

CHAPTER 4

CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 4.1: Objectives

The objectives of this Chapter are to:

- (a) simplify and harmonise customs procedures of each Party;
- (b) ensure consistency, predictability, and transparency in the application of customs laws and regulations of each Party;
- (c) ensure efficient and expeditious clearance of goods;
- (d) facilitate trade in goods between the Parties by the use of information and communications technology, to the extent possible taking into account international standards; and
- (e) promote cooperation between the customs authorities of each Party.

Article 4.2: Scope

1. This Chapter shall apply to customs procedures for goods traded between the Parties and means of transport 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.

Article 4.3: Definitions

For the purposes of this Chapter:

- (a) **customs authority** means the authority that, according to the legislation of each Party, is responsible for the administration and enforcement of its customs laws and regulations:
 - (i) in the case of Thailand, the Customs Department; and
 - (ii) in the case of Sri Lanka, the Sri Lanka Customs;

(b) **customs laws and regulations** means such laws and regulations applied and enforced by the customs authority of each Party concerning the importation, exportation, and transit/transshipment of goods, so far 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;

(c) **customs procedures** means the treatment applied by the customs authority of each Party to goods and means of transport that are subject to customs laws and regulations including customs control; and

(d) **Expedited Shipment** means all goods imported by or through an enterprise operating a consignment service for the expeditious cross-border movement of goods who assumes liability to the customs authority for those goods.

Article 4.4: Pre-arrival Processing

1. Each Party shall adopt or maintain procedures allowing for the submission of import documentation and other required information in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival.
2. Each Party shall provide, as appropriate, for advance lodging of documents and other information referred to in paragraph 1, in electronic format for pre-arrival processing of such documents.

Article 4.5: Advance Rulings

1. Customs authorities of each Party shall, subject to its laws and regulations, issue a written advance ruling prior to the importation of goods 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 an application of an exporter, importer or any person with respect to:

- (a) the tariff classification of goods;
 - (b) valuation method, the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts; or
 - (c) whether goods qualify as originating goods 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 120 days.
3. Each Party shall provide advance rulings that shall be in force from their date of issuance, or such other date specified by the ruling, for the period of time, in accordance with its laws and regulations, provided that the facts or circumstances on which the ruling is based remain unchanged.
4. Each Party may modify or revoke an advance ruling:
- (a) if the ruling was based on an error of fact;
 - (b) if there is a change in the material facts or circumstances on which the ruling was based;
 - (c) to conform with a judicial decision; or
 - (d) based on reasons or circumstances specified in its laws and regulations.
5. Before issuing a decision, each Party may reject a request for an advance ruling:
- (a) if the requester does not submit additional required information within specified period;
 - (b) if a request was based on an error of fact;
 - (c) if a detailed request is under verification by customs authority or other agencies; or
 - (d) based on reasons or circumstances specified by customs authority of each Party.
6. Each Party shall provide, in its laws and regulations, that any modification or revocation of an advance ruling shall be effective on the date on which the

modification or revocation is issued, or on such later date as may be specified therein, and shall not be applied to importations of goods that have occurred prior to that date, unless the person to whom the advance ruling was issued has not acted in accordance with the terms and conditions of the advance ruling.

7. Where an importer claims that the treatment accorded to imported goods 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.

8. Each Party shall make its advance rulings publicly available, subject to confidentiality requirements in its laws and regulations, for the purposes of promoting the consistent application of advance rulings to other goods.

9. 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 laws and regulations.

10. Where a Party modifies or revokes an advance ruling, it shall provide written notice to the requester setting out the relevant facts and the basis for its decision. Where a Party revokes or modifies an advance ruling with retrospective effect, it may only do so where the advance ruling was based on incomplete, incorrect, false or misleading information.

11. An advance ruling issued by a Party shall be binding on that Party in respect of the requester that sought it. The Party may provide that the advance ruling is binding on the requester.

Article 4.6: Customs Procedures

1. The customs authority of each 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 each Party shall, where possible and to the extent permitted by their respective customs laws and regulations, conform with the

standards and recommended practices of the World Customs Organization (WCO) and other international organisations as relevant to customs.

3. The customs authority of each Party shall review its customs procedures and practices with a view to their simplification to facilitate trade.

Article 4.7: 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 may:

(a) provide for the release of goods within a period no greater than the period that is 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.

