

# WCO Custom Brokers Guidelines

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August 2017

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WORLD CUSTOMS ORGANIZATION  
ORGANISATION MONDIALE DES DOUANES

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## I. Introduction

1. Customs brokers<sup>1</sup> generally act as an intermediary between traders and Customs in Customs clearance processes. Brokers' knowledge of Customs laws and processes in addition to their work experience in the trade supply chain can be useful for both traders and Customs. While brokers support traders by providing all necessary documentation and undertaking formalities related to cargo clearance, Customs brokers are also expected to maintain government interests by ensuring compliance with Customs and other regulatory requirements and the collection of appropriate duties and taxes.
2. In line with ongoing Customs reforms and to further enhance their service delivery, some Customs brokers are transitioning towards a more comprehensive consultancy and advisory role, rather than being confined to merely submitting declarations/documents for Customs release and clearance. They also collaborate with other actors in the supply chain on behalf of traders, such as port/terminal operators, freight forwarders, carriers/agents, warehouse operators and transporters. In some cases, brokers have even expanded to provide many other services in the supply chain, such as cargo handling, warehousing, multi-modal transport carriage, packaging, consolidation, insurance coverage, delivery services, as well as providing consultancy in compliance and dispute resolution.
3. With accession to the RKC, more and more Members are making the use of a Customs brokers' service "optional". However, mandatory use of licensed brokers' services is still prevalent in many countries, for example in the WCO Americas/Caribbean Region or in some African countries, the latter following rules stipulating that only licensed brokers are allowed to process all import/export clearance, except for some specified goods.
4. In contrast to mandatory broker regimes, other countries follow free market principles where the engagement of Customs broker services or otherwise is the commercial decision of the trader. Cost effectiveness and quality of professional service based on free market principles are key factors influencing such a decision.
5. There are varied licensing and regulatory models adopted by Customs administrations to authorize legal and/or natural persons to act as Customs brokers. Many administrations have specific licensing requirements allowing a party to act as a broker, while others simply allow anyone to establish a free business and take up the job of a clearing agent on behalf of others.
6. Some Members permit a licensed Customs broker as an individual to operate and practise his/her profession without having any linkage to a Customs brokerage entity, whereas some others only allow the licensed brokerage entity to carry out such activities. In some

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<sup>1</sup> The WCO "*Glossary of International Customs Terms*" defines the Customs clearing agent as a person who carries on the business of arranging for the Customs clearance of goods and who deals directly with the Customs for and on behalf of another person.

1. Examples of Customs clearing agents are Customs agents, Customs brokers and freight forwarders.

2. Some countries require that Customs clearing agents or Customs brokers be approved or licensed by Customs.

3. See also the term "Third party" (Chapter 2 of the GA to the Revised Kyoto Convention).

cases, a periodic (such as annual, five or ten years) renewal/validation of the licence is required, while in other cases the licence remains valid until suspended/revoked on specific grounds. Some administrations issue port-specific licences and identity cards to brokers to transact business. They need to have an identity card and/or endorsement of their licence for each of the ports where they want to transact business.

## II. Framework for Customs brokers

### a. Optional use

7. The Revised Kyoto Convention (RKC) makes the usage of Customs broker services “optional” for the importer/exporter. Standard 8.1 of the General Annex (GA) to the RKC provides that persons concerned shall have the choice of transacting business with Customs either directly or by designating a “third party” to act on their behalf. Standard 8.2 to the GA to the RKC calls for the national legislation to specify the conditions for persons to act as third parties and to stipulate their liability for any duties and taxes and for any irregularities in compliance with Customs requirements. It further stipulates that licensing requirements for Customs brokers should be transparent, non-discriminatory and reasonable.
8. Standard 8.3 of the GA to the RKC requires Customs not to impose more stringent requirements on anyone preferring to deal directly with Customs rather than employing a third party for any particular transaction or in general. Additionally, Standard 8.4 states that a person designated as a third party shall have the same rights as the person who designated him in those matters related to transacting business with Customs.

#### **Box 1. Chapter 8 of the GA to the RKC**

##### **8.1. Standard**

Persons concerned shall have the choice of transacting business with the Customs either directly or by designating a third party to act on their behalf.

##### **8.2. Standard**

National legislation shall set out the conditions under which a person may act for and on behalf of another person in dealing with the Customs and shall lay down the liability of third parties to the Customs for duties and taxes and for any irregularities.

### **8.3. Standard**

The Customs transactions where the person concerned elects to do business on his own account shall not be treated less favourably or be subject to more stringent requirements than those Customs transactions which are handled for the person concerned by a third party.

### **8.4. Standard**

A person designated as a third party shall have the same rights as the person who designated him in those matters related to transacting business with the Customs.

### **8.5. Standard**

The Customs shall provide for third parties to participate in their formal consultations with the trade.

### **8.6. Standard**

The Customs shall specify the circumstances under which they are not prepared to transact business with a third party.

### **8.7. Standard**

The Customs shall give written notification to the third party of a decision not to transact business.

9. Further, Chapter 3 of the General Annex to the Revised Kyoto Convention sets out standards regarding the declarant. Standard 3.6 stipulates that national legislation must prescribe who is entitled to be a declarant and the conditions under which the person can act as a declarant. Standard 3.7 provides that any person who has the right to dispose of the goods can act as declarant. The RKC Guidelines go on to state that in order to facilitate trade, this should not be taken as referring solely to the owner of the goods, but should be interpreted as broadly as possible, in accordance with national legislation, to include third parties acting on behalf of the owner such as the carrier, the consignee, a forwarding agent or a Customs broker, express courier in door-to-door services, etc.
10. The RKC clearly set out that the use of brokers should not be mandated by Customs/governments; rather it should be determined by market forces and offered as a choice to traders.

**Box 2. Chapter 3 of the GA to the RKC**

**3.6. Standard**

National legislation shall specify the conditions under which a person is entitled to act as declarant.

**3.7. Standard**

Any person having the right to dispose of the goods shall be entitled to act as declarant.

11. Article 10.6 of the WTO Agreement on Trade Facilitation (TFA) provides that, from the entry into force of the Agreement, Members shall not introduce the mandatory use of Customs brokers. Article 10.6 of the WTO TFA also requires that Members shall apply transparent and objective rules for licensing.

**Box 3. Article 10.6 of the WTO TFA**

**Use of Customs Brokers**

6.1 Without prejudice to the important policy concerns of some Members that currently maintain a special role for customs brokers, from the entry into force of this Agreement Members shall not introduce the mandatory use of customs brokers.

6.2 Each Member shall notify the Committee and publish its measures on the use of customs brokers. Any subsequent modifications thereof shall be notified and published promptly.

6.3 With regard to the licensing of customs brokers, Members shall apply rules that are transparent and objective.

## b. Licensing Criteria

12. Licensing requirements for Customs brokers, where applicable, vary from one country to another and depend on national legislation and domestic needs. Members' licensing requirements broadly include a combination of the following: sound knowledge of Customs and other laws relating to border regulatory requirements, knowledge of trade-related transport and finance matters, demonstrated compliance record (clean track records in terms of security and other compliance matters), financial capacity or solvency, minimum educational qualification, minimum work experience, in some cases a written and/or oral examination and even a minimum number of hours of training, electronic transmission capability, financial guarantee (surety bond, security deposit), and being incorporated or established in the country/citizenship or residency. Some other requirements range from an oral interview or knowledge of the national language to the moral character of the applicant. The reasoning behind these requirements is to secure duties and taxes as well as to ensure continued compliance with Customs and other regulatory requirements.
13. By obtaining a licence/permission through a specified process, Customs brokers are allowed to practise while enabling Customs administrations, or relevant licensing government agencies, to have a complete list of brokers with verified credentials. Audits/checks of this list of registered Customs brokers at prescribed intervals ensure that those who are licensed are maintaining their standards and administrations can, therefore, focus on those brokers with a poor compliance record.
14. The first aspect to consider is who should be responsible for meeting the Customs broker licence requirements. Options include the regulation of individuals, the regulation of businesses with or without specified requirements for qualified individuals or some combination thereof.
15. What are the criteria that should be met before a licence is issued? It is critical that such criteria be completely objective, transparent, non-discriminatory, and measurable. There is no merit in establishing subjective criteria or criteria subject to interpretation since these can lead to a lack of transparency and an unfair application. Where Customs brokers are regulated/licensed, there should be a standard list of criteria.
16. In some countries, requirements are imposed only on those who provide services as third parties while in others there are also requirements that apply to individuals who perform services on their own behalf or that of their employers.
17. Additionally, imposing conditions concerning conflict of interest might be favoured as a policy option. A Customs Administration should not permit its employees, while employed, to operate or be employed by a Customs brokerage business. They may wish to go further and impose conditions relating to the control or direction of partnerships or corporations or importing or exporting businesses that prohibit Customs Administration employees from participating in such activities. A Customs administration may allow its employees to carry out broker activities only after a specified number of years of their retirement or resignation from service.

