

CHAPTER 4

CUSTOMS ADMINISTRATION AND TRADE FACILITATION

Article 4.1: Customs Procedures

Each Party shall ensure that its customs procedures are applied in a manner that is predictable, consistent and transparent.

Article 4.2: Cooperation

1. With a view to facilitating the effective operation of this Agreement, each Party shall:
 - (a) encourage cooperation with the other Party regarding significant customs issues that affect goods traded between the Parties; and
 - (b) endeavour to provide the other Party with advance notice of any significant administrative change, modification of a law or regulation, or similar measure related to its laws or regulations that governs importations, exportations or transit, that is likely to substantially affect the operation of this Agreement.
2. Each Party shall, in accordance with its law, cooperate with the other Party through information sharing and other activities as appropriate, to achieve compliance with their respective laws and regulations that pertain to:
 - (a) the implementation and operation of the provisions of this Agreement governing importations, exportations or transit, including claims for preferential tariff treatment, procedures for making claims for preferential tariff treatment and verification procedures;
 - (b) the implementation, application and operation of the Customs Valuation Agreement;
 - (c) restrictions or prohibitions on imports, exports or transit;
 - (d) investigation and prevention of customs offences, including duty evasion and smuggling; and
 - (e) other customs matters as the Parties may decide.
3. If a Party has a reasonable suspicion of unlawful activity related to its laws or

regulations governing importations, exportations or transit, it may request that the other Party provide specific confidential information that is normally collected in connection with the importation, exportation or transit of goods.

4. If a Party makes a request under paragraph 3, it shall:
 - (a) be in writing;
 - (b) specify the purpose for which the information is sought; and
 - (c) identify the requested information with sufficient specificity for the other Party to locate and provide the information.
5. The Party from which the information is requested under paragraph 3 shall, subject to its law and any relevant international agreements to which it is a party, provide a written response containing the requested information.
6. For the purposes of paragraph 3, “a reasonable suspicion of unlawful activity” means a suspicion based on relevant factual information obtained from public or private sources comprising one or more of the following:
 - (a) historical evidence of non-compliance with laws or regulations that govern importations, exportations and transit by an importer or exporter;
 - (b) historical evidence of non-compliance with laws or regulations that govern importations, exportations and transit by a manufacturer, producer or other person involved in the movement of goods from the territory of a Party to the territory of the other Party;
 - (c) historical evidence of non-compliance with laws or regulations that govern importations by some or all of the persons involved in the movement of goods within a specific product sector from the territory of a Party to the territory of the other Party; or
 - (d) other information that the Parties agree is sufficient in the context of a particular request.
7. Each Party shall endeavour to provide the other Party with any other information that would assist that Party to determine whether imports from, or exports to, that Party are in compliance with the receiving Party’s laws or regulations that govern importations, exportations and transit, in particular those related to unlawful activities, including smuggling and similar infractions.
8. In order to facilitate trade between the Parties, a Party receiving a request shall endeavour to provide the other Party with technical advice and assistance for the purpose of:

- (a) developing and implementing improved best practices and risk management techniques;
- (b) facilitating the implementation of international supply chain standards;
- (c) simplifying and enhancing procedures for clearing goods through customs in a timely and efficient manner;
- (d) developing the technical skill of customs personnel; and
- (e) enhancing the use of technologies that can lead to improved compliance with the requesting Party's laws or regulations that govern importations, exportations and transit.

9. The Parties shall endeavour to establish or maintain channels of communication for cooperation, including by establishing contact points in order to facilitate the rapid and secure exchange of information and improve coordination on importation issues.

Article 4.3: Advance Rulings

1. Each Party shall issue, prior to the importation of a good of the other Party into its territory, a written advance ruling at the written request of an importer in its territory, or an exporter or producer in the territory of the other Party,¹ with regard to:²

- (a) tariff classification;
- (b) the application of customs valuation criteria for a particular case in accordance with the Customs Valuation Agreement;
- (c) whether a good is originating in accordance with Chapter 3 (Rules of Origin and Origin Procedures); and
- (d) such other matters as the Parties may decide.

