

CHAPTER FIVE CUSTOMS ADMINISTRATION AND TRADE FACILITATION

SECTION A: TRADE FACILITATION

ARTICLE 5.1: SCOPE OF APPLICATION AND OBJECTIVES

1. This Chapter shall apply, in accordance with the Parties' respective international obligations and domestic customs laws, 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) simplify and harmonize customs procedures of the Parties;
 - (b) ensure predictability, consistency, and transparency in the application of customs laws, including administrative procedures of the Parties;
 - (c) ensure the efficient and expeditious clearance of goods and movement of means of transport;
 - (d) facilitate trade between the Parties; and
 - (e) promote cooperation between the customs administrations, within the scope of application of this Chapter.

ARTICLE 5.2: COMPETENT AUTHORITIES

1. The competent authorities for the administration of this Chapter are:
 - (a) for Korea, the *Ministry of Strategy and Finance*, or its successor; and
 - (b) for Peru, the *Ministry of Foreign Trade and Tourism*, or its successor.
2. Each competent authority shall designate one or more contact points for purposes of this Chapter and provide contact details of such contact points to the competent authority of the other Party. Competent authorities of the Parties shall promptly notify each other of any changes to the contact details of their contact points.

ARTICLE 5.3: FACILITATION

1. Each Party shall ensure that its customs procedures and practices are predictable, consistent, and transparent and facilitate trade.
2. Customs procedures of each Party shall, where possible and to the extent permitted by

its respective customs laws, conform with the trade-related instruments of the World Customs Organization (hereinafter referred to as “WCO”) to which the Party is a party, including those of the *International Convention on the Simplification and Harmonization of Customs Procedures* (Kyoto Convention) (as amended) and *Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures* (Revised Kyoto Convention).

3. Each Party shall provide for clearance of goods with minimum documentation requirements and make electronic systems accessible to customs users and use information technology that expedites procedures for the release of goods.

4. Customs administrations of the Parties shall facilitate the clearance, including the release, of goods in administering their procedures.

5. Each Party shall endeavor to provide a focal point, electronic or otherwise, through which its traders may submit all regulatory information that is required in order to obtain the clearance, including the release, of goods.

ARTICLE 5.4: CUSTOMS VALUATION

The Parties shall apply Article VII of GATT 1994 and the Customs Valuation Agreement to goods traded between them.

ARTICLE 5.5: TARIFF CLASSIFICATION

The Parties shall apply the *International Convention on the Harmonized Commodity Description and Coding System* to goods traded between them.

ARTICLE 5.6: REVIEW AND APPEAL

1. Each Party shall ensure that with respect to its determinations¹ on customs matters including origin of goods and preferential tariff treatment and other import, export, and transit requirements and procedures, persons concerned who are the subject of such determinations² shall 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.

2. A producer or exporter may provide, upon request of the reviewing authority, information directly to the Party conducting the administrative review, and may request such

¹ For purposes of this Article, a determination, if made by Peru, means an administrative act.

² It shall be understood that these persons need a representative domiciled in the territory of the Party where the review or appeal is made.

Party to treat that information as confidential in accordance with the rules applicable in that Party. This information shall be provided in accordance with the rules determined by the Parties.

ARTICLE 5.7: ADVANCE RULINGS

1. The Parties shall adopt or maintain procedures for the issuance of advance rulings on the following matters:

- (a) tariff classification;
- (b) execution of the rules of origin; and
- (c) such other matters as the Parties may agree.

2. Procedures for the issuance of these advance rulings shall include at least:

- (a) a maximum term of 120 days for issuance or such shorter period as may be established by a Party, starting from the date on which all the requirements by the competent authority are met;
- (b) conditions for their validation, revocation, and publication; and
- (c) sanctions

3. Upon written request of importers, exporters, or producers, each Party shall issue, through its customs administration or competent authority, written advance rulings on customs matters, in particular on tariff classification and rules of origin, in accordance with the legislation of each Party.

4. Detailed procedures, and in particular deadlines, for the issuance, use, and revocation of advance rulings shall be set out in the legislation of each Party.

