



EXPLANATORY MEMORANDUM

A map of Europe is shown, tilted slightly. The map is overlaid with a grid of yellow stars on a light blue background, similar to the European Union flag. Various national flags are placed over different countries on the map, including the United Kingdom, Ireland, Denmark, Sweden, Finland, Greece, Spain, and Italy.

The impact of the customs representation on the EU's competitiveness and security

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1. INTRODUCTION

The CONFIAD Pan European Network, International Federation of Customs Agents, was founded in 1982 as organisation of the European Customs Brokers/Agents, with the purpose to defend and co-ordinate the professional interests of its members, supporting an harmonisation of the legislative, professional and customs regulations at European level. Members of the Confederation can be only organisations representing at national level Customs Brokers duly recognised in their own country.

Among the objectives of the Organisation there are also the development of a strict co-operation and friendly relationships between its members, as well as the examination and an in-depth analysis of all those issues having a direct impact on the customs broker's activity.

CONFIAD represents also its members before the Community institutions and other kinds of public and private administrations and organisations.

To date, CONFIAD embodies about 20.000 companies (mainly Small and Medium Enterprises) providing customs services and employing about 250.000 workers all over the European Union.

Within the CONFIAD, a Steering Committee for the Modernisation of the Customs Code has been created on January 2007. This group, composed of customs experts of proven experience coming from different member States of the EU, has been charged with the task to analyse and monitor the ongoing reform of the Community Customs Code (Reg. n. 2913/1992), with special regard to any issue having both direct or indirect reflex on the customs brokers' activity.

This paper, in particular, provides an in-depth analysis of one of the more controversial aspect of the reform: the customs representation. It is an attempt to find, in the light of the experience gained by several Countries of the world, a solution able to meet, at the same time, the need of a major competitiveness of the European companies with the necessity to safeguard in an effective way the security of the European Union.

Further information about the Confiad's activity is available on the web site www.confriad.org.

2. EXECUTIVE SUMMARY

The regulation of the customs representation in the context of the future modernised EU customs environment represents an issue of vital importance for the EU trade. For this reason, the reform of this matter has drawn since the beginning a huge attention both among the European Institutions and the Member States.

At present, the access to customs representation in Europe is regulated on a national basis. Accordingly, major differences exist concerning the way in which each Member State regulates the provision of customs services within its territory. Some Countries indeed, impose very demanding requirements in order to perform customs representation activities, some others do not.

If we look outside the EU, it worth to be noted that almost everywhere a special discipline regarding customs representatives is expressly foreseen. This set of rules not only aims to regulate a figure who is widely recognised as a “facilitator” of international trade, but has also the purpose to guarantee the protection of the revenues and the financial interests of States.

The present analysis will prove that the majority of Countries worldwide has deemed opportune to reserve the functions of customs representation to some “*licensed*” professions. In fact, dealings with customs require an extensive knowledge of customs and commercial procedures. Moreover, the complexity of information and data to be submitted to customs, the technical problems related to the calculation of duties and other tariff and tax measures, the technicality of the rules of classification, determination of the customs value and origin of goods, can easily lead to incorrect declarations and liquidation of customs duties. This is the reason why an increasing number of companies not possessing an “*in-house expertise*” in the customs field (small and medium-sized enterprises above all), prefer to apply to expert brokers in order to fulfil the above formalities, leveraging those figures in order to access to all the simplifications and facilitations provided for the customs legislation.

In the majority of the countries in the world, the above service providers must **hold a valid State-released¹ license** in order to perform any kind customs activity on behalf of third parties, irrespective of the fact that they act as professionals.

The principle at the basis of the regulations adopted by these Countries is, in fact, that a general freedom of provision of services related to international trade is recognised, but when it comes to accomplish customs formalities and fulfilments, as well as to represent an operator before customs authorities, some additional guarantees are required by customs administrations. In particular, each customs intermediary is required to be registered or accredited before customs and to prove the holding of special **competence, knowledge** and **reliability** requirements with regard to the customs procedures.

The requirements of “**competence**” and “**knowledge**” usually entail a preliminary assessment by the public authorities which is performed through an exam combined with a period of practice. This process normally ends with the release of a licence or of an

¹ In the majority of the analysed Countries, licensing policies are usually administered at national level and more rarely at Super-state or federal level.

authorisation. The “**reliability**” is a prerequisite for the exercise of the customs representation services, so much so that each time this aspect is missing, the consequence is a revocation of the license.

All the restrictions imposed to the exercise of the customs representation are expressly intended to restrict the exercise of customs representation only to persons endowed with the above requirements, as this solution is likely to reduce effectively the possibility of frauds and other irregularities on the revenues for the States.

The role covered by customs representatives in fact is multifaceted: on the one hand they are **facilitators of trade**; on the other hand they can **guarantee the correct recovery of the financial resources by the States**. In other cases, some Countries (ex. Chile, Japan, Mexico), have leveraged the experience of highly professionalised customs representatives in order to improve the efficiency of their customs administrations, freeing them of some “unproductive” functions (ex. the execution of some kinds of controls), so that the latter can focus on more significant and delicate tasks.

The experience gained by all the Countries listed in the present analysis proves that in the current “globalised” environment, where the control over the massive flow of goods becomes increasingly complex, and the terrorism represents a threat more than ever hard to contrast, these highly professionalised “*customs intermediaries*” can effectively offer a valuable support to the administrations for a better security and an improved smoothness of traffics.

2. HISTORICAL BACKGROUND

In the document SEC(2005) of 30 November 2005, concerning the impact assessment of the Commission’s Proposal for a regulation laying down a new “modernised” community customs code, the EU Commission argued that member States restricting, within their territory, the right to make customs declarations by direct or indirect representation to customs agents carrying on their business in that countries, would protect them from the concurrence of providers of customs services established in other member States².

The same line of thought can be found in the Commission’s documents TAXUD/447/2004 of 22 July 2004³ and TAXUD/447/2004, Rev. 2 of 24 February 2005⁴, where it is expressly stated:

“Under the modernized Customs Code customs declarations are normally made in electronic form. The former possibility for Member States to restrict the right to make customs declarations by direct or indirect representation to customs agents established in that Member State is neither compatible with an electronic environment (in which the place of establishment within the Community should not play a decisive role with regard to the question as to who can lodge a customs declaration) nor with the principles of the single market (according to which service providers from all Member States should be able to carry on their business throughout the

² The member States to which the analysis was referred are namely: Greece, Italy, Portugal, Spain and Poland.

³ Doc. TAXUD/447/2004 of 22 July 2004, concerning “An Explanatory Introduction to the modernized Customs Code” (Rev. 1).

⁴ Doc. TAXUD/447/2004, Rev 2 of 24 February 2005, concerning “An Explanatory Introduction to the modernized Customs Code” (Rev. 2).

Community [...]). Furthermore, maintaining such restrictions in certain Member States would mean that trade is diverted to other Member States without such restrictions".

The presence in the EU of a "dual-track" situation, where some States restrict one of the two modes of representation envisaged by the current text of the art. 5, Reg. 2913/1992 (usually, the direct one), to customs agents carrying on business in their territory ("Reservist States"), and other States that have not taken advantage of this possibility ("No-Reservist States"), would constitute, in the Commission's views, an obstacle to the possibility to lodge electronic declarations in a member State other than the one where the goods are entered, i.e. to operate from a single remote point in the Community to perform customs operations in several member States.

For example, on the basis of the regulations currently in force, a customs agent established in a non-reservist State (ex. the U.K.) could not declare **in the mode of the direct representation** those goods that are entered in the Community through the territory of a reservist State (ex. Italy), being such a possibility, to date, limited exclusively to the Italian "Doganalisti" (customs brokers). So, the only way for a UK customs agent to act in Italy through the direct representation, would be to qualify as "doganalista" on the basis of the Italian national law. To this end, he should firstly pass a public exam⁵ and subsequently be inscribed to a special professional Roll⁶.

Starting from these arguments, the EU Commission, in the document TAXUD/447/2004 of 22 July 2004, assimilated (page 9), the activity of "customs broker" to that of "patent agent". Quoting the sentence of the European Court of Justice, case C-131/01 *Commission v. Italy* (judgement of 13.02.2003), the Commission argued that the current possibility for Member States to restrict the right to make customs declarations by direct or indirect representation to customs agents established in their respective territory, should be "*neither compatible with an electronic environment [...], nor with the principles of the single market*"⁷.

The rationale of the above assimilation should be in the fact that both these activities are essentially characterised by the filing to an administrative authority and the monitoring of a deed (the patent demand for the patent agent - the customs declaration for the customs broker), whose complexity and technicality requires the possession of particular skills and knowledge by those performing these operations. Furthermore, even regarding the filling up and the lodging of the patent demand, many States recognise the possibility to perform this activity only to particular categories of persons endowed with special requirements of competence and professionalism and usually subjected to an inscription to a professional roll (ex. lawyers, engineers or other kinds of qualified intermediaries)⁸.

The principle affirmed in the above sentence is that the maintenance of national regulations imposing to consultants established in other member States to be inscribed to the Roll of the consultants of another member State and to have their residence or professional domicile therein, would infringe the provisions contained in the articles 49 - 55 of the EC Treaty, on the free provision of professional services. This principle,

⁵ Article 50 of the Decree of the President of Republic n. 43 of 23 January 1973.

⁶ Law n. 1612 of 22 December 1960 on recognition of the profession and institution of the professional roll.

⁷ Ref. TAXUD/447/2004 of 22 July 2004, page 11.

⁸ See also ECJ, sentence 3 October 2000, case C-58/98, Rec. page I-7919, n. 33.

expressly referred in the above decision to the Patents consultants, is *de facto* extended also to customs brokers.

To sum up, the diversity of regulations in the member states on the customs representation, would be an obstacle to the possibility for the customs representatives established in a member State to act in the others, so determining a barrier to competition between the providers of customs services in the EU. This situation is expressly defined as “*de-facto monopoly*” by documents TAXUD/458/2004–REV3 of 22nd July 2004 and TAXUD/458/2004–REV 4 of 11th November 2004⁹.

The term “monopoly”, abandoned in the text of the Document COM(2005) 608 final of 30 November 2005 (concerning a Proposal for a Regulation of the EP and the Council laying down the “Modernized Customs Code”), re-appears in the documents of the European Parliament 2005/0246(COD) – provisional¹⁰ and A6-0429/2006 of 29 November 2006. The latter, in particular, states:

“Customs representatives should no longer have a ‘monopoly’ over their activities – although they should continue to exist as an occupational category, since the services which they provide are useful to a great many businesses”¹¹.

Again, the same document reads:

“Customs representatives should no longer have a ‘monopoly’ over their activities in interacting with customs”¹², “[...] it is entirely inappropriate that business and EU consumers should be forced to use someone from a monopolistic trade such as a licensed broker if they wish to clear goods through customs”¹³.

The above alleged barriers are also deemed to be ineffective by the Commission given that, due to the establishment of the customs union, the importers today are basically free to choose those member States where they can enter (and release for free circulation) their goods. In making such a choice, operators would take into account also the different costs of the customs services practiced by the above intermediaries in each member State.

These costs, in the Commission’s views, would be higher in those States reserving a particular kind of representation to particular categories of customs agents established in their territory.

⁹ It is textually stated: “*Negative impacts are the cost of change-over to the electronic systems and, possibly, some reduction in employment as a result of increased competition throughout the Single Market, especially in areas where de-facto monopolies exist (e.g. in Member States which restrict a certain type of representation to customs agents established and registered in that country)*”.

¹⁰ “*Customs representatives should no longer have a ‘monopoly’ over their activities – although they should continue to exist as an occupational category, since the services which they provide are useful to a great many businesses*”, European Parliament, “*Draft report on the proposal for a European Parliament and Council Regulation laying down the Community Customs Code*”, Doc. 2005/0246(COD) provisional of 28th August 2006 (justification to Amendment 4, Recital 8), p. 7.

¹¹ EP, Doc. A6-0429/2006 of 29.11.2006. justification to amendment n. 3, Recital n. 8, p. 7.

¹² EP, Doc. A6-0429/2006 of 29.11.2006 - justification to amendment 14, article 11, paragraph 2 a (new), p. 13.

¹³ EP, Doc. A6-0429/2006 of 29.11.2006 - justification to amendment 19, article 15, point (d), p. 15.

As a result, importers and exporters applying to the services of customs agents established in the “reservist” States, would have higher customs clearance costs, due to an asserted lack of competition in their territory¹⁴.

This situation is considered by the EU Commission as an obstacle to the development of international trade, hampering the economic growth and, in turn, causing a loss of job and business opportunities to multinational companies, being these ones discouraged to perform operations in those Member States with higher customs compliance costs (namely, those States applying the above restrictions to the exercise of the customs representation). Finally, this situation would be especially damaging for SMEs and contrary to the Lisbon objectives of increasing business competitiveness and cutting red tape in Europe.

The final conclusion is that the Commission do not believe that a licensing system for customs agents will be able to guarantee the quality of their services. An abolition of the existing restrictions on the provision of customs services will therefore lead to a better functioning of the Single Market. In other words, the market should decide itself which customs service providers offer quality services.

However, in order to maintain a high level of service and to create a level playing field for customs representatives in Europe, it is **also recognised that common professional standards** could be envisaged¹⁵. This principle was reiterated by the Commissioner László Kovács at the Clecat meeting of 5th October 2006 in Brussels¹⁶, where, referring to the method to follow in order to come to a common definition of the criteria for the accreditation of customs representatives, he expressly stated:

[...] this method should be:

- a) **common and not nationally-based**, in order to avoid the "temptation" of a restrictive implementation by some MS;*
- b) "**internal Market proof**" insofar as it is compatible with the free circulation of services within the EU."*

3.1. The evolution of the customs representative's concept in the political debate

The concept of “customs representative”, during the course of the political debate at Community level, has been characterised by a continuous evolution that determined also a change in the meaning commonly ascribed to this term. A reconstruction of this process is crucial in order to understand the current state of the play and how the situation is evolving.

In the first drafts of the Proposal for a Regulation of the EP and the Council laying down the “Modernized Customs Code”, and in particular in the **Document COM(2005) 608 final of 30 November 2005**, the term “customs representative” is simply used to identify, in a very generic, not-technical and “all-inclusive” sense, those persons who provide customs services at Community level (i.e. *doganalisti, commissionaires en douane*,

¹⁴ Ref. SEC(2005) of 30 November 2005, page 20.

¹⁵ Ref. SEC(2005) of 30 November 2005, page 26.

¹⁶ Clecat, Conference on the European Accreditation of Customs Representatives (Brussels, 5 October 2006).

agents de douane, comisionistas y agentes de aduana, shipping agents, handling agents, forwarding agents, zollmaklers, clearing agents, etc.), irrespective of the mode of representation used (direct/indirect) and of their nature (professionals/not professionals). Consequently, the title of “customs representative” is automatically recognised to all the above persons, irrespective of the possession of any particular requirement of competence, reliability or whatever.

The **Draft report n. 2005/0246(COD) Provisional of 28 August 2006** (“*Fourtou amendment*”) proposes for the first time to bring in the text of the Code a punctual definition of “Customs representative”:

*“(4a) 'customs representative' means any person established on EU territory who provides customs services to third parties.”*¹⁷

The “*customs representative*” ceases to be a simple term identifying in a very generic way all those persons who are established in the EU territory and provide customs services, becoming a *qualification* expressly attributed by each Member State on the basis of common criteria to be established at Community level and on condition that those who are interested to cover that position will be able to satisfy a precise set of requirements. In fact, the above document suggests to introduce a new paragraph to the article 11 MCCC, reading as follows:

2a. Customs representatives established on the territory of the European Community shall be authorised.

Authorisation shall be granted by the relevant authority in the Member State concerned on the basis of criteria applicable throughout the European Community and shall be valid in all the Member States.

A customs representative shall be authorised if he can demonstrate:

- a sound financial situation,*
- professional integrity,*
- his competence.*

The **Doc. A6-0429/2006 of 29 November 2006** (amendment adopted in first lecture by the EP) welcomes the definition of customs representative proposed in the “*Fourtou amendment*” and qualifies the “customs representative” as a “*status*” valid on the entire EC territory, putting this figure on the same level of the “*Authorised Economic Operator*”. It must be reminded that the “*status*” is a relatively new juridical concept progressively arising within the community customs law in the last decades, and whose main characteristics are:

- 1) the access is generally granted only on demand by those who are interested to cover this position;

¹⁷ Ref. Amendment 9, concerning the Article 4, paragraph 4 a. The concept of “thirds parties” implies that the economic operator, alternatively to the execution on his own of the acts and formalities laid down in the customs legislation, can choose to appoint another subject able to represent him before the Customs authority and that therefore will perform the acts and formalities that the customs legislation requires to the represented person.

- 2) it is a source of a variable set of rights and obligations whose amplitude is depending case by case¹⁸.

3. THE CUSTOMS REPRESENTATION IN THE REST OF THE WORLD

If we look at the international landscape, a common thread seems to tie together the majority of the Countries of the world, represented by the fact that all of them envisage strict requirements of access to the functions of customs brokerage and customs intermediation in general. The apparent reason is that these activities, considered their extremely delicate nature¹⁹, are potentially able to cause harmful effects on their budget, in terms of relevant loss of tax revenue.

3.1. United States

In the **U.S.A.**, customs brokers are the only category allowed to exert any activity of customs intermediation on behalf of third parties (U.S. Customs Regulations, Section § 111.4). To this end, they are required to hold both a **license** valid at Federal level and a **permit** for each customs district where they intend to perform their activity. Besides, all customs brokers (both those who are actively and not actively engaged in transacting customs business) are obliged to submit each 3 years to the Secretary of the Treasury²⁰, a special report ("*status report*") where they must declare:

- a) whether there are actively involved in a customs brokerage activity;
- b) the name under which they perform this activity;
- c) the address of their main place of business²¹.

The failure to file this report will lead to a suspension or - where applicable - to a revocation of the customs broker's licence²².

¹⁸ Apart from the status of AEO, introduced by Regulation (EC) 648/2005, that inserted within the Community Code the new art. 5a, it can be quoted the status of *authorised consignor* (art. 398 IP-CCC), the status of *authorised consignee* (art. 406 IP-CCC), the status of "*authorised weigher of fresh bananas*", set forth by the new art. 290 b IP- CCC, and introduced by Regulation N. 402 of the 8 March 2006, and finally the status of "*safe operator*" which is at the centre of the Communication of the EU Commission on enhancing supply chain security [COM (2006), 79 of 27 February 2006]. The latter is a special status that will allow to all those operators implementing special measures of safety and security within the supply chain to benefit of "*fast track*" procedures as concerns the security controls.

¹⁹ An element that seems to confirm the very delicate nature of the customs brokerage's activity, is represented by the provision, adopted by several countries of the world, prohibiting customs staff to offer customs brokerage services for several years after ending employment with customs (ref. Luc De Wulf, José B. Sokol, "*Customs Modernization Handbook*", World Bank, Washington, D.C., 2005, page 35).

²⁰ 19 U.S.C. § 1641(g)(1).

²¹ 19 C.F.R. § 111.30(a) states that: "[w]hen a broker changes his business address, he must immediately give written notice of his new address to each director of a port that is affected by the change of address. In addition, if an individual broker is not actively engaged in transacting business as a broker and changes his non-business mailing address, he must give written notice of the new address in the status report...".

²² 19 U.S.C. § 1641(g)(2) provides: "(2) Suspension and revocation. If a person licensed under subsection (b) of this section fails to file the required report by March 1 of the reporting year, the license is

The access to the profession of customs broker is subjected to the passing of an examination (*Customs Broker Licensure Examination*), consisting of 80 multiple-choice questions²³ with a passing score of 75% at least. The examination lasts 4 hours and its purpose is to assess the examinee's knowledge of the customs laws, regulations and procedures, as well as bookkeeping, accounting and finally, on the whole, his (or her) capability to render valuable service to importers and exporters. The main topics of the exam are: the Harmonized Tariff Schedule of the United States (HTSUS), Title 19 of the Code of Federal Regulations (Parts 1 to 199) and other special Customs Directives. The examination is normally given at CBP²⁴ service ports the first Monday in April and the first Monday in October. The competent port director must receive the examination application and \$200 fee at least 30 days in advance of the examination.

After passing the exam, it is necessary to apply for the customs broker's license to a CBP port director within three years from the date of the letter notifying the applicant that he/she has passed the examination.

The applicant is subjected to three levels of controls: firstly, a multi-agency background investigation²⁵; secondly, the CBP port director reviews the background investigation and any other pertinent information, forwarding a recommendation to CBP Headquarters in Washington, D.C.

Finally, CBP carefully evaluates the application, and the Assistant Commissioner, Office of Field Operations, will advise the applicant whether his (or her) application is approved.

The length of time required to complete the license application process can vary depending on multiple factors. Some of these factors include the amount of different locations the applicant has lived in, the workload of the agent conducting the background investigation and the national security threat level. However, an application take on average from 8 to 12 months to process.

As we will see, restrictions to the exercise of the customs representation quite similar to those in force in the United States are currently foreseen in Australia, Canada, China, Japan, Mexico, Russia, Turkey. As a matter of fact, all these Countries have chosen to reserve the functions of customs representation to some regulated professions (i.e. professions requiring a preliminary registration and/or license from a public authority or a professional body accredited by the public authorities²⁶). Other figures, acting both at professional and not professional level, who are regulated or recognised by these Countries (i.e. "*forwarding agents*"), deal essentially with **logistic activities**, being generally interdicted them the exercise of any customs function on behalf of third parties

suspended, and may be thereafter revoked subject to the following procedures: (A) The Secretary shall transmit written notice of suspension to the licensee no later than March 31 of the reporting year. (B) If the licensee files the required report within 60 days of receipt of the Secretary's notice, the license shall be reinstated".

²³ It is necessary to choose one correct answer among five alternatives (A, B, C, D, or E).

²⁴ C.B.P. stands for "*Customs and Border Protection*", the U.S. customs administration.

²⁵ Background investigation includes a fingerprint analysis and a review of character references, credit reports, and any arrest record. However, arrests or convictions do not necessarily preclude the issuance of a license.

²⁶ In the majority of the analysed Countries, licensing policies are usually administered at national level and more rarely at Super-state or federal level.

or more generally, to transact of any customs business, **without the possession of a valid license of customs broker**²⁷.

The principle at the basis of the regulations adopted by all these Countries is that all of them recognise a general freedom of provision of customs services related to international trade, but when it comes to perform customs operations and to represent an operator before the customs authorities, some precise guarantees are required.

In particular, customs administrations require those persons to be accredited before them and to prove the holding of special competences and knowledge with regard to the customs procedures. The requirement of competence usually entails a preliminary assessment by the public authorities, which is performed through an exam combined with a period of practice.

This process normally ends with the release of a licence or authorisation.

The above restrictions aim to guarantee the customs administrations that the presentation of a customs declaration on behalf of third parties will be performed only by persons endowed with special requirements of reliability and competence. This solution is intended to reduce the possibility of frauds and other irregularities on the revenue. In the case of the United States, for instance, this need is quite clear in the Act of 10 June 1910 (see further), providing the Secretary of the Treasury with the authority to revoke a broker's license for "*good and sufficient reasons*" and in Section 641 of the Tariff Act of 1930 (as amended by Title 19 U.S.C. § 1641), which expressly authorises the latter to prescribe further rules and regulations relating to the customs business of brokers (in addition to those that are still in force), as may be necessary to protect importers and **the revenue** of the United States.

The United States represent a concrete example of a Country that has gone through the negative experience of a total deregulation of the customs representation activities. Already in the mid 1850's, in fact, the practice of endorsing bills of lading over to special tradesmen called "*Custom-house brokers*" or "*express agents*" was performed by many importers or consignees of the Country. Being the activity of these agents (who were responsible for the material lodging of the entry documents to the customs) totally unregulated, they began to lodge customs declarations also in their own names, without declaring to act as a representative for the real consignee. This practice eventually, gave rise to many problems, including frauds on the revenue, so that the US Government decided to react through the enactment of the Customs Regulations of 1857, whose Article 194 expressly stated:

"The practice of allowing custom-house brokers, express agents, and other parties, not the owner or original consignees, to make entries of merchandise in their own names, on the production of bill of lading endorsed by the importer or consignee, is in contravention of the express provisions of law and the decisions of the courts, and will therefore be discontinued. Entry must, in all cases, be made by the owner or consignee, who alone is authorized, under our revenue system, to take the prescribed oath, give the requisite bond, and pay the duties; and in cases where, from either of the causes averted to in the act [absence or sickness], the owner or consignee may be unable to attend personally at the custom-house, s/he will be required to be represented by a duly constituted agent or attorney, whose power must be

²⁷ In the case of the United States, this is expressly set forth at Section 111.4 of the US Customs Regulations.

*lodged with the collector, who will make entry and perform all the necessary acts in the owners name, giving bond for the due production of his oath*²⁸.

Although Customs laws and regulations have continued to restrict the right to lodge declarations until the late nineteenth century, the basically unregulated business of customhouse broker continued to grow as trade expanded. The customhouse broker was actually filling a gap, since he responded to a concrete need of the market: i.e. **the lack in U.S. companies of personnel experienced in the execution of customs formalities**. At the same time, they offered a service useful to the customs administration, having the latter the possibility to benefit from the competence of qualified individuals for a correct execution of the customs formalities, so avoiding risks of errors in the drafting of customs declarations. Unfortunately, not every broker was honest, as testified by several Decisions of the Treasury and opinions of the Solicitor of the Treasury of the time, where a major concern seems to emerge with regard to the growing number of frauds perpetrated to the U.S. Exchequer.

As a result, the necessity to subject his activity to a governmental control and to reserve its exercise only to those holding a special license, became immediately evident. With the Section 23 of the Act of August 27, 1894 a special provision was therefore introduced in the US legal system, prohibiting any unregulated "agent" to transact customs business:

*"The collector or chief officer of the customs at any port of entry or delivery shall issue a license **to any reputable and competent person** desiring to transact business as a custom-house broker. Such license shall be granted for a period of one year, and may be revoked for cause at any time by the Secretary of the Treasury. From and after the first day of August, eighteen hundred and ninety-four, **no person shall transact business as a custom-house broker without a license** granted in accordance with its provision..."*²⁹

This provision has been in force until passage of the Act of June 10, 1910, that modified the wording "**any reputable and competent person**" in that of "**any person of good moral character**", subsequently transposed into the Code of Federal Regulations of the U.S. (Section § 111.11), currently in force. The Section 23 of the Act of August 27, 1894 was amended as follows:

*"the collector or chief officer of the customs at any port of entry or delivery shall, **upon application**, issue **to any person of good moral character, being a citizen of the United States** a license to transact business as a customhouse broker in the collection district in which such license is issued, and on and **after sixty days from the approval of this act no person shall transact business as a customhouse broker without a license** ..."*

The above Act also authorised the Secretary of the Treasury to prescribe regulations necessary or convenient for carrying the Act into effect.

Broker regulations were originally promulgated as Treasury Decisions and later consolidated into the Customs Regulations. These regulations required to licensed brokers to submit employee lists and written authorizations for employees to act, as well as "*to exercise such discipline as will insure proper conduct on the part of their employees in the transaction of customs business*". Subsequently, customs brokers were held directly responsible for the acts of their employees.

²⁸ U.S. Bureau of Customs & Border Protection, "What Every Member of the Trade Community Should Know About: Customs Brokers" publication by the Office of Regulations & Rulings.

²⁹ 28 Stat., Chap 349.

The provisions contained in the 1910 Act continued to be in force until enactment of the Tariff Act of 1930. Afterwards, the implementing Customs Regulations of 1931 introduced the obligation, for those aiming to access to the profession, to pass an oral or written examination intended to ascertain their knowledge of the Customs laws, regulations and procedures.

Over the years, statutes and regulations governing customhouse brokers were continually revised. Major changes occurred under the Anti-Smuggling Act of 1935, the Trade and Tariff Act of 1984, and Title VI (Customs Modernization) of the NAFTA Agreement's Implementation Act in 1993.

On 1984, Section 641 of the Tariff Act of 1930, changed the title from "customhouse broker" to "customs broker", realising at the same time a transition from the previous system of authorisation (based on the release of a licence for each district where the customs broker conducted his activity), to the system currently in force, where the exercise of this profession is subjected to the holding both of a **licence** valid at federal level, and of a special **permit** for each customs district where the broker is intended to conduct its business.

To date, in the United States there are approximately **7900 permits** issued to businesses/people to conduct customs business as a broker at various ports throughout the Country.

3.2. Canada

In **Canada**, as in the USA, licensed customs brokers Customs brokers are the only persons authorised by the Canada Border Services Agency (CBSA)³⁰ to operate as agents for importers/exporters as well as to act, on a commercial basis, and pay duties and other taxes on their behalf. Customs brokers in Canada can be either individuals or firms, on condition that they are regularly licensed by the Customs authorities.