2. Each Party shall issue an advance ruling as expeditiously as possible and in no case later than 150 days after it receives a request, provided that the requester has submitted all the information that the receiving Party requires to make the advance ruling. This

¹ For greater certainty, an importer, exporter or producer may submit a request for an advance ruling through a duly authorised representative.

² For greater certainty, a Party is not required to provide an advance ruling when it does not maintain measures of the type subject to the ruling request.

includes a sample of the good for which the requester is seeking an advance ruling if requested by the receiving Party.

3. In issuing an advance ruling, the Party shall take into account the facts and circumstances that the requester has provided. For greater certainty, 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 requester in writing, setting out the relevant facts and circumstances and the basis for its decision to decline to issue the advance ruling.

4. Each Party shall provide that its advance rulings shall take effect on the date that they are issued or on another date specified in the ruling, and remain in effect for at least three years, provided that the law, facts and circumstances on which the ruling is based remain unchanged. If a Party's law provides that an advance ruling becomes ineffective after a fixed period of time, that Party shall endeavour to provide procedures that allow the requester to renew the ruling expeditiously before it becomes ineffective, in situations in which the law, facts and circumstances on which the ruling was based remain unchanged.

5. After issuing an advance ruling, the Party may modify or revoke the advance ruling if there is a change in the law, facts or circumstances on which the ruling was based, if the ruling was based on inaccurate or false information, or if the ruling was in error.

6. A Party may apply a modification or revocation in accordance with paragraph 4 after it provides notice of the modification or revocation and the reasons for it.

7. Neither Party shall apply a revocation or modification retroactively to the detriment of the requester unless the ruling was based on inaccurate or false information provided by the requester.

8. Each Party shall ensure that requesters have access to administrative review of advance rulings.

9. Subject to any confidentiality requirements in its law, each Party shall endeavour to make its advance rulings publicly available, including online.

Article 4.4: Response to Requests for Advice or Information

On request from an importer in its territory, or an exporter or producer in the territory of the other Party, a Party shall expeditiously provide advice or information relevant to the facts contained in the request on:

- (a) the requirements for qualifying for quotas, such as tariff rate quotas;

- (b) the application of duty drawback, deferral or other types of relief that reduce, refund or waive customs duties;
- (c) the eligibility requirements for goods under Article 2.6 (Goods Re-entered after Repair and Alteration);
- (d) country of origin marking, if it is a prerequisite for importation; and
- (e) other matters as the Parties may decide.

Article 4.5: Review and Appeal

1. Each Party shall ensure that any person to whom it issues a determination³ on a customs matter has access to:

- (a) administrative review of the determination, independent⁴ of the employee or office that issued the determination; and
- (b) judicial review of the determination.

2. Each Party shall ensure that an authority that conducts a review under paragraph 1 notifies the parties to the matter in writing of its decision and the reasons for the decision. A Party may require a request as a condition for providing the reasons for a decision in the review.

Article 4.6: Automation

1. Each Party shall:

- (a) endeavour to use international standards with respect to procedures for the release of goods;
- (b) make electronic systems accessible to customs users;
- (c) employ electronic or automated systems for risk analysis and targeting;
- (d) endeavour to implement common standards and elements for import and export data in accordance with the World Customs Organization (WCO) Data Model;

³ For the purposes of this Article, a determination, if made by Peru, means an administrative act.

⁴ The level of administrative review may include any authority supervising the customs administration.

- (e) take into account, as appropriate, WCO standards, recommendations, models and methods developed through the WCO or APEC; and
- (f) work toward developing a set of common data elements that are drawn from the WCO Data Model and related WCO recommendations as well as guidelines to facilitate government to government electronic sharing of data for purposes of analysing trade flows.

2. Each Party shall endeavour to provide a facility that allows importers and exporters to electronically complete standardised import and export requirements at a single entry point.

