

CHAPTER 6 CUSTOMS PROCEDURES & TRADE FACILITATION

ARTICLE 6.1 Definitions

For the purposes of this Chapter:

“Customs Administration” means the Federal Authority of Identity, Citizenship, Customs and Port Security for the UAE and the Central Board of Indirect Taxes & Customs for India;

“customs laws and regulations” means laws and regulations concerning the importation, exportation, transit of goods, or any other customs procedures, whether relating to customs duties, taxes or any other charges collected by the Customs Administrations, or to measures for prohibition, restriction, or control enforced by the Customs Administrations;

“customs procedures” means the measures applied by the Customs Administration of a Party to goods and to the means of transport that are subject to its customs laws and regulations;

“persons” means both natural and legal person, unless the context otherwise requires;

“Customs Mutual Assistance Agreement (CMAA)” means the agreement that further enhances customs cooperation and exchange of information between the Parties to secure and facilitate lawful trade through enhancing assistance in administration of customs matters for proper application of customs law and for the prevention, investigation and combating of customs offences and to ensure the security of the international trade supply chain, signed on 01 April 2012;

“Authorised Economic Operator(s) (AEO)” means, in accordance with the WTO Agreement on Trade Facilitation, set out in Annex 1A to the WTO Agreement (TFA), the program which recognises an operator involved in the international movement of goods in whatever function that has been approved by the national Customs Administration as complying with the World Customs Organisation (WCO) supply chain security standards;

“Mutual Recognition Arrangement (MRA)” means the arrangement between the Parties that mutually recognises AEO authorisations that have been properly granted by the respective Customs Administrations; and

“TFA commitment(s)” means respective commitments of both Parties under the WTO Agreement on Trade Facilitation, set out in Annex 1A to the WTO Agreement.

ARTICLE 6.2

Scope

This Chapter shall apply, in accordance with the Parties' respective national laws, rules and regulations, to customs procedures required for clearance of goods traded between the Parties.

ARTICLE 6.3

General Provisions

1. The Parties agree that their customs laws and regulations and customs procedures shall be transparent, non-discriminatory, consistent and avoid unnecessary procedural obstacles to trade.
2. Customs procedures of the Parties shall conform, where possible, to the standards and recommended practices of the WCO.
3. The Customs Administration of each Party shall, to the extent possible, periodically review its customs procedures with a view to their further simplification and development to facilitate bilateral trade.

ARTICLE 6.4

Publication and Availability of Information

1. Each Party shall ensure that its laws, regulations, guidelines, procedures, and administrative rulings governing customs matters are promptly published, either on the internet or in print form in the English language, to the extent possible.
2. Each Party shall designate, establish, and maintain one or more enquiry points consistent with its TFA commitments to address reasonable enquiries from interested persons pertaining to customs matters, and shall endeavour to make available publicly through electronic means, information concerning procedures for making such enquiries.
3. Nothing in this Article or in any part of this Agreement shall require any Party to publish law enforcement procedures and internal operational guidelines including those related to conducting risk analysis and targeting methodologies.
4. Each Party shall, to the extent practicable, and in a manner consistent with its domestic law, TFA commitments and legal system, ensure that new or amended laws and regulations of general application related to the movement, release, and clearance of goods, including goods in transit, are published or information on them made otherwise publicly available, as early as possible before their entry into force, so that interested parties have the opportunity to become acquainted with the new or amended laws and regulations. Such information and publications shall be available in the English language, to the extent possible.
5. Changes to duty rates or tariff rates, measures that have a relieving effect, measures the effectiveness of which would be undermined as a result of compliance with paragraph 4, measures applied in urgent circumstances, or minor changes to domestic law and legal system are each excluded from the obligations in paragraphs 1 and 4.

ARTICLE 6.5
Risk Management

Each Party shall adopt a risk management approach in its customs activities, based on its risk evaluation criteria concerning goods and supply chain entities, in order to facilitate the clearance of low-risk consignments, while focusing its customs control on high-risk goods.

ARTICLE 6.6
Paperless Communications

1. For the purposes of trade facilitation, the Parties shall endeavour to provide an electronic environment that supports business transactions between the Customs Administrations and trading entities.
2. The Parties shall exchange views and information on realising and promoting paperless communications between the Customs Administrations and trading entities.
3. The Customs Administration of each Party, in implementing initiatives which provide for the use of paperless communications, shall take into account the methodologies agreed at the WCO.

