

## **CHAPTER FOUR CUSTOMS ADMINISTRATION AND TRADE FACILITATION**

### **SECTION A: TRADE FACILITATION**

#### **ARTICLE 4.1: OBJECTIVES AND PRINCIPLES**

With the objectives of facilitating trade under this Agreement and cooperating in pursuing trade facilitation initiatives between the Parties, the Parties agree to administer their import, export and transit procedures for goods traded under this Agreement in accordance with the following principles:

- (a) procedures shall be simplified and harmonized on the basis of international standards, while recognizing the importance of balance between compliance and facilitation to ensure the free flow of trade and to meet the needs of governments for revenue and the protection of society;
- (b) entry procedures shall be consistent and transparent to ensure predictability for importers and exporters;
- (c) a Party shall hold consultations with the representatives of its trading community before adopting significant modifications to procedures;
- (d) procedures shall be based on risk assessment principles to focus compliance efforts by promoting effective use of resources; and
- (e) the Parties shall encourage mutual cooperation, technical assistance, and exchange of information, including information on best practices, for the purpose of promoting the application of and compliance with the trade facilitation measures agreed upon under this Agreement.

#### **ARTICLE 4.2: TRANSPARENCY**

1. Each Party shall ensure that its customs procedures and practices are predictable, consistent, and transparent.
2. Each Party shall publish, including on the Internet, all customs laws and any administrative procedures which it applies or enforces in relation to exportation, importation, or transit.
3. Each customs authority shall designate one or more inquiry points to deal with inquiries from interested persons from either Party on customs matters arising from the implementation of this Agreement. Information concerning the procedures for making such inquiries shall be easily accessible by the public.

#### ARTICLE 4.3: HARMONIZATION AND FACILITATION

1. Each Party shall endeavor to use international standards, including the development of a set of common data elements and processes in accordance with the World Customs Organization (hereinafter referred to as the "WCO") Customs Data Model and related WCO recommendations and guidelines.

2. The Parties shall ensure that the requirements of their respective agencies related to the import and export of goods are coordinated to facilitate trade, regardless of whether these requirements are administered by an agency or on behalf of that agency by the customs authority. In furtherance of this objective, each Party shall take steps to harmonize the data requirements of its respective agencies with the objective of allowing importers and exporters to present all required data before one agency.

#### ARTICLE 4.4: USE OF AUTOMATED SYSTEMS

1. Each customs authority shall apply information and communication technology to support customs operations, particularly in the paperless trading context, taking into account developments in this area within the WCO.

2. Each customs authority shall endeavor to use information and communication technology that expedites procedures for the release of goods, including the submission and processing of information and data before arrival of the shipment, as well as electronic or automated systems for risk management and targeting.

#### ARTICLE 4.5: RISK MANAGEMENT

In administering customs procedures, each customs authority shall focus resources on high-risk shipments of goods and facilitate the clearance, including release, of low-risk goods. In addition, the customs authority shall exchange information related to applied techniques on risk management, while ensuring the confidentiality of the information.

#### ARTICLE 4.6: AUTHORIZED ECONOMIC OPERATOR

The Parties shall promote the implementation of the Authorized Economic Operator (hereinafter referred to as "AEO") concept according to the WCO SAFE Framework of Standards. Acknowledgment of the AEO security status shall be taken into account by the Parties in order to secure the international trade supply chains. In this respect, trade facilitation benefits shall be provided by the customs authority of an importing Party to operators meeting customs security standards and having AEO status granted by the customs authority of any Party.

#### ARTICLE 4.7: RELEASE OF GOODS

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties.
2. Pursuant to paragraph 1, each Party shall ensure that its customs authority and other competent authorities 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, and to the extent possible release the goods within 48 hours of arrival;
  - (b) provide for advance electronic submission and processing of information before physical arrival of goods to enable the release of goods on arrival;
  - (c) allow goods to be released at the point of arrival, without temporary transfer to warehouses or other facilities; and
  - (d) allow importers to withdraw goods from customs before the final determination by its customs authority of the applicable customs duties, taxes, and fees. Before releasing the goods, a Party may require an importer, according to its legislation, to provide sufficient guarantee covering the ultimate payment of the customs duties, taxes, or fees in connection with the importation of the goods.
3. Each Party shall endeavor to adopt and maintain a system under which goods in need of emergency clearance can go through the customs procedures 24 hours a day including holidays.
4. Each Party shall endeavor to ensure, in accordance with its laws and regulations, that all competent administrative authorities, intervening in the control and physical inspection of goods subject to either import or export procedures, perform their activities in a simultaneous manner and in a single place.

