

## CHAPTER 4

### CUSTOMS 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 laws and regulations relating to the requirements for the import, export and transit of goods and consistency thereof with applicable international standards;
- (c) ensure predictable, consistent and non-discriminatory application by each Party of its customs laws and regulations relating to the requirements for the import, export and transit of goods;
- (d) promote simplification and modernisation of customs procedures and practices of each Party;
- (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

### Customs cooperation and mutual administrative assistance

1. The competent authorities of the Parties shall cooperate on customs matters in order to ensure that the objectives set out in Article 4.1 (Objectives) are attained.
2. In addition to the CCMAA, the Parties shall develop cooperation, including in the following areas:
  - (a) exchanging information concerning customs laws and regulations, their implementation, and customs procedures, particularly in the following areas:
    - (i) the enforcement of intellectual property rights by the customs authorities;
    - (ii) the facilitation of transit movements and transshipment; and
    - (iii) relations with the business community;
  - (b) strengthening their cooperation in the field of customs in international organisations such as the WTO and the WCO;
  - (c) endeavouring to harmonise their data requirements for import, export and other customs procedures by implementing common standards and data elements in accordance with the WCO Data Model;
  - (d) exchanging, where relevant and appropriate, through a structured and recurrent communication between customs authorities of the Parties, certain categories of customs-related information for the purpose of improving risk management and the effectiveness of customs controls, targeting high-risk goods and facilitating legitimate trade. Exchanges under this point shall be without prejudice to exchanges of information that may take place between the Parties pursuant to the provisions of the

CCMAA on mutual administrative assistance;

- (e) strengthening their cooperation on risk management techniques, including sharing best practices, and where appropriate, risk information and control results; and
- (f) establishing, where relevant and appropriate, mutual recognition of authorised economic operator programmes and customs controls, including equivalent trade facilitation measures.

3. Without prejudice to other forms of cooperation envisaged under this Agreement, the customs authorities of the Parties shall cooperate, including through exchange of information, and provide each other with mutual administrative assistance in the matters covered by this Chapter in accordance with the provisions of the CCMAA. Any exchange of information between the Parties under this Chapter shall be *mutatis mutandis* subject to the confidentiality and protection of information requirements set out in Article 17 CCMAA as well as any confidentiality and privacy requirements to be agreed by the Parties.

#### ARTICLE 4.3

##### Customs provisions and procedures

1. Each Party shall ensure that its customs provisions and procedures are based on:
  - (a) the international instruments and standards applicable in the area of customs and trade which each Party has accepted, including the substantive elements of the International Convention on the Simplification and Harmonisation of Customs Procedures, done at Kyoto on 18 May 1973, as amended, (Revised Kyoto Convention), the International Convention on the Harmonized Commodity Description and Coding System, done at Brussels on 14 June 1983, as well as the Framework of Standards to Secure and Facilitate Global Trade and the WCO Data Model;

- (b) the protection and facilitation of legitimate trade through effective enforcement and compliance with the applicable requirements provided under its law;
- (c) customs laws and regulations that are proportionate and non-discriminatory, avoiding unnecessary burdens on economic operators, providing for further facilitation for operators ensuring high levels of compliance, including favourable treatment with respect to customs controls prior to the release of goods, and ensuring safeguards against fraud and illicit or damageable activities; and
- (d) rules that ensure that any penalty imposed for breaches of customs laws and regulations is proportionate and non-discriminatory and that the imposition of such penalties does not unduly delay the release of the goods.

2. Each Party should periodically review its customs laws, regulations and procedures. Customs procedures shall also be applied in a manner that is predictable, consistent and transparent.

3. In order to improve working methods, as well as to ensure non-discrimination, transparency, efficiency, integrity and accountability of operations, each Party shall:

- (a) simplify and review requirements and formalities wherever possible with a view to ensuring the rapid release and clearance of goods; and
- (b) work towards further simplification and standardisation of data and documentation required by customs authorities and other agencies.

