

## CHAPTER 4

### CUSTOMS PROCEDURES AND TRADE FACILITATION

#### **Article 4.1: Definitions**

For purposes of this Chapter:

**Competent Authority** means the government authority or authorities designated by a Party and notified to the other Party;

**customs laws and regulations** 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 measures applied by the customs authority of a Party to goods that are subject to customs laws; and

**express consignment** means all goods imported by or through an enterprise operating a consignment service for the expeditious cross-border movement of goods who assumes liability to the customs authority for those goods.

#### **Article 4.2: Objectives**

The objectives of this Chapter are to:

- (a) ensure predictability, consistency and transparency in the application of customs laws and regulations of the Parties;
- (b) promote efficient administration of customs procedures and the expeditious clearance of goods;
- (c) simplify customs procedures of the Parties and harmonise them to the extent possible with relevant international standards; and
- (d) promote cooperation among the customs authorities of the Parties.

### **Article 4.3: Scope**

This Chapter shall apply to customs procedures applied to goods traded between the Parties in accordance with each Party's laws and regulations.

### **Article 4.4: Consistency**

1. Each Party shall ensure consistent implementation and application of its customs laws and regulations throughout its customs territory.
2. In fulfilling the obligation in paragraph 1, each Party shall endeavour to 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 customs laws and regulations of that Party among its regional customs offices.
3. If a Party fails to comply with paragraphs 1 and 2, the other Party may consult with that Party on the matter relating thereto in accordance with consultation procedures under this Chapter.
4. Each Party is encouraged to share with the other Party its practices and experiences relating to the administrative mechanism referred to in paragraph 2 with a view to improving the operations thereof.

### **Article 4.5: Transparency**

1. Each Party shall, to the extent possible, promptly publish on the internet 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;
- (i) agreements 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. Nothing in this Article shall be construed as requiring the publication or provision of information other than in the language of the Party.

3. In particular, each Party shall to the extent possible and as appropriate, make available and update the following through the internet:

- (a) a description<sup>1</sup> of its procedures for importation, exportation and transit, including procedures for appeal or review that informs governments, traders and other interested persons of the practical steps needed for importation, exportation and transit;
- (b) the forms and documents required for importation into, exportation from or transit through the territory of that Party; and
- (c) contact information for the enquiry points as well as information on the manner in which enquiries on customs matters can be made as provided for in Article 4.6.

4. To the extent possible, when developing new or amending existing customs laws and regulations, each Party shall publish or otherwise make readily available such proposed new or amended laws and regulations and provide a reasonable opportunity for interested persons to comment on the proposed laws and regulations, unless such advance notice is precluded.

5. Each Party shall, to the extent practicable and in a manner consistent with its domestic law and legal system, ensure that new or amended laws and regulations of general application related to the movement, release and

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<sup>1</sup> Each Party has the discretion to state on its website the legal limitations of this description.

clearance of goods, including goods in transit, are published or information on them made otherwise publicly available, as early as possible before their entry into force, in order to enable traders and other interested persons to become acquainted with them.

#### **Article 4.6: Enquiry Points**

Each Party shall designate one or more enquiry points to answer reasonable enquiries of interested persons concerning customs matters and to facilitate access to forms and documents required for importation, exportation and transit.

#### **Article 4.7: Customs Procedures**

1. Each Party shall ensure that its customs procedures and practices are predictable, consistent, transparent and facilitate trade, including through the expeditious clearance of goods.
2. Customs procedures of each Party shall, where possible and to the extent permitted by its customs laws and regulations, conform with the standards and recommended practices of the World Customs Organization.
3. The customs authority of each Party shall review its customs procedures with a view to their simplification to facilitate trade.

#### **Article 4.8: Pre-shipment Inspection**

1. Each Party shall not require the use of pre-shipment inspections in relation to tariff classification and customs valuation.
2. Without prejudice to the rights of both Parties to use other types of pre-shipment inspection not covered by paragraph 1, each Party is encouraged not to introduce or apply new requirements regarding their use.
3. Paragraph 2 refers to the pre-shipment inspections covered by the *Agreement on Pre-shipment Inspection* and does not preclude pre-shipment inspections for sanitary and phytosanitary purposes.

#### **Article 4.9: Pre-arrival Processing**

1. Each Party shall adopt or maintain procedures allowing for the submission of documents and other information required for 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 such documents.

