

CHAPTER 6 CUSTOMS AND TRADE FACILITATION

Article 6.1 Agreement on Trade Facilitation

1. The provisions of Section I of the concluded *Agreement on Trade Facilitation* (ATF) of the WTO reproduced in Annex 6-A are hereby incorporated into and made part of this Agreement, *mutatis mutandis*, on a bilateral basis pending its entry into force.
2. Upon the entry into force of the ATF, Section I of the ATF shall automatically be incorporated into and made part of this Agreement, *mutatis mutandis*, without prejudice to the rights and obligations of the Parties with respect to each other under the WTO Agreement.

Article 6.2 Advance Rulings

Each Party shall, through its customs authorities or other competent authorities, and prior to the importation of goods into its territory and in accordance with its legislation and procedures, issue written advance rulings to an applicant concerning tariff classification, origin, and any other matters as the Party may decide.

Article 6.3 Single Window

Each Party shall develop or maintain single window systems to facilitate a single, electronic submission of all information required by customs and other legislation for the exportation, importation and transit of goods.

Article 6.4 Transparency

1. Each Party shall publish or otherwise make available, including through electronic means, their legislation, regulations, and administrative procedures and other requirements relating to customs and trade facilitation. General information on import, export, and transit procedures shall, to the extent practicable, be made available, on the internet in English.
2. Each Party shall designate or maintain one or more inquiry or information points to address inquiries by interested persons concerning customs and trade facilitation matters. The inquiries shall be addressed in English.

Article 6.5
Temporary Admission of Goods

Each Party shall continue to facilitate the procedures for the temporary admission of goods traded between the Parties in accordance with the *Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods* and the ATF of the WTO.

Article 6.6
Technical Cooperation

In order to enhance cooperation on customs matters, the Parties shall, *inter alia*:

- (a) exchange information concerning their respective customs legislation, its implementation, and customs procedures, particularly in the following areas:
 - (i) simplification and modernisation of customs procedures;
 - (ii) border enforcement of intellectual property rights by the customs authorities;
 - (iii) transit movements and transshipment; and
 - (iv) relations with the business community;
- (b) consider developing joint initiatives relating to import, export and other customs procedures, as well as towards ensuring an effective service to the business community;
- (c) work together on customs-related aspects of securing and facilitating the international trade supply chain; and
- (d) strengthen coordination in international organisations such as the WTO and the *World Customs Organization*.

Article 6.7
Customs Contact Points

1. The Parties shall exchange lists of designated contact points for matters arising under this Chapter.
2. The contact points shall endeavour to resolve operational matters covered by this Chapter through consultations.

ANNEX 6-A

AGREEMENT OF TRADE FACILITATION (ATF) OF THE WORLD TRADE ORGANIZATION

SECTION I

ARTICLE 1: PUBLICATION AND AVAILABILITY OF INFORMATION

1 Publication

1.1 Each Member shall promptly publish the following information in a non-discriminatory and easily accessible manner in order to enable governments, traders, and other interested parties 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.

1.2 Nothing in these provisions shall be construed as requiring the publication or provision of information other than in the language of the Member except as stated in paragraph 2.2.

2 Information Available Through Internet

2.1 Each Member shall make available, and update to the extent possible and as

appropriate, the following through the internet:

- (a) a description² of its procedures for importation, exportation, and transit, including procedures for appeal or review, that informs governments, traders, and other interested parties 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 Member;
- (c) contact information on its enquiry point(s).

2.2 Whenever practicable, the description referred to in subparagraph 2.1(a) shall also be made available in one of the official languages of the WTO.

2.3 Members are encouraged to make available further trade-related information through the internet, including relevant trade-related legislation and other items referred to in paragraph 1.1.

3 Enquiry Points

3.1 Each Member shall, within its available resources, establish or maintain one or more enquiry points to answer reasonable enquiries of governments, traders, and other interested parties on matters covered by paragraph 1.1 and to provide the required forms and documents referred to in subparagraph 1.1(a).

3.2 Members of a customs union or involved in regional integration may establish or maintain common enquiry points at the regional level to satisfy the requirement of paragraph 3.1 for common procedures.

3.3 Members are encouraged not to require the payment of a fee for answering enquiries and providing required forms and documents. If any, Members shall limit the amount of their fees and charges to the approximate cost of services rendered.

3.4 The enquiry points shall answer enquiries and provide the forms and documents within a reasonable time period set by each Member, which may vary depending on the nature or complexity of the request.

4 Notification

Each Member shall notify the Committee on Trade Facilitation established under paragraph 1.1 of Article 23 (referred to in this Agreement as the "Committee") of:

- (a) the official place(s) where the items in subparagraphs 1.1(a) to (j) have been published;

² Each Member has the discretion to state on its website the legal limitations of this description.

- (b) the Uniform Resource Locators of website(s) referred to in paragraph 2.1; and
- (c) the contact information of the enquiry points referred to in paragraph 3.1.

