

CHAPTER 4

CUSTOMS AND TRADE FACILITATION

ARTICLE 4.1

Objectives and scope

1. The Parties recognise the importance of customs and trade-facilitation matters in the evolving global trading environment.
2. The Parties recognise that international trade and customs instruments and standards are the basis for import, export and transit requirements and procedures.
3. The Parties recognise that their legislation should be non-discriminatory and that customs and other trade-related procedures should be based upon the use of modern methods and effective controls to combat fraud, protect consumer health and safety and promote legitimate trade. Each Party should periodically review its legislation and customs procedures. The Parties also recognise that their customs and other trade-related procedures should not be more administratively burdensome or trade-restrictive than necessary to achieve legitimate objectives and that they should be applied in a predictable, consistent and transparent manner.
4. The Parties shall reinforce their cooperation with a view to ensuring that the relevant laws and regulations, as well as the administrative capacity of the relevant administrations, fulfil the objectives of promoting trade-facilitation while ensuring effective control of import, export and transit of goods at the border.
5. The Parties shall cooperate with a view to supporting the development of regional integration within both the European Union and MERCOSUR.

ARTICLE 4.2

Customs cooperation

1. The Parties, through their respective authorities, shall cooperate on customs and other trade-related matters in order to ensure that the objectives set out in Article 4.1 are attained.

2. Cooperation may include:

(a) exchanging information concerning customs and other trade-related legislation, the implementation of such legislation and customs procedures, particularly in the following areas:

(i) simplification and modernisation of customs procedures;

(ii) enforcement of intellectual property rights by the customs authorities;

(iii) free circulation of goods and regional integration;

(iv) facilitation of transit movements and transshipment;

(v) interagency coordination at the border;

(vi) relations with the business community;

(vii) supply chain security and risk management; and

(viii) use of information technology, data and documentation requirements and single window systems, including work towards their future interoperability;

(b) exchanging information concerning international trade and customs instruments and standards;

- (c) collaborating on the customs-related aspects of securing and facilitating the international trade supply chain in accordance with the Framework of Standards to Secure and Facilitate Global Trade (hereinafter referred to as the "SAFE Framework") of the World Customs Organization (hereinafter referred to as the "WCO");
- (d) developing joint initiatives related to import and export procedures, including technical assistance, capacity building and measures aimed at providing an effective service to the business community;
- (e) strengthening cooperation between the Parties in the fields of customs and trade-facilitation in international organisations such as the WTO, the WCO and the United Nations Conference on Trade and Development (hereinafter referred to as "UNCTAD");
- (f) establishing, if relevant and appropriate, mutual recognition of trade partnership programmes and customs controls, including equivalent trade-facilitation measures;
- (g) fostering cooperation between customs and other government authorities or agencies in relation to authorised economic operator programmes for example by aligning requirements, facilitating access to benefits and minimising unnecessary duplication;
- (h) working together with a view to reaching a common approach to issues relating to customs valuation; and
- (i) working together to further reduce release times and to release goods without undue delay, in particular perishable goods.

3. The Parties shall provide each other with mutual administrative assistance in customs matters in accordance with the provisions of Annex 4-A.

ARTICLE 4.3

Customs and other trade-related laws and regulations

1. Each Party's customs and trade-related laws and regulations¹ shall be based upon:
- (a) international instruments and standards applicable in the area of customs and trade, including: the WTO Trade Facilitation Agreement done at Bali on 7 December 2013 (hereinafter referred to as "WTO Trade Facilitation Agreement"); the International Convention on the Harmonized Commodity Description and Coding System, done at Brussels on 14 June 1983; the Safe Framework and the WCO data model, adopted in June 2005, and, to the extent possible, the substantive elements of the Revised Kyoto Convention on the Simplification and Harmonisation of Customs Procedures, done at Kyoto on the 18 May 1973;
 - (b) the common objective of facilitating legitimate trade through effective enforcement of and compliance with legislative requirements; and
 - (c) legislation that is proportionate and non-discriminatory, avoids unnecessary burdens on economic operators, provides for further facilitation for operators with high levels of compliance, including favourable treatment with respect to customs controls prior to the release of goods, and ensures safeguards against fraud and illicit or damaging activities.

