

## CHAPTER 7

### CUSTOMS ADMINISTRATION AND TRADE FACILITATION

#### Section A: Trade Facilitation

##### Article 7.1: Trade Facilitation

1. The Parties affirm their rights and obligations under the *Agreement on Trade Facilitation*, set out in Annex 1A to the WTO Agreement.
2. With a view to minimizing the costs incurred by traders through the importation, exportation, or transit of a good, each Party shall administer its customs procedures in a manner that facilitates the importation, exportation, or transit of a good, and supports compliance with its law.
3. The Parties shall discuss within the Trade Facilitation Committee established under Article 7.24 (Committee on Trade Facilitation) additional measures to facilitate trade. The Parties are encouraged to adopt additional measures that build on the obligations in this Chapter with a view to further facilitating trade.

##### Article 7.2: Online Publication

Each Party shall make available on a free, publicly accessible website the following information and update such information as necessary:

- (a) an informational resource that describes the procedures and practical steps an interested person needs to follow for importation into, exportation from, or transit through the territory of the Party;
- (b) the documentation and data that it requires for importation into, exportation from, or transit through its territory;
- (c) its laws, regulations, and procedures for importation into, exportation from or transit through its territory;
- (d) web links to all current customs duties, taxes, fees, and charges it imposes on or in connection with importation, exportation, or transit, including when the fee or charge applies, and the amount or rate;
- (e) contact information for its enquiry point or points established or maintained pursuant to Article 7.4 (Enquiry Points);

- (f) its laws, regulations, and procedures for becoming a customs broker, for issuing customs broker licenses, and regarding the use of customs brokers;
- (g) informational resources that help an interested person understand their responsibilities when importing into, exporting from, or transiting goods through its territory, how to be compliant, and the benefits of compliance; and
- (h) procedures to correct an error in a customs transaction, including the information to submit and, if applicable, the circumstances when penalties will not be imposed.

### **Article 7.3: Communication with Traders**

1. To the extent possible, in accordance with its law, each Party shall publish, in advance, regulations of general application governing trade and customs matters that it proposes to adopt and shall provide interested persons the opportunity to comment before the Party adopts such regulations.
2. Each Party shall adopt or maintain a mechanism to regularly communicate with traders within its territory on its procedures related to the importation, exportation, and transit of goods. These communications shall provide traders with an opportunity to raise emerging issues and provide their views to the customs administration on these procedures.

### **Article 7.4: Enquiry Points**

1. Each Party shall establish or maintain one or more enquiry points to respond to enquiries by interested persons concerning importation, exportation, and transit procedures.
2. A Party shall not require the payment of a fee or charge for answering enquiries under paragraph 1.<sup>1</sup>
3. Each Party shall ensure that its enquiry points respond to enquiries within a reasonable period of time, which may vary depending on the nature or complexity of the request.

### **Article 7.5: Advance Rulings**

1. Each Party shall, through its customs administration, issue a written advance ruling, prior

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<sup>1</sup> For greater certainty, a Party may require payment of a fee or charge with respect to other enquiries requiring document search, duplication, and review in connection with requests in accordance with its laws and regulations providing public access to government records.

to the importation of a good into its territory, that sets forth the treatment that the Party shall provide to the good at the time of importation.

2. Each Party shall allow an exporter, importer, producer, or any other person with a justifiable cause, or a representative thereof, to request a written advance ruling.

3. No Party shall as a condition for requesting an advance ruling, require an exporter or producer of another Party to establish or maintain a contractual or other relation with a person located in the territory of the importing Party.

4. Each Party shall issue advance rulings with regard to:

- (a) tariff classification;
- (b) the application of customs valuation criteria for a particular case in accordance with the Customs Valuation Agreement;
- (c) the origin of the good, including whether the good qualifies as an originating good under the terms of this Agreement;
- (d) whether a good is subject to a quota or a tariff-rate quota; and
- (e) other matters as the Parties may agree.

5. Each Party shall adopt or maintain uniform procedures throughout its territory for the issuance of advance rulings, including a detailed description of the information required to process an application for a ruling.

6. Each Party shall provide that its customs administration:

- (a) may, at any time during the course of an evaluation of a request for an advance ruling, request supplemental information from the person requesting the ruling or a sample of the good for which the advance ruling was requested;
- (b) in issuing an advance ruling, take into account the facts and circumstances provided by the person requesting that ruling;
- (c) issue the ruling as expeditiously as possible and in no case later than 120 days after it has obtained all necessary information from the person requesting an advance ruling; and
- (d) provide to that person a full explanation of the reasons for the ruling.

