

**GUIDELINES FOR THE COMPLETION
OF THE GENERAL AGENCY AGREEMENT
AND STANDARD TRADING CONDITIONS (09-2016)**

The following guidelines have been prepared by the CSCB to assist members when they meet with clients to sign the general agency agreement ("GAA") with attached standard trading conditions ("STC"). If you alter the GAA or the STC in any way, you are required to remove any references to the Canadian Society of Customs Brokers or CSCB from the document.

CBSA has published its GAA requirements in D1-6-1. If you make any changes to the GAA, ensure that the following elements remain:

The written authority must specify:

- (a) the names of the person and the agent including their business numbers and addresses;
- (b) a description of the type of business transactions being authorized, e.g. accounting and payment of duties on commercial goods imported under section 32 of the Customs Act;
- (c) whether the authority is continuous or for a specified period;
- (d) whether the agent is authorized to appoint a sub-agent;
- (e) the name, title and signature of the agent;
- (f) the name, title and signature of the person on whose behalf the agent is acting; and
- (g) the effective date.

The CBSA does not accept an electronic check-off box as an acceptable substitute for a wet (ink on paper) signature for the purpose of an agency agreement.

The GAA, with attached STC, is a legally binding contract. Clients should be strongly encouraged to read all the terms and conditions in each of the GAA and STC before signing the GAA. Once the client signs the GAA, it will be agreeing to each term and condition of the GAA and the STC. It is recommended that all signatories initial each page of the GAA and STC.

Although a minimal review is not desirable, in some cases it is all that is possible. In these situations, the Customs Broker representative should walk through the highlights/critical sections of the GAA and STC with the client, ensuring that the client understands in layman's terms what the client's obligations are and what client can expect from the Customs Broker.

Following are some additional considerations:

1. Who can sign the GAA (with attached STC) on behalf of the client when that client is an incorporated company?

If possible, it is preferable that two authorized individuals sign on behalf of an incorporated company. Their titles must also be indicated. If possible, have the corporate seal affixed and ensure that the name of the client company corresponds exactly with the name on the corporate seal. In many jurisdictions a corporate seal is no longer required. In that case, it is important to verify that the persons signing the agreement have the authority to do so. In instances where the signatory is not an officer but has authority to sign, attach a copy of the corporate resolution granting this authority.

2. Who can sign the GAA (with attached STC) on behalf of the client when that client is not an incorporated company?

Unincorporated companies, associations, partnerships or sole proprietorships require the signature of at least one and preferably two duly authorized signing officers, partners or owners. Always insert the title or position of the person, i.e. president, partner. These signatures must be witnessed by another individual of "lawful age".

3. How do we proceed if a Client requests amendments to the GAA and/or STC?

Institute a procedure that must be followed whenever changes are under consideration. Ensure that Sales, Operations, Consulting and Legal are part of the discussion. Once approved, all signatories should initial any changes to the agreements.

NOTE: if any changes are made to the STC, then you must amend the GAA and ensure all references in the GAA to the "Standard Trading Conditions" or "STC" are changed to refer to the "attached trading conditions." You must also remove the STC as an attachment to the GAA and replace the STC with the amended trading conditions.

4. Do the documents need to be originals or can we retain photocopies for our records?

D1-6-1 states that facsimile copies of the written authority may be accepted but it is always preferable to have a signed original in your possession, especially for a power of attorney. It is recommended that you take a minimum of two copies of the entire document – that is, the GAA with the attached STC (or revised trading conditions, if applicable) and the Annex 1 attachment to the STC - to your client for signing. The GAA must be signed and all other pages of the entire document initialed. One original of the entire document can be left with the client and the other can then be returned for safekeeping in your own office. If the signed document is sent/delivered by email, then ensure the entire document (the GAA with attached STC (or revised trading conditions, if applicable) and the Annex 1 to the STC) are fully compiled/scanned together as 1 complete document in pdf form and emailed.

5. GAA Provisions – Commentary

Opening section

- a. A request from the Client to restrict the scope of authority to specific Customs functions may be very challenging in operational terms. Do not agree to any scope restriction unless your operations team confirms that they can consistently meet this request.
- b. CBSA has confirmed that the phrase, from the previous version of the CSCB GAA, "in all matters relating to the import and export of goods" is sufficient for allowing authorized customs brokers to file ATD on behalf of importers but it was further recommended that going forward, agents might want to add more specific wording regarding this service. The wording in section i) of the opening section has been amended accordingly.

"I further grant my attorney... to appoint... as a sub-agent"

Where a Client is reluctant to grant such authority because it seems too broad, explain that the operational world of customs is usually time-sensitive and seeking appropriate authorizations on a case by case basis could be costly, both in terms of time and money. The unexpected happens far too often. Sub-agents can be essential to managing those incidents. Although a customs broker can arrange for the release of goods electronically from anywhere in the country, there are occasions where CBSA requests specific information at a specific port of entry. No customs broker can be physically present at all ports of entry at all times. Therefore, the ability to appoint another licensed customs broker as a sub-agent is critical to efficiency. This sub-agent acts as a go-between the primary customs broker and the CBSA. Without a sub-agency agreement, the customs broker will need to contact the client for written authority should a situation arise where a sub-agent is required. This could happen outside of regular business hours and as a result the release of the shipment could be delayed.

If after presenting further explanation as to why this authority is important, your client still wants a change, following is alternative wording.

