



USAID Trade Project

Revised Kyoto Convention Compliance Roadmap for Pakistan

USAID Trade Project
USAID/Pakistan
Office of Economic Growth & Agriculture
Contract Number: EEM-I-03-07-00005

August 2014

Disclaimer: This report is made possible by the support of the American people through the United States Agency for International Development (USAID). The contents of this report are the sole responsibility of Deloitte Consulting, LLP.

Table of Contents

Executive Summary	1
Chapter 1: Overview of Numerous Changes to Customs Legislation Required by RKC	3
A. Modifications to Existing Provisions	3
B. New Provisions to be Introduced	16
Chapter 2: New Customs Rules	23
Chapter 3: Modification of Other Laws as Required by RKC	29
Chapter 4: Amendments and Updating Manuals	31
Chapter 5: Training Modules	32
Chapter 6: IT modifications	33

Executive Summary

This report provides a proposed roadmap for the Government of Pakistan (GoP) outlining the measures that the Trade Project believes are necessary or advisable to ensure the compliance of Pakistan's customs regime with the International Convention on the Simplification and Harmonization of Customs Procedures, generally referred to as the Revised Kyoto Convention (RKC). This RKC compliance roadmap is based on the Trade Project's updated legal gap analysis, which assesses the current degree of compliance of Pakistan's customs legislation (which includes not just the Customs Act, but other legislation enforced at the border), regulations and practices with the standards and recommended practices of the RKC. Where a compliance issue was identified, the gap analysis also provides specific recommendations with respect to measures to address that compliance issue.

The first version of the gap analysis was completed in September of 2013 and delivered to the FBR shortly thereafter. The project has now prepared an updated version of the gap analysis based on the comments and new information received from senior Customs officers at the Customs House, Karachi, in May of 2014. The updated version of the gap analysis is being delivered contemporaneously with this report.

The gap analysis indicates that substantial changes will need to be made to all 20 chapters of the current Customs Act to ensure consistency with RKC's standards and recommended practices. Many existing provisions will have to be heavily revised or deleted; and a large number of new provisions, possibly requiring the addition of more than 10 new chapters, will need to be added to the Customs Act to ensure consistency with RKC. For example the current chapters of the Customs Act governing transit and transshipment would need to be deleted and replaced in their entirety by three new chapters on international transit, national transit and transshipment. Incorporating these and the other amendments and new provisions into the existing Customs Act would require the re-writing of more than 70% of the current provisions of the Customs Act and the introduction of numerous new provisions and definitions. A similar major effort would be needed to reform the Customs Rules to ensure their consistency with the reformed Customs Act and the RKC. A summary of the changes needed to the Customs Act is provided in Chapter 1 and a summary of the changes to the Customs Rules in Chapter 2. The box below summarizes only the subject matter of the new chapters to be introduced into the Customs Act.

Subject Matter of the Recommended New Customs Act Provisions

New chapters in the Customs Act

- i. International Transit
- ii. National transit
- iii. Transshipment
- iv. Inward Processing
- v. Outward Processing
- vi. Compliance Risk Management
- vii. Authorized Economic Operators
- viii. Advance binding rulings on Classification, Valuation, Rules of Origin, concessions in duties and taxes
- ix. Single Window
- x. Post-Clearance Audit
- xi. Structured consultations with Trade, and third parties seeking comments
- xii. Notification and seeking comments on new provisions, amendments in the customs legislation, procedures, forms, fees and charges prior to making such changes
- xiii. Provision of information to all stakeholders through publications and on the FBR/Commerce websites
- xiv. Consultation, provision and exchange of information with neighboring Customs administrations

In light of the above, the Trade Project's principal recommendation, which has the concurrence of many senior Customs officials, is that a new modern Customs Act and a new set of Customs Rules need to be written to replace the current Customs Act and Customs Rules. This would be a far more efficient and less-confusing approach than the drafting and adoption of a very large number of individual amendments to the existing Customs Act and Customs Rules. Given the large scope of the reforms, it is also recommended that the new Customs Act not take effect for at least two years after the date of its adoption. This 2+ year lag period between adoption and effectiveness will be needed to give time for new Customs Rules and Implementation Manuals to be written and adopted (which should also not take effect until the date the Customs Act comes into force), and for customs officers and the Trade to be trained in the new system.

In addition to the recommended reform of the Customs Act and Customs Rules, other pieces of legislation will also require modification to bring them into RKC compliance. These include, among others, the Income Tax Ordinance, the Federal Excise Act, and the Sales Tax Act. However, the required changes to these pieces of legislation are much narrower in scope than the changes needed to the Customs Act and the Customs Rules. Given their limited scope, the recommended changes to these other pieces of legislation (which are summarized in Chapter 3) could be introduced and made effective much sooner than the proposed reform of the Customs Act and Customs Rules.

Chapter 4 of this report discusses the need for new/updated implementation manuals to enable customs personnel to properly implement the proposed changes in the Customs Act, the Customs Rules and the other pieces of legislation specified in Chapter 3. Chapter 5 discusses the need to develop and deliver, together with the new/updated implementation manuals, a series of capacity building training modules for both customs personnel and the Trade. And Chapter 6 discusses the modifications needed to the IT systems currently being used by Customs. Finally, attached to this report is a framework draft of a proposed new Customs Act.

Chapter 1: Overview of Numerous Changes to Customs Legislation Required by RKC

A. Modifications to Existing Provisions

Introduction: The gap analysis of RKC and Pakistan Customs/Trade Law reveals that out of 514 RKC standards (including recommended practices and transitional standards), Pakistan is substantially compliant with 234 standards (46%), does not meet the requirements of 119 standards (23%), and is substantially, partially or marginally compliant with the remaining 161 standards (31%). Therefore, for 280 standards, Pakistan either has to amend the provisions of the Customs Act or add new provisions that reflect the requirements of the RKC's standards as elaborated in the WCO's Guidelines.

The Gap Analysis has examined the requirement of each RKC standard with reference to Pakistan's customs legislation¹, procedures and practices. Specific recommendations have also been made and the sections/chapters of the customs legislation that need to be amended have been identified. These changes are classified by this report as either simple or complex; simple changes are those that can be made by executive or administrative action through amendments to the rules or procedures, whereas complex changes are those requiring legislative action by the Parliament, which will then necessitate concomitant changes in the implementing rules and procedures, and possibly the IT system (WeBOC). Complex changes will also require either the significant revision of existing implementation manuals or – where provisions on new subject matter are introduced (e.g., on risk management) - the development of new manuals.

The current Customs Act consists of 20 chapters comprising 224 sections. A review of the recommendations shows that there is only one chapter, which consists of only three sections (Chapter 4, "Prohibition and Restriction of Importation and Exportation"), for which no change has been recommended. Significant amendments have been proposed for each of the other 19 chapters. In light of this, and taking into account the number of new provisions and definitions that have been recommended, the Trade Project estimates that more 70% of the existing provisions of the Customs Act would require modification or deletion, and more than 100 new provisions would need to be introduced.

A brief analysis of each chapter of the Customs Act identifies the nature of changes required to ensure compliance with RKC.

Chapter I – Preliminary: Section 2 of this chapter provides definitions. To achieve RKC consistency, a number of customs-specific terms used in the RKC will need to be incorporated into Section 2 (e.g., declarant, import/importation, customs territory, inward processing, outward processing, and equivalent goods). Still other terms currently used in the Customs Act (e.g., transit, transshipment) require redefinition, and the provisions currently using those terms will consequently need to be entirely revised.

Chapter II - Appointment of Officers of Customs and their Powers: This Chapter has 5 sections (sections 3 to 8), and the Gap Analysis has recommended an amendment in Section 3 that aims to "include a provision requiring the FBR to take into account the requirements of the Trade when designating the competence, location and hours of business of Customs offices."

The addition of this provision will also require that Customs Rules be formulated to specify the format and structure of how requirements of the Trade will be ascertained.

¹ The term "customs legislation" when used in this report and in the Gap Analysis refers to the Customs Act and the Customs Rules as well as other Pakistan laws and rules that are applied at the border or that otherwise affect the movement of goods in international trade.

Chapter III - Declaration of Customs Ports, Airports, Land Customs Stations: This Chapter has seven sections, and the Gap Analysis has recommended that section 13 be amended to provide “a standard provision wherein goods shall be specified that may be admitted to private customs warehouses.”

Chapter IV - Prohibition and Restriction of Importation and Exportation: This chapter has only 3 sections (15-17). However, in the RKC there are a number of provisions pertaining to imports, exports, FTAs, and inward and outward processing for which there are no specific provisions in the Customs Act. However, the Imports and Exports (Control) Act, 1950, also provides for the prohibition and restriction of imports and exports. Therefore, there is a need to harmonize Chapter IV of the Customs Act with the Imports and Exports Control Act.

Chapter V - Levy of, Exemption from and Repayment of Customs Duties: This chapter has 14 sections and the Gap Analysis recommends changes in 11. These recommendations reflect the requirements of 31 RKC standards. For example:

Section 18D should be modified to establish the principle that every fee charged by Customs must be established at a level that is reasonably commensurate with the estimated cost of providing the concerned; and a rule should be issued under that section establishing such a fee schedule. (General Annex, standard 3.2).

Section 21 should be modified to allow the admission to customs warehouses of goods that are entitled to repayment of import duties and taxes when exported, so that they may qualify for such repayment immediately on the condition that they are to be subsequently exported.

There should be a provision added to Section 21 (c) and (d) authorizing repayment of duties and taxes on imported goods that have been replaced by equivalent goods used in the production of exported goods. The term equivalent goods may be defined under Section 2 of the Customs Act (Specific Annex F, chapter 3, Recommended Practice 3).

Reference of Section 21A (2) to Karachi Interbank Offered Rate (KIBOR) needs to be further elaborated to better identify the method required for choosing the applicable KIBOR rate.

Section 22 of the Act should be modified to:

- Allow, when circumstances so justify, a person other than the exporter to re-import the goods, provided that the latter authorizes him in writing, and the person undertakes to pay any necessary duties and taxes.
- Authorize the Collector of Customs to approve a request from an importer for an extension of time beyond one year to re-import the goods in the same state.
- Authorize Customs to no longer require a Goods Declaration to be filed for goods being re-imported, and instead, require a new form to be filed by the exporter describing the goods being exported.
- Ensure that goods being exported and intended to be re-imported shall be exempt from any import duties and taxes (Specific Annex B, chapter 2, standard 13), and permit exportation with notification of intended return which may be later converted to outright exportation, on the request of the importer/exporter.

Section 24 should be modified to include the procurement of stores for replenishment during national transit from one Customs station to another within the country, for example in the case of a train travelling in land (Specific Annex J, chapter 4, standard 16).

Section 27 should be amended to clarify that the damage or deterioration that may be appraised under that section includes that which occurs during temporary storage before the lodging of the goods declaration. (Specific Annex A, Chapter 2, Recommended Practice 11).