7. Each Party shall provide that its advance rulings take effect on the date that they are issued or on a later date specified in the ruling, and remain in effect unless the advance ruling is modified or revoked.
8. Each Party shall provide to a person requesting an advance ruling the same treatment, including the same interpretation and application of provisions of Chapter 4 (Rules of Origin) regarding a determination of origin, as it provided to any other person to whom it issued an advance ruling, provided that the facts and circumstances are identical in all material respects.
9. An advance ruling issued by a Party shall apply throughout its territory to the person to whom the ruling is issued.
10. After issuing an advance ruling, the issuing 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, or if the ruling was based on inaccurate or false information, or on an error.
11. 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 a post clearance audit or an administrative, judicial, or quasi-judicial review or appeal. A Party that declines to issue an advance ruling shall promptly notify, in writing, the person requesting the ruling, setting out the relevant facts and circumstances and the basis for its decision.
12. No Party shall apply retroactively a revocation or modification to the detriment of the requester unless the person to whom the advance ruling was issued has not acted in accordance with its terms and conditions or the ruling was based on inaccurate or false information provided by the requester.
13. Each Party shall provide that, unless it retroactively applies a modification or revocation as described in paragraph 12, 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.
14. The issuing Party shall postpone the effective date of such modification or revocation for a period not exceeding 90 days if the person to whom the advance ruling was issued demonstrates that it has relied in good faith to its detriment on that ruling.
15. Each Party shall, in accordance with its laws, regulations, and procedures, make its advance rulings, complete or redacted, available on a free, publicly accessible website.

#### **Article 7.6: Advice or Information Regarding Duty Drawback or Duty Deferral Programs**

Upon request from an importer in its territory, or an exporter or producer in the territory of another Party, a Party shall, within a reasonable timeframe, provide advice or information relevant

to the facts contained in the request on the application of duty drawback or duty deferral programs that reduce, refund, or waive customs duties.

#### **Article 7.7: 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 immediate release of goods upon receipt of the customs declaration and fulfillment of all applicable requirements and procedures;
  - (b) provide for the electronic submission and processing of documentation and data, including manifests, 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 requiring temporary transfer to warehouses or other facilities; and
  - (d) require that the importer be informed if a Party does not promptly release goods, including, to the extent permitted by its law, the reasons why the goods are not released and which border agency, if not the customs administration, has withheld release of the goods.
3. Each Party shall adopt or maintain procedures that provide for the release of goods prior to a final determination and payment of any customs duties, taxes, fees, and charges imposed on or in connection with importation of the goods, when these are not determined prior to or promptly upon arrival, provided that the goods are otherwise eligible for release and any security required by the importing Party has been provided.
4. 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 or, for instruments covering multiple entries, until it is no longer required by the customs administration; and

- (c) allow an importer to provide security using a non-cash financial instrument, including, if applicable, when an importer frequently enters goods, an instrument covering multiple entries.

5. Nothing in this Article requires a Party to release a good if its requirements for release have not been met nor prevents a Party from liquidating a security in accordance with its law.

6. Each Party shall allow, to the extent practicable, goods intended for import to be moved within its territory under customs control from the point of entry into the Party's territory to another customs office in its territory from where the goods are intended to be released, provided the applicable regulatory requirements are met.

### **Article 7.8: Express Shipments**

1. Each Party shall adopt or maintain specific expedited customs procedures for express shipments while maintaining appropriate customs controls. These procedures shall:

- (a) provide for information required to release an express shipment to be submitted and processed before the shipment arrives;
- (b) allow a single submission of information, such as a manifest, covering all goods contained in an express shipment, through, if possible, electronic means;
- (c) expedite the release of these shipments based on, to the extent possible, minimum documentation or a single submission of information;
- (d) provide for these shipments, under normal circumstances, to be released immediately after arrival, provided that all required documentation and data are submitted;
- (e) apply to shipments of any weight or value, recognizing that a Party may require formal entry procedures as a condition for release, including a 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 or taxes will be assessed at the time or point of importation or formal entry procedures required,<sup>2</sup> on express shipments of a Party valued at or below a fixed amount set out under the Party's law, provided that the shipment does not form part of a series of shipments

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<sup>2</sup> For greater certainty, this subparagraph shall not prevent a Party from requiring informal entry procedures, including applicable supporting documents.

carried out or planned for the purpose of evading duties or taxes, or avoiding any regulation applicable to the formal entry procedures required by the importing Party. The fixed amount set out under the Party's law shall be at least<sup>3</sup>:

- (i) for the United States, US\$800,
- (ii) for Mexico, US\$117 for customs duties and US\$50 for taxes, and
- (iii) for Canada, C\$150 for customs duties and C\$40 for taxes.

For these shipments, each Party shall allow for the periodic assessment and payment of duties and taxes applicable at the time or point of importation.

2. Each Party shall adopt or maintain procedures that apply fewer customs formalities than those applied under formal entry procedures, to shipments valued at less than CAD\$3,300 for Canada and US\$2,500 for the United States and Mexico, provided that the shipments do not form part of a series of importations that may be reasonably considered to have been undertaken or arranged for the purpose of avoiding compliance by an importer with the importing Party's laws, regulations, or procedures related to formal entry.