Article 4.7: Express Shipments

1. Each Party shall adopt or maintain expedited customs procedures for express shipments while maintaining appropriate customs control and selection. These procedures shall:

- (a) provide for information necessary to release an express shipment to be submitted and processed before the shipment arrives;
- (b) allow a single submission of information covering all goods contained in an express shipment, such as a manifest, through, if possible, electronic means;⁵
- (c) to the extent possible, provide for the release of certain goods with a minimum of documentation;
- (d) under normal circumstances, provide for express shipments to be released within six hours after submission of the necessary customs documents, provided the shipment has arrived;
- (e) apply to shipments of any weight or value recognising that a Party may require formal entry procedures as a condition for release, including declaration and supporting documentation and payment of customs duties, based on the good's weight or value; and
- (f) provide that, under normal circumstances, no customs duties will be assessed on express shipments valued at or below a fixed amount set under the Party's law.⁶

⁵ For greater certainty, additional documents may be required as a condition for release.

⁶ Notwithstanding this Article, a Party may assess customs duties, or may require formal entry documents, for restricted or controlled goods, such as goods subject to import licensing or similar requirements.

2. If a Party does not provide the treatment in paragraph 1(a) through (f) to all shipments, that Party shall provide a separate⁷ and expedited customs procedure that provides that treatment for express shipments.

Article 4.8: Penalties

Each Party shall adopt or maintain measures that allow for the imposition of a penalty by a Party's customs administration for a breach of its customs laws, regulations or procedural requirements, including those governing tariff classification, customs valuation, country of origin and claims for preferential treatment under this Agreement.

Article 4.9: Risk Management

1. Each Party shall adopt or maintain a risk management system for assessment and targeting that enables its customs administration to focus its inspection activities on high-risk goods and that simplifies the clearance and movement of low-risk goods.

2. In order to facilitate trade, each Party shall periodically review and update, as appropriate, the risk management system specified in paragraph 1.

Article 4.10: Release of Goods

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties. 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:

- (a) provide for the release of goods within a period no longer than that required to ensure compliance with its customs laws and, to the extent possible, within 48 hours of the arrival of the goods;
- (b) provide for the electronic submission and processing of customs information in advance of the arrival of the goods in order to expedite the release of goods from customs control upon arrival;
- (c) allow goods to be released at the point of arrival without temporary transfer to warehouses or other facilities; and

⁷ For greater certainty, "separate" does not mean a specific facility or lane.

- (d) allow an importer to obtain the release of goods prior to the final determination of customs duties, taxes and fees by the importing Party's customs administration when these are not determined prior to or promptly upon arrival, provided that the good is otherwise eligible for release and any security required by the importing Party has been provided or payment under protest, if required by a Party, has been made. Payment under protest refers to payment of duties, taxes and fees if the amount is in dispute and procedures are available to resolve the dispute.

3. If a Party allows for the release of goods conditioned on a security, it shall adopt or maintain procedures that:

- (a) ensure that the amount of the security is no greater than that required to ensure that obligations arising from the importation of the goods will be fulfilled;
- (b) ensure that the security shall be discharged as soon as possible after its customs administration is satisfied that the obligations arising from the importation of the goods have been fulfilled; and
- (c) allow importers to provide security using non-cash financial instruments, including, in appropriate cases where an importer frequently enters goods, instruments covering multiple entries.

Article 4.11: Publication

1. Each Party shall make publicly available, including online, its customs laws, regulations, and general administrative procedures and guidelines, to the extent possible in the English language.

2. Each Party shall designate or maintain one or more enquiry points to address enquiries from interested persons concerning customs matters and shall make information concerning the procedures for making such enquiries publicly available online.

3. To the extent possible, each Party shall publish in advance regulations of general application governing customs matters that it proposes to adopt and shall provide interested persons the opportunity to comment before the Party adopts the regulation.

Article 4.12: Confidentiality

1. If a Party provides information to the other Party in accordance with this Chapter and designates the information as confidential, the other Party shall keep the information confidential. The Party that provides the information may require the other Party to use it only for the purposes specified in the other Party's request.

2. This Article shall not preclude the use or disclosure of information provided pursuant to this Chapter to the extent such use or disclosure is required by the domestic laws and regulations of the Party of the customs administration receiving the information. Such customs administration shall, whenever possible, give advance notice of any such disclosure to the customs administration providing information.

3. A Party may decline to provide information requested by the other Party if that Party has failed to act in accordance with paragraph 1.

4. Each Party shall adopt or maintain procedures for protecting from unauthorised disclosure confidential information submitted in accordance with the administration of the Party's customs laws, including information the disclosure of which could prejudice the competitive position of the person providing the information.