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REVIEW OF CUSTOMS BROKER LICENSING, MANAGEMENT, AND REGULATIONS

TRADE FACILITATION PROJECT

April 2009

This publication was produced for review by the United States Agency for International Development. It was prepared by Chemonics International Inc.

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Contract No.EEM-I-00-07-00008-00 TO 04

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ACRONYMS

ASYCUDA	Automated System for Customs Data
CPA	Certified Public Accountant
DTI	Direct Trader Input
GCC	Gulf Cooperation Council
HS	Harmonized System
MALAM	Israeli Customs Automated Entry Processing System
MOU	Memorandum of Understanding
PACE	Palestinian Authority for Customs and Excise
PAFFCB	Palestinian Association of Freight Forwarders and Customs Brokers
PCB	Palestinian Customs Broker
SAD	Single Administrative Document
UNCTAD	United Nations Conference on Trade and Development
USAID	United States Agency for International Development
VAT	Value-Added Tax
WBG	West Bank and Gaza
WCO	World Customs Organization

EXECUTIVE SUMMARY

1. Overview

The current trade regime between Israel and the Palestinian Authority is based on the Paris Protocol. This provides for a uniform economic envelope based upon external borders, also known as a customs union. With limited exceptions, the Israeli customs law applies.

The Palestinian Authority for Customs and Excise (PACE) has responsibility for customs duties, value-added tax (VAT), as well as excise assessment and collection. PACE has no direct representation at international border crossing points or internal crossing points into the West Bank and Gaza (WBG).

Import procedures for goods destined for the WBG or being exported are dealt with by an Israeli-licensed customs broker, acting as the interface with the Israeli Customs Department. To meet their compliance obligations, Palestinian importers/exporters have two options:

1. Employ a Palestinian customs broker (PCB) as their representative and intermediary with the Israeli customs broker/Israeli Customs Department. The PCB is not licensed by PACE or the Israeli Customs Department.
2. A business may choose to deal directly with the Israeli customs broker. Again, PACE has no legal authority over the Israeli customs broker.

2. Factors to Consider in Assessing Existing & Future Demand for Licensed PCBs

2.1. Number of Transactions Involving PCBs

PACE advances the proposition that licensing PCBs will ensure access to better-quality information. Adding value to the information will provide the means by which PACE can increase revenues and implement improved measures to identify, analyze, and address the consequences of regulatory breaches. The absence of reliable data on which to quantify PCB activity levels makes it difficult to assess the benefit that regulatory control over PCBs would deliver.

Recommendation (Section 4.1):

- PACE should collect data on the number and customs value of declarations dealt with by PCB intermediaries.

2.2. Rollout of ASYCUDA World

The functionality of ASYCUDA World will allow PACE to: (a) provide a total e-customs platform to transact business with the trading community and (b) have an effective data

interface with MALAM, the Israeli Customs automated entry processing system. The Director-General is proposing legislation that will obligate Palestinian businesses to report all import/export transactions using ASYCUDA. To manage their compliance obligations, businesses may elect to use a licensed PCB.

2.3. Certified Public Accountants

The certified public accountant (CPA) prepares and lodges the monthly statement to VAT officers. Underpinning the calculation of the VAT amount is the valuation of the imported goods. In establishing the customs value, the owner is commonly represented by a CPA. PACE considers this a short-term measure; in the future, CPA firms will not be able to carry out the ‘profession of a customs broker’, thus increasing future demand for licensed customs brokers.

2.4. Re-export to Jordan

The PACE Single Administrative Document (SAD) is accepted by Jordanian Customs for the re-export of qualifying goods from the West Bank. At present, the SAD document is prepared by PACE on behalf of the exporter. In the future, ‘direct trader input’ will be implemented. If this was accompanied by an increase in re-exports¹ and exports (not currently approved), it would create additional demand for licensed PCBs.

2.5. Memorandum of Understanding

A memorandum of understanding (MOU) represents a softer compliance management option for PACE—one that does not have the cost impact of regulatory-driven compliance. An MOU has the potential to deliver many of the compliance outcomes of the draft law, such as defining mutual obligations, access to documents, and exchange of information, albeit on a voluntary basis. On the downside, it is not a legally enforceable agreement. An MOU is in place between PACE and CPAs, which has had a positive effect on industry awareness and increased customs and VAT collections.

3. Compliance Management Options

There are two options for managing compliance. The first is to license PCBs through an amendment to the Customs Law (1961)² and secondly via an MOU. The body of this report provides a cost/benefit analysis for each option.

There is a solid argument for licensing PCBs through an amendment to the customs law. However, there is no immediate requirement for amending the law. The timing will depend on the demand for licensed PCBs, which in turn is based upon the factors listed in the report (Section 4).

¹ 148 qualifying shipments were made between May 20, 2008 and April 5, 2009.

² The Trade Facilitation Project legal officer will advise what form the legislation will take; it may take the form of a regulation or an amendment to the Customs Law of 1961.

In any event, the process of having the draft law written, endorsed, and passed will take time. An MOU can be implemented immediately and represents an interim option for both PACE and PCBs, albeit one that does not provide the full gamut of compliance measures and authority which PACE seeks to achieve through an amending law. It is an intermediate step on the path to full regulatory compliance. It would allow time for PACE and the industry to design and implement systems, policies, and procedures in a planned and considered way, and based on lessons learned.

Recommendations (Section 5.3):

- Since there is no immediate need for an amending law, an MOU should be negotiated between PCBs and PACE as the basis for compliance management and support to the professional development of PCBs.
- The legal officer of the Trade Facilitation Project should draft the terms of the MOU, incorporating as appropriate the content described in Section 6 of this report.
- The MOU should have a minimum validity period of 12 months.
- During the period of the MOU and prior to the enactment of the draft law, PACE should work in partnership with PCBs, importers, and exporters to prepare the supporting policies, procedures, and implementation plan necessary to give effect to the amending law.
- The draft law should not be enacted during the period of the MOU.

4. Amending Law

This report argues that there is no immediate requirement for an amending law. However, when considering the content of a future amending law, the nine key elements described in Section 6.1 should be taken into account. They will serve to ensure that the draft law is consistent with, inter alia, the World Customs Organization (WCO) Kyoto Convention and SAFE Framework of Standards, ensure accountability, reasonableness, and transparency in PACE application of these standards.

Recommendation (Section 6.1):

- Future amendments to the Customs Law (1961) should take into account the nine key elements presented in Section 6.1.

In considering the content of the draft law, note was taken of customs law from several customs administrations, including Jordan, Israel, the Gulf Cooperation Council (GCC) states, and Egypt. The report systematically addresses and provides justification for the draft law subject-matter.

Recommendation (Section 6.2):

- The content of the draft law should incorporate Sections 6.2.2-6.2.15, taking into account the justification ‘notes’.

5. Industry Self-Regulation

The proposed Palestinian Association of Freight Forwarders and Customs Brokers (PAFFCB) offers an opportunity for PACE to oversee governance at an industry level. It is in the interests of PACE to actively support and promote the role of PAFFCB (or similar body) as the peak industry body representing members' broad interests. While PACE should continue to support the aims and objectives of a peak industry body, there will always remain a need for PACE to oversee the activities of customs brokers.

Recommendations (Section 7):

- PACE should support the registration of the PAFFCB and the development of an industry-wide code of conduct.
- PACE should build a cooperative working relationship with the PAFFCB, enlisting its support to promote PACE compliance policies and procedures.