#### **Article 4.10: Advance Rulings**

1. Each Party shall, prior to the importation of a good from a Party into its territory, issue a written advance ruling at the written request containing all necessary information of an importer, an exporter or any person with a justifiable cause or a representative thereof with regard to:

- (a) tariff classification;
- (b) whether a good is originating in accordance with Chapter 3 (Rules of Origin) under this Agreement;
- (c) the appropriate method or criteria and the application thereof to be used for determining the customs value under a particular set of facts in accordance with the provisions of the Customs Valuation Agreement; and
- (d) such other matters as the Parties may decide.

2. Each Party shall adopt or maintain procedures for issuing advance rulings which:

- (a) specify the information required to apply for an advance ruling;
- (b) provide that each Party may at any time during the course of an evaluation of an application for an advance ruling, request that the applicant provide additional information which may include a sample of the goods necessary to evaluate the request;
- (c) ensure that an advance ruling be based on the facts and circumstances presented by the applicant and any other relevant information in the possession of the decision-maker; and
- (d) ensure that the advance ruling includes the relevant facts and the basis for its decision.

3. Each Party shall issue an advance ruling in the official language of the issuing Party or in the language it decides. The advance ruling shall be issued within 90 days to the applicant on the receipt of all necessary information. Each Party shall specify and make public such time period for the issuance of an advance ruling in advance of such an application. Should the customs authority have reasonable grounds to issue the ruling later than the specified period, after the receipt of the application, it shall notify the applicant of the ground for such a delay prior to the end of the specified period.

4. A Party may decline to issue an advance ruling if the facts and circumstances forming the basis of the advance ruling are the subject of administrative or judicial review. A Party that declines to issue an advance ruling shall promptly notify the applicant in writing, setting forth the relevant facts, circumstances and the basis for its decision to decline to issue the advance ruling.

5. A Party may reject requests for an advance ruling where the additional information requested in writing in accordance with paragraph 2(b) is not provided within a reasonable, specified period, which is determined at the time of the request for additional information and the Party requests the additional information from the applicant in writing.

6. Each Party shall provide that advance rulings shall be in force from the date they are issued or another date specified in the ruling, provided that the laws, regulations and administrative rules, and facts and circumstances, on which the ruling is based remain unchanged. Subject to paragraphs 1 and 7, an advance ruling shall remain in force for at least three years.

7. Where a Party revokes, modifies or invalidates the advance ruling, it shall promptly provide written notice to the applicant setting out the relevant facts and the basis for its decision, where:

- (a) there is a change in its laws, regulations and administrative rules;
- (b) incorrect information was provided or relevant information was withheld;
- (c) there is a change in a material fact or circumstances on which the advance ruling was based; or
- (d) if the ruling was in error.

8. Where a Party revokes, modifies or invalidates advance rulings with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, false or misleading information.

9. An advance ruling issued by a Party shall be binding on that Party in respect of the applicant that sought it.

10. Each Party shall publish, at a minimum:

- (a) the requirements for the application for an advance ruling, including the information to be provided and the format;
- (b) the time period by which it will issue an advance ruling; and
- (c) the length of time for which the advance ruling is valid.

11. Each Party may 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 commercially confidential information.

#### **Article 4.11: 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. Pursuant to paragraph 1, each Party shall ensure that its customs authority or other competent authorities adopts or maintains procedures that:

- (a) provide for the release of goods within a period no greater than that required to ensure compliance with its customs laws and regulations and, to the extent possible, within 48 hours of the goods' arrival; and
- (b) allow goods to be released at the point of arrival without temporary transfer to warehouses or other facilities.

3. If any goods are selected for further examination, such examination shall be conducted on the basis of reasonableness and necessity only and undertaken and completed without undue delay.

4. Each Party shall adopt or maintain procedures allowing the release of goods prior to the final determination of customs duties, taxes, fees and charges if such determination is not made prior to, upon arrival or as rapidly as possible after arrival and provided that all other regulatory requirements have been met. As a condition for such release, a Party may require a guarantee in accordance with its domestic laws and regulations that does not exceed the amount the Party

requires to ensure payment of customs duties, taxes, fees and charges ultimately due for the goods covered by the guarantee.

5. Nothing in these provisions shall affect the right of a Party to examine, detain, seize or confiscate or deal with the goods in any manner consistent with its domestic laws and regulations.

