CHAPTER 4

CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 4.1: Definitions

For the purposes of this Chapter:

customs administration means the authority that according to the legislation of each Party is responsible for the administration and enforcement of its customs laws and regulations:

(a) in the case of Peru, the National Superintendence of Customs and Tax Administration (*Superintendencia Nacional de Aduanas y de Administración Tributaria* - SUNAT), or its successor; and

(b) in the case of Thailand, the Customs Department of Thailand, or its successor;

customs laws and regulations means any legal or regulatory provision applicable in the territory of either Party, that governs the entry or import of goods, the exit or export of goods, the transit of goods and the placing of goods under any other customs regime or procedure, and that may include prohibitions, restrictions or controls which are enforced by the customs administration of each Party;

customs offence means any breach or attempted breach of customs laws and regulations of each Party;

customs procedures means the treatment applied in accordance with customs laws and regulations, by the customs administration of each Party to goods, persons and means of transport 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: Competent Authority

The competent authorities for the administration of this Chapter are:

(a) in the case of Peru, the Ministry of Foreign Trade and Tourism (*Ministerio de Comercio Exterior y Turismo* - MINCETUR), or its successor; and

(b) in the case of Thailand, the Customs Department of Thailand and any other authorities identified by the Customs Department of Thailand to apply and enforce customs laws and regulations.

Article 4.3: Scope and Objectives

1. Subject to the laws and regulations of each Party, this Chapter shall be applied to customs procedures and control related to goods traded between the Parties.

2. The objectives of this Chapter are to:

(a) ensure predictability, consistency, and transparency in the application of customs laws and regulations of each Party;

(b) promote efficient administration of customs procedures of each Party, and the expeditious clearance of goods;

(c) simplify customs procedures of each Party and harmonise them to the extent possible with relevant international standards; and

(d) promote cooperation between the customs authorities of the Parties; and facilitate trade between the Parties.

Article 4.4: Customs Valuation

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

Article 4.5: Customs Procedures and Facilitation

1. Each Party shall ensure predictability, consistency and transparency in the application of its customs laws and regulations, including customs procedures.

2. The Parties shall limit controls, formalities and the number of documents required in the context of trade facilitation between the Parties to those necessary and appropriate, to ensure compliance with customs law and regulations legal requirements, thereby simplifying, to the extent possible, the related procedures, for the efficient and expedited clearance and release of goods.

3. Customs procedures of both Parties shall be consistent, where possible and to the extent permitted by their respective customs laws and regulations, with the international standards, and

recommended practices, such as the instruments of the *World Customs Organization* (WCO) to which that Party is a contracting party.

4. The customs administration of each Party shall review its customs procedures with a view to simplifying such procedures to facilitate trade.

Article 4.6: 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 4.7: Customs Cooperation

1. In order to strengthen the cooperation and assistance between the customs administrations, to the extent permitted by their customs 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) prevention of customs offences, including duty evasion and smuggling;

(c) the application of best practices and risk management techniques;

(d) the development of the specialised skills on capacity building for customs officials; and

(e) 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 customs offences.

4. A written request, through paper or electronic means, for information related to customs declaration and its responses shall be in English.

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 90 days of the date of receiving the request.

6. The requesting customs administration shall hold all information or documents provided by the requested customs administration strictly in confidence.

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 in due time of any amendment to the details of its contact point.

Article 4.8: Confidentiality

1. Where a Party has a reasonable suspicion of unlawful activity related to its laws and regulations governing importation, it may request the other Party in writing for information.

2. Subject to the laws and regulations of each Party, where a Party provides information to the other Party in accordance with this Chapter, and designates the information as confidential, that other Party shall maintain the confidentiality of such information. The Party providing the information may require a written assurance from the other Party that such information will be held in confidence, will be used only for the purposes specified in the request of the other Party for information, and will not be disclosed without the specific permission of the Party.

3. A Party may decline to provide information requested by the other Party where that Party has failed to act in conformity with the assurance provided under paragraph 2.

4. Each Party shall adopt or maintain procedures in which confidential information submitted in accordance with the administration of its customs laws and regulations, including information where its disclosure could prejudice the competitive position of the person providing the information, shall be protected from unauthorised disclosure.

