

CHAPTER 4

CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 4.1: 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 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;
- (c) **customs procedure** means the measures applied by the customs authority of a Party to goods and to the means of transport that are subject to its customs laws and regulations;
- (d) **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
- (e) **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 4.2: Objectives

The objectives of this Chapter are to:

- (a) ensure predictability, consistency, and transparency in the application of customs laws and regulations of each Party;

- (b) promote efficient administration of customs procedures of each Party, and the expeditious clearance of goods;
- (c) simplify customs procedures of each Party and harmonise them to the extent possible with relevant international standards;
- (d) promote cooperation among the customs authorities of the Parties; and
- (e) facilitate trade among the Parties, including through a strengthened environment for global and regional supply chains.

Article 4.3: Scope

This Chapter shall apply to customs procedures applied to goods traded among the Parties and to the means of transport which enter or leave the customs territory of each Party.

Article 4.4: Consistency

1. Each Party shall ensure that its customs laws and regulations are consistently implemented and applied 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 assures consistent application of the customs laws and regulations of that Party among its regional customs offices.
3. 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.

4. If a Party fails to comply with the obligations in paragraphs 1 and 2, another Party may consult with that Party on the matter in accordance with the consultation procedures under Article 4.20 (Consultations and Contact Points).

Article 4.5: 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 to which it is party, or parts thereof with any country or countries relating to importation, exportation, or transit; and
 - (j) procedures relating to the administration of tariff quotas.

2. In particular, each Party shall make available, and update to the extent possible and as appropriate, the following through the internet:
 - (a) a description¹ of its procedures for importation, exportation, and transit, including procedures for appeal or review, that informs governments, traders, and other interested persons of the practical steps needed for importation, exportation, and transit;
 - (b) the forms and documents required for importation into, exportation from, or transit through the territory of that Party; and
 - (c) contact information for the enquiry points as well as information on how to make enquiries on customs matters as provided for in Article 4.6 (Enquiry Points).
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 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 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 is otherwise made publicly available, as early as possible before the date of their entry into force, in order to enable traders and other interested persons to become acquainted with them.
5. Nothing in this Article shall be construed as requiring the publication or provision of information other than in the language of the Party.

¹ Each Party has the discretion to state on its website the legal limitations of this description.

Article 4.6: 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 4.7: Customs Procedures

1. Each Party shall ensure that its customs procedures and practices are predictable, consistent, and transparent, and facilitate trade, including through the expeditious clearance of goods.
2. Each Party shall ensure that its customs procedures, 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.
3. The customs authority of each Party shall review its customs procedures with a view to simplifying such procedures to facilitate trade.

Article 4.8: Preshipment Inspection

1. Each Party shall not 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 covered by 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 Preshipment Inspection Agreement, and does not preclude preshipment inspections for sanitary and phytosanitary purposes.

Article 4.9: 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 goods with a view to expediting the release of 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 4.10: Advance Rulings

1. Each Party shall, prior to the importation of a good from a Party into its territory, issue a written advance ruling to an importer, exporter, or any person with a justifiable cause, or a representative thereof, who has submitted a written request containing all necessary information, with regard to:
 - (a) tariff classification;
 - (b) whether the good is an originating good in accordance with Chapter 3 (Rules of Origin);
 - (c) the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts, in accordance with the Customs Valuation Agreement; and
 - (d) such other matters as the Parties may agree.
2. A Party may require that an applicant have legal representation or registration in that Party. To the extent possible, such requirements shall not restrict the categories of persons eligible to apply for advance rulings, with particular consideration for the specific needs of small and medium enterprises. These requirements shall be clear and transparent and not constitute a means of arbitrary or unjustifiable discrimination.^{2, 3}
3. Each Party shall adopt or maintain procedures for issuing advance rulings which:

² On request of a Party, the Parties may review the requirements of this paragraph in terms of their contribution towards the trade facilitation through the Committee on Goods.

³ Each Party shall ensure that its registration process is transparent, applications are considered in a timely manner, and the decision made on an application, and the reasons for it, are promptly advised to the applicant in writing.

