2008).

## **2.6 Irregular concession on raw material**

According to the notification of February 1992, tax shall be levied and paid at the rate of one paise in a rupee on the sale of raw material by an existing/new industrial unit for use by them in manufacture for sale or in the processing and packing of goods subject to certain conditions. One of the conditions for availing concessional rate of tax is that the purchasing dealer will furnish a certificate in form ST XXV-B<sup>11</sup> to the selling dealer, failing which tax shall be levied at full rate.

Test check of the records of five industrial units of two districts (Kangra and Una), whose assessments for the years 2001-02 to 2004-05 were finalised between September 2005 and June 2007, revealed that the AAs allowed concessional rate of tax at the rate of one *per cent* on the turnover of Rs. 17.22 crore without the requisite certificate. This resulted in underassessment of tax of Rs. 1.20<sup>12</sup> crore.

The matter was reported to the department and the Government in June 2008; their reply has not been received (September 2008).

## **2.7 Non-deposit of sales tax**

The HPGST Rules, 1970, provides for deduction of sales tax at the rate of two *per cent* at source from the bills of works contractor and the person making tax deduction is responsible to pay into the Government treasury all the amounts deducted by him during a month on or before the 15<sup>th</sup> day of the month following the month to which the deduction relates. In the event of non-deposit of the collected tax, the prescribed authority shall after giving an opportunity of being heard, by an order, in writing, direct that such person shall pay by way of penalty, a sum not exceeding twice the amount of tax deductible.

Test check of the records of two<sup>13</sup> public works divisions (PWDs) between May 2007 and September 2007 revealed that sales tax amounting to Rs. 94.78 lakh deducted at source from the contractor's bills for the period falling between 2000-01 and 2007-08 (upto 31 August 2007), was not deposited into the treasury under the sales tax receipt head of account.

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<sup>11</sup> Containing description of raw material purchased for availing the concession.

<sup>12</sup> Kangra: Rs. 15 lakh and Una: Rs. 1.05 crore.

<sup>13</sup> Jubbal and Spiti at Kaza.

After the cases were pointed out between May and September 2007, the PWDs intimated in February 2008 and March 2008 that Rs. 34.26 lakh had been deposited. It was further intimated by the Kaza division that the balance amount of Rs. 40.26 lakh would be deposited on receipt of funds whereas Jubbal division stated that balance of Rs. 20.26 lakh would be deposited. A report on recovery and further development has not been received (September 2008).

The matter was reported to the Government between June 2007 and October 2007; their reply has not been received (September 2008).

## **2.8 Underassessment due to incorrect deduction**

The HPGST Act governs the sale made within the State. Under Rule 31 (xii) of HPGST Rules, a registered dealer for arriving at his taxable turnover, may deduct purchase value of goods used by him in the manufacture of finished goods which have already suffered tax under the HPGST Act. The inter state sales are governed by the CST Act and there is no provision in the Act to allow benefit of deduction as is applicable under the HPGST Act/Rules. Further, if a dealer fails to pay the tax due by the prescribed date, he becomes liable to pay interest at the rate of one *per cent*, on the tax due for a period of one month and at the rate of one and a half *per cent* per month thereafter, till the default continues.

Test check of the records between March 2008 and May 2008 revealed that the AAs while finalising (between July 2002 and March 2007) the assessments for the period 1998-99 to 2004-05 in respect of six industrial units of Sirmour and Una districts, incorrectly allowed deduction of purchase value of tax paid goods of Rs. 4.58 crore from the inter state sales of Rs. 43.36 crore. This resulted in underassessment of tax of Rs. 88 lakh<sup>14</sup> including interest.

The matter was reported to the department and the Government in June 2008; their reply has not been received (September 2008).

## **2.9 Short levy of tax**

As per the notification of July 1999, sales tax at the rate of 25 *per cent* of the rates notified under section 6 of the HPGST Act, was to be levied in respect of goods manufactured by the dealers running new village industries and new tiny industries, subject to the condition that annual turnover of the unit did not exceed Rs. 60 lakh in respect of a unit located in an industrially backward area and Rs. 45 lakh in respect of industrially developing areas.

