

CHAPTER 4

CUSTOMS MATTERS AND TRADE FACILITATION

ARTICLE 4.1

Objectives

The objectives of this Chapter are to:

- (a) promote trade facilitation for goods traded between the Parties while ensuring effective customs controls, taking into account the evolution of trade practices;
- (b) ensure transparency of each Party's customs legislation and other trade-related laws and regulations and consistency thereof with applicable international standards;
- (c) ensure predictable, consistent and non-discriminatory application by each Party of its customs legislation and other trade-related laws and regulations;
- (d) promote simplification and modernisation of each Party's customs procedures and practices;
- (e) further develop risk management techniques to facilitate legitimate trade while securing the international trade supply chain; and
- (f) enhance cooperation between the Parties in the field of customs matters and trade facilitation.

ARTICLE 4.2

Scope

1. This Chapter applies to matters relating to each Party's customs legislation, other trade-related laws and regulations and general administrative procedures related to trade, including their application to goods traded between the Parties, as well as the cooperation between the Parties.
2. Nothing in this Chapter shall affect the rights and obligations of a Party under Chapters 6 and 7.
3. In the event of any inconsistency between this Chapter and Chapter 6 or 7, Chapter 6 or 7 shall prevail to the extent of the inconsistency.
4. This Chapter applies without prejudice to the fulfilment of each Party's legitimate policy objectives and its obligations under international agreements to which it is a party, regarding the protection of:
 - (a) public morals;
 - (b) human, animal or plant life or health;
 - (c) national treasures of artistic, historic or archaeological value; or
 - (d) the environment.
5. This Chapter shall be implemented by each Party in accordance with its laws and regulations. Each Party shall use its available resources in an appropriate way to implement this Chapter.

ARTICLE 4.3

Transparency

1. Each Party shall ensure that its customs legislation and other trade-related laws and regulations as well as its general administrative procedures and relevant information of general application related to trade are published and readily available to any interested person in an easily accessible manner, including, as appropriate, through the Internet.
2. Each Party shall publish and make readily available its customs legislation, other trade-related laws and regulations and general administrative procedures related to trade as early as possible before their entry into force, in order to enable any interested person to become acquainted with them, except in the case:
 - (a) of urgent circumstances;
 - (b) of minor changes to such laws, regulations or general administrative procedures;
 - (c) the effectiveness of such laws and regulations or their enforcement is undermined as a result of prior publication; or
 - (d) of measures having relieving effects.
3. Each Party shall designate one or more enquiry points to answer reasonable enquiries from any interested persons on the matters covered by paragraph 1. Enquiry points shall answer such enquiries and provide any relevant forms and documents within a reasonable time period set by each Party.
4. Each Party shall, as appropriate, provide for regular consultations between its customs authority and other trade-related agencies and traders or other stakeholders located within its territory.

5. Information on fees and charges shall be published in accordance with paragraphs 1 and 2. That 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. Such fees and charges shall not be applied until information on them has been published.

ARTICLE 4.4

Procedures for import, export and transit

1. Each Party shall apply its customs legislation and other trade-related laws and regulations in a predictable, consistent, transparent and non-discriminatory manner.
2. Each Party shall ensure that its customs procedures:
 - (a) are consistent with international standards and recommended practices applicable to each Party in the area of customs procedures such as those made under the auspices of the World Customs Organization¹ (hereinafter referred to as "the WCO"), including the substantive elements of the Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures, done at Brussels on 26 June 1999, the International Convention on the Harmonized Commodity Description and Coding System, done at Brussels on 14 June 1983, and the Framework of Standards to Secure and Facilitate Global Trade of the WCO (hereinafter referred to as "the SAFE Framework");
 - (b) aim at facilitating legitimate trade, taking into account the evolution of trade practices, while securing compliance with its laws and regulations;
 - (c) provide for effective enforcement in case of breaches of its laws and regulations concerning customs procedures, including duty evasion and smuggling; and
 - (d) do not include mandatory use of customs brokers or preshipment inspections.

