

CHAPTER FOUR

CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 4.1: Definitions

For purposes of this Chapter:

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

- (i) for Korea, the Ministry of Economy and Finance, or the Korea Customs Service, or their respective successors; and
- (ii) for Georgia, the Revenue Service of the Ministry of Finance, or its respective successors.

(b) **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 a customs authority, and any regulations made by a customs authority, under its statutory powers;

(c) **customs procedure** means the measures applied by the customs authority of a Party to goods and to the means of transport that are subject to its customs laws and regulations;

(d) **express shipment** means all goods imported by or through an enterprise that operates a shipment service for the expeditious cross-border movement of goods and assumes liability to the customs authority for those goods;

(e) **goods** means materials, products, or articles; and

(f) **means of transport** means various types of vessels, vehicles, and aircraft which enter or leave the customs territory of a Party carrying natural persons or goods.

Article 4.2: Scope and Objectives

1. This Chapter shall apply to customs procedures applied to goods traded between the Parties and to the means of transport which enter or leave the customs territory of each Party.
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 harmonize them with relevant international standards;
 - (d) promote cooperation between the customs authorities of the Parties; and
 - (e) facilitate trade between the Parties, including through a strengthened environment for global and regional supply chains.

Article 4.3: Transparency

1. Each Party shall publish on the internet for free the following information and, to the extent possible, keep it updated, in a non-discriminatory and easily accessible manner in order to enable the other Party, traders, and other interested persons to become acquainted with them:
 - (a) laws, regulations, and any 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 classification or valuation of products for customs purposes;
- (e) laws, regulations, and any procedures of general application relating to rules of origin;
- (f) laws, regulations, and any procedures it has for requesting an advance ruling;
- (g) information on how to seek an appeal or review of a determination by the customs administration on a customs matter;
- (h) information that describes how to contact the enquiry points; and
- (i) procedures relating to the administration of tariff quotas.

2. 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 customs laws and regulations and provide a reasonable opportunity for interested persons to comment on the proposed customs laws and regulations, unless such advance notice is precluded.

3. Each Party shall, to the extent practicable and in a manner consistent with its laws and regulations and legal system, ensure that new or amended laws and regulations of general application related to the movement, release, and clearance of goods, including goods in transit, are published or information on them is otherwise made publicly available, as early as possible before the date of their entry into force, in order to enable traders and other interested persons to become acquainted with them.

4. Each Party shall, to the extent practicable, provide the information referred to in paragraph 1 in English.

Article 4.4: Consistency

1. Each Party shall ensure that its customs laws and regulations are consistently implemented and applied throughout its customs territory.

2. If a Party fails to comply with the obligations in paragraph 1, another Party may consult with that Party on the matter in accordance with the consultation procedures under Article 4.14.

Article 4.5: Enquiry Point

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 4.6: Advance Rulings

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

- (a) tariff classification;
- (b) whether the good is an originating good in accordance with Chapter Three (Rules of Origin);
- (c) customs valuation in accordance with the Article VII of GATT 1994 and Customs Valuation Agreement; and
- (d) such other matters as the Parties may agree.

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, if necessary;
- (c) ensure that an advance ruling is 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 within 90 days on receipt of all necessary information.

4. Each Party shall provide that an advance ruling becomes valid from the date it is issued, or on a later date specified in the ruling, and remains valid for no less than three years, unless the advance ruling is modified, revoked, or invalidated.

5. Where a Party revokes, modifies, or invalidates an advance ruling, it shall promptly provide a 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, or 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) the advance ruling was in error.

6. A Party may decline to issue an advance ruling if the facts and circumstances forming the basis of the advance ruling are under verification by the customs authority or other government agency or the subject of a post clearance audit or of an administrative or judicial review or appeal. A Party that declines to issue an advance ruling shall promptly notify, in writing, the person requesting the ruling, setting out the relevant facts and circumstances and the basis for its decision.

7. The advance ruling issued by the Party shall be binding in its territory to the person to whom the ruling is issued only.

8. Each Party shall 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 4.7: 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 a good if its requirements for release have not been met.

2. Pursuant to paragraph 1, each Party shall ensure that its customs authority 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, to the extent possible, within 48 hours of the goods' arrival;
- (b) provide for customs information to be submitted and processed electronically before goods arrive in order for them to be released on their arrival;
- (c) allow goods to be released at the point of arrival, without temporary transfer to warehouses or other facilities; and
- (d) allow importers to withdraw goods from customs before, and without prejudice to, its customs authority's final determination of the applicable customs duties, taxes, and fees. Party may require importers to provide guarantees in the form of sureties, deposits, or other appropriate instruments sufficient to cover payment of the customs duties, taxes, and fees its customs authority ultimately applies in connection with the importation of the good.

3. If a good is selected for further examination, such an examination shall be limited to what is reasonable and necessary, and undertaken and completed without undue delay.

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

5. 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, 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.

