

USAID Trade Project

Assessment and Review of Acts and Regulations Pertaining to Customs Agents Licensing in Pakistan

USAID Trade Project

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Acronyms & Initialisms

AEO	Authorized Economic Operator
CAL	Customs Agent License/Licensing
CNIC	Computerized National Identity Card
DoT	Director of Training
FBR	Federal Board of Revenue
FPSC	Federal Public Service Commission
IFCBA	International Federation of Customs Brokers Association
GD	General Declaration
HRD	Human Resource Development
JPS	Job Procedure Statement
KCAA	Karachi Customs Agents Association
LCAA	Lahore Customs Agents Association
NCOCALC	National Customs Officers & Customs Agents Liaison Committee
NTS	National Testing Service
PCA	Post Clearance Audit
PDC	Professional Development Course
PKR	Pakistan Rupees
SPLMs	Self-Paced Learning Manuals
SRO	Statutory Regulatory Order
WCO	World Customs Organization
WeBOC	Web Based One Customs

1. Introduction

This report is an assessment and review of the Acts and Regulations (Statutory Regulatory Orders - SROs)¹ pertaining to Customs Agents Licensing (CAL) in Pakistan.

The role of a 'duly authorized' Customs Agent² chiefly entails the filing of customs declarations and submission of customs documents on behalf of the importing/exporting entity, in the prescribed manner and procedure, giving detailed descriptions of the traded goods as mentioned in the Customs tariff.

In addition to this, Customs Agents are also obligated to provide, before or after the clearance of consignments, complete information and documents as and when required by the Customs authorities, and exercise due diligence to ascertain the correctness of any information that is presented to Pakistan Customs, or to any client with reference to Customs procedures.

All Customs Agents are legally obliged not to conceal or withhold information relating to the processing of consignments from Customs Authorities, or from clients who are entitled to such information. It is also necessary that they promptly pay, when due, all sums received for payment of any duty, tax, or other debt or obligation owed to the government, and promptly render account to the client. Additionally, the agent is required to produce the actual importers/exporters, declare their Computerized National Identity Card (CNIC), official address, and contact details to Customs officials, whenever necessary.

For applicants to be awarded a Customs Agent's License, it is mandatory for the individual to prove his/her competency to Pakistan Customs. The inclusion of a licensed agent into the approved supply chain of Authorized Economic Operators (AEOs) provides a high level of facilitation to the clients' imported and exported goods, thereby increasing the facilitation of trade in Pakistan. This, in turn, offers AEO clients an edge in the marketplace (i.e., by enabling them to clear goods through Customs at a faster rate, thereby reducing the time and cost to trade).

The Customs Act of Pakistan and rules of SRO No. 450 detail the requirements for the issuance of a Customs Agent's license in Pakistan. These requirements include the eligibility criteria to qualify for the CAL examination, indicating the compulsory subjects, and the minimum required grades. The Trade Project's preliminary research on the test structure has revealed that the high weightage placed on subjects such as the English language and the inadequacy of pre-requisite training criterion for being eligible to take the examination, among other deficiencies, are not ideal to produce knowledgeable and professional Customs agents.

This assessment has identified several suggested improvements in the CAL process and supporting legislation, and internal communication gaps within Pakistan Customs that directly impact the effectiveness of the selection process.

Although the methods undertaken to issue Customs Agent licenses vary around the world, the prerequisite criteria usually specifies years of in-field experience, degrees/diplomas in relevant subjects, and minimum passing marks (all higher than what are presently required in Pakistan) for a range of exams of different complexity. Regulatory bodies such as Customs Brokers Associations, the CEOs/Collectors/Commissioners of Customs, and the Agents Liaison Committees, also provide input as to whether an applicant is eligible for a license. These rigorous processes for the issuance of a license are indicative of the range of compulsory assessments that potential agents need to pass

¹ There are no specific Customs Regulations in Pakistan, only SROs that also apply to all manner of Pakistani legislation created and issued by the Federal Board of Revenue (FBR).

² Terms Customs 'Broker' or 'Agent' are interchangeable

through, depending on the country in which they are located. In some cases, no license is required at all to become a Customs Agent – such as in the EU.

There are many Pakistan-centric issues in the current CAL processes that are not in line with international best practice and impose an excessive burden on Customs' resources. These issues include piece-meal management of the process, which unnecessarily disturbs the effectiveness with which the Customs Agents Associations can operate. The gaps for improvement and suggested resolutions will be discussed further in Section 3 of this report.

This report will summarize how Pakistan Customs' current internal communication systems and culture are somewhat counter-productive for keeping consistency in the CAL processes.

2. Methodology

During 2013-2014, the Trade Project interviewed various Pakistan Customs officials directly or indirectly involved with the CAL processes in Karachi, Lahore and Islamabad. Discussions were also held with senior representatives of the Karachi Customs Agents Association (KCAA) and Lahore Customs Agents Association (LCAA) to undertake an assessment of the CAL regime and its supporting legislation.

An examination of the feedback gathered from the above mentioned meetings, as well as the Pakistan Customs Act and SRO No. 450 rules for CAL contributed to the completion of a gap analysis³ for Pakistan Customs. The gap analysis considered the present legislative provisions and practices and recommendations for improvement.

In its report, the Trade Project presented a comparative analysis of Pakistan's CAL processes against other countries (refer to table of CAL comparisons of assorted countries in Appendix IV). A second round of interviews was then conducted with the KCAA, LCAA and Pakistan Customs representatives to verify the initial findings of the gap analysis and gather additional suggestions for improvement. The Trade Project received substantial support, both, from the private sector associations as well as the Pakistan Customs officials, on the recommendations presented for the licensing of Customs Agents.

During August 5-6, 2014, the Trade Project conducted a Workshop on the licensing and regulation of Customs Agents at the Marriott Hotel in Islamabad. The event was well attended by 22 participants from the mid to high management level of Pakistan Customs across Pakistan. The findings of this workshop and the Customs Agents' previously recorded views are listed below.

3. Findings and Observations

LEGISLATION: Customs Act 1969

Observations around the four (4) sections of the Customs Act (Sections 207-210) that relate to CAL follow:

Section 207:

- Section 207 (S. 207), based on the present terminology, could apply to both shipping agents and clearing agents. Hence, the workshop's proposal was to change this section in order to clearly segregate shipping and clearing agents. ***This observation was seen to be required for S.210 by the more senior participants of Group 1.***
- Workshop participants considered Customs Act S. 207 to refer to a 'Customs-house agent to be licensed'. Yet, the section provides no definition of what this term means. It is contrary to SRO 450's Rule 90 which refers (in its definitions) to a 'Customs Agent'.

³ Gap Analysis is at Appendix I

Recommendation: The workshop concluded that S. 207 of the Customs Act should either include a definition of a Customs-house Agent; or, if the same as a Customs Agent, then the term be deleted. It is presently unclear in the Act. Furthermore, S. 207 should clearly define the difference between the obligations of a clearing agent and a shipping agent.

Section 208:

- Relates to a 'person to produce (written) authority if required'. This section is outmoded in that it does not permit the presentation of such required authority by electronic means.

Recommendation: The WeBOC system could manage this form of verification electronically; hence, this section needs to be redrafted to reflect today's technological capabilities.

Section 219 of the Act and its linkage to Item 21 of the Third Schedule of the Customs Act 1969:

There was discussion in the workshop on the legal process regarding Section 219 (S. 219) of the Act and its defined linkage to Item 21 of the Third Schedule of the Customs Act. S. 219 gives power to the Federal Board of Revenue (FBR) to make rules within the 23 items listed in this schedule. The facilitator of the workshop sought opinions from the participants of their definition of the scope of FBR's powers to make rules regarding Customs Agents licensing, given the definition laid out in Item 21 of the Third Schedule about 'Licensing of Agents'.

The discussion highlighted that on first read, rules can be made by FBR, via S.219 and Item 21 of the Third Schedule via a group of specific descriptions in regard to licensing. The descriptions are separated by semi-colons and all relate to matters affecting 'a license' or 'licensee'. Nothing within the descriptions mentions a potential licensee (i.e. one who is unlicensed). It may seem difficult to have a debate over whether the FBR SRO No. 450 clauses, in which there have been rules made, do not seem to strictly adhere to the definitions of Item 21 of the Third Schedule of the Act, however, it must be remembered that the law must be interpreted as written and be adhered to accordingly, otherwise challenges by individuals can often succeed.

Given the above, the workshop participants were questioned on whether, in terms of the law, the FBR was permitted to issue FBR 450 rules containing the following details that relate to the licensing process:

- Eligibility criteria for (unlicensed) applicants to meet before being permitted to apply to sit the qualifying examination Authorisation to sign documents on behalf of licensees
- Issuance of permits (these are issued to persons who are registered and unlicensed assistants of licensed agents)
- A stated pass mark for the qualifying examination and the subjects therein of the qualifying examination (i.e. an action taken before a license is even granted?)

Item 23 was also considered however, its wording states; 'Any other matter necessary for giving effect to the provisions of the Act' was interpreted as not to be an overall fix for errors but; to encompass 'other matters' i.e. matters not already mentioned in the Third Schedule.

Recommendation: The general consensus of the participants was that Item 21 of the Third Schedule needs to be amended to include all aspects related to CAL parameters. Some members of the group who strongly supported this view possess law degrees, adding further weight to the need for a legal review by FBR of this link between S. 219, Item 21 of the Third Schedule and the SRO No. 450 rules relating to CAL.

