

4. Replace Chapter 4 (Customs Procedures) with:

CHAPTER 4

CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 1 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 clearance 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 authorities of the Parties; and
- (e) facilitate trade between the Parties, including through a strengthened environment for global and regional supply chains.

Article 2 Scope

This Chapter shall apply to customs procedures applied to:

- (a) goods traded among the Parties; and
- (b) means of transport which enter or leave the customs territories of the Parties.

Article 3 Definitions

For the purposes of this Chapter:

- (a) **customs authority** means any authority that is responsible under the law of each Party for the administration and enforcement of its customs laws and regulations;
- (b) **customs procedures** means the measures applied by the customs authority of a Party to goods and to the means of transport that are subject to customs laws and regulations;
- (c) **customs laws and regulations** means the statutory and regulatory provisions relating to the importation, exportation, movement, or storage of goods, the administration and enforcement of which are specifically charged to a customs authority, and any regulations made by a customs authority, under its statutory powers;
- (d) **Customs Valuation Agreement** means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement;
- (e) **express consignment** means all goods imported by or through an enterprise that operates a consignment service for the expeditious cross-border movement of goods and assumes liability to the customs authority for those goods; and
- (f) **means of transport** means various types of vessels, vehicles, and aircrafts which enter or leave the customs territory of a Party carrying natural persons, goods or articles.

Article 4 Customs Procedures

1. Each Party shall ensure that its customs procedures and practices are predictable, consistent, transparent, and facilitate trade, including through the expeditious clearance of goods.
2. The customs procedures of each Party shall, where possible and to the extent permitted by its customs laws and regulations, conform with the standards and recommended practices of the World Customs Organization and the World Trade Organization.
3. The customs authority of each Party shall review its customs procedures with a view to simplifying such procedures to facilitate trade.

Article 5 Customs Co-operation

1. To the extent permitted by its customs laws and regulations, the customs authority of each Party may, as deemed appropriate, assist the customs authority of another Party, in relation to:
 - (a) the implementation and operation of this Chapter;
 - (b) developing and implementing customs best practice and risk management techniques;
 - (c) simplifying and harmonising customs procedures;
 - (d) advancing technical skills and the use of technology;
 - (e) application of the Customs Valuation Agreement;
and

- (f) such other customs issues as the Parties may mutually determine.
2. Subject to available resources, the customs authority of the Parties may, as deemed appropriate, explore and undertake co-operation projects, including:
- (a) capacity building programmes to enhance the capability of customs personnel of the Parties; and
 - (b) technical assistance programmes to facilitate the Parties' development in customs reform and modernisation, including implementation of the single windows outlined in Article 13 (Single Window).

Article 6 Consistency

1. Each Party shall ensure consistent implementation and application of its customs laws and regulations throughout its customs territory. For greater certainty, this does not prevent the exercise of discretion granted to the customs authority of a Party where such discretion is granted by that Party's customs laws and regulations, provided that the discretion is exercised consistently throughout that Party's customs territory and in accordance with its customs laws and regulations.
2. In fulfilling the obligation in Paragraph 1, each Party shall endeavour to adopt or maintain administrative measures to ensure consistent implementation and application of its customs laws and regulations throughout its customs territory, preferably by establishing an administrative mechanism which ensures consistent application of the customs laws and regulations of that Party among its regional customs offices.

3. If a Party fails to comply with Paragraphs 1 and 2, another Party may consult with that Party on the matter relating thereto in accordance with Article 24 (Consultation).

4. Each Party is encouraged to share with the other Parties its practices and experiences relating to the administrative mechanism referred to in Paragraph 2 with a view to improving the operations thereof.

Article 7 Transparency

1. Each Party shall promptly publish, on the internet to the extent possible, the following information in a non-discriminatory and easily accessible manner in order to enable governments, traders and other interested persons to become acquainted with them:

- (a) procedures for importation, exportation and transit (including port, airport and other entry-point procedures), and required forms and documents;
- (b) applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;
- (c) fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;
- (d) rules for the classification or valuation of products for customs purposes;
- (e) laws, regulations and administrative rulings of general application relating to rules of origin;
- (f) import, export or transit restrictions or prohibitions;

- (g) penalty provisions for breaches of import, export or transit formalities;
- (h) procedures for appeal or review;
- (i) agreements or parts thereof with any country or countries relating to importation, exportation or transit; and
- (j) contact information for the enquiry points, as well as information on how to make enquiries on customs matters, as provided for in Article 8 (Enquiry Points).

