

## Chapter 5

### Customs Procedures

#### Section A

#### General Provision

##### Article 5.1: Definitions

###### For the purposes of this Chapter:

**commercial samples** means commercial samples having a negligible value, or no commercial value, or so marked, torn, perforated or otherwise treated that they are unsuitable for sale or for use except as commercial samples;

**customs authority** means the authority that according to the legislation of the country of each Party is responsible for the administration and enforcement of its customs laws:

- (a) in the case of Chile, the National Customs Service; and
- (b) in the case of Thailand, the Customs Department;

**customs laws** mean such laws and regulations administered and enforced by the customs authority of each Party concerning the importation, exportation, and transit/transshipment of goods, as they relate to customs duties, charges, and other taxes, or to prohibitions, restrictions, and other similar controls with respect to the movement of controlled items across the boundary of the customs territory of each Party;

**customs procedures** means the treatment applied by the customs authority of each Party to goods which are subject to customs control; and

**printed advertising materials** means those goods classified in Chapter 49 of the Harmonized System (HS), including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, trade and tourist promotional materials and posters, that are used to promote, publicise or advertise a good or service, are essentially intended to advertise a good or service, and/or are supplied free of charge.

##### **Article 5.2: Objectives**

The objectives of this Chapter are to:

- (a) simplify and harmonise customs procedures of the Parties;
- (b) ensure consistency, predictability and transparency in the application of customs laws and regulations of the Parties;

- (c) ensure efficient and expeditious release of goods;
- (d) facilitate trade in goods between the Parties by the use of information and communications technology, taking into account international standards; and
- (e) promote cooperation between the customs authorities with relevant international standards and recommended practices such as those made under the auspices of the Customs Cooperation Council.

### **Article 5.3: Scope and Coverage**

1. This Chapter shall apply to customs procedures for goods traded between the Parties.
2. This Chapter shall be implemented by each Party in accordance with the laws and regulations in force in each Party and within the competence and available resources of the customs authorities of each Party

## **Section B**

### **Customs Procedures and Facilitation**

#### **Article 5.4: Customs Procedures**

1. Customs authorities of a Party shall ensure that its customs procedures and practices are predictable, consistent, transparent and facilitate trade, including through the expeditious clearance of goods and means of transport.
2. Customs procedures of a Party shall, where possible and to the extent permitted by their respective customs laws, conform with the standards and recommended practices of the World Customs Organization (WCO) and other international organization as relevant to customs.
3. The customs authority of a Party shall review its customs procedures and practices with a view to their simplification to facilitate trade.

#### **Article 5.5: Customs Valuation**

The Parties shall apply the WTO Agreement on the Implementation of Article VII of GATT 1994 for the purposes of determining the customs value of goods traded between the Parties.

#### **Article 5.6: Advance Rulings**

1. Customs authorities of each Party, shall issue written advance ruling prior to the importation of a good into its territory upon written request of a person who intends to import in or export to its territory, on the basis of the facts and circumstances provided by the requester,

including a detailed description of the information required to process a request for an advance ruling, concerning:

- (a) tariff classification;
- (b) valuation method; or
- (c) whether a good qualifies as an originating good under this Agreement.

2. The customs authorities shall issue advance rulings after receiving a written request, provided that the requester has submitted all necessary information. The issuance of advance ruling shall be made within one hundred and twenty (120) days.

3. Each Party shall provide that advance rulings shall be in force from their date of issuance, or such other specified by the ruling, for the period of time, in accordance with their domestic laws and regulations, provided that the facts or circumstances on which the ruling is based remain unchanged.

4. The customs authorities may modify or revoke an advance ruling where facts or circumstances prove that the information on which the advance ruling is based is false or inaccurate.

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

6. Each Party shall make its advance rulings publicly available, subject to confidentiality requirements in its domestic law, for purposes of promoting the consistent application of advance rulings to other goods.

7. If a requester provides false information or omits relevant circumstances or facts in its request for an advance ruling, 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, penalties, or other sanctions in accordance with its domestic laws.

#### **Article 5.7: Customs Clearance**

1. Each Party shall endeavor to apply customs procedures in a predictable, consistent and transparent manner for the efficient release of goods in order to facilitate trade between the Parties.

2. For prompt release of goods traded between the Parties, to the extent possible each Party shall:

- (a) provide for the release of goods within a period no greater than that required to ensure compliance with its customs laws or regulations;
- (b) make use of information and communications technology;
- (c) adopt or maintain procedures allowing, to the extent possible, goods to be released at the point of arrival, without temporary transfer to warehouses or other locations;
- (d) harmonise its customs procedures, as far as possible, with relevant international standards and best practices, such as those recommended by the WCO; and
- (e) adopt or maintain procedures allowing the release of goods prior to, and without prejudice to, the final determination by its customs authority of the applicable customs duties, taxes and fees, subject to domestic procedures.

#### **Article 5.8: Risk Management**

1. In order to facilitate release of goods traded between the countries of the Parties, the customs authority of each Party shall use risk management methodology.
2. The customs authority of each Party shall exchange information, including best practices, on risk management techniques and other enforcement techniques.
3. Each Party shall endeavor to adopt or maintain risk management systems that enable its customs authority to concentrate inspection activities on high risk goods and that simplify the clearance and movement of low risk goods.