## ARTICLE 4.4

### Release of goods

1. Each Party shall adopt or maintain customs procedures that:
  - (a) provide for the prompt release of goods within a period that is no longer than necessary to ensure compliance with its laws and regulations and, to the extent possible, upon arrival of the goods;
  - (b) provide for advance electronic submission and processing of documentation and any other required information prior to the arrival of the goods, to enable the release of goods upon arrival;
  - (c) allow for the release of goods prior to the final determination of the applicable 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. As a condition for such release, each Party may require 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. Such guarantee shall not be greater than the amount the Party requires to ensure payment of customs duties, taxes, fees and charges ultimately due for the goods covered by the guarantee. The guarantee shall be discharged when it is no longer required; and

(d) allow goods to be released at the point of arrival, without temporary transfer to warehouses or other facilities, provided that the goods are otherwise eligible for release.

2. Each Party shall, to the extent possible, minimise the documentation required for the release of goods.

3. Each Party shall endeavour to allow for the expeditious release of goods in need of urgent clearance, including outside regular business hours of customs authorities and other relevant authorities.

4. Each Party shall, to the extent possible, adopt or maintain customs procedures that provide for expedited release of certain consignments while maintaining appropriate customs control, including allowing the submission of a single document covering all of the goods in the shipment, if possible, by electronic means.

#### ARTICLE 4.5

##### 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. To prevent avoidable deterioration or loss of perishable goods, each Party shall give appropriate priority to perishable goods when scheduling and performing any examinations that may be required.

3. In addition to point (a) of Article 4.4(1) (Release of goods), and at the request of the economic operator, each Party shall, where practicable and in accordance with its laws and regulations:

- (a) provide for the clearance of a consignment of perishable goods outside regular business hours of customs authorities and other relevant authorities; and
- (b) allow consignments of perishable goods to be moved to and cleared at the premises of the economic operator.

## ARTICLE 4.6

### Simplified customs procedures

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 measures may include:

- (a) customs declarations containing a reduced set of data or supporting documents; or
- (b) periodical customs declarations for the determination and payment of customs duties and taxes covering multiple imports within a given period, after the release of those imported goods.

## ARTICLE 4.7

### Transit and transshipment

1. Each Party shall ensure the facilitation and effective control of transshipment operations and transit movements through its respective territory.
2. Each Party shall ensure cooperation and coordination between all authorities and agencies concerned in its respective territory to facilitate traffic in transit.
3. Provided all regulatory requirements are met, each Party shall allow goods intended for import to be moved within its territory under customs control from a customs office of entry to another customs office in its territory from where the goods would be released or cleared.

## ARTICLE 4.8

### Risk management

1. Each Party shall adopt or maintain a risk management system for customs control.
2. Each Party shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions to international trade.

3. Each Party shall concentrate customs control and other relevant border controls on high-risk consignments and shall expedite the release of low-risk consignments. Each Party may also select consignments for such controls on a random basis as part of its risk management.

4. Each Party shall base risk management on assessment of risk through appropriate selectivity criteria.

#### ARTICLE 4.9

##### Post-clearance audit

1. With a view to expediting the release of goods, each Party shall adopt or maintain post-clearance audits to ensure compliance with customs and other related laws and regulations.

2. Each Party shall select a person or a consignment for a post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Party shall conduct a post-clearance audit in a transparent manner. Where a 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.

3. The information obtained in a post-clearance audit may be used in further administrative or judicial proceedings.

4. The Parties shall, wherever practicable, use the result of a post-clearance audit in applying risk management.

#### ARTICLE 4.10

##### Authorised economic operators

1. Each Party shall establish or maintain a partnership programme for operators who meet specified criteria (hereinafter referred to as "authorised economic operators").

2. The specified criteria to qualify as an authorised economic operator shall be published and they shall relate to compliance with requirements specified in the respective laws and regulations or procedures of the Parties. Such criteria may include:

- (a) an appropriate record of compliance with customs and other related laws and regulations;
- (b) a system of managing records to allow for necessary internal controls;
- (c) financial solvency, including, where appropriate, provision of a sufficient security or guarantee; and
- (d) supply chain security.

3. The specified criteria to qualify as an authorised economic operator shall not be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail and shall allow the participation of SMEs.