ARTICLE 2: OPPORTUNITY TO COMMENT, INFORMATION BEFORE ENTRY INTO FORCE, AND CONSULTATIONS

1 Opportunity to Comment and Information before Entry into Force

- 1.1 Each Member shall, to the extent practicable and in a manner consistent with its domestic law and legal system, provide opportunities and an appropriate time period to traders and other interested parties to comment on the proposed introduction or amendment of laws and regulations of general application related to the movement, release, and clearance of goods, including goods in transit.
- 1.2 Each Member 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 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 parties to become acquainted with them.
- 1.3 Changes to duty rates or tariff rates, measures that have a relieving effect, measures the effectiveness of which would be undermined as a result of compliance with paragraphs 1.1 or 1.2, measures applied in urgent circumstances, or minor changes to domestic law and legal system are each excluded from paragraphs 1.1 and 1.2.

2 Consultations

Each Member shall, as appropriate, provide for regular consultations between its border agencies and traders or other stakeholders located within its territory.

ARTICLE 3: ADVANCE RULINGS

- 1. Each Member shall issue an advance ruling in a reasonable, time-bound manner to the applicant that has submitted a written request containing all necessary information. If a Member declines to issue an advance ruling, it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.
- 2. A Member may decline to issue an advance ruling to the applicant where the question raised in the application:
 - (a) is already pending in the applicant's case before any governmental agency, appellate tribunal, or court; or
 - (b) has already been decided by any appellate tribunal or court.

3. The advance ruling shall be valid for a reasonable period of time after its issuance unless the law, facts, or circumstances supporting that ruling have changed.
4. Where the Member revokes, modifies, or invalidates the advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. Where a Member 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.
5. An advance ruling issued by a Member shall be binding on that Member in respect of the applicant that sought it. The Member may provide that the advance ruling is binding on the applicant.
6. Each Member 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.
7. Each Member shall provide, upon written request of an applicant, a review of the advance ruling or the decision to revoke, modify, or invalidate the advance ruling.³
8. Each Member shall endeavour to 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.
9. Definitions and scope:
 - (a) An advance ruling is a written decision provided by a Member to the applicant prior to the importation of a good covered by the application that sets forth the treatment that the Member shall provide to the good at the time of importation with regard to:
 - (i) the good's tariff classification; and
 - (ii) the origin of the good.⁴

³ Under this paragraph: (a) a review may, either before or after the ruling has been acted upon, be provided by the official, office, or authority that issued the ruling, a higher or independent administrative authority, or a judicial authority; and (b) a Member is not required to provide the applicant with recourse to paragraph 1 of Article 4.

⁴ It is understood that an advance ruling on the origin of a good may be an assessment of origin for the purposes of the Agreement on Rules of Origin where the ruling meets the requirements of this Agreement and the Agreement on Rules of Origin. Likewise, an assessment of origin under the Agreement on Rules of Origin may be an advance ruling on the origin of a good for the purposes of this Agreement where the ruling meets the requirements of both agreements. Members are not required

- (b) In addition to the advance rulings defined in subparagraph (a), Members are encouraged to provide advance rulings on:
 - (i) the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts;
 - (ii) the applicability of the Member's requirements for relief or exemption from customs duties;
 - (iii) the application of the Member's requirements for quotas, including tariff quotas; and
 - (iv) any additional matters for which a Member considers it appropriate to issue an advance ruling.
- (c) An applicant is an exporter, importer or any person with a justifiable cause or a representative thereof.
- (d) A Member may require that the applicant have legal representation or registration in its territory. To the extent possible, such requirements shall not restrict the categories of persons eligible to apply for advance rulings, with particular consideration for the specific needs of small and medium-sized enterprises. These requirements shall be clear and transparent and not constitute a means of arbitrary or unjustifiable discrimination.

ARTICLE 4: PROCEDURES FOR APPEAL OR REVIEW

1. Each Member shall provide that any person to whom customs issues an administrative decision⁵ 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/or
 - (b) a judicial appeal or review of the decision.

to establish separate arrangements under this provision in addition to those established pursuant to the Agreement on Rules of Origin in relation to the assessment of origin provided that the requirements of this Article are fulfilled.

⁵ An 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 Member's domestic law and legal system. For addressing such failure, Members 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 1(a).

2. The legislation of a Member may require that an administrative appeal or review be initiated prior to a judicial appeal or review.
3. Each Member shall ensure that its procedures for appeal or review are carried out in a non-discriminatory manner.
4. Each Member shall ensure that, in a case where the decision on appeal or review under subparagraph 1(a) is not given either:
 - (a) within set periods as specified in its laws or regulations; or
 - (b) without undue delaythe 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.⁶
5. Each Member 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.
6. Each Member is encouraged to make the provisions of this Article applicable to an administrative decision issued by a relevant border agency other than customs.

