

CHAPTER 5

CUSTOMS ADMINISTRATION AND TRADE FACILITATION

Article 5.1: Definitions

For the purposes of this Chapter:

AEO means an Authorised Economic Operator;

TFA Agreement means the *Trade Facilitation Agreement*, set out in Annex 1A to the WTO Agreement;

WCO means the World Customs Organization; and

WCO SAFE Framework means Framework of Standards to Secure and Facilitate Global Trade.

Article 5.2: Scope

This Chapter shall apply to customs procedures for goods traded between the Parties, in accordance with their laws and regulations.

Article 5.3: Objectives

The objectives of this Chapter are to:

- (a) ensure predictability, consistency and transparency in the application of customs laws and regulations of the Parties;
- (b) promote efficient administration of customs procedures, and the expeditious release of goods;
- (c) simplify customs procedures of the Parties and harmonise them to the extent possible with relevant international standards;
- (d) promote co-operation between the customs administrations of the Parties; and
- (e) facilitate trade between the Parties, including through a strengthened environment for global and regional supply chains.

Article 5.4: Affirmation of the Trade Facilitation Agreement

The Parties affirm their rights and obligations under the TFA Agreement. If a Party has not comprehensively implemented the TFA Agreement, that Party shall implement, to the extent possible, the remaining obligations in Section I of the TFA Agreement no later than the date of entry into force of this Agreement.

Article 5.5: Confidentiality

1. If a Party provides information to the other 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 the other 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 and regulations, including information the disclosure of which could prejudice the competitive position of the person providing the information.

Article 5.6: Transparency

1. Each Party shall make publicly available, including on the internet:

- (a) its customs laws and regulations;
- (b) its customs procedures and guidelines related to the importation, exportation and transit of goods, in a manner that is comprehensive, clear, and concise;
- (c) any additional information a Party is required to publish under the TFA Agreement and Article X of the GATT 1994, as well as quasi-judicial decisions, where applicable, of general application; and
- (d) if applicable, a description of the guarantee or security regime as referred to in Article 5.9, including the basis for determining the guarantee or security amount.

2. The information in paragraph 1 shall be made available free of charge and without registration requirements, and, to the extent possible, through a single website. To the extent possible, each Party shall make the information referred to in paragraph 1 available in English.

3. Each Party shall periodically review, and update as necessary, the publication of the information listed in paragraph 1.

4. Each Party shall designate or maintain one or more enquiry points to address enquiries from interested persons concerning customs matters, and shall provide easily accessible points of contact on the internet for making such enquiries.

5. No Party shall require the payment of a fee for answering general enquiries under paragraph 4. A Party may require payment of a fee with respect to enquiries requiring document search, duplication, and review in connection with requests under its laws and regulations providing public access to government records.

6. To the extent possible, each Party shall publish, including on the internet, any laws and regulations of general application governing customs matters that it proposes to adopt, and provide to interested persons the opportunity to provide comments prior to its adoption.

7. Each Party shall establish or maintain mechanisms for regular consultations between its customs administration and traders within its territory to provide an opportunity for the customs administration to consider the concerns or evolving needs of traders.

Article 5.7: Use of Customs Brokers

1. Without prejudice to the important policy concerns of the Parties that currently maintain a role for customs brokers, from the entry into force of this Agreement, Parties shall not introduce the mandatory use of customs brokers.

2. Each Party shall publish its measures on the use of customs brokers. Any subsequent modifications thereof shall be notified and published promptly.

3. With regard to the licensing of customs brokers, Parties shall apply rules that are transparent and objective.

Article 5.8: Consistency in Tariff Classification and Customs Valuation

1. Each Party shall adopt or maintain measures that promote consistency throughout its territory in the tariff classification and customs valuation of goods. This includes taking into account relevant jurisprudence and measures such as training of customs officials and traders, providing internal guidance, or issuing internal policy documents that serve to guide customs officials.

