

CHAPTER 4

CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 4.1: Definitions

For the purposes of this Chapter:

customs administration means any authority that is responsible under the law of each Party for the administration and enforcement of its customs laws and regulations;

- i. for Indonesia, the Directorate General of Customs and Excise; and
- ii. for Peru, the National Superintendence of Customs and Tax Administration (*Superintendencia Nacional de Aduanas y de Administración Tributaria - SUNAT*);

or their successors;

customs control means measures applied by the customs administration to ensure compliance with customs laws of the Parties;

customs laws means provisions laid down by laws and regulations concerning the importation, exportation, transit of goods, or any other customs procedures whether relating to customs duties, taxes or any other charges collected by the customs administration, or to measures for prohibition, restriction, or control enforced by the customs administration;

customs procedure means the measures applied by the customs administration of a Party to goods and to the means of transport that are subject to its customs control;

Customs Valuation Agreement means the *Agreement on Implementation of Article VII of GATT 1994*, set out in Annex 1A to the WTO Agreement;

means of transport means various types of vessels, vehicles, and aircrafts which enter or leave the territory carrying persons and/or goods, and others means according to the laws and regulations of the Parties;

Trade Facilitation Agreement means the *Agreement on Trade Facilitation*, set out in Annex IA to the WTO Agreement.

Article 4.2: Objectives

The objectives of this Chapter are to:

- (a) ensure predictability, consistency, and transparency of customs procedures;

- (b) promote efficient administration of customs procedures of the Parties and the expeditious performance of customs operations;
- (c) simplify customs procedures of each Party and harmonize them to the extent possible with relevant international standards;
- (d) facilitate trade between the Parties; and
- (e) promote cooperation among the customs authorities of the Parties.

Article 4.3: Affirmation of the Trade Facilitation Agreement

The Parties affirm their existing rights and obligations with respect to each other under the Trade Facilitation Agreement, and which is incorporated into and forms part of this Agreement, *mutatis mutandis*.

Article 4.4: Consistency

1. Each Party, to the extent possible, ensure that its customs laws and regulations are consistently implemented and applied throughout its customs territory. For greater certainty, this shall not prevent the exercise of discretion granted to the customs authority of a Party if that discretion is granted by that Party's customs laws and regulations, provided that the discretion is exercised consistently throughout that Party's customs territory and in accordance with its customs laws and regulations.
2. In fulfilling the provision in paragraph 1, each Party may adopt or maintain administrative measures to ensure consistent implementation and application of its customs laws and regulations throughout its customs territory, preferably by establishing an administrative mechanism which assures consistent application of the customs laws and regulations of that Party among its regional customs offices.

Article 4.5: Customs Valuation

The Parties shall apply Article VII of GATT 1994 and the Customs Valuation Agreement to goods traded between them.

Article 4.6: Publication and Transparency

1. The Parties shall publish the following information in a non-discriminatory and easily accessible manner in order to enable governments, traders, and other interested persons to become acquainted with them:

- (a) procedures for importation, exportation, and transit (including port, airport, and other entry-point procedures), and required forms and documents;
- (b) applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;
- (c) fees and charges imposed by or for governmental agencies on or in connection with importation, exportation, or transit;
- (d) rules for the classification or valuation of products for customs purposes;
- (e) laws, regulations, and administrative rulings of general application relating to rules of origin;
- (f) import, export, or transit restrictions or prohibitions;
- (g) penalty provisions for breaches of import, export, or transit formalities;
- (h) procedures for appeal or review; and
- (i) agreements to which it is party, or parts thereof with any country or countries relating to importation, exportation, or transit.

2. The Parties shall designate or maintain one or more enquiry points to process enquiries from interested persons concerning to importations, exportations, and transit issues and shall publish on the official website information concerning those enquiry points.

Article 4.7: Release of Goods

1. In order to facilitate trade between the Parties, each Party shall adopt or maintain simplified customs procedures for the efficient release of goods. For greater certainty, this paragraph shall not require a Party to release a good if its requirements for release have not been met.

2. Pursuant to paragraph 1, each Party shall adopt or maintain procedures that:

- (a) provide for the immediate release of goods upon receipt of the customs declaration and fulfillment of all applicable requirements and procedures;
- (b) allow goods to be released at the point of arrival, without temporary transfer to warehouses or other facilities, provided all requirements are met;
- (c) to the extent permitted by its law, require that the importer be informed if a Party does not promptly release goods, including the reasons why the goods are not released and which border agency, if not the customs administration, has withheld release of the goods; and

- (d) allow the release of goods prior to the final determination by its customs administration of the applicable customs duties, taxes, fees and charges, provided that no further controls are required, a sufficient and effective guarantee is submitted and all other regulatory requirements have been met.