LEGISLATION: Statutory Regulation Order (SRO) No. 450's Rules Nos. 90-106 relating to CAL

The CAL Workshops four (4) syndicate groups' findings regarding the various Rules contained in SRO 450 related to CAL are listed in Appendix V. A summary of the most important and desired changes are as follows:

Rule 92: Eligibility of an applicant to sit for the CAL qualifying examination

The workshop participants provided consensus for the need to retain some of the existing eligibility criterion for the examination and suggested changes to others. These are as follows:

- The participants provided unanimous support for the necessity of Rule 92 (c) i.e. 'a graduate from a recognized university' along with evidence of graduation, as ascertained and attested for authenticity by the Higher Education Commission (HEC).
- The participants opined that providing proof of education at tertiary level is a sufficient indicator of the intellectual abilities required to understand the technical aspects of CAL⁴ and command over the English language. The type of degree should, therefore, not be restricted by subject.
- There was an overwhelming support for further inclusion of pre-requisite study in Rule 92. The suggested inclusions follow: a Diploma in Customs Law and Procedures, a mandatory short term training course at the Directorate of Training (DOT) or an internship (ideally with a Customs Agency⁵) of various time periods.
- Lastly, (reference Rule 92 (d)), in line with their support to the idea that conviction in a court of law should not in itself be a reason to deny eligibility to take the qualifying exam, the participants proposed a police verification certificate to be made essential for verifying the nature of convictions against the types listed in Rule 102 - which lists reasons to revoke a Customs Agent's license (i.e. fraud, embezzlement, not a mere traffic infraction). This recommended change was seen as offering a transparent and defensible approach.

Recommendations: The eligibility criteria to sit for the qualifying examination should be amended to include the following:

- i. Confirmed authenticity of the degree by the HEC
- ii. Proof of successful completion of pre-requisite study and practical experience in the Customs Agent's industry (including production of a police verification certificate to prove the candidate has not had any convictions of the type included in Rule 102⁶) and;
- iii. Re-wording of criteria for 'not convicted by a court of law' with 'not convicted in a court of law for any crimes listed in Rule 102.'

Rule 93: Qualification test: conditions for the licensing qualification test

- This rule currently states the subjects to be tested in this examination are; (i) English language (ii) Computers & (iii) Customs law and procedures, and all are allocated 33% each of the total marks however, with the implementation of the recommended pre-requisite qualification as detailed in Rule 92, the participants agreed that the qualifying exam could then contain 100% of its content and marks to the subject 'Customs Law and Procedures', as well as, the current multiple choice segment of the exam (on the same subject) be diluted to around 40% of total marks.

⁴ This was yet another change as to the reason for a person needing to be a graduate from a recognized university, as previous interviews with various staff indicated this criterion's purpose was to prove the candidate had sufficient proficiency in the English language, and was an example of lack of common understanding in Customs, potentially due to a failure in internal communications systems (i.e., a process to easily access policies and general orders electronically in order to be better briefed as to why various decisions have been made).

⁵ Customs Agents Associations we spoke to offered to guarantee to arrange a set time for candidates to work within and beside Customs Agents.

⁶ Fraud, embezzlement, etc.

- The workshop also agreed with the proposal that around 60% of the exam include the compilation of a manual General Declaration (GD) against dummied-up invoices, certificates of origin, bill of lading and/or air way bills etc. This process would ensure that a newly licensed agent is capable of turning commercial import documentation into a GD.
- It was proposed that the overall minimum passing percentage of the course be increased from 50% to 70%, which will be much closer to the international best practice of 80% or higher.
- Customs Agents licenses are issued when an agent is considered 100% competent in their field of work and is expected to be able to act independently, hence a more rigorous examination regime is required to ensure that the successful candidates are capable of performing the assigned tasks. An added outcome of having a stricter selection criterion would be to expect fewer agents passing the examination. It will be imperative to explain to the Customs Agents' community that the suggested new exam format is not designed with the intent of reducing the number of Customs Agents in the field, rather; to only ensure that only competent professionals are awarded licenses.
- It was also stated for Rule 93(1) paragraph two, that the level for a retired Customs officer, who has completed at least ten (10) years' service, may be awarded, on application, a Customs Agent's license without taking the qualifying exam, has already been raised from the legislated BS-14 to BS-16. The Trade Project's concerns regarding the aforementioned statement relate to the change lying outside the parameters of this Rule's legislative scope and would therefore require an amendment of this SRO Rule. Hence it is recommended to review how this change in senior officer's levels occurred, to determine if it is legal.
- Lastly, there was much support for the National Testing Service (NTS) conducting tests to ensure impartiality and transparency. This appears to be least complicated, given the rule does not specify who will conduct the test or where it will be held, only that it is to be held simultaneously across Pakistan at the listed locations.

Recommendations: The following is a summary of recommended changes to Rule 93:

- i. Amend the exam to contain 100% of the subject currently listed third i.e. 'Customs Law and Procedures' while abolishing English language and computer literacy tests.
- ii. Maintain the current multiple choice segment of the 'Customs Law and Procedures' subject but ensure it does not account for more than 40% of the total marks required to pass,
- iii. Include practical exercises (per the format suggested in the Rule 93 discussion) and ensure this segment accounts for at least 60% of the total marks for the subject 'Customs Law and Procedures',
- iv. Increase the passing percentage from the current 50% to 70% or higher,
- v. Assign FBR with the responsibility to review the decision made to lift the level of senior officer, who may be eligible to be granted a Customs Agent's license, from their legislated level of BS-14 to now BS-16. As it appears this change has been an administrative decision (which is outside the parameters of this legislated Rule's conditions) when it should have been only changed via a legislative amendment. If FBR agrees with this finding, an issue of an amended SRO 450 re rule 93 is necessary in order to maintain the new level BS-16 requirement.

Rule 94: Approval of license

- There was much support to change the validity of licenses on a country-wide scale to assist, over time, in breaking up the parochial scene that is currently seen in Pakistan among the major Customs Agent's Associations. This would also encourage city-wise associations to amalgamate into one national body, which will be a better outcome for Pakistan Customs as well as the agents.
- A considerable raise in the current annual license fee, possibly up to a million rupees, was highly encouraged by the participants. However, the Trade Project is of the view that this would be counterproductive to the overall goal mentioned above. This increased fee proposal

was also seen by some participants as an avenue to prompt 'dormant' licensees to either renew or have their licenses revoked.

- The simple answer to lower the dormant license numbers would be to urge the authorities to revoke the licenses via the legislated process outlined in Rule 96 (Renewal of License) i.e. a case where it is identified that *'the licensee.....has failed to file sufficient number of declarations and conduct customs business, as prescribed by the Collector'*. However, the officers have suggested an increase in annual fees to decrease the amount of dormant licensees rather than revoking them.

Recommendations:

- i. Amend Rule 94-- cost of permission for a nation-wide ability to act as an agent be reduced to the legislated Customs station rate i.e. PKR 300,000 in order to assist to gradually break the current parochial views by local Customs Agents Associations.
- ii. Commence a campaign to revoke dormant licenses as soon as possible.⁷

Rule 95: License and its conditions (includes 'Provisional Licenses')

- The aspect of provisional licenses in this Rule (refer Rule 95 (9)) provoked much debate among the participants. There were two strong views, one: to repeal this rule since provisional licenses were not seen as necessary and were believed to be only causing more issues than resolving them, and the other: to ensure their existence for extenuating circumstances.
- On further exploration of 'extenuating circumstances', it was established that regular licenses had not been issued since 2009. It was identified that the qualifying exam of 2013 was held after a gap of almost four years (reasons were not established as to this delay). It is observed that this delay is a breach of the Pakistan Customs legislated responsibilities of holding the qualifying course twice a year in July and January respectively. (Rule 93) Nonetheless, results of the 2013 test were challenged in court⁸ by one of the aggrieved (failed) candidates, which resulted in the qualifying exam to be held again.⁹
- It is accepted that while the identified complexity remains as to the perceived legal cessation of holding qualifying exams and issuance of new agent's licenses, provisional licenses have a place. However, no impediment appears in the law (Rule 95 (9)) that restricts a policy being created to specify certain criteria to be completed before issuance of this license. Such criteria may still be seen to be within the parameters of the law but needs to be explicitly stated in policy and adopted uniformly throughout Pakistan (consultation with the agents associations would provide better acceptance as well).
- The eligibility criteria for a provisional license, as suggested above, would be for candidates to pass the proposed pre-requisite diplomas before being permitted a provisional license (only if the courts have intervened and held up the process of permitting qualifying examinations and/or the cessation of issuing licenses).
- Given that some of the workshop participants proposed that the license should remain but a 'defined criteria listed' must be developed to ensure rationality. It will be logical to develop a stringent set of criteria once the present embargo against holding further qualifying exams is lifted. This criteria will have to be satisfied by prospective candidates before the issuance a

⁷ This will serve two purposes; (i) less administrative management of licenses (ii) enable Karachi, which has over 2,000 licensed agents, to have a better chance of meeting their Professional Development Course legislative responsibility of training 50% of their licensed agents each year, so they meet their obligation to train all the agents in this course over every two year interval (iii) as mentioned later in this report, revoking licenses of dormant holders, will be expected to reduce considerably the large frauds.

⁸ These are listed in the attached scanned High Court of Sindh, decision at Appendix No III.