2. The publication or provision of the information referred to in Paragraph 1 shall, to the extent possible, be in English.

3. To the extent possible, when developing new, or amending existing, customs laws and regulations, each Party shall publish, or otherwise make readily available, such proposed new or amended customs laws and regulations and provide a reasonable opportunity for interested persons to comment on the proposed new or amended customs laws and regulations, unless such advance notice is precluded.

4. Each Party shall, to the extent practicable and in a manner consistent with its laws and regulations, 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 published or information on them made otherwise publicly available, as early as possible before their entry into force, in order to enable traders and other interested persons to become acquainted with them.

Article 8 Enquiry Points

Each Party shall designate one or more enquiry points to answer reasonable enquiries of interested persons

concerning customs matters and to facilitate access to forms and documents required for importation, exportation and transit.

Article 9 Confidentiality

1. Nothing in this Chapter shall be construed to require any Party to furnish or allow access to confidential information, the disclosure of which it considers would:

- (a) be contrary to the public interest as determined by its laws and regulations;
- (b) be contrary to any of its laws and regulations including laws and regulations protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;
- (c) impede law enforcement; or
- (d) prejudice legitimate commercial interests, which may include the competitive position of particular enterprises, whether public or private.

2. Where a Party provides information to another Party in accordance with this Chapter and designates the information as confidential, the Party receiving the information shall maintain the confidentiality of the information, use it only for the purposes specified by the Party providing the information, and not disclose it without the specific written permission of the Party providing the information.

Article 10 Advance Rulings

1. Each Party shall issue an advance ruling to any person with justifiable cause, in accordance with its laws, regulations

and administrative rules, with respect to the:

- (a) tariff classification of a product;
- (b) origin of goods; and
- (c) appropriate method or criteria, and the application thereof, to be used for determining the customs value of a good under a particular set of facts in accordance with the Customs Valuation Agreement.

2. On receipt of all necessary information, each Party shall issue an advance ruling on tariff classification, origin and valuation in a reasonable, specified and time-bound manner, and to the extent possible within 90 days or in such shorter time as specified by its laws, regulations and administrative rules. A Party:

- (a) may at any time during the course of an evaluation of an application for advance ruling, request that the applicant provide additional information, which may include a sample of the good, necessary to evaluate the application;
- (b) may reject a request for an advance ruling where the additional information requested in accordance with Paragraph 2(a) is not provided in a reasonable, specified period, which is determined at the time of the request for additional information, and the Party requests the additional information from the applicant in writing;
- (c) 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

applicant in writing, setting forth the relevant facts, circumstances and the basis for its decision to decline to issue the advance ruling; and

- (d) shall provide that when issuing an advance ruling, it shall be valid from the date it is issued, or another date specified in the advance ruling, provided that the laws, regulations and administrative rules, and facts and circumstances, on which the advance ruling is based remain unchanged.

3. The customs authority of each Party shall establish a validity period for an advance ruling of at least three years from the date of its issuance.

4. An issuing Party may modify or revoke an advance ruling if:

- (a) the ruling was based on an error of fact;
- (b) the information provided is false or inaccurate;
- (c) there is a change in the material facts or circumstances on which the ruling was based;
- (d) any of the conditions, to which the ruling was made subject, cease to be met or complied with; or
- (e) a change is required to conform with a judicial decision or a change in its laws, regulations or administrative rules.

5. Each Party shall provide that a modification or revocation of an advance ruling shall take effect on the date on which the modification or revocation is issued, or on such later date as may be specified therein.

6. Where a Party revokes, modifies or invalidates an advance ruling with retroactive effect, it may only do so where the advance ruling was based on incomplete, incorrect, false or misleading information.

7. Where a Party revokes, modifies or invalidates the advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision.

8. An advance ruling issued by a Party shall be binding on that Party in respect of the applicant that sought it.

9. Each Party shall publish, at a minimum:

(a) the requirements for an application for an advance ruling, including the information to be provided and the format;

(b) the time period by which it will issue an advance ruling; and

(c) the length of time for which an advance ruling is valid.