- (a) specify the information required to apply for an advance ruling;
 - (b) provide that each Party may at any time during the course of an evaluation of an application for an advance ruling, request that the applicant provide additional information, which may include a sample of the goods, necessary to evaluate the application;
 - (c) ensure that an 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
 - (d) ensure that the advance ruling includes the relevant facts and the basis for its decision.
- 4. Each Party shall issue an advance ruling in the official language of the issuing Party or in the language it decides. The advance ruling shall be issued in a reasonable, specified, and time-bound manner, and to the extent possible within 90 days, to the applicant on the receipt of all necessary information. Each Party shall specify and make public such time period for the issuance of an advance ruling prior to such an application. Should the customs authority have reasonable grounds to issue the advance ruling later than the specified period after the receipt of the application, it shall notify the applicant of the grounds for such a delay prior to the end of the specified period.
- 5. 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 applicant in writing, setting forth the relevant facts, circumstances, and the basis for its decision to decline to issue the advance ruling.
- 6. A Party may reject a request for an advance ruling where the additional information requested, in writing, in accordance with subparagraph 3(b) is not provided within 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.
- 7. Each Party shall provide that an advance ruling shall be valid from the date it is issued, or another date specified in the ruling, provided that the laws, regulations, and administrative rules, and

facts and circumstances, on which the ruling is based remain unchanged. Subject to paragraph 8, an advance ruling shall remain valid for at least three years.

8. Where a Party revokes, modifies, or invalidates an advance ruling, it shall promptly provide written notice to the applicant setting out the relevant facts and the basis for its decision, where:
 - (a) there is a change in its laws, regulations, or administrative rules;
 - (b) incorrect information was provided or relevant information was withheld;
 - (c) there is a change in a material fact or circumstances on which the advance ruling was based; or
 - (d) the advance ruling was in error.
9. Where a Party revokes, modifies, or invalidates an advance ruling with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, false, or misleading information.
10. An advance ruling issued by a Party shall be binding on that Party in respect of the applicant that sought it.
11. 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.
12. 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 4.11: Release of Goods

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade among the Parties. For greater certainty, 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 allow goods to be cleared from customs within a period no longer than that required to ensure compliance with its customs laws and regulations and, to the extent possible, within 48 hours of the arrival of goods and lodgement of all the necessary information for customs clearance.
3. If any goods are selected for further examination, such an examination shall be limited to what is reasonable and necessary, and undertaken and completed without undue delay.
4. Each Party shall adopt or maintain procedures allowing the release of goods, prior to the final determination of customs duties, taxes, fees, and charges if such determination is not done prior to, or upon arrival or as rapidly as possible after arrival and provided that all other regulatory requirements have been met. As a condition for such release, a Party may require a guarantee in accordance with its laws and regulations that does not exceed the amount the Party requires to ensure payment of customs duties, taxes, fees, and charges ultimately due for the goods covered by the guarantee.
5. Nothing in this Article shall affect the right of a Party to examine, detain, seize or confiscate or deal with the goods in any manner consistent with its laws and regulations.
6. 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, and to the extent possible in less than six hours 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, outside the business hours of its customs authority.
7. Each Party shall give appropriate priority to perishable goods when scheduling any examinations that may be required.

8. 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, where required, of the relevant authorities. Each Party shall, where practicable and consistent with domestic legislation, on the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

Article 4.12: Application of Information Technology

1. Each Party shall, to the extent possible, apply information technology to support customs operations based on internationally accepted standards for expeditious customs clearance and release of goods.
2. Each Party shall, to the extent possible, use information technology that expedites customs procedures for the release of goods, including the submission of data before the arrival of the shipment of those goods, as well as electronic or automated systems for risk management targeting.
3. Each Party shall endeavour to make its trade administration documents available to the public in electronic versions.
4. Each Party shall endeavour to accept trade administration documents submitted electronically as the legal equivalent of the paper version of these documents.
5. In developing initiatives that provide for the use of paperless trade administration, each Party is encouraged to take into account international standards or methods made under the auspices of international organisations.
6. Each Party shall cooperate with other Parties and in international fora to enhance the acceptance of trade administration documents submitted electronically.

Article 4.13: 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, (hereinafter referred to as “authorised operators” in this Chapter). 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 small and medium enterprises.
3. The trade facilitation measures provided pursuant to paragraph 1 shall include at least three of the following measures:⁴
 - (a) low documentary and data requirements, as appropriate;

⁴ Measures listed in subparagraphs (a) through (g) will be deemed to be provided to authorised operators if it is generally available to all 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 authorised operator schemes 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 operators, each Party shall afford to other Parties the possibility of negotiating mutual recognition of authorised operator schemes.
 6. The Parties are encouraged to cooperate, where appropriate, in developing their respective authorised operator schemes using the contact points designated pursuant to Article 4.20 (Consultations and Contact Points) and the Committee on Goods 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 4.14: Risk Management

1. Each Party shall adopt or maintain a risk management system for customs control.
2. Each Party shall design and apply risk management in a manner so as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions on international trade.
3. Each Party shall concentrate customs control and, to the extent possible other relevant border controls, on high risk consignments and expedite the release of low risk consignments. Each Party may also select, on a random basis, consignments for such controls as part of its risk management.
4. Each Party shall base risk management on the assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include, *inter alia*, 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 type of means of transport.

Article 4.15: 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,⁵ by:
 - (a) providing for pre-arrival processing of information related to express consignments;
 - (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

⁵ 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.

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) through (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 4.16: 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:
 - (a) results;
 - (b) reasons for the results; and

- (c) person's rights and obligations.
- 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 4.17: 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 the World Customs Organization with a view to:
 - (a) assessing its trade facilitation measures; and
 - (b) 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 4.18: Review and Appeal

1. Each Party shall provide that any person to whom its customs authority issues an administrative decision⁶ has the right, within its territory, to:

⁶ 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 referred to in this Article covers an administrative action within the meaning of Article X of GATT 1994 or failure to take an administrative action or decision as provided for in a Party's laws and regulations and legal system. For addressing such failure, a 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).

- (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.⁷
- 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. 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.⁸
- 5. Each Party shall ensure that the person referred to in paragraph 1 is provided with the reasons for the administrative decision so as to enable such a person to have recourse to procedures for appeal or review where necessary.
- 6. Each Party shall ensure that the person referred to in paragraph 1 is not treated unfavourably merely because that person seeks review of an administrative decision or omission referred to in paragraph 1.
- 7. Each Party is encouraged to make this Article applicable to an administrative decision issued by a relevant border agency other than its customs authority.
- 8. The decision, and the reasons for the decision, of an administrative or judicial review or appeal shall be provided in writing.

⁷ Brunei Darussalam may comply with this paragraph by establishing or maintaining an independent body to provide impartial review of the determination.

⁸ 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.

Article 4.19: Customs Cooperation

1. The customs authority of each Party may, as deemed appropriate, assist the customs authorities of other Parties, 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. Each Party shall, to the extent possible, provide the other Parties with timely notice of any significant administrative change, modification of a law or regulation, or similar measure related to its laws or regulations that govern importations or exportations, that is likely to substantially affect the operation of this Chapter. The notice can be made in the English language or the Party's language and will be provided to the contact point designated pursuant to Article 4.20 (Consultations and Contact Points).
3. The customs authority of a Party may, as deemed appropriate, share with other Parties, information and experiences on development of customs administration.
4. Each Party shall, to the extent possible and practicable, cooperate on mutually agreed terms with other Parties with whom it shares a common border with a view to coordinating procedures at border crossings to facilitate cross-border trade.

Article 4.20: Consultations and Contact Points

1. A Party may at any time request consultations with another 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 respective contact points designated

pursuant to paragraph 3 and shall commence within 30 days following the date of the receipt of the request, unless the relevant Parties determine otherwise.

2. In the event that such consultations fail to resolve the matter, the requesting Party may refer the matter to the Committee on Goods.
3. Each Party shall, within 30 days of the date of entry into force of this Agreement for that Party, designate one or more contact points for the purposes of this Chapter and notify the other Parties of the contact details and other relevant information, if any. Each Party shall promptly notify the other Parties of any change to those contact details.

Article 4.21: Implementation Arrangement

Recognising the different levels of readiness of Parties in implementing some of the commitments under this Chapter, Parties shall be given a period of time as identified in Annex 4A (Period of Time to Implement the Commitments) during which the full implementation of specified commitments shall commence.