

## **CHAPTER FOUR**

### **CUSTOMS PROCEDURES AND TRADE FACILITATION**

#### **Article 4.1: Definitions**

For purposes of this Chapter:

- (a) **customs procedure** means the measures applied by the customs administration to goods and to the means of transport that are subject to its customs laws and regulations; and
- (b) **means of transport** means various types of vessels, vehicles, and aircrafts which enter or leave the customs territory of a Party carrying natural persons, goods, or articles.

#### **Article 4.2: Objectives**

The objectives of this Chapter are to:

- (a) ensure predictability, consistency, and transparency in the application of customs laws and regulations of the Parties;
- (b) promote efficient administration of customs procedures of the Parties, and the expeditious clearance of goods;
- (c) simplify customs procedures of the Parties and harmonize them to the extent possible with relevant international standards;
- (d) promote cooperation between the customs administrations; and
- (e) facilitate trade between the Parties, including through a strengthened environment for global and regional supply chains.

#### **Article 4.3: Scope**

This Chapter shall apply to customs procedures applied to goods traded between the Parties and to the means of transport which enter or leave the customs territory of each Party.

#### **Article 4.4: 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 4.5: Transparency**

1. Each Party shall promptly publish, on the internet to the extent possible, the following information in a non-discriminatory and easily accessible manner in order to enable governments, traders, and other interested persons to become acquainted with them:
  - (a) procedures for importation, exportation, and transit (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 for breaches of import, export, or transit formalities;
  - (h) procedures for appeal or review;

- (i) agreements to which it is party, or parts thereof with any country or countries relating to importation, exportation, or transit; and
- (j) procedures relating to the administration of tariff quotas.

2. In particular, each Party shall make available, and update to the extent possible and as appropriate, the following through the internet:

- (a) a description<sup>1</sup> of its procedures for importation, exportation, and transit, including procedures for appeal or review, that informs governments, traders, and other interested persons of the practical steps needed for importation, exportation, and transit;
- (b) the forms and documents required for importation into, exportation from, or transit through the territory of that Party; and
- (c) contact information for the inquiry points as well as information on how to make inquiry on customs matters as provided for in Article 4.6.

3. To the extent possible, when developing new, or amending existing, customs laws and regulations, each Party shall publish, or otherwise make readily available such proposed new or amended customs laws and regulations and provide a reasonable opportunity for interested persons to comment on the proposed customs laws and regulations, unless such advance notice is precluded.

#### **Article 4.6: Inquiry Points**

Each customs administration shall designate one or more inquiry points to answer reasonable inquiry of interested persons concerning customs matters and to facilitate access to forms and documents required for importation, exportation, and transit.

#### **Article 4.7: Customs Procedures**

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<sup>1</sup> Each Party has the discretion to state on its website the legal limitations of this description.

1. Each customs administration shall ensure that its customs procedures and practices are predictable, consistent, and transparent, and facilitate trade, including through the expeditious clearance of goods.
2. Each customs administration shall ensure that its customs procedures, where possible and to the extent permitted by its customs laws and regulations, conform with the standards and recommended practices of the World Customs Organization.
3. The customs administration shall review its customs procedures with a view to simplifying such procedures to facilitate trade.

#### **Article 4.8: Preshipment Inspection**

1. Each Party shall not require the use of preshipment inspections in relation to tariff classification and customs valuation.
2. Without prejudice to the rights of any Party to use other types of preshipment inspection not covered by paragraph 1, each Party is encouraged not to introduce or apply new requirements regarding their use.
3. Paragraph 2 refers to preshipment inspections covered by the Agreement on Preshipment Inspection in Annex 1A to the WTO Agreement, and does not preclude preshipment inspections for sanitary and phytosanitary purposes.

#### **Article 4.9: Advance Rulings**

1. Each Party shall, prior to the importation of a good from a Party into its territory, issue a written advance ruling to an importer, exporter, or any person with a justifiable cause, or a representative thereof, who has submitted a written request containing all necessary information, with regard to:
  - (a) tariff classification;
  - (b) whether the good is an originating good in accordance with Chapter Three (Rules of Origin);
  - (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; and
  - (d) such other matters as the Parties may agree.

