

# FONASBA MEMBERSHIP ENQUIRY



## ENQUIRY RESPONSE FORM

<b>ORIGINATING ASSOCIATION:</b>	<b>APRAM (Morocco)</b>
<b>ENQUIRY DETAILS:</b> <i>APRAM are in discussion with the Moroccan authorities for the provision of waste incinerators for use by the port community, particularly for disposal of goods rendered unfit for human consumption by reason of being found in abandoned containers. They would therefore like to know how common-user incinerators are financed, managed and the procedure for requesting use of the facility by the ship agent</i>	<i>In general terms, please advise:</i> <ol style="list-style-type: none"> <li><i>1. Are cargoes of goods unfit for human consumption incinerated or disposed of in another way?</i></li> <li><i>2. If incinerators are used, are they usually financed by the port, by contracted waste operators or by another party? (Please specify)</i></li> <li><i>3. Who operates the incinerator? The port, the waste contractor, or another party? (Please specify)</i></li> <li><i>4. What is the process for booking use of the incinerator for the disposal of abandoned cargoes?</i></li> </ol>
<b>REPLY TO:</b>	<b>admin@fonasba</b>
<b>COPY REPLY TO:</b>	
<b>CLOSING DATE FOR REPLIES:</b>	<b>Friday, 20<sup>th</sup> August</b>
<b>RESPONDING ASSOCIATION:</b>	

### RESPONDING ASSOCIATION COMMENTS: (Please include any attachments)

Argentina	<ol style="list-style-type: none"> <li>Disposal of goods unfit for human consumption by reason of being found in abandoned containers should be incinerated.</li> <li>Incineration is carried out through waste operators hired by the person responsible for its disposal. Operators are private companies under a registration and authorization system regulated by Government. These companies assume the responsibility of giving the appropriate treatment to these wastes and also of managing their final disposition.</li> <li>Incinerator is operated by the company providing the service, which must have suitable equipment in order to be registered and authorized to render the service.</li> <li>Whoever is held responsible for eliminating the charges before the authorities, determined through judicial or customs procedure (Maritime Agency, Ship Company, Port Terminal or others), must hire at their expense a registered and authorized company that will provide the service and will document the</li> </ol>
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	incineration procedure established under national regulation as from the removal of the waste to its final disposal.
Bahrain	<ol style="list-style-type: none"> <li>1. The decision and method of disposal would be subject to the Ministry of Health discretion and subject various factors such as toxicity, contamination factors etc. The method can be incineration, landfill disposal etc.</li> <li>2. The incinerators are operated by private parties and charges are levied to the consignee. It is consignee's responsibility to dispose of the damaged goods.</li> <li>3. As mentioned in point 2.</li> <li>4. There are multiple incinerator companies /waste disposal companies available in Bahrain and there is no prior booking needed for such jobs.</li> </ol>
Brazil	<ol style="list-style-type: none"> <li>1. It depends on the type of goods. Currently, there are partnerships between Brazilian Customs, Universities and the private sector that aim to find safe and ecologically sustainable solutions for the destination of products unfit for consumption or use. For example, industries that make their facilities available free of charge for incineration and that transform this process into energy for their production furnaces. Another example are the products that go through the composting process to become fertilizer.</li> <li>2. When those responsible for the cargo are known, they are legally appointed to give the proper destination and, of course, to support the entire cost of this operation. When it is a typical situation of abandoned cargo, the Brazilian Customs bears the cost of incineration or, depending on the type of the cargo, solutions such as mentioned on answer 1 can be considered.</li> <li>3. The waste contractor.</li> <li>4. As in Brazil there is not a so-called "common-use incinerator" for this purpose, an answer does not apply here.</li> </ol>
Cape Verde	This is not applicable – there are no incinerator facilities whatsoever.
Costa Rica	<ol style="list-style-type: none"> <li>1. In our country, cargo of goods not suitable for human consumption are not incinerated by regulations of the Ministry of Health, they are disposed of in pits in sanitary landfills.</li> <li>2. The use of incinerators is not a practice in Costa Rica.</li> <li>3. n/a</li> <li>4. n/a</li> </ol>
Croatia	<ol style="list-style-type: none"> <li>1. Usual practice in Croatia is in another way because incinerators are located far away from the port. In practice, blast furnaces are used in cement plants and steel factories to destroy cargo.</li> <li>2. Very few incinerators are financed by waste operators and not located in the port area.</li> <li>3. Waste contractors.</li> <li>4. After cargo is abandoned, there is certain customs procedure to be followed. Official confirmation from the waste contractor should be obtained after cargo is disposed.</li> </ol>

