

Chapter Five

Customs Administration and Trade Facilitation

Article 5.1: Publication

1. Each Party shall publish, including on the Internet, its customs laws, regulations, and general administrative procedures.
2. Each Party shall designate or maintain one or more inquiry points to address inquiries by interested persons concerning customs matters and shall make available on the Internet information concerning the procedures for making such inquiries.
3. To the extent possible, each Party shall publish in advance any regulations of general application governing customs matters that it proposes to adopt and provide interested persons the opportunity to comment prior to their adoption.

Article 5.2: Release of Goods

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate bilateral trade.
2. Pursuant to paragraph 1, each Party shall adopt or maintain procedures that:
 - (a) provide for the release of goods from customs 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) allow goods to be released at the point of arrival, without temporary transfer to warehouses or other facilities; and
 - (c) allow importers to withdraw goods from customs before and without prejudice to the final determination by its customs authority of the applicable customs duties, taxes, and fees.¹

Article 5.3: Automation

Each Party's customs authority shall endeavor to use information technology that expedites procedures for releasing goods from customs. When deciding on the information technology to be used for this purpose, each Party shall:

- (a) use, to the extent possible, international standards;

¹ A Party may require an importer to provide sufficient guarantee in the form of a surety, a deposit, or some other appropriate instrument, covering the ultimate payment of the customs duties, taxes, and fees in connection with the importation of the good.

- (b) make electronic systems accessible to the trading community;
- (c) provide for electronic submission and processing of information and data before arrival of the shipment to allow for the release of goods on arrival;
- (d) employ electronic or automated systems for risk analysis and targeting;
- (e) work towards developing electronic systems that are compatible with the other Party's systems in order to facilitate government to government exchange of bilateral trade data; and
- (f) work towards developing with the other Party a set of common data elements and processes in accordance with World Customs Organization (WCO) Customs Data Model and related WCO recommendations and guidelines.

Article 5.4: Risk Management

Each Party shall endeavor to adopt or maintain risk management systems that enable its customs authority to focus its inspection activities on high-risk goods and that simplify the clearance and movement of low-risk goods through customs, while respecting the confidential nature of the information it obtains through such activities.

Article 5.5: Cooperation

1. With a view to facilitating the effective operation of this Agreement, each Party shall endeavor to provide the other Party with advance notice of any significant modification of administrative policy or other similar development related to its laws or regulations governing importations that is likely to substantially affect the operation of this Agreement.

2. The Parties shall cooperate in achieving compliance with their respective laws and regulations pertaining to:

- (a) the implementation and operation of the provisions of this Agreement governing importations or exportations, including claims of origin and origin procedures;
- (b) the implementation and operation of the Customs Valuation Agreement;
- (c) restrictions or prohibitions on imports or exports; and
- (d) other customs matters as the Parties may agree.

3. Where a Party has a reasonable suspicion of unlawful activity related to its laws or regulations governing importations, the Party may request the other Party to provide specific confidential information it normally collects in connection with the importation of goods.

4. For purposes of paragraph 3, “a reasonable suspicion of unlawful activity” means a suspicion based on relevant factual information obtained from public or private sources comprising one or more of the following:

- (a) historical evidence of non-compliance with laws or regulations governing importations by an importer or exporter;
- (b) historical evidence of non-compliance with laws or regulations governing importations by a manufacturer, producer, or other person involved in the movement of goods from the territory of one Party to the territory of the other Party;
- (c) historical evidence that some or all of the persons involved in the movement from the territory of one Party to the territory of the other Party of goods within a specific product sector have not complied with a Party’s laws or regulations governing importations; or
- (d) other information that the Parties agree is sufficient in the context of a particular request.

5. A Party’s request under paragraph 3 shall be in writing, shall specify the purpose for which the information is sought, and shall identify the requested information with sufficient specificity for the other Party to locate and provide the information.

6. The Party from which the information is requested shall, in accordance with its law and any relevant international agreements to which it is a party, provide a written response containing the information.

7. Each Party shall endeavor to provide the other Party with any other information that would assist that Party in determining whether an importer or exporter of that Party is in compliance with that Party’s laws or regulations governing importations, in particular those related to the prevention of smuggling and similar infractions.

8. In order to facilitate bilateral trade, each Party shall endeavor to provide the other Party with technical advice and assistance for the purpose of improving its risk assessment techniques, simplifying and expediting its customs procedures, advancing the technical skill of its personnel, and enhancing its use of technologies that can lead to improved compliance with regard to its laws or regulations governing importations.

Article 5.6: Confidentiality

1. 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 the information. The Party providing the information may require written assurances from the other Party that the information will be held in confidence, will be used only for the purposes

specified in the other Party's request for information, and will not be disclosed without the Party's specific permission.

2. A Party may decline to provide information requested by the other Party where that Party has failed to act in conformity with assurances provided under paragraph 1.

3. Each Party shall adopt or maintain procedures in which confidential information, including information the disclosure of which could prejudice the competitive position of the person providing the information, submitted in accordance with the administration of the Party's customs laws, shall be protected from unauthorized disclosure.