As a matter of fact, the Canadian law binds those performing customs brokerage activities to obtain a licence for each CBSA Customs office where they wish to conduct their business (except in the case of acting through a sub-agent).

The customs broker's activity is regulated also in this Country as a profession. In particular, the art. 3 of the Customs Brokers Licensing Regulations³¹, indicates five requirements to be satisfied in order to access to that, and namely:

- 1) being a citizen or permanent resident of Canada;
- 2) being of "good character";
- 3) being at least 18 years old;
- 4) having sufficient financial resources to conduct his business in a responsible manner;
- 5) having a sufficient knowledge of laws and procedures relating to importations and exportations.

³⁰ Ref. Customs Act, R.S.C. 1985, c. 1, 2nd Supp., Section 32.

³¹ Ref. CBSA , Memorandum D1-8-1, March 26, 1993.

The last requirement is assessed through a professional examination which is conducted, at least once a year, by the customs administration in each region of the Country. Candidates may apply to the examination site of their choice at least 30 days before the examination date. Passing of this examination is crucial in order to be qualified as a customs broker³². Alongside the “*Professional Examination*”, conceived for those individuals intending to qualify as a Professional and to obtain a licence as an individual (sole proprietor) or on behalf of a corporation (as Qualified Officer), there is another kind of examination, named “*Qualifying Examination*”, which is aimed to those intending to obtain employment as a customs broker in the office of a licensed customs brokerage firm³³.

A special Licensing Advisory Committee is foreseen by the Canadian customs law, as advisory body to the Minister of Finance competent for all the matters related to the issuance, renewal, suspension or cancellation of licences to customs brokers.

To date, in Canada there are approximately **260 customs brokerage firms** operating at about **650 licensed offices**.

3.3. Mexico

In Mexico, in order to import and/or export, a company/individual need to be registered with the government customs authority³⁴. The registration process is easier for export and more difficult for import.

More frequently, however, Mexican companies prefer to avoid the above registration, entrusting to a customs broker the fulfilment of all customs procedures and formalities related to their import/export operations.

Tariff laws of Mexico recognise Customs brokers how the only persons authorised to act as agents/representatives for importers or exporters. Furthermore, Mexican customs brokers cover also a role of support with regard to the customs administration. In fact, and this is a characteristic of the Mexican system, they are allowed to carry out controls of security on goods on behalf of the customs authorities, that can therefore count on them to offset their lack of personnel.

The Federal Government of Mexico licenses only those who have shown (by virtue of a special examination) their ability to handle the customs brokerage activity on behalf of the general public. Customs brokers can be only private parties that are in the business of

³² An importer or exporter must authorise the broker to conduct business. The authorisation can be specific to a particular brokerage firm, or it can allow the latter to appoint one or more subagents to transact business at those locations where it is not licensed (extract from “*Exporting Business Sourcing Guide*”, Canada / British Columbia Business Services Society, March 2004).

³³ Requirements and procedures regarding to the Customs Brokers Qualifying Examination and the Customs Brokers Professional Examination are described in Memorandum D1-8-3, 7th July 2000 of the Canadian Customs administration.

³⁴ Mexico maintains a National Registry of its authorized importers and exporters. Those persons and companies that customarily import or export are to be registered there, otherwise they can not import or export.

assisting private parties and businesses in their importation/exportation activities, by performing filings, obtaining permits and paying duties, as needed³⁵.

3.4. Japan

The Japanese law makes a distinction between the position of “**customs broker**” and that of “**customs specialist**”. Only the first one is regulated as a professional activity, whereas the second refers to those acting as employees of a customs brokerage company or of a customs broker owner of a professional firm. In both the cases, it is necessary to pass a special examination and to get a licence in order to provide in a legitimate way customs representation services.

Japanese customs brokers perform especially consultancy activities in the customs/tax field. On the other hand, registered customs specialists deal essentially with the submission of customs declarations and data to customs offices.

The Registered Customs Specialist System was adopted in Japan on 1967. Since then, the system has been playing an essential role in realising the fast and accurate clearance of goods, depending the latter on the correct filing of customs-related documents, such as the declarations to be submitted to the Customs offices.

Customs Brokerage Law stipulates that, in principle, registered customs specialists who have sufficient expertise and experience of customs brokerage must be assigned by customs brokers to each of their business places and examine declarations to be submitted to customs offices.

To gain the qualification of “*registered customs specialist*” it is necessary to pass the “**Qualifying Examination for Registered Customs Specialists**”, a national examination³⁶ held once a year since 1967, which is conducted by the Director-General of each Regional Customs office and consisting of questions determined by the Ministry of Finance, aiming to judge whether or not the applicant has the necessary knowledge and ability to act as a registered customs specialist. In addition, after passing the exam, it is necessary to be confirmed by the Director-General of Customs, upon explicit application of the customs broker employing the specialist³⁷.

The total number of persons engaged in customs brokerage in Japan is **14.347** (6.478 of them are registered customs specialists).

3.5. Russia

A distinction similar to that existing in Japan is also present in Russia, where the activity of **customs broker** is regulated in a different way from that of “**customs clearance specialist**”. Russian customs brokers play a major role in simplifying customs

³⁵ Source: <http://www.mexicolaw.com>.

³⁶ The subjects on which the Qualifying Examination for Registered Customs Specialists is focused, are the Japanese Customs Law, the Customs Tariff Law, and other tariff-related laws (as well as the Foreign Exchange and Foreign Trade Control Law, in particular Chapter 6), the customs clearance documentation and other clearance procedures, the Customs Brokerage Law and other relevant laws concerning the customs field.

³⁷ Ref. Japan Customs Brokerage Law, Articles 23, 27, and 31.

procedures, acting as middlemen between customs and companies. But becoming a customs broker is not easy at all. Firstly, it is necessary to obtain a special license from the Federal Customs administration and secondly a bond must be lodged, to be used in cases of violations for non-payment of customs fines. Being customs brokers fully responsible both for declaring goods and paying customs duties, the risk of operating in this field is very high.

The definition of customs broker is set forth at art. 11, n. 18 of the Customs Code of the Russian Federation³⁸. This is *“an intermediary [juridical] person fulfilling customs clearance formalities on behalf of or as instructed by a declarant or another person who is designated or authorised to perform customs operations in accordance with [...] Customs Code”*. The Chapter 15 of the Code (Articles 139-148) specifies that in order to carry out the activity of customs broker (agent), one must be inscribed in a **Federal Register of Customs Brokers**. After this inscription, customs brokers must demand a **Certificate of registration** to the above Register, which is a prerequisite to exercise legitimately the activity of customs brokerage.

Among the requirements prescribed in order to get the inscription in the Register of Customs brokers, there are:

1. the availability, in the applicant's staff, of at least two certified specialists in customs clearance procedures, who will possess the relevant licence (Article 146);
2. a guarantee for the payment of duties (Article 339);
3. the availability of the applicant's civil liability insurance policy covering the damages caused to the goods belonging to represented person or any breach of the agreements concluded with the latter.

The Certificate of Entry onto the Register of Customs Brokers may be revoked by the customs authorities in case of breach of at least one of the above condition of entry in the Register or in case of multiple application of administrative penalties for non-fulfilment of his/her responsibilities or for administrative offences in the customs field, as provided for by articles 16.1, 16.2, 16.3, 16.15 and 16.22 of the Code of the Russian Federation on Administrative Offences.

Concerning the Certified Specialist in Customs Clearance Procedures, article 146 of the Code provides that it *“may be any natural person meeting the qualification requirements established by the Federal Customs Authority and having a licence qualifying him or her as a ‘certified customs clearance specialist’*. And finally, *“A certified customs clearance specialist carries out his (or her) duties as an employee of a customs broker (agent)”*.

To act as a customs specialist, it is necessary to obtain a special *“Attestation for Compliance with Qualification Requirements”*, that is a certificate proving the possession of the competences required in order to carry out customs procedures and operations. This attestation, whose term of validity is not limited by time, is released only to those who successfully pass a special qualification test (exam).

To apply for the Qualification Certificate as “customs clearance specialist”, in turn, it is necessary to meet the following criteria:

- a) availability of a higher-education diploma issued by a Russian state-accredited institution of higher professional education or a higher-education diploma issued by

³⁸ Federal Law 61-FZ of 28 May 2003.

a higher-education institution of a foreign country (in such a case, the latter needs to be supplemented with a document certifying its equivalence to a Russian state diploma of higher education);

b) minimum two years of working experience.

Moreover, starting from the year following the attestation year, each certified customs clearance specialist is obliged to undergo a biennial 40-hour **upgrading course** approved by the Federal Customs Authority.

The Qualification Certificate (*licence*) for specialists in customs clearance procedures can be revoked in the following cases:

- a) it has been ascertained that the licence was obtained on the basis of forged documents;
- b) by virtue of a court decision suspending its validity for a designated period of time;
- c) due to a breach of the requirements stipulated by Item 3 of Article 144 of the Customs Code of the Russian Federation, establishing that “*Any information obtained by a customs broker (agent) from the persons he represents constituting commercial, banking and other secrets protected by law or any other requisite confidential information may not be made public, or used by the customs broker (agent) and/or its employees for their personal goals, or revealed to other persons except for the cases stipulated by federal law*”;
- d) in case of reiterated application of administrative penalties, due to non-fulfilment of its responsibilities or its administrative offences in the sphere of customs system stipulated by Articles 16.1, 16.2, 16.3, 16.15 and 16.22 of the Code of the Russian Federation on Administrative Offences;
- e) In case of breach by the certified customs clearance specialist of the requirement to undertake the upgrading course provided for the Item 3 of Article 147 of the Customs Code of the Russian Federation.

The decision concerning the annulment of a Qualification Certificate (*licence*) of a customs clearance specialist is taken by the Federal Customs Authority through a motivated resolution. A copy of this resolution must be forwarded to the person concerned within three days from the date of its adoption.

3.6. Australia

Very rigorous requirements of access to the activities of customs representation are foreseen in **Australia**, where the Customs Act 1901 (Part XI, Section 183C) requires all customs brokers (the only professional category allowed to exert functions of customs intermediation), to be licensed by the Australian Customs Service. To this end, it is required that the applicant will be properly qualified and have gained a sufficient and suitable experience to act as a customs broker³⁹.

³⁹ Australian Customs Notice n. 2006/12.

To obtain the license, there are a number of pathways that intending customs brokers may alternatively follow⁴⁰:

- 1) to complete a special training course (named "**Certificate IV**"), organised by a special Institute ("*Technical and Further Education*" – "*T.A.F.E.*") and provided through the colleges of the main Australian cities, which is offered also in the part time mode, with students attending night classes, to meet the needs of those who are already active in the field. The prescribed course of study comprises eleven technical study units⁴¹. Those who have completed and passed the course and who are seeking to be licensed by Customs, must subsequently demonstrate their operational competency by passing the **National Examination**, which is held twice per year in April and October. The examination is aimed to assess the skills of an aspirant broker and its capability in handling documents and dealing with the typical complex range of issues that confront a broker on a daily basis. The examination lasts 3-hour and requires a 70% pass mark. Candidates who meet all the requirements outlined above, and can demonstrate they are a "*person of integrity*" as required by S.183CC(1) of the Customs Act, can make application to the Broker Licensing section of Customs in order to get the licence to act as a customs broker in Australia. The application will be considered by the National Customs Brokers Licensing Advisory Committee (NCBLAC)⁴². If this advisory body of customs believes that the candidate holds all the necessary skills, knowledge and attributes required to become a customs broker, will make a recommendation to C.E.O. of Customs, that will formally release the license;
- 2) intending customs brokers who already possess a significant experience in the customs clearance operations, may choose to seek *Recognition of Prior Learning (RPL)* for their skills and knowledge acquired over time, as an alternative to the above course of study. To obtain RPL, they have to contact one of the educational institutions offering the above course of study and make application to complete the RPL process. The intending customs broker will have to demonstrate, via a significant portfolio of evidence, that he or she has the necessary skills, knowledge and attributes required for the exercise of the activity of customs brokerage. If the RPL application is approved, the person concerned will obtain a *certificate* that recognise the competence possessed and that is equivalent the one released at the end of the course of study referred to in item n. 1 above;

⁴⁰ Customs Brokers and Forwarders Council of Australia Inc. (CBFCA), "*Becoming a customs broker*", www.cbfc.com.au.

⁴¹ The course of study comprises a mandatory minimum of eleven study units covering the full range of technical skills required to a licensed customs broker in daily practice, and precisely: Import-Export Documentation; Border Clearance Functions; Permit Issuing Authorities; GST (Goods and Services Tax); Quarantine Procedures; Customs Clearance Practices; Customs Valuation 1; Customs Valuation 2; Classification 1; Classification 2; Integrated Border Clearance. These units may be taken as a stand alone course of study or they may be included within a nationally recognised credential such as a Certificate IV.

⁴² The primary role of this Committee is to advise the Chief Executive Officer (CEO) of Customs regarding the standards that customs brokers should meet in the performance of their duties (Section 183D of Australian Customs Act). In its deliberations, NCBLAC will determine, *inter alia*, whether the nominee has the "*acquired experience that ...fits him to be a customs broker* (Section 183CC(2)(b) of Australian Customs act).

- 3) intending customs brokers can finally apply for a direct interview with the **National Customs Brokers Licensing Advisory Committee** (NCBLAC), who can declare sufficiently competent, and consequently recommend them to the CEO of Customs in order to get a licence of customs broker.

Licences for customs brokers are **valid for up to three years, expiring on 30 June 2009 and every three years thereafter**⁴³. The holder of the licence is also entitled to apply for Australian Quarantine and Inspection Service (AQIS) certification under the Broker Accreditation Scheme. This certification is necessary for brokers to operate within certain key areas of international trade logistics operations under the Government's co-regulation schemes.

3.7. China

In **China**, the activity of customs brokerage is governed by the "*Regulation on the management of Agent Declaration Enterprises*", promulgated by decree No. 52 of the Customs General Administration of 6th July 1995. The customs brokerage's activity is reserved to special companies ("*Agent Declaration Enterprises*"), expressly authorised by the Customs service of the People's Republic of China.

To obtain this authorisation, it is necessary to pass a **qualification examination** (which is organised on annual basis), and to be registered in a special **list of agent declaration enterprises**. Only after obtaining the registration certificate it is possible to begin carrying out the customs representation business.

The requirements that applicants must meet in order to be authorised to the exercise of the customs brokerage activity are, among others (art. 5, decree 52/1995):

- (1) a registered capital of not less than 1.5 million yuan;
- (2) the payment of 200,000 yuan in risk guarantee;
- (3) other further conditions that Customs could deem necessary.

Customs can temporarily suspend (up to six months) or revoke the declaration right of the agent declaration enterprises if they are involved in one of the cases set forth at articles 17 and 18 of the Decree No. 52 of 6 July 1995 (i.e. violations of customs regulations concerning supervision and control; failure to fulfil the obligation of tax payment; failure to pass the test in annual examinations, etc).

3.8. Turkey

In Turkey, the activity of customs brokerage ("*customs consultancy*") is regulated as a profession. Customs consultancy has been defined by law since 1909.

Turkish customs law distinguishes between the role of "*customs consultant*" and "*assistant customs consultant*".

According to the art. 226-1 of the Turkish Customs Code, Customs consultants can transact any kind of customs business, while assistant customs consultants work as employees of a customs consultant (to this end, they are entitled to carry out their work with the customs administrations only in the name of the latter). Nevertheless,

⁴³ Australian Customs law, Section 183CH (*Duration of licence*), see Annexes.

Undersecretary of Customs can impose some limitations to the activity of the assistant customs consultants.

Customs consultants are responsible for acts or transactions performed by the assistant customs consultants, who are therefore not directly responsible for their work.

In order to perform their activity, both Turkish Customs Consultants and assistant customs consultants are required to be enrolled as members of one of the Customs Consultants Associations of the Country, according to the Customs Law n. 4458 of 5th February 2000⁴⁴.

Under the article 229-2 of the Turkish Customs Code, in order to carry out their activity, customs consultants can also set up special entities (legal persons), in whose case each partner must be qualified as a customs consultant. The legal person, in this hypothesis, is jointly responsible with the employees who materially signed the customs declaration.

The table below indicates the number of customs consultants (both physical and legal persons) and assistant customs consultant who act in each customs district:

Directorates of competence	Customs Consultants	Assistant Customs Consultants	Total	customs consultancy companies
Istanbul	1.571	3.589	5.160	933
Izmir	308	506	814	206
Mersin	190	420	610	130
Ankara	186	271	457	137
Bursa	98	186	284	80
TOTAL	2.353	4.972	7.325	1.486

The role of customs consultant in Turkey is crucial to the State revenue. To make an example, the global foreign trade volume in 2006 has been nearly 222 billion dollar. Customs consultants have performed about 87% of these transactions and collected about 14% of the total amount of duties and taxes to which goods were subject to⁴⁵.

Customs representation is regulated by the article 5 of the Turkish Customs Code. According to this article:

"Any person may be represented in his dealings with the customs authorities to perform the acts and formalities laid down by customs rules.

Representatives are the persons who are established in the customs territory of Turkey, except for the transit carriers and those who lodge a declaration temporarily.

Representation may be direct or indirect. In the case of direct representation, the representative shall act in the name of and on behalf of another person. In the case of indirect representation, the representative shall act in his own name but on behalf of another person.

⁴⁴ In Turkey there are currently 5 Customs Consultants Associations located in İstanbul, Ankara, İzmir, Bursa and Mersin.

⁴⁵ To date in Turkey 99.9% of foreign trade is treated by electronic means, with 75% of customs declarations prepared by using an EDI system (Electronic Data Interchange).

A representative must state that he is acting on behalf of the person represented, specifying whether the representation is direct or indirect, and this representative must exhibit the license to the customs administration.

A person who fails to state that he is acting in the name of or on behalf of another person or who states that he is acting in the name of or on behalf of another person without being empowered to do so, shall be deemed to be acting in his own name and on his own behalf.

The article 225 of the Turkish Customs Code reserves the exercise of the **indirect representation** to the customs consultants. This article reads as follows:

*"The activities related to the customs-approved treatment or use of the goods can be exercised and concluded, under the article 5, by the owners of goods and the persons acting in the name of the owners of the goods via direct representation or by the customs consultants via the indirect representation. **Indirect representation can be performed only by customs consultants.***

The representatives of the transport enterprise and the road, sea and airway enterprises can only follow the transactions of the goods carried by them via the direct representation".

Finally, art. 227-1 sets the requirements to which are subjected those aiming to access the activity of *assistant customs consultant*. These requirements are:

- a) to be a citizen of Republic of Turkey;
- b) having the capacity to use the civil rights;
- c) not having lost the public rights;
- d) not being sentenced⁴⁶ for infamous crimes such as smuggling, bribery, theft, corruption, fraudulent act, falsification, *crimen falsi*, calumny and tax fraud offences, or of rigging a bidding process;
- e) not being suspended from office after a penal prosecution or disciplinary proceedings;
- f) being graduated in 1) law, 2) economics, 3) finance, 4) accounting, 5) banking, 6) public administration, 7) political sciences or 8) industrial engineering, 9) business administration. However, one can become a customs consultant even if graduated in disciplines other from those above listed, on condition that a master degree is obtained in one of the fields above, or a period of not less than two years has been attended in the high school concerning matters related to customs, foreign trade or European Community law;
- g) having practiced as a trainee the activity of customs consultant for a minimal period of three years;
- h) passing a special exam covering customs legislation and other related fields such as economics, commerce and finance.

To qualify as a customs consultant, in addition to the above criteria, a further **3-years period of practice** as trainee in a customs consultancy company is required, as well as to overcome another **special exam** organised by the Undersecretary of Customs.

⁴⁶ Except for the crimes committed by imprudence, even if condoned.

4. THE CUSTOMS REPRESENTATION IN THE EU

Within the Community there are different traditions regarding the attribution of the activities of customs representation on behalf of third persons. While in some States these activities are reserved since the ancient times to persons endowed with special requirements of reliability and trustworthiness (i.e. Portugal, Italy, Greece, Spain)⁴⁷, in other States they are substantially deregulated, not being required the possession of any special requisite or professional competence to be assessed by the customs authorities, in order to practice this activity.

The existence of the possibility to restrict one of the two kinds of representation provided for the art. 5, CCC (*direct* and *indirect*) to customs agents exercising their activity in their respective territory of establishment, has generated an inhomogeneous situation at Community level, with regard to the exercise of the customs representation, so that currently two groups of States can be identified:

- 1) **“Reservist” States**: i.e. States that, availing of the possibility offered by the art. 5 CCC have reserved one of the two kinds of representation (generally the direct one)⁴⁸, to special professional figures established in their territory, fully liberalising the exercise of the other kind of representation.
- 2) **“Not Reservist” States**: i.e. States that have not introduced any restriction to the exercise both of the direct and the indirect representation, with the consequence that in their territory any person can act, with no limit, with both the kinds of representation.

In the first group of States, the activity of customs intermediation is usually considered as a **profession** (whose access is allowed upon passing of a national examination), and it is regulated in a very detailed way by internal rules or regulations defining very rigorously the conditions of practice.

In the other group of States, there is a generic freedom of exercise of any activity of customs intermediation on behalf of third parties, and the provision of customs services is assured by a variety of figures, generally represented by *Forwarding agents*, *clearance agents* and *shipping and handling agents*. Alongside these figure is not unusual to find, as not-regulated category, also *customs brokers*. This is the case, for instance, of Germany (“*zollmakler*”) and United Kingdom.

All these figures, apart from the different name with which they are identified and irrespective of their professional or not-professional nature, are subject to very diverse regulations, depending on the member state in which they are established.

⁴⁷ In Portugal for instance, some documents dating back to the XVI century, testify that customs brokers, during the development of the colonial traffics along the seaways to India, were responsible on behalf of the King for the collection of taxes and other levies on trade. In Italy too, the profession of customs broker was existing already in the beginning of the XIX century (see Chapter 4.4).

⁴⁸ The direct representation can lead to more dangerous patrimonial and financial consequences for businesses, being the person on whose behalf the customs declaration is made directly responsible for the activity of those acting with this mode of representation (that will be therefore exonerated from any responsibility regarding the customs debt, except in the case where they knew, or ought reasonably to have known, that information contained in the declaration was false). Conversely, in case of indirect representation, the representative and the person on whose behalf the customs declaration is made are jointly responsible (art. 201 CCC).

4.1. Belgium

In Belgium, a definition of “customs agent” (*agent en douane*) can be found in art. 127 of the “*Loi Générale des Douanes & Accises*” of 18 July 1997. More precisely, this article reads as follows:

“Nobody can act as a customs agent if is not enrolled in a special register kept under the conditions laid down by the Minister of Finance.

Having regard to the first intend, customs agent means any natural or moral person who performs professionally the activity of fulfilment in his own name, on behalf of third persons, customs formalities of importation, exportation or transit.”⁴⁹

The expression “customs agent” seems to be commonly referred only to those persons (natural or moral) performing professionally activities of customs representation **in their own name**. Conversely, those who lodge occasionally in their name customs declarations on behalf of third persons, are not considered customs agents⁵⁰. Therefore in Belgium, a customs agent, formally, is allowed to act only by means of the indirect representation. But in practice things are quite different, since Belgian customs agents frequently use to submit a declaration to the operator (to be signed by the latter) with which they decline every kind of responsibility regarding declared goods. As a result, the responsibility for the customs debt is completely transferred to the economic operator. Hence, from a juridical point of view, the effects of this way of acting are perfectly identical to the direct representation.

Customs agents are required to be **registered with the Customs Administration**⁵¹. The registration can be refused (or revoked) where the applicant (or the agent, if already registered), has been sentenced to fraud or to other offences regarding direct and indirect taxes (or other similar levies), as well as to theft, recycling of theft goods, swindle, embezzlement, simple or fraudulent bankruptcy, concussion, or corruption of public officials.

In accordance to article 138 of the “*Loi Générale des Douanes & Accises*”, the customs declaration must be lodged with the customs office in writing, signed by those who are materially disposing of goods and who are able to produce them for examination, namely:

- the owner or the consignee of goods, the captain, the carrier or the driver;
- an authorised representative;
- the sender, the commerce or maritime broker, or any agent expressly recognised or empowered to do so by the administration.

⁴⁹ “Art. 127. Nul ne peut faire acte d'agent en douane s'il n'est immatriculé dans un registre spécial tenu dans les conditions fixées par le Ministre des Finances. Pour l'application de l'alinéa 1^{er}, on entend par agent en douane toute personne physique ou morale qui fait profession de remplir en son nom, pour compte de tiers, les formalités douanières à l'importation, à l'exportation ou au transit.”

⁵⁰ Belgian customs, Instruction n. 881.0 of 16.03.1998, chap. II, item n. 6.

⁵¹ Instruction n. 881.0, *supra*, chap. III, item n. 8.

Customs agents belong to the latter category of persons. Finally, they are required to write down the particulars of the customs declarations made, on an annual register to be kept according to special instructions given by the Ministry of Finance⁵².

To date, in the Country **766 customs agents** are currently active in the field.

4.2. France

In France, the profession of customs broker ("*commissionnaire en douane*") was regulated for the first time in 1935 (decree 30 October 1935). Consequently, the decree 22 December 1988, reserving to this professional in exclusive way the exercise of the direct representation, has introduced the obligation to get a special ministerial accreditation ("*agrément*"), in order to perform in a legitimate way his activity⁵³.

French law defines the "*commissionnaire en douane*" as a person dealing at professional title with the execution of the customs formalities on behalf of third parties. The ministerial accreditation is granted on the basis of criteria of solvency, experience (i.e. on demonstration that he/she and his employees are endowed with particular technical competences and expertise with regard to the accomplishment of the customs operations) and respectability (i.e. absence of infringements to the tax and criminal law)⁵⁴.

The request of "*agrément*" must be presented to the General Direction of Customs and Indirect Tax that, after a first examination of the above requirements performed by the Regional Direction competent for the district where the applicant is established, expresses its opinion to the Minister of Finance, that formally releases the authorisation.

In France to date there are **825 *commissionnaires en douane*** who are actively involved in the provision of customs services, with an average of nearly 20 new authorisations released each year.

4.3. Greece

Greek customs brokers are regulated by law n. 718 of 6.10.1977 (so called "customs broker law"), that provides strict conditions for the practice of this profession. Although this figure appeared for the first time at the end of 19th century, with a primary role of support to the economic operators in their dealings with customs authorities, a special legislative framework for the profession has been established only at the end of 1920's.

A characteristic of the Greek regulation is that in this Country **only natural persons** are allowed to act as customs brokers. Other persons operating in the customs broker's staff as employees, can only carry out auxiliary operations, outside and within the customs area and are not allowed to deal with customs formalities.

⁵² Instruction 881.0, *supra*, chap. V.

⁵³ Ref., art. 2, par. 2, decree 22/12/1998, "*the person who makes the declaration in the name and on behalf of third persons within a contract of mandate, shall be a commissionnaire en douane accredited according to the provisions set forth in TITLE II...*". A register of all *commissionnaires en douane* receiving the ministerial accreditation to the exercise of the customs representation is kept at the General Direction of Customs and Indirect Taxes (art. 6, decree 22/12/1998).

⁵⁴ Berr C.J., Tremeau H., "*Le droit douanier communautaire et national*", *Economica*, 6^a ed., 2004, page 182.

Finally, Greek law sets an age limit of 21 years for the access to the profession, as well as an obligatory threshold of exit at the 70th year.

In order to perform the profession of customs broker the passing of a professional examination before a Committee of the Ministry of Finance is required. Those who have succeeded are awarded a **customs broker diploma** and accordingly, are obliged to make their practice for a two-years period.

At the end of this process, the candidate need to pass another examination before a special Committee of the Greek Ministry of Finance and only upon passing of this last examination he will obtain the **customs broker's license**.

As a holder of the license the customs broker is entitled to perform all customs operations on behalf of his/her clients. Moreover, Greek brokers offer consultancy services to their clients with regard to all customs and tax matters.

The professional life and the conduct of customs brokers is strictly monitored by special regional Committees of the Ministry of Finance.

The Greek law reserves the direct representation only to licensed Customs brokers, whilst the indirect representation is free. However, in reality, Greek customs brokers use to act **exclusively** with the first kind of representation. The indirect one is not used at all.

To date, in Greece there are nearly **2.500 persons** acting as customs brokers. It is important to underscore that this number, over the last 15 years, has progressively reduced of about **3.500** units.

