

CHAPTER 5

CUSTOMS PROCEDURES AND COOPERATION

Article 1 Objectives and Scope

1. The objectives of this Chapter are to:
 - (a) simplify and harmonise customs procedures of the Parties;
 - (b) ensure predictability, consistency and transparency in the application of customs laws and administrative procedures of the Parties;
 - (c) ensure the efficient and expeditious clearance of goods and means of transport;
 - (d) facilitate trade between the Parties; and
 - (e) promote cooperation between the customs administrations, within the scope of this Chapter.

2. This Chapter shall apply, in accordance with the Parties' respective international obligations and domestic customs law, to customs procedures applied to goods traded between the Parties and to the movement of means of transport between the Parties.

Article 2 Definitions

For the purposes of this Chapter:

- (a) **customs administration** means:
 - (i) in relation to New Zealand, the New Zealand Customs Service; and

- (ii) in relation to Hong Kong, China, the Customs and Excise Department of Hong Kong, China;
- (b) **customs law** means any legislation administered, applied or enforced by the customs administration of a Party;
- (c) **customs procedures** means the treatment applied by the customs administration to goods and means of transport that are subject to customs control;
- (d) **express consignments** means all goods imported by an enterprise operating a consignment service for the expeditious international movement of goods that assumes liability to the customs administration for those goods; and
- (e) **means of transport** means various types of vessels, vehicles, aircraft and pack-animals which enter or leave the Area carrying persons or goods.

Article 3 Facilitation

1. Each Party shall ensure that its customs procedures and practices are predictable, consistent, transparent and facilitate trade, in accordance with this Chapter.
2. Customs procedures of each Party shall where possible conform to the standards and recommended practices of the World Customs Organization, including those of the *International Convention on the Simplification and Harmonization of Customs Procedures* (as amended), known as the *Revised Kyoto Convention*.
3. Customs administrations of the Parties shall facilitate the clearance of goods in administering their customs procedures in accordance with this Chapter.

4. Each customs administration shall provide one or more focal points, electronic or otherwise, through which its traders may submit all information as may be required by the customs administration in respect of the importation of goods.

Article 4 Customs Valuation

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

Article 5 Tariff Classification

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

Article 6 Advance Rulings

1. Each customs administration shall provide, in writing, advance rulings in respect of the tariff classification and origin of goods (“advance rulings”) to an applicant described in Paragraph 2(a).

2. Each Party shall adopt or maintain procedures for advance rulings, which shall:

- (a) provide that an exporter, importer or any person with a justifiable cause may apply for an advance ruling before the importation of the goods in question;
- (b) require that an applicant for an advance ruling provide a detailed description of the goods and all

relevant information needed to issue an advance ruling;

- (c) provide that its customs administration may, at any time during the course of issuing an advance ruling, request that the applicant provide additional information within a specified period;
- (d) provide that any advance ruling be based on the facts and circumstances presented by the applicant, and any other relevant information in the possession of the decision-maker; and
- (e) provide that the ruling be issued to the applicant expeditiously on receipt of all necessary information, and in any case within:
 - (i) 60 days with respect to tariff classification; and
 - (ii) 150 days with respect to origin.

3. A Party may reject a request for an advance ruling where the additional information requested by its customs administration in accordance with Paragraph 2(c) is not provided within the specified period.

4. Subject to Paragraph 5, each Party shall apply an advance ruling to all importations of goods described in that ruling imported into its Area within a period of at least three years from the date of that ruling.

5. A Party may modify or revoke an advance ruling:

- (a) upon a determination that the advance ruling was based on an error of fact or law, or the information provided is false or inaccurate;
- (b) if there is a change in domestic law which is consistent with this Agreement; or

- (c) if there is a change in a material fact, or circumstances on which the ruling is based.

6. Where an importer claims that the treatment applied to an imported good should be governed by an advance ruling, the customs administration may evaluate whether the facts and circumstances of the importation are consistent with the facts and circumstances upon which the advance ruling was based.

