

## **CHAPTER 4**

### **CUSTOMS ADMINISTRATIONS AND TRADE FACILITATION**

#### Article 4.1: General Provisions

1. The Parties reaffirm their commitments under the WTO Agreement on Trade Facilitation.
2. Each Party shall ensure that its trade facilitation and customs procedures including importation, exportation, and transit procedures, are applied in a predictable, consistent and transparent manner.
3. The Parties shall be guided by the following general principles to support the customs procedures and trade facilitation measures:
  - (a) transparency, efficiency, simplification, harmonization, consistency, and non-discrimination of the procedures related to exportation, importation and transit of goods;
  - (b) consistent, impartial, and predictable administration of their respective laws, regulations and administrative decisions relevant to trade in goods;
  - (c) customs procedures of each Party shall conform, where possible, to the standards and recommended practices of the World Customs Organization, WTO and other relevant international standards;
  - (d) consistency with relevant multilateral instruments;
  - (e) best possible use of information technology;
  - (f) controls based on risk management;
  - (g) cooperation within each Party among customs and other border authorities;
  - (h) consultations between the Parties and their respective traders and other interested parties, and
  - (i) the customs administration of each Party shall periodically review its customs procedures with a view to their further simplification and development to facilitate bilateral trade.

4. Each Party shall endeavour to provide for clearance of goods with minimum documentation requirements and make electronic systems accessible to customs users and use information technology that expedites procedures for the release of goods.

#### Article 4.2: Transparency

1. The Parties recognise the importance of timely consultations with trade representatives on legislative proposals and general procedures related to customs and trade issues. To that end, each Party shall provide for appropriate consultations between administrations and traders and other interested parties, which shall take place in each Party to the extent practicable, and in a manner consistent with its law.

2. Each Party shall ensure that their respective customs and related requirements and procedures continue to meet the needs of the trading community, follow best practices, and remain as little trade-restrictive as possible.

3. Each Party shall, as appropriate, provide for regular consultations between border agencies and traders or other stakeholders located within its territory.

4. Each Party shall promptly publish the following information, in a non-discriminatory and easily accessible manner, in order to enable governments, traders, and other interested parties to become acquainted with them:

- (a) importation, exportation, and transit procedures (including port, airport, and other entry-point procedures) and required forms and documents;
- (b) fees and charges imposed by, or for, governmental agencies on, or in connection with, importation, exportation or transit;
- (c) rules for the classification or valuation of products for customs purposes;
- (d) laws, regulations, and administrative rulings of general application relating to rules of origin;
- (e) import, export, or transit restrictions or prohibitions;
- (f) penalty provisions against breaches of import, export or transit formalities;
- (g) review and appeal procedures;
- (h) agreements or parts thereof with any country or countries relating to importation, exportation or transit;

- (i) procedures relating to the administration of tariff quotas;
- (j) contact points for information enquiries, and
- (k) other relevant information of an administrative nature in relation to subparagraphs (a) to (j).

5. Each Party shall, to the extent practicable, and in a manner consistent with its law, ensure that new or amended laws and regulations of general application related to the movement, release, and clearance of goods, including goods in transit, are promptly published, in a non-discriminatory and easily accessible manner, including online, as well as the interpretations of such laws and regulations.

6. Each Party shall endeavour, to the extent possible and within its available resources, to publish the information referred to in paragraphs 4 and 5, in the English language.

7. Each Party shall, to the extent practicable and in a manner consistent with its law, ensure that there is a reasonable time period between the publication of new or amended laws and regulations and fees or charges and their entry into force.

8. Each Party shall establish or maintain one or more enquiry points to answer enquiries from traders and other interested parties on customs and other trade-related matters. The enquiry points shall answer enquiries within a reasonable time period set by each Party, which may vary depending on the nature or complexity of the request. A Party shall not require the payment of a fee for answering enquiries or providing required forms and documents.

9. Nothing in this Article or in any part of this Agreement shall require any Party to publish law enforcement procedures and internal operational guidelines including those related to conducting risk analysis and targeting methodologies.

