

ANNEX 2.B
TRADE FACILITATION

ANNEX 2.B TRADE FACILITATION

Article 1 General Principles

1. The Parties, aiming to serve the interests of their respective business communities and to create a trading environment allowing them to benefit from the opportunities offered by the Agreement, agree that in particular the following principles are the basis for the development and administration of trade facilitation measures by their competent authorities:
 - (a) transparency, efficiency, simplification, harmonisation and consistency of trade procedures;
 - (b) consistent, impartial, predictable and reasonable administration of international laws and domestic laws, regulations and administrative decisions relevant to international trade in goods;
 - (c) promotion of international standards;
 - (d) consistency with multilateral instruments;
 - (e) best possible use of information technology;
 - (f) high standards of public service;
 - (g) governmental controls based on risk management;
 - (h) cooperation within each Party among customs and other border authorities; and
 - (i) consultations between the Parties and their respective business communities.
2. Nothing in this Annex shall be construed as to diminish the rights and obligations of the Parties under Chapters 4 (Sanitary and Phytosanitary Measures) and 5 (Technical Barriers to Trade) of the Agreement.

Article 2 WTO Agreement on Trade Facilitation

For the purposes of this Annex, the Agreement on Trade Facilitation, as set out in Annex 1A to the WTO Agreement, shall apply and is hereby incorporated into and made part of the Agreement, *mutatis mutandis*. In addition, the measures provided for in this Annex shall apply.

Article 3

Transparency

1. Each Party shall promptly make available, as far as practicable in English, on the internet:
 - (a) all domestic laws and regulations, administrative decisions of general application and 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 in connection with importation or exportation;
 - (c) fees and charges imposed by or for governmental agencies in connection with importation, exportation or transit;
 - (d) rules for the classification or valuation of goods for customs purposes;
 - (e) domestic 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;
 - (j) procedures relating to the administration of tariff quotas; and
 - (k) a description of its customs procedures that informs interested parties of the practical steps needed to trade or transit goods, including contact information on enquiry points.
2. Each Party shall establish enquiry points for customs matters relevant to trade in goods, which may be contacted in English through the internet. Enquiries in English shall be answered in English. Each Party shall endeavour not to require the payment of a fee to answer enquiries. If the payment of a fee is required, the Party concerned shall limit the amount of its fees and charges to the approximate cost of services rendered.

Article 4

Public Consultation and Information before Entry into Force

1. Each Party shall consult its business community on its needs with regard to the development and implementation of trade facilitation measures, giving

particular attention to the interests of micro, small and medium-sized enterprises.

2. Each Party shall publish in advance, and on the internet, any proposed domestic laws and regulations relevant to international trade in goods, with a view to affording interested persons an opportunity to comment on them.
3. Each Party shall ensure that a reasonable period of time is provided between the publication of domestic laws and regulations relevant to international trade in goods and their entry into force.
4. Paragraphs 1 to 3 shall not apply to:
 - (a) measures having a relieving effect;
 - (b) measures, the effectiveness of which would be undermined as a result of compliance with paragraphs 1 to 3;
 - (c) measures applied in urgent circumstances; and
 - (d) minor changes to domestic laws and regulations.

Article 5 ***Advance Rulings***

1. Each Party shall, prior to the importation or exportation of a good, in a reasonable time bound manner, issue a written advance ruling to an importer, exporter, or any person with a justifiable cause, or a representative thereof, who has submitted a written request containing all necessary information. An advance ruling shall be issued with regard to:
 - (a) tariff classification;
 - (b) the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts in accordance with the Customs Valuation Agreement;¹
 - (c) whether a product is originating in accordance with Annex 2.A (Rules of Origin); and
 - (d) other matters as the Parties may agree.
2. Each Party shall endeavour to make information on advance rulings publicly available, taking into account the need to protect confidential information.

¹ Switzerland applies customs duties based on weight or quantity rather than *ad valorem* duties.

Article 6
Procedures for Appeal

1. Each Party shall ensure that any person to whom the customs authority issues an administrative decision has the right to at least:
 - (a) one level of independent administrative appeal, unless the administrative decision has been taken by the highest administrative entity; or
 - (b) one level of independent judicial appeal.
2. Each Party shall ensure that its procedures for review and appeal are carried out in a non-discriminatory manner and without undue delay.
3. Each Party shall ensure that an authority conducting a review or appeal in accordance with paragraph 1 notifies the person in writing of its decision and its reasons thereof.