3. Under normal circumstances, the Parties shall endeavor to ensure the simultaneous inspection of goods by the competent national authorities when goods are entering or leaving the Parties' customs territory at a single time and place.

Article 4.8: Trade Facilitation Measures for Authorised Operators

1. Each Party shall provide additional trade facilitation measures related to import, export, or transit formalities and procedures, pursuant to paragraph 3, to operators who meet specified criteria, hereinafter called “authorised operators”. Alternatively, a Party may offer such trade facilitation measures through customs procedures generally available to all operators and is not required to establish a separate scheme.

2. The specified criteria to qualify as an authorised operator shall be related to compliance, or the risk of non-compliance, with requirements specified in a Party’s laws, regulations or procedures.

(a) Such criteria, which shall be published, may include:

(i) an appropriate record of compliance with customs and other related laws and regulations;

(ii) a system of managing records to allow for necessary internal controls;

(iii) financial solvency, including, where appropriate, provision of a sufficient security or guarantee; and

(iv) supply chain security.

(b) Such criteria shall not:

(i) be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail; and

(ii) to the extent possible, restrict the participation of small and medium-sized enterprises.

3. The trade facilitation measures provided pursuant to paragraph 1 shall include at least three of the following measures¹:

(a) low documentary and data requirements, as appropriate;

(b) low rate of physical inspections and examinations, as appropriate;

¹ A measure listed in subparagraphs (a) through (f) will be deemed to be provided to authorised operators if it is generally available to all operators.

- (c) rapid release time, as appropriate;
 - (d) deferred payment of duties, taxes, fees, and charges;
 - (e) use of comprehensive guarantees or reduced guarantees; and
 - (f) clearance of goods at the premises of the authorised operator or another place authorised by the relevant customs authority.
4. Each Party is encouraged to develop authorised operator schemes based on international standards, where such standards exist, except when such standards would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued.
5. In order to enhance the trade facilitation measures provided to operators, a Party shall afford to the other Party the possibility of negotiating mutual recognition of authorised operator schemes.
6. Each Party is encouraged to exchange relevant information about authorised operator schemes in force.

Article 4.9: Risk Management

1. In order to facilitate release of goods traded between the Parties, the customs authority of each Party shall apply risk management methodology.
2. The customs authority of each Party is encouraged to 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 focus its inspection activities on high-risk goods and that simplify the clearance and movement of low-risk goods.
4. The Parties shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or a disguised restriction on international trade.
5. The Parties shall base risk management on an assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include, *inter alia*, the Harmonized System Code, nature and description of the goods, country of

origin, country from which the goods were shipped, value of the goods, compliance record or traders, and type of means of transport.

Article 4.10: Expedited Shipments

1. Each Party shall adopt or maintain customs procedures to expedite the clearance of expedited shipments for at least those goods entered through air cargo facilities while maintaining appropriate customs control and selection, by:

(a) providing for pre-arrival processing of information related to expedited shipments to the extent possible;

(b) permitting, to the extent possible, the single submission of information covering all goods contained in an expedited shipment, through electronic means;

(c) minimizing, to the extent possible, the documentation required for the release of expedited shipments;

(d) providing for expedited shipments to be released under normal circumstances as rapidly as possible, and within six hours, when possible, after the arrival of the goods and submission of the information required for release;

(e) endeavouring to apply the treatment in subparagraphs (a) through (d) to shipments of any weight or value recognising that a Party is permitted to require additional entry procedures, including declarations and supporting documentation and payment of duties and taxes, and to limit such treatment based on the type of goods, provided that the treatment is not limited to low value goods such as documents; and

(f) providing, to the extent possible, for a *de minimis* shipment value or dutiable amount for which customs duties and taxes will not be collected, aside from certain prescribed goods. Internal taxes, such as value added taxes and excise taxes, applied to imports consistently with Article III of GATT 1994, are not subject to this subparagraph.

2. Nothing in paragraph 1 shall affect the right of a Party to examine, detain, seize, confiscate or refuse the entry of goods, or to carry out post-clearance audit, including in connection with the use of risk management systems.

Further, nothing in paragraph 1 shall prevent a Party from requiring, as a condition for release, the submission of additional information and the fulfillment of non-automatic licensing requirement.

