



USAID
FROM THE AMERICAN PEOPLE



Business Plus Initiative
USAID funded project implemented by Chemonics International

Customs brokers legislation review

April 2012
Ulaanbaatar, Mongolia

Project: Mongolia Business Plus Initiative Project (BPI)
Report Title: ***Customs Brokers Legislation Review***
Main Author: Stephen Creskoff
Contract No. 438-C-11-00001
Submitted by: BPI Project/Chemonics International Inc., Express Tower, 12th Floor,
Chingeltei District, Ulaanbaatar, Mongolia
Telephone and fax: (976-11) 32 13 75 Fax: (976-11) 32 78 25
Contact: Efrain Laureano, Chief of Party
E-mail address: elaureano@bpi-chemonics.biz

ABBREVIATIONS AND ACRONYMS

BPI	Business Plus Initiative
CGA	Customs General Administration
GATT	General Agreement on Tariffs and Trade
MNCCI	Mongolian National Chamber of Commerce and Industry
RKC	Revised Kyoto Convention
USAID	United States Agency for International Development
WCO	World Customs Organization
WTO	World Trade Organization

TABLE OF CONTENT

ABBREVIATIONS AND ACRONYMS.....	i
TABLE OF CONTENT	iii
EXECUTIVE SUMMARY	iii
SECTION I: SCOPE OF WORK, ACTIVITIES AND DELIVERABLES	1
SECTION II: CONCLUSIONS AND RECOMMENDATIONS.....	3
ANNEX A: A MODEL LAW ON CUSTOMS BROKERS	7
ANNEX B: A CONCEPT PAPER TO THE MODEL LAW ON CUSTOMS BROKERS	19
ANNEX C: BPI RECOMMENDATIONS TO CUSTOMS BROKERS LAW.....	25
ANNEX D: CUSTOMS BROKERS PRACTICE PRESENTATION.....	59

EXECUTIVE SUMMARY

The purpose of my consulting assignment was to assist CGA, customs brokers and other stakeholders regarding trade facilitation issues in general and specifically with the development of a proposed Law on Customs Brokers consistent with international standards and “best practices” as reflected in the WCO’s Revised Kyoto Convention and WTO agreements.

The proper functioning of customs brokers is an important component in modern customs administration. Declarants, and their customs brokers, are responsible for the submission of correctly prepared customs declarations and other documents and the payment to Customs of the correct amounts of duties and taxes assessed on imports and exports. In Mongolia, customs brokers and customs licensed specialists reportedly are not satisfactorily performing this function. Therefore, the current regulatory regime needs to be revised and the capacity of customs brokers and customs licensed specialists increased.

The key stakeholders, CGA, the customs brokers, and the Ministry of Finance, have different views regarding an appropriate new regulatory regime for customs brokers and customs licensed specialists. In its draft Law on Customs Brokers, CGA has proposed intensively regulating customs brokers, including requirements for training and licensing and determining the fees that brokers can charge, the places and times where they can work, a state authorized trade association, and the creation of a “risk fund” managed by CGA. In contrast, the customs brokers favor a regime where training and possibly also licensing are performed by NGOs and brokers are free to determine their fees for services and where they work. The brokers also favor a financial guarantee that is less costly than the proposed “risk fund”. The Ministry of Finance opposes new customs brokers’ legislation and shifting licensing from the Minister of Finance to CGA and is of the view that any regulatory changes should take place through the issuance of new CGA regulations.

The three key stakeholders, as well as traders and other concerned stakeholders, must come to an agreement on an appropriate regulatory regime for customs brokers and customs licensed specialists. To start the agreement process, I prepared a “matrix” analyzing the CGA legislative proposal and suggesting changes based on international standards and best practices. The next steps may include the following:

- The formulation of an alternative proposal by the customs brokers, probably in the format of alternative legislation
- Dialogue between the key stakeholders (public-private dialogue) discussing the key issues and resolving differences
- The preparation of a draft law (or new regulations) incorporating the agreed upon new regime for customs brokers
- Implementation of the new regime either by the adoption of new legislation or the promulgation of new regulations. A new regime should include a financial guarantee program based on insurance contracts and bank guarantees as an alternative to the “Risk Fund” proposed by CGA.

In view of the importance of customs brokers and licensed customs specialists to improved trade facilitation, a new regulatory regime should be approved and in place by the end of 2012.

SECTION I: SCOPE OF WORK, ACTIVITIES AND DELIVERABLES

All consulting work took place during the 24 days LOE allotted from 2 April through 28 April in Ulaanbaatar. Key elements of the methodology used during the STTA included: (1) maximization of the involvement of all relevant private sector stakeholders; (2) facilitation of dialogue between private sector stakeholders and the CGA and, Ministry of Finance; (3) assisting private sector stakeholders to develop a new regulatory regime for customs brokers; and (4) targeted communications at key stages of the legislative process to inform about progress, educate about reforms, and gather support for a new regulatory regime for customs brokers.

During the period of the STTA, the following activities took place:

- Inception meetings with BPI, CGA, customs brokers and freight forwarders, MNCCI, and USAID where the basic issues regarding a customs brokers' regulatory regime and the objectives of the STTA were discussed
- Preparation of an international "best practices" powerpoint presentation highlighting the different regulatory regimes employed by other countries, including USA, the EU, China and Russia, and detailing the international standards applicable to customs brokers activities contained in the WCO's Revised Kyoto Convention and relevant WTO agreements.
- Oral presentation and discussion of the powerpoint presentation on international "best practices" to CGA (customs brokers legislative working group and, separately, senior CGA management) and to the customs brokers (the Customs Brokers Council of MNCCI). A copy of the presentation was also provided to the Ministry of Finance and USAID.
- Facilitation of the formation of a joint private-public sector working group to consider reform of the customs brokers' regulatory regime
- Debriefing of all stakeholders
- Development of an action plan to resolve differences between stakeholders regarding an appropriate regulatory regime for customs brokers in Mongolia

During the STTA, the following deliverables were prepared:

- Public presentations on international standards and "best practices" applicable to the regulation of customs brokers
- Public presentations on the benefits of trade facilitation
- Technical review of the draft Law on Customs Brokers. This was prepared in matrix format with comments and recommendations to facilitate discussion of the issues by the various stakeholders
- A model law based on the CGA proposal and incorporating BPI's recommendations
- A concept paper to accompany the model law

SECTION II: CONCLUSIONS AND RECOMMENDATIONS

The most important objectives in revising the regulatory regime applicable to customs brokers and customs licensed specialist are to:

1. Incorporate all international standards and best practices applicable to customs brokers;
2. Develop and implement a regime that increases the capacity of customs brokers and customs licensed specialists to carry out their functions, thereby improving trade facilitation;
3. Adopt an affordable financial guarantee program for customs brokers using (if possible) insurance based guarantees;
4. Encourage frequent consultations between the stakeholders about issues of concern (implement an ongoing public-private dialogue between the private sector stakeholders - customs brokers and traders - and CGA and the Ministry of Finance.

ANNEX A: A MODEL LAW ON CUSTOMS BROKERS

ANNEX A: A MODEL LAW ON CUSTOMS BROKERS

Working Documents on Competitiveness and Business Enabling Environment - Mongolia

BPI recommendations of April 25, 2012

(based on first draft of Working Group of CGA of December 24, 2010

and amendments and changes made as of April 5, 2012)

[brackets indicate alternate language]

THE MODEL LAW ON CUSTOMS BROKERAGE

CHAPTER ONE

General Provisions

Article 1. Title and Purpose of the Law

1.1 The purpose of this Law shall be to improve customs brokerage activities and regulate relations between the customs organization, customs brokers, customs certified specialists and persons and legal entities commissioning customs clearance through customs brokers.

Article 2. Legislation

2.1 The customs brokerage legislation of Mongolia shall consist of the Constitution of Mongolia, the Civil Code, the Law on Licensing, the Customs Law, the Customs Tariff Law, this Law, and other legislative acts enacted in conformity therewith.

2.2 If an international treaty to which Mongolia is a party establishes procedures different from those in this Law, then the former shall prevail. International agreements applicable to customs administration and customs brokers include but are not limited to the World Trade Organization's General Agreement on Tariffs and Trade (GATT); the Agreement on the Implementation of Article VII of the GATT (the Agreement on Customs Valuation); and the World Customs Organization's International Convention on the Harmonize Commodity Description and Coding System, Revised Kyoto Convention and the SAFE Framework of Standards.

Article 3. Definitions of terms of the Law

3.1 The terms used in this Law shall be understood as follows:

3.1.1. "Customs brokerage" means to perform works and obligations specified in article 5 and 17.2 of article 17 of this law liable to the customs organization according to a customs brokerage agreement;

3.1.2. "customs broker" means a legal entity to which is granted the right to conduct customs brokerage activities by the customs central administration organization in accordance with this law;

3.1.3. "principal" means a person or entity who concluded a customs brokerage agreement to perform works and obligations stated in the article 5 and 17.2 of the article 17 of this Law through a customs broker in relation to the goods and transportation means intending to cross customs frontier;

3.1.4. "Customs certified specialist" means an individual, who has trained and been granted a certificate by the customs central administration according to this Law;

3.1.5. “Customs brokerage agreement” means an agreement concluded between a principal and customs broker for commissioning works and obligations specified in article 5 and 17.2 of the article 17 of this Law;

3.1.6. “Customs” means the government service responsible for the administration of customs laws and the collection of customs duties and taxes and includes the entire customs organization including the customs central administration and customs offices.

3.2 Other terms used in this Law shall be understood as interpreted in the Customs Law and the Law on Customs Tariff and Duties.

CHAPTER TWO

Customs brokerage

Article 4. Customs brokerage

4.1. Goods and transportation means of a person or an entity intending to cross customs frontier may use customs brokerage service in accordance with this Law.

4.2. Customs brokerage matters not specified in this Law shall be regulated by the procedure on Customs Brokerage.

4.3. The procedure on Customs Brokerage shall be approved by the customs central administration organization.

Article 5. Activities subject to customs brokerage

5.1 Customs brokerage shall include the following activities:

5.1.1. To declare to the customs the goods and transportation means crossing the customs frontier;

5.1.2. To submit information and documents needed for customs clearance of goods and transportation means to a customs office;

5.1.3. To determine the customs value of import, export or transit goods based upon the Law on Tariffs and Duties;

5.1.4. To determine the customs tariff classification of goods based upon the Law on Tariffs and Duties;

5.1.5. To pay or ensure payments of customs duties and other taxes on goods and transportation means or issue or be issued a guarantee for the payments of customs duties and other taxes;

5.1.6. To ensure its agent may be present during the physical examination of goods and transportation means and provide assistance if requested by Customs.

Article 6. Customs control over the process of customs brokerage

6.1 Customs shall regularly control the process of customs brokerage. The customs organization shall regularly conduct inspections of customs brokerage operations.

