

Chapter Five

Customs Administration and Trade Facilitation

Article 5.1: Publication

1. Each Party shall publish, including on the Internet, its customs laws, regulations, and general administrative procedures.
2. Each Party shall designate or maintain one or more inquiry 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. To the extent possible, each Party shall publish in advance any regulations of general application governing customs matters that it proposes to adopt and provide interested persons the opportunity to comment prior to their adoption.

Article 5.2: 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.
2. Pursuant to paragraph 1, each Party shall adopt or maintain procedures that:
 - (a) provide for the release of goods within a period no greater than that required to ensure compliance with its customs laws, and to the extent possible release the goods within 48 hours of arrival;
 - (b) allow goods to be released at the point of arrival, without temporary transfer to warehouses or other facilities; and
 - (c) allow importers to withdraw goods from customs before and without prejudice to the final determination by its customs authority of the applicable customs duties, taxes, and fees.¹

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, taxes, and fees in connection with the importation of the good.

Article 5.3: Automation

Each Party 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, each Party shall:

- (a) endeavor to use international standards;
- (b) make electronic systems accessible to customs users;
- (c) provide for electronic submission and processing of information and data before arrival of the shipment to allow for the release of goods on arrival;
- (d) employ electronic or automated systems for risk analysis and targeting;
- (e) work towards developing compatible electronic systems among the Parties' customs authorities, to facilitate government to government exchange of international trade data; and
- (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 adopt or maintain risk management systems that enable its customs authority to focus its inspection activities on high-risk goods and that simplify the clearance and movement of low-risk goods, while respecting the confidential nature of the information it obtains through such activities.

Article 5.5: Cooperation

1. With a view to facilitating the effective operation of this Agreement, each Party shall endeavor to provide each other Party 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 cooperate in achieving compliance with their respective laws and regulations pertaining to:

- (a) the implementation and operation of the provisions of this Agreement governing importations or exportations, including claims of origin and origin procedures;
- (b) the implementation and operation of the Customs Valuation Agreement;

- (c) restrictions or prohibitions on imports or exports; and
- (d) other customs matters as the Parties may agree.

3. Where a Party has a reasonable suspicion of unlawful activity related to its laws or regulations governing importations, the Party may request that another Party provide specific confidential information normally collected in connection with the importation of goods.

4. A Party's request under paragraph 3 shall be in writing, shall specify the purpose for which the information is sought, and shall identify the requested information with sufficient specificity for the other Party to locate and provide the information.

5. The Party from whom the information is requested shall, in accordance with its law and any relevant international agreements to which it is a party, provide a written response containing such information.

6. For 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 governing importations by an importer or exporter;
- (b) historical evidence of non-compliance with laws or regulations governing importations by a manufacturer, producer, or other person involved in the movement of goods from the territory of one Party to the territory of another Party;
- (c) historical evidence that some or all of the persons involved in the movement from the territory of one Party to the territory of another Party of goods within a specific product sector have not complied with a Party's laws or regulations governing importations; or
- (d) other information that the requesting Party and the Party from whom the information is requested agree is sufficient in the context of a particular request.

7. Each Party shall endeavor to provide another Party with any other information that would assist that Party in determining whether imports from or exports to that Party are in compliance with the other Party's laws or regulations governing importations, in particular those related to the prevention of unlawful activities such as smuggling and similar infractions.

8. For purposes of facilitating trade between the Parties, each Party shall endeavor to provide the other Parties with technical advice and assistance for the purpose of improving risk

assessment and risk management techniques, facilitating the implementation of international supply chain standards, simplifying and expediting customs procedures for the timely and efficient clearance of goods, advancing the technical skill of personnel, and enhancing the use of technologies that can lead to improved compliance with regard to a Party's laws or regulations governing importations.