6. PACE Organizational Structure

PACE will require internal capability to implement and manage the MOU and, later, the new law. At the outset, a small 'Compliance Support Section' will be required, with functional responsibilities limited to designing, writing, and implementing policies and procedures to support the implementation of the MOU/draft law. Externally, there will be a requirement for stakeholder education and support.

The degree to which customs brokers willingly cooperate with PACE is a key element in developing an effective partnership. In this context, PACE should not establish a specific section with responsibility for investigating customs broker non-compliance as this would convey the wrong message to both the customs broker and PACE staff.

Recommendations (Section 8):

- PACE should establish a Licensing Section with a role and functional responsibilities in accordance with Section 5 and Section 8 recommendations.
- PACE should not (at this time) establish a specific section with responsibility for investigating customs broker non-compliance.

7. Regulating Customs Broker Numbers

The role of PACE is to determine whether the applicant meets the required standard to be licensed. The proposed law strongly supports transparency and accountability. It is not the role of PACE to artificially regulate the number of PCBs. Market forces will ultimately determine the number of PCBs.

Recommendations (Section 9):

- PACE should not take any action to artificially restrict the number of licensed customs brokers.

- PACE is only empowered to oversee licensing and compliance in accordance with the law.

8. Professional Development

8.1. Current Situation

There is no accredited training program for Palestinian customs brokers. It is important to prepare them for their future role in the event that:

- A changing political environment provides an expanded role (for PACE) in the management of WBG borders.
- There is an enhanced role representing Palestinian business at Israeli-controlled border crossing points.
- Palestinian businesses are obligated to provide PACE with data for all WBG import/export transactions.³

Recommendation (Section 10.1):

- PCBs should receive vocational training independent of any decision related to customs broker licensing.

8.2. Training Program

Customs broker training programs are widely available. Regionally, the Jordan Customs Department is a designated WCO regional capacity-building center and could advise on the availability of customs broker training courses. In Israel, there are a number of academic institutions delivering accredited customs broker training programs. The Director-General advises that the Australian Center for Customs and Excise Studies also has a customs broker training program.

Recommendations (Section 10.2):

- Regional and international vocational training programs should be identified and evaluated.
- The vocational training program must incorporate a ‘customs union’-specific curriculum and be delivered in the context of the Paris Accord.

8.3. Program Delivery and Fees

The training of PCBs is not PACE core business and is better left to a private sector educational institution(s). The delivery of the vocational training program offers an opportunity for private sector investment. It is preferable for an academic institution/college to provide a ‘turnkey solution’ incorporating, inter alia, provision of training facilities, maintenance of training records, printing and distribution of training

³ Source: Director-General meeting of April 8, 2009.

notes, and delivery of the curriculum. The industry and its members should be responsible for all cost and fees associated with the program.

Recommendations (Section 10.3):

- The private sector should provide a ‘turnkey solution’ to the delivery of a vocational training program.
- PACE involvement should be limited to writing, supervising, and marking the examination.

SECTION 1. BACKGROUND

1.1. Objective

The Trade Facilitation Project is helping the Palestinian Authority for Customs and Excise (PACE) develop ways to gain greater accountability for information provided by the importer/exporter in connection with declarations and statements made to PACE through the introduction of Palestinian-registered custom brokers. Currently, (unregistered) Palestinian customs brokers (PCBs) act as sub-agents of Israeli customs brokers. They are not regulated or accountable for the accuracy of the documents presented. PACE considers that this limits its ability to collect all of the revenue that is legitimately due, which underscores the need for regulatory supervision.

The assignment objective was to work with PACE to assess the current state of customs brokerage activities in the West Bank and develop a plan to implement a customs administration that qualifies, registers, designates, and regulates custom brokers who are permitted to conduct specific customs business for clients with the understanding and support of involved private sector interests in the trade community.

1.2. Overview

The current trade regime between Israel and the Palestinian Authority is based on the Paris Protocol. This provides for a uniform customs envelope on external borders, also known as a 'customs union'. With respect to trade with third parties (i.e. non-Israeli-Palestinian trade), the agreement stipulates that, with limited exceptions, the Israeli import regime applies to the West Bank and Gaza (WBG). This includes not only tariff rates and import charges, but also international procedures adopted by Israel for classification and valuation of goods as well as standards and import licensing law.

Furthermore, it was agreed that there would be a unified system for VAT clearances and that these revenues would be transferred by Israel to the Palestinian Authority based upon supporting documentation. PACE, which is located within the Ministry of Finance, has responsibility for customs duties, VAT, as well as excise assessment and collection.

PACE has no direct representation at international border crossing points or internal crossing points into the WBG. All import procedures for goods destined for the WBG or being exported are dealt with by an Israeli-licensed customs broker acting as the interface with the Israeli Customs Department (except for the re-export of goods to Jordan, subject to certain qualifying conditions). The declaration and payment of revenues is made at the point at which the goods enter the customs envelope (e.g. Port of Haifa), but the revenue is allocated according to the final destination point of the consignment (e.g. West Bank). Duties and taxes collected by PACE, either directly or through revenue allocation from the Israeli Customs Department, represent 93 percent of the Palestinian Authority budget.⁴

⁴ Palestine's Involvement in the WCO – Progress Report, Policy Commission WCO, November 2008.

SECTION 2. ROLE OF A LICENSED CUSTOMS BROKER

Customs administrations the world over depend on voluntary compliance, backed up by intelligence-led audit and enforcement strategies. As part of their risk-managed approach to compliance, customs administrations rely heavily on licensed customs brokers to advise and support clients in meeting their compliance obligations.

As part of the 'entry' process, goods must be classified and their value determined. It is usual for the entry to be electronically transmitted to Customs. It is the responsibility of importers or their authorized agents to use "reasonable care" to "enter," "classify," and "value" the goods and provide any other information necessary to enable the customs administration to properly assess duties, collect accurate statistics, and determine whether all other applicable legal requirements are met. These requirements may be complex and require specific expertise.

For importers/exporters to meet their responsibilities, they may employ experts within their organizations or seek external advice or services from licensed customs brokers, lawyers, certified public accountants, etc, who specialize in customs matters.

Of these outside experts, it is normal for licensed customs brokers to prepare and lodge entry documentation. The preparation and lodging of entry documentation constitutes "customs business" which often, by statute, can only be performed on behalf of others by a licensed customs broker.

SECTION 3. RELATIONSHIP BETWEEN PALESTINIAN AND ISRAELI CUSTOMS BROKERS

Border clearance activities are a legal function of the relationship between the Israeli Customs Department and a licensed Israeli customs broker. When goods are imported into the customs envelope, they are subject to certain formalities. In almost all cases, the goods are required to be “entered,” that is, declared to the Israeli Customs Department. Consignments may be subject to evaluation to ensure compliance with the law.

To comply with their legal and administrative obligations under the ‘customs envelope,’ businesses in the Palestinian Territories have two options.

Option 1

Traders may employ a PCB as their representative and intermediary with the Israeli custom broker/Israeli Customs Department. As a general rule, this is based upon:

- Location of the PCB in the West Bank; the requirement for a travel permit makes it difficult and time-consuming to make direct contact with an Israeli customs broker.
- Knowledge of the traders’ business.
- Language barrier when dealing with an Israeli customs broker.

PCBs act as a ‘customs broker’ but are not licensed by either the Israeli Customs Department or PACE. A PCB is not legally accountable to PACE for any omissions, errors, and misrepresentations made by the Israeli customs broker. PACE requires PCBs to report those transactions for which they act as a sub-agent to an Israeli customs broker. This is governed by a voluntary agreement between PACE and the PCB. PACE reports a level of non-compliance but is generally satisfied with the level of cooperation from PCBs.