CHAPTER THREE

Requesting, granting and extending of customs brokerage rights

Article 7. Request for customs brokerage rights

- 7.1 A person or legal entity requesting customs brokerage rights shall submit to the customs central administration organization the following documents:
- 7.1.1. An application for customs brokerage rights;
 - 7.1.2. A confirmed copy of the state registration certificate;
 - 7.1.3. Documents evidencing financial capacity;
 - 7.1.4. The names of its customs certified specialists and copies of identity cards of the customs certified specialists;
 - 7.1.5. Identify the territory on which customs brokerage operates, and its branch organization chart;
 - 7.1.6. Customs and police statements evidencing that its affiliated customs certified specialists have no connection with offences or cases, and are not in tax debt and are of good character;
 - 7.1.7. The types of goods handled, the kind of businesses and the territory pertaining to the customs brokerage;
 - 7.1.8. The recommendation of the customs office of the territory in which the customs brokerage shall operate;
 - 7.1.9. Other documents stated in the articles 11.1.1-11.1.4 of the Law on Licensing;
- 7.2 An entity requested for customs brokerage rights according to the 7.1 of this article shall be only a legal entity registered in Mongolia.
- 7.3 For an entity whose customs brokerage rights were cancelled pursuant to this law, such entity may request again customs brokerage rights in accordance with 7.1 of this article only after three years from the date on which its customs brokerage rights were cancelled.
- 7.4 An application and other materials stated in 7.1 of this article may be submitted in an electronic form.
- 7.5 The number of customs certified specialists stated in 7.1.4 of this article who will be affiliated with customs broker shall be not less than two.
- 7.6 The customs central administration organization shall approve the application form for customs brokerage rights.

Article 8. Granting customs brokerage rights

- 8.1 The customs central administration organization shall make a decision regarding the application stated in 7.1.1 of the article 7 of this Law according to this Law and the procedure on customs brokerage (specified in the article 4.2 of this law) within 21 work days from the date of receiving such application. [The customs central administration organization shall recommend a decision regarding an application for a customs brokerage license to the Minister of Finance. The Minister shall decide whether to issue a license within 21 work days after the request was received in proper order by the customs central administration organization.]
- 8.2 The chairman of the customs central administration organization may specify the customs brokerage rights by restricted types of goods, kind of activities or territory. This must be specified in the order on granting customs brokerage rights. [On the recommendation of the chairman of the customs central administration organization, the Minister of Finance

may specify the customs brokerage rights by restricting types of goods, kinds of activities or territory. This must be specified in the order on granting customs brokerage rights.]

8.3 The duration of customs brokerage rights shall not be less than 3 years unless suspended or terminated by the provisions of this Act.

8.4 Any transfer of customs brokerage rights to others is prohibited.

Article 9. Extension of customs brokerage rights

9.1 Customs brokerage rights shall be extended upon the order of the chairman of the customs central administration organization. [Customs brokerage rights shall be extended upon the order of the Minister of Finance, based upon the recommendation of the chairman of the customs central administration organization.]

9.2 A customs broker shall submit the following documents to the customs central administration organization in order to extend customs brokerage rights:

9.2.1. An application for extension of customs brokerage rights;

9.2.2. Documents evidencing financial capacity;

9.2.3. A list of names of affiliated customs certified specialists and copies of identity cards of such customs certified specialists;

9.2.4. The territory on which the customs brokerage operates and the branch chart;

9.2.5. Customs and police statements evidencing that its affiliated customs certified specialists have no connection with offenses or cases, and are not in tax debts and are of good character;

9.2.6. The types of goods handled, kind of businesses and the territory pertaining to the customs brokerage;

9.2.7. The recommendation of the customs office of the territory to be served;

9.3 The application and other materials stated in 9.2 of this article may be submitted in an electronic form.

9.4 A decision regarding the extension of customs brokerage rights shall be made within 21 working days after the date the application stated in 9.2.1 of this article is received.

9.5 The extension of the brokerage rights may specify restricted types of goods, the kind of activities, periods or territory. This must be specified in the order regarding the extension of customs brokerage rights. New restrictions may be appealed in accordance with applicable provisions for appeal.

9.6 The duration of customs brokerage rights may be extended for 3 years.

CHAPTER FOUR

Establishment of customs brokerage agreement

Article 10. Customs brokerage agreement

10.1 A principal and their customs broker shall enter into a customs brokerage agreement in writing in order to cross the customs frontier with goods and means of transport using a customs broker pursuant to article 4 of this law.

10.2 The following must be reflected in the customs brokerage agreement:

10.2.1. The official name, address, telephone number and email address of parties to the agreement;

10.2.2. The rights and obligations of the parties to the agreement;

10.2.3. The customs offices and the territory where customs clearance of goods and means of transport are commissioned through the customs broker;

10.2.4. The duration of the customs brokerage agreement

10.3 A customs broker itself or its branch or agent on behalf of the customs broker may establish a customs brokerage agreement.

10.4 A person or entity intending to cross the customs frontier with goods and means of transport may enter into the customs brokerage agreement stated in section 1 of this article, with one or more customs brokers.

CHAPTER FIVE

Customs certified specialist

Article 11. Training of customs certified specialists

11.1 Customs shall train customs certified specialists on a fee basis. Fees for training customs certified specialists shall be based upon the approximate cost of the services rendered.

11.2 Training and employment of customs certified specialists and their rights and duties, as well as amount of training fees, shall be regulated by the procedure on customs brokerage as specified in article 4.2 of this law.

Article 12. Granting rights of a customs certified specialist

12.1 The chairman of the customs central administration organization shall grant the rights of a customs certified specialist to a Mongolian citizen who shall meet the following requirements: [The Minister of Finance shall grant the rights of a customs certified specialist based on the recommendation of the chairman of the customs central administration organization to a Mongolian citizen who shall meet the following requirements:]

12.1.1. Undergo training and pass an examination according to the program developed by the customs organization;

12.1.2. Shall have no connection with an offense or case and any tax debt and shall be of good character;

12.2 The rights of a customs certified specialist may be extended for 3 years;

12.3 An identity card shall be granted to the customs certified specialist;

Article 13. Extension of rights of customs certified specialists

13.1 The chairman of the customs central administration organization shall extend the rights of a customs certified specialist, who meet the following criteria: [The Minister of Finance shall extend the rights of a customs certified specialist, based upon the recommendation of the chairman of the customs central administration organization, who meet the following criteria;]

13.1.1. A customs certified specialist shall have undertaken training and passed an examination according to the program developed by Customs;

13.1.2. A citizen intending to obtain the rights of customs certified specialist shall have no connection with an offense or case and any tax debt and shall be of good character;

13.2 The rights of a customs certified specialist are for a 3 year period but may be extended every 3 years.

Article 14. Cancellation of rights of customs certified specialists

- 14.1 The customs central administration organization shall cancel the rights of a customs certified specialist in the following cases:
- 14.1.1. he/she committed a crime and the final court decision has become effective;
 - 14.1.2. The customs certified specialist has repeatedly breached customs legislation;
 - 14.1.3. The customs certified specialist intentionally provided false documents and obtained the identification of customs certified specialist under false pretenses;
 - 14.1.4. The customs certified specialist failed to pass the examination stated in 12.1.1 of this law or the periodic examinations provided for in Article 68.2 of the Customs Law;

CHAPTER SIX

Customs brokers risk fund, rights and duties, payments and other matters related to customs brokerage activities

Article 15 deleted.

Article 16. Customs brokers financial guarantees

- 16.1 Customs shall require financial guarantees from customs brokers in a form and amount sufficient to protect the revenue.
- 16.1.1. A customs broker shall provide a financial guarantee to Customs to assure the payment of customs duties or other taxes or liabilities for itself and on behalf of persons and entities represented by the customs broker.
 - 16.1.2. The financial guarantee provided may be a specific guaranty for a particular transaction or a general guarantee that covers all entries made by a broker for a specified period of time.
 - 16.1.3. Customs brokers shall be allowed to choose any form of financial guarantee that is acceptable to Customs. Financial guarantees may be insurance contracts, bank guarantees, cash or personal property, or assets maintained in a risk fund.
- 16.2 In determining whether the amount of a financial guarantee is sufficient, Customs shall consider the following factors:
- 16.2.1. The prior record of the customs broker in the timely payment of duties, taxes and other charges;
 - 16.2.2. The prior record of the customs broker in complying with other customs requirements;
 - 16.2.3. The value and nature of the goods involved;
 - 16.2.4. Any additional relevant information.
- 16.3 The amount of financial guarantee required shall be periodically reviewed by Customs to assure that the guarantee is adequate to protect the revenue. Customs may increase the amount of a financial guarantee required if circumstances dictate.
- 16.4 Customs brokers who are members of any customs broker association of Mongolia may maintain a joint risk fund for the purpose of providing financial guarantees for association members. In this case, the minimum amount of assets to be allocated in such a joint risk fund shall be established based on the negotiation of related customs broker association and the customs central administration organization.

- 16.5 When a financial guarantee has been provided, it shall be discharged as soon as possible after Customs is satisfied that the obligations for which the financial guarantee was required have been fulfilled.

Article 17. Rights and obligations of a customs broker

- 17.1 Rights of a customs broker include but are not limited to the following:

- 17.1.1. A customs broker is entitled to have access to any amendments to customs legislation and regulations from Customs, and to be consulted when new legislation and regulations are being developed by Customs;
- 17.1.2. The conditions under which a customs broker may represent its principal when dealing with Customs and the liability of customs brokers to Customs for duties and taxes and any irregularities shall be specified in legislation;
- 17.1.3. Customs brokers shall have the same rights as their principals in matters related to transacting business with Customs;
- 17.1.4. Customs shall provide for customs brokers to participate in their formal consultations with the trade;
- 17.1.5. Customs shall specify the circumstances under which they are not prepared to transact business with a customs broker and unless a customs broker has committed a very serious offense, Customs shall first issue written warnings to give the broker an opportunity to correct their conduct;
- 17.1.6. Customs shall give written notification to customs brokers of a decision not to transact business;
- 17.1.7. When a financial guarantee is required of a customs broker, Customs shall accept a general guarantee from customs brokers who regularly declare goods at different offices in the customs territory;
- 17.1.8. When a financial guarantee is required its amount shall not exceed the amount of duties and taxes potentially chargeable;
- 17.1.9. The introduction of information technology shall be carried out in consultation with customs brokers to the greatest extent possible;
- 17.1.10. When untrue information is furnished in a goods declaration and a customs broker can show that all reasonable steps had been taken to provide accurate and correct information, Customs shall take that factor into account in considering the imposition of any penalty.

- 17.2 Obligations of a customs broker include but are not limited to the following:

- 17.2.1. To establish a customs broker agreement pursuant to article 10 of this law;
- 17.2.2. To engage in customs operations through its customs certified specialists;
- 17.2.3. To maintain track of and report on customs brokerage activities, and present those data and reports to the customs organization;
- 17.2.4. At the time of obtaining a customs broker certificate pursuant this law, or later, any changes in the information contained in reports submitted to the customs organization must be notified on every occasion;
- 17.2.5. Not to disclose and/or use illegally confidential information of a declarant;

17.2.6. To ensure involvement of its affiliated customs certified specialists in training organized by the customs organization;

17.2.7. To submit information on goods crossing the state border to the customs organization 10 days prior to entry of the goods when the nature of the shipment permits;

17.2.8. To ensure accurate and complete documents required for customs clearance;

17.2.9. To carry out all obligations imposed on declarants;

17.2.10. To bear liability in case of any breaches of customs brokerage legislation.

17.3 Customs brokers shall retain all documents and files concerning customs brokerage activities, customs clearance, and records and reports stated in 17.2.3 of this article for not less than 5 years;

17.4 Customs brokers themselves, or customs certified specialists, both individually and through a customs broker association, must report to the customs organization about suspicious actions which may breach customs legislations;

17.5 Customs brokers shall avoid conflicts of interest. No active customs officer shall have a financial interest in any customs broker firm or act as a licensed customs specialist.