Cyprus	Abandoned goods that are not sold under public auction are subject to disposal under the Department of Customs and Excise and such liability for the incineration of goods lies within the Customs Department, without passing additional costs to port users.
Denmark	<ol style="list-style-type: none"> <li>1. Disposal only, and the use of incinerators are banned in ports.</li> <li>2. N/A</li> <li>3. N/A</li> <li>4. N/A</li> </ol>
France	<ol style="list-style-type: none"> <li>1. Most of the time yes.</li> <li>2. Incineration service is on account of cargo, so paid by cargo owner or its representative.</li> <li>3. Incinerators are private companies.</li> <li>4. Appointment is set further to admin formalities and procedures are fully accomplished.</li> </ol>
Hungary	<ol style="list-style-type: none"> <li>1. We have very few abandoned containers loaded with cargo. There are only 1-2 cases in every 2-3 years. Usually abandoned containers are abandoned/refused to take over by cargo owner due to some problems non-EU conform cargo, or customs problems. Most of containers contain customs cargo, therefore National Tax and Customs authority has the right to arrest cargo and destroy cargo – usually for cost of cargo owner.</li> <li>2. Usually cost has to be covered by cargo owner, or some special cases (illegal cargos) by the State.</li> <li>3. Process of destroying cargo could be done with incinerator, or with other demolishing / dismantling method. There is incinerator controlled by National Tax and Customs offices, but there are some private places to dismantle/destroy cargo with supervision of authorities.</li> <li>4. As 99% of such cargos are bonded cargos, National Tax and Customs authority has the right to do the process.</li> </ol>
India	<ol style="list-style-type: none"> <li>1. The responsibility to dispose of Cargoes unfit for human consumption falls on the Cargo Custodian. He/ She has to bear all the expenses that comes with it.</li> <li>2. At present, no special apparatus for incineration are used at Indian ports. They are either burnt or buried by following conventional methods at garbage disposal areas.</li> <li>3. And normally, it the Accredited entities of the Pollution control board who carry out all disposals on the Cargo custodian's behalf.</li> </ol> <p>The attached Customs circular is for your reference and records. You will find the relevant clause No. xi at Page No.3 highlighted.</p>
Israel	<ol style="list-style-type: none"> <li>1. The reply is positive. The cargo is being destroyed within the belly of a special Pressing Truck under the control of the Customs.</li> <li>2. No cargo is incinerated. The Paying Party is always the Shipping Agent who pays to the Waste Destructing operator.</li> <li>3. Due to Environmental Limitations there are no incinerations in the ports.</li> <li>4. The Shipping Agent orders the Waste Destroying Truck and updates the Customs, The customs controls the whole process of the Good's Destruction.</li> </ol>

