

CHAPTER 5

CUSTOMS ADMINISTRATION

Article 5.1: Definitions

For the purposes of this Chapter:

- (a) **Customs Authority** means the authority that according to the legislation of each Party is responsible for the administration and enforcement of its customs laws:
 - (i) in the case of Chile, the Chile Customs Service; and
 - (ii) in the case of Malaysia, the Royal Malaysian Customs;
- (b) **customs laws** means such laws and regulations administered and enforced by the customs authority of each Party concerning the importation, exportation, and transit of goods, relating to customs duties, charges and other taxes, or to prohibitions, restrictions and other similar controls with respect to the movement of controlled items across the boundary of the customs territory of each Party;
- (c) **information** means any data, documents, reports and certified or authenticated copies thereof or other communications;
- (d) **Requesting Authority** means the Customs Authority which requests assistance; and
- (f) **Requested Authority** means the Customs Authority from which assistance is requested.

Article 5.2: Objectives

The objectives of this Chapter are to:

- (a) simplify and harmonise customs procedures of the Parties;
- (b) ensure consistency, predictability and transparency in the application of customs laws and regulations of the Parties;
- (c) ensure efficient and expeditious release of goods;

- (d) facilitate trade in goods between the Parties by the use of information and communications technology, taking into account international standards; and
- (e) promote cooperation between the customs authorities with relevant international standards and recommended practices such as those made under the auspices of the Customs Cooperation Council.

Article 5.3: Scope and Coverage

1. This Chapter shall apply to customs procedures for goods traded between the Parties.
2. This Chapter shall be implemented by each Party in accordance with the laws and regulations in force in each Party and within the competence and available resources of the Customs Authority of each Party.

Article 5.4: Publication and Enquiry Points

1. For the purposes of this Chapter, each Party shall:
 - (a) publish, on the internet or in print form, all statutory and regulatory provisions and procedures applicable or enforced by its Customs Authority; and
 - (b) designate one or more enquiry points to address enquiries from the other Party concerning customs matters, and shall make available on the internet or print form, information concerning procedures for making such enquiries.
2. To the extent possible, each Party may have prior consultation on any related regulations of general application governing customs matters that it proposes to adopt and shall publish any regulations of general application governing customs matters as soon as it comes into force.

Article 5.5: Release of Goods

1. Each Party shall endeavour to apply customs procedures in a predictable, consistent and transparent manner for the efficient release of goods in order to facilitate trade between the Parties.
2. For the prompt release of goods traded between the Parties, each Party shall, to the extent possible,:

- (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 all relevant customs import;
- (b) make use of information and communications technology;
- (c) adopt or maintain procedures allowing, to the extent possible, goods to be released at the point of arrival, without temporary transfer to warehouses or other locations; and
- (d) harmonise its customs procedures, as far as possible, with relevant international standards and best practices, such as those recommended by the World Customs Organization.

Article 5.6: Risk Management

1. In order to facilitate release of goods traded between the Parties, the Customs Authority of each Party shall use risk management methodology.
2. The Customs Authority of each Party shall exchange information, including best practices, on risk management techniques and other enforcement techniques.
3. Each Party shall endeavour to adopt or maintain risk management systems that enable its Customs Authority to concentrate inspection activities on high risk goods and that simplify the clearance and movement of low risk goods.

Article 5.7: Cooperation and Capacity Building

1. Each Party shall cooperate on capacity building, such as training, technical assistance, exchange of experts and any other forms of cooperation, as may be mutually agreed upon by the Parties, for trade facilitation.
2. To the extent permitted by their domestic laws and regulations, the Customs Authority of each Party shall assist each other in relation to:
 - (a) achieving compliance with their laws and regulations pertaining to the implementation and operation of the provisions of this Agreement; and such other customs matters as the Parties may agree;
 - (b) the implementation and operation of the Agreement on Customs Valuation;

- (c) enforcement of prohibitions and restrictions on exports to and imports from their respective territories;
- (d) joint efforts to combat customs fraud; and
- (e) cooperation in any other areas as may be mutually agreed upon by the Parties.

Article 5.8: Mutual Assistance

1. The Customs Authority of each Party shall, to the extent possible, provide the Customs Authority of the other Party, upon request or on its own initiative, with information which helps to ensure proper application of customs laws and the prevention of violation or attempted violation of customs laws.

2. To the extent permitted by their respective domestic laws, the customs authorities may provide each other with mutual assistance in order to prevent or investigate violations of customs laws or when information is required for use in judicial proceedings.

3. The request pursuant to paragraph 1 shall, wherever appropriate, specify:

- (a) the verification procedures that the Requesting Authority has undertaken or attempted to undertake; and
- (b) the specific information that the Requesting Authority requires, which may include:
 - (i) subject and reason for the request;
 - (ii) a brief description of the matter and the action requested; and
 - (iii) the names and addresses of the parties concerned with the proceedings, if known.

Article 5.9: Enforcement Against Illicit Trafficking

The Customs Authority of each Party shall, to the extent permitted by their laws and regulations, wherever possible, cooperate and exchange information in their enforcement against the trafficking of illicit drugs and other prohibited goods in their respective territories.

Article 5.10: Information and Communications Technology

The customs authorities of the Parties shall make cooperative efforts to promote the use of information and communications technology in their customs procedures including sharing best practices, for the purpose of improving their customs procedures.

Article 5.11: Confidentiality

1. Any information communicated under this Chapter shall be treated as confidential unless the Requested Authority consents in writing to the disclosure of such information.
2. The Requested Authority may limit the information communicated under this Chapter if the Requesting Authority is unable to give the assurance that the information is used solely for the purpose it was requested for.
3. If a Requesting Authority would be unable to comply with a similar request in case such a request was made by the Requested Authority, the Requesting Authority shall draw attention to that fact in its request. Execution of such a request shall be at the discretion of the Requested Authority.
4. Any information communicated under this Chapter shall be used only by the Requesting Authority, solely for the purpose of administrative assistance according to the terms set out in this Chapter.
5. Any information in the possession of the requested customs administration and communicated under this Chapter, if required for use in judicial proceedings, shall only be disclosed in accordance with the laws and regulations of the respective Party.
6. Notwithstanding the provisions of this Chapter, if the communication of any information requested under this Chapter is prohibited by the laws or regulations, considered to be incompatible or prejudicial to the national interest or national security of the country of the Requested Authority, the Requested Authority shall not be required to provide such information or may provide such information subject to any terms, conditions or limitations it may prescribe.

Article 5.12: Review and Appeal

Each Party shall ensure that with respect to its determinations on customs matters, importers in its territory have access to:

- (a) a level of administrative review independent of the office that issued the determinations; and

- (b) judicial review of the determinations.

Article 5.13: Penalties

Each Party shall adopt or maintain measures that provide for the imposition of civil, administrative and, where appropriate, criminal sanctions for violations of its customs laws and regulations.

Article 5.14: Advance Rulings

1. Each Party shall issue, prior to the importation of a good into its territory, a written advance ruling at the written request of an importer in its territory, with regard to:

- (a) tariff classification; and
- (b) the application of customs valuation criteria for a particular case, in accordance with the application of the provisions set forth in the Agreement on Customs Valuation.

2. For the issuance of the written advance ruling, each Party will apply their domestic laws and procedures.