3. Nothing in this Article prevents a Party from requiring the necessary information and documents as a condition for the release of goods, and from assessing customs duties or taxes for restricted or controlled goods.

#### **Article 7.9: Use of Information Technology**

Each Party shall:

- (a) use information technology that expedites procedures for the release of goods;
- (b) make available by electronic means any declaration or other form that is required for import, export, or transit of goods through its territory;
- (c) allow a customs declaration and related documentation to be submitted in electronic format;
- (d) make electronic systems accessible to importers, exporters, persons engaged in the transit of goods through its territory, and other customs users in order to submit and receive information;

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<sup>3</sup> Notwithstanding the amounts set out under this subparagraph, a Party may impose a reciprocal amount that is lower for shipments from another Party if the amount provided for under that other Party's law is lower than that of the Party.

- (e) promote the use of its electronic systems to facilitate the communication between traders and its customs administration and other related agencies;
- (f) adopt or maintain procedures allowing for the electronic payment of customs duties, taxes, fees, or charges imposed on or in connection with importation or exportation and collected by customs and other related agencies;
- (g) use electronic risk management systems in accordance with Article 7.12 (Risk Management); and
- (h) endeavor to allow an importer, through its electronic systems, to correct multiple import declarations previously submitted to the Party involving the same issue through a single submission.

#### **Article 7.10: Single Window**

1. Each Party shall establish or maintain a single window system that enables the electronic submission through a single entry point of the documentation and data the Party requires for importation into its territory.
2. Each Party shall review the operations of its single window system with a view to expanding its functionality to cover all its import, export, and transit transactions.
3. Each Party shall, in a timely manner, inform a person that is using its single window system of the status of the release of goods, through the single window system.
4. If a Party receives documentation or data for a good or shipment of goods through its single window system, the Party shall not request the same documentation or data for that good or shipment of goods, except in urgent circumstances or pursuant to other limited exceptions set out in its laws, regulations, or procedures. Each Party shall minimize the extent to which paper documents are required if electronic copies are provided.
5. In building and maintaining its single window system, each Party shall:
  - (a) incorporate, as appropriate, the World Customs Organization Data Model for data elements;
  - (b) endeavor to implement standards and data elements for import, export, and transit that are the same as the other Parties' single window system; and
  - (c) on an ongoing basis, streamline its single window system, including by adding functionality to facilitate trade, improve transparency, and reduce release times and costs.



6. In implementing paragraph 5, the Parties shall:
  - (a) share with each other their respective experiences in developing and maintaining their single window system; and
  - (b) work towards a harmonization, to the extent possible, of data elements and customs processes that facilitate use of a single transmission of information to both the exporting and importing Party.

#### **Article 7.11: Transparency, Predictability, and Consistency in Customs Procedures**

1. Each Party shall apply its customs procedures related to the importation, exportation, and transit of goods in a manner that is transparent, predictable, and consistent throughout its territory.
2. Nothing in this Article prevents a Party from differentiating its import, export, and transit procedures, and documentation and data requirements:
  - (a) based on the nature and type of goods, or their means of transport;
  - (b) based on risk management;
  - (c) to provide total or partial exemption to a good from customs duties, taxes, fees, or charges;
  - (d) to allow electronic filing, processing or payment; or
  - (e) in a manner consistent with Chapter 9 (Sanitary and Phytosanitary Measures) and the SPS Agreement.
3. Each Party shall review its import, export, and transit procedures, and documentation and data requirements, and, based on the results of the review, ensure, as appropriate, that these procedures and requirements are:
  - (a) adopted and applied with a view to a rapid release of goods;
  - (b) adopted and applied in a manner that aims at reducing the time, administrative burden, and cost of compliance with those procedures and those documentation and data requirements;
  - (c) the least trade restrictive, if two or more alternative measures are reasonably available to fulfil the Party's policy objectives; and

- (d) not maintained, including parts thereof, if no longer required to fulfil the Party's policy objectives.

4. If a Party holds the original paper version of a document submitted for the importation into, exportation from, or transit through its territory, the Party shall not require an additional submission of the same document.

5. Each Party shall take into consideration, to the extent practicable and appropriate, relevant international standards and international trade instruments for the development of its customs procedures related to the importation, exportation and transit of goods.

6. Each Party shall adopt or maintain measures with a view to ensuring consistency and predictability for traders throughout its territory in the application of its customs procedures, including determinations on tariff classification and customs valuation of goods. These measures may include training of customs officials or issuing documents that serve to guide customs officials. If an inconsistency in the application of its customs procedures, including determinations on tariff classification or customs valuation of goods, is discovered, the Party shall seek to resolve the inconsistency, if practicable.

