

APPENDIX 2

NEW CHAPTER 4 (CUSTOMS PROCEDURES AND TRADE FACILITATION)

CHAPTER 4

CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 4.1: Definitions

For purposes of this Chapter:

customs administration means:

- (a) for China, the General Administration of Customs of the People's Republic of China; and
- (b) for Peru, the National Superintendence of Customs and Tax Administration (SUNAT).

customs law means any legislation administered, applied, or enforced by the customs administration of a Party;

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

means of transport means various types of vessels, vehicles and aircrafts which enter or leave the territory carrying persons and/or goods.

Article 4.2: Scope and Objectives

1. This Chapter shall apply, in accordance with the respective international obligations of the Parties and their domestic laws and regulations, to customs and relevant trade-related 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:

- (a) to simplify and harmonize customs and relevant trade-related procedures of the Parties;
- (b) to ensure predictability, consistency and transparency in the application of domestic laws and regulations related with exportation, importation and transit of goods;
- (c) to ensure the efficient and expeditious clearance and release of goods and movement of means of transport;

- (d) to facilitate trade between the Parties; and
- (e) to promote cooperation between the customs administrations, subject to the scope of this Chapter.

Article 4.3: Affirmation of the WTO Trade Facilitation Agreement

The Parties affirm their existing rights and obligations with respect to each other under the WTO Trade Facilitation Agreement.

Article 4.4: Competent Authorities

The competent authorities for the administration of this Chapter are:

- (a) for China, the General Administration of Customs of the People's Republic of China; and
- (b) for Peru, the Ministry of Foreign Trade and Tourism of the Republic of Peru.

Article 4.5: Facilitation

1. Each Party shall ensure that its customs and trade-related procedures and practices are predictable, consistent, transparent and facilitate trade.
2. Customs procedures of each Party shall, where possible and to the extent permitted by their 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 administrations of the Parties shall facilitate the clearance, including release of goods in administering their procedures.
4. The Parties shall limit controls, formalities and the number of documents required in the context of trade in goods between the Parties to those necessary and appropriate, to ensure compliance with legal requirements, thereby simplifying, to the extent possible, the related procedures.

Article 4.6: Customs Valuation

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

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 and Assistance

1. In order to strengthen the cooperation and assistance between the customs administrations, to the extent permitted by their laws and regulations, the customs administrations of the Parties shall assist each other, as appropriate, in relation to:

- (a) the implementation and operation of this Article;
- (b) the implementation and operation of the *Agreement Between the Government of the Republic of Peru and the Government of the People's Republic of China Concerning Co-Operation and Mutual Administrative Assistance in Customs Matters*;
- (c) the application of the Customs Valuation Agreement;
- (d) the application of best practices and risk management techniques;
- (e) the simplification and harmonization of customs procedures;
- (f) advancing technical skills and the use of technology;
- (g) such other issues as the customs administrations mutually determine.

2. The customs administrations of the Parties shall push forward cooperation based on “Smart Customs, Smart Borders, and Smart Connectivity” in order to enhance mutual trust and promote trade facilitation to achieve a high-level connectivity between the Parties.

3. Each customs administration shall endeavour to provide the other customs administration with timely notice of any significant modification of customs laws or regulations, procedures or similar measures that govern the movement of goods and means of transport that is likely to substantially affect the operation of this Chapter.

4. Upon 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.

5. The requested customs administration shall respond the request or provide related information in writing, through electronic means within the timeframe agreed by customs administrations of both Parties under article 8.1 of the *Agreement Between the*

Government of the Republic of Peru and the Government of the People's Republic of China Concerning Co-Operation and Mutual Administrative Assistance in Customs Matters.

6. Any information or document provided by a customs administration shall be held by the other customs administration in confidence.

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

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 administrative decisions on a customs matters have access to:

- (a) a level of administrative review of administrative decisions by an administrative authority higher than or independent of the official or office that issued the administrative decisions under review; and
- (b) judicial review of the administrative decisions.

2. Each Party shall ensure that the person referred to in first paragraph is provided with the reasons for the administrative decision so as to enable such a person to have recourse to procedures for review where necessary.

Article 4.10: Advance Rulings

1. Each customs administration shall issue written advance rulings, prior the importation of goods into its territory, in a reasonable, time bound manner, at the written request of a person described in subparagraph 2 (a) who shall provide in such request all necessary information, concerning:

- (a) tariff classifications;
- (b) whether a good qualifies as an originating good under the provision established in this Agreement; or
- (c) any other matters for which the customs administrations consider it appropriate to issue an advance ruling.