5. Peru shall fully implement the obligations under paragraph 1 from January 1, 2012.

ARTICLE 5.8: USE OF AUTOMATED SYSTEMS IN THE PAPERLESS TRADING ENVIRONMENT

1. The customs administrations shall use information technology to support customs operations, where it is cost-effective and efficient, particularly in the paperless trading context, taking into account developments in this area within the WCO.

2. The customs administrations shall endeavor to use information 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.

3. The Parties shall endeavor to ensure the simultaneous inspection of goods by the

relevant domestic authorities at a single time and place when goods enter or leave the Parties' customs territory at a single time and place.

ARTICLE 5.9: RISK MANAGEMENT

1. Each customs administration shall focus its inspection activities on high-risk shipments of goods and facilitate the clearance, including release, of low-risk goods in administering customs procedures. Additionally, customs administrations shall exchange information related to applied techniques on risk management, ensuring the confidentiality of the information.
2. Each Party shall endeavor to mutually accept the certification given to the economic operator by the customs administration of the exporting Party throughout its supply chain which follows international standards and promotes safer trade in cooperation with governments and international organizations.
3. The Parties shall fully implement the obligation under paragraph 2 within three years following the date of entry into force of this Agreement.

ARTICLE 5.10: PUBLICATION AND INQUIRY POINTS

1. Each customs administration shall publish all customs laws and administrative procedures it applies or enforces.
2. Each customs administration shall designate one or more inquiry points to deal with inquiries from interested persons of either Party on customs matters arising from the implementation of this Agreement, and provide details of such inquiry points to the other customs administration. Information concerning the procedures for making such inquiries shall be accessible to the public.
3. Each customs administration shall endeavor to provide the other customs administration with timely notice of any significant modification to its customs laws or procedures governing the movement of goods and means of transport that is likely to substantially affect the operation of this Chapter.

ARTICLE 5.11: EXPRESS CONSIGNMENTS

Each customs administration shall adopt or maintain separate and expeditious customs procedures for express shipments while maintaining appropriate customs control and selection. Those procedures shall, under normal circumstances, provide an express clearance of goods after submission of all the necessary customs documents, regardless of their weight or customs value.

ARTICLE 5.12: 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. In accordance with paragraph 1, each Party shall ensure that its customs administration or competent authority adopt or maintain procedures that:
 - (a) provide for the release of goods within a period no longer than that required to ensure compliance with its customs laws and to the extent possible within 48 hours following the goods' 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, and without prejudice to, the final determination by its customs administration of the applicable customs duties, taxes, and fees.
3. A Party may require an importer to provide sufficient guarantee in the form of a surety, a deposit, or other appropriate instrument, covering the ultimate payment of the customs duties, taxes, and fees in connection with the importation of the good.

SECTION B: CUSTOMS COOPERATION

ARTICLE 5.13: CUSTOMS COOPERATION

1. The Parties shall enhance their cooperation in customs and customs-related matters.
2. 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 computerized systems in accordance with this Agreement.
3. The Parties shall assist each other, in the areas within their competence, in the manner and under the conditions set out in this Chapter to ensure that the customs legislation is correctly applied, in particular by preventing, detecting, and investigating operations in breach of that legislation.
4. The Parties shall commit to:
 - (a) pursuing the harmonization of documentation used in trade and data elements in accordance with international standards, for purposes 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 working towards the harmonization of customs laboratories methods ;

- (c) exchanging customs' experts of the Parties;
- (d) jointly organizing training programs 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 each other, to the extent possible, in tariff classification, valuation, and determination of origin, for the preferential tariff treatment of imported goods, and other customs matters including non-preferential origin;
- (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 regarding counterfeit goods; and
- (h) improving the security, while facilitating trade, of sea-container and other shipments from all locations that are imported into, trans-shipped through, or transiting Korea or Peru. 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) coordinating positions, to the extent possible, in any multilateral fora where issues related to container security may be appropriately raised and discussed.

ARTICLE 5.14: IMPLEMENTATION OF THE CUSTOMS COOPERATION

1. The implementation of this Section shall be entrusted to the customs administration of the Parties. They shall decide on all practical measures and arrangements necessary for its application, taking into consideration the rules in force in the field of data protection.
2. The Parties shall consult each other on the detailed rules of implementation which are adopted in accordance with this Chapter.
3. The Parties shall exchange the contact points for the exchange of information.

