

CHAPTER 4
CUSTOMS PROCEDURES AND TRADE FACILITATION

ARTICLE 4.1
Definitions

For the purposes of this Chapter, the following definitions shall mean:

customs law means provisions implemented by legislation or regulation, administered or enforced by the customs authority of a Party, concerning the importation, exportation, and transit of goods, as well as any other customs procedure including those relating to customs duties, taxes or any other charges collected by the customs authority of a Party, or measures for prohibition, restriction, or control enforced by the customs authorities; and

customs procedure means the measures applied by the customs authority of a Party to goods and to the means of transport that are subject to its customs law.

ARTICLE 4.2
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 predictability, consistency and transparency in the application of customs law and customs procedures of the Parties;
- (c) promote efficient administration of customs procedures, and the expeditious clearance of goods;
- (d) simplify customs procedures of the Parties and harmonise them to the extent possible with relevant international standards; and
- (e) promote co-operation between the customs authorities of the Parties.

ARTICLE 4.3
Scope

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

ARTICLE 4.4
General Provisions

1. Parties agree that their customs laws and customs procedures, and their application, shall be transparent, non-discriminatory, consistent and avoid unnecessary procedural obstacles to trade.
2. Customs procedures of the Parties shall conform, where possible, to the standards and recommended practices of the WCO and other relevant international agreements to which the Parties are party.
3. The customs authority of each Party shall periodically review its customs procedures with a view to their further simplification and development to facilitate bilateral trade.

ARTICLE 4.5
Publication and Availability of Information

1. Each Party shall ensure that its relevant laws, regulations, guidelines, procedures, and administrative rulings governing customs matters are promptly published in a non-discriminatory and easily accessible manner including, to the extent possible, on the Internet in the English language.
2. Each Party shall designate, establish, and maintain one or more inquiry points to address inquiries from interested persons pertaining to customs matters, and shall make available publicly, through electronic means, information concerning procedures for making such inquiries.
3. Nothing in this Chapter shall require any Party to publish law enforcement procedures or internal operational guidelines, including those related to conducting risk analysis and targeting methodologies.
4. Each Party shall, to the extent practicable, and in a manner consistent with its domestic law, ensure that new or amended laws and regulations of general application related to customs matters are published, or information on them made otherwise publicly available, as early as possible before their entry into force, so that interested parties have the opportunity to become acquainted with the new or amended laws and regulations. Such information and publications shall, to the extent possible, be available in the English language.
5. Where appropriate, the following may be excluded from paragraphs 1 and 4:
 - (a) changes to duty rates or tariff rates;
 - (b) measures that have a relieving effect;

- (c) measures that may be undermined as a result of compliance with paragraphs 1 and 4;
- (d) measures applied in urgent circumstances; or
- (e) minor changes to domestic law.

ARTICLE 4.6 **Risk Management**

The Parties shall adopt a risk management approach in its customs activities in order to facilitate the clearance of low-risk consignments, while focusing its inspection activities on high-risk goods.

ARTICLE 4.7 **Paperless Communications**

1. For the purposes of facilitating bilateral exchange of international trade data and expediting procedures for the release of goods, the Parties shall provide an electronic environment that supports business transactions between their respective customs authorities and their trading entities.
2. The Parties shall exchange views and information on realising and promoting paperless communications between their respective customs authorities and their trading entities.
3. The respective customs authorities of the Parties, in implementing initiatives which provide for the use of paperless communications, shall take into account the methodologies agreed at the WCO and other appropriate international fora.
4. The Parties shall cooperate bilaterally and in international fora to enhance acceptance of electronic versions of trade administration documents.

ARTICLE 4.8 **Single Window**

1. Each Party shall endeavour to implement and promote its single window, enabling traders to submit documentation or data requirements for importation, exportation, or transit of goods through a single-entry point to the participating authorities or agencies. The Parties shall endeavour to work on the interoperability between their single windows.
2. In cases where documentation or data requirements have already been received through the single window, the same documentation or data requirements shall not be

requested by participating authorities or agencies except in urgent circumstances and other limited exceptions which are made public.

3. Each Party shall adopt or maintain procedures to determine duties and taxes upon the submission of the customs declaration through the single window and to allow collection of payment electronically upon approval of the customs declaration.

ARTICLE 4.9 **Advance Rulings**

1. Each Party shall provide for the issuance of an advance ruling, prior to the importation of a good into its territory, to an importer in its territory or to an exporter or producer (the applicant) in the territory of the other Party.

2. For the purposes of paragraph 1, each Party shall issue a ruling within a reasonable time-bound manner from the date of receipt of a complete application for an advance ruling, in accordance with its domestic laws and procedures, with regard to:

- (a) the tariff classification of the good;
- (b) whether the good qualifies as an originating good;
- (c) 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; and
- (d) other matters as agreed by the Parties.