18. For business entities, operating as Customs brokers, evidence of financial stability (the past and current financial statements) should be provided. In addition, in cases where payment will be made on behalf of their clients, Customs brokers should typically provide a financial guarantee or security deposit in accordance with requirements set out in legislation or regulation.
19. Some fundamental principles and examples for licensing individuals and businesses as Customs brokers are set out below :
20. An individual is qualified for a licence if the individual,
  - meets the knowledge requirement and has passed the Customs broker licensing examination with a grade of minimum specified percentage,
  - has two years of experience working for a licensed Customs broker,
  - has sufficient financial resources to conduct business in a responsible manner,
  - has electronic transmission capability (where required) - Customs Broker Automated Systems should be able to interface with Customs/government systems,
  - is eligible to meet or has met the country's business registration requirements.
21. A partnership, when composed of individuals, is qualified for a licence,
  - if one of the individuals meets the knowledge requirement and has passed the Customs broker examination with a grade of minimum specified percentage,
  - if the partnership has sufficient financial resources to conduct business in a responsible manner,
  - if none of its partners is bankrupt,
  - if none of its partners has been found guilty within the previous three years (or any other specified period) of any violation of any legislation relating to importation or exportation,
  - has electronic transmission capability (where required) - Customs Broker Automated Systems should be able to interface with Customs/government systems,
  - if eligible to meet or has met the country's business registration requirements.
22. A partnership, when composed of corporations, is qualified for a licence if at least one of the corporations is qualified for a licence.
23. A corporation is qualified for a licence
  - if the corporation has at least one employee who meets the knowledge requirement and has passed the Customs broker examination with a grade of minimum specified percentage,
  - if the corporation has sufficient financial resources to conduct business in a responsible manner,
  - if a majority of its directors are citizens or permanent residents of the country,
  - if it is incorporated in the country,
  - if none of its directors is bankrupt,
  - if none of its directors has been found guilty within the previous three years (or any other specified period) of any violation of any legislation relating to importation or exportation,
  - has electronic transmission capability (where required) - Customs Broker Automated Systems should be able to interface with Customs/government systems.

24. In growing digital economy, Customs brokers are deeply involved in, and dependent upon, the automated systems that drive efficiency, speed, accuracy, standardization, and compliance. Therefore, the requirement for a robust Customs Broker Automated System that is capable of interfacing with Customs/government systems is a critical element in the overall clearance process, especially in a Single Window environment.
25. The following are detailed practices relating to possible licensing criteria, which may be considered, as appropriate :

#### **Application for Licence**

26. The process of issuing licences must be efficient, transparent and fair. In designing a process for the issuance of licences, the Customs Administration must consider the resources associated with the various options and it must consider partnerships with others who could play a role in the investigation/verification and registration processes. In some countries, the investigation/verification process requires the involvement of law enforcement authorities. Coordination with the business registration authority might also be a useful consideration.
27. The application for a licence should include the following information :
  - Where the applicant is an individual,
    - o the applicant's full name
    - o the business name and address.
  - Where the applicant is a partnership composed of individuals,
    - o the full name of each partner
    - o the names of the partners who have passed the Customs broker licensing examination and maintained their qualifications
    - o the business name and address.
  - Where the applicant is a partnership composed of corporations,
    - o the legal name of each partner
    - o the head office address of each partner
    - o the name of each officer and the directors of each partners
    - o the names of the officers of each partner who have passed the Customs broker licensing examination and maintained their qualifications
    - o the business name and address.
  - Where the applicant is a corporation
    - o the legal name of the corporation
    - o the head office address of the corporation
    - o the name and address of each officer or director
    - o the name of each officer who is a Customs specialist
    - o the names of the officers who have passed the Customs broker licensing examination and maintained their qualifications
    - o the business name to be used if other than the legal name of the corporation.

### **Licensing Fees**

28. Typically, a non-refundable application fee must accompany the application filed with the Customs Administration.

### **Investigation/Verification of the Applicant**

29. An investigation will ascertain facts relevant to whether the applicant is qualified including consideration of the accuracy of information provided in the application.

### **Issuance of Licence**

30. Where all Customs broker licence requirements have been met, the designated Customs Administration officer will issue a Customs broker licence and publicize its issuance.

### **Business Registration**

31. A holder of a Customs broker licence must be registered as a commercial entity in accordance with the laws and regulations of the country.

### **Denial of Licence and Appeal**

32. If the Customs Administration finds that a licence should not be issued, written notice of the decision providing reasons should be provided to the applicant. The applicant, whose licence application has been refused, should have a right to appeal that decision to an appellate authority or tribunal before approaching a court of law.

## **c. Scope of Practice**

33. The function of a Customs broker also varies greatly among Members. The scope of their service is normally determined by licensing/regulatory frameworks and conditions laid down therein and as agreed between the trader and the broker. It encompasses a wide spectrum of activities, notable among them are : the preparation of documents related to release and clearance on behalf of traders; submission of declarations and other information to Customs and other government agencies; payment of duties and taxes on behalf of traders; samples before the lodging of a Customs declaration; dealing with refunds and adjustments on behalf of traders; accounting of goods and the entry of goods; liaising with other government agencies for licences, permits and other requirements; assistance in post clearance audits; representation of clients in dispute resolutions; consultancy/advice to traders in meeting various regulatory requirements.
34. The scope of practice generally relates to services that require knowledge and skills best acquired through education and training and where performance of these services by persons without such knowledge and skill can cause harm (financial or otherwise) to traders and Customs alike. The purpose of the scope, in this instance, is to determine which specific services can be offered only by licensed Customs brokers.

35. The following is a list of services that could be specified within a licensed Customs broker scope of practice:
- a. Preparation of import, export and warehouse documents required by Customs and other government agencies,
  - b. Completion and submission of Customs declarations for import, export and transit,
  - c. Completion and submission of Customs declarations related to warehousing,
  - d. Completion and submission of other import or export documents or data required by government authorities,
  - e. Payment of duties, taxes and other regulatory charges and fees on imports and exports,
  - f. Arranging and being present for the examination of goods by Customs authorities and other government agencies,
  - g. Filing of duty and tax refund requests and amendments to Customs declarations.
  - h. Consultation on matters relating to classification, valuation, and determination of origin for imports and exports and on matters relating to government requirements for imports and exports.
  - i. Maintenance of records and supporting documents and data relating to import, export, and transit transactions as required by law.
36. Any person who intentionally transacts business within the specified scope of practice, as a third party without complying with the licensing/regulatory requirements, should be liable for administrative and penal proceedings.

#### **d. Brokers' Obligations and Liabilities**

37. While performing several activities on behalf of traders, licensed Customs brokers, where applicable, have to meet several obligations and liabilities depending on the national legislation and regulations of the country in which they are licensed.
38. Some administrations also prescribe certain licensing obligations for brokers in respect of business ethics and professional conduct; due diligence towards clients; and/or accuracy of information provided.
39. Normally, licensed Customs brokers may act only under the proper authorization or agreement from/with the trader within the licensing/regulatory framework. Some of their obligations and responsibilities are :
- to ensure compliance with Customs and other regulatory requirements,
  - to advise their clients on various compliance requirements,
  - to take reasonable measures to follow 'Know Your Customer' (KYC) principles, including the verification of track record and identity of his client,
  - to exercise due diligence to ascertain the correctness of any information and not submit or procure or assist in the filing of any claim, or of any document, known by the broker to be false,
  - to be liable (jointly and severally) for the payment of duties, taxes and other charges on behalf of their clients,

- not attempt to influence the conduct of any official concerning any matter pending consideration,
- not allow his licence, permit or name to be used by or for any unlicensed person (including a broker whose licence or permit is under suspension), other than his own employees authorized to act for him, in the solicitation, promotion or performance of any Customs business or transaction,
- not procure or attempt to procure directly or indirectly, information from Government records or other Government sources of any kind to which access is not granted by the proper authority,
- to maintain and preserve records relating to his representation for a specified period of time for Customs audit/inspection,
- to maintain high professional standards, transparency, efficiency, and business ethics,
- to discharge his duties with the utmost speed, efficiency, and integrity, ensuring a high level of service delivery standards,
- to cooperate with Customs and other government agencies in improving compliance,
- to meet all terms and conditions, mentioned in the contract between the Customs broker and the trader.

### **III. Knowledge Base of Customs Brokers**

#### **a. Requirements**

40. The benefits that arise from the work carried out by Customs brokers and the value offered to traders in the efficient clearance of goods and to the Custom Administration and other government agencies in terms of ensuring compliance with all regulatory requirements as well as the collection of legally due duties and taxes largely depend upon a specialized education and professional development programme that –
  - i. enhances the rate of compliance with national import and export requirements, including revenue collection and safety and security requirements,
  - ii. ensures that the services provided to importers/exporters are of value in helping them meet both their business needs and their Customs and other regulatory obligations, and
  - iii. contributes to the efficiency of the cross-border movements of goods.
  
41. Those providing Customs broker services must have knowledge of the following (but not limited to) :
  - i. Principal legislation, regulations, and policies governing the import and export of goods,
  - ii. the Harmonized Tariff Classification System,
  - iii. Tariff Treatments and Trade Agreements,
  - iv. Valuation,
  - v. Product quality,
  - vi. Origin - Marking of Goods,
  - vii. Corrections and Refunds/Adjustments,

- viii. Goods requiring permit/certificates and Prohibited Goods,
- ix. Anti-dumping and countervailing duty,
- x. Reporting, releasing and formal entry of goods,
- xi. Payment of duties and taxes,
- xii. Export procedures including drawback,
- xiii. Data and documentary submission requirements,
- xiv. Other regulatory requirements,
- xv. Border procedures of neighbouring countries and major trade partners,
- xvi. Ethical business practices.

42. If the provider of Customs broker service is a business entity, additional knowledge requirements would include :

- i. Licensing legislation/regulation and related rules/procedures,
- ii. Agency and other contractual agreements,
- iii. Financial Management,
- iv. Human Resource Management,

### **b. Management of Customs brokers examinations**

43. An examination (oral and/or written) as part of licensing requirements of a Customs broker is a useful process to test the knowledge of the applicants. This examination can act as an initial screener of Customs brokers, which could increase compliance rates because of the level of knowledge of Customs and other related laws and procedures required to pass the examination. One option could consist of Customs administrations, Customs brokers associations, and other relevant government agencies working together to produce a comprehensive examination system that would evaluate the knowledge of the applicants on all applicable laws concerning Customs clearance, declaration, and requirements as well as those of other relevant agencies.

44. Generally, the responsibility for the examination's content and organization should lie with the Customs administration, as it is the the most competent border agency when it comes to the clearance of goods, conveyances and people. However, in a few countries other government agencies, brokers associations or bodies comprising representatives from Customs and brokers associations and the private sector are responsible for organizing such examinations.

45. When taking decisions regarding the organization of Customs brokers' examinations, the way in which the courses are developed and delivered must be taken into consideration. A Customs Administration may choose to develop and administer the examination(s) in-house or it may choose to outsource or a combination thereof. Should the examinations be organized by a party other than the course content developers in partnership with experienced knowledge assessment designers, sufficient caution should be exercised to ensure that the examination fairly evaluates the candidate's knowledge in line with the curriculum? The administrator of the exams also must be able to conduct the exams in a fair and accessible manner suited to the delivery method selected, whether they be in-person, online, written, oral or both or some combination thereof. There should be a link

between the format of the examination and the way in which it is marked: resources available for marking must be taken into consideration when deciding on the format of the examination and marking must be done in line with the format of the examination and must reflect integrity across the whole process.

46. The Customs Broker Licensing examination can also be developed in collaboration with the association representing Customs brokers, where one is in place and offered on a regular, scheduled basis. Notice of the time and place of an examination should be posted on the website and in the public areas of Customs checkpoints not less than 60 days before the date of the examination. If a fee is needed to take the examination, it should be processed along with the application. Examination results should be provided to candidates in writing within a specified time period following the examination.

#### **Proof of Financial Stability**

47. Where there is no provision for release of goods prior to payment, the applicant should provide the Customs Administration with proof of sufficient funds to set up operation as a Customs broker. Where release prior to payment is permitted, the Customs broker should deposit a financial security with the Customs Administration in order to protect the Customs Administration against any loss related to non-payment of monies owing on imported or exported goods. The security deposited can be in any approved form including cash, a certified cheque, a surety bond or a bank guarantee.

## **IV. Brokers' Compliance and Performance Management**

### **a. Key Principles**

48. Once licensed/authorized as applicable, a Customs broker has obligations that must be met for in order to retain its licence. In most countries, Customs brokers rely on the data provided by the importer or exporter to complete the import or export declarations. As such, it is the importer or exporter who is liable for the accuracy of the information submitted to Customs. However, this does not mean that the Customs broker is without responsibility for its interactions with the Customs Administration.
49. A proper regulation of Customs brokers does not end with the issuance of a licence. How can the Customs Administration ensure that knowledge and performance standards are maintained and that the quality of work performed by Customs brokers continues to be based on up-to-date knowledge of current laws, procedures and other requirements? What rules can be put in place to assure clients that their Customs brokers have the necessary knowledge and resources to properly transact Customs business on their behalf?
50. In some countries, after the initial licence issuance, there is no management by Customs of requirements for Customs brokers beyond payment of a licence renewal fee, maintenance of appropriate levels of financial security, updating changes in contact information and timely payment of duties and taxes on behalf of their clients. Suspensions

and cancellations are resorted to only in extreme cases where there has been a successful criminal prosecution of a Customs broker. In other countries, there are requirements relating to ongoing professional development/continuing education for the key personnel in Customs brokerage firms. And in yet others, there are requirements that key personnel put a concept known as “responsible supervision and control” into place within their Customs brokerage operations.

51. Those responsible for the ongoing regulation of Customs brokers should consider establishing national standards of professional practice that protect client and Customs Administration interests while actively acknowledging that the knowledge and skills required in Customs brokerage are best acquired and developed through ongoing professional development including courses, seminars and events provided by brokers associations as well as corporate in-house training, informal on-the-job training activities, and tertiary education at recognized national education institutions. Additionally, continued financial stability and Customs compliance (measurable standards) should be evident. In the case of the latter, such standards would be based on various aspects of a Customs Administration’s laws, policies and practices.

52. The following are examples of good practice relating to Customs broker regulation :

**Licence Display**

53. A Customs broker should display his licence at his business premises and provide evidence of it on request.

**Terms and Conditions**

54. A Customs broker must maintain the eligibility conditions that were met at the time of issuance of licence.

**Notification of Changes**

55. A Customs broker should immediately notify in writing the designated Customs Administration officer of any change -

- in the address of a business office at which he transacts business as a Customs broker,
- in the legal or business name of the partnership or the corporations, where the Customs broker is a partnership or a corporation,
- in the membership of the partnership, where the Customs broker is a partnership
- in the officers or directors of the corporation, where the Customs broker is a corporation,
- in the ownership of the business or corporation, where the Customs broker is an individual or corporation.

**Financial Security**

56. A Customs broker must maintain sufficient financial resources to conduct business as a Customs broker.

57. Where release prior to payment or other security is required, a Customs broker must continue to provide evidence that an adequate level of security is still in place.

### **Diligence in correspondence and paying monies**

58. A Customs broker must exercise due diligence in responding to correspondence, making payments, reporting to clients regarding any funds received for the client from the government as well as provide to the importer or exporter sufficient evidence of each transaction made on their behalf, including evidence of financial transactions

### **False Information**

59. A Customs broker must not file or assist in the filing of any declaration or other document known by him to be false.

### **Advice to clients**

60. A Customs broker must not withhold information relating to any Customs business from a client who is entitled to that information. A Customs broker must exercise due diligence to ascertain the accuracy of any information which he imparts to a client, and he must not knowingly impart false information to a client.
61. If a Customs broker knows that a client has not complied with the law or has made an error in, or omission from, any document or other paper which is required by law, he must advise the client promptly of that noncompliance, error or omission and assist him with the rectification process as laid down by the law.
62. A Customs broker must not knowingly suggest to a client or prospective client any illegal plan for evading payment of duty or other financial obligations to the Customs Administration.