10. Each Party may make publicly available any information on advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information.

Article 11

Preshipment Inspection

1. No Party shall require the use of preshipment inspections in relation to tariff classification and customs valuation.

2. Without prejudice to the rights of any Party to use other types of preshipment inspection not referred to in Paragraph

1, each Party is encouraged not to introduce or apply new requirements regarding their use.

3. Paragraph 2 refers to preshipment inspections covered by the *Agreement on Preshipment Inspection*, and does not preclude preshipment inspections for sanitary and phytosanitary purposes.

Article 12 Pre-arrival Processing

1. Each Party shall adopt or maintain procedures allowing for the submission of documents and other information required for the importation of goods, in order to begin processing prior to the arrival of the goods with a view to expediting the release of the goods upon arrival.

2. Each Party shall provide, as appropriate, for advance lodging of documents and other information referred to in Paragraph 1 in electronic format for pre-arrival processing of such documents.

Article 13 Single Window

1. Each Party shall, to the extent possible, establish or maintain a single window, enabling traders to submit clear and readable electronic copies of documentation and/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 participating authorities or agencies of the documentation or data, the results shall be notified to the applicants through the single window in a timely manner.

2. In cases where documentation or data requirements have already been received through the single window, the same documentation or data requirements shall not be requested by participating authorities or agencies except in

urgent circumstances or in accordance with other limited exceptions which are made public.

3. Each Party shall adopt or maintain procedures to determine duties and taxes upon the submission of a customs declaration and to allow collection of payment electronically upon approval of a customs declaration.

4. In implementing initiatives related to this Article, each Party shall take into account the relevant standards and best practices recommended by the World Customs Organization and other international organisations, taking into consideration the available infrastructure and capabilities of each Party.

5. The Parties are encouraged to co-operate in relation to exchanging trade-related electronic documents according to their respective laws and regulations through the single window.

Article 14 Valuation

The Parties shall determine the customs value of goods traded among them in accordance with the provisions of the Customs Valuation Agreement.

Article 15 Trade Facilitation Measures for Authorised Operators

1. Each Party shall provide additional trade facilitation measures related to import, export or transit formalities and procedures, pursuant to Paragraph 3, to operators who meet specified criteria (the “authorised operators”). Alternatively, a Party may offer such trade facilitation measures through customs procedures generally available to all operators and is not required to establish a separate scheme.

2. The specified criteria to qualify as an authorised

operator shall be related to compliance, or the risk of non-compliance, with requirements specified in a Party's laws, regulations or procedures.

- (a) Such criteria, which shall be published, may include:
 - (i) an appropriate record of compliance with customs and other related laws and regulations;
 - (ii) a system of managing records to allow for necessary internal controls;
 - (iii) financial solvency, including, where appropriate, provision of a sufficient security or guarantee; and
 - (iv) supply chain security.
- (b) Such criteria shall not:
 - (i) be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail; and
 - (ii) to the extent possible, restrict the participation of MSMEs.

3. The trade facilitation measures provided pursuant to Paragraph 1 shall include at least three of the following measures:¹

- (a) low documentary and data requirements, as appropriate;

¹ A measure listed in Paragraph 3(a) to (g) that is generally available to all operators will be deemed to be provided to authorised operators.

- (b) low rate of physical inspections and examinations, as appropriate;
- (c) rapid release time, as appropriate;
- (d) deferred payment of duties, taxes, fees and charges;
- (e) use of comprehensive guarantees or reduced guarantees;
- (f) a single customs declaration for all imports or exports in a given period; and
- (g) clearance of goods at the premises of the authorised operator or another place authorised by a customs authority.

4. Each Party is encouraged to develop an authorised operator scheme on the basis of international standards, where such standards exist, except when such standards would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued.

5. In order to enhance the trade facilitation measures provided to authorised operators, each Party shall afford to the other Parties the possibility of negotiating mutual recognition of authorised operator schemes.