ARTICLE 5.15: MUTUAL ADMINISTRATIVE ASSISTANCE ON CUSTOMS MATTERS

1. Upon request of the applicant authority, the requested authority shall provide it with all relevant information which may enable it to ensure compliance with customs legislation,

including information on non-preferential origin, tariff classification, valuation, determination of origin, and operations noted or planned which are or might be in breach of such legislation.

2. Upon request of the applicant authority, the requested authority shall inform it whether goods exported from the territory of one of the Parties have been properly imported into the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods.

3. Upon request of the applicant authority, the requested authority shall, within the framework of its laws, take the necessary steps to ensure special surveillance of:

- (a) natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been in breach of customs legislation;
- (b) places where goods are stored in a way that gives grounds for suspecting that they are intended to be used in operations in breach of customs legislation;
- (c) movements of goods notified as possibly giving rise to substantial breaches of customs legislation; and
- (d) means of transport for which there are reasonable grounds for believing that they have been, are, or may be used in operations in breach of customs legislation.

4. The Parties shall provide each other, on their own initiative and in accordance with their laws, rules, and other legal instruments, with assistance if they consider that to be necessary for the correct application of customs legislation, particularly when they obtain information on:

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

ARTICLE 5.16: FORM AND SUBSTANCE OF REQUESTS FOR ASSISTANCE

1. Requests for assistance in accordance with this Chapter shall be made in writing. They

shall be accompanied by the documents necessary to enable compliance with the request. In urgent situations, oral requests may be accepted, but shall be confirmed in writing immediately.

2. Requests for assistance in accordance with this Chapter shall include the following information:

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

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

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

ARTICLE 5.17: EXECUTION OF REQUESTS

1. In order to comply with a request for assistance, the requested authority shall proceed, within the limits of its competence and available resources, 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. Requests for assistance shall be executed in accordance with the legal or regulatory provisions of the requested Party and the answer shall be sent at the latest within 120 days following the date of the receipt of the request.

3. Duly authorized officials of a Party may be present in the offices of the requested authority or any other concerned authority in accordance with paragraph 1, to obtain information related to activities that are or may be operations in breach of customs legislation which the applicant authority needs for purposes of this Chapter.

4. Duly authorized officials of a Party involved may be present at inquiries or verifications carried out in the territory of the other Party.

ARTICLE 5.18: EXCEPTIONS TO THE OBLIGATION TO PROVIDE ASSISTANCE

1. The Parties may refuse to give assistance as provided for in this Chapter, where such assistance would:
 - (a) be likely to prejudice their sovereignty, public policy, security, or other essential interests;
 - (b) involve currency or tax regulations other than customs legislation; or
 - (c) violate an industrial, commercial, or professional secret.
2. Where the applicant authority requests 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.
3. If assistance is refused, the decision and the reasons therefor shall be notified to the applicant authority without delay.

ARTICLE 5.19: CONFIDENTIALITY

1. Any information communicated in any form in accordance with this Chapter, shall be treated as confidential or restricted. 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 receiving Party.
2. Personal data, that is, all information related to an identified or identifiable individual, may be exchanged only where the receiving Party undertakes to protect such data in at least an equivalent way to the one applicable to that particular case in the supplying Party.

ARTICLE 5.20: USE OF INFORMATION

1. Information obtained shall be used solely for purposes of this Chapter. Where a Party requests the use of such information for other purposes, the Party shall ask for the prior written consent of the authority which furnished the information. Such use shall then be subject to any restrictions laid down by that authority. Information related to illicit drug trafficking may be communicated to other authorities.
2. Paragraph 1 shall not impede the use of information in any judicial or administrative proceedings instituted for failure to comply with customs legislation. The customs administration which supplied that information shall be notified of such use without delay.
3. 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 Chapter.

ARTICLE 5.21: 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 regarding the matters covered by this Chapter in the jurisdiction of the other Party, and produce such objects, documents, or authenticated copies thereof, as may be needed for the proceedings. The request for an appearance shall indicate specifically on what matters and by virtue of what title or qualification the official will be questioned.