4.4. Italy

In Italy, the customs broker ("*spedizioniere doganale*") has historically been considered a pivotal figure in the relations between commercial operators and customs offices. The first law regulating this profession was the decree of the King 14 January 1864, that indicated the "*spedizionieri doganali*" as those persons, endowed with particular competences with regard to the customs and tax regulations, able to exercise, under their own responsibility and of the client, the activity of customs representation. The same decree allowed the directors of each tax office the possibility to refuse services offered by those persons who not deserved their confidence. However, it is also well-known that already in the beginning of the XIX century, before Italy obtained its Unity (1861), the various States of which the Country was made up, used to reserve to special professionals the exercise of the customs representation activity⁵⁵.

Since the past therefore, confidence and reliability were the main conditions required by the Italian customs administration in order to carry out the activity of customs representation on behalf of third parties. After the enactment of the Community Customs Code (Reg. 1913/1992) the exclusivity of the **direct** representation has been reserved⁵⁶ to the "*spedizionieri doganali*", totally liberalising the indirect representation, so that the latter can currently be performed by any person, irrespective of the possession of any

⁵⁵ Walter Orlando, "*Lo spedizioniere doganale – doganalista*", Consiglio Nazionale degli Spedizionieri Doganali Editions, 2000, pages 17 and 18.

⁵⁶ Law 8 May 1998, n. 146 has emended the text of the article 40 of the decree of the President of Republic n. 43 of 23 January 1973.

requirement or professional qualification, on condition that it holds the goods and the documentation concerned and present them to the customs.

The law n. 213 of 25th July 2000 introduced as a condition to access to the profession of *spedizioniere doganale*, the possession of a degree in juridical or economic matters. At the same time, such a law changed the title of “*spedizioniere doganale*” with that, more prestigious, of “*doganalista*”.

The activity of “*doganalista*” is today expressly defined in Italy by the law 22 December 1960, n. 1612 (so-called “professional law”) as a qualified profession regarding all the matters related to tax, customs, merchandise and currency issues.

To carry out the profession of *doganalista* a minimal period of two years of practice is required, as well as the passing of a professional examination. To the end of this process, the applicant will get a licence from the financial administration (Customs Agency)⁵⁷ allowing him to accomplish customs operations exclusively at the customs offices of a specific customs district of his choice, to be indicated in the licence⁵⁸.

Italian Customs brokers, after getting the licence, are required to be inscribed in a **professional Roll** kept by the *National Council of Customs Brokers* on behalf of the Ministry of Finance. Alternatively to the practice of their activity as professionals, they can operate as employees of a company.

To date, in Italy there are **2.284 doganalisti**.

4.5. Latvia

In Latvia, a special regulation concerning customs brokers (agents) was introduced in the framework of the Customs Modernisation programme of the National Customs Board, on 1st October 1998. The activity of customs broker is currently regulated, in very detailed way, by the Chapter VI of the Latvian Customs law.

Section 36 defines “Customs Agents” those who have the right to represent before the customs authorities, on the basis of an agreement, the holder of goods to be transferred across the customs border or a person authorised by him or her. Besides, customs brokers ensure all customs clearance operations and perform the duties and tax payments specified by regulatory enactments.

To gain the status of customs broker and to begin the relevant operations, it is necessary to apply and receive a special permit from the State Revenue Service, that will be released only if the applicant complies with a series of pre-definite criteria expressly indicated by the customs law (i.e. absence of convictions for crimes against the national economy⁵⁹; possession of a title certifying the education of a customs clearance

⁵⁷ The issuance of the licence is performed on advice of the Italian Council of Customs Brokers.

⁵⁸ However, a project of law aiming to remove this restriction is currently pending before the Italian Parliament.

⁵⁹ Besides, the aspiring CB must not had been repeatedly punished, in the last year, for administrative violations in the customs sphere from which a reduction of the amount of a tax due to the Exchequer is derived.

specialist⁶⁰; absence of debts towards the State budget or the budget of local governments; engagement from a bank or insurance company to cover the risks arising from operations of customs brokerage, especially those of non-fulfilment of customs debts and other obligations⁶¹). Finally, the State Revenue Service keeps a register of customs brokers and ensures the regular publishing of a list thereof in the official journal “*Latvijas Vestnesis*”.

4.6. Lithuania

In Lithuania, customs brokerage's activities are regulated by the Customs law 27 April 2004 (N. IX-2183), at the art. 30 (Representation and brokerage). According to this provision, only Customs brokers have the right to represent other persons, from a customs point of view, within the Customs territory of the Republic of Lithuania and to act on their behalf.

The activity of customs brokerage can be performed by any company, institution or organisation registered and operating in the territory of the Republic of Lithuania, by any representative of foreign legal persons or organisations, branches or other units, as well as by any person registered and operating in the Republic of Lithuania who is entitled to represent other persons regarding the accomplishment of Customs formalities within the Customs territory of the Republic of Lithuania. Besides, customs brokers must dispose of an insurance cover for civil liability.

4.7. Portugal

In Portugal, the activity of customs brokers (“*Despachante Oficiais*”) is regulated by the law decree n. 445 of 3th November 1999, as amended by the decree-law n. 73 of 26.02.2001, requiring to these professionals (art. 1), in order to exert in a legitimate way their activity, to be registered at the Chamber of Official Customs Brokers (COCB). Customs brokers are the only persons able to deal directly with the customs offices on behalf of third parties. The art. 3 of the decree n. 445/1999 describes their profession, establishing that customs brokers can act as representatives on behalf of third parties, in any part of the national territory, with any form of representation, in acts and formalities provided for in the customs legislation, including declarations and the lodging of documents in respect of merchandise subject to special taxes on consumption, or whose management or reception is within the competence of the General Directorate of Customs and of Special Taxes on Consumption.

4.8. Spain

In Spain the activity of customs brokers (“*agentes y comisionistas de aduanas*”) counts more than one hundred years of history, since the foundation, on 1899, of the first Association of Forwarding Agents and Brokers, the forerunner in 1923 of the today's Professional Associations or Councils.

⁶⁰ In order to obtain a document certifying the education of a Customs Clearance Specialist, it is necessary to pass an examination in a higher educational institution with an accredited programme for the training of customs experts (Section 28, customs law).

⁶¹ The amount of such an insurance cover must be not less than 50.000 lats.

The first set of regulations governing this figure was introduced in 1919, with the Royal Decrees of 18 February and 10 April and the Royal Order of 14 December, setting up the conditions to practice as a Customs Broker/Agent. Subsequently, the Royal Decree of 14 November 1922 promoted the constitution of the "**Official Councils**", whose organisation was regulated by the Royal Order of 14 March 1923 that, among other things, expressly authorised them to lodge collective surety bonds⁶².

Later on, in 1924, other Customs Ordinances introduced special provisions with regard to customs brokers.

Finally, the Ministerial Order HAC/916/2004, of 23 March, regulating the conditions for the access to the activity of Customs Broker/Agent, points out (art. 1) the requirements to be met in order to carry out this activity. Among these conditions, the following ones need to be emphasised:

1. the possession of the **university diploma** or other equivalent, duly recognised qualification, issued by any Member State of the EU;
2. the completion of a special **course of aptitude** organised by the State Tax Authority (AEAT).

The above brief historical background, highlights the essential role played by customs brokers in Spain, with particular regard to the development and modernisation of the Spanish Customs, because of their close cooperation with these ones.

Spanish customs brokers are therefore considered professionals with legally recognised powers concerning the customs clearance of goods. In particular, they are the only category of persons to which a special professional qualification issued by the Ministry of Finance is recognised, whose aim is the protection of the rights of economic operators in their dealing with competent customs intermediaries.

To sum up, to be able to undertake the professional activity of Customs Broker/Agent in Spain, a professional qualification (university diploma + aptitude course) is required, as well as the knowledge of customs matters, foreign trade and whatever is deemed essential for the correct fulfilment of the customs formalities⁶³.

The above conditions are expressly foreseen in order to reduce the possibility of frauds, so increasing the security levels in commercial traffics. In fact, thanks to their knowledge of customs practices, customs brokers offer a guarantee to the State as far as it concerns the correct application of customs regulations and the accurate fulfilment of customs formalities.

Spanish customs brokers guarantee also the efficient and smooth execution of import and export declarations, because of their solvency with the Customs Authority. They are also empowered to make arrangements of any kind with Customs on behalf of third parties, in order to facilitate the clearance of goods and their assignment to the appropriate procedure (import, export, transit, introduction in a customs warehouse of any type, etc.). The profession can be performed both in an independent and/or liberal manner, or at the service of the logistics company, or again, within the structure of a company.

⁶² Official Councils were organisations with a corporative nature with special inspection and disciplinary functions.

⁶³ Furthermore, a customs broker, after obtained the special qualification issued by the Customs and Excise Department, needs to apply for registration to one of the Official Councils of Spain.

Concerning their functions, these ones can be summarised in the preparation and filing to the Customs administration of tax and customs Declarations, in particular those determining the customs destination to be assigned to the goods⁶⁴. Plus, they are intermediaries for the operator in the payment of the taxes related to the customs destination applied for.

Concerning the functions of the Councils of Customs Brokers, their main duty is to watch over the honourable practice of the profession, settling disputes involving such professionals and making efforts to ensure that their members could maintain the highest level of expertise required for the exercise of their activity.

In Spain to date about **770, among customs brokers and customs brokerage companies**, are active in the field.

4.9. The Netherlands

Basically deregulated at legislative level, the activity of customs broker in The Netherlands is essentially subject to the "*Dutch Forwarding Conditions*", established by the Dutch Forwarding Agents Organisation (Fenex), commonly referred to as "*Fenex-conditions*". The Fenex-conditions in fact, circumscribe their scope of application to all forwarding activities, including customs brokerage, as confirmed by several precedents of the Dutch case law.

Under the art. 1348 of the Netherlands Civil Code, the Fenex-conditions are considered, from a juridical point of view, "*common widespread conditions of contract*" and consequently they can complement the contractual discipline expressly agreed by parties⁶⁵.

Finally, case law also indicates that the Fenex-conditions, whose provisions are similar to those used by Forwarders worldwide, also apply even if their use is not explicitly agreed by the parties, being these considered a source of law too, integrating and supplementing the traditional ones⁶⁶.

Traditionally, in the past, Dutch customs brokers used to act only through the indirect representation, although since long time the forwarding community (represented by the FENEX), was expressing the need to apply for direct representation for customs brokerage. Such a restriction was due mainly to the fact that the Dutch customs IT

⁶⁴ For some types of imported or exported goods, prior to the filing of the appropriate customs Declaration, the intervention of other government agencies other than the Customs [such as the Health Service, Veterinary Service, Plant Health Protection Service, etc.] may be required. The intervention of any of these official agencies must be required by the customs broker in accordance with the nature of the goods and the selection criteria laid down by the TARIC (customs tariff), accompanying this application with all the documents required and attending the physical inspection of the goods, wherever they are located. Once the application and inspection formalities have been completed, the Customs broker will collect the relevant authorisations and/or refusals, so that they can be filed, later on, to the customs authority for the due purposes.

⁶⁵ The New Netherlands Civil Code ("NNCC"), in force since the 1st January 1992, states at the article 6 (248), that "customs" and "usage" can supplement the contractual discipline expressly agreed by parties, introducing further rights and obligations for them. Accordingly, The "Fenex –conditions" would be part of these "*customs or usage*".

⁶⁶ Simmons & Simmons (newsletter), "*Customs Special*", Issue n. 4, 12 January 2005.

system "SAGITTA" was not configured to accept declarations made with this kind of responsibility. As a consequence, the customs broker was in any case considered the primary debtor of the customs debt, and this generated significant risks concerning the exercise of his activity.

Recently however, the Dutch customs authority informed the operators that, starting from 1st July 2005⁶⁷, also the direct representation can be applied, as the necessary changes to the IT system "SAGITTA" have been implemented.

4.10. United Kingdom

In the United Kingdom the activity of customs representation is fragmented among a multitude of persons variously denominated, such as handling agents, shipping agents, clearing agents, customs consultants, customs brokers, etc., none of them holding the status of "regulated profession"⁶⁸. Any reservation is provided with regard to particular categories of persons, as concerns one of the two modes of representation provided for the art. 5 CCC.

The Notice n. 199 of January 2004 of the HMRC⁶⁹ clarifies who is responsible for the customs debt in case of direct or indirect representation. If an economic operator applies to an agent to make the customs declaration as its representative, the agent may also become liable for the customs debt depending on the kind of representation adopted.

More precisely, under chapter 7.4.1 of the aforementioned Notice, the representation is "direct" when a person makes a customs declaration acting as a direct representative on behalf of a principal. In this case, the principal will be liable for the customs debt. The agent, and in case, his sub-agent will have no liability for the customs debt. The agreement between the agent and the principal must provide, either implicitly or explicitly, for the delegation of tasks to a sub-agent in order for the sub-agent to be empowered to represent the principal. If such a provision is absent, the sub-agent will not be empowered to represent the principal in making a customs declaration. If he does nevertheless, the sub-agent may also become liable for customs debt. Instead, under chapter 7.4.2 (Indirect representation), when an agent makes a customs declaration acting as an indirect representative on behalf of a principal, both the agent and the principal are considered liable for the customs debt. Customs is therefore entitled to seek payment from either the agent and/or the principal. If the agent delegates the making of a customs declaration to a sub-agent, then the sub-agent will become liable for the customs debt along with the principle, but not the agent. This is because the latter do not made the declaration nor have the responsibility for performing the acts and formalities required by customs rules.

Under chapter 7.4.3, an agent (direct/indirect representative) must have a formal written authorisation issued by the principal stating that he is empowered to be a direct representative or indirect representative. This will avoid any doubt regarding who is liable for the customs debt. If the agent do not hold a written authorisation, he risks of being

⁶⁷ Dutch Tax and Customs Administration, "Direct representation and declarations with specific obligations", July 2005.

⁶⁸ For a list of the regulated professions in the UK, see:
http://www.dfes.gov.uk/europeopen/eutouk/authorities_list.shtml

⁶⁹ High Majesty Revenue & Customs service.

regarded as acting solely on your its behalf. If the authorisation does not confirm the type of representation, he could be regarded as an indirect representative. In both cases, he would be liable for the customs debt. The agent should therefore consider obtaining confirmation of its empowerment to act for a principal as a direct or indirect representative in writing.

5. THE ROLE OF THE CUSTOMS BROKER /AGENT

Customs brokers, also known as “*customhouse brokers*”, “*customs agents*”, “*clearing agents*” or “*customs clearing agents*”, are natural or legal persons whose main duty is to assist importers and exporters in the customs clearance, and in general, in the fulfilment of all the customs operations and formalities related to the international movement of goods. The function that they carry out is essentially a representation activity, in the customs field, of all those operators performing international transactions or other kind of operations entailing the movement of goods towards or from other countries.

A definition of “customs agent” can be found in the “*Glossary of International Customs Terms*” of the World Customs Organisation⁷⁰, that defines the customs clearing agent (or “*Agent en douane*”) 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”.

In the same text it is added that some countries can require that:

“...Customs clearing agents or Customs brokers [will] be approved or licensed by the Customs”.

In almost every Country, customs brokers help importers and exporters to deal with complex administrative regulations and procedures, pulling information together, helping companies to leverage that information into a strategic advantage, so facilitating the clearance of the goods. Indeed, businesses usually view foreign trade procedures as technically complicated, requiring the involvement of many professionals and entailing considerable paperwork.

The customs broker’s primary responsibility is to help their clients to comply with customs rules and regulations in an efficient and cost-effective way. Since information reporting requirements are complex, and companies are more than ever demanding about the speed and efficiency of the logistic flows, brokers have become increasingly involved in all aspects of client operations⁷¹. They work with the client’s business partners (suppliers, carriers, forwarders, and others) to ensure that the technology and procedures are in place to meet both business and regulatory demands. For this reason, customs brokers play an essential role in representing their clients’ interests in consultations with the customs administrations on new customs rules, regulations and procedures and are usually the main points of contact with customs.

⁷⁰ WCO, “*Glossary of international customs terms of the World Customs Organisation*”, May 2006.

⁷¹ Customs brokers in particular, have experience in dealing with local Customs officials and generally dispose of a wealth of knowledge allowing them to address effectively all problems associated with classification and valuation of goods. In fact, since classification is not always a simple operation, a customs broker can be of valuable assistance in providing information on how Customs inspectors may handle certain cases. Furthermore, they offer a wide range of specialised services aimed to help traders to develop new product lines, explore new markets, evaluate the impact of global change, and cut costs.

As a matter of fact, most international trade transactions could not be completed without the use of a reputable and trusted intermediary specialising in customs operations. Most international traders, especially small and medium enterprises⁷², rely on the services offered by these figures to get their shipments rapidly cleared at the border⁷³ outsourcing them the execution of all the customs procedures and formalities.

The regulation of the customs broker's activity is very different, depending on the Country to which we make reference. Some States provide a very detailed discipline, laid down by special laws or regulations clearly defining the extent, as well as the rights and obligations of such a figure. Other countries leave this activity essentially within a contractual discipline (mandate or power of attorney), where parties are generally free to set right and obligations of those covering the functions of customs representations.

Again, in other Countries, Customs Brokers are the only subjects authorised to deal with customs business (USA, Canada, Australia), while in other States they are considered a proper extension of the customs authorities, being responsible for the controls of security on some goods (ex. Mexico and Chile)⁷⁴. This is the reason why in such a case they are subject to very strict controls, that in some cases are performed through regular audits on their activity.

The Chapter 8 of the Revised Convention of Kyoto (*Relationship between the Customs and Third Parties*)⁷⁵, provides rules on how to deal with Customs brokers and other service providers. The Revised Kyoto Convention has become an important reference for regulatory reforms and revision of customs codes in the majority of the Countries in the world.

Among the measures promoted by the Convention in order to facilitate the international trade, an element which is indicated as a key factor in order to improve transparency of customs services and security at the external borders, is the dialogue and the building of partnerships with all stakeholders in the private sector (particularly with traders' and **brokers'** communities). In particular, the introduction to the Chapter 8 expressly recognises that the use of a customs operations specialist can speed up the passing of goods through customs controls:

⁷² An increasing number of companies not disposing of an in-house expertise, actually prefer to apply to a customs broker in order to fulfil their customs formalities, outsourcing them all or part of their customs operations. At the same time, this solution allow companies to focus on their core business, using the customs broker as a "leverage" to access to all simplifications and facilitations provided for the customs legislation.

⁷³ A recent survey realised in the UK by the SITPRO (Andrew Grainger, "*Survey of the Regulatory Environment for UK Importers - Comprehensive report and presentation of key data*", 18 October 2005), comes to the conclusion, on the basis of the analysed data, that in the UK, businesses renouncing to the use of customs agents are generally those who have large a volume of traffic and therefore lodge a great number of customs declarations (page 13).

⁷⁴ OECD (Organisation for economic Development and Co-operation), "*The role of automation in Trade Facilitation*", OECD Trade Policy Working Paper n. 22, 17 October 2005, page 20.

⁷⁵ Convention on the Simplification and Harmonization of Customs Procedures. The Convention was concluded in Kyoto in 1973 (entered into force in September 1974) and subsequently reviewed by a special Protocol of Amendment of June 1999, to which the European Communities adhered with the Decision of the Council 2003/231/CE of 17 March 2003. For ease of reference, we shall refer to this latter version of the Kyoto Convention as either the "*revised Convention of Kyoto*".

*“...Importers and exporters are able to employ specialists to deal with complicated and detailed Customs procedures that may be unfamiliar to them and who can act on their behalf at times and places which they themselves would find inconvenient. Carriers and delivery services are able to expedite the movement of goods in their charge through Customs controls and to service the steadily growing proportion of time-sensitive consignments. Customs are able to more steadily and predictably clear goods, thereby better managing their own resources and the release times for the trade. In some countries, **Customs also benefit from dealing with agents and brokers who are often more expert at handling the requirements for Customs procedures than some of their customers.**”*

The same principle is established in the WCO's document “*Framework of Standards to Secure the Global Trade*”, where the cooperation among relevant government agencies, customs administrations, and economic agents is indicated one of the main pillar of the strategy aiming to the facilitation, and on the other hand, to the “securisation”, of the international trade⁷⁶.

6. CONCLUSIONS

Some controversial aspects regarding the issue of the customs representation need to be preliminarily clarified. In particular, some explanations are necessary with particular regard to several statements contained in some official documents, regarding an alleged “monopoly” of **Customs representatives** over their activities⁷⁷.

To this purpose it must be first of all specified that currently, a juridical concept of “**customs representative**” do not exist neither at Community, nor at State level. As examined above, in fact, this wording is uniquely used as a conventional term to indicate, on the whole, a huge category of persons, both professionals and not professionals, irrespective of the mode or representation with which they act (*ex. doganalisti, commissionnaires en douane, zollmakler, agentes y comisionistas de aduanas, customs brokers, forwarding agents, handling agents, shipping agents, clearing agents, etc.*). In addition, each of them is subject to very diverse regulations, depending on the member state where is established.

⁷⁶ World Customs Organisation, “*Framework of Standards to Secure and Facilitate Global Trade*”, 24 June 2005 (SAFE). This document sets forth a series of principles and standards aimed to favour the growth of the world trade, ensuring at the same time a better security against terrorism through an increasing co-operation between customs and trade partners. The Framework consists of two pillars: a) customs-to-customs network arrangements and b) customs-to-business partnerships. At the basis of the first pillar there is the Authorized Economic Operator (AEO) concept, who is actually foreseen already in the Convention of Kyoto (General Annex – Chapter 3: Guidelines on Clearance and other Customs formalities – Part 7 – “Special procedures for authorized persons”). The AEO concept includes, *inter alia*, manufacturers, importers, exporters, brokers, carriers, consolidators, intermediaries, ports, airports, terminal operators, integrated operators, warehouses, and distributors. They operate as security partners to evaluate and address threats to their own supply chain, helping customs in the performance of its security function by minimizing risk, and facilitating legitimate trade. As a result, AEOs will reap the benefits of faster processing of goods by customs through reduced examination rates and uniform and predictable customs procedures.

⁷⁷ See European Parliament, doc. 2005/0246(COD) – provisional of 28th August 2006 and A6-0429/2006 of 29th November 2006, “*Customs representatives should no longer have a 'monopoly' over their activities ...*”, see Chapter 3, page 5 *supra*.

If we consider that **all** the above persons are “customs representatives”, the absurdity of the motivation according to which they would have a “monopoly” over their activities becomes immediately obvious.

The same line of thought can be applied to the statement contained in the report of the European Parliament n. A6-0429/2006 of 29.11.2006, according to which: “*Customs representatives should no longer have a ‘monopoly’ over their activities in interacting with customs*”⁷⁸. To this purpose, it must be clarified that currently there is no State within the EU where the right to manage the dealings with customs on behalf of third parties is reserved in exclusive way to a particular occupational category. To be reserved, in fact, is **only a particular kind of representation, and not all relations with customs on the whole**.

Although the current text of the art. 5 CCC allows member States the possibility to reserve to some kinds of customs agents operating in their territory, **one** of the two kinds of representation (direct or indirect), not surprisingly, the majority of the member States in the EU has chosen to reserve the **direct** one, since this kind of representation can yield more harmful patrimonial effects for the represented person (as a matter of fact, in such a case, the effects of the declaration made by the representative, arise directly in the juridical sphere of the represented person, that will be considered the only responsible for the customs debt).

Of consequence, if it is certainly true that in some States the services and functions of customs representation are provided by a most limited range of persons (if compared with other member States), the conclusion that this situation is the result of barriers or of some kind of “protection” imposed by some States, that in turn would give rise to restrictions of concurrence between the suppliers of those services (with higher release costs for exporters and importers) comes to be absolutely simplistic. Firstly, because this conclusion has not been proved (as far as we know, to date any survey has been realised on the impact of customs services’ provision in each member State), secondly, because it seems to ignore the social reality and the structure of the demand of customs services in those countries, being obtained exclusively from a comparison among member States having very different traditions with regard to the regulation of customs services, how illustrated in the previous chapters of the present analysis.

Actually, a more attentive analysis of the above situation, highlights as in those Countries where major restrictions to the provision of customs services are in force, **any barrier, numerical limit or “contingentation” to the offer of such services is imposed**. The States concerned set only some requirements of access to these ones, that in most cases are also very rigorous, having these activities a direct impact on their revenues. Such a solution is therefore aimed to protect **their tax/financial interests, and not the interests of those categories of customs agents established in their territory**.

In other words, the above States, aware of the dangers that an indiscriminate and not regulated exercise of the activities of customs representation can cause to the Exchequer (in terms of possible loss of revenues due to an incorrect liquidation of duties or other levies related to the international trade)⁷⁹, set some strict requirements of access to the

⁷⁸ Amendment 14, Article 11, paragraph 2 a (new).

⁷⁹ This principle is particularly true also with regard to the European Union. Indeed, customs duties are collected by the member states on behalf of the EU and are among the main sources of financing the EU budget (25% of them are to the member state and 75% to the Community), even though the

activities of provision of customs services on behalf of third parties, in order to make more responsible those exerting these ones. These requirements, identified with high professional standards of integrity, as well as with a series of incompatibilities to the exercise of other working activities, are common also to other professions, sharing with these ones (in addition to the goal of safeguard of the financial and tax interests of the State), the further objective of the **consumer's protection**.

With regard to this aspect, it worth to be noted that one of the elements characterising the provision of customs services is the **asymmetry of information** existing between customers and those who supply these services. In other words, consumers generally are not capable to assess the qualitative level of the services offered by those providers, because this implies the possession of an high technical knowledge that they usually do not have. This can lead to misleading or manipulative claims (also in term of major tariffs applied by those providing those services), against which the consumer therefore needs to be protected.

Hence, it is necessary to foresee a special mechanism of safeguard also with regard to the consumers, in order to avoid that the access of not qualified persons to services potentially able to provoke dramatic financial and tax consequences for companies, could cause damages capable of compromising the survival of these ones.

As above described, the experience of many States worldwide, proves that the increase of professionalism and an high responsabilisation of those exerting functions of customs representation (also through the "filter" of professional bodies or other entities ensuring the quality of the services rendered and the ethical conduct of their providers), can be a suitable answer to those needs.

6.1. Option cannot be quoted as a "monopoly"

Adopting an inappropriate wording, some observers have defined the situation of those member states reserving the direct representation to customs agents established in their territory, as a "monopoly".

In the United States there are approximately 7.900 customs brokers; in Canada those performing brokerage's activity are nearly 260 and in Japan almost 4.700⁸⁰. In Europe, if we consider only 5 member States (Italy, Greece, Belgium, Spain and France) we have nearly 5.200 customs brokers. If we add also the other 22 States of the EU, this number outnumber significantly the professional customs representatives operating in the other Countries of the world.

Furthermore, any situation of concentration, distortion of competition or "monopoly" in the internal market able to perturb the competition structure within the Community, is continually monitored both by the competition authorities in each member State and by the European institutions⁸¹. In case of infringement of these rules, considerable financial sanctions are applied both at Community and national level.

Commission in the doc. COM(2004) 505 final of 14.7.2004 has launched a new strategy aimed to detect alternative tools for financing the European Union.

⁸⁰ 14.550, if we consider also the customs registered specialists acting as their employees.

⁸¹ At Community level, see the Council Regulation (EC) No 139/2004 of 20 January 2004, on the control of concentrations between undertakings (also known as the "The EC Merger Regulation").

On the contrary, this situation has never occurred with regard to the right of representation. In Italy, for example, the national Authority for the Concurrence and Market analysed, on 17 February 2000, a proposal of law aimed to allow to the Italian customs brokers special competences with regard to the **asseveration of data** contained into the customs declarations⁸². The exclusivity of the attribution of these functions to customs brokers was deemed by the Authority an unjustified restriction of concurrence; so the law proposal was consistently amended through the extension of the right of "asseveration" even to other categories of persons (ex. chartered accountants).

On that occasion the Italian Authority for the concurrence analysed the entire national regulation on customs brokers and any situation of "monopoly" was deemed to be in effect with regard to the current exclusive reservation to the Italian "*doganalisti*" of the possibility to lodge customs declarations in the mode of the direct representation.

6.2. The licensing system for customs agents as a restriction of competition

Another topic strictly related to the one examined in the previous Chapter, is the assertion that a licensing system for customs agents would not be able to guarantee the quality of the services provided by these persons (see pages 4 and 5, *supra*). Allegedly, the abolition of the existing restrictions on the provision of customs services and a complete liberalisation of these ones, will lead to a better functioning of the Single Market.

In a recent book, published by Professor Morris Kleiner of the University of Minnesota⁸³, the impact of the so-called "licensing occupations" on the market of services has been analysed, with particular regard to possible restrictions of competition. In his book, Prof. Kleiner, esteems that in the United States, approximately 20 percent of workers who were in occupations in the year 2000, were covered by some kind of state licensing requirement, while during the early 1950s, only about 4.5 percent of the labour force was subject to these requirements. Taking into account local and federal government requirements, he concludes that in the U.S. about three of every ten workers would be required to obtain a license to do their jobs. A similar phenomenon, having similar proportions, is also present in Canada⁸⁴.