6. The Parties are encouraged to co-operate, where appropriate, in developing their respective authorised operator schemes using the contact points in Article 24 (Consultation) and the relevant AANZFTA body through the following:

- (a) exchanging information on such schemes and on initiatives to introduce new schemes;

- (b) sharing perspectives on business views and experiences, and best practices in business outreach;
- (c) sharing information on approaches to mutual recognition of such schemes; and
- (d) considering ways to enhance the benefits of such schemes to promote trade, and, in the first instance, to designate customs officers as coordinators for authorised operators to resolve customs issues.

Article 16

Release of Goods

1. Each Party shall adopt or maintain procedures that:
 - (a) provide for the release of goods within a period of time no greater than that required to ensure compliance with its laws and regulations;
 - (b) provide, to the extent possible, for goods to be released within 48 hours of arrival and lodgment of all necessary information for customs clearance; and
 - (c) allow the release of imported goods prior to the final determination by its customs authority of the applicable customs duties, other duties and taxes, provided that the good is otherwise eligible for release from customs and that all other regulatory requirements have been met.

2. Notwithstanding Paragraph 1(c), each Party may, in accordance with its laws and regulations, require the importer to provide:
 - (a) a guarantee; or

- (b) 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.
- 3. If a Party allows for the release of goods conditioned on a guarantee, according to its laws and regulations, it shall adopt or maintain procedures that:
 - (a) ensure that the amount of any guarantee is no greater than that required to ensure that obligations arising from the importation of the goods will be fulfilled; and
 - (b) ensure that any guarantee shall be discharged as soon as possible after its customs authority is satisfied that the obligations arising from the importation of the goods have been fulfilled.
- 4. Nothing in this Article shall affect the right of a Party to examine, detain, seize, confiscate or deal with goods in any manner consistent with its laws and regulations.

Article 17

Express Consignments

- 1. Each Party shall adopt or maintain customs procedures to expedite the clearance of express consignments for at least those goods entered through air cargo facilities while maintaining appropriate customs control and selection,² by:
 - (a) providing for pre-arrival processing of information related to express consignments;

² In cases where a Party has an existing procedure that provides the treatment in this Article, this provision would not require that Party to introduce separate expedited release procedures.

- (b) permitting, to the extent possible, the single submission of information covering all goods contained in an express consignment, through electronic means;
- (c) minimising the documentation required for the release of express consignments;
- (d) providing for express consignment to be released under normal circumstances as rapidly as possible, and within six hours when possible, after the arrival of the goods and submission of the information required for release;
- (e) endeavouring to apply the treatment in Subparagraphs (a) to (d) to shipments of any weight or value recognising that a Party is permitted to require additional entry procedures, including declarations and supporting documentation and payment of duties and taxes, and to limit such treatment based on the type of good, provided that the treatment is not limited to low value goods such as documents; and
- (f) providing, to the extent possible, for a *de minimis* shipment value or dutiable amount for which customs duties and taxes will not be collected, aside from certain prescribed goods. Internal taxes, such as value added taxes and excise taxes, applied to imports consistently with Article III of GATT 1994, shall not be subject to this provision.

2. Nothing in Paragraph 1 shall affect the right of a Party to examine, detain, seize, confiscate or refuse the entry of goods, or to carry out post-clearance audits, including in connection with the use of risk management systems. Further, nothing in Paragraph 1 shall prevent a Party from requiring, as a condition for release, the submission of

additional information and the fulfilment of non-automatic licensing requirements.

Article 18

Perishable Goods

1. With a view to preventing avoidable loss or deterioration of perishable goods, and provided all regulatory requirements have been met, each Party shall:

- (a) provide for the release of perishable goods, to the extent possible, within six hours of the arrival of the goods and the submission of the necessary customs information; and
- (b) provide for the release of perishable goods, in exceptional circumstances where it would be appropriate to do so, outside the business hours of its customs authority.

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.³ Each Party may require that any storage facilities arranged by the importer have been 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.

4. Each Party shall, where practicable and consistent with its laws and regulations, on request of the importer, provide for the release to take place at those storage facilities.

³ This requirement can be relaxed for a Party until it has met its obligations under the *Agreement on Trade Facilitation*.

