

CHAPTER 5

CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 5.1 Definitions

For the purposes of this Chapter:

“customs laws” means any laws and regulations applicable in the territory of each Party governing the import, export, and transit of goods, as well as other customs procedures, and including measures of prohibition, restriction, and control, administered, applied or enforced by the customs authorities of the Parties; and

“customs procedures” means the measures applied by the customs authority of each Party.

Article 5.2 Scope

1. This Chapter applies to customs procedures applied to goods traded between the Parties.
2. This Chapter shall be implemented by each Party in accordance with its laws and regulations.

Article 5.3 Customs Procedures and Facilitation of Trade

1. Each Party shall ensure that its customs procedures are applied in a manner that is predictable, consistent, transparent, and non-discriminatory.
2. The Parties affirm their rights and obligations under the Trade Facilitation Agreement.
3. Customs procedures of each Party shall conform, where possible, and to the extent permitted by its respective laws, regulations, and policies, to international standards and recommended practices established by the World Customs Organization ("WCO") and under other relevant international agreements to which the Parties are party.
4. Each Party shall periodically review its customs procedures with a view to exploring options for their simplification and the enhancement of mutually beneficial arrangements to facilitate trade between the Parties.

5. The Parties shall seek to reinforce their cooperation to promote trade facilitation while ensuring effective customs control.

Article 5.4
Data, Documentation and Automation

1. With a view to simplifying and minimising the complexity of import, export, and transit formalities and documentation requirements, each Party shall ensure as appropriate, that such formalities, data, and documentation requirements:
 - (a) are adopted or applied with a view to a rapid release of goods, to facilitate trade between the Parties; and
 - (b) are adopted or applied in a manner that aims to reduce the time and cost of compliance for traders and operators.
2. Each Party shall:
 - (a) make electronic systems accessible to customs users;
 - (b) allow a customs declaration to be submitted in electronic format;
 - (c) employ electronic or automated systems for risk analysis and targeting; and
 - (d) endeavour to implement common standards and elements for import and export data by giving consideration to the WCO Data Model;
3. The Parties shall endeavour to cooperate on the development of interoperable electronic systems, to facilitate trade between the Parties.

Article 5.5
Transparency and Publication

1. Further to Article 28.2 (Publication – Transparency and Anti-Corruption), each Party shall promptly publish, including online:
 - (a) importation, exportation, and transit procedures (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 against breaches of import, export or transit formalities;
 - (h) procedures for appeal or review;
 - (i) agreements or parts thereof with any country or countries relating to importation, exportation or transit;
 - (j) procedures relating to the administration of tariff quotas;
 - (k) hours of operation services provided by customs offices at ports and border crossing points; and
 - (l) points of contact for information enquiries.
2. Each Party shall establish or maintain one or more enquiry points to address enquiries of interested parties or persons concerning customs and other trade facilitation issues and shall make information concerning the procedures for making those enquiries publicly available online. The enquiry points shall answer enquiries and provide the forms and documents within a reasonable time period set by each Party, which may vary depending on the nature or complexity of the request.

Article 5.6 **Simplified Customs Procedures**

Each Party shall adopt or maintain measures allowing traders or operators fulfilling criteria specified in its laws and regulations to benefit from further simplification of customs procedures. Those measures may be offered through a Party's Authorised Economic Operator program, or otherwise made available to traders or operators in accordance with its laws and regulations and may include:

- (a) customs declarations containing a reduced set of data or supporting documents, including for the movement of low-value consignments;

- (b) deferred payment of customs duties and taxes until after the release of those imported goods; and
- (c) other matters as the Party may decide.

Article 5.7 **Expedited Shipments**

1. Each Party shall adopt or maintain expedited customs procedures for expedited shipments,¹ while maintaining appropriate customs control and selection. These procedures shall:
 - (a) provide for the submission and processing of information in advance of the arrival² of a shipment to expedite its release;
 - (b) to the extent possible, allow for a single submission of information covering all goods contained in a shipment through, if possible, electronic means;
 - (c) to the extent possible, provide for the release of expedited shipments with a minimum of documentation or a reduced set of data;
 - (d) provide, in normal circumstances, for an expedited shipment to be released within six hours of arrival, provided:
 - (i) all information and documentation necessary to release the goods have been submitted on or prior to arrival;
 - (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;
 - (e) apply to shipments of any weight or value recognising that a Party may require additional entry procedures as a condition for release, including declarations and supporting documentation and payment of customs duties, and may limit such treatment based on the type of good; and
 - (f) provide that under normal circumstances no customs duties will be assessed on expedited shipments valued at or below a fixed amount set under a Party's law.

¹ Expedited shipments may include goods imported through air cargo, or goods imported by traders fulfilling other criteria specified in the importing Party's laws and regulations.

