

CHAPTER 5

CUSTOMS PROCEDURES

Article 5.1: Definitions

For the purposes of this Chapter:

customs law means any legislation administered, applied or enforced by the customs administration of a Party;

customs offence means any breach or attempted breach of customs law;

customs procedures means the treatment applied by the customs administration of each Party to goods, which are subject to customs control.

Article 5.2: Objectives

The objectives of this Chapter of the Agreement are to:

- (a) ensure predictability, consistency and transparency in the application of customs laws and other customs administrative policies of the Parties;
- (b) ensure efficient, economical administration of customs procedures, and the expeditious clearance of goods;
- (c) facilitate trade among the Parties;
- (d) apply simplified customs procedures; and
- (e) promote cooperation among the customs administrations.

Article 5.3: Scope

This Chapter shall apply, in accordance with each Party's respective international obligations and customs law, to customs procedures applied to goods traded among the Parties.

Article 5.4: Customs Procedures and Facilitation

1. Customs procedures of the Parties shall, where possible and to the extent permitted by their respective customs law, 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*.
2. Each Party shall ensure that its customs procedures and practices are predictable, consistent, transparent and facilitate trade.
3. The customs administrations of the Parties shall periodically review their customs procedures with a view to their further simplification and the development of further mutually beneficial arrangements to facilitate trade.

Article 5.5: Customs Cooperation

1. To the extent permitted by their domestic law, the customs administrations of the Parties may, as they deem fit, assist each other, in relation to originating goods, by providing information on the following:
 - (a) the implementation and operation of this Chapter;
 - (b) the movement of goods among the Parties;
 - (c) investigation and prevention of *prima facie* customs offences;
 - (d) developing and implementing customs best practice and risk management techniques;
 - (e) simplifying and expediting customs procedures;
 - (f) advancing technical skills and the use of technology;
 - (g) application of the Customs Valuation Agreement; and
 - (h) additional assistance in respect to other matters.
2. Where a Party providing information to another Party in accordance with this Chapter designates the information as confidential, the other Party shall maintain the confidentiality of the information.

Article 5.6: Customs Valuation

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

Article 5.7: Advance Rulings

1. Each Party, through its customs administration, shall provide in writing advance rulings in respect of the tariff classification and origin of goods and whether a good qualifies for entry free of customs duty in accordance with Article 3.5 (*Goods Re-entered After Repair or Alteration*) (hereinafter referred to as “advance rulings”), to a person described in Subparagraph 2(a).

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 another 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 issue an advance ruling;
- (c) provide that its customs administration may, at any time during the course of issuing 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 60 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 Subparagraph 2(c) is not provided within a specified time.

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 3 years of the date of that ruling, or such other period as required by that Party's laws.

5. A Party may modify or revoke an advance ruling upon a determination that the ruling was based on an error of fact or law, the information provided is false or inaccurate, if there is a change in domestic law consistent with this Agreement, or there is a change in a material fact, or circumstances on which the ruling is based.

6. Subject to the confidentiality requirements of a Party's domestic law, each Party shall publish its advance rulings.

7. Where an importer claims that the treatment accorded to an imported good should be governed by an advanced ruling, the customs administration may evaluate whether the facts and circumstances of the importation are consistent with the facts and circumstances upon which an advanced ruling was based.

8. The importing Party may apply measures as provided in Article 5.12.

Article 5.8: Review and Appeal

1. Each Party shall ensure that the importers in its territory have access to:

- (a) administrative review independent of the official or office that issued the determination subject to review; and
- (b) judicial review of the determination taken at the final level of administrative review, in accordance with the Party's domestic law.

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

3. The level of administrative review may include any authority supervising the customs administration.

Article 5.9: Consultation

The customs administrations of the Parties will encourage consultation with each other regarding significant customs issues that affect goods traded among the Parties.

Article 5.10: Paperless Trading

1. The customs administrations shall each endeavour to provide an electronic environment that supports business transactions between it and its trading communities.
2. In implementing initiatives that provide for paperless trading, the customs administrations of the Parties shall take into account the methods developed in APEC and the *World Customs Organisation*.

Article 5.11: Express Consignments

Each Party shall ensure efficient clearance of all shipments, while maintaining appropriate control and customs selection. In the event that a Party's existing system does not ensure efficient clearance, it should adopt procedures to expedite express consignments to:

- (a) provide for pre-arrival processing of information related to express consignments;
- (b) permit the submission of a single document covering all goods contained in a shipment transported by the express shipment company through electronic means if possible; and
- (c) minimise, to the extent possible, the documentation required for the release of express consignments.

Article 5.12: Penalties

Each Party shall adopt or maintain measures that provide for the imposition of civil, criminal or administrative penalties, whether solely or in combination, for violations of its customs laws consistent with the provisions of this Chapter.

Article 5.13: Risk Management

1. The Parties shall administer customs procedures so as to facilitate the clearance of low-risk goods and focus on high-risk goods. To enhance the flow of goods across their borders the customs administrations shall regularly review these procedures.
2. Where a customs administration deems that the inspection of goods is not necessary to authorise clearance of the goods from customs control, the Party shall endeavour to provide a single point for the documentary or electronic processing of all imports and exports.

Article 5.14: Release of Goods

Each Party shall adopt or maintain procedures allowing, to the greatest extent possible, goods to be released:

- (a) within 48 hours of arrival; and
- (b) at the point of arrival, without temporary transfer to warehouses or other locations.

Article 5.15: Enquiry Points

Each Party shall designate one or more enquiry points to address enquires from interested persons concerning customs matters, and shall make available on the Internet or in print form information concerning procedures for making such enquires.

Article 5.16: Confidentiality

Nothing in this Chapter shall be construed to require any Party to furnish or allow access to confidential information pursuant to this Chapter the disclosure of which it considers would:

- (a) be contrary to the public interest as determined by its legislation;
- (b) be contrary to any of its legislation including but not limited to those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;
- (c) impede law enforcement; or
- (d) prejudice the competitive position of the person providing the information.