3. Each Party may allow, to the extent practicable, goods intended for import to be moved within its territory under customs control from the point of entry into the Party's territory to another customs office in its territory from where the goods are intended to be released, provided the applicable regulatory requirements are met.

Article 4.8: Pre-Arrival Processing

1. Each Party shall adopt or maintain procedures allowing for the submission and processing of documentation and data, including manifests and other information required for the importation of goods, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival.

2. Each Party shall provide, as appropriate, for advance lodging of documents and other information referred to in paragraph 1 in electronic format for pre-arrival processing of those documents.

Article 4.9: Classification of Goods

Each Party shall apply the *International Convention on the Harmonized Commodity Description and Coding System*, done at Brussels on June 14, 1983, as amended, to goods traded with other parties.

Article 4.10: Express Consignment

1. Each Party shall adopt or maintain customs procedures allowing for the expedited release of at least those goods entered through air cargo facilities to persons who apply for that treatment, while maintaining appropriate customs control and selection, by:

- (a) providing for pre-arrival processing of information related to express consignments;
- (b) permitting, to the extent possible, the single submission of information covering all goods contained in an express consignment, through electronic means;
- (c) minimizing the documentation required for the release of express consignments;
- (d) providing for express consignment to be released under normal circumstances as rapidly as possible and within six hours, when possible, after the arrival of the goods and submission of the information required for release; and

- (e) endeavoring to apply the treatment in subparagraph (a) to subparagraph (d) to shipments of any weight or value recognizing that a Party is permitted to require additional entry procedures, including declarations, and supporting documentation and payment of duties and taxes, and to limit that treatment based on the type of good, provided that the treatment is not limited to low value goods such as documents.

2. Nothing in paragraph 1 shall affect the right of a Party to examine, detain, seize, confiscate, or refuse the entry of goods, or to carry out post-clearance audits, including in connection with the use of risk management systems. Further, nothing in paragraph 1 shall prevent a Party from requiring, as a condition for release, the submission of additional information and the fulfilment of non-automatic licensing requirements.

Article 4.11: Advance Rulings

1. In accordance with its commitments under the Trade Facilitation Agreement, the Parties on a written request shall issue, prior to the importation of a good into their territories, an advance ruling, in a reasonable and time-bound manner to an applicant, containing all necessary information in relation to:

- (a) tariff classification;
- (b) origin of goods; and
- (c) any other matters as the Parties may agree.

2. Subject to its laws and regulations, each Party shall adopt or maintain procedures for issuing written advance rulings, which shall:

- (a) provide that an exporter, importer or any person with a justifiable cause or a representative thereof, may apply for an advance ruling before the date of importation of the goods that are the subject of the application;
- (b) include a detailed description of the information required to process a request for an advance ruling, which may include a sample of the good for which the applicant is seeking an advance ruling if requested;
- (c) allow, at any time during the course of evaluation of an application for an advance ruling, to request that the applicant provides additional information necessary to evaluate the application;
- (d) provide that, in issuing an advance ruling, the decision-maker shall take into account the facts and circumstances presented by the applicant; and
- (e) to the extent possible, provide that the advance ruling be issued in the official language of the issuing Party, to the applicant expeditiously on receipt of all necessary information within 90 days.

3. The importing Party shall apply an advance ruling issued by it under paragraph 1 on the date that the ruling is issued or on a later date specified in the ruling, provided that the facts, or circumstances on which the ruling is based, remain unchanged.
4. The advance ruling shall be valid for a reasonable period of time after its issuance unless the laws, facts, or circumstances supporting that ruling have changed.
5. The advance ruling issued by the Party shall be binding to the person to whom the ruling is issued only.
6. A Party may decline to issue an advance ruling to the applicant where the question raised in the application:
 - (a) is already pending in the applicant's case before any governmental agency, appellate tribunal, or court; or
 - (b) has already been decided by any appellate tribunal or court.
7. A Party that declines to issue an advance ruling shall promptly notify, in writing, the person requesting the ruling, setting out the relevant facts and circumstances and the basis for its decision.
8. The importing Party may modify or revoke an advance ruling:
 - (a) if the ruling was based on an error of fact or law;
 - (b) if there is a change in the material facts or circumstances on which the ruling was based;
 - (c) where there is a change in laws or regulations on which the ruling was based; and
 - (d) where incorrect information was provided or information on which the ruling was based was withheld.
9. The Party shall provide a written notice to the applicant explaining the Party's decision to revoke or modify the advance ruling issued to the applicant.
10. Subject to its laws and regulations, each Party shall ensure that the applicant has access to administrative review of advance rulings.
11. Each Party shall endeavor to make publicly available any information on advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect confidential information.