¹ For greater certainty, reference to laws and regulations covers procedures enshrined therein.

2. In order to improve working methods, as well as to ensure non-discrimination, transparency, efficiency, integrity and accountability of operations, each Party shall:

- (a) simplify and review requirements and formalities wherever possible with a view to the rapid release and clearance of goods;
- (b) work towards the further simplification and standardisation of data and documentation required by customs authorities and other agencies; and
- (c) ensure that the highest standards of integrity be maintained, through the application of measures reflecting the principles of the relevant international conventions and instruments in this field.

ARTICLE 4.4

Release of goods

1. Each Party shall adopt or maintain requirements and procedures that:
- (a) provide for the prompt release of goods within a period no greater than that required to ensure compliance with its customs and other trade-related laws and formalities;

- (b) provide for advance electronic submission and processing of documentation and of any other required information prior to the arrival of the goods, to enable the release of goods on arrival²; and
- (c) allow for the release of goods prior to the final determination of customs duties, taxes, fees and charges, if such a determination is not done prior to, upon, or as rapidly as possible after arrival, and if all other regulatory requirements have been met.

2. For the purposes of point (c) of paragraph 1, as a condition for such release, each Party may require a guarantee for any amount not yet determined in the form of a surety, a deposit or another appropriate instrument provided for in its laws and regulations. Such guarantee shall not be greater than the amount the Party requires to ensure payment of customs duties, taxes, fees and charges ultimately due for the goods covered by the guarantee. The guarantee shall be discharged when it is no longer required³.

3. Each Party shall strive to further reduce release-times and release the goods without undue delay.

² Signatory MERCOSUR States shall comply with the commitments in this paragraph in accordance with Article 16 (Notification of definitive dates for implementation of Category B and Category C) of the WTO Trade Facilitation Agreement.

³ Signatory MERCOSUR States shall comply with the commitments in this paragraph in accordance with Article 16 (Notification of definitive dates for implementation of Category B and Category C) of the WTO Trade Facilitation Agreement.

ARTICLE 4.5

Perishable goods

1. For the purposes of this provision, perishable goods are goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.
2. Each Party shall give appropriate priority to perishable goods when scheduling and performing any examinations that may be required.
3. On request of an economic operator, each Party shall, if practicable and consistent with its laws and regulations:
 - (a) provide for the clearance of a consignment of perishable goods outside the business hours of customs and other relevant authorities; and
 - (b) allow consignments of perishable goods to be cleared at the premises of the economic operator.

ARTICLE 4.6

Advance rulings

1. For the purposes of this Article, "advance ruling" means a written decision provided to an applicant prior to the importation of a good covered by the application that sets forth the treatment that the Party shall provide to the good at the time of importation with regard to:

(a) the good's tariff classification; and

(b) the origin of the good.

2. Each Party shall issue, through its customs authorities, an advance ruling that sets forth the treatment to be provided to the goods concerned. If an applicant submits a written request, including in electronic format, containing all necessary information in accordance with the laws and regulations of the issuing Party, that ruling shall be issued in a reasonable, time-bound manner.

3. The advance ruling shall be valid for a period of at least 3 (three) years after its issuance unless the law, facts or circumstances supporting the original advance ruling change.

4. A Party may decline to issue an advance ruling if the question raised is the subject of administrative or judicial review or if the application does not relate to any intended use of the advance ruling. If a Party declines to issue an advance ruling, it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.

5. Each Party shall publish, 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.

6. If a Party revokes, modifies or invalidates an advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. A Party may revoke, modify or invalidate an advance ruling with retroactive effect, only if the ruling was based on incomplete, incorrect, false or misleading information.

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

8. Each Party shall provide, upon written request of an applicant, a review of the advance ruling or of the decision to revoke, modify or invalidate it⁴.

9. Subject to any confidentiality requirements, substantive elements of these rulings shall be published, online or in other appropriate formats.

⁴ Under this paragraph, a review may, either before or after the ruling has been acted upon, be provided by the official, office, or authority that issued the ruling, a higher or independent administrative authority, or a judicial authority.

10. To facilitate trade, the Subcommittee on customs, trade facilitation and rules of origin, referred to in Article 4.21, shall regularly discuss updates on changes in the respective laws and regulations of the Parties on the matters listed in this Article.

