

CHAPTER 5

CUSTOMS PROCEDURES

Article 5.1: Definitions

For the purposes of this Chapter:

customs law means such laws and regulations administered and enforced by the customs administration of each Party concerning the importation, exportation, and transit/transshipment of goods;

customs procedures means the treatment applied by the customs administration of a Party to goods which are subject to that Party's customs law; and

temporary admission means customs procedures under which certain goods (including means of transport) can be brought into a Party's territory conditionally relieved, totally or partially, from payment of import duties and taxes and without application of import prohibitions or restrictions of an economic character; such goods (including means of transport) must be imported for a specific purpose and must be intended for re-exportation within a specified period and without having undergone any change except normal depreciation due to the use made of them.

Article 5.2: Objectives

The objectives of this Chapter are to:

- (a) ensure predictability, consistency and transparency in the application of customs laws, regulations and procedures of the Parties;
- (b) promote efficient, economical administration of customs procedures and the expeditious clearance of goods;
- (c) to the extent possible, simplify and harmonise customs procedures;
- (d) enhance cooperation between the customs administrations of the Parties;
and
- (e) facilitate trade between the Parties.

Article 5.3: Scope

This Chapter shall apply, in accordance with the respective laws and regulations of the Parties, to customs procedures applied to goods traded between the Parties.

Article 5.4: Customs Procedures and Trade Facilitation

1. Each Party shall ensure that its customs procedures and practices are administered to:
 - (a) facilitate trade in a predictable, impartial, uniform and transparent manner, including through the expeditious clearance of goods; and
 - (b) avoid arbitrary and unwarranted procedural obstacles.
2. Customs procedures of each Party shall conform, where possible and to the extent permitted by its respective laws and regulations, to international standards and recommended practices established by the World Customs Organization and under other relevant international agreements to which the Parties are party.
3. The customs administration of each Party shall review its customs procedures with a view to facilitating trade.

Article 5.5: Customs Cooperation

1. The customs administration of each Party shall endeavour to assist the customs administration of the other Party, in relation to the implementation and operation of this Chapter and other customs matters as the Parties may agree.
2. Each Party shall endeavour to provide the customs administration of the other Party with timely notice of any significant modification of its customs laws or customs procedures that is likely to substantially affect the operation of this Agreement.
3. The Parties shall encourage their customs administrations to consult with each other regarding significant customs issues that affect trade between the Parties.
4. The customs administrations of the Parties shall endeavour to establish or maintain channels of communication for customs cooperation, including by establishing contact points, in order to facilitate the rapid and secure exchange of information and improve coordination on importation issues.

Article 5.6: Publication and Enquiry Points

1. Each Party shall make publicly available, including online, its customs laws, regulations and general administrative procedures applied or enforced by its customs administration, not including law enforcement procedures and internal operational guidelines.

2. Each Party shall designate or maintain one or more enquiry points to address enquiries from interested persons concerning customs matters and shall make information on how to make such enquiries publicly available online. Such customs matters shall include but not be limited to:

- (a) the application of duty drawback, deferral or other types of relief that reduce, refund or waive customs duties;
- (b) applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;
- (c) rules for the classification or valuation of products for customs purposes;
- (d) penalty provisions for breaches of import, export or transit formalities; and
- (e) procedures for appeal or review.

3. To the extent practicable and in a manner consistent with its laws and regulations, each Party shall provide interested persons the opportunity to and a reasonable period of time in which to comment on the proposed introduction or amendment of customs laws and procedures .

Article 5.7: Advance Ruling

1. Each Party, through its customs administration or other relevant authorities, on the application of a person described in paragraph 2(a) or 2(b), shall provide in writing advance rulings in respect of:

- (a) tariff classification;
- (b) questions arising from the application of the principles of the Customs Valuation Agreement, and;
- (c) origin of goods.

2. Where available, each Party shall adopt or maintain procedures for advance rulings, which shall:

- (a) provide that an importer in its territory may apply for an advance ruling before the importation of the goods in question;
- (b) provide that an exporter or producer in the territory of the other Party may apply for an advance ruling before the importation of the goods in question;
- (c) require that an applicant for an advance ruling provide a detailed description of the goods and all relevant information needed to process an application for an advance ruling;
- (d) provide that its customs administration may, at any time during the course of an evaluation of an application for an advance ruling, request that the applicant provide additional information within a specified period;
- (e) provide that any advance ruling be based on the facts and circumstances presented by the applicant, and any other relevant information in the possession of the decision-maker;
- (f) provide that an advance ruling be issued to the applicant expeditiously, within the period specified in the laws, regulations or administrative determinations of each Party; and
- (g) provide in writing the reasons for the decision.

3. A Party may reject requests for an advance ruling where the additional information requested by it in accordance with paragraph 2(d) is not provided within the specified period.

4. Subject to paragraphs 1 and 5, and where available, each Party shall apply an advance ruling to all importations of goods described in that ruling imported into its territory for three years from the date of that ruling, or such other period as specified in the laws, regulations or administrative determinations of that Party.

5. A Party may modify or revoke an advance ruling upon a determination that the ruling was based on an error of fact or law (including human error), the information provided is false or inaccurate, if there is a change in its laws and regulations which is consistent with this Agreement, or there is a change in a material fact or circumstance on which the ruling is based.

