



Brussels, 21 January 2015.

**CUSTOMS BROKERS**  
**(Item VII on the Agenda)**

**Introduction**

1. At its 72<sup>nd</sup> session held in Recife, Brazil from 8 to 10 December 2014, the Policy Commission discussed the document SP0497E on “Customs Brokers – Institutional Framework and Arrangements” (appended as an Annex to this document).
2. In wide ranging discussions, a number of Members described their working experiences with Customs Brokers and outlined their national framework on the accreditation of brokers (where applicable) and their involvement in Customs related transactions. While some Members had concerns about the Customs brokers’ role (including unqualified/informal brokers) in assisting their clients by advising them on how to circumvent regulations and avoid/evade duties and taxes, through such practices as false declaration of description, origin and undervaluation, others underscored the important role played by Customs Brokers in Customs’ facilitation and compliance strategies and even assisting in Customs’ modernization programmes including the implementation of AEO programmes through partnership approaches.
3. It was mentioned that in some administrations social and political issues relating to Customs brokers were an obstacle to the achievement of Customs compliance, whereas others have made significant progress in promoting transparency and enhancing the professional standards and capacity of Customs Brokers.
4. The Policy Commission noted the high degree of interest in this topic and the very wide range of experiences described. It tasked the PTC to carry out further work with a view to preparing a study – based on Members’ experiences, success stories and lessons learned – on certification criteria for Customs brokers, and guidance on how to ensure that the involvement of Customs brokers helped to enhance compliance.
5. It was also suggested that training for Customs brokers, which could be offered by Customs administrations or universities for example, could be covered by the future study.

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Another step might be to prepare some guidance on the minimum knowledge that Customs Brokers should possess.

6. In order to carry out further work, there is a need for more granular level discussions and research to identify scope and outline of such work. It also needs to be explored whether a working group of interested Members could be set up to advance the work. Also, the PTC could look at the possibility of carrying out a simple survey to ascertain Members' practices in that domain.

**Action requested**

7. The PTC is requested to:
- consider and discuss the Customs Brokers' role in trade supply chains and potential opportunities of cooperation between Customs and Customs brokers including addressing regulatory frameworks and capacity building and bearing in mind respective provisions of the RKC and the WTO TFA;
  - provide guidance, approach and outline for carrying out future work as mandated by the PC; and
  - share working experiences, success stories and lessons learned – on licensing/certification criteria for Customs brokers and involvement of Customs Brokers in enhancing compliance.

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POLICY COMMISSION

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72<sup>nd</sup> Session  
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Recife  
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Brussels, 7 November 2014.

**CUSTOMS BROKERS - INSTITUTIONAL FRAMEWORK AND ARRANGEMENTS**

**(Item X (b) on the Agenda)**

**SUMMARY**

**Purpose of document**

This document explores the role played by Customs brokers in the trade supply chain. It analyses various regulatory and licensing frameworks and working arrangements, and examines how Customs should engage brokers more effectively to leverage the synergy of cooperation for enhanced trade facilitation and compliance. It also examines some key determinants and criteria for regulatory and licensing frameworks for brokers and their engagement with Customs.

**Action required of the Policy Commission**

The Policy Commission is invited to :

- consider and discuss cooperation between Customs and Customs brokers;
- share working experiences and practices on respective institutional framework and working arrangements; and
- provide guidance and strategic direction on future work in this respect.