#### Article 4.3: Advance Rulings

1. Each Party shall issue, prior to the importation of a good of a Party into its territory, a written advance ruling upon written request, including by electronic means, of an importer in its territory, or an exporter or producer in the territory of the other Party, with regard to:

- (a) tariff classification of the goods;
- (b) the application of customs valuation criteria, in accordance with the Customs Valuation Agreement, and

(c) whether a good qualifies as originating in accordance with Chapter 3 (Rules of Origin).

2. Each Party shall adopt or maintain procedures for the issuance of advanced rulings, including a detailed description of the information reasonably required to process an application for a ruling.

3. Each Party shall issue an advance ruling, in accordance with its laws and regulations, in a reasonable time-bound manner, and in no case later than 90 days after it receives all the information required to process the application, including any supplemental information that may be requested. This may include a sample of the good for which the requester 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 requester has provided.

4. A Party may decline to issue an advance ruling, in accordance with its laws and regulations. A Party that declines to issue an advance ruling shall promptly notify the requester in writing, setting out the relevant facts and circumstances and the basis for its decision to decline to issue the advance ruling.

5. Each Party shall provide that its advance rulings shall take effect on the date that they are issued or on a later date specified in the ruling, and remain in effect for a reasonable period of time, unless the law, facts or circumstances on which the ruling is based have changed.

6. 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, or if the ruling was in error.

7. A Party may apply a modification or revocation in accordance with paragraph 6 after it provides notice of the modification or revocation and the reasons for it to the requester.

8. No Party shall apply a revocation or modification retroactively to the detriment of the requester unless the ruling was based on inaccurate or false information provided by the requester.

9. Subject to each party's advance rulings proceeding and any confidentiality requirements in its laws and regulations, each Party may make its advance rulings publicly available, including online.

#### Article 4.4: Review and Appeal

1. Each Party shall ensure that any person to whom it issues an administrative determination on customs matters has access to:
  - (a) at least one level of administrative review, independent of the official or authority<sup>1</sup> that issued the administrative determination, in accordance with its laws and regulations, and
  - (b) judicial review of such administrative determination or decision taken at the final level of administrative review.
2. Each Party shall ensure that its procedures for appeal and review are carried out in a non-discriminatory and timely manner.
3. Each Party shall ensure that an authority conducting a review or appeal under paragraph 1 notifies the person in writing of its decision in the review or appeal, and the reasons for the decision.

#### Article 4.5: Penalties

1. Each Party shall ensure that penalties for a breach of its customs laws, regulations, or procedural requirements are imposed only on the person or persons legally responsible for the breach.
2. The 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. No Party shall impose substantial penalties for minor breaches of customs regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in customs documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.
4. Each Party shall ensure that if a penalty is imposed for a breach of customs laws, regulations, or procedural requirements, an explanation in writing is provided to the person or persons upon whom the penalty is imposed, specifying the nature of the breach, the basis for the penalty and instructions on the right to appeal.

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<sup>1</sup> The level of administrative review for the UAE may include the competent authority supervising the Customs Administration.

5. If a person voluntarily discloses to a Party's customs administration the circumstances of a breach of customs laws, regulations, or procedural requirements prior to the discovery of the breach by the customs administration, the Party is encouraged to, if appropriate, consider this fact as a potential mitigating factor when establishing a penalty for that person.

6. Each Party shall maintain measures to avoid conflicts of interest in the assessment and collection of penalties, ensuring that government officials do not personally benefit from any penalty or duties assessed or collected.

#### Article 4.6: Use of Automated Systems

1. Each Party shall endeavor, to the extent possible, to apply information and communication technologies to support customs operations, particularly in the paperless trading context, taking into account developments in this area within the World Customs Organization (WCO).

2. The customs authority of each Party shall endeavor to use information and communication technologies that expedites procedures for the release of goods, including the submission and processing of information and data before arrival of the shipment, as well as electronic or automated systems for risk management and targeting.

