

Chapter 5 Customs Procedures and Trade Facilitation

Article 5.1 Definitions

For the purposes of this Chapter:

customs administration means:

- (a) for China, the General Administration of Customs of the People's Republic of China; and
- (b) for Ecuador, the National Customs Service of Ecuador.

customs law means the statutory and regulatory provisions relating to the importation, exportation, movement, or storage of goods, the administration and enforcement of which are charged to the customs administration, and any regulations made by the customs administration under its statutory powers;

customs procedures means the treatment applied by each customs administration to goods and the means of transport that are subject to customs control;

Customs Valuation Agreement means the Agreement on Implementation of Article VII of the GATT 1994, which is a part of the WTO Agreement; and

means of transport means various types of vessels, vehicles, and aircrafts which enter or leave the customs territory carrying persons and/or goods.

Article 5.2 Scope and Objectives

1. This Chapter shall apply, in accordance with the international obligations and domestic laws and regulations of the Parties, to customs procedures applied to goods traded between the Parties and to the movement of means of transport between the Parties.

2. For the purposes of this Chapter, the Parties shall:

- (a) promote the simplification and harmonization of their customs procedures;
- (b) to ensure the efficient and expeditious clearance of goods and movement of

means of transport;

(c) to ensure predictability, consistency, and transparency in the application of customs law, including administrative procedures of the Parties;

(d) facilitate trade between them; and

(e) promote cooperation between their customs administrations.

Article 5.3 Facilitation

1. Each Party shall ensure that its customs procedures and practices are predictable, consistent, transparent, and trade facilitating.

2. Each Party shall, where possible and to the extent permitted by their respective customs laws, conform its customs procedures with the standards and recommended practices of the World Customs Organization (WCO) to which that Party is a contracting party, in particular those of the International Convention on the Simplification and Harmonization of Customs Procedures (as amended), known as the Revised Kyoto Convention.

3. The customs administrations of the Parties shall facilitate the clearance, including the release of goods, in administering their procedures.

4. Each Party shall provide a focal point, electronic or otherwise, through which its traders may submit required regulatory information in order to obtain clearance, including the release of goods.

Article 5.4 Customs Valuation

The Parties shall determine the customs value of goods traded between them in accordance with the provisions of Article VII of GATT 1994 and *the Customs Valuation Agreement*.

Article 5.5 Tariff Classification

The Parties shall apply the *International Convention on the Harmonized Commodity Description and Coding System* to goods traded between them.

Article 5.6 Customs Cooperation

1. The customs administrations of the Parties shall provide mutual cooperation and assistance to ensure the proper application of customs law, the review of customs procedures, the prevention, investigation, and combating of customs offenses as to achieve a satisfactory balance between effective control and facilitation.

2. The customs administrations of the Parties shall assist each other, in relation to:

(a) the implementation and operation of this Chapter;

(b) the application of the Customs Valuation Agreement;

(c) simplifying and harmonizing customs procedures;

(d) developing and implementing customs best practices and risk management techniques;

(e) exchanging of information, best practices, experiences, training skills, and any related support suitable for strengthening customs management;

(f) establishing or maintaining channels of communication to strengthen the efficient exchange of information and improve coordination regarding customs matters;

(g) enhancing the use of technologies that lead to improve compliance with the laws and regulations governing importations, exportations, and transit; and

(h) such other issues as the Parties mutually determine.

3. The customs administrations of the Parties shall push forward cooperation based on “Smart Customs, Smart Borders, and Smart Connectivity” in order to enhance mutual trust and promote trade facilitation to achieve a high level connectivity between the Parties.

4. The customs administrations of the Parties shall provide mutual cooperation and assistance in customs matters in accordance with the provisions of this Chapter and shall consider developing an agreement concerning cooperation and mutual administrative assistance that will cover relevant customs issues.

Article 5.7 Transparency

1. Each Party shall promptly publish, including on the Internet, its laws, regulations, and, where applicable, administrative rules or procedures of general application relevant to trade in goods between the Parties.

2. Each Party shall designate one or more enquiry points to address enquiries from interested persons on customs matters and shall make available on the Internet information concerning the procedures for making such enquiries.

3. To the extent practicable and in a manner consistent with its domestic law and legal system, each Party shall publish, in advance on the Internet, draft laws and regulations of general application relevant to trade between the Parties, with a view to affording traders and other interested persons an opportunity to provide comments.

4. To the extent practicable and in a manner consistent with its domestic law and legal system, each Party shall ensure that a reasonable interval is provided between the publication and the entry into force of new or amended laws and regulations of general application relevant to trade between the Parties.

Article 5.8 Advance Rulings

1. The customs administration of each Party shall issue an advance ruling, prior to the importation of a good into its customs territory, at the written request containing all necessary information, on an application of the exporter, importer, or any person with a justifiable cause or a representative thereof¹, with respect to:

(a) origin of a good in accordance with Chapter 4 (Rules of Origin and Implementation Procedures);

(b) tariff classification of a good; and

(c) such other matters as the Parties may agree.

2. The customs administration of the importing Party shall issue an advance ruling within 90 days on receipt of all necessary information and the completion of the requirements.

3. Each Party shall provide that an advance ruling shall be valid from the date it is issued, or another date specified in the advance ruling, provided that the laws, regulations, administrative rules, and the facts or circumstances, on which the advance ruling is based remain unchanged.

