

CHAPTER 5

CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 39: Definitions

For the purposes of this Chapter:

customs administration means:

- (a) for China, the General Administration of Customs of the People's Republic of China; and
- (b) for Maldives, Maldives Customs Service;

customs law 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 the customs authority, and any regulations made by the customs authority under their statutory powers;

customs procedures mean the treatment applied by the customs administration to goods and means of transport that are subject to customs control; and

means of transport mean various types of vessels, vehicles and aircrafts which enter or leave the territory that carry persons and/or goods.

Article 40: Scope and Objectives

1. This Chapter shall apply, in accordance with the Parties' respective international obligations and domestic customs law, to customs procedures applied to goods traded between the Parties and to the movement of means of transport between the Parties.
2. The objectives of this Chapter are to:
 - (a) simplify and harmonize customs procedures of the Parties;
 - (b) facilitate trade between the Parties; and
 - (c) promote cooperation between the customs administrations, within the scope of this Chapter.

Article 41: Facilitation

1. The Parties shall ensure that their customs procedures and practices are predictable, consistent and transparent, to facilitate trade.
2. The Parties shall use efficient customs procedures, based, as appropriate, on international standards, aiming to reduce costs and unnecessary delays in trade between them, in particular the standards and recommended practices of the World Customs Organization, including the principles of the revised *International Convention on the Simplification and Harmonization of Customs Procedures* (Revised Kyoto Convention).
3. The Parties shall limit controls, formalities and the number of documents required in the context of trade in goods between the Parties to those necessary and appropriate to ensure compliance with legal requirements, thereby simplifying, to the greatest extent possible, the related procedures.
4. The customs administration of each Party shall periodically review its customs procedures with a view to exploring options for their simplification and the enhancement of mutually beneficial arrangements to facilitate international trade.

Article 42: Transparency

1. Each Party shall promptly publish, including on the Internet, its laws, regulations, and where applicable, administrative rules or procedures, of general application, relevant to trade in goods between the Parties.
2. Each Party shall designate one or more enquiry points to address enquiries from interested persons on customs matters, and shall make available on the Internet information concerning procedures for making such enquiries.
3. To the extent practicable and in a manner consistent with its laws and regulations, each Party shall publish, in advance, on the Internet, draft laws and regulations of general application relevant to trade between the Parties, with a view to affording the public, especially interested persons, an opportunity to provide comments.
4. Each Party shall ensure, to the extent possible, that a reasonable interval is provided between the publication of new or amended laws and regulations of general application relevant to trade between the Parties and their entry into force.
5. Each Party shall administer, in a uniform, impartial and reasonable manner, its laws and regulations of general application relevant to trade between the Parties.

Article 43: Customs Valuation

The Parties shall determine the customs value of goods traded between them in accordance with the provisions of Article VII of GATT 1994 and the Customs Valuation Agreement.

Article 44: Tariff Classification

The Parties shall apply the *International Convention on the Harmonized Commodity Description and Coding System* to goods traded between them.

Article 45: Cooperation

1. To the extent permitted by their laws and regulations, the customs administrations of the Parties shall assist each other, in relation to:

- (a) the implementation and operation of this Chapter;
- (b) capacity building on customs procedures for enhancing trade facilitation; and
- (c) such other issues as the Parties may mutually agree.

2. Each Party shall endeavor to provide the other Party with timely notice of any significant modification of its customs laws, regulations or procedures that are likely to substantially affect the operation of this Agreement.

Article 46: Advance Rulings

1. Each Party shall provide for written advance rulings to be issued to a person described in paragraph 2(a) concerning tariff classification and whether goods are originating under this Agreement.

2. Each Party shall adopt or maintain procedures for issuing written advance rulings, which shall:

- (a) provide that an exporter, importer or any person with a justifiable cause, or a representative thereof, may apply for an advance ruling, before the date of importation of the goods that are the subject of the application. A Party may require that an applicant have legal representation or registration in its

territory;

- (b) include a detailed description of the information required to process a request for an advance ruling;
- (c) allow its customs administration, at any time during the course of an evaluation of an application for an advance ruling, to request that the applicant provide additional information necessary to evaluate the request;
- (d) 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
- (e) provide that the ruling be issued, in the national language of the issuing customs administration, to the applicant, expeditiously on receipt of all necessary information, within 90 days.

3. A Party that declines to issue an advance ruling shall promptly notify the applicant in writing, setting forth the basis for its decision to decline to issue the advance ruling.

4. A Party may reject requests for an advance ruling where the additional information requested in accordance with paragraph 2(c) is not provided within the specified period.

5. Each Party shall endeavor to make information on advance rulings which it considers to be of significant interest to other traders, publicly available, taking into account the need to protect confidential information.

6. Subject to paragraph 7, each Party shall apply an advance ruling to importations into its territory through any port of entry, beginning on the date the advance ruling was issued or on any other date specified in the advance ruling. The Party shall ensure the same treatment of all importations of goods subject to the advance ruling during the validity period regardless of the importer or exporter involved, where the facts and circumstances are identical in all material respects.

7. A Party may modify or revoke an advance ruling, consistent with this Agreement, where there is a change in the laws or regulations; where incorrect information was provided or relevant information was withheld; where there is a change in a material fact; or where there is a change in the circumstances on which the ruling was based.

