

APPENDIX 2

NEW CHAPTER 5 (CUSTOMS PROCEDURES AND TRADE FACILITATION)

CHAPTER 5

CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 1 Definitions

For the purposes of this Chapter:

customs administration means:

- (a) in relation to China, the General Administration of Customs of the People's Republic of China; and
- (b) in relation to New Zealand, the New Zealand Customs Service;

customs law means any legislation administered, applied, or enforced by the customs administration of a Party;

customs procedures means the treatment applied by each customs administration to goods and means of transport that are subject to customs control;

Customs Valuation Agreement means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;

Implementing Arrangements means any subsidiary documents to this Chapter which set out the mutually determined mechanisms for applying, or outcomes derived from applying, the principles and processes outlined in this Chapter;

means of transport means various types of vessels, vehicles, aircraft and pack-animals which enter or leave the territory carrying persons, goods or articles;

trade administration document means the forms issued or controlled by the customs administration of a Party which must be completed by or for an importer or exporter in relation to the import or export of goods.

Article 2 Scope and Objectives

1. This Chapter shall apply, in accordance with the Parties' respective international obligations and domestic customs law, to customs procedures applied to goods traded between the Parties and to the movement of means of transport between the Parties.

2. The objectives of this Chapter are to:

- (a) simplify and harmonize customs procedures of the Parties;
- (b) ensure predictability, consistency and transparency in the application of customs law and administrative procedures of the Parties;
- (c) ensure the efficient and expeditious clearance of goods and means of transport;
- (d) facilitate trade between the Parties; and
- (e) promote cooperation between the customs administrations, within the scope of this Chapter.

Article 3 Competent Authorities

The competent authorities for the administration of this Chapter are:

- (a) in relation to China, the General Administration of Customs of the People's Republic of China; and
- (b) in relation to New Zealand, the New Zealand Customs Service.

Article 4 Facilitation

1. Each Party shall ensure that its customs procedures and practices are predictable, consistent, transparent and facilitate trade.

2. Customs procedures shall:

- (a) where possible and permitted by each Party's respective customs law, conform with trade-related instruments such as those of the WCO to which that Party is a contracting party, including the *International Convention on the Simplification and Harmonization of Customs Procedures (as amended)*, known as the Revised Kyoto Convention; and
- (b) be consistent with each Party's obligations under the *Agreement on Trade Facilitation*, which is part of the WTO Agreement.

3. Customs administrations of the Parties shall facilitate the clearance of goods in administering their procedures.

4. Each customs administration shall endeavour to provide a focal point, electronic or otherwise, through which its traders may submit all required regulatory information in order to obtain clearance of goods.

Article 5 Customs Valuation

1. The Parties shall apply Article VII of GATT 1994 and the Customs Valuation Agreement to goods traded between them.

2. The customs value of imported goods used by the Parties shall be the price paid or payable for the goods when sold for export in the first instance. If this method is not available or applicable, the customs administrations of the Parties shall sequentially determine the customs value in accordance with the Customs Valuation Agreement.

Article 6 Tariff Classification

 The Parties shall apply the *International Convention on the Harmonized Commodity Description and Coding System* to goods traded between them.

Article 7 Customs Cooperation

 To the extent permitted by their domestic laws, the customs administrations of the Parties shall assist each other, in relation to:

- (a) the implementation and operation of this Chapter; and
- (b) such other issues as the Parties mutually determine.

Article 8 Appeal

1. The legislation of each Party shall provide for the right of appeal without penalty in regard to customs administrative rulings, determinations or decisions by the importer, exporter or any other person affected by that administrative ruling, determination or decision.

2. An initial right of appeal by a person described in paragraph 1 may be to an authority within the customs administration or to an independent body, but the legislation of each Party shall provide for the right of appeal without penalty to a judicial authority.

3. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing.

Article 9 Advance Rulings

1. Each customs administration shall provide an advance ruling in writing to a person described in paragraph 2(a) in respect of the:

- (a) tariff classification;
- (b) origin of goods; and
- (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.

2. Each customs administration shall adopt or maintain procedures, which shall:

- (a) provide that an exporter, importer or any person with a justifiable cause may apply in writing, in the national language of the issuing customs administration, for an advance ruling. An application shall be submitted at least 3 months before the date of importation of the goods that are the subject of the application. An applicant for an advance ruling from China Customs shall be registered with China Customs;
- (b) require that an applicant for a ruling provide a detailed description of the goods and all relevant information needed to issue a ruling;
- (c) provide that its customs administration may, at any time during the course of issuing a ruling, request that the applicant provide additional information within a specified period;
- (d) provide that any ruling be based on the facts and circumstances presented by the applicant, and any other relevant information in the possession of the decision-maker; and
- (e) provide that the ruling be issued, in the national language of the issuing customs administration, to the applicant expeditiously on receipt of all necessary information, or in any case within:
 - (i) 60 days with respect to tariff classification;
 - (ii) 90 days with respect to origin; and
 - (iii) 150 days with respect to the appropriate method or criteria to determine the customs value.

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

4. Subject to paragraph 5, each Party shall apply an advance ruling to all importations of goods described in that advance ruling into its territory through any port of entry within 3 years of the date of that ruling or such other period as required by that Party's domestic legislation.

5. A Party may modify or revoke an advance ruling:

- (a) upon a determination that the ruling was based on an error of fact or law, or the information provided is false or inaccurate;
- (b) if there is a change in domestic law consistent with this Agreement; or
- (c) if there is a change in a material fact or circumstances on which the ruling is based.