⁹ It needs to be mentioned here, the consultant's interpretation of the court's decision did not restrict Customs from continuing the process for issuing new licenses under which the aforesaid examination was held however, most workshop participants were adamant the consultant's reading of the decision was incorrect. The consultant remains to be convinced. Regardless, FBR should first determine if the workshop participant's view of the high court decision is correct or the consultant's. If it is the latter, qualifying examinations can re-commence immediately. If it is the earlier, FBR needs to seek to resolve this deadlock as soon as is possible, as the situation is currently unworkable and providing defensible support for the problematical provisional license to remain.

provisional license (e.g. pre-requisite qualifications and practical experience of working alongside an agent).

Recommendations: The following are listed for Rule No. 95:-

- i. The FBR should drive the efforts to obtain a final decision on the interpretation of the attached high court (Sindh). If the correct interpretation is as per the Trade Project, then the (proposed) qualifying examination and issuance of licenses will recommence. However if the workshop participants' interpretation is correct, then FBR will need to make their legal section up-to-date with the courts and resolve all outstanding issues before moving ahead.
- ii. Conditional to the outcome of the above; the concept of provisional license can either be repealed, or a new policy can be drafted to make the satisfaction of the proposed (strict) criteria compulsory for issuance of a provisional license.

Rule 96: Renewal of License

- The Pakistan Customs officials largely supported the need to clearly define the circumstances in which to refuse the renewal of a license (listed at Rule 96 (2) (a-h)) especially, in the terms listed in Rule 96's clauses (2) (c), (d) & (h).
- It was emphasized and agreed, that there is a dire need to define the terms and processes required to determine reasons to deny a license. Customs, in particular, needs to have a legally defensible case when revoking licenses based on terms like 'lunatic', 'mentally retarded', 'unsatisfactory performance' and/or 'sufficient number of declarations'. In the absence of a clearly stated uniform policy around these definitions and the associated processes, Customs will always remain vulnerable to losing a legal challenge against these clauses. It remains FBR's call to consider how best to address this issue.
- Lastly, one statistic extracted from WeBOC revealed that a total of 1100 agents had not filed a GD with the Pakistan Customs in the past year, out of an active list of approximately 2400 licensees. This confirms the Trade Project's observation of the Pakistan Customs officials not practicing a strict approach towards revoking licenses from inactive licensees. To support the Trade Project's concerns, the senior officers commented that the biggest frauds involving Customs Agents were undertaken by the inactive agents, who are viewed as a considerable threat to the efficiency and transparency of trade in Pakistan.
- If the above is substantiated, there is a reason to re-assess the risk of dormant licenses/licensees, of committing a crime, to the 'likely' to 'highly likely' bracket. This would require suitable profiles to be created in WeBOC to flag when a 'dormant license'¹⁰ is being used for a consignment.
- For the threats highlighted above, it seems ideal to launch a 'campaign' for reviewing all inactive licensees.

Recommendation: The following are listed for Rule 96:

- i. Definitions of the mentioned terms, used in this rule, that are terms used to deny or revoke a license, to be properly defined.
- ii. Well written policy outlining the processes required to prove the 'defined terms' in a logical and defensible manner, to a level that will overcome anticipated legal challenges in court, to be drafted.
- iii. Verify the information learnt about the level of risk of 'dormant licensee's' in terms of their apparent propensity to commit large frauds and 'disappear' when trying to be located by Customs¹¹. Additionally, create an appropriate risk profile for submission into WeBOC.
- iv. FBR to drive a campaign to revoke or deny the renewal of 'dormant licenses' as soon as possible.

¹⁰ Definition/parameters of a 'dormant licensee' will have to be determined before submitting a risk profile

¹¹ How does this happen? Are their flaws in the identification regime when issuing an agent with a license? If so, these flaws also need to be addressed.

Rule 99: Mandatory Training Course, also referred to as a Professional Development Course (PDC)

- It was agreed that PDCs should continue. The Pakistan Customs officials advised several improvements, such as the re-introduction of mandatory tests as highlighted during the workshop discussions, which were once stated in the SRO 450 rules. It was stated that previously, upon being approached by the industry representatives, FBR re-issued the rule of omitting the requirement to have a mandatory test without the consultation of Customs. Now the requirement for the agents, in addition to attending a PDC once every two years, is to attain an attendance rate of 90% only.
- There were a lot of issues raised about this course, not least of all from prior meetings with agents association representatives. The agents claim they are not given enough warning as to when this course is being held and would like three (3) months' notice. The agents also complained that it is a repetitive and unchallenging course, barely changing at all from one year to the next.
- The Trade Project learnt that Pakistan Customs informs the agent's associations of nominations for the PDC with a six (6) week notice and the agent's associations then advise the nominees. Clearly there could be a delay from the time the associations receive the advice from Customs and when they promulgate it.
- If the current PDCs continue to be repetitive in nature of content, as claimed by the agents, it is reasonable to understand the agents' reluctance to attend and be tested. PDCs should ideally be courses for professional development i.e. involving discussions and practical exercises on recent legislative and policy changes impacting the agents' working practices. The proposed revival of the mandatory test would not serve as a true assessment of the candidates if the PDC format remains largely unchanged.
- In summary, there are many issues that need to be discussed and substantiated from officers and agents before any recommendations can be provided for this rule. This would also involve following up with a liaison meeting between the agents and customs, perhaps by the proposed National Customs Officer and Customs Agent Liaison Committee (NCOCALC), discussed below.

Recommendation: The identified issues relating to Rule 99 need to be further addressed. The proposed method to address the identified issues is to ensure that the FBR/Pakistan Customs liaise closely with Customs Agents Associations so that both parties can understand and acknowledge the needs of each stakeholder and reach a consensus on how to address these respective needs.

Rule 103: Appeal

- The agent has an obligation to appeal against his license being denied, revoked or suspended within sixty (60) days of the decision to take these actions. In that, the Pakistan Customs officials concurred with the Trade Project's view that the current appeal process was unfair as it does not specify any reciprocal time limit for the Collector to respond to the appellant. In this regard, the Pakistan Customs proposed a time period ranging from 30 to 120 days from the time of the decision being notified by the Collector.

Recommendation: For Rule 103, it is recommended that the proposed timeframe for the Collector to advise an agent of the outcome of their appeal against denial, revocation or suspension of their license to be resolved at FBR level in consultation with Customs and the agents.

Other observations and information learned during the pre-workshop interviews and the workshop

During the workshop discussion it was highlighted that often the 'dormant license'¹² holders, for a relatively small fee, permit other (usually un-licensed) individuals to use their ID and user code to submit GDs via the WeBOC system. Although the Customs officials are aware of this unacceptable act, the present systems cannot identify when such an incident occurs.

Interestingly, during interviews with the Customs Agent's Associations, the senior representatives informed that the above (dormant agent) could easily be seen entering goods from many different ISP addresses if the Customs officials decided to actively monitor such trends and check ISP addresses.

Due to the need to facilitate agents and allow for the flexibility to lodge GDs electronically across Pakistan, Customs officials clarified that Customs Agents cannot be restricted to one ISP address.

The above has provided several loopholes in the present veracity of the CAL system. In Rule 95 (2) it is clear that an agent is not permitted to transfer or sub-let a license and Rule 103 lists many reasons that would apply to this behavior (if not specifically) leading to revocation of the license. However, proving that such behavior exists (i.e. identifying when someone other than the licensed agent submits information electronically against a license) is a considerable challenge.

There seem to be a range of actions that should be taken in order to help counteract the above.

Firstly, Pakistan Customs needs to immediately desist in its present 'less than robust approach' in revoking licenses that are neither being renewed (but appear to be still active) with minimal level of utilization nor are their holders attending the PDCs.. Taking this action will eradicate a great deal of the aforementioned problems since it has been noted that agents who do not use their license are more prone to 'sell' its use to others.

Invoke Rule 102 (Action in case of violation) where if an agent is found to perform the above transgression they will be liable for loss of license and should have as well, a very heavy fine and or jail, such is the seriousness of this action by a license holder. It of course will also be deemed to be aiding and abetting fraudulent use and fraud alone is yet another reason for the license to be revoked under Rule 96 (2) (b), (e) (Renewal of License).

Given the need to maintain facilitation by permitting agents to lodge from any ISP, it is suggested by a participant, that bio-metric details can be contained in a plastic license smartcard that could be 'swiped' before they key details into the WeBOC system. This would help in identifying the license (and therefore its legitimate holder) who is submitting the GD. This idea would limit misuse because there would only be one card (and if lost or misplaced can be de-activated) usable by the attributed licensed agent, which in turn would lessen the chance of the agent 'selling its use' to anyone else. Furthermore this idea may also assist in proving that a certain ISP address could not have been used by the license holder.

The above suggestions may not eradicate this type of fraud entirely, however they can be expected to have a desirable impact on the frequency of occurrence of fraudulent practices owing to the reduced illegal access to a license and the proposition of a heavy penalty on the original license holder if he permits misuse of his card/license.

¹² Licenses rarely activated yet, not cancelled or revoked, as is permitted under the conditions of Rule 96

All the above have merit but FBR needs to look at this problem extremely closely as it undermines everything that a license stands for, including the integrity of the electronic GD lodgment system, among others.

Recommendation: FBR must take note of the issue of license fraud and drive the process to examine the listed proposals to lessen or eradicate it; also it must ensure that a suitable legal deterrent process is created and actioned via legislative and/or policy change.

Proposed National Policy Section:

Before the workshop the consultant ascertained through interviews with various CAL related staff that there was a clear lack of a uniform policy to resolve regional issues. It was learnt that the licensing authority delegates did not have readily available Job Procedure Statements (JPSs) nor policy files that could be accessed electronically to guide efforts on issues that had been encountered or resolved previously or to obtain a uniform opinion on an issue at hand.