ARTICLE 5: OTHER MEASURES TO ENHANCE IMPARTIALITY, NON-DISCRIMINATION AND TRANSPARENCY

1 Notifications for enhanced controls or inspections

Where a Member adopts or maintains a system of issuing notifications or guidance to its concerned authorities for enhancing the level of controls or inspections at the border in respect of foods, beverages, or feedstuffs covered under the notification or guidance for protecting human, animal, or plant life or health within its territory, the following disciplines shall apply to the manner of their issuance, termination, or suspension:

- (a) the Member may, as appropriate, issue the notification or guidance based on risk;
- (b) the Member may issue the notification or guidance so that it applies uniformly only to those points of entry where the sanitary and phytosanitary conditions on which the notification or guidance are based apply;
- (c) the Member shall promptly terminate or suspend the notification or guidance when circumstances giving rise to it no longer exist, or if changed

⁶ Nothing in this paragraph shall prevent a Member from recognizing administrative silence on appeal or review as a decision in favor of the petitioner in accordance with its laws and regulations.

circumstances can be addressed in a less trade-restrictive manner; and

- (d) when the Member decides to terminate or suspend the notification or guidance, it shall, as appropriate, promptly publish the announcement of its termination or suspension in a non-discriminatory and easily accessible manner, or inform the exporting Member or the importer.

2 Detention

A Member shall promptly inform the carrier or importer in case of detention of goods declared for importation, for inspection by customs or any other competent authority.

3 Test Procedures

- 3.1 A Member may, upon request, grant an opportunity for a second test in case the first test result of a sample taken upon arrival of goods declared for importation shows an adverse finding.
- 3.2 A Member shall either publish, in a non-discriminatory and easily accessible manner, the name and address of any laboratory where the test can be carried out or provide this information to the importer when it is granted the opportunity provided under paragraph 3.1.
- 3.3 A Member shall consider the result of the second test, if any, conducted under paragraph 3.1, for the release and clearance of goods and, if appropriate, may accept the results of such test.

ARTICLE 6: DISCIPLINES ON FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION AND PENALTIES

1 General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation

- 1.1 The provisions of paragraph 1 shall apply to all fees and charges other than import and export duties and other than taxes within the purview of Article III of GATT 1994 imposed by Members on or in connection with the importation or exportation of goods.
- 1.2 Information on fees and charges shall be published in accordance with Article 1. This information shall include the fees and charges that will be applied, the reason for such fees and charges, the responsible authority and when and how payment is to be made.
- 1.3 An adequate time period shall be accorded between the publication of new or amended fees and charges and their entry into force, except in urgent circumstances. Such fees and charges shall not be applied until information on them has been published.

- 1.4 Each Member shall periodically review its fees and charges with a view to reducing their number and diversity, where practicable.

2 Specific disciplines on Fees and Charges for Customs Processing Imposed on or in Connection with Importation and Exportation

Fees and charges for customs processing:

- (i) shall be limited in amount to the approximate cost of the services rendered on or in connection with the specific import or export operation in question; and
- (ii) are not required to be linked to a specific import or export operation provided they are levied for services that are closely connected to the customs processing of goods.

3 Penalty Disciplines

- 3.1 For the purpose of paragraph 3, the term "penalties" shall mean those imposed by a Member's customs administration for a breach of the Member's customs laws, regulations, or procedural requirements.
- 3.2 Each Member shall ensure that penalties for a breach of a customs law, regulation, or procedural requirement are imposed only on the person(s) responsible for the breach under its laws.
- 3.3 The penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.
- 3.4 Each Member shall ensure that it maintains measures to avoid:
- (a) conflicts of interest in the assessment and collection of penalties and duties; and
 - (b) creating an incentive for the assessment or collection of a penalty that is inconsistent with paragraph 3.3.
- 3.5 Each Member shall ensure that when a penalty is imposed for a breach of customs laws, regulations, or procedural requirements, an explanation in writing is provided to the person(s) upon whom the penalty is imposed specifying the nature of the breach and the applicable law, regulation or procedure under which the amount or range of penalty for the breach has been prescribed.
- 3.6 When a person voluntarily discloses to a Member's customs administration the circumstances of a breach of a customs law, regulation, or procedural requirement prior to the discovery of the breach by the customs administration, the Member is encouraged to, where appropriate, consider this fact as a potential mitigating factor when establishing a penalty for that person.

- 3.7 The provisions of this paragraph shall apply to the penalties on traffic in transit referred to in paragraph 3.1.

ARTICLE 7: RELEASE AND CLEARANCE OF GOODS

1 Pre-arrival Processing

- 1.1 Each Member shall adopt or maintain procedures allowing for the submission of import documentation and other required information, including manifests, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival.
- 1.2 Each Member shall, as appropriate, provide for advance lodging of documents in electronic format for pre-arrival processing of such documents.

2 Electronic Payment

Each Member shall, to the extent practicable, adopt or maintain procedures allowing the option of electronic payment for duties, taxes, fees, and charges collected by customs incurred upon importation and exportation.

3 Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges

- 3.1 Each Member shall adopt or maintain procedures allowing the release of goods prior to the final determination of customs duties, taxes, fees, and charges, if such a determination is not done prior to, or upon arrival, or as rapidly as possible after arrival and provided that all other regulatory requirements have been met.
- 3.2 As a condition for such release, a Member may require:
- (a) payment of customs duties, taxes, fees, and charges determined prior to or upon arrival of goods and a guarantee for any amount not yet determined in the form of a surety, a deposit, or another appropriate instrument provided for in its laws and regulations; or
 - (b) a guarantee in the form of a surety, a deposit, or another appropriate instrument provided for in its laws and regulations.
- 3.3 Such guarantee shall not be greater than the amount the Member requires to ensure payment of customs duties, taxes, fees, and charges ultimately due for the goods covered by the guarantee.
- 3.4 In cases where an offence requiring imposition of monetary penalties or fines has been detected, a guarantee may be required for the penalties and fines that may be imposed.