Article 4.11: Time Release Studies

1. The Parties are encouraged to measure the time required for the release of goods by the customs authority periodically and in a consistent manner, and to publish the findings thereof, using tools such as the Guide to Measure the Time Required for the Release of Goods issued by the WCO with a view to assessing their trade facilitation measures and to considering opportunities for further improvement of the time required for the release of goods.
2. A Party is encouraged to share with the other Party their experiences in the time release studies referred to in paragraph 1, including methodologies used and bottlenecks identified.

Article 4.12: Temporary Admission of Goods

1. Each Party shall allow temporary admission of goods in accordance with relevant international standards applied by, and international agreements applicable to, such Party and its laws and regulations.
2. For the purposes of this Article, **temporary admission** means customs procedures under which certain goods may be brought into a customs territory conditionally relieved, totally, or partially, from payment of customs duties. Such goods must be imported for a specific purpose and must be intended for re-exportation within a specified period and without having undergone any change except normal depreciation due to the use made of them.

Article 4.13: Use of Automated Systems

1. The customs authorities of the Parties shall make cooperative efforts to promote the use of information and communications technology in their customs procedures to support customs operations, including sharing best practices, for the purposes 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 businesses directly affected.
5. Each Party shall develop or maintain single window systems within the capability of that Party, to facilitate a single, electronic submission of all information required by customs and other legislation for the exportation, importation, and transit of goods.

Article 4.14: 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 made 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 4.15: Penalties Disciplines

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 its laws and regulations.

Article 4.16: Enquiry Points

1. Each Party shall designate one or more enquiry points to deal with enquiries from interested persons from either Party on customs matters arising from the implementation of this Agreement, and provide details of such enquiry points to the other Party's customs administration.
2. Information concerning the procedures for making such enquiries shall be made easily accessible to the public.

Article 4.17: Publication

1. Each Party shall promptly publish or otherwise make available, including through electronic means, the following information in a non-discriminatory and easily accessible manner, in order to enable interested parties to become acquainted with them:
 - (a) importation, exportation, and transit procedures (including port, airport, and other entry-point procedures) and required forms and documents;
 - (b) applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;
 - (c) rules for the classification or the valuation of products for customs purposes;
 - (d) import, export, or transit restrictions or prohibitions;
 - (e) fees and charges imposed on or in connection with importation, exportation, or transit;
 - (f) penalty provisions against breaches of import, export, or transit formalities; and
 - (g) appeal procedures.
2. The information in paragraph 1 shall, to the extent practicable, be made available on the internet in the English language.
3. The Parties shall designate or maintain one or more enquiry or information points to address enquiries by interested persons concerning customs and trade facilitation matters. Such enquiries shall be addressed in the English language.

Article 4.18: Customs Cooperation

1. The Parties shall enhance their cooperation in customs and customs related matters. In order to enhance cooperation on customs matters, the Parties shall, to the extent possible, *inter alia*:

(a) exchange information concerning their respective customs legislation, its implementation, and customs procedures, particularly in the following areas:

(i) simplification and modernisation of customs procedures;

(ii) border enforcement of intellectual property rights by the customs authorities;

(iii) transit movements and transshipment; and

(iv) relations with the business community;

(b) uphold their commitment to the facilitation of the legitimate movement of goods, and to the improvement of customs techniques and procedures in accordance with the provisions of this Agreement;

(c) consider developing joint initiatives relating to import, export, and other customs procedures towards ensuring an effective service to the business community;

(d) work together on customs-related aspects of securing and facilitating the international trade supply chain; and

(e) strengthen coordination in international organisations such as the WTO and the WCO.

Article 4.19: Post-Clearance Audit

1. With a view to expediting the release of goods, the Parties shall adopt or maintain post-clearance audits to ensure compliance with customs and other related laws and regulations.

2. Each Party shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. The Parties shall conduct post-clearance audits in a transparent manner. Where conclusive results of a post-clearance audit have been achieved, the Party

conducting the post-clearance audit shall, without delay, notify the person whose record was audited of the audit results, the person's rights and obligations, and the reasons for the audit results, wherever practicable.

3. Each Party shall, wherever practicable, use the result of post-clearance audit in applying risk management.

Article 4.20: Electronic Payment

Each Party shall adopt or maintain procedures allowing the option of electronic payment for duties, taxes, fees, and charges collected by the relevant customs authorities incurred upon importation and exportation.