#### **Article 7.12: Risk Management**

1. Each Party shall maintain a risk management system for assessment and targeting that enables its customs administration, and other agencies involved in the process for cross border trade, to focus inspection activities on high-risk goods and that simplifies the release and movement of low-risk goods.

2. Each Party shall base risk management on assessment of risk through appropriate selectivity criteria.

3. Each Party shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions on international trade.

4. In order to facilitate trade, each Party shall periodically review and update, as appropriate, its risk management system.

5. The Parties shall work towards strengthening their respective assessment of risk through improvements in compatibility of risk analysis and risk targeting systems, as appropriate.

#### **Article 7.13: Post-Clearance Audit**

1. With a view to expediting the release of goods, each Party shall adopt or maintain post-clearance audit to ensure compliance with its customs and related laws and regulations.

2. Each Party shall conduct post-clearance audits in a risk-based manner.
3. Each Party shall conduct post-clearance audits in a transparent manner. If an audit is conducted and conclusive results have been achieved, the Party shall, without delay, notify the person whose records are audited of the audit results, the basis of the results, and the audited person's rights and obligations.
4. The Parties acknowledge that the information obtained in a post-clearance audit may be used in further administrative, quasi-judicial, or judicial proceedings.
5. Each Party shall, whenever practicable, use the result of post-clearance audit in applying risk management.
6. Each Party shall conduct a post-clearance audit in a manner that informs the trader with respect to laws, regulations, and procedures and promotes future compliance.
7. Each Party shall provide in its laws or regulations a fixed and finite period with respect to record-keeping obligations.

**Article 7.14: Authorized Economic Operator – AEO**

1. Each Party shall maintain a trade facilitation partnership program for operators who meet specified security criteria, hereinafter, referred to as Authorized Economic Operator (AEO) programs, in accordance with the *Framework of Standards to Secure and Facilitate Global Trade* of the World Customs Organization.
2. The Parties shall endeavor to cooperate by:
  - (a) exchanging experiences on the operation of and improvements to their respective AEO programs, seeking to adopt, if appropriate, best practices;
  - (b) exchanging information with each other on the operators authorized by each program, in accordance with each Party's law and established processes; and
  - (c) collaborating in the identification and implementation of trade facilitation benefits for operators authorized by the other Parties.

## **Article 7.15: Review and Appeal of Customs Determinations**

1. With a view to providing effective, impartial, and easily accessible procedures for review and appeal of administrative determinations on customs matters, each Party shall ensure that any person to whom a customs administration issues a determination has access to:
  - (a) an administrative appeal or a review of the determination by an administrative authority higher than or independent of the employee or office that issued the determination; and
  - (b) a quasi-judicial or judicial review or appeal of the determination or decision made at the final level of an administrative review.
2. Each Party shall provide a person to whom it issues an administrative determination with the reasons for the administrative determination and access to information on how to request reviews and appeals.
3. Each Party shall ensure that an authority conducting a review or appeal under paragraph 1 notifies the person in writing of its determination or decision in the review or appeal, and the reasons for the determination or decision.
4. Each Party shall ensure that if a person receives a determination or decision on an administrative, quasi-judicial, or judicial review or appeal as provided under paragraph 1, that determination or decision shall be applicable in the same manner throughout the territory of the Party with respect to that person.
5. With a view to ensuring predictability for traders and consistent application of its customs laws, regulations, and procedural requirements, each Party is encouraged to apply determinations or decisions of administrative, quasi-judicial, and judicial authorities under paragraph 1 to the practices of its customs administration throughout its territory.
6. Each Party shall endeavor to allow a trader to file a request for administrative review or appeal to be conducted by the customs administration through electronic means.

## **Article 7.16: Administrative Guidance**

1. Each Party shall adopt or maintain an administrative procedure by which a customs office in its territory may request the appropriate authority of the customs administration to provide guidance as to the proper application of laws, regulations, and procedures for importation into, exportation from, or transit through its territory with respect to a specific customs transaction, regardless of whether the transaction is prospective, pending, or has been completed. A customs

office shall request guidance under this administrative procedure on its own initiative or at the written request of an importer or exporter in its territory, or a representative thereof.

2. The appropriate authority of a Party shall provide guidance in response to a request under paragraph 1 if the customs treatment applied or proposed to be applied by the customs office to the transaction is inconsistent with the customs treatment provided with respect to transactions that are identical in all material respects, including by another customs office in the territory of the Party.

3. Each Party shall make available to the public on a free, publicly accessible website the procedures, including any forms, for requesting guidance under paragraph 1.

4. Each Party shall allow an importer or exporter to whom a request under paragraph 1 relates an opportunity to submit written views and information to the appropriate authority of the customs administration before it issues guidance in response to a request.