4. The customs administration of the importing Party may modify, revoke, or invalidate an advance ruling:

¹ An applicant for an advance ruling from China shall be registered with China Customs.

- (a) if the advance ruling was based on an error of fact;
- (b) if there is a change in the material facts or circumstances on which the advance ruling was based;
- (c) if incorrect information was provided or relevant information was withheld; or
- (d) to conform with a change in its domestic laws, a judicial decision, or a modification of this Chapter.

Article 5.9 Review and Appeal

Each Party shall, in accordance with its laws and regulations, provide that the importer, exporter, or any other person affected by those administrative determinations or decisions have access to:

- (a) a level of administrative review of determinations by its customs administration, independent of the official or office responsible for the decision under review; and
- (b) judicial review of the administrative determinations subject to its laws and regulations.

Article 5.10 Application of Information Technology

1. The customs administrations of the Parties shall use information technology to support customs operations, including sharing best practices with each other for the purpose of improving their customs procedures where it is cost-effective and efficient, particularly in the paperless trading context, taking into account developments of the WCO in this area.

2. The customs administrations of the Parties are encouraged to focus on the application of new technologies, including the development of hardware facilities and software systems, as to accelerate customs operations and increase the accuracy and impartiality of customs control.

Article 5.11 Risk Management

1. The customs administration of each Party shall focus measures of control on high-risk goods and facilitate the clearance of low-risk goods in administering customs procedures.

2. The customs administration of each Party shall design and apply risk

management in a manner as to avoid arbitrary or unjustifiable discrimination or disguised restrictions on international trade.

Article 5.12 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. This paragraph shall not require a Party to release a good where its requirements for release have not been met.

2. In accordance with paragraph 1, each Party shall adopt or maintain procedures that:

(a) provide for the release of goods as rapidly as possible after arrival, provided all other regulatory requirements have been met; and

(b) as appropriate, provide for advance electronic submission and processing of information before the physical arrival of goods with a view to expediting the release of goods.

3. Each Party shall adopt or maintain procedures allowing the release of goods prior to the final determination of customs duties, taxes, fees, and charges if such 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. As a condition for such release, a Party may require a guarantee in accordance with its laws and regulations that does not exceed the amount the Party requires to ensure payment of customs duties, taxes, fees, and charges ultimately due for the goods covered by the guarantee.

4. Nothing in this Article shall affect the right of a Party to examine, detain, seize, confiscate, or deal with the goods in any manner consistent with its laws and regulations.

5. With a view to preventing avoidable loss or deterioration of perishable goods, and provided that all regulatory requirements have been met, each Party shall provide for a prompt release of perishable goods, and under normal circumstances within the shortest possible time.

6. For the purposes of this provision, perishable goods are goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.

Article 5.13 Authorized Economic Operator

1. The customs administrations of the Parties shall establish the program of Authorized Economic Operators (AEO) to promote informed compliance and efficiency of customs control and to share best practices between the Parties.

2. The customs administrations of the Parties shall work towards mutual recognition of AEO.

Article 5.14 Penalties

Each Party shall adopt or maintain measures that allow for the imposition of administrative penalties and, where appropriate, criminal sanctions for violations of its customs laws and regulations, including those governing tariff classification, customs valuation, rules of origin, and claims for preferential tariff treatment under this Agreement.

Article 5.15 Confidentiality

Each Party's customs administration shall maintain the confidentiality of the information and protect it from use or disclosure that could prejudice the competitive position of the person providing the information.

Article 5.16 Consultation

1. The customs administration of each Party may at any time request consultations with the customs administration of the other Party on any matter arising from the operation or implementation of this Chapter, in cases where there are reasonable grounds provided by the requesting Party. Such consultations shall be conducted through the relevant contact points and shall take place within 30 days of the request, unless the customs administrations of both Parties mutually determine otherwise.

2. In the event that such consultations fail to resolve any such matter, the requesting Party may refer the matter to the Committee on Customs Procedures and Trade Facilitation set forth in Article 5.17 (Committee on Customs Procedures and Trade Facilitation) of this Chapter for consideration.

3. Each customs administration shall designate one or more contact points for the purposes of this Chapter and provide details of such contact points to the other Party. The customs administrations of the Parties shall notify each other promptly of any amendments to the details of their contact points.

Article 5.17 Committee on Customs Procedures and Trade Facilitation

1. The Parties, with the view to an effective implementation and operation of this Chapter, hereby establish a Committee on Customs Procedures and Trade Facilitation (Committee on CPTF), under the Free Trade Commission.

2. The Committee on CPTF shall be composed of representatives from customs administrations and, upon mutual agreement, relevant government authorities of the Parties.

3. The functions of the Committee on CPTF shall be as follows:

(a) ensure the proper functioning of this Chapter and resolve all issues arising from its application;

(b) review the operation and implementation of this Chapter, as well as revise this Chapter as appropriate;

(c) identify areas related to this Chapter to be improved for facilitating trade between the Parties;

(d) make recommendations and report to the Free Trade Commission; and

(e) address any issues presented by each customs administration in conformity with Article 5.16 (Consultation) of this Chapter, notwithstanding the rights and obligations set out in Chapter 13 (Dispute Settlement) of this Agreement.

4. The Committee on CPTF shall meet at such venues and times as agreed by the Parties.