

Chapter 5

Customs Administration

Article 5.1: Definitions

For the purposes of this Chapter:

- (a) **customs law** means such laws and regulations administered and enforced by the Customs Administration of each Party concerning the importation, exportation, and transit/transshipment of goods, as they relate to customs duties, charges, and other taxes, or to prohibitions, restrictions, and other similar controls with respect to the movement of controlled items across the boundary of the customs territory of each Party; and
- (b) **customs procedures** means the treatment applied by the Customs Administration of each Party to goods which are subject to customs control.

Article 5.2: Scope and Coverage

This Chapter applies to customs procedures applied to goods traded between the Parties.

Article 5.3: Publication and Enquiry Points

1. Each Party shall publish on the Internet its laws, regulations and administrative procedures applicable to or enforceable by its Customs Administration.
2. Each Party shall designate one or more inquiry points to address inquiries from interested persons concerning customs matters, and shall make available on the Internet information concerning procedures for making such inquiries.
3. Each Party shall endeavour to provide interested persons and the other Party with advance notice of any proposed customs laws and practices that are likely to substantially affect the operation of the Agreement.

Article 5.4: Review and Appeal

1. Each Party shall ensure that with respect to its determinations on customs matters, importers in its territory have access to:
 - (a) administrative review independent of the official that issued the determination; and
 - (b) judicial review of the determination or decision taken at the final level of administrative review.

2. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing.

Article 5.5: Penalties / Sanctions

Each Party shall maintain measures for the imposition of civil or administrative penalties or sanctions, and, where appropriate, criminal sanctions for violations of its customs laws.

Article 5.6: Customs Procedures and Facilitation

1. Each Party shall ensure that its customs procedures conform, where possible and to the extent permitted by its respective laws, regulations and practices, to international standards and recommended practices established by the World Customs Organization.
2. Each Party shall ensure that its customs procedures and practices:
 - (a) are administered in an impartial, uniform and reasonable manner; and
 - (b) avoid arbitrary and unwarranted procedural obstacles.
3. The Customs Administration of 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 international trade.
4. Each Party shall ensure goods are released within a time period no longer than that required to ensure compliance with its customs laws.
5. A Party may, so long as other customs requirements have been met, and to the extent possible:
 - (a) release goods at the point of arrival, without temporary transfer to warehouses or other locations; or
 - (b) release goods prior to, and without prejudice to, the final determination by its Customs Administration of the applicable customs duties, taxes and fees.

Article 5.7: Risk Management

1. Each Party shall administer its customs procedures so as to facilitate the clearance of low-risk goods and focus on high-risk goods. To the extent possible,

systems that allow for information regarding an importation to be processed in advance of arrival are to be used to clear goods.

2. Each Party shall work to further enhance the use of risk management techniques in the administration of its customs procedures.

Article 5.8: Cooperation

1. Each Party's Customs Administration shall endeavor to provide the Customs Administration of the other Party with advance notice of any significant modification of administrative policy regarding the implementation of its customs laws and practices that are likely to substantially affect the operation of this Agreement.

2. To the extent permitted by their domestic laws, rules and regulations, the Customs Administrations of both Parties shall endeavour to provide each other with:

- (a) information to assist in the investigation and prevention of infringements of customs and customs related laws and regulations; and
- (b) any other customs matters agreed by the Parties.

Article 5.9: Confidentiality

1. Each Party's Customs Administration undertakes not to use any information received in accordance with this Chapter or Chapter 4 (Rules of Origin) other than for the purpose for which the information was given, or to disclose any such information, except in cases where:

- (a) the Customs Administration that furnished the information has expressly approved its use or disclosure for other purposes related to this Chapter or Chapter 4 (Rules of Origin); or
- (b) the national law of the receiving Customs Administration requires disclosure, in which case the receiving Customs Administration shall notify the Customs Administration that furnished the information of the relevant law.

2. Any information received in accordance with this Chapter or Chapter 4 (Rules of Origin) shall be treated as confidential and will be subject to the same protection and confidentiality as the same kind of information is subject to under the national law of the Customs Administration where it is received.

3. Nothing in this Chapter or Chapter 4 (Rules of Origin) shall be construed to require a Party to furnish or allow access to information the disclosure of which would:

- (a) be contrary to the public interest as determined by its laws, rules or regulation;
- (b) be contrary to any of its laws, rules and regulations including but not limited to those protecting personal privacy or the financial affairs and accounts of individuals; or
- (c) impede law enforcement.

Article 5.10: Advance Rulings

1. Each Party, where possible and to the extent permitted by its domestic laws, regulations and practices, shall provide for written advance rulings to be issued to a person described in subparagraph 2(a) concerning tariff classification, valuation and the qualification of a good as an originating good under this Agreement.

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

- (a) provide that an importer in its territory or an exporter or producer in the territory of the other Party may apply for an advance ruling before the importation of the goods concerned;
- (b) include a detailed description of the information required to process a request for an advance ruling;
- (c) allow its Customs Administration, at any time during the course of an evaluation of an application for an advance ruling, to request that the applicant provide additional information necessary to evaluate the request;
- (d) ensure that an 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, or in any case within 30 working days of the receipt of all necessary information; and
- (f) provide a written explanation for the reasons for the advance ruling.

3. Subject to paragraph 4, each Party shall apply an advance ruling to importations into its territory beginning on the date it issues the ruling or on any other date specified in the ruling. The Party shall ensure the same treatment of all importations regardless of the importer, exporter or producer involved, where the facts and circumstances are identical in all material respects.

4. A Party may modify or revoke an advance ruling where, consistent with this Agreement:

- (a) there is a change in the law;
- (b) incorrect information was provided or relevant information was withheld;
- (c) there is a change in a material fact; or
- (d) there is a change in the circumstances on which the ruling was based.

Article 5.11: Paperless Trading

1. The Customs Administration of each Party, in implementing initiatives which provide for the use of paperless trading, shall take into account the methods agreed by the World Customs Organization, including adoption of the World Customs Organization data model for the simplification and harmonisation of data.
2. The Customs Administration of each Party shall work towards having electronic means for all its customs reporting requirements, as soon as practicable.
3. The introduction and enhancement of information technology shall, to the greatest extent possible, be carried out in consultation with all relevant parties including businesses directly affected.

Article 5.12: Fees and Charges

For greater certainty, the Parties confirm that Article 3.10 (Administrative Fees and Formalities - National Treatment and Market Access for Goods Chapter) applies to customs fees and charges.