2. If an inconsistency in the tariff classification or customs valuation of a good is discovered, the Party shall seek to resolve the inconsistency.

Article 5.9: 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 release of goods within a period no longer than that required to ensure compliance with its requirements, and, to the extent possible, within 24 hours of arrival of the goods;¹
 - (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;
 - (c) allow, to the extent possible, goods to be released at the point of arrival, without temporary transfer to warehouses or other facilities;
 - (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; and
 - (e) provide, in cases of delay in the release of goods, and upon written request by the importer, that the importing Party shall, to the extent possible, communicate the reasons for the delay.
3. A Party that requires a guarantee under paragraph 2(d) shall, in accordance with its laws and regulations, allow for guarantees that serve as security against multiple importations.
4. Each Party shall ensure, to the extent possible, that its competent authorities and agencies responsible for border controls and procedures dealing with the exportation, importation and transit of goods, cooperate with one another and coordinate their activities in order to facilitate trade.

Article 5.10: Post-clearance Audit

1. Each Party shall adopt or maintain post-clearance audit to expedite the release of goods and to ensure and promote compliance with customs and other related laws and regulations.

¹ Notwithstanding paragraph 2(a), if a Party's laws and regulations as at the date of signature of this Agreement provide for a different period for the release of goods, that different period shall apply, provided that it does not exceed 48 hours to the extent possible.

2. Each Party shall select a person or a shipment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria.

3. Each Party shall conduct post-clearance audits in a transparent manner. Where the person is involved in the audit process and conclusive results have been achieved, the Party shall, without delay, notify the person whose record is audited of the results, the person's rights and obligations, and the reasons for the results.

Article 5.11: Record Keeping

Each Party shall provide a finite period with respect to record-keeping obligations in its laws or regulations.

Article 5.12: Automation

Each Party shall endeavour to use information technology that facilitates the release of goods. In doing so, each Party shall:

- (a) adopt or maintain procedures allowing for a customs declaration and related documentation to be submitted in electronic format;
- (b) adopt or maintain procedures to allow for the electronic payment of duties, taxes, fees and charges;
- (c) endeavour to apply international standards;
- (d) make electronic systems accessible to traders;
- (e) employ electronic or automated systems for risk analysis and targeting; and
- (f) work towards developing a set of common data elements and processes in accordance with the WCO Customs Data Model and related WCO recommendations and guidelines or, where appropriate, other relevant international approaches.

Article 5.13: Risk Management

1. Each Party shall adopt or maintain a risk management system for assessment and targeting that enables its customs administration and, to the extent possible, other agencies responsible for border controls, to focus inspection activities on high-risk goods and facilitate the release and movement of low-risk goods.

2. When applying risk management, each Party shall examine the imported goods on the basis of appropriate selectivity criteria with the assistance of non-intrusive inspection instruments, as appropriate, in order to reduce the physical examination of goods entering its territory.
3. Each Party shall periodically review and update, as appropriate, its risk management system.

Article 5.14: 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 a separate and expedited customs procedure;
 - (b) provide for information required to release an express shipment to be submitted and processed before the shipment arrives;
 - (c) allow a single submission of information covering all goods contained in an express shipment, such as a manifest, through, if possible, electronic means. For greater certainty, additional documents may be required as a condition for release;
 - (d) to the extent possible, provide for the release of certain goods with a minimum of documentation;
 - (e) provide for express shipments to be released, under normal circumstances, within four hours after submission of the necessary customs documents to the extent possible, provided that the shipment has arrived and all requirements have been met²; and
 - (f) provide that, under normal circumstances, no customs duties will be assessed on express shipments valued at or below an amount set under the Party's laws and regulations.³
2. If a Party has an existing procedure that provides for the treatment in paragraphs 1(b) through (e), this Article does not require that Party to introduce a separate expedited customs procedure.

Article 5.15: Perishable Goods

² Notwithstanding paragraph 1(e), if a Party's laws and regulations as at the date of signature of this Agreement provide for a different period for the release of goods, that different period shall apply, provided it does not exceed six hours under normal circumstances.