3. A Party may request that the applicant provide additional information at any time during the course of an evaluation of an application for an advance ruling, which may include a sample of the good, necessary to evaluate the request.

4. A Party shall apply an advance ruling issued by it under paragraph 1 on the date that the ruling is issued, or on a later date specified in the ruling, and that ruling shall remain in effect for a reasonable period of time and in accordance with the domestic laws and procedures on advanced rulings unless the advance ruling is modified or revoked.

5. An advance ruling issued by the Party shall be binding only to the applicant to whom the ruling is issued, and to the Party that issued it in respect of that applicant.

6. A Party may decline to issue an advance ruling if the facts and circumstances forming the basis of the advance ruling are the subject of a post clearance audit or an administrative or judicial review or appeal. A Party that declines to issue an advance ruling shall promptly notify the applicant in writing, setting out the relevant facts and circumstances and the basis for its decision.

7. The importing Party may modify or revoke an advance ruling:
 - (a) if the ruling was based on incomplete, incorrect, false, or misleading information, or an error of fact;
 - (b) if there is a change in the material facts or circumstances on which the ruling was based;
 - (c) to conform with a modification of this Agreement;
 - (d) to conform with a judicial decision or a change in its domestic law; or
 - (e) if the applicant has not acted in accordance with the rulings' terms and conditions.
8. A Party shall provide written notice to the applicant explaining its decision to revoke or modify the advance ruling issued to the applicant.
9. A Party shall provide that any modification or revocation of an advance ruling shall be effective on the date on which the modification or revocation is issued, or on such later date as may be specified therein. A Party may only modify or revoke an advance ruling with retroactive effect if the ruling was based on incomplete, incorrect, false, or misleading information provided by the applicant, or the applicant has not acted in accordance with its terms and conditions.
10. The issuing Party may postpone the effective date of the modification or revocation of an advance ruling for a reasonable period of time, and in accordance with each Party's national procedures on advance rulings, where the person to whom the advance ruling was issued demonstrates that they have relied in good faith to their detriment on that ruling.

ARTICLE 4.10 **Penalties**

1. Each Party shall maintain measures that allow for the imposition of penalties for breaches of its customs law or procedure.
2. Each Party shall ensure that penalties issued for a breach of a customs law or procedure are imposed only on the person responsible for the breach under its laws.
3. Each Party shall ensure that the penalty imposed by its customs authority is dependent on the facts and circumstances of the case and is commensurate with the degree and severity of the breach.
4. Each Party shall ensure that it maintains measures to avoid conflicts of interest in the assessment and collection of penalties and duties. No portion of the remuneration

of a government official shall be calculated as a fixed portion or percentage of any penalties or duties assessed or collected.

5. Each Party is encouraged to require its customs authority, when imposing a penalty for a breach of its customs law or procedures, to consider as a potential mitigating factor the voluntary disclosure of the breach prior to its discovery by the customs administration.

6. Each Party shall ensure that if a penalty is imposed by its customs authority for a breach of its customs law or procedures, an explanation in writing is provided to the person upon whom the penalty is imposed specifying the nature of the breach and the law, regulation or procedure used for determining the penalty amount.

ARTICLE 4.11 **Release of Goods**

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade.

2. Pursuant to paragraph 1, each Party shall adopt or maintain procedures that:

- (a) provide for the immediate release of goods upon receipt of the customs declaration and fulfillment of all applicable requirements and procedures;¹
- (b) provide for the electronic submission and processing of documentation and data, including manifests, prior to the arrival of the goods to expedite the release of goods on arrival;
- (c) allow goods to be released at the place of arrival without requiring temporary transfer to warehouses or other facilities;
- (d) where practicable, require that the importer be informed if a Party does not promptly release goods, including, to the extent permitted by its law, the reasons why the goods are not released and which border agency, if not the customs authority, has withheld release of the goods; and
- (e) allow for the release of goods prior to the final determination of customs duties, taxes, fees, and charges, if that determination is not done prior to, or promptly upon arrival, and provided that all other regulatory requirements have been met. Before releasing the goods, a Party may require that an importer provides sufficient security in the form of a surety, a deposit, or some other appropriate instrument.

¹ For greater certainty, the immediate release of goods is to be provided within a period no greater than that required to ensure compliance with its customs laws and not exceeding 48 hours from arrival.

3. If a Party allows for the release of goods conditional on a security in accordance with subparagraph 2(e), it shall adopt or maintain procedures that:

- (a) to the extent practicable, ensure that the amount of any 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 any security is discharged as soon as possible after its customs authority is satisfied that the obligations arising from the importation of the goods have been fulfilled.

