

## **CHAPTER 5**

### **CUSTOMS ADMINISTRATION AND TRADE FACILITATION**

\*This Chapter is similar to that of TPP, together with note of freeze clause under CPTPP (according to WTO Center-VCCI)

#### **Article 5.1: Customs Procedures and Facilitation of Trade**

Each Party shall ensure that its customs procedures are applied in a manner that is predictable, consistent and transparent.

#### **Article 5.2: Customs Cooperation**

1. With a view to facilitating the effective operation of this Agreement, each Party shall:

- (a) encourage cooperation with other Parties regarding significant customs issues that affect goods traded between the Parties; and
- (b) endeavour to provide each Party with advance notice of any significant administrative change, modification of a law or regulation, or similar measure related to its laws or regulations that governs importations or exportations, that is likely to substantially affect the operation of this Agreement.

2. Each Party shall, in accordance with its law, cooperate with the other Parties through information sharing and other activities as appropriate, to achieve compliance with their respective laws and regulations that pertain to:

- (a) the implementation and operation of the provisions of this Agreement governing importations or exportations, including claims for preferential tariff treatment, procedures for making claims for preferential tariff treatment and verification procedures;
- (b) the implementation, application and operation of the Customs Valuation Agreement;
- (c) restrictions or prohibitions on imports or exports;
- (d) investigation and prevention of customs offences, including duty evasion and smuggling; and
- (e) other customs matters as the Parties may decide.

3. If a Party has a reasonable suspicion of unlawful activity related to its laws or regulations governing importations, it may request that another Party provide

specific confidential information that is normally collected in connection with the importation of goods.

4. If a Party makes a request under paragraph 3, it shall:
  - (a) be in writing;
  - (b) specify the purpose for which the information is sought; and
  - (c) identify the requested information with sufficient specificity for the other Party to locate and provide the information.
  
5. The Party from which the information is requested under paragraph 3 shall, subject to its law and any relevant international agreements to which it is a party, provide a written response containing the requested information.
  
6. For the purposes of paragraph 3, “a reasonable suspicion of unlawful activity” means a suspicion based on relevant factual information obtained from public or private sources comprising one or more of the following:
  - (a) historical evidence of non-compliance with laws or regulations that govern importations by an importer or exporter;
  - (b) historical evidence of non-compliance with laws or regulations that govern importations by a manufacturer, producer or other person involved in the movement of goods from the territory of one Party to the territory of another Party;
  - (c) historical evidence of non-compliance with laws or regulations that govern importations by some or all of the persons involved in the movement of goods within a specific product sector from the territory of one Party to the territory of another Party; or
  - (d) other information that the requesting Party and the Party from which the information is requested agree is sufficient in the context of a particular request.
  
7. Each Party shall endeavour to provide another Party with any other information that would assist that Party to determine whether imports from, or exports to, that Party are in compliance with the receiving Party’s laws or regulations that govern importations, in particular those related to unlawful activities, including smuggling and similar infractions.
  
8. In order to facilitate trade between the Parties, a Party receiving a request shall endeavour to provide the Party that made the request with technical advice and assistance for the purpose of:

- (a) developing and implementing improved best practices and risk management techniques;
- (b) facilitating the implementation of international supply chain standards;
- (c) simplifying and enhancing procedures for clearing goods through customs in a timely and efficient manner;
- (d) developing the technical skill of customs personnel; and
- (e) enhancing the use of technologies that can lead to improved compliance with the requesting Party's laws or regulations that govern importations.

9. The Parties shall endeavour to establish or maintain channels of communication for customs cooperation, including by establishing contact points in order to facilitate the rapid and secure exchange of information and improve coordination on importation issues.

### **Article 5.3: Advance Rulings**

1. Each Party shall issue, prior to the importation of a good of a Party into its territory, a written advance ruling at the written request of an importer in its territory, or an exporter or producer in the territory of another Party,<sup>1</sup> with regard to:<sup>2</sup>

- (a) tariff classification;
- (b) the application of customs valuation criteria for a particular case in accordance with the Customs Valuation Agreement;
- (c) whether a good is originating in accordance with Chapter 3 (Rules of Origin and Origin Procedures); and
- (d) such other matters as the Parties may decide.

2. Each Party shall issue an advance ruling as expeditiously as possible and in no case later than 150 days after it receives a request, provided that the requester has submitted all the information that the receiving Party requires to make the advance ruling. This includes a sample of the good for which the

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<sup>1</sup> For greater certainty, an importer, exporter or producer may submit a request for an advance ruling through a duly authorised representative.

<sup>2</sup> For greater certainty, a Party is not required to provide an advance ruling when it does not maintain measures of the type subject to the ruling request.