Due to the above and based on experience, it seemed obvious that Pakistan Customs lacks a single national policy section that can be easily accessed by the managers.

The Trade Project noted that, regardless of whether policies exist, they are not being identified or readily utilized by the CAL managers.

There was some concession by senior staff that previously they used to have up-to-date JPSs with locatable files, but things gradually fell behind. After this admission and further discussion, the participants agreed that lack of policy development is lesser of a problem than the failure to promulgate new policies and decisions effectively to staff (i.e. internal communication processes).

Discussion then eventuated on the abilities of WeBOC and the FBR/Customs website to provide ready up-to-date access to these important references. Given WeBOC was seen as only being readily accessible by those who use it each day to undertake their entry processing tasks and the like, the best vehicle to maintain a library of essential information was considered the FBR/Customs website.

This session closed with the recommendation that FBR/Customs should look at coordinating up-to-date policies and general orders (and linking those that relate to each other) and having them uploaded on the website for easy access by all staff and managers.

It was already mentioned, some things of importance are on the website, but too often are seen to be out of date or staff have heard of a change and it has not been uploaded promptly. So the coordination and time-keeping processes around this idea must be very efficient and systematic, for it to provide the required administrative support that the very mobile managers of FBR/Customs both undertake and desire.

In summary, with regard to communication, it was mentioned that referencing of such important documents must exceed the current referencing process for tools like the SROs where it was claimed, searchers can only find SROs by knowing their number or date of issue. It was deemed a much improved situation if a subject index was also able to be used as a search profile, as well as linkages to other documents that have some impact on the one they are seeking.

Recommendations: With regard to internal communication systems, in order for officers to readily find their delegations, position relevant policies, general orders and the like, the following are the recommendations as follows:-

- i. Utilize the FBR/Customs website to upload, in a systematic and timely manner, officer's delegation powers (associated with position numbers and or job titles and locations, current

policies, general orders and the like that officers and staff need to be across to perform their duties efficiently and effectively (and legally).

- ii. Ensure that when the above is loaded onto the FBR website that the subjects of such documents are searchable (not just via numbers or dates) and, where appropriate, have linkages to other documents that are or should be read in conjunction with the document sought¹³. Develop an internal communications policy relating to the above so all Customs staff
- iii. Can access it in order to understand how it works

Proposed National Customs Officers and Customs Agents Liaison Committee (NCOCALC)

On Day 2 of the CAL workshop the above proposal was listed to be discussed and if deemed worthwhile break-out groups were to compile a mission statement for this committee as well as a SWOT¹⁴ plan and a Way Forward.

There were a few reasons that created the impetus for this proposal namely:-

- International best practice
- Lack of any formal and regular collaboration currently existing between only Customs Officers and Customs Agents representatives
- Feedback from both that indicated there was a lack of understanding and appreciation by both parties, as to how and why the other side operates

There was pre break-out conversation around the current levels of (piece-meal) communication that is currently undertaken with the agents in various forums, as well as, some examples of good personal (but informal) relationships between officers and agents.

There was lacking however, a proposal such as a NCOCALC where customs and agents are the sole participants and are brought together to improve and enhance their professional relationships and understanding and resolving each other's difficulties with each other.

After the above initial conversations on the above, and on discussion of the many international examples of such committees enough participants saw merit in this idea, so the breakout groups were commenced. The group was asked not to limit themselves on what they saw as the possible scope of such committees. By way of example, a few ideas were floated to the participants before they went to their respective break-out groups.

As a result of the participants' break-out groups, presentations were made by each listed group on their proposed SWOT analysis of this proposal. They were also asked to provide a proposed mission statement first, so it would help them focus on the purpose of the NCOCALC, as well as provide a Way Forward. The latter was only picked up by one group.

Overall the majority saw a need and many advantages of this proposal.

All the mission statements listed in the attached appendix of presentations were particularly good and proved each group had the right impression of what such a committee's purpose should be and, they adequately reflected similar purposes in the international field.

A summary of each impact as the groups saw it, per their SWOT analysis, are also listed in the attached Annex No. I.

¹³ This would merely require a 'document controller' in charge of determining appropriate linkages and ensuring they are added

¹⁴ S.W.O.T. (Strengths, Weaknesses, Opportunities & Threats) Plan

The single Way Forward suggestion was worded thus:

'Initiate proposal to agents at field level by collectors, consolidate agents at field level, Option by field bodies of agents a) Collectorate representative b) Regional Representative c) Task Manager appointed by FBR for setup of coordination'

The Trade Project advisor can add to the above by advising in this report that the senior representatives of the KCAA and the LCAA were very keen to be part of this committee. These representatives also pre-empted the workshop's listed strengths of such a committee, as on the mere suggestion to them of such a proposed committee, they considered the time is long overdue and never better, to have this proposal activated as soon as possible.

The Trade Project sees that the listed strengths and opportunities far out-weigh the possible threats and weaknesses. This forum could act as an effective outreach facility to the import/export trade. It is hard to identify who better to promulgate changes in Customs policy or standard operating procedures than such a committee with a collaborative and consultative approach in formulating any policy or change of procedures and the like, before they are finalized.

4. Executive Summary & Way Forward

Gap Analysis:

The outcomes of this analysis contain recommendations where possible or suggestions on how to arrive at the best proposition to address the identified issues.

- The most important recommendations provided by the Trade Project, which were also supported by the workshop participants, are related to the issues of eligibility to take the qualifying exam and the need to invoke a pre-requisite qualification. This would help potential agents be better prepared for the license qualifying examination. It is recommended that action to amend the appropriate rules be undertaken in consultation with the proposed NCOCALC.
- Action must be prompt and thorough to revoke inactive licenses given the itemized trouble they cause (as discussed in Part Three (3) of this report).
- FBR to steer/lead the above process.

National Policy Section proposal:

- As explained in the body of the report, this issue came down to identifying that improved internal communication processes within Customs were required to provide officers with easy and clear access to policy changes and General Orders impacting their daily duties and responsibilities. It is therefore suggested that these two 'tools' be input on the FBR website (in a timely manner), with not only reference numbers and dates (as is done with SROs), but with a search engine capability to find required subjects with linkages to other documents that need to be read in unison with references provided.
- FBR to steer/lead the above process.

National Customs Officer Customs Agent Liaison Committee (NCOCALC)

- Given this proposal was well received and many advantages were seen and listed in creating it, it is recommended that FBR takes the lead in initiating this proposal by nominating influential change agents backed by the most senior members of Pakistan Customs who have the will and ability to assist the nominated change agent(s) overcome any administrative or managerial resistance to creating a NCOCALC.
- It will be important to establish a Memorandum of Understanding (MOU) with all of Pakistan's Customs Agents' Associations as to mutual expectations. However, within the confines of the MOU, Customs must have the final say on important issues as it is the only body in this partnership that retains legislative power.

Appendices I to IV

- 1) **Gap Analysis** – this analysis in the attached format is in the original draft form before interviews were held and consists of the listed SRO No. 450 Rule Nos. that were seen as needing more elaboration due to their identified various weaknesses in definition etc. and; a column of 'first impression' observations completed by the team. Also included are notations of the various regions' first impressions of the suggested changes to the SROs. It can be noted that most regions had early agreement with the suggested changes.

The proposed CAL workshop in early August 2014 revisited this gap-analysis and; to work on proposed frameworks to create the (then) proposed FBR/Customs National Policy (creation and review) Section and the anticipated make up, roles, and tasks, of the proposed NCCOCA.

- 2) **Customs Agents/Brokers pre-requisites and qualifications before issuance of license in various countries** – compares the differences in the above between the listed countries. Pakistan needs to select what would work best for Pakistan at this time of its development. Certainly this accompanying report has indicated some large gaps that need to be addressed now in order to achieve a slower growing but more professional community of Customs Agents.
- 3) **Copy of the High Court of Sindh at Karachi Ref: C.P. No. D-1389 of 2013** court order that caused (inadvertently?) Karachi Customs to cancel holding the Customs Agents qualifying examination for over twelve (12) months.
- 4) **Examples of NCOCALC-type structures in other countries**

Appendix I: Customs Act – core sections of the act relating to Customs Agents Licensing

Chapter XX ‘Miscellaneous’ - Section No. and subject it relates to regarding Customs Agents licensing	Abbreviated summary and any comments
Section 207: Customs House Agents to be licensed	Simply ensuring those who deal with import and export of goods holds a license granted in this behalf in accordance with the rules
Section 208: Person to produce authority if required	Person (licensee) to produce authority (on request) to prove they have authority of principal to transact any specified business on behalf of (any) principal
Section 209: Liability of principal and agent	Anything the principal required or need to do may be done by person expressly authorized to do so (unless contrary is proved) shall be deemed to done with knowledge and consent of principal so any proceedings under this Act, the principal will be liable etc.
Section 210: Liability of agent appointed by the person-in-charge of a conveyance	An agent appointed by the person-in-charge of a conveyance and any person who represents himself to a Customs Officer as an agent of any such person-in-charge....shall be liable for the fulfilment in respect of the matter in question of all obligations imposed on such person-in-charge by or under this Act...and to penalties...which may be incurred in respect of that matter
NOTE: The above represents the WHOLE Customs Act’s sections on Customs Agent’s licensing!	<p>Is the above considered sufficient to provide a ‘core’ legislative base for Customs Agent Licensing?</p> <p>Should the Act be re-written to better accommodate Customs Agent’s licensing?</p> <p>Do SROs provide the expected level of propriety?</p>