#### Article 4.7: Express Shipments

Each Party shall adopt or maintain expedited customs procedures for express shipments while maintaining appropriate customs control and selection. These procedures shall:

- (a) provide for a separate and expedited customs procedure for express shipments;
- (b) provide for information required to release an express shipment to be submitted and processed electronically before the shipment arrives;
- (c) allow submission of a single manifest covering all goods contained in an express shipment, through, if possible, electronic means;
- (d) to the extent possible, provide for the release of certain goods with a minimum of documentation;

- (e) under normal circumstances, provide for express shipments to be released as soon as possible after submission of the necessary customs documents, provided the shipment has arrived;
- (f) apply to shipments of any weight or value recognising that a Party may require formal entry procedures as a condition for release, including declaration and supporting documentation and payment of customs duties, based on the good's weight or value, and
- (g) provide that, under normal circumstances, no customs duties will be assessed on express shipments valued at or below a fixed amount set under the Party's law<sup>2</sup>.

#### Article 4.8: Risk Management

1. Each Party shall adopt or maintain a risk management system for customs control.
2. Each Party shall concentrate customs control on high-risk consignments and expedite the release of low-risk consignments. Each Party may also select, on a random basis, consignments for such controls as part of its risk management.
3. Each Party shall base risk management on an assessment of risk through appropriate selectivity criteria.
4. In order to strengthen their risk management systems, the Parties may adopt cooperation programmes that are based on best practices established between them and in accordance with the Agreement between the Government of the United Arab Emirates and the Government of the Republic of Chile on Co-Operation and Mutual Assistance in Customs signed on 27 September 2019, and its amendments (hereinafter CMAA) upon the entry into force of the CMAA.

#### Article 4.9: Post-clearance Audit

1. With a view to expediting the release of goods, each Party shall adopt or maintain post-clearance audit to ensure compliance with customs and other related laws and regulations.
2. Each Party shall conduct post-clearance audits in a risk-based manner.

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<sup>2</sup> Notwithstanding this Article, a Party may assess customs duties, or may require formal entry documents, for restricted or controlled goods, such as goods subject to import licensing or similar requirements.

3. Each Party shall conduct post-clearance audits in a transparent manner. If an audit is conducted and conclusive results have been achieved, the Party shall, without delay, notify the person whose record has been audited of the results, the reasons for the result, and the rights and obligations of that person.

4. The Parties acknowledge that the information obtained in a post-clearance audit may be used in further administrative or judicial proceedings.

5. The Parties shall, wherever practicable, use the result of post-clearance audit in applying risk management.

#### Article 4.10: Authorised Economic Operator - AEO

1. Each customs administration of the Parties shall adopt the implementation and strengthening of its national Authorized Economic Operator programme (“AEO”) in accordance with the WCO Framework of Standards to Secure and Facilitate Global Trade (“WCO SAFE Framework”).

2. In order to facilitate trade and enhance compliance and risk management between them, the customs administrations of the Parties shall promote and work toward the signing of mutual recognition arrangements or agreements on AEO of the Parties.

#### Article 4.11: Single Windows for Foreign Trade

The Parties shall endeavour to implement and promote their single window, enabling traders to submit documentation or data requirements for importation, exportation, or transit of goods through a single-entry point to the participating authorities or agencies. The Parties shall endeavour to work on the interoperability between them.

#### Article 4.12: 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.

2. Pursuant to paragraph 1, each Party shall adopt or maintain procedures that:

- (a) provide for the immediate release of goods upon receipt of the customs declaration and fulfillment of all applicable requirements and procedures;



- (b) provide for advance electronic submission and processing of information before the physical arrival of goods with a view to expediting the release of goods upon arrival;
- (c) allow goods, to be released at the point of arrival, 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, if such a determination is not done prior to, or upon arrival, or as rapidly as possible after arrival and provided that all other regulatory requirements have been met,<sup>3</sup> and
- (e) require that the importer be informed if a Party does not promptly release goods, including, to the extent permitted by its law, the reasons why the goods are not released and which border agency, if not the customs administration, has withheld release of the goods.