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. For greater certainty, a Party may decline to issue an advance ruling if the facts and circumstances forming the basis of the advance ruling are the subject of administrative or judicial review. 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.

3. Each Party shall provide that its advance rulings shall take effect on the date that they are issued or on another date specified in the ruling, and remain in effect for at least three years, provided that the law, facts and circumstances on which the ruling is based remain unchanged. If a Party's law provides that an advance ruling becomes ineffective after a fixed period of time, that Party shall endeavour to provide procedures that allow the requester to renew the ruling expeditiously before it becomes ineffective, in situations in which the law, facts and circumstances on which the ruling was based remain unchanged.

4. 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.

5. A Party may apply a modification or revocation in accordance with paragraph 4 after it provides notice of the modification or revocation and the reasons for it.

6. 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.

7. Each Party shall ensure that requesters have access to administrative review of advance rulings.

8. Subject to any confidentiality requirements in its law, each Party shall endeavour to make its advance rulings publicly available, including online.

#### **Article 5.4: Response to Requests for Advice or Information**

On request from an importer in its territory, or an exporter or producer in the territory of another Party, a Party shall expeditiously provide advice or information relevant to the facts contained in the request on:

- (a) the requirements for qualifying for quotas, such as tariff rate quotas;

- (b) the application of duty drawback, deferral or other types of relief that reduce, refund or waive customs duties;
- (c) the eligibility requirements for goods under Article 2.6 (Goods Re-entered after Repair and Alteration);
- (d) country of origin marking, if it is a prerequisite for importation; and
- (e) other matters as the Parties may decide.

### **Article 5.5: Review and Appeal**

1. Each Party shall ensure that any person to whom it issues a determination<sup>3</sup> on a customs matter has access to:

- (a) administrative review of the determination, independent<sup>4</sup> of the employee or office that issued the determination; and
- (b) judicial review of the determination.<sup>5</sup>

2. Each Party shall ensure that an authority that conducts a review under paragraph 1 notifies the parties to the matter in writing of its decision and the reasons for the decision. A Party may require a request as a condition for providing the reasons for a decision in the review.

### **Article 5.6: Automation**

1. Each Party shall:

- (a) endeavour to use international standards with respect to procedures for the release of goods;
- (b) make electronic systems accessible to customs users;
- (c) employ electronic or automated systems for risk analysis and targeting;
- (d) endeavour to implement common standards and elements for

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<sup>3</sup> For the purposes of this Article, a determination, if made by Peru, means an administrative act.

<sup>4</sup> The level of administrative review may include any authority supervising the customs administration.

<sup>5</sup> Brunei Darussalam may comply with this paragraph by establishing or maintaining an independent body to provide impartial review of the determination.

import and export data in accordance with the World Customs Organization (WCO) Data Model;

- (e) take into account, as appropriate, WCO standards, recommendations, models and methods developed through the WCO or APEC; and
- (f) work toward developing a set of common data elements that are drawn from the WCO Data Model and related WCO recommendations as well as guidelines to facilitate government to government electronic sharing of data for purposes of analysing trade flows.

2. Each Party shall endeavour to provide a facility that allows importers and exporters to electronically complete standardised import and export requirements at a single entry point.

#### **Article 5.7: Express Shipments**

1. 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 information necessary to release an express shipment to be submitted and processed before the shipment arrives;
- (b) allow a single submission of information covering all goods contained in an express shipment, such as a manifest, through, if possible, electronic means;<sup>6</sup>
- (c) to the extent possible, provide for the release of certain goods with a minimum of documentation;
- (d) under normal circumstances, provide for express shipments to be released within six hours after submission of the necessary customs documents, provided the shipment has arrived;
- (e) 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
- (f) provide that, under normal circumstances, no customs duties will be assessed on express shipments valued at or below a fixed

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<sup>6</sup> For greater certainty, additional documents may be required as a condition for release.

amount set under the Party's law.<sup>7</sup> ~~Each Party shall review the amount periodically taking into account factors that it may consider relevant, such as rates of inflation, effect on trade facilitation, impact on risk management, administrative cost of collecting duties compared to the amount of duties, cost of cross-border trade transactions, impact on SMEs or other factors related to the collection of customs duties.~~

\*(This clause is freeze under CPTPP)

2. If a Party does not provide the treatment in paragraph 1(a) through (f) to all shipments, that Party shall provide a separate<sup>8</sup> and expedited customs procedure that provides that treatment for express shipments.

### **Article 5.8: Penalties**

1. Each Party shall adopt or maintain measures that allow for the imposition of a penalty by a Party's customs administration for a breach of its customs laws, regulations or procedural requirements, including those governing tariff classification, customs valuation, country of origin and claims for preferential treatment under this Agreement.

