

CHAPTER 4

CUSTOMS PROCEDURES

Article 1: Definitions

For the purposes of this Chapter:

customs law means such laws and regulations administered and enforced by the Customs Administration of a Party concerning the importation, exportation, and transit/transshipment of goods, as they relate to customs duties, other taxes and other charges, or to prohibitions, restrictions and other similar controls with respect to the movement of controlled items across the boundary of the customs territory of a Party;

customs procedures means the treatment applied by the Customs Administration of a Party to goods, which are subject to that Party's customs law;

Revised Kyoto Convention means the World Customs Organization's *International Convention on the Simplification and Harmonization of Customs Procedures* done on 26 June 1999; and

WCO means the World Customs Organization.

Article 2: Objectives

1. The objectives of this Chapter are:
 - (a) to ensure predictability, consistency and transparency in the application of customs laws and regulations of the Parties;
 - (b) to promote efficient, economical administration of customs procedures and the expeditious clearance of goods;
 - (c) to simplify and harmonise customs procedures;
 - (d) to facilitate trade among the Parties and the security of such trade;
 - (e) to enhance the implementation of the requirements of Article VII of GATT 1994, the Agreement on Customs Valuation and other relevant WTO provisions relating to customs matters; and
 - (f) to promote cooperation between the Customs Administrations of the Parties.

2. Recognising the capacity constraints of the developing country Parties, and with a view to increasing their export opportunities, assistance in relation to this Chapter would be

provided under Chapter 10 (Development and Economic Cooperation) and the associated Work Programme.

Article 3: Scope

This Chapter shall apply, in accordance with the Parties' respective laws, regulations and policies, to customs procedures applied to goods traded between the Parties.

Article 4: Customs Procedures and Facilitation

1. Each Party shall ensure that its customs procedures and practices are predictable, consistent and transparent, and facilitate trade, including through the expeditious clearance of goods.
2. Customs procedures of each Party shall, if possible and to the extent permitted by its customs law, conform to international standards and recommended practices, in particular those of the WCO.
3. The Customs Administration of each Party shall periodically review its customs procedures with a view to their simplification and the facilitation of trade.

Article 5: Customs Cooperation

1. Subject to available resources and to the extent its domestic laws permit, the Customs Administration of each Party should assist the Customs Administration of another Party in relation to:
 - (a) the implementation and operation of this Chapter;
 - (b) the development and implementation of customs best practice and risk management techniques;
 - (c) the provision, if possible, of prior notice of changes to laws, regulations, and relevant procedures and guidelines that would affect the operation of this Chapter;
 - (d) the simplification and harmonisation of customs procedures;
 - (e) the advancement of technical skills and the use of technology;
 - (f) the application of the Harmonized System;
 - (g) the application of the disciplines on valuation for customs purposes under Article VII of GATT 1994 and the Agreement on Customs Valuation;
 - (h) the movement of goods among the Parties; and

- (i) customs enforcement, including *inter alia* investigation and prevention of *prima facie* customs offences.
2. Subject to available resources, the Customs Administrations of the Parties may, as deemed appropriate, explore and undertake cooperation projects, including:
- (a) capacity building programmes to enhance the capability of customs personnel of Parties that are Forum Island Countries; and
 - (b) technical assistance programmes to facilitate the activities of Parties that are Forum Island Countries in relation to customs matters.

Article 6: Use of Automated Systems

1. The Customs Administration of each Party should have its own system that supports electronic customs transactions.
2. In implementing initiatives under paragraph 1, the Customs Administration of each Party shall take into account relevant international standards and best practices, including those recommended by the WCO, taking into consideration its available infrastructure, capabilities and needs.

Article 7: Expedited Shipments

To the extent possible, the Customs Administration of each Party shall adopt procedures to expedite the clearance of shipments while maintaining appropriate control, including:

- (a) to provide for pre-arrival processing of information related to shipments;
- (b) to permit the submission of a single document covering all goods contained in a shipment, including through electronic means; and
- (c) to minimise the documentation required for the release of shipments.