- 3.5 The guarantee as set out in paragraphs 3.2 and 3.4 shall be discharged when it is no longer required.
- 3.6 Nothing in these provisions shall affect the right of a Member to examine, detain, seize or confiscate or deal with the goods in any manner not otherwise inconsistent with the Member's WTO rights and obligations.

4 Risk Management

- 4.1 Each Member shall, to the extent possible, adopt or maintain a risk management system for customs control.
- 4.2 Each Member shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or a disguised restriction on international trade.
- 4.3 Each Member 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. A Member also may select, on a random basis, consignments for such controls as part of its risk management.
- 4.4 Each Member shall base risk management on an assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include, *inter alia*, the Harmonized System 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.

5 Post-clearance Audit

- 5.1 With a view to expediting the release of goods, each Member shall adopt or maintain post-clearance audit to ensure compliance with customs and other related laws and regulations.
- 5.2 Each Member shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Member shall conduct post-clearance audits in a transparent manner. Where the person is involved in the audit process and conclusive results have been achieved the Member shall, without delay, notify the person whose record is audited of the results, the person's rights and obligations, and the reasons for the results.
- 5.3 The information obtained in post-clearance audit may be used in further administrative or judicial proceedings.
- 5.4 Members shall, wherever practicable, use the result of post-clearance audit in applying risk management.

6 Establishment and Publication of Average Release Times

- 6.1 Members are encouraged to measure and publish their average release time of goods periodically and in a consistent manner, using tools such as, *inter alia*, the Time Release Study of the World Customs Organization (referred to in this Agreement as the “WCO”).⁷
- 6.2 Members are encouraged to share with the Committee their experiences in measuring average release times, including methodologies used, bottlenecks identified, and any resulting effects on efficiency.

7 Trade Facilitation Measures for Authorized Operators

- 7.1 Each Member shall provide additional trade facilitation measures related to import, export, or transit formalities and procedures, pursuant to paragraph 7.3, to operators who meet specified criteria, hereinafter called authorized operators. Alternatively, a Member may offer such trade facilitation measures through customs procedures generally available to all operators and is not required to establish a separate scheme.
- 7.2 The specified criteria to qualify as an authorized operator shall be related to compliance, or the risk of non-compliance, with requirements specified in a Member's laws, regulations or procedures.
- (a) Such criteria, which shall be published, may include:
- (i) an appropriate record of compliance with customs and other related laws and regulations;
 - (ii) a system of managing records to allow for necessary internal controls;
 - (iii) financial solvency, including, where appropriate, provision of a sufficient security or guarantee; and
 - (iv) supply chain security.
- (b) Such criteria shall not:
- (i) be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail; and
 - (ii) to the extent possible, restrict the participation of small and medium-sized enterprises.

⁷ Each Member may determine the scope and methodology of such average release time measurement in accordance with its needs and capacity.

- 7.3 The trade facilitation measures provided pursuant to paragraph 7.1 shall include at least three of the following measures:⁸
- (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 authorized operator or another place authorized by customs.
- 7.4 Members are encouraged to develop authorized 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.
- 7.5 In order to enhance the trade facilitation measures provided to operators, Members shall afford to other Members the possibility of negotiating mutual recognition of authorized operator schemes.
- 7.6 Members shall exchange relevant information within the Committee about authorized operator schemes in force.

8 Expedited Shipments

- 8.1 Each Member shall adopt or maintain procedures allowing for the expedited release of at least those goods entered through air cargo facilities to persons who apply for such treatment, while maintaining customs control.⁹ If a Member employs criteria¹⁰ limiting who may apply, the Member may, in published criteria, require that the applicant shall, as conditions for qualifying for the application of the treatment described in paragraph 8.2 to its expedited shipments:

⁸ A measure listed in subparagraphs 7.3 (a) to (g) will be deemed to be provided to authorized operators if it is generally available to all operators.

⁹ In cases where a Member has an existing procedure that provides the treatment in paragraph 8.2, this provision does not require that Member to introduce separate expedited release procedures.

¹⁰ Such application criteria, if any, shall be in addition to the Member's requirements for operating with respect to all goods or shipments entered through air cargo facilities.

- (a) provide adequate infrastructure and payment of customs expenses related to processing of expedited shipments in cases where the applicant fulfils the Member's requirements for such processing to be performed at a dedicated facility;
- (b) submit in advance of the arrival of an expedited shipment the information necessary for the release;
- (c) be assessed fees limited in amount to the approximate cost of services rendered in providing the treatment described in paragraph 8.2;
- (d) maintain a high degree of control over expedited shipments through the use of internal security, logistics, and tracking technology from pick-up to delivery;
- (e) provide expedited shipment from pick-up to delivery;
- (f) assume liability for payment of all customs duties, taxes, fees, and charges to the customs authority for the goods;
- (g) have a good record of compliance with customs and other related laws and regulations;
- (h) comply with other conditions directly related to the effective enforcement of the Member's laws, regulations, and procedural requirements, that specifically relate to providing the treatment described in paragraph 8.2.