Section 29 should be revised to explicitly add a provision that the declarant may amend a declaration that has already been lodged if the request is received by Customs before it has begun to check the declaration or examine the goods (General Annex, standard 3.27).

Section 32 should be modified to provide that:

- Where a Customs offence of minor importance is discovered during clearance of goods, the field officers of respective Collectorates of Customs shall be allowed to settle the offence on their own in cases that are brought before them (Specific Annex H, chapter 1, Recommended Practice 20). Likewise for travelers, minor offences shall be settled by officers dealing with travelers/passengers at the time of disembarkation or embarkation (General Annex Recommended Practice 20 and 21).
- The penalties, in case of offences under subsection 2 of section 32, should be considerably more severe as compared to offences under subsection 3 of section 32. The offences under section 32 and their penalties under section 156(1) 14 and 14A should be clearly specified and it should not be left to the discretion of the adjudicating officers (Specific Annex H, chapter 1, Recommended Practice 23, 24 & 25).

Section 33 should:

- Add a provision requiring that, if Customs permits the goods to be placed under a customs procedure other than that for which the declaration was originally filed, Customs must refund any duties and taxes charged in excess of the amount due under the new procedure (General Annex, Transitional Standard 4.20).
- Require Customs to reach a decision and to notify the claimant in writing of that decision within 30 days of the refund claim being submitted (General Annex, Transitional Standard 4.21).
- Require Customs to actually pay the refund within ten days after the decision is reached.

Section 34 should be amended to specify cases where security is required and the type/form of security required in each situation. All other provisions enumerating the situations when security is required should be reviewed and amended where necessary, to ensure that the type of security required is clearly specified (General Annex standard 5.1). The section should also be amended to ensure that all provisions requiring a security shall specify the method Customs applies to calculate the value of the security (General Annex standard 5.2). The person required to provide security shall be allowed to choose the form of security, if acceptable to Customs (General Annex standard 5.3).

Chapter VI - Drawback: This chapter deals with the drawback of the duties and taxes paid on imported goods including conditions and time of the payment of drawback, and the extent of payment of drawback. This Chapter has 7 sections and the Gap Analysis has revealed that Pakistan meets requirements of the RKC standards except in the case of section 37, which authorizes FBR to grant drawback on the duties and taxes paid on export of goods. It has been recommended that a provision be added to section 37, authorizing drawback of duties and taxes on imported goods that have been replaced by equivalent goods used in the production of exported goods. The term equivalent goods may also be defined under section 2 of the Customs Act (Specific Annex F, chapter 3, Recommended Practice 3).

The addition of this provision is necessary because in Pakistan, customs drawback of duties and taxes on goods used in production or manufacture of other goods that are subsequently exported, is termed as repayment instead of drawback (section 21 of the Customs Act). Another option could be to

allow drawback only as per chapter 6 of the Customs Act. This will require large scale changes in the duty drawback system currently in use².

Chapter VII - Arrival and Departure of Conveyance: This chapter deals with the arrival and departure of conveyance, delivery of import manifest, contents of import manifest, bulk breaking, application for port clearance, power to refuse entrance and port clearance. These provisions are discussed in 18 sections of the Act. The Gap Analysis has revealed that Pakistan's law does not meet the RKC standards for 6 sections and recommendations to ensure full compliance are provided below.

- Section 42 of the Act should be amended to require that interference with packaging and seals on goods entering Pakistan and en route to an inland Customs office is prohibited (Specific Annex A, chapter 1 standard 5).
- Sections 43 should be amended to provide that in cases where the place of entry of the goods is different from the place where goods are to be declared to Customs, a document should be lodged with Customs only when Customs considers it necessary for control purposes (Specific Annex A, chapter 1 recommended practice 7).
- Section 44 should be amended to comply with the recommended practice which requires that "Cargo declaration should be the only requirement by customs (Specific Annex A, chapter 1 standard 10)".
- Section 48 should allow a Customs officer to require documents only when, in the exercise of reasonable judgment, he considers it necessary for control purposes. No document should be required for purposes other than the identification of goods and the transport (Specific Annex A, chapter 1, recommended practice 7 and standard 8).
- Section 57 of the Act is amended to specify the type of security required in each situation. All other provisions addressing situations when security is required should be reviewed and amended, where necessary, to ensure that the type of security required is clearly specified. Also see comments against section 34 (General Annex, 5.1).
- All provisions requiring a security to be posted with Customs shall clearly specify the method Customs apply to calculate the value of the security (General Annex, 5.2).

Chapter VIII - General Provisions Affecting Conveyances and Customs Stations: This chapter deals with general provisions affecting the disposition of conveyances at customs stations including the powers of customs officers to board conveyances and seal conveyances. The chapter has 14 sections and the gap analysis has revealed that there are 4 sections that are not compliant with the requirements of 5 standards. The following recommendations have been made to ensure compliance:

- The possibility for allowing unloading to proceed outside the designated hours of operation at land-border Customs stations should be implemented in practice. (Specific Annex A, chapter 1, Recommended Practice 18).
- Sections 66 and 67 of the Customs Act should be re-drafted to make it mandatory for the concerned authorized Customs officer to authorize the performance of Customs functions away from a designated customs station if resources are available and the declarant has provided a justification that Customs deems valid (General Annex, 3.2).

FBR/Customs may enforce Section 67. However, strict controls shall be maintained to avoid misuse of the exemption from Section 64 and Section 66. It should be ensured that Customs officers are present when the operation is taking place (General Annex, 3.2).

Chapter IX - Discharge of Cargo and Entry Inwards of Goods: This chapter deals with the discharge of cargo and entry inwards of goods. It contains 10 sections pertaining to provisions on discharge of cargo and goods, procedures, immediate discharge of cargo, declaration and

² It is not part of the original gap analysis.

assessment for home consumption, checking of goods declarations, provisional determination, and procedures in case of goods not cleared, warehoused, transshipped, exported, or removed.

The RKC Gap Analysis has revealed that 6 sections of Pakistan's Customs Act do not fully meet the requirements of 22 RKC standards. Required amendments are provided below.

- A new subsection (2) should be inserted in Section 75 of the Customs Act, providing that goods should be allowed to be unloaded irrespective of the quantity, country of origin or country from where they arrive (Specific Annex A, Chapter 2, Recommended Practice 3).
- Customs should issue a notification to clarify when it will authorize goods to be removed or otherwise dealt with, under sub-section 78(4), in the following situations:
 - Packing/bagging of loose cargo
 - Separating damaged or deteriorated goods from the rest
 - Sorting goods or changing their containers for the purpose of preservation, sale, export or disposal
 - Dealing with goods and their containers in a manner necessary to prevent loss, deterioration or damage (Specific Annex A, Chapter 2, Recommended Practice 8).
- Section 79 of the Customs Act should be amended to provide the following:
 - Any person having the right to dispose of goods may serve as the declarant (see General Annex, 3.7) as long as that person meets the conditions specified in the Customs Act; and the Customs Act should be amended to specify a list of all such conditions (General Annex, 3.7).
 - The declarant has the right, prior to filing the declaration, to examine the concerned goods (not just used goods) and to draw samples (General Annex, 3.9); and no separate declaration shall be required for samples that have been drawn (General Annex, 3.10).
 - The declarant be given 30 days to file the complete declaration, and require that the declarant furnish adequate security to ensure the declarant complies with this obligation within the 30 day period (General Annex, 3.13).
 - If all supporting documents cannot be filed with the goods declaration for reasons that Customs, in the exercise of reasonable judgment, deem valid, the declarant shall be allowed a specific period (say 30 days) to file the supporting documentation. This shall be allowed subject to the declarant furnishing adequate security to ensure that the declarant shall comply with this obligation (General Annex, 3.17).
 - The Customs should provide reasons to the declarant in writing when it cannot register a declaration. A standardized format should be used for this communication in hard copy or electronically (General Annex, 3.26).
 - The due date for payment by non-PACCS users should be indicated (General Annex, 4.8).
 - To permit specified goods such as packaging, containers, sports goods, scientific tools and goods for demonstration purposes to be exported with notification of intended return and re-imported in the same state repeatedly, against the same export declaration and permission to export initially (Specific Annex B, Chapter 2, Standard 15).
 - In case of imports to a free Zone, if the information required by Customs for clearance of imported goods is already available on documents accompanying the goods such as Bill of Lading or Pro forma Invoice, the filing of a GD should not be required (Specific Annex D, Chapter 2, Recommended Practice 15).
 - The acceptance of the Pro forma Invoice or some other similar document, as the descriptive part of the GD/TP (Specific Annex E, Chapter 2, Recommended Practice 6).
 - Joint examinations by Customs and other agencies to meet the requirements of Standards 3.33 and 3.34 of the General Annex. And Standard 3.35 of the General

Annex requires that Customs ensure that the examination/inspection takes place at one time and place.

- Section 80 of the Act may be modified to provide for joint examination to meet the requirements of Standards 3.33 and 3.34 of the General Annex and also require Customs to complete the assessment of all applicable duties and taxes as soon as possible.
- Customs should complete the assessment of all applicable duties and taxes as soon as possible (General Annex, 4.2).
- Section 81 of the Act should be amended to:
 - Ensure that goods declared are released as soon as the Customs have examined them or have decided not to examine them (General Annex, 3.40).
 - Permit an authorized person to furnish security to cover all potential liability for duties, taxes and charges (not just the differential) if the authorized person provides Customs with an acceptable official or commercial document giving the main particulars of the goods, and the types of “official or commercial documents” that will be acceptable should also be specified (General Annex, 3.41).
 - Require the release of goods to *any* importer while Customs is waiting for test results, technical literature or expert advice, provided some security is furnished to the satisfaction of Customs and the goods are not prohibited or restricted (General Annex, 3.42)
- Section 82 should be amended to specify the conditions under which a person can act as a declarant. It also needs to be ensured that there is consistency in the terms used in various sections of the Customs Act, for example owner, importer and principal (General Annex, 3.6).

Chapter X - Clearance of Goods for Home Consumption: Section 83(2) should be modified to provide that interest on outstanding duties and taxes owed on a consignment that has been released does not begin to accrue until ten days after release (General Annex, Standards 3.6 & 4.9).

Chapter XI - Warehousing: This chapter contains 36 sections and deals with applications, forms receipt of goods, warehousing procedures, access of customs officers and their powers, access of owner and his privileges, manufacturing and other operations, removal of goods and allied matters.

Given below is a brief account of the sections of the Customs Act that need to be aligned with RKC standards.