³ Notwithstanding paragraph 1(f), a Party may assess customs duties, or may require formal documents for the entry of restricted goods.

1. 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 the release of perishable goods:

- (a) under normal circumstances within the shortest possible time; and
- (b) in exceptional circumstances where it would be appropriate to do so, outside the business hours of customs and other relevant authorities.

2. Each Party shall give appropriate priority to perishable goods when scheduling any examinations that may be required.

3. Each Party shall either arrange or allow an importer to arrange for the proper storage of perishable goods pending their release. The Party may require that any storage facilities arranged by the importer to be approved or designated by its relevant authorities. The movement of the goods to those storage facilities, including authorisations for the operator moving the goods, may be subject to the approval, where required, of the relevant authorities. The Party shall, where practicable and consistent with its laws and regulations, upon the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

4. In cases of significant delay in the release of perishable goods, and upon written request, the importing Party shall, to the extent practicable, provide an explanation on the reasons for the delay.

Article 5.16: Authorised Economic Operator

1. Each Party shall adopt or maintain AEO programmes in accordance with the WCO SAFE Framework.

2. Each Party shall afford to the other Party the possibility of negotiating mutual recognition of AEO programmes in order to enhance the trade facilitation measures provided to AEO members.

Article 5.17: Single Window

1. The Parties shall endeavour to establish or maintain a 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. After the examination by the participating authorities or agencies of the documentation or data, the results shall be notified to the trader through the single window in a timely manner.

2. If documentation or data requirements have already been received through the single window, the same documentation or data requirements, to the extent possible, shall not be requested by participating authorities or agencies except in urgent circumstances and other limited exceptions which are made public.

3. The Parties shall use information technology to support the single window.
4. With a view towards facilitating trade, the Parties shall explore opportunities to work towards single window interoperability.

Article 5.18: Review and Appeal

1. Each Party shall ensure that any person to whom it issues an administrative determination⁴ on customs matters has access, without undue delay, to:
 - (a) administrative review or appeal of the determination independent⁵ of the employee or office that issued the determination; and
 - (b) a quasi-judicial or judicial review or appeal of such administrative determination;
2. Each Party shall provide a person, to whom it issues an administrative determination, with the reasons for the administrative determination and access to information on how to request a review or appeal.
3. With a view to promoting paperless processes, each Party, in accordance with its laws, regulations or procedures, shall endeavour to allow a request for administrative review or appeal to be conducted by the customs administration through electronic means.
4. Each Party shall ensure that an authority conducting a review under paragraph 1 notifies the person in writing of its determination of the review, and the reasons for the determination.
5. With a view to ensuring predictability and consistent application of its customs laws and regulations, each Party is encouraged to apply determinations of administrative, quasi-judicial and judicial authorities under paragraph 1 to the practices of its customs administration throughout its territory.

Article 5.19: Penalties

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

⁴ For the purposes of this Article, a determination, if made by Peru or Colombia, means an administrative act.

⁵ The level of administrative review may include any authority supervising the customs administration.

2. Each Party shall ensure that the measures under paragraph 1 are administered in a transparent and uniform manner throughout its territory.
3. Each Party shall ensure that a penalty imposed by its customs administration for a breach of its customs laws or regulations is imposed only on the person responsible under its laws or regulations for the breach.
4. Each Party shall ensure that any penalty imposed by its customs administration for a breach of its customs laws or regulations shall depend on the facts and circumstances of the case, including any previous breaches by the person receiving the penalty, and shall be commensurate with the degree and severity of the breach.
5. Each Party shall adopt or maintain measures to avoid conflicts of interest in the assessment and collection of penalties and duties. A portion of the remuneration of a government official shall not be calculated as a fixed portion or percentage of any penalties or duties assessed or collected.
6. Each Party shall ensure that when its customs administration imposes a penalty for a breach of its customs laws or regulations, it provides an explanation in writing to the person on whom the penalty is imposed, specifying the nature of the breach, including the specific law or regulation concerned, and the procedure used for determining the penalty amount.
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 proceedings⁶ 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.
9. 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.