Test check of the records of five<sup>15</sup> AETCs between March 2008 and May 2008 revealed that the AAs while finalising assessments between April 2003 and March 2007 of 13 industrial units, applied concessional rate of tax even though their annual turnover exceeded the prescribed limit. In 14 cases, the AAs applied incorrect concessional rate of tax. This resulted in short levy of sales tax of Rs. 81.60 lakh including interest as mentioned below:

<sup>14</sup> Sirmour: Rs. 85 lakh and Una: Rs. 3 lakh.

<sup>15</sup> Kangra, Mandi, Shimla, Solan and Una.

(Rupees in lakh)

Sr. No.	Name of the district	Period involved/date of assessment	No. of industrial units	Nature of irregularities	Tax effect
1.	Kangra, Shimla, Solan and Una	<u>1999-2000 to 2004-05</u> Between November 2004 and December 2006	13	Annual turnover of the dealers engaged in the manufacture of <i>haldi</i> powder, bricks etc. exceeded the prescribed limit of Rs. 45/60 lakh. While finalising the assessments, the AAs incorrectly levied concessional rate of tax of 25 <i>per cent</i> on the turnover of Rs. 19.41 crore.	72.58
2.	Kangra, Mandi, Shimla, Solan and Una	<u>1999-2000 to 2004-05</u> Between April 2003 and March 2007	14	The concessional rate of 25 <i>per cent</i> was incorrectly applied on turnover of Rs. 6.44 crore instead of the actual turnover of Rs. 5.96 crore.	9.02
<b>Total</b>			<b>27</b>		<b>81.60</b>

The matter was reported to the department and the Government in June 2008; their reply has not been received (September 2008).

## 2.10 Non-levy of tax due to non-registration of dealers

Under Section 2 of the HPGST Act, “a dealer” means any person who carries on (whether regularly or otherwise) the business of buying, selling or supplying or distributing goods directly or indirectly for cash or for deferred payment or for commission, remuneration or other valuable consideration. Further, a dealer is liable to be registered and pay tax from the date on which his gross turnover during any year exceeds the taxable quantum of Rs. 4 lakh, prescribed with effect from 23 April 1999. If a dealer fails to pay the tax due by the prescribed date, he shall be liable to pay interest on the tax due at the rate of one *per cent* per month for a period of one month and at 1.5 *per cent* per month thereafter, till the default continues. *Khairwood* was taxable at the general rate of 12 *per cent* upto 2001-02, being an unspecified item.

Cross verification of the information collected from the case file of a dealer in AETC Una with the records of three<sup>16</sup> AETCs (between April and September 2007) revealed that 12 suppliers of these districts sold *khairwood* valued as Rs. 2.54 crore to a firm<sup>17</sup> of Una district between 2000-01 and 2001-02. The annual turnover of each dealer exceeded Rs. 4 lakh but none of them had applied for registration. The department also failed to detect the cases of non-registration although information relating to sale of *khairwood* by these dealers was available with the department. The dealers had also not paid any tax during this period. This resulted in non-levy of tax of Rs. 30.52 lakh besides interest of Rs. 32.68 lakh for the period between May 2001 and September 2007.

<sup>16</sup> Bilaspur: five cases: Rs. 33.35 lakh; Hamirpur: four cases: Rs. 15.89 lakh and Solan: three cases: Rs. 13.96 lakh.

<sup>17</sup> M/s Mahesh Udyog, Oel, district Una.

After the cases were pointed out between April and September 2007, the Additional Excise and Taxation Commissioner (Addl ETC) in the case of Bilaspur, intimated in February 2008 that concerned AETC had been directed (February 2008) to dispose the cases at the earliest. Further development and reply from other AETCs has not been received (September 2008).

The matter was reported to the department and the Government between May and October 2007; their reply has not been received (September 2008).

### 2.11 Incorrect application of rate of tax

As per the notification of July 1978, issued under the CST Act, tax at the rate of one *per cent* shall be levied on the taxable turnover for the first five years and at two *per cent* in the second span of five years, subject to the production of 'C'<sup>18</sup> forms. The said notification was rescinded in 1992, according to which, small scale industrial (SSI) units which have started making payment of CST under the rescinded notification, shall continue to make the payment of CST at the rate of two *per cent*, for the unexpired part of the period.