Italy	<p>In Italy there is a bit of confusion, because we still do not have a complete legislation on this issue, also because we know that the EU Regulations are under application in full and there is not yet a completely clear idea on how same will be implemented. Because of this the matter it is still left to each local administration, which tries to manage waste disposal locally and not according to a more general plan.</p> <p>We expect something to happen by end of this year but we do not have any specific rule to be applied as yet.</p>
Japan	<ol style="list-style-type: none"> <li>1. Unnecessary items in the container will be disposed of in accordance with the Marpol Convention.</li> <li>2. Disposal costs are paid by the shipper/consignee or the shipping carrier.</li> <li>3. The incinerator is operated by the local government.</li> <li>4. There is no specific regulation.</li> </ol>
Lithuania	<ol style="list-style-type: none"> <li>1. All cargoes of goods unfit for human are disposed.</li> <li>2. There are not any facilities at Klaipeda port. Disposal of good only on agent/receiver account.</li> <li>3. Agent/receiver should have agreement with disposal company which have approval of local custom.</li> <li>4. Cargo disposal strictly under custom supervision.</li> </ol>
Mexico	<ol style="list-style-type: none"> <li>1. It depends on the type of merchandise and the state in which it is, this is determined by the authority if they may be destroyed or incinerated.</li> <li>2. They are normally operated by private services providers.</li> <li>3. Normally, by private companies.</li> <li>4. The interested party makes the request in writing to the competent authority according to the merchandise to be incinerated, subsequently the authorization letter is presented to the person in charge of the incinerator. Finally, the time and the date on which the collection will take place is coordinated, the majority of cases is with the presence of customs authority or SADER authority to certify that the request was carried out.</li> </ol>
Mozambique	<ol style="list-style-type: none"> <li>1. Incinerated.</li> <li>2. Customs or the lines if containerized.</li> <li>3. Privately owned and operated.</li> <li>4. Customs has to approve if import process is pending.</li> </ol> <p>General rule – goods landed falls under customs direct control until cleared. If abandoned customs may elect to either sell at public auction or dispose them if unfit.</p>
Netherlands	<ol style="list-style-type: none"> <li>1. It depends on the type of goods and it is decided case by case. Close cooperation with the various governmental bodies (e.g. Customs, vet. checks, Port Master, etc.) is needed</li> <li>2. In principle the cargo owner is responsible for their cargo.</li> <li>3. Private company.</li> <li>4. Cargo owner initially will start the process otherwise it will be taken over by 3rd party that is the cargo in their possession at that moment.</li> </ol>

Portugal	<ol style="list-style-type: none"> <li>1. It depends and it is analysed case by case. The management of cargo residues is a complicated and generally costly process, as immediate destruction is required which increases costs. There is also the fact that we have to request authorization to discharge into the incinerator, which is not always granted.</li> <li>2. The costs of operation, collection and transport to the final destination are charged to the ship. The costs are analysed case by case.</li> <li>3. The Port of Lisbon does not have equipment to carry out the treatment of waste on the pier. The waste is transported to waste centre.</li> <li>4. The request for waste collection implies that a request is made on APL's informatic system – JUL - by the shipping agent, with the date and time for unloading.</li> </ol>
Russia	<ol style="list-style-type: none"> <li>1. It's disposed in a different way. Abandoned cargo is taken out of the port area to special fields for destruction.</li> <li>2. N/A</li> <li>3. N/A</li> <li>4. N/A</li> </ol>
Slovenia	<ol style="list-style-type: none"> <li>1. Cargo of goods unfit for human consumption which is collected is treated as veterinary waste first category. Upon collection this is thermally processed and turned into paste.</li> <li>2. All waste collection must be settled by who ordered.</li> <li>3. In the port there is no incinerator, if necessary, waste contractor is hired.</li> <li>4. Customs office must agree with the disposal. After that agent must hire a disposal company.</li> </ol>
South Africa	<ol style="list-style-type: none"> <li>1. It could be incinerated chemically treated and buried,</li> <li>2. The contracted waste disposal company.</li> <li>3. The waste contractor.</li> <li>4. The contractor is appointed and registered by the Port Authority and users are only permitted to appoint the listed company for any removal.</li> </ol>
Sweden	In Sweden we have a completely different system. We leave almost everything for recycling and don't use incinerators.
UK	<ol style="list-style-type: none"> <li>1. Products of animal origin will be incinerated, products of plant origin may go to land fill – decision will be made by local (to Port) port / plant health authority on disposal method they will allow</li> <li>2. Incinerators are operated by private contractors under supervision of local port / plant health (cargoes for destruction are usually escorted by Port / Plant health officer to the incinerator</li> <li>3. As 2) above</li> <li>4. Arrangements will be made through local Port / Plant Health who will not release cargo until day of destructions and as described above will often escort truck to the incineration point. Costs (to the ships agent) will either come through Port Health or direct from contractor (different port health authorities have different procedures)</li> </ol>