Option 2

A business may choose to deal directly with the Israeli customs broker. The reasons are business-related:

- For larger clients, an Israeli customs broker will provide a line of credit, and will pay on behalf of the client customs and VAT revenues, port clearance charges, service fees, and the like.
- Employing a PCB as an intermediary adds unnecessary costs; although the NIS unit cost of employing a PCB is small, it becomes a significant cost if the company is importing say 1,000 containers per year.
- There is no legal impediment to a Palestinian importer/exporter dealing directly with the Israeli Customs Department. However, to ensure that all compliance and entry requirements are met, businesses regard it as prudent to employ a licensed customs broker to effect clearance of the goods. The Israeli Customs Department places

commercial goods entered by unlicensed persons into a higher risk category and evaluates them accordingly.

For these transactions, PACE obtains transaction data from: (a) the monthly Declaration and VAT Statement lodged by a CPA company or owner and/or (b) monthly reconciliation data received from the Israeli Customs Department.

PACE has no legal authority to demand access to records held by an Israeli customs broker. Legal advice is to the effect that the legal, policy, and administrative relationship between the Israeli customs broker and PACE cannot be addressed in the draft law.

SECTION 4. FACTORS TO CONSIDER IN ASSESSING EXISTING AND FUTURE DEMAND FOR LICENSED PCBs

4.1. Number of Transactions Involving PCBs

PACE advances the proposition that as a consequence of licensing PCBs, it will gain access to better-quality information. Adding value to the information will provide the means by which PACE can increase revenues and implement improved measures to identify, analyze, and address the consequences of regulatory breaches of the Customs Law of 1961.

No one should seriously question the requirement for a licensed and professional cadre of customs brokers in a conventional import/export relationship with the international trading community, in which the customs authority has sovereign control over international border crossing points. This is not the case with WBG, however.

Each month, an average of 4,500 declarations are lodged for goods destined for the West Bank.⁵ There is no reliable data to quantify the number/percentage of declarations lodged each month by PCBs acting as intermediaries. Based on a telephone survey of major PCB companies in Ramallah, Nablus, and Hebron, approximately 20 percent or 900 declarations per month are referred to PCBs; the balance is referred directly by Palestinian businesses to the Israeli customs broker. However, the Director-General of PACE asserts that at least 75 percent of transactions are referred through a PCB intermediary.⁶

There is agreement by all parties that PCBs do the majority of their business with the smaller import/export companies and individuals. Larger companies tend to deal directly with the Israeli customs broker.⁷ The absence of reliable data on which to quantify PCB activity levels makes it difficult to assess the benefit that regulatory control would deliver.

Recommendation

- PACE should collect data on the number and customs value of declarations dealt with by PCB intermediaries.

4.2. ASYCUDA Implementation

PACE is in the process of implementing ASYCUDA World, an upgrade from the existing ASYCUDA++, as its entry processing platform. The ASYCUDA technical team reports that it will be ready for a general rollout to PACE and the business community in June 2009. The ASYCUDA World functionality will allow PACE to fully automate its

⁵ Source: ASYCUDA/MALAM data.

⁶ Source: Meeting with the Director-General on April 8, 2009.

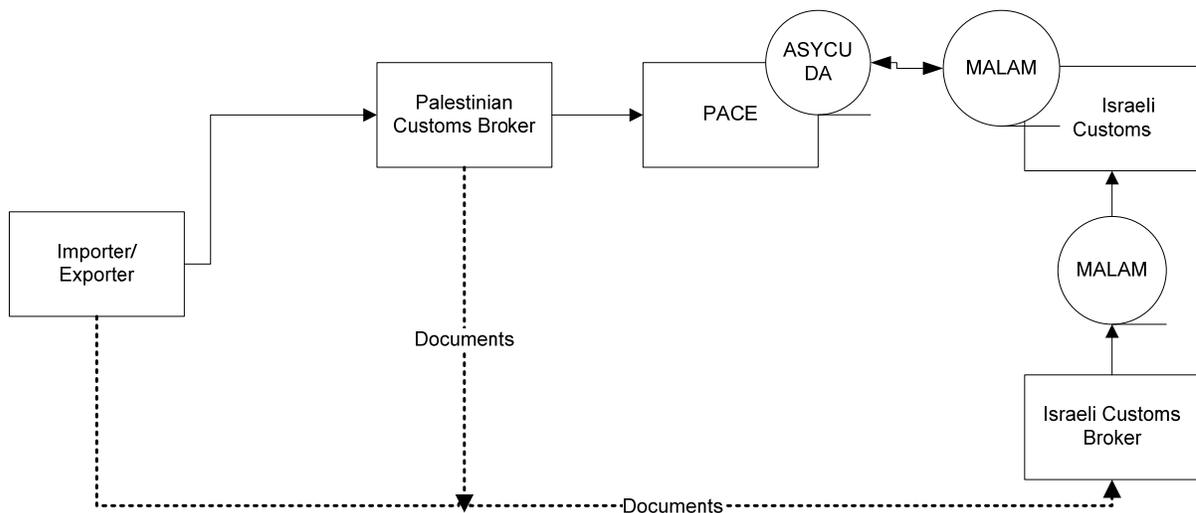
⁷ Source: Director-General of PACE.

relationship with the trading community based on an e-commerce platform and to have an effective data interface with MALAM, the Israeli Customs automated entry processing system.

The Director-General of PACE plans to use ASYCUDA to re-engineer the import/export relationship between PACE and the Palestinian trading community (see Exhibit 1). This is based on the following assumptions:

- Through regulation or other instruments, Palestinian businesses will be required to use ASYCUDA to provide PACE with all import/export transaction details, regardless of whether they employ a PCB intermediary or contract directly with an Israeli customs broker.
- The ASYCUDA/MALAM interface⁸ will ultimately provide PACE with real-time trade data or, if not real-time, at least provide data in a format that can be interfaced seamlessly (without data input by PACE staff).

Exhibit 1. Reengineering Import/Export Relationship Between PACE and Traders



Full access to transaction data would provide PACE with the capability to manage compliance using the risk profiling and targeting modules of ASYCUDA, greatly enhancing the effectiveness of its post-entry audit program. The MALAM interface will also allow PACE to analyze importer/exporter transaction data declared to the Israeli customs broker and to match it against the importer/exporter ASYCUDA record.

Import/export documentation would be sent, as it is now, directly to the Israeli broker by either the owner or PCB. The strategy meets all the requirements of the customs envelope. The relationship between the importer/exporter, Israeli customs broker, and Israeli Customs Department remains unchanged.

⁸ Source: Director-General of PACE. A joint PACE/Israeli Customs Department technical committee is examining the scope of any interface between MALAM and ASYCUDA. It is due to report by the end of May 2009.

As noted earlier, the business of customs is complex. It can be expected that the demand will increase for licensed PCBs who are able to prepare entry documentation and input data into ASYCUDA to create the Single Administrative Document (SAD) required by PACE. It is highly likely that businesses that currently deal directly with Israeli customs brokers will need to contract with a PCB to ensure they meet their legal obligations to PACE and not expose themselves to the penalty provisions of the Customs Law of 1961.⁹

4.3. Certified Public Accountant Companies

In common with counterparts in other countries, the CPA companies in the West Bank offer a range of commercial and financial advice. The market is dominated by the ‘big four’ companies and banking institutions. To survive, small CPA companies occupy a niche market providing audit, taxation, and VAT advice to small private sector companies and individuals—a market segment that is largely ignored by the larger accounting and financial service companies.