Test check of the records of two AETCs revealed that the AAs while finalising assessments of four industrial units levied tax at incorrect rate on the turnover of Rs. 16.01 crore. This resulted in short levy of tax of Rs. 39.46 lakh as mentioned below:

(Rupees in lakh)					
Sr. No.	Name of the district	Period involved/date of assessment`	No. of industrial units	Nature of irregularities	Amount
1.	Sirmour	<u>1997-98 and 1998-99</u> September 2006	1	For the years 1997-98 and 1998-99, rate of tax on inter state sale was incorrectly applied at one <i>per cent</i> instead of two <i>per cent</i> on the turnover of Rs. 5.61 crore.	14.70
2.	Sirmour and Solan	<u>1994-95 to 1999-2000</u> January 2004 and December 2007	3	The AAs levied incorrect rate of tax at one <i>per cent</i> during the second span of five years on the turnover of Rs. 10.40 crore instead of two <i>per cent</i> .	24.76
<b>Total</b>			<b>4</b>		<b>39.46</b>

The matter was reported to the department and the Government in June 2008; their reply has not been received (September 2008).

### 2.12 Non-withdrawal of concession

According to Schedule B of the HPGST Act, units manufacturing electronic goods and falling in 'C' category of industrial block are entitled to exemption from payment of sales tax for five years from the date of commercial

<sup>18</sup> It is a declaration form issued by the purchasing dealer to the selling dealer during the course of inter state sale.



production. As per the notifications of December 1994 and January 1997, small scale/tiny industrial units located in 'B' category of industrial block are entitled for concessional rate of tax at one *per cent* for a period of seven/nine years and for a period of six years in 'C' category of industrial block. Further, as per the notification of July 1999, the concessional rate of tax at the rate of 25 *per cent* of the specified rate would be available for a period of eight and five years in respect of industrially backward areas and industrially developing areas respectively. However, the department did not prescribe any monitoring mechanism/check list to ensure that the benefits allowed under the incentive scheme(s) do not run beyond the admissible period.

Test check of the records of four<sup>19</sup> AETCs revealed that the AAs while finalising between August 2002 and June 2007, the assessments of nine industrial units for the years 1999-2000 to 2004-05, incorrectly allowed concessional rate of tax on the turnover of Rs. 3.36 crore beyond the expiry of the concessional period. This resulted in irregular allowing of concession of sales tax of Rs. 32.18 lakh including interest.

The matter was reported to the department and the Government in June 2008; their reply has not been received (September 2008).

### **2.13 Evasion of tax due to suppression of sales**

Under Section 12 (7) of the HPGST Act, if a dealer has maintained false or incorrect accounts with a view to suppress his sales or purchases, he is liable to pay by way of penalty (in addition to the tax to which he is assessed), an amount not less than 25 *per cent* but not more than one and a half times the amount of his tax liability. If a dealer fails to pay the tax due by the prescribed date, he becomes liable to pay interest at the prescribed rates.

Test check of the records of AETC Sirmour at Nahan in December 2006 revealed that a firm<sup>20</sup> had purchased *khairwood* valued as Rs. 92.70 lakh from five dealers of Kangra and Solan districts during the year 2000-01 and 2001-02. Cross verification by audit of the said information with the records of two AETCs revealed that the dealers of Kangra district had not disclosed sales of Rs. 68.78 lakh in their returns whereas the dealers of Solan district had disclosed only Rs. 16.69 lakh (out of Rs. 23.92 lakh) as sales and had been assessed accordingly. Consequently, the taxable turnover of Rs. 76.01 lakh had escaped assessment. The AAs while finalising (between September 2003 and April 2007) the assessments of the dealers for the years 2000-01 and 2001-02 had failed to detect the suppression. This resulted in evasion of tax of Rs. 20.23<sup>21</sup> lakh including interest of Rs. 8.83 lakh and minimum penalty of Rs. 2.28 lakh.

The matter was reported to the department and the Government between July and October 2007; their reply has not been received (September 2008).

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<sup>19</sup> Kangra, Kullu, Solan and Una.

<sup>20</sup> M/s Sagar Katha Udyog, Kala Amb.

<sup>21</sup> Kangra: three, Rs. 18.26 lakh and Solan: two, Rs. 1.97 lakh.