5. Guidance in response to a request under paragraph 1 shall be taken into account by the customs office with respect to the transaction that is the subject of the request, provided that there is not a ruling or determination issued on the transaction and the facts and circumstances remain the same.

6. Nothing in this Article requires the appropriate authority of the customs administration to provide guidance on transactions for which a determination has been made, or for which a determination has been applied consistently throughout its territory; on transactions for which a determination is pending; if an importer or exporter has requested a ruling or has received a ruling that has been applied consistently throughout its territory; or on transactions for which a determination or ruling is being reviewed.

#### **Article 7.17: Transit**

1. Goods (including baggage), and also vessels and other means of transport, shall be deemed to be in transit across the territory of a Party when the passage across the territory, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey beginning and terminating beyond the frontier of the Party across whose territory the traffic passes. Traffic of this nature is termed for purposes of this Article as “traffic in transit.”

2. This Article does not apply to the operation of aircraft in transit, but applies to air transit of goods (including baggage).

3. Each Party’s formalities, documentation requirements, and customs controls in connection with traffic in transit shall not be more burdensome than necessary to:

- (a) identify the goods in transit; and
  - (b) ensure that the Party's transit requirements have been met.
4. After a Party has authorized the goods to proceed from the point of entry through a Party's territory, the Party shall not apply customs charges or customs procedures, or conduct inspections, other than those necessary for specific law enforcement purposes under its law with respect to that traffic in transit, until the goods arrive at the point of exit from its territory.
  5. Each Party shall provide for advance filing and processing of documentation and data required for transit prior to the arrival of goods.
  6. Once traffic in transit has reached the point of exit from the territory of a Party and transit requirements have been met, the Party shall promptly terminate the transit operation.
  7. A Party may require a guarantee or other security for traffic in transit, provided the use of the guarantee is limited to ensuring that obligations arising from such traffic in transit are fulfilled.
  8. If a guarantee covers a transit operation, a Party shall allow use of a comprehensive guarantee that covers multiple transactions by the same operator.
  9. If a Party requires a guarantee for traffic in transit, it shall discharge the guarantee without delay once it determines that its transit requirements have been satisfied.
  10. Each Party shall publish information on how it sets the amount of a guarantee for traffic in transit.
  11. If a Party limits the time for transiting its territory, it shall ensure that the time it allows is sufficient to accomplish the transit operation.
  12. A Party shall not require the use of customs convoys or customs escorts for traffic in transit.
  13. Each Party shall allow goods moving in transit to be imported into its territory provided the goods and appropriate information are presented to its customs administration and that the goods fulfil all applicable requirements for release under its law.

**Article: 7.18: Penalties**

1. Each Party shall adopt or maintain measures that allow for the imposition of a penalty by a Party's customs administration for breach of its customs laws, regulations, or procedural requirements, including those governing tariff classification, customs valuation, transit procedures, country of origin, or claims for preferential treatment. Each Party shall ensure that such measures are administered in a uniform manner throughout its territory.

2. Each Party shall ensure that a penalty imposed by its customs administration for a breach of its customs laws, regulations, or procedural requirements is imposed only on the person legally responsible for the breach.
3. Each Party shall ensure that any penalty imposed by its customs administration for breach of its customs laws, regulations, or procedural requirements depends on the facts and circumstances of the case, including any previous breaches by the person receiving the penalty, and be commensurate with the degree and severity of the breach.
4. Each Party shall provide that a clerical or minor error in a customs transaction, as set forth in its laws, regulations or procedures, published in accordance with Article 7.2 (Online Publication), shall not be treated as a breach of customs laws, regulations, or procedural requirements, and may be corrected without assessment of a penalty, unless the error is part of a consistent pattern of such errors by that person.
5. Each Party shall adopt or maintain measures to avoid conflicts of interest in the assessment and collection of penalties and duties. No portion of the remuneration of a government official shall be calculated as a fixed portion or percentage of any penalties or duties assessed or collected.
6. Each Party shall ensure that when its customs administration imposes a penalty for a breach of its customs laws, regulations, or procedural requirements, it provides an explanation in writing to the person on whom the penalty is imposed, specifying the nature of the breach, including the specific law, regulation, or procedural requirement concerned, and the basis for determining the penalty amount if not set forth specifically in the law, regulation, or procedural requirement.
7. Each Party shall provide that a person may correct an error in a customs transaction that is a potential breach of a customs law, regulation, or procedural requirement, excluding fraud, prior to the discovery of the error by the Party, if the person does so in accordance with the Party's laws, regulations, or procedures, and pays any owed customs duties, taxes, fees, and charges, including interest. The correction shall include the identification of the transaction and circumstances of the error. The Party shall not use this error to assess a penalty for a breach of a customs law, regulation, or procedural requirement.
8. Each Party shall specify a fixed, finite period within which it may initiate penalty proceedings in connection with a breach of a customs law, regulation, or procedural requirement.