8.2 Subject to paragraphs 8.1 and 8.3, Members shall:

- (a) minimize the documentation required for the release of expedited shipments in accordance with paragraph 1 of Article 10 and, to the extent possible, provide for release based on a single submission of information on certain shipments;
- (b) provide for expedited shipments to be released under normal circumstances as rapidly as possible after arrival, provided the information required for release has been submitted;
- (c) endeavour to apply the treatment in subparagraphs (a) and (b) to shipments of any weight or value recognizing that a Member 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
- (d) provide, 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 the GATT 1994 are not subject to this provision.

- 8.3 Nothing in paragraphs 8.1 and 8.2 shall affect the right of a Member to examine, detain, seize, confiscate or refuse entry of goods, or to carry out post-clearance audits, including in connection with the use of risk management systems. Further, nothing in paragraphs 8.1 and 8.2 shall prevent a Member from requiring, as a condition for release, the submission of additional information and the fulfilment of non-automatic licensing requirements.

9 Perishable Goods¹¹

- 9.1 With a view to preventing avoidable loss or deterioration of perishable goods, and provided that all regulatory requirements have been met, each Member shall provide for the release of perishable goods:
- (a) under normal circumstances within the shortest possible time; and
 - (b) in exceptional circumstances where it would be appropriate to do so, outside the business hours of customs and other relevant authorities.
- 9.2 Each Member shall give appropriate priority to perishable goods when scheduling any examinations that may be required.
- 9.3 Each Member shall either arrange or allow an importer to arrange for the proper storage of perishable goods pending their release. The Member 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. The Member 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.
- 9.4 In cases of significant delay in the release of perishable goods, and upon written request, the importing Member shall, to the extent practicable, provide a communication on the reasons for the delay.

ARTICLE 8: BORDER AGENCY COOPERATION

1. Each Member shall ensure that its authorities and agencies responsible for border controls and procedures dealing with the importation, exportation, and transit of goods cooperate with one another and coordinate their activities in order to facilitate trade.

¹¹ For the purposes of this provision, perishable goods are goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.

2. Each Member shall, to the extent possible and practicable, cooperate on mutually agreed terms with other Members with whom it shares a common border with a view to coordinating procedures at border crossings to facilitate cross-border trade. Such cooperation and coordination may include:
 - (a) alignment of working days and hours;
 - (b) alignment of procedures and formalities;
 - (c) development and sharing of common facilities;
 - (d) joint controls;
 - (e) establishment of one stop border post control.

ARTICLE 9: MOVEMENT OF GOODS INTENDED FOR IMPORT UNDER CUSTOMS CONTROL

Each Member shall, to the extent practicable, and provided all regulatory requirements are met, allow goods intended for import to be moved within its territory under customs control from a customs office of entry to another customs office in its territory from where the goods would be released or cleared.

ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION, EXPORTATION AND TRANSIT

1 Formalities and Documentation Requirements

- 1.1 With a view to minimizing the incidence and complexity of import, export, and transit formalities and to decreasing and simplifying import, export, and transit documentation requirements and taking into account the legitimate policy objectives and other factors such as changed circumstances, relevant new information, business practices, availability of techniques and technology, international best practices, and inputs from interested parties, each Member shall review such formalities and documentation requirements and, based on the results of the review, ensure, as appropriate, that such formalities and documentation requirements are:
 - (a) adopted and/or applied with a view to a rapid release and clearance of goods, particularly perishable goods;
 - (b) adopted and/or applied in a manner that aims at reducing the time and cost of compliance for traders and operators;
 - (c) the least trade restrictive measure chosen where two or more alternative measures are reasonably available for fulfilling the policy objective or objectives in question; and

(d) not maintained, including parts thereof, if no longer required.

1.2 The Committee shall develop procedures for the sharing by Members of relevant information and best practices, as appropriate.

2 Acceptance of Copies

2.1 Each Member shall, where appropriate, endeavour to accept paper or electronic copies of supporting documents required for import, export, or transit formalities.

2.2 Where a government agency of a Member already holds the original of such a document, any other agency of that Member shall accept a paper or electronic copy, where applicable, from the agency holding the original in lieu of the original document.

2.3 A Member shall not require an original or copy of export declarations submitted to the customs authorities of the exporting Member as a requirement for importation.¹²

3 Use of International Standards

3.1 Members are encouraged to use relevant international standards or parts thereof as a basis for their import, export, or transit formalities and procedures, except as otherwise provided for in this Agreement.

3.2 Members are encouraged to take part, within the limits of their resources, in the preparation and periodic review of relevant international standards by appropriate international organizations.

3.3 The Committee shall develop procedures for the sharing by Members of relevant information, and best practices, on the implementation of international standards, as appropriate. The Committee may also invite relevant international organizations to discuss their work on international standards. As appropriate, the Committee may identify specific standards that are of particular value to Members.

