

CHAPTER FIVE

TRADE FACILITATION

Article 5.01: Objectives and Principles

1. With the objectives of facilitating trade under this Agreement and of cooperating to pursue trade facilitation initiatives on a multilateral basis, each Party shall administer its import and export procedures and measures for goods traded under this Agreement on the basis that, to the extent possible:

- (a) procedures be efficient to reduce costs for importers and exporters and simplified where appropriate to achieve such efficiency;
- (b) procedures be based on international trade instruments or international standards agreed upon by the Parties;
- (c) entry procedures be transparent to ensure predictability for importers and exporters;
- (d) measures to facilitate trade also support mechanisms to protect persons through effective enforcement of and compliance with national requirements;
- (e) those procedures and the personnel involved in them comply with international standards of integrity;
- (f) the development of significant modifications to procedures of a Party include, in advance of implementation, consultations with the representatives of the trading community of that Party; and
- (g) procedures be based on risk management principles to focus compliance efforts on transactions that merit attention.

2. The Parties shall encourage cooperation, technical assistance and the exchange of information, including information on best practices, for the purpose of promoting the application of and compliance with the trade facilitation measures agreed upon under this Agreement and those agreed upon by the Parties under the auspices of the World Customs Organization or the World Trade Organization.

Article 5.02: Rights and Obligations

1. The Parties affirm their rights and obligations under Article VIII (Fees and Formalities Connected with Importation and Exportation) and Article X (Publication and Administration of Trade Regulations) of the GATT 1994.

2. A Party shall promptly release an unrestricted, uncontrolled or non-regulated good. Subject to paragraph 3, each Party shall provide the option of releasing that good either:

- (a) at the time of its presentation to the customs administration of the importing Party based on the submission of only the information required before the good arrives or at the time of arrival; for greater certainty, a Party, through its customs administration, may require the submission of more extensive information through post-entry accounting and verifications, as appropriate; or
- (b) before or at the time of arrival of the good, based on the submission of all the information necessary to obtain a final accounting of the good.

3. The Parties recognize that, for certain goods, under certain circumstances, such as goods subject to a quota or to health-related or public safety requirements, a Party may require before releasing the goods the submission of more extensive information, before or at the time of arrival of the goods, to allow the competent authorities to examine the goods for release.

4. Each Party shall facilitate and simplify its procedures for the release of low-risk goods, and shall improve procedures on the release of high-risk goods. For these purposes, each Party shall base its examination and release procedures and its post-entry verification procedures on risk management principles, rather than examining every shipment offered for entry in a comprehensive manner for compliance with all import requirements. Nothing in this paragraph prevents a Party from conducting quality control and compliance reviews, which may require more extensive examinations.

5. Each Party shall ensure that the procedures of its competent authorities, whose requirements on the import or export of goods are maintained either by themselves or on their behalf by the Party's customs administration, are coordinated to facilitate trade. To this end, each Party shall take steps to harmonize the data requirements of its competent authorities, with the objective of allowing importers and exporters to present all required data to only one competent authority.

6. In its procedures for the clearance of express consignments, each Party shall apply, to the extent possible, the World Customs Organization's *Guidelines for the Immediate Release of Consignments by Customs*.

7. In accordance with its domestic law, each Party shall adopt or maintain simplified clearance procedures for the entry of a good that is low in value if the importing Party considers that the revenue associated with the import of that good is not significant.

8. The Parties shall endeavour to achieve common procedures and to simplify the information necessary for the release of goods, applying, when appropriate, existing international standards. With this objective, each Party shall set up a system for the electronic exchange of information between competent authorities and importers, exporters, their agents or their representatives, for the purpose of encouraging rapid release procedures. For the purpose of this Article, and without precluding the use of additional electronic data transmission standards, each Party shall, to the extent possible:

- (a) use formats based on international standards for the electronic exchange of information; and

- (b) take into account the World Customs Organization's Recommendations "Concerning the Use of UN/EDIFACT Rules for Electronic Data Interchange" and "Concerning the Use of Codes for the Representation of Data Elements".

9. Each Party shall establish means of consultation with its trade and business communities to promote greater cooperation and the exchange of electronic information.

10. Subject to Chapter Four (Customs Procedures), a Party, prior to importation, shall upon request issue a written ruling pertaining to tariff classification, applicable rate of customs duty or any other tax applicable upon importation except a surtax or surcharge. That request may be made in writing by:

- (a) an importer in the Party's territory;
- (b) an exporter or producer in the territory of the other Party; or
- (c) a representative of a person in subparagraph (a) or (b).