4. The authorised economic operator programme shall include specific benefits for an authorised economic operator, such as:

- (a) low rate of physical inspections and examinations as appropriate;
- (b) priority treatment if selected for control;
- (c) rapid release time as appropriate;
- (d) deferred payment of customs duties, taxes, fees and charges;
- (e) use of comprehensive guarantees or reduced guarantees;
- (f) a single customs declaration for all imports or exports in a given period; and
- (g) clearance of goods at the premises of the authorised economic operator or another place authorised by the customs authorities.

5. Notwithstanding paragraphs 1 to 4, a Party may offer the exemplary benefits listed in paragraph 4 through customs procedures generally available to all operators, in which case that Party is not required to establish a separate scheme for authorised economic operators.

6. The Parties may foster cooperation between customs authorities and other government authorities or agencies within a Party in relation to authorised economic operator programmes. Such cooperation may be achieved, *inter alia*, by aligning requirements, facilitating access to benefits and minimising unnecessary duplication.

#### ARTICLE 4.11

##### Publication and availability of information

1. Each Party shall promptly publish, in a non-discriminatory and easily accessible manner and as far as possible through the internet, laws, regulations and customs procedures, relating to the requirements for the import, export and transit of goods. This shall include:

- (a) importation, exportation and transit procedures, including port, airport, and other entry-point procedures, and required forms and documents;
- (b) applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;
- (c) fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;
- (d) rules for the classification or valuation of products for customs purposes;

- (e) laws, regulations and administrative rulings of general application relating to rules of origin;
- (f) import, export or transit restrictions or prohibitions;
- (g) penalty provisions against breaches of import, export or transit formalities;
- (h) appeal procedures;
- (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;
- (k) hours of operation for customs offices; and
- (l) relevant notices of an administrative nature.

2. Each Party shall endeavour to make public new laws, regulations and customs procedures, relating to the requirements for the import, export and transit of goods prior to their application, as well as changes to and interpretations thereof.

3. Each Party shall, to the extent possible, ensure there is a reasonable time period between the publication of amended or new laws, regulations and customs procedures, fees or charges and their entry into force.

4. Each Party shall make available, and update as appropriate, the following through the internet:

- (a) a description of its importation, exportation and transit procedures, including appeal procedures, informing of the practical steps needed for the import and export, and for transit;
- (b) the forms and documents required for importation into, exportation from, or transit through the territory of the Party; and
- (c) contact information of enquiry points.

5. Each Party shall, subject to its available resources, establish or maintain enquiry points to answer within a reasonable time enquiries of governments, traders and other interested parties on matters covered by paragraph 1. A Party shall not require the payment of a fee for answering enquiries from the other Party.

#### ARTICLE 4.12

##### Advance rulings

1. The customs authority of each Party shall issue advance rulings to an applicant setting out the treatment to be accorded to the goods concerned, in accordance with its laws and regulations. Such rulings shall be issued in writing or in electronic format in a time-bound manner and shall contain all necessary information. Each Party shall ensure that an advance ruling can be issued to, and used in the Party by, an applicant of the other Party.

2. Advance rulings shall be issued with regard to:

- (a) the tariff classification of goods;
- (b) the 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, if permitted by the laws and regulations of a Party.

3. Advance rulings shall be valid for a period of at least three years from the date of their issuance or some other date if specified in the ruling. The issuing Party may modify or revoke, invalidate or annul an advance ruling if the ruling was based on incorrect, incomplete, false or misleading information, an administrative error or if there is a change in the law, the material facts or the circumstances on which the ruling is based.

4. A Party may refuse to issue an advance ruling if the question raised in the application is the subject of an administrative or judicial review, or if the application does not relate to any intended use of the advance ruling or any intended use of a customs procedure. If a Party declines to issue an advance ruling, that Party shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.

5. Each Party shall publish, at least:

- (a) the requirements for the application for an advance ruling, including the information to be provided and the format;

(b) the time period by which it will issue an advance ruling; and

(c) the length of time for which the advance ruling is valid.