4 Single Window

4.1 Members shall endeavour to establish or maintain a single window, enabling traders to submit documentation and/or data requirements for importation, exportation, or transit of goods through a single entry point to the participating authorities or agencies. After the examination by the participating authorities or agencies of the documentation and/or data, the results shall be notified to the applicants through the single window in a timely manner.

4.2 In cases where documentation and/or data requirements have already been received through the single window, the same documentation and/or data requirements shall

¹² Nothing in this paragraph precludes a Member from requiring documents such as certificates, permits or licenses as a requirement for the importation of controlled or regulated goods.

not be requested by participating authorities or agencies except in urgent circumstances and other limited exceptions which are made public.

4.3 Members shall notify the Committee of the details of operation of the single window.

4.4 Members shall, to the extent possible and practicable, use information technology to support the single window.

5 Preshipment Inspection

5.1 Members shall not require the use of preshipment inspections in relation to tariff classification and customs valuation.

5.2 Without prejudice to the rights of Members to use other types of preshipment inspection not covered by paragraph 5.1, Members are encouraged not to introduce or apply new requirements regarding their use.¹³

6 Use of Customs Brokers

6.1 Without prejudice to the important policy concerns of some Members that currently maintain a special role for customs brokers, from the entry into force of this Agreement Members shall not introduce the mandatory use of customs brokers.

6.2 Each Member shall notify the Committee and publish its measures on the use of customs brokers. Any subsequent modifications thereof shall be notified and published promptly.

6.3 With regard to the licensing of customs brokers, Members shall apply rules that are transparent and objective.

7 Common Border Procedures and Uniform Documentation Requirements

7.1 Each Member shall, subject to paragraph 7.2, apply common customs procedures and uniform documentation requirements for release and clearance of goods throughout its territory.

7.2 Nothing in this Article shall prevent a Member from:

- (a) differentiating its procedures and documentation requirements based on the nature and type of goods, or their means of transport;
- (b) differentiating its procedures and documentation requirements for goods based on risk management;

¹³ This paragraph refers to preshipment inspections covered by the Agreement on Preshipment Inspection, and does not preclude preshipment inspections for sanitary and phytosanitary purposes.

- (c) differentiating its procedures and documentation requirements to provide total or partial exemption from import duties or taxes;
- (d) applying electronic filing or processing; or
- (e) differentiating its procedures and documentation requirements in a manner consistent with the Agreement on the Application of Sanitary and Phytosanitary Measures.

8 Rejected Goods

- 8.1 Where goods presented for import are rejected by the competent authority of a Member on account of their failure to meet prescribed sanitary or phytosanitary regulations or technical regulations, the Member shall, subject to and consistent with its laws and regulations, allow the importer to re-consign or to return the rejected goods to the exporter or another person designated by the exporter.
- 8.2 When such an option under paragraph 8.1 is given and the importer fails to exercise it within a reasonable period of time, the competent authority may take a different course of action to deal with such non-compliant goods.

9 Temporary Admission of Goods and Inward and Outward Processing

9.1 Temporary Admission of Goods

Each Member shall allow, as provided for in its laws and regulations, goods to be brought into its customs territory conditionally relieved, totally or partially, from payment of import duties and taxes if such goods are brought into its customs territory for a specific purpose, are intended for re-exportation within a specific period, and have not undergone any change except normal depreciation and wastage due to the use made of them.

9.2 Inward and Outward Processing

- (a) Each Member shall allow, as provided for in its laws and regulations, inward and outward processing of goods. Goods allowed for outward processing may be re-imported with total or partial exemption from import duties and taxes in accordance with the Member's laws and regulations.
- (b) For the purposes of this Article, the term "inward processing" means the customs procedure under which certain goods can be brought into a Member's customs territory conditionally relieved, totally or partially, from payment of import duties and taxes, or eligible for duty drawback, on the basis that such goods are intended for manufacturing, processing, or repair and subsequent exportation.
- (c) For the purposes of this Article, the term "outward processing" means the customs procedure under which goods which are in free circulation in a

Member's customs territory may be temporarily exported for manufacturing, processing, or repair abroad and then re-imported.

ARTICLE 11: FREEDOM OF TRANSIT

1. Any regulations or formalities in connection with traffic in transit imposed by a Member shall not be:
 - (a) maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a reasonably available less trade-restrictive manner;-
 - (b) applied in a manner that would constitute a disguised restriction on traffic in transit.
2. Traffic in transit shall not be conditioned upon collection of any fees or charges imposed in respect of transit, except the charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.
3. Members shall not seek, take, or maintain any voluntary restraints or any other similar measures on traffic in transit. This is without prejudice to existing and future national regulations, bilateral or multilateral arrangements related to regulating transport, consistent with WTO rules.
4. Each Member shall accord to products which will be in transit through the territory of any other Member treatment no less favourable than that which would be accorded to such products if they were being transported from their place of origin to their destination without going through the territory of such other Member.
5. Members are encouraged to make available, where practicable, physically separate infrastructure (such as lanes, berths and similar) for traffic in transit.
6. Formalities, documentation requirements, and customs controls in connection with traffic in transit shall not be more burdensome than necessary to:
 - (a) identify the goods; and
 - (b) ensure fulfilment of transit requirements.
7. Once goods have been put under a transit procedure and have been authorized to proceed from the point of origination in a Member's territory, they will not be subject to any customs charges nor unnecessary delays or restrictions until they conclude their transit at the point of destination within the Member's territory.
8. Members shall not apply technical regulations and conformity assessment procedures within the meaning of the Agreement on Technical Barriers to Trade to goods in

transit.