¹ For greater certainty, the WCO was established in 1952 as the Customs Co-operation Council (CCC).

3. Each Party shall adopt or maintain measures granting favourable treatment with respect to customs controls prior to the release of goods to traders or operators fulfilling criteria specified in its laws and regulations.
4. Each Party shall promote the development and use of advanced systems, including those based on information and communications technology, to facilitate the exchange of electronic data between traders or operators and its customs authority and other trade-related agencies.
5. Each Party shall work towards further simplification and standardisation of data and documentation required by its customs authority and other trade-related agencies.

ARTICLE 4.5

Release of goods

Each Party shall adopt or maintain customs procedures that:

- (a) provide for the prompt release of goods within a period that is not longer than necessary to ensure compliance with its laws and regulations;
- (b) allow for advance electronic submission and processing of documentation and any other required information prior to the arrival of the goods; and
- (c) allow for the release of goods prior to the final determination of customs duties, taxes, fees and charges, subject to the provision of a guarantee, if required by its laws and regulations, in order to secure their final payment.

ARTICLE 4.6

Simplification of customs procedures

1. Each Party shall work towards simplification of its requirements and formalities for customs procedures in order to reduce the time and costs thereof for traders or operators, including small and medium-sized enterprises.
2. Each Party shall adopt or maintain measures allowing traders or operators fulfilling criteria specified in its laws and regulations to benefit from further simplification of customs procedures. Such simplification may allow periodical declaration for the determination and payment of customs duties and taxes covering multiple imports within a given period, after the release of the goods.
3. Each Party shall adopt or maintain programmes which enable operators fulfilling criteria specified in its laws and regulations to benefit further from or have easier access to the simplification referred to in paragraph 2.

ARTICLE 4.7

Advance rulings

1. Each Party shall issue, through its customs authority, an advance ruling that sets forth the treatment to be provided to the goods concerned. That ruling shall be issued in a reasonable, time-bound manner to the applicant that has submitted a written request, including in electronic format, containing all necessary information in accordance with the laws and regulations of the issuing Party.
2. An advance ruling shall cover tariff classification of the goods, origin of goods including their qualification as originating goods under Chapter 3 or any other matter as the Parties may agree, in particular regarding the appropriate method or criteria to be used for the customs valuation of the goods.

3. Subject to any confidentiality requirements in its laws and regulations, a Party may publish its advance rulings, including through the Internet.

ARTICLE 4.8

Appeal and review

1. Each Party shall guarantee the right of appeal or review to any person to whom an administrative decision has been addressed by the customs authority or other trade-related agencies of that Party.

2. Appeal or review shall include:

(a) an administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision; or

(b) a judicial appeal or review of the decision.

3. Each Party shall ensure that, if the decision on appeal or review referred to in subparagraph 2(a) is not issued within a period of time provided for in its laws and regulations or without undue delay, the person referred to in paragraph 1 has the right to further administrative or judicial appeal or review.

4. Each Party shall ensure that the person referred to in paragraph 1 is provided with the reasons for the administrative decision to enable that person to have recourse to appeal or review procedures when necessary.

ARTICLE 4.9

Risk management

1. Each Party shall adopt or maintain a risk management system that enables its customs authority to concentrate inspection activities on high-risk consignments and that expedites the release of low-risk consignments.
2. Each Party shall base risk management on assessment of risk through appropriate selectivity criteria.
3. A Party may also select, on a random basis, consignments for inspection activities referred to in paragraph 1 as part of its risk management.
4. Each Party shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions to international trade.

ARTICLE 4.10

Post-clearance audit

1. With a view to expediting the release of goods, each Party shall adopt or maintain post-clearance audit to ensure compliance with its customs legislation and other trade-related laws and regulations. The customs authority of each Party shall use the results of post-clearance audit performed by it when applying the risk management referred to in Article 4.9. A Party may provide that its customs authority uses the results of the post-clearance audit performed by other trade-related agencies when applying risk management, and *vice-versa*.
2. Each Party shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Party 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 Party 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.