### **Supervision and Training**

63. Where a Customs broker employee has not met the Customs broker knowledge requirements and is conducting Customs business, his work must be directly supervised by an individual who has met those requirements.
64. A Customs broker must maintain a list of all employees engaged in transacting Customs business.

### **Record Keeping**

65. A Customs broker should maintain the following information :
- Records indicating all financial transactions made while transacting business as a Customs broker
  - Copies of all documents relating to those transactions including all correspondence, bills, accounts, statements, invoices and other papers received or prepared by the Customs broker that relate to his business as a Customs broker
  - Copies of powers of attorney authorizing the Customs broker to act on an importer's behalf.
66. Records should be kept for a specified period of time after the importation or exportation of the goods to which the information relates.

67. The information should be kept in such a manner as to enable a Customs officer to perform detailed audits and to obtain or verify the information.
68. The information required may be kept in an original document, a photocopy or electronically if the media can be related back to the supporting source documents and are stored in a system capable of producing accessible and readable copies.
69. Client records are to be considered confidential and the Customs broker must not disclose their contents to any person other than the client concerned and any duly authorized officers of the Customs Administration, except on legal subpoena.
70. Customs brokers should not, without justifiable grounds, divulge or misappropriate any confidential information which they have learned during the course of conducting their Customs brokerage business.

**Warnings, Monetary Penalties, Cancellation or Suspension of Licences and Licence Renewal Refusals**

71. Customs administrations should establish penalty and sanction regimes for non-compliance/violations/misconduct by Customs brokers. Such regimes include censure/advisories/warnings, suspension, termination, fines/penalties, and prosecution.
72. Each Customs Administration must consider the conditions under which it will issue administrative censure/advisories/warnings, impose monetary penalties, and suspend or cancel a licence. It must design the process that will be followed in order to determine whether an administrative warning, monetary penalty, suspension or cancellation is required as well as how the related appeal process will be managed. Information must also be published about how disciplinary proceedings and appeals are conducted and who will be involved in proceedings.
73. As a minimum, a list of potential offences and penalties should be published with the policy makers considering the inherent and relative severity of each offence in terms of national law and in terms of its impact on clients of Customs brokers. This list should be periodically updated.
74. The Customs Administration may wish to establish a committee to review any complaints or offences. In some jurisdictions, the Customs Administration invites private sector representatives to be part of this process, although the highest levels of confidentiality must be maintained.
75. An appeal process should be in place and should not involve those who made the original decision although their decision-making process will be important to understand. Hence, the decision-making process should require the issuance of a detailed reasoned order.
76. Decisions not to renew licences should be taken as a result of a regularly scheduled review of each Customs broker. The review should be based directly on the Customs broker licence maintenance requirements.

77. The following are some more detailed examples of good practice in licence suspension and renewal that may be considered, as appropriate :

#### **Voluntary suspension**

78. Where a Customs broker wishes to cease transacting business as a broker for a temporary period, a request for a voluntary licence suspension may be submitted to the Customs Administration. The Customs Administration may accept the voluntary offer of suspension for a specific period of time under any terms and conditions that may be drawn up and agreed to.

#### **Grounds for suspension or cancellation**

79. A licence may be suspended or canceled if the Customs broker:
- has contravened the provisions of a law or regulations relating to the importation or exportation or transit of goods,
  - has acted to defraud government authorities or a client,
  - has granted a Customs broker licence, documents or statements under false pretences,
  - has suggested a plan for evasion of any duties, taxes or other charges owed to the government that involved the contravention of any laws or regulations,
  - has failed to comply with the Customs broker regulations,
  - becomes insolvent or bankrupt,
  - has engaged in dishonest conduct while transacting business as a Customs broker,
  - ceases to carry on business as a Customs broker for a specified period or failed to carry out his duties and responsibilities as a Customs broker in a competent and professional manner maintaining business ethics,
  - is no longer qualified under these regulations.

#### **Cancellation measures and conditions**

80. Before a licence is canceled or suspended, the designated Customs Administration officer will normally provide written notice to the Customs broker in advance of the proposed suspension or cancellation, except in situations (which may be specified) warranting immediate action.
81. Relevant information concerning any allegations or with respect to any of the grounds on which the proposal to suspend or cancel the licence are based should be provided to the Customs broker affording them an opportunity to explain in writing and/or orally during a personal hearing.

#### **Appeals**

82. A Customs broker whose licence has been suspended or canceled or whose licence renewal has been refused may, within a specified period (e.g., 30 days) of receipt of the written notification of such decision, appeal to the designated appellate authority.
83. When a licence is suspended, cancelled or when a licence renewal is refused, and there is no appeal of that suspension, revocation or refusal within the prescribed time-limit or if the appeal has been made and dismissed, the Customs Administration should publish notice of the suspension or cancellation on its website and in the public areas of Customs border points.

### **Surrender of Licence**

84. Customs Administrations must have a procedure for accepting notification of a surrendered licence where a Customs broker has ceased to transact business as a Customs broker.

### **Unlicensed brokers**

85. In order to prevent Customs brokers from being able to lend their licence and signature to other brokers or to a third party not licensed/authorized to act as a broker, Customs Administrations could establish a system by which whoever has the legal power to dispose of the goods (owner, consignee, etc.) grants authorization to their Customs broker to be represented before Customs in order to process their Customs operations. Moreover, Customs brokers associations should incorporate measures into their codes of ethic, which allow Customs brokers indulging in such activities to be sanctioned. Encouraging business chambers, especially those representing importers and exporters, to know the Customs brokers they operate with is also considered a positive mitigating factor.

## **b. Compliance Measurement**

### **i. Merit System**

86. A brokers compliance level can be assessed on the basis of a 'Merit System' to reward compliant brokers, for example, an AEO scheme for brokers. Customs administrations can carry out a study to rank Customs brokers on the basis of their compliance and service delivery to promote compliance. Additionally, Customs administrations can measure the compliance rates of traders who use a Customs broker against those who do not, and compare release times of consignments for which a Customs broker is used against those for which a Customs broker is not used in order to measure the compliance level and to reward compliant brokers through various initiatives including the provision of additional benefits under trusted traders programmes (e.g., authorised economic operators programme).

### **ii. Demerit System**

87. A Customs brokers' demerit system could primarily be based on awarding negative points for non-compliance based on the severity of the offence and taking measured and proportionate corrective measures including penalties such as warnings, suspension and cancellation. This can help in continued monitoring and achieving better oversight with brokers being fully aware of their compliance history and associated points to enable them to improve. The objective of such a system is to increase the level of trust from the business community and to have a more systematic and efficient performance management system, rather than penalizing Customs brokers. For each offence committed by a broker, specified demerit points are imposed, and once the aggregate demerit points reach a certain level, either a warning is issued to enable the broker to improve (if the explanation was found satisfactory by the competent body/administrative committee) or the broker's licence is suspended.

88. A potential area of importance for improving compliance is training and capacity building to support Customs brokers. Customs administrations should carry out such activities, with the support of other government agencies, Customs brokers associations, and other bodies.

## **V. Trade Facilitation and Cooperation between Customs and Brokers: Building Trust while Improving Efficiency and Compliance**

89. Customs brokers are uniquely positioned to contribute to Customs Administrations' objectives relating to efficiency and compliance, both as a party with whom the Administrations directly engage and as a communication agent. Integrity and the related principles of predictability and accountability must be supported by private sector knowledge and a good understanding of the rules that govern the cross-border movement of goods. The establishment of effective communications channels through which issues and concerns can be addressed without fear of negative repercussions is essential.
90. Customs brokers can play a pivotal role in advancing Customs modernization agendas. They can support the promotion of trade facilitation according to international instruments, tools and practices like the WCO Revised Kyoto Convention, the WTO Agreement on Trade Facilitation, and related initiatives such as Authorized Economic Operator (AEO) programmes, Coordinated Border Management and Single Window. Customs could increase the role of brokers as a communicator and force multiplier to increase compliance. Likewise, they are potential partners in curbing illicit trade including that of counterfeited/pirated goods and in ensuring compliance with the regulatory requirements of other government agencies.
91. Thought can equally be given to the role of brokers in enhancing the quality of data submitted to Customs. Obviously, data quality is crucial for effective and efficient risk analysis. One may argue that the trader often has better knowledge of and clearer responsibility for the accuracy of the information set out in the declaration or other submissions to Customs than the broker. However, the broker can raise awareness and encourage their customers to improve data quality both in terms of accuracy and adequacy. With their ability to gather, organize and manage commercial and trade data, brokers can take reasonable and effective steps within their domain to provide accurate and correct information.
92. Potential benefits of an active engagement process include improved service delivery; improved supply chain security; enhanced compliance; enhanced facilitation; improved data quality; improved revenue collection; reduced transaction costs; enhanced professionalism, business ethics and integrity and more effective resource management.