Article 7
Fees and Charges

1. Fees and charges levied by customs authorities, other than import duties and other than taxes in accordance with Article III of the GATT 1994, imposed in connection with importation, exportation or transit, including tasks provided under Article 5 (Advance Rulings), shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection of domestic goods or a taxation of imports or exports for fiscal purposes.
2. Each Party shall endeavour to not calculate fees and charges referred to in paragraph 1 on an *ad valorem* basis.
3. Each Party shall publish information on fees and charges on the internet, as far as practicable in English. Such information shall include the service provided, the responsible authority, the applicable fees and charges and their methods of calculation, as well as the time and method of the payment.
4. Each Party's customs authorities shall provide information on fees and charges applicable to imports, exports or transit of goods, including the methods of calculation.

Article 8
Penalty Disciplines

1. Each Party shall ensure that penalties for breaches of its domestic customs laws, regulations, or procedural requirements are imposed only on the person or persons legally responsible for the breach.

2. The penalty imposed shall depend on the facts and circumstances of the case and shall be based on the culpability of the responsible person and be commensurate with the degree and severity of the breach.
3. A penalty for minor breaches, such as inadvertent omissions or mistakes, including mistakes in interpretation of domestic customs laws, regulation or procedural requirement, made without fraudulent intent or gross negligence, shall not be greater than necessary to discourage a repetition of such errors. Each party shall ensure that penalties are not inflicted for obvious formality errors, in accordance with the domestic customs laws, regulations, or procedural requirements.
4. Each Party shall ensure that when a penalty is imposed for a breach of domestic customs laws, regulations, or procedural requirements, an explanation in writing is provided to the person or persons upon whom the penalty is imposed, specifying the nature of the breach, the basis for the penalty and instructions on the rights to appeal.
5. Each Party shall consider, as a mitigating factor, the voluntary disclosure to the competent authorities of the circumstances of a breach of domestic customs laws, regulations, or procedural requirements prior to the discovery of a breach by the authority.
6. Each Party shall specify in its domestic laws and regulations a limited period within which it may initiate penalty proceedings in connection with a breach of domestic customs laws, regulations, or procedural requirements.
7. Each Party shall ensure that it maintains measures to avoid conflicts of interest in the assessment and collection of penalties and duties.

Article 9

Release and Clearance of Goods

1. Each Party shall apply simple, reasonable and impartial trade and border procedures.
2. Each Party shall adopt or maintain procedures that:
 - (a) provide for advance electronic submission and processing of information before the physical arrival of goods in order to expedite their clearance;
 - (b) provide for the possibility of electronic payment for duties, taxes, fees and charges collected by the customs authority; and
 - (c) allow importers to obtain the release of goods prior to meeting all import requirements of that Party if the importer provides sufficient guarantees and where it is decided that no further examination, physical inspection or any other submission is required;

3. In order to avoid deterioration of perishable goods², each Party shall provide:
 - (a) for the rapid release of perishable goods, as soon as possible, provided that all regulatory requirements have been met;
 - (b) upon request, in case of delays in the release of perishable goods, an explanation of the reasons for the delay to the extent possible.

Article 10

Risk Management

1. Each Party shall determine which persons, goods, or means of transport are to be examined and the extent of the examination, based on risk management.
2. Each Party shall systematically apply objective risk management procedures and practices in identifying and addressing risks related to the entry, exit, transit, transfer or end-use of goods moved between the customs territories of the Parties, or to the presence of goods that are not in free circulation.
3. Each Party's border procedures and customs controls, including its documentary examinations, physical examinations or post-audit examinations, shall not be more burdensome than necessary to limit its exposure to the risks referred to in paragraph 2.

Article 11

Formalities Related to Importation, Exportation and Transit

1. Each Party shall limit controls, formalities and the number of documents required in the context of trade in goods between the Parties to those necessary and appropriate to ensure compliance with its domestic laws and regulations and thereby simplify to the greatest extent possible the respective procedures.
2. With a view to minimising the incidence and complexity of import, export and transit formalities and to decreasing and simplifying import, export and transit documentation requirements, each Party shall ensure, as appropriate, that such formalities and documentation requirements are:
 - (a) applied with a view to a rapid release and clearance of goods;
 - (b) applied in a manner that aims at reducing the time and cost of compliance; and
 - (c) the least trade-restrictive.