Article 7 Use of Automated Systems

The customs administration of each Party shall apply information technology to support customs operations where it is practicable, cost-effective and efficient, particularly in the paperless trading context, including taking into account developments on this issue within the World Customs Organization.

Article 8 Express Consignments

Each customs administration shall adopt procedures to expedite the clearance of express consignments while maintaining appropriate control, including:

- (a) to provide for pre-arrival processing of information related to express consignments;
- (b) to permit the submission of a single document covering all goods contained in an express consignment, through electronic means if possible; and
- (c) to minimise, to the extent possible, the documentation required for the release of express consignments.

Article 9

Release of Goods

Each Party shall adopt or maintain procedures which allow goods to be released within 48 hours of arrival, and at the point of arrival without temporary transfer to warehouses or other locations, unless:

- (a) the importer fails to provide any information required by the importing Party at the time of first entry;
- (b) the goods are selected for closer examination by the customs administration of the importing Party through the application of risk management techniques;
- (c) the goods are to be examined by any agency, other than the customs administration of the importing Party, acting under powers conferred by the domestic law of the importing Party; or
- (d) fulfilment of all necessary customs formalities has not been able to be completed or release is otherwise delayed by virtue of force majeure.

Article 10

Risk Management

1. The Parties shall administer customs procedures so as to facilitate the clearance of low-risk goods and focus on high-risk goods.
2. To enhance the flow of goods across their borders, the customs administration of each Party shall regularly review its customs procedures.

Article 11 Review and Appeal

1. Each Party shall provide for the right of review or appeal without penalty in regard to customs administrative rulings, determinations or decisions by the importer, exporter or any other person affected by that administrative ruling, determination or decision.
2. An initial right of review or appeal described in Paragraph 1 may be to an authority within the customs administration or to an independent body; but in any case the domestic law of each Party shall provide for the right of review or appeal without penalty to a judicial authority.
3. Notice of the decision on any review or appeal shall be given to the applicant and the reasons for such decision shall be provided in writing.

Article 12 Customs Cooperation

1. To the extent permitted by their domestic laws, the customs administrations of the Parties shall assist each other by providing information in relation to:
 - (a) the implementation and operation of this Chapter and, as appropriate, Chapter 4 (Rules of Origin);
 - (b) security of trade between the Parties; and
 - (c) such other issues as the Parties mutually determine.
2. Each customs administration shall provide the other customs administration with timely notice of any modification of its customs law or procedures that is likely to substantially affect the operation of this Chapter.

Article 13 Consultations

1. Each customs administration shall designate one or more contact points for the purposes of this Chapter and provide details of such contact points to the other customs administration. Customs administrations of the Parties shall notify each other promptly of any amendments to the details of their contact points.
2. Either customs administration may at any time request consultations with the other customs administration on any matter arising from the operation or implementation of this Chapter. Such consultations shall be conducted through the relevant contact points and shall take place within 30 days of the receipt of the request, unless the customs administrations of the Parties mutually determine otherwise.
3. 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 for consideration.
4. Customs administrations may consult each other on any trade facilitation issues arising from procedures to secure trade and the movement of means of transport between the Parties.
5. Any action taken pursuant to this Article shall be without prejudice to the rights and obligations of the Parties under Chapter 16 (Dispute Settlement) or under the *WTO Dispute Settlement Understanding*.

Article 14 Publication and Enquiry Points

1. Each customs administration shall publish, on the internet or in print form, its customs law and any administrative procedures it applies or enforces.

2. Each customs administration shall designate one or more enquiry points to deal with enquiries from interested persons from either Party on customs matters arising from the implementation of this Agreement, and provide details of such enquiry points to the other customs administration. Customs administrations of the Parties shall notify each other promptly of any amendments to the details of their enquiry points.

Article 15 **Review of Customs Procedures**

Each customs administration shall periodically review its customs procedures with a view to their further simplification and the development of mutually beneficial arrangements to facilitate the flow of trade between the Parties.