Article 4.9: Review and Appeal

1. Each Party shall provide that any person to whom its customs authority issues an administrative decision[1] has the right, within its territory, to:

[1] For the purposes of this Article, "administrative decision" means a decision with a legal effect that affects the rights and obligations of a specific person in an individual case. It shall be understood that an administrative decision referred to in this Article covers an administrative action within the meaning of Article X of GATT 1994 or failure to take an administrative action or decision as provided for in a Party's laws and regulations and legal system. For addressing such failure, a Party may maintain an alternative administrative mechanism or judicial recourse to direct the customs

(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 decisions.

2. The legislation of a Party may require that an administrative appeal or review be initiated prior to a judicial appeal or review.

3. Each Party shall ensure that its procedures for appeal or review are carried out in a non-discriminatory manner.

4. 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[2].

5. Each Party shall ensure that the person referred to in paragraph 1 is provided with the reasons for the administrative decision so as to enable such a person to have recourse to procedures for appeal or review, where necessary.

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

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

8. The decision, and the reasons for the decision, of an administrative or judicial review or appeal shall be provided in writing.

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authority to promptly issue an administrative decision in place of the right to appeal or review under subparagraph 1(a).

[2] Nothing in this paragraph shall prevent a Party from recognising administrative silence on appeal or review as a decision in favour of the petitioner in accordance with its laws and regulations.

Article 4.10: Paperless Trading and Use of Automated Systems

Each Party shall endeavour to use information technology that expedites procedures for the release of goods. When deciding on the information technology to be used for this purpose, each Party shall:

(a) encourage to use relevant international standards or parts thereof to expedite procedures related to importation, exportation or transit of goods;

(b) make electronic systems accessible to customs users;

(c) provide electronic submission and processing of information and data before arrival of the shipment to allow for the release of goods on arrival;

(d) employ electronic or automated systems or risk analysis and targeting;

(e) work towards developing compatible electronic systems between the customs authorities of the Parties, to facilitate government to government exchange of international trade data; and

(f) work towards developing a set of common data elements in accordance with the WCO Data Model and related WCO recommendations or other relevant international standards.

Article 4.11: Single Window

1. Each Party shall endeavour to establish or maintain a single window, enabling traders to submit documentation 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 the participating authorities or agencies of the documentation or data, the results shall be notified to the applicants through the single window in a timely manner.

2. In cases where documentation or data requirements have already been received through the single window, the same documentation or data requirements shall not be requested by participating authorities or agencies in accordance with domestic legislation of each Party.

Article 4.12: Risk Management

1. Each Party within their available resources shall adopt or maintain a risk management system, which shall be based on an assessment and targeting risk through appropriate selectivity criteria.

2. Each customs administration shall focus customs controls on high-risk shipments of goods and facilitate their clearance.

3. Each Party shall design and apply risk management to avoid arbitrary or unjustifiable discrimination, or disguised restrictions to international trade.

Article 4.13: Transparency

1. Each Party shall promptly publish its laws and regulations in a non-discriminatory and easily accessible manner, to the extent possible through the internet and in that Party's language. Such laws and regulations shall include:

(a) procedures for importation, exportation, and transit (including port, airport, and other entry-point procedures), and required forms and documents;

(b) applied rates of customs 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;

(i) agreements to which it is a party, or parts thereof with any country or countries relating to importation, exportation, or transit; and

(j) procedures relating to the administration of tariff quotas.

2. Each Party shall designate one or more enquiry points to address enquiries from interested persons of the other Party concerning customs matters and shall make available on the internet information related to the procedures for making such enquiries.

Article 4.14: Penalties

1. For the purposes of this Article, the term "penalties" means 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 customs 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 4.15: Express Consignment

1. Each Party shall adopt or maintain separate and expedited customs procedures for express consignment while maintaining appropriate customs control and selection, in accordance with its laws and regulations. These procedures shall:

(a) provide the submission and processing of information necessary for the release of an express consignment before the express consignment arrives;

(b) allow submission of a single manifest covering all goods contained in a shipment transported by an express consignment service, through, if possible, by electronic means;

(c) to the extent possible, provide for clearance of certain goods with a minimum of documentation;

(d) under normal circumstances, provide for the clearance of express consignment within 12 hours after submission of all the necessary customs documents, provided the shipment has arrived; and

(e) endeavour to apply the treatment in subparagraphs (a) through (d) to shipments of any weight or value recognising that a Party is permitted to require additional entry procedures, including declarations and supporting documentation and payment of customs duties and taxes, and to limit such 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.