### **a. Memorandum of Understanding**

93. Co-operation and consultation between Customs and brokers can be enhanced through Joint Customs/Trade Committees at national and local level, including participation in the

national committee on trade facilitation (NCTF). Opportunities for cooperation and associated frameworks are described in detail in the WCO Customs-Business Partnership Guidance<sup>2</sup> and the Guidance on NCTFs<sup>3</sup>.

94. At national level, such cooperation could be supplemented by a formal Memoranda of Understanding (MOU) between Customs and Customs brokers, perhaps through brokers associations, which would outline roles, responsibilities and mutual expectations.

## **b. Transparency Agreement**

95. A transparency agreement between Customs and brokers (through brokers associations, for example) underlining the need for commitment to transparency by brokers, Customs, and other users, may be considered an option. Such a transparency agreement between Customs and brokers could help to fight any sort of bad practice in either party's domain.

## **c. Broker –Trader Vetting**

96. This process involved two-way exchange/communication between the Customs brokers and the trader which helped in carrying out background checks of traders, thus improving compliance management benefiting both parties. To the extent possible, efforts can be made to standardize the information that a broker could request from a trader who should be mandated to provide it, in order to verify the importer's identity. This standardization would contribute to greater transparency and supply chain security.

## **d. Trusted Partners - AEO programme**

97. Organizational or structural frameworks should underpin efforts to build a culture of integrity through trusted partnerships. These frameworks can extend beyond the internal workings of the Customs Administration to its stakeholders. Many countries have implemented AEO programmes that support not just integrity but also transparency and compliance goals, while enhancing supply chain security and efficiency. In the case of Customs brokers, AEO requirements are often an addition to some requirements further to those included in the licensing and regulatory requirements for Customs brokers already in place. Customs administrations should include brokers in their AEO and other trusted programmes. Some administrations have already included them their security and compliance programmes as a secure and trusted partner and grant them additional facilitation benefits.
98. As an example, the US Customs-Trade Partnership Against Terrorism (C-TPAT) has the "Minimum Security Criteria for U.S. Customs Brokers" in place. US Customs brokers are required to carry out a comprehensive assessment of their security practice based on C-TPAT minimum-security criteria. The criteria acknowledge that the value of the Customs

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<sup>2</sup> <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/customs-business-partnership-guidance.aspx>

<sup>3</sup> <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/national-committee-on-trade-facilitation.aspx>

broker arises from the role played by them in the transmission of key trade data and as a liaison between US Customs and Border Protection (CBP) and other key entities in the supply chain. According to US CBP, “the broker’s key role for C-TPAT is to educate, corroborate, and encourage that members within supply chains further the supply chain security tenets of C-TPAT.” In addition to that role as an educator, Customs brokers must also implement security policies and procedures regarding employee hiring and monitoring, and access to physical premises, documents and IT systems.

99. Also worth consideration is the possibility that through an AEO Customs broker, small and medium sized enterprises (SMEs) may be able to gain access to facilitated processes. By using an AEO Customs broker, an SME that is not an AEO (as they may find it difficult to meet all the AEO criteria and requirements) may be able to gain access to some of the privileges available to AEOs thereby deriving benefit from, and delivering benefits to, the Customs Administration through the SAFE Framework of Standards.
100. Because Customs brokers are already licensed by their governments/Customs in countries where there are such requirements, and already have the authority to represent their clients, the following strategic aspects should be taken into consideration when looking to broaden the scope of Customs brokers’ purview to include trade security and facilitation:
  - i. Scalability - Customs brokers have the ability to communicate AEO requirements and benefits to SMEs with greater reach and reliability, since they deal with them on a more regular basis
  - ii. Viability -- in order to ensure SMEs that cannot meet AEO standards remain viable international traders, possibilities should be provided to them to receive some AEO benefits if they use AEO-authorized Customs brokers, for example in Japan AEO brokers’ benefits include the pre-arrival filing of an import declaration and the facility to pay duties after the release of the cargo.
101. SME’s should be encouraged to qualify for their AEO status whenever possible. However, Customs administrations should explore possibilities to expedite processes for traders who do not qualify for AEO status, but whose Customs brokers and carriers have AEO status, and for whom risk can be assessed in advance of goods’ arrival.

## **VI. Brokers’ Code of Ethics**

### **a. Codes of Conduct**

102. Customs brokers operate in an environment where expectations from both their clients and the Customs Administration must be met in a complementary manner. It is, therefore, critical that they operate transparently and with integrity.
103. In addition to the legislative framework that governs the practice of Customs brokerage, Customs brokers often operate in accordance with a code of conduct that provides ethical

guidelines vis-a-vis their relationships with clients, government authorities and other trade chain partners. These codes cover things such as:

**i. Personal conduct and professional practice**

- (a) The main duty of Customs brokers is to represent the interests of their clients, as long as these are not in violation of the laws and regulations valid in the broker's country.
- (b) Customs brokers shall act according to the principles of morality, dignity, and integrity, avoiding actions which might be considered disrespectful of the profession.
- (c) Customs brokers shall perform their professional activity with competence and responsibility, keeping professional confidentiality, fulfilling duties with respect to their colleagues, clients, and Customs.
- (d) Customs brokers should perform the legally required activities. They must meet regulatory deadlines and requirements, and pay duties and taxes according to Customs and other relevant laws.
- (e) Customs brokers should seek the best possible legal solutions for the client.
- (f) While promoting their professional interests and those of clients, Customs brokers must not compromise their duties or obligations to Customs and other government agencies.

**ii. Independence**

- (a) Customs brokers shall carry out their profession with objectivity. They will give a fair and impartial opinion.
- (b) Customs brokers' relations with their clients' management or indeed anyone involved within their professional sphere of activity, will not jeopardize the broker's independence.

**iii. Competence**

- (a) Customs brokers must apply all their knowledge inherent to the technical and professional demands of the industry in order to facilitate services for clients.
- (b) Customs brokers must have the ability to fulfill requirements and take advantage of benefits for their clients. They should be prepared to defend and educate their clients when dealing with Customs or other entities.
- (c) Customs brokers should update their professional knowledge continuously. Employers should provide opportunities for professional development and advancement of employees, allowing them to maintain at all times the standards of competence expressed by the academic and experience requirements for admission to the profession, and extending the effectiveness of the profession through the interchange of Customs brokerage information and experiences.

**iv. Professional confidentiality**

- (a) The Customs broker is subject to professional confidentiality and data privacy norms.
- (b) The Customs broker is obliged to ensure his employees adhere to the abovementioned principles.

**v. Advertising restrictions**

(a) Customs brokers can publish any information about their professional activity as long as it does not breach the rules of conduct, professional confidentiality and legal principles about advertising and competition.

**vi. Customs brokers duties within the brokers community**

- (a) Customs brokers shall act professionally and appropriately.
- (b) Customs brokers shall respect the principles of fair competition.

**vii. Customs brokers duties towards Government Agencies, Federations, Associations and other entities**

- (a) Customs brokers shall act professionally in all their relations.
- (b) Customs brokers should obey the rules, directives, and deliberations of their professional organizations and associations, if they are members of such organizations.

**b. Agreements between Customs Brokers and their Clients**

104. In combination with ethical guidelines, Customs brokers in many countries also enter into formal contractual arrangements with their clients. These agreements are often referred to as agency agreements (AA) or powers of attorney (POA). Reflective of national contract law and services to be provided by the Customs broker, an AA or POA clearly identifies both parties, specifies the services that the Customs broker is authorized to undertake on the client's behalf and includes legal and authorizing signatures.

105. An additional companion document may contain the Standard Trading Conditions (STC) which governs the business practice of the Customs broker. Such documents are typically "Standard" because they are drafted for common use although they may be altered by the parties entering into the agreement. STC may contain policy and procedural details regarding:

- a. Fees and Disbursements
- b. Invoicing and Payment
- c. Advancement of Funds and Disbursements
- d. Duties and Responsibilities of the Client
- e. Duties and Responsibilities of the Customs Broker
- f. A Limitation of Liability
- g. Termination and a reference to liabilities
- h. Confirmation of the Governing Laws

106. In more complex working partnerships, a Customs broker and client may also choose to agree upon Standard Operating Procedures (SOP) that reflects the responsibilities and expectations of both the client and the Customs broker. An SOP clearly defines their

respective roles. The information contained within an SOP should be client specific and validated against actual operational procedures once business is underway. The consistency of application and adherence to the instructions should be assessed.