11. The Parties may agree upon advance rulings on any other matter.

ARTICLE 4.7

Transit and transshipment

1. Each Party shall ensure freedom of transit through its territory via the route most convenient for transit.

2. Without prejudice to legitimate control, each Party shall accord to traffic in transit to or from the territory of the other Party, treatment no less favourable than that accorded to its own like goods and their movement, including imports and exports, when such goods are transported on the same route under like conditions.

3. Each Party shall, to the extent possible, apply to transhipped goods customs procedures that are less burdensome than those applied to traffic in transit.

4. Each Party shall operate bonded transport regimes that allow the transit of goods without payment of customs duties or other charges subject to the provision of an appropriate guarantee.

5. Each Party shall promote and implement regional transit arrangements with a view to facilitating traffic in transit and reducing trade barriers.
6. Each Party shall draw upon and use international standards and instruments relevant to transit.
7. Customs transit procedures may be used also if the transit of goods begins or ends in the territory of a Party (inland transit).
8. The Parties shall ensure that all concerned authorities and agencies in their respective territories cooperate and coordinate on customs matters with a view to facilitating traffic in transit.

ARTICLE 4.8

Authorised economic operator

1. Each Party shall establish or maintain a trade-facilitation partnership programme for operators who meet specified criteria (hereinafter referred to as "authorised economic operators").
2. The specified criteria that operators need to meet in order to qualify as authorised economic operators (hereinafter referred to as "the specified criteria") shall be related to compliance, or the risk of non-compliance, with requirements specified in each Party's laws and regulations. The specified criteria, which shall be published, may include:
 - (a) the absence of any serious infringement or repeated infringements of customs and taxation laws and regulations, including no record of serious criminal offences relating to the economic activity of the applicant;

- (b) the demonstration by the applicant of a high level of control of his or her operations and of the flow of goods, by means of a system of managing commercial and, where appropriate, transport records which allows appropriate customs controls;
- (c) financial solvency, which shall be deemed to be proven if the applicant has good financial standing, which enables him or her to fulfil his or her commitments, with due regard to the characteristics of the type of business activity concerned;
- (d) proven competences or professional qualifications directly related to the activity carried out; and
- (e) appropriate security and safety standards.

3. The specified criteria 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 trade-facilitation partnership programme shall include at least four of the following benefits:

- (a) fewer documentary and data requirements, as appropriate;
- (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 economic operator or another place authorised by the customs authorities.

5. The Parties should ensure coordination between customs authorities and other border agencies in the development of their respective authorised economic operator programmes through means such as the alignment of requirements, the minimisation of unnecessary duplication and the access to benefits related to controls and requirements administered by agencies other than customs authorities.

ARTICLE 4.9

Single window

Each Party shall endeavour to establish single window systems, enabling traders to submit through a single entry point documentation and data requirements for importation, exportation or transit of goods to the participating authorities or agencies.

ARTICLE 4.10

Transparency

1. The Parties recognise the importance of timely consultations with trade representatives on their respective proposed laws and procedures related to customs and trade facilitation matters.
2. Each Party shall ensure that its respective customs and other trade-related requirements and procedures continue to meet the needs of the trading community, follow best practices and remain as less trade-restrictive as possible.
3. Each Party shall, as appropriate, provide for regular consultations between its border agencies and traders or other stakeholders located within its territory.
4. Each Party shall promptly publish, in a non-discriminatory and easily accessible manner, and as far as possible through electronic means, new laws, regulations and general procedures related to customs and trade-facilitation matters prior to the application of any such laws, regulations or general procedures, as well as changes to and interpretations of such laws, regulations and general procedures. This shall include:
 - (a) importation, exportation and transit procedures, including port, airport, and other entry-point procedures and hours of operation, 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 against breaches of import, export or transit formalities;
- (h) appeal procedures;
- (i) agreements or parts thereof with any country or countries relating to importation, exportation or transit;
- (j) procedures relating to the administration of tariff quotas;
- (k) points of contact for information enquiries; and
- (l) other relevant notices of an administrative nature in relation to the above.

5. Each Party shall ensure there is a reasonable time period between the publication of new or amended laws, regulations and general procedures and fees or charges and their entry into force.

