

## **CHAPTER 4**

### **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 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) simplify and harmonise customs procedures of the Parties;
  - (b) ensure predictability, consistency and transparency in the application of customs law, 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 co-operation between the customs administrations, within the scope of this Chapter.

#### **Article 4.2 : Definitions**

For the purposes of this Chapter:

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

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

**express consignments** means all goods imported by an enterprise operating a consignment service for the expeditious international movement of goods who assumes liability to the customs administration for those goods;

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

**WCO** means the World Customs Organization.

### **Article 4.3 : Transparency and Enquiry Points**

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

### **Article 4.4 : Facilitation and Harmonisation**

1. The Parties shall facilitate the clearance of goods in administering their procedures in accordance with the provisions of this Chapter.
2. Customs procedures of each Party shall conform, where possible, to the standards and recommended practices of the WCO, including the *WCO Customs Data Model* and related WCO recommendations and guidelines.
3. Each Party shall work towards the implementation of initiatives that harmonise the data requirements of its respective agencies associated with the importation, exportation or transit of goods, and minimise the submission of trade data.
4. Each customs administration shall provide a focal point, electronic or otherwise, through which its traders may submit all required information in order to obtain clearance of goods with the objective of allowing importers and exporters to present all required data to one agency.

### **Article 4.5 : Use of Automated Systems**

1. The customs administrations shall apply 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 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 endeavour to ensure the simultaneous inspection of goods by the competent national authorities when goods are entering or leaving the Parties' customs territory at a single time and place.

#### **Article 4.6 : Risk Management**

1. Each customs administration shall focus resources on high-risk shipments of goods and facilitate the clearance, including release, of low-risk goods in administering customs procedures. Customs administrations shall exchange information related to applied techniques on risk management, in accordance with Article 4.13.

2. To enhance the flow of goods across the borders of the Parties, each customs administration shall regularly review these procedures.

#### **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 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 law, 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 and without prejudice to the final determination by its customs administration of the applicable customs duties, taxes, and fees.

3. Each Party shall endeavour to adopt and maintain a system under which goods in need of urgent clearance can undergo customs procedures, 24 hours in every day including holidays.

#### **Article 4.8 : Express Consignments**

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

- (a) provide expedited customs procedure for express consignments, and where applicable, use the *WCO Guidelines for the Immediate Release of Consignments*;
- (b) provide for the electronic submission and processing of information necessary for the release of an express consignment before the express consignment arrives;
- (c) allow submission of a single document covering all goods contained in a shipment transported by an express consignments service, through, if possible, electronic means;
- (d) to the extent possible, provide for clearance of certain goods with a minimum of documentation;
- (e) under normal circumstances, provide for clearance of express consignments within four hours after submission of the necessary customs documents, provided the consignments have arrived;
- (f) apply without regard to weight or customs value; and
- (g) under normal circumstances, provide that no customs duties will be assessed on, nor will formal entry documents be required for express consignments valued at 100 US dollars or less.<sup>1</sup>

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

1. Each Party shall issue, through its customs administration, prior to the importation of a good into its territory, a written advance ruling on the written request of an importer in its territory, or an exporter or producer in the territory of the other Party<sup>2</sup> with regard to:

- (a) tariff classification;
- (b) whether a good is originating in accordance with Chapter 3 (Rules of Origin and Origin Procedures); and
- (c) such other matters as the Parties may agree.

2. Each Party shall adopt or maintain procedures for advance rulings, which shall:

- (a) require that an applicant for an advance ruling provide a detailed description of the goods and all relevant information needed to issue an advance ruling;

---

<sup>1</sup> Notwithstanding this subparagraph, a Party may require that express consignments be accompanied by an airway bill or other bill of lading. For greater certainty, a Party may require formal entry documents for restricted goods.

<sup>2</sup> For greater certainty, an importer, exporter or producer may submit a request for an advance ruling through a duly authorised representative.

- (b) provide that its customs administration may, at any time during the course of issuing an advance ruling, request that the applicant provide additional information within a specified period;
  - (c) provide that any advance ruling be based on the facts and circumstances presented by the applicant, and any other relevant information in the possession of the decision-maker, including, if the Party requests, a sample of the good for which the requester is seeking an advance ruling; and
  - (d) provide that the ruling be issued, in the national language of the issuing customs administration, to the applicant expeditiously on receipt of all necessary information.
3. On receipt of all necessary information, each Party shall issue an advance ruling:
- (a) with respect to tariff classification, within 40 days or such shorter time period specified in domestic legislation; or
  - (b) with respect to origin, within 90 days.
4. A Party may reject a request for an advance ruling where the additional information requested by it in accordance with paragraph 2(b) is not provided within a specified time.
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.
6. Subject to paragraph 7, each Party shall apply an advance ruling to all importations of goods described in that ruling imported into its territory within a period of three years from the date of that ruling or such other period specified in legislation of the importing Party.
7. A Party may modify or revoke an advance ruling upon a determination that:
- (a) the ruling was based on an error of fact or law;
  - (b) the information provided is false or inaccurate;
  - (c) there is a change in domestic laws consistent with this Agreement; or
  - (d) there is a change in a material fact, or circumstances on which the ruling is based.
8. The issuing Party may modify or revoke an advance ruling retroactively only if the ruling was based on inaccurate or false information.
9. Subject to any confidentiality requirements in its domestic laws, each Party shall publish, including on the internet, its advance rulings.
10. Where an importer claims that the treatment accorded to an imported good should be

governed by an advance ruling, the customs administration may evaluate whether the facts and circumstances of the importation are consistent with the facts and circumstances upon which an advance ruling was based.