² For the purposes of this Article and in relation to shipments into the UK, "arrival" for the UK means arrival at the point where the goods are presented to customs.

2. If a Party does not provide the treatment in subparagraphs 1(a) through 1(f) to all shipments, that Party shall provide a separate³ and expedited customs procedure that provides that treatment for expedited shipments.

Article 5.8 **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 in a manner that aims to reduce the cost for traders. 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:
 - (a) provide, in normal circumstances, for goods to be released within 48 hours of arrival,⁴ provided:
 - (i) all information and documentation necessary to release the goods have been submitted on or prior to arrival;
 - (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 the electronic submission and processing of customs information relating to import in advance of the arrival of the goods to expedite the release of goods from customs control upon arrival;
 - (c) allow goods to be released without temporary transfer to warehouses or other facilities;
 - (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 good is 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

³ For greater certainty, "separate" does not mean a specific facility or lane.

⁴ For the purposes of this Article and in relation to shipments into the UK "arrival" for the UK means arrival at the point where the goods are presented to customs.

- (e) to the extent possible and if applicable, 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 a security, it 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 as soon as possible after its 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.

Article 5.9 Risk Management

1. Each Party shall 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 as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions to international trade.
3. Each Party shall base risk management on assessment of risk through appropriate selectivity criteria.
4. Each Party may also select, on a random basis, consignments for inspection activities referred to in paragraph 1 as part of its risk management.
5. In order to facilitate trade, each Party shall periodically review and update, as appropriate, the risk management system specified in paragraph 1.

Article 5.10 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 producer in the territory of the other Party⁵, each an "applicant", with regard to:

- (a) tariff classification;
 - (b) whether a good is originating in accordance with Chapter 4 (Rules of Origin and Origin Procedures); and
 - (c) other matters as the Party may decide.
2. Each Party shall issue an advance ruling as expeditiously as possible and in no case later than 90 days 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 three years, provided that the law, facts and circumstances on which the ruling is based remain unchanged.
 4. After issuing an advance ruling, the Party may modify or revoke the advance ruling if there is a change in the law, facts or circumstances on which the ruling was based, if the ruling was based on inaccurate or false information, if the ruling was in error, if conflicting advance rulings have been issued for goods of the same class or kind, if the advance ruling has been reviewed internally, or if the importing customs authority changes its interpretation of the law.
 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 or modification retroactively to the detriment of the applicant unless the ruling was based on incomplete, incorrect, inaccurate, false, or misleading information provided by the applicant.

⁵ For greater certainty, an importer, exporter or producer may submit a request for an advance ruling through a duly authorised representative.

7. Subject to any confidentiality requirements in its laws and regulations, a Party may publish its advance rulings including online.
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, a review of the advance ruling or of the decision to revoke or modify it.

Article 5.11 Customs valuation

For the purpose of determining the customs value of goods traded between the Parties, the provisions of Part I of the Customs Valuation Agreement shall apply, *mutatis mutandis*.

Article 5.12 Review and Appeal

1. Each Party shall ensure that any person to whom it issues a decision on a customs matter has access 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 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 the 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 5.13 Penalties

1. Each Party shall adopt or maintain measures that allow for the imposition of a penalty by a Party's customs authority for a breach of its customs laws.
2. Each Party shall ensure that any penalties imposed for breaches of customs laws are proportionate and non-discriminatory. Any penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.
3. Each Party shall ensure that a penalty imposed by its customs authority for a breach of its customs laws is imposed only on the person legally responsible for the breach.
4. Each Party is encouraged to require its customs authority, when imposing a penalty for a breach of its customs laws, to consider as a potential mitigating factor the voluntary disclosure of the breach prior to its discovery by the customs authority.
5. Each Party shall ensure that if a penalty is imposed for a breach of customs laws, an explanation in writing is provided to the person upon whom the penalty is imposed, specifying the nature of the breach and the applicable laws under which the amount or range of penalty for the breach has been prescribed.
6. Each Party shall provide in its laws, regulations or procedures, or otherwise give effect to, a fixed and finite period within which its customs authority may initiate proceedings to impose a penalty relating to a breach of its customs laws.

Article 5.14 Customs Cooperation

1. The Parties shall, within the competence and available resources of their respective customs authorities, enhance cooperation, including the exchange of information on the matters referred to in this Chapter, with a view to further developing trade facilitation, while ensuring compliance with their respective customs laws, regulations, and procedural requirements, and improving supply chain security, in the following areas:

- (a) cooperation on harmonisation of data requirements for customs purposes, in line with applicable international standards such as the WCO standards;
- (b) cooperation on further development of the customs-related aspects of securing and facilitating the international trade supply chain in accordance with the *SAFE Framework of Standards to Secure and Facilitate Global Trade*, adopted by the WCO Council in June 2005;
- (c) cooperation on improvement of their risk management techniques, including sharing best practices and, if appropriate, risk information and control results; and
- (d) cooperation in international organisations on matters of common interest, including tariff classification, customs valuation and origin.