Gap Analysis Table (SROs)

Identified Rule and paragraph (if applicable)	Identified Gaps / Discussion points against the corresponding SROs
<p>Rule 92: Eligibility to file application (to sit for a license) states amongst other things:- (c) a graduate from a recognized university</p> <p>ISB’s views:- <i>i) Were amenable to RPL being used rather than being a ‘graduate’ to apply</i> <i>ii) Indicated that the ‘graduate’ clause was probable more to do re proving English skills (as universities teach courses in English) than proving a candidate’s ability to pass the CA course.</i></p>	<ul style="list-style-type: none"> Why a graduate and in what subject(s)? Definition of a ‘recognized university’? Any graduate from any course? What of graduates from (for e.g.) a graduate certificate course that usually lasts for 12months? Eligible? Any graduate? Was a possible graduate in choreography or architecture considered when this clause was written? Or, is the whole purpose (as suggested in interviews carried out with; Customs ‘Licensing Authorities’) to state a ‘graduate from a recognized university’ is because all such graduates have to speak English to do their courses? If this criteria has nothing to do with the qualification obtained from the university and everything to do with proving English language proficiency would it not be fairer and more transparent to demand recognized proof of English proficiency¹⁵ before permitting a candidate to sit for a qualifying exam than having to graduate in a course that is not relevant to Customs Agent work? <u>CONSIDERATION:</u> Given the specific field of expertise required by a Customs Agent, would not a Customs Agent

¹⁵ The GoP or FBR can surely nominate various evidence that they would be happy with to enable them to be satisfied a candidate has met the English proficiency test before permitting a candidate to sit for an exam?

	<p>staffer whom had completed 3-4 years of full time employment in the field, not be justified to be considered as 'relevantly educated' as any graduate to at least permit them to sit for the exam? (I.e. IF level of education is a true and only requirement for adding this eligibility demand).</p> <ul style="list-style-type: none"> The qualifying term here for such applicants is the 'Recognition of Prior Learning' (RPL) i.e. their experience is formally recognized to meet an education criteria. In this example RPL could be used merely to meet the 'graduate criteria' only, and providing they meet the rest of the criteria, only permits them to sit for the exam - <i>nothing else</i>. To omit these non-graduated candidates is to lose people who have a proven knowledge and interest in Customs work.
<p>Rule 92 (d) not convicted by any court of law¹⁶ Both KHI and ISB could see merit in the arguments raised here.</p>	<ul style="list-style-type: none"> Perhaps unnecessarily strict or just not thought through? What if the applicant had only been convicted of a minor speeding offence? Other minor offences that could cause a conviction to be recorded in a court of law. Necessary to omit a candidate on these grounds? In order to keep things fair and transparent why not have the same 'standards' burden on candidates as licensed Customs Agents i.e. per the grounds a license is revoked as specified in SRO 102(b)? This suggested standard should be seen by the reader to be fairer (and more transparent) to potential candidates for a license. Finally: Whilst S. 219 of the Customs Act permits the FBR to make rules enumerated in the Third Schedule (of the Customs Act), and whilst this Schedule, under its Item 21 discusses the topic of Customs Agents Licensing, the section goes on to specify what aspects of Customs Agents licensing the FBR can make rules on. Item 21 details topics like 'qualification of the licensee'. It does not say it can make rules about the 'eligibility of a candidate for a qualifying exam <i>to become</i> a licensee' so; has FBR in Rule 92 overstepped its authority? And if so, has the fact the SRO was later published and sold in the publication 'Pakistan Customs Laws 2013-2014' meant the Federal Government did later pass the SRO into law?...or not? And if so, was the 'process' legal? Then again, what does Items Nos. 22A and 23 mean and does one or both affect the above argument?
<p>Rule 93 (1): Qualifications Test</p>	<ul style="list-style-type: none"> Why does the eligibility criteria in Rule 92 not mention anything about providing proof of an applicant's level of knowledge of the English language when this Rule, relating to the qualification test, states amongst various aspects the following:- The applicant (to qualify for a Customs Agent's license) must attend a written examination with a view to ascertain the applicant's knowledge about (i) English language, (ii) Computers and (iii) the Customs Law and Procedure and;

¹⁶ Perhaps for consistency's sake this clause should state that 'not convicted by any court of law, any of the transgressions listed in Rule 102 (b)' i.e. larceny, theft, robbery, extortion, forgery, counterfeiting, fraud concealment, embezzlement, fraudulent conversion or misappropriation of funds – surely all more relevant to stopping a person's eligibility for a license than a misdemeanour offence? And; this clause does not state a person convicted of a misdemeanour offence has his license revoked so, we have two different standards for application of a license and the revocation of one – hardly transparent or fair.

	<ul style="list-style-type: none"> • The candidate must achieve a 40% minimum pass mark in each of these three subjects • It seems unnecessarily burdensome on all concerned if the applicant has paid his course fee of 5,000PKRs and has inadequate English language skills to pass that subject of the exam. An adequate pre-requisite process to pass by candidates would ensure they are both English speakers and are technically trained enough to sit for the exam. This would save any unnecessary disappointment to the candidate and lessen the bureaucratic burden of the exam organizers and markers if any candidate has inadequate English skills.
<p>Rule 93 (2): If applicant fails to secure at least 50% of marks (aggregate marks along with 40% marks in each of the three (3 subjects) in the written exams)</p> <p>KHI: was receptive to the idea of raising the pass mark from ‘at least 50%’ to more like 70-75%. Accepted that this change would be to increase the professionalism of new agents however; it was also recognized that such a change would reduce the number of new agents coming into the commercial world which; was also seen as an advantage.</p>	<ul style="list-style-type: none"> • What does ‘at least 50% of marks’ really mean? Suggest a clear statement of ‘50% of marks required’. The information re aggregate percentages is clear. • Should Customs permit an applicant to score as low as 40% in any of the three subjects and still pass? • Given Customs has admitted either imposing an artificial (and legally indefensible) level of licenses to be issued in any year and, Customs Agents complain about too many agents getting licenses, why would Customs have been satisfied with ‘at least’ a 50% pass mark? • Perhaps thought should be given to what level of pass should be achieved for a <u>competency based</u> qualification like the Customs Agents Course; versus a degree in academia? A person who earns a degree generally goes out into the commercial world and obtains further training/experience before they can practice what they graduated in (like dentistry, medical doctor, engineer, psychiatrist and the like) however once a person passes the Customs Agent’s Course they are eligible to obtain a license and practice as an agent immediately. Hence they need to be very competent from ‘Day 1’ so; due to this difference, graduates from a Customs Agent’s course should have to achieve a pass mark of 80% with at least 75% in each subject, certainly not the insufficient 50% as it stands today. • Higher standards also produce more professional people and; such a high pass mark will highly likely (and by default) answer the calls of Customs Agents and Senior Customs staff in their wish to see lesser numbers of persons become eligible for a license.
<p>Rule 94 (a): Discusses the need (for successful examinees who are to be awarded a license) to pay 300,00R for a license to operate in one customs station or 700,000R to operate on a country wide basis.</p> <p>KHI and ISB – had considerable debate on this issue. The surprise here was that apparently the two charges came from agent’s demands because they thought the ‘national’ license fee was too high.</p>	<p>It is questionable if a Customs Agent’s license can be anything but a national license. Why?</p> <ol style="list-style-type: none"> An applicant sits for a license via a national exam from a national government agency under the authority of a national Customs Act. There is no hint of a distinction in the Act or SROs between a license that permits an agent to operate at a customs station versus on a country wide basis in the Customs Act; The Act clearly indicates at its Section 1 (2) that this act ‘...extends to the whole of Pakistan’. Therefore it could be argued that this Rule, is not in the spirit of the Customs Act as ANY Customs Agents License issued should on its own; permit the licensee to operate throughout Pakistan. <ul style="list-style-type: none"> • If this Rule was intended to exist the Customs Act would be expected to offer words around this requirement that indicates

	<p>a separation of areas for operating with a license. There are none.</p> <ul style="list-style-type: none"> • If Rule 94(a) was created essentially to reap more revenue, would it not be easier and justifiable to simply increase the security deposit and make it a standard amount for all Agents, thereby not restricting their trade? <p>Seems to be a point that needs more private sector consultation than most as the split fees apparently came from Agents requests.</p> <p>Question: Should we recommend to reform this SRO if the private sector is against it?</p>
<p>Rule 95 (9): Issuing of a 'provisional license'..... in 'anticipation' of the passing of a test or training and examination, as the case maybe, for a maximum period of six months or till such time a fresh examination is conducted fulfilling conditions laid down in rules 92 and 95.</p> <p>KHI states:</p> <ul style="list-style-type: none"> i) an in-house exam* (written and verbal) is held before issue ii) must sit again 6 months later if Customs Agent license examination not held iii) License renewed every 6 months (uncertain if test has to be sat for again) if qualifying exam still not held iv) License will be cancelled if qualifying exam available but Prov. License holder does not sit for it or fails. <p>ISB states:</p> <ul style="list-style-type: none"> i) They do not see a need to issue provisional licenses <p>NOTE: this in-house exam not mentioned as criteria for provisional license in SROs. So legal? If so, why?</p>	<ul style="list-style-type: none"> • The Trade Project (TP) Team has not heard of anyone being issued a provisional license (in anything) based on a licensing authority's 'anticipation' of the applicant passing a test or training or examination. Perhaps AFTER passing an exam and waiting formal graduation and/or issue of license. No reference stated or implied to such a license is in the Customs Act. • This clause unfortunately and intentionally or not; makes a mockery of the qualifications required of other applicants who have to sit for (and pass) the qualifying exam before they are permitted to practice. • This license is also clearly a 'backdoor' process that can be easily corrupted in that it can be issued to anyone with connections and or 'speed money'¹⁷ • The TP Team collected evidence that the allocation of this type of license can have different rules in each region throughout Pakistan. Again failure to produce a national approach which should make national legislation and rules, instead, Customs has produced non-transparent and unfair results and expectations to applicants. • Another example of a lack of an agreed national policy or approach, in determining how to manage these licenses by a nationally legislated agency (Customs).
<p>Rule 96 (2): (c) May refuse to renew a license: (if) the licensee becomes mentally retarded or lunatic.</p>	<ul style="list-style-type: none"> • If not already in place, this clause is a perfect example of how a well worded policy document could be written to cover off relevant points this clause causes the reader to ask themselves without being over prescriptive in the original ruling for e.g. <ul style="list-style-type: none"> ○ Which medical authority will be used to determine the agent is mentally retarded or lunatic? ○ How will the process commence on how to reach this conclusion and who commences it? ○ Who pays the fees of the medical advice? ○ What is the stated process as to how to wind up the agents business if he/she is the sole licensee? ○ Who will a review the (say) last 3-6 months of the agent's customs documentation to see if his/her