6. Subject to the confidentiality requirements of a Party's domestic law, each Party shall publish its rulings.

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

Article 10 Information Technology and Paperless Trading

1. The customs administrations of the Parties shall apply information technology to support customs procedures.

2. Each Party shall, to the extent possible, accept the electronic versions of trade administration documents as the legal equivalent of paper versions of those documents.

3. The Parties shall work together to promote awareness and acceptance of electronic versions of trade administration documents.

4. In developing initiatives which provide for the use of paperless trading, each Party shall endeavour to take into account the methods agreed by international organisations, such as the WCO and the WTO.

5. Each Party shall, to the extent possible, make trade administration documents available to the public in electronic versions.

Article 11 Risk Management

Each customs administration shall focus resource on high-risk goods and facilitate the clearance of low-risk goods in administering customs procedures.

Article 12 Transparency

1. Pursuant to Article 168 of the Agreement, each customs administration shall publish its customs law and any administrative procedures it applies or enforces.

2. To the extent possible and in a manner consistent with its domestic laws and regulations, each Party shall publish in advance on the internet draft customs law between the Parties and allow interested persons an opportunity to provide comment.

3. Each Party shall ensure that a reasonable interval is provided between the publication of new or amended customs law and customs procedures relevant to trade between the Parties and their entry into force.

4. Each customs administration shall provide the other customs administration with timely notice, where possible and practicable within 30 days of any significant modification of domestic customs law or customs procedures governing the movement of goods and means of transport that is likely to substantially affect the operation of this Chapter.

5. Each customs administration shall designate one or more enquiry points to deal with enquiries from interested persons from either Party on customs matters arising from the implementation of this Chapter, and provide details of such enquiry points to the other customs administration. The customs administrations shall notify each other promptly of any amendments to the details of their enquiry points.

6. Each Party shall designate one or more enquiry points to answer reasonable enquiries of interested persons concerning customs matters and to facilitate access to forms and documents required for importation, exportation and transit. Details of the enquiry points at agreed ports shall be provided to the other Party. The customs administrations shall notify each other promptly of any amendments to the details of their enquiry points.

7. Each Party shall administer its customs law and customs procedures in a uniform, impartial and reasonable manner.

Article 13 Single Window

1. Each Party shall establish or maintain a 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. After the examination by the participating authorities or agencies of the documentation or data, the results shall be notified to the applicants through the single window in a timely manner.

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 published.

3. Each Party shall, to the extent possible and practicable, use information technology to support its single window.

Article 14 Express Consignments

Each customs administration shall adopt procedures to expedite the clearance of express consignments.

Article 15 Release of Goods

Each Party shall adopt or maintain procedures which allow goods to be released within 48 hours of arrival unless:

- (a) the importer fails to provide any information required by the importing Party at the time of first entry;
- (b) the goods are selected for closer examination by the competent authority of the importing Party through the application of risk management techniques;
- (c) the goods are to be examined by any agency, other than the competent authority of the importing Party, acting under powers conferred by the domestic legislation of the importing Party; or
- (d) fulfilment of all necessary customs formalities has not been able to be completed or release is otherwise delayed by force majeure.

Article 16 Perishable Goods

1. In order to prevent avoidable loss or deterioration of perishable goods, and provided that regulatory requirements have been met, each Party's customs administration shall provide for the release of perishable goods from the customs administration's control:

- (a) under normal circumstances in the shortest possible time, and to the extent possible in less than six hours after the arrival of the goods and submission of the information required for release; and
- (b) in exceptional circumstances where it would be appropriate to do so, outside its business hours.

2. Each customs administration shall give appropriate priority to perishable goods when scheduling any examinations that may be required.

3. Each customs administration 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 have been approved or designated by its relevant authorities. The movement of the goods to those storage facilities, including authorisations for the operator moving the goods, may be subject to the approval, where required, of the relevant authorities. Each customs administration shall, where practicable and consistent with its laws, on request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

Article 17 Review of Customs Procedures

1. Each customs administration shall periodically review its procedures with a view to their further simplification and the development of mutually beneficial arrangements to facilitate the flow of trade between the Parties.

2. In applying a risk management approach to customs control, each customs administration shall regularly review the performance, effectiveness and efficiency of its systems.

Article 18 Contact points

Each customs administration shall designate one or more contact points for direct communication between the customs administrations on matters arising under this Chapter and shall provide details of such contact points to the other Party. The Parties shall notify each other promptly of any amendments to the details of their contact points.

Article 19 Consultation

1. Either customs administration may at any time request consultations with the other customs administration on any matter arising from the operation or implementation of this Chapter. Such consultations shall be conducted through the

relevant contact points, and shall take place within 30 days of the request, unless the customs administrations of the Parties mutually determine otherwise.

2. In the event that such consultations fail to resolve any such matter, the requesting Party may refer the matter to the Customs Committee for consideration.

3. Customs administrations may consult each other on any trade facilitation issues arising from procedures to secure trade and the movement of means of transport between the Parties.

Article 20 Customs Committee

1. The Parties hereby establish a Customs Committee, comprising of representatives from the customs administrations of each Party responsible for matters arising from the implementation of this Chapter. The Committee shall meet on the request of either Party.

2. The Committee's functions shall include:

- (a) furthering the effective and consistent administration of this Chapter;
- (b) supporting the adoption of customs practices and standards that facilitate trade between the Parties, according to international standards;
- (c) considering and endeavouring to resolve matters referred to the Committee through consultations under Article 19 of this Chapter;
- (d) considering proposals aimed at further facilitating trade between the Parties; and
- (e) reporting to the FTA Joint Commission on proposed solutions to address issues related to the interpretation and application of this Chapter.

3. The Committee shall adopt its own rules of procedure, including the ability to invite relevant non-committee members to attend committee meetings as mutually agreed.