

CHAPTER SIX

CUSTOMS AND TRADE FACILITATION

ARTICLE 6.1: OBJECTIVES AND PRINCIPLES

With the objectives of facilitating trade and promoting customs cooperation on a bilateral and multilateral basis, the Parties agree to cooperate and to adopt and apply their import, export and transit requirements and procedures for goods on the basis of the following objectives and principles:

- (a) in order to ensure that import, export and transit requirements and procedures for goods are efficient and proportionate;
 - (i) each Party shall adopt or maintain expedited customs procedures while maintaining appropriate customs control and selection procedures;
 - (ii) import, export and transit requirements and procedures shall be no more administratively burdensome or trade restrictive than necessary to achieve legitimate objectives;
 - (iii) each Party shall provide for clearance of goods with a minimum of documentation and make electronic systems accessible to customs users;
 - (iv) each Party shall use information technology that expedites procedures for the release of goods;
 - (v) each Party shall ensure that its customs authorities and agencies involved in border controls including import, export and transit matters, cooperate and co-ordinate their activities; and
 - (vi) each Party shall provide that the use of customs brokers is optional.
- (b) import, export and transit requirements and procedures shall be based on international trade and customs instruments and standards which the Parties have accepted;
 - (i) international trade and customs instruments and standards shall be the basis for import, export and transit requirements and procedures, where such instruments and standards exist, except when they would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued; and
 - (ii) data requirements and processes shall be progressively used and applied in accordance with World Customs Organization (hereinafter

referred to as the “WCO”) Customs Data Model and related WCO recommendations and guidelines;

- (c) requirements and procedures shall be transparent and predictable for importers, exporters and other interested parties;
- (d) each Party shall consult in a timely manner with representatives of the trading community and other interested parties, including on significant new or amended requirements and procedures prior to their adoption;
- (e) risk management principles or procedures shall be applied to focus compliance efforts on transactions that merit attention;
- (f) each Party shall cooperate and exchange information for the purpose of promoting the application of, and compliance with, the trade facilitation measures agreed upon under this Agreement; and
- (g) measures to facilitate trade shall not prejudice the fulfilment of legitimate policy objectives, such as the protection of national security, health and the environment.

ARTICLE 6.2: RELEASE OF GOODS

1. Each Party shall adopt and apply simplified and efficient customs and other trade-related requirements and procedures in order to facilitate trade between the Parties.

2. Pursuant to paragraph 1, each Party shall ensure that its customs authorities, border agencies or other competent authorities apply requirements and procedures that:

- (a) provide for the release of goods within a period no longer than that required to ensure compliance with its customs and other trade-related laws and formalities. Each Party shall work to further reduce release time;
- (b) provide for advance electronic submission and eventual processing of information before physical arrival of goods, “pre-arrival processing”, to enable the release of goods on arrival;
- (c) allow importers to obtain the release of goods from customs before, and without prejudice to, the final determination by its customs authority of the applicable customs duties, taxes and fees;¹ and
- (d) allow goods to be released for free circulation at the point of arrival, without temporary transfer to warehouses or other facilities.

¹ A Party may require an importer to provide sufficient guarantee in the form of a surety, a deposit or some other appropriate instruments, covering the ultimate payment of the customs duties, taxes and fees in connection with the importation of the goods.

ARTICLE 6.3: SIMPLIFIED CUSTOMS PROCEDURE

The Parties shall endeavour to apply simplified import and export procedures for traders or economic operators which meet specific criteria decided by a Party, providing in particular more rapid release and clearance of goods, including advance electronic submission and processing of information before physical arrival of consignments, a lower incidence of physical inspections, and facilitation of trade with regard to, for example, simplified declarations with a minimum of documentation.

ARTICLE 6.4: RISK MANAGEMENT

Each Party shall apply risk management systems, to the extent possible in an electronic manner, for risk analysis and targeting that enable its customs authorities to focus inspection activities on high-risk goods and that simplify the clearance and movement of low-risk goods. Each Party shall draw upon the revised *International Convention on the Simplification and Harmonisation of Customs Procedures* of 1999 (hereinafter referred to as the “Kyoto Convention”) and WCO Risk Management Guidelines for its risk management procedures.

ARTICLE 6.5: TRANSPARENCY

1. Each Party shall ensure that its customs and other trade-related laws, regulations and general administrative procedures and other requirements, including fees and charges, are readily available to all interested parties, via an officially designated medium, and where feasible and possible, official website.
2. Each Party shall designate or maintain one or more inquiry or information points to address inquiries by interested persons concerning customs and other trade-related matters.
3. Each Party shall consult with, and provide information to, representatives of the trading community and other interested parties. Such consultations and information shall cover significant new or amended requirements and procedures and the opportunity to comment shall be provided prior to their adoption.