- Section 84 should be modified so that:
 - Goods entitled to repayment of import duties and taxes when exported are allowed to be warehoused so as to qualify for immediate repayment of duties and taxes on export, on the condition that the declarant commits to their subsequent exportation (Special Annex D, Chapter 1, Standard 7).
 - Goods that are warehoused under the temporary admission procedure in anticipation of subsequent exportation should also be allowed to be subsequently disposed through other customs procedures such as those for Home Use, Domestic Transit or International Transit. Such goods should also be exempted from the exportation requirement (Special Annex D, Chapter 1, Recommended Practice 8).
 - Goods intended to be exported should be allowed admission to customs warehouses; if these goods are liable to internal duties or taxes or have borne internal duties or taxes, they should qualify for an exemption from, or the repayment of, such internal duties and taxes (Special Annex D, Chapter 1, Recommended Practice 9).
 - Warehoused goods should be allowed to be transited to another Customs station in Pakistan. (Special Annex D, Chapter 1, Standard 14).
- Care should be taken when including provisions of Standards 3.27 and 3.28 of the General Annex to retain the existing content of section 88(5) of the Customs Act.

- Section 94(d) may be suitably amended to introduce a provision for the transfer of ownership of goods without the payment of duties and taxes (Special Annex D, Chapter 1, Standard 12).
- Section 98 should be amended to provide for a maximum period of one year for warehousing, subject to the condition that no further extension shall be allowed to such goods. Sub-section (4) of section 98 should be modified to provide sufficient time for removal of goods from a warehouse on its closure for any reason, to another Customs warehouse or to place them under another Customs procedure (Special Annex D, Chapter 1, Standard 11).
- Section 102 should be amended to clearly specify the method applied by Customs to calculate the value of the security (General Annex, 5.2).
- Section 108 needs to be amended so that the amount of the bond required does not exceed the applicable duty.
- The Customs Act should specify that, in all cases discussed in Standard 13 of Chapter 1 of Annex D, damaged or deteriorated goods should be treated as if they were imported in that state.

Chapter XII and XIII: Transshipment and Transit Trade: Section 121 of the Customs Act partially meets the requirements of the RKC. This section contains provisions governing national transit, but it refers to this as “transshipment.” It also has contains provisions on transshipment that comply with the narrow definition of that term as defined in Chapter 2 of Specific Annex E.

Chapters 1 and 2 of Specific Annex E contain the standards and recommended practices that pertain, respectively, to transit and transshipment.

In the Customs Act, the term “transit” and the provisions thereon deal only with international transit. However, in the Specific Annex E, and the RKC generally, “transit” refers to four different types of transit; international transit is only one. The RKC requires that all four types of transit be permitted:

- a) From an office of entry to an office of exit (International Transit)
- b) From an office of entry to an inland Customs office (National Transit)
- c) From an inland Customs office to an office of exit (National Transit)
- d) From one inland Customs office to another inland Customs office (National Transit)

Pakistan is complaint with (a) and (b) above, although (b) is called “transshipment” instead of “national transit” by the Customs Act. Under Chapter 2 of Specific Annex E, “transshipment” is very narrowly defined to refer to a situation where goods change from one means of conveyance to another within one customs station.

To ensure full compliance, customs transit can be dealt with either as an individual subject where international transit and national transit are addressed collectively in the same chapter with (c) and (d) above also included in it, or, international transit as provided under (a) above can be dealt with separately. In case of the latter, the APTTA transit rules can be supplemented with “General Transit Rules” for other landlocked countries such as the Central Asian Republics (CARs).

Currently, there are no rules allowing transit to the CARs through Pakistan and also no provisions in the Act or in the Rules for allowing goods to move in transit through Afghanistan to CARs. Consequently, despite the immense potential of trade between Pakistan and CARs, the absence of a coherent transit policy restricts transit from Pakistan to CARs through Afghanistan.

Additionally, there is no specific provision in the Act/Imports and Exports (Control) Act or in the rules to include (c) and (d) above. It is therefore recommended that;

- 1) The definitions of the above terms be recast in Section 2 of the Act to clearly distinguish “Transshipment” from “National Transit.”

- 2) International Transit, National Transit (including (c) and (d) above) be addressed in separate sub-chapters to avoid any ambiguity. However, they should be termed as “Transit” in compliance with RKC standards, guidelines and other international best practices.
- 3) Detailed rules be drafted for National Transit and International Transit, ideally in a separate procedures manual.

Section 121 of the Customs Act allows “Transshipment” (as provided under chapter 2 of Specific Annex E) and the Preventive Service Manual details its procedure, as explained below by the gap analysis of the chapter:

“Chapter X of the Preventive Service Manual provides that after the payment of transshipment fee leviable under Section 133 of the Sea Customs Act, the Superintendent Export Section, shall sign the “Let Transship” order on all the copies of the transship permit, and hand over the duplicate and triplicate copies to the owner or agent as the case may be as authority to proceed with the goods.”

- 4) Provisions on Transshipment in the Preventive Service Manual are however, not supported by any provision in the Act or the Customs Rules, 2001. There is therefore a need to provide a separate chapter for Transshipment as provided in RKC.
- 5) There should also be separate Rules for Transshipment and the Preventive Service Manual needs to be re-cast accordingly.
- 6) At present, there is no provision in the Act or in the Customs Rules 2001 pertaining to Less Than Container Load (LCL) goods, for consignments coming from various countries to go to other countries including Afghanistan. While framing Rules for Transshipment, LCL cargo and its handling in Pakistan should be taken into account through consultation with Pakistan Ship’s Agents Association and Pakistan International Freight Forwarders Association.

Chapter XIV: Exportation or Shipment and Re-Landing: This chapter of the Customs Act provides the conditions and procedure for loading of goods on a conveyance, clearance for exportation, securities requirements in certain cases, frustrated cargo, and port clearance through nine sections. Pakistan is compliant with some elements of the RKC standards. There are, however, several other provisions that need to be aligned with RKC standards and are discussed below.

- Section 131 of the Act should be modified to:
 - Include a specific provision for joint examinations by Customs and other departments empowered to examine export goods (General Annex, Standards 3.33 and 3.34).
 - Include a provision which ensures that “goods shall be released as soon as they have been examined by Customs, if no offence has been found, all documents provided and all duties and taxes paid”(General Annex, Standard 3.40).
 - Include a provision that certain categories of goods that are regularly exported and then re-imported in the same state (e.g., packaging, containers, sporting goods, scientific tools, and goods for demonstration purposes), provided that a notification of their intended return is filed on export, be permitted to be exported against the same export declaration under which they were first exported. No further export declarations should be required for subsequent exports and re-imports” (Specific Annex B, Chapter 2, Standard 15).
 - Include a provision permitting the filing of one document for the purpose of export of goods such as newspapers, bulk goods like sand and cement, where no duty drawback is involved and there is no risk to Customs revenue (goods that comply with the CRM criteria). The required document could be the bill of lading, pro forma Invoice or any other document providing all particulars required by Customs (Specific Annex C, chapter 1, Recommended Practice 2).
 - Allow goods on export from the free zone to not require filing of a GD for export (Special Annex D, chapter 2, S18).

- Section 132 of the Act should be amended so that the amount of relevant security required does not exceed the applicable duty. Alternatively, a new provision in the Customs Act could specify that the amount of any security should not exceed the duties and taxes potentially chargeable. This has been recommended in other Standards as well (General Annex-Standard 5.6).

Chapter XV - Special Provisions regarding Baggage and Goods Imported or Exported by Post

Baggage: The two provisions pertaining to baggage and post need to be separated. Provisions regarding travelers (passengers) and their baggage are dealt with in chapter 1 of Specific Annex J. Section 139 should be amended to align it with the definition of “declarant” as recommended elsewhere (General Annex standards 3.6 and 3.9) and the definition of that term as proposed to be added to section 2 of the Act. There are several provisions regarding travelers that need to be incorporated in the Act based on RKC standards. For example, the provision regarding cash security provided in Specific Annex J, chapter 1, Recommended Practice 37, needs to be provided for in the Act and the Rules. This chapter along with provisions on baggage rules of residents and non-residents (including tourist) need to be aligned with chapter 1 of Specific Annex J.

Postal Traffic: There are only two sections pertaining to postal traffic in the Act (sections 144 and 145). Both sections need to be elaborated to correspond with the guidelines of chapter 2 of Specific Annex J. The Customs Act does not define postal items. CN22/23 (postal declaration forms as described in the Acts of universal postal union), the Universal Postal Union itself, which is a specialized agency of UN since 1948 etc., also needs to be defined. Likewise there are provisions in chapter 2 of specific annex J which do not find mention either in the Act or the Customs rules 2001. This postal traffic therefore requires a separate chapter in the Act. There is also need to have rules dealing with postal traffic which are non-existent today.

Courier Service: There are currently no laws or rules governing the conduct, licensing, and operations of courier services in Pakistan. These act as an alternate postal service and also do business as “Air Cargo Carriers”. It also appears that carriage of goods, parcels, letters, etc. by the couriers is not dealt with by RKC also. Despite efforts by Trade Project (TP) no rules, laws, or any other regulations could be located, dealing with the couriers. The Customs in Custom House Karachi informed the TP team that couriers operate under some orders of a Deputy Collector Customs.in Karachi. The Customs Act therefore needs provisions regarding courier services, preferably in the chapter relating to postal traffic. For this purpose Customs would need to consult with the Ministry of Communications and Post Office Department.

Chapter XVI - Provisions Relating to Coastal Goods and Vessels

This Chapter of the Customs Act contains provisions pertaining to coastal goods and vessels. According to the definition of coastal goods under section 2(f) of the Act, coastal goods do not include imported goods that have not been declared to Customs and on which duties and taxes have not been paid. When compared to the RKC definition, the Customs Law and Rules appear to be non-compliant, and there appears to be a contradiction between the definition of coastal goods given under Section 2(f) of the Act and the provisions of chapter XVI of the Act under section 150. Detailed provisions with regard to the carriage of goods coastwise are provided in chapter XVI of the Act and chapter VII of the Preventive Service Manual, last updated in 1965 (even before the Customs Act 1969).

Preventive Service Manual: The Preventive Service Manual provides an elaborate procedure for the customs processing of coastal goods. This procedure, however, is not compliant with the applicable RKC provisions. It is worth mentioning that the Preventive Service Manual of Customs House, Karachi, provides a simplified procedure for imported goods in coastal trade. However, that procedure is contrary to the definition of coastal goods under section 2 of the Act.

Both coastal goods and other (imported) goods should be accounted-for and reported to Customs. The procedure in force before 1969 (the year when the Sea Customs Act of 1878 was replaced by the Customs Act) remains unchanged and is still reflected in the current Preventive Service Manual. That procedure requires updating.

The following changes are recommended:

- The Customs Act should be amended to provide (Chapter XVI, Sections 146-155, of the Act) that Customs shall allow free goods to be transported under the carriage of goods coastwise procedure, on board a vessel which is also carrying goods that have not been declared to Customs and on which duties and taxes have not been paid.
- Customs must be satisfied that the goods are identifiable at the port of destination and have followed the prescribed conditions for transport of such goods in the same vessel.
- The Preventive Service Manual should be updated and rewritten to include the provisions of the Customs Act (as amended) and compliant with the RKC.
- A detailed procedure/rule called “Carriage of Goods Coastwise Procedure” should also be drafted and should replace chapter VII of the Preventive Service Manual. This would be part of a larger exercise to re-write the entire Preventive Service Manual.