4. Nothing in this Article requires a Party to release a good if the requirements for release have not been met nor prevents a Party from liquidating a security deposit in accordance with its law.

5. Each Party may allow, to the extent practicable and in accordance with its customs laws, goods intended for import to be moved within its territory under the applicable regulatory requirements from the point of entry to another customs site within the territory of the Party where the goods are intended to be released.

ARTICLE 4.12 **Express Shipments**

1. Each Party shall adopt or maintain customs procedures allowing for the expedited release of, at least, those goods entered through air cargo facilities while maintaining appropriate customs control and selection. These procedures shall:

- (a) provide for information necessary to release an express shipment to be submitted and processed before the shipment arrives;
- (b) allow a single submission of information covering all goods contained in an express shipment, such as a manifest, through, if possible, electronic means²;
- (c) to the extent possible, provide for the release of certain goods with a minimum of documentation;
- (d) under normal circumstances, provide for express shipments to be released immediately after submission of the necessary customs documents, provided the shipment has arrived;
- (e) apply to shipments of any weight or value recognizing that a Party may require formal entry procedures as a condition for release, including declaration and supporting documentation and payment of customs duties, based on the good's weight or value; and

² For greater certainty, additional documents may be required as a condition for release.

- (f) provide that, under normal circumstances, no customs duties will be assessed on express shipments valued at or below a fixed amount set under the Party's law.³
2. In cases where a Party has an existing procedure that provides the treatment in paragraph 1, this provision does not require that Party to introduce separate expedited release procedures.

ARTICLE 4.13 **Perishable Goods**

1. For the purposes of this Article, perishable goods are goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.
2. In addition to Article 4.11 and with a view to preventing avoidable loss or deterioration of perishable goods, each Party shall, provided that all necessary requirements have been met:
- (a) provide, in normal circumstances, for perishable goods to be released in the shortest time possible⁴;
 - (b) release perishable goods outside the business hours of its customs authority in exceptional circumstances, if it would be appropriate to do so; and
 - (c) give appropriate priority to perishable goods when scheduling any examinations that may be required.
3. Each Party shall either arrange, or allow an importer to arrange, for the proper storage of perishable goods pending their release. Each Party may require that any storage facilities arranged by the importer be approved or designated by its relevant authorities. Each Party shall, if practicable and consistent with its laws and regulations, on the request of the importer, provide for the release to take place at those storage facilities.

³ Notwithstanding this Article, a Party may assess customs duties, or may require formal entry documents, for restricted or controlled goods, such as goods subject to import licensing or similar requirements.

⁴ For perishable goods, such release will be done within six hours of arrival provided that all necessary requirements have been met.

ARTICLE 4.14
Authorised Economic Operators

1. Each Party shall establish or maintain a national Authorised Economic Operator (AEO) programme which recognizes an operator involved in the international movement of goods, in whatever function, that has been approved by the national customs authority as complying with the WCO SAFE Framework of Standards.
2. In order to facilitate trade and enhance compliance and risk management between them, the Parties shall endeavor to mutually conclude an AEO Mutual Recognition Arrangement.
3. The customs authorities of the Parties are encouraged to share best practices related to AEO programmes.

ARTICLE 4.15
Border Agency Cooperation

Each Party 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 pursuant to this chapter.

ARTICLE 4.16
Appeal and Review

1. Each Party shall ensure that any person to whom it issues a decision on a customs matter has access 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
 - (b) a judicial appeal or review of the decision.
2. Each Party shall ensure that its procedures for appeal and review are carried out in a non-discriminatory and timely manner.
3. Each Party shall ensure that an authority conducting a review or appeal under paragraph 1 notifies the person in writing of its decision in the appeal or review, and the reasons for the decision.

ARTICLE 4.17
Customs Cooperation

1. The Parties, for the purposes of applying customs law and to give effect to the provisions of this Agreement, may cooperate in relation to:
 - (a) the implementation and operation of this Chapter;
 - (b) sharing best practices in the development, implementation and simplification of customs procedures, including capacity building activities;
and
 - (c) other activities that the Parties may agree to.
2. With a view to further enhancing customs cooperation through the exchange of information and the sharing of best practices between the customs authorities to secure and facilitate lawful trade, the customs authorities of the Parties will endeavor to conclude and sign a Customs Mutual Assistance Agreement.
3. Cooperation under this Chapter shall be provided in accordance with the domestic law of the requested Party.
4. The Parties shall exchange official contact points with a view to facilitating the effective implementation of this Chapter.

ARTICLE 4.18
Rules of Origin and Customs and Trade Facilitation Sub-Committee

The Rules of Origin and Customs and Trade Facilitation Sub-Committee established under Article 19.4 (Establishment of Sub-Committees) shall be responsible for the effective implementation and operation of this Chapter.