107. The following are some elements that might be included in a SOP :

- a. Release and Entry (i.e. what procedures should be following when supporting documentation is missing, including specified procedures by transport mode).
- b. Indication of any special process that may apply and instructions as they pertain to demurrage charges.
- c. Instructions relating to database management and responsibility for tariff classification of new commodities.
- d. Management of certificates and permits.
- e. Invoicing and payment terms.
- f. Procedures including timelines and responsibilities for Post Entry Adjustment.
- g. How IT solutions will be employed.
- h. A review mechanism.

### **c. Industry Guidelines and oversight**

108. Besides the legal and regulatory framework, the evolving trade environment requires improved service delivery, professionalism, ethics and a self-regulation mechanism for brokers. Customs brokers and freight forwarders associations, on their own or in collaboration with Customs administrations should develop business guidelines concerning professional standards and an industry code of conduct (dos and don'ts) to enhance the service delivery standards of brokers.

109. Industry bodies and associations can also develop model service delivery codes as a guiding principle and aspirational service model for brokers. In addition, an industry/association-led oversight body can be set up to monitor the professional conduct of brokers with its own set of rules to deal with delinquent brokers that may include dismissal from its membership.

## **VII. Fees and Charges**

110. Fees and charges for Customs broker services should be determined by free market principles. However, in some countries, it is either fixed or monitored in some way (e.g. setting minimum fees) by a government authority, mainly the Customs department (and in some instances together with a private sector body) to protect the interest of traders as well as brokers.

111. As a means of maintaining appropriate levels of service to clients and the standard of performance expected by the Customs Administration, Customs brokers should uphold the principle of adequate compensation for Customs brokerage services, within acceptable business practices.
112. Customs brokers should not indulge in unfair competition between themselves and restrain from overcharging or undercharging for the services rendered.
113. Invoices issued by Customs brokers should provide a breakdown of any charges paid to Customs and other government agencies for services provided by them, i.e. after-hours services, in addition to any amounts of duty, tax or other charges paid on the client's behalf.

## **VIII. Capacity Building**

### **a. Knowledge Management**

114. Licensing requirements, examinations, and training all support both Customs brokers and Customs administrations because a lack of knowledge and training often leads to delays in the goods declaration and Customs clearance processes. A lack of knowledge in Customs procedures and the necessary documents as well as insufficient knowledge of harmonized systems, can lead to avoidable errors that ultimately wastes limited Customs administrations' resources and creates backlogs and delays. It is recommendable that any reform or modernization of Customs includes the provision of the necessary information and training to Customs brokers.
115. Capacity building for Customs brokers underpins their continued compliance and up-to-date knowledge management. This is an area which provides huge opportunities for cooperation between Customs and brokers, by leveraging respective resources and expertise. In some countries Customs administrations and/or other government bodies support the training and professional skill development of Customs brokers through their Customs colleges and training schools. While in others, Customs brokers associations provide training and professional development programmes. Academia too can play an important role - colleges, universities and specialized training schools also offer courses to Customs brokers to enable them to maintain and upgrade their knowledge.
116. The knowledge and skills required in Customs brokerage are best acquired and developed through a combination of academic and experiential learning that is ongoing throughout an individual's career. The academic curriculum can be delivered through :
  - i. Classroom learning
  - ii. Online learning
  - iii. A combination of classroom and online learning.

117. Requirements and features unique to classroom learning include :
- a. a well-defined curriculum developed in coordination with Customs, brokers associations, and academia
  - b. instructors/experts from Customs and the private sector who are knowledgeable about all elements of course content and who are trained to deliver technical information in a classroom setting, with consistent quality delivery
  - c. less flexible than online learning
  - d. ease of exchange between instructor and students and among students themselves.

118. Requirements and features unique to online learning include:

- a. technology with appropriate software to host the course content
- b. delivery on the internet/intranet or other media
- c. instructors/experts from Customs and the private sector who are knowledgeable about all elements of course content and who are trained to respond to student inquiries regarding content and to deliver content online using various tools
- d. highly flexible for those who are also working full or part time
- e. interaction can be facilitated through webinars and discussion forums

### **Assessment of Knowledge**

119. Typically, Customs knowledge is assessed by a written examination. Examinations could be used as part of the curriculum as well as for periodic testing of knowledge, aside from initial licensing requirements. The use of case studies allows for an assessment of applied knowledge. Further, the use of multiple choice questions ensures both consistency and ease of marking as a way for continual assessment.

### **Work Experience**

120. Customs broker trainees/employees will better understand the application of the academic content when given the opportunity to apply their learning in an operational environment. This can be achieved through the integration of work terms within a course of study or a work experience requirement either before or as a capstone to the course work.

### **Content Development and Course Delivery**

121. Content is best developed by subject matter experts from brokers' associations/bodies, Customs and academia in partnership with experts in the areas of curriculum design and delivery. The subject matter experts should have knowledge of both the subject matter and the application of that knowledge by Customs brokers. A Customs Administration and broker association may choose to develop and deliver the course(s) in-house or they may choose to outsource or use a combination of both approaches. A key consideration must be the level of expertise and the ongoing availability of resources.

## **b. Professional Development**

122. Customs broker services need to evolve in order to keep pace with changing commercial and regulatory environments in the international supply chain. Like any other professional service, Customs brokers are required to provide added value for their customers, whilst supporting Customs/governments in enhancing overall compliance with regulatory requirements, making supply chains transparent and secure.
123. Passing an examination is not a guarantee of continued expertise in the long term. To support quality Customs work, those who provide Customs broker services either to their employer or clients should be required to continue their education and strive to evolve professionally. In some jurisdictions Customs brokers are required to participate in regular information sessions or advanced training on Customs-focused issues such as valuation or rules of origin and trade agreements.
124. Customs administrations, on their own or in partnership with private sector bodies, brokers associations and academia, should consider providing training support for Customs brokers. They can play a significant role in enhancing professional standards of Customs brokers by providing training that challenges their acquired knowledge and skills (e.g. electronic filing of declarations), while also teaching them new relevant knowledge/skills.

## **c. Joint Training**

125. Organizing joint training for Customs officers and brokers can facilitate a common understanding of rules and procedures and any associated amendments by both parties. It can also help to bridge some gaps in understanding and dispel misconceptions, thus leading to enhanced compliance and improved partnerships.
126. Customs administrations, along with Customs brokers and freight forwarders associations can organize joint training sessions to build capacity among brokers and thus enhance the effectiveness of clearance processes, in turn deepening the understanding of each other's perspective. Such joint training sessions can also focus on re-training/refresher courses at regular intervals to keep knowledge and skills up to date.

## **d. Key elements of a capacity building framework**

127. A framework for capacity building may have the following pillars :
  - a. The development of an administrative structure with appropriate policies and procedures to support Customs broker management.
  - b. A means of educating a pool of individuals with subject matter expertise and relevant experience and a means of ensuring the ongoing professional development of those individuals.

- c. A means of training Customs officials in the practical application of licensing regulation for Customs brokers including a compliance management framework.
- d. An ongoing strategy for Customs-Business consultation and information sharing including the setting-up of a Customs broker association, where needed, to support Customs brokers in meeting its obligations vis-à-vis regulatory authorities and importers/exporters.
- e. A formalized evaluation and review plan.

## **e. Administrative Structure/Policies and Procedures**

128. The tasks performed by the Customs broker management unit within a Customs Administration will vary depending on whether the Administration chooses to be responsible for developing and delivering Customs broker training and Customs broker examinations in addition to its regulatory functions such as licensing, licence renewal and performance monitoring and regulation. The following is a sample list of tasks that could be performed or managed by Customs Broker Management Units:

- i. Creating and updating course content, or reviewing course content drafted by external partners, including brokers associations and academia (if the Customs Administration chooses to be responsible for this function)
- ii. Creating examinations or reviewing examination content drafted by external partners
- iii. Registering applicants for courses and examinations
- iv. Delivering course content together with partners including brokers associations and academia
- v. Organizing examinations
- vi. Marking examinations
- vii. Communicating examination results
- viii. Vetting licence applicants
- ix. Issuing/rejecting licences
- x. Monitoring Customs broker performance
- xi. Suspending or canceling licences/Other disciplinary measures
- xii. Renewing licences
- xiii. Managing consultations and communications essential to Customs Brokers and importers/exporters
- xiv. Maintaining/publishing directory of those who have met and continue to meet the licensing requirements

129. Once the list is developed, policies and procedures must be written for each task. In doing so, administrative efficiency will be improved and those who interact with the Unit will be treated in a fair and transparent manner.

