

CHAPTER 5 CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 5.1 Definitions

For the purposes of this Chapter:

- (a) **customs administration** has the same meaning as in paragraph (d) of Article 4.1 (Definitions and Interpretation – Rules of Origin);
- (b) **customs laws** means such laws and regulations administered and enforced by the customs authority of each Party concerning the importation, exportation, and transit or transshipment of goods;
- (c) **customs procedures** means the measures applied by the customs authority of each Party; and
- (d) **Trade Facilitation Agreement** means the *Agreement on Trade Facilitation*, set out in Annex 1A of the WTO Agreement.

Article 5.2 Scope

- 1. This Chapter shall apply to customs procedures applied to goods traded between the Parties.
- 2. This Chapter shall be implemented in accordance with the Parties' customs laws, subject to the competence and available resources of the customs administration of each Party.
- 3. The Parties affirm their rights and obligations under the Trade Facilitation Agreement.

Article 5.3 Customs Procedures and Facilitation of Trade

- 1. Each Party shall endeavour to apply its customs procedures and practices in a predictable, consistent, and transparent manner, and to facilitate trade including through the expeditious clearance of goods where possible.
- 2. Each Party shall ensure that its customs procedures, where possible and to the extent permitted by its customs laws, conform with the standards and recommended practices of the World Customs Organization (“WCO”).
- 3. The customs administration of each Party shall, to the extent possible, review its customs procedures with a view to simplifying such procedures to facilitate trade.

Article 5.4 Transparency

1. To the extent practicable and in a manner consistent with its laws and regulations, each Party shall publish in advance on the internet, or otherwise make publicly available, draft laws and regulations of general application relevant to trade between the Parties, with a view to affording the public, especially interested persons, an opportunity to become acquainted with them.
2. To the extent possible, each Party shall publish regulations of general application governing customs matters that it proposes to adopt in order to enable all interested parties to become acquainted with them. Each Party shall provide, to the extent possible, and in a manner consistent with its laws and legal system, interested persons the opportunity to comment before it adopts the regulation.
3. Each Party shall, subject to its available resources, establish or maintain one or more enquiry points to address reasonable enquiries from interested persons concerning customs matters and shall make information concerning the enquiry points available online.

Article 5.5 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. This paragraph shall not require a Party to release a good if the Party's requirements for release of the good have not been met.
2. Pursuant to paragraph 1, each Party shall adopt or maintain procedures that:
 - (a) provide, in normal circumstances, for the release of goods within a period no longer than that required to ensure compliance with the customs laws of a Party and as rapidly as possible after the arrival of the goods, provided that:
 - (i) all information and documentation necessary to release the goods has been submitted on or prior to arrival of the goods;
 - (ii) the goods are not subject to physical examination or inspection; and
 - (iii) the goods are otherwise admissible under the importing Party's laws and regulations;

- (b) if applicable and to the extent possible, provide for electronic submission and processing of customs information relating to an import in advance of the arrival of the goods to expedite the release of goods from customs control upon arrival;
 - (c) endeavour to allow goods to be released without temporary transfer to warehouses or other facilities, to the extent possible, and where consistent with its laws and regulations and customs procedures;
 - (d) allow for the release of goods prior to the final determination of customs duties, taxes, fees, and charges not determined prior to or promptly upon arrival, provided that the goods are otherwise eligible for release and any security required by the importing Party has been provided. Before releasing the goods, a Party may require that an importer provides sufficient guarantee in the form of a surety, a deposit, or some other appropriate instrument; and
 - (e) if applicable and to the extent possible, provide for, in accordance with its laws and regulations, clearance of certain goods with a minimum of documentation.
3. If a Party allows for the release of goods conditioned on the provision of a security, that Party shall adopt or maintain procedures that:
- (a) ensure that the amount of the security is no greater than that required to ensure that obligations arising from the importation of the goods will be fulfilled;
 - (b) ensure that the security shall be discharged after that Party's customs authority is satisfied that the obligations arising from the importation of the goods have been fulfilled; and
 - (c) allow importers to provide security using a form other than cash, including, in appropriate cases where an importer frequently enters goods, instruments covering multiple entries.
4. Nothing in paragraph 2 or 3 shall:
- (a) affect the right of a Party to examine, detain, seize, confiscate or refuse entry of goods, or to carry out post-clearance audits, including in connection with the use of risk management systems; or
 - (b) prevent a Party from requiring, as a condition for release, the submission of additional information and the fulfilment of non-automatic licensing requirements.
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 after the arrival of the goods and submission of the information required for release;
 - (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 goods to such storage facilities, including authorisations 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 its laws and regulations, on the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

Article 5.6 Risk Management

- 1. Each Party shall, to the extent possible, adopt or maintain a risk management system for customs control that enables its customs authority to focus its inspection activities on high-risk consignments and expedite the release of low-risk consignments.
- 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 base risk management on the assessment of risk 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.

Article 5.7 Data, Documentation and Automation

Each Party shall endeavour to provide a facility that allows importers and exporters to electronically provide standardised information related to imported goods and export goods at a single-entry point or single window that:

- (a) uses international standards with respect to procedures for the release of goods;

- (b) makes electronic systems accessible to customs users;
- (c) allows a customs declaration to be submitted in electronic format;
- (d) employs electronic or automated systems for risk analysis and targeting;
- (e) implements common standards and elements for import and export data in accordance with the WCO Data Model; and
- (f) takes into account, as appropriate, standards, recommendations, models and methods developed by various international organisations such as the WCO, United Nations Centre for Trade Facilitation and Electronic Business, and the WTO.

