CHAPTER 4

CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 4.1

Definitions

For the purpose of this Chapter:

Customs Administration means:

(a) for Australia, the Department of Home Affairs and its successors; and

(b) for the UAE, the Federal Authority of Identity, Citizenship, Customs and Port Security, and its successors;

customs laws means provisions implemented by legislation and regulations concerning the importation, exportation, transit of goods, or any other customs procedures, whether relating to customs duties, taxes or any other charges collected by the Customs Administrations, or to measures for prohibition, restriction, or control enforced by the Customs Administrations;

customs procedure means the measures applied by the Customs Administration of a Party to goods and to the means of transport that are subject to its customs laws and regulations;

**perishable goods** means goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions; and

**WCO** means the World Customs Organization.

Article 4.2

Scope

This Chapter shall apply, in accordance with the Parties’ respective laws, rules and regulations, to customs procedures applied to goods traded between the Parties.

Article 4.3

General Provisions

1. Each Party agrees that their customs procedures shall be predictable, transparent, non-discriminatory, consistent and avoid unnecessary procedural obstacles to trade.

2. Customs procedures of the Parties shall conform, as applicable and appropriate, to the standards and recommended practices of the WCO.

3. Each Party shall periodically review its customs procedures with a view to their further simplification and development to facilitate bilateral trade.

Article 4.4

Publication and Availability of Information

1. Each Party shall ensure that its laws, regulations, guidelines, procedures, and administrative rulings governing customs matters are promptly published, including online, in the English language, to the extent possible and appropriate.

2. Each Party shall designate, establish, and maintain one or more inquiry points to address inquiries from interested persons pertaining to customs matters, and shall endeavour to make available publicly through electronic means, information concerning procedures for making such inquiries.

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

4. Each Party shall, to the extent practicable, and in a manner consistent with its law and legal system, 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, so that interested parties have the opportunity to become acquainted with the new or amended laws and regulations. Such information and publications shall be available in the English language, to the extent possible.

Article 4.5

Risk Management

The Parties shall adopt or maintain a risk management system for customs control for its customs activities, based on its identified risk of goods, in order to facilitate the expedited clearance of low-risk consignments, while focusing its inspection activities on high-risk goods.

Article 4.6

Data, Documentation and Automation

Each Party shall endeavour to provide a facility that allows importers and exporters to electronically provide standardised information related to clearance of goods at a single-entry point or single window that:

(a) uses international standards with respect to procedures for the release of goods;

 (b) makes electronic systems accessible to customs users;

 (c) allows a customs declaration to be submitted in electronic format;

(d) employs electronic or automated systems for risk analysis and targeting; and

 (e) takes into account, as appropriate, standards, recommendations, models and methods developed by various international organisations such as the WCO, United Nations Centre for Trade Facilitation and Electronic Business, and the WTO.

Article 4.7

Advance Rulings

1. Each Party shall issue, prior to the importation of a good of the other 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 the other Party, each an “applicant”, with regard to:

 (a) tariff classification;

 (b) questions arising from the application of the principles of the Customs Valuation Agreement;

 (c) whether a good is originating in accordance with Chapter 3 (Rules of Origin); and

 (d) other matters as the Party may decide.

2. Each Party shall issue an advance ruling as expeditiously as possible and in accordance with their procedures of advance ruling after it receives a request, provided that the applicant 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 applicant 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 applicant has provided.

3. 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 or where the application is not based on factual information, or does not relate to an intention to import or export.  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.

4. 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 advance ruling, and remain in effect in accordance with their procedures of advance ruling, provided that the law, facts and circumstances on which the advance ruling is based remain unchanged.

5. After issuing an advance ruling, a Party may modify or revoke the advance ruling if there is a change in the law, facts or circumstances on which the advance ruling was based, if the advance ruling was based on inaccurate or false information, if the advance ruling was in error, if conflicting advance rulings have been issued for goods of the same class or kind, if the advance ruling has been reviewed internally, or if the importing customs authority changes its interpretation of the law.

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

7. A Party shall not apply a revocation or modification retroactively to the detriment of the applicant, unless the advance ruling was based on incomplete, incorrect, inaccurate, false, or misleading information provided by the applicant.

8. Subject to its laws and regulations, including any confidentiality requirements, a Party may publish its advance rulings, including online.

9. Each Party shall publish its advance ruling procedures online, and will include at least:

 (a) the requirements for the 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 the advance ruling is valid.

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

11. Each Party shall provide, upon written request of an applicant, a review of the advance ruling or of the decision to revoke or modify it.

12. Notwithstanding paragraph 10, the issuing Party may postpone the effective date of the modification or revocation of an advance ruling for a reasonable period of time and in accordance with its procedures on advance rulings, if the person to whom the advance ruling was issued demonstrates that they have relied in good faith to their detriment on that ruling.

Article 4.8

Penalties

1. Each Party shall maintain measures that allow for the imposition of criminal, civil or administrative penalties, whether solely or in combination, for violations of the Party’s customs laws, regulations or procedural requirements.

2. Each Party shall ensure that penalties issued for a breach of a customs law, regulations or procedural requirements are imposed only on the persons responsible for the breach under its laws.

3. Each Party shall ensure that the penalty imposed by its Customs Administration is dependent on the facts and circumstances 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 persons upon whom the penalty is imposed specifying the nature of the breach, includingthe law, regulation or procedure concerned and the basis for determining the penalty amount, if not set forth specifically in a law, regulation or procedure.