2. Each customs administration 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, according to their domestic law, may request for an advance ruling, before the date of importation of the goods that are the subject of the application.

Customs administration may require that a requester have legal representation or registration in its territory. To the extent possible, these requirements shall not restrict the categories of persons eligible to apply for advance rulings, with particular consideration for the specific needs of small and medium-sized enterprises. For China, the requester of an advance ruling shall be registered with China Customs;

- (b) require the requester to include a detailed description of the information needed to process for an advance ruling. This may include a sample of the good for which the requester is seeking an advance ruling, if requested;
- (c) allow the customs administration, at any time during the course of an evaluation of an application for an advance ruling, to require that the requester provide additional information necessary to evaluate the request;
- (d) ensure that an advance ruling be based on the facts and circumstances presented by the requester; and
- (e) provide that the advance ruling be issued, in the national language used by customs administration, to the requester expeditiously on receipt of all necessary information, within 90 days.

3. The customs administration that declines to issue an advance ruling shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision to decline to issue the advance ruling.

4. Subject to paragraph 5, each customs administration shall apply an advance ruling to importations into its territory, beginning on the date the advance ruling was issued or on any other date specified in the advance ruling. The customs administration shall ensure the same treatment of all importations of goods subject to the advance ruling regardless of the requester involved, where the facts and circumstances are identical in all material respects.

5. The customs administration may modify or revoke an advance ruling, where there is a change in the laws or regulations; where incorrect information was provided or relevant information was withheld; where there is a change in a material fact; or where there is a change in the circumstances on which the ruling was based.

6. Where the customs administration revokes or modifies advanced rulings with retroactive effect, it may only do so where the advanced ruling was based on incomplete, incorrect, false or misleading information.

7. Each customs administration shall ensure that requester have access to administrative review of advance rulings.

8. Subject to any confidentiality requirements in its domestic laws and regulations, and taking into account the protection of the commercially confidential information, each customs administration shall make its advance rulings publicly available, including online.

Article 4.11: Use of Automated Systems

1. The customs administrations shall apply information technology to support customs operations.

2. Each customs administration is encouraged to:

- (a) implement common standards and elements for import and export data in accordance with the World Customs Organization (WCO) Data Model;
- (b) take into account, as appropriate, WCO standards, recommendations, models and methods developed through the WCO; and
- (c) work toward developing a set of common data elements that are drawn from the WCO Data Model and related WCO recommendations.

3. The Parties shall use information technology to expedite procedures towards the release of goods, and electronic or automated systems for risk management and targeting.

Article 4.12: Single Window

1. To the extent possible and practicable, each Party shall develop or maintain an interconnected and compatible system in order to establish a single window, and shall use information technology to support it.

2. Such single window shall allow traders to make a single electronic submission of all documentation or data requirements established by participating authorities or agencies for exportation, importation or transit of goods. After the examination of the information previously mentioned the results shall be notified to the requester through the single window in a timely manner.

3. The single window shall facilitate the share of information among the participating authorities or agencies of each Party.

Article 4.13: Use of International Standards

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

Article 4.14: Authorized Economic Operators

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 WCO SAFE Framework of Standards. Such criteria shall not, to the extent possible, restrict the participation of small and medium-sized enterprises.

Article 4.15: 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 this system, each Party shall determine which persons, goods or means of transport are to be examined and the extent of 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 shipments of goods and facilitate the clearance, including release, of low-risk goods.
3. Risk management shall be applied in such a manner that it does not create arbitrary or unjustifiable discrimination under the same conditions or disguised restriction on international trade.

Article 4.16: Publication and Enquiry Points

1. Each Party shall promptly publish, including on the Internet, its laws, regulations, and where applicable, administrative rules or procedures, of general application, relevant to trade in goods between the Parties.
2. Each customs administration shall designate one or more enquiry points to deal with enquiries from interested persons from either Party on customs matters arising from the implementation of this Agreement, and provide details of such enquiry points to the other customs administration. Information concerning the procedures for making such enquiries shall be easily accessed to public, including online.
3. To the extent practicable and in a manner consistent with its laws and regulations, each Party shall publish, in advance, on the Internet, draft laws and regulations of general application relevant to trade between the Parties, with a view to affording the public,

especially interested persons, an opportunity to provide comments.

4. Each Party shall ensure, to the extent possible, that a reasonable interval is provided between the publication of new or amended laws and regulations of general application relevant to trade between the Parties and their entry into force.