Chapter XVI A - Provisions Relating to the Customs Computerized System: This Chapter of the Act contains provisions pertaining to the Customs computerized system and audit, and access to documents. A comprehensive procedure has been provided in this Chapter regarding the operations and use of Information Technology in the handling of import and export cargo and other allied matters.

FBR should initiate a review of the Customs Law and procedures to map its business requirements with its computer program. WCO has developed specific detailed guidelines on computerization for Post-Clearance Audit, Risk Management system and Single Window. There are detailed RKC Guidelines for the computerization of various functions/activities of Customs and are provided in Chapter 7: Application of Information and Communication Technology. The up-dating of computer programs should be undertaken after studying these guidelines in consultation with stakeholders.

Chapter XVII (Offences and Penalties): Two sections of this chapter deal with offences and penalties. Section 156 specifies, in tabulated format, all offences and penalties while Section 157 specifies the extent of confiscation.

The RKC Gap Analysis has made recommendations to ensure compliance with RKC standards as discussed below.

- Section 156 should be amended to provide the following:
 - Different levels of fines and penalties for errors resulting from inadvertence or misconception and where there is clear proof of fraud, deliberate misrepresentation and connivance. At present, the penalty is the same for section 32(2) and 32(3), as evident through sections 156(1), (14) and (14A). It is left to the discretion of the adjudicating officer to impose penalties for cases covered by section 32(3), (General Annex 3.39).
 - FBR to develop a system with higher penalties for those persons who repeatedly and frequently are found involved in the same type of violations (such as. under invoicing, description, and quantity mis-declaration).
 - Imposition of a penalty against Customs officials responsible for not releasing security without valid cause (General Annex, 5.7).
 - Strict action to be taken and Customs officials to be penalized if involved in disclosure of confidential information (General Annex 9.6).
 - Fines and penalties to be incorporated according to the severity of the offence (Special Annex H, chapter1, s24)
 - Provisions which clearly state that in cases of *force majeure* the persons and legal entities that appear to have committed various offences should either be exonerated or treated very leniently (Special Annex H,ch1, s25).

- After Section 157, Section 157A should be added to the Customs Act, incorporating the requirements of standard 3.43, which provides that in case an offence is detected, goods should be released against a security subject to the conditions specified in the standard (General Annex, 3.43).

Chapter XVIII - Prevention of Smuggling: Powers of Search, Seizure and Arrest: Adjudication of Offences

This chapter has 34 sections. A review of the Customs Law and procedure has identified certain sections that are not compliant with RKC standards and recommendations to ensure compliance are discussed below.

- Section 168 should be amended to provide that if a Customs offence relates to a part of a consignment, only that part shall be seized or detained, provided that the Customs are satisfied that the remainder of the consignment did not serve, directly or indirectly, in the commission of the offence, such as concealing of the offending goods (Specific Annex H, ch1, S12).
- Section 169 should be amended to provide for release of seized or detained goods against adequate security, provided that the goods are not subject to any prohibitions or restrictions, or are not needed as evidence at some later stage in the proceedings (Specific Annex H, chapter 1, S14).
- Section 179 should be amended to:
 - Include a provision for summary adjudication proceedings and provide for the delegation of powers to officers of various grades (Specific Annex H, chapter 1, S19).
 - Provide that where - during clearance of the goods - a Customs offence of minor nature is discovered, the field officers of respective Collectorates of Customs should be empowered to settle such minor offences, in cases that are brought before them (Specific Annex H, chapter 1, S20).
 - Provide that these minor offences are identified in the Guidelines for Standard 3.39 of the General Annex and also specified in the Customs Act (Specific Annex H, chapter 1, S20).

Chapter XIX - Appeals and Revisions: This Chapter has 13 Sections including section “196-J Definitions” that contains definitions of terms used in the chapter. Changes need to be made to make these provisions compliant with RKC standards. A brief account of such recommendations is provided below.

- A provision should be added in the chapter to ensure that in a situation where a person or entity is aggrieved by the decision of the adjudicating authority, the initial recourse should be to appeal to a supervisory officer, to the head of the local Customs office, or to the Regional office (General Annex 10.4).
- A provision should also be added in the chapter to provide the time frame within which any party can obtain decisions of the Appellate body (General Annex 10.3).
- A provision should be added under section 193 stating that all orders made by the Customs must inform the appellant of his right to further appeal against the order and specify the time limit for lodgment of any such appeals (General Annex 10.11).
- Provisions should be added in Sections 193, 194 and 196 to provide the timeframe for implementation of the order of the appellate body (General Annex 10.12).
- A provision should be added in the chapter to provide guidelines for filing an appeal (General Annex 10.9).
- In matters where an appeal or some other statutory remedy is not provided, a new forum of “departmental appeal/revision” should be created by providing that such orders shall be appealable before the Collector of Customs (Appeals)/Chief Collector Customs having jurisdiction (General Annex 9.8).
- FBR/Customs should set up contact points in each office for receiving requests from interested persons regarding pendency or delay in the implementation of decisions in appeals and for responding to or get these disposed by concerned authorities (General Annex 9.8).

- A new revision procedure should be created. The new procedure should subject a decision of an officer up to the rank of Additional Collector to revision by an officer having the rank of Collector in the same Model Collectorate of Customs. Similarly, an order (or a failure to provide an order) by a Collector of Customs should be made subject to revision by the concerned Chief Collector (General Annex 10.2).

Chapter XX (Miscellaneous): This Chapter of the Customs Act has 28 sections that deal with miscellaneous issues not specified elsewhere in the Customs Act. The RKC Gap Analysis has identified sections that are not compliant and recommendations to ensure compliance are discussed below.

- The term “declarant” should be defined and substituted, *wherever appropriate*, with the terms “owner” or “importer” throughout the Customs Act, including in section 198 (General Annex 3.9).
- Section 198 should be modified for joint examinations to meet the requirements of Standards 3.33 and 3.34 as provided against section 79 of the Act (General Annex 3.35).
- Section 199(1) should be amended to reflect the requirements of Standard 3.38 to ensure that the sample is as small as possible and taken only to determine classification and value (General Annex 3.38).
- Sections 199 and 200 of the Customs Act should be amended to comply with the requirement of standards 3.36 and 3.37 so that the declarant should be present at the time of examination on his own request or on the request of the Customs (General Annex 3.36 and 3.37).
- Section 202 of the Act should be modified to specify a three year limitation within which Customs must initiate legal action to collect unpaid duties and taxes. There should, however, be a proviso as indicated in the Guidelines, expanding this limitation to five years if non-payment is the result of criminal conduct, fraud or deliberate misrepresentation, or connivance with Customs. These limitation periods align with those provided in Section 32(2) and (3) for intentional and inadvertent misstatements (General Annex 4.10).
- Section 208 of the Act 1969 should be amended to include a new sub-section, 208(3), providing that Customs shall not discriminate in favor or against a principal acting directly without an agent (General Annex 8.3).
- A new provision, 211B, should be added to the Act, requiring traders conducting a certain volume of trade each year to maintain an accounting system in compliance with requirements set by the Customs Rules (General Annex 6.10).
- A new provision, 211C, should be added to the Act, authorizing Customs to audit the accounting systems of traders, as required under Section 211B (General Annex 6.10).
- The phrase “in the context of a specific case” should be inserted at the end of the proviso to Section 223 which forbids FBR/ Customs to issue orders with regard the quasi-judicial functions of Customs officers (General Annex 3.43).

B. New Provisions to be Introduced

Tasks undertaken by customs administrations include control of conveyance and goods, clearance of import/export and transit cargo, entry and exit of travelers and clearance of their accompanied/unaccompanied baggage, prevention of smuggling, regulation of customs exemptions, warehousing, valuation of goods, regulation of tariff quotas, and ensuring compliance with other relevant national laws pertaining to the import/export and transit of goods among other tasks.

It would therefore be appropriate to have provisions pertaining to Rules of Origin, Inward Processing and Outward Processing in this chapter as sub-chapters.

The quality of service delivery varies in each country, depending on its level of development, technical expertise, availability of trained human resources, and the use of information technology. With the enhanced movement of goods, RKC emphasizes the importance of trade facilitation measures that are required to expedite customs clearance procedures.

In addition to specifying standards that aim to achieve greater trade facilitation, RKC has also introduced new provisions that help member countries increase their trade, reduce the cost of doing business, become an efficient part of the international value chains of various products, and, consequently, make their national products more competitive in the world market. If these provisions are incorporated effectively in the Customs Law and Rules of Pakistan, they could help it achieve greater trade facilitation. At this point, however, these new provisions have only been included in the Rules and Law arbitrarily, thereby still rendering several elements of the Law non-compliant with RKC standards.

The new provisions are:

- 1) Availability of information to all stakeholders in print and electronically on the FBR website
- 2) International Transit
- 3) National Transit
- 4) Transshipment
- 5) Inward processing/Outward processing
- 6) Compliance Risk Management
- 7) Authorized Persons/Authorized Economic Operators
- 8) Advance rulings on classification, valuation, concessions in duties and taxes
- 9) Rules of Origin
- 10) Single Window
- 11) Structured Consultations with Trade and third parties seeking comments.
- 12) Customs Cooperation

The Gap Analysis has revealed that there are limited RKC provisions that have been addressed in the Customs Act or the Rules. Even these limited provisions have not been provided in a well-defined and structured manner as per the requirements of the RKC standards. New legislation has to be introduced to ensure compliance with the concepts. Consequently, new rules, procedures, forms, IT applications, and computer programs will also be needed to meet RKC requirements.

The new provisions are discussed below:

Availability of information to stakeholders in print and electronically on the FBR website

FBR is responsible for publishing the updated Customs Act, the rules made thereunder, SROs, and the Customs General Orders. It also updates them periodically when a new rule, procedure or amendment is made to the Customs Act or the Customs Rules. All changes are incorporated in laws and procedures on the same day, shared on the FBR/Customs website, and communicated to all field

offices. However, this still leaves a large number of stakeholders who do not get immediate access to these amendments.

The following measures need to be taken to ensure availability of information to all stakeholders and compliance with RKC requirements:

- A computer program needs to be developed by PRAL to make it easy for individuals to access all provisions of the Customs Act, Rules and Tariff, and other related material through a word/subject/ section/rule search.
- All material should also be available for sale in hard and soft copy, both (General Annex standard 4.4 and Chapter 9).
- There needs to be a search engine developed for the FBR/Customs portal which should facilitate stakeholders in their search for various subjects, for example, valuation, appeal, and exemption for all goods.
- With increasing trade volume and participation by a greater number of people and organizations, particularly SMEs, in international trade, there is an emerging need to provide information over the internet. WCO and other trade organizations have therefore been emphasizing the need for relevant information to be disseminated efficiently. RKC General Annex Chapter 9 exclusively deals with this concern and through its standards, makes it obligatory for member countries to provide information, decisions and rulings on customs related matters. To ensure compliance, it is required that member countries appoint inquiry points at each customs administration office to respond to stakeholder queries and provide guidance.

