

CHAPTER 4

CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 4.1: Definitions

For the purposes of this Chapter:

customs law means the statutory and regulatory provisions relating to the importation, exportation, movement or storage of goods, the administration and enforcement of which are specifically charged to the customs authorities, and any regulations made by customs authorities, under their statutory powers;

customs procedures means the treatment applied by each customs authorities to goods and means of transport that are subject to customs law; and

means of transport means various types of vessels, vehicles, aircraft and pack-animals which enter or leave the territory of a Party carrying persons, goods or articles.

Article 4.2: Scope and Objectives

1. This Chapter shall apply, in accordance with the Parties' respective international obligations and domestic customs law, to customs procedures applied to goods traded between the Parties and to the movement of means of transport between the Parties.

2. The objectives of this Chapter are to:

- (a) simplify and harmonize customs procedures of the Parties;
- (b) facilitate trade between the Parties; and
- (c) promote cooperation between the customs authorities, within the scope of this Chapter.

Article 4.3: Facilitation

1. Each Party shall ensure that its customs procedures and practices are predictable, consistent, and transparent to facilitate trade.

2. Customs procedures of each Party shall, where possible and to the extent permitted by its respective customs law, conform with the trade-related instruments of the World Customs Organization (WCO) to which that Party is a contracting party, including those of the *International Convention on the Simplification and Harmonization of Customs Procedures*, as amended, known as the Revised Kyoto Convention.

3. The customs authorities shall facilitate the clearance, including release of goods in administering their procedures.

4. Each Party shall endeavor to provide a focal point, electronic or otherwise, through which its traders may submit all required regulatory information in order to obtain clearance, including release of goods.

Article 4.4: Consistency

Each Party shall ensure, to the extent possible, consistent implementation of its customs laws and regulations nationwide, and endeavour to deter inconsistent matters that may arise in the implementation process of the laws and regulations among its regional customs offices by establishing and taking proper measures.

Article 4.5: Transparency

1. Each Party shall ensure that its customs and other trade-related laws, regulations, general administrative procedures and other requirements, including fees and charges, are readily available to all interested parties, via an officially designated medium including official website. Each customs authority shall publish all customs laws and any administrative procedures it applies or enforces, via an officially designated medium including official website.

2. Each customs authority shall designate or maintain one or more enquiry points to deal with inquiries from interested persons from either Party on customs matters arising from the implementation of this Agreement, and make available on the official website information concerning the procedures for making such inquiries.

3. To the extent possible, each customs authority shall publish in advance any new or amended regulations of general application governing customs matters that it proposes to adopt and shall provide interested persons with the opportunity to comment before adopting them.

4. Each customs authority shall provide the other customs authority with timely notice of any significant modification of customs laws or procedures governing the movement of goods and means of transport that is likely to substantially affect the operation of this Chapter.

Article 4.6: Customs Valuation

The Parties shall determine the customs value of goods traded between them in accordance with the provisions of Article VII of GATT 1994 and the Customs Valuation Agreement.

Article 4.7: Tariff Classification

The Parties shall apply the *International Convention on the Harmonized Commodity Description and Coding System* to goods traded between them.

Article 4.8: Customs Cooperation

1. The Parties affirm their commitment to facilitate the legitimate movement of goods and shall exchange expertise on measures to improve customs techniques and procedures, and on computerized systems.
2. To the extent permitted by their domestic laws, the customs authorities shall assist each other, in relation to:
 - (a) the implementation and operation of this Chapter; and
 - (b) such other issues as the Parties mutually determine.

Article 4.9: Review and Appeal

1. Each Party shall, in accordance with its domestic laws and regulations, provide that the importer, exporter or any other person affected by its determinations, have access to:
 - (a) a level of administrative review of determinations by its customs authorities independent of the official or office responsible for the determinations under review; and
 - (b) judicial review of the administrative determinations subject to its laws and regulations.
2. A producer or exporter may provide, on the request of the reviewing authority, information directly to the Party conducting the administrative review, and may request such Party to treat that information as confidential in accordance with the rules applicable in that Party. This information shall be provided in accordance with the rules determined by the Parties.

Article 4.10: Advance Rulings

1. The customs authority of each Party shall issue written advance rulings prior to the importation of a good into its territory on the written request of an importer, an exporter, or

any other applicant in the territory of that Party¹, on the basis of the facts and circumstances provided by the requester, including a detailed description of the information required to process a request for an advance ruling. The advance ruling may be issued on the following matters:

- (a) tariff classification;
- (b) origin of a good in accordance with this Agreement; and
- (c) such other matters as the Parties may agree.

2. The customs authority shall issue an advance ruling within 90 days after a request, provided that the requester has submitted all information required under the domestic laws, regulations and rules. The advance ruling shall be in force from its date of issuance, provided that the facts or circumstances on which the ruling is based remain unchanged.

3. The advance rulings that are into force may be annulled, amended or revoked:

- (a) where the facts or circumstances prove that the information on which the advance ruling is based is false or inaccurate. In these cases, the customs authority may apply appropriate measures to the requester, including civil, criminal and administrative actions, penalties or other sanctions in accordance with its domestic laws;
- (b) where the customs authorities deem appropriate to apply different criteria due to the obvious error made by customs authorities on the same facts and circumstances of the original advance rulings. In this case, the amendment or revocation shall be applied from the date of the change; or
- (c) when the administrative decisions are affected due to changes in the laws, regulations and rules that served as basis. In these cases, the advance rulings shall automatically cease to be in force from the date of publication of those changes.