6. If a Party modifies, revokes, invalidates or annuls an advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. A Party may only modify, revoke, invalidate or annul an advance ruling with retroactive effect if the advance ruling was based on incomplete, incorrect, false or misleading information.

7. An advance ruling issued by a Party shall be binding on that Party in respect of the applicant that sought it. The Party may provide that the advance ruling be binding on the applicant.

8. Each Party shall provide, upon written request from the applicant, a review of an advance ruling or of a decision to amend, revoke or invalidate the advance ruling.

9. Each Party shall endeavour to make publicly available information on advance rulings, taking into account the need to protect personal and commercially confidential information.

10. Each Party shall issue an advance ruling without delay, and normally within 150 days after the date of receipt of all necessary information. This period may be extended, in accordance with the laws and regulations of a Party, if additional time is needed to ensure that the advance rulings are issued in a correct and uniform manner. In that event, the Party shall inform the applicant of the reason for, and the duration of, the extension.

## ARTICLE 4.13

### Customs brokers

The customs provisions and procedures of a Party shall not require the mandatory use of customs brokers. Each Party shall notify and publish its measures on the use of customs brokers. Each Party shall apply transparent, non-discriminatory and proportionate rules if and when licensing customs brokers.

## ARTICLE 4.14

### Customs valuation

1. Each Party shall determine the customs value of goods in accordance with Part I of the Customs Valuation Agreement. To that end, Part 1 of the Customs Valuation Agreement is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.
2. The Parties shall cooperate with a view to reaching a common approach to issues relating to customs valuation.

## ARTICLE 4.15

### Preshipment inspection activities

A Party shall not require the mandatory use of preshipment inspection activities within the meaning of Article 1(3) of the Agreement on Preshipment Inspection, contained in Annex 1A to the WTO Agreement.

## ARTICLE 4.16

### Appeal and review

1. Each Party shall provide effective, prompt, non-discriminatory and easily accessible procedures to guarantee the right of appeal against administrative actions, rulings and decisions of customs authorities or other competent authorities that affect the import or export of goods or goods in transit.
2. Each Party shall ensure that any person with respect to whom it takes administrative action referred to in paragraph 1 or to whom it issues a ruling or decision referred to in paragraph 1 has access to:
  - (a) an administrative appeal to or review by an administrative authority higher than or independent of the official or office that took the administrative action or that issued the ruling or the decision; or
  - (b) a judicial appeal or review of the administrative action or the ruling or the decision.

3. Each Party shall ensure that, in cases where the decision on administrative appeal or review under point (a) of paragraph 2 is not issued within the period of time provided for in its laws and regulations or is not issued without undue delay, the petitioner has the right to further administrative or judicial appeal or review or any other recourse to a judicial authority in accordance with the laws and regulations of that Party.

4. Each Party shall ensure that the petitioner is provided in writing, including electronically, with the reasons for the administrative decision, so as to enable the petitioner to have recourse to appeal or review procedures where necessary.

#### ARTICLE 4.17

##### Engagement with the business community

1. Considering the need for timely and regular consultations with trade representatives on legislative proposals and general procedures related to customs and trade facilitation issues, each Party's customs administration shall hold consultations with the business community of that Party.

2. Each Party shall ensure, where possible, that its customs and related requirements and procedures continue to meet the needs of the business community, follow internationally accepted best practices, and remain as least trade-restrictive as possible.

## ARTICLE 4.18

### Joint Customs Cooperation Committee

1. This Article complements and further specifies Article 24.4 (Specialised committees).
2. The Joint Customs Cooperation Committee shall, with respect to the Chapters and provisions that fall within its competences pursuant to Article 24.4(2) (Specialised committees), except for Chapter 3 (Rules of origin and origin procedures), have the following functions:
  - (a) identifying areas for improvement in their implementation and operation; and
  - (b) seeking appropriate ways and methods to reach mutually agreed solutions with regard to any matters that may arise.
3. The Joint Customs Cooperation Committee may adopt decisions in relation to the areas listed in Article 4.2(2) (Customs cooperation and mutual administrative assistance), including, where it considers it necessary, for the purpose of implementing points (d) and (f) of paragraph 2 of that Article.