² For the purposes of this paragraph, “**perishable goods**” means goods which rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.

3. In accordance with domestic laws, regulations, or procedural requirements, the Parties shall use efficient trade procedures, with a view to reducing costs and unnecessary delays in trade between them, based on international standards, in particular the standards, guidelines and recommendations of the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT), the International Organization for Standardization (ISO), and the World Customs Organization (WCO) including the principles of the *Revised International Convention on the Simplification and Harmonisation of Customs Procedures* (Revised Kyoto Convention).

Article 12 **Customs Brokers**

The customs systems and procedures of each Party shall enable exporters and importers to submit their customs declaration without requiring recourse to customs brokers.

Article 13 **Temporary Admission of Goods and Inward and Outward Processing**

1. Each Party shall allow temporary admission of goods in accordance with international standards, as applicable, and its domestic law.
2. For the purposes of this Article, “**temporary admission**” means customs procedures under which certain goods may be brought into a customs territory conditionally relieved from payment of customs duties.
3. Each Party shall allow for inward processing and outward processing in accordance with international standards, as applicable, and its domestic law.
4. For the purposes of this Article,
 - (a) “**inward processing**” means the customs procedure under which certain goods can be brought into a Party’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;
 - (b) “**outward processing**” means the customs procedure under which goods which are in free circulation in a Party’s customs territory may be temporarily exported for manufacturing, processing, or repair abroad and then re-imported.

Article 14 **Competent Customs Offices**

1. Each Party shall designate the customs offices at which goods may be presented or cleared. In determining the competence and location of these offices and their

business hours, the factors to be taken into account shall include in particular the requirements of trade.

2. Each Party shall, subject to the availability of resources, perform customs controls and procedures outside the designated business hours or outside the premises of the competent customs offices if requested by a trader for a valid reason. Any related fee or charge shall be limited to the approximate cost of the services rendered.

Article 15

Authorised Economic Operator System

1. A Party operating an Authorised Economic Operator System affecting international trade flows shall:
 - (a) afford another Party the possibility to negotiate a mutual recognition agreement on authorisation for the purpose of facilitating international trade while ensuring effective customs control; and
 - (b) base its domestic laws and regulations on relevant international standards, as applicable, in particular the WCO Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework), except when such standards would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued.

Article 16

Consular Transactions

1. No Party shall require consular transactions, including any related fees and charges, in connection with the importation of any good of another Party.
2. For the purposes of this Article, “**consular transactions**” means requirements that goods of a Party intended for export to the territory of another Party must first be submitted to the supervision of the consul of the importing Party in the territory of the exporting Party for the purpose of obtaining consular invoices or consular visas for commercial invoices, certificates of origin, manifests, shippers’ export declarations, or any other customs documentation required on or in connection with importation.

Article 17

Data, Documentation and Automation

Each Party shall endeavour to establish or maintain a single window enabling traders to electronically submit the standardised information or documentation related to imported and export goods.

Article 18
Time Release Studies

1. Each Party is encouraged to measure the average time required for the release of goods by its customs administration periodically and in a consistent manner, and to publish the findings thereof, using tools such as the Guide to Measure the Time Required for the Release of Goods issued by the WCO, with a view to:
 - (a) assessing the Party's trade facilitation measures; and
 - (b) considering opportunities for further improvement of the time required for the release of goods.
2. Each Party is encouraged to share with the other Parties its experiences in the time release studies referred to in paragraph 1, including methodologies used and bottlenecks identified.

Article 19
Sub-Committee on Trade Facilitation

1. A Sub-Committee on Trade Facilitation is hereby established, consisting of government representatives of the Parties.
2. The functions of the Sub-Committee related to this Annex shall include:
 - (a) monitoring and review of measures taken and implementation of commitments;
 - (b) exchange of information;
 - (c) discussion on operational matters including cooperation among competent authorities;
 - (d) the preparation of recommendations and reporting to the Joint Committee as necessary; and
 - (e) any other matter referred to it by the Joint Committee.
3. The Sub-Committee on Trade Facilitation shall act by consensus.
4. The Sub-Committee shall meet at least every two years, consecutively with the meeting of the Joint Committee and the Sub-Committees on Trade in Goods and Rules of Origin, unless agreed otherwise by the Parties. The meetings of the Sub-Committee on Trade Facilitation shall be chaired jointly by an EFTA State and India.