

CHAPTER 3: CUSTOMS PROCEDURES AND COOPERATION

ARTICLE 3.1

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 the administrative policies of the Parties;
- (c) promote efficient and economical customs border administration and the expeditious clearance of goods; and
- (d) facilitate trade between the Parties and promote the security of such trade.

ARTICLE 3.2

Scope

This Chapter shall apply, in accordance with the Parties' international obligations and respective laws, rules and regulations, to customs procedures related to the clearance of goods traded between the Parties.

ARTICLE 3.3

Definitions

For the purposes of this Chapter:

- (a) "craft" includes any aircraft, ship, boat or other vehicle used or capable of being used for the carriage or transportation of persons or goods, or both, by air, land, water or over or under water;
- (b) "customs administration" means:
 - (i) in relation to New Zealand, the New Zealand Customs Service; and
 - (i) in relation to Thailand, the Customs Department of the Kingdom of Thailand;

(c) “customs law” means the statutory and regulatory provisions relating to the importation, exportation, movement and storage of goods, the administration and enforcement of which are specially charged to the customs administration of a Party;

(d) “customs offence” means any breach or attempted breach of customs law;

(e) “customs procedures” means the treatment applied by the customs administration of each Party to goods, persons and craft that are subject to customs control.

ARTICLE 3.4

General Provisions

1. The Parties recognise that the objectives of this Agreement may be promoted by the application of common, simplified customs procedures, and cooperation between the customs administrations.

2. To give effect to the provisions of this Chapter and Chapter 4 of this Agreement the customs administrations shall enter into a Cooperative Arrangement to take effect concurrently with the entry into force of this Agreement.

3. Where a Party providing information to the other Party in accordance with this Chapter designates the information as confidential, the other Party shall maintain the confidentiality of that information. The Parties shall not use or disclose such information except with the written consent of the requested Party or to the extent that the information may be required to be disclosed for law enforcement purposes or in the context of judicial proceedings.

4. Nothing in this Chapter shall be taken to require a Party to furnish or allow access to information the disclosure of which it considers would:

- (a) be contrary to the public interest as determined by its laws, rules or regulations;
- (b) be contrary to its laws, rules or regulations to protect personal privacy or the financial affairs and accounts of individual customers of financial institutions; or
- (c) impede law enforcement.

ARTICLE 3.5

Customs Procedures and Facilitation

1. Customs procedures of the Parties shall, where possible and to the extent permitted by their respective laws, rules or regulations, conform with the standards and recommended practices of the World Customs Organisation, including the principles of the *International Convention on the Simplification and Harmonisation of Customs Procedures 1973*.
2. Each Party shall ensure that its customs procedures and practices are predictable, consistent, transparent and facilitate trade.
3. The customs administrations of both Parties shall periodically review their customs procedures with a view to their further simplification and the development of mutually beneficial arrangements to facilitate bilateral trade.
4. In respect of consignments for which immediate clearance is requested, the Parties shall, insofar as permitted by their laws, follow the guidelines of the World Customs Organisation.

ARTICLE 3.6

Customs Valuation

The Parties shall determine the customs value of goods traded between them in accordance with the provisions of Article VII of GATT 1994 and the WTO *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*.

ARTICLE 3.7

Customs Cooperation

1. The Parties shall, through their customs administrations and in accordance with this Chapter and the Cooperative Arrangement referred to in Article 3.4 (2), cooperate in achieving compliance with their customs laws, in accordance with their international obligations governing the importation and exportation of goods, relating to:
 - (a) the implementation and operation of this Agreement;
 - (b) security of trade between the Parties;
 - (c) restrictions and prohibitions on imports and exports; and
 - (d) such other issues as the Parties may determine.

2. To the extent permitted by their laws, regulations and policies, the customs administrations of both Parties shall provide each other with mutual assistance in order to prevent breaches of customs law and for the protection of the economic, fiscal, social and commercial interests of their respective countries, including ensuring appropriate and efficient customs duty collection.

3. Each Party shall endeavour to provide the other Party with advance notice of any significant modification of laws, regulations or policies governing importations that are likely to substantially affect the operation of this Agreement.

ARTICLE 3.8

Review and Appeal

1. Each Party shall, with regard to customs administrative rulings, determinations or decisions, provide the right of appeal, without penalty, by the importer, exporter or other person affected by that administrative ruling, determination or decision.

2. An initial right of appeal without penalty may be to an authority within the customs administration or to an independent body, but the legislation of each Party shall provide for the right of appeal without penalty to a judicial authority.

3. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing.

ARTICLE 3.9

Advance Rulings

1. Subject to Paragraph 2, each Party shall provide in writing advance rulings in respect of the classification of goods to a person described in Sub-paragraph 2(a) (hereinafter referred to as "advance rulings").

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

- (a) provide that an importer in its territory or an exporter or producer in the territory of the other Party may apply for an advance ruling before the importation of goods in question;
- (b) require that an applicant for an advance ruling provide a detailed description of the goods and all relevant information needed to process an application for an advance ruling;

- (c) provide that its customs administration may, at any time during the course of an evaluation of an application for an advance ruling, request that the applicant provide additional information within a specified period;
 - (d) provide that any 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
 - (e) provide that an advance ruling be issued to the applicant expeditiously, or in any case within 30 working days of the receipt of all necessary information.
3. A Party may reject requests for an advance ruling where the additional information requested by it in accordance with Sub-paragraph 2(c) is not provided within the specified period.
4. Subject to Paragraph 5, each Party shall apply an advance ruling to all importations of goods described in that ruling imported into its territory within three years of the date of that ruling, or such other period as required by that Party's laws, regulations or policies.
5. A Party may modify or revoke an advance ruling upon a determination that the advance ruling was based on an error of fact or law (including human error), or if there is a change in:
- (a) domestic law consistent with this Agreement;
 - (b) a material factor; or
 - (c) the circumstances on which the ruling is based.
6. Any fees charged for advance rulings shall not exceed the approximate cost of the services rendered in providing the advance ruling.

ARTICLE 3.10

Early Resolution of Differences between the Parties

1. Where significant differences between the customs administrations of the Parties arise with respect to the application of the provisions of this Chapter and Chapter 4 of this Agreement, either customs administration may request to consult with the other customs administration to resolve such differences. The modalities of such consultation shall be agreed between the customs administrations.
2. Consultations under this Article are without prejudice to the rights of the Parties under Chapter 17 of this Agreement or under the *WTO Understanding on Rules and Procedures Governing the Settlement of Disputes*.

ARTICLE 3.11

Security of Trade and Repression of Terrorist Activity

In the event either Party desires to adopt procedures to ensure the security of trade in goods and/or the movement of craft between the Parties, the customs administrations shall consult with a view to agreeing procedures to secure such trade and/or movement of craft.

ARTICLE 3.12

Paperless Trading and Use of Automated Systems

1. The customs administrations of both Parties, in implementing initiatives that provide for the use of paperless trading, shall take into account the methods agreed in APEC and the World Customs Organisation.
2. The customs administrations of the Parties shall, as soon as practicable, adopt electronic procedures for all reporting requirements, consistent with the provisions of Chapter 10 of this Agreement.

ARTICLE 3.13

Risk Management

1. The Parties shall administer customs procedures at their respective borders so as to facilitate the clearance of low-risk goods and focus on high-risk goods.
2. The Parties shall apply and develop further risk management techniques in the performance of their customs procedures.

ARTICLE 3.14

Publication and Enquiry Points

1. Each Party shall publish on the Internet or in print form all statutory and regulatory provisions and any administrative procedures applicable or enforceable by its customs administration.
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 concerning procedures for making such enquiries.