Article 5.8
Temporary Admission of Goods

1. Each Party shall allow, as provided for in its laws and regulations, goods to be brought into its territory conditionally relieved, totally or partially, from payment of import duties and taxes, if such goods:
 - (a) are brought into its customs territory for a specific purpose;
 - (b) have not undergone any change except normal depreciation and wastage due to the use made of them; and
 - (c) are intended for re-exportation within a specific period.
2. Each Party shall continue to facilitate procedures for the temporary admission of goods traded between the Parties in accordance with its laws and regulations, and international obligations.

Article 5.9
Pre-Arrival Processing

1. Each Party shall adopt or maintain procedures allowing for the submission of documents and other information required for the importation of goods, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival.
2. Each Party shall provide, as appropriate, for advance lodging of documents and the other information referred to in paragraph 1 in electronic format for pre-arrival processing of such documents.

Article 5.10 Customs Cooperation

1. The Parties shall, in accordance with their laws, regulations and customs procedures and subject to the availability of resources, encourage cooperation and exchange of information with each other on customs matters.
2. The customs administration of each Party shall assist each other, in accordance with its laws, regulations and customs procedures and subject to the availability of resources, 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 harmonising customs procedures;
 - (d) application of the Customs Valuation Agreement;
 - (e) exchanging information, including information on best practices, relating to customs matters. Such exchanges of information shall be without prejudice to exchanges of information that may take place between the Parties pursuant to the *Memorandum of Understanding between the Central Board of Excise and Customs of the Republic of India and the Australian Customs Service on Customs Cooperation and Mutual Administrative Assistance in Customs Matters* signed at New Delhi on 06 March 2006, as amended on 18 November 2013; and
 - (f) such other customs issues as may be mutually determined by the Parties.

Article 5.11 Review and Appeal

1. Each Party shall ensure that any person to whom it issues an administrative decision¹ on a customs matter has the right to:

¹ An administrative decision in this Article 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 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 authority to promptly issue an administrative decision in place of the right to appeal or review under subparagraph 1(a).

- (a) an administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision; or
 - (b) a judicial appeal or review of the decision.
- 2. Each Party shall ensure that, in a case where the decision on appeal or review under subparagraph 1(a) is not given within the period of time provided for in its laws and regulations or without undue delay, the person has the right to further administrative or judicial appeal or review or any other recourse to a judicial authority in accordance with that Party's laws and regulations.
- 3. Each Party shall provide a person to whom it issues an administrative decision on the basis of a review or appeal referred to in paragraph 1 with the reasons for the administrative decision, so as to enable such a person to have recourse to appeal procedures where necessary.

Article 5.12
Advance Rulings

- 1. Each Party shall issue, prior to the importation of a good of the other Party into its territory, a written advance ruling at the written request of an importer in its territory, or an exporter or any person with a justifiable cause to the satisfaction of the respective Party, or a representative thereof, who has submitted a written request containing all necessary information, in the territory of the other Party (each an "applicant") with regard to:
 - (a) tariff classification;
 - (b) whether a good is originating in accordance with Chapter 4 (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) any other matters as the Party may specify under its domestic advance ruling system.
- 2. Each Party shall issue an advance ruling as expeditiously as possible and in no case later than 3 months after it receives a request, provided that the applicant has submitted all the information that the receiving Party requires to make the advance ruling. This includes a sample of the good for which the applicant is seeking an advance ruling if requested by the receiving Party. In issuing an advance ruling, the Party shall take into account the facts and circumstances that the applicant has provided. For greater certainty, 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 or where the application is not based on factual information, or does not relate to an intention to import or export. A Party that declines to issue an advance ruling shall promptly notify the applicant in writing, setting out the relevant facts and circumstances, and the basis for its decision to decline to issue the advance ruling.

3. Each Party shall provide that its advance rulings shall take effect on the date that they are issued or on another date specified in the ruling, and remain in effect for at least 3 years provided that the law, facts and circumstances on which the ruling is based remain unchanged.
4. The importing Party may:
 - (a) modify an advance ruling in such respects as it considers appropriate and as per its laws and regulations or system on advanced ruling, if the ruling was based on incorrect facts or mistake of law;
 - (b) revoke or find the advance ruling non-binding if there is a change in the material facts or circumstances or law on which the ruling was based; or
 - (c) revoke the advance ruling from when it was issued if the advance ruling has been obtained by fraud or misrepresentation of facts.
5. Where a Party revokes or modifies an advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision.
6. Neither Party shall apply a revocation, modification, or invalidation retroactively to the detriment of the applicant unless the ruling was based on incomplete, incorrect, inaccurate, false, or misleading information provided by the applicant.
7. Each Party shall endeavour to 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.
8. Each Party shall publish online, at least:
 - (a) the requirements for the application for an advance ruling, including the information to be provided and the format;
 - (b) the time period by which it will issue an advance ruling; and
 - (c) the length of time for which the advance ruling is valid.
9. An advance ruling issued by a Party shall be binding on that Party in respect of the applicant that sought it and on the applicant.

10. Each Party shall provide, upon written request of an applicant, an opportunity to review an advanced ruling, or the decision to revoke, modify or invalidate it.²

Article 5.13

Joint Technical Subcommittee on Rules of Origin and Customs Procedures and Trade Facilitation

The Joint Technical Subcommittee on Rules of Origin and Customs Procedures and Trade Facilitation established pursuant to Article 4.32 (Joint Technical Subcommittee on Rules of Origin and Customs Procedures and Trade Facilitation – Rules of Origin) shall consider any matters arising under this Chapter.

² Under this paragraph, a review may, either before or after the ruling has been acted upon, be provided by the official, office, or authority that issued the ruling, a higher or independent administrative authority, or a judicial authority; and a Party is not required to provide the applicant with recourse to paragraph 1 of Article 5.11 (Review and Appeal).