Article 4.9

Release of Goods

1. Each Party shall adopt or maintain procedures for the efficient release of goods[[1]](#footnote-2) in order to facilitate trade.

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

 (a) provide for the rapid release of goods[[2]](#footnote-3) upon receipt of the customs declaration and fulfilment of all applicable requirements and procedures;

 (b) allow for the electronic submission and processing of customs documentation and data, including manifests and cargo reports, prior to the arrival of the goods in order to expedite the release of low-risk goods from customs control upon arrival;

 (c) allow goods to be released at the point of arrival without requiring temporary transfer to warehouses or other facilities; and

 (d) if a Party does not promptly release goods it shall inform[[3]](#footnote-4) the importer, to the extent practical and permitted by its law, regulations, or law enforcement measures, the reasons why the goods are not released or which border agency, if not the Customs Administration, has withheld release of the goods.

3. Nothing in this Article requires a Party to release a good if its requirements for release have not been met nor prevents a Party from enforcing or liquidating a guarantee in the form of surety, a deposit, or other appropriate instrument provided for in its laws and regulations.

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

Article 4.10

Perishable 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 from customs control:

 (a) under normal circumstances, in the shortest possible time after the arrival of the goods and submission of the information required for release; and

 (b) in exceptional circumstances where it would be appropriate to do so, provide for the release of perishable goods outside the business hours of customs and other relevant authorities.

2. Each Party shall give appropriate priority to perishable goods when scheduling any physical examinations or inspections 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.  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, if required, of the relevant authorities. Each Party shall, where practicable and consistent with its legislation, upon the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

Article 4.11

Authorised Economic Operators

1. Each Party shall establish or maintain a national Authorised Economic Operator (AEO) programme which recognises an operator involved in the international movement of goods in whatever function that has been approved by the Customs Administration as complying with the WCO SAFE Framework of Standards.

2. Each Party shall publish its AEO programme requirements, including criteria for qualification, in accordance with Article 4.4 (Publication and Availability of Information).

3. The criteria for qualification as an AEO shall not be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail and shall allow the participation of SMEs.

4. The Customs Administrations of the Parties are encouraged to share their best practices on their AEO programmes and may endeavour to further strengthen their cooperation on this matter through bilaterally agreed initiatives or arrangements.

Article 4.12

Border Agency Cooperation

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

Article 4.13

Expedited Shipments

1. Each Party shall adopt or maintain expedited customs procedures for goods entered through air cargo facilities while maintaining appropriate customs control and selection.[[4]](#footnote-5) These procedures shall:

 (a) provide for information necessary to release an expedited 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 or cargo report through, if possible, electronic means;[[5]](#footnote-6)

 (c) to the extent possible, provide for the release of certain goods with a minimum of documentation;

 (d) under normal circumstances, provide for expedited shipments to be released as soon as possible after submission of the necessary documents for release, 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 amount set under the Party’s law.[[6]](#footnote-7)

Article 4.14

Review and Appeal

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

 (a) at least one level of administrative review of determinations by its Customs Administration independent[[7]](#footnote-8) of either the official or office responsible for the decision under review; and

 (b) a judicial appeal or review of the decision.

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

3. Each Party shall ensure than an authority conducting a review or appeal under paragraph 1 notifies the person in writing of its determination or decision in the review or appeal, and the reasons for the determination or decision.

Article 4.15

Customs Cooperation

1. The Customs Administrations of the Parties shall cooperate in order to ensure the implementation and operation of the provisions of this Agreement that pertain to customs matters and to secure and facilitate lawful trade.

2. The Customs Administrations shall, for the purposes of applying customs laws and to give effect to the provisions of this agreement, endeavour to:

 (a) cooperate and assist each other in the prevention and investigation of offences against their customs laws;

 (b) upon request, provide information to each other to be used in the enforcement of customs laws;

 (c) cooperate in the research, development and application of new customs procedures;

 (d) cooperate in the training and exchange of personnel;

 (e) cooperate in sharing of best practices; and

 (f) cooperate in and in other matters of mutual interest as determined by the Parties.

3. Assistance under this Chapter shall be provided in accordance with the laws, regulations and customs procedures of the requested party and subject to the availability of resources.

4. The Parties shall exchange details of their official contact points with a view to facilitating the effective implementation of this Chapter.

5. The Customs Administrations of the Parties may endeavour to further strengthen their cooperation through bilaterally agreed initiatives or arrangements.

Article 4.16

Confidentiality

1. Nothing in this Agreement shall be construed to require a Party to furnish or allow access to confidential information related to customs matters, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private. Any information received under this Agreement shall be treated as confidential.

2. Each Party shall maintain, in accordance with its laws, the confidentiality of information obtained pursuant to this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the persons providing the information.

1. For the purposes of this Article, release of goods means the action by a Party to permit goods undergoing clearance to be placed at the disposal of the trader. [↑](#footnote-ref-2)
2. For greater certainty, the rapid release of goods is to be provided within a period no greater than that required to ensure compliance with its customs laws. [↑](#footnote-ref-3)
3. For greater certainty, the importer may be informed through a Party’s electronic systems by being required to log in and navigate to the appropriate page or location within that system. [↑](#footnote-ref-4)
4. In cases where a Party has an existing procedure that provides the treatment in Article 4.13, this provision does not require that Party to introduce separate expedited release procedures. [↑](#footnote-ref-5)
5. Additional documents may be required as a condition for release. [↑](#footnote-ref-6)
6. 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. [↑](#footnote-ref-7)
7. The level of administrative review for the UAE may include the competent authority supervising the Customs Administration. [↑](#footnote-ref-8)