Both large and small CPA companies are involved in submitting VAT returns to PACE. While no reliable data is available, informal advice from PACE and the CPA industry suggests that the smaller CPA companies submit the majority of VAT returns in terms of importer client numbers.

An importer is required to submit a monthly VAT return to PACE. Subject to certain conditions being met, the VAT input paid at import is refunded as cash or used as an offset at settlement. The CPA prepares and lodges the monthly statement to VAT officers, comprising the original MALAM declaration, invoice, B/L, packing list, and VAT-specific documentation.

Underpinning the calculation of the VAT amount is the valuation of the imported goods. The VAT section of PACE will not accept the Israeli Customs Department valuation (calculated by the Israeli customs broker), because: (a) officers cannot substantiate the customs valuation¹⁰ and (b) there is a level of under-valuation of goods by importers in documents submitted for clearance to Israeli authorities. The importation is re-valued by PACE, the invoice ‘stamped’ and submitted to the VAT section. The ‘stamp’ is evidence to VAT officers that the valuation is approved by PACE.

In establishing the customs value, the owner is commonly represented by a CPA. The CPA establishes the customs value, relying on knowledge of marketplace prices, valuation of previously imported similar goods, and a CPA-owned prices reference guide. If PACE disputes the CPA customs valuation, then a negotiated outcome is achieved.

⁹ Under the proposed draft law, non-licensed persons/companies may deal with their own goods but will be liable for any errors, omissions, and the like, and subject to the specific and general penalty provisions of the Customs Law (1961).

¹⁰ Requires a written request to the Israeli Customs Department.

From May 20, 2008, to November 4, 2008, there were approximately 6,900 re-valuations resulting in additional revenue of 589,000 NIS.¹¹

CPAs have a legitimate role in representing the importer to the VAT section of PACE. This is in accordance with their professional role representing their clients' financial interests. There is no regulation that specifically prohibits a CPA from acting as a de facto customs broker.¹² However, PACE agrees that it is less than ideal to have CPAs with no customs-specific qualifications responsible for establishing the customs value. Nevertheless, this provides PACE with a level of assurance that the valuation of goods is within acceptable parameters and that the revenues collected are higher than if no action were taken.

The role of CPAs also represents a conflict of interest and the potential for a corrupt relationship between the CPA and PACE officer. In the latter case, ASYCUDA World will contain a Prices Reference Database that will provide the basis for arbitrating over disputed valuations.

The Director-General of PACE made it clear that this was an interim measure and that, in the future, CPA firms would not be able to carry out the "profession of a customs broker," which will increase the future demand for licensed customs brokers. This is based on the assumption that the draft law is enacted and that there is a body of licensed customs brokers to take over the current CPA role.

It is not inconsistent with the Director-General's view that CPA firms may structure their business to meet the requirements of the law to obtain a corporate customs broker license.

4.4. Re-exports to Jordan

The ASYCUDA Single Administrative Document (SAD) is accepted by the Jordanian Customs Department for the re-export of qualifying goods from the West Bank through the Allenby Bridge border crossing point.¹³ If the qualifying criteria were to be broadened to include all exports, then potentially shipments that are currently exported through Israeli ports for Europe could be routed through Jordan. Subject to approval by Israel, there is also potential for the growth of export traffic through the Eilat and Sheik Hussein crossing points.

4.5. Rafah Crossing Point

For a short period in 2005, PACE had sovereign control over the Rafah border crossing point. Although now closed to commercial traffic, if it were to reopen, then qualified PCBs would be required to undertake the customs clearance function.

¹¹ Source: ASYCUDA data.

¹² The draft law will define 'customs business' and require, with two exceptions, for a person conducting customs business to be licensed.

¹³ From May 20, 2008, through April 5, 2009, there were 148 qualifying shipments, based on ASYCUDA data.

4.6. Memorandum of Understanding

A memorandum of understanding (MOU) represents a softer compliance management option for PACE and does not have the cost impact of regulatory-driven compliance. An MOU has the potential to deliver many of the compliance outcomes of the draft law, such as defining mutual obligations, access to documents, and exchange of information, albeit on a voluntary basis. On the downside, it is not a legal commitment nor is it a legally enforceable agreement. There are no penalty provisions other than to revoke what is effectively a gentleman's agreement.¹⁴

In terms of precedence, the relationship between PACE and CPA companies is underpinned by an MOU based on an initiative of the Director-General. PACE has worked with the industry to educate CPAs and generally support them in their role. The arrangement has been described by both parties as successful in enhancing compliance as well as increasing VAT receipts and the revenue paid by importers.

¹⁴ A legal advisor has been requested to provide advice on the potential for penalties to be incorporated into an MOU.

SECTION 5. COMPLIANCE MANAGEMENT OPTIONS

5.1. Option 1: Legal Amendment

On the upside, licensing PCBs by enacting an amendment to the Customs Law (1961) will:

- Increase compliance by PCBs.
- Provide PACE with the authority to demand access to records whenever PCBs act as an intermediary.¹⁵
- Increase revenue receipts and provide a higher level of assurance that the correct amount of revenue is being collected.
- Constitute a step towards international and regional recognition of Palestinian customs brokers as a professional body.
- Prevent unlicensed persons or companies (e.g. CPAs) from practicing as de-facto customs brokers. As a result, industry will be better informed on compliance obligations and the quality of information provided to PACE will be enhanced.
- Build the capacity of the industry and PACE, preparing them for the future.

On the downside:

- The draft law will not provide PACE with authority over Israeli customs brokers.
- There are direct and indirect costs for PCB and PACE in establishing and maintaining systems and procedures to manage obligations.
- Even without licensing the role of CPAs in determining customs, value will decrease with the introduction of the ASYCUDA Prices Reference List.
- Enacting a draft law¹⁶ requires a Presidential Decree. Unless the law is a priority, decree processes take considerable time.

5.2. Option 2: MOU

On the upside, using an MOU to manage PCB compliance will:

- Enable immediate implementation by PACE, requiring no regulatory approval by an external authority.
- Reduce the cost of compliance-related policies and procedures for the private sector and PACE.
- Increase compliance by PCBs.
- Provide PACE with access to records whenever a PCB acts as an intermediary.¹⁷

¹⁵ The assumption here is that Palestinian businesses are not required by law to provide PACE with a SAD for all import/export transactions.

¹⁶ This is an assumption only and based on informal advice from USAID. See Section 6 for further discussion.

¹⁷ The assumption is that Palestinian businesses are not required by law to provide PACE with a SAD for all import/export transactions.

- Increase revenue receipts and provide a higher level of assurance that the correct amount of revenue is being collected.
- Build capacity; in an environment where there is no regulation, the MOU represents an intermediate step towards full regulatory control by PACE.
- Allow for the immediate incorporation of existing unlicensed and unregulated PCBs into a system of voluntary (agreed) ‘regulation’.
- Provide the basis of a compliance relationship, incorporating PACE support for professional development as well as educational and awareness components.

On the downside:

- The terms of the MOU are not legally enforceable. Compliance is a voluntary commitment on the part of the PCBs (and PACE).
- The terms of the MOU will have a lesser scope than the draft laws—i.e. it will not prevent any person or company from practicing as a PCB.
- The MOU applies to PCBs only.