Article 4.12: Risk Management

1. Each Party, within available resources, shall adopt or maintain a risk management system, which shall be based on an assessment and targeting of risk through appropriate selectivity criteria. Based on these systems, each Party shall determine which person, goods, or means of transport are to be examined and the extent to the examination. To the extent possible, risk management system shall be reviewed and updated periodically.
2. Each customs administration shall focus customs controls on high-risk shipment of goods and facilitate clearance, including release, of low-risk goods. Each Party may also select, on a random basis, goods for those controls as part of its risk management.
3. Each Party shall apply risk management in a manner that does not create arbitrary or unjustifiable discrimination under the same conditions or a disguised restriction on international trade.

Article 4.13: Perishable Goods

1. With a view to preventing avoidable loss or deterioration of perishable goods, and provided that all regulatory requirements have been met, each Party shall provide for the release of perishable goods:
 - (a) under normal circumstances within the shortest possible time; and
 - (b) in exceptional circumstances where it would be appropriate to do so, outside the business hours of customs and other relevant authorities.
2. Each Party shall give appropriate priority to perishable goods when scheduling any examinations may be required.
3. Each Party shall either arrange, or allow an importer to arrange, for the proper storage of perishable goods pending their release. Each Party may require that any storage facilities arranged by the importer have been approved or designated by its relevant authorities. The movement of the goods to those storage facilities, including authorizations for the operator moving the goods, may be subject to the approval, when required, of the relevant authorities. Each Party shall, if practicable and consistent with its laws and regulations, on the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

Article 4.14: Penalties

1. For the purposes of this Article, the term “penalties” shall mean those imposed by a customs administration of a Party for a breach of its customs laws or procedural requirements.
2. Each Party shall ensure that penalties for a breach of a customs law or procedural requirement are imposed only on the person responsible for the breach under its laws.

3. The penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.
4. Each Party shall ensure that it maintains measures to avoid:
 - (a) conflicts of interest in the assessment and collection of penalties and duties; and
 - (b) creating an incentive for the assessment or collection of a penalty that is inconsistent with paragraph 3.
5. Each Party shall ensure that when a penalty is imposed for a breach of customs laws or procedural requirements, an explanation in writing is provided to the person upon whom the penalty is imposed specifying the nature of the breach and the applicable law, regulation or procedure under which the amount or range of penalty for the breach has been prescribed.

Article 4.15: Review of Formalities and Documentation Requirements

1. Each Party shall review its formalities and documentation requirements with a view to minimizing the incidence and complexity of import, export, and transit formalities and to decreasing and simplifying import, export, and transit documentation requirements.
2. Based on the results of the review, each Party shall ensure, as appropriate, that those formalities and documentation requirements are adopted or applied in a manner that aims at reducing the time and cost of compliance for traders and operators.

Article 4.16: Authorized Economic Operator

Each customs administration shall provide trade facilitation measures related to import, export, or transit formalities and procedures, to authorized economic operators who meet specified criteria based on the *SAFE Framework of Standards to Secure and Facilitate Global Trade* of the World Customs Organization (WCO).

Article 4.17: Post-Clearance Audit

1. With a view to expediting the release of goods, each Party shall adopt or maintain post-clearance audit to ensure compliance with customs and other related laws and regulations.
2. Each Party shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Party shall conduct post-clearance audits in a transparent manner. If the person is involved in the audit process and conclusive results have been achieved, the Party shall, without delay, notify the person whose record is audited of the results, the person's rights and obligations and the reasons for the results.

3. The Parties acknowledge that the information obtained in post-clearance audit may be used in further administrative or judicial proceedings.
4. The Parties shall whenever practicable, use the result of post-clearance audit in applying risk management.

Article 4.18: Consultation

1. A Party may, at any time, request consultations with the other Party regarding any significant customs matter arising from the operation or implementation of this Chapter, providing relevant details related to the matter. Those consultations shall be conducted through the respective contact points designated pursuant to paragraph 3 and shall commence within 30 days of the date of receipt of the request unless the Parties determine otherwise.
2. In the event that those consultations fail to resolve the matter, the requesting Party may refer the matter to the Committee on National Treatment and Market Access for Goods.
3. Each Party shall, within 30 days of the date of entry into force of this Agreement, designate one or more contact points for the purposes of this Chapter and notify the other Party of the contact details and other relevant information, if any. Each Party shall promptly notify the other Party of any change to those contact details.