Article 5.15 Single Window

Each Party shall endeavour to develop or maintain single window systems to facilitate a single, electronic submission of all information required by customs and other legislation for the exportation, importation and transit of goods.

Article 5.16 Transit and Transshipment

Each Party shall:

- (a) ensure the facilitation and effective control of transshipment operations and transit movements through their respective territories;
- (b) ensure that its authorities and agencies responsible for border controls and procedures dealing with the transit and transshipment of goods cooperate and coordinate their activities in order to facilitate trade; and
- (c) allow goods intended for import to be moved under customs control within its territory from a customs office of entry to another customs office in its territory from where the goods would be released or cleared.

Article 5.17
Post-clearance Audit

1. With a view to expediting the release of goods, each Party shall:
 - (a) adopt or maintain post-clearance audit processes to ensure compliance with customs and other related laws and regulations;
 - (b) conduct post-clearance audits in a risk-based manner, which may include appropriate selectivity criteria;
 - (c) conduct post-clearance audits in a transparent manner. Where an audit is conducted and conclusive results have been achieved the Party shall, without delay, notify the person whose record is audited of the results, the reasons for the results and the audited person's rights and obligations; and
 - (d) wherever practicable, use the result of post-clearance audit in applying risk management.

Article 5.18
Customs Brokers

The Parties shall:

- (a) not require the mandatory use of customs brokers;
- (b) publish measures on the use of customs brokers; and
- (c) apply transparent and objective rules if and when licensing customs brokers.

Article 5.19
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 are brought into its customs territory for a specific purpose, have not undergone any change except normal depreciation and wastage due to the use made of them, and 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, with regard to:

- (a) goods intended for display or demonstration at exhibitions, fairs, meetings, demonstrations or similar events, and goods intended for use in connection with the display of foreign products at those events;
- (b) professional equipment;
- (c) commercial samples, advertising, films and recordings;
- (d) containers, packing materials and pallets that are in use or to be used in the shipment of goods in international traffic;
- (e) goods imported for sports purposes; and
- (f) any other goods as the Party may decide.

Article 5.20
Perishable Goods

1. For the purposes of this Article, perishable goods are goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.
2. With a view to preventing avoidable loss or deterioration of perishable goods, and provided that all regulatory requirements have been met, each Party shall:
 - (a) provide in normal circumstances, for perishable goods to be released within 6 hours of arrival⁶ provided:
 - (i) all information and documentation necessary to release the goods have been submitted on or prior to arrival;
 - (ii) the goods are not subject to physical examination or inspection;
 - (iii) the goods are otherwise admissible under the importing Party's laws and regulations; and
 - (b) in exceptional circumstances where it would be appropriate to do so, provide for the release of perishable goods outside the business hours of customs and other relevant authorities.
3. Each Party shall give appropriate priority to perishable goods when scheduling any physical examinations or inspections that may be required.

⁶ For the purposes of this Article and in relation to shipments into the UK, "arrival" means at the point where the goods are presented to customs.

4. 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 the goods to those 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 domestic legislation, upon the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

Article 5.21 Confidentiality

1. Further to Article 31.6 (Confidentiality of Information – General Provisions and Exceptions), each Party shall maintain the confidentiality of the information collected pursuant to this Chapter or Chapter 4 (Rules of Origin and Origin Procedures) and shall protect that information from disclosure that could prejudice the competitive position of the person to whom the confidential information relates.
2. Confidential information collected pursuant to this Chapter or Chapter 4 (Rules of Origin and Origin Procedures) shall only be used or disclosed for the purpose of administration and enforcement of customs matters, including determination of origin, or as otherwise provided under the Party's laws and regulations, except with the permission of the Party who provided the confidential information. Where permission has been granted by a Party, that use shall then be subject to any restrictions laid down by that Party.
3. If the Party receiving or obtaining the information is authorised or required by its laws and regulations to disclose the information, that Party shall, where possible, notify the Party who provided that information, wherever possible in advance of that disclosure.
4. Paragraph 2 shall not preclude the use of information collected as part of its customs processes as evidence in proceedings or charges subsequently instituted before the courts or tribunals for failure to comply with customs law. Where the information is received from the other Party, the Party shall, where possible, notify the Party who provided the information in advance of such use.

Article 5.22 Working Group on Rules of Origin and Customs and Trade Facilitation

The Working Group on Rules of Origin and Customs and Trade Facilitation established pursuant to Article 4.29 (Working Group on Rules of

Origin and Customs and Trade Facilitation – Rules of Origin) shall consider any matters arising under this Chapter.