130. The policy governing the initial drafting and/or regular review of course content and examinations should include the hiring of subject matter experts both from within the Customs Administration and externally to ensure that the content properly reflects the knowledge needed to ensure compliance with import and export requirements and reflects the operational realities of the business environment.

131. Once the course content is finalized, the course will need to be promoted to potential students. Registration forms are required and a process should be put in place. Applications must be received and reviewed and there must be communication with the applicants. The application process must be documented.
132. Depending on the method of course delivery, policy will need to be developed to support it. Regardless of the delivery method, there will always be a need for an administrative policy covering matters such as tuition fees, the successful pass mark, how to withdraw from a course, and how to re-take a course after failing to pass.
133. Having an examination policy in place is also critical as the administration and marking of exams must be beyond reproach. Policy outlining who is involved in the setting, supervision and marking of examinations, the communication of examination results, and the procedures that will be followed can make or break the legitimacy of the educational requirements associated with Customs Broker Management.
134. The same principles may apply to licence application and associated examination requirements, if any. The rules governing how to apply, how to pay the licensing fee, how the applications are reviewed, how the decision is made on whether or not a licence will be issued, how rejections can be appealed – all these procedures must demonstrate and ensure the integrity of the process.
135. The standards associated with Customs broker performance, once set, must be made public. These standards apply to the scope of practice, and relate to the obligations that Customs brokers have vis-à-vis their clients, Customs Administrations, and other government authorities. The policies relating to the suspension or cancellation of licences or other disciplinary measures must not only be clear but must also contain provisions for appeal.
136. Licence renewal will generally be a straightforward process but must be connected procedurally with the monitoring of Customs broker performance. Additionally, the procedures for applying for renewal should be published along with information about the related fees.
137. It may also be worth considering developing a policy in order to define procedures for consultation and communications with Customs brokers and importers/exporters, as an integral part of compliance and facilitation initiatives. Such policies benefit the Customs Administration on many fronts; business engagement is facilitated; the level of compliance is improved and business sees an official commitment from Customs to the Customs-Business partnership.
138. There might also be a need lay down procedures regarding the publication of a directory of licensed brokers so that clients can readily verify the qualifications of those who might promote themselves as holding those qualifications. This will also curb malpractice related to unlicensed and informal brokers.
139. Initially, significant policy and procedural drafting that needs be done to support Customs Broker Management. Over time, the work will become more operational and evaluative.

140. A Customs Broker Management Unit should make the most of the technology as it may not be possible to increase the staff numbers in line with increasing numbers of potential applicants attending courses and applying for licences.

**f. Training Customs officials in the practical application of Customs broker regulations**

141. The skill set and attitude required by those who will administer the Customs Broker Management Unit, once the policies and procedures have been drafted, will be different from that associated with many other staff positions. Strong administrative and organizational skills are required, together with the drive to work cooperatively with businesses in a fair and transparent manner. These officers must also have an interest in better understanding the challenges faced by new businesses and in supporting compliance through continual information sharing and client outreach programmes.
142. In particular, those who lead stakeholder consultations must have experience in agenda-setting and in facilitating/encouraging open discussions. They must be able to work with business to identify strategies and objectives which further compliance and facilitation objectives.
143. The private sector can make a unique contribution to capacity building for Customs. This contribution can be made by all businesses regardless of size or focus. Integrity and efficiency can both be enhanced by engaging with business representatives although the quality of the interaction will determine the extent of the improvements. A Customs Broker Management Unit is uniquely positioned to act as the main facilitator of professional development, joint training, information sharing and consultations.
144. Information sharing is the foundation of capacity building within a Customs-Business relationship. If changes that affect Customs operations are not shared with business, compliance is unattainable. There cannot be an expectation of compliance without the ease of access to the rules with which businesses must comply, and clarity on those rules. Even the most significant improvements in Customs standards will have limited benefit if there is no positive impact on business. While not all changes initiated by a Customs administration will have an impact on business, broader economic benefit will only be possible where there is an opportunity for business to take advantage of such changes.
145. There are many different ways that the necessary information can be shared with business. Fundamentally, when any change is contemplated, whether resulting from a domestic decision, a bilateral or multilateral trade agreement, from within Customs or elsewhere, the following questions must be asked:

“Who might be affected by this proposed change?”

“Could consultation with stakeholders help in our decision-making?”

“Will Customs brokers and other traders require this information in order to be compliant with Customs and other requirements?”

“If consultation is needed, how can such consultation be made most efficient and effective?”

146. Stakeholders should be asked for their opinion regarding the best ways to communicate with them. These might include any of the following initiatives:
1. Email notifications
  2. Text messages for information that is of immediate concern, such as checkpoint closure, or other border disruptions
  3. Posting of information on a website with an RSS (Rich Site Summary) feed for those who want the information
  4. Communication via social media
  5. Posted notices at border points
  6. Seminars for topics that require more in depth discussion – where there is interpretation, for example.
  7. Joint training where Customs brokers and Customs officials learn together about new initiatives or changes.
147. Consultation can be conducted both in person and through publications. If conducted through the publication of documents for consultation, sufficient time must be allowed for thoughtful response and the Customs Administration must take on the responsibility of responding to submissions in a timely and appropriate manner, directly addressing any concerns expressed.
148. It is perhaps obvious that issues that are national in scope must be presented to all who might have an interest. However, even those issues that affect operations at a single port should be shared more broadly for two reasons. Firstly, limiting consultation or information sharing to a group based on geography might exclude someone who could have relevant experience. Secondly, border point specific procedures might at some point be adopted elsewhere or a trader doing business elsewhere could someday have a shipment through the affected border point.
149. Business has an undeniable interest in efficiency. Involving business representatives in consultation brings additional resources to the table and creates the potential to maximize added value. It also mitigates any negative impacts that may arise by allowing business time to prepare for change.
150. It is important to remember that small businesses, in particular, do not typically have the time or human resources for lengthy information sessions. Every effort must be made to ensure that they are not excluded from information sharing or consultation. Customs brokers could be an efficient conduit to these traders.
151. Consultative forums should have the following characteristics:
- Consistency of participants
  - Collaborative agenda setting
  - Requests for input and a response to that input
  - Regular meetings
  - Inclusive and cordial discussion.

## **g. Evaluating a Customs Broker Management Mechanism**

152. Including an evaluation framework in the initial design and work plan has several advantages. While there is always room for improvement, the advantage of planning ahead for evaluation is highly efficient and delivers tangible results. As work proceeds, data can be collected that will form the basis of the evaluation. Some elements can be evaluated on an ongoing basis from the earliest stages of the implementation. Several elements should be evaluated. Some can be evaluated on an ongoing basis, but until everything is up and running, a comprehensive, rational evaluation will obviously not be possible. The following is just an example of possible things that can be evaluated both on a short-term basis and a longer-term basis:
- a. Does the educational content match the needs of those who provide Customs broker services?
  - b. Are those who provide Customs broker services properly trained to meet the needs of importers and exporters?
  - c. Does the examination fairly assess the knowledge of potential applicants/students?
  - d. Is the licensing application process fair?
  - e. Is the licensing application process efficient?
  - f. Do the buyers of Customs brokerage services understand the services offered by Customs brokers?
  - g. Is business fully aware of changes to Customs rules and procedures?
  - h. Has compliance with Customs requirements increased?
153. Evaluation tools could include the following:
- a. Surveys of businesses and Customs Administration officials allowing for anonymous participation,
  - b. One-on-one interviews with Customs Administration officials both inside and outside the Customs Brokers Management Unit as well as with business representatives and clients of Customs broker services,
  - c. Customs-business discussion forums, and
  - d. Measurement of compliance improvement against baselines set for Customs brokers.