ARTICLE 6.6: ADVANCE RULINGS

1. Upon written request from traders, each Party shall issue written advance rulings, through its customs authorities, prior to the importation of a good into its territory in accordance with its laws and regulations, on tariff classification, origin or any other such matters as the Party may decide.
2. Subject to any confidentiality requirements in its laws and regulations, each Party shall publish, e.g. on the Internet, its advance rulings on tariff classification and any other such matters as the Party may decide.
3. To facilitate trade, the Parties shall include in their bilateral dialogue regular updates on changes in their respective legislation on the matters referred to in paragraphs 1 and 2.

ARTICLE 6.7: APPEAL PROCEDURES

1. Each Party shall ensure that with respect to its determinations on customs matters and other import, export and transit requirements and procedures, persons concerned who are the subject of such determinations shall have access to review or appeal of such determinations. A Party may require that an appeal be initially heard by the same agency, its supervisory authority or a judicial authority prior to a review by a higher independent body, which may be a judicial authority or administrative tribunal.

2. The producer or exporter may provide, upon request of the reviewing authority to the producer or exporter, information directly to the Party conducting the administrative review. The exporter or producer providing the information may ask the Party conducting the administrative review to treat that information as confidential in accordance with its laws and regulations.

ARTICLE 6.8: CONFIDENTIALITY

1. Any information provided by persons or authorities of a Party to the authorities of the other Party pursuant to the provisions of this Chapter shall, including where requested pursuant to Article 6.7, be treated as being of confidential or restricted nature, depending on the laws and regulations 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 and regulations of the Party that received it.

2. Personal data may be exchanged only where the Party receiving the data undertakes to protect such data in a manner at least equivalent to that applicable to that particular case in the Party that may supply them. The person providing information shall not stipulate any requirements which are more onerous than those applicable to it in its own jurisdiction.

3. Information referred to in paragraph 1 shall not be used by the authorities of the Party which has received it for purposes other than those for which it was provided without the express permission of the person or authority providing it.

4. Other than with the express permission of the person or authority that provided it, the information referred to in paragraph 1 shall not be published or otherwise disclosed to any persons, except where obliged or authorised to do so under the laws and regulations of the Party that received it in connection with legal proceedings. The person or authority that provided the information shall be notified of such disclosure, wherever possible, in advance.

5. Where an authority of a Party requests information pursuant to the provisions of this Chapter, it shall notify the requested persons of any possibility of disclosure in connection with legal proceedings.

6. The requesting Party shall, unless otherwise agreed by the person who provided the information, wherever appropriate, use all available measures under the applicable laws and regulations of that Party to maintain the confidentiality of information and to protect personal data in case of applications by a third party or other authorities for the disclosure of the information concerned.

ARTICLE 6.9: FEES AND CHARGES

With regard to all fees and charges of whatever character other than customs duties and the items that are excluded from the definition of a customs duty under Article 2.3 (Customs duty) imposed in connection with importation or exportation:

- (a) fees and charges shall only be imposed for services provided in connection with the importation or exportation in question or for any formality required for undertaking such importation or exportation;
- (b) fees and charges shall not exceed the approximate cost of the service provided;
- (c) fees and charges shall not be calculated on an *ad valorem* basis;
- (d) fees and charges shall not be imposed with respect to consular services;
- (e) the information on fees and charges shall be published via an officially designated medium, and where feasible and possible, official website. This information shall include the reason for the fee or charge for the service provided, the responsible authority, the fees and charges that will be applied, and when and how payment is to be made; and
- (f) new or amended fees and charges shall not be imposed until information in accordance with subparagraph (e) is published and made readily available.

ARTICLE 6.10: PRE-SHIPMENT INSPECTIONS

Neither Party shall require the use of pre-shipment inspections or their equivalent.

ARTICLE 6.11: POST CLEARANCE AUDIT

Each Party shall provide traders with the opportunity to benefit from the application of efficient post clearance audits. The application of post clearance audits shall not impose unwarranted or unjustified requirements or burdens on traders.

ARTICLE 6.12: CUSTOMS VALUATION

The Customs Valuation Agreement without the reservations and options provided for in Article 20 and paragraphs 2 through 4 of Annex III of the Customs Valuation Agreement, shall be incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 6.13: CUSTOMS COOPERATION

1. The Parties shall enhance their cooperation in customs and customs-related matters.

2. The Parties undertake to develop trade facilitation actions in customs matters taking account of the work done in this connection by international organisations. This may include testing of new customs procedures.

3. The Parties affirm their commitment to the facilitation of the legitimate movement of goods and shall exchange expertise on measures to improve customs techniques and procedures and on computerised systems in accordance with the provisions of this Agreement.