#### **Article 4.10 : Review and Appeal**

1. Each Party shall provide that the importer, exporter or any other person affected by administrative rulings, determinations or decisions, have access to:
  - (a) a level of administrative review of determinations independent of the official or office responsible for the decision under review; and
  - (b) judicial review of administrative determinations subject to its domestic laws and regulations.
2. The producer or exporter in the territory of the other Party may provide, upon a request by 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 the rules applicable in that Party.
3. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing.

#### **Article 4.11 : Customs Co-operation**

1. The Parties shall enhance their co-operation in customs and customs related matters.
2. The Parties affirm their commitment to the facilitation of the legitimate movement of goods, and to the improvement of customs techniques and procedures in accordance with the provisions of this Agreement.
3. The Parties shall co-operate in achieving compliance with their respective domestic laws and regulations pertaining to:
  - (a) the implementation and operation of the provisions of this Agreement governing importation or exportation, including claims for preferential tariff treatment, procedures for making claims for preferential tariff treatment, and verification procedures;
  - (b) the extent practicable, assisting each other in the tariff classification, valuation and determination of origin for preferential tariff treatment, of imported goods; and
  - (c) other customs matters as the Parties may agree.

#### **Article 4.12 : Bilateral Customs Consultation**

1. Without prejudice to Article 4.14, each customs administration may at any time request consultations with the other customs administration on any matter arising from the operation or implementation of this Chapter and of Chapter 3 (Rules of Origin and Origin Procedures). Such consultations shall be conducted through the relevant contact points established in paragraph 3, and shall take place within 30 days of the request, unless the customs administrations of the Parties mutually determine 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 under Article 4.14 for consideration.
3. Each customs administration shall designate one or more contact points for the purposes of this Chapter and of Chapter 3 (Rules of Origin and Origin Procedures), and provide details of such contact points to the other Party. Customs administrations of the Parties shall notify each other promptly of any changes to the details of their contact points.
4. Customs administrations 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.
5. Consultations pursuant to this Article are without prejudice to the rights of the Parties under Chapter 19 (Dispute Settlement) or under the *WTO Understanding on Rules and Procedures Governing the Settlement of Disputes*.

#### **Article 4.13 : Confidentiality**

1. Any information collected for the purposes of this Chapter, or Chapter 3 (Rules of Origin and Origin Procedures), which has been designated as confidential by the person or Party who provided it shall not be used for purposes other than the administration and enforcement of determinations of origin, and of customs matters, except with the permission of the person or Party who provided the confidential information.
2. Notwithstanding paragraph 1, information that is collected for the purposes of this Chapter, or Chapter 3 (Rules of Origin and Origin Procedures) may be used in any administrative, judicial or quasi-judicial proceedings instituted for failure to comply with customs related laws and regulations implementing this Chapter or Chapter 3 (Rules of Origin and Origin Procedures). The person or Party who provided the information will be notified in advance of such use.

#### **Article 4.14 : Customs Committee**

1. The Parties hereby establish a Customs Committee (hereinafter referred to as “the Committee”), comprising officials of each Party responsible for customs matters and rules of

origin.

2. The 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 implementation.

3. The functions of the Committee shall include:

- (a) ensuring the effective, uniform and consistent administration of this Chapter and Chapter 3 (Rules of Origin and Origin Procedure);
- (b) maintaining Annexes 2-A (Tariff Schedule) and 3-A (Product Specific Rules of Origin) on the basis of the neutral transposition of the Harmonized System;
- (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 related to the determination of origin;
  - (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) that may affect adversely the flow of trade between the Parties;
- (d) adopting customs practices and standards which facilitate trade between the Parties, according to international standards;
- (e) settling any disputes related to the interpretation, application and administration of this Chapter, including tariff classification; and
- (f) making proposals regarding the modification of Parties' Schedules in Annexes 2-A (Tariff Schedule) and 3-A (Product Specific Rules of Origin) to the Joint Commission for approval under Article 18.2 (Functions of the Joint Commission).

4. The Committee shall adopt its own rules of procedure. The Committee shall meet within one year of entry into force of this Agreement, and then as it deems necessary.

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

**Article 4.15 : Customs Valuation**

The Parties shall determine the customs value of goods traded between them in accordance with the provisions of Article VII of GATT 1994 and the Customs Valuation Agreement.

**Article 4.16 : Tariff Classification**

The Parties shall apply the *International Convention on the Harmonized Commodity Description and Coding System* done on 24 June 1986, to goods traded between them.