Article 8: Release of Goods

1. To the extent possible, each Party shall adopt or maintain procedures allowing, goods to be released:
- (a) within 48 hours of arrival or as soon as practicable; and
 - (b) where possible, at the point of arrival, without temporary transfer to warehouses or other locations.

2. The provisions of paragraph 1 shall not prevent the Customs Administration of a Party from holding a shipment:

- (a) for the purpose of determining, in accordance with risk management techniques, whether an examination of the goods is necessary;
- (b) if permits need to be obtained for restricted goods; or
- (c) in any situation if it has concerns in relation to the goods.

Article 9: Valuation

1. Subject to paragraph 2, each Party shall apply the provisions of Article VII of GATT 1994 and the Agreement on Customs Valuation, including the Interpretative Notes at Annex I to that Agreement, in determining the value for customs purposes of goods traded between the Parties.

2. If a Party is a developing country and not a WTO Member, it may apply the provisions of the Agreement on Customs Valuation to the extent of its capacity, provided that if a problem arises from the application of a specific valuation procedure, it engages in bilateral consultations on request of another Party with an interest in a good to which that valuation procedure has been applied, with a view to finding a mutually agreed solution. Such consultations shall be undertaken in accordance with Article 15.

3. A Party that is a developing country and not a WTO Member:

- (a) shall to the extent of its capacity apply a system for the valuation of goods for customs purposes that:
 - (i) is fair, uniform and neutral;
 - (ii) precludes the use of arbitrary or fictitious customs values;
 - (iii) bases the valuation of goods for customs purposes, to the greatest extent possible, on the transaction value of the goods being valued;
 - (iv) bases customs value on simple and equitable criteria consistent with commercial practices;
 - (v) ensures that valuation procedures are of general application without distinction between sources of supply; and
 - (vi) does not use valuation procedures to combat dumping;
- (b) shall to the greatest extent possible not determine customs value on the basis of:

- (i) the selling price in the country of importation of goods produced in such country;
- (ii) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
- (iii) the price of goods in the domestic market of the country of exportation;
- (iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Article 6 and Article 8(2) of the Agreement on Customs Valuation;
- (v) the price of goods for export to a country other than the country of importation;
- (vi) minimum customs values; or
- (vii) arbitrary or fictitious values;

and shall seek to eliminate those measures which are so determined as soon as practicable; and

- (c) shall ensure that, if the importer so requests, the importer be informed in writing of the customs value and the method used to determine such value.

Article 10: Advance Rulings

1. To the extent permitted by its domestic laws, regulations and administrative practices and its capacity, each Party upon receiving an application pursuant to paragraph 2(a), shall through its Customs Administration provide written advance rulings on tariff classification and origin of goods, and, if the Party has implemented the Agreement on Customs Valuation on questions arising from the application of that Agreement to goods.

2. Procedures for advance rulings adopted by a Party shall:

- (a) provide that an importer in its territory or an exporter or producer in the territory of another Party may apply for an advance ruling before the importation of the goods in question;
- (b) include a detailed description of the information required to process an application for an advance ruling;
- (c) provide that its Customs Administration may, at any time during the course of an evaluation of an application for an advance ruling, request that the applicant provide additional information within a specified period;

- (d) 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;
- (e) provide that an advance ruling be issued to the applicant expeditiously, within the period specified in each Party's domestic laws, regulations or administrative procedures; and
- (f) provide that a written explanation of the reasons for the ruling be provided to the applicant.

3. A Party may reject a request for an advance ruling where the additional information requested by it in accordance with paragraph 2(c) is not provided within the specified period.

4. Subject to paragraphs 1 and 5, each Party that permits advance rulings under its domestic laws, regulations and administrative procedures, shall apply an advance ruling to goods described in that ruling imported into its territory beginning on the date it issues the ruling or any other date specified in the ruling for such period in accordance with its domestic laws, regulations and administrative procedures. The issuing Party shall accord the same treatment to all importations described in that ruling, if the facts and circumstances are identical in all respects.