Alternate Wording – I agree to immediately issue a sub-power of attorney, upon written request from my aforesaid attorney, directly to the sub agent with the understanding that my aforesaid attorney will not be financially liable or responsible for costs of fees. Additionally, I acknowledge that my aforesaid attorney shall not be held financially or otherwise responsible as a result of any delay that may ensue in my issuance of the sub power of attorney.

“I acknowledge that any duties...”

This clause facilitates Customs related financial transaction and provides preferential security for the Customs Broker regarding any disbursements not reimbursed by the Client.

“I hereby ratify and confirm.....”

This sentence is the indispensable foundation of an appointed Attorney. This allows the government, for example, to deal with the Attorney as if dealing directly with the Client. If the Client believes that the Attorney should not have done something it did as an Attorney, the Client can sue for damages subject to the STC limitations of liability.

6. STC Provisions – Commentary

Old Subsection 3(d)

Subsection 3(d) re right to retain physical possession of goods, seen in previous versions of the STC, has now been deleted, in recognition of the reality that customs brokers generally do not have any goods in their physical possession and have no security over such goods even if they are in customs broker’s possession.

Please see Section 4(d) re Customs Broker’s rights on client’s default.

In addition, if you perform services for a client that causes you to be in possession of client’s goods (ie., warehouse or storage services, etc.) you may want to reinstate this deleted Section 3(d) and it is reproduced below for that purpose:

“Section 3(d) - Upon default of payment by the Client, the Customs Broker, in addition to any other rights and remedies the Customs Broker may have, has the right to (i) retain, in its possession, all goods of the Client then in the Customs Broker’s possession and all goods of the Client which may, in the future, come into the Customs Broker’s possession; and (ii) sell any or all such goods by public auction if the Client’s payment default continues for a period in excess of 45 days from the date of the relevant invoice therefor.”.

Subsection 5 (a)(ii)

Remind Clients that an amendment of Customs accounting data prior to the deemed CBSA Determination (30 days) is less onerous, and avoids an accounting error Record and potential monetary liabilities. Since the Attorney is to make, as the Client, the data declarations instructed by the Client to be used, it behooves the Client to satisfy itself as to the correctness of declarations on its behalf. Repeat errors are then avoided/identified.

Subsections 5(a)(iii), (iv) and (c) – Broker indemnity and Client liabilities

These provisions are integral in a Principal-Attorney relationship. The Attorney must be free to act in what it sees as the Client’s/Principal’s best interests in accordance with instructions received.

Subsection 6(a) re: offshore IT, data entry and data hosting.

You may need to add additional language to the end of Section 6(a) in the STC to address outsourcing data entry and other services offshore. If so, insert the following:

“The Client acknowledges and agrees that the Customs Broker may use service providers, including IT, data entry and data hosting service providers, residing outside of Canada in connection with the Services.”

If this is a concern to Client, you may need to amend or provide additional language and potential restrictions around that offshore outsourcing (i.e., some clients specify those limited countries that may be used for such duties.) In addition, consider any Customs Broker’s internal privacy policies or contractual privacy provisions in Client contracts and/or terms and conditions with which Customs Broker will need to continue to comply.

Subsection 6(f) - Customs Broker shall not be liable for: any error in judgement; anything which it may do or refrain from doing; or negligence

This subsection is a tough sell. Most Clients’ lawyers would suggest removal/modification of this subsection, partially on the expectation that the Broker would carry insurance for such liability.

Section 7 - If the Client does not accept the standard liability/indemnity clauses provided in the STC and requires the Broker to be liable for its acts of gross negligence, wilful misconduct and/or fraud, below is an alternate Section 7 which makes each party liable for the types of enumerated damages to the extent that party caused the damages by its acts of gross negligence, wilful misconduct and/or fraud. Note, however, that with this alternate wording we have maintained that Broker will not (even if it is grossly negligent, fraudulent or acts with wilful misconduct) be liable for loss of profit, revenue or use or like damages. Client may or may not accept the exclusion of those sorts of damages.

Alternate Section 7 - Neither the Customs Broker nor the Client will be liable for any consequential, special, incidental, indirect, punitive or exemplary damages resulting from these Standard Trading Conditions, the Agency Agreement and Power of Attorney, any act of God, ‘force majeure’ or unavoidable delay, or event beyond the reasonable control of the affected party, to the extent not caused by the gross negligence, wilful misconduct or fraud of such party or a person under its responsibility. In addition, the Customs Broker shall not be liable for any loss of profit, loss of revenue, loss of use or other like damages or losses, or damages arising in tort, whether or not known, contemplated or reasonably foreseeable, in connection with the Services, these Standard Trading Conditions and/or the Agency Agreement and Power of Attorney.

If you use alternate section 7 as per above, you must add this **Cap on Liability as section 8**.

New Section 8 - Notwithstanding any other provision hereof, in no event shall the Customs Broker’s total aggregate liability (if any) to the Client arising under these Standard Trading Conditions and/or the Agency Agreement and Power of Attorney exceed the total amount of Fees paid by the Client to the Customs Broker under these Standard Trading Clauses in connection with those Services giving rise to the said liability.

NOTE: If a new section 8 is added to the Standard Trading Conditions, it causes a renumbering of subsequent provisions thereof, and the reference to “Section 8 of the Standard Trading Conditions” occurring (a) at the start of the Standard Trading Conditions and (b) in the final paragraph of the GAA/POA (occurring just before the “In witness whereof” clause) need to be amended to refer to “Section 9 of the Standard Trading Conditions”.