In both those Countries it cannot be denied that regulated professions have grown considerably, despite the high level of regulation existing at State or Federal level, and that they currently account for a significant and increasing share of GDP of those economies. Likewise, no one can deny that there is a surplus of professionals in those Countries. The strong growth of these occupations therefore means that the licensing system has not produced at all a restriction in the supply of the services provided.

The reasons usually adduced in defence of this form of control of the access to some activities, are based on the idea that a licensing system may minimise consumer

⁸² The asseveration involves a double control of the customs declaration, both from a formal and a substantial point of view, where the latter implies an analysis of the regularity, truth and correctness of data contained in the declaration, as well as their correspondence with the documents on which basis the declaration is made.

⁸³ Morris Kleiner "*Licensing Occupations: Ensuring Quality or Restricting Competition?*", Upjohn Institute, 2006.

⁸⁴ See the proceedings of the Annual Fall Conference on Competition Law Gatineau, Québec - September 29, 2006.

uncertainty over the quality of the service rendered, so increasing the overall demand for them. It is also true that this system can, in certain cases, lead to cost increases able to reduce competition in a certain sector, that in turn, would be transferred on consumers through higher tariffs.

The two approaches need obviously to be balanced.

In the above publication, Professor Kleiner makes an important consideration. Not all the activities have the same implications, both from a social and an economic point of view. For instance, a doctor who makes a bad diagnosis may cause harmful effects on the health of his patients and even their death. A lawyer that is not competent enough in practicing his profession can cause damages to the freedom rights or to other fundamental rights of his clients. But a massage therapist who is not competent or has not a suitable experience in his/her job cannot cause damages with a similar extent.

In the case of the doctor or of the lawyer therefore, a system of licensing linked to a minimal period of training or practice can be regarded as a valuable mechanism able to protect consumers against the provision of services having a potentially harmful effect on them. In such hypothesis, the licensing system do not yield any effect of restriction of concurrence, as demonstrated by the fact that over the years, the access to this kind of activities has increased exponentially, despite the significant barriers to their practice. Conversely, this kind of mechanism can even encourage consumers to resort to these services, since it increases the reliability of the public over the capability of suppliers to meet their specific needs. This in turn, can lead to a growth of the relevant demand.

The positive aspects of a licensing system, are “*gatekeeping*”, behavioural changes and eased enforcement against those who are responsible for incorrect behaviour.

“*Gatekeeping*” refers to the fact that requiring those providers of services to complete educational programs, pass licensing exams and to be registered before a public authority, can keep some negative elements out of the industry by warding off unprepared and dishonest persons. The existence of a licensing system can also influence the behaviour of those who do enter a certain industry. As a matter of fact, the imposition of high educational levels or formal codes of conduct can urge providers of services to adopt a more accurate and law-compliant behaviour. Finally, licensing and codes of conduct might make enforcement easier. Rather than prosecuting through the judicial system, professional bodies of vigilance can use their own procedures in order to ascertain possible incorrect behaviours and punish those who are responsible, also with the revocation of the license.

Conversely, in the case of the massage therapist, the consumer is able both to perceive the quality of the service provided and to evaluate the consistency of its price. Even though the exercise of this activity can require a minimum degree of competence to serve the public, in such a case, to foresee a licensing system as a requirement for its practice, does not necessarily assure higher-quality services, but conversely can determine enhanced earnings for practitioners and, accordingly, higher prices for consumers. In this case the licensing system tend to degrade, with the license becoming a purely bureaucratic hindrance and a barrier to competition, and on top of that, failing to ensure quality of the services rendered.

To sum up, the concurrence between service providers is not assured by a complete absence of rules, but only if all those persons are subjected to common, rigorous and effective regulations, aimed to assure a diligent and competent provision of their services

to consumers, with correctness and impartiality. This is the only way to avoid that an activity which is regulated in many States as a profession, having as its main objective not the maximisation of profit, but **the provision of a highly qualified assistance to the operators**, will be submitted to a process of "merchandisation".

Concerning the requirement of a common regulatory framework for the customs representation activities, being licensing policies (where they exist) carried out autonomously by each member State, this situation can effectively lead to increased costs, when a customs agent works in multiple states and is forced to comply to manifold requirements, differing State by State.

A community system of licensing in such a case could simplify this framework and reduce costs for those persons, by imposing uniformity.

6.3. Impact of a total liberalisation of customs representation services

In the light of what has been examined in the previous sections, the most probable consequence stemming from the opening of the possibility to lodge customs declarations to individuals or companies not professionally and continually exercising the activity of customs representation will be a growth of irregularities and frauds in Europe.

It is important to consider this aspect, especially if we take into account that in the past decades numerous and serious phenomena of frauds have been characterising trade between the Community and third Countries, that have been the subject of special inquiries from the European Parliament⁸⁵.

With regard to the objective of an increased competitiveness of the Community enterprises, it is hard to imagine that also persons not adequately educated and competent will be able to assure effectively the smoothness and the fastness of the customs operations, without no delays.

Conversely, the opening up also to these persons of the possibility to act as customs representatives, irrespective of any State or Community control over their activities, will increase the possibility of damages stemming from inaccurate declarations, irregular or not correct fulfilments of the customs formalities and wrong calculations of duties, excises and other levies duties due on the merchandise, as recognised by the Joint Report of the International Finance Corporation and the World Bank, "Reforming the Regulatory Procedures for Import and Export", where is expressly stated that the lack of training and professionalism by all those intermediaries who deal with customs formalities is one of the major source of serious clearance delays:

"The lack of training and professionalism by the Customs broker/clearing agent can frequently be a source of serious clearance delays in the preparation of the Customs goods declaration. Lack of knowledge regarding the clearance process, its document requirements, where and how to obtain necessary certificates, insufficient technical knowledge on how to determine the classification of goods, can all contribute to unnecessary errors and significant delays in preparing an error-free goods declaration for Customs and having it accepted as correct. It is critical that any Customs reform/modernization and trade facilitation develop a strategy to improve the professionalism and conduct of the customs brokers and clearing agents. This can be addressed through professional training and licensing programs (possibly even requiring re-

⁸⁵ With regard to fraud related to the transit procedure, see EU Court of Auditors, "Special report n. 11/2006 on the Community transit system", with the Commission's replies (2007/C 44/01), in O.J.(EU) C 44/1 of 27.2.2007.

*training and re-licensing of existing brokers/agents), and the application of sanctions, temporary suspension or permanent revocation of licenses when brokers/agents are deemed to be unprofessional, non-performing, or involved in a customs fraud or other corrupt practice”.*⁸⁶

The complexity of the documentation to be submitted to the customs authorities with regard to the clearance of goods in fact, often leads to an incorrect compilation of information, with data frequently missing, so slowing down the entire clearance process⁸⁷. In many cases, the documents are incomplete or incorrect, as well as their attachments (invoice, bill of lading, insurance certificates, importer's declaration, certificate of origin, etc.)⁸⁸.

Furthermore, those who are defined in Europe in a very generic way “*customs representatives*”, but that are the various *customs brokers, comisionistas y agentes de aduana, commissionnaires en douane, agents des douane, zollmakler, clearing agents*, but also *forwarding agents, handling agents, shipping agents*, have a high technical nature and their role cannot be simply identified, as someone can think, to the filling up and presentation of a customs declaration or the transmission of other kinds of data or information to the customs authorities. Indeed, the activity of “customs representation” embraces also the liquidation of duties and of the other tariff and tax measures to which goods are subjected, but moreover, it entails the knowledge of complex rules of classification, as well as of determination of the customs value and the origin of goods⁸⁹. A correct application of the customs taxation depends on the correct execution of **all** these operations, that due to their particular complexity, can be carried out only by selected categories of persons, endowed with special skills and knowledge that will be the result of a scientific approach to this matter and of a constant updating, being this the only way to follow the continuous evolution of the legislative, regulatory, administrative and jurisprudential framework surrounding this complicated discipline.

It is hard to imagine that a person non professionally and continually involved in the customs operations will be able to carry out all these activities with the due diligence. Indeed, what kind of guarantee could they offer with regard to the correct execution of the customs operations and liquidation of duties?

⁸⁶ The World Bank Group, “*Reforming the Regulatory Procedures for Import and Export*”, Small and Medium Enterprise Department, June 2006, page 77.

⁸⁷ The number and complexity of the documents that it is necessary to provide for a international trade transaction, often determines an incomplete, erroneous or inadequate provision of information to the customs administration, that often causes delays at the borders. See European Conference of Ministers of Transport (CEMT), “*Removal of obstacles at border crossing*”, CEMT/CM(2004)23, 22-Apr-2004, page 21.

⁸⁸ This was the case, for instance, of Uganda, where the Uganda Revenue Authority (URA) addressed this situation through the introduction of accreditation scheme for all customs brokers, in order to ensure that their activity would be performed only by capable operators. Currently, the URA manages the customs agent certification process, with full participation by a representative of the Uganda Freight Forwarding Association (created in 2001). The criteria for certification are 12, and include an assessment of the level of qualification of the applicant, of its financial capacity, and the presence of an insurance bond to cover his activity. See Luc De Wulf, José B. Sokol, “*Customs Modernization Initiatives – case studies*”, World Bank, Washington, D.C., 2004, page 118.

⁸⁹ If the declaration is incorrect, additional duties or even sanctions can be imposed by the customs authorities. In the case of the direct representation, the principal, importer or other persons involved in the import and/or sale of the product will be held directly liable for the debt.

It is generally recognised that customs brokers and other representatives of the owner of goods before customs are often the conduits through which bribes are demanded and paid. Anecdotal evidence suggests in fact that brokers regularly inflate the amount of the bribes paid by their clients, and keep the excess for themselves. This practice can provide customs intermediaries with a strong economic incentive to perpetuate a cycle of corruption if an adequate form of control is not executed over their activity⁹⁰.

A solution of total liberalisation of the customs representation services would therefore seriously compromise the main tenets inspiring the reform of the Customs Code (namely, the facilitation of the flow of international trade, an encouraged compliance with Customs rules and a more effective use of customs resources).

But also with regard to the other objective of the reform, and namely the enhancement of the safety and security levels within the Community (in order to better protect the health of the Community citizens against the risks of terrorist attacks)⁹¹, we have serious doubts that the solution of liberalisation of customs representation could assure it.

As a matter of fact, how it is possible to talk of *"increasing levels of safety and security"* within the Community if we accept the possibility to allow anyone, indiscriminately, could exercise the activity of customs representation? Who can assure that dishonest organisations will not seize this opportunity to lodge false declarations, possibly on-line, on behalf of colluding traders, availing of their position of customs representative to introduce within the Community territory materials for terrorist use?

If we keep in mind that today, in Europe, with the use of the risk analysis techniques, nearly 85-90% of goods are released without any control, 10% is subject to documentary controls, and only a small percentage of goods (ranging from 2 to 5%), is subject to physical controls, it is rather easy that materials for terrorist use can escape to customs controls.

This situation risk therefore seriously to jeopardise the safety and the security of the EU if an effective "filter" will not be interposed between economic operators and customs authorities, as it could be a professional intermediary assuming responsibility for reporting to Customs and ensuring that duties and other taxes on goods are correctly paid.

Only partnership and close cooperation between customs and qualified and trusted intermediaries can contribute to protect in a better way the entire supply chain against terrorists risks⁹² as confirmed by the item n. 12 of the Arusha declaration (1993), reading as follows:

⁹⁰ Luc De Wulf, José B. Sokol, *"Customs Modernization Handbook"*, World Bank, Washington, D.C., 2005, page 86. See also Noel Johnson, *"Committing to Civil Service Reform: The Performance of Pre-Shipment Inspection under Different Institutional Regimes"*, World Bank, 2001, pages 5 and 8.

⁹¹ Ref. TAXUD/477/2004 - Rev. 4 – EN, Working document, *"Draft eCustoms Multi-Annual Strategic Plan"*, 8 June 2005, page 3.

⁹² *"By partnering with the trade community – U.S. importers, customs brokers, carriers, shippers, and others – we can better protect the entire supply chain against potential exploitation by terrorists or terrorists weapons."* Asa Hutchinson, Under Secretary Department of Homeland Security, March 20, 2003 (extract from *"Business Executives for National Security"*, BENS - Business Sense for a Safer America, Washington DC, page 9).

“Customs administrations should foster an open and transparent relationship with Customs brokers and with the relevant sectors of the business community. Liaison committees are useful in this respect”⁹³.

Furthermore, the *“High Level Guidelines for Co-operative Arrangements between WCO members and Private Industry to Increase Supply Chain Security and Facilitate the Flow of International Trade”*, adopted at the 3rd WCO Task Force meeting (2003) and subsequently endorsed by the WCO Council⁹⁴ concluded:

“To the extent that Customs can rely on its partners in the trade community to evaluate and address threats to their own supply chain, the risk confronting Customs is reduced. Therefore, companies that demonstrate a verifiable willingness to enhance supply chain security will benefit. Minimizing risk in this way helps Customs in performing their security functions, and in facilitating legitimate trade.”

The conclusion of co-operative arrangements between Customs Administrations and Customs Brokers could therefore constitute another element able to enhance the supply chain security, being customs brokers an integrated part of the latter. This could be obtained encouraging the active involvement of the customs broker in enhancing cargo security in that portion of the supply chain over which it has control. Furthermore, in order to promote trade facilitation, customs administrations could benefit of the role of customs brokers as “secure” partners of the supply chain, leveraging their experience to detect and prevent specific attempts to commit Customs offences in cargo shipments⁹⁵.

As indicated above, such a strategy has already been adopted in Mexico, Chile and Japan. In Japan, in particular, customs authorities have leveraged the position of customs intermediaries to guarantee a better security inside the Country. Indeed, with particular regard to the airline shipments, the Japanese Ministry of Transport has introduced special security measures, called *“Phase E”*, consisting in a series of instructions aimed to involve forwarding agents and customs brokers in security controls: they are in fact obliged to signal in writing to the transport airline all cargo received in their facilities at least 24 hours before their loading on the aircraft.

But a similar strategy has been adopted also by the EU with particular regard to the field of civil aviation security. As a matter of fact, the Regulation (EC) No 2320/2002 of the

⁹³ Declaration of the Customs Co-operation Council concerning integrity in customs, Arusha (Tanzania), 7 July 1993 (81st/82nd Council Sessions). This Declaration was successively revised on June 2003 (101st/102nd Council Sessions), and a new item n. 10, concerning the Relationship with the Private Sector has been introduced, addressing the issue of the private-public partnership from a more general perspective: *“Customs administrations should foster an open, transparent and productive relationship with the private sector. Client groups should be encouraged to accept an appropriate level of responsibility and accountability for the problem and the identification and implementation of practical solutions. The establishment of Memoranda of Understanding between Customs and industry bodies can be useful in this regard. Likewise, the development of codes of conduct for the private sector, which clearly set out standards of professional behaviour, can be useful. Penalties associated with engaging in corrupt behaviour must be sufficient to deter client groups from paying bribes or facilitation fees to obtain preferential treatment”*.

⁹⁴ WCO, doc. TF0004E3, Annex VII to Doc. SP0122E1, Brussels, 13 May 2003, page 7.

⁹⁵ Irène Hors, *“Fighting corruption in customs administration: what we can learn from recent experiences?”*, OECD Development centre, Working Paper No. 175 (Formerly Technical Paper No. 175), page 39. With regard to the role of “facilitator” of customs brokers with reference to the special situation of developing countries, see John Raven, *“Trade and Transport Facilitation”*, Discussion Paper n. 427, World Bank, Washington DC - 2001, page 55.

European Parliament and of the Council of 16 December 2002 provides the possibility for an agent, a freight forwarder or another entity who conducts business with an operator, to provide security controls that are accepted or required by the appropriate authority in respect of cargo, courier and express parcels or mail (so called 'Regulated Agent').

Finally, Customs can extend the reach of its security by training customs brokers to assist importers and exporters for participation in the security of the supply chain. Such a role of "assistance" of the operators is currently performed by the U.S. customs brokers with regard to those operators who have intention to access to the "C-TPAT" program⁹⁶.

To conclude, it is absolutely necessary that the "threshold" of access to the figure of customs representative will be high and rigorous, in order to circumscribe the exercise of the customs representation only to persons endowed with a proven professionalism and/or practical competences, being that the only possible way to achieve the two main objectives at the basis of the customs code reform, and namely:

- 1) facilitation of trade and;
- 2) an increased level of safety and security within the EU's territory.

The above analysis has proved that it should be inopportune to renounce in Europe to the contribution of a professional, highly competent and well-educated figure, expressly recognised by the national authorities and capable to perform customs representation activities on behalf of third parties. As a matter of fact, the experience of the other countries has demonstrated that such a figure can offer a substantial support both to the customs administrations as well as to the economic operators, in order to assure the correct execution and smoothness of the customs operations and an improved level of security. The lesson that we can learn, in particular, is that the activity of customs brokerage/intermediation need to be subjected to a special regime of authorisation, to prevent frauds and other irregularities, and at the same time to create the conditions for a correct fulfilment of the customs operations as far as a representative (an intermediary) is concerned on behalf of the operators.

Awaiting a future regulation of a figure of "customs agent" at Community level, possibly in a uniform manner, the current text of the article 11 of the proposal of MCCC must be aimed at least to create the conditions necessary to allow the access to the activity of customs representation to those who are in possession of particular requisites of knowledge, competence and reliability, to be established uniformly at Community level.

This solution, besides, should be perfectly in line with the principle of the free provisions of services at Community level, because it would imply that every provider of customs services belonging to any member State can practice his activity in the other member states under the same circumstances of the operators resident therein, on condition that it holds the prescribed requirements of competence and training.

⁹⁶ C-TPAT (*Customs – Trade Partnership Against Terrorism*). This joint government/business initiative aims to build cooperative relationships between the two partners, in order to strengthen the supply chain and border security. The program recognises that Customs can provide the highest level of security only through close cooperation with all those who are part in the supply chain, as importers, carriers, brokers, warehouse operators and manufacturers. Through this initiative, Customs ask businesses to adopt measure aimed to increase the security of traffics and to communicate their security guidelines to the other partners within the supply chain. Companies who participate under the program can benefit from a reduced number of inspections and border clearance time.

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UNITED STATES CODE OF FEDERAL REGULATIONS (EXTRACT)

[...]

§ 111.0 Scope.

This part sets forth regulations providing for the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers, including the qualifications required of applicants, and the procedures for applying for licenses and permits. This part also prescribes the duties and responsibilities of brokers, the grounds and procedures for disciplining brokers, including the assessment of monetary penalties, and the revocation or suspension of licenses and permits.

Subpart A—General Provisions

§ 111.1 Definitions.

When used in this part, the following terms have the meanings indicated:

Assistant Commissioner. “Assistant Commissioner” means the Assistant Commissioner, Office of Field Operations, United States Customs Service, Washington, DC.

Broker. “Broker” means a customs broker.

Corporate compliance activity. “Corporate compliance activity” means activity performed by a business entity to ensure that documents for a related business entity or entities are prepared and filed with Customs using “reasonable care”, but such activity does not extend to the actual preparation or filing of the documents or their electronic equivalents. For purposes of this definition, a “business entity” is an entity that is registered or otherwise on record with an appropriate governmental authority for business licensing, taxation, or other legal purposes, and the term “related business entity or entities” encompasses a business entity that has more than a 50 percent ownership interest in another business entity, a business entity in which another business entity has more than a 50 percent ownership interest, and two or more business entities in which the same business entity has more than a 50 percent ownership interest.

Customs broker. “Customs broker” means a person who is licensed under this part to transact customs business on behalf of others.

Customs business. “Customs business” means those activities involving transactions with Customs concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by Customs on merchandise by reason of its importation, and the refund, rebate, or drawback of those duties, taxes, or other charges. “Customs business” also includes the preparation, and activities relating to the preparation, of documents in any format and the electronic transmission of documents and parts of documents intended to be filed with Customs in furtherance of any other customs business activity, whether or not signed or filed by the preparer. However, “customs business” does not include the mere electronic transmission of data received for transmission to Customs and does not include a corporate compliance activity.

District. “District” means the geographic area covered by a customs broker permit other than a national permit. A listing of each district, and the ports thereunder, will be published periodically.

Employee. “Employee” means a person who meets the common law definition of employee and is in the service of a customs broker.

Freight forwarder. “Freight forwarder” means a person engaged in the business of dispatching shipments in foreign commerce between the United States, its territories or possessions, and foreign countries, and handling the formalities incident to such shipments, on behalf of other persons.

Officer. “Officer”, when used in the context of an association or corporation, means a person who has been elected, appointed, or designated as an officer of an association or corporation in accordance with statute and the articles of incorporation, articles of agreement, charter, or bylaws of the association or corporation.

Permit. “Permit” means any permit issued to a broker under §111.19.

Person. “Person” includes individuals, partnerships, associations, and corporations.

Records. "Records" means documents, data and information referred to in, and required to be made or maintained under, this part and any other records, as defined in §163.1(a) of this chapter, that are required to be maintained by a broker under part 163 of this chapter.

Region. "Region" means the geographic area covered by a waiver issued pursuant to §111.19(d).

Responsible supervision and control. "Responsible supervision and control" means that degree of supervision and control necessary to ensure the proper transaction of the customs business of a broker, including actions necessary to ensure that an employee of a broker provides substantially the same quality of service in handling customs transactions that the broker is required to provide. While the determination of what is necessary to perform and maintain responsible supervision and control will vary depending upon the circumstances in each instance, factors which Customs will consider include, but are not limited to: The training required of employees of the broker; the issuance of written instructions and guidelines to employees of the broker; the volume and type of business of the broker; the reject rate for the various customs transactions; the maintenance of current editions of the Customs Regulations, the Harmonized Tariff Schedule of the United States, and Customs issuances; the availability of an individually licensed broker for necessary consultation with employees of the broker; the frequency of supervisory visits of an individually licensed broker to another office of the broker that does not have a resident individually licensed broker; the frequency of audits and reviews by an individually licensed broker of the customs transactions handled by employees of the broker; the extent to which the individually licensed broker who qualifies the district permit is involved in the operation of the brokerage; and any circumstance which indicates that an individually licensed broker has a real interest in the operations of a broker.

Treasury Department or any representative of the Treasury Department. "Treasury Department or any representative of the Treasury Department" means any office, officer, or employee of the U.S. Department of the Treasury, wherever located.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 03–15, 68 FR 47460, Aug. 11, 2003]

§ 111.2 License and district permit required.

(a) *License* —(1) *General.* Except as otherwise provided in paragraph (a)(2) of this section, a person must obtain the license provided for in this part in order to transact customs business as a broker.

(2) *Transactions for which license is not required* —(i) *For one's own account.* An importer or exporter transacting customs business solely on his own account and in no sense on behalf of another is not required to be licensed, nor are his authorized regular employees or officers who act only for him in the transaction of such business.

(ii) *As employee of broker* —(A) *General.* An employee of a broker, acting solely for his employer, is not required to be licensed where:

(1) *Authorized to sign documents.* The broker has authorized the employee to sign documents pertaining to customs business on his behalf, and has executed a power of attorney for that purpose. The broker is not required to file the power of attorney with the port director, but must provide proof of its existence to Customs upon request; or

(2) *Authorized to transact other business.* The broker has filed with the port director a statement identifying the employee as authorized to transact customs business on his behalf. However, no statement will be necessary when the broker is transacting customs business under an exception to the district permit rule.

(B) *Broker supervision; withdrawal of authority.* Where an employee has been given authority under paragraph (a)(2)(ii) of this section, the broker must exercise sufficient supervision of the employee to ensure proper conduct on the part of the employee in the transaction of customs business, and the broker will be held strictly responsible for the acts or omissions of the employee within the scope of his employment and for any other acts or omissions of the employee which, through the exercise of reasonable care and diligence, the broker should have foreseen. The broker must promptly notify the port director if authority granted to an employee under paragraph (a)(2)(ii) of this section is withdrawn. The withdrawal of authority will be effective upon receipt by the port director.

(iii) *Marine transactions.* A person transacting business in connection with entry or clearance of vessels or other regulation of vessels under the navigation laws is not required to be licensed as a broker.

(iv) *Transportation in bond.* Any carrier bringing merchandise to the port of arrival or any bonded carrier transporting merchandise for another may make entry for that merchandise for transportation in bond without being a broker.

(v) *Non-commercial shipments.* An individual entering non-commercial merchandise for another party is not required to be a broker, provided that the requirements of §141.33 of this chapter are met.

(vi) *Foreign trade zone activities.* A foreign trade zone operator or user need not be licensed as a broker in order to engage in activities within a zone that do not involve the transfer of merchandise to the customs territory of the United States.

(b) *District permit* —(1) *General.* Except as otherwise provided in paragraph (b)(2) of this section, a separate permit (see §111.19) is required for each district in which a broker conducts customs business.

(2) *Exceptions to district permit rule* —(i) *National permits.* A national permit issued to a broker under §111.19(f) will constitute sufficient permit authority for the broker to act in any of the following circumstances:

(A) *Employee working in client's facility (employee implant).* When a broker places an employee in the facility of a client for whom the broker is conducting customs business at one or more other locations covered by a district permit issued to the broker, and provided that the employee's activities are limited to customs business in support of that broker and on behalf of that client but do not involve the filing of entries or other documents with Customs, the broker need not obtain a permit for the district within which the client's facility is located;

(B) *Electronic drawback claims.* A broker may file electronic drawback claims in accordance with the electronic filing procedures set forth in part 143 of this chapter even though the broker does not have a permit for the district in which the filing is made;

(C) *NCAP participation.* A broker who is a participant in the National Customs Automation Program (NCAP) may electronically file entries for merchandise from a remote location and may electronically transact other customs business that is provided for and operational under the NCAP even though the entry is filed, or the other customs business is transacted, within a district for which the broker does not have a district permit; and

(D) *Representations after entry summary acceptance.* After the entry summary has been accepted by Customs, and except when a broker filed the entry as importer of record, a broker who did not file the entry, but who has been appointed by the importer of record, may orally or in person or in writing or electronically represent the importer of record before Customs on any issue arising out of that entry or concerning the merchandise covered by that entry even though the broker does not have a permit for the district within which those representations are made, provided that, if requested by Customs, the broker submits appropriate evidence of his right to represent the client on the matter at issue.

(ii) *Filing of drawback claims.* A broker granted a permit for one district may file drawback claims manually or electronically at the drawback office that has been designated by Customs for the purpose of filing those claims, and may represent his client before that office in matters concerning those claims, even though the broker does not have a permit for the district in which that drawback office is located.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 03–15, 68 FR 47460, Aug. 11, 2003]

§ 111.3 [Reserved]

§ 111.4 Transacting customs business without a license.

Any person who intentionally transacts customs business, other than as provided in §111.2(a)(2), without holding a valid broker's license, will be liable for a monetary penalty for each such transaction as well as for each violation of any other provision of 19 U.S.C. 1641. The penalty will be assessed in accordance with subpart E of this part.

§ 111.5 Representation before Government agencies.

(a) *Agencies within the Treasury Department.* A broker who represents a client in the importation or exportation of merchandise may represent the client before the Treasury Department or any representative of the Treasury Department on any matter concerning that merchandise.

(b) *Agencies not within the Treasury Department.* In order to represent a client before any agency not within the Treasury Department, a broker must comply with any regulations of that agency governing the appearance of representatives before it.

Subpart B—Procedure To Obtain License or Permit

§ 111.11 Basic requirements for a license.

(a) *Individual.* In order to obtain a broker's license, an individual must:

- (1) Be a citizen of the United States on the date of submission of the application referred to in §111.12(a) and not an officer or employee of the United States Government;
- (2) Attain the age of 21 prior to the date of submission of the application referred to in §111.12(a);
- (3) Be of good moral character; and
- (4) Have established, by attaining a passing (75 percent or higher) grade on a written examination taken within the 3-year period before submission of the application referred to in §111.12(a), that he has sufficient knowledge of customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters to render valuable service to importers and exporters.

(b) *Partnership.* In order to qualify for a broker's license, a partnership must have at least one member of the partnership who is a broker.

(c) *Association or corporation.* In order to qualify for a broker's license, an association or corporation must:

- (1) Be empowered under its articles of association or articles of incorporation to transact customs business as a broker; and
- (2) Have at least one officer who is a broker.

§ 111.12 Application for license.