5. A Party may modify or revoke an advance ruling if:

- (a) a determination is made that the ruling was based on an error of fact or law;
- (b) a determination is made that false or misleading information was provided or relevant information was withheld;
- (c) there is a change in domestic law consistent with this Chapter;
- (d) there is a change in a material fact or circumstance on which the ruling was based;
or
- (e) conflicting rulings have been issued.

6. If 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 11: Risk Management

1. Each Party shall administer customs procedures so as to facilitate the clearance of low-risk goods and focus on high-risk goods. To enhance the flow of goods across its borders, the Customs Administration of each Party shall regularly review these procedures.
2. If a Customs Administration of a Party deems that the inspection of goods is not necessary to authorise clearance of the goods from customs control, that Party shall endeavour to provide a single point for the documentary or electronic processing of those goods.
3. Each Party shall, to the extent of its capacity, work to further enhance the use of risk management techniques in the administration of its customs procedures.

Article 12: Confidentiality

1. Nothing in this Chapter shall be construed to require any Party to furnish or allow access to confidential information pursuant to this Chapter, the disclosure of which it considers would:
 - (a) be contrary to the national and public interest as determined by its laws, rules, regulations or policies;
 - (b) be contrary to any of its laws, regulations or policies including, but not limited to, those protecting personal privacy or the financial affairs and accounts of individuals;
 - (c) prejudice legitimate commercial interests of particular enterprises, public or private; or
 - (d) impede law enforcement.
2. A Party shall maintain the confidentiality of information provided pursuant to this Chapter and shall not use or disclose information provided pursuant to this Chapter except for the purpose for which it was provided, unless it has the consent of the providing Customs Administration, or disclosure is required by its laws and regulations. If a Party is required or authorised by its laws and regulations to disclose information provided pursuant to this Chapter, it shall, wherever possible, give advance notice of any such disclosure to the providing Customs Administration.

Article 13: Enquiry Points and Transparency

1. Each Party shall designate one or more enquiry points to address enquiries from interested persons concerning customs matters, and shall publish online if possible and, if not, in print form, information concerning procedures for making such enquiries.
2. Each Party shall publish online if possible and, if not, in print form, all statutory and regulatory provisions and any customs administrative procedures applied or enforced by its Customs Administration, not including law enforcement procedures and internal operational guidelines.
3. Each Party that is a WTO Member or a Contracting Party to the Revised Kyoto Convention shall ensure that all items of information required to be published under paragraphs 1 and 2 are published promptly in such a manner as to enable interested Parties and persons to become acquainted with them. Each Party that is not a WTO Member or a Contracting Party to the Revised Kyoto Convention shall ensure that those items of information are published in such a manner as to enable interested Parties and persons to become acquainted with them and shall, to the extent of its capacity, ensure that those items are published promptly.

Article 14: Review and Appeal

1. In accordance with its domestic law, each Party shall provide that any person to whom its Customs Administration issues an administrative decision has access, within its territory, to:
 - (a) administrative review independent of the official or office that issued the decision subject to review, or administrative review by a higher authority supervising its Customs Administration; and
 - (b) judicial review of the determination taken at the final level of administrative review.
2. The decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing.

Article 15: Consultations

The Customs Administrations of the Parties shall encourage consultation with each other regarding significant customs issues that affect goods traded between the Parties.

Article 16: Meetings on Customs Procedures

1. The Parties shall, through the Joint Committee, the Committee on Trade in Goods, Rules of Origin and Customs Procedures, or another relevant subsidiary body, consult regularly to consider the implementation of their commitments under this Chapter.
2. The Parties, through the Joint Committee, the Committee on Trade in Goods, Rules of Origin and Customs Procedures, or another relevant subsidiary body, shall commence a review of this Chapter within three years of entry into force of this Agreement and submit a final report to the Joint Implementation Committee, including any recommendations, within four years of entry into force of this Agreement.