¹⁷ 'Speed money' another term regularly used in Pakistan – including in its media, so clearly an issue. NOTE: It is not suggested just a senior manager could undertake this it is conceivable any level officer with access to the agent's records and WeBOC could manage an illegal registration of a provisional license.

	<p>illness had caused incorrect lodgement of import/export documentation and the like?</p> <p>The policy detail may need to be considerable as indeed the supporting procedural document, however, these supporting documents ensure the law does not have to be too prescriptive. Once the above definitions are consulted with stakeholders and policy on the above is written and put on the Pakistan Customs website, they are for all to see, providing full understanding and transparency.</p>
<p>Rule 96 (2): (d) May refuse to renew a license: (if) the licensee's previous performance has not been satisfactory;</p>	<ul style="list-style-type: none"> • It is statements like these that need better prescription so the persons concerned with making the decisions and those it impacts upon, understand what level of unsatisfactory performance (in clearly described terms) can lead to a license not being renewed. • NOTE: formalized transparent policy and job procedure documents can allay such ambiguities
<p>Rule 96 (2): (h) May refuse to renew a license: (if) the licensee, in the previous period of validity of license, has failed to file sufficient number of declarations and conduct customs business, as prescribed by the Collector</p>	<ul style="list-style-type: none"> • The author has to date, been unable to find a written document as to the various regions' Collector's tolerance of 'sufficient declarations' and conduct of 'customs business'. However if it is not readily available it needs to be for transparency purposes as well as clarity. What is defined as 'customs business'? Given it is a component WITH number of declarations lodged that determines if an agent loses their license or not, it therefore needs to be suitably described (i.e. 'airtight'). • Again, poorly worded clauses like this opens up legislation to 'flexibility', 'negotiation' and other such 'informal' processes that are rampant in Pakistan and cause only suspicion and anger and; thereby encourages non-compliance.
<p>Rule 99: Customs Agents to attend course This rule relates to a mandatory course of attendance for Customs Agents who must attend 90% of the time of the 6 day course once every 2 years in order to maintain their license. <i>KHI – not keeping up with its legal requirements. With over 3000 agents in Karachi alone they need enough courses to process 1500+ agents per year which at 100 agents per course they are looking at 15 courses per year!</i></p>	<ul style="list-style-type: none"> • This clause is an example that the rule maker must abide by his own rules as well, otherwise; how can agents be expected to abide by the law? • The author learnt that this mandatory legislated course was not held by Customs for some 2-3 years. Given there are ~3,000 agents in Karachi alone how can they all attend a mandatory course in the 2 year window they have if Customs does not meet its legal commitment? • These exam delays will (has?) cause an administrative mess because Customs will need to find a way to 'catch up' with their mandatory license renewal course legal obligations and the longer the period before they hold courses, the further behind their obligations are under their own law. • As it is the 2-3 courses they held recently only covered about 300 agents, how is it possible to catch up when clearly over 1500 agents have to be put through the course every year to meet their legal obligations. • The fall-out of this type of behaviour? Lack of respect for Customs, questions as to what other legislation that impacts on agents Customs may overlook as well? Encourages the oft spoken about Pakistani culture of 'informality', 'flexibility' and 'negotiation' when it comes to the law. • Also to be mentioned again, different regions within Pakistan have different successes with holding examinations again; a dis-jointed approach by a national government agency.
<p>Rule 103: Appeal (against a denial, suspension or</p>	<ul style="list-style-type: none"> • Whilst this clause advises the agent who he/she may appeal to for reinstatement of license, if they are aggrieved by any

<p>revocation of a license)</p> <p><i>KHI & ISB amenable to the view that Customs should have a timeframe in which it needs to make a decision on suspended and revoked licenses</i></p>	<p>decision or order of the ‘Licensing Authority’ denying, revoking or suspending a license or permit under this chapter (i.e. Chapter VIII – Customs Agents Licensing) to the Chief Collector) and offers a time frame in which to lodge an appeal (60 days), there is NO obligation on the Chief Collector or Customs to resolve the issue within any timeframe.</p> <ul style="list-style-type: none"> • Anecdotal evidence suggests only a small percentage (5% has been floated) of suspended licenses have been revoked over the last three (3) years but the period of waiting for a result can be many weeks or months. This small percentage (even if fairly correct) represents a de-facto fine in loss of earnings which could unnecessarily jeopardise the agent’s financial standing causing capital damage. Therefore it is suggested a much fairer process for any agent under investigation is to permit them uninterrupted work and either have them lodge a security or bank guarantee for the potential amount of fraud that they are being investigated for and have them work as they normally did or; have each of their consequential consignments yellow or red lined to enable at least 100% check of lodged documents and if need be, a physical examination of their client’s goods to ensure that, from news of their being investigated, Customs ensures there are no possible further illegal issues during the investigation into their culpability or otherwise, whilst the case is currently being examined by Customs. • As mentioned before, it also concerns the author that regions can and do act independently of each other in terms of how they interpret the Act and SROs pertaining to the Customs Act instead of acting uniformly and nationally. • It is further suggested an SRO be issued regarding this aspect or a publicised policy document for transparency purposes so everyone knows the policy and that it applies consistently and uniformly to everybody concerned – no exceptions.
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Appendix II: Customs Agents/Brokers – Pre-requisites and qualifications before issuance of license in various countries

Country	Pre-requisites	Managing bodies	Issuer of License
Australia	<p>Diploma of Customs Broking – 15 mandatory core units and 3 elective units to be completed totalling 18. Successful assessment outcome over 18 months i.e. 5 semesters of 'Progress of Study'.</p> <p>Successful completion of above ensures applicant is then eligible to sit for the National Customs Brokers qualifying examination.</p> <p>On successful completion of above applicant applies to the National Customs Broker Licensing Advisory Committee (NCBLAC) for consideration of a recommendation to license them to be made to Customs. This committee looks at Integrity, Approved Course of Study and Acquired Experience (RPL). Integrity/Police checks completed. Interviews done. Can take 8 weeks to deliberate on recommending (or not) the applicant. Final recommendation put to CEO Customs</p>	<p>Customs Brokers & Forwarders Council of Australia (CBFCA) formally recognized as the Registered Training Authority (RTA) - by the Australian Skills Authority - manages the Diploma of Customs Broking course.</p> <p>Exam created, held and marked by CBFA. Average pass <u>rate</u> is only 20%. Three (3) hour exam. Same questions <i>never</i> used in future examinations. Minimum pass <u>mark</u> is 70%</p> <p>NCBLAC consider the applicant's application to be granted a Broker's License and sends recommendation (or otherwise to CEO Customs)</p>	<p>CEO of Australian Customs Border Patrol Service (Customs) or their delegate. Usually follows the recommendation made by NCLAC however, is not legally obliged to. Can decide the opposite of the recommendation to issue or not if he/she has grounds.</p> <p><i>It would be expected the applicant would receive feedback (on request) if their application failed.</i></p>
Costa Rica	<p>University degree i.e. Bachelor of Customs & Administration Minimum 2 years' experience in the field \$10,000 deposit to be lodged with Customs as security (bail).</p>	<p>No further details obtained</p>	<p>License authorised by Director General of Customs.</p>
Canada	<p>Must be Canadian National Must be at least 18 years of age Have financial resources to conduct business in a responsible manner Must pass the Customs Broker Professional Examination – 3 hour examination all multiple choice questions and pass mark is a minimum of 60% Must be able to lodge a \$50,000 security before a license is issued.</p>	<p>Examination created, managed and marked by Canada Border Service Agency (CBSA) i.e. Customs</p>	<p>License issued by CBSA</p>