5.3. Analysis: Options 1 and 2

- Amending the Customs Law (1961) remains a medium-term priority. It is essential in the context of PACE capacity-building and its role of guaranteeing the revenue and broader community protection responsibilities.
- The MOU is a short-term but cost-effective option for both PACE and PCBs. Lodging a customs declaration can be the end-result of a set of complex analysis of commercial documents provided by the importer/exporter. In the event that WBG businesses are obligated to provide an ASYCUDA record for all import/export transactions, then a demand will be created for qualified customs brokers. This eventuality can be prepared for through a PCB professional development program (see Section 10). If this requirement becomes law, then the industry is fully prepared from a competency perspective. Professional development is not contingent upon the enactment of the draft law.
- An MOU with the PCBs will go some way to achieving immediate relief based on a voluntary commitment.
- Neither party is experienced in the design and implementation of a regulatory-driven compliance environment. An MOU is an intermediate step on the path to full regulatory compliance in preparation for enactment of the draft law. It will allow time for both PACE and the industry to develop and implement systems, policies, and procedures in a planned and considered way, and based on lessons learned.
- Even if a draft law could be immediately enacted, PACE has not presented a solid case supporting the need for a draft law. Evidence of the type and financial consequences of PCB non-compliance are anecdotal. On balance, the number of import/export transactions dealt with by PCB intermediaries as a percentage of total WBG transactions is minimal. How much difference would the draft law make to PCB compliance and how much would it contribute to increased revenue collection?
- There is no immediate requirement for an amending law. PACE could negotiate an MOU with PCBs individually and with an overarching agreement with the PAFFCB.

- In the short to medium term, the MOU option will make the most cost-effective and immediate contribution to the compliance objectives of PACE.
- The timing for the draft law is dependent on the demand for licensed PCBs, which in turn is based on the factors listed in this report (Section 4).

Recommendations

- Since there is no immediate need for an amending law, an MOU should be negotiated between customs brokers and PACE as the basis for compliance management and support for the professional development of PCBs.
- The Trade Facilitation Project legal advisor should draft the terms of the MOU, incorporating, as appropriate, the content described in Section 6 of this report.
- The MOU should have a minimum validity period of 12 months.
- During the period of the MOU and prior to the enactment of the draft law, PACE should work in partnership with PCBs, importers, and exporters to prepare the supporting policies, procedures, and implementation plan necessary to give effect to the law.
- The draft law should not be enacted during the period of the MOU.

SECTION 6. AMENDING LAW

As noted in Section 5.3, there is no immediate requirement for an amending law. However, when considering the content of a future amending law, the nine “key elements” described below should be taken into account. They will serve to ensure that the draft law is consistent with, inter alia, the WCO Kyoto Convention and SAFE Framework of Standards, promoting accountability, reasonableness, and transparency in PACE application of these standards.

There have been ongoing discussions with the legal advisor of the Trade Facilitation Project and agreement that the key elements and content listed in the following sections are central to achieving licensing and compliance outcomes, and will be reflected in the draft law.

6.1. Key Elements of the Draft Law

Any legislation that establishes a broker management regime should incorporate the following points:

1. Consistency with:
 - WCO principles
 - Revised Kyoto Convention to promote trade facilitation, while ensuring that the statutory functions of PACE are not compromised
 - SAFE Framework of Standards Pillar II – strengthening the partnership with business enterprises
2. A person must hold a customs broker license in order to transact ‘customs business’ on behalf of others.
 - Note: a definition of ‘customs business’ will be included elsewhere in the Customs Law; broadly, it would incorporate activities involving transactions with PACE concerning the declaration of goods, their classification, valuation, payment of duties, tax refunds and the like, and preparation of documents intended for lodgment with PACE.
3. Provide the basis for the legal and administrative control of the customs broker industry by PACE—i.e. set the standards for issuing of the license, including qualifications, describe roles and responsibilities, as well as grounds for license revocation and suspension, etc. The administration of the regulations is at a Ministry of Finance/agency level.
4. Create a regulatory environment that balances the control and facilitation continuum.
5. The regulations will provide for reasonableness, transparency, and accountability, including a mechanism to independently monitor application of the regulations.
6. Compliance-related costs incurred by the industry and PACE are minimized.

7. The regulations will address the core requirements and provide the foundation on which the regulatory environment can be developed as and when the need is identified by PACE and/or customs brokers.
8. Use of drafting language that will allow for PACE officers, PCBs, and the trading community to interpret and apply, without continual recourse to formal interpretative legal advice.
9. Inevitably and over time, the complexity of the regulatory environment will develop. There is nothing to be gained at this point from either stakeholder perspective to propose a draft law that cannot be effectively managed by either party.

Recommendation

- Future amendments to the Customs Law (1961) should take into account the nine key elements outlined above.

6.2. Draft Law Framework

In designing the draft law, note was taken of the following customs legislation:

- Palestinian Customs Law No. 2 (1961)
- Draft Palestinian Customs Code of 2005 (GTZ Economic Policy Advice Project)
- Common Customs Law of the GCC States
- Customs Law of Egypt
- Jordan Customs Law
- Arab League Uniform Customs Law (draft)
- Israeli Customs Code

6.2.2. Rights and Liabilities

Authority

- Owners of the goods must authorize a customs broker to be their agent while maintaining their responsibility as the importer.
- A customs officer can require a corporate/nominee/individual customs broker to produce the authority if requested.

Liability of Customs Broker and Owner

- The customs broker shall for the purpose of the Customs Act (1961) deemed to be the owner of the goods.
 - Note: The owner has legally appointed the PCB as his/her agent; the appointment of an agent does not remove any legal and administrative obligations of the owner.

- Where a person is the nominee of a customs broker, then for the purposes of the Customs Act (1961), any representation shall be deemed to have been made by the customs broker.
- In each of the cases above and for the purposes of the Customs Act (1961), a declaration submitted to PACE shall be deemed to have been made with the knowledge of the owner of the goods.
 - Note: For the purposes of the Customs Law of 1961, the customs broker is deemed to be owner of the goods.
- Customs brokers are responsible for any offenses that they or their authorized employees commit in the customs declaration, if not acting in good faith.
- The owners of the goods are responsible for the acts of their employees with respect to the duties and taxes collected by the customs office and for any penalties and confiscations provided for in the Customs Act (1961).

6.2.3. Licensing of a Customs Broker

Granting of a License

- No person may practice the profession of a customs broker and transact the ‘business of customs’¹⁸ in WBG without first having obtained a license issued by the PACE Director-General after meeting the provisions of the draft law.
- Authority is delegated to the Director-General to grant a customs broker license in any of the three categories (see Section 6.2.4).

Application for a License

- Requirement to specify form of the application—e.g. in writing.
- Requirement to specify the information to be provided in the application—e.g. contain the name and address of the applicant and the company address, if applicable.
- Other information that the Director-General may prescribe.
 - Note: An option is to request the application be made on a ‘prescribed form’, which the Director-General has the power to amend from time to time to reflect changed license information requirements.

6.2.4. License Categories

To be qualified, an applicant must have been assessed as competent—i.e. having the requisite skills, knowledge, experience, and personal attributes. The following sections address this requirement.

Individual License

- Must be a natural person (as opposed to a corporate entity).
- Must be a Palestinian citizen.¹⁹

¹⁸ This requires a definition in the Customs Law (1961).

¹⁹ This requires a definition in the Customs Law (1961).