#### ARTICLE 4.8: EXPRESS SHIPMENTS

Each Party shall adopt or maintain expedited customs procedures for express shipments, while maintaining appropriate customs control and selection. These procedures shall:

- (a) provide a separate and expedited customs procedure for express shipment, and where applicable, use the WCO Guidelines for the Immediate Release of Consignment;
- (b) provide for the electronic submission and processing of information necessary for the release of an express shipment before the express shipment arrives;
- (c) to the extent possible, provide for clearance of certain goods with minimum

documentation;

- (d) provide for expeditious release of express shipments, within a period no greater than that required to ensure compliance with its legislation; and
- (e) under normal circumstances, provide that no customs duties will be assessed on, nor will formal entry documents be required for express shipments valued at US\$100 or less.

#### ARTICLE 4.9: ADVANCE RULINGS

1. Each Party shall issue, through its customs authority, prior to the importation of a good into its territory, a written advance ruling upon written request of an importer in its territory, or an exporter or producer in the territory of the other Party with regard to:

- (a) tariff classification;
- (b) the application of customs valuation criteria for a particular case, in accordance with the provisions of the Customs Valuation Agreement;
- (c) whether a good is originating in accordance with Chapter 3 (Rules of Origin and Origin Procedures); and
- (d) such other matters as the Parties may agree.

2. Each Party shall adopt or maintain procedures for the issuance of such advance rulings, including the details of the information required to process an application for a ruling. Each Party shall issue an advance ruling expeditiously, and no later than 90 days or such longer period exceptionally specified in the laws of the Party after a request, provided that the requester has submitted all information that the Party requires, including, if the Party requests, a sample of the good for which the requester is seeking an advance ruling.

3. 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 administrative or judicial review. The Party that declines to issue an advance ruling shall promptly notify the requester in writing, setting forth the relevant facts and the basis for its decision to decline to issue the advance ruling.

4. Each Party shall provide that advance rulings shall be in force from their date of issuance, or another date specified in the ruling. Subject to paragraphs 1 and 5, an advance ruling shall remain in force, provided that the facts or circumstances on which the ruling is based remain unchanged, or for the period specified in the laws, regulations or administrative rulings of the importing Party.

5. The issuing Party may modify or revoke an advance ruling after the Party notifies the requester, where, consistent with this Agreement:

- (a) there is a change in the relevant laws or regulations;

- (b) incorrect information was provided or relevant information was withheld; or
- (c) there is a change in the material fact or circumstances on which the ruling was based, including the change of the main functions of the good by the development of science, technology and the production method.

6. The issuing Party may modify or revoke a ruling in a retroactive manner, in accordance with its laws and regulations, if the requester provided incorrect information or withheld relevant information.

7. Subject to any confidentiality requirements in its laws and regulations, each Party shall make available to the public, on the Internet, its advance rulings on tariff classification and any other matter as the Parties may agree.

#### ARTICLE 4.10: REVIEW AND APPEAL

1. Each Party shall ensure that with respect to its determinations on customs matters, importers in its territory have access to:

- (a) at least one level of administrative review, independent of the official or authority responsible for the determination under review; and
- (b) judicial review of the determination or decision taken at the final level of administrative review.

2. Each Party shall grant substantially the same rights for the review and appeal of determinations of origin and advance rulings issued by its customs authority as it provides to importers in its territory to any person who:

- (a) completes and signs a certificate of origin for a good that has been the subject of a determination of origin; or
- (b) has received an advance ruling pursuant to Article 4.9.

3. Each Party shall allow an exporter or producer of the other Party to provide information directly to the Party conducting the review and to request that Party to treat that information as confidential in accordance with Article 4.20.

### SECTION B: CUSTOMS COOPERATION AND MUTUAL ASSISTANCE

#### ARTICLE 4.11: CUSTOMS COOPERATION

1. The Parties shall cooperate in order to ensure compliance with their respective laws and regulations on:

- (a) the implementation and operation of the provisions of this Agreement governing importations or exportations;
- (b) preferential tariff treatment and claims procedures;
- (c) verification procedures;
- (d) customs valuation and tariff classification of a good; and
- (e) restrictions or prohibitions on imports and/or exports.