The RKC Gap Analysis has revealed that although such enquiry points have been partially established, they are yet to be made functional and capable to respond to queries within a reasonable time, depending on the nature of information sought. To ensure that no unauthorized information is shared publicly, FBR may develop a mechanism to monitor responses published on the FBR website (General Annex Chapter 9).

- The measures described above should be mandatory; this will require that the Customs Act be amended.

International Transit, National Transit and Transshipment³

Section 121 of the Customs Act partially meets the requirements of RKC standards. It has a provision for national transit and transshipment as provided under chapter 2 of Specific Annex E.

The first and second chapters of Specific Annex E pertain, respectively to transit and transshipment.

According to the RKC, Customs should allow goods to be transported under Customs transit in their territory:

- a) From an office of entry to an office of exit (International Transit)
- b) From an office of entry to an inland Customs office (National Transit)
- c) From an inland Customs office to an office of exit (National Transit)
- d) From an Inland Customs office to another inland Customs office (National Transit)

Pakistan is compliant with (a) and (b) above, although (b) is misnamed “transshipment” instead of “national transit” by the Customs Act.

To ensure compliance, customs transit can be dealt with either as an individual subject where international transit and national transit are addressed collectively in the same chapter with (c) and (d) above also included in it, or, international transit as provided under (a) above can be dealt with

³ International transit, national transit and transshipment have been discussed collectively. This is because RKC provisions deal with international and national transit together, and Pakistan uses the term ‘national transit’ instead of ‘transshipment’.

separately. In case of the latter, the Transit Rules (applicable only to Afghanistan under APTTA, 2010 agreement) can be supplemented with a set of general transit rules for other landlocked countries such as the Central Asian Republics.

Currently, there are no rules allowing transit to CARs through Pakistan and also no provisions in the Act or in the Rules for allowing goods to move in Transit through Afghanistan to CARs. Consequently, despite the immense potential of trade between Pakistan and CARs, the absence of a coherent transit policy restricts transit from Pakistan to CARs through Afghanistan.

Additionally, there is no specific provision in the Act/Imports and Exports (Control) Act or in the rules to include (c) and (d) above. It is therefore recommended that:

- 1) The definitions of the above terms should be recast in Section 2 of the Customs Act to clearly distinguish “Transshipment” from “National Transit.”
- 2) International transit, national transit (including (c) and (d) above) should be addressed in separate sub-chapters to avoid any ambiguity. However, they should be termed as “transit” in compliance with RKC standards, guidelines and other international best practices.
- 3) Detailed rules should be drafted for national transit and international transit, ideally in a separate procedure manual.

Section 121 of the Act covers “transshipment” (as provided under chapter 2 of Specific Annex E), and the Preventive Service Manual details its procedure. As explained in the gap analysis:

Chapter X of the Preventive Service Manual provides that after the payment of the transshipment fee leviable under Section 133 of the Sea Customs Act, the Superintendent Export Section shall sign the “Let Transship” order on all the copies of the transship permit, and hand over the duplicate and triplicate copies to the owner or agent as the case may be as authority to proceed with the goods.

- 4) The provisions on transshipment in the Preventive Service Manual are, however, not supported by any provision in the Act or the Customs Rules. There is, therefore, a need to provide a separate chapter on transshipment as provided in RKC.
- 5) There should also be separate rules for transshipment and the Preventive Service Manual needs to be re-cast accordingly.
- 6) At present, there is no provision in the Act or in the Customs Rules pertaining to less than container load (LCL) goods, for consignments coming from various countries to go to other countries, including Afghanistan. When framing the rules for transshipment, LCL cargo and its handling in Pakistan should be taken into account through consultation with the Pakistan Ship’s Agents Association and the Pakistan International Freight Forwarders Association.

Inward Processing/Outward Processing

Inward processing. The Customs procedure for inward processing provides for conditional relief from import duties and taxes for goods that are to be exported after having undergone specified manufacturing, processing, or repair. The main purpose of the inward processing procedure is to make it possible for national enterprises to offer their products and services to foreign markets at competitive prices, thereby facilitating trade.

The RKC Gap Analysis has revealed that the Customs Act provides conditional exemption of customs duty and sales tax on temporary imports for re-export after some processing (SRO 492(I) 2009, date 13 June 2009: Chapter XII Exports, subchapter 7, Duty and Tax Remission for Exports (DTRE), of Customs Rules 2001).

Outward processing. Outward processing provides for total or partial exemption from import duties and taxes on goods that are obtained by manufacturing, processing or repair of temporarily exported

goods, and are declared for home use. The term “processing” in this context may include repairs, packing, or repacking of goods, in addition to manufacturing and processing operations included in the definition of outward processing.

There is no procedure in the Customs Act or Rules in which “exportation” of goods is allowed for processing outside the country and their subsequent re-importation, i.e. Outward Processing. The only regulation allowing some specific exports for re-import is in Section 8 of the “Export Policy Order (EPO) SRO 192 (I), 8th March, 2013.”

8. Export cum Import:

(1) Imported items may be exported for the purposes of repairs, replacement, or refilling of cylinders and ISO tanks

(5) The temporary export-cum-re-import of products shall be allowed for participation in foreign exhibitions and fairs, and also for carrying out tests or certain other processes, for which the facilities are not available in the country against a submission of indemnity bond or undertaking to Customs Authorities.

There is, however, no procedure prescribed in the Customs Act or Customs Rules. This provision also covers inward processing partially.

- a) Export Policy Order (EPO) SRO 192 (I), 8th March, 2013 should be expanded to cover all goods and commodities to be temporarily exported and re-imported after some processing including repairs.
- b) There is a need to include the terms “Inward and Outward Processing” in the Import Policy Order and Export Policy Order.
- c) The terms “Inward Processing” and “Outward Processing” should be defined in Section 2 of the Customs Act.
- d) A new chapter should be added to the Act after chapter XIV and should have two sub-chapters dealing with:
 - o Inward Processing
 - o Outward processing

This chapter should explain the processes as described in chapters 1 & 2 of Specific Annex F.

- e) Detailed Rules also need to be issued in this regard as provided in RKC and as recommended in the Gap Analysis.

Compliance Risk Management

A Directorate of Risk Management has been established by FBR. It is still, however, in its nascent stages and is not fully functional due to a lack of adequate technical support staff and trained manpower to review the strategy, process, results, detailed risk profiles based on PCA, intelligence, and valuation. The existing system is using low end risk profiling, and there is a need to draft a new Compliance Risk Management module for WeBOC.

The following measures can be taken to ensure compliance:

- The Directorate General of Risk Management should be provided support staff and other technical resources for development of a business process that enables it to assess and manage risks and construct a strategy for monitoring these risks on a continuous basis. In this regard, a detailed Compliance Risk Management Roadmap is being provided to FBR by the USAID Trade Project.
- Developing an efficient risk management process will require programming and writing several modules in the WeBOC system (PCA, valuation, intelligence from DG I&I) along with rules on which they are to be based. Such a process can be developed with the help of specialized skills, knowledge, and training in Risk Management, over a period of three to five

years as a sustainable, automated system based on WCO guidelines i.e. the Risk Management Compendium (volumes I and II). Pakistan Customs and PRAL currently do not have the requisite skills and expertise needed to develop a sound risk management procedure, and, for this purpose, it is suggested that FBR seek support of donor agencies.

- To establish a risk management system, the administrative setup of FBR will also need to be re-structured and re-engineered since the Directorate General of Risk Management has to be the coordinating and supervisory authority. It will have to collect information about various other Directorates and the DG Risk Management will have to function at the same level as a Member of the FBR (General Annex, standard 6.5, Risk Management Compendium & SAFE Framework).
- Changes will also need to be made to the Customs Act. Since currently there is only one section on the Directorate General of Risk Management (section 3BBB), a new section will have to be added to include the risk management process, powers of the Directorate General of Risk Management and a lucid definition of the term “risk management.” A detailed report on the WCO compendium has been prepared by the Trade Project in this regard.

Authorized Persons (Authorized Economic Operators)

RKC Transitional Standard 3.32 and Article 7.7 of ATF provide additional trade facilitation to authorized persons who meet the criteria specified by the Customs, including having an appropriate record of compliance with Customs requirements and a satisfactory system for managing their commercial records.

RKC standard specifically provides the following facilities:

1. Release of goods on the provision of minimum information necessary to identify goods and permit subsequent completion of the final goods declaration.
2. Clearance of goods at the declarant’s premises or at another place authorized by the Customs.
3. Allowing a single goods declaration for all imports or exports in a given period where goods are imported or exported frequently by the same person.
4. Use of the authorized person’s commercial records to self-assess their duty and tax liability and, where appropriate, to ensure compliance with other Customs requirements Allowing the lodgement of the goods declaration by means of an entry in the records of the authorized person to be supported subsequently by a supplementary goods declaration.

To ensure compliance, the following measures need to be taken:

- The Customs Act should be amended to specify the basic criteria that an economic operator must meet to become an “authorized person”, in line with the RKC standard.
- The Customs Act shall provide for each of the specified facilitative procedures (applicable to both exports and imports), which will be available to an authorized person as mentioned above.
- The Customs Rules shall specify an application process that an authorized person shall use to prove that it meets the “authorized person” criteria (General Annex Standard 3.32).
- Pakistan does not have an authorized person scheme at present. To establish such a system Customs should consider seeking technical assistance to provide the expertise, resources and understanding of best practice in this regard.

Advance Rulings on Classification, Valuation, Concessions in Duties and Taxes

Standard 9.9 of the General Annex requires that ‘the Customs shall issue binding rulings at the request of the interested person, provided that the Customs have all the information they deem necessary.’ This provision also appears as Article 3 in the ATF. RKC Guidelines to this standard explain the following elements of this standard:

1. Sampling of goods
2. Notification of binding rulings

3. Time limits for validity of rulings
4. Use of binding rulings
5. Annulment of binding ruling
6. Scope of binding rulings

Advance Ruling is defined in the Customs Act, Section 2(ai) and is restricted to the classification of goods only. It is managed through a classification committee setup by the board and authorized to issue advanced rulings. Advance rulings are, however, restricted to a particular classification whereas, RKC provides for advance rulings on classification, valuation, origin, concessions to products, and processes, and on any other aspect of Customs that the Customs administration may allow in addition to the above (General Annex, standard 9.9).

Rules of Origin

With the growing trend of bilateral and regional free and preferential trade agreements, the importance of Rules of Origin has increased manifold. Pakistan has entered into Free Trade Agreements with Iran, Malaysia, China, Sri Lanka and SAFTA. The clearance of import goods, on which concessions have been accorded to the above countries, is governed by specific Rules of Origin provided in the FTAs.

