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Subject to Legal Review for Accuracy, Clarity, and Consistency
January 28, 2004

Chapter Five

Customs Administration and Trade Facilitation

Article 5.1: Publication

1. Each Party, in accordance with the provisions of its laws, shall publish including on the Internet, its customs laws, regulations, and general administrative procedures.
2. Each Party shall designate, establish, and maintain one or several contact points to address inquiries by interested persons concerning customs matters and shall make available on the Internet information concerning the procedures for making such inquiries.
3. Each Party shall, where possible, publish in advance any regulations of general application governing customs matters that it proposes to adopt in order to provide interested persons the opportunity to comment prior to the adoption of such regulations.

Article 5.2: Release of Goods

1. Each Party shall establish and maintain simplified customs procedures for efficient release of goods in order to facilitate trade between the Parties.
2. Specifically, each Party shall adopt procedures that:
 - (a) provide for the release of goods within a period of time no greater than that: required to ensure compliance with its customs laws and, to the extent possible, allow goods to be released within 48 hours of arrival;
 - (b) in accordance with their respective legislation allow goods release at point of arrival, without temporary transfer to warehouses or other facilities; and
 - (c) in accordance with their respective domestic legislation, allow importers to withdraw goods from customs prior to and without prejudice to the final determination by customs of the applicable customs duties, taxes and fees.¹

Article 5.3: Automation

¹ A Party may require an importer to provide sufficient guarantee in the form of a surety, a deposit, or some other appropriate instrument, covering the ultimate payment of the customs duties for which the goods may be liable.

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Customs administrations shall endeavor to use information technology that expedites procedures for the release of goods. When deciding on the information technology to be used for this purpose, the Parties shall:

- (a) use, to the extent possible, international standards;
- (b) make electronic systems accessible to the trading community;
- (c) provide for electronic submission and processing of information and data prior to arrival of the shipment to allow for release of goods upon arrival;
- (d) employ customs electronic/automated systems for risk analysis and targeting;
- (e) work towards developing compatible electronic systems among customs administrations, to enable Government to Government exchange of international trade data;
- (f) work towards developing a set of common data elements and processes in accordance with World Customs Organization (WCO) Customs Data Model and related WCO Recommendations and Guidelines.

Article 5.4: Risk Management

Each Party shall endeavor to implement risk management systems in its verification activities while respecting the confidential nature of the information according to its laws, in order to focus customs inspection activities on high-risk goods and simplify clearances and movement of low-risk goods.

Article 5.5: Cooperation

1. With a view to facilitating the effective operation of this Agreement, each Party shall endeavor to provide the other Parties with advance notice of any significant modification of administrative policy or other similar development related to its laws or regulations governing importations that is likely to substantially affect the operation of this Agreement.
2. The Parties shall, through their competent authorities, cooperate in achieving compliance with their respective laws or regulations governing importations or exportations pertaining to:
 - (a) implementation and operation of this Agreement, including rules of origin and customs procedures of origin;

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- (b) implementation and operation of the WTO Agreement on the Implementation of Article VII of GATT 1994;
- (c) restrictions and prohibitions on imports or exports; and
- (d) other issues to which the Parties may agree.

3. If a Party, based upon reasonable suspicion of unlawful activity related to its laws or regulations governing importations, through its competent authority requests another Party to provide specific confidential information normally collected in connection with the importation of goods, the Party requesting the information shall specify the purpose for which the information is sought. The Party from whom the information is requested shall, through its competent authority, in a manner consistent with its laws and any international agreements to which it is a Party, provide a written response containing such information.

4. For purposes of paragraph 3, a reasonable suspicion of unlawful activity shall be based on relevant factual information obtained from public sources, private persons, or intelligence reports, indicating the existence of one or more of the following factors:

- (a) information indicating that an importer or exporter has a relevant history of past infractions;
- (b) historical evidence of non-compliance with laws or regulations governing importations by a manufacturer, producer, or other company involved in the movement of goods from the territory of one Party to the territory of the other Party;
- (c) historical evidence of non-compliance with laws or regulations governing importations for some or all of the companies within a product sector where goods are moving from the territory of one Party to the territory of the other Party; or
- (d) other indicators determined to be mutually acceptable to the Parties in the context of a particular request.

5. A Party's request under paragraph 4 shall be in writing and shall identify the requested information with sufficient specificity for the other Party to locate and provide the information.

6. Each Party shall, through its competent authority, endeavor to provide another Party with any other information that would assist a Party in determining whether imports from or exports to the other Party are in compliance with applicable domestic laws or regulations governing importations, in particular those related to the prevention or investigation of smuggling and similar infractions.

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7. For purposes of facilitating the flow of trade between them, the Parties shall endeavor to provide each other with technical advice and assistance for the purpose of improving risk assessment techniques, simplifying and expediting customs procedures, advancing the technical skill of personnel, and enhancing the use of technologies that can lead to improved compliance with regard to laws or regulations governing importations.

8. The Parties shall use their best efforts to explore other avenues of cooperation for the purpose of enhancing each Party's ability to enforce its laws or regulations governing importations. Within six months after the signature of this Agreement, the Parties shall conclude a Mutual Assistance Agreement between their customs administrations. The Parties shall examine the establishment and maintenance of other channels of communication to facilitate the secure and rapid exchange of information and efforts to improve effective coordination on importation issues, building upon the mechanisms established in this Article.

Article 5.6: Confidentiality

1. Where a Party providing information to another Party in accordance with this Chapter designates the information as confidential, the other Party shall maintain the confidentiality of the information. The Party providing the information may, in accordance with its domestic law, require written assurances from the other Party that the information will be held in confidence, will be used only for the purposes specified in the other Party's request for information, and will not be disclosed without the Party's specific permission.

2. A Party may decline to provide information requested by the other Party where the other Party has failed to act in conformity with assurances provided under paragraph 1.

3. Each Party shall adopt or maintain procedures in which confidential information, including information the disclosure of which could prejudice the competitive position of the person supplying the information, submitted in connection with the Party's administration of its customs laws shall be protected from unauthorized disclosure.

Article 5.7: Express Shipments

Each Party shall adopt procedures that will expedite express shipments while maintaining appropriate customs control and selection. These procedures shall:

- (a) provide a separate, expedited customs procedure for express shipments;
- (b) provide for processing information prior to the arrival of express shipments;

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- (c) allow submission of a single manifest covering all goods contained in a shipment transported by the express shipment service, through, if possible, electronic means;
- (d) whenever possible and using appropriate means of control provide for clearance of certain goods with a minimum of documentation; and
- (e) under normal circumstances, provide for clearance of express shipments within six hours of submission of the necessary customs documents, assuming the shipment has arrived.

Article 5.8: Review and Appeal

Each Party shall guarantee that importers in its territory have access to:

- (a) a level of administrative review independent of the employee or office issuing the determination subject to review; and
- (b) judicial review of an administrative determination according to the law of each Party.

Article 5.9: Penalties

Each Party shall adopt measures that allow for the imposition of civil or administrative penalties and, if appropriate, criminal sanctions for violations of its customs laws and regulations governing, *inter alia*, the tariff classification, customs valuation, country of origin, and requirements for securing preferential treatment in accordance with this Agreement.

Article 5.10: Advance Rulings

1. Each Party's customs or other competent authority shall issue, prior to the importation of a good into its territory, advance rulings at the written request of the importer in its territory, or the exporter or the producer² in the territory of the other Party.
2. Provided the requester has submitted all necessary information required by a Party, including, if deemed necessary by a Party, a sample of the goods in question, each Party shall provide that its customs or other competent authority shall issue advance rulings within 150 days, based upon consideration of facts and circumstances provided by the requester, with regard to:

- (a) tariff classification;

² In this Article the reference to "importer, exporter or producer" also includes their representative.

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- (b) the application of customs valuation criteria for a particular case, in accordance with the application of the provisions set forth in the Customs Valuation Agreement;
 - (c) the application of duty drawback, deferral, or relief from customs duties and import taxes;
 - (d) whether a good is originating, in accordance with Chapter Four (Regime of Origin and Customs Procedures related to the Administration of the Origin Regime);
 - (e) whether a good re-imported into the territory of Party after being exported to the territory of another Party for repair or alteration is eligible for duty free treatment in accordance with Article XX (Goods re-imported after repair or alteration);
 - (f) country of origin marking;
 - (g) the application of quotas; and
 - (h) such other matters as the Parties may agree.
3. The Parties shall provide that the advance rulings shall be in force from their issue date, or a date specified by the ruling, provided that the facts or circumstances upon which the ruling is based remain unchanged.
4. A Party may modify or revoke an advance ruling after the Party notifies the person that requested the ruling. The Parties may only modify or revoke such rulings with retroactive application in circumstances where inaccurate or false information has been provided.
5. Each Party shall, subject to confidentiality requirements in its domestic law, make advance rulings publicly available for purposes of promoting application of the rulings to other goods where the facts and circumstances are the same as under which the rulings are issued.
6. If the requester provides false information or omits relevant circumstances or facts upon which the advance ruling determination is based or does not act in accordance with the ruling's terms and conditions, the importing Party may apply appropriate measures, including civil, criminal, and administrative actions, monetary penalties, or other sanctions.

Article 5.11: Implementation

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The obligations of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua under this Chapter shall enter into force as follows:

- (a) Article 5.1.1 and 5.1.2 shall enter into force 2 years after the date of entry into force of this Agreement;
- (b) Article 5.3 shall enter into force 3 years after the date of entry into force of this Agreement;
- (c) Article 5.4 shall enter into force 2 years after the date of entry into force of this Agreement;
- (d) Article 5.7 shall enter into force 1 year after the date of entry into force of this Agreement; and
- (e) Article 5.10 shall enter into force 2 years after the date of entry into force of this Agreement.

Article 5.12: Capacity Building on Customs Matters

Recognizing the importance of trade capacity building activities in facilitating the implementation of this Chapter, the Parties recommend to the *ad hoc* working group on customs administration and trade facilitation under the Committee on Trade Capacity Building that the *ad hoc* working group's initial capacity building priorities be related to implementation of this Chapter and other priorities designated by the Committee.