ARTICLE 5.22: ASSISTANCE EXPENSES

The Parties shall waive all claims on each other for the reimbursement of expenses incurred in accordance with this Chapter, except, as appropriate, for expenses related to experts and witnesses and to interpreters and translators who are not public officials.

ARTICLE 5.23: REVIEW OF CUSTOMS PROCEDURES

1. Each customs administration shall periodically review its procedures with a view to their further simplification and the development of mutually beneficial arrangements to facilitate the trade between the Parties.
2. In applying a risk management approach to customs control, each customs administration shall regularly review the performance, effectiveness, and efficiency of its systems.

ARTICLE 5.24: CONSULTATIONS

1. Without prejudice to Article 5.25, a Party may at any time request consultations with the other Party on any matter arising from the operation, or implementation of this Chapter, 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 following the date of receipt of the request, unless the Parties determine otherwise.
2. In the event that such consultations fail to resolve the matter, the requesting Party may refer the matter to the Committee on Customs, Origin, and Trade Facilitation established under Article 5.25 for consideration.
3. The Parties may consult each other on any trade facilitation issues arising from procedures to secure trade and the movement of means of transport between the Parties.

ARTICLE 5.25: COMMITTEE ON CUSTOMS, ORIGIN, AND TRADE FACILITATION

1. The Parties hereby establish a Committee on Customs, Origin, and Trade Facilitation,

which shall ensure the proper functioning of this Chapter and Chapters Three (Rules of Origin) and Four (Origin Procedures), and examine all issues arising from their application. For matters covered by this Agreement, it shall report to the Joint Commission.

2. The Committee shall consist of the competent authorities and other relevant authorities of the Parties responsible for rules of origin, origin procedures, trade facilitation, and customs matters.

3. The Committee shall:

- (a) ensure the effective, uniform, and consistent administration of this Chapter and Chapters Three (Rules of Origin) and Four (Origin Procedures), and enhance cooperation in this regard;
- (b) maintain the Annex 3A (Product Specific Rules of Origin) on the basis of the transposition of the HS;
- (c) advise the Joint Commission of proposed solutions to address issues related to:
 - (i) interpretation, application, and administration of this Chapter and Chapters Three (Rules of Origin) and Four (Origin Procedures);
 - (ii) tariff classification and customs valuation related to the determination of origin;
 - (iii) calculation of the regional value content; and
 - (iv) the adoption by either Party of operational practices not in conformity with this Chapter and Chapters Three (Rules of Origin) and Four (Origin Procedures) that may adversely affect the trade between the Parties;
- (d) adopt customs practices and standards which facilitate commercial exchange between the Parties in accordance with international standards;
- (e) settle any disputes related to interpretation, application, and administration of this Chapter, including tariff classification. If the Committee does not reach a decision on the tariff classification, the Committee shall hold the appropriate consultations at, and seek recommendations from, the WCO. Such recommendations of the WCO shall be applied by the Parties;
- (f) propose to the Joint Commission for approval of the modification proposals under Article 4.12 (Modifications) in the event a consensus is reached between the Parties;
- (g) work on the development of an electronic certification and verification system; and
- (h) examine any other origin-related matters not covered by the Committee on

Trade in Goods established under Article 2.17 (Committee on Trade in Goods).

4. The Committee may formulate resolutions, any 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 Chapters Three (Rules of Origin) and Four (Origin Procedures).

SECTION C: DEFINITIONS

ARTICLE 5.26: DEFINITIONS

For purposes of this Chapter:

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

breaches of customs legislation means any violation or attempted violation of that legislation;

customs administration means:

- (a) for Korea, the *Korea Customs Service*, or its successor; and
- (b) for Peru, the *National Superintendence of Tax Administration* (*Superintendencia Nacional de Administración Tributaria*), or its successor.

customs laws means any legislation administered, applied, or enforced by the customs administration of a Party;

customs legislation means any legal or regulatory provision adopted by Korea or Peru, governing the import, export, and transit of goods and their placing under any customs procedure, including measures of prohibition, restriction, and control;

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 to 97 of the HS;

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

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