- Note: The intention is to ensure that persons of other nationalities cannot be licensed as individual customs brokers to practice in WBG. This is a common applied condition—e.g. Common Customs Law of GCC law, Jordanian Customs Law, Australian Customs Act, Canadian Customs Code, and Israeli Customs Act. There is precedence in WBG under the Auditing Practice Law (No. 9) Article for other nationalities to practice as a CPA in WBG, provided there is (a) country reciprocity, (b) they are fluent in Arabic, and (c) can demonstrate an understanding of the relevant Palestinian statutes.
- Must be at least 25 years of age, which is recommended by the Director-General.
 - Note: The intention is to ensure that a person is an adult in the eyes of the law and can be dealt with accordingly.
- Has sufficient financial resources to conduct his/her business in a responsible manner.
- Has sufficient knowledge of the Customs Law and related administrative policy and practices.
- Must be of a person of good character—i.e. a fit and proper person to occupy a position of trust in his/her relationship with Palestinian Customs.
- When determining whether a person is of good character, there is a need to provide guidance in the draft law to ensure objectivity and accountability—for example: no criminal convictions within say the last five years in any jurisdiction of a nature that is relevant to a person’s fitness to be granted a license; police has no record of serious misconduct; and the application contained no false or misleading statements.

Eligibility to Be the Nominee of a Customs Broker

This section covers the activities of a company with a corporate customs broker license, which employs a licensed customs broker(s):

- The nominee must be a licensed customs broker.
- The nominee cannot act as a customs broker in his/her own right.
- The nominee must be a director or an employee of the company.

Corporate License (Incorporates Partnerships)

In the event that individuals wish to conduct the business within the framework of a legal entity (e.g. company structure), then the draft law will make provision for corporate licenses:

- The company must be incorporated in WBG and hold the appropriate licenses to conduct the business of a customs broker.
- Is of good reputation.
- Has sufficient financial resources to conduct its business in a responsible manner.
- All the directors are of good character.
- At least one director is a licensed customs broker.
- Changes in company directors must be notified to within 30 days. PACE will require integrity checks for each new director(s).
- Must advise PACE when new nominees are employed or existing nominees depart.

- When the structure of a company changes and a new company registration is made, the license issued to the original company is not transferable.
- The licensee must inform PACE of changes in the financial status of the company that affect the ability to hold a license. This covers bankruptcy, winding up of a company, and the like.

6.2.5. Exceptions to the Requirement for a Customs Broker License

For the following category of transactions, no license is required:

- A person entering non-commercial goods for themselves or a third party.
- An importer or exporter conducting business solely on his/her own account.
 - Note: persons in these two categories are accountable for ensuring that the goods are correctly entered in accordance with the Customs Act of 1961, and penalties resulting from errors, omissions, and the like in the declaration will be applied to the person or company.

6.2.6. Examination

- An applicant will be required to demonstrate a sufficient knowledge of the Customs Law (1961) and administrative policies and practices. This would be established by requiring applicants to take a written customs broker examination and attain a pass mark of at least 75 percent. Examinations must be held at least once per year.
- Having acquired relevant experience, which in the opinion of the Director-General qualifies the applicant to be a licensed customs broker.
- No officer of PACE can be licensed as a customs broker within 12 months of resignation from PACE.
 - Note: this is designed to avoid the perception of or any actual conflict of interest.

6.2.7. Transition Period

- For a person practicing as an unlicensed customs broker prior to the draft law coming into force and who in the opinion of the Director-General has demonstrated the required level of skills and knowledge and met the character requirement, then that person may be granted a customs broker license without fulfilling the requirement to pass the written examination.
 - Note: On the date the draft law comes into effect, there is a requirement to ensure the availability of a sufficient number of licensed customs brokers who are able to provide business continuity. The number of persons approved under the transition provisions should be limited to those who are actively involved in the business.

6.2.8. Security/Guarantee

Individual

Before a license is issued or renewed, the customs broker shall be required to deposit a security, using an amount determined by the Director-General, to protect PACE against

financial loss incurred through the actions of the customs broker/nominee/corporation and when the revenue loss cannot be recovered through normal channels.

6.2.9. Fees

The applicant is required to pay a fee before a license is issued or renewed; the amount of this fee shall be determined by the Director-General.

6.2.10. Duration

- A license, including one that has been renewed, is valid for a period of three years from the date of issue.
 - Note: The Director-General will have the authority to cancel or suspend a license during the three-year period.

6.2.11. Records

- A customs broker is required to keep prime and supporting records as well as books of account, including information transmitted by electronic means.
- Specify the documentation retention. The period should be consistent with normal commercial requirements applied in WBG.

6.2.12. Cancellation or Suspension

- The Director-General will have the power to cancel or suspend a license.
- A failure to meet any of the conditions and responsibilities associated with a customs broker license may result in referral of the matter to an Advisory Board for consideration and recommendation to the Director-General on possible suspension or cancellation of the license.
 - Note: Reasons for canceling/suspending a license must be based on objective criteria and would normally relate to a significant contravention of legislative provisions relating to the import and export of goods.
- To ensure objectivity, accountability, and transparency, the customs broker will be advised of the reasons for the proposed cancellation/suspension and provided with the opportunity to respond and make representations as to why the license should not be cancelled/suspended. The Advisory Board will be responsible for advising the Director-General with respect to the cancellation/suspension of a license.

6.2.13. Surrender of a License

A customs broker shall surrender his/her license to the Director-General if:

- The license has been cancelled; or
- The customs broker has ceased to transact business as a customs broker.

6.2.14. Penalties

The intent of penalties is for PCBs to be fully responsible for any offenses they or their authorized employees commit. Penalties will be broadly categorized into three sections:

1. Contraventions that may lead to the cancellation/suspension of a license. Such contraventions include: acting to defraud the revenue or a client; engaging in dishonest conduct as a customs broker; no longer being considered a ‘fit and proper person’ through conviction in any jurisdiction; contravening the provisions of the Customs Law (1961); failing to pay fees or penalties due to PACE; becoming bankrupt, resulting in the customs broker being unable to provide the required guarantee; or no longer being qualified under the (proposed) law. Before a decision is taken by the Director-General to cancel or suspend a license, the facts should be forwarded to the Advisory Board for investigation and a recommendation, to be provided to the Director-General.
2. Mid-range contraventions: These are less serious offences resulting from inadvertent error that can be dealt with through verbal counseling, education, and the like, with the objective of improving customs broker compliance. In addition, it is prudent that PACE have recourse to financial penalties as a tool to manage mid-range offenses.
 - Note: (i) Customs offences can be classified as either a ‘strict liability’ offense or an ‘at fault’ offense. A strict liability offense does not require fault to be proved. This means PACE can penalize a customs broker for a relevant action without the need to prove whether he/she acted intentionally, recklessly or otherwise. The fact that the action occurred is sufficient.
 - Note: (ii) Strict liability offenses may also be prosecuted, but in the main these offenses are of lesser nature and are dealt with at an administrative level. For example, an ‘infringement notice’ could be issued to a customs broker for making a false or misleading statement resulting in a loss of revenue. A demand to pay say 5 percent of the short paid revenue would be the penalty.
3. Serious offenses: Penalties for more serious ‘at fault’ offenses may include prosecution under the general offenses provisions of the Customs Law (1961). This action may also result in the cancellation or suspension of a license using the ‘offense’ provisions of the Customs Act (1961).

6.2.15. Advisory Board

Objectives of an Advisory Board

- Ensure that PACE administers the law objectively and is accountable for its decisions.
- Provide an avenue for a person to challenge a decision by PACE without the need to go to a civil court.
- Reduce the cost of litigation for all parties by having the matter dealt with at an administrative level.