(a) *Submission of application and fee.* An application for a broker's license must be submitted in duplicate to the director of the port where the applicant intends to do business. The application must be under oath and executed on Customs Form 3124. The application must be accompanied by the \$200 application fee prescribed in §111.96(a) and one copy of the appropriate attachment required by the application form (Articles of Agreement or an affidavit signed by all partners, Articles of Agreement of the association, or the Articles of Incorporation). If the applicant proposes to operate under a trade or fictitious name in one or more States, evidence of the applicant's authority to use the name in each of those States must accompany the application. An application for an individual license must be submitted within the 3-year period after the applicant took and passed the written examination referred to in §§111.11(a)(4) and 111.13. The port director may require an individual applicant to provide a copy of the notification that he passed the written examination (see §111.13(e)) and will require the applicant to submit fingerprints on form FD 258 or electronically at the time of filing the application. The port director may reject an application as improperly filed if the application, on its face, demonstrates that one or more of the basic requirements set forth in §111.11 have not been met at the time of filing, in which case the application and fee will be returned to the filer without further action.

(b) *Posting notice of application.* Following receipt of the application, the port director will post a notice that the application has been filed. The notice will be posted conspicuously for at least 2 consecutive weeks in the customhouse at the port and similarly at any other port where the applicant also proposes to maintain an office. The notice also will be posted by appropriate electronic means. The notice will give the name and address of the applicant and, if the applicant is a partnership, association, or corporation, will state the names of all members or officers who are licensed as brokers. The notice will invite written comments or information regarding the issuance of the license.

(c) *Withdrawal of application.* An applicant for a broker's license may withdraw the application at any time prior to issuance of the license by providing written notice of the withdrawal to the port director. However, withdrawal of the application does not entitle the applicant to a refund of the \$200 application fee.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by T.D. 01–14, 66 FR 8767, Feb. 2, 2001]

§ 111.13 Written examination for individual license.

(a) *Scope of examination.* The written examination for an individual broker's license will be designed to determine the individual's knowledge of customs and related laws, regulations and procedures,

bookkeeping, accounting, and all other appropriate matters necessary to render valuable service to importers and exporters. The examination will be prepared and graded at Customs Headquarters, Washington, DC.

(b) *Date and place of examination.* Written examinations will be given on the first Monday in April and October unless the regularly scheduled examination date conflicts with a national holiday, religious observance, or other foreseeable event and the agency publishes in the Federal Register an appropriate notice of a change in the examination date. An individual who intends to take the written examination must so advise the port director in writing at least 30 calendar days prior to the scheduled examination date and must remit the \$200 examination fee prescribed in §111.96(a) at that time. The port director will give notice of the exact time and place for the examination.

(c) *Special examination.* If a partnership, association, or corporation loses the required member or officer having an individual broker's license (see §§111.11(b) and (c)(2)) and its license would be revoked by operation of law under the provisions of 19 U.S.C. 1641(b)(5) and §111.45(a) before the next scheduled written examination, Customs may authorize a special written examination for a prospective applicant for an individual license who would serve as the required licensed member or officer. Customs may also authorize a special written examination for an individual for purposes of continuing the business of a sole proprietorship broker. A special written examination for an individual may also be authorized by Customs if a brokerage firm loses the individual broker who was exercising responsible supervision and control over an office in another district (see §111.19(d)) and the permit for that additional district would be revoked by operation of law under the provisions of 19 U.S.C. 1641(c)(3) and §111.45(b) before the next scheduled written examination. A request for a special written examination must be submitted to the port director in writing and must describe the circumstances giving rise to the need for the examination. If the request is granted, the port director will notify the prospective examinee of the exact time and place for the examination. If the individual attains a passing grade on the special written examination, the application for the license may be submitted in accordance with §111.12. The examinee will be responsible for all additional costs incurred by Customs in preparing and administering the special examination that exceed the \$200 examination fee prescribed in §111.96(a), and those additional costs must be reimbursed to Customs before the examination is given.

(d) *Failure to appear for examination.* If a prospective examinee advises the port director at least 2 working days prior to the date of a regularly scheduled written examination that he will not appear for the examination, the port director will refund the \$200 examination fee referred to in paragraph (b) of this section. No refund of the examination fee or additional reimbursed costs will be made in the case of a special written examination provided for under paragraph (c) of this section.

(e) *Notice of examination result.* Customs will provide to each examinee written notice of the result of the examination taken under this section. A failure of an examinee to attain a passing grade on the examination will preclude the submission of an application under §111.12 but will not preclude the examinee from taking an examination again at a later date in accordance with paragraph (b) of this section.

(f) *Appeal of failing grade on examination.* If an examinee fails to attain a passing grade on the examination taken under this section, the examinee may challenge that result by filing a written appeal with Trade Programs, Office of Field Operations, U.S. Customs Service, Washington, DC 20229 within 60 calendar days after the date of the written notice provided for in paragraph (e) of this section. Customs will provide to the examinee written notice of the decision on the appeal. If the Customs decision on the appeal affirms the result of the examination, the examinee may request review of the decision on the appeal by writing to the Secretary of the Treasury within 60 calendar days after the date of the notice of that decision.

[T.D. 00-17, 65 FR 13891, Mar. 15, 2000, as amended by T.D. 03-23, 68 FR 31977, May 29, 2003]

§ 111.14 Investigation of the license applicant.

(a) *Referral of application for investigation.* The port director will immediately refer an application for an individual, partnership, association, or corporation license to the special agent in charge or other entity designated by Headquarters for investigation and report.

(b) *Scope of investigation.* An investigation under this section will ascertain facts relevant to the question of whether the applicant is qualified and will cover, but need not be limited to:

- (1) The accuracy of the statements made in the application;
- (2) The business integrity of the applicant; and

(3) When the applicant is an individual (including a member of a partnership or an officer of an association or corporation), the character and reputation of the applicant.

(c) *Referral to Headquarters.* The port director will forward the originals of the application and the report of investigation to the Assistant Commissioner. The port director will also submit his recommendation for action on the application.

(d) *Additional investigation or inquiry.* The Assistant Commissioner may require further investigation to be conducted if additional facts are deemed necessary to pass upon the application. The Assistant Commissioner may also require the applicant (or in the case of a partnership, association, or corporation, one or more of its members or officers) to appear in person before him or before one or more representatives of the Assistant Commissioner for the purpose of undergoing further written or oral inquiry into the applicant's qualifications for a license.

§ 111.15 Issuance of license.

If the Assistant Commissioner finds that the applicant is qualified and has paid all applicable fees prescribed in §111.96(a), he will issue a license. A license for an individual who is a member of a partnership or an officer of an association or corporation will be issued in the name of the individual licensee and not in his capacity as a member or officer of the organization with which he is connected. The license will be forwarded to the port director, who will deliver it to the licensee.

§ 111.16 Denial of license.

(a) *Notice of denial.* If the Assistant Commissioner determines that the application for a license should be denied for any reason, notice of denial will be given by him to the applicant and to the director of the port at which the application was filed. The notice of denial will state the reasons why the license was not issued.

(b) *Grounds for denial.* The grounds sufficient to justify denial of an application for a license include, but need not be limited to:

(1) Any cause which would justify suspension or revocation of the license of a broker under the provisions of §111.53;

(2) The failure to meet any requirement set forth in §111.11;

(3) A failure to establish the business integrity and good character of the applicant;

(4) Any willful misstatement of pertinent facts in the application for the license;

(5) Any conduct which would be deemed unfair in commercial transactions by accepted standards; or

(6) A reputation imputing to the applicant criminal, dishonest, or unethical conduct, or a record of that conduct.

§ 111.17 Review of the denial of a license.

(a) *By the Assistant Commissioner.* Upon the denial of an application for a license, the applicant may file with the Assistant Commissioner, in writing, a request that further opportunity be given for the presentation of information or arguments in support of the application by personal appearance, or in writing, or both. This request must be received by the Assistant Commissioner within 60 calendar days of the denial.

(b) *By the Secretary.* Upon the decision of the Assistant Commissioner affirming the denial of an application for a license, the applicant may file with the Secretary of the Treasury, in writing, a request for any additional review that the Secretary deems appropriate. This request must be received by the Secretary within 60 calendar days of the Assistant Commissioner's affirmation of the denial of the application for a license.

(c) *By the Court of International Trade.* Upon a decision of the Secretary of the Treasury affirming the denial of an application for a license, the applicant may appeal the decision to the Court of International Trade, provided that the appeal action is commenced within 60 calendar days after the date of entry of the Secretary's decision.

§ 111.18 Reapplication for license.

An applicant who has been denied a license may reapply at any time by complying with the provisions of §111.12.

§ 111.19 Permits.

(a) *General.* Each person granted a broker's license under this part will be concurrently issued a permit for the district in which the port through which the license was delivered to the licensee (see §111.15) is located and without the payment of the \$100 fee required by §111.96(b), if it is shown to the satisfaction of the port director that the person intends to transact customs business within that district and the person otherwise complies with the requirements of this part.

(b) *Submission of application for initial or additional district permit.* A broker who intends to conduct customs business at a port within another district for which he does not have a permit, or a broker who was not concurrently granted a permit with the broker's license under paragraph (a) of this section, and except as otherwise provided in paragraph (f) of this section, must submit an application for a permit in a letter to the director of the port at which he intends to conduct customs business. Each application for a permit must set forth or attach the following:

- (1) The applicant's broker license number and date of issuance;
- (2) The address where the applicant's office will be located within the district and the telephone number of that office;
- (3) A copy of a document which reserves the applicant's business name with the state or local government;
- (4) The name of the individual broker who will exercise responsible supervision and control over the customs business transacted in the district;
- (5) A list of all other districts for which the applicant has a permit to transact customs business;
- (6) The place where the applicant's brokerage records will be retained and the name of the applicant's designated recordkeeping contact (see §§111.21 and 111.23); and
- (7) A list of all persons who the applicant knows will be employed in the district, together with the specific employee information prescribed in §111.28(b)(1)(i) for each of those prospective employees.

(c) *Fees.* Each application for a district permit under paragraph (b) of this section must be accompanied by the \$100 and \$125 fees specified in §§111.96(b) and (c). In the case of an application for a national permit under paragraph (f) of this section, the \$100 fee specified in §111.96(b) and the \$125 fee specified in §111.96(c) must be paid at the port through which the applicant's license was delivered (see §111.15) prior to submission of the application. The \$125 fee specified in §111.96(c) also must be paid in connection with the issuance of an initial district permit concurrently with the issuance of a license under paragraph (a) of this section.

(d) *Responsible supervision and control* —(1) *General.* The applicant for a district permit must have a place of business at the port where the application is filed, or must have made firm arrangements satisfactory to the port director to establish a place of business, and must exercise responsible supervision and control over that place of business once the permit is granted. Except as otherwise provided in paragraph (d)(2) of this section, the applicant must employ in each district for which a permit is granted at least one individual broker to exercise responsible supervision and control over the customs business conducted in the district.

(2) *Exception to district rule.* If the applicant can demonstrate to the satisfaction of Customs that he regularly employs at least one individual broker in a larger geographical area in which the district is located and that adequate procedures exist for that individual broker to exercise responsible supervision and control over the customs business conducted in the district, Customs may waive the requirement for an individual broker in that district. A request for a waiver under this paragraph, supported by information on the volume and type of customs business conducted, or planned to be conducted, and supported by evidence demonstrating that the applicant is able to exercise responsible supervision and control through the individual broker employed in the larger geographical area, must be sent to the port director in the district in which the waiver is sought. The port director will review the request for a waiver and make recommendations which will be sent to the Office of Field Operations, Customs Headquarters, for review and decision. A written decision on the waiver request will be issued by the Office of Field Operations and, if the waiver is granted, the decision letter will specify the region covered by the waiver.

(e) *Action on application; list of permitted brokers.* The port director who receives the application will issue a written decision on the district permit application and will issue the district permit if the applicant meets the requirements of paragraphs (b), (c), and (d) of this section. If the port director is of the opinion that the district permit should not be issued, he will submit his written reasons for that opinion to the Office of Field Operations, Customs Headquarters, for appropriate instructions on whether to grant or deny the district

permit. Each port director will maintain and make available to the public an alphabetical list of brokers permitted through his port.

(f) *National permit.* A broker who has a district permit issued under paragraph (a) or paragraph (e) of this section may apply for a national permit for the purpose of transacting customs business in any circumstance described in §111.2(b)(2)(i). An application for a national permit under this paragraph must be in the form of a letter addressed to the Office of Field Operations, U.S. Customs Service, Washington, DC 20229, and must:

- (1) Identify the applicant's broker license number and date of issuance;
- (2) Set forth the address and telephone number of the office designated by the applicant as the office of record for purposes of administration of the provisions of this part regarding all activities of the applicant conducted under the national permit. That office will be noted in the national permit when issued;
- (3) Set forth the name, broker license number, office address, and telephone number of the individual broker who will exercise responsible supervision and control over the activities of the applicant conducted under the national permit; and
- (4) Attach a receipt or other evidence showing that the fees specified in §111.96(b) and (c) have been paid in accordance with paragraph (c) of this section.

(g) *Review of the denial of a permit* —(1) *By the Assistant Commissioner.* Upon the denial of an application for a permit under this section, the applicant may file with the Assistant Commissioner, in writing, a request that further opportunity be given for the presentation of information or arguments in support of the application by personal appearance, or in writing, or both. This request must be received by the Assistant Commissioner within 60 calendar days of the denial.

(2) *By the Court of International Trade.* Upon a decision of the Assistant Commissioner affirming the denial of an application for a permit under this section, the applicant may appeal the decision to the Court of International Trade, provided that the appeal action is commenced within 60 calendar days after the date of entry of the Assistant Commissioner's decision.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by T.D. 01–14, 66 FR 8767, Feb. 2, 2001; CBP Dec. 03–13, 68 FR 43630, July 24, 2003]

Subpart C—Duties and Responsibilities of Customs Brokers

§ 111.21 Record of transactions.

- (a) Each broker must keep current in a correct, orderly, and itemized manner records of account reflecting all his financial transactions as a broker. He must keep and maintain on file copies of all his correspondence and other records relating to his customs business.
- (b) Each broker must comply with the provisions of this part and part 163 of this chapter when maintaining records that reflect on his transactions as a broker.
- (c) Each broker must designate a knowledgeable company employee to be the contact for Customs for broker-wide customs business and financial recordkeeping requirements.

§ 111.22 [Reserved]

§ 111.23 Retention of records.

(a) *Place and period of retention* —(1) *Place.* Records must be retained by a broker in accordance with the provisions of this part and part 163 of this chapter within the broker district that covers the Customs port to which they relate unless the broker chooses to consolidate records at one or more other locations, and provides advance notice of that consolidation to Customs, in accordance with paragraph (b) of this section.

(2) *Period.* The records described in paragraph (a)(1) of this section, other than powers of attorney, must be retained for at least 5 years after the date of entry. Powers of attorney must be retained until revoked, and revoked powers of attorney and letters of revocation must be retained for 5 years after the date of revocation or for 5 years after the date the client ceases to be an “active client” as defined in §111.29(b)(2)(ii), whichever period is later. When merchandise is withdrawn from a bonded warehouse, records relating to the withdrawal must be retained for 5 years from the date of withdrawal of the last merchandise withdrawn under the entry.

(b) *Notification of consolidated records* —(1) *Applicability*. Subject to the requirements of paragraph (b)(2) of this section and except when a restriction applies under §163.5(b) of this chapter, the option of maintaining records on a consolidated system basis is available to brokers who have been granted permits to do business in more than one district.

(2) *Form and content of notice*. If consolidated storage is desired by the broker, he must submit a written notice addressed to the Director, Regulatory Audit Division, U.S. Customs Service, 909 S.E. First Avenue, Miami, Florida 33131. The written notice must include:

(i) Each address at which the broker intends to maintain the consolidated records. Each such location must be within a district where the broker has been granted a permit;

(ii) A detailed statement describing all the records to be maintained at each consolidated location, the methodology of record maintenance, a description of any automated data processing to be applied, and a list of all the broker's customs business activity locations; and

(iii) An agreement that there will be no change in the records, the manner of recordkeeping, or the location at which they will be maintained, unless the Director, Regulatory Audit Division, in Miami is first notified.

§ 111.24 Records confidential.

The records referred to in this part and pertaining to the business of the clients serviced by the broker are to be considered confidential, and the broker must not disclose their contents or any information connected with the records to any persons other than those clients, their surety on a particular entry, and the Field Director, Regulatory Audit Division, the special agent in charge, the port director, or other duly accredited officers or agents of the United States, except on subpoena by a court of competent jurisdiction.

§ 111.25 Records must be available.

During the period of retention, the broker must maintain the records referred to in this part in such a manner that they may readily be examined. Records required to be made or maintained under the provisions of this part must be made available upon reasonable notice for inspection, copying, reproduction or other official use by Customs regulatory auditors or special agents or other authorized Customs officers within the prescribed period of retention or within any longer period of time during which they remain in the possession of the broker. Records subject to the requirements of part 163 of this chapter must be made available to Customs in accordance with the provisions of that part.

§ 111.26 Interference with examination of records.

Except in accordance with the provisions of part 163 of this chapter, a broker must not refuse access to, conceal, remove, or destroy the whole or any part of any record relating to his transactions as a broker which is being sought, or which the broker has reasonable grounds to believe may be sought, by the Treasury Department or any representative of the Treasury Department, nor may he otherwise interfere, or attempt to interfere, with any proper and lawful efforts to procure or reproduce information contained in those records.

§ 111.27 Audit or inspection of records.

The Field Director, Regulatory Audit Division, will make any audit or inspection of the records required by this subpart to be kept and maintained by a broker as may be necessary to enable the port director and other proper officials of the Treasury Department to determine whether or not the broker is complying with the requirements of this part.

§ 111.28 Responsible supervision.

(a) *General*. Every individual broker operating as a sole proprietor and every licensed member of a partnership that is a broker and every licensed officer of an association or corporation that is a broker must exercise responsible supervision and control (see §111.1) over the transaction of the customs business of the sole proprietorship, partnership, association, or corporation.

(b) *Employee information* —(1) *Current employees* —(i) *General*. Each broker must submit, in writing, to the director of each port at which the broker intends to transact customs business, a list of the names of persons currently employed by the broker at that port. The list of employees must be submitted upon issuance of a permit for an additional district under §111.19, or upon the opening of an office at a port within a district for which the broker already has a permit, and before the broker begins to transact customs business as a broker at the port. For each employee, the broker also must provide the social security

number, date and place of birth, current home address, last prior home address, and, if the employee has been employed by the broker for less than 3 years, the name and address of each former employer and dates of employment for the 3-year period preceding current employment with the broker. After the initial submission, an updated list, setting forth the name, social security number, date and place of birth, and current home address of each current employee, must be submitted with the status report required by §111.30(d).

(ii) *New employees.* In the case of a new employee, the broker must submit to the port director the written information required under paragraph (b)(1)(i) of this section within 10 calendar days after the new employee has been employed by the broker for 30 consecutive days.

(2) *Terminated employees.* Within 30 calendar days after the termination of employment of any person employed longer than 30 consecutive days, the broker must submit the name of the terminated employee, in writing, to the director of the port at which the person was employed.

(3) *Broker's responsibility.* Notwithstanding a broker's responsibility for providing the information required in paragraph (b)(1) of this section, in the absence of culpability by the broker, Customs will not hold him responsible for the accuracy of any information that is provided to the broker by the employee.

(c) *Termination of qualifying member or officer.* In the case of an individual broker who is a qualifying member of a partnership for purposes of §111.11(b) or who is a qualifying officer of an association or corporation for purposes of §111.11(c)(2), that individual broker must immediately provide written notice to the Assistant Commissioner when his employment as a qualifying member or officer terminates and must send a copy of the written notice to the director of each port through which a permit has been granted to the partnership, association, or corporation.

(d) *Change in ownership.* If the ownership of a broker changes and ownership shares in the broker are not publicly traded, the broker must immediately provide written notice of that fact to the Assistant Commissioner and must send a copy of the written notice to the director of each port through which a permit has been granted to the broker. When a change in ownership results in the addition of a new principal to the organization, and whether or not ownership shares in the broker are publicly traded, Customs reserves the right to conduct a background investigation on the new principal. The port director will notify the broker if Customs objects to the new principal, and the broker will be given a reasonable period of time to remedy the situation. If the investigation uncovers information which would have been the basis for a denial of an application for a broker's license and the principal's interest in the broker is not terminated to the satisfaction of the port director, suspension or revocation proceedings may be initiated under subpart D of this part. For purposes of this paragraph, a "principal" means any person having at least a 5 percent capital, beneficiary or other direct or indirect interest in the business of a broker.

§ 111.29 Diligence in correspondence and paying monies.

(a) *Due diligence by broker.* Each broker must exercise due diligence in making financial settlements, in answering correspondence, and in preparing or assisting in the preparation and filing of records relating to any customs business matter handled by him as a broker. Payment of duty, tax, or other debt or obligation owing to the Government for which the broker is responsible, or for which the broker has received payment from a client, must be made to the Government on or before the date that payment is due. Payments received by a broker from a client after the due date must be transmitted to the Government within 5 working days from receipt by the broker. Each broker must provide a written statement to a client accounting for funds received for the client from the Government, or received from a client where no payment to the Government has been made, or received from a client in excess of the Governmental or other charges properly payable as part of the client's customs business, within 60 calendar days of receipt. No written statement is required if there is actual payment of the funds by a broker.

(b) *Notice to client of method of payment* —(1) All brokers must provide their clients with the following written notification:

If you are the importer of record, payment to the broker will not relieve you of liability for Customs charges (duties, taxes, or other debts owed Customs) in the event the charges are not paid by the broker. Therefore, if you pay by check, Customs charges may be paid with a separate check payable to the "U.S. Customs Service" which will be delivered to Customs by the broker.

(2) The written notification set forth in paragraph (b)(1) of this section must be provided by brokers as follows:

(i) On, or attached to, any power of attorney provided by the broker to a client for execution on or after September 27, 1982; and

(ii) To each active client no later than February 28, 1983, and at least once at any time within each 12-month period after that date. An active client means a client from whom a broker has obtained a power of attorney and for whom the broker has transacted customs business on at least two occasions within the 12-month period preceding notification.

§ 111.30 Notification of change of business address, organization, name, or location of business records; status report; termination of brokerage business.

(a) *Change of address.* When a broker changes his business address, he must immediately give written notice of his new address to each director of a port that is affected by the change of address. In addition, if an individual broker is not actively engaged in transacting business as a broker and changes his non-business mailing address, he must give written notice of the new address in the status report required by paragraph (d) of this section.

(b) *Change in an organization.* A partnership, association, or corporation broker must immediately provide written notice of any of the following to the director of each port through which it has been granted a permit:

(1) The date on which a licensed member or officer ceases to be the qualifying member or officer for purposes of §111.11(b) or (c)(2), and the name of the broker who will succeed as the qualifying member or officer; and

(2) Any change in the Articles of Agreement, Charter, or Articles of Incorporation relating to the transaction of customs business, or any other change in the legal nature of the organization (for example, conversion of a general partnership to a limited partnership, merger with another organization, divestiture of a part of the organization, or entry into bankruptcy protection).

(c) *Change in name.* A broker who changes his name, or who proposes to operate under a trade or fictitious name in one or more States within the district in which he has been granted a permit and is authorized by State law to do so, must submit to the Office of Field Operations, U.S. Customs Service, Washington, DC 20229, evidence of his authority to use that name. The name must not be used until the approval of Headquarters has been received. In the case of a trade or fictitious name, the broker must affix his own name in conjunction with each signature of the trade or fictitious name when signing customs documents.

(d) *Status report* —(1) *General.* Each broker must file a written status report with Customs on February 1, 1985, and on February 1 of each third year after that date. The report must be accompanied by the fee prescribed in §111.96(d) and must be addressed to the director of the port through which the license was delivered to the licensee (see §111.15). A report received during the month of February will be considered filed timely. No form or particular format is required.

(2) *Individual.* Each individual broker must state in the report required under paragraph (d)(1) of this section whether he is actively engaged in transacting business as a broker. If he is so actively engaged, he must also:

(i) State the name under which, and the address at which, his business is conducted if he is a sole proprietor;

(ii) State the name and address of his employer if he is employed by another broker, unless his employer is a partnership, association or corporation broker for which he is a qualifying member or officer for purposes of §111.11(b) or (c)(2); and

(iii) State whether or not he still meets the applicable requirements of §111.11 and §111.19 and has not engaged in any conduct that could constitute grounds for suspension or revocation under §111.53.

(3) *Partnership, association or corporation.* Each corporation, partnership or association broker must state in the report required under paragraph (d)(1) of this section the name under which its business as a broker is being transacted, its business address, the name and address of each licensed member of the partnership or licensed officer of the association or corporation who qualifies it for a license under §111.11(b) or (c)(2), and whether it is actively engaged in transacting business as a broker, and the report must be signed by a licensed member or officer.

(4) *Failure to file timely.* If a broker fails to file the report required under paragraph (d)(1) of this section by March 1 of the reporting year, the broker's license is suspended by operation of law on that date. By March

31 of the reporting year, the port director will transmit written notice of the suspension to the broker by certified mail, return receipt requested, at the address reflected in Customs records. If the broker files the required report and pays the required fee within 60 calendar days of the date of the notice of suspension, the license will be reinstated. If the broker does not file the required report within that 60-day period, the broker's license is revoked by operation of law without prejudice to the filing of an application for a new license. Notice of the revocation will be published in the Customs Bulletin.

(e) *Custody of records.* Upon the permanent termination of a brokerage business, written notification of the name and address of the party having legal custody of the brokerage business records must be provided to the director of each port where the broker was transacting business within each district for which a permit has been issued to the broker. That notification will be the responsibility of:

- (1) The individual broker, upon the permanent termination of his brokerage business;
- (2) Each member of a partnership who holds an individual broker's license, upon the permanent termination of a partnership brokerage business; or
- (3) Each association or corporate officer who holds an individual broker's license, upon the permanent termination of an association or corporate brokerage business.

§ 111.31 Conflict of interest.

(a) *Former officer or employee of U.S. Government.* A broker who was formerly an officer or employee in U.S. Government service must not represent a client before the Treasury Department or any representative of the Treasury Department in any matter to which the broker gave personal consideration or gained knowledge of the facts while in U.S. Government service, except as provided in 18 U.S.C. 207.

(b) *Relations with former officer or employee of U.S. Government.* A broker must not knowingly assist, accept assistance from, or share fees with a person who has been employed by a client in a matter pending before the Treasury Department or any representative of the Treasury Department to which matter that person gave personal consideration or gained personal knowledge of the facts or issues of the matter while in U.S. Government service.

(c) *Importations by broker or employee.* A broker who is an importer himself must not act as broker for an importer who imports merchandise of the same general character as that imported by the broker unless the client has full knowledge of the facts. The same restriction will apply if a broker's employee is an importer.

§ 111.32 False information.

A broker must not file or procure or assist in the filing of any claim, or of any document, affidavit, or other papers, known by such broker to be false. In addition, a broker must not knowingly give, or solicit or procure the giving of, any false or misleading information or testimony in any matter pending before the Treasury Department or any representative of the Treasury Department.

§ 111.33 Government records.

A broker must 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 proper authority.

§ 111.34 Undue influence upon Treasury Department employees.

A broker must not influence or attempt to influence the conduct of any representative of the Treasury Department in any matter pending before the Treasury Department or any representative of the Treasury Department by the use of duress or a threat or false accusation, or by the offer of any special inducement or promise of advantage, or by bestowing any gift or favor or other thing of value.

§ 111.35 Acceptance of fees from attorneys.

With respect to customs transactions, a broker must not demand or accept from any attorney (whether directly or indirectly, including, for example, from a client as a part of any arrangement with an attorney) on account of any case litigated in any court of law or on account of any other legal service rendered by an attorney any fee or remuneration in excess of an amount measured by or commensurate with the time, effort and skill expended by the broker in performing his services.

§ 111.36 Relations with unlicensed persons.

(a) *Employment by unlicensed person other than importer.* When a broker is employed for the transaction of customs business by an unlicensed person who is not the actual importer, the broker must transmit to

the actual importer either a copy of his bill for services rendered or a copy of the entry, unless the merchandise was purchased on a delivered duty-paid basis or unless the importer has in writing waived transmittal of the copy of the entry or bill for services rendered.

(b) *Service to others not to benefit unlicensed person.* Except as otherwise provided in paragraph (c) of this section, a broker must not enter into any agreement with an unlicensed person to transact customs business for others in such manner that the fees or other benefits resulting from the services rendered for others inure to the benefit of the unlicensed person.

(c) *Relations with a freight forwarder.* A broker may compensate a freight forwarder for referring brokerage business, subject to the following conditions:

(1) The importer or other party in interest is notified in advance by the forwarder or broker of the name of the broker selected by the forwarder for the handling of his Customs transactions;

(2) The broker transmits directly to the importer or other party in interest:

(i) A true copy of his brokerage charges if the fees and charges are to be collected by or through the forwarder, unless this requirement is waived in writing by the importer or other party in interest; or

(ii) A statement of his brokerage charges and an itemized list of any charges to be collected for the account of the freight forwarder if the fees and charges are to be collected by or through the broker;

(3) No part of the agreement of compensation between the broker and the forwarder, nor any action taken pursuant to the agreement, forbids or prevents direct communication between the importer or other party in interest and the broker; and

(4) In making the agreement and in all actions taken pursuant to the agreement, the broker remains subject to all other provisions of this part.