6. Each Party shall make available online and update, as appropriate, the following:

- (a) a description of its importation, exportation and transit procedures, including appeal procedures, informing of the practical steps needed to import and export and for transit;
- (b) the forms and documents required for importation into, exportation from, or transit through the territory of that Party; and
- (c) contact information on enquiry points.

7. Each Party shall establish or maintain one or more enquiry points to answer within a reasonable time enquiries from governments, traders and other interested parties on customs and other trade-related matters. The Parties shall not require the payment of a fee for answering enquiries or providing required forms and documents. The enquiry points shall answer enquiries and provide the forms and documents within a reasonable time period set by each Party, which may vary depending on the nature or complexity of the enquiry.

ARTICLE 4.11

Customs valuation

The Agreement on the Implementation of Article VII of GATT 1994 shall govern customs valuation rules applied to reciprocal trade between the Parties. Its provisions are hereby incorporated into and made an integral part of this Agreement.

ARTICLE 4.12

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 such a manner as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions on international trade.
3. Each Party shall concentrate customs control and 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 assessment of risk through appropriate selectivity criteria.
5. The provisions of this Article are, whenever possible, applicable to procedures administered by other border agencies.

ARTICLE 4.13

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 customs and other related laws and regulations.

2. Each Party shall conduct post-clearance audits in a risk-based manner.
3. Each Party shall conduct post-clearance audits in a transparent manner. If an audit is performed and conclusive results have been achieved, the Party shall, without delay, notify the person whose record is audited of the results, the person's rights and obligations and the reasons for the results.
4. The Parties acknowledge that the information obtained in a post-clearance audit may be used in further administrative or judicial proceedings.
5. The Parties shall, wherever practicable, use the results of a post-clearance audit in applying risk management.

ARTICLE 4.14

Customs brokers

Each Party shall publish its measures on the use of customs brokers. Each Party shall apply transparent, non-discriminatory and proportionate rules if and when licensing customs brokers. A Party shall not adopt new measures introducing the mandatory use of customs brokers.

ARTICLE 4.15

Pre-shipment Inspections

A Party shall not require the mandatory use of pre-shipment inspections as defined in the WTO Agreement on Pre-shipment Inspection or any other inspection activity performed at destination, before customs clearance, by private companies.

ARTICLE 4.16

Appeals

1. Each Party shall provide effective, prompt, non-discriminatory and easily accessible procedures to guarantee the right of appeal against the administrative actions, rulings and decisions of customs or other competent authorities affecting import or export of goods or goods in transit.
2. Appeal procedures may include administrative review by the supervising authority and judicial review of decisions taken at the administrative level according to each Party's laws and regulations.
3. Any person who has applied to the customs authorities for a decision and has not obtained a decision on that application within the applicable time-limits shall also be entitled to exercise the right of appeal.

4. Each Party shall provide a person to whom it issues an administrative decision with the reasons for that decision, so as to enable that person to have recourse to appeal procedures if necessary.

ARTICLE 4.17

Import, export and transit formalities and data and documentation requirements

1. Each Party shall ensure that import, export and transit formalities and data and documentation requirements are:
 - a) adopted or applied with a view to a rapid release of goods, in particular perishable goods, provided the conditions for the release are fulfilled;
 - b) adopted or applied in a manner that aims to reduce the time and cost of compliance for traders and operators;
 - c) the least trade-restrictive measure chosen, if two or more alternative measures are reasonably available for fulfilling the policy objective or objectives in question;
and
 - d) not maintained, including parts thereof, if they, or parts of them are no longer required.
2. MERCOSUR shall work towards applying common customs procedures and uniform customs data requirements for the release of goods.

ARTICLE 4.18

Use of information technology

1. Each Party shall use information technologies that expedite procedures for the release of goods in order to facilitate trade between the Parties.
2. Each Party shall:
 - (a) make available by electronic means customs declarations and, whenever possible, other documents required for the import, transit or export of goods;
 - (b) allow a customs declaration and, whenever possible, any other data requirements for the import and export of goods to be submitted in electronic format;
 - (c) establish means of providing for the electronic exchange of customs information with its trading community;
 - (d) promote the electronic exchange of data between its respective traders, customs administrations and other trade-related agencies; and
 - (e) use electronic risk management systems for assessment and targeting that enable its customs authorities and, whenever possible, other border agencies to focus their inspections on high-risk goods and that facilitate the release and movement of low-risk goods.

3. Each Party shall adopt or maintain procedures allowing the option of electronic payment for duties, taxes, fees and charges incurred upon importation and exportation collected by customs authorities and, whenever possible and applicable, by other border agencies.

ARTICLE 4.19

Penalties

1. Each Party shall ensure that its customs laws and regulations provide that any penalties imposed for breaches of customs regulations or procedural requirements be proportionate and non-discriminatory.

2. Penalties for a breach of a Party's customs law, regulation or procedural requirement are imposed only on the person responsible under that Party's law for such breach.

3. Penalties imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach. Each Party shall avoid incentives for the assessment or collection of penalties or conflicts of interest in the assessment and collection of penalties.

4. In the event of voluntary prior disclosure to a customs administration of the circumstances of a breach of a customs law, regulation or procedural requirement, each Party is encouraged to consider this as a potential mitigating factor when establishing a penalty.

5. When a penalty is imposed for a breach of a customs law, regulation or procedural requirement, an explanation in writing is provided to the person upon whom the penalty is imposed specifying the nature of the breach and the applicable law, regulation or procedure under which the amount or range of penalty for the breach has been prescribed.

ARTICLE 4.20

Temporary admission

1. For the purposes of this Article, the term "temporary admission" means the customs procedure under which certain goods, including their means of transport, that are brought into a customs territory for a specific purpose are conditionally relieved from payment of import duties and taxes, without application of import prohibitions or restrictions of economic character. Such goods must be intended for re-exportation within a specified period and without having undergone any change except normal depreciation due to the use made of them.

2. Nothing in this Article should be construed as to relieve imported goods from meeting trade-related requirements of non-economic character, in particular sanitary and phytosanitary measures.

3. Each Party shall, in accordance with its law, grant temporary admission, with total conditional relief from import duties and taxes and without application of import restrictions or prohibitions of economic character to the following goods:

(a) goods for display or use at exhibitions, fairs, meetings or similar events;

- (b) professional equipment for the press or for sound or television broadcasting; cinematographic equipment; any other equipment necessary for the exercise of the calling, trade or profession of a person visiting the territory of another country to perform a specified task;
- (c) goods imported in connection with a commercial operation but whose importation does not in itself constitute a commercial operation;
- (d) goods imported in connection with a manufacturing operation (such as plates, drawings, moulds, plans and models, for use during a manufacturing process); replacement means of production;
- (e) goods imported exclusively for educational, scientific or cultural purposes;
- (f) personal effects of passengers and goods imported for sports purposes;
- (g) tourist publicity material;
- (h) goods imported for humanitarian purposes; and
- (i) animals imported for specific purposes.

3. Each Party shall, for the temporary admission of the goods referred to in paragraph 2 and regardless of their origin, accept A.T.A. carnets issued and endorsed by the other Party in accordance with the Customs Convention on the A.T.A. Carnet for the temporary admission of goods done at Brussels on 6 December 1961, and guaranteed by an association forming part of the international guarantee chain, certified by the competent authorities and valid in the territory of the importing Party⁵.

ARTICLE 4.21

Subcommittee on customs, trade facilitation and rules of origin

The Subcommittee on customs, trade facilitation and rules of origin, established pursuant to Article 22.3(4) shall, in addition to the functions listed in Articles 3.32, 4.6(10) and 22.3, have the function to enhance cooperation on the development, application and enforcement of customs and trade-related procedures, mutual administrative assistance in customs matters, rules of origin and administrative cooperation.

ARTICLE 4.22

Trade Council

With a view to implementing the relevant provisions in this Chapter, the Trade Council shall have the power to adopt decisions relating to authorised economic operator programmes and their mutual recognition as well as to joint initiatives relating to customs procedures and trade-facilitation.

⁵ This provision shall apply only in respect of the European Union and of those Signatory MERCOSUR States that are Contracting parties to the Convention on Temporary Admission done at Istanbul on 26 June 1990 and according to the commitments undertaken in that Convention.