ARTICLE 6.7
Advance Rulings

1. In accordance with its commitments under the TFA, each Party shall provide for the issuance of an advance ruling, prior to the importation of a good into its territory, to an importer of the good in its territory or to an exporter or producer of the good in the territory of the other Party.
2. For the purposes of paragraph 1, each Party shall issue rulings as to whether the good qualifies as an originating good or to assess the good's tariff classification. Each Party shall issue its determination regarding the origin or classification of the good within a reasonable, time-bound manner from the date of receipt of a complete application for an advance ruling.
3. The importing Party shall apply an advance ruling issued by it under paragraph 1 on the date that the ruling is issued or on a later date specified in the ruling. The ruling shall remain in effect for a reasonable period of time and in accordance with the national procedures on advance rulings unless the Party revokes, modifies, or invalidates the advance ruling, wherein it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. Where a Party invalidates advance rulings with retroactive effect, it may only do so where the ruling was based on false or misleading information.
4. The advance ruling issued by the Party shall be binding only on the person to whom the ruling is issued.
5. 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 under review before any governmental agency or an administrative, judicial, or

quasi-judicial review or appeal. A Party that declines to issue an advance ruling shall promptly in accordance with national procedures notify, in writing, the person requesting the ruling, setting out the relevant facts and circumstances and the basis for its decision.

6. Each Party shall provide 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 a good that have occurred prior to that date, unless the advance ruling was based on incomplete, incorrect, false, or misleading information.

ARTICLE 6.8 Penalties

1. Each Party shall maintain measures imposing criminal, civil or administrative penalties, whether solely or in combination, for violations of the Party's customs laws and regulations or customs procedures.

2. Each Party shall ensure that penalties issued for a breach of its customs laws and regulations or customs procedures are imposed only on the person(s) responsible for the breach under its laws.

3. Each Party shall ensure that the penalty imposed by its Customs Administration is dependent on the facts and circumstances of the case and is commensurate with the degree and severity of the breach.

4. Each Party shall ensure that it maintains measures to avoid conflicts of interest in the assessment and collection of penalties and duties. Each Party will ensure that it maintains measures to avoid creating an incentive for the assessment or collection of a penalty that is inconsistent with paragraph 3 above.

5. Each Party shall ensure that if a penalty is imposed by its Customs Administration for a breach of its customs laws and regulations or customs procedures, an explanation in writing is provided to the person(s) upon whom the penalty is imposed specifying the nature of the breach and the law, regulation or procedure used for determining the penalty amount.

ARTICLE 6.9 Release of Goods

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade, consistent with domestic laws and procedures.

2. Pursuant to paragraph 1, each Party shall adopt or maintain procedures that:

- (a) provide for the release of goods without unnecessary delay upon receipt of the customs declaration and fulfilment of all applicable requirements and procedures;

- (b) provide for the electronic submission and processing of documentation and data, including manifests, prior to the arrival of the goods, in order to expedite the release of goods from customs control upon arrival;
- (c) provide for goods to be released at the point of arrival without requiring temporary transfer to warehouses or other facilities; and
- (d) require that, to the extent permitted by its customs laws and regulations, the importer be informed if a Party does not promptly release goods, including, the reasons why the goods are not released and which border agency, if not the Customs Administration, has withheld release of the goods.

3. 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 or requiring a security deposit in accordance with its customs laws and regulations.

4. Each Party may allow, to the extent practicable and in accordance with its customs laws and regulations, 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 6.10 **Authorised Economic Operators**

In order to facilitate trade and enhance compliance and risk management between them, the Parties shall work towards negotiating, finalizing and implementing the Authorised Economic Operator (AEO) Mutual Recognition Arrangement (MRA) between the two Parties.

ARTICLE 6.11 **Border Agency Cooperation**

Each Party shall ensure that its authorities and agencies responsible for border controls and procedures dealing with the importation, exportation, and transit of goods cooperate with one another and coordinate their activities in order to facilitate trade pursuant to this Chapter.

ARTICLE 6.12 **Expedited Shipments**

1. Each Party shall adopt or maintain expedited customs procedures for goods entered through air cargo facilities while maintaining appropriate customs control and selