

CHAPTER FOUR CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 4.1: 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) ensure predictability, consistency, and transparency in the application of customs laws and regulations of each Party;
 - (b) simplify and harmonize customs procedures of the Parties to the extent possible with relevant international standards;
 - (c) facilitate trade between the Parties; and
 - (d) promote cooperation between the customs authorities, within the scope of this Chapter.

Article 4.2: Consistency

1. Each Party shall ensure that its customs laws and regulations are consistently implemented and applied throughout its customs territory.
2. In fulfilling the obligation in paragraph 1, each Party shall endeavor to adopt or maintain administrative measures to ensure consistent implementation and application of its customs laws and regulations throughout its customs territory, preferably by establishing an administrative mechanism which assures consistent application of the customs laws and regulations of that Party among its regional customs offices.

Article 4.3: Publication

1. Each Party shall publish, by any means, including the Internet, its laws, regulations, and general administrative procedures related to customs.
2. Each Party shall designate or maintain one or more inquiry points to address inquiries by interested persons concerning customs matters and shall

make available on the Internet information concerning the procedures for making such inquiries.

3. To the extent possible, and in a manner consistent with its domestic law and legal system each Party shall publish in advance any regulations of general application governing customs matters that it proposes to adopt and shall provide interested persons the opportunity to comment before adopting them.

Article 4.4: Automation

Each Party shall use information technology that expedites procedures for the release of goods and shall:

- (a) make electronic systems accessible to customs users;
- (b) endeavor to use international standards;
- (c) endeavor to develop electronic systems that are compatible with the other Party's systems, in order to facilitate exchange of international trade data; and
- (d) endeavor to develop a set of common data elements and processes in accordance with World Customs Organization (hereinafter referred to as the "WCO") Customs Data model and related WCO recommendations and guidelines.

Article 4.5: Advance Rulings

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

For greater certainty, an importer, exporter or producer may submit a request for an advance ruling through a duly authorized representative.

- (a) tariff classification;
- (b) the application of customs valuation criteria for a particular case, in accordance with the Customs Valuation Agreement;
- (c) whether a good is originating under this Agreement; and

- (d) such other matters as the Parties may agree.
2. Each Party shall issue an advance ruling within 90 days after its customs authority receives a request provided that the requester has submitted all the information that the Party requires, including, if the Party requests, a sample of the good for which the requester is seeking an advance ruling.

In issuing an advance ruling, the Party shall take into account facts and circumstances the requester has provided.

For greater certainty, the Party may decline to issue an advance ruling if the facts or circumstances forming the basis of this ruling are the subject of administrative or judicial review, or if there is already an administrative or judicial decision on the same matter. The Party that, pursuant to this paragraph, 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.

3. Each Party shall provide that advance rulings shall take effect on the date they are issued, or on another date specified in the ruling, provided that the facts or circumstances on which the ruling is based remain unchanged.

4. The issuing Party may modify or revoke an advance ruling after publication of the decision in accordance with the laws and regulations of the issuing Party. The issuing Party may modify or revoke a ruling retroactively only if the ruling was based on inaccurate or false information.

5. Subject to any confidentiality requirements in its laws, each Party shall publish its advance rulings, including on the Internet.

6. If a requester provides false information or omits relevant facts or circumstances relating to the advance ruling, or does not act in accordance with the ruling's terms and conditions, the importing Party may apply appropriate measures, including civil, criminal, and administrative actions, monetary penalties, or other sanctions.

Article 4.6: Release of Goods

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

2. Pursuant to paragraph 1, each Party shall ensure that its customs authority or other competent authority adopts or maintains 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, within 48 hours of the goods' arrival;
- (b) provide for customs information to be submitted and processed electronically before goods arrive in order for them to be released on their arrival;
- (c) allow goods to be released at the point of arrival without temporary transfer out of the point of arrival; and
- (d) allow importers to withdraw goods from its customs before, and without prejudice to, its customs authority's final determination of the applicable customs duties, taxes, and fees.

3. A Party may require importers to provide guarantees in the form of sureties, deposits, or other appropriate instruments sufficient to cover payment of the customs duties, taxes, and fees its customs authority ultimately applies in connection with the importation of the good.

4. Each Party shall adopt and maintain procedures under which goods in need of emergency clearance may be released 24 hours a day, seven days a week including holidays.

5. With a view to preventing avoidable loss or deterioration of perishable goods, and provided that all regulatory requirements have been met, each Party shall provide for the release of perishable goods from customs control:

- (a) under normal circumstances in the shortest possible time, in less than 12 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 the business hours of its customs authority.

6. Each Party shall give appropriate priority to perishable goods when scheduling any examinations that may be required.

7. 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 have been approved or designated by its relevant authorities. The movement of the goods to those storage facilities, including authorizations for the operator moving the goods, may be subject to the approval, where required, of the relevant authorities. Each Party shall, where practicable and consistent with domestic legislation,

on the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

Article 4.7: 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 shipments;
- (b) provide for information necessary to release an express shipment to be submitted and processed electronically before the shipment arrives;
- (c) allow submission of a single manifest covering all goods contained in an express shipment, through, if possible, electronic means;
- (d) to the extent possible, provide for certain goods to be cleared with a minimum of documentation;
- (e) under normal circumstances, provide for express shipments to be cleared within six hours after the necessary customs documents have been submitted, provided the shipment has arrived; and
- (f) under normal circumstances, provide that no customs duties will be assessed on, nor will formal entry documents be required for, express shipments under the law of each Party.

Notwithstanding subparagraph (f), a Party may require the express shipments to be accompanied by an airway bill or other bill of lading. For restricted goods, a Party may require formal entry documents, duties or taxes.

Article 4.8: Risk Management

Each Party shall adopt or maintain risk management systems for assessment and targeting that enable its customs authority to focus its inspection activities on high-risk goods and that simplify the clearance and movement of low-risk goods.

Article 4.9: Authorized Economic Operators and Mutual Recognition

1. The Parties shall promote the implementation of Authorized Economic Operator programs in accordance with the *WCO SAFE Framework of Standards to Secure and Facilitate Global Trade*.
2. The obligations, requirements, formalities of the programs, as well as the benefits offered to the companies that comply with the requirements shall be established in accordance with the legislation of each Party.
3. The customs authorities of the Parties shall endeavor to negotiate a Mutual Recognition Arrangement of the Authorized Economic Operator programs, within a reasonable period of time mutually agreed by the customs authorities.

Article 4.10: Post-clearance Audit

1. With a view to expediting the release of goods, each Party shall adopt or maintain post-clearance audit to ensure compliance with its customs and other related laws and regulations.
2. Each Party shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Party shall conduct post-clearance audits in a transparent manner. Where the person is involved in the audit process and conclusive results have been achieved, the Party shall, without delay, notify the person whose record was audited of the:
 - (a) results;
 - (b) reasons for the results; and
 - (c) person's rights and obligations.
3. The Parties acknowledge that the information obtained in post-clearance audit may be used in further administrative or judicial proceedings.
4. Each Party shall, wherever practicable, use the result of post-clearance audit in applying risk management.

Article 4.11: Review and Appeal

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

- (a) a level of administrative review independent of the employee or office that issued the determinations; and
- (b) judicial review of the determinations.

For greater certainty, each Party shall allow an exporter or producer 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 4.13.

Article 4.12: Penalties

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 laws and regulations.

Article 4.13: Confidentiality

1. Where a Party that provides information to the other Party in accordance with this Chapter and Chapter Three (Rules of Origin and Origin Procedures) designates the information as confidential, the other Party shall keep the information confidential.

The information provided by one of the Parties in accordance with paragraph 1, and classified by the providing Party as confidential will be held in confidence, will be used only for the purposes the other Party specified in its request for information, and will not be disclosed without the specific permission of the Party that provided the information or the person that provided the information to that Party.

2. If a Party receives information designated as confidential in accordance with paragraph 1, the Party receiving the information may nevertheless use or disclose the information for law enforcement purposes or in the course of judicial proceedings.

3. A Party may decline to provide information that the other Party has requested where that Party has failed to act in conformity with paragraph 1. When a Party declines the provision of information on the grounds of this article, the declining Party shall provide a reasonable written explanation of the specific non-compliance committed by the requesting Party.

4. Each Party shall protect confidential information submitted in accordance with the administration of the Party's customs laws from unauthorized disclosure, including information the disclosure of which could prejudice the competitive position of the person providing the information.

Article 4.14: Customs Cooperation

1. The customs authorities of both Parties may, as deemed appropriate, assist each other, in relation to:

- (a) the implementation and operation of this Chapter;
- (b) developing and implementing customs best practice and risk management techniques;
- (c) simplifying and harmonizing customs procedures;
- (d) advancing technical skills and the use of technology;
- (e) the tariff classification, valuation and determination of origin of goods, for the purposes of preferential tariff treatment;
- (f) exchanging FTA implementation statistics, formats and types of which are to be mutually agreed by both Parties; and
- (g) such other customs issues as the Parties may mutually determine.

2. The customs authorities of both Parties may, as deemed appropriate, share with each other, information and experiences on development of customs administration.

3. Each Party shall designate official contact points and provide details thereof to the other Party, with a view to facilitating the effective implementation of this Chapter and Chapter Three (Rules of Origin and Origin Procedures). If a matter cannot be resolved through the contact points, the matter shall be referred to the Customs Committee set out in Article 4.15.

Article 4.15: Customs Committee

1. The Parties hereby establish Customs Committee (hereinafter referred to as the “Committee”) composed of the customs authorities of each Party. Other competent authorities of each Party may join the Committee if the Parties deem it necessary.

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

3. The functions of the Committee may include:
 - (a) reviewing, discussing, and proposing effective, uniform, and consistent administration of this Chapter and Chapter Three (Rules of Origin and Origin Procedures);
 - (b) reviewing, discussing, and proposing regulations for the effective, uniform, and consistent interpretation of this Chapter and Chapter Three (Rules of Origin and Origin Procedures);
 - (c) revising Annex 3-A (Product Specific Rules) on the basis of the transposition of the Harmonized System (hereinafter referred to as the “HS”);
 - (d) consulting on and endeavoring to resolve any difference that may arise between the Parties on matters related to the classification of goods under the HS;
 - (e) reviewing the possibility of revision and reaching agreement on revision of this Chapter and Chapter Three (Rules of Origin and Origin Procedures);
 - (f) working on the development of an electronic certification and verification system; and
 - (g) any other issues related to this Chapter as determined by the Joint Committee.

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

Article 4.16: Definitions

For the purposes of this Chapter:

customs authority means any authority that is responsible under each Party’s domestic law for the administration and enforcement of its customs laws and regulations:

- (a) for Korea, the Ministry of Economy and Finance, or the Korea Customs Service, or their respective successors; and

- (b) for Ecuador, the Ministry of Production, Foreign Trade, Investments and Fisheries, or the National Customs Service of Ecuador, or their respective successors.

customs laws and regulations means the statutory and regulatory provisions relating to the importation, exportation, movement, or storage of goods, the administration and enforcement of which are specifically charged to a customs authority, and any regulations made by a customs authority, under its statutory powers;

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 laws and regulations; and

means of transport means various types of vessels, vehicles, and aircrafts which enter or leave the customs territory of a Party carrying natural persons, and goods.