Article 19
**Facilitation of Essential Goods During Humanitarian
Crises, Epidemics or Pandemics**

1. Each Party shall, to the extent permitted by its laws and regulations, expedite and facilitate the movement, release and clearance, including transit through its exit or entry points, of all essential goods.
2. Each Party shall, to the extent permitted by its laws and regulations, expedite the release of essential goods upon arrival, including by adopting or maintaining procedures allowing for the submission of import documentation and other required information, including manifests, prior to the arrival of the essential goods, in order to allow the processing of such documentation and information to begin prior to the arrival of the essential goods.
3. Each Party shall, to the extent permitted by its laws and regulations, clear essential goods using documents received through electronic means during a humanitarian crisis, epidemic or pandemic.

Article 20
Risk Management

1. Each Party shall adopt or maintain a risk management system for assessment and targeting that enables its customs authority to focus its inspection activities on high-risk consignments and expedite the release of low-risk consignments. Each Party may also select, on a random basis, consignments for such inspection activities as part of its risk management.
2. Each Party shall design and apply risk management in a manner so as to avoid arbitrary or unjustifiable discrimination, or a disguised restriction on international trade.

3. Each Party shall base risk management on an assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include the HS Code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders and means of transport.

Article 21 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 its customs and other related laws and regulations.

2. Each Party shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. 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 was audited of the results, the person's rights and obligations and the reasons for the results.

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

4. Each Party shall, wherever practicable, use the result of post-clearance audit in applying risk management.

Article 22 Time Release Studies

1. Each Party is encouraged to measure the time required for the release of goods by its customs authority periodically and in a consistent manner, and to publish the findings thereof, using tools such as the *Guide to Measure the Time*

Required for the Release of Goods issued by World Customs Organization with a view to assessing its trade facilitation measures and considering opportunities for further improvement of the time required for the release of goods.

2. Each Party is encouraged to share with the other Parties its experiences in the time release studies referred to in Paragraph 1, including methodologies used and bottlenecks identified.

Article 23 Review and Appeal

1. Each Party shall provide that any person to whom its customs authority issues an administrative decision⁴ has the right, within its territory, to:

- (a) an administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision; and
- (b) a judicial appeal or review of the decision.⁵

2. The legislation of a Party may require that an administrative appeal or review be initiated prior to a judicial appeal or review.

3. Each Party shall ensure that its procedures for appeal or review are carried out in a non-discriminatory manner.

⁴ For the purposes of this Article, “administrative decision” means a decision with a legal effect that affects the rights and obligations of a specific person in an individual case. It shall be understood that an administrative decision for the purposes of this Article covers an administrative action within the meaning of Article X of the GATT 1994 or failure to take an administrative action or decision as provided for in a Party’s laws and regulations. For addressing such failure, each Party may maintain an alternative administrative mechanism or judicial recourse to direct the customs authority to promptly issue an administrative decision in place of the right to appeal or review under Subparagraph 1(a).

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

4. Each Party shall ensure that, in a case where the decision on appeal or review under Subparagraph 1(a) is not given either:

(a) within set periods as specified in its laws or regulations; or

(b) without undue delay,

the petitioner has the right to either further appeal to, or further review by, the administrative authority or the judicial authority or any other recourse to the judicial authority.⁶

5. Each Party shall ensure that the person referred to in Paragraph 1 is provided with the reasons for the administrative decision to enable that person to have recourse to procedures for appeal or review, where necessary.

6. Each Party is encouraged to make the provisions of this Article applicable to an administrative decision issued by a relevant border agency other than its customs authority.

Article 24 Consultation

1. A Party may, at any time, request consultations with any other Party regarding any significant customs matter arising from the operation or implementation of this Chapter, providing relevant details related to the matter. Such consultations shall be conducted through the Parties' designated contact points and shall commence within 30 days following the date of the receipt of the request, unless the Parties mutually determine otherwise.

⁶ Nothing in this Paragraph shall prevent a Party from recognising administrative silence on appeal or review as a decision in favour of the petitioner in accordance with its laws and regulations.

2. In the event that such consultations fail to resolve the matter, the requesting Party may refer the matter to the Committee on Trade in Goods.

3. Each Party shall designate one or more contact points for the purposes of this Chapter. Information on the contact points shall be provided to the other Parties and any change to that information shall be notified promptly.