2. The Parties shall cooperate in order to ensure that training and technical assistance programs related to the provisions of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures) are organized jointly, for purposes of:

- (a) enhancing institutional cooperation between the Parties;
- (b) providing expertise and capacity building on legislative and technical matters to develop and enforce customs legislation;
- (c) the application of modern customs techniques; and
- (d) the simplification, harmonization and automation of customs procedures.

3. The Parties shall cooperate in order to ensure that the documents provided under this Chapter and Chapter 3 (Rules of Origin and Origin Procedures) shall not need further certification, authentication, notarization, or other types of solemnity, other than those provided by the competent administrative authority, which shall be held as authentic.

#### ARTICLE 4.12: MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS

1. The Parties shall assist each other, in the areas within their competence, in accordance with the conditions laid down in this Chapter, to ensure the correct application of customs law, in particular by preventing, investigating, and combating operations in breach of customs law.

2. Assistance in customs matters, as provided for in this Section, shall not prejudice the rules governing mutual assistance in criminal matters, nor shall it cover information obtained under powers exercised at the request of a judicial authority, except where communication of such information is authorized by that authority. Assistance to recover duties, taxes, or fines is not covered by this Section.

3. Upon request of the applicant authority, the requested authority shall inform it:

- (a) whether goods exported from the territory of the applicant Party have been properly imported into the territory of the requested Party, specifying, where appropriate, the customs procedure applied to the goods; or

- (b) whether goods imported into the territory of the applicant Party have been properly exported from the territory of the requested Party, specifying, where appropriate, the customs procedure applied to the goods.

4. Upon request of the applicant authority, the requested authority shall, within the framework of its legal or regulatory provisions, take the necessary steps to ensure special surveillance of:

- (a) persons in respect of whom there are reasonable grounds for believing that they are or have been in breach of customs law;
- (b) places where stocks of goods have been or may be assembled or transformed in such a way that there are reasonable grounds for believing that these goods are intended to be used in operations in breach of customs law;
- (c) goods that are or may be transported in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs law; and
- (d) means of transport that are or may be used in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs law.

5. The Parties shall assist each other, at their own initiative and in accordance with their laws, rules, and other legal instruments, if they consider that to be necessary for the correct application of customs law, in particular, by providing information obtained pertaining to:

- (a) activities which are or appear to be operations in breach of customs law and which may be of interest to the other Party;
- (b) new means or methods employed in carrying out operations in breach of customs law;
- (c) goods known to be subject to operations in breach of customs law;
- (d) persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs law; and
- (e) means of transport in respect of which there are reasonable grounds for believing that they have been, are, or may be used in operations in breach of customs law.

6. Upon request of the applicant authority, the requested authority shall, in accordance with legal or regulatory provisions applicable to the latter, take all necessary measures in order to deliver any document or to notify any decision, emanating from the applicant authority and falling within the scope of this Article, to an addressee residing or established in the territory of the requested authority. Requests for delivery of documents or notification of

decisions shall be made in a written form in English.

#### ARTICLE 4.13: FORM AND SUBSTANCE OF REQUESTS FOR ASSISTANCE

1. Requests for assistance in accordance with Article 4.12 shall be made in writing or through an official secure electronic means as agreed upon by authorities of the Parties, in accordance with their laws. They shall be accompanied by the documents necessary to enable compliance with the request. In urgent situations, oral requests may be accepted but must be confirmed in writing immediately.

2. Requests for assistance shall be executed in accordance with the legal or regulatory provisions of the requested Party.

3. Requests for assistance in accordance with paragraph 1 shall include the following information:

- (a) the applicant authority;
- (b) the measures requested;
- (c) the object of and the reason for the request;
- (d) the legal or regulatory provisions and other legal instruments involved;
- (e) indications as exact and comprehensive as possible on the persons who are the target of the investigations; and
- (f) a summary of the relevant facts and of the inquiries already carried out.

4. Requests shall be submitted in English. Where documents are made in a language other than English, the requested authority may require the applicant authority to submit a translation of the documents in English.

5. If a request does not meet the formal requirements set out above, its correction or completion may be requested.

#### ARTICLE 4.14: EXECUTION OF ASSISTANCE REQUESTS

1. In order to comply with a request for assistance, the requested authority shall proceed, within the limits of its competence, as though it were acting on its own account or upon request of other authorities of that same Party, by supplying information already possessed, by carrying out appropriate inquiries, or by arranging for them to be carried out. This paragraph shall also apply to any other authority to which the request has been addressed by the requested authority when the latter cannot act on its own.