6. 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 from customs control:

- (a) under normal circumstances in the shortest possible time and to the extent possible, in less than six hours after the arrival of the goods and submission of the information required for release; and
- (b) in exceptional circumstances where it would be appropriate to do so, outside the business hours of its customs authority.

7. Each Party shall give appropriate priority to perishable goods when scheduling any examinations that may be required.

8. 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 authorisations for the operator moving the goods, may where required, be subject to the approval of the relevant authorities. Each Party shall, where practicable and consistent with domestic legislation, upon the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

#### **Article 4.12: Application of Information Technology**

1. Each Party shall to the extent possible, apply information technology to support customs operations based on internationally accepted standards for expeditious customs clearance and release of goods.

2. Each Party shall to the extent possible, use information technology that expedites customs procedures for the release of goods, including the submission of data before the arrival of the shipment of those goods, as well as electronic or automated systems for risk management targeting.

3. Each Party shall endeavour to make trade administration documents available to the public in electronic versions.

4. Each Party shall endeavour to accept trade administration documents submitted electronically as the legal equivalent of the paper version of these documents.

5. In developing initiatives which provide for the use of paperless trade administration, each Party is encouraged to take into account international standards or methods made under the auspices of international organisations.

6. Each Party shall cooperate with the other Party to enhance the acceptance of trade administration documents submitted electronically.

#### **Article 4.13: Trade Facilitation Measures for Authorised Economic Operators**

1. Each Party shall provide additional trade facilitation measures related to import, export or transit formalities and procedures, pursuant to paragraph 5 to operators who meet the specified criteria and shall hereinafter be referred to as authorised operators. Alternatively, a Party may offer such trade facilitation measures through customs procedures generally available to all operators and is not required to establish a separate scheme.

2. The specified criteria to qualify as an authorised operator shall be related to compliance or the risk of non-compliance with requirements specified in a Party's laws, regulations or procedures.

3. Such criteria, which shall be published, may include:

- (a) an appropriate record of compliance with customs and other related laws and regulations;
- (b) a system of managing records to allow for necessary internal controls;
- (c) financial solvency, including where appropriate, provision of a sufficient security or guarantee; and
- (d) supply chain security.

4. Such criteria shall not:

- (a) be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail; and

- (b) to the extent possible, restrict the participation of small and medium-sized enterprises.

5. The trade facilitation measures provided pursuant to paragraph 1 shall include at least three of the following measures:<sup>2</sup>

- (a) low documentary and data requirements, as appropriate;
- (b) low rate of physical inspections and examinations, as appropriate;
- (c) rapid release time, as appropriate;
- (d) deferred payment of duties, taxes, fees and charges;
- (e) use of comprehensive guarantees or reduced guarantees;
- (f) a single customs declaration for all imports or exports in a given period; and
- (g) clearance of goods at the premises of the authorised operator or another place authorised by the customs authority.

6. The Parties are encouraged to develop authorised operator schemes on the basis of international standards, where such standards exist, except when such standards would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued.

7. In order to enhance the trade facilitation measures provided to operators, a Party shall afford to the other Party the possibility of negotiating the mutual recognition of authorised operator schemes.

8. The Parties are encouraged to cooperate where appropriate, in developing their respective authorised operator schemes using the Contact Points in Article 4.21 through the following:

- (a) exchanging of information on such schemes and on initiatives to introduce new schemes;
- (b) sharing of perspectives on business views and experiences and best practices in business outreach;

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<sup>2</sup> Measures listed in subparagraphs (a) through (g) will be deemed to be provided to authorised operators if they are generally available to all operators.

- (c) sharing of information on approaches to mutual recognition of such schemes; and
- (d) considering ways to enhance the benefits of such schemes to promote trade, and in the first instance, to designate customs officers as coordinators for authorised operators to resolve customs issues.

#### **Article 4.14: Risk Management**

1. Each Party shall adopt or maintain a risk management system for customs control.
2. Each Party shall design and apply risk management in a manner so as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions to international trade.
3. Each Party shall concentrate customs control and, to the extent possible other relevant border controls, on high risk consignments and expedite the release of low risk consignments. Each Party may also select, on a random basis, consignments for such controls as part of its risk management.
4. Each Party shall base risk management on assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include, *inter alia*, HS code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders and type of means of transport.