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## 2.14 Underassessment of tax

Under Section 2(m) of the HPGST Act, “turnover” includes the aggregate of the amounts of sales and purchases actually made by any dealer during the given period. The taxable turnover of a registered dealer is arrived at after deducting the amount of tax free/tax paid sales to registered dealers from the gross turnover, provided declarations in the prescribed forms are furnished. As per the Excise and Taxation Department notification of 23 July 1999, a new tiny industrial unit located in industrially backward areas was entitled to a concessional rate of tax of 25 *per cent* of the specified rate of tax for a period of eight years from the date of commercial production. This concession was admissible only if the annual turnover of the unit did not exceed Rs. 60 lakh. The departmental instructions issued in April 1978 also provided that the AAs, while examining the accounts of dealers were required to see that the sales were in agreement with the purchases and to take cognizance of any difference between the figures shown by the dealers in their returns and those reflected in the accounts. If a dealer failed to pay the tax due by the prescribed date, he became liable to pay interest at the prescribed rates.

**2.14.1** Test check of the records of AETC Shimla in June 2007 revealed that the assessments for the years 2001-02 to 2004-05 of a dealer engaged in tyre retreading were finalised between September and December 2006 by the AA. Audit scrutiny revealed that the taxable turnovers of the dealer as reflected in the manufacturing, trading and profit and loss account for these years added upto Rs. 2.89 crore (inclusive of gross profit). However, the AA while finalising the assessments for these years, incorrectly determined the aggregate taxable turnover as Rs. 2.19 crore without taking into account the opening stock, purchase of raw materials made, less closing stock and the element of gross profit. It was further noticed that the annual turnover of the dealer had exceeded Rs. 60 lakh in 2002-03 and he was not entitled to concessional rate of tax. Thus, failure of the AA to compute the turnover correctly and incorrect allowing of concessional rate of tax resulted in underassessment of tax of Rs. 7.88 lakh including interest of Rs. 2.82 lakh.

After the case was pointed out in June 2007, the AETC Shimla intimated in June 2008 that the dealer was reassessed in October 2007 and additional demand of Rs. 5.91 lakh (including interest of Rs. 1.96 lakh) had been created by levying concessional rate of tax in 2002-03. The dealer had however filed an appeal before the appellate authority in November 2007. The AETC further stated that the appellate authority had directed the dealer to deposit 75 *per cent* of the amount by 7 April 2008, against which the dealer deposited Rs. 50,000 only. Further report has not been received (September 2008).

The matter was reported to the Government in July 2007; their reply has not been received (September 2008).

**2.14.2** Test check of the records of AETC Sirmour in October 2007 revealed that a contractor engaged in execution of works contract was assessed in August 2006 for the years 2001-02, 2002-03 and 2004-05 at taxable turnover of Rs. 62.31 lakh. Scrutiny of the trading accounts and assessment records revealed that the taxable turnover of Rs. 62.31 lakh determined by the AA for these years was less than the value of the material of Rs. 84.84 lakh (inclusive

of gross profit) transferred in execution of works contract by the contractor. Thus, taxable turnover amounting to Rs. 22.53 lakh had escaped levy of tax. This resulted in underassessment due to short determination of turnover with a tax effect of Rs. 2.85 lakh including interest of Rs. 1.05 lakh.

The matter was reported to the department and the Government in November 2007; their reply has not been received (September 2008).

### **2.15 Incorrect assessment due to non-linking of connected records**

Under the CST Act, “turnover” of a dealer includes aggregate of the sale prices received and receivable by him in respect of sale of any goods in the course of inter state trade or commerce made during any prescribed period. Further, as per the departmental instructions of April 1978, the AAs, while examining the accounts of the dealers, are required to cross check the purchases/sales on barrier chits<sup>22</sup> for determining taxable turnover.

Cross verification of the barrier chits (ST XXVI-A forms) with return version in respect of two industrial units of Sirmour district revealed short disclosure of inter state sales of Rs. 46.98 lakh. Failure of the AA to correlate the sales resulted in evasion of CST of Rs. 10.71 lakh including interest between August 2006 and March 2007.

The matter was reported to the department and the Government in June 2008; their reply has not been received (September 2008).

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<sup>22</sup> It is a declaration form (ST XXVI-A) filed by the dealer at the barrier while importing/exporting goods.

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