Article 18. Payments

18.1 The customs central administration organization shall determine the amounts of payments for granting and extending the rights for customs brokerage activities and customs certified specialists..

Article 19. Working hours of customs broker and customs certified specialist

19.1 Customs broker and customs certified specialist shall work during the business hours set by the relevant customs organization.

19.2 At the request of a customs broker and for reasons deemed valid, the customs organization may permit customs brokers and customs certified specialists to conduct business outside of regular business hours. Any additional expenses charged by the customs organization for services provided outside of regular hours or away from regular locations shall be limited to the approximate cost of the services provided.

Article 20. Liable/Responsible territory of customs broker and customs certified specialist

20.1 Customs brokers and customs certified specialists shall report to the customs organization of its assigned territory about import and export goods, and means of transport crossing only its assigned territory.

CHAPTER SEVEN

Obligations of the customs organization

Article 21. Customs Brokers Registration. Moved to implementing regulations.

Article 22. Obligations for the customs organization

22.1 The customs organization shall have the following duties concerning customs brokerage activities:

22.1.1. To give information on customs legislation, rules and regulations to customs brokers;

22.1.2. To provide customs brokers with customs broker programs;

22.1.3. To ensure involvement of customs certified specialists in training and advanced training;

22.1.4. When appropriate, Customs may charge fees for services provided to customs brokers and customs certified specialists as long as the fees approximate the cost of the services provided.

Article 23. Customs Control. Deleted.

CHAPTER EIGHT

Suspension and cancellation of customs brokerage rights

Article 24. Suspension of customs brokerage rights

24.1 The customs central administration organization may suspend customs brokerage rights up to 3 months in the following cases, based on process evaluations of customs brokerage activities stated in article 6 of this law:

24.1.1. A customs broker is in debt for customs duties and other taxes;

24.1.2. A customs broker is insolvent for a temporary period;

24.1.3. The number of customs certified specialists who work for a customs broker has not reached to the number specified in 7.4 of this law;

24.1.4. A customs broker failed to fulfill its duties specified in 16.2 of this law;

24.1.5. A customs broker itself or its affiliated customs certified specialist breached customs legislation one or more times;

24.2 Customs brokerage rights may be suspended by the order of the chairman of customs central administration organization. Justification for suspension of a customs brokerage must be specified in the order. Unless a very serious offense has been committed written warning will first be issued to give the customs broker an opportunity to correct their conduct. When a customs brokerage rights are suspended, normally notification shall be made a reasonable period of time in advance to give the broker time to wind up its ongoing business and appeal the decision.

Article 25. Cancellation of customs brokerage rights

25.1 The customs central administration organization may cancel customs brokerage rights in the following cases, based on the process evaluation of customs brokerage activities stated in article 6 of this Law: [The Minister of Finance may cancel customs brokerage rights, on the recommendation of the customs central administration organization, in the following cases, based on the process evaluation of customs brokerage activities stated in article 6 of this Law:]

25.1.1. If a customs broker failed to eliminate reasons for basis for suspension of customs brokerage rights during the period of customs brokerage rights are suspended;

25.1.2. If a customs broker itself or its affiliated customs certified specialist breach the customs legislation 2 or more times and said breaches were deemed to be serious violations;

25.1.3. If a customs broker's organization is liquidated, or merged with another organization and changes its official name;

25.1.4. Unless good cause for not operating is shown, if a customs broker has not operated a custom brokerage for 6 months from when customs brokerage rights have been given or extended;

25.1.5. If false documents are found to have been intentionally submitted to obtain customs brokerage rights;

25.2 Customs brokerage rights shall be cancelled by the order of the chairman of the customs central administration organization. [Customs brokerage rights shall be cancelled by the Minister of Finance on the recommendation of the customs central administration organization.]

CHAPTER NINE

Liabilities for customs brokers and customs certified specialists

Article 26. Liabilities to be imposed on customs brokers

26.1 A customs broker, who breached customs and/or other legislation shall be liable according to the provisions of the relevant legislation.

Article 27. Liabilities to be imposed for customs certified specialists

27.1 A customs certified specialist who breached the customs and other legislation shall be liable in accordance with the relevant legislation.

CHAPTER TEN

Miscellaneous provisions

Article 28. Adherence to provisions of other laws

28.1 Any matters related to application for customs brokerage rights, granting extensions, cancellation and suspension of such rights which are not regulated by this law shall be regulated by Law on Licensing. In the event of any conflict regarding the provisions regulating customs brokers and customs licensed specialists between the Customs Law of 2008 and this Law, the provisions of this Law are to be followed.

Article 29. Provisions not subject to customs brokerage activities

29.1 A customs certified specialist stated in article 11 of this Law, who is not affiliated with any customs broker, may be employed by any person or entity intending to cross the customs frontiers with goods and means of transport based on the Civil Code of Mongolia or Labor Law, and may declare to the customs organization, only its goods and means of transport, on behalf of such person or entity. Customs certified specialists may only represent the single person or entity employing them when conducting customs business. If they represent more than one person and/or entity they must first qualify as a customs broker.

ANNEX B: A CONCEPT PAPER TO THE MODEL LAW ON CUSTOMS BROKERS

ANNEX B: A CONCEPT PAPER TO THE MODEL LAW ON CUSTOMS BROKERS

One. The grounds and justification for drafting the Law

Certain customs polices have substantially changed during the transition period of Mongolia and legal reform of customs commenced with the Customs Law adopted in March 1, 1991 regulating relations pertaining to the carrying out of an integrated policy on customs duties/taxes, combating violations of customs legislation, and customs control of goods and transport means crossing the state border.

Within the scope of this reform, the customs brokers have rights and duties to declare goods and means of transport on behalf of exporters and importers. The Customs Law adopted in 1996 was the first step towards legalizing the general relations concerning customs brokers who provide support for activities of persons and enterprises engaging in customs and external relations of the economy. However, the legal basis for a proper functioning of “customs brokers” and “customs licensed specialists” remains to be fully elaborated.

On June 24, 2005, the Meeting of the Council of the World Customs Organization held in Brussels, Belgium endorsed “Basic Standards for Foreign Trade Safety and Facilitation” (SAFE Framework of Standards) and Mongolia as a member country of the World Trade Organization and World Customs Organization has the obligation to implement these standards. In addition, on February 2006, the World Customs Organization’s Revised Kyoto Convention became effective. Mongolia acceded to the Revised Kyoto Convention in June 2006. The proper functioning of customs brokers and customs license specialists is essential to the implementation of the modern customs “best practices” set forth in the Revised Kyoto Convention and the principles embodied in SAFE Framework of Standards.

To achieve the goal “To strengthen partnership of customs and businesses” the above-mentioned standards and best practices require acceleration of foreign trade turnover and its facilitation. This, in turn, requires the improvement of the legal environment for customs brokerage and customs licensed specialist activities. For this reason, we are proposing that customs brokers and custom licensed specialists be regulated by a separate law.

Subchapter 7 (articles 66-70) of the existing Customs Law sets out the basic requirements for customs brokers and their activities, their rights and duties as well as relations concerning registered specialists, and the procedure for controlling brokers’ activities to be approved and enforced by the chairman of customs central administrative body. However, in the current environment of greatly expanded trade and the introduction of modern information technology, the legal framework for regulating customs brokers and customs licensed specialists is inadequate and must be improved.

Customs brokers engaging in customs activities through their customs registered specialists are obligated to facilitate customs examinations of declared goods, to file accurate customs declarations and other required documents in accordance with the law, and to pay customs duties and other taxes. However, because of inadequate training of customs licensed specialists and inadequate supervision of the operation of customs brokers, customs licensed specialists and customs brokers have not been carrying out their activities adequately. This has impeded trade facilitation and placed an additional burden on customs administration.

Current customs reform is anticipated to be implemented through building a legal environment enabling customs brokers to take responsibilities for paying duties, taxes and other payments on behalf of exporters and importers and for activities starting from delivering of goods

crossing the border to their owners and ending with the exiting of export goods from the inland territory to abroad.

It is considered appropriate at this time to develop a draft Law on Customs Brokerage which will regulate various relations of customs brokerage activities in order to determine the obligations and participation of customs brokers engaging in foreign trade based on legal arrangements, legal acts and experiences of foreign countries including the European Union, Canada, China, South Korea, Russia, USA, Japan, etc.

Two. General structure, relations subject to regulation by the draft law and its scope

The draft Law on Customs Brokerage will have 10 chapters to be developed according to the Law on Drafting Law and other Resolutions of the Parliament.

The draft law will incorporate relations subject to the regulation by the draft law and its scope in a following manner:

Chapter 1: will include general provisions, purpose, terms and definitions, and subjects to the regulation of the law.

Chapter 2: will include regulations concerning customs brokerage activities, works, duties of customs brokers, and a body controlling the customs brokerage activities.

Chapter 3: will include regulations for granting and extension of rights (permission) to conduct customs brokerage activities, restrictions for customs registered specialists of the customs brokers institutions and designated territories for conducting customs brokers activities.

Chapter 4: will legalize the requirements for a customs brokerage agreement and its establishment with a person or entity declaring goods with Customs on a voluntary basis.

Chapter 5: will legalize matters pertaining to granting, extending and cancellation of the rights for customs registered specialists.

Chapter 6: will include provisions regarding a customs brokers association, a risk fund of customs brokers, payments for brokerage, working hours for customs brokers and customs registered specialists and their designated territories.

Chapter 7: will regulate matters pertaining to the registration of customs brokers, duties and supervision by Customs.

Chapter 8: will regulate matters of suspension or cancellation of rights /permission/ for conducting customs brokerage activities.

Chapter 9: will reflect penalties to be imposed on violators of the Law on Customs Brokerage.

Chapter 10: will reflect relations concerning the matters of granting, extending, suspending or cancelling of rights (permission) to conduct customs brokerage activities that are not regulated by this law to be subject to Law on Licensing.

Three. Social, economic and legal consequences after the adoption of the draft law

The adoption of the draft law will not require additional funds and expenses.

It will not affect negatively on businesses, works and services of legal entities carrying out customs brokerage activities provided that the legal entities registered in Mongolia conduct their customs brokerage activities within the designated territories, which will improve service to exporters and importers.

Furthermore, the reduction of the steps for granting and extending of a period of carrying customs brokerage activities (granting and extending a license) will have a positive impact on the activities of customs brokers and customs licensed specialists.

The draft law also specifies Customs' responsibility for the supervision of the customs brokerage activities, records and information as well as organizing training. However, private training institutions (professional associations) authorized by the customs central administrative body may conduct basic and repeated trainings for customs registered specialists.