2. Duly authorized officials of a Party, may be present at the offices of the requested

authority or any other concerned authority in accordance with paragraph 1 and subject to the conditions, laws, rules, and other legal instruments laid down by the latter in order to obtain information related to activities that are or may be operations in breach of customs law which the applicant authority needs for the purpose of investigation on the case referred to in paragraph 1.

3. Duly authorized officials of a Party involved may, with the agreement of the other Party involved and subject to the conditions laid down by the latter, be present at inquiries carried out in the latter's territory.

#### ARTICLE 4.15: EXCEPTIONS TO THE OBLIGATION TO PROVIDE ASSISTANCE

1. Assistance may be refused or may be subject to the satisfaction of certain conditions or requirements, in cases where a Party is of the opinion that assistance under this Section would:

- (a) be likely to prejudice the sovereignty of a Party which has been requested to provide assistance under this Section;
- (b) be likely to prejudice public policy, security, or other essential interests, in particular in the cases referred to under Article 4.16.2;
- (c) violate an industrial, commercial, or professional secret; or
- (d) be unconstitutional or contrary to its law, rules, or other legal instruments.

2. Assistance may be postponed by the requested authority on the ground that it will interfere with an ongoing investigation, prosecution, or proceeding. In such a case, the requested authority shall consult with the applicant authority to determine if assistance can be given subject to such terms or conditions as the requested authority may require.

3. Where the applicant authority seeks assistance which it would itself be unable to provide if so requested, it shall draw attention to that fact in its request. It shall then be for the requested authority to decide how to respond to such a request.

4. For the cases referred to in paragraphs 1 and 2, the decision of the requested authority and the reasons thereof must be communicated to the applicant authority without delay.

#### ARTICLE 4.16: INFORMATION EXCHANGE AND CONFIDENTIALITY

1. Any information communicated in whatsoever form pursuant to this Section shall be of a confidential or restricted nature, depending on the rules applicable in each Party. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to similar information under the relevant laws of the Party that received it.

2. Personal data may be exchanged only where the Party which may receive them

undertakes to protect such data in at least an equivalent way to the one applicable to that particular case in the Party that may supply them.

3. The use, in judicial or administrative proceedings instituted in respect of operations in breach of customs law, of information obtained under this Section, is considered to be for purposes of this Section. Therefore, the Parties may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence information obtained and documents consulted in accordance with this Section. The competent authority which supplied that information or gave access to those documents shall be notified of such use.

4. Information obtained shall be used solely for purposes of this Section. Where one of the Parties wishes to use such information for other purposes, it shall obtain the prior written consent of the authority which provided the information. Such use shall then be subject to any restrictions laid down by that authority.

#### ARTICLE 4.17: EXPERTS AND WITNESSES

An official of a requested authority may be authorized to appear, within the limitations of the authorization granted, as an expert or witness in judicial or administrative proceedings of the requesting Party regarding the matters covered by this Section, and produce such objects, documents, or certified copies thereof, as may be needed for the proceedings. The request for appearance must indicate specifically before which judicial or administrative authority the official will have to appear, on what matters and by virtue of what title or qualification the official will be questioned.

#### ARTICLE 4.18: ASSISTANCE EXPENSES

The Parties shall waive all claims on each other for the reimbursement of expenses incurred pursuant to this Section except, as appropriate, for expenses to experts and witnesses, and those to interpreters and translators who are not public service employees.

#### ARTICLE 4.19: BILATERAL CUSTOMS CONSULTATION

1. Without prejudice to Article 4.21, each customs authority may at any time request consultations with the customs authority of the other Party on any matter arising from the operation or implementation of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures) including tariff classification, customs valuation, and origin determination. Such consultations shall be conducted through the relevant contact points, and shall take place within 30 days of the request, unless the customs authorities of the Parties agree 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 established in Article 4.21 for consideration.

3. Each customs authority shall designate one or more contact points for purposes of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures) and provide details of such contact points to the other Party. The customs authorities of the Parties shall notify each other promptly of any amendment to the details of their contact points.