6. Each Party shall give appropriate priority to perishable goods when scheduling an examination that may be required.

7. Each Party shall either arrange or allow an importer to arrange for the proper storage of perishable goods pending their release. Each Party may require that any storage facilities arranged by the importer have been approved or designated by its relevant authorities. The movement of the goods to those storage facilities, including authorizations for the operator moving the goods, may be subject to the approval, where required, of the relevant authorities. Each Party shall, where practicable and consistent with domestic legislation, on the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

8. Nothing in this Article shall affect the right of a Party to examine, detain, seize, confiscate, or deal with the goods in a manner consistent with its laws and regulations.

Article 4.8: Express Shipments

1. Each Party shall adopt or maintain expedited customs procedures for express shipments while maintaining appropriate customs control and selection. These procedures shall:

- (a) provide a separate and expedited customs procedure for express shipments;
- (b) provide for information necessary to release an express shipment to be submitted and processed electronically before the shipment arrives;
- (c) allow submission of a single manifest covering all goods contained in an express shipment, through, if possible, electronic means;

- (d) to the extent possible, provide for certain goods to be cleared with a minimum of documentation;
- (e) under normal circumstances, provide for express shipments to be cleared as rapidly as possible after the necessary customs documents have been submitted, provided the shipment has arrived;
- (f) apply without regard to an express shipment's weight or value; and
- (g) under normal circumstances, provide that no customs duties shall be assessed on express shipments valued at a fixed amount as prescribed under the national legislation. The formal entry documents shall be simplified in accordance with the laws and regulations of each Party.

2. Notwithstanding paragraph 1(g) for restricted goods, a Party may require formal entry documents, duties or taxes.

Article 4.9: Application of Information Technology

- 1. A 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. A 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. A Party shall endeavor to make its trade administration documents available to the public in electronic versions.
- 4. A Party shall endeavor to accept trade administration documents submitted electronically as the legal equivalent of the paper version of these documents.
- 5. In developing initiatives that provide for the use of paperless trade administration, a Party is encouraged to take into account international standards or methods made under the auspices of international organizations.
- 6. A Party shall cooperate with the other Party and in international fora to enhance the acceptance of trade administration documents submitted electronically.

Article 4.10: Risk Management

1. A Party shall adopt or maintain a risk management system for customs control.
2. A Party shall design and apply risk management in a manner so as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions on international trade.
3. A 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. A Party shall base risk management on the 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 4.11: Post Clearance Audit

Each Party shall provide traders with the opportunity to benefit from the application of efficient post clearance audits. The application of post clearance audits shall not impose unwarranted or unjustified requirements or burdens on traders.

Article 4.12: Review and Appeal

1. A Party shall ensure that a person to whom its customs administration issues a determination on a customs matter has access to:
 - (a) an administrative review by an administrative authority higher than or independent of the official or office that issued the decision; and
 - (b) judicial review of the decisions.
2. A Party shall ensure that its procedures for appeal and review are carried out in a non-discriminatory and timely manner.

3. A Party shall ensure that an authority conducting a review under paragraph 1 notifies the person in writing of its determination or decision in the review, and the reasons for the determination or decision.
4. A Party shall allow an exporter or producer to provide information directly to the Party conducting the review and to request that Party to treat that information as confidential in accordance with Article 4.13.

Article 4.13: Confidentiality

1. Where a Party that provides information to the other Party in accordance with this Chapter and Chapter Three (Rules of Origin) 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 will be held in confidence, will be used only for purpose the other Party specified in its request for information, and will 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. If a Party receives information designated as confidential in accordance with paragraph 1, the Party receiving the information may, under its domestic laws and legal system, use or disclose the information for law enforcement purposes or in the course of judicial proceedings with a written consent from the other Party.
3. 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.
4. Each Party shall adopt or maintain procedures for protecting from unauthorized disclosure of confidential information submitted in accordance with the administration of the Party's customs laws, including information the disclosure of which could prejudice the competitive position of the person providing the information.

Article 4.14: Customs Cooperation

1. Parties are welcomed to having the agreement on mutual administrative assistance in customs matters as an instrument for facilitating trade and implementing this Chapter.

2. A Party may at any time request consultations with another Party regarding any significant customs matter arising from the operation or implementation of this Chapter and Chapter Three (Rules of Origin), 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 the receipt of the request.

3. In the event that such consultations fail to resolve the matter, the requesting Party may refer the matter to the Customs sub-Committee.

4. Each Party shall, within 30 days of the date of entry into force of this Agreement for that Party, designate one or more contact points for purposes of this Chapter and Chapter Three (Rules of Origin) and notify the other Party of the contact details and other relevant information, if any. Each Party shall promptly notify the other Party of any change to those contact details.

Article 4.15: Customs Sub-Committee

1. The Parties hereby establish a Customs Sub-Committee on Rules of Origin and Customs Procedures and Trade Facilitation composed of the customs authorities of the Parties. Other competent authorities of the Parties may join the Customs Sub-Committee if the Parties deem it necessary.

2. The Customs Sub-Committee shall consider and, as appropriate, resolve any matter arising under this Chapter and Chapter Three (Rules of Origin) by means of, *inter alia*, considering common approaches to the interpretation and implementation of those Chapters.

3. The Customs Sub-Committee shall meet biennially or on request of either Party.