9. Members shall allow and provide for advance filing and processing of transit documentation and data prior to the arrival of goods.
10. Once traffic in transit has reached the customs office where it exits the territory of a Member, that office shall promptly terminate the transit operation if transit requirements have been met.
11. Where a Member requires a guarantee in the form of a surety, deposit or other appropriate monetary or non-monetary¹⁴ instrument for traffic in transit, such guarantee shall be limited to ensuring that requirements arising from such traffic in transit are fulfilled.
12. Once the Member has determined that its transit requirements have been satisfied, the guarantee shall be discharged without delay.
13. Each Member shall, in a manner consistent with its laws and regulations, allow comprehensive guarantees which include multiple transactions for same operators or renewal of guarantees without discharge for subsequent consignments.
14. Each Member shall make publicly available the relevant information it uses to set the guarantee, including single transaction and, where applicable, multiple transaction guarantee.
15. Each Member may require the use of customs convoys or customs escorts for traffic in transit only in circumstances presenting high risks or when compliance with customs laws and regulations cannot be ensured through the use of guarantees. General rules applicable to customs convoys or customs escorts shall be published in accordance with Article 1.
16. Members shall endeavour to cooperate and coordinate with one another with a view to enhancing freedom of transit. Such cooperation and coordination may include, but is not limited to, an understanding on:
 - (a) charges;
 - (b) formalities and legal requirements; and
 - (c) the practical operation of transit regimes.
17. Each Member shall endeavour to appoint a national transit coordinator to which all enquiries and proposals by other Members relating to the good functioning of transit operations can be addressed.

¹⁴ Nothing in this provision shall preclude a Member from maintaining existing procedures whereby the means of transport can be used as a guarantee for traffic in transit.

ARTICLE 12: CUSTOMS COOPERATION

1 Measures Promoting Compliance and Cooperation

- 1.1 Members agree on the importance of ensuring that traders are aware of their compliance obligations, encouraging voluntary compliance to allow importers to self-correct without penalty in appropriate circumstances, and applying compliance measures to initiate stronger measures for non-compliant traders.¹⁵
- 1.2 Members are encouraged to share information on best practices in managing customs compliance, including through the Committee. Members are encouraged to cooperate in technical guidance or assistance and support for capacity building for the purposes of administering compliance measures and enhancing their effectiveness.

2 Exchange of Information

- 2.1 Upon request and subject to the provisions of this Article, Members shall exchange the information set out in subparagraphs 6.1(b) and/or (c) for the purpose of verifying an import or export declaration in identified cases where there are reasonable grounds to doubt the truth or accuracy of the declaration.
- 2.2 Each Member shall notify the Committee of the details of its contact point for the exchange of this information.

3 Verification

A Member shall make a request for information only after it has conducted appropriate verification procedures of an import or export declaration and after it has inspected the available relevant documentation.

4 Request

- 4.1 The requesting Member shall provide the requested Member with a written request, through paper or electronic means in a mutually agreed official language of the WTO or other mutually agreed language, including:
 - (a) the matter at issue including, where appropriate and available, the number identifying the export declaration corresponding to the import declaration in question;
 - (b) the purpose for which the requesting Member is seeking the information or documents, along with the names and contact details of the persons to whom the request relates, if known;

¹⁵ Such activity has the overall objective of lowering the frequency of non-compliance, and consequently reducing the need for exchange of information in pursuit of enforcement.

- (c) where required by the requested Member, confirmation¹⁶ of the verification where appropriate;
- (d) the specific information or documents requested;
- (e) the identity of the originating office making the request;
- (f) reference to provisions of the requesting Member's domestic law and legal system that govern the collection, protection, use, disclosure, retention, and disposal of confidential information and personal data.

4.2 If the requesting Member is not in a position to comply with any of the subparagraphs of paragraph 4.1, it shall specify this in the request.

5 Protection and Confidentiality

5.1 The requesting Member shall, subject to paragraph 5.2:

- (a) hold all information or documents provided by the requested Member strictly in confidence and grant at least the same level of such protection and confidentiality as that provided under the domestic law and legal system of the requested Member as described by it under subparagraphs 6.1(b) or (c);
- (b) provide information or documents only to the customs authorities dealing with the matter at issue and use the information or documents solely for the purpose stated in the request unless the requested Member agrees otherwise in writing;
- (c) not disclose the information or documents without the specific written permission of the requested Member;
- (d) not use any unverified information or documents from the requested Member as the deciding factor towards alleviating the doubt in any given circumstance;
- (e) respect any case-specific conditions set out by the requested Member regarding retention and disposal of confidential information or documents and personal data; and
- (f) upon request, inform the requested Member of any decisions and actions taken on the matter as a result of the information or documents provided.