In the RKC Specific Annex K, the following have been discussed:

1. Rules of Origin
2. Documentary Evidence of Origin
3. Control of Documentary Evidence of Origin.

The current Rules of Origin were formulated and issued by the Ministry of Commerce on February 27, 1973. The RKC Gap Analysis of the Rules reveals that:

- Neither the Act nor the Customs Rules or the Import Policy Order provides a definition of the term "Rules of Origin." These Rules are outdated and need to be issued afresh, based on the WTO Agreement on Rules of Origin (January 1, 1995), Specific Annex K of RKC and the Hand Book on Rules of Origin issued by WCO. This should be made a part of the next Import Policy Order and the definitions should also be provided in the Imports and Exports (Control) Act 1950 (Specific Annex K, Chapter 1).
- Pakistan's customs regime appears to be only in partial compliance with the standards and recommended practices of Annex K. The Customs Act, therefore also needs to be amended to include the provisions of the WTO Agreement and the Rules of Origin Hand Book developed by the WCO. There should be a separate chapter for Rules of Origin and definitions should also be added to section 2 of the Customs Act (Specific Annex K, Chapter 1 Standards 1-13).

Single Business Window

Pakistan Customs is in the process of establishing a National Single Business Window. It may, however, take up to several years for a fully computerized Single Business Window to be developed and will require assistance from donor agencies in the form of necessary technical expertise and infrastructure. The USAID Trade Project has prepared detailed guidelines for this purpose.

The guidelines to RKC for chapter 7 of General Annex mention the establishment of a Single Window for communication with other government agencies and private stakeholders. WCO has developed a two volume Single Business Window compendium and WTO has also included a section on Single Window in the Agreement on Trade Facilitation (section 10.4 of the WTO Agreement on Trade Facilitation - General Annex standards 3.11 and 7.4).

Consultations with Trade and Third Parties

The RKC requires that the Trade and third parties be consulted on various customs matters. In particular, the RKC requires that Customs actively seek comments on customs operations through the establishment of standing consultative committees in all customs houses. The RKC also requires that Customs seek comments from the Trade on proposed new provisions and other amendments in customs legislation, rules, procedures, forms, fees, and charges before any such changes are implemented.

Both the RKC and ATF have especially emphasized the importance of developing a relationship between Customs administrations and traders (including importers, exporters, freight forwarders, shippers, Customs brokers/agents, warehouse owners and shipping companies).

RKC General Annex standard 6.8 (Customs to conclude MOU with the Trade), standard 6.10 (evaluation of traders' commercial systems), standard 7.3 (consultation with relevant parties on introduction of Information Technology), standard 8.5 (formal consultations with the traders), standard 9.2 (revised information be made available to the traders) and standard 9.6 (protection of confidential information about third parties) are trade facilitation measures identified by WCO.

WTO, in its ATF, further strengthened trade facilitation measures through Article 2 which requires Member countries to provide opportunities to traders to comment on the proposed measures and also makes it obligatory to provide information about changes in laws and procedures to stakeholders before entry into force of any new measure or amendments in existing provisions.

There is no provision in the Pakistan law that requires the FBR/Customs and the MOC to provide an "opportunity to comment" or provide information on any legislation, subordinate legislation or rules and procedures, "before its entry into force."

Occasionally, some businessmen, important associations, Chambers, and FPCCI are provided an opportunity to comment on proposals. Trade is also approached by FBR for suggestions almost six months before the annual national budget. These suggestions are taken into consideration and, where possible, adopted by FBR/Customs. It is important to note, however, that no formal or structured arrangement exists for such consultations with the trade sector or industry in any sector.

The RKC Gap Analysis has recommended that in order to be fully compliant with the aforementioned RKC standards, new provisions should be added to the Customs Act to meet the requirements of all RKC standards (General Annex Standards 6.8; 6.10; 7.3; 8.5; 9.2 and 9.6).

Cooperation with Customs

As a trade facilitation measure, RKC standards 3.3, 3.4 and 3.5 correlate business hours and competence of customs offices at border posts, operate joint controls wherever possible and consult with neighboring countries to facilitate Customs controls.

Pakistan has entered into agreements with neighboring countries for "customs to customs" cooperation. However, a lot more still needs to be done in consultation with relevant GoP ministries in the light of Pakistan's international commitments and the WTO Agreement on Trade Facilitation. Article 12 of the WTO Trade Facilitation Agreement is very comprehensive, and compliance with the article would require an addition of a new chapter to the Customs Act.

In the near term, FBR shall initiate consultations with MoC with a view to opening discussions with Iran, China Afghanistan and India. Reference should be made to the requirements of Standard 3.5 (General Annex Standard 3.3; 3.4; and 3.5).

Chapter 2: New Customs Rules

Section 219 of the Customs Act empowers FBR/Customs to make rules for implementing the Customs Act, subject to the condition that these rules are within the bounds of section 219 and the third schedule of the Act. FBR/Customs has, therefore, been formulating and publishing various rules regularly. These Rules were notified under SRO numbers assigned to them by the government of Pakistan printing press, in numerical order starting from January 1 of a given year. In 2001, the rules were consolidated and notified as Customs Rules 2001 vide SRO 450 (I)/2001 dated June 18, 2001. They are divided subject wise into 25 chapters, such as prior release of goods, valuation procedures, recovery of arrears, exports, and duty drawback.

RKC Gap Analysis

Current Customs Rules: During the RKC Gap Analysis study, the current Customs Rules, procedures, and practices were also reviewed in addition to the Customs Law to determine compliance. The Gap Analysis has revealed several inconsistencies between the Rules and RKC provisions and has recommended amendments in the Rules along with addition of new provisions, to make the Rules compliant. All amendments/additions have been identified and discussed below with reference to specific sub-chapters of the Customs Rules, clearly indicating what amendments/additions are to be made and in which chapter of the Rules.

Formulation of Customs Rules on New Provisions: The Gap Analysis also revealed that both the RKC and the WTO's ATF require a number of customs provisions designed to promote trade facilitation. Pakistan's current Customs Act, however, does not contain provisions that reflect these requirements. All new provisions have been identified and analyzed in Section B of Chapter 1 of this report. It has been pointed out here that, in addition to the provisions in the Customs Act on these new concepts, corresponding Customs Rules will also have to be formulated, based on WCO Guidelines and compendiums on respective subjects. These new rules will translate into new chapters or sub-chapters of existing Customs Rules, which will in turn add clarity to the rules and procedures.

The following changes are suggested:

Baggage Rules (Chapter 2 of the Customs Rules 2001)

The review of the Baggage Rules has revealed that the following elements should be incorporated in the Rules to make them compliant with RKC standards.

- FBR may consider revising the list provided in rule 6 of the Baggage Rules, 2006, to include all items therein, or their latest substitutes, in line with RKC provisions as contained in RKC excluding spirits and wines (Specific Annex J, Chapter 1, standard 20).
- In cases where at some stage, a cash security is required in the Customs regulations for temporary admission of goods, the refund of cash so deposited may be permitted even if the re-export takes place from a Customs office other than the one from which the goods were temporarily admitted (Specific Annex J, Chapter 1, standard 37).

Prior Release of Consignments (Chapter 4 of the Custom Rules 2001)

RKC standards require that Customs should introduce provisions providing for clearance of notified import/export of goods on priority as a trade facilitation measure. Pakistan Customs has provisions pertaining to this particular RKC requirement but some elements are non-complaint. The following changes are suggested:

- The definition of "urgent consignment" in Rule(1)(iv) should be substantially expanded to identify a large number of other goods that currently are subject to discretionary approval under item (g); for example, fresh fruit, flowers and vegetables, fresh and frozen meat and fish, milk products, and other perishable food products. (General Annex, standard 3.34)
- A notification, SRO 487(I)/2003, prescribes who the appropriate officer is under various sections of the Act. These rules should also be added to this notification so that the Principal

Appraiser and Assistant Collector of Customs are designated as appropriate officers. The scope of this notification should be practically extended to rules, as this provision is already provided in section 2(b) of the Act. (General Annex, standard 3.34)

Temporary Importation of Vehicles (Chapter 6 of the Custom Rules 2001)

As a facilitation measure, RKC standards require that replacement parts of a means of transport temporarily imported shall be granted temporary admission. The relevant rule shall be amended to make the Rules compliant with this standard. Rule 77 of the Customs Rules, 2001, may be modified to provide that any replacement parts required for the repair of a means of transport for private use temporarily in the country shall be granted temporary admission, if they are not available at the place where repairs are to take place. (Specific Annex J, chapter 1, standard 30)

Recovery of Arrears (Chapter 11 of the Custom Rules 2001)

Revenue collection by Customs faces several challenges including the recovery of arrears. Pakistan Customs has developed and notified Rules on the subject. Section 202 of the Customs Act and Rule 139 of the Customs Rules should be modified to specify a three year limitation within which Customs must initiate legal action to collect unpaid duties and taxes.

- There should, however, be a provision – as indicated in the Guidelines – for expanding this limitation to five years if non-payment is fraudulent or the result of criminal conduct (General Annex, standard 4.10).

Duty Drawback/Claim payment (Sub-chapter 2 of Chapter 12 of The Custom Rules 2001)

Chapter 11 of the Customs Rule contains duty drawback rules specifying the procedure for claiming repayments. The following changes should be made in the Customs Rules on duty drawback.

- FBR/Customs may consider doing away with the requirement of Bank Credit Advice in consultation with the MoC and SBP from exporters who claim duty drawback/refund of taxes. (Specific Annex C, chapter 1, standard 3)
- A provision should be added to Section 37 authorizing drawback of duties and taxes on imported goods that have been replaced by “equivalent goods” used in the production of exported goods. The procedure for the implementation of the drawback on such equivalent goods should be included in sub-chapter 2 of Chapter XII of the Rules. Equivalent goods should be defined in section 2 of the Act. (Specific Annex F, chapter 3, standard 3)
- Rule 220(e) should be amended to permit payment of duty drawback on export goods that have yet to be exported but are placed in a Customs warehouse on the condition of subsequent export. (Specific Annex F, chapter 3, standard 9)
- A new provision should be added to the Act to allow for periodic payment of duty drawback to exports from the country. Rules also need to be framed to prescribe risk parameters for such periodic payments. (Specific Annex F, chapter 3, standard 10)

Export Processing Zone (Sub-Chapter 3 of Chapter 12 of the Custom Rules 2001)

Sub Chapter 3 (Export Processing Zone) of Chapter 12 (Exports) has prescribed Customs rules that have been notified as part of the Customs Rules, 2001. The following amendment should be made to the Rules.