Article 4.17: Express Consignments

1. Each customs administration shall adopt or maintain separate and expedited customs procedures for express consignments while maintaining appropriate customs control and selection. Said procedures shall, under normal circumstances, provide an express clearance of consignment after the submission of all the necessary customs documents and the arrival of the consignment. These procedures shall not be limited by weight or customs value.

2. The customs administrations shall minimize the documentation required for the release of express consignments and, to the extent possible, provide for release based on a single submission of information on certain consignments.

Article 4.18: Release of Goods

1. Each Party shall adopt or maintain 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. In accordance with paragraph 1, each Party shall adopt or maintain procedures that:

- (a) provide for the release of goods as rapidly as possible after arrival, provided all other legal and regulatory requirements have been met;
- (b) as appropriate, provide for advance electronic submission and processing of information before the physical arrival of goods with a view to expediting the release of goods;and
- (c) 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 shall adopt and maintain a system under which goods in need of urgent clearance can obtain prompt customs clearance.

4. Each Party shall ensure that goods are released within a time period no longer than that required to ensure compliance with its customs law.

Article 4.19: Border Agency Cooperation

Each Party shall ensure that its border agencies responsible for border controls and procedures dealing with the importation, exportation and transit of goods cooperate and coordinate with one another in order to facilitate trade.

Article 4.20: 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 that 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. The Party may require that any storage facilities arranged by the importer to be 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, where required, of the relevant authorities. The Party shall, where practicable and consistent with its domestic laws and regulations, upon the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

Article 4.21: Penalties

1. For the purposes of this Article, the term penalties shall mean those imposed by a customs administration for a breach of its customs law, regulations or procedural requirements.

2. Each Party shall ensure that a penalty is imposed only on the person legally responsible for the breach and is dependent on the facts and circumstances of the case and is commensurate with the degree and severity of the breach.

3. Each Party shall ensure that it maintains measures to avoid conflicts of interest in the assessment and collection of penalties and duties and to prevent creating an incentive for the assessment or collection of a penalty. When the penalty is imposed, each Party shall provide an explanation in writing to the person upon whom the penalty is imposed specifying the nature of the breach and the applicable law, regulation or procedure used

for determining the penalty amount.

Article 4.22: Review of Formalities and Documentation Requirements

1. Each Party shall periodically review its formalities and documentation requirements with a view to simplifying procedures and to the development of mutually beneficial arrangements to facilitate the flow of trade between the Parties.
2. Based on the results of the review, the Parties shall ensure, as appropriate, that such formalities and documentation requirements are adopted or applied in a manner that aims at reducing the time and cost of compliance for traders.

Article 4.23. Consultation

1. The Party may at any time request consultations with the other Party, on any matter arising from the implementation or operation of this Chapter. Such consultations shall be conducted through the relevant contact points, and shall commence within 30 days of the request, or any other possible time period that the Parties may mutually determine.
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 Procedures and Trade Facilitation referred to in Article 74 for further consideration.
3. Each Party shall designate one or more contact points for the purposes of this Chapter. Information on the contact points shall be provided to the other Party and any amendment of the said information shall be notified promptly.

Article 4.24: Committee on Customs Procedures and Trade Facilitation

1. With the view to the effective implementation and operation of this Chapter, the Parties hereby establish a Committee on Customs Procedures and Trade Facilitation (the Committee on CPTF), under the Free Trade Commission.
2. The functions of the Committee on shall be, among others as follows:
 - (a) to ensure the proper function of this Chapter and to resolve all issues arising from its application.-Concerning tariff classification, if the Committee does not reach a decision, said Committee shall hold the appropriate consultations at the WCO. The decision of the WCO shall, to the extent possible, be applied by the Parties.
 - (b) to review the interpretation and implementation of this Chapter;

- (c) to identify areas related to this Chapter to be improved for facilitating trade between the Parties;
- (d) to support customs cooperation and assistance of this Chapter; and
- (e) to make recommendations and report to the Free Trade Commission.

3. The Committee on CPTF shall consist of representatives from competent authorities of both Parties. When deemed necessary and appropriate, as well agreed by both Parties, representatives from other relevant government agencies or, relevant international organizations or entities may be invited to the Committee meetings. One or more contact points shall be designated for this purpose and shall meet at such venue and time as agreed by the Parties.

4. The Committee on CPTF shall be convened annually, or at other times as the Parties may mutually agree, in a format or method as agreed by both Parties.

5. All the decisions from the Committee on CPTF will be adopted by mutual agreement.