USA	To the best of my knowledge, incinerators are no longer allowed to be used at US ports.
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F.No.450/179/2017-Cus. - IV  
Government of India  
Ministry of Finance  
Department of Revenue  
(Central Board of Indirect Taxes and Customs)  
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Room 227B, North Block  
New Delhi, dated the 3<sup>rd</sup> December, 2018

To

All Principal Chief Commissioner/Chief Commissioner of Customs/Custom (Preventive),  
All Principal Chief Commissioner/Chief Commissioner of Central Tax and Customs,  
All Principal Commissioner/Commissioner of Customs /Custom (Preventive),  
All Principal Commissioner/Commissioner of Central Tax and Customs.

Madam/Sir,

**Subject: Procedure for disposal of un-claimed/un-cleared cargo under section 48 of the Customs Act, 1962, lying with the custodians –reg.**

Kind reference is drawn to Board's Circular No. 50/97 dated 17.10.1997, 11/98-Cus. dated 11.02.1998, 5/2000-Cus. dated 13.01.2000, 7/2004-Cus. dated 28.01.2004, 50/2005-Cus. dated 01.12.2005, 52/2005-Cus. dated 09.12.2005 and 11/2006-Cus. dated 16.02.2006 regarding procedure and expeditious disposal of unclaimed/uncleared cargo under section 48 of the Customs Act, 1962.

2. Despite the issuance of many circulars, the feedback relating to disposal of unclaimed/uncleared cargo at all Customs locations has not been fully satisfactory. Sometime back, Central Vigilance Commission had appointed a committee of Chief Vigilance Officers to examine the reasons of delay in disposing of unclaimed/un-cleared cargo. The committee has observed inordinate delays, complete breakdown of system, substantial loss to the government revenue etc. Accordingly, Board has reviewed the procedure with regard to disposal of un-cleared/un-claimed cargo under section 48 of the Customs Act, 1962 in consultation with CONCOR. The revised procedure for disposal of such cargo shall be as under: -

3. Following procedure with regard to expeditious disposal of un-claimed/un-cleared cargo lying with custodians, whether in the private or public sector, under section 48 of the Customs Act, 1962, is prescribed:

- (i) The concerned custodian of the Customs Station shall prepare a list of cargo lying un-claimed/ un-cleared in the bonded area of the Customs Station for more than **30 days** from the date of arrival of such cargo in the Customs Station. This list shall be sent to the jurisdictional Commissioner of Customs to intimate as to whether listed goods/cargo can be taken up for disposal through public auction. The list will contain the following details:
  - (a) Bill of Lading No. and date
  - (b) Container number
  - (c) Description of goods
  - (d) Weight
  - (e) Name of the consignor (exporter) and consignee (importer).

These details will be furnished as per the information available from the IGM message of ICEGATE.

- (ii) The custodian shall simultaneously update the list with importer's name and address. In those cases, where the address of the importer is not mentioned in the IGM message from ICEGATE, a notice shall be sent to the respective Shipping Line requesting them to give address of the importer/consignee within one week of receipt of the notice.

The Shipping Line will be obliged to respond with the relevant details within 7 days of receipt of letter from the custodian. The Shipping line will also be requested by the custodian to contact the importer and ask him to clear the cargo from the concerned Customs Station.