#### **Article 4.15: Express Consignments**

1. Each Party shall adopt or maintain customs procedures to expedite the clearance of express consignments for at least those goods entered through air cargo facilities while maintaining appropriate customs control<sup>3</sup> 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;

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<sup>3</sup> In cases where a Party has an existing procedure that provides the treatment in this Article, this provision would not require that Party to introduce separate expedited release procedure.

- (c) minimising the documentation required for the release of express consignments;
- (d) providing for express consignment to be released under normal circumstances within six hours when possible, after the arrival of the goods and submission of the information required for release;
- (e) endeavouring 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 duties and taxes, and to limit such treatment based on the type of good, provided the treatment is not limited to low value goods such as documents; and
- (f) providing to the extent possible, for a *de minimis* shipment value or dutiable amount for which customs duties and taxes will not be collected, aside from certain prescribed goods. Internal taxes, such as value added taxes and excise taxes, applied to imports consistently with Article III of GATT 1994, are not subject to this provision.

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 audit, 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 requirement.

#### **Article 4.16: 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. Where the selected person is involved in the audit process and conclusive results have been achieved, the Party shall without delay, notify the selected person whose record was audited of the results, the selected 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. Each Party shall wherever practicable, use the result of post-clearance audit in applying risk management.

#### **Article 4.17: Time Release Studies**

1. The Parties are encouraged to measure the time required for the release of goods by the customs authority periodically and in a consistent manner, and to publish the findings thereof, using tools such as the *Guide to Measure the Time Required for the Release of Goods* issued by World Customs Organization with a view to assessing their trade facilitation measures and to considering opportunities for further improvement of the time required for the release of goods.
2. The Parties are encouraged to share their experiences in the time release studies referred to in paragraph 1, including methodologies used and bottlenecks identified.

#### **Article 4.18: Confidentiality**

1. Where a Party that provides information to the other Party in accordance with this Chapter designates the information as confidential, the other Party shall keep the information confidential. The Party providing the information may require the other Party to furnish written assurance that the information shall be held in confidence, shall be used only for the purposes the other Party specified in its request for information and shall not be disclosed without the specific permission of the Party that provided the information or the person that provided the information to that Party.
2. A Party may decline to provide information that the other Party has requested where that Party has failed to act in conformity with paragraph 1.
3. Each Party shall adopt or maintain procedures for protecting confidential information submitted in accordance with the administration of the Party's customs laws from unauthorised disclosure, including information the disclosure of which could prejudice the competitive position of the person providing the information.

## **Article 4.19: Review and Appeal**

1. Each Party shall provide that any person to whom its customs authority issues an administrative decision<sup>4</sup> 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. 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.<sup>5</sup>

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.

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<sup>4</sup> “administrative decision” in this Article 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 in this Article covers an administrative action within the meaning of Article X of the 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, the Parties may maintain an alternative administrative mechanism or judicial recourse to direct the customs authority to promptly issue an administrative decision in place of the right to appeal or review under subparagraph (a).

<sup>5</sup> 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.

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 customs authority.

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

#### **Article 4.20: Customs Cooperation**

1. The customs authority of each Party may, as deemed appropriate, assist the customs authority of the other Party, in relation to:

- (a) the implementation and operation of this Chapter;
- (b) developing and implementing customs best practice and risk management techniques;
- (c) simplifying and harmonising customs procedures;
- (d) advancing technical skills and the use of technology;
- (e) application of the *Customs Valuation Agreement*; and
- (f) such other customs issues as the Parties may mutually determine.

2. Each Party shall, to the extent possible, provide the other Party with timely notice of any significant administrative change, or modification of a law or regulation or similar measure related to its laws or regulations, that govern importations or exportations that is likely to substantially affect the operation of this Chapter. The notice can be made in English or the Party's language and will be provided to the Contact Point identified in Article 4.21.

3. The customs authority of a Party may, as deemed appropriate, share with the other Party, information and experiences on development of customs administration.

#### **Article 4.21: Consultations and Contact Points**

1. A Party may at any time request consultations regarding any significant customs matter arising from the operation or implementation of this Chapter, providing relevant details related to the matter. Such consultation shall be conducted through the Contact Points and shall commence within 30 days following the date of the 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 on Goods.
3. A 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 changes of the said information shall be notified promptly.