2. A Party may require that an applicant have legal representation or registration in that Party. To the extent possible, such requirements shall not restrict the categories of persons eligible to apply for advance rulings, with particular consideration for the specific needs of small and medium enterprises. These requirements shall be clear and transparent and not constitute a means of arbitrary or unjustifiable discrimination<sup>2, 3</sup>

3. Each Party shall adopt or maintain procedures for issuing advance rulings which:

- (a) specify the information required to apply for an advance ruling;
- (b) provide that each Party may at any time during the course of an evaluation of an application for an advance ruling, request that the applicant provide additional information, which may include a sample of the goods, necessary to evaluate the application;
- (c) ensure that an advance ruling is based on the facts and circumstances presented by the applicant and any other relevant information in the possession of the decision-maker; and
- (d) ensure that the advance ruling includes the relevant facts and the basis for its decision.

4. Each Party shall issue an advance ruling within 90 days on receipt of all necessary information.

5. 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. A Party that declines to issue an advance ruling shall promptly notify the applicant in writing, setting forth the relevant facts, circumstances, and the basis for its decision to decline to issue the advance ruling.

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<sup>2</sup> On request of a Party, the Parties may review the requirements of this paragraph in terms of their contribution towards the trade facilitation through the Committee on Rules of Origin and Customs Procedures.

<sup>3</sup> Each Party shall ensure that its registration process is transparent, applications are considered in a timely manner, and the decision made on an application, and the reasons for it, are promptly advised to the applicant in writing.

6. A Party may reject a request for an advance ruling where the additional information requested, in writing, in accordance with subparagraph 3(b) is not provided within a reasonable and specified period, which is determined at the time of the request for additional information and the Party requests the additional information from the applicant in writing.

7. Each Party shall establish a validity period for an advance ruling of three years from the date of its issuance.

8. Where a Party revokes, modifies, or invalidates an advance ruling, it shall promptly provide a written notice to the applicant setting out the relevant facts and the basis for its decision, where:

- (a) there is a change in its laws, regulations, or administrative rules;
- (b) incorrect information was provided or relevant information was withheld;
- (c) there is a change in a material fact or circumstances on which the advance ruling was based; or
- (d) the advance ruling was in error.

9. Where a Party revokes, modifies, or invalidates an advance ruling with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, false, or misleading information.

10. Each Party may make publicly available any information on advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information.

#### **Article 4.10: Release of Goods**

1. The customs administration of each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties. This paragraph shall not require a Party to release a good if its requirements for release have not been met.

2. Pursuant to paragraph 1, each Party shall adopt or maintain procedures that allow the goods to be cleared from customs within a period no longer than that required to ensure compliance with its customs law.

3. For goods selected for further examination, such an examination shall be limited to what is reasonable and necessary, and undertaken and completed without undue delay.
4. Each Party shall adopt or maintain procedures allowing the release of goods, prior to the final determination of customs duties, taxes, fees, and charges if such 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, a Party may require a guarantee in accordance with its laws and regulations that does not exceed the amount the Party requires to ensure payment of customs duties, taxes, fees, and charges ultimately due for the goods covered by the guarantee.
5. With a view to preventing avoidable loss or deterioration of perishable goods, and provided that all regulatory requirements have been met, each Party may provide for the release of perishable goods from customs control:
  - (a) under normal circumstances in the shortest possible time; and
  - (b) in exceptional circumstances where it would be appropriate to do so, outside the business hours of its customs administration.
6. Each Party may give appropriate priority to perishable goods when scheduling any examinations that may be required.
7. Each Party may 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 may, 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 4.11: Risk Management**

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

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

4. Each Party shall base risk management on the risk assessment through appropriate selectivity criteria. Such selectivity criteria may include, inter alia, HS code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders, and type of means of transport.

5. The customs administration of each Party shall exchange best practices on risk management techniques.

#### **Article 4.12: 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 4.13: Time Release Studies**

1. Each Party is encouraged to measure the time required for the release of goods by its customs administration periodically and in a consistent manner, and to publish the findings thereof, using tools such as the *Guide to Measure*



*the Time Required for the Release of Goods* issued by the World Customs Organization with a view to:

- (a) assessing its trade facilitation measures; and
- (b) considering opportunities for further improvement of the time required for the release of goods.

2. Each Party is encouraged to share its experiences in the time release studies referred to in paragraph 1, including methodologies used and bottlenecks identified.

#### **Article 4.14: Review and Appeal**

1. Each Party shall provide that any person to whom its customs administration issues an administrative decision<sup>4</sup> has the right, within its territory, to:

- (a) an administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision; and
- (b) a judicial appeal or review of the decision.

2. 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 4.15.

#### **Article 4.15: Confidentiality**

Where a Party provides information to the other Party and designates the information as confidential, the Party receiving the information shall maintain the confidentiality of the information, in accordance with its laws and regulations.

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<sup>4</sup> For purposes of this Article, “administrative decision” means a decision with a legal effect that affects the rights and obligations of a specific person in an individual case. It shall be understood that an administrative decision referred to in this Article covers an administrative action within the meaning of Article X of GATT 1994 or failure to take an administrative action or decision as provided for in a Party’s laws and regulations and legal system. For addressing such failure, a Party may maintain an alternative administrative mechanism or judicial recourse to direct the customs administration to promptly issue an administrative decision in place of the right to appeal or review under subparagraph 1(a).

#### **Article 4.16: Customs Cooperation**

1. The customs administration 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) application of the WTO Customs Valuation Agreement;
- (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 administration of both Parties may, as deemed appropriate, share information and experiences on development of customs administration.

3. Each Party shall, to the extent possible, provide the other Party with timely notice of any significant administrative change, modification of laws or regulations, or similar measures related to its laws or regulations that govern importations or exportations, that is likely to substantially affect the operation of this Chapter. The notice can be made in the English language or the Party's language and will be provided to the contact point designated pursuant to Article 4.17.

#### **Article 4.17: Consultation and Contact Points**

1. The customs administration of each Party may at any time request consultations with the customs administration of the other Party on any significant matter arising from the implementation or operation of this Chapter, in cases where there are reasonable grounds or truth provided by the requesting Party.

2. In the event that such consultations fail to resolve any such matter, the requesting Party may refer the matter to the Committee on Rules of Origin and Customs Procedures referred to in Article 4.18 for further consideration.

3. Each customs administration shall designate one or more contact points for purposes of this Chapter. Information on the contact points shall be provided to the other Party and any amendment of the said information shall be notified promptly.

#### **Article 4.18: Committee on Rules of Origin and Customs Procedures**

1. The Parties hereby establish a Committee on Rules of Origin and Customs Procedures (hereinafter referred to as the “Committee”) composed of representatives<sup>5</sup> designated by each Party.

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

3. The functions of the Committee may include:

- (a) reviewing, discussing, proposing and making appropriate recommendations to the Joint Committee, as necessary, on:
  - (i) the effective, uniform and consistent administration of this Chapter and Chapter Three (Rules of Origin); including their interpretations and applications, and the enhancement of cooperation in relation to these Chapters; and
  - (ii) revising Annex 3-A (Product Specific Rules) on the basis of the transposition of the Harmonized System (hereinafter referred to as the “HS”).
- (b) consulting on and endeavouring to resolve any difference that may arise between the Parties on matters related to the classification of goods under the HS and interpretation of this Chapter and Chapter Three (Rules of Origin);
- (c) reviewing the possibility of revision and reaching agreement on revision of this Chapter and Chapter Three (Rules of Origin); and
- (d) dealing with other matters referred to the Committee by the Joint Committee.

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<sup>5</sup> For Korea, the representative will be Korea’s customs administration. For Cambodia, there shall be co-leads representing ROO and CPTF.

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