Preparatory work to implement the law through conducting training for legal entities engaged in customs brokerage activities and customs registered specialists will positively affect the implementation of the law.

**Four. Coordination of the draft law with other laws
and further revisions, amendments or annulments
for the purpose of implementing this draft law**

The entire subchapter 7 of the Customs law and the article 15.4.7 of Law on Licensing will require amendments to make them consistent with the provisions of this Law to grant customs brokerage rights (permissions) with determination of responsible territories by the chairman of the customs central administrative body.

ANNEX C: BPI RECOMMENDATIONS TO CUSTOMS BROKERS LAW

ANNEX C: BPI RECOMMENDATIONS TO CUSTOMS BROKERS LAW

Working Documents on Competitiveness and Business Enabling Environment - Mongolia

Discussion Draft on Proposed Customs Brokers Law

First draft of CGA working group of December 12, 2010 with amendments of 5/4/2012

Prepared by Business Plus Initiative, USAID

25 April, 2012

Existing Law	Proposed Law	Comments	Recommendations
	Chapter One – General Provisions		
	Article 1. Title and Purpose of the Law		
The current laws applicable to customs brokers and licensed customs specialists include the Customs Law of 2008, Art. 66-70, the Law on Licensing, and Decree of the Chief of the Mongolian Customs General Administration No. 388 (6 September 2010).	1.2 The purpose of this Law shall be to improve customs brokerage activities, and regulate relations between customs organization, customs brokers, customs certified specialists and individuals and legal entities commissioning the customs clearance through customs brokers.	1. The regulation of customs brokerage activities is currently accomplished by Art. 66-70 of the Customs Law and Decree No. 388. The proposed legislation creates a separate law that pertains exclusively to the regulation of customs brokers and licensed customs specialists. These regulations could be implemented in one of three ways: (1) a stand alone law, as has been proposed; (2) amendments to the Customs Law; and (3) revised regulations. Revised regulations would be easier to issue and amend. A new law or amendments to the Customs Law will require action by Parliament. 2. Article 1 is captioned “Title and Purpose of Law” but no provision is included stating the title. This should be added.	1. Consider first implementing the new regulations as a decree issued by Customs as Parliamentary approval is not required. After operating experience with the new regulations, it may then be desirable to pursue either stand alone legislation regulating brokers or amendments to the Customs Law. 2. Add the following provision: “1.1. This Law shall be known as the Customs Brokers Law” and renumber current 1.1. as 1.2.
	Article 2. Legislation		
	2.1. The Customs	The Law on Licensing	Add to the legislation

	<p>Brokerage legislation of Mongolia shall consist of the Constitution of Mongolia, Civil Code, Customs Law, Customs Tariff Law, this Law, and other legislative acts enacted in conformity therewith.</p>	<p>is applicable to the licensing of customs brokers and customs specialists and it should be cited.</p>	<p>mentioned in 2.1. “the Law on Licensing”.</p>
	<p>2.2. If an international treaty to which Mongolia is a party establishes procedures different from those in this Law, then the former shall prevail.</p>	<p>The WCO’s Revised Kyoto Convention has a number of provisions that apply to customs brokers. These will be referenced below. In addition, the WTO is in the process of negotiating an Agreement on Trade Facilitation that may contain provisions relating to customs brokers.</p>	<p>Check the draft law to assure that it is consistent with international obligations.</p>
	<p>Article 3. Definition of terms of the Law</p>		
<p>The Customs Law, Article 3, sets forth a number of definitions including 3.1.19 customs stakeholder, which includes customs brokers. Decree No. 388 contains definitions of “customs broker” (1.3) and “registered customs specialist” (1.4).</p>	<p>3.1. The terms used in this Law shall be understood as follows: 3.1.1. ”Customs brokerage” means to perform works and obligations specified in article 5 and 17.2 of article 17 of this law liable to the customs organization according to a customs brokerage agreement; 3.1.2. “customs broker” means a legal entity to which granted the right to conduct customs brokerage activities by the customs central administration organization in accordance with this law. ; 3.1.3. “principal” means an entity, who concluded a customs brokerage agreement to perform works and</p>	<p>1. To the extent that the definitions in 3.1. are inconsistent with the Customs Law Article 3 or Decree No. 388 they should be harmonized. 2. The term “central customs administration” is used frequently but is not defined. Is this the same as “central senior customs institution” in Article 67.2 of the Customs Law?</p>	<p>1. Revise the definitions of customs broker and registered customs specialist to use the same definition in both the Customs Law and this Law. 2. Replace “central customs administration” with “central senior customs institution” to be consistent with the Customs Law. 3. Amend 3.1.3. to provide “Principal means a person or entity....”</p>

	<p>obligations stated in the article 5 and 17.2 of the article 17 of this Law through a customs broker in relation to the goods and transportation means intending to cross customs frontier.</p> <p>3.1.4. “Customs certified specialist” means an individual, who trained and granted a certificate by the customs central administration according to this Law;</p> <p>3.1.5. “Customs brokerage agreement” means an agreement concluded between principal and customs broker for commissioning works and obligations specified in article 5 and 17.2 of the article 17 of this Law.</p>		
	<p>3.2. Other terms used in this Law shall be understood as interpreted in the Customs Law and Law on Customs Tariff and Duties.</p>	No comment.	
	Chapter Two Customs Brokerage		
	Article 4. Customs Brokerage		
	<p>4.1. Goods and transportation means of an entity intending to cross customs frontier may use customs brokerage service in accordance with this Law.</p>	<p>1. Does “entity” include natural person? “Entity” is used in the Customs Law without definition. Natural persons should be able to use customs brokerage services.</p> <p>2. The Customs Law and this Law use the term “customs frontier”. Much modern customs legislation uses the term “customs territory” to include</p>	<p>Amend 4.1. to provide: “Goods and transportation means of a person or of an entity....”</p>

		free zone operations, as free zones are considered to be outside the customs territory but may be deemed to be inside customs frontiers.	
	4.2. Customs brokerage matters not specified in this Law, shall be regulated by the procedure on Customs Brokerage.	No comment.	
	4.3. The procedures on Customs Brokerage shall be promulgated by the customs central administration organization.	No comment.	
	Article 5. Activities to be carried out by customs brokerages		
	5.1. Customs brokerages shall include following activities:		
	5.1.1. To declare to Customs the goods and transportation means crossing the customs frontier;	No comment.	
	5.1.2. To submit information and documents needed for customs clearance of goods and transportation means to Customs ;	No comment.	
	5.1.3. To determine customs values of import, export or transit goods;	Reference should be made to the Mongolian Law on Tariffs and Duties.	Add after “goods” “based upon the Law on Tariffs and Duties”
	5.1.4. To determine the customs values of export, import and transit goods;	This provision repeats 5.1.3. and should be deleted.	Delete 5.1.4.
	5.1.5. To determine the customs tariff classification of goods;	1. Renumber as 5.1.4. 2. add after “goods” “based upon the Law on Tariffs and Duties”	Renumber and add after “goods” “based upon the Law on Tariffs and Duties”
	5.1.5. To pay or ensure payments of customs duties and other taxes of goods and transportation means or	No comment.	

	issue and/or submit a guarantee in the form and amount required by Customs for the payments of customs duties and other taxes;		
	5.1.6. To ensure its agent may take part in conducting physical examination of goods and transportation means.	Revised Kyoto Convention, General Annex, Chapter 3, standards 3.36 and 3.37 pertain to the presence of a declarant during physical examination of goods. Declarants and their agents do not “take part in conducting physical examination of goods and transportation means”. However, they may be present in most cases and if Customs requests, provide assistance.	Amend 5.1.6. to provide: “To ensure its agent may be present during the physical examination of goods and transportation means and provide assistance if requested by Customs.”
	Article 6. Customs control over the customs brokerage process		
	6.1. Customs shall control customs brokerages and all customs brokerage activities.	No comment.	
	Chapter Three. Requesting, granting and extending customs brokerage rights		
	Article 7. Request for customs brokerage rights		
	7.1. A person requesting customs brokerage rights, shall submit to the customs central administration organization the following documents when requesting customs brokerage rights:	A “person” may not include a legal entity and usually a legal entity will request brokerage rights.	Add after “person” “or legal entity”.
	7.1.1. An application for customs brokerage rights;	No comment.	

	7.1.2. A confirmed copy of its state registration certificate;	Does a “person” have a state registration certificate? Under the Law on Licensing a natural person must only bring a notarized copy of his passport or ID. See 11.1.3.	Clarify the obligations of an entity vs. a natural person.
	7.1.3. Documents evidencing financial capacity;	No comment.	
	7.1.4. The names of its customs certified specialists and copies of the identity cards of the customs certified specialists;	No comment.	
	7.1.5. Identify the territory in which customs brokerage operates, and its branch organization chart;	No comment.	
	7.1.6. Customs and police statements evidencing that its affiliated customs certified specialists have no connection with offences or cases, and are not in tax debt;	Add after “tax debt”: “and are of good character” to reflect the general character of the applicant.	Add after “tax debt” “and are of good character”
	7.1.7. The types of goods handled, kind of businesses and the territory in which the customs brokerage operates;	No comment.	
	7.1.8. The proposal of the customs office regarding the territory in which the customs brokerage shall operate;	No comment.	
	7.1.9. Other documents stated in articles 11.1.1-11.1.4 of the Law on Licensing:	The only additional document required that is not already specified in the Law appears to be a receipt confirming the payment of the State stamp fee. See 11.1.4.	
	7.2. An entity requesting customs brokerage rights pursuant to 7.1 of this article, must be a legal	No comment.	Amend 7.2. to provide “A person or entity....”

	entity registered in Mongolia.		
	7.3. An entity whose customs brokerage rights were cancelled pursuant to this law may request customs brokerage rights again in accordance with 7.1 of this article after three years from the date on which customs brokerage rights were cancelled.	No comment.	Amend 7.3. to provide “A person or entity....”
	7.4. An application and other materials stated in 7.1 of this article may be submitted in an electronic form.	Submission in electronic form is authorized by the Revised Kyoto Convention, General Annex, Chapter 7.	
Customs Law Art. 67.1.3. “employing no less than two registered customs specialists;”	7.5. The number of customs certified specialists stated in 7.1.4 of this article, who will be affiliated with customs broker must be not less than two [five].	Requiring at least five certified customs specialists is inconsistent with the Customs Law which requires at least two. In addition, requiring 5 specialists discriminates against small customs brokerage firms. The requirement should remain at not less than two specialists.	The minimum number of customs certified specialists should be two.
	7.6. The customs central administration organization shall approve the application form for customs brokerage rights.	No comment.	
	Article 8. Granting customs brokerage rights		
1. Customs Law, Article 66.2 provides: “Legal entities of Mongolia engaging in customs brokerage activities shall have a license and the member of the Government in charge of customs matters shall grant such license.” This means	8.1. The customs central administration organization shall make a decision on the application stated in 7.1.1 of the article 7 of this law according to this law and procedure on customs brokerage (specified in the article 4.2 of this law) within	The Customs Law, Article 66.2, provides that the Minister of Finance grants customs brokers licenses. There is reportedly currently a difference of opinion between Customs and the Ministry of Finance regarding whether licenses should be	[As an alternative to Customs issuing brokers licenses, revise the draft to provide: “The customs central administration organization shall recommend a decision on an application for a customs brokerage license to the Minister

