

CHAPTER 4

CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 4.1: Definitions

For the purposes of this Chapter:

customs laws means any laws and regulations of a Party administered, applied or enforced by the customs administration of the Party;

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

means of transport means various types of vessels, vehicles and aircraft which enter or leave the Area of a Party carrying persons or goods.

Article 4.2: Objectives

The objectives of this Chapter are to:

- (a) simplify and harmonise customs procedures of the Parties;
- (b) ensure predictability, consistency and transparency in the application of customs laws and other regulations related to importation, exportation and transit of goods;
- (c) ensure the efficient and expeditious clearance and release of goods and movement of means of transport;
- (d) facilitate trade between the Parties; and
- (e) promote cooperation between the customs administrations of the Parties, within the scope of this Chapter.

Article 4.3: Scope

This Chapter shall apply, subject to the Parties' respective laws and regulations and international obligations, to customs procedures and other procedures related to importation, exportation and transit of goods applied to goods traded between the Parties and to the movement of means of transport between the Parties.

Article 4.4: Affirmation of the WTO Agreement on Trade Facilitation

The Parties affirm their rights and obligations with respect to each other under the *Agreement on Trade Facilitation*, set out in Annex 1A to the WTO Agreement.

Article 4.5: Customs Valuation

Each Party shall determine the customs value of goods traded with the other Party in accordance with Article VII of GATT 1994 and the Customs Valuation Agreement.

Article 4.6: Tariff Classification

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 between the Parties.

Article 4.7: Competent Authorities

The competent authorities for coordinating the administration of this Chapter are:

- (a) for Hong Kong, China, the Trade and Industry Department; and
- (b) for Peru, the Ministry of Foreign Trade and Tourism (Ministerio de Comercio Exterior y Turismo - MINCETUR).

Article 4.8: Facilitation

1. Each Party shall ensure that its customs procedures and practices and other procedures and practices related to importation, exportation and transit of goods are predictable, consistent and transparent and facilitate trade.
2. Each Party shall ensure that its customs procedures conform, where possible and subject to its laws and regulations, to international standards and recommended practices established by the World Customs Organization (WCO), including the principles of the *International Convention on the Simplification and Harmonization of Customs Procedures*, done at Kyoto on May 18, 1973, as amended, known as the *Revised Kyoto Convention*.
3. The customs administration of each Party shall periodically review its customs procedures with a view to exploring options for their simplification and the enhancement of mutually beneficial arrangements to facilitate trade between the Parties.

Article 4.9: Advance Rulings

1. Subject to its laws and regulations, each Party shall provide written advance rulings prior to the importation of goods into its Area in a reasonable and time-bound manner to a person described in subparagraph 2(a), who has submitted a written request containing all necessary information, concerning:

- (a) tariff classification;
- (b) whether a good qualifies as an originating good in accordance with Chapter 3 (Rules of Origin and Origin Procedures); and
- (c) such 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 producer 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 its customs administration, at any time during the course of evaluation of an application for an advance ruling, to request that the applicant provide additional information necessary to evaluate the request;
- (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) 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. Notwithstanding paragraph 1, a Party may decline to issue an advance ruling by promptly notifying the applicant in writing, setting out the relevant facts and circumstances and the basis for its decision to decline to issue the advance ruling.

4. Notwithstanding paragraph 1, a Party may reject a request for an advance ruling where the additional information requested in accordance with subparagraph 2(c) is not provided within a specified period.

5. Subject to its laws and regulations and paragraph 6, each Party shall provide that advance rulings take effect on the date they are issued, or on another date specified in the

ruling, provided that the facts, or circumstances on which the ruling is based, remain unchanged. A Party may limit the validity of advance rulings to a period determined by its laws and regulations. The Party shall ensure the same treatment of all importations of identical goods subject to the advance ruling during the validity period regardless of the importer, exporter or producer involved, where the facts and circumstances are identical in all material respects.

6. A Party may modify or revoke an advance ruling:
 - (a) where there is a change in laws or regulations on which the ruling was based;
 - (b) where incorrect information was provided or information on which the ruling was based was withheld;
 - (c) where there is a change in a material fact on which the ruling was based;
 - (d) where there is a change in the circumstances on which the ruling was based;
or
 - (e) where there is an error of fact or law.
7. Subject to its laws and regulations, where a Party revokes or modifies an advance ruling with retroactive effect, it may only do so where the advance ruling was based on incomplete, incorrect, false or misleading information.
8. Subject to its laws and regulations, each Party shall ensure that the applicant has access to administrative review of advance rulings.
9. Each Party shall endeavour to make the information on advance rulings which it considers to be of significant interest to other traders, publicly available, including on the Internet, taking into account the need to protect confidential information.

Article 4.10: Application of Information Technology

1. 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.
2. 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.

3. The Parties shall use information technology to expedite procedures for risk management and targeting.

Article 4.11: Single Window

1. To the extent possible and practicable, each Party shall develop or maintain a single window, and shall use information technology to support it.