Article 5.7: Express Shipments

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, expedited customs procedure for express shipments;
- (b) provide for the submission and processing of information necessary for the release of an express shipment before the express shipment arrives;
- (c) allow submission of a single manifest covering all goods contained in a shipment transported by an express shipment service, through, if possible, electronic means;
- (d) to the extent possible, provide for certain goods to be cleared through customs with a minimum of documentation;
- (e) under normal circumstances, provide for express shipments to be cleared within six hours after the necessary customs documents have been submitted, provided the shipment has arrived;
- (f) apply without regard to an express shipment's weight or customs value; and
- (g) under normal circumstances, provide that no customs duties or taxes will be assessed on, nor will formal entry documents be required for, express shipments valued at US\$100 or less.²

Article 5.8: Review and Appeal

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

² Notwithstanding this subparagraph, a Party may require express shipments to be accompanied by an airway bill or other bill of lading. For greater certainty, a Party may assess customs duties or taxes, and may require formal entry documents, for restricted goods.

- (a) a level of administrative review independent of the employee or office that issued the determination; and
- (b) judicial review of the determination.

Article 5.9: Penalties

Each Party shall adopt or maintain measures that allow for the imposition of civil or administrative penalties and, where appropriate, criminal sanctions for violations of its customs laws and regulations, including those governing tariff classification, customs valuation, country of origin, and claims for preferential treatment under this Agreement.

Article 5.10: Advance Rulings

1. Each Party, through its customs authority, shall issue, before a good is imported into its territory, a written advance ruling at the written request of an importer in its territory, or an exporter or producer in the territory of the other Party with regard to:

- (a) tariff classification;
- (b) the application of customs valuation criteria for a particular case, in accordance with the application of the provisions set out in the Customs Valuation Agreement;
- (c) the application of duty drawback, deferral, or other relief from customs duties;
- (d) whether a good is originating;
- (e) whether a good re-entered into the territory of a Party after being exported to the territory of the other Party for repair or alteration is eligible for duty free treatment in accordance with Article 3.6 (Goods Re-entered after Repair or Alteration);
- (f) country of origin marking;
- (g) the application of quotas; and
- (h) such other matters as the Parties may agree.

2. Each Party shall provide that its customs authority shall issue an advance ruling within 150 days after a request, provided that the requester has submitted all information that the Party requires, including, if the authority requests, a sample of the good for which the requester is seeking an advance ruling. In issuing an advance ruling, the customs authority shall take into account facts and circumstances the requester has provided.

3. Each Party shall provide that advance rulings shall take effect on the date they are issued, or on another date specified in the ruling, provided that the facts or circumstances on which the ruling is based remain unchanged.

4. The issuing Party may modify or revoke an advance ruling after the Party notifies the requester. The issuing Party may modify or revoke a ruling retroactively only if the ruling was based on inaccurate or false information.

5. Subject to any confidentiality requirements in its law, each Party shall make its advance rulings publicly available.

6. If a requester provides false information or omits relevant facts or circumstances relating to the advance ruling, or does not act in accordance with the ruling's terms and conditions, the importing Party may apply appropriate measures, including civil, criminal, and administrative actions, monetary penalties, or other sanctions.

Article 5.11: Panamanian Free Zone Monitoring Program

1. Panama shall maintain its existing program of monitoring the importation, exportation, processing, and manipulation of goods in Panamanian free zones.

2. If the United States has a reasonable suspicion that a good for which an importer in the United States has made a claim for preferential tariff treatment under another free trade agreement to which the United States is a party has undergone further processing or operations in a Panamanian free zone, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or transport it to the territory of the United States, then the United States may request in writing that Panama:

- (a) make available all records identified in the written request that relate to whether the good or an identical good, as defined in Article 4.23 (Definitions), was imported into, exported from, or processed or manipulated in a free zone; or
- (b) conduct a visit to a free zone to verify whether such good was imported into, exported from, or processed or manipulated in the free zone.

Panama shall promptly grant any such request, except as provided in paragraph 5. In the written request, the United States shall state that it has a reasonable suspicion as described above.

3. The United States may request in writing that a U.S. official attend a visit under paragraph 2(b), and Panama shall grant any such request.³

4. Where Panama conducts a visit that U.S. officials do not attend, Panama shall, promptly after the conclusion of the visit, report the findings of such visit in writing to the United States.

³ Visits shall be conducted under the authority of Panamanian officials. The attendance of U.S. officials at a visit shall be limited to the purposes provided in this Article and shall not confer any authority to such officials within the territory of Panama.

5. If Panama denies a written request made under paragraph 2, Panama shall provide a written explanation for such denial and shall enter into consultations with the United States within 30 days of the request under paragraph 2 with a view to resolving the matter to the satisfaction of the Parties. If the Parties are unable to resolve the matter in these consultations, either Party may refer the matter to the Commission.

6. For greater certainty, nothing in this Article shall require a shipper or exporter of a good from a Panamanian free zone to the territory of the United States or an importer of a good from a Panamanian free zone into the territory of the United States to collect, retain, or report information in addition to the information the United States requires in accordance with this Agreement or otherwise requires to ensure compliance with U.S. laws or regulations governing importations of goods.

7. The United States shall treat any information that Panama provides pursuant to paragraphs 2, 4 and 5 as if Panama has designated it as confidential information, as provided in Article 5.6.

Article 5.12: Application of Certain Provisions

Panama may delay giving effect to:

- (a) Articles 5.1.1 and 5.1.2 for a period of no longer than two years;
- (b) Articles 5.3 and 5.4 for a period of no longer than three years;
- (c) Article 5.7 for a period of no longer than one year; and
- (d) Article 5.10 for a period of no longer than two years,

beginning on the date of entry into force of this Agreement.