<p>the Minister of Finance. 2. The Law on Licensing provides: “12.1. The authorized licensing institution will review the request and other relevant documents and will make a decision within 21 working days after receiving the request, if the issue of giving a license is not differently stated in the law.”</p>	<p>30 days from the date of receiving such application.</p>	<p>issued by Customs or the Minister. However, international “best practice” is that licenses should be issued by the agency that actually processes the application and is responsible for fact finding. This is Customs. The Law on Licensing, 12.1 provides for decisions within 21 working days after receiving a request unless another law differently states. As there is not much difference between 21 working days and 30 days including weekends and holidays, it would be preferable not to deviate from the Law on Licensing.</p>	<p>of Finance. The Minister of Finance shall decide whether to issue a license within 21 working days after the request was received in proper order by the customs central administration organization.”] If Customs issues brokers licenses delete “30 days” and substitute “21 work days”.</p>
	<p>8.2. Customs brokerage rights shall be granted by the order of the chairman of the customs central administration organization based on the resolution of a meeting of the Professional Board.</p>	<p>This provision is inconsistent with 66.2 of the Customs Law which provides that the Minister of Finance grants licenses. The Professional Board is not mentioned in the Customs Law or other laws pertaining to customs matters.</p>	<p>Delete 8.2.</p>
	<p>8.3. The chairman of the customs central administration organization may specify the customs brokerage rights by restricted types of goods, kind of activities or territory. This must be specified in the order granting customs brokerage rights.</p>	<p>It is the Minister of Finance who may restrict brokerage rights.</p>	<p>Amend 8.3. as follows: “On the recommendation of the chairman of the customs central administration organization, the Minister of Finance may specify the customs brokerage rights by restricted types of goods.....”</p>
	<p>8.4. The duration of customs brokerage rights shall not be less than 3 years.</p>	<p>This provision should be amended to indicate that the rights are conditioned on good performance.</p>	<p>Amend 8.4 as follows: “The duration of customs brokerage rights shall not be less than 3 years unless they are suspended or</p>

			terminated pursuant to the provisions of this Act.”
Customs Law, 66.4	8.5. Any transfer of customs brokerage rights to others is prohibited.	A brokerage business may be sold but the license itself may not be transferred.	
	8.6. Customs brokerage rights may be granted to fully or partially state owned enterprises.	State owned enterprises should not be granted brokerage rights. Customs brokers are uniquely private sector businesses. The state owned entity qualified to handle declarations and other customs business is Customs itself. On the other hand, enterprises that are partly or wholly state owned (for example, mining enterprises) can employ customs certified specialists to handle their own exports and imports.	Delete 8.6.
	Article 9. Extension of customs brokerage rights		
Law on Licensing, Art. 6.2 provides: “The license can be extended for the period not less than the original deadline, if it is not differently stated in the law.” See also Customs Law, 70.6.	9.1. Customs brokerage rights shall be extended upon the order of the chairman of the customs central administration organization.	It is not clear whether only the Minister of Finance can extend a license (if the Minister retains the initial licensing authority for customs brokers) or whether this can be delegated to Customs. A legal opinion should be obtained on this issue.	
	9.2. A customs broker shall submit following documents to the customs central administration organization in order to extend customs brokerage rights:		
	9.2.1. An application for extension of customs brokerage rights;	No comment.	

	9.2.2. Documents evidencing financial capacity;	What documents will be required? This should be specified in regulations.	
	9.2.3. A list of names of affiliated customs certified specialists and copies of identity cards of such customs certified specialists;	No comment.	
	9.2.4. The territory on which customs brokerage operates and the branch chart;	No comment.	
	9.2.5. Customs and police statements evidencing that its affiliated customs certified specialists have no connection with offences or cases, and are not in tax debts;	In addition, the specialists should be of good character.	Add after “tax debts” “and are of good character.”
	9.2.6. The types of goods handled, kind of businesses and the territory where the brokerage operates;	No comment.	
	9.2.7. The proposal of the customs office of the territory to be served;	No comment.	
	9.3. The application and other materials stated in 9.2 of this article may be submitted in an electronic form.	This is consistent with the Revised Kyoto Convention, General Annex, Chapter 7.	
	9.5. The customs central administration organization shall approve the application form for extension of customs brokerage rights.	This appears to duplicate 9.1.	Delete this provision.
	9.6. A decision on the extension of customs brokerage rights shall be made within 30 days of the date of received application stated in 9.2.1 of this article.	The time for a decision on an extension should not be longer than the time for a decision on the original application – 21 working days, as provided in the Law on Licensing.	Renumber this subsection and change 30 days to 21 working days.
	9.8. The extension of the brokerage rights	If new restrictions are imposed in connection	This subsection should be renumbered. The

	may specify restricted types of goods, kind of activities, periods or territory. This must be specified in the order on the extension of customs brokerage rights.	with an extension the broker should have an opportunity to appeal.	following provision should be added: “New restrictions may be appealed pursuant to applicable provisions for appeals.”
Law on Licensing Art. 6.2.	9.9. The duration of customs brokerage rights shall be extended for not less than 3 years.	No comment.	
	Chapter Four – Establishment of customs brokerage agreement		
	Article 10. Customs brokerage agreement		
	10.1. A principal and their customs broker shall establish a customs brokerage agreement in writing in order to cross the customs frontier with goods and means of transport using a customs broker pursuant to article 4 of this law.	No comment.	
	10.2. The following must be included in the customs brokerage agreement:		
	10.2.1. The official name, address, telephone number and email address of parties to the agreement;	No comment.	
	10.2.2. The rights and obligations of the parties to the agreement;	No comment.	
	10.2.3. The customs office(s) and the territory where customs clearance of goods and means of transport are commissioned through the customs broker;	No comment.	
	10.2.4. Duration of the customs brokerage agreement	No comment.	

	10.3. A customs broker itself or its branch on behalf of its name from the side of the customs broker may establish the customs brokerage agreement.	The broker's agent should also be able to enter into an agreement.	Add after "branch" "or agent".
	10.4. An entity intending to cross the customs frontier with goods and means of transport, may establish a customs brokerage agreement described in section 1 of this article, with one or more customs brokers.	What about a natural person? They should be able to have customs brokers represent them.	Change as follows: "A person or an entity...."
	Chapter Five – Customs certified specialist		
	Article 11. Training of customs certified specialists		
	11.1. The customs organization shall train customs certified specialists on a fee basis.	International agreements (the WTO's GATT Art. VIII and the Revised Kyoto Convention, General Annex, Chapter 9) require that fees charged be based upon the approximate cost of the services rendered.	Add the following: "Fees for training customs certified specialists shall be based on the approximate cost of the services rendered."
	11.2. Training and employment of customs certified specialists and their rights and duties, as well as amount of training fees shall be regulated by the procedure on customs brokerage as specified in article 4.2 of this law.	No comment.	
	Article 12. Granting rights of a customs certified specialist		
	12.1. The chairman of the customs central administration organization shall grant the rights of customs certified specialist to a Mongolian citizen who	No comment.	

	shall meet following requirements:		
	12.1.1. Undergo training and pass an examination, according to the program developed by the customs organization;	No comment.	
	12.1.2. Shall have no connection with an offence or case or any tax debt ;	And also should be of good character.	Add: “and shall be of good character.”
	12.2. The rights of a customs certified specialist may be extended for 3 years;	Extensions are subject to examinations and maintaining good standing.	
	12.3. An identity card shall be granted to the customs certified specialist;	No comment.	
	12.4 The customs central administration organization shall determine the number of customs certified specialists to be working in the affiliated territories of customs houses, customs offices and customs branches.	Why not let Customs brokers and the market determine the number of specialists to be working in the various territories? The number does not need to be regulated by Customs.	Delete this provision.
	Article 13. Extension of rights of customs certified specialists		
	13.1. The chairman of the customs central administration organization shall extend the rights of customs certified specialist, who meet the following criteria:	No comment.	
	13.1.1. A specialist shall have undertaken training and passed an examination according to the program developed by the customs organization;	No comment.	
	13.1.2. A citizen intending to obtain the rights of customs certified specialist shall have no connection	And the specialist should also be of good character.	Add: “and shall be of good character.”

	with an offence or case and any tax debt;		
	13.3. The rights of customs certified specialist are for a three year period but may be extended every 3 years;	No comment.	
	Article 14. Cancellation of rights of customs certified specialist		
	14.1. The customs central administration organization shall cancel the rights of a customs certified specialist in the following cases:	No comment.	
Customs Law 68.3.1.	14.1.1. He/her committed a crime and the final court decision has become effective;	No comment.	
Customs Law 68.3.2.	14.1.2. The specialist has repeatedly breached customs legislation;	No comment.	
Customs Law 68.3.3.	14.1.3. The specialist provided false documents and obtained the identification of customs certified specialist under false pretense;	No comment.	
Customs Law 68.2; 68.3.4.	14.1.4. The specialist failed to pass the examination provided for in 12.1.1 of this law;	The specialist is required by the Customs Law, 68.2, to take examinations every two years and can lose his or her rights if the examination is not passed. Customs Law 68.3.4.	Revise 14.1.4. to provide: “The specialist failed to pass the examinations provided for in 12.1.1. of this law or the periodic examinations provided for in Article 68.2 of the Customs Law.
	Chapter Six – Customs brokers association, customs brokers risk fund, rights and duties, payments and other matters related to customs brokers activities		

	Article 15. Customs brokers association		
	15.1. A customs broker may be a member of one or several customs brokers associations.	Why is it necessary to authorize customs brokers associations in the Law? Aren't Mongolians free to form associations without specific legal authorization? In most countries associations of brokers are private organizations although a few countries such as China have created them as state institutions. In Mongolia, an association of brokers could become an NGO (a not for profit organization) and raise money and conduct business as an NGO without any additional legislative authority. Some concern has been expressed by Customs that NGOs are not properly regulated under Mongolian law and this could be a concern regarding the Risk Fund. However, even if this is true Customs does not have the expertise and resources to regulate trade associations.	Delete this provision.
	15.2. Customs broker association solely or through international customs broker association may cooperate with the customs central administration organization on following matters:	Why is this provision necessary? Can't associations in Mongolia cooperate with Customs without specific legal authorization? The Council of Brokers of the MNCCI currently cooperates with Customs without specific legal authorization.	Delete this provision.
	15.2.1. Protection of its members' interests;	Trade associations by their nature are devoted	Delete this provision.