Article 4.19: Review and Appeal

1. Each Party shall provide that any person to whom its customs authority issues an administrative decision has the right, within its territory, to:
 - (a) an administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision; and
 - (b) a judicial appeal or review of the decision.
2. Each Party shall ensure that its procedures for appeal and review are carried out in a non-discriminatory and timely manner.
3. Each Party shall ensure that an authority conducting a review or appeal under paragraph 1 notifies the person in writing of its determination or decision in the review or appeal, and the reasons for the determination or decision.
4. The law of a Party may require that an administrative appeal or review be initiated prior to a judicial appeal or review.
5. Each Party shall ensure that, in a case where the decision on appeal or review under paragraph 1(a) is not given either:

- (a) within set periods as specified in its laws or regulations; or
- (b) without undue delay;

the petitioner has the right to either further appeal to or further review by the administrative authority or the judicial authority or any other recourse to the judicial authority.

7. Each Party shall ensure that the person referred to in paragraph 1 is not treated unfavorably merely because that person seeks review of an administrative decision or omission referred to in paragraph 1.

8. Each Party is encouraged to make this Article applicable to an administrative decision issued by a relevant border agency other than its customs authority.

Article 4.20: Enquiry Points

1. Each Party shall designate, establish, and maintain one or more enquiry points to address enquiries from interested persons pertaining to the matters covered in this Chapter, within its available resources, and shall endeavor to make available publicly through electronic means, information concerning procedures for making those enquiries.

2. Pursuant to paragraph 1:

- (a) enquiry point for Indonesia is the Directorate General of Customs and Excise of Indonesia;
- (b) enquiry point for Peru is the Ministry of Foreign Trade and Tourism (*Ministerio de Comercio Exterior y Turismo - MINCETUR*);

or their successors.

Article 4.21: Exchange of Information

1. On request, each customs administration shall provide the other customs administration with information related with customs declaration that would assist with the enforcement of customs law.

2. The requested customs administration shall respond the request or provide related information, to the extent it is available, in writing, through electronic means within the timeframe agreed by customs administrations of the Parties which shall not be more than 90 days, after receiving the written request. All request and responses must be made in English.

3. Any information or document provided by the requested customs administration shall be held

by the requesting customs administration in confidence.

4. The information requested in this Article will not be used as evidence in criminal investigations, judicial proceedings, or in non-customs proceedings without the specific written permission of the requested customs administration.

5. A requested customs administration may postpone or refuse part or all of a request to provide information, and shall inform the requesting customs administration of the reasons for doing so, where:

- (a) it would be contrary to the public interest as reflected in the domestic law and legal system of the requested customs administration;
- (b) its domestic law and legal system prevent the release of the information. In that case, it shall provide the requesting customs administration with a copy of the relevant, specific reference;
- (c) the provision of the information would impede law enforcement or otherwise interfere with an on-going administrative or judicial investigation, prosecution or proceeding;
- (d) the consent of the importer or exporter is required by its domestic law and legal system that governs the collection, protection, use, disclosure, retention, and disposal of confidential information or personal data and that consent is not given; or
- (e) the request for information is received after the expiration of the legal requirement of the requested customs administration for the retention of documents.

6. Each customs administration shall designate one or more contact points for the purposes of this Article.

Article 4.22: Single Window

1. Each Party shall, to the extent possible, establish or maintain a single window, enabling traders to submit clear and readable electronic copies of documentation and/or data requirements for importation, exportation, or transit of goods through a single-entry point to the participating authorities or agencies. After the examination by participating authorities or agencies of the document and/or data, the results shall be notified to the applicants through the single window in a timely manner.

2. To the extent possible and practicable, in cases where documentation and/or data requirements have already been received through the single window, the same documentation and/or data requirements shall not be requested by participating authorities or agencies except in urgent circumstances or other limited exceptions which are made public.

Article 4.23: Application of Information Technology

1. Each Party shall endeavor to provide an electronic environment that supports business transactions between their respective customs administrations and their trading enterprises based on internationally accepted standards for expeditious customs clearance and release of goods.
2. Each Party 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.
3. Each customs administration is encouraged to:
 - (a) implement common standards and elements for import and export data in accordance with the WCO Data Model; and
 - (b) take into account, as appropriate, standards, recommendations, models, and methods developed through the WCO.
4. Each Party shall endeavor to make its trade administration documents available to the public in electronic versions.
5. Each Party shall endeavor to accept trade administration documents submitted electronically as the legal equivalent of the paper version of these documents.

Article 4.24: Use of International Standards

The Parties are encouraged to use relevant international standards or parts thereof to expedite procedures related to importation, exportation, or transit of goods.

Article 4.25: Confidentiality

All the information provided pursuant to this Chapter shall be treated by the Parties as confidential in accordance with their respective laws and regulations. It shall not be disclosed without the written permission of the person or authority of the Party providing it.