2. Each Party shall ensure that a penalty imposed by its customs administration for a breach of a customs law, regulation or procedural requirement is imposed only on the person legally responsible for the breach.

3. Each Party shall ensure that the penalty imposed by its customs administration is dependent on the facts and circumstances<sup>9</sup> of the case and is commensurate with the degree and severity of the breach.

4. Each Party shall ensure that it maintains measures to avoid conflicts of interest in the assessment and collection of penalties and duties. No portion of the remuneration of a government official shall be calculated as a fixed portion or percentage of any penalties or duties assessed or collected.

5. Each Party shall ensure that if a penalty is imposed by its customs administration for a breach of a customs law, regulation or procedural requirement, an explanation in writing is provided to the person upon whom the penalty is imposed specifying the nature of the breach and the law, regulation or procedure used for determining the penalty amount.

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<sup>7</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.

<sup>8</sup> For greater certainty, "separate" does not mean a specific facility or lane.

<sup>9</sup> Facts and circumstances shall be established objectively according to each Party's law.

6. If a person voluntarily discloses to a Party's customs administration the circumstances of a breach of a customs law, regulation or procedural requirement prior to the discovery of the breach by the customs administration, the Party's customs administration shall, if appropriate, consider this fact as a potential mitigating factor when a penalty is established for that person.

7. Each Party shall provide in its laws, regulations or procedures, or otherwise give effect to, a fixed and finite period within which its customs administration may initiate proceedings<sup>10</sup> to impose a penalty relating to a breach of a customs law, regulation or procedural requirement.

8. Notwithstanding paragraph 7, a customs administration may impose, outside of the fixed and finite period, a penalty where this is in lieu of judicial or administrative tribunal proceedings.

#### **Article 5.9: Risk Management**

1. Each Party shall adopt or maintain a risk management system for assessment and targeting that enables its customs administration to focus its inspection activities on high-risk goods and that simplifies the clearance and movement of low-risk goods.

2. In order to facilitate trade, each Party shall periodically review and update, as appropriate, the risk management system specified in paragraph 1.

#### **Article 5.10: 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 if its requirements for release have not been met.

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

- (a) provide for the release of goods within a period no longer than that required to ensure compliance with its customs laws and, to the extent possible, within 48 hours of the arrival of the goods;
- (b) provide for the electronic submission and processing of customs information in advance of the arrival of the goods in order to expedite the release of goods from customs control upon arrival;

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<sup>10</sup> For greater certainty, "proceedings" means administrative measures by the customs administration and does not include judicial proceedings.



- (c) allow goods to be released at the point of arrival without temporary transfer to warehouses or other facilities; and
  - (d) allow an importer to obtain the release of goods prior to the final determination of customs duties, taxes and fees by the importing Party's customs administration when these are not determined prior to or promptly upon arrival, provided that the good is otherwise eligible for release and any security required by the importing Party has been provided or payment under protest, if required by a Party, has been made. Payment under protest refers to payment of duties, taxes and fees if the amount is in dispute and procedures are available to resolve the dispute.
3. If a Party allows for the release of goods conditioned on a security, it shall adopt or maintain procedures that:
- (a) ensure that the amount of the security is no greater than that required to ensure that obligations arising from the importation of the goods will be fulfilled;
  - (b) ensure that the security shall be discharged as soon as possible after its customs administration is satisfied that the obligations arising from the importation of the goods have been fulfilled; and
  - (c) allow importers to provide security using non-cash financial instruments, including, in appropriate cases where an importer frequently enters goods, instruments covering multiple entries.

#### **Article 5.11: Publication**

1. Each Party shall make publicly available, including online, its customs laws, regulations, and general administrative procedures and guidelines, to the extent possible in the English language.
2. Each Party shall designate or maintain one or more enquiry points to address enquiries from interested persons concerning customs matters and shall make information concerning the procedures for making such enquiries publicly available online.
3. To the extent possible, each Party shall publish in advance regulations of general application governing customs matters that it proposes to adopt and shall provide interested persons the opportunity to comment before the Party adopts the regulation.

## **Article 5.12: Confidentiality**

1. If a Party provides information to another Party in accordance with this Chapter and designates the information as confidential, the other Party shall keep the information confidential. The Party that provides the information may require the other Party to furnish written assurance that the information will be held in confidence, used only for the purposes specified in the other Party's request for information, and not disclosed without the specific permission of the Party that provided the information or the person that provided the information to that Party.
2. A Party may decline to provide information requested by another Party if that Party has failed to act in accordance with paragraph 1.
3. Each Party shall adopt or maintain procedures for protecting from unauthorised disclosure confidential information submitted in accordance with the administration of the Party's customs laws, including information the disclosure of which could prejudice the competitive position of the person providing the information.