		to protecting members' interests.	
	15.2.2. Improvement of customs brokerage activities;	A private association of customs brokers should be devoted to improving brokerage activities.	Delete this provision.
	15.2.3. Modernization of customs control and inspection;	A private association of customs brokers should be devoted to improving customs administration.	Delete this provision.
	15.2.4. Protection of security of International supply network.	A private association of customs brokers should be devoted to cargo security.	Delete this provision.
	15.3. If customs broker rights of any entity are cancelled, such entity shall have no right to the assistance of a customs broker association.	This is a particularly objectionable provision. An association of customs brokers should be able to assist individual brokers that have problems with Customs when the case involves matters of policy that apply to all brokers.	Delete this provision.
	Article 16. Customs brokers risk fund		
Customs Law, 67.1.4 and Decree No. 388, 2.3.	16.1. A customs broker may establish a risk fund in order to pay customs duties or other taxes on behalf of a person intending to cross the customs frontier with goods and means of transport, or to prevent from any loss may occur in payment guarantee.	1. The Customs Law, Art. 67.1.4., currently requires all customs brokers to establish a risk fund. Proposed 16.1 would make this optional by using "may". It is essential that customs brokers provide an adequate financial guarantee to Customs that the payments of duties and taxes for which they are responsible will be fulfilled. 2. Best international practice, as is reflected in Revised Kyoto Convention, General Annex, Chapter 5, "Security", requires customs brokers to provide "general security" for their	Add the following: 16.1. Customs shall require financial guarantees from customs brokers in a form and amount sufficient to protect the revenue. 16.1.1. A customs broker shall provide a financial guarantee to Customs to assure the payment of customs duties or other taxes or liabilities for itself and on behalf of persons and entities represented by the customs broker. . 16.1.2. The financial guarantee provided may be a specific guaranty for a particular transaction or a general guarantee that covers all entries made by a broker

operations, i.e., a financial guarantee that Customs can draw on in the event that a customs broker does not carry out its obligations to pay duties and taxes. In many countries, these financial guarantees are called “customs bonds” and are provided by insurance companies on the basis of risk assessment. Insurance backed financial guarantees have proved to be less expensive than guarantees issued by banks or other third party guarantors and they eliminate the problems of Customs having to deal with the financial assets posted by customs brokers and others in “risk funds”.

for a specified period of time.

16.1.3. Customs brokers shall be allowed to choose any form of financial guarantee that is acceptable to Customs. Financial guarantees may be insurance contracts, bank guarantees, cash or personal property, or assets maintained in a risk fund.

16.2 In determining whether the amount of a financial guarantee is sufficient, Customs shall consider the following factors:

16.2.1. The prior record of the customs broker in the timely payment of duties, taxes and other charges;

16.2.2. The prior record of the customs broker in complying with other customs requirements;

16.2.3. The value and nature of the goods involved;

16.2.4. Any additional relevant information.

16.3. The amount of financial guarantee required shall be periodically reviewed by Customs to assure that the guarantee is adequate to protect the revenue. Customs may increase the amount of a financial guarantee if circumstances require.

16.4. Customs brokers who are members of any customs broker association of Mongolia may maintain a joint risk fund for the purpose of providing financial guarantees for association members. In

			<p>this case, the minimum amount of assets to be allocated in such a joint risk fund shall be established based on the negotiation of related customs broker association and the customs central administration organization.</p> <p>16.5. When a financial guarantee has been provided, it shall be discharged as soon as possible after Customs is satisfied that the obligations for which the financial guarantee was required have been fulfilled.</p>
	<p>16.2. The chairman of the customs central administration shall determine the minimum amount of assets to be allocated in the risk fund stated in clause 16.1 of this article taking into account the scope of the customs brokerage activities.</p>	<p>See the comments in connection with 16.1. above. The Revised Kyoto Convention, General Annex, Chapter 5, Standard 5.6, says that the amount of security shall be as low as possible and not exceed the amount potentially chargeable for duties and taxes.</p>	<p>See 16.1 above.</p>
	<p>16.3. Customs brokers who are members of any customs broker association of Mongolia may have a joint fund. In this case, the minimum amount of assets to be allocated in the joint risk fund shall be set based on the negotiation of related customs broker association and the customs central administration organization, and it shall not be subject to clause 16.2 of this article .</p>	<p>While it is common for trade associations to obtain financial guarantees and other insurance for their members (an example is the insurance backed guarantee used for TIR transit that is underwritten by national chambers of commerce or truckers associations), the amount of the financial guarantee should always cover the potential liability for duties and taxes.</p>	<p>See 16.1 above.</p>
<p>Article 17. Rights and</p>			

	obligations of a customs broker		
	<p>17.1. Rights. A customs broker is entitled to have access to any amendments to customs legislation from the customs organization.</p>	<p>1. The WTO's GATT Art. X and the WCO's Revised Kyoto Convention, General Annex, Standards 1.3 and 9.1 and 9.2 require that information regarding legislative amendments be made available to all interested parties. Customs brokers and other stakeholders should also be given an opportunity to participate in the development of new legislation and regulations. See Revised Kyoto Convention, General Annex, Chapter 1.</p> <p>2. The Revised Kyoto Convention sets forth a number of rights applicable to customs brokers. These should be included in the Law.</p>	<p>Rewrite Section 17.1. as follows:</p> <p>17.1. Rights.</p> <p>17.1.1. A customs broker is entitled to have access to any amendments to customs legislation and regulations from Customs, and to be consulted when new legislation and regulations are being developed by Customs.</p> <p>17.1.2. The conditions under which a customs broker may represent its principal when dealing with Customs and the liability of customs brokers to Customs for duties and taxes and any irregularities shall be specified in legislation.</p> <p>17.1.3. Customs brokers shall have the same rights as their principals in matters related to transacting business with Customs.</p> <p>17.1.4. Customs shall provide for customs brokers to participate in their formal consultations with the trade.</p> <p>17.1.5. Customs shall specify the circumstances under which they are not prepared to transact business with a customs broker and unless a customs broker has committed a very serious offense, Customs shall first issue written warnings to give the broker an opportunity to correct their conduct.</p> <p>17.1.6. Customs shall</p>

			<p>give written notification to customs brokers of a decision not to transact business.</p> <p>17.1.7. When a financial guarantee is required of a customs broker, Customs shall accept a general guarantee from customs brokers who regularly declare goods at different offices in the customs territory.</p> <p>17.1.8. When a financial guarantee is required its amount shall not exceed the amount potentially chargeable.</p> <p>17.1.9. The introduction of information technology shall be carried out in consultation with customs brokers to the greatest extent possible.</p> <p>17.1.10. When untrue information is furnished in a goods declaration and a customs broker can show that all reasonable steps had been taken to provide accurate and correct information, Customs shall take that factor into account in considering the imposition of any penalty.</p>
	17.2. Obligations:		Rewrite as follows: 17.2. Obligations of a customs broker include but are not limited to the following:
	17.2.1. To establish a customs broker agreement pursuant to article 10 of this law;	No comment.	
	17.2.2. To engage in customs operation through its customs certified specialist;	No comment.	

	17.2.3. To maintain track of and report on customs brokerage activities, and submit on a regular basis those data and reports to the customs organization;	No comment.	
	17.2.4. From the time of obtaining a customs broker certificate pursuant this law any changes in declarations and reports submitted to the customs organization must be informed on every occasion;	No comment.	
	17.2.5. To not disclose or use illegally the confidential information of a declarant;	Regulations should make clear what is truly confidential information of a declarant. Information released by the declarant to third parties without restriction cannot be considered to be confidential.	
	17.2.6. To ensure participation of its affiliated customs certified specialists in trainings organized by the customs organization at every occasion;	No comment.	
	17.2.7. To submit information on goods crossing the state border to the customs organization no later than 10 days before entry;	<p>1. It would be preferable for customs laws to refer to “entering the customs territory”. This would include goods that have been stored or manufactured in zones outside the customs territory.</p> <p>2. It will not always be possible to submit information to Customs regarding imports at least 10 days before entry. One example is express shipments.</p>	Change 17.2.7 as follows: “When the nature of the shipment permits, to submit information on goods....”
	17.2.8. To ensure	No comment.	

	accurate and complete documents required for customs clearance;		
	17.2.9. To bear liability in case of breaches of customs brokerage legislation.	No comment.	
Customs Law, 239.	17.3. Customs brokers shall keep all documents and files concerning customs brokerage activities, customs clearance, and records and reports stated in 17.2.3 of this article, for not less than 5 years;	No comment.	
	17.4. Customs brokers themselves, or customs certified specialists, shall report to the customs organization about suspicious actions which may breach customs legislation;	No comment.	
		A provision regarding conflicts of interest between customs brokers and active customs officers should be added here and in the Code of Ethics for customs officers.	17.5. Customs brokers shall avoid conflicts of interest. No active customs officer shall have a financial interest in any customs broker firm or act as a licensed customs specialist.
	Article 18. Payments related to customs brokerage activities		
	18.1. Customs brokerage payments shall be set based on the negotiation between customs broker and the customs central administration organization;	This proposal would make Customs responsible for setting the fees charged by customs brokers to their clients. This apparently is not presently the case. This is a counterpart of requiring customs brokers to provide services in certain specific areas and low density points of entry. Customs brokers would in effect be regulated utilities. However, an alternate	Delete this provision.

		<p>approach would be to let the market determine the fees charged. This is the current situation and according to the Brokers Council, the fees currently are very low. (However, traders may dispute this.)</p>	
	<p>18.2. Customs declaration form shall be free of charge;</p>	<p>Why should the submission of declarations by customs brokers be free of charge? This is the basic document submitted to Customs. Customs brokers currently charge for the submission of declarations. Customs claims that it currently charges customs brokers \$1 for customs declarations and they in turn sell them to clients for \$7. When in the future declarations will be available electronically there will be no charge by Customs. Customs believes that filling out declarations is simply a clerical function of no value. However, customs expertise should be involved in determining the classification and valuation of goods and in connection with completing other aspects of a declaration. Forcing customs brokers to submit declarations without charge may drive them out of business.</p>	<p>Delete this provision.</p>
	<p>18.3. The customs central administration organization shall determine the amounts of payments for granting and extending</p>	<p>No comment.</p>	

	the rights for customs brokerage activities and customs certified specialists.		
	Article 19. Working hours of customs brokers and customs certified specialists		
	19.1. Customs brokers and customs certified specialists shall work under the business hours set by the related customs organization.	The Revised Kyoto Convention, General Annex, Chapter 3, contains provisions about business hours. Standard 3.1. says that Customs may determine the business hours of its offices. However, Standard 3.2. says that Customs at the request of traders may conduct business outside of regular business hours and away from their regular locations. Expenses charged by Customs for these additional services must be limited to the approximate cost of the services provided.	Amend 19.1 to add the following: “At the request of a customs broker and for reasons deemed valid, the customs organization may permit customs brokers and customs certified specialists to conduct business outside of regular business hours. Any additional expenses charged by the customs organization for services provided outside of regular hours or away from regular locations shall be limited to the approximate cost of the services provided.”
	Article 20. Responsible territory of customs brokers and customs certified specialists		
	20.1. Customs brokers and customs certified specialists shall report to the customs organization responsible for their territory of operation about imports and exports of goods and means of transport in their responsible territory.	No comment.	
	Chapter Seven. Customs brokers registration, duties of the customs organization		
	Article 21. Customs	Doesn't Article 21	Move Article 21 to