- Ensure a speedy resolution to an issue.
- Provide the Director-General with independent advice to balance that received from internal sources.

Functions of an Advisory Board

- Review all license applications and advise the Director-General on whether the applicant has met all of the requirements for licensing.
- Investigate and report on issues relating to the cancellation/suspension of a license.
- Hear appeals lodged by customs brokers disputing decisions made by Customs relating to the (proposed) law.
- Advise the Director-General in relation to the approval of courses of study.
- Investigate and report on matters referred to it by the Director-General.

Membership of the Advisory Board

- An executive-level customs officer (not the Director-General),
- A board member from the Palestinian Association of Freight Forwarders and Customs Brokers (or other body if the PAFFCB is not constituted or functioning), and
- A legal practitioner.

It should be noted that the Director-General is concerned that the proposed Advisory Board lacks independence and will be viewed as a function of PACE. The Director-General is also concerned that, as final arbitrator, he may be subject to personal representations from affected parties seeking to influence his decision. His preference is for two committees organizationally independent from PACE to deal with: (a) licensing certification procedures, including setting and marking of examinations and (b) dispute resolution. Decisions issued by these committees would be binding on the Director-General rather than ‘advisory’, as proposed in the draft law.

If this approach is adopted, there is a real concern that decision-making will be overly bureaucratic and subject to delays that are counter to the reasons for recommending that issues be first dealt with at a PACE administrative level. The Advisory Board structure provides the appropriate balance, ensuring that the independence and integrity of the Advisory Board and Director-General can be defended. The proposed law requires that certain matters be referred to the Advisory Board before a decision is taken.

In most instances, the Advisory Board recommendation(s) will be accepted by the Director-General. On those occasions where a recommendation is rejected, the reasons would be well-documented and conveyed to the affected party. The draft law does not preclude disaffected parties from seeking redress before a civil court.

Recommendation

- The content of the draft law should incorporate Sections 6.2.2-6.2.15 inclusive, taking into account the justification ‘notes’.

SECTION 7. INDUSTRY SELF-REGULATION

The idea of customs broker self-regulation as an adjunct to PACE regulation has been raised in the course of meetings by industry representatives. The industry recognizes that a level of PACE supervision is desirable and a necessity to achieve the objective of professional recognition within the broader Palestinian and international business community. That said, there is concern that PACE will attempt to over-regulate the industry, resulting in unnecessarily high compliance costs.

Without any credible industry body to take responsibility for the development, implementation, and monitoring of an industry code of conduct, a code of ethics and standards, then the idea of industry self-regulation is some way off. Over time, the industry will engage in voluntary standard-setting but, at best, this will serve only to complement PACE supervision of the industry.

The proposed Palestinian Association of Freight Forwarders and Customs Brokers (PAFFCB) offers an opportunity for PACE to oversee governance at an industry level. It is in the interests of PACE to actively support and promote the role of PAFFCB (or similar body) as the peak industry body representing members' broader interests and becoming an effective voice for members.

While PACE should continue to support the aims and objectives of a peak industry body, encouraging self-regulation, there will always remain a need for PACE oversight of the activities of customs brokers. This is an area where the Palestinian government and clients of the customs broker expect PACE to provide regulatory oversight.

Recommendations

- PACE should support the registration of the PAFFCB and the development of an industry-wide code of conduct.
- PACE should build a cooperative working relationship with the PAFFCB, enlisting its support to promote compliance policies and procedures.

SECTION 8. PACE ORGANIZATIONAL STRUCTURE

There are approximately 70 PCBs in the West Bank, of which around 30 are actively engaged in the business. A 'Compliance Support Section' should be created within PACE, with functional responsibilities limited to the writing and implementation of policies and procedures required to support introduction of the draft law. Externally, there will be an educational and support role with all stakeholders. Deciding on the number and duties of staff is a PACE responsibility.

Over time, the scope and volume of work for PACE will increase and responsibilities will evolve. Organizational structures may be reviewed at any time and changed to meet a current or emerging business need.

The degree to which customs brokers willingly cooperate with PACE is a key element in developing an effective partnership. Conversely, aggressive and unresponsive behavior from either party will undermine the integrity and legitimacy of the relationship. In this context, PACE should not at this time establish a specific section with responsibility for investigating customs broker non-compliance as this will convey the wrong message to both the customs broker and PACE staff.

Recommendations

- PACE should establish a Compliance Support Section with a role and functional responsibilities in accordance with Section 5 and Section 8 recommendations.
- PACE should not (at this time) establish a specific section with responsibility for investigating customs broker non-compliance.

SECTION 9. REGULATING CUSTOMS BROKER NUMBERS

The role of PACE is to determine whether the applicant meets the required standard to be licensed. It is not the role of PACE to artificially regulate the number of customs brokers.

The proposed law strongly supports transparency and accountability. The Director-General has little discretionary authority and is obligated to take note of criteria in the law when making a decision on whether an individual or corporate entity meets the qualifying criteria for licensing. The draft law also makes provision for individuals and companies who have their application for a license or license renewal refused by the Director-General to appeal to an independent Advisory Board for review.

Market forces will ultimately determine the number of customs brokers. Allowing a choice of service provider encourages competition. The benefits of an ‘open market’ policy will ultimately flow through to the importer/exporter in the form of lower transaction costs and improved service levels.

Recommendations

- PACE should not take any action legally or administratively to artificially restrict the number of licensed customs brokers.
- PACE is only empowered to oversee licensing and compliance in accordance with the law.

SECTION 10. PROFESSIONAL DEVELOPMENT

10.1. Current Situation

If a customs broker does not have the fundamental knowledge, ability, or expertise, this will be reflected in the sub-standard quality of that person's work. There is no accredited training program for customs brokers in WBG to provide individuals with the skills and knowledge to correctly 'enter' goods for import and export in accordance with the Customs Act (1961). Competency as a customs broker is gained through a mixture of on-the-job training, mentoring, and attendance at industry training courses on trade-related topics. Professional development is the result of personal motivation and desire to remain competitive in the marketplace, in addition to also being driven by industry and regulatory standards.

It is important to prepare PCBs for their future role in the event that:

- A changing political environment provides an expanded role (for PACE) in the management of WBG borders.
- There is an enhanced role representing Palestinian businesses at Israeli-controlled border crossing points.
- Palestinian businesses are obligated to provide PACE with data for all WBG import/export transactions.²⁰

It is essential that the trading community has confidence in PCBs' professional competence. The same applies to PACE, which relies on the customs broker to co-manage the compliance responsibilities of importers and exporters. It is critical to the integrity of the global supply chain that customs brokers have the knowledge, skills, and experience to fulfill this important role.

The formal process of licensing a person to be a customs broker is a simple and quick process, delegated to the Director-General. However, attaining sufficient knowledge of the customs law and administrative policy and practices requires a considerably longer period of time. Independent of a decision to adopt the draft law, it is essential that a training program be available for PCBs.

Recommendation

- Independent of any decision relating to the licensing of PCBs, a vocational training program should be made available to PCBs.

10.2. Training Program

Customs broker training programs are widely available. While making allowances for specific country differences relating to say health and quarantine permit requirements and

²⁰ Source: Director-General meeting of April 8, 2009.

border clearance procedures, the curriculum is uniform, addressing the harmonized international standards and norms that ensure multilateral trading activities can proceed using a common language. For example, the Harmonized System (HS) nomenclature is used as a basis for the collection of customs duties and international trade statistics, while the General Agreement on Tariffs and Trade lays down the general principles for an international system of valuation.