Article 5.20: Advance Rulings

1. Each Party shall issue, prior to the importation of goods 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 the other Party or a representative⁷ thereof (“applicant”), with regard to:

⁶ For greater certainty, for the purposes of this Chapter, “**proceedings**” means administrative measures by the customs administration and does not include judicial proceedings.

⁷ If an importer, exporter or producer submits a request for an advance ruling through a duly authorised representative, it shall be done in accordance with the laws and regulations of the importing Party.

- (a) tariff classification;
- (b) whether a good qualifies as originating in accordance with Chapter 4 (Rules of Origin and Origin Procedures);
- (c) the application of customs valuation method or criteria, for a particular case in accordance with the Customs Valuation Agreement; and
- (d) such other matters as the Parties may decide.

2. Each Party shall adopt or maintain uniform procedures throughout its territory for the issuance of an advance ruling. Under these procedures a Party:

- (a) shall provide a detailed description of the information required to process the advance ruling request;
- (b) may request additional information, including a sample of the good, from the applicant necessary for the processing of the advance ruling request; and
- (c) shall provide a detailed rationale for the decision.

3. Each Party shall issue an advance ruling as expeditiously as possible and in no case later than 120 days after it has received all necessary information from the applicant. In issuing an advance ruling, the Party shall take into account the facts and circumstances that the applicant has provided.

4. Advance rulings shall take effect on the date of issuance, or on a later date specified in the ruling and shall remain in effect for at least three years, provided that the laws, regulations, facts and circumstances on which the ruling is based remain unchanged and the advance ruling has not been modified or revoked.

5. After issuing an advance ruling, the Party may modify or revoke the advance ruling, in the following cases:

- (a) if there is a change in the laws, regulations, facts or circumstances on which the ruling was based;
- (b) if the ruling was based on inaccurate or false information;
- (c) if the ruling was in error; or
- (d) to comply with an administrative, judicial or quasi-judicial decision.

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

7. No Party shall apply a revocation or modification of an advance ruling retroactively to the detriment of the applicant, unless the ruling was based on inaccurate or false information provided by the applicant.

8. 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, judicial or quasi-judicial review. A Party that declines to issue an advance ruling shall promptly notify the applicant in writing, setting out the relevant facts and circumstances and the basis for its decision to decline to issue the advance ruling.

9. Each Party shall endeavour to make publicly available online any information on advance rulings which it considers to be of significant interest to other interested parties, subject to any confidentiality requirements in its laws and regulations.

10. No Party shall require that an applicant have registration in its territory in order to request an advance ruling.

Article 5.21: Standards of Conduct

1. Each Party shall administer its customs procedures with professionalism and integrity.

2. Each Party shall adopt or maintain measures to deter its customs officials from engaging in any action that would result in, or that reasonably creates the appearance of, use of their public service position for private gain, including any monetary benefit.

3. Each Party shall provide a mechanism for the submission of a complaint regarding perceived improper or corrupt behaviour of a customs official in its territory. Each Party shall take appropriate action in response to a complaint in a timely manner and in accordance with its laws, regulations, or procedures.

Article 5.22: Customs Cooperation

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

(a) encourage cooperation with the other Party 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 laws or regulations, 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 laws and regulations, cooperate with the other Party 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 the other 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 laws and regulations 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 a Party to the territory of the other 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 a Party to the territory of the other 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 the other 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 5.23: Administration of this Chapter

1. Matters relating to administration of this Chapter shall be considered by the Parties through the Trade in Goods Committee established under Article 22.5(a) (Establishment of Cross-Cutting Committees).

2. The Trade in Goods Committee shall have additional functions under this Chapter as set out in Article 4.31 (Administration of this Chapter and Chapter 5).