Country	Pre-requisites	Managing bodies	Issuer of License
EU (includes UK)	<p>For customs brokers and clearing agents operating within the European Union, there is NO licensing system. Article 5 of the current customs code (Council Regulation 2913/1992) deals with representation, a key concept. This provision allows an importer or exporter to appoint a third party to act on their behalf. The importer or exporter can appoint the third party to act in two capacities, i.e., as a direct representative or as an indirect representative.</p> <p>A <u>direct representative</u> will act on behalf of the importer/exporter but will have NO responsibility for the customs debt arising from their actions, whereas an <u>indirect representative</u> will have a joint and several liability for the customs debt. In almost all cases, the third party will elect to provide brokerage services on a direct representation basis. As a result the importer or exporter is fully exposed to the risk or error and omission by the customs broker.</p>	N/A	N/A
South Korea	<p>In service training of six (6) months - not specified what this entails. Exam held at least once per year. Need to pass 2 exams. First multiple choice and second based on essays. Complicated marking arrangements but overall need a minimum of 60% of marks for each test. Graduates based on number of brokers required. If not all successful candidates required, selections are based on scores to second decimal point to separate candidates otherwise; if total number who passed are required, all pass and become eligible for license</p>	<p>Examination conducted by Commissioner of Korea Customs Service.</p> <p>Results determined by the Qualification Deliberation Committee (made up of Deputy Commissioner of Customs, other Customs professionals, broker reps, NGO rep.)</p> <p>Commissioner of Korea Customs Service determines minimum amount of persons passing.</p>	<p>On application and if eligible, license issued by Commissioner Korea Customs Service</p>
USA	<p>Customs Broker examination to be successfully completed – minimum pass mark 75% Integrity : Background checks on applicant to ensure moral character Must be 21 years of age or above Citizen of USA</p>	<p>US Office of Personnel Management assists the Customs Border Protection (CBP) in developing, administration and scoring of Customs Broker's Examination</p>	<p>US CBP issues the broker's license</p>

Appendix III: Copy of the High Court of Sindh at Karachi Ref: C.P. No. D-1389 of 2013

IN THE HIGH COURT OF SINDH AT KARACHI 579

C. P. No. D-1389 of 2013

Muhammad Mumtaz Petitioner

Versus

Federation of Pakistan & ors. Respondents

To,

(Respondents)

1. Federation of Pakistan through Secretary Finance, Pakistan Secretariat, Islamabad
2. Chairman, Federal Board of Revenue, FBR House, Constitution Avenue, Islamabad
3. Collector of Customs, Model Customs Collectorate (Appr), Customs House, Karachi
4. Director General, Directorate General of Training and Research (Customs), Sutluj Block, Allama Iqbal Town, Lahore
5. Director, Directorate General of Training and Research (Customs) Old Custom House, Karachi

*** The D.A.G at Karachi


Whereas the Counsel for the petitioner above named has filed Constitution Petition U/A-199, of Islamic Republic of Pakistan 1973 alongwith application to this Court CMA No. 7096 of 2013, (Copy of the petition with annexure and application is attached herewith).


You are, hereby required to appear in person to this Court, or by a Pleader duly instructed d on the 02nd day of May 2013 at 08:15 A. M. for Katcha Peshi and to show cause against the petition, failing wherein, the said petition will be heard and determined ex-parte.

"Till the next date Respondents are directed to maintain status quo and in particular are restrained from cancellation or scrapping the process for issuing new licenses under the Customs Clearing Agents Licensing Rules under which aforesaid examination was held."

Also take notice that in default of your filling an address for service on or before the date mentioned you are liable to have your Defence struck off.

Given under my hand and the seal of the Court this 11th day of April 2013.




 2013

17-4-13

Appendix IV: International examples of NCOCALC type bodies, how they are made up, their purpose and their authority

Country	Committee and make up of it	Purpose	Legislation Authority
Australia	<p>National Customs Brokers Licensing Advisory Committee (NCBLAC)</p> <p>Representatives are:-</p> <ol style="list-style-type: none"> The Chair shall be a person who is or has been a Stipendiary, Police, Special or Resident Magistrate of a state or territory; or in the opinion of the CEO (Customs), possesses special knowledge or skill in relation to matters that the Committee is to advise or report on. Appointed by the CEO for a period NOT exceeding 2 years (but eligible for re-appointment) Broker appointed on nomination of the Broker's organisation that in the opinion of the CEO, represents customs brokers A member of the Commonwealth shall be the person for the time being holding, or performing the duties of, the office in the Department that the CEO specifies, in writing signed by him or her, to be the office for the purposes of this subsection (S183DA(2)(b)(5)) <p>There also exists a Customs & Border Protection (CBP) service National Consultative Committee (CBPNCC).</p> <p>The Chair is the CEO of the Customs and Border Protection (CBP) service. Members are:-</p> <ol style="list-style-type: none"> Shipping Australia Ltd Stevedores Industry Customs Brokers & Forwarders Council of Australia Ltd Aust. Chamber of Commerce Law Council of Australia Institute of Chartered Accountants Aust. Federation of International Forwarders 	<p>Functions are:-</p> <ol style="list-style-type: none"> to investigate and report on applications referred to it by the Chief EO Customs or a Regional Director (RD) for a State or Territory under Section 183CB (Reference of application to Committee) to investigate and report on questions referred to it by the CEO, or a RD for a State or Territory under Section 183CQ ((Investigation of matters relating to a broker's license) to advise the CEO in relation to the approval of courses of study under Section 183CC (Requirements for grant of license) where the CEO requests the Committee to advise him or her on the standards of customs brokers should meet in performance of their duties and obligations as customs brokers – to advise the CEO accordingly <p>Its general principles are:- The Committee will be constructive and creative, weighing carefully the impact of any proposals on industry and Government</p> <p>Its responsibilities are to review and make recommendations on:-</p> <ol style="list-style-type: none"> Emerging strategic issues in the Customs Border Protection international trade operating environment The work program of the sub-committees Where appropriate, proposed changes to the Customs Act 1901 and other related legislation and; <p>Recent developments in case law in the Customs and Border Protection commercial operating environment</p> <p>NOTE: Sub-committees maybe constituted for</p>	<p>NCBLAC is enshrined in several sections of the Australian Customs Act 1901</p> <p>The CBPNCC had its genesis from a recommendation in a report "A Tour of Duties" by the House of Representatives Standing Committee on Finance & Public Administration.</p> <p>Reference: http://www.cargosupport.gov.au/site/documents/CBPNCC_Terms_Of_Reference.pdf</p>

Country	Committee and make up of it	Purpose	Legislation Authority
	<ul style="list-style-type: none"> viii) Board of Airline Representatives of Australia ix) Conference of Asia Pacific Express Carriers x) Australia Post xi) Aust. Quarantine Inspection Service <p>NOTE: The CBP provides secretariat services to the Committee</p>	<p>consultation purposes. The Committee will set the program of work for the sub-committees</p> <p>. The Committee meets twice per calendar year in the capital city where most members are located.</p>	
Canada	<p>Licensing Advisory Committee (LAC) Representatives are:-</p> <ul style="list-style-type: none"> a) Dir. Gen. Border & Compliance Programs Directorate (Chairperson) and/or Director, Licensing, Export & Accounting Policy – Canadian Border Services Agency (CBSA) b) Manager, Brokers Licensing & Account Security Programs, CBSA (secretariat) c) Two (2) representatives from the Canadian Society of Customs Brokers (who have professional status i.e. have a license or appropriate experience and knowledge) d) One (1) representative from the Association of International Customs & Border Agencies (AICBA) (who has same qualification as (c)) e) One (1) representative from the Canadian Association of Importers & Exporters (IE Canada) – who has relevant experience in the industry. <p>Note: Each organizational area is responsible for funding its own representative.</p>	<p>Advises the Minister on following matters</p> <ul style="list-style-type: none"> a) The issue, renewal, suspension or cancellation of licenses, b) Policies & procedures related to professional qualifications & licensing, c) Disciplinary action and complaints against customs agents &; d) Other matters respecting the licensing of brokers 	
Liberia	<p>Recent consultancy in Liberia recommended that a 'Broker Consultation Committee' should be created with an MOU between Customs and the Brokers. Expectations are; that Customs and this Committee would meet once a month to discuss policy and operational issues as well as key decisions of (any) Customs Reform program.</p>	<p>The aims and objective of the National Association of Customs Brokers (NACB) is to:</p> <ul style="list-style-type: none"> - To render services to importers/exporters; - To serve as liaison between the Bureau of Customs and the business community from time to time as required by law; - To serve as the supervisory body in carrying out the 	<p>Legislation governing licensing of Customs brokers is the Act to Incorporate the National Customs Brokers Association of Liberia, approved on January 17, 1994, published under the authority of the Ministry of Foreign Affairs.</p>

Country	Committee and make up of it	Purpose	Legislation Authority
		<p>activities of clearing and forwarding through whom all documents going into the Bureau of Customs and Excise for clearing purposes, which includes and not limited to clearing and forwarding of goods for the business community or members thereof; and to ensure that all the responsible documents pass through the offices of the Association for verification prior to entering the Customs system, in order to generate public confidence and prevent incorrect and fraudulent declarations with respect to the description of goods and rate of duties;</p> <p>- To organize, conduct, administer and evaluate candidates or applicants wishing to engage and practice brokerage activities in order to standardize the profession. It shall administer test to all persons or applicants wishing to practice brokerage activities and to members of the Association;</p> <p>- To do any and all things necessary or appropriate in connection with or incidental to the accomplishment of the foregoing activities;</p> <p>- To act as the national organization for all qualified and licensed customs brokers of the Republic of Liberia and ensure at all times that no person who is not a Liberian national nor a trained and licensed customs broker should practice the profession of customs broker in Liberia.</p>	
<p>UK</p>	<p>Joint Customs Consultative Committee (JCCC) Ref: https://www.gov.uk/government/groups/joint-customs-consultative-committee#terms-of-reference Her Majesty's Revenue & Customs (HMRC) established this in 1969</p>	<p>This committee is the MAIN forum for HMRC to consult trade on imports and exports.</p> <p>Committee should discuss a clear and agreed business model and review all future changes against it for fit or</p>	<p>HMRC Sponsored forum</p>