ARTICLE 4.11

Transit and transshipment

Each Party shall adopt or maintain procedures to facilitate the movement of goods from or to the other Party that are in transit through or in transshipment within its customs territory, while maintaining appropriate control.

ARTICLE 4.12

Customs cooperation

1. Without prejudice to other forms of cooperation provided for in this Agreement, the customs authorities of the Parties shall cooperate, including by exchanging information, and provide mutual administrative assistance in the matters referred to in this Chapter in accordance with CMAA, notwithstanding Article 1.6.
2. The customs authorities of the Parties shall enhance cooperation on the matters referred to in this Chapter with a view to further developing trade facilitation while ensuring compliance with their respective customs legislation and improving supply chain security, in the following areas:
 - (a) cooperation on further simplification of customs procedures, taking into account the evolution of trade practices;
 - (b) cooperation on harmonisation of data requirements for customs purposes, in line with applicable international standards such as the WCO standards;
 - (c) cooperation on further development of the customs-related aspects of securing and facilitating the international trade supply chain in accordance with the SAFE Framework;

- (d) cooperation on improvement of their risk management techniques, including sharing best practices and, if appropriate, risk information and control results;
- (e) cooperation with a view to further developing the measures referred to in paragraph 3 of Article 4.4 and paragraph 2 of Article 4.6 or the programmes referred to in paragraph 3 of Article 4.6, including the possibility of cooperation with a view to allowing traders or operators of a Party to benefit from the measures or the programmes of the other Party;
- (f) cooperation and coordination in international organisations such as the WTO and the WCO, on matters of common interest, including tariff classification, customs valuation and origin, with a view to establishing, if possible, common positions; and
- (g) cooperation on enforcement against the trafficking of prohibited goods.

3. The customs authorities of the Parties shall ensure the exchange of information necessary for the purposes of paragraph 2.

ARTICLE 4.13

Temporary admission

For the temporary admission of goods referred to in Article 2.10 and regardless of their origin, each Party shall, in accordance with the procedures laid down in international agreements concerning temporary admissions and applied by the Party, accept A.T.A. carnets¹ issued in the other Party.

¹ "A.T.A. carnet" has the same meaning as in the Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods, done at Brussels on 6 December 1961 or the Convention on Temporary Admission, done at Istanbul on 26 June 1990.

ARTICLE 4.14

Committee on Rules of Origin and Customs-Related Matters

1. The Committee on Rules of Origin and Customs-Related Matters established pursuant to Article 23.3 (hereinafter referred to in this Chapter as "the Committee") shall be responsible for the effective implementation and operation of this Chapter and the customs-related matters of Chapter 2 and of Article 14.57, in addition to the other responsibilities specified in paragraph 1 of Article 3.27.¹
2. The Parties shall ensure that the composition of their delegations to meetings of the Committee corresponds to the agenda items.
3. The Committee shall have the following functions:
 - (a) addressing all issues arising from the implementation and operation of the provisions referred to in paragraph 1;
 - (b) identifying areas for improvement in the implementation and operation of the provisions referred to in paragraph 1;
 - (c) functioning as a mechanism to expeditiously reach mutually agreed solutions with regard to any matters covered by the provisions referred to in paragraph 1;
 - (d) formulating resolutions, recommendations or opinions regarding actions or measures which it considers necessary for the attainment of the objectives and effective functioning of this Chapter;
 - (e) deciding on the actions to be taken or the measures to be implemented by a Party or the Parties, in the areas referred to in paragraph 2 of Article 4.12, which it considers necessary for the attainment of the objectives and effective functioning of this Chapter; and

¹ For greater certainty, nothing in this Article shall affect the rights and obligations of the Parties with regard to the Committee on Trade in Goods relating to Chapter 2, nor the Committee on Intellectual Property relating to Chapter 14.

- (f) carrying out other functions as may be delegated by the Joint Committee pursuant to subparagraph 5(b) of Article 23.1.