§ 111.37 Misuse of license or permit.

A broker must not allow his license, permit or name to be used by or for any unlicensed person (including a broker whose license 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.

§ 111.38 False representation to procure employment.

A broker must not knowingly use false or misleading representations to procure employment in any customs matter. In addition, a broker must not represent to a client or prospective client that he can obtain any favours from the Treasury Department or any representative of the Treasury Department.

§ 111.39 Advice to client.

(a) *Withheld or false information.* A broker must not withhold information relative to any customs business from a client who is entitled to the information. Moreover, a broker must exercise due diligence to ascertain the correctness of any information which he imparts to a client, and he must not knowingly impart to a client false information relative to any customs business.

(b) *Error or omission by client.* If a broker knows that a client has not complied with the law or has made an error in, or omission from, any document, affidavit, or other paper which the law requires the client to execute, he must advise the client promptly of that non compliance, error, or omission.

(c) *Illegal plans.* A broker must not knowingly suggest to a client or prospective client any illegal plan for evading payment of any duty, tax, or other debt or obligation owing to the U.S. Government.

§ 111.40 Protests.

A broker must not act on behalf of any person, or attempt to represent any person, regarding any protest unless he is authorized to do so in accordance with part 174 of this chapter.

§ 111.41 Endorsement of checks.

A broker must not endorse or accept, without authority of his client, any U.S. Government draft, check, or warrant drawn to the order of the client.

§ 111.42 Relations with person who is notoriously disreputable or whose license is under suspension, cancelled "with prejudice," or revoked.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, a broker must not knowingly and directly or indirectly:

(1) Accept employment to effect a Customs transaction as associate, correspondent, officer, employee, agent, or subagent from any person who is notoriously disreputable or whose broker license was revoked for any cause or is under suspension or was cancelled "with prejudice;"

(2) Assist in the furtherance of any customs business or transactions of any person described in paragraph (a)(1) of this section;

(3) Employ, or accept assistance in the furtherance of any customs business or transactions from, any person described in paragraph (a)(1) of this section, without the approval of the Assistant Commissioner (see §111.79);

(4) Share fees with any person described in paragraph (a)(1) of this section; or

(5) Permit any person described in paragraph (a)(1) of this section to participate, directly or indirectly and whether through ownership or otherwise, in the promotion, control, or direction of the business of the broker.

(b) *Client exception.* Nothing in this section will prohibit a broker from transacting customs business on behalf of a bona fide importer or exporter who may be notoriously disreputable or whose broker license is under suspension or was cancelled "with prejudice" or revoked.

§§ 111.43-111.44 [Reserved]

§ 111.45 Revocation by operation of law.

(a) *License.* If a broker that is a partnership, association, or corporation fails to have, during any continuous period of 120 days, at least one member of the partnership or at least one officer of the association or corporation who holds a valid individual broker's license, that failure will, in addition to any other sanction that may be imposed under this part, result in the revocation by operation of law of the license and any permits issued to the partnership, association, or corporation. The Assistant Commissioner or his designee will notify the broker in writing of an impending revocation by operation of law under this section 30 calendar days before the revocation is due to occur.

(b) *Permit.* If a broker who has been granted a permit for an additional district fails, for any continuous period of 180 days, to employ within that district (or region, as defined in §111.1, if an exception has been granted pursuant to §111.19(d)) at least one person who holds a valid individual broker's license, that failure will, in addition to any other sanction that may be imposed under this part, result in the revocation of the permit by operation of law.

(c) *Notification.* If the license or an additional permit of a partnership, association, or corporation is revoked by operation of law under paragraph (a) or (b) of this section, the Assistant Commissioner or his designee will notify the organization of the revocation. If an additional permit of an individual broker is revoked by operation of law under paragraph (b) of this section, the Assistant Commissioner or his designee will notify the broker. Notice of any revocation under this section will be published in the Customs Bulletin.

(d) *Applicability of other sanctions.* Notwithstanding the operation of paragraph (a) or (b) of this section, each broker still has a continuing obligation to exercise responsible supervision and control over the conduct of its brokerage business and to otherwise comply with the provisions of this part. Any failure on the part of a broker to meet that continuing obligation during the 120 or 180-day period referred to in paragraph (a) or (b) of this section, or during any shorter period of time, may result in the initiation of suspension or revocation proceedings or the assessment of a monetary penalty under subpart D or subpart E of this part.

Subpart D—Cancellation, Suspension, or Revocation of License or Permit, and Monetary Penalty in Lieu of Suspension or Revocation

§ 111.50 General.

This subpart sets forth provisions relating to cancellation, suspension, or revocation of a license or a permit, or assessment of a monetary penalty in lieu of suspension or revocation, under section 641(d)(2)(B), Tariff Act of 1930, as amended (19 U.S.C. 1641(d)(2)(B)). The provisions relating to assessment of a monetary penalty under sections 641(b)(6) and (d)(2)(A), Tariff Act of 1930, as amended (19 U.S.C. 1641(b)(6) and (d)(2)(A)), are set forth in subpart E of this part.

§ 111.51 Cancellation of license or permit.

(a) *Without prejudice.* The Assistant Commissioner may cancel a broker's license or permit "without prejudice" upon written application by the broker if the Assistant Commissioner determines that the application for cancellation was not made in order to avoid proceedings for the suspension or revocation of the license or permit. If the Assistant Commissioner determines that the application for cancellation was made in order to avoid those proceedings, he may cancel the license or permit "without prejudice" only with authorization from the Secretary of the Treasury.

(b) *With prejudice.* The Assistant Commissioner may cancel a broker's license or permit "with prejudice" when specifically requested to do so by the broker. The effect of a cancellation "with prejudice" is in all respects the same as if the license or permit had been revoked for cause by the Secretary except that it will not give rise to a right of appeal.

§ 111.52 Voluntary suspension of license or permit.

The Assistant Commissioner may accept a broker's written voluntary offer of suspension of the broker's license or permit for a specific period of time under any terms and conditions to which the parties may agree.

§ 111.53 Grounds for suspension or revocation of license or permit.

The appropriate Customs officer may initiate proceedings for the suspension, for a specific period of time, or revocation of the license or permit of any broker for any of the following reasons:

(a) The broker has made or caused to be made in any application for any license or permit under this part, or report filed with Customs, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any application or report any material fact which was required;

(b) The broker has been convicted, at any time after the filing of an application for a license under §111.12, of any felony or misdemeanor which:

(1) Involved the importation or exportation of merchandise;

(2) Arose out of the conduct of customs business; or

(3) Involved larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds;

(c) The broker has violated any provision of any law enforced by Customs or the rules or regulations issued under any provision of any law enforced by Customs;

(d) The broker has counselled, commanded, induced, procured, or knowingly aided or abetted the violations by any other person of any provision of any law enforced by Customs or the rules or regulations issued under any provision of any law enforced by Customs;

(e) The broker has knowingly employed, or continues to employ, any person who has been convicted of a felony, without written approval of that employment from the Assistant Commissioner;

(f) The broker has, in the course of customs business, with intent to defraud, in any manner willfully and knowingly deceived, misled or threatened any client or prospective client; or

(g) The broker no longer meets the applicable requirements of §111.11 and §111.19.

§ 111.54 [Reserved]**§ 111.55 Investigation of complaints.**

Every complaint or charge against a broker which may be the basis for disciplinary action will be forwarded for investigation to the special agent in charge of the area in which the broker is located. The special agent in charge will submit a report on the investigation to the director of the port and send a copy of it to the Assistant Commissioner.

§ 111.56 Review of report on investigation.

The port director will review the report of investigation to determine if there is sufficient basis to recommend that charges be preferred against the broker. He will then submit his recommendation with supporting

reasons to the Assistant Commissioner for final determination together with a proposed statement of charges when recommending that charges be preferred.

§ 111.57 Determination by Assistant Commissioner.

The Assistant Commissioner will make a determination on whether or not charges should be preferred, and he will notify the port director of his decision.

§ 111.58 Content of statement of charges.

Any statement of charges referred to in this subpart must give a plain and concise, but not necessarily detailed, description of the facts claimed to constitute grounds for suspension or revocation of the license or permit. The statement of charges also must specify the sanction being proposed (that is, suspension of the license or permit or revocation of the license or permit), but if a suspension is proposed the charges need not state a specific period of time for which suspension is proposed. A statement of charges which fairly informs the broker of the charges against him so that he is able to prepare his response will be deemed sufficient. Different means by which a purpose might have been accomplished, or different intents with which acts might have been done, so as to constitute grounds for suspension or revocation of the license may be alleged in the alternative under a single count in the statement of charges.

§ 111.59 Preliminary proceedings.

(a) *Opportunity to participate.* The port director will advise the broker of his opportunity to participate in preliminary proceedings with an opportunity to avoid formal proceedings against his license or permit.

(b) *Notice of preliminary proceedings.* The port director will serve upon the broker, in the manner set forth in §111.63, written notice that:

- (1) Transmits a copy of the proposed statement of charges;
- (2) Informs the broker that formal proceedings are available to him;
- (3) Informs the broker that sections 554 and 558, Title 5, United States Code, will be applicable if formal proceedings are necessary;
- (4) Invites the broker to show cause why formal proceedings should not be instituted;
- (5) Informs the broker that he may make submissions and demonstrations of the character contemplated by the cited statutory provisions;
- (6) Invites any negotiation for settlement of the complaint or charge that the broker deems it desirable to enter into;
- (7) Advises the broker of his right to be represented by counsel;
- (8) Specifies the place where the broker may respond in writing; and
- (9) Advises the broker that the response must be received within 30 calendar days of the date of the notice.

§ 111.60 Request for additional information.

If, in order to prepare his response, the broker desires additional information as to the time and place of the alleged misconduct, or the means by which it was committed, or any other more specific information concerning the alleged misconduct, he may request that information in writing. The broker's request must set forth in what respect the proposed statement of charges leaves him in doubt and must describe the particular language of the proposed statement of charges as to which additional information is needed. If in the opinion of the port director that information is reasonably necessary to enable the broker to prepare his response, he will furnish the broker with that information.

§ 111.61 Decision on preliminary proceedings.

The port director will prepare a summary of any oral presentations made by the broker or his attorney and forward it to the Assistant Commissioner together with a copy of each paper filed by the broker. The port director will also give to the Assistant Commissioner his recommendation on action to be taken as a result of the preliminary proceedings. If the Assistant Commissioner determines that the broker has satisfactorily responded to the proposed charges and that further proceedings are not warranted, he will so inform the port director who will notify the broker. If no response is filed by the broker or if the Assistant Commissioner determines that the broker has not satisfactorily responded to all of the proposed charges, he will advise the port director of that fact and instruct him to prepare, sign, and serve a notice of charges and the

statement of charges. If one or more of the charges in the proposed statement of charges was satisfactorily answered by the broker in the preliminary proceedings, the Assistant Commissioner will instruct the port director to omit those charges from the statement of charges.

§ 111.62 Contents of notice of charges.

The notice of charges must inform the broker that:

- (a) Sections 554 and 558, Title 5, United States Code, are applicable to the formal proceedings;
- (b) The broker may be represented by counsel;
- (c) The broker will have the right to cross-examine witnesses;
- (d) Within 10 calendar days after service of this notice, the broker will be notified of the time and place of a hearing on the charges; and
- (e) Prior to the hearing on the charges, the broker may file, in duplicate with the port director, a verified answer to the charges.

§ 111.63 Service of notice and statement of charges.

(a) *Individual.* The port director will serve the notice of charges and the statement of charges against an individual broker as follows:

- (1) By delivery to the broker personally;
- (2) By certified mail addressed to the broker, with demand for a return card signed solely by the addressee;
- (3) By any other means which the broker may have authorized in a written communication to the port director; or
- (4) If attempts to serve the broker by the methods prescribed in paragraphs (a)(1) through (a)(3) of this section are unsuccessful, the port director may serve the notice and statement by leaving them with the person in charge of the broker's office.

(b) *Partnership, association or corporation.* The port director will serve the notice of charges and the statement of charges against a partnership, association, or corporation broker as follows:

- (1) By delivery to any member of the partnership personally or to any officer of the association or corporation personally;
- (2) By certified mail addressed to any member of the partnership or to any officer of the association or corporation, with demand for a return card signed solely by the addressee;
- (3) By any other means which the broker may have authorized in a written communication to the port director; or
- (4) If attempts to serve the broker by the methods prescribed in paragraphs (b)(1) through (b)(3) of this section are unsuccessful, the port director may serve the notice and statement by leaving them with the person in charge of the broker's office.

(c) *Certified mail; evidence of service.* When the service under this section is by certified mail, the receipt of the return card duly signed will be satisfactory evidence of service.

§ 111.64 Service of notice of hearing and other papers.

(a) *Notice of hearing.* After service of the notice and statement of charges, the port director will serve upon the broker and his attorney if known, by one of the methods set forth in §111.63 or by ordinary mail, a written notice of the time and place of the hearing. The hearing will be scheduled to take place within 30 calendar days after service of the notice of hearing.

(b) *Other papers.* Other papers relating to the hearing may be served by one of the methods set forth in §111.63 or by ordinary mail or upon the broker's attorney.

§ 111.65 Extension of time for hearing.

If the broker or his attorney requests in writing a delay in the hearing for good cause, the hearing officer designated pursuant to §111.67(a) may reschedule the hearing and in that case will notify the broker or his attorney in writing of the extension and the new time for the hearing.

§ 111.66 Failure to appear.

If the broker or his attorney fails to appear for a scheduled hearing, the hearing officer designated pursuant to §111.67(a) will proceed with the hearing as scheduled and will hear evidence submitted by the parties. The provisions of this part will apply as though the broker were present, and the Secretary of the Treasury may issue an order of suspension of the license or permit for a specified period of time or revocation of the license or permit, or assessment of a monetary penalty in lieu of suspension or revocation, in accordance with §111.74 if he finds that action to be in order.

§ 111.67 Hearing.

(a) *Hearing officer.* The hearing officer must be an administrative law judge appointed pursuant to 5 U.S.C. 3105.

(b) *Rights of the broker.* The broker or his attorney will have the right to examine all exhibits offered at the hearing and will have the right to cross-examine witnesses and to present witnesses who will be subject to cross-examination by the Government representatives.

(c) *Interrogatories.* Upon the written request of either party, the hearing officer may permit deposition upon oral or written interrogatories to be taken before any officer duly authorized to administer oaths for general purposes or in customs matters. The other party to the hearing will be given a reasonable time in which to prepare cross-interrogatories and, if the deposition is oral, will be permitted to cross-examine the witness. The deposition will become part of the hearing record.

(d) *Transcript of record.* The port director will provide a competent reporter to make a record of the hearing. When the record of the hearing has been transcribed by the reporter, the port director will deliver a copy of the transcript of record to the hearing officer, the broker and the Government representative without charge.

(e) *Government representatives.* The Assistant Commissioner will designate one or more persons to represent the Government at the hearing.

§ 111.68 Proposed findings and conclusions.

The hearing officer will allow the parties a reasonable period of time after delivery of the transcript of record in which to submit proposed findings and conclusions and supporting reasons for the findings as contemplated by 5 U.S.C. 557(c).

§ 111.69 Recommended decision by hearing officer.

After review of the proposed findings and conclusions submitted by the parties pursuant to §111.68, the hearing officer will make his recommended decision in the case and certify the entire record to the Secretary of the Treasury. The hearing officer's recommended decision must conform to the requirements of 5 U.S.C. 557.

§ 111.70 Additional submissions.

Upon receipt of the record, the Secretary of the Treasury will afford the parties a reasonable opportunity to make any additional submissions that are permitted under 5 U.S.C. 557(c) or otherwise required by the circumstances of the case.

§ 111.71 Immaterial mistakes.

The Secretary of the Treasury will disregard an immaterial misnomer of a third person, an immaterial mistake in the description of any person, thing, or place, or ownership of any property, any other immaterial mistake in the statement of charges, or a failure to prove immaterial allegations in the description of the broker's conduct.

§ 111.72 Dismissal subject to new proceedings.

If the Secretary of the Treasury finds that the evidence produced at the hearing indicates that a proper disposition of the case cannot be made on the basis of the charges preferred, he may instruct the port director to serve appropriate charges as a basis for new proceedings to be conducted in accordance with the procedures set forth in this subpart.

§ 111.73 [Reserved]**§ 111.74 Decision and notice of suspension or revocation or monetary penalty.**

If the Secretary of the Treasury finds that one or more of the charges in the statement of charges is not sufficiently proved, he may base a suspension, revocation, or monetary penalty action on any remaining charges if the facts alleged in the charges are established by the evidence. If the Secretary of the Treasury, in the exercise of his discretion and based solely on the record, issues an order suspending a broker's license or permit for a specified period of time or revoking a broker's license or permit or, except in a case described in §111.53(b)(3), assessing a monetary penalty in lieu of suspension or revocation, the Assistant Commissioner will promptly provide written notification of the order to the broker and, unless an appeal from the Secretary's order is filed by the broker (see §111.75), the Assistant Commissioner will publish a notice of the suspension or revocation, or the assessment of a monetary penalty, in the Federal Register and in the Customs Bulletin. If no appeal from the Secretary's order is filed, an order of suspension or revocation or assessment of a monetary penalty will become effective 60 calendar days after issuance of written notification of the order unless the Secretary finds that a more immediate effective date is in the national or public interest. If a monetary penalty is assessed and no appeal from the Secretary's order is filed, payment of the penalty must be tendered within 60 calendar days after the effective date of the order, and, if payment is not tendered within that 60-day period, the license or permit of the broker will immediately be suspended until payment is made.

§ 111.75 Appeal from the Secretary's decision.

An appeal from the order of the Secretary of the Treasury suspending or revoking a license or permit, or assessing a monetary penalty, may be filed by the broker in the Court of International Trade as provided in section 641(e), Tariff Act of 1930, as amended (19 U.S.C. 1641(e)). The commencement of those proceedings will, unless specifically ordered by the Court, operate as a stay of the Secretary's order.

§ 111.76 Reopening the case.

(a) *Grounds for reopening.* Provided that no appeal is filed in accordance with §111.75, a person whose license or permit has been suspended or revoked, or against whom a monetary penalty has been assessed in lieu of suspension or revocation, may make written application in duplicate to the Assistant Commissioner to reopen the case and have the order of suspension or revocation or monetary penalty assessment set aside or modified on the ground that new evidence has been discovered or on the ground that important evidence is now available which could not be produced at the original hearing by the exercise of due diligence. The application must set forth the precise character of the evidence to be relied upon and must state the reasons why the applicant was unable to produce it when the original charges were heard.

(b) *Procedure.* The Assistant Commissioner will forward the application, together with his recommendation for action thereon, to the Secretary of the Treasury. The Secretary may grant or deny the application to reopen the case and may order the taking of additional testimony before the Assistant Commissioner. The Assistant Commissioner will notify the applicant of the Secretary's decision. If the Secretary grants the application and orders a hearing, the Assistant Commissioner will set a time and place for the hearing and give due written notice of the hearing to the applicant. The procedures governing the new hearing and recommended decision of the hearing officer will be the same as those governing the original proceeding. The original order of the Secretary will remain in effect pending conclusion of the new proceedings and issuance of a new order under §111.77.

§ 111.77 Notice of vacated or modified order.

If, pursuant to §111.76 or for any other reason, the Secretary of the Treasury issues an order vacating or modifying an earlier order under §111.74 suspending or revoking a broker's license or permit, or assessing a monetary penalty, the Assistant Commissioner will notify the broker in writing and will publish a notice of the new order in the Federal Register and in the Customs Bulletin.

§ 111.78 Reprimands.

If a broker fails to observe and fulfil the duties and responsibilities of a broker as set forth in this part but that failure is not sufficiently serious to warrant initiation of suspension or revocation proceedings, Headquarters, or the port director with the approval of Headquarters, may serve the broker with a written reprimand. The reprimand, and the facts on which it is based, may be considered in connection with any future disciplinary proceeding that may be instituted against the broker in question.

§ 111.79 Employment of broker who has lost license.

Five years after the revocation or cancellation “with prejudice” of a license, the ex-broker may petition the Assistant Commissioner for authorization to assist, or accept employment with, a broker. The petition will not be approved unless the Assistant Commissioner is satisfied that the petitioner has refrained from all activities described in §111.42 and that the petitioner's conduct has been exemplary during the period of disability. The Assistant Commissioner will also give consideration to the gravity of the misconduct which gave rise to the petitioner's disability. In any case in which the misconduct led to pecuniary loss to the Government or to any person, the Assistant Commissioner will also take into account whether the petitioner has made restitution of that loss.

§ 111.80 [Reserved]

§ 111.81 Settlement and compromise.

The Assistant Commissioner, with the approval of the Secretary of the Treasury, may settle and compromise any disciplinary proceeding which has been instituted under this subpart according to the terms and conditions agreed to by the parties including, but not limited to, the assessment of a monetary penalty in lieu of any proposed suspension or revocation of a broker's license or permit.

Subpart E—Monetary Penalty and Payment of Fees

§ 111.91 Grounds for imposition of a monetary penalty; maximum penalty.

Customs may assess a monetary penalty or penalties as follows:

(a) In the case of a broker, in an amount not to exceed an aggregate of \$30,000 for one or more of the reasons set forth in §§111.53 (a) through (f) other than those listed in §111.53(b)(3), and provided that no license or permit suspension or revocation proceeding has been instituted against the broker under subpart D of this part for any of the same reasons; or

(b) In the case of a person who is not a broker, in an amount not to exceed \$10,000 for each transaction or violation referred to in §111.4 and in an amount not to exceed an aggregate of \$30,000 for all those transactions or violations.

§ 111.92 Notice of monetary penalty.

(a) *Pre-penalty notice.* If assessment of a monetary penalty under §111.91 is contemplated, Customs will issue a written notice which advises the broker or other person of the allegations or complaints against him and explains that the broker or other person has a right to respond to the allegations or complaints in writing within 30 days of the date of mailing of the notice. The Fines, Penalties, and Forfeitures Officer has discretion to provide additional time for good cause.

(b) *Penalty notice.* If the broker or other person files a timely response to the written notice of the allegations or complaints, the Fines, Penalties, and Forfeiture Officer will review this response and will either cancel the case, issue a notice of penalty in an amount which is lower than that provided for in the written notice of allegations or complaints or issue a notice of penalty in the same amount as that provided in the written notice of allegations or complaints. If no response is received from the broker or other person, the Fines, Penalties, and Forfeitures Officer will issue a notice of penalty in the same amount as that provided in the written notice of allegations or complaints.

[T.D. 00–57, 65 FR 53575, Sept. 5, 2000]

§ 111.93 Petition for relief from monetary penalty.

A broker or other person who receives a notice issued under §111.92(b) may file a petition for relief from the monetary penalty in accordance with the procedures set forth in part 171 of this chapter.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by T.D. 00–57, 65 FR 53575, Sept. 5, 2000]

§ 111.94 Decision on monetary penalty.

Customs will follow the procedures set forth in part 171 of this chapter in considering any petition for relief filed under §111.93. After Customs has considered the allegations or complaints set forth in the notice issued under §111.92 and any timely response made to the notice by the broker or other person, the Fines, Penalties, and Forfeitures Officer will issue a written decision to the broker or other person setting forth the final determination and the findings of fact and conclusions of law on which the determination is based. If the final determination is that the broker or other person is liable for a monetary penalty, the broker or other person must pay the monetary penalty, or make arrangements for payment of the monetary penalty, within

60 calendar days of the date of the written decision. If payment or arrangements for payment are not timely made, Customs will refer the matter to the Department of Justice for institution of appropriate judicial proceedings.

§ 111.95 Supplemental petition for relief from monetary penalty.

A decision of the Fines, Penalties, and Forfeitures Officer with regard to any petition filed in accordance with part 171 of this chapter may be the subject of a supplemental petition for relief. Any supplemental petition also must be filed in accordance with the provisions of part 171 of this chapter.

§ 111.96 Fees.

(a) *License fee; examination fee; fingerprint fee.* Each applicant for a broker's license pursuant to §111.12 must pay a fee of \$200 to defray the costs to Customs in processing the application. Each individual who intends to take the written examination provided for in §111.13 must pay a \$200 examination fee before taking the examination. An individual who submits an application for a license must also pay a fingerprint check and processing fee; the port director will inform the applicant of the current Federal Bureau of Investigation fee for conducting fingerprint checks and the Customs fingerprint processing fee, the total of which must be paid to Customs before further processing of the application will occur.

(b) *Permit fee.* A fee of \$100 must be paid in connection with each permit application under §111.19 to defray the costs of processing the application, including an application for reinstatement of a permit that was revoked by operation of law or otherwise.

(c) *User fee.* Payment of an annual user fee of \$125 is required for each permit, including a national permit under §111.19(f), granted to an individual, partnership, association, or corporate broker. The user fee is payable when an initial district permit is issued concurrently with a license under §111.19(a), or in connection with the filing of an application for a permit under §111.19 (b) or (f), and for each subsequent calendar year at the port through which the broker was granted the permit or at the port referred to in §111.19(c) in the case of a national permit. The user fee must be paid by the due date as published annually in the Federal Register, and must be remitted in accordance with the procedures set forth in §24.22(i) of this chapter. When a broker submits an application for a permit or is issued an initial district permit under §111.19, the full \$125 user fee must be remitted with the application or when the initial district permit is issued, regardless of the point during the calendar year at which the application is submitted or the initial district permit is issued. If a broker fails to pay the annual user fee by the published due date, the appropriate port director will notify the broker in writing of the failure to pay and will revoke the permit to operate. The notice will constitute revocation of the permit.

(d) *Status report fee.* The status report required under §111.30(d) must be accompanied by a fee of \$100 to defray the costs of administering the reporting requirement.

(e) *Method of payment.* All fees prescribed under this section must be paid by check or money order payable to the United States Customs Service.

AUSTRALIAN CUSTOMS ACT 1901 (EXTRACT)

Act No. 6 of 1901 as amended

This compilation was prepared on 10 April 2006
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[...]

Part XI—Agents and customs brokers

Division 1—Preliminary

180 Interpretation

(1) In this Part, unless the contrary intention appears:

broker's licence means a licence to act as a customs broker granted under section 183C (including such a licence renewed under section 183CJ).

Committee means the National Customs Brokers Licensing Advisory Committee continued in existence by subsection 183D(1).

corporate customs broker means a customs broker that is a company or a partnership.

customs broker means a person who holds a broker's licence that is in force, and in relation to a place, means a person who holds a broker's licence to act as a customs broker at the place.

nominee, in relation to a customs broker, means another customs broker whose name is endorsed on the broker's licence held by the first-mentioned customs broker as a nominee of the first-mentioned customs broker.

person means a natural person, a company or a partnership.

prescribed offence means:

- (a) an offence against this Act; or
- (b) an offence punishable under a law of the Commonwealth (other than this Act), or by a law of a State or of a Territory, by imprisonment for one year or longer.

(2) A reference in this Part, other than in subsection 181(2), 183CC(5), 183CJ(1), 183CQ(4), (5) or (7) or 183CR(3) or in section 183CS, 183D, 183DA, 183DC, 183DD or 183S, to the CEO shall be read as including a reference to a Regional Director for a State or Territory.

Division 2—Rights and liabilities of agents**181 Authorised agents**

- (1) Subject to subsection (2), an owner of goods may, in writing, authorize a person to be his agent for the purposes of the Customs Acts at a place or places specified by the owner.
- (2) Where the CEO, by notice published in the *Gazette*, declares that a place specified in the notice is a place to which this subsection applies, an owner of goods shall not authorize a person to be his agent for the purposes of the Customs Acts at that place unless that person is:
- (a) a natural person who is an employee of the owner and is not an employee of any other person; or
 - (b) a customs broker at that place.
- (3) Where an owner of goods authorizes a person to be his agent for the purposes of the Customs Acts at a place, the owner may comply with the provisions of, or requirements under, the Customs Acts at that place by:
- (a) except where the agent is a corporate customs broker—that agent; or
 - (b) where the agent is a customs broker—a nominee of that agent who is a customs broker at that place.
- (4) A person, other than the owner of goods or a person who, in accordance with this section, may comply with the provisions of, or requirements under, the Customs Acts on behalf of the owner in relation to those goods, shall not:
- (a) do any act or thing in relation to the goods that is required or permitted to be done by the owner of the goods under the Customs Acts; or
 - (b) represent that he is able to do, or able to arrange to be done, any act or thing in relation to the goods that is required or permitted to be done by the owner under the Customs Acts.
- (4A) Subsection (2) does not apply to the making of an export entry.
- (5) A person who contravenes subsection (4) is guilty of an offence punishable upon conviction by a penalty not exceeding 10 penalty units.
- (6) Subsection (5) is an offence of strict liability.

