

CHAPTER 4 CUSTOMS PROCEDURES AND COOPERATION

Article 4.1 Scope

This Chapter shall apply, in accordance with the Parties' respective laws, regulations and policies, to customs procedures applied to goods traded between the Parties.

Article 4.2 Definitions

For the purposes of this Chapter:

- (a) **customs laws and regulations** means such laws and regulations administered and enforced by the customs authority of each Party concerning the importation, exportation, and transit/transshipment of goods;
- (b) **customs procedures** means the treatment applied by the Customs Administration of a Party to goods which are subject to that Party's customs laws and regulations.

Article 4.3 Customs Administration

1. Customs procedures of each Party shall conform, where possible, and to the extent permitted by its respective laws, regulations and policies, to international standards and recommended practices established by the World Customs Organization.
2. Each Party shall ensure that its customs procedures are administered to facilitate trade in an impartial, uniform and transparent manner and avoid arbitrary and unwarranted procedural obstacles.
3. 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 trade between the Parties.
4. Each Party shall ensure that goods are released within a period no longer than that required to ensure compliance with its customs laws and regulations.

Article 4.4 Cooperation

1. To the extent permitted by their laws, rules and regulations, the Parties shall endeavour to provide each other with information to assist in the investigation and prevention of infringements of customs and customs-related laws and regulations.
2. Each Party shall also make efforts to explore additional means of cooperation to enhance the ability of either Party to implement the customs-related provisions of this Agreement.
3. This could include cooperation in relation to the following:
 - (a) implementation and operation relating to the importation or exportation of goods;
 - (b) the use of information and communications technology, including possible electronic data interchange between the Parties;
 - (c) activities undertaken with other national authorities and the trading communities of the respective Parties;
 - (d) best practice on risk management and other enforcement techniques; and
 - (e) such other matters relating to the importation or exportation of goods as the Parties may agree.
4. The Parties shall endeavour to provide each other capacity building and technical assistance as appropriate, including in areas such as risk management, post-clearance audit, computer forensic and rules of origin.
5. Each Party shall endeavour to provide the other with advance notice of any proposed laws, regulations or policies governing the administration of customs procedures that are likely to substantially affect the operation of this Agreement.

Article 4.5 Risk Management

1. The Parties shall administer customs procedures so as to facilitate the clearance of low-risk goods and focus on high-risk goods. To enhance the flow of goods across their borders the Customs Administrations of each Party shall regularly review these procedures.
2. Where a Customs Administration of a Party deems that the inspection of goods is not necessary to authorise clearance of the goods from customs control, that Party shall endeavour to provide a single point for the documentary or electronic processing of those goods.

Article 4.6 Advance Rulings

1. Each Party shall provide for written advance rulings to be issued to an importer in its territory, or an exporter or producer in the territory of the other Party, concerning:

- (a) tariff classification;
- (b) questions arising from the application of the principles of the Customs Valuation Agreement; and,
- (c) to the extent permitted by its laws, regulations and administrative determinations, origin of goods⁵.

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

- (a) provide that an importer in its territory, or an exporter or producer in the territory of the other Party, may apply for an advance ruling before the importation of the goods concerned;
- (b) require that an applicant for an advance ruling include a detailed description of the goods and all relevant 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 application, within a specified period;
- (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;
- (e) provide that an advance ruling be issued to the applicant expeditiously, within the period specified in each Party's laws, regulations or administrative determinations, and in any case within 90 days of receipt of all necessary information, or within 60 days of receipt of a third party analysis report where this is required; and
- (f) provide in writing the reasons for the decision.

3. A Party may reject requests for an advance ruling where the additional information requested by it in accordance with subparagraph 2(c) is not provided within the specified time.

⁵ For greater certainty, Malaysia shall provide advance rulings on the origin of goods only when it is provided in its domestic legislation.

4. A Party may modify or revoke an advance ruling where there is a determination that the advance ruling was based on an error of fact or law, or if there is a change in:

- (a) its law consistent with relevant provisions of this Agreement; or
- (b) a material fact; or
- (c) the circumstances on which the ruling was based.

5. Subject to paragraph 4, each Party shall apply an advance ruling to importations into its territory beginning on the date it issues the ruling or on any other date specified in the ruling. The Party shall ensure the same treatment of all importations regardless of the importer, exporter, or producer involved, where the facts and circumstances are identical in all material respects.

6. Any fees charged for advance rulings shall not exceed the approximate cost of the service rendered in providing the advance ruling.

Article 4.7 Publication and Enquiry Points

1. Each Party shall publish on the Internet and/or in print form its laws, regulations, and customs procedures applicable to, or enforceable by, its Customs Administration.

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.

Article 4.8 Review and Appeal

1. Each Party shall ensure the availability of processes for administrative and judicial review of decisions taken by its Customs Administrations independent of the authority responsible for the decision under review.

2. The decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing.

Article 4.9 Confidentiality

1. Where a Party providing information to the other Party in accordance with this Chapter designates the information as confidential, the other Party shall maintain the confidentiality of that information. The Parties shall not use or disclose such information for purposes other than those specified in this request for information, or to the extent that the information may be required to be disclosed by or under law, or if its disclosure has been agreed to by the other Party in writing.

2. Nothing in this Chapter shall be construed to require a Party to furnish or allow access to information the disclosure of which would:

- (a) be contrary to the public interest as determined by its laws and regulations;
- (b) be contrary to any of its laws and regulations, including but not limited to those protecting personal privacy or the financial affairs and accounts of individuals or which could prejudice legitimate commercial interests of particular enterprises, public or private; or
- (c) impede law enforcement.