Article 47: Review and Appeal

Each Party shall, in accordance with its domestic laws and regulations, provide that the importer, exporter or any other person affected by its determinations on a customs matter, have access to:

- (a) a level of administrative review of determinations by its customs administrations independent of the official or office responsible for the decision under review; and
- (b) judicial review of the determinations subject to its laws and regulations.

Article 48: Application of Information Technology

1. Each Party shall apply information technology to support customs operations, where it is cost-effective and efficient, particularly in the paperless trading context, taking into account developments in this area within relevant international organizations, including the World Customs Organization.
2. Each Party shall endeavor to establish, as far as practicable, an electronic means for communication of relevant information required by its customs administration and other relevant border agencies to facilitate the international movement of goods and means of transport.

Article 49: Risk Management

1. Each Party shall determine which persons, goods or means of transport are to be examined and the extent of the examination, based on risk management.
2. Each Party shall work to further enhance the use of risk management techniques in the administration of its customs procedures so as to facilitate the clearance of low-risk goods and allow resources to focus on high-risk goods.
3. Risk management shall be applied in such a manner that it does not create arbitrary or unjustifiable discrimination under the same conditions or disguised restriction on international trade.

Article 50: 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. For greater certainty, this paragraph shall not require a Party to release goods where its requirements for release have not been met.

2. In accordance with paragraph 1, each Party shall adopt or maintain procedures that:

- (a) provide for the release of goods as rapidly as possible after arrival, provided all other regulatory requirements have been met;
- (b) as appropriate, provide for advance electronic submission and processing of information before the physical arrival of goods with a view to expediting the release of goods; and
- (c) may allow importers to obtain the release of goods prior to meeting all import requirements of that Party if the importer provides sufficient and effective guarantees and where it is decided that neither further examination, physical inspection nor any other submission is required.

3. Each Party shall endeavor to adopt and maintain a system under which goods in need of urgent clearance can obtain prompt customs clearance.

4. Each Party shall ensure that goods are released within a time period no longer than that required to ensure compliance with its customs laws.

Article 51: Perishable Goods

1. With a view to preventing avoidable loss or deterioration of perishable goods, and provided all regulatory requirements have been met, each Party shall:

- (a) provide for the release of perishable goods under normal circumstances within the shortest possible time; and
- (b) provide for the release of perishable goods, in exceptional circumstances where it would be appropriate to do so, outside the business hours of its customs administration.

2. Each Party shall give appropriate priority to perishable goods when scheduling any examinations that may be required.

Article 52: Single Window

1. The Parties shall endeavor to establish or maintain a single window, enabling traders to submit documentation and/or data requirements for importation, exportation, or transit of goods through a single entry point to the participating authorities or

agencies. After the examination by the participating authorities or agencies of the documentation and/or data, the results shall be notified to the applicants through the single window in a timely manner.

2. In cases where documentation and/or data requirements have already been received through the single window, the same documentation and/or data requirements shall not be requested by participating authorities or agencies except in urgent circumstances and other limited exceptions which are made public.

3. The Parties shall, to the extent possible and practicable, use information technology to support the single window.

Article 53: Consultation

1. The customs administration of each Party may at any time request consultations with the customs administration of the other Party, on any matter arising from the implementation or operation of this Chapter, in cases where there are reasonable grounds or truth provided by the requesting Party. Such consultations shall be conducted through the relevant contact points, and shall take place within 60 days of the request, or any other possible time period that the Parties may mutually determine.

2. In the event that such consultations fail to resolve any such matter, the requesting Party may refer the matter to the Committee on Customs referred to in Article 54 for further consideration.

3. Each customs administration shall designate one or more contact points for the purposes of this Chapter. Information on the contact points shall be provided to the other Party and any amendment of the said information shall be notified promptly.

Article 54: Committee on Customs

1. With the view to the effective implementation and operation of Chapters 4 (Rules of Origin and Origin Implementation Procedures) and 5 (Customs Procedures and Trade Facilitation), a Committee on Customs is hereby established, under the FTA Joint Commission.

2. The function of the Committee on Customs shall be as follows:

(a) ensure the proper function of these two Chapters and attempt to resolve all issues arising from their application;

(b) keep Annex 2 updated on the basis of the transposition of the Harmonized

Commodity Description and Coding System of the World Customs Organization;

- (c) ensure the effective, uniform and consistent administration of these two Chapters, and enhance the cooperation in this regard;
- (d) identify areas related to these two Chapters to be improved for facilitating trade between the Parties;
- (e) address technical issues related to the implementation of Annex 2, such as change in tariff classification, regional value content calculation, etc.;
- (f) review the interpretation and implementation of these two Chapters, and propose revisions to these two chapters as appropriate;
- (g) exchange information on customs strategic development of each Party to strengthen the cooperation between the Parties; and
- (h) make recommendations and report to the FTA Joint Commission.

3. The Committee on Customs shall consist of representatives from Customs administrations of the Parties. When deemed necessary and appropriate, as well as agreed by the Parties, representatives from other relevant government agencies or relevant non-government organizations may be invited to the Committee meetings. One or more contact points shall be designated for this purpose.

4. The Committee shall be convened annually, or at other times as the Parties may mutually agree, in a format or method agreeable to the Parties.