## **IX. Stakeholder Engagement: The Structure and Role of Customs Brokers' Associations**

154. Like in all stakeholder relations, Customs should have regular, constructive communication with brokers, as brokers are often the first line of contact between Customs and traders. Beyond the preparation of documents, manual/ electronic submissions, the calculation and, often, payment of duties and taxes, they play an important role in facilitating communication between Customs/government authorities and importers/exporters. Standard 8.5 of the GA to the RKC along with Standard 1.3 contain provisions on Customs establishing and maintaining consultative relationships with trade, by requiring Customs to include third parties such as brokers in their formal consultations.
155. Business associations are one of the key pillars of successful stakeholder engagement and of consultative processes. In terms of Customs brokers, consideration should be given

to the establishment and recognition of a Customs brokers' association at a national/regional level; as such associations can provide support to their members while assisting Customs administrations with the fulfilment of their regulatory/licensing responsibilities. These associations can also provide valuable training, capacity building and an oversight framework, which, given the limited resources some Administrations may have, could add to the overall capacity of brokers. However, Customs administrations should support Customs brokers, through brokers' associations, by informing/educating them about regulations and requirements, including those of other Government agencies, where appropriate."

156. In general, associations can play an important role in representing common interests, facilitating the transfer and communication of information, providing a platform for partnerships with other associations, and developing and delivering education and training courses. In many countries, associations are an effective way to engage stakeholders, especially small and medium-sized businesses, and this is especially true for Customs brokers' management and the relationship between Customs administrations and Customs brokers.
157. More specifically, a Customs broker association can play an important role in enhancing trade compliance and contributing to economic competitiveness. It can also play a key role in ensuring that there is a two-way transfer of information between national governments and business, ensuring that Customs is aware of business concerns and ensuring that information about any changes in regulatory requirements or new requirements is well communicated and understood.
158. Customs administrations should find the best ways of engaging with brokers associations when designing new policies and procedures aimed at improving the facilitation of international supply chains, with a view to achieving the desired balance between facilitation and control, and promoting good ethics and transparency.
159. When establishing a Customs brokers association, the following basic yet important questions may be borne in mind :
  - Is the association composed of business members, individual members or both?
  - Is the association national, regional or local?
  - What is the mandate of the association?
  - Is membership voluntary or mandatory?
  - What are the membership fees?
  - How will voting be managed?
  - What will the leadership of the association look like? What is the relationship between the leadership (Chairman or President/Executive/Board of Directors) and members?

- What are the activities and services provided to members? These may include sharing information with members, running educational and professional development courses and seminars, advocacy and representation of members' interests, advice to government on Customs broker licensing and ongoing regulation, participation in consultative bodies including the national committee on trade facilitation (NCTF), all of which are critical to stakeholder engagement in terms of simplifying and modernizing procedures and enhancing compliance.
160. Once a decision is taken to set up a Customs broker association, it is important that it be recognized by the Customs administration as an official organization representing Customs brokers. All licensed Customs brokers should be eligible for membership. The status of the national Customs broker association should be recognized by the national Customs administration for consultation on key issues relating to procedure and reform relevant to Customs brokers including representation in the NCTF. Brokers Association's responsibilities may include providing input on the curriculum used for training Customs brokers, supporting the management of Customs brokers education programme, including running ongoing professional development activities in order to maintain and improve the professional standards of brokers. Customs broker associations may also participate in broader consultative mechanisms with other members of the trade community and other ministries with responsibility for border management.

## **X. General Guidelines - Customs Broker Regime**

- i. Use of Customs brokers should be made “optional” in line with the provisions of the RKC, and could potentially be governed by free-market principles as are other professional services, keeping in mind the national social and economic situation.
- ii. Fees and charges for Customs brokers should be neither fixed nor regulated by an authority, and should be left to be determined by the market. However, depending on specific national requirements, general oversight may be required by the Government/Customs - sometimes together with brokers' associations or other private organizations - to protect the interests of traders.
- iii. Both individuals (natural persons) and companies (legal persons) should be permitted to become licensed brokers, in cases where licensing is required. This is to ensure equal opportunities for everyone, and also to have a wider availability of brokers.
- iv. Given the nature of the activities carried out by Customs brokers, which are primarily related to Customs clearance, Customs should, to the extent possible, be the regulatory and licensing authority for Customs brokers. Responsibility for administering examinations for brokers may also be entrusted to Customs, where applicable. Where needed, Customs - together with brokers associations or any other private body - could also be entrusted with overseeing the business ethics and professional conduct of Customs brokers.

- v. Customs administrations should be responsible for establishing and monitoring the necessary compliance controls and managing the brokers' performance, as well as for determining the awards/benefits to grant and sanctions/penalties to impose for compliant and non-complaint brokers respectively. Sanctions and penalties could be progressive, ranging from censure, warnings, and reprimands to monetary fines, suspension or cancellation of licences and criminal proceedings and prosecution. Customs may maintain a register or record of Customs brokers' performance. Sanction and penalty rules should be clear and transparent so as to allow for their correct application in a non-discretionary fashion.
- vi. Regulatory and licensing criteria, where applicable, should be transparent, non-discriminatory and simple, and may include, among other items mentioned in the Model Checklist, sanctions and penalties (e.g. suspension, termination, fines/penalties and prosecution) for misconduct and violations by Customs brokers, including provisions for dealing with informal/unauthorized brokers, in order to ensure effective compliance with Customs and other Government agencies' requirements.
- vii. Where licensing requirements, if any, are foreseen for traders who are permitted to carry out Customs formalities for the clearance of their own goods, they need not necessarily be as stringent as the licensing requirements for Customs brokers; however, some minimum prerequisites such as knowledge of Customs and related laws, a good compliance record and financial solvency could be prescribed.
- viii. In order to test the knowledge brokers have of Customs and ensure that they keep themselves abreast of the latest developments, Customs administrations should consider designing suitable assessment/verification systems, for example, an examination which could be either written or oral.
- ix. The obligations and liabilities of brokers may include representing their clients under proper authorization; advising their clients on various compliance requirements, and not lending their licence to anyone or permitting any other person or agent to use it under any circumstances. They may also be jointly and severally liable for the payment of duties, taxes and other charges on behalf of their clients.
- x. Challenges posed by some brokers, including informal/unauthorized brokers, could be met to some extent through the increased use of ICT, the publication of a list of licensed brokers, the use of dissuasive sanctions and penalties in appropriate cases, and through constant engagement and dialogue with such brokers, traders, and brokers associations and other trade bodies.
- xi. Opportunities for cooperation between Customs and brokers could include: Customs modernization and trade facilitation initiatives; implementation of bilateral/multilateral agreements (e.g. Free Trade Agreements (FTAs), WTO TFA); compliance with Customs and other Government agencies' requirements, including due diligence and data quality; enhancing supply chain security; enhancing the professionalism and business ethics of brokers (e.g. capacity building and joint training activities); and carrying out performance measurement (including conducting Time Release Studies).

- xii. The remit of AEO/trusted trader programmes should be expanded to include brokers, with well-identified, tangible benefits. Where appropriate, Customs brokers could also be involved in the National Committee on Trade Facilitation set up/maintained under the WTO TFA.
  - xiii. With the purpose of keeping Customs brokers continuously updated in their profession in all areas related to Customs and foreign trade regulations, and as part of cooperation between Customs Administrations and Customs brokers associations, training courses on various subjects (e.g. classification, valuation, origin, IT issues, etc.) should be organized regularly.
  - xiv. Consideration could also be given to establishing/recognizing a brokers' association at a national/regional level; as such associations can provide support to their members while assisting Customs administrations with the fulfilment of their regulatory/licensing responsibilities. These associations can also provide valuable training and capacity building exercises and an oversight framework which, given the limited resources some administrations may have, could add to the overall capacity of brokers. However, Customs administrations should support Customs brokers, through brokers' associations, by informing/educating them about regulations and requirements, including those of other Government agencies, where appropriate.
  - xv. Consideration could also be given to measuring the compliance rates of traders who use a Customs broker against those who do not and undertaking studies that measure the release times of traders who use a Customs broker against those of traders who do not. Such studies, conducted at regular intervals, could provide valuable insights into the role and responsibilities of Customs brokers, and identify potential areas for further improvement.
  - xvi. Consideration could also be given to ascertaining the extent to which Customs brokers are used in the Customs clearance process. Several Members reported a high percentage of traders using brokers despite this being "optional" in their jurisdiction. Outcomes of such studies might require policy changes, not only in terms of adjusting licensing requirements, but also in setting up an effective oversight and capacity building mechanism.
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