Article 4.16: Advance Rulings

1. Each Party shall issue advance rulings, in its official language to an applicant who has submitted a written request, setting out the treatment to be accorded to the goods concerned. Such rulings shall be issued in writing, where possible in electronic format, within 90 days after receiving all necessary information - which may include a sample of the goods - from the applicant and shall contain all information necessary pursuant to the laws and regulations of the issuing Party.

2. Advance rulings shall be issued with regard to:

(a) the tariff classification of goods;

(b) the origin of goods;

(c) the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts, if permitted by the laws and regulations of a Party; and

(d) such other matters as the Parties may agree.

3. The advance ruling shall be valid from the date of issuance or another date specified in the ruling in accordance with its domestic laws and regulations.

4. A Party may refuse to issue an advance ruling if the question raised in the application is the subject of an administrative or judicial review. If a Party declines to issue an advance ruling, that Party shall promptly notify the applicant in writing, setting out the relevant facts and the reasons for its decision.

Notwithstanding paragraph 1, a Party may reject a request for an advance ruling if the additional information requested is not provided within a specified period.

5. Each Party shall publish, at least:

(a) the requirements for the application for an advance ruling, including the information to be provided and the format; and

(b) the time period by which it will issue an advance ruling.

6. The issuing Party may revoke, modify, invalidate or annul an advance ruling if there is a change in the laws and regulations, a change in the facts or the circumstances on which the ruling was based, or where incomplete or incorrect or false information was provided. In such cases, the Party shall provide written notice to the applicant setting out the relevant facts and the reasons for its decision. A Party may only revoke, modify, invalidate or annul an advance ruling with retroactive effect, if the ruling was based on incomplete, incorrect or false information.

7. An advance ruling issued by a Party shall be binding on that Party in respect of the applicant that sought it, in accordance with its domestic laws and regulations.

8. Each Party shall provide, upon written request of an applicant, a review of the advance ruling.

Article 4.17: Release of Goods

1. Each Party shall adopt or maintain simplified customs procedures for the release of goods in accordance with its domestic laws and regulations, in order to facilitate trade between the Parties. Such procedures shall:

(a) provide for the prompt release of goods within a period that is no longer than necessary to ensure compliance with its laws and regulations and, to the extent possible, within 48 hours of arrival of goods and lodgment of all the necessary information for customs clearance;

(b) provide for advance electronic submission and processing of documentation and any other required information prior to the arrival of the goods, to enable their release upon arrival;

(c) provide for the possibility of electronic payment for customs duties, taxes, fees and charges collected by customs authorities;

(d) allow goods to be released upon arrival, at the point designated by the customs administration, without temporary transfer to warehouses or other facilities, provided that all the requirements for the release of the goods are met; and

(e) allow for 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.

2. Each Party shall allow the release of goods without the payment of customs duties, taxes, fees, and charges subject to the provisions of a guarantee in accordance with its legislation in order to secure the final payment. Such guarantee shall not be greater than the amount the Party requires to ensure payment of customs duties, taxes, fees and charges ultimately due for the goods covered by the guarantee.

Article 4.18: Sub-Committee on Customs Procedures and Trade Facilitation

1. For the purposes of the effective implementation, interpretation and operation of this Chapter, a Sub-Committee on Customs Procedures and Trade Facilitation (hereinafter referred to as the "Sub-Committee") shall be established. The Sub-Committee shall consist of the competent authorities and/or other relevant authorities responsible for trade facilitation and customs procedures.

2. The functions of the Sub-Committee shall be to:

(a) review the implementation, interpretation and operation of this Chapter;

(b) identify areas to be improved for facilitating trade between the Parties;

(c) propose to the Joint Commission mutually agreed solution for the problems which could be found during the implementation, interpretation and operation of this Chapter; and

(d) carry out other functions which may be delegated by the Joint Commission.

3. The Sub-Committee shall meet at such venues and times as may be agreed by the Parties.

Article 4.19: 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 Small and Medium Enterprises (SMEs).

Article 4.20: Consultations and Contact Points

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. Such consultations shall be conducted through the respective contact points designated pursuant to paragraph 3 and shall commence within 30 days following the date of receipt of the request, unless the Parties determine otherwise.

2. In the event that such consultations fail to resolve the matter, the requesting Party may refer the matter to the Sub-Committee.

3. Each Party shall designate one or more contact points for purposes of this Chapter.

Information on the contact points shall be provided to the other Party and any changes of the said information shall be notified promptly.