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## **I. Introduction**

1. Customs brokers<sup>1</sup> act as an intermediary between traders and Customs in Customs clearance processes. Brokers' domain knowledge of Customs laws and processes and their working experience in the trade supply chain can be useful for both traders and Customs. While they support traders by providing all necessary documentation and undertaking formalities related to cargo clearance, Customs brokers are also expected to uphold government interests by ensuring compliance with Customs and other regulatory requirements and the collection of appropriate duties and taxes.
2. With growing e-commerce, with many Customs administrations developing more client-oriented ICT-enabled services, and with increasingly simple and transparent Customs procedures, it may seem that the relevance of Customs brokers' services is declining. On the other hand, the Customs broker profession is expected to stay relevant as Customs administrations with their partly limited resources may not have capacity to deal with ever-increasing numbers of traders at individual level, while many of these traders may not have the necessary capacity and wherewithal to meet Customs and other regulatory requirements.
3. In line with ongoing Customs reforms and to further enhance their service delivery, some Customs brokers are moving towards a more comprehensive consultancy and advisory role, rather than being confined to merely filing declarations/documents for Customs release and clearance. They also liaise with other actors in the supply chain on behalf of traders, such as freight forwarders, carriers/agents, warehouse operators and transporters. Furthermore, in some cases, they themselves have 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.
4. The Revised Kyoto Convention (RKC) makes the engagement of 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 8.3 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 the Customs.

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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.

Notes :

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 the Customs.
3. See also the term "Third party" (Chapter 2 of the GA to the RKC).

5. With accession to the RKC, more and more Customs administrations are making the use of Customs brokers' services "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 that only licensed brokers are allowed to process all import/export clearance, except for some specified goods such as personal cars. Some administrations in Asia provide for priority processing for Customs brokers.
6. Article 10.6 of the WTO Trade Facilitation Agreement (TFA) provides that, from the entry into force of the Agreement, Members shall not introduce the mandatory use of Customs brokers.
7. In contrast to mandatory broker regimes, other countries follow free market principles where the engagement of Customs broker services or otherwise is a commercial decision of traders. Cost effectiveness and quality of professional service are key factors influencing such a decision.

## **II. Institutional framework and arrangements**

8. Standard 8.2 of 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. Licensing requirements for Customs brokers should be transparent, non-discriminatory and reasonable. Article 10.6 of the WTO TFA equally requires that Members shall apply transparent and objective rules for licensing.
9. There are varied licensing and regulatory models adopted by Customs administrations to authorize legal and natural persons to act as Customs brokers. Many administrations have specific licensing requirements to act as broker, while others simply allow anyone to establish a free business and take up the job of a clearing agent on behalf of others. There are also practices, for example in Asia, where some administrations make concessions from the use of licensed brokers when a person transacts any business solely on his own account.
10. Some Customs administrations 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 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 specified grounds. It is also seen that some administrations issue port-specific licences and identity cards to brokers to transact business. They need to have an ID and/or endorsement of their licence for each of the ports where they want to transact business.
11. The appearance of informal brokers who operate with no licence and ID has also been observed. They usually hire the licence/ID number from a licensed broker, for lodging declarations and other related work, against a consideration. This practice is not only deleterious to professional brokers and traders, but it also raises concern from a compliance perspective.
12. Licensing/accreditation requirements vary, but in general include sound knowledge of Customs laws and other regulatory requirements; clean track records in terms of

security and other compliance matters; financial solvency - surety bond, security deposit; minimum educational qualification; specified working experience; in some cases a written and/or oral examination and even minimum hours of training. Some administrations also prescribe certain licensing obligations for brokers in respect of business ethics and professional conduct; due diligence on clients; and/or correctness of information provided.

13. Some Customs administrations are already providing, or have started to look into, training support for Customs brokers. Likewise, a number of initiatives are being taken by Customs brokers and freight forwarders associations in collaboration with Customs administrations to enhance the capacity of brokers and thus the effectiveness of clearance processes.
14. One example of such efforts on a regional level can be found in the East African Community (EAC). Customs clearing and forwarding associations, Revenue Authorities and the EAC Directorate of Customs are considering the development of a Policy Framework for accreditation and self-regulation of Customs clearance and freight forwarding agents. The objective of developing the policy is to improve service delivery, enhance professionalism and ensure self-regulation of the industry.
15. The European Committee for Standardisation (CEN)<sup>2</sup> procedures, under the auspices of the European association of freight forwarders and logistics service providers (CLECAT) has developed a new code of conduct for Customs brokers. It establishes principles, values and rules of conduct, encouraging Customs brokers to adopt high ethical standards and to perform their duties to an appropriate standard, thereby protecting the rights of customers and their own profession, as well as the financial interests of individual Member States and the European Union as a whole.
16. The WCO-NORAD (Norwegian Agency for Development Cooperation) Project in Vietnam is providing support on capacity building of Customs brokers. The Project is primarily focused on improving a framework related to the accountability of Customs brokers, on enhancing their knowledge and skills, and on strengthening the capacity of the General Department of Vietnam Customs to effectively manage the licensed Customs broker programme based on new legislation.