- The manufacturing processes should also be included in the Export Processing Zones Authority Ordinance rules issued under S.R.O. 1058(1)/81, the Customs Export Processing rules issued under SRO 249(I)81 dated March 21, 1981 and in the authority granted to the enterprises carrying out these operations. (Annex D, Chapter 2, Standard 11 and 12)
- The ordinance and the rules mentioned above should be amended by incorporating the various types of goods that are allowed into the zones, as discussed below.
 - In the existing rules there is no mention of office stores, equipment, food, and beverages

- Vehicles required for use within the zone for carrying goods and the workers inside the zone are also not specifically mentioned in the rules. (Annex D, Chapter 2, Standard 13)
- Section 131 and Rule 228 should be amended so that the goods on export from the free zone do not require filing of a GD for export. (Annex D, Chapter 2, Standard 18)
- The Customs Rules as well as the Export Processing Zone Authority Rules should be modified, to provide a specific Clause/Rule that in the event of the closure of a Free Zone the persons concerned should have sufficient time to move their goods to another free Zone or to place them under another Customs procedure. (Annex D, Chapter 2, Standard 21)

Duty and Tax Remission for Exports (Sub-Chapter 7 of Chapter 12 of the Custom Rules 2001)

These rules are notified under sub-chapter 5 of Chapter 12 of the Customs Rules. They provide remission of duty on goods used in the manufacture of products for subsequent exports. The following changes shall be made in the rules.

- According to the proviso to the rule 305, an extension can be allowed only at the level of FBR/Customs. This power should be granted to the Regulatory Collector under rule 305 (Specific Annex F, chapter 1, standard 16).
- Rule 307A should be modified to provide for transfer of goods imported for inward processing under remission of duties and taxes to a third person who accepts all the liabilities and obligations under the law (Specific Annex F, chapter 1, standard 17).

Deferment of Duties (Chapter 13 of the Customs Rules 2001)

Chapter 13 of the Customs Rules contains provisions on deferred payment of duty on machinery and ships for scrapping. RKC standard 4.15 requirements are not met in these provisions. The following amendments should be made.

- Internal inconsistencies and the definitions in the Rules need to be clarified, as does the inconsistency between Rule 317 and Section 21A (2) of the Customs Act. For example, the delay in repayments is subject to the payment of the current KIBOR, however, at any given time there is more than one KIBOR rate and it is not clear which rate will apply (General Annex Standard 4.15).
- Rules 322 -324 should clearly state that the surcharge required to be paid under 21A (2) should not apply for the first 60 days of the deferred period (General Annex Standard 4.15).
- Rule 317 should be modified to provide for a 15 or 30 day interest free period on the deferred amount (General Annex Standard 4.16).

Transit and Transshipment of Goods (Chapters XXV and XIV of the Custom Rules 2001)

Chapter XXV of the Customs Rules contains rules on the movement of Afghan transit cargo from the port of entry (Karachi) to the point of exit. Rules 598 to 652 are very comprehensive and are formulated in pursuance of Afghanistan-Pakistan Transit Trade Agreement. Some provisions of these rules, however, are not compliant with RKC standards. The following amendments should be made.

- Customs should formally review the necessity of routes already designated and issue a new Customs Rule setting out the criteria for determining the location of routes. (Specific Annex A, Chapter 1, Standard 3)
- FBR may consult stakeholders to evaluate the necessity for meeting the requirements of the standards and to amend rule 603 to provide for change in destination, subject to the conditions prescribed in RKC. (Specific Annex E, Chapter 1, Standard 19)
- The time limit for completing Customs transit in Pakistan, for each route should be prescribed for permitted routes under Protocol Three of APTTA, 2010. (Specific Annex E, Chapter 1, Standard 25)

There are separate chapters on Transit and transshipment in the Customs Act and the Customs Rules. The RKC Gap Analysis has revealed that the Pakistan Customs Act is not fully consistent with RKC definitions and the following changes are recommended.

- The definitions of Transshipment and Transit in Section 2 of the Customs Act and other related terms should be aligned with the RKC definitions of those terms. Definitions should also be clarified in the rules for the four modes of movement of goods as provided in Chapter 1 of Specific Annex E and in Chapter 2 of Specific Annex E. (Specific Annex E, Chapter 1, Standard 2)
- Chapters on Transshipment (Chapter XII) and transit (Chapter XIII) in the Act should be re-written entirely, based on RKC standards. (Specific Annex E, Chapter 1, Standard 2)
- There should be separate rules for international transit to Central Asian Republics (CARs). There are no existing rules or chapters in the Act for CARs specifically.
- There should also be separate rules for Transshipment as described in Specific Annex E, chapter 2. (Specific Annex E chapters 1 and 2).

Warehousing procedure (Chapter 15 of The Custom Rules 2001)

Chapter 1 of Specific Annex D and chapter 11 of the Customs Act address the topic of Warehousing. The RKC Gap Analysis has revealed that Pakistan Customs act meets some requirements of RKC standards but is not fully compliant. The following changes should be made to the Rules.

- All provisions requiring a security to be posted with Customs should clearly specify the method Customs would apply to calculate the value of the security. In particular, Sections 102 and 121 of the Customs Act and Customs Rule 343(f) need to be amended. (General Annex Standard 5.2)
- The existing provisions of the Act and warehousing rules should be amended to provide for the storage of dangerous goods such as volatile products, explosives, hazardous goods, radioactive material, and those dangerous to public health. This however, would only apply to warehouses that have special arrangement for the storage of such goods, as per the related laws such as the Explosives Act and the Petroleum Act. (Specific Annex D, Chapter 1, Standard 5)

Recommendations for Customs Rules/Customs General Order

In addition to the recommendations made above that require amendments in the Customs Rules already notified, some changes have been recommended for other rules and the Customs General Order. They are discussed below.

- All Customs Rules should be reviewed to align them with the definitions provided in the Act (General Annex Standard 3.6).
- New Customs Rules should be developed and promulgated to specify the conditions under which the rights of examination and sampling may be exercised by importers/exporters/agents of transit goods/declarant. It is suggested that detailed Rules be prescribed for the drawing of samples, their custody, the ownership and the period of validity of the test reports in various cases (General Annex Standard 3.9 and 3.38).
- The Customs Rules should specify an application process that an economic operator is to use to prove that the person or the entity meets the “authorized person” criteria as prescribed by RKC standards/guidelines (General Annex Standard 3.32).
- Customs Rules should be amended to refer to the Treasury Rules authorizing the National Bank of Pakistan (NBP) to collect duties and taxes and provide an updated list of NBP branches where payment can be made (General Annex Standard 4.8).
- FBR/Customs may seek to further cooperate with the trading community by concluding Memoranda of Understanding on cooperation for enhancing Customs control. A roadmap should be developed to identify the scope, steps, activities and tasks and their expected benefits to the business community and Customs. New rules should prescribe a sample MOU

template for Customs and other stakeholders in the public and private sectors (General Annex Standard 6.8).

- If the recommendation to define “Customs practitioners” is agreed upon, the Customs General Order 12/2002 (the CGO) may also be modified by adding a general order for regulating the conduct of business by a Customs practitioner (General Annex Standard 8.2).
- A provision should be added to the Customs Act requiring Customs to provide information relating to the specific matters raised by an interested person within a stated period. A Customs General Order should be issued to set out Standard Operating Procedures (SOP) for officers to respond to public requests for Customs-related information promptly, to provide accurate information and to ensure compliance with the provisions of the Freedom of Information Ordinance, 2002 (General Annex Standard 9.4 and General Annex Standard 9.5).
- It is recommended that the CGO 12/2002 be amended, or a new CGO issued, adding an Order providing for the following actions; the Printing and Publication Section of Customs in FBR to publish, in adequate numbers, all customs legislation (Customs Act, 1969 and subordinate legislation, i.e. Notifications and Rules), administrative guidelines, procedures and practices (General Annex Standard 9.1).
- The Customs General Order should also require Customs to publish responses and monitor the performance of responses. Customs officials should also be trained to develop their communications skills and customer service (General Annex Standard 9.4 and General Annex Standard 9.5).
- Chapter II of the Customs General Order 12 of 2002 should be amended to provide for binding rulings on valuation, classification, origin, Customs concessions and exemptions (General Annex Standard 9.9).
- FBR/Customs should issue a Customs General Order specifying the number of days (for instance within fifteen days) in which an order for grant of remission of duties and taxes, grant of license for Customs House Agent, for Bonded Transport, for Bonded Warehouse, or similar other matters should be passed (General Annex Standard 10.2).
- The Customs Rules should be modified to provide that “temporary admission” may also be granted in case of goods already placed in another Customs procedure such as Customs bonded warehouses (Specific Annex G, Chapter 1, Standard 4).
- The Customs Rules should be modified to provide that goods granted “temporary admission” may be allowed specifically to undergo operations for their preservation during their stay in the Customs territory (Specific Annex G, Chapter 1, Standard 6).
- The Customs Rules should be modified to provide that where goods have been temporarily admitted, the declarant can transfer the goods to another person, with the approval of Customs, provided the transferee formally assumes the obligations of the initial declarant (Specific Annex G, Chapter 1, Standard 16).
- The Customs Act (section 179, 180) should be amended to include summary adjudication proceedings. This will also require formulation of detailed rules for the application of such proceedings enunciated in the RKC standards. The only exception to this could be that Customs have some specific information or suspect foul play. An example of this is the entry of stolen vehicles into Pakistan from other countries (Specific Annex J, Chapter 1, Standard 4).
- A new provision should be added to the Customs Act that explicitly exempts stores on ships, trains, aircrafts, passengers, and buses from duties and taxes as required by Standard 4 of Chapter 4 of Annex J. This is somewhat of an urgent matter as it is likely that an international train will begin operating in Pakistan in the near future.
- A new rule should be framed for clearance of relief goods. The provision of this standard should be made a part of the rule regarding relief goods being cleared on priority. A module may be introduced in the WeBOC system for this purpose (Specific Annex J, Chapter 5, Standard 2).

- FBR/Customs should note Standard 1.2 of the General Annex and provide in the Act and Rules simplified conditions to be fulfilled and formalities to be accomplished for Relief consignments. In line with Article 2 of the Convention, FBR/Customs should grant greater facilities than those provided for in this standard considering the humanitarian and urgent nature of such goods and consignments (Specific Annex J, Chapter 5, Standard 3).
- The Customs Act and Rules should clearly provide for exemption of all relief goods as defined in this Chapter and stated below.
 - Goods, including vehicles and other means of transport, food items, medicaments, clothing, blankets, tents, prefabricated houses, water purifying and water storage items, or other goods of prime necessity, forwarded as aid to those affected by disaster; and
 - All equipment, vehicles and other means of transport, specially trained animals, provisions, supplies, personal effects and other goods required by disaster relief personnel to perform their duties and to support them in living and working in the territory of the disaster throughout the duration of their mission. (Specific Annex J, chapter 5, Standard 6)
- A provision should be added to the Trade Policy 2012-2015 (Import Policy Order) that no import restrictions will be imposed on relief consignments as defined above. (Specific Annex J, Chapter 5, Standard 6)

Chapter 3: Modification of Other Laws as Required by RKC

Amendments in Other Laws

The Customs department is primarily responsible for the implementation and operations of the Customs Act and the procedures made there under. Additionally, it is also responsible to undertake tasks and perform duties that are entrusted to it under other laws of the country. RKC has identified the following laws that contain provisions relevant to the duties of Customs officials.