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

7. Each of the provisions of paragraphs 1 and 2 shall only apply between the Parties, when a Party has the capacity to implement that provision, and when provided for under the laws and regulations of that Party.

Article 5.8: Review and Appeal

1. Each Party shall ensure that any person to whom it issues a decision on a customs matter has access, within its territory, to:

- (a) administrative review by an administrative authority higher than or independent of the employee or office that issued the decision; and
- (b) judicial review of the decision.

2. Each Party shall ensure that the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing.

Article 5.9: Penalties

1. 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 law.

2. Each Party shall ensure that a penalty imposed by its customs administration for a breach of customs law is imposed only on the person legally responsible for the breach.

3. Each Party shall ensure that the penalty imposed by its customs administration is dependent on the facts and circumstances¹ of the case and is commensurate with the degree and severity of the breach.

4. Each Party shall ensure that if a penalty is imposed by its customs administration for a breach of customs law, an explanation in writing is provided to the person upon whom the penalty is imposed specifying the nature of the breach and the law used for determining the penalty.

Article 5.10: Risk Management

1. Each Party shall adopt or maintain a risk management system for assessment and targeting that enables its customs administration to focus its inspection activities on high-risk goods and that simplifies the clearance and movement of low-risk goods.

¹ Facts and circumstances shall be established objectively in accordance with each Party's laws and regulations.

2. In order to facilitate trade, each Party shall periodically review and update, as appropriate, the risk management system specified in paragraph 1.

Article 5.11: Release of Goods

1. In order to facilitate bilateral trade, each Party shall adopt or maintain simplified customs procedures for the efficient release of goods. This paragraph shall not require a Party to release a good if its requirements for release have not been met.

2. In accordance with paragraph 1, each Party shall adopt or maintain procedures that:

(a) provide for the release of goods within a period no greater than that required to ensure compliance with its customs laws;

(b) provide for customs information to be submitted and processed in electronic format as appropriate, before the goods arrive in order to expedite the release of goods from customs control upon arrival;

(c) allow goods to be released at the point of arrival without temporary transfer to warehouses or other facilities; and

(d) allow 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. As a condition for such release, a Party 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 other appropriate instrument provided for in its laws and regulations.

4. If a Party allows for the release of goods conditioned on a security, it shall adopt or maintain procedures that:

(a) ensure that the amount of the security is no greater than that required to ensure that obligations arising from the importation of the goods will be fulfilled; and

- (b) ensure that the security shall be discharged as soon as possible after its customs administration is satisfied that the obligations arising from the importation of the goods have been fulfilled.

Article 5.12: Temporary Admission of Goods

1. Each Party shall allow temporary admission as provided for in its laws and regulations, and grant duty-free temporary admission for goods including, but not limited to, the following, regardless of their origin:

- (a) professional equipment, including equipment for the press or television, software, and broadcasting and cinematographic equipment, that is necessary for carrying out the business activity, trade or profession of a person who qualifies for temporary entry in accordance with the laws and regulations of the importing Party;
- (b) goods intended for display or demonstration;
- (c) commercial samples;
- (d) goods admitted for sports purposes;
- (e) goods admitted for repair or alteration from the territory of the other Party²; and
- (f) containers, pallets and packing material, that are in use or to be used in the international transportation of goods.

2. Each Party shall, on request of the person concerned and for reasons its customs administration considers valid, extend the time limit for temporary admission beyond the period initially fixed.

3. Each Party shall permit a good temporarily admitted under this Article to be exported through a customs port other than the port through which it was admitted.

4. Each Party shall, in accordance with its laws and regulations, provide that the importer or other person responsible for a good admitted under this Article shall not be liable for failure to export the good on presentation of satisfactory proof to the importing Party that the good was destroyed within the period fixed for temporary admission, including any lawful extension.

² For the purposes of this Article, “repair or alteration” does not include an operation or process that:
(a) destroys a good’s essential characteristics or creates a new or commercially different good; or
(b) transforms an unfinished good into a finished good.

Article 5.13: Information Technology

1. Each Party shall apply information technology to support customs operations, where it is cost-effective and efficient, particularly in the paperless trading context, taking into account developments in this area within relevant international organisations, including the World Customs Organization.
2. The customs administration of each Party shall endeavour to establish as soon as practicable an electronic means for communication of relevant information required by it and other relevant, trade-related agencies to facilitate the international movement of goods and means of transport.
3. The introduction and enhancement of information technology shall, to the greatest extent possible, be carried out in consultation with relevant parties, including businesses directly affected.

Article 5.14: Confidentiality

1. Nothing in this Chapter shall be construed to require any Party to furnish or allow access to confidential information in accordance with this Chapter, the disclosure of which it considers would:
 - (a) be contrary to the public interest as determined by its laws and regulations;
 - (b) be contrary to any of its laws and regulations including, but not limited to, laws and regulations protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;
 - (c) impede law enforcement; or
 - (d) prejudice legitimate commercial interests, which may include competitive position, of particular enterprises, public or private.
2. Where a Party provides information to the other Party in accordance with this Chapter and designates the information as confidential, the Party receiving the information shall maintain the confidentiality of the information, use it only for the purposes specified by the Party providing the information, and not disclose it without the specific written permission of the Party providing the information.