2. To the extent possible and practicable, such single window shall allow traders to submit documentation or data requirements for importation, exportation or transit of goods through a single entry point to its relevant authorities or agencies. After the examination of the documentation or data by the relevant authorities or agencies, the results shall be notified to the applicants through the single window in a timely manner.

Article 4.12: 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 4.13: Risk Management

1. Each Party shall work to further enhance the use of risk management techniques in the administration of its customs procedures so as to facilitate the clearance and release of low-risk goods and allow resources to focus on high-risk goods.

2. The customs administration of each Party shall periodically review its customs procedures specified in paragraph 1.

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 4.14: Publication and Enquiry Points

1. Further to Article 16.2 (Publication) of Chapter 16 (Transparency and Anti-Corruption), each Party shall promptly publish procedures for importation, exportation and transit (including ports, airports and other entry-points procedures), the working hours of customs-related government agencies and required forms and documents.

2. Each customs administration shall designate one or more enquiry points to deal with enquiries from interested persons of either Party on customs matters arising from the implementation of this Agreement, and provide details of such enquiry points to the

customs administration of the other Party. Information concerning the procedures for making such enquiries shall be easily accessible by the public, including on the Internet.

Article 4.15: Express Consignments

Each customs administration shall adopt procedures to expedite the clearance of express consignments while maintaining appropriate control, including, under normal circumstances, after the submission of all necessary customs documents:

- (a) to provide for pre-arrival processing of information related to express consignments;
- (b) to permit the submission of a single document covering all goods contained in an express consignment, through electronic means if possible; and
- (c) to minimise, to the extent possible, the documentation required for the release of express consignments.

Article 4.16: 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. This paragraph shall not require a Party to release a good if its requirements for release have not been met.

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

- (a) provide for the release of goods within a period no longer than that required to ensure compliance with its customs laws and, to the extent possible, within 48 hours of arrival;
- (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 of customs duties, taxes, fees and charges, if such a determination is not done prior to, or upon arrival, or as rapidly as possible after arrival and provided that all other regulatory requirements have been met.

Article 4.17: Border Agency Cooperation

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

Article 4.18: 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 have been approved or designated by its relevant authorities. The movement of the goods to those storage facilities, including authorisations 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 laws and regulations, on request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

Article 4.19: 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(s) 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(s) 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 4.20: Review of Formalities and Documentation Requirements

1. Each Party shall review its formalities and documentation requirements with a view to minimising 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 such 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 4.21: Authorised Economic Operator

Each customs administration shall provide trade facilitation measures related to import, export, or transit formalities and procedures, to authorised economic operators who meet specified criteria based on the *SAFE Framework of Standards to Secure and Facilitate Global Trade of the WCO*. Such criteria shall not, to the extent possible, restrict the participation of SMEs.

Article 4.22: Review and Appeal

Each Party shall, in accordance with its laws and regulations, provide the importer, exporter or any other person affected by its administrative decisions on a customs matter access to:

- (a) a level of administrative review of decisions by its customs administration, independent of the official or office responsible for the decision under review; and
- (b) judicial review of the decisions subject to its laws and regulations.

Article 4.23: Customs Cooperation and Assistance

1. Subject to their customs laws, the customs administrations of the Parties shall assist each other, in relation to:
 - (a) the implementation and operation of this Article;
 - (b) the investigation and prevention of customs offences, including duty evasion and smuggling;
 - (c) the application of best practices and risk management techniques;
 - (d) the simplification of procedures for clearing goods in a timely and efficient manner;
 - (e) the development of the specialised skills of customs officials; and
 - (f) such other issues as the customs administrations mutually determine.
2. Each customs administration shall endeavour to provide the customs administration of the other Party with timely notice of any significant modification of its customs laws or customs procedures that govern the movement of goods and means of transport that is likely to substantially affect the operation of this Chapter.
3. On request, the customs administrations shall exchange information for the purpose of verifying an import or export declaration in those cases where there are reasonable grounds to doubt the truth or accuracy of the declaration.
4. The requesting customs administration shall hold all information or documents provided by the requested customs administration strictly in confidence.
5. The requested customs administration shall provide the information or respond in writing to a request pursuant to paragraph 3, through paper or electronic means, within 60 days of the date of receiving the request.
6. A written request, through paper or electronic means, for information related to customs declaration and its responses shall be in English.
7. Each customs administration shall designate a contact point for the purposes of this Article and provide details of such contact point to the customs administration of the other Party. Each customs administration shall notify the other promptly of any amendment to the details of its contact point.

Article 4.24: Consultations

1. A 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 take place within 30 days of the date of receipt of the request, unless the Parties mutually determine otherwise.
2. In the event that such consultations fail to resolve the matter, the requesting Party may refer the matter to the Trade in Goods Committee for consideration.
3. Each Party shall designate one or more contact points for the purposes of this Chapter and provide details of such contact points to the other Party. The Parties shall notify each other promptly of any amendments to the details of their contact points.