#### **Article 7.19: Standards of Conduct**

1. Further to Article 7.18 (Penalties) and Article 27.4 (Promoting Integrity among Public Officials), each Party shall adopt or maintain measures to deter its customs officials from engaging in any action that would result in, or that reasonably creates the appearance of, use of their public service position for private gain, including any monetary benefit.

2. Each Party shall provide a mechanism for importers, exporters, carriers, customs brokers and other stakeholders to submit complaints regarding perceived improper or corrupt behavior in its territory, including at ports of entry and other customs offices, of its customs administration personnel. Each Party shall take appropriate action on a complaint in a timely manner in accordance with its laws, regulations, or procedures.

#### **Article 7.20: Customs Brokers**

1. Each Party shall allow an importer and any other person it deems appropriate, in accordance with its laws and regulations, to self-file a customs declaration and other import or transit documentation without the services of a customs broker. For the purposes of electronic filing, self-filing shall include direct access or access through a service provider, to electronic systems for filing and transmitting customs declarations and other import or transit documentation. Each Party shall ensure that access to the electronic systems is available for self-filers on a non-discriminatory basis relative to other categories of users.

2. If a Party establishes requirements for qualifications, licensing, or registration to be a customs broker or to provide customs broker services, the Party shall ensure that the requirements are transparent, based on objective criteria related to providing customs broker services, promote integrity and professionalism among customs brokers, and are administered uniformly in its territory.

3. No Party shall impose arbitrary limits to the number of ports or locations at which a customs broker may operate. A Party shall allow a licensed customs broker to electronically submit a customs declaration and import documentation to the electronic systems referred to in paragraph 1, at any port at which it is licensed to operate in accordance with the preceding sentence.

#### **Article 7.21: Border Inspections**

1. The Parties shall cooperate with each other, as appropriate, with a view to facilitating trade through the promotion of efficient and effective processing of imports and exports through their ports of entry.

2. Each Party shall ensure that its customs administration and other relevant agencies that examine goods, conveyances, or instruments of international traffic, carry out examinations with appropriate coordination and, to the extent practicable, simultaneously within a single location, with a view to releasing goods and allowing conveyances and instruments of international traffic to enter its territory in a timely manner and immediately after the examinations have been completed, provided that all regulatory requirements have been met.



3. Pursuant to paragraphs 1 and 2, each Party is encouraged to develop and implement standard operating procedures amongst its customs administration and relevant agencies that examine goods, conveyances, or instruments of international traffic. If practicable, each Party is encouraged to adapt their border facilities to carry out the examinations specified in paragraph 2.

4. As appropriate, the Parties shall coordinate to develop procedures or facilities adjacent to ports of entry for the efficient movement of goods the processing of which requires specific accommodations with respect to facilities or examination.

5. Nothing in this Article requires a Party to provide services for the examination and release of goods for all types of goods at all ports of entry within its territory.

#### **Article 7.22: Protection of Trader Information**

1. Each Party's customs administration shall apply measures governing the collection, protection, use, disclosure, retention, correction, and disposal of information that it collects from traders.

2. Each Party's customs administration shall protect, in accordance with its law, confidential information from use or disclosure that could prejudice the competitive position of the trader to whom the confidential information relates.

3. Notwithstanding paragraph 2, a Party may use or disclose confidential information but only for the purposes of administration or enforcement of its customs laws or as otherwise provided under the Party's law, including in an administrative, quasi-judicial, or judicial proceeding.

4. If confidential information is used or disclosed other than in accordance with this Article, the Party shall address the incident, in accordance with its laws, regulations, or procedures, and strive to prevent a reoccurrence.

#### **Article 7.23: Customs Initiatives for Trade Facilitation**

1. The Parties shall cooperate in the development and implementation of customs initiatives related to the trade facilitation measures described in this Section, as well as on other trade facilitation initiatives.

2. This cooperation may include information sharing or collaboration with respect to:

- (a) best practices on the implementation of customs procedures;
- (b) the management of customs and trade compliance measures;

- (c) engagement between the customs administrations at the operational level to address issues related to regular cross-border operations and to resolve specific cases, including pending shipments;
- (d) the development and implementation of procedures to facilitate cross border trade and improve customs operations related to the movement, release, and clearance of goods;
- (e) the harmonization of cargo manifest data requirements in each mode of transportation;
- (f) the implementation of programs designed to facilitate the movement of goods through their ports of entry, including, if feasible, alignment of hours of service, joint customs inspections, and the use of shared facilities; and
- (g) the design, development, and construction of ports of entry located at their common borders.