Country	Committee and make up of it	Purpose	Legislation Authority
	<p>Membership agreed by HMRC and trade chairs with HMRC Chair having the final say in the event of an impasse.</p> <p>Membership reviewed every two (2) years at least. Membership Associations are:-</p> <ul style="list-style-type: none"> i) Assoc. of Freight Software Suppliers (AFSS) ii) Assoc. of Int'l Courier & Express (AICES) iii) Automated Customs & Int'l Trade Assoc. (ACITA) iv) British Chamber of Commerce (BCC) v) British Int'l Freight Assoc. (BIFA) vi) British Ports Assoc. (BPA) vii) British Retails Consortium (BRC) viii) Chamber of Shipping (COS) ix) Chartered Institute of Logistics & Trans. (CILT) x) Community System Providers (CSP) xi) Confederation of British Industry (CBI) xii) Customs Air Trans Consultative Group (CATICG) xiii) Customs Practitioners Group (CPG) xiv) Food & Drink Federation (FDF) xv) Freight Transport Assoc. (FTA) xvi) Institute of Chartered Shipbrokers (ICSB) xvii) Railway Industry Road Haulage Assoc. (RHA) xviii) Royal Mail Soc. of Mtr. Manfs. & Traders (SMMT) xix) UK Aerospace Industry Customs Group (UKAICG) xx) UK Major Ports Group (UKMPG) xxi) UK Warehousing Assoc. (UKWA) 	<p>adjustment.</p> <p>Stated Terms of Reference (TORs) are:-</p> <ul style="list-style-type: none"> i) Discuss the future changes to Customs processes and procedures ii) Share information and act as a consultative group for EU and national initiatives iii) Understand trade impacts and their position to ensure coherence and common understanding in influencing negotiations iv) Horizon scan v) Review progress against the Blueprint and to suggest ways of achieving objectives or changing objectives that are not being achieved vi) Additionally; the JCCC shall consider representations from member organisations relating to Customs matters, where resolution of the latter cannot be achieved by the relevant sub-group 	

Appendix V: Typed copies of the CAL Workshop presentations as a result of the Legislation and NCOCALC workshop agenda issues

Group Presentations:

Group Number 1

- S 207: To be amended to segregate shipping agents and clearing agents
- S 208: Agreed. System needs review to see processes introduced through WeBoC
- S 209: Agreed
- S210: Agreed. S 207 as suggested above has to be amended
- Rule 92: Education qualification: a) graduation- yes- recognized by HEC b) diploma in customs law and procedure 6 plus 3 months (theory and internship) c) exam through NTS
- Rule 92 D: No change, schedule 3, item 21, needs to be amended,
- Rule 93 (1): As suggested at 92
- Rule 93 (2): Agreed. Exam through NTS. Max and min marks may be revisited
- Rule 94 (a): Rs 1 million fee to be prescribed- license to be issued on countrywide basis and the concerned collectorate
- Rule 95 (9): needs revisit – to be aligned with best international practices- provisional license provision to be discounted
- Rule 96 (2) (c): KPI to be devised and rectified 2 (d) – quantifiable parameters to defined-
- Rule 99 : there have to be refresher courses
- Rule 103: agreed; therefore be given
- Comments – Consultant may draft model legislation both in the Act and the rules with in best international practices.
- Sec 207: terminology needs to be rectified act states as custom house agents whereas rules state it as customs agents
- Sec 208: agreed
- Sec 209: should be strictly enforced to the extent that responsibility lies solely with principles and their agents
- Rule 92 (c): the degrees should be duly certified by higher education commission (HEC)
- 92 (d) : Police verification certificate in proof of non – conviction
- 93 (1): Practical test on WeBOC system to ascertain computer literacy and command on customs law and procedures.

Group Number 2

- 92 (c) to be deleted – educational qualification. Initial screening by a body designated by board i) English ii) computer and customs L+P.
DOT for 3 months training then passing out Exam (70 % passing) on the basis of license countrywide
(e) Excluding traffic violations, convictions (Minor)
- 93: testing service to be included (i.e. NTS). BS 14 – has been upgraded to BS 16.
- 94 (9): Provisional issuance may continue in situations only where courts get involved
(3): Operational partnerships – addition
- 96 2 (c): Medical board of government hospitals will decide fee is minor collector may pay Doh (?) – No renewal if dormant during past six months (none of the functions) – have not done mandatory course.
- 103: Appeal to be decided in 120 days.
- 105: Excluding minor traffic convictions.

Group Number 3: (Power Point presentation)

1. Customs Act
 - Section 207 - Terminology
 - Section 208 – Agreed
 - Section 209 – Responsibility of agent should be strictly enforced
2. Rules (SRO 450)
 - 92 (c) : Degree should be certified by HEC
 - 93 (1) : system based WeBOC test module to check the competency
 - 93 (1) : Even the experienced applicant should not be accepted from the WeBOC test
 - 93 (2) : Individual marks criteria 50%
 - 95 (3) : same criteria for partnership as for original applicant
 - 95(9) : provisions of provisional license should be there but there should be defined criteria for it
 - 96 (2 d) : criteria should be defined, it should be quantifiable
 - 96 (2h) : performance has to be percentage of total transactions
 - 99: 6days course should end up with a mandatory Assessment test.
 - 103: appeal period should be 30days.

Group Number 4

- 90: Difference between ‘customs house’ agents and customs agents: these two terms shall be rationalized reference to section 207 of CA.
Definition of partners along with terms and conditions shall be incorporated in rules
- 91: requirements of STRN for application
- 92: Graduation condition is supported. There shall be no limitation on subject in graduation.
Mandatory Customs Course: if) 3 months training in DOT ii) Course fee i.e. Rs. 50,000
Conviction clause: i) shall exclude minor convictions ii) no major conviction within last 2 years (self-declaration by applicant)
Language of 3rd schedule may be made inclusive regarding all matters relating to licensing
- 93: qualification examination after mandatory customs course, within two years. Till then provisional license may be issued for transactions of business
Course completion certificate: i) Spot exam = 50% ii) Class participation =25% iii) attendance = 25%, with minimum of 30% in each module (Rs 5000)
Contents of course – focused on customs laws and procedures
- 94: Country wide (national) license after filtration through such a hectic procedure License fee shall be uniform i.e. Rs. 500,000.
- 95: 1) provisional license – shall be issued after course completion course, for 2 years only
2) Partners – Shall be defined – law/rules shall apply mutatis mutandis – maximum no of partners 3.
- Renewed Fee shall be Rs. 25000 – Renewal shall be compliance based (compliance to law/rules) rather than performance based – no of declaration (GD's) shall not be the criteria for renewal of license.
- 99: Course shall be conducted at various stations under supervision of DOT
- 102: Show cause notice shall be issued within 30 days of supervision of license, otherwise license will be revived and cannot be suspended during that financial year
- 103: Chief Collector to decide appeal within 120 days after filing of appeal by custom agent.

Day 2 Presentations: re: NCOCALC

Group Number 1&2 (combined)

- To enhance corporation for cooperation for better efficiency, compliance and fairness.
- **Strengths:** Forum – national liaison committee, Consultation feedback on policies: agents Perspective, Resolution disputes, complaint verification and REFL.
- **Opportunities:** Reduce Disputes and litigation, better consensus on related policies, new policy ideas, and development: compliance risk parameters, improved compliance, breaking agent's monopolies, elements of fairness for FBR.
- **Weakness :** Committee Members may predominate personal agents , predomination of bigger agents, nepotism and pressure on customs, lack of commitment in long-term matters
- **Threats** – Protectionism, status quo, agents exposed to bureaucratic hassle from their representatives, affects speed of daily process.
- **Way forward:** Initiate proposal to agents at field level by collectors, consolidate agents at field level, Option by field bodies of agents: a) Collectorate representative b) regional representative c) Task Manager appointed by FBR for setup of coordination.

Group Number 3 (Electronic presentation)

- Proposed National Customs officers and customs agent's liaison committee.
- Mission Statement – The mission of proposed committee is to provide a national focal point for facilitation with balanced public – private participation in order to improve dialogue between Customs agents and Customs Administration; define solutions to remove impediments to smooth functioning; assist in the implementation of those measures and provide the collection and dissemination of information.
- **Strengths:** Better communication, Dispute resolution trade facilitation, and proactive approach. Pre-empt problems and find solutions before the problem arises.
- **Weaknesses:** Pressure groups, interference in administrative matters, manipulation of vested interests, peculiar dynamics of field formations, too big a body for issues of small nature
- **Opportunities:** Possibility of standardization of procedures, uniformity in policies, speedy mechanism for removal of impediments.
- **Threats:** Undue pressure on customs resources, possibility of lack of consensus amongst associations of various regions.

Group Number 4

- Mission statement of NCOCALC – To enhance quality of service, knowledge base, compliance and ownership of law and to reduce trust deficit between customs administration and clearing agents and manipulation through consultative process.
- **SWOT Analysis:**
- **Strengths:** May reduce trust deficit between customs and customs agents, Consultative input to decision makers, ownership of law, enhance compliance
- **Weakness:** Poor experience of ADRC (delays and corruption), May not address issues requiring immediate decisions, pressure groups/ abuse of positions.
- **Opportunities:** dispute resolutions such as classification issues, standardization of business processes, communication channel
- **Threats:** Slowing down of decision making grid lock many people, cultural context-group interest override national interest, Chances of manipulation