- (iii) Jurisdictional Commissioner of each customs station shall issue instructions to the officers and staff posted at the station to ensure that details of all goods/shipments which are put on hold for investigation or otherwise by DRI/Preventive/SIIB or any other agency are furnished to the Disposal branch of the customs station and the concerned custodian immediately, under proper receipt and acknowledgement. This will ensure that the Disposal branch and custodian are at all times aware of the goods/shipments/containers for which 'No Objection Certificate' from the concerned agency would be required before initiating disposal process.
- (iv) From the said list, Customs will segregate shipments which are disputed/stayed shipments required to be retained for investigation/adjudication/court procedure etc. Customs shall also segregate shipments containing motor vehicles or other goods requiring Licence/Permission/ Certification from DGFT or any other Department. Customs will furnish to the custodian **within 10 days** of the receipt of the said list, the details of shipments not to be included in the auction process. Customs shall also choose 10% shipments from the list of shipments segregated for inclusion for the auction process for which detailed inventory shall be made in their presence for sample check. This will be conveyed to the concerned custodian along with the list of shipments/containers which are required to be retained.
- (v) (a) Based on the intimation received from Customs, the concerned custodian will issue a notice to importer under Section 48 of the Customs Act 1962 advising him to clear the goods within **10 days** from the date of issue of the notice failing which the goods will be placed in public auction. Notice will be sent to the importer on the address as given in IGM message available with the custodians, or the address ascertained from the shipping lines in terms of the para 3 (ii) above.  
(b) A copy of the notice issued to the importer under section 48 of the Customs Act, 1962 shall also be affixed on the notice board of the Customs Station.
- (vi) The concerned custodian, in the next **20 days** shall prepare a detailed inventory of the shipments which are not required to be retained by Customs for any purpose. In doing so, they will associate the Customs in 10% of the consignments for which Customs has already intimated that inventory has to be drawn in their presence for sample check.
- (vii) Within **7 days** of drawing up of inventory, the concerned custodian shall approach the jurisdictional Customs authorities along with the said inventory seeking No Objection Certificate (**NOC**) in respect of all containers which are to be taken up for auction through the e-auction/tender. The inventory should have a detailed description of the items, to enable Customs to easily identify the regulatory requirements in respect of the consignments mentioned in the inventory and it shall clearly indicate variation in description of goods with respect to description of goods mentioned in the list already forwarded as per para 3 (i), above.
- (viii) Customs shall examine the list and within **15 days** of receipt of such request, intimate to the custodian, details of the listed shipments which can straightway be taken up for auction as they do not require any regulatory clearances (NOC from FSSAI, Drug Controller, BIS etc.), or do not need any chemical analysis to identify the contents and fitness for consumption/usage. The consignments for which such unconditional NOCs are issued by Customs, shall be taken up for auction by e-auction through MSTC to ensure maximum outreach and participation. In order to ensure quick and regular turnover, the concerned custodian shall attempt to hold at least one auction each month. In case the list is incomplete and does not have the complete details for Customs to clearly pinpoint the regulatory requirements, Customs shall indicate the deficiencies in the list, within this period of **15 days**.