#### **Article 7.24: Committee on Trade Facilitation**

1. The Parties hereby establish a Committee on Trade Facilitation (Trade Facilitation Committee), composed of government representatives of each Party.
2. The Trade Facilitation Committee shall:
  - (a) facilitate the exchange of information among the Parties with respect to their respective experiences regarding the development and implementation of a single window including information regarding each Party's participating border agencies and the automation of its forms, documents, and procedures;
  - (b) facilitate the exchange of information among the Parties regarding the formulation and implementation of, and experiences under, each Party's low-risk trader programs, including their AEO programs;
  - (c) provide a forum for the sharing of views on individual cases involving questions of tariff classification, customs valuation, other customs treatments, or emerging industry trends and issues, with a view to reconciling inconsistencies, supporting a competitive business environment, or otherwise facilitating trade and investment among the Parties;
  - (d) facilitate the exchange of information among the Parties regarding the formulation and implementation of, and experiences with, each Party's measures that promote voluntary compliance by traders;

- (e) providing a forum for the Parties to consult and endeavor to resolve issues relating to this Chapter, including, as appropriate, in coordination or jointly with other committees or other subsidiary bodies established under this Agreement;
- (f) review international initiatives on trade facilitation;
- (g) identify initiatives for joint action by their respective customs administrations, in cases where joint action could facilitate trade among the Parties, and taking into account priorities and experiences of their customs administrations;
- (h) discuss technical assistance and support for capacity building to enhance the impact of trade facilitation measures for traders, and in particular to identify priorities for this assistance and support among their customs administrations and outside North America; and
- (i) engage in other activities as the Parties may decide.

3. The Trade Facilitation Committee shall meet within one year of the date of entry into force of this Agreement, and thereafter at such times as the Parties decide.

4. The Parties are encouraged to provide opportunities for persons to provide input to each Party's representative to the Trade Facilitation Committee on matters relevant to the Committee's work, such as through the mechanism described in Article 7.3 (Communication with Traders).

## **Section B: Cooperation and Enforcement**

### **Article 7.25: Regional and Bilateral Cooperation on Enforcement**

1. The Parties agree to strengthen and expand their customs and trade enforcement efforts and cooperation as set out in this Section. In these efforts, the Parties may use any applicable mechanism, including bilateral cooperation mechanisms.
2. Each Party shall, in accordance with its laws and regulations, cooperate with other Parties for the purposes of enforcing or assisting in the enforcement of their respective measures concerning customs offenses in the trade in goods between the Parties, including ensuring the accuracy of claims for preferential tariff treatment under this Agreement.
3. With a view to facilitating the effective operation of this Agreement, each Party shall:
  - (a) encourage cooperation with the other Parties regarding customs issues that affect goods traded between the Parties; and
  - (b) endeavor to provide the other Parties with advance notice of any significant administrative change, modification of a law or regulation, or other measure related to its laws or regulations that governs importations, exportations, or transit procedures that is likely to substantially affect the operation of this Agreement or likely to affect the effective implementation and enforcement of the customs and trade laws and regulations of a Party.
4. Each Party shall take appropriate measures, such as legislative, administrative, or judicial actions for enforcement of its laws, regulations, and procedures related to customs offenses, to enhance coordination between its customs administration and other relevant agencies and for cooperation with another Party.
5. The measures under paragraph 4 may include:
  - (a) specific measures, such as enforcement actions to detect, prevent, or address customs offenses, especially on identified customs priorities, taking into account trade data, including patterns of imports, exports, or transit goods to identify potential or real sources of these offenses;
  - (b) adopting or maintaining penalties aimed at deterring or penalizing customs offenses; and
  - (c) providing a Party's government officials with the legal authority to meet its enforcement obligations under this Agreement.

6. The Parties shall, subject to their respective laws, regulations and procedures, cooperate by sharing information, including exchanging historical data and if practicable and appropriate, data in real time with respect to imports, exports, and transit of goods to identify potential or real sources of customs offenses, especially on priority initiatives or industry sectors. Each Party shall identify and maintain the capability for the secure exchange of customs data with another Party.

7. Each Party shall, whenever practicable, and subject to its laws and regulations, provide another Party with information that has come to its attention that it believes would assist the receiving Party in detecting, preventing, or addressing potential or real customs offenses in particular those related to unlawful activities, including duty evasion, smuggling, and similar infractions. Such information may include specific data on any person suspected to be involved in unlawful activity, the mode of transportation, other relevant information, and the results of enforcement actions, application of penalties, or unusual trade patterns, both collected directly by the providing Party and received from other sources.

8. The Parties shall endeavor to cooperate, subject to their laws, regulations, and procedures, bilaterally or trilaterally, as appropriate, by developing customs enforcement initiatives, which may include the creation of task forces, joint or coordinated data analysis, and identification of special monitoring measures and other actions, to prevent, deter, and address customs offenses, particularly with respect to priorities of mutual concern.