3. Each Party shall, provided that all regulatory requirements have been met, endeavor to adopt or maintain a procedure for the release of perishable goods in order to permit prompt customs clearance.

4. Nothing in this Article requires a Party to release a good if its requirements for release have not been met nor prevents a Party from liquidating a security deposit in accordance with its law.

5. Each Party may allow, to the extent practicable and in accordance with its customs laws, goods intended for import to be moved within its territory under customs control from the point of entry into the Party's territory to another customs office in its territory from where the goods are intended to be released, provided the applicable regulatory requirements are met.

#### Article 4.13: Border Agency Coordination

Each Party shall ensure that its authorities and agencies responsible for border controls and procedures dealing with the importation, exportation, and transit of goods cooperate with one another and coordinate their activities in order to facilitate trade pursuant to this Chapter.

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<sup>3</sup> As a condition for such release, a Party may require: (i) payment of customs duties, taxes, fees, and charges determined prior to or upon arrival of goods and a guarantee for any amount not yet determined in the form of a surety, a deposit, or another appropriate instrument provided for in its laws and regulations; or (ii) a guarantee in the form of a surety, a deposit, or another appropriate instrument provided for in its laws and regulations.

#### Article 4.14: Confidentiality

1. If a Party provides information to the other Party in accordance with this Chapter, the other Party shall keep that information confidential. Such information shall not be made publicly available by a Party without the expressed permission of the Party that provided the information or the person that provided the information to that Party.
2. Any information pertaining to Customs exchanged under this Agreement shall be treated as confidential pursuant to the terms set forth in the CMAA upon the entry into force of the CMAA.

#### Article 4.15: Cooperation

1. The Parties shall cooperate, as appropriate, on customs and trade facilitation matters. Such cooperation may include:
  - (a) cooperate in the research, development and application of new customs procedures, in the training and exchange of personnel, in sharing of best practices, and in other matters of mutual interest;
  - (b) collaborating on the customs-related aspects of securing and facilitating the international trade supply chain in accordance with WCO SAFE Framework;
  - (c) exploring the possibility of developing joint initiatives, including the exchange of best practices and technical assistance, as well as towards ensuring an effective service to the business community. Cooperation may include fields such as new technologies for customs procedures, developing training programs for customs officers, among others;
  - (d) strengthening their cooperation in the field of customs in international organisations such as the World Trade Organization (WTO) and the World Customs Organization (WCO), and
  - (e) sharing their respective experiences in developing and deploying their single window systems, as well as their respective implementation of data standards and elements in accordance with the World Customs Organization (WCO) and its Data Model;
2. The Parties shall provide each other with mutual administrative assistance in customs matters under the CMAA upon the entry into force of the CMAA.

3. Assistance under this Article shall be provided in accordance with the law of the requested party.

#### Article 4.16: Contact Points

1. The Parties designate the following contact points:
  - (a) for Chile, the Undersecretariat of International Economic Relations, or its successor, and
  - (b) for the UAE, the Federal Authority of Identity, Citizenship, Customs and Port Security.
2. The Parties shall notify each other promptly of any amendment to the details of their contact points.
3. The contact points shall:
  - (a) facilitate the discussions, requests and exchange of information pertaining to this Chapter in a timely manner;
  - (b) consult and, if appropriate, coordinate with the relevant governmental authorities in its territory related to any matter arising from this Chapter, and
  - (c) carry out any other additional responsibilities that the Parties may agree.

#### Article 4.17: Subcommittee on Customs Administration and Trade Facilitation

1. The Parties hereby establish a Subcommittee on Customs Administration and Trade Facilitation (“Subcommittee”). The Subcommittee shall be composed of representatives of the Parties and shall be co-chaired by a representative of each Party.
2. The functions of the Subcommittee shall be to:
  - (a) monitor the implementation and administration of this Chapter;
  - (b) follow up on the various developments, application and enforcement of customs procedures pertaining to the implementation of this Chapter, and
  - (c) report on its activities and findings, and make recommendations, as required, to the Joint Committee.