- Income Tax Ordinance, 2001
 - The Customs, Excise and Sales Tax Appellate Tribunal Procedural Rules, 2006
 - Federal Excise Act, 2005
 - Sales Tax Act, 1990
 - The Federal Board of Revenue Act, 2007
 - The State Bank of Pakistan Act, 1956
 - Controller General of Accounts Ordinance, 2001
 - The Code of Civil Procedure, 1908
 - Civil Establishment Code (ESTA Code)
 - The Constitution of Islamic Republic of Pakistan, 1973
 - Tax Special Procedures Rules, 2007
 - Imports and Exports (Control) Act, 1950
 - Foreign Exchange Regulation Act, 1947
 - Imports and Exports (Control) Act, 1950
 - The Freedom of Information Ordinance, 2002
 - The Federal Board of Revenue Act, 2007
 - Federal Tax Ombudsman Investigation and Disposal of Complaints Regulations, 2001
 - The Establishment of the Office of Federal Tax Ombudsman Ordinance
 - Control of Narcotic Substances Act, 1997
 - Pakistan Animals Quarantine (Import and Export of Animals and Animal Products) Ordinance, 1979
 - The Drugs Act, 1976
 - The Pakistan Plant Quarantine Act, 1976; among others.
-
- The Gap Analysis has identified certain provisions of the above quoted and other laws that are to be amended. Recommendations are discussed below. Sections 80, 131, and 198 of the Customs Act should be modified for joint examinations to meet the requirements of Standards 3.33 and 3.34. Other relevant laws should be similarly modified. These acts include the Control of Narcotic Substances Act, the Pakistan Animals Quarantine (Import and Export of Animals and Animal Products) Ordinance, the Drugs Act and the Pakistan Plant Quarantine Act (General Annex Standard 3.35).
 - FBR/Customs and other concerned agencies should jointly develop a set of procedures governing the timing and conduct of such joint inspections (General Annex Standard 3.35).
 - Section 33 should be amended to require Customs to reach a decision and notify the claimant in writing of that decision within 30 days, after the refund claim is submitted (General Annex Standard 4.21).
 - Adjustments should be made to the Sales Tax Act and the Excise Act for payment of markup @ one week KIBOR plus 3% (General Annex, Standard 4.21).
 - Section 57 of the Sales Tax Act, and Section 44A of the Excise Act shall be amended to add a provision reflecting the above requirement of the standard (General Annex Standard 4.22).
 - Customs should initiate a dialogue with SBP, MoC, and other stake holders for accelerating the process of laying down wider procedural and regulatory framework for using Electronic Commerce (General Annex Standard 7.4).
 - Use electronic commerce techniques (General Annex Standard 7.4).

- Prepare the operative platform for paper less system of goods processing through Customs. (General Annex Standard 7.4)
- Develop authentication techniques/methods of electronic commerce (General Annex Standard 7.4).
- In retail transactions of exports/imports, the procedure relating to customs clearance and value assignment should be reviewed (General Annex Standard 7.4).
- Customs should publish, in adequate numbers, all Customs legislation (Customs Act, 1969 and sub-ordinate legislation, i.e. Notifications and Rules), administrative guidelines, procedures and practices (General Annex Standard 9.1).
- All publications, including G.D forms, should be readily available at all Customs stations and book stalls and also in CD format (General Annex Standard 9.1).
- Since the term “relevant information” includes information on other laws administered by Customs, the relevant laws need to be linked with the FBR/Customs website (General Annex Standard 9.1).
- Information of general interest may also be shared on the website, for example:
 - FBR/Customs annual budget and expenditure
 - Chassis and engine numbers of vehicles cleared by Customs each month for the public and agencies to confirm the legal status of vehicles.
 - Customs-related decisions of the Supreme Court of Pakistan
 - All Classification Rulings of FBR and Classification Committee and similar import related decisions/rulings of Sales tax, Federal Excise Act, Income Tax Act and Imports and Exports Control Act etc. (General Annex Standard 9.1)

Chapter 4: Amendments and Updating Manuals

The Customs department has developed manuals that provide guidelines and working procedures/checklists for various relevant Customs operations for operational staff. These manuals are, however, outdated and need to incorporate the latest changes in the laws, rules, and procedures.

The RKC Gap Analysis has revealed that Pakistan Customs has several manuals, including the Appraisers Manual, Preventive Service Manual, and Valuation Manual, which need to be updated. With the increased use of information technology and the various new and improved provisions introduced by RKC and the Trade Facilitation Agreement, there is now a pressing need for many new manuals to be developed, to address topics such as risk management, inward and outward processing, transshipment, authorized persons (Authorized Economic Operators), international transit, and national transit etc. The following changes are recommended.

- Existing manuals being used by Customs should be modified to account for all the legislative, regulatory, and consequent administrative changes (to meet the requirements of standards 3.6 to 3.9). The existing manuals are outdated and need to be recast entirely, particularly the Appraiser's Manual and the Preventive Service Manual (General Annex Standard 3.9).
- The Customs manuals should be amended to provide more detailed instructions on the subject as per RKC Standards and Guidelines (General Annex Standard 3.33).
- Section 199(1) should be amended to reflect the requirements of the RKC standards. The samples should be small and in compliance with the requirements of classification and valuation only. In addition, the Manual should be amended and made applicable to goods being exported or subject to another customs procedure. The reasons for taking a sample should be explained and detailed rules should be issued to ensure that the power to take samples is not misused (General Annex Standard 3 38).
- The Post Clearance Audit Manual should be updated and upgraded according to RKC Standards and Guidelines (General Annex Standard 6.6).
- The Preventive Service Manual should be updated and rewritten to include provisions of the Customs Act (as amended) and compliant with RKC Standards/Guidelines (Specific Annex J, Chapter 3, Standard 2).
- The Preventive Service Manual should be amended to incorporate a new procedure that covers the requirements of this standard on fixing a time limit for the export of commercial vehicles imported temporarily (Specific Annex J, Chapter 3, Standard 5).
- A new section should be added to the Act in chapter VII to address arrival and departure of conveyance, declaring these stores to be exempt from duties and taxes. This exemption should also be notified and made a part of the Preventive Service Manual (Specific Annex J, Chapter 4, Standard 3).

Chapter 5: Training Modules

Training procedures should also be developed for the capacity building of Customs officials and other stakeholders to increase productivity and efficiency, and reduce the cost of doing business. This includes training on the new Customs Act, Customs Rules and procedures, efficient use of computer technology by officials, capacity building of those involved in developing technical specifications for IT programs and those responsible for managing risk management, valuation, post clearance audit, and single window segments of the computer programs among others. WCO has developed guidelines on various aspects of Customs operations including Training Modules. The RKC Gap Analysis has identified training needs for officials, as briefly discussed below.

- Annual refresher courses should be provided to update knowledge officials on the risk management system and valuation (General Annex Standard 6.3).
- Appropriate training should be provided to audit personnel in relevant techniques, analysis and use of information technology (General Annex Standard 6.6).
- FBR should develop a roadmap towards negotiating such agreements with other customs administrations (General Annex Standard 6.7).
- A roadmap should be developed to identify the scope, steps, activities, tasks, and their expected benefits to the business community and Customs. (General Annex Standard 6.8).
- DG Risk Management should create a Research and Development Cell that could conduct studies for the refinement of risk profiling on a regular basis (General Annex Standard 6.10).
- Confidentiality of information of individuals (legal and natural person) should be protected (General Annex Standard 7.4).
- All staff should be trained on the importance of confidentiality of information and privacy of individuals and organizations. Communication between Customs officials should be monitored and strict administrative action should be taken to penalize disclosure of confidential information. (General Annex Standard 9.6)

Chapter 6: IT modifications

For certain RKC provisions, the Pakistan Customs computerized system (WeBOC) is not compliant. The following changes are recommended.

- WeBOC should be re-programmed to allow for the filing of an incomplete or provisional goods declaration when authorized by the appropriate Customs officer (General Annex Standard 3.13).
- WeBOC should be re-programmed to allow for the filing of a declaration without the supporting documentation when authorized by the appropriate Customs officer (General Annex Standard 3.17).
- The Act (chapter XVIA) should be amended to permit the filing of documents in the WeBOC system electronically unless specifically advised otherwise by a WeBOC administrator (General Annex Standard 3.18). The Act (section 155Q of chapter XVI A) should be amended to permit the filing of Goods Declaration (GD) in the WeBOC system electronically unless specifically advised otherwise by WeBOC administrator (General Annex Standard 3.21).
- Section 29 of the Customs Act should be amended to explicitly add a provision that the declarant may amend a declaration that has already been lodged if the request is received by Customs before Customs has begun to check the declaration or to examine the goods. Care should be taken when including this provision not to dilute the current content of either Section 29 or Section 88(5). (General Annex Standard 3.27)
- A prior notification should be issued to the declarant that advises him of his or his agent's right to be present at the examination of goods. Likewise, whenever an examination is ordered under the WeBOC system, a notice should be issued to the importer/exporter/declarant and his agent that an examination of their consignment has been ordered (General Annex Standard 3.36 & 3.37).
- A new provision should be added to the Customs Act/Rules specifying that all methods of payment are allowed including electronic funds transfer and payment, excluding those that are specifically disallowed by the Customs (General Annex Standard 4.6).
- All IT applications/WeBOC should be based on the principles of Compliance (Risk) Management (General Annex Standard 6.4).
- Director General of Risk Management should identify the business and technical requirements of the IT application, which should be developed based on the risk management in consultation with DG I & I, DG Post Clearance Audit, DG Valuation, DG Reforms and Automation and DG Internal Audit as resource persons for designing compliance risk management (General Annex Standard 6.5).
- The Guidelines provided by RKC/ WCO should be studied carefully and implemented. A third party audit should be conducted for a gap analysis between the current system and the RKC guidelines, and international data standards should be applied. (General Annex Standard 7.2)
- The Customs bonded carrier (transporter) should inform the Office of Departure to amend the particulars of the transport (truck) in the system, if it has changed due to some accident (Specific Annex E, Chapter 1 standard 20).
- A new rule should be framed for the clearance of relief goods. The provision of this standard should be made part of the rule regarding relief goods being cleared on priority. A module may be introduced in the WeBOC system for this purpose (Specific Annex, Chapter 5, Standard 2).
- A provision should be made in the international and national transit so that the trucks and/or containers are not sealed unless Customs specifically requires them to be sealed. The compliance risk management technique should be used in such situations before sealing of transit cargo, both National and International, is ordered (Specific Annex E, Chapter 1, Standard 11).