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

182 Authority to be produced

- (1) Where a person claims to be the agent of an owner of goods for the purposes of the Customs Acts at a place, an officer may require that person to produce written authority from the owner authorizing that person to be such an agent and, if that written authority is not produced, the officer may refuse to recognize the authority of that person to act on behalf of the owner at that place.
- (2) Where a nominee of a customs broker claims that that customs broker is the agent of an owner of goods for the purposes of the Customs Acts at a place, an officer may require the nominee to produce a copy of the written authority from the owner of the goods authorizing the customs broker to be such an agent and, if that written authority is not produced, the officer may refuse to recognize the authority of the nominee to act on behalf of the owner at that place.

183 Agents personally liable

- (1) Where a person is, holds himself out to be or acts as if he were the agent of an owner of goods for the purposes of the Customs Acts, that person shall, for the purposes of the Customs Acts (including liability to penalty), be deemed to be the owner of those goods.
- (2) Where a customs broker is the agent of an owner of goods for the purposes of the Customs Acts and a person who is, holds himself out to be or acts as if he were a nominee of that customs broker acts in relation to those goods, that person shall, for the purposes of those Acts, (including liability to penalty), be deemed to be the owner of those goods.
- (3) Any act done, or representation made, by a nominee of a customs broker for the purposes of the Customs Acts shall be deemed to be an act done or, a representation made, by that customs broker.

(4) Nothing in this section shall be taken to relieve any owner from liability.

183A Principal liable for agents acting

(1) Where an agent of, or a nominee of a customs broker that is an agent of, an owner of goods makes a declaration for the purposes of this Act in relation to those goods, that declaration shall, for the purposes of this Act (including the prosecution of an offence against this Act), be deemed to be made with the knowledge and consent of the owner.

(2) Notwithstanding any other provision of this Act, a person who is convicted of an offence by reason of the operation of subsection (1) shall not be subject to a penalty of imprisonment.

Division 3—Licensing of customs brokers

183B Interpretation

(1) In this Division, unless the contrary intention appears, **application** means an application under section 183CA.

(2) For the purposes of this Division, a person shall be taken to participate in the work of a customs broker if:

- (a) he has authority as a nominee of, or as an agent, officer or employee of, the customs broker, to do any act or thing for the purposes of the Customs Acts on behalf of an owner of goods; or
- (b) he has authority to direct a person who has authority referred to in paragraph (a) in the exercise of that authority.

183C Grant of licence

(1) Subject to this Part, the CEO may grant a person a licence in writing, to be known as a broker's licence, to act as a customs broker at a place or places specified in the licence.

(2) A broker's licence granted to a corporate customs broker shall not specify a place as a place at which the corporate customs broker may act as a customs broker unless the licence specifies as a nominee of the corporate customs broker a customs broker at that place who, in accordance with section 183CD, is eligible to be its nominee.

183CA Application for licence

(1) An application for a broker's licence shall:

- (a) be in writing; and
- (b) specify the place or places at which the applicant proposes to act as a customs broker; and
- (c) where the application is made by a company or a partnership—specify the person or each person who, if the licence is granted, is to be its nominee; and
 - (a) (ca) where the application is made by a natural person—specify the person or each person (if any) who, if the licence is granted, is to be a nominee of the applicant; and
- (d) set out the name and address of each person whom the CEO is required to consider for the purposes of subparagraph 183CC(1)(a)(i) or paragraph 183CC(1)(b) or (c); and
- (e) set out such particulars of the persons and matters that the CEO is required to consider for the purposes of subparagraph 183CC(1)(a)(ii) and section 183CD as will enable him adequately to consider those matters; and
- (f) contain such other information as is prescribed.

(2) Where a person makes an application, he shall not propose a person as his nominee at a place unless, at the time the application is made, that person is eligible, or intends to take all necessary action to ensure that, if a broker's licence is granted to the applicant, he will be eligible, to be a nominee of the applicant at that place.

(3) A person shall not be proposed under paragraph (1)(c) unless he has consented, in writing, to the proposal.

183CB Reference of application to Committee

(1) Where the CEO receives an application, he shall refer the application to the Committee for a report relating to the application and shall not grant, or refuse to grant, a broker's licence to the applicant unless he has received and considered the report.

(2) Where the CEO refers an application to the Committee under subsection (1), the Committee shall investigate the matters that the CEO is required to consider in relation to the application and, after its investigation, report to the CEO on those matters.

183CC Requirements for grant of licence

(1) Where an application is made, the CEO shall not grant a broker's licence if, in his opinion:

(a) where the application is made by a natural person:

(i) the applicant is not a person of integrity; or

(ii) the applicant is not qualified to be a customs broker; or

(iii) an employee of the applicant who would participate in the work of the applicant if he were a customs broker is not a person of integrity; or

(b) where the application is made by a company:

(i) a director of the company who would participate in the work of the company if it were a customs broker is not a person of integrity; or

(ii) an officer or employee of the company who would participate in the work of the company if it were a customs broker is not a person of integrity; or

(iii) the company is not a fit and proper company to hold a broker's licence; or

(c) where the application is made by a partnership:

(i) a partner in the partnership is not a person of integrity; or

(ii) an employee of the partnership who would participate in the work of the partnership if it were a customs broker is not a person of integrity.

(2) For the purposes of subsection (1), an applicant shall be taken to be qualified to be a customs broker if, and only if:

(a) except where he has been exempted under subsection (3), he has completed a course of study or instruction approved under subsection (5); and

(b) he has acquired experience that, in the opinion of the CEO, fits him to be a customs broker.

(3) The CEO may, by writing signed by him, exempt an applicant from the requirements of paragraph (2)(a) where, having regard to the experience or training of the applicant, he considers that it is appropriate to do so.

(4) The CEO shall, in determining whether a person is a person of integrity for the purposes of subsection (1), have regard to:

(a) any conviction of the person for a prescribed offence committed within the 10 years immediately preceding the making of the application;

(b) whether the person is an undischarged bankrupt;

(c) any misleading statement made in the application by or in relation to the person; and

(d) where any statement by the person in the application was false—whether the person knew that the statement was false.

(4A) The CEO shall, in determining whether a company is a fit and proper company to hold a broker's licence for the purposes of subparagraph (1)(b)(iii), have regard to:

(a) any conviction of the company for an offence against this Act committed within the 10 years immediately preceding the making of the application and at a time when a person who is a director, officer or shareholder of the company was a director, officer or shareholder of the company;

- (b) any conviction of the company for an offence under a law of the Commonwealth, of a State or of a Territory that is punishable by a fine of \$5,000 or more, being an offence committed within the 10 years immediately preceding the making of the application and at a time when a person who is a director, officer or shareholder of the company was a director, officer or shareholder of the company;
 - (c) whether a receiver of the property, or part of the property, of the company has been appointed;
 - (ca) whether the company is under administration within the meaning of the *Corporations Act 2001*;
 - (cb) whether the company has executed under Part 5.3A of that Act a deed of company arrangement that has not yet terminated;
 - (d) whether the company has been placed under official management; and
 - (e) whether the company is being wound up.
- (5) The CEO may, after obtaining and considering the advice of the Committee, approve, in writing, a course or courses of study or instruction that fits or fit him to be a customs broker.

183CD Eligibility to be nominee

- (1) Subject to this section, a person is eligible to be the nominee of a customs broker if, and only if:
- (a) he is a natural person; and
 - (b) he is a customs broker; and
 - (c) he does not act as a customs broker in his own right; and
 - (d) where the first-mentioned customs broker is a company—he is a director or an employee of the company; and
 - (e) where the first-mentioned customs broker is a partnership—he is a member or an employee of the partnership; and
 - (f) he is not the nominee of another customs broker; and
 - (g) he is not authorized to be an agent in accordance with subsection 181(1); and
 - (h) he is a customs broker at a place at which the first-mentioned customs broker is a customs broker; and
 - (i) he is not a customs broker at any other place.
- (2) A person is not ineligible to be the nominee of 2 or more corporate customs brokers, being companies, at a place or places by reason of paragraph (1)(f) or (j) if:
- (a) he is a director of each of those companies; and
 - (b) each of those companies has a nominee at the place, or each place, at which it is a customs broker.
- (3) A person is not ineligible to be the nominee of 2 or more corporate customs brokers, being partnerships, at a place or places by reason of paragraph (1)(f) or (j) if:
- (a) he is a member of each of those partnerships; and
 - (b) each of those partnerships has, at the place, or each place, at which it is a customs broker, a nominee who is not a partner in it.
- (4) A person is not ineligible to be the nominee of a customs broker by reason only of paragraph (1)(j) if:
- (a) all the places at which he is a customs broker are places at which the first-mentioned customs broker is a customs broker; and
 - (b) the CEO is satisfied that he could attend to the duties of the nominee at all those places in a satisfactory manner.

183CE Original endorsement on licence

- (1) Where the CEO grants a broker's licence, he shall:
 - (a) endorse on the licence the name of the place or of each place at which the holder of the licence may act as a customs broker; and
 - (b) endorse on the licence the name of each customs broker who is a nominee of the licensee and opposite to each such name the name of the place or of each place at which he acts as a customs broker.
- (2) The CEO shall not, in pursuance of subsection (1), endorse a licence so as to show a person as a nominee of a customs broker at a place if that person is not eligible to be a nominee of that customs broker at that place.

183CF Variation of licences

- (1) Subject to subsection (3), the CEO may, upon application in writing by a customs broker and the production of the broker's licence, vary the endorsements on the licence so that a place is specified, or ceases to be specified, in the licence as a place at which the holder of the licence may act as a customs broker.
- (2) Subject to subsection (3), the CEO may, upon application in writing by a customs broker and the production of its broker's licence, vary the endorsements on the licence so that a person is specified, or ceases to be specified, in the licence as a nominee of the customs broker.
- (3) The CEO shall not vary the endorsements on a licence so that the licence ceases to comply with subsection 183C(2).
- (4) A person shall not be endorsed under subsection (2) as a nominee of a customs broker unless he has consented, in writing, to the endorsement.

183CG Licence granted subject to conditions

- (1) A broker's licence is subject to the condition that if:
 - (a) the holder of the licence is convicted of a prescribed offence;
 - (b) in the case of a licence held by a natural person—the holder of the licence becomes bankrupt; or
 - (c) in the case of a licence held by a company:
 - (i) a receiver of the property, or part of the property, of the company is appointed; or
 - (ii) an administrator of the company is appointed under section 436A, 436B or 436C of the Corporations Act 2001; or
 - (iii) the company executes a deed of company arrangement under Part 5.3A of that Act; or
 - (iv) the company begins to be wound up;

the holder of the licence shall, within 30 days after the occurrence of the conviction, bankruptcy or event referred to in paragraph (c), as the case requires, give the CEO particulars in writing of the conviction, bankruptcy or event referred to in paragraph (c), as the case requires.

- (2) A broker's licence held by a natural person is subject to the condition that the holder of the licence shall not act as a customs broker in his own right at any time at which he is a nominee of a customs broker.
- (3) A broker's licence held by a customs broker is subject to the condition that if:
 - (a) a person not described in the application for the licence as participating in the work of the customs broker commences so to participate;
 - (b) a nominee of the customs broker dies or ceases to act as nominee of the customs broker;
 - (c) a person who participates in the work of the customs broker is convicted of a prescribed offence or becomes bankrupt; or
 - (d) in the case of a licence held by a partnership:

- (i) a member of the partnership is convicted of a prescribed offence or becomes bankrupt; or
- (ii) there is a change in the membership of the partnership;

the holder of the licence shall, within 30 days after the occurrence of the event, change, conviction or bankruptcy, as the case requires, give the CEO particulars in writing of that event, change, conviction or bankruptcy, as the case requires.

(4) A broker's licence held by a customs broker is subject to the condition that the broker shall do all things necessary to ensure that:

- (a) all persons who participate in the work of the customs broker are persons of integrity; and
- (b) in the case of a licence held by a partnership—all members of the partnership are persons of integrity.

(5) A broker's licence is subject to such other conditions (if any) as are prescribed.

(6) A broker's licence is subject to such other conditions (if any) as are specified in the licence, being conditions considered by the CEO to be necessary or desirable for the protection of the revenue or for the purpose of ensuring compliance with the Customs Acts.

(7) The CEO may, upon application in writing by a customs broker and the production of the licence held by the customs broker, vary the conditions specified in the licence by making an alteration to, or an endorsement on, the licence.

(8) Where a customs broker fails to comply with a condition of his licence the CEO may, by notice in writing served on him, require him to comply with that condition within the time specified in the notice.

183CH Duration of licence

(1) A broker's licence:

- (a) comes into force on a date specified in the licence or, if no date is so specified, the date on which it is granted; and
- (b) subject to this Part, remains in force until the end of the licence expiry day next following the grant of the licence but may be renewed in accordance with section 183CJ.

(1A) For the purposes of this section:

- (a) the first licence expiry day is 31 December 2000; and
- (b) the next licence expiry day is 30 June 2003; and
- (c) later licence expiry days occur at intervals of 3 years after the last licence expiry day.

(2) A licence granted to a natural person ceases to have effect on the death of that person.

183CJ Renewal of licence

(1) Where a customs broker, within 2 months before the date on which his or her broker's licence is due to expire, applies in writing to the CEO, or to a Regional Director for a State or Territory, for the renewal of the licence:

- (a) if the application is made to the CEO—the CEO or the Regional Director to whom the CEO refers the application; or
- (b) if the application is made to a Regional Director—the CEO or that Regional Director;
- (c) shall, by writing, renew the licence unless:
- (d) the CEO has given an order under paragraph 183CS(1)(d) in relation to the licence; or
- (e) the customs broker is, because of section 183CK, not entitled to hold a broker's licence.

(2) A renewal of a licence shall not take effect if, on or before the date on which the licence would, apart from the renewal, expire, the licence is revoked.

(3) Where the licence held by a customs broker has been suspended, subsection (1) applies as if the licence had not been suspended, but the renewal of the licence does not have any force or effect until the licence ceases to be suspended.

(4) Where the CEO renews a licence under subsection (1), he may, in accordance with subsection 183CG(6), specify conditions different from those specified in the original licence.

(5) Subject to this Part, a licence that has been renewed continues in force until the first licence expiry day (as defined in section 183CH) after the day on which the licence would have expired apart from the renewal, but may be further renewed.

183CK Security

(1) The CEO may, by notice in writing served on a person making an application for a broker's licence or a person who holds a broker's licence, require that person to give, within the time specified in the notice, security in an amount determined by the CEO, not being an amount exceeding the amount prescribed in respect of the prescribed class of applicants or customs brokers to which the person belongs, by bond, guarantee or cash deposit, or by any or all of those methods, for compliance by him with the Customs Acts, for compliance with the conditions or requirements to which the importation or exportation of goods is subject and generally for the protection of the revenue and that person is not entitled to be granted or to hold a broker's licence, as the case may be, unless he gives security accordingly.

(2) Where the amount of the security in force in respect of a customs broker is less than the amount prescribed in respect of the prescribed class of customs brokers to which the customs broker belongs, the CEO may, by notice in writing to the customs broker, require the customs broker to give, within such period as is specified in the notice, a fresh security in lieu of the security in force under subsection (1) in an amount specified in the notice, being an amount not exceeding the amount so prescribed, and, if the customs broker fails to comply with the notice, the customs broker shall not be entitled to hold a broker's licence.

(3) Where, by virtue of subsection (1), an applicant for a broker's licence is not entitled to be granted the licence, the CEO may refuse to grant the licence to the applicant.

(4) Where, by virtue of subsection (1) or (2), a customs broker is not entitled to hold a broker's licence, the CEO may cancel the broker's licence held by the customs broker.

(5) Regulations made for the purposes of this section may prescribe different amounts in respect of different classes of applicants or customs brokers and, without limiting the generality of the foregoing, may prescribe different amounts in respect of applicants who are natural persons and applicants that are partnerships or companies and in respect of customs brokers who are natural persons and corporate customs brokers.

183CL Fees

(1) Such fees (if any) as are prescribed are payable in respect of broker's licences.

(2) Regulations made for the purposes of this section may prescribe:

(a) different fees in respect of different classes of customs brokers and, without limiting the generality of the foregoing, may prescribe different fees in respect of customs brokers who are natural persons and corporate customs brokers; and

(b) the time within which fees payable under this section are to be paid.

(2A) The regulations may prescribe fees for broker's licences by reference to the period for which the licences are to remain in force under paragraph 183CH(1)(b). This does not limit the ways in which the regulations may prescribe fees for broker's licences.

(3) Fees prescribed under subsection (1) may include an amount calculated with regard to the cost of the establishment, administration and operation of the Committee.

183CM Nominees

For the purposes of this Part, a person shall be taken to be a nominee of a customs broker from the time when the name of the nominee is endorsed, in pursuance of paragraph 183CE(1)(b) or of section 183CF, on the licence of the customs broker until the nominee dies or until the CEO deletes the name of the nominee from that licence under section 183CP, whichever occurs first.

183CN Removal of nominee

(1) The CEO shall delete the name of a nominee of a customs broker from the broker's licence of that customs broker if:

- (a) the nominee dies;
- (b) the nominee ceases to hold a broker's licence;
- (c) the nominee ceases to act as nominee of the customs broker;
- (d) the nominee requests the CEO, in writing, to delete his name from the licence; or
- (e) the name of the nominee is found to have been endorsed on the licence in circumstances where the endorsement should not have been made.

(2) Where the deletion of the name of a nominee from a licence of a customs broker is required under subsection (1), the customs broker shall forthwith deliver the licence to the CEO for the purpose of having the deletion effected.

183CP Notice to nominate new nominee

If the broker's licence of a customs agent ceases to comply with subsection 183C(2), the CEO may, by notice in writing served on the customs broker, require the customs broker to apply within such period as is specified in the notice, for such variation of the endorsements on the licence as would result in the licence complying with that subsection.

Division 4—Suspension, revocation and non-renewal of licences**183CQ Investigation of matters relating to a broker's licence**

(1) The CEO may give notice in accordance with this section to a customs broker if he has reasonable grounds to believe that:

- (a) the customs broker has been convicted of a prescribed offence;
- (b) the customs broker, being a natural person, is an undischarged bankrupt;
- (c) the customs broker, being a company, is in liquidation;
- (d) the customs broker has ceased to perform the duties of a customs broker in a satisfactory and responsible manner;
- (e) the customs broker is guilty of conduct that is an abuse of the rights and privileges arising from his licence;
- (f) the customs broker has not, within 28 days after the day prescribed for the payment of any fees, paid those fees;
- (g) the customs broker made a false or misleading statement in the application for the licence;
- (h) the customs broker has not complied with a condition imposed on the grant or renewal of the licence and, having been served with a notice under subsection 183CG(8) in relation to the non-compliance with that condition, the customs broker has not, within the time specified in the notice, complied with that condition; or
- (i) the customs broker has not, within the time specified in a notice under section 183CP, complied with that notice;
- (j) or it otherwise appears to him to be necessary for the protection of the revenue or otherwise in the public interest to give the notice.

(2) Without limiting the generality of paragraph (1)(d), a customs broker shall be taken, for the purposes of that paragraph, to have ceased to perform the duties of a customs broker in a satisfactory and responsible manner if the documents prepared by the customs broker for the purposes of this Act contain errors that are unreasonable having regard to the nature or frequency of those errors.

(3) Notice in accordance with this section to a customs broker shall be in writing and shall be served, either personally or by post, on the customs broker.

- (4) A notice in accordance with this section to a customs broker shall state:
- (a) the grounds on which the notice is given;
 - (b) that the person who gave the notice intends forthwith to refer to the Committee, for investigation and report to the CEO, the question whether the CEO should take action in relation to the licence under subsection 183CS(1);
 - (c) the powers that the CEO may exercise in relation to a licence under subsection 183CS(1); and
 - (d) the rights of the customs broker under sections 183J and 183S to take part in the proceedings before the Committee.
- (5) Where the CEO, or a Regional Director for a State or Territory, gives notice in accordance with this section to a customs broker, he shall refer the question whether the CEO should take action in relation to the licence under subsection 183CS(1) to the Committee, for investigation and report to the CEO.
- (6) Where the CEO refers a question to the Committee under subsection (5), he shall give particulars to the Committee of all the information in his possession that is relevant to the question so referred.
- (7) Where a question is referred to the Committee under subsection (5), the Committee shall, as soon as practicable, conduct an investigation and make a report on the question to the CEO.

183CR Interim suspension by CEO

- (1) Where the CEO gives notice in accordance with section 183CQ to a customs broker, he may, if he considers it necessary for the protection of the revenue or otherwise in the public interest to do so, suspend the licence of the customs broker pending the investigation and report of the Committee.
- (2) The CEO may suspend the broker's licence of a customs broker in pursuance of subsection (1) by:
- (a) including in the notice to the customs broker in accordance with section 183CQ a statement to the effect that the licence is suspended under that subsection; or
 - (b) giving further notice in writing to the customs broker to the effect that the licence is suspended under that subsection.
- (3) A suspension of a licence by the CEO, or by a Regional Director for a State or Territory, under subsection (1) has effect until the suspension is revoked by the CEO, or by a Regional Director for a State or Territory, or the CEO has dealt with the matter in accordance with section 183CS, whichever first occurs.
- (4) Where a broker's licence is suspended under this section, the CEO may at any time revoke the suspension.

183CS Powers of CEO

- (1) Where the CEO, after considering a report under subsection 183CQ(7) in relation to a broker's licence, is:
- (a) satisfied in relation to the licence as to any of the matters mentioned in paragraphs (a) to (j) (inclusive) of subsection 183CQ(1); or
 - (b) satisfied on any other grounds that it is necessary to do so for the protection of the revenue or for the purpose of ensuring compliance with the Customs Acts;

he may, by notice to the customs broker:

- (c) cancel the licence;
- (d) if the licence is about to expire—order that the licence not be renewed;
- (e) reprimand the customs broker;
- (f) in a case where the licence is not already suspended—suspend the licence for a period specified in the notice; or
- (g) in a case where the licence is already suspended—further suspend the licence for a period specified in the notice.

(2) Where the CEO, after considering a report under subsection 183CQ(7) in relation to a broker's licence, decides not to take any further action in the matter, he shall, by notice in writing to the customs broker, inform the customs broker accordingly, and, if the licence of the customs broker is suspended, he shall revoke the suspension.

(3) A notice under subsection (1) shall:

- (a) be in writing; and
- (b) be served, either personally or by post, on the holder of the licence.

(4) The period for which the CEO may suspend or further suspend a licence under subsection (1) may be a period expiring after the date on which the licence, if not renewed, would expire.

(5) Where the CEO orders under paragraph (1)(d) that a licence not be renewed, he shall notify the appropriate Collector accordingly.

183CT Effect of suspension

(1) During a period in which a broker's licence held by a natural person is suspended under this Division:

- (a) the person shall not act as a customs broker;
- (b) the person shall not act as a nominee of a customs broker; and
- (c) a nominee of the person shall not act as such a nominee.

(2) During a period in which a broker's licence held by a corporate customs broker is suspended under this Division:

- (a) the corporate customs agent shall not act as a customs broker; and
- (b) a nominee of the corporate customs broker shall not act as such a nominee.

183CU Service of notices

For the purposes of the application of section 29 of the *Acts Interpretation Act 1901* to the service by post of a notice under this Division on a person who holds or held a broker's licence, such a notice posted as a letter addressed to that person at the last address of that person known to the sender shall be deemed to be properly addressed.

Division 5—National Customs Brokers Licensing Advisory Committee

183D National Customs Brokers Licensing Advisory Committee

(1) The National Customs Agents Licensing Advisory Committee in existence immediately before the commencement of this subsection continues in existence as the National Customs Brokers Licensing Advisory Committee.

(2) The functions of the Committee are:

- (a) to investigate and report on applications referred to it by the CEO, or a Regional Director for a State or Territory, under section 183CB;
- (b) to investigate and report on questions referred to it by the CEO, or a Regional Director for a State or Territory, under section 183CQ;
- (c) to advise the CEO in relation to the approval of courses of study under section 183CC; and
- (d) where the CEO requests the Committee to advise him on the standards that customs brokers should meet in the performance of their duties and obligations as customs brokers—to advise the CEO accordingly.

183DA Constitution of Committee

(1) The Committee shall consist of the following members:

- (a) the Chair;
- (b) a member to represent customs brokers;

- (c) a member to represent the Commonwealth.
- (2) The Chair shall be a person who:
- (a) is or has been a Stipendiary, Police, Special or Resident Magistrate of a State or Territory; or
 - (b) in the opinion of the CEO, possesses special knowledge or skill in relation to matters that the Committee is to advise or report on.
- (3) A member referred to in paragraph (1)(a) or (b) shall be appointed by the CEO for a period not exceeding 2 years but is eligible for re-appointment.
- (4) The member referred to in paragraph (1)(b) shall be appointed on the nomination of an organization that, in the opinion of the CEO, represents customs brokers.
- (5) The member referred to in paragraph (1)(c) shall be the person for the time being holding, or performing the duties of, the office in the Department that the CEO specifies, in writing signed by him, to be the office for the purposes of this subsection.
- (6) The appointment of a member is not invalidated, and shall not be called in question, by reason of a deficiency or irregularity in, or in connection with, his nomination or appointment.

183DB Remuneration and allowances

- (1) A member referred to in paragraph 183DA(1)(a) or (b) shall be paid such remuneration as is determined by the Remuneration Tribunal, but if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.
- (2) A member referred to in paragraph 183DA(1)(a) or (b) shall be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

183DC Acting Chair

- (1) Subject to subsection (2), the CEO may appoint a person to act as Chair:
- (a) during a vacancy in the office of Chair; or
 - (b) during any period, or during all periods, when the Chair is absent from duty or from Australia or is for any other reason, unable to perform the functions of his office.
- (2) A person shall not be appointed to act as Chair unless he is qualified, in accordance with subsection 183DA(2), to be appointed as Chair.
- (3) A person appointed to act as Chair shall be paid such fees, allowances and expenses as the CEO determines.

183DD Deputy member

- (1) The CEO may appoint a person, on the nomination of an organization referred to in subsection 183DA(4), to be the deputy of the member referred to in paragraph 183DA(1)(b) during the pleasure of the CEO and the person so appointed shall, in the event of the absence of the member from a meeting of the Committee, be entitled to attend that meeting and, when so attending, shall be deemed to be a member of the Committee.
- (2) Where the CEO specifies an office in the Department for the purposes of this subsection, the person for the time being holding, or performing the duties of, that office shall be the deputy of the member referred to in paragraph 183DA(1)(c) and that person shall, in the event of the absence of that member from a meeting of the Committee, be entitled to attend that meeting and, when so attending, shall be deemed to be a member of the Committee.
- (3) A deputy of the member referred to in paragraph 183DA(1)(b) shall be paid such fees, allowances and expenses as the CEO determines.

183E Procedure of Committees

The regulations may make provision for and in relation to the procedure of the Committee.

183F Evidence

The Committee is not bound by legal rules of evidence but may inform itself on a matter referred to it under this Part in such manner as it thinks fit.

183G Proceedings in private

The proceedings of the Committee shall be held in private.

183H Determination of questions before a Committee

All questions before the Committee shall be decided according to the opinion of the majority of its members.

183J Customs broker affected by investigations to be given notice

(1) Where an application is referred to the Committee under section 183CB or a question is referred to the Committee under section 183CQ, the Chair of the Committee shall cause a notice in writing of the reference of the application or question to the Committee, and of the time and place at which the Committee intends to hold an inquiry into the application or question, to be served on the person making the application or holding the licence to which the question relates, as the case may be, at least ten days before the date of the inquiry.

(2) Subject to subsection (3), the Committee shall afford the person on whom a notice has been served in pursuance of subsection (1) an opportunity of examining witnesses, of giving evidence and calling witnesses on his behalf and of addressing the Committee.

(3) Where the person on whom notice has been served in pursuance of subsection (1) fails to attend at the time and place specified in the notice, the Committee may, unless it is satisfied that the person is prevented by illness or other unavoidable cause from so attending, proceed to hold the inquiry in his absence.

(4) Where an application is referred to the Committee under section 183CB or a question is referred to the Committee under section 183CQ, the Chair of the Committee may cause a notice in writing of the reference of the application or question to the Committee, and of the time and place at which the Committee intends to hold an inquiry into the application or question, to be served on such other persons who, in the opinion of the Chair, have a special interest in, or are specially affected by, the inquiry.

183K Summoning of witnesses

(1) The Chair of the Committee may, by writing under his hand, summon a person to attend before the Committee at a time and place specified in the summons and then and there to give evidence and to produce any books, documents and writings in his custody or control which he is required by the summons to produce.