The Director-General recently returned from a study tour to Australia, where he visited the Center for Customs and Excise Studies. He advises that the center has a customs broker training program available based upon the Australian National Customs Broker program. Regionally, the Jordanian Customs Department is designated as the WCO capacity-building center for the Middle East/North Africa and could advise on the availability of customs broker training courses. In Israel, there are a number of academic institutions delivering accredited customs broker training programs.

The suitability of any program curriculum requires that it be delivered in a country-specific context. In addition to the Palestinian-specific content, an approved course should reflect the reality of the customs union, where customs procedures, tariff and valuation measures will continue to be based on Israeli rules and procedures.

Recommendations

- Regional and international vocational training programs should be identified and evaluated.
- The vocational training program must have a ‘customs union’-specific curriculum and be delivered in the context of the Paris Accord.

10.3. Program Delivery and Fees

The training of PCBs is not PACE core business and is better left to a private sector educational institution(s). The delivery of the vocational training program offers an opportunity for private sector investment. PACE is responsible for ensuring that the applicant has the required knowledge of the Customs Law (1961), administrative policies and practices.

To demonstrate knowledge, the applicant will be required to take a written examination, supervised and marked by PACE. In this way, PACE can control the quality of the program and standard required of applicants without being involved in administration, design, and/or delivery of the program.

It is preferable for an academic institution/college to provide a ‘turnkey solution’. This would include, inter alia, training facilities, maintenance of training records, printing and distribution of training notes, and delivery of the curriculum.

As a matter of principle, the industry and its members should be responsible for all cost and fees. Costs associated with the program are not the responsibility of PACE.

Recommendations

- The private sector should provide a ‘turnkey solution’ to the delivery of a vocational training program.
- PACE involvement is limited to writing, supervising, and marking the examination.

SECTION 11. ACTION PLAN

No	Issue	Report Location	Action	Lead Responsibility	By When ²¹
1	Transactions PCBs	Section 4.1	Collect data on the number and customs value of declarations dealt with by PCB intermediaries.	PACE	Immediate and ongoing
2	MOU	Section 5.1	Implementation of an MOU between PCBs and PACE, as the basis for compliance management and support for the professional development of PCBs.	PACE	30 days
3	MOU Drafting	Section 5.3	Draft terms of the MOU, incorporating as appropriate the content described in section 8 of this report.	Trade Facilitation Project (Legal Advisor)	21 days
4	Amending Law	Section 5	Prior to the enactment of the draft law, work with PCBs, importers, and exporters to prepare the supporting policies, procedures, and implementation plan necessary to give effect to the amending law.	PACE	90 days
5	PAFFCB	Section 7	Support the registration of the PSFFCB and assist in the development of an industry code of conduct.	PACE	Immediate and ongoing
6	Organizational Structure	Section 8	Establish a Compliance Support Section within PACE, with a role and functional responsibilities in accordance with Section 7.3 and Section 10 recommendations.	PACE	14 days
7	Professional Development	Section 10.2	Identify and assess customs broker training programs.	PACE	60 days
		Section 10.2	Identify and negotiate with a private sector education institution to provide a 'turnkey solution' to the delivery of the customs broker training program.	PACE	90 days

²¹ Reflects the number of days for completion after commencement of the activity.

ANNEX A. LIST OF MEETINGS ATTENDED

Date	Organization	Participants	Purpose of Meeting
March 29- April 14, 2009	Chemonics International	Jim Purser Abed Hammouri	<ul style="list-style-type: none"> Ongoing discussions during the course of the assignment; receiving and validating information
March 30- April 14, 2009	Equity Legal Group	Tareq Z. Touqan	<ul style="list-style-type: none"> Discussion of the content of proposed sub-agents licensing regulations
March 29	Palestinian Customs	Director-General	<ul style="list-style-type: none"> Overview of the political, legal, and operational environment Understand vision of the Director-General
March 29	Palestinian Customs	Deputy Director-General, Customs and Excise	<ul style="list-style-type: none"> Understand the current environment and role of sub-agents Discussion of various aspects relating to administrative controls over sub-agents
March 30	Palestinian Customs	Ghaha Al Whaidy Iyad Salamaha	<ul style="list-style-type: none"> Update on the existing approach to the control over sub-agents Update on previous attempts to license sub-agents
March 30	Lausanne Trading Consultants	Mohamad Khader	<ul style="list-style-type: none"> Understanding of the current environment and role of sub-agents Discussion of various aspects relating to administrative controls over sub-agents
March 31	UNCTAD ASYCUDA Program	Misyef Misyef	<ul style="list-style-type: none"> Update on the rollout of ASYCUDA World Piloting of Direct Trader Input (DTI) Training program for external stakeholders
March 31	Israeli Tax Authority (Customs)	Aviram Abramovitz	<ul style="list-style-type: none"> Understanding of licensing regulations; approach to compliance and training of customs brokers
April 1	<ul style="list-style-type: none"> Palestinian Customs (Nablus) Palestinian Customs (HQ) Palestinian Customs Broker (also Board Member of Paltrade and PSC) 	<ul style="list-style-type: none"> Thaher Rafe Iyad Salamaha Tareq Saqfalhait 	<ul style="list-style-type: none"> Joint meeting to discuss and debate issues central to the assignment: professional development, regulatory environment, roles and responsibilities vis-à-vis relationship with Israeli customs brokers and Palestinian Customs, licensing criteria, role of CPAs, self-regulation in the context of the role of the Palestinian Federation of Freight Forwarders and Customs Brokers; integrity
April 5	Palestinian Customs	Ghaha Al Whaidy	<ul style="list-style-type: none"> Relationship with CPA firms and governing authority

Date	Organization	Participants	Purpose of Meeting
April 6	Soufan (CPA company)	Ghassan. M. Soufan	<ul style="list-style-type: none"> • Role of CPA in the lodging of returns to PACE • Method of establishing value of goods for VAT purposes • CPA licensing policy • CPA professional development • MOU with Customs
April 7	UNCTAD ASYCUDA Program	Misyef Misyef Alaa Bassyouni	<ul style="list-style-type: none"> • Rollout schedule for ASYCUDA • Authority to access ASYCUDA • DTI input • Trade data for report
April 8	Palestinian Customs	Director-General	<ul style="list-style-type: none"> • Overview of finding and recommendations • Receive feedback
April 10	USAID	Andrew McKim	<ul style="list-style-type: none"> • Overview of finding and recommendations • Receive feedback
April 12	American Furniture	Saed Ajouli (direct employment of Israeli customs broker)	<ul style="list-style-type: none"> • Businessman who imports approximately 1,000 containers/year • Relationship with Israeli customs brokers • Reasons why an Israeli broker, and not a PCB, was employed for clearance work
April 12	Lamar	Asad Jabari (employment of PCB intermediary)	<ul style="list-style-type: none"> • Businessman who imports approximately 50 containers/year (heavy machinery) • Relationship with PCB • Reasons why the business employs a PCB as an intermediary for customs clearance work
April 13	Palestinian Customs	Ghaha Al Whaidy lyad Salamaha	<ul style="list-style-type: none"> • Briefing on findings and recommendations

ANNEX B. COMPLIANCE MANAGEMENT FRAMEWORK

As a general principle, a compliance management policy and responses should be applied uniformly and objectively. The proposed model describes a range of responses that are tailored to different risk levels and the PCB's compliance history. The responses range from support and assistance through targeted enforcement measures (e.g. audits, penalties, and prosecutions). This approach also provides a pathway by which PACE can improve compliance based on lessons learned.