#### **Article 7.26: Exchange of Specific Confidential Information**

1. For the purposes of enforcing or assisting in the enforcement of its respective measures concerning customs offenses, a Party may request that another Party provide specific confidential information that is normally collected in connection with the importation, exportation, or transit of a good if the requesting Party has relevant facts indicating that a customs offense is occurring or is likely to occur.

2. A request under paragraph 1 shall be made in writing, electronically, or through another means that allows for the acknowledgement of receipt, and shall include a brief statement of the matter at issue, the information requested, the relevant facts indicating that a customs offense is occurring or is likely to occur, and sufficient information for the Party that receives a request to respond in accordance with its laws and regulations.

3. The Party that receives a request under paragraph 1 shall, subject to its laws, regulations, procedures, or other legal obligations, provide to the requesting Party a written response containing the requested information held by the Party as soon as practicable.

4. A Party may provide information under this Article in paper or electronic format.

5. In order to facilitate the rapid and secure exchange of information, each Party shall designate or maintain a contact point for cooperation under this Section in accordance with Article 30.5 (Agreement Coordinator and Contact Points).

6. For the purposes of paragraph 1, relevant facts indicating that a customs offense is occurring or is likely to occur means historical evidence of non-compliance with laws or regulations, or other information that the requesting Party and the Party from which the information is requested agree is sufficient in the context of a particular request.

#### **Article 7.27: Customs Compliance Verification Requests**

1. A Party may request another Party to conduct a verification in that Party's territory to assist the requesting Party to determine whether a customs offence is occurring or has occurred by obtaining information, including documents, from an exporter or producer. The requesting Party shall make the request in writing. The requested Party shall respond to the request promptly and in no case later than 30 days after the date it receives the request. The response will include whether it will conduct the verification. If the Party does not intend to conduct the verification, the response will indicate the basis for refusal. If a Party will conduct the verification, the response will indicate the intended timing and other relevant details.

2. If the requested Party conducts a verification under paragraph 1, it shall provide the requesting Party promptly upon completing the verification a report containing the relevant information including data and documents, obtained during its verification.

3. In the case of a site visit by the requested Party, the requesting Party may, through officials it designates and subject to the consent of a legally responsible person for the location visited, accompany the requested Party. Accompanying the requested Party does not create any legal authority for the designated officials of the requesting Party. The designated officials of the requesting Party shall fulfill the conditions and procedures mutually agreed between the relevant Parties for the visit. Nothing in this Agreement requires the requested Party to allow or facilitate the participation of the designated officials of the requesting Party.

#### **Article 7.28: Confidentiality between Parties**

1. If a Party provides information to another Party in accordance with this Section and designates the information as confidential or is confidential under the receiving Party's law, the receiving Party shall keep the information confidential in accordance with its law.

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

3. A Party may use or disclose confidential information received from another Party under this Section but only for the purposes of administration or enforcement of its customs laws or as otherwise provided under the Party's law, including in an administrative, quasi-judicial, or judicial proceeding.

#### **Article 7.29: Sub-Committee on Customs Enforcement**

1. The Parties hereby establish a Sub-Committee on Customs Enforcement (Customs Enforcement Sub-Committee), composed of government representatives of each Party, to address issues related to potential or real customs offenses.

2. The Customs Enforcement Sub-Committee shall:

- (a) work to identify regional priorities of mutual concern and programs for detecting, preventing, and addressing duty evasion and other customs offenses;
- (b) identify and discuss opportunities for the exchange of customs and trade information or data among the Parties that facilitates detecting, preventing, and addressing customs offenses;
- (c) provide a forum to discuss proposed customs enforcement initiatives, including by identifying areas of coordination and cooperation, as appropriate, especially those related to detecting, preventing, and addressing customs offenses;
- (d) facilitate the exchange of information of best practices on customs enforcement and in managing customs compliance;
- (e) provide a forum to discuss technical guidance or assistance and support for capacity building, including specific training programs, in matters related to customs enforcement and compliance;
- (f) provide a forum to discuss, with a view to identifying and enhancing joint customs enforcement and compliance initiatives on topics of mutual concern, including with respect to customs offenses, such as deterring duty evasion and circumvention of safeguards, antidumping, and countervailing duty laws and orders;
- (g) identify appropriate government officials to address the matters raised in the Customs Enforcement Sub-Committee and share their contact information;
- (h) inform the Trade Facilitation Committee about customs enforcement measures implemented by a Party that may have an impact on their customs procedures with respect to a matter covered by this Chapter; and

(i) engage in other matters related to customs offenses as the Parties may decide.

3. The Parties shall designate and notify a contact point for this Customs Enforcement Sub-Committee in accordance with Article 30.5 (Agreement Coordinator and Contact Points).

4. The Customs Enforcement Sub-Committee shall meet within one year of the date of entry into force of this Agreement, and thereafter as the Parties may decide.