	brokers registration	duplicate Articles 7 and 8? To the extent that these provisions don't duplicate Articles 7 and 8, shouldn't they be in recordkeeping regulations?	implementing regulations.
	21.1. The customs central administration organization shall maintain a record of customs brokers registrations. Customs brokers registrations may be in electronic form.		
	21.2. The customs broker registration shall contain the following:		
	21.2.1. Application for customs broker rights and its supporting documents;		
	21.2.2. Original copy of the order on granting customs broker rights;		
	21.2.3. Process evaluation on customs brokerage activities and its suggestions and recommendations as stated in article 6 of this law;		
	21.2.4. Original copy of the orders on extension, suspension, cancellation of customs broker rights;		
	21.2.5. Stamp, seal and signature of customs broker used in customs brokerage activities;		
	21.2.6. Information on customs certified specialist;		
	21.2.7. Information on the customs brokers union;		
	21.3. Customs broker and customs brokers union shall provide information needed for the customs brokers registration upon the		

	official request by the customs organization.		
	Article 22. Obligations for the customs organization		
	22.1. The customs organization shall have the following duties concerning customs brokerage activities:		
	22.1.1. To give information on customs legislation, rules and regulations to customs brokers, with certain payment;	This seems to repeat Article 17.	
	22.1.2. To provide customs brokers with customs broker programs, with certain payment;	No comment.	
	22.1.3. To ensure involvement of customs certified specialists in training and advanced training;	No comment.	
	Article 23. Customs control		
	23.1. The customs organization shall control customs brokers and customs certified specialists and the director of the customs organization shall approve regulations governing customs brokers and customs certified specialists.	This provision is probably not necessary because it is clear from the Customs Law that the customs organization controls customs brokers and customs certified specialists. If it is deemed necessary to state, logically it should be at the beginning of the legislation and not in Article 23.	Move this provision to Article 4.
	Chapter Eight. Suspension and cancelation of customs brokerage rights		
Customs Law, 70.	Article 24. Suspension of customs brokerage rights		
Customs Law 70.4.	24.1. The customs central administration organization may suspend customs brokerage rights up to 3	The Customs Law, Art. 70.4 provides that “the member of Government in charge of Customs matters” may suspend	If it is decided that the Minister of Finance will continue to have responsibility for licensing, revise 24.1 to

	months in the following cases, based on process evaluation of customs brokerage activities stated in article 6 of this law:	brokerage rights up to 3 months based on “an opinion from the central senior customs institution.” Article 24.1 conflicts with Customs Law 70.4. A decision must be made regarding whether the Minister of Finance will continue to be responsible for licensing matters or whether Customs will assume this responsibility.	be consistent with the Customs Law 70.4.
	24.1.1. A customs broker is in debt of customs duties and other taxes;	No comment.	
	24.1.2. A customs broker is insolvent for a temporary period;	No comment.	
	24.1.3. The number of customs certified specialists, who work for customs brokers, has is less than the amount specified in 7.4 of this law;	No comment.	
	24.1.4. A customs broker failed to fulfill its duties specified in 16.2 of this law;	No comment.	
	24.1.5. A customs broker itself or its affiliated customs certified specialist violated customs legislation one or more times;	No comment.	
	24.2. Customs brokerage rights may be suspended by the order of the chairman of customs central administration organization. Justification for suspension of customs brokerage must be specified in the order.	24.2 is not consistent with Customs Law 70.4 and if the Minister retains licensing authority it should be revised to provide that the Minister of Finance suspends brokerage rights based on Customs’ recommendation.	If the Minister of Finance retains licensing authority revise 24.2 to be consistent with Customs Law 70.4.
		Consistent with the Revised Kyoto	Add the following to 24.2: “Unless a very

		Convention, unless a very serious offense has been committed, Customs should first issue written warnings to give the customs broker an opportunity to correct their conduct. When Customs suspends a customs brokerage's rights, normally notification shall be made a reasonable period of time in advance to give the customs broker time to wind up its ongoing business and appeal the decision.	serious offense has been committed written warning will first be issued to give the customs broker an opportunity to correct their conduct. When a customs brokerage rights are suspended, normally notification shall be made a reasonable period of time in advance to give the broker time to wind up its ongoing business and appeal the decision."
	Article 25. Cancellation of customs brokers rights		
Customs Law 70.5.	25.1. The customs central administration organization may cancel customs brokerage rights in the following cases, based on the process evaluation of customs brokerage activities stated in article 6 of this law:	25.1 is inconsistent with Customs Law 70.5 which gives the authority to cancel customs brokerage rights to "the member of Government in charge of customs matters" based on an opinion from the "central senior customs institution".	If the Minister of Finance retains licensing authority, amend 25.1 to make it consistent with Customs Law 70.5.
	25.1.1. If a customs broker failed to eliminate reasons for the basis for suspension of customs brokerage rights during the period customs brokerage rights are suspended;	No comment.	
	25.1.2. If a customs broker itself or its affiliated customs certified specialist breached the customs legislation for 2 or more times;	If the breaches are minor in nature, cancellation of brokerage rights would be inappropriate. Revised Kyoto Convention, Specific Annex H, Standard 23, sets forth the principle of proportionality: <i>The severity or the amount</i>	Amend 25.1.2 as follows: "If a customs broker itself or its affiliated customs certified specialist breach the customs legislation for 2 or more times and said breaches were deemed to be serious violations;"

		<i>of any penalties applied in an administrative settlement of a Customs offence shall depend upon the seriousness or importance of the Customs offence committed and the record of the person concerned in his dealings with Customs. This principle should be applied to violations by customs brokers.</i>	
	25.1.3. If a customs broker's organization is liquidated, or merged with another organization and changes its official name ;	No comment.	
	25.1.4. If a customs broker has not operated the custom brokerage for 2 years [6 months] since customs brokerage rights have been given or extended;	6 months may be too short a time period if a customs broker is organizing or reorganizing its business. There should be discretion to allow a longer period of time for good cause shown.	Amend 25.1.4. as follows: "Unless good cause for not operating is shown....."
	25.1.5. If false documents are found to have been submitted to obtain customs brokerage rights;	There should also be a requirement of intent, as it may be possible that false documents might be unintentionally submitted.	Amend 25.1.5 as follows: "If false documents are found to have been intentionally submitted to obtain customs brokerage rights;"
Customs Law 70.5.	25.2. Customs brokerage rights shall be cancelled by the order of the chairman of the customs central administration organization.	25.2 conflicts with Customs Law 70.5 which gives to the "member of Government in charge of customs matters" the power to cancel brokerage rights.	If the Minister of Finance retains licensing authority, amend 25.2 as follows: "Customs brokerage rights shall be cancelled by the member of Government in charge of customs matters on the recommendation of the customs central administration organization."
	Chapter Nine. Liabilities for customs brokers and customs certified specialists		

	Article 26. Liabilities to be imposed on customs brokers		
	26.1. A customs broker, who breached the customs and other legislation, shall be subject to liability according to the related legislation.	No comments.	
	Article 27. Liabilities to be imposed on customs certified specialists		
	27.1. A customs certified specialist, who breached the customs and other legislation shall be subject to liability in accordance with related legislation.	No comments.	
	Chapter Ten. Miscellaneous provisions		
	Article 28. Adherence to provisions of other laws		
Customs Law, 66-70.	28.1. Any matters related to application for customs brokerage rights, granting extension, cancellation and suspension of such rights which are not regulated by this law shall be regulated by Law on Licensing.	This provision apparently is intended to repeal the provisions in the Customs Law (articles 66-70) that pertain to customs brokerage rights. However, it does not expressly say this. This proposed law and the provisions regarding brokers in the Customs Law can be made consistent by adding conforming amendments to the Customs Law to this Law.	Add the following: “In the event of any conflict regarding the provisions regulating customs brokers and customs licensed specialists between the Customs Law of 2008 and this Law, the provisions of this Law are to be followed.”
	Article 29. Provisions not subject to customs brokerage activities		
Decree 388, 4.1.4.	29.1. A customs certified specialist stated in article 11 of this law, who is not affiliated with any customs broker, may	29.1 allows a customs certified specialist who is not affiliated with any customs broker to represent “any entity” doing business with	Amend 29.1 as follows: “A customs certified specialist stated in article 11 of this Law, who is not affiliated with any customs

	<p>negotiate with any entity intending to cross customs frontiers with goods and means of transport based on the Civil Code of Mongolia or Labor Law, and may declare to the customs organization, only its goods and means of transport, on behalf of such entity.</p>	<p>Customs. This would permit a customs certified specialist to operate as a one person customs broker. While individual businesses should be able to employ customs certified specialists to handle their customs transactions, the specialists should be employed only by one individual business. Otherwise, they are functioning as customs brokers by providing services to more than one client.</p>	<p>broker, may be employed by any person or entity intending to cross the customs frontiers with goods and means of transport based on the Civil Code of Mongolia or Labor Law, and may declare to the customs organization, only its goods and means of transport, on behalf of such entity. Customs certified specialists may only represent the single person or entity employing them when conducting customs business. If they represent more than one person and/or entity they must first qualify as a customs broker.”</p>
	<p>29.2. In the case stated in section 1 of this article, the concerning relations shall not be subject to this law. In the case of section 1, concerning relations shall be regulated by the Customs Law, and Law on Customs Tariff and taxes. In this event, a customs certified specialist shall be “declarant” as stated in the Customs Law.</p>	<p>See the comments and recommendations in connection with 29.1 above.</p>	
	<p>29.3. Other relations between customs broker, and individual or legal entity who makes customs clearance through the customs broker, which are not specified in this law, shall be regulated by the Civil Code, Customs Law, Law on Licensing and other laws.</p>	<p>This has already been stated in Article 2.1. and it is not necessary to repeat here.</p>	<p>Delete this provision.</p>

ANNEX D: CUSTOMS BROKERS PRACTICE PRESENTATION

ANNEX D: CUSTOMS BROKERS PRACTICE PRESENTATION



USAID
FROM THE AMERICAN PEOPLE



Business Plus Initiative
USAID funded project implemented by Chemonics International

International “Best Practices” for Customs Brokers

working Document on Competitiveness and Business Enabling Environment - Mongolia

Stephen Creskoff
Customs Legislative
Specialist
Business Plus Initiative
USAID

13 April 2012
Ulaanbaatar, Mongolia



USAID
FROM THE AMERICAN PEOPLE



Business Plus Initiative
USAID funded project implemented by Chemonics International

What are Customs Brokers?

- A profession that involves the clearing of goods through Customs for clients (importers and exporters)
 - Preparation of customs declarations and other documents
 - Determination of customs classification and valuation of goods
 - Calculation and payment of duties and taxes for clients
 - Submission of required documents to Customs for clients
 - Facilitating communications between the client and Customs
- Known by many names (customs broker, clearing agent, forwarding agent, third party, representative, etc.)