11. Each Party shall adopt or maintain procedures for the issuance of rulings referred to in paragraph 10. A Party may, at any time, modify or revoke a ruling:

- (a) without retroactive application after notification to the person that requested the ruling; or
- (b) with retroactive application and without notification if inaccurate or false information was provided.

12. When a Party determines that a request for a ruling is incomplete, it may request additional information, including, if appropriate, a sample of the goods or materials in question from the person requesting the ruling. A Party shall issue a ruling within 120 days of receiving all the information it considers necessary to issue the ruling. A ruling shall be binding upon the competent authority that issued the ruling at the time the good is actually imported provided that the facts and circumstances that were the basis for the issuance of the ruling remain in effect.

13. Each Party shall ensure that:

- (a) an administrative action or official decision taken in respect of the import or export of a good is reviewable promptly by a judicial, arbitral or administrative tribunal or through administrative procedures;
- (b) the administrative tribunal or administrative procedures referred to in subparagraph (a) are:
 - (i) available before a person is required to seek redress before a judicial or arbitral tribunal, and
 - (ii) independent of the official or, where applicable, the office responsible for the original action or decision; and
- (c) the tribunal or official acting under the administrative procedures referred to in subparagraph (a) is independent of the official or office issuing the decision and has the competence to maintain, modify or reverse the determination, in accordance with the domestic law of that Party.

14. Further to Article 20.02 (Transparency – Publication), each Party shall promptly publish or otherwise make available, including through electronic means, all its legislation, regulations, judicial decisions and administrative rulings or policies of general application relating to its requirements for imported or exported goods. Each Party shall also make available notices of an administrative nature, such as general agency requirements and entry procedures, hours of operation and contact for information enquiries.

15. Each Party shall, in accordance with its domestic law, treat as strictly confidential all business information obtained pursuant to this Chapter that is by its nature confidential or that is provided on a confidential basis.

Article 5.03: Cooperation

1. The Parties recognize that technical cooperation is fundamental to facilitating compliance with the obligations set forth in this Agreement and for reaching a better degree of trade facilitation.

2. The Parties agree to develop a technical cooperation program on customs-related matters on the basis of mutually decided terms relating to issues such as the scope, timing and cost of cooperative measures. Customs-related matters includes, among other matters:
 - (a) training;
 - (b) risk assessment;
 - (c) prevention and detection of contraband and illegal activities;
 - (d) implementation of the Customs Valuation Agreement;
 - (e) audit and verification frameworks;
 - (f) customs laboratories; and
 - (g) implementation of the World Customs Organization's Framework of Standards to Secure and Facilitate Global Trade, Pillar 1, Customs-to-Customs level.

3. The Parties shall cooperate:
 - (a) in the enforcement of their respective customs-related laws or regulations implementing this Agreement;
 - (b) to the extent practicable and for purposes of facilitating the flow of trade between them, in such customs-related matters as the collection and exchange of statistics regarding the importation and exportation of goods, the harmonization of documentation used in trade and the standardization of data elements; and

- (c) to the extent practicable, to exchange information to assist each other in the tariff classification of imported and exported goods.

Article 5.04: Future Work Program

1. With the objective of developing further steps to facilitate trade under this Agreement, the Parties establish the following work program:

- (a) to develop the Cooperation Program referred to in Article 5.03 for the purpose of facilitating compliance with the obligations set forth in this Agreement; and
- (b) as appropriate, to identify and submit for the consideration of the Commission new measures aimed at facilitating trade between the Parties, taking as a basis the objectives and principles set forth in Article 5.01, including, among other things:
 - (i) common processes,
 - (ii) general measures to facilitate trade,
 - (iii) official controls,
 - (iv) transportation,
 - (v) the promotion and use of standards,
 - (vi) the use of automated systems and Electronic Data Interchange (EDI),
 - (vii) the availability of information,
 - (viii) customs and other official procedures concerning the means of transportation and transportation equipment, including containers,
 - (ix) official requirements for imported goods,

- (x) simplification of the information necessary for the release of goods,
- (xi) customs clearance of exports,
- (xii) transshipment of goods,
- (xiii) goods in international transit,
- (xiv) commercial practices, and
- (xv) payment procedures.

2. The Parties may periodically review the work program referred to in paragraph 1 to decide on new cooperation actions and new measures that might be needed to promote application of the trade facilitation obligations and principles.

3. The Parties shall review relevant international initiatives on trade facilitation, including the Compendium of Trade Facilitation Recommendations, developed by the United Nations Conference on Trade and Development and the United Nations Economic Commission for Europe, to identify areas where further joint action would facilitate trade between the Parties and promote shared multilateral objectives.