In the cases mentioned in subparagraph (c), the customs authority shall make available to interested persons the information reviewed, with sufficient time prior to the date on which the amendments enter into force, so they can take them into account, with the exception of the cases where it is impossible to publish in advance.

4. Each Party shall publish its advance rulings subject to any confidentiality requirements in its laws, regulations and rules.

5. A Party may decline to issue an advance ruling if the facts or circumstances forming the basis of the advance ruling are the subject of administrative or judicial review.

¹ For China, the applicant for an advance ruling must be registered with China customs.

Article 4.11: Penalties

Each Party shall adopt or maintain measures that allow for the imposition of administrative penalties and, where appropriate, criminal sanctions for violations of its customs laws and regulations, including those governing tariff classification, customs valuation, country of origin, and claims for preferential tariff treatment under this Agreement.

Article 4.12: Use of Automated Systems

The customs authorities shall apply information technology to support customs operations, where it is cost-effective and efficient, particularly in the paperless trading context taking into account developments in this area within the WCO.

Article 4.13: Risk Management

1. The customs authorities shall focus measures of control on high-risk goods and facilitate the clearance of low-risk goods in administering customs procedures.
2. The Parties shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination or disguised restrictions on international trade.

Article 4.14: Release of Goods

1. Each Party shall adopt and apply simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties. For greater certainty, this paragraph shall not require a Party to release goods where its requirements for release have not been met.
2. Pursuant to paragraph 1, each Party shall adopt or maintain procedures that:
 - (a) provide for advance electronic submission and processing of information before the physical arrival of goods subject to the satisfaction of certain conditions or requirements, to enable the release of goods on arrival to the extent possible;
 - (b) may allow importers to obtain the release of goods prior to meeting all import requirements of that Party if the importer provides sufficient and effective guarantees and where it is decided that neither further examination, physical inspection nor any other submission is required;
 - (c) provide for the release of goods within a period no greater than that required

to ensure compliance with its customs and other trade-related laws and formalities and to the extent possible, within 48 hours of the goods' arrival; and

- (d) allow goods, other than prohibited, controlled or regulated, to be released at the place of customs supervision, for free circulation, without temporary transfer to warehouses or other facilities.

Article 4.15: Express Shipments

1. Each Party shall adopt or maintain separate and expedited customs procedures for express shipments while maintaining appropriate customs control and selection.
2. These procedures shall:
 - (a) allow submission of a single manifest covering all goods contained in an express shipment, through, if possible, electronic means;
 - (b) to the extent possible, provide for certain goods to be cleared with a minimum of documentation; and
 - (c) apply without regard to an express shipment's weight or customs value, unless otherwise regulated by its domestic laws, regulations and rules.

Article 4.16: Post Clearance Audit

Each Party shall provide traders with the opportunity to benefit from the application of efficient post clearance audits. The application of post clearance audits shall not impose unwarranted or unjustified requirements or burdens on traders.

Article 4.17: Confidentiality

1. A Party shall maintain the confidentiality of the information provided by the other Party pursuant to this Chapter and protect it from disclosure that could prejudice the competitive position of the person providing the information. Any violation of the confidentiality shall be treated in accordance with the legislation of each Party.
2. The information referred to in paragraph 1 shall not be disclosed without the specific permission of the person or government providing such information.

Article 4.18: Consultation

1. The customs authorities of each Party may request consultations on any matter arising from the operation or implementation of this Chapter in cases where there are reasonable grounds or truth provided by the requesting Party. Such consultations shall be conducted through the relevant contact points in confirmation of the receipt of request within 10 working days from the date of receipt by the requested Party and shall take place within 60 days of the request, unless the customs authorities of the Parties mutually determine otherwise.

2. In the event that such consultations fail to resolve any such matter, the requesting Party may refer the matter to the Committee on Customs referred to in Article 4.19 for consideration.

3. Each customs authority shall designate one or more contact points for the purposes of this Chapter and provide details of such contact points to the other Party. Customs authorities of the Parties shall notify each other promptly of any amendments to the details of their contact points.

Article 4.19: Committee on Customs

1. With a view to the effective implementation and operation of this Chapter and Chapter 3 (Rules of Origin and Origin Implementation Procedures), a Committee on Customs (hereinafter referred to as the “Committee”), consisting of a Sub-Committee on Customs Procedures and Trade Facilitation (CPTF) and a Sub-Committee on Rules of Origin (ROO), is hereby established, under the Joint Commission.

2. The function of the Sub-Committee on CPTF shall be as follows:

- (a) to ensure the proper function of this Chapter and resolve all issues arising from its application;
- (b) to review the interpretation and implementation of this Chapter as well as the revision of this Chapter, as appropriate;
- (c) to identify areas related to this Chapter to be improved for facilitating trade between the Parties; and
- (d) to report to the Committee.

3. The Sub-Committee on CPTF shall consist of representatives from customs authorities of the Parties. The Sub-committee shall meet at such venues and times as agreed by the Parties.