### **III. Customs-Brokers Engagement**

17. Like in all stakeholder relations, Customs should ideally have a regular constructive engagement with brokers, as often brokers are the first line of interface between Customs and traders. Beyond the preparation of documents, manual/electronic submissions, the calculation and often payment of duties and taxes, they can play an active 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, provides for Customs to establish and maintain consultative relationships with the trade, by requiring Customs to include third parties such as brokers in their formal consultations.

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<sup>2</sup> CEN is a non-profit organization that has been officially recognized by the European Union and the European Free Trade Association (EFTA) as being responsible for developing and defining voluntary standards at European level.

18. There are several areas where a good relationship with Customs brokers and/or broker associations can be of benefit for Customs administrations. Brokers may be consulted regarding support of Customs modernization and trade facilitation initiatives in line with international instruments such as the RKC and the SAFE Framework of Standards and the related initiatives like AEO programmes, Coordinated Border Management and Single Window. Such consultation and potential further involvement could also be envisaged for the National Committee on Trade Facilitation provided for under Article 23.2 of the WTO TFA.
19. Customs could leverage the role of brokers as a communicator and force multiplier to improve compliance. Likewise, they are potential partners in curbing illicit trade including counterfeited/pirated goods, as well as in ensuring compliance with regulatory requirements of other government agencies.
20. Thought could equally be given to the role of brokers in enhancing the quality of data submitted to Customs. Obviously, quality of data is crucial for effective and efficient risk analysis. One may argue that usually the trader has better knowledge of, and clearer responsibility for, the accuracy of the information set out in the declaration or other submission to Customs than the broker. However, brokers can sensitize and encourage their customers to improve data quality in terms of accuracy and adequacy.
21. Training academies/schools of Customs administrations such as the Shanghai Customs College, the Maldives Customs Academy, the Royal Malaysian Customs Academy (AKMAL), the Russian Customs Academy, the Ukrainian Customs Academy and the Tanzanian Institute of Tax Administration are running various diploma and graduate courses in Customs law. The Argentinean School of Tax and Customs Training and the Maldives Customs Academy also conduct specific training programmes for Customs brokers. It could be worthwhile exploring whether there are benefits of joint training initiatives, whether there is a need for Customs curricula specifically for Customs brokers and/or what respectively already exists, including on the side of brokers' associations.
22. In summary, there are various different cooperation and consultation mechanism options depending upon a Customs administration's needs and circumstances. In some Members, brokers have been part of Joint Customs/Trade Committees at national and local level. Such cooperation might also be supplemented by a formal Memorandum of Understanding (MOU) between Customs and broker associations, while recognizing that cooperation can equally take place in a less formalized way. 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 cost; enhanced professionalism, business ethics and integrity; and more effective resource management.

**IV. Conclusion**

23. The role of Customs brokers and their engagement with Customs are constantly evolving at national, regional and global level. To examine the role of brokers in supply chain management in the future needs further discussion, guidance and research, as well as collection and study of Members' practices.
24. Policy Commission members are requested to be prepared for an in-depth discussion on Customs' engagement with brokers, including sharing their own practices and experience.
25. The Policy Commission is invited to :
- consider and discuss cooperation between Customs and Customs brokers;
  - share working experiences and practices on respective institutional framework and working arrangements; and
  - provide guidance and strategic direction on future work in this respect.
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