4. The request for consultations and any response thereto shall be written in English and sent by electronic means. A physical copy of the request or response for consultations shall also be sent by courier or fax. Nonetheless, each Party may request or respond to the above mentioned consultations both in English and in the language required by its law.

#### ARTICLE 4.20: CONFIDENTIALITY

1. A Party shall maintain the confidentiality of the information provided by the other Party pursuant to this Chapter and Chapter 3 (Rules of Origin and Origin Procedures), and protect it from disclosure that could prejudice the competitive position of the person providing the information. Any violation of the confidentiality shall be treated in accordance with the legislation of each Party.

2. The information referred to paragraph 1 shall not be disclosed without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed for law enforcement purposes or in the course of judicial proceedings.

#### ARTICLE 4.21: CUSTOMS COMMITTEE

1. The Parties hereby establish a customs committee (hereinafter referred to as the “Customs Committee”), composed of the customs authorities of the Parties and other competent authorities, if the Parties deem it necessary. The Customs Committee shall be responsible for addressing rules of origin, origin procedures, trade facilitation, and customs matters.

2. The Customs Committee shall ensure the proper functioning of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures) and examine all issues arising from their application.

3. The functions of the Customs Committee shall include:

- (a) ensuring the effective, uniform, and consistent administration of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures);
- (b) revising Annex 3-A (Product Specific Rules of Origin) on the basis of the transposition of the HS;
- (c) advising the Joint Commission of proposed solutions to address issues related to:

- (i) interpretation, application, and administration of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures);
  - (ii) tariff classification and customs valuation;
  - (iii) calculation of the regional value content; and
  - (iv) issues arising from the adoption by either Party of operational practices not in conformity with this Chapter or Chapter 3 (Rules of Origin and Origin Procedures) which may adversely affect the flow of trade between the Parties;
- (d) adopting customs practices and standards which facilitate commercial exchange between the Parties, according to the international standards;
  - (e) resolving any issues related to interpretation, application, and administration of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures), including tariff classification. If the Customs Committee does not reach a decision on the tariff classification, the Parties shall hold the appropriate consultations at the WCO. The recommendations of the WCO HS Committee or the Council shall be binding between the Parties;
  - (f) presenting proposals for the Joint Commission's approval on modifications under Article 3.17 (Consultation and Modification), in the event a consensus is reached between the Parties; and
  - (g) working on the development of an electronic certification and verification system.

4. The Customs Committee may formulate resolutions, recommendations or opinions which it considers necessary for the attainment of the common objectives and the functioning of the mechanisms established in this Chapter and Chapter 3 (Rules of Origin and Origin Procedures).

5. The Customs Committee shall meet every year, or as otherwise agreed, alternating between the Parties.

6. The Customs Committee shall report to the Joint Commission on the results of each of its meetings.

#### ARTICLE 4.22: IMPLEMENTATION

1. The Parties commit to undertake further understandings, under the framework of this Chapter, in order to facilitate the implementation of the obligations and duties mentioned above in this Chapter.

2. The customs authorities of the Parties shall decide on all practical measures and arrangements necessary for the application of this Chapter, taking into consideration the rules in force, in particular in the field of data protection. They may recommend to the competent bodies the developing of complementary instruments for the application of this Chapter.

3. The Parties shall consult each other and subsequently keep each other informed of the detailed rules of implementation which are adopted in accordance with the provisions of this Chapter.

## SECTION C: DEFINITIONS

### ARTICLE 4.23: DEFINITIONS

For purposes of this Chapter:

**applicant authority** means a competent administrative authority which has been appointed by a Party to make a request for assistance;

**customs authority** means:

- (a) for Korea, the *Ministry of Strategy and Finance*, or the *Korea Customs Service*, or their successors; and
- (b) for Colombia, the *Directorate of National Taxes and Customs (Dirección de Impuestos y Aduanas Nacionales)* or its successor notified in writing to the other Party;

**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, as they relate to customs duties, charges, and other taxes, or to prohibitions, restrictions, and other similar controls with respect to the movement of controlled items across the boundary of the customs territory of each Party;

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

**goods** means all goods falling within Chapters 1 through 97 of the HS, irrespective of the scope of this Agreement;

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

**operation in breach of customs law** means any violation or attempted violation of customs legislation of any of the Parties;

**personal data** means all information related to an identified or identifiable person; and

**requested authority** means a competent administrative authority which has been appointed by a Party to receive a request for assistance.