9. The Parties shall endeavor to cooperate to enhance each Party's ability to enforce its regulations governing importations. The Parties shall further endeavor to establish and maintain other channels of communication to facilitate the secure and rapid exchange of information and to improve coordination on importation issues.

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 require a written assurance 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 another Party where that Party has failed to act in conformity with the assurance 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 providing the information, submitted in accordance with the administration of the Party's customs laws, shall be protected from unauthorized disclosure.

Article 5.7: Express Shipments

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

- (a) provide a separate and expedited customs procedure for express shipments;
- (b) provide for the submission and processing of information necessary for the release of an express shipment before the express shipment arrives;
- (c) allow submission of a single manifest covering all goods contained in a shipment transported by an express shipment service, through, if possible, electronic means;
- (d) to the extent possible, provide for clearance of certain goods with a minimum of documentation;

- (e) under normal circumstances, provide for clearance of express shipments within six hours after submission of the necessary customs documents, provided the shipment has arrived;
- (f) apply without regard to weight or customs value; and
- (g) provide, under normal circumstances, that no customs duties or taxes will be assessed on, nor will formal entry documents be required for, express shipments valued at US\$200 or less.²

Article 5.8: Review and Appeal

Each Party shall ensure that with respect to its determinations³ on customs matters, importers in its territory have access to:

- (a) a level of administrative review independent of the employee or office that issued the determinations; and
- (b) judicial review of the determinations.

Article 5.9: Penalties

Each Party shall adopt or maintain measures that allow for the imposition of civil or administrative penalties and, where appropriate, criminal sanctions for violations of its customs laws and regulations, including those governing tariff classification, customs valuation, country of origin, and claims for preferential treatment under this Agreement.

Article 5.10: Advance Rulings

1. Each Party shall issue, before a good is imported into its territory, a written advance ruling at the written request of an importer in its territory, or an exporter or producer⁴ in the territory of another Party with regard to:

- (a) tariff classification;

² Notwithstanding Article 5.7(g), a Party may require that express shipments be accompanied by an airway bill or bill of lading. For greater certainty, a Party may assess customs duties or taxes and may require formal entry documents for restricted goods.

³ For purposes of this Article, a determination, if made by a Party other than the United States means an administrative act.

⁴ For greater certainty, an importer, exporter, or producer may submit a request for an advance ruling through a duly authorized representative.

- (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 other relief from customs duties;
- (d) whether a good is originating in accordance with Chapter Four (Rules of Origin and Origin Procedures);
- (e) whether a good re-entered into the territory of a Party after being exported to the territory of the other Party for repair or alteration is eligible for duty free treatment in accordance with Article 2.6 (Goods Re-entered after Repair or Alteration);
- (f) country of origin marking;
- (g) the application of quotas; and
- (h) such other matters as the Parties may agree.

2. Each Party shall issue an advance ruling within 150 days after a request, provided that the requester has submitted all information that the Party requires, including, if the Party requests, a sample of the good for which the requester is seeking an advance ruling. In issuing an advance ruling, the Party shall take into account facts and circumstances the requester has provided.

3. Each Party shall provide that advance rulings shall be in force from their date of issuance, or another date specified in the ruling, provided that the facts or circumstances on which the ruling is based remain unchanged.

4. The issuing Party may modify or revoke an advance ruling after the Party notifies the requester. The issuing Party may modify or revoke a ruling retroactively only if the ruling was based on inaccurate or false information.

5. Subject to any confidentiality requirements in its laws, each Party shall make its advance rulings publicly available.

6. If a requester provides false information or omits relevant facts or circumstances relating to the 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, monetary penalties, or other sanctions.

Article 5.11: Implementation

For Colombia:

- (a) Articles 5.1.1, 5.1.2, and 5.7 shall enter into force two years after the date of entry into force of this Agreement;
- (b) Article 5.10 shall enter into force three years after the date of entry into force of this Agreement; and
- (c) Article 5.2 shall enter into force one year after the date of entry into force of this Agreement.