- (ix) In case regulatory clearances from agencies other than Customs are required such as NOC from FSSAI, Drug Controller, BIS etc., or samples of the consignment are required to be chemically analysed to identify the contents and fitness for consumption/ usage, Customs shall identify such requirement and intimate to the concerned custodian within **15 days** of the receipt of complete list. The concerned custodian will then approach the jurisdictional Customs officer for assistance in obtaining the said regulatory clearance. If in this process, chemical analysis is required, Customs shall draw the samples and forward the same to the respective agency for testing. The required testing fees or such other charges required to be paid to the concerned agency, shall be paid directly by the concerned custodian to the said agency. The concerned testing agency will be required to submit the test reports within 15 days of receipt of the samples.
- (x) NOC for such consignments shall be issued by Customs only after receipt of the required clearance/result of chemical analysis from the concerned agency, without which the concerned custodian shall not put the said consignment for auction.
- (xi) **In case the result of chemical analysis, or report from FSSAI, Drug Controller, Plant Quarantine etc. indicate that the sample is not fit for consumption/usage, Customs shall inform the concerned custodian about the need for destruction of the same and the concerned custodian shall arrange to destroy the same at their expense, after obtaining the requisite environmental and other clearances as per law. Date of the proposed destruction shall be intimated to Customs at least 15 days in advance, to enable the representative of the Customs to witness the same, should the need for the same be felt.**
- (xii) The value of the shipment/lot included in the auction list shall be fixed in next 7 days by a panel of Govt. approved valuers appointed by the concerned custodian which shall include an expert on the product line without involvement of the local Customs authorities. The values assessed by the approved valuers appointed by the custodians shall form the “reserve price”.
- (xiii) The concerned custodian shall fix a date immediately after assessment of value of such shipment/lot, for holding the auction/tender and communicate such date to the jurisdictional Commissioner of Customs and the Assistant/Deputy Commissioner, Disposal branch of the Customs Station. The Assistant/ Deputy Commissioner shall nominate, if necessary, an officer not below the rank of Superintendent/Appraiser to witness the auction/tender. Customs shall not withdraw any consignment at the last moment from the auction/tender except with the written approval of the jurisdictional Commissioner of Customs.
- (xiv) The shipment/ lot in respect of which NOC has been given by Customs, shall be taken up for auction. All bids of value equal to or more than the reserve price, or those up to 5% less than the reserve price, shall be treated as successful bids for sale of goods. Remaining shipments/ lots of the list shall again be taken up for second auction against the same reserve price. In case, shipments or lots, where bids are not received up to the reserve price, shall again be taken up for third auction against the same reserve price. Unsuccessful shipments/ lots of third auction, in respect of which three auctions have already taken place, shall be considered for fourth auction against the reserve price fixed before the first auction of such shipments/lots, however, in the fourth auction such shipments/lots are to be necessarily sold for the highest bid regardless of the reserve price fixed. In the event of the shipments/ lots not being disposed of in the first auction, subsequent auction/ tender should be conducted in a time bound manner and such shipments/lots should be taken up in the next auction. Custodian shall furnish shipment/ lot wise bids received in respect of each auction to the jurisdictional Commissioner of Customs for approval.
- Further, if these goods remain unsold and pass into the category of landed-more than one-year prior, the concerned custodian can sell the same following the independent procedure as detailed in para 3 of CBIC Circular No. 50/2005-Cus. dated 01.12.2005 without any reference to Customs, and adjusting the number of auctions/ tenders to which the lot was already subjected to against the prescribed number of four such auctions/ tender. However, even for such goods the requisite NOC from Customs will be obtained by the concerned custodian following the procedure laid down in paras above.
- (xv) After the successful bidder has been informed about the result of the auction, a consolidated bill of entry, buyer-wise will be filed with the Customs in the prescribed format by the

concerned custodian for clearance of the goods as per Section 46 of the Customs Act 1962 read with Un-Cleared Goods (Bill of Entry) Regulations, 1972 (Regulation 2 & 3).

(xvi) (a) The proper officer of Customs shall assess the goods to duty in accordance with the extant law within 15 days of filing of the Bill of Entry and after assessment inform the amount of duty payable to the concerned custodian.

(b) The auctioned goods shall be handed over to the successful bidder after assessment and out-of-charge orders given by the proper officer, on payment of dues.

4. The above procedure shall be applicable to cargo, which are unloaded at a Customs Station after being brought from outside India on or after 01.04.2018 and which fall in the category of 'unclaimed/un-cleared' in terms of section 48 of the Customs Act, 1962. It would also be applicable to all unclaimed/un-cleared goods brought from outside India before 01.04.2018 (unclaimed/ un-cleared for a period not exceeding one year) in respect of which:

(a) auction process has not started yet; or

(b) list of cargo proposed for auction has been sent to Customs by the custodian but Customs has not yet provided the necessary information as referred in the para 3 (i) and 3 (iv) above.

5. The sale proceeds of the auction shall be disbursed as per Section 150 of the Customs Act 1962.

6. In case the entire process of auction is not concluded within 180 days of the commencement of auction, the custodian shall inform the bidder about further extended time which may be required to conclude the auction process. Where ever, the bidder indicates his unwillingness to wait further, his successful bid will be cancelled and the earnest money, if any deposited with the custodian by the bidder will be returned to the bidder under intimation to Customs. Otherwise, the auction process shall be concluded within the extended time conveyed to the bidder.

7. Wherever, any amount of earnest money is deposited by the bidder with the custodian, the same shall be refunded to the bidder within one week of announcement of auction results where the bid fails to succeed in the auction.

8. The above instructions may be brought to the notice of all concerned immediately through appropriate Public Notice. You are also requested to issue suitable standing order, for guidance of the officers. Difficulty, if any, in implementation of the above directions may be brought to the notice of the Board.

9. Hindi version will follow.

Yours faithfully



(Zubair Riaz)

Director (Customs)