4. The Parties shall commit to:

- (a) pursuing the harmonisation of documentation and data elements used in trade according to international standards for the purpose of facilitating the flow of trade between them in customs-related matters regarding the importation, exportation and transit of goods;
- (b) intensifying cooperation between their customs laboratories and scientific departments and to working towards the harmonisation of customs laboratories methods;
- (c) exchanging customs personnel;
- (d) jointly organising training programmes on customs-related issues, for the officials who participate directly in customs procedures;
- (e) developing effective mechanisms for communicating with the trade and business communities;
- (f) assisting to the extent practicable each other in the tariff classification, valuation and determination of origin for preferential tariff treatment of imported goods;
- (g) promoting strong and efficient intellectual property rights enforcement by customs authorities, regarding imports, exports, re-exports, transit, transshipments and other customs procedures, and in particular as regards counterfeit goods; and
- (h) improving the security, while facilitating trade, of sea-container and other shipments from all locations that are imported into, transhipped through, or transiting the Parties. The Parties agree that the objectives of the intensified and broadened cooperation include, but are not limited to:
 - (i) working together to reinforce the customs related aspects for securing the logistics chain of international trade; and
 - (ii) co-ordinating positions, to the greatest extent practicable, in any multilateral fora where issues related to container security may be appropriately raised and discussed.

5. The Parties recognise that technical cooperation between them is fundamental to

facilitating compliance with the obligations set forth in this Agreement and to achieving high levels of trade facilitation. The Parties, through their customs administrations, agree to develop a technical cooperation programme under mutually agreed terms as to the scope, timing and cost of cooperative measures in customs and customs-related areas.

6. Through the Parties' respective customs administrations and other border-related authorities, the Parties shall review relevant international initiatives on trade facilitation, including, *inter alia*, relevant work in the WTO and WCO, to identify areas where further joint action would facilitate trade between the Parties and promote shared multilateral objectives. The Parties shall work together to establish, wherever possible, common positions in international organisations in the field of customs and trade facilitation, notably in the WTO and WCO.

7. The Parties shall assist each other in implementation and enforcement of this Chapter, the Protocol concerning the Definition of 'Originating Products' and Methods of Administrative Cooperation, and their respective customs laws or regulations.

ARTICLE 6.14: MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS

1. The Parties shall provide mutual administrative assistance in customs matters in accordance with the provisions laid down in the Protocol on Mutual Administrative Assistance in Customs Matters.

2. Neither Party may have recourse to Chapter Fourteen (Dispute Settlement) under this Agreement for matters covered by Article 9.1 of the Protocol on Mutual Administrative Assistance in Customs Matters.

ARTICLE 6.15: CUSTOMS CONTACT POINTS

1. The Parties shall exchange lists of designated contact points for matters arising under this Chapter and the Protocol concerning the Definition of 'Originating Products' and Methods of Administrative Cooperation.

2. The contact points shall endeavour to resolve operational matters covered by this Chapter through consultations. If a matter cannot be resolved through the contact points, the matter shall be referred to the Customs Committee referred to in this Chapter.

ARTICLE 6.16: CUSTOMS COMMITTEE

1. The Customs Committee established pursuant to Article 15.2.1 (Specialised Committees) shall ensure the proper functioning of this Chapter and the Protocol concerning the Definition of 'Originating Products' and Methods of Administrative Cooperation and the Protocol on Mutual Administrative Assistance in Customs Matters and examine all issues arising from their application. For matters covered by this Agreement, it shall report to the Trade Committee set up under Article 15.1.1 (Trade Committee).

2. The Customs Committee shall consist of representatives of the customs and other

competent authorities of the Parties responsible for customs and trade facilitation matters, for the management of the Protocol concerning the Definition of 'Originating Products' and Methods of Administrative Cooperation and the Protocol on Mutual Administrative Assistance in Customs Matters.

3. The Customs Committee shall adopt its rules of procedure and meet annually, the location of the meeting alternating between the Parties.

4. On the request of a Party, the Customs Committee shall meet to discuss and endeavour to resolve any difference that may arise between the Parties on matters as included in this Chapter and the Protocol concerning the Definition of 'Originating Products' and Methods of Administrative Cooperation and the Protocol on Mutual Administrative Assistance in Customs Matters, including trade facilitation, tariff classification, origin of goods and mutual administrative assistance in customs matters, in particular relating to Articles 7 and 8 of the Protocol on Mutual Administrative Assistance in Customs Matters.

5. The Customs Committee may formulate resolutions, recommendations or opinions which it considers necessary for the attainment of the common objectives and sound functioning of the mechanisms established in this Chapter and the Protocol concerning the Definition of 'Originating Products' and Methods of Administrative Cooperation and the Protocol on Mutual Administrative Assistance in Customs Matters.