(2) A person who has been summoned to attend before the Committee as a witness shall appear and report himself from day to day, unless excused by the Committee.

(3) The Committee may inspect books, documents or writings before it, and may retain them for such reasonable period as it thinks fit, and may make copies of such portions of them as are relevant to the inquiry.

183L Service of notices and summonses

A notice or summons under this Part shall be served by delivering it personally to the person to be served or by sending it by prepaid registered letter addressed to him at his last known place of abode or business or by leaving it:

- (a) at his last known place of abode with some person apparently an inmate of that place and apparently not less than 16 years of age; or
- (b) at his last known place of business with some person apparently employed at that place and apparently not less than 16 years of age.

183N Committee may examine upon oath or affirmation

(1) The Committee may examine on oath a person appearing as a witness before the Committee, whether the witness has been summoned or appears without being summoned, and for that purpose a member of the Committee may administer an oath to a witness.

(2) Where a witness conscientiously objects to take an oath, he may make an affirmation that he conscientiously objects to take an oath and that he will state the truth, the whole truth and nothing but the truth to all questions that are asked him.

(3) An affirmation so made is of the same force and effect, and entails the same liabilities, as an oath.

183P Offences by witness

(1) A person summoned to attend before the Committee as a witness shall not:

- (a) fail to attend, after payment or tender to him of a reasonable sum for his expenses of attendance;
- (b) refuse to be sworn or to make an affirmation as a witness, or to answer any question when required to do so by a member of the Committee; or
- (c) refuse or fail to produce a book or document which he was required by the summons to produce.

Penalty: 10 penalty units.

(2) Paragraphs (1)(a) and (c) do not apply if the person has reasonable cause for the failure or refusal.

183Q Statements by witness

A person is not excused from answering a question or producing a book or document when required to do so under section 183P on the ground that the answer to the question, or the production of the book or document, might tend to incriminate him or make him liable to a penalty, but his answer to any such question is not admissible in evidence against him in proceedings other than proceedings for:

- (a) an offence against paragraph 183P(b) or (c); or
- (b) an offence in connection with the making by him of a statement in an examination before the Committee under section 183N.

183R Witness fees

(1) A person who attends in obedience to a summons to attend as a witness before the Committee is entitled to be paid witness fees and travelling allowance according to the scale of fees and allowances payable to witnesses in the Supreme Court of the State or Territory in which he is required to attend or, in special circumstances, such fees and allowances as the Chair of the Committee directs (less any amount previously paid to him for his expenses of attendance).

(2) The fees and allowances are payable:

- (a) in the case of a witness summoned at the request of the customs broker to whom the inquiry relates—by that customs broker; and
- (b) in any other case—by the Commonwealth.

183S Representation by counsel etc.

(1) In an inquiry before the Committee, the customs broker to whom the inquiry relates and the CEO are each entitled to be represented by a barrister or solicitor or, with the approval of the Committee, by some other person.

(2) A barrister, solicitor or other person appearing before the Committee may examine or cross-examine witnesses and address the Committee.

183T Protection of members

(1) An action or proceeding, civil or criminal, does not lie against a member of the Committee for or in respect of an act or thing done, or report made, in good faith by the member of the Committee in his capacity as a member.

(2) An act or thing shall be deemed to have been done in good faith if the member or Committee by whom the act or thing was done was not actuated by ill-will to the person affected or by any other improper motive.

183U Protection of barristers, witnesses etc.

- (1) A barrister, solicitor or other person appearing before the Committee has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.
- (2) A witness summoned to attend or appearing before the Committee has the same protection as a witness in proceedings in the High Court.

CUSTOMS BROKERS LICENSING REGULATIONS (CANADA)

SOR/86-1067

CUSTOMS ACT

Customs Brokers Licensing Regulations

REGULATIONS RESPECTING THE LICENSING OF CUSTOMS BROKERS

SHORT TITLE

1. These Regulations may be cited as the *Customs Brokers Licensing Regulations*.

INTERPRETATION

2. In these Regulations,
 - "Act" means the Customs Act; (Loi)
 - "chief officer of customs", with respect to a customs broker, means the manager of a local customs office or customs offices that serve the area in which the broker transacts business, or proposes to transact business, as a customs broker; (*agent en chef des douanes*)
 - "licence" means a licence to transact business as a customs broker issued pursuant to section 9 of the Act. (*agrément*)

PRESCRIBED QUALIFICATIONS FOR CUSTOMS BROKERS

3. (1) An individual is qualified under these Regulations if the individual
 - (a) is a citizen or permanent resident of Canada;
 - (b) is of good character;
 - (c) is at least 18 years of age;
 - (d) has sufficient financial resources to conduct his business in a responsible manner; and
 - (e) has a sufficient knowledge of the laws and procedures relating to importations and exportations determined in accordance with section 4.
- (2) A partnership is qualified under these Regulations if the partnership
 - (a) in the case of a partnership composed of individuals,
 - (i) is composed of individuals each of whom meets the qualifications prescribed in paragraphs (1)(a) to (c),
 - (ii) has sufficient financial resources to conduct its business in a responsible manner, and
 - (iii) has at least one partner who has a sufficient knowledge of the laws and procedures relating to importations and exportations, determined in accordance with section 4; and

- (b) in the case of a partnership composed of corporations,
 - (i) is composed of corporations each of which meets the qualifications prescribed in paragraphs (3)(a) to (c),
 - (ii) has sufficient financial resources to conduct its business in a responsible manner, and
 - (iii) has at least one partner that meets the qualification prescribed in paragraph (3)(d).

(3) A corporation is qualified under these Regulations if

- (b) the corporation
 - (i) is incorporated in Canada,
 - (ii) is of good reputation, and
 - (iii) has sufficient financial resources to conduct its business in a responsible manner;
- (c) all of the directors of the corporation are of good character;
- (d) a majority of the directors of the corporation are citizens or permanent residents of Canada; and
- (e) at least one officer of the corporation has a sufficient knowledge of the laws and procedures relating to importations and exportations, determined in accordance with section 4.

4. (1) Subject to subsection (2), a sufficient knowledge of the laws and procedures relating to importations and exportations is established, for the purposes of paragraph 3(1)(e), subparagraphs 3(2)(a)(iii) and (b)(iii) and paragraph 3(3)(d) if the individual, partner or officer has

- (a) first attained a grade of at least 60 per cent on the Customs Brokers Qualifying Examination given pursuant to section 15; and
- (b) written the Customs Brokers Professional Examination, given under section 15, and attained a grade of at least 60 per cent on it
 - (i) not more than one year before the date of the application for a licence, or
 - (ii) more than one year before the date of the application for a licence and the individual, partner or officer transacted business as a customs broker, whether on their own behalf or on behalf of a licensee, from within one year after the date on which the examination was written until not more than one year before the date of the application for the licence.

(2) For the purposes of paragraph 3(1)(e), subparagraphs 3(2)(a)(iii) and (b)(iii) and paragraph 3(3)(d), a sufficient knowledge of the laws and procedures relating to importations and exportations is established, if the individual, partner or officer

- (a) prior to the coming into force of these Regulations, met the requirement under the Custom-House Brokers Licensing Regulations of having a sufficient knowledge of the law relating to customs matters to discharge the obligations of a customs broker; and
- (b) transacted business as a customs broker, whether on his own behalf or on behalf of a person to whom a licence was issued under subsection 118(1) of the former Customs Act, being chapter C-40 of the Revised Statutes of Canada, 1970, until not more than six months before the date of the application for a licence. SOR/2002-149, s. 1.

PRESCRIBED QUALIFICATIONS FOR PERSONS TRANSACTING BUSINESS AS CUSTOMS BROKERS ON BEHALF OF PERSONS SO LICENSED

5. (1) An individual who is not a licensed customs broker who transacts business as a customs broker on behalf of an individual who is a licensed customs broker must be an employee of the licensed customs broker and

- (a) meet the qualifications prescribed in paragraphs 3(1)(a) to (c); and
 - (b) have a sufficient knowledge of the laws and procedures relating to importations and exportations, determined in accordance with section 6.
- (2) An individual who is not a licensed customs broker who transacts business as a customs broker on behalf of a partnership composed of individuals that is a licensed customs broker must be
- (a) a partner of the partnership and
 - (i) meet the qualifications prescribed in paragraphs 3(1)(a) to (c), and
 - (ii) have a sufficient knowledge of the laws and procedures relating to importations and exportations, determined in accordance with section 4; or
 - (b) a partner or an employee of the partnership and
 - (i) meet the qualifications prescribed in paragraphs 3(1)(a) to (c), and
 - (ii) have sufficient knowledge of the laws and procedures relating to importations and exportations determined in accordance with section 6.
- (3) An individual who is not a licensed customs broker who transacts business as a customs broker on behalf of a partnership composed of corporations must be
- (a) an officer of one of the partners and
 - (i) meet the qualifications prescribed in paragraphs 3(1)(a) to (c), and
 - (ii) have sufficient knowledge of the laws and procedures relating to importations and exportations determined in accordance with section 4; or
 - (b) an employee of one of the partners or of the partnership and
 - (i) meet the qualifications prescribed in paragraphs 3(1)(a) to (c), and
 - (ii) have sufficient knowledge of the laws and procedures relating to importations and exportations, determined in accordance with section 6.
- (4) An individual who is not a licensed customs broker who transacts business as a customs broker on behalf of a corporation that is a licensed customs broker must be
- (a) an officer of the corporation and
 - (i) meet the qualifications prescribed in paragraphs 3(1)(a) to (c), and
 - (ii) have a sufficient knowledge of the laws and procedures relating to importations and exportations, determined in accordance with section 4; or
 - (b) an employee of the corporation and
 - (i) meet the qualifications prescribed in paragraphs 3(1)(a) to (c), and
 - (ii) have a sufficient knowledge of the laws and procedures relating to importations and exportations determined in accordance with section 6.
- 6.** For the purposes of paragraphs 5(1)(b), (2)(b), (3)(b) and (4)(b), an individual has a sufficient knowledge of the laws and procedures relating to importations and exportations if the person
- (a) attained a grade of at least 60 per cent on the Customs Brokers Qualifying Examination given pursuant to section 15;
 - (b) meets the knowledge requirement determined in accordance with subsection 4(2); or
 - (c) establishes that

- (i) prior to the coming into force of these Regulations, he had successfully completed the Customs Brokers Employee Qualifying Course given by the Canadian Institute of Customs House Brokers, and
- (ii) he has been continuously employed since completing the Course referred to in subparagraph (i) in the transaction of business as a customs broker on behalf of a person to whom a licence was issued under subsection 118(1) of the former Customs Act, being chapter C-40 of the Revised Statutes of Canada, 1970.

APPLICATION FOR LICENCE

7. An application for a licence must be made in the prescribed form and be submitted to the chief officer of customs for the area in which the applicant proposes to transact business as a customs broker. SOR/2002-149, s. 2.

8. (1) On receipt of an application for a licence and before a licence is issued, the chief officer of customs to whom the application is made shall display, for a period of two weeks in the customs office managed by him, a public notice of the application, setting out

- (a) where the applicant is an individual, the applicant's full name and address and the business name to be used;
- (b) where the applicant is a partnership composed of individuals,
 - (i) the full name and address of each partner,
 - (ii) the name of each partner who meets the knowledge requirement determined in accordance with section 4, and
 - (iii) the business name to be used;
- (c) where the applicant is a partnership composed of corporations
 - (i) the legal name of each partner,
 - (ii) the head office address of each partner,
 - (iii) the name and address of each officer and director of each partner,
 - (iv) the names of the officers of each partner who meet the knowledge requirement determined in accordance with section 4, and
 - (v) the business name to be used;
- (d) where the applicant is a corporation,
 - (i) the legal name of the corporation,
 - (ii) the head office address of the corporation,
 - (iii) the name and address of each officer or director,
 - (iv) the name of each officer who meets the knowledge requirement determined in accordance with section 4, and
 - (v) the business name to be used if other than the legal name of the corporation;
- (e) [Repealed, SOR/2002-149, s. 3]
- (f) the name of each individual who will transact business on a full-time basis as a customs broker at a business office maintained in the area served by that customs office and meets the knowledge requirement determined in accordance with section 6;
- (g) in respect of each individual referred to in paragraph (f), the business office of the applicant at which the individual will transact business.

(2) The notice referred to in subsection (1) shall invite written comments or information from the public regarding the application. SOR/2002-149, s. 3.

9. [Repealed, SOR/2002-149, s. 4]

SECURITY

10. (1) Before a licence is issued or renewed, the customs broker shall, in respect of the licence to be issued or renewed, deposit security with the chief officer of customs in the amount of \$50,000 to protect the Canada Customs and Revenue Agency against loss while the licence or renewal thereof is in effect.

(2) The security deposited under subsection (1) shall be in the form of

- (a) cash;
- (b) a certified cheque;
- (c) a transferable bond issued by the Government of Canada; or
- (d) a bond issued by
 - (i) a company that is registered and holds a certificate of registry to carry on the fidelity or surety class of insurance business and that is approved by the President of the Treasury Board as a company whose bonds may be accepted by the Government of Canada,
 - (ii) a member of the Canadian Payments Association referred to in section 4 of the Canadian Payments Association Act,
 - (iii) a corporation that accepts deposits insured by the Canada Deposit Insurance Corporation or the Régie de l'assurance-dépôts du Québec to the maximum amounts permitted by the statutes under which those institutions were established,
 - (iv) a credit union as defined in subsection 137(6) of the Income Tax Act, or
 - (v) a corporation that accepts deposits from the public, if repayment of the deposits is guaranteed by Her Majesty in right of a province. SOR/90-121, s. 1; SOR/91-274, Part V; SOR/2001-197, s. 6; SOR/2002-149, s. 10.

FEES

11. (1) A fee of \$600 must be paid before a licence is issued.

(2) A renewal fee of \$600 must be paid before a licence is renewed.

(3) A renewal fee must be refunded if, prior to the 15th day of February preceding the day on which the licence will expire, the customs broker withdraws the application for renewal by notice in writing to the chief officer of customs. SOR/92-186, s. 1.

DURATION

12. A licence, including a licence that has been renewed, expires on the 31st day of March next following the date on which the licence or its renewal is expressed to be effective.

TERMS AND CONDITIONS

13. (1) Subject to subsection (2), a licence authorizes the holder to transact business as a customs broker

- (a) at the customs office specified in the licence, if the holder maintains at least one business office in the area served by that customs office;
- (b) at any customs office specified by the Minister of National Revenue;
- (c) at any other customs office through a customs broker qualified under these Regulations whose licence specifies that customs office; and
- (d) at any customs office, by electronic means in accordance with the Participants' Requirements Document, published by the Canada Customs and Revenue Agency, as amended from time to time, if the holder maintains at least one business office in Canada.

(2) A licence only authorizes the transaction of business as a customs broker at a business office referred to in paragraph (1)(a) if at least one individual who transacts business on a full-time basis as a customs broker at the business office meets the knowledge requirement determined in accordance with section 4, if the individual transacts business on his own behalf, or in accordance with section 6, if the individual transacts business on behalf of another person. SOR/98-236, s. 1; SOR/2002-149, ss. 5, 11.

TRANSACTION OF BUSINESS AS A CUSTOMS BROKER

14. Every customs broker shall

- (a) display prominently at each business office at which he transacts business as a customs broker
 - (i) where the customs broker is a partnership or a corporation, a sign bearing the name under which the partnership or corporation is authorized to transact business as a customs broker, and
 - (ii) the licence or a copy thereof;
- (b) immediately notify in writing the chief officer of customs of any change
 - (i) in the address of a business office at which he transacts business as a customs broker,
 - (ii) in the legal or business name of the partnership or the corporation, where the customs broker is a partnership or a corporation,
 - (iii) in the membership of the partnership, where the customs broker is a partnership,
 - (iv) in the officers or directors of the corporation, where the customs broker is a corporation,
 - (v) [Repealed, SOR/2002-149, s. 6]
 - (vi) in the ownership of the business or corporation, where the customs broker is an individual or corporation, and
 - (vii) in the individuals meeting the knowledge requirement determined in accordance with section 4 or 6 who are employed on a full-time basis by the holder of the licence;
- (c) furnish to the importer or exporter, in respect of each transaction made on their behalf, a copy of the customs accounting documents bearing the customs accounting number and official customs stamp, and a copy of the information transmitted by electronic means to the Canada Customs and Revenue Agency; and
- (d) promptly account to a client importer or exporter for funds received

- (i) for the client from the Receiver General for Canada, and
- (ii) from the client in excess of the duties or other charges payable in respect of the client's business with the Canada Customs and Revenue Agency. SOR/90-121, s. 2(F); SOR/98-236, s. 2; SOR/2002-149, ss. 6, 10, 11.

EXAMINATIONS

15. (1) The Customs Brokers Professional Examination and the Customs Brokers Qualifying Examination shall be given at least once a year at any time that the Minister or a person designated by the Minister for the purpose of section 9 of the Act directs.

(2) Notice of the time and place of an examination shall be posted in the office of the chief officer of customs not less than 60 days before the date of the examination. SOR/2002-149, s. 7.

16. Every individual proposing to write an examination must

- (a) file an application therefor in the prescribed form with the chief officer of customs at the nearest customs office at least 30 days prior to the date set for the examination; and
- (b) at the time the application is made, pay a fee of
 - (i) \$200, in the case of the Customs Brokers Professional Examination, or
 - (ii) \$100, in the case of the Customs Brokers Qualifying Examination. SOR/2002-149, s. 8.

RECORDS

17. (1) Every customs broker shall keep the following information:

- (a) records and books of account indicating all financial transactions made while transacting business as a customs broker;
- (b) a copy of each customs accounting document made while transacting business as a customs broker and copies of all supporting documents, and a copy of the information transmitted by electronic means to the Canada Customs and Revenue Agency while transacting business as a customs broker;
- (c) copies of all correspondence, bills, accounts, statements and other papers received or prepared by the customs broker that relate to the transaction of business as a customs broker; and
- (d) separately, all of the records, books of account and copies referred to in paragraphs (a) to (c) relating to business transacted under paragraph 13(1)(c).

(2) Every customs broker shall retain the information for a period of six years after the importation of the goods to which the information relates.

(3) The information required by subsection (1) shall be kept in such a manner as to enable an officer to perform detailed audits and to obtain or verify the information.

(4) The information required by subsection (1) shall be kept for the period prescribed by subsection (2)

- (a) in an original document;

- (b) in a copy made by means of any photographic, microphotographic or image-processing process that is in accordance with National Standard of Canada CAN/CGSB-72.11-93, Microfilm and Electronic Images as Documentary Evidence, published by the Canadian General Standards Board in November 1993, as amended from time to time; or
- (c) on machine-sensible data media if the media can be related back to the supporting source documents and are supported by a system capable of producing accessible and readable copy. SOR/98-236, s. 3; SOR/2002-149, ss. 9, 11.

CANCELLATION OR SUSPENSION

18. (1) The Minister or a person designated by the Minister for the purposes of section 9 of the Act may suspend or cancel the licence of a customs broker if the customs broker

- (a) contravened the provisions of an Act of Parliament or a regulation made thereunder relating to the importation or exportation of goods;
- (b) acted to defraud Her Majesty or a client;
- (c) suggested a plan for the evasion of any duties or other debts due to Her Majesty in right of Canada that involves the contravention of the provisions of an Act of Parliament or a regulation made thereunder;
- (d) failed to comply with these Regulations;
- (e) became insolvent or bankrupt;
- (f) engaged in any dishonest conduct while transacting business as a customs broker;
- (g) ceased to carry on business as a customs broker or failed to carry out his duties and responsibilities as a customs broker in a competent manner; or
- (h) is no longer qualified under these Regulations.

(2) Before a licence is cancelled or suspended the Minister or a person designated by him for the purposes of section 9 of the Act shall cause to be given to the customs broker

- (a) 30 days notice of the proposed cancellation or suspension;
- (b) reasonable information concerning any allegations with respect to any of the grounds referred to in paragraphs (1)(a) to (h) on which the Minister proposes to cancel or suspend the licence; and
- (c) a reasonable opportunity to respond and make representations as to why the licence should not be cancelled or suspended. SOR/90-121, s. 3.

SURRENDER OF LICENCE

19. Every customs broker shall forthwith surrender his licence to the chief officer of customs at the customs office specified in the licence if

- (a) the licence has been cancelled; or
- (b) the customs broker has ceased to transact business as a customs broker.

REGULATIONS OF THE CUSTOMS GENERAL ADMINISTRATION OF THE PRC ON THE MANAGEMENT OF AGENT DECLARATION ENTERPRISES

(Promulgated by Decree No.52 of the Customs General Administration on July 6, 1995)

Chapter I

General Provisions

Article 1

In order to strengthen supervision and management of agent declaration enterprises and normalize declaration conduct, these Regulations are hereby formulated in accordance with the Customs Law of the People's Republic of China and related regulations.

Article 2

The agent declaration enterprises mentioned in these Regulations refer to the domestic corporations which engage in the businesses such as handling of transportation of international goods and international transport means on a commission basis, and acknowledgement of assignments to handle matters such as Customs declaration of and tax payment for import and export goods, and performance of procedures for agent declaration and registration.

Article 3

The Customs of the People's Republic of China is the competent organization in charge of the qualification examination and approval and declaration registration of agent declaration enterprises.

Article 4

While handling affairs such as declaration and tax payment on a commission basis, the agent declaration enterprises shall abide by the Customs Law, and other related laws and regulations, and shall be responsible for the truthfulness and legality of the product name, specification, price, quantity and various other items that should be declared, and shall undertake appropriate legal responsibility.

Chapter II Qualification Examination, Approval and Registration

Article 5

Enterprises which apply for agent declaration and registration shall possess the following conditions:

- (1) Handling the businesses of international goods transportation and international transport means on a commission basis approved by the competent department of the State Council;
- (2) Registered capital standing at above 1.5 million yuan;
- (3) Payment of 200,000 yuan in risk guarantee;
- (4) Other conditions the Customs deems necessary.

Article 6

In light of the Application Form for the Declaration and Registration of Agent Declaration Enterprises and the original (or photocopies) of the following documents submitted by the enterprises, Customs departments at locations of agent declaration enterprises shall perform registration procedures and renew registration certificates for agent declaration enterprises:

- (1) Documents on handling international goods transportation and international transport means on a commission basis approved by competent departments of the State Council;

- (2) Business licenses issued by the administrations for industry and commerce;
- (3) The situation regarding the establishment of financial management systems and account books;
- (4) Capital-auditing reports and account numbers of deposit banks;
- (5) The names, telephone numbers and ID numbers of legal representatives, persons in charge of declaration businesses and prospective declarants;
- (6) Other documents which the Customs deems necessary to be submitted.

An enterprise can begin carrying out the declaration business only after obtaining a registration certificate of the agent declaration enterprise.

Article 7

The seal (or signature) of the legal representative of the declaration enterprise, the person in charge of the declaration business and the declarant, the special seal for declaration should be submitted to Customs departments for the record.

Chapter III Annual Examination and Alteration of Registration

Article 8

Customs departments institutes an annual examination system with regard to agent declaration enterprises. The agent declaration enterprises shall, before March 31 each year, submit their previous year's "annual examination reports "to local Customs departments so as to perform the procedures for annual examination. Enterprises which have obtained the qualifications for non-local declaration file may bring with them the annual examination certified records issued by local competent Customs departments to perform the procedures for annual examination by the filed Customs departments.

The main contents of the "annual examination report" shall include: annual declaration business volume and an analysis of the business situation, declaration errors and causes, the situation regarding observance of the various related regulations of the Customs and self-appraisal, and the situation regarding operation and management.

Those with registration performed less than one full year may not participate in the annual examination of the current year.

Article 9

Agent declaration enterprises which need to change names, legal representatives, addresses, enterprise nature or business scope, registered capital or other aspects already registered with Customs departments shall all submit in advance written reports to local Customs departments for verification and approval.

Article 10

Agent declaration enterprises, at the time of being disbanded or going bankrupt, shall submit written reports to local Customs departments. After fulfilling settlement procedures, the Customs departments shall withdraw the registration certificates and return payments of risk guarantees.

Chapter IV Rules for Declaration Behaviour

Article 11

Agent declaration enterprises shall carry out declaration and tax payment at various ports of local Customs areas. They can handle such businesses in other places only under special circumstances, with agreements reached between local Customs department and non-local Customs departments, and examination and approval by the Customs General Administration.

Article 12 Agent declaration enterprises can only accept entrustment by units with the right to handle import and export goods, and contract to handle declaration and tax payment for the transported goods of their own enterprises.

Article 13

While declaring to the Customs, the agent declaration enterprises shall present the following documents:

- (1) The certificate of liability authorization signed by the legal representative of the enterprise concerned authorizing the handling of such affairs as current declaration and tax payment;
- (2) Agreement on the contract for transporting import and export goods;
- (3) The consignor's declaration certificate of entrustment. The certificate of entrustment shall clearly indicate the names of both the consignor and the consignee, the registration code number, address, the name of the legal representative, as well as matters to be handled on a commission basis, limit of power and time limit, and the responsibilities of both sides. It shall also be stamped with the official seals of both sides.

Article 14

Agent declaration enterprises shall not, in any form, transfer their names to others to handle declaration and tax payment of import and export goods.

Article 15 Agent declaration enterprises shall employ declarants in accordance with Customs regulations and undertake legal responsibility for the declaration conduct of the declarants.

Article 16 The agent declaration enterprises shall, in compliance with the requirements of the Customs concerning the financial account books and business statements and reports of import and export enterprises, establish account books and declaration business records. They shall truly, correctly and comprehensively record all the activities related to how they are entrusted with handling declaration and tax payment. Within the number of years specified by the Customs, they shall keep the various documents, bills, letters and telegraphs intact provided by consignment units and accept Customs checks. The agent declaration enterprises shall, in compliance with the requirements of Customs departments, assist Customs departments in contacting the consignor, and provide related written records concerning the consignor and declaration and tax payment.

Chapter V Legal Responsibility

Article 17

If the agent declaration enterprises are involved in one of the following matters, the Customs shall temporarily suspend their declaration right for a period of six months:

- (1) Violations of Customs regulations concerning supervision and control;
- (2) Frequent disqualification of declarants due to failure to enforce strict management;
- (3) Default of tax payments or failure to fulfil the obligation of tax payment;
- (4) Failure to pass the test in annual examinations by Customs departments or delayed participation in annual examinations without the consent of Customs departments;
- (5) Violation of the stipulation of Article 14 and Article 16 of these Regulations;
- (6) Suspension of declaration right due to other reasons.

Article 18

If the agent declaration enterprises are involved in one of the following matters, the Customs shall cancel their declaration right, and related procedures will be performed in accordance with Article 10 of these Regulations:

- (1) Changes have taken place in the original situation, and the enterprise no longer possesses the conditions as listed in Article 5 of these Regulations;
- (2) The existence of one of the cases as listed in Article 17 of these Regulations and the case is serious;
- (3) The existence of smuggling actions;
- (4) The business license is revoked by administrations for industry and commerce;
- (5) The declaration right should be withdrawn due to other reasons.

Article 19

The agent declaration enterprises shall assume the responsibility for the economic disputes arising between the consignors as a result of the suspension or cancellation of the declaration right by Customs departments.

Article 20

In handling the affairs related to declaration and tax payment, the agent declaration enterprises which perpetrate the act of violating the Customs Law of the People's Republic of China shall, in addition to being dealt with in accordance with the stipulations of Article 17 and Article 18, also be dealt with in accordance with the stipulations of the Detailed Rules for the Implementation of Administrative Penalty of the Customs Law of the People's Republic of China, the legal responsibility shall be investigated and affixed to the legal representative.

If the agent declaration enterprises fail to pay overdue taxes or carry out Customs decisions concerning penalty, Customs departments may, besides pursuing tax payments according to law and applying to People's courts for forced implementation, deduct the taxes from the risk guarantees these enterprises have paid.

Chapter VI Supplementary Provisions

Article 21

Agent declaration enterprises which apply for registration according to these Regulations shall pay service charges and costs of production in accordance with Customs regulations.

Article 22

For enterprises which engage in businesses related to international postal delivery and entry and exit express mails, their agent declaration qualifications shall be examined and approved in accordance with other related stipulations promulgated by the Customs, and declaration and registration and management shall be carried out in accordance with these Regulations.

Article 23

The right to interpret these Regulations resides in the Customs General Administration.

Article 24

These Regulations go into effect as of September 1, 1995.

Appendix:

- 1.Application Form for the Declaration and Registration of Agent Declaration Enterprises (omitted)
- 2.Registration Certificate for Agent Declaration Enterprises (omitted)
- 3.Application Form for the Record of Agent Declaration Enterprises (omitted)
- 4.Record Certificate for Agent Declaration Enterprises (omitted)