What are Customs Brokers? Some International Examples



- Customs brokers in the United States
 - The term “customs broker” refers to both individuals and firms
 - May also be: freight forwarders; provide customs consulting services; specialize in certain types of trade transactions (clothing and textiles, petroleum, etc.)
 - Usually are located at major seaports and international airports
 - Arrange transshipment or local deliver of cleared goods
 - Individuals are licensed by US Customs and Border Protection to assure competence
 - Background check
 - Examination



What are Customs Brokers? Some International Examples

- Customs brokers in the European Union (EU Customs Law, 2008, Art. 11 and 12)
 - Representation may be either direct or indirect
 - Must be established within the customs territory of the EU
 - Member States may define the conditions under which representatives may provide service
 - Frequently no licensing requirements in EU
 - Anyone acting as a representative may be required to provide evidence of authorization





What are Customs Brokers? Some International Examples

- Customs brokers in China
 - Highly regulated by government
 - Licensed by CGA of China
 - Approved by Ministry of Commerce, Ministry of Communication, SGS audits, etc.
 - May provide wide range of services
 - Customs clearance
 - Warehousing
 - Freight forwarding
 - Insurance
 - Inspection



What are Customs Brokers? Some International Examples

- Customs brokers in Russia
 - A Russian juridical person included in the register of customs brokers
 - Can confine activities to specific types of goods, specific means of transport, or a specific region
 - Relation between broker and client determined by contract
 - Brokers must have:
 - two certified customs specialists,
 - availability of authorized capital,
 - financial guarantee,
 - liability insurance





What Do Customs Brokers Do?



- Manage trade by handling most trade transactions worldwide
 - Data, Complex transactions, Payments
 - Relationships with Customs
- Save governments money
 - Transfer the cost of managing customs transactions from the government to the private sector
 - Provide expert assistance to traders at no cost to government
- Directly enhance trade facilitation through expertise
 - Reduce the time and cost of trade transactions
 - Help businesses conduct international trade transactions



What Do Customs Brokers Do?

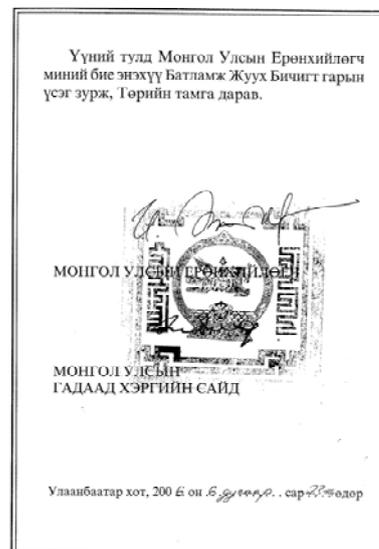
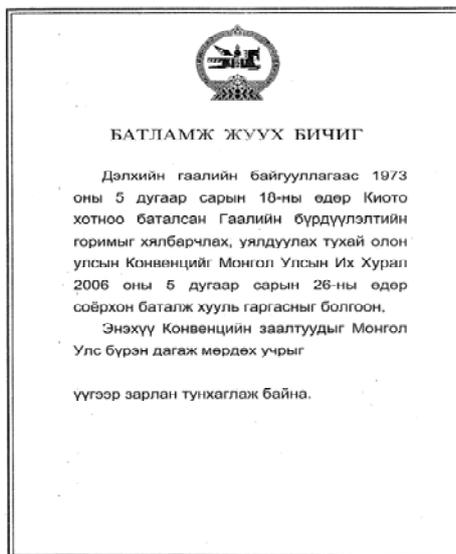


- Cooperate domestically with other brokers through trade associations or ad hoc groups, for example:
 - National Customs Brokers and Freight Forwarders Association of America (<http://www.ncbfaa.org/>)
 - China Customs Brokers Association (a state level industrial association under CGA of China)
 - Korea Customs Brokers Association (<http://www.ifcba.org/node/39>)
- Cooperate internationally through an international trade association
 - International Federation of Customs Brokers Associations (www.ifcba.org)



What International “Best Practices” Apply to Customs Brokers?

- Many customs international “best practices” are codified in the World Customs Organization’s Revised Kyoto Convention (RKC). This includes standards regarding brokers.
 - The RKC came into effect in February 2006.
 - Mongolia ratified the RKC in June 2006.
 - Currently 78 members (Nov. 2011)





The Importance of the Revised Kyoto Convention

- Implementation of RKC standards and recommended practices result in:
 - Increased revenue collections
 - Improved law enforcement at the border
 - **Trade facilitation**



The Importance of the Revised Kyoto Convention

- Trade facilitation = the administrative and logistic steps required in the international movement of goods, as measured by shipment time and freight cost
- World Bank economists predict that for each day shipment time is reduced, trade increases between 1% to 7%
- **If Mongolia reduced the current time for exports from 46 days to the regional average of 22 days, export trade would increase from 24% to as much as 168%!**



The Importance of the Revised Kyoto Convention

- **The RKC is a blueprint for modern, efficient customs procedures. It's key principles include:**
 - Transparency and predictability
 - Standardization and simplification of goods declaration and supporting documents
 - Simplified procedures for authorized persons
 - Maximum use of information technology
 - Use of risk management and audit based controls
 - Coordinated interventions with other border agencies
 - Partnership with the trade



What RKC Standards Apply to Customs Brokers?

- RKC GA Ch. 8, Relationship between Customs and Third Parties: **Standard 8.1**
 - *Persons concerned shall have the choice of transacting business with the Customs either directly or by designating a third party to act on their behalf.*
 - This standard gives a trader the option of using a third party (customs broker) to deal with Customs or of dealing with Customs directly. Some large multinational corporations prefer to deal directly with Customs by using their own customs specialists



What RKC Standards Apply to Customs Brokers?

- **RKC GA Standard 8.2**
 - *National legislation shall set out the conditions under which a person may act for and on behalf of another person in dealing with the Customs and shall lay down the liability of third parties to the Customs for duties and taxes and for any irregularities.*
 - In some countries the third party may be held jointly and severally liable to Customs for the financial obligations of its principal
 - However, if a liability arises solely from the actions of the principal and the third party has acted reasonably Customs should take this into account when imposing penalties



What RKC Standards Apply to Customs Brokers?

- **RKC GA Standard 8.3**
 - *The Customs transactions where the person concerned elects to do business on his own account shall not be treated less favorably or be subject to more stringent requirements than those Customs transactions which are handled for the person concerned by a third party.*
 - However, the granting of deferred payment to third parties who regularly clear substantial volumes of goods is not a precedent for principals with a low volume of transactions or poor compliance record



What RKC Standards Apply to Customs Brokers?

- RKC GA **Standard 8.4**
 - *A person designated as a third party shall have the same rights as the person who designated him in those matters related to transacting business with the Customs.*
 - Third parties should have the same rights as their principles. This includes the use of modern IT systems.
 - Third parties should also not be required to retain more records for audit and inspection than those needed to assure they have carried out their duties in a legal and responsible manner.



What RKC Standards Apply to Customs Brokers?

- RKC GA **Standard 8.5**
 - *The Customs shall provide for third parties to participate in their formal consultations with the trade.*
 - RKC GA Standard 1.3 requires Customs to establish and maintain regular consultative relationships with the trade at all levels of customs administration. Third parties should be included in this consultative process.
 - This includes important legal and procedural changes, such as new customs brokers legislation



What RKC Standards Apply to Customs Brokers?

- **RKC GA Standard 8.6**
 - *Customs shall specify the circumstances under which they are not prepared to transact business with a third party.*
 - The reasons or circumstances could include :
 - Conviction of a serious customs offense with a specified recent period, or
 - Consistent failure by the third party to fulfill responsibilities to its principal or to Customs, including repeated cases of gross negligence or violation of customs rules.



What RKC Standards Apply to Customs Brokers?

- **RKC GA Standard 8.6 (continued)**
 - *Customs shall specify the circumstances under which they are not prepared to transact business with a third party (continued).*
 - Unless a third party has committed a very serious offense, Customs should first issue written warnings to given the third party an opportunity to correct their conduct.



What RKC Standards Apply to Customs Brokers?

- RKC GA **Standard 8.7**
 - *Customs shall give written notification to the third party of a decision not to transact business.*
 - The decision not to transact business with a third party is very serious. Standard 8.7 requires written notification and the reasons for the decision.
 - Such a notification should be made a reasonable period of time in advance to give the third party time to wind up its ongoing business and to appeal the decision. However, in cases where the third party has committed a criminal offense, revocation should be immediate.



What RKC Standards Apply to Customs Brokers?

- RKC GA **Standard 5.1**
 - *National legislation shall enumerate the cases in which security is required and shall specify the forms in which security is to be provided.*
 - “Security” or financial guarantees are an essential part of modern customs operations. All customs brokers should be required to provide security to assure Customs that they will comply with all their obligations.



What RKC Standards Apply to Customs Brokers?

- **RKC GA Standard 5.5**
 - *When security is required to ensure that the obligations arising from a Customs procedure will be fulfilled, the Customs shall accept a general security, in particular from declarants who regularly declare goods at different offices in the Customs territory.*
 - Customs normally has a standard procedure for granting general security based on the volume of operations carried out by the applicant.
 - Financial guarantees may be provided by third parties such as banks and insurance companies



What RKC Standards Apply to Customs Brokers?

- **RKC GA Standard 5.6**
 - *Where security is required, the amount of security to be provided shall be as low as possible and, in respect of the payment of duties and taxes, shall not exceed the amount potentially chargeable.*
 - The security required should be based upon the risk and amount of money involved and should not normally include penalties potentially chargeable or interest for delayed payments that may be charged.



What RKC Standards Apply to Customs Brokers?

- **RKC GA Standard 7.4**
 - *New or revised national legislation shall provide for:*
 - *electronic commerce methods as an alternative to paper-based documentary requirements;*
 - *electronic as well as paper-based authentication methods;*
 - *the right of the Customs to retain information for their own use and, as appropriate, to exchange such information with other Customs administrations and all other legally approved parties by means of electronic commerce techniques.*



What RKC Standards Apply to Customs Brokers?

- **RKC GA Standard 7.3**
 - *The introduction of information technology shall be carried out in consultation with all relevant parties directly affected, to the greatest extent possible.*
 - It is essential that Customs and customs brokers collaborate in connection with the introduction of new IT systems. This requires close consultation and collaboration during the planning, procurement and installation of new customs IT systems.



What RKC Standards Apply to Customs Brokers?

- RKC SA H, Customs Offenses, **Standard 23**
 - *The severity or the amount of any penalties applied in an administrative settlement of a Customs offense shall depend upon the seriousness or importance of the Customs offense committed and the record of the person concerned in his dealings with Customs.*
 - Customs brokers who have had a good compliance record with Customs should not be excessively penalized for an infraction
 - Penalties should reflect the amount of potentially lost revenue and not be based on the value of the goods involved



What RKC Standards Apply to Customs Brokers?

- RKC SA H, Customs Offenses, **Standard 24**
 - *Where untrue particulars are furnished in a goods declaration and the declarant can show that all reasonable steps had been taken to provide accurate and correct information, Customs shall take that factor into account in considering the imposition of any penalty.*
 - This standard applies specifically to customs brokers that usually do not have access to the business information of their principals. As a result, the possibilities for verifying information are limited.



Additional International “Best Practices” Applicable to Customs Brokers

- ***Prohibition of conflicts of interest involving customs brokers and customs officers***
 - When active customs officers or their families or business partners have a financial interest in a customs brokerage, the integrity of customs administration may be subverted.
 - Favoritism may be shown to the brokerage connected to the customs official to the disadvantage of competing customs brokers
 - Customs may lose revenue because the broker connected to the customs official receives preferential treatment



International “Best Practices” Applicable to Customs Brokers

Thank you!