5.2 A requesting Member may be unable under its domestic law and legal system to comply with any of the subparagraphs of paragraph 5.1. If so, the requesting Member shall specify this in the request.

¹⁶ This may include pertinent information on the verification conducted under paragraph 3. Such information shall be subject to the level of protection and confidentiality specified by the Member conducting the verification.

- 5.3 The requested Member shall treat any request and verification information received under paragraph 4 with at least the same level of protection and confidentiality accorded by the requested Member to its own similar information.

6 Provision of Information

- 6.1 Subject to the provisions of this Article, the requested Member shall promptly:
- (a) respond in writing, through paper or electronic means;
 - (b) provide the specific information as set out in the import or export declaration, or the declaration, to the extent it is available, along with a description of the level of protection and confidentiality required of the requesting Member;
 - (c) if requested, provide the specific information as set out in the following documents, or the documents, submitted in support of the import or export declaration, to the extent it is available: commercial invoice, packing list, certificate of origin and bill of lading, in the form in which these were filed, whether paper or electronic, along with a description of the level of protection and confidentiality required of the requesting Member;
 - (d) confirm that the documents provided are true copies;
 - (e) provide the information or otherwise respond to the request, to the extent possible, within 90 days from the date of the request.
- 6.2 The requested Member may require, under its domestic law and legal system, an assurance prior to the provision of information that the specific information will not be used as evidence in criminal investigations, judicial proceedings, or in non-customs proceedings without the specific written permission of the requested Member. If the requesting Member is not in a position to comply with this requirement, it should specify this to the requested Member.

7 Postponement or Refusal of a Request

- 7.1 A requested Member may postpone or refuse part or all of a request to provide information, and shall inform the requesting Member of the reasons for doing so, where:
- (a) it would be contrary to the public interest as reflected in the domestic law and legal system of the requested Member;
 - (b) its domestic law and legal system prevents the release of the information. In such a case it shall provide the requesting Member with a copy of the relevant, specific reference;

- (c) the provision of the information would impede law enforcement or otherwise interfere with an on-going administrative or judicial investigation, prosecution or proceeding;
- (d) the consent of the importer or exporter is required by its domestic law and legal system that govern the collection, protection, use, disclosure, retention, and disposal of confidential information or personal data and that consent is not given; or
- (e) the request for information is received after the expiration of the legal requirement of the requested Member for the retention of documents.

7.2 In the circumstances of paragraphs 4.2, 5.2, or 6.2, execution of such a request shall be at the discretion of the requested Member.

8 Reciprocity

If the requesting Member is of the opinion that it would be unable to comply with a similar request if it was made by the requested Member, or if it has not yet implemented this Article, it shall state that fact in its request. Execution of such a request shall be at the discretion of the requested Member.

9 Administrative Burden

- 9.1 The requesting Member shall take into account the associated resource and cost implications for the requested Member in responding to requests for information. The requesting Member shall consider the proportionality between its fiscal interest in pursuing its request and the efforts to be made by the requested Member in providing the information.
- 9.2 If a requested Member receives an unmanageable number of requests for information or a request for information of unmanageable scope from one or more requesting Member(s) and is unable to meet such requests within a reasonable time, it may request one or more of the requesting Member(s) to prioritize with a view to agreeing on a practical limit within its resource constraints. In the absence of a mutually-agreed approach, the execution of such requests shall be at the discretion of the requested Member based on the results of its own prioritization.

10 Limitations

A requested Member shall not be required to:

- (a) modify the format of its import or export declarations or procedures;
- (b) call for documents other than those submitted with the import or export declaration as specified in subparagraph 6.1(c);

- (c) initiate enquiries to obtain the information;
- (d) modify the period of retention of such information;
- (e) introduce paper documentation where electronic format has already been introduced;
- (f) translate the information;
- (g) verify the accuracy of the information; or
- (h) provide information that would prejudice the legitimate commercial interests of particular enterprises, public or private.

11 Unauthorized Use or Disclosure

- 11.1 In the event of any breach of the conditions of use or disclosure of information exchanged under this Article, the requesting Member that received the information shall promptly communicate the details of such unauthorized use or disclosure to the requested Member that provided the information and:
- (a) take necessary measures to remedy the breach;
 - (b) take necessary measures to prevent any future breach; and
 - (c) notify the requested Member of the measures taken under subparagraphs (a) and (b).
- 11.2 The requested Member may suspend its obligations to the requesting Member under this Article until the measures set out in paragraph 11.1 have been taken.

12 Bilateral and Regional Agreements

- 12.1 Nothing in this Article shall prevent a Member from entering into or maintaining a bilateral, plurilateral, or regional agreement for sharing or exchange of customs information and data, including on a secure and rapid basis such as on an automatic basis or in advance of the arrival of the consignment.
- 12.2 Nothing in this Article shall be construed as altering or affecting a Member's rights or obligations under such bilateral, plurilateral, or regional agreements, or as governing the exchange of customs information and data under such other agreements.