#### **Article 5.9: Temporary Admission**

1. The Parties shall facilitate movement of goods under temporary admission to the greatest extent possible.
2. The customs authorities of the Parties shall specify the period within which goods placed under the temporary admission procedure must be re-exported or placed under a subsequent customs procedure.
3. Where, in exceptional circumstances, the goods cannot be re-exported or placed under a subsequent customs procedure within the specified period, the customs authorities concerned may, at the request of the holder of the authorisation, extend those periods for a reasonable duration.

#### **Article 5.10: Goods Re-entered after Repair and Alteration**

1. The Parties may, in accordance with their customs laws, not apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been temporarily

exported from its territory to the territory of the other Party for repair or alteration, regardless of whether such repair or alteration could be performed in its own territory.

2. The Parties may, in accordance with their customs laws, not apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of the other Party for repair or alteration.

3. For the purposes of this Article, repair and alteration does not include an operation or process that:

- (a) destroys a good's essential characteristics or creates a new or commercially different good; or
- (b) transforms an unfinished good into a finished good.

#### **Article 5.11: Duty-Free Entry of Commercial Samples and Printed Advertising Materials**

Each Party shall, in accordance with its customs laws, grant duty-free entry to commercial samples and to printed advertising materials imported from the territory of the other Party regardless of their origin, but may require that:

- (a) such samples be imported solely for the solicitation of orders for goods, or services provided from the territory, of another Party or a non-Party; and
- (b) such printed advertising materials are imported in packets that each contains no more than one copy of each material and that neither such materials nor packets form part of a larger consignment.

#### **Article 5.12: Use of Automated System and Paperless Trading**

1. The customs authorities of the Parties shall make cooperative efforts to promote the use of information and communications technology in their customs procedures including sharing best practices, for the purpose of improving their customs procedures.

2. The customs authorities of each Party, in implementing initiatives which provide for the use of paperless trading, shall take into account the methods agreed by the WCO, including adoption of the WCO data model for the simplification and harmonisation of data.

3. The customs authorities of each Party shall work towards having electronic means for all its customs reporting requirements, as soon as practicable.

4. The introduction and enhancement of information technology shall, to the greatest extent possible, be carried out in consultation with all relevant parties including business directly affected.

### **Article 5.13: Review and Appeal**

1. Each Party shall ensure that with respect to its determinations on customs matters, importers in its territory have access to:
  - (a) administrative review issued by a superior official different from who took the determination; and
  - (b) judicial review of the determination or decision taken at the final level of administrative review.
2. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing.

### **Article 5.14: Publication and Enquiry Points**

1. Each Party shall designate one or more enquiry points to address enquiries from the other Party concerning customs matters, and shall make available on the internet, or print form information concerning procedures for making such enquiries.
2. Each Party shall endeavor to publish on the internet or in print form statutory and regulatory provisions and procedures applicable or enforced by its customs authority.
3. Nothing in this Article shall require a Party to publish law enforcement procedures and internal operational guidelines including those related to conducting risk analysis and targeting technologies.

### **Article 5.15: Confidentiality**

1. Each Party's customs authority undertakes not to use any information received in accordance with this Chapter other than for the purpose for which the information was given, or to disclose any such information, except in cases where:
  - (a) the customs authority that furnished the information has expressly approved its use or disclosure for other purposes related to this Chapter; or
  - (b) the domestic laws and regulations of the receiving customs authority requires disclosure, in which case the receiving customs authority shall notify the customs authority that furnished the information of the relevant law.
2. Any information received in accordance with this Chapter shall be treated as confidential and will be subject to the same protection and confidentiality as the same kind of information is subject to under the national law of the customs authority where it is received.
3. Nothing in this Chapter shall be construed to require a Party to furnish or allow access to information the disclosure of which would:

- (a) be contrary to the public interest as determined by its laws, rules or regulations;
- (b) be contrary to any of its laws, rules and regulations including but not limited to those protecting personal privacy or the financial affairs and accounts of individuals;
- (c) impede law enforcement; or
- (d) prejudice legitimate commercial interest, which may include competitive position, particular juridical persons, whether public or private.

#### **Article 5.16: Penalties and Sanctions**

Each Party shall maintain measures for the imposition of civil or administrative penalties or sanctions and, where appropriate, criminal sanctions for violations of its customs laws and other laws relating to customs according to their domestic laws.

#### **Article 5.17: Customs Cooperation and Mutual Assistance**

The Parties agree to negotiate a memorandum of understanding on cooperation and mutual assistance in customs matters through their respective customs authorities no later than one (1) year after the entry into force of this Agreement.

#### **Article 5.18: Committee on Customs Procedures**

1. The Parties hereby establish a Committee on Customs Procedures (hereinafter referred to as “the Committee”).
2. The functions of the Committee shall be:
  - (a) reviewing the implementation and operation of this Chapter;
  - (b) reporting the finding of the Committee to the Commission;
  - (c) identifying areas to be improved for facilitating trade between the Parties;
  - (d) consulting for the problems which could be found during the implementation of this Chapter; and
  - (e) carrying out other functions which may be delegated by the Commission.
3. The Committee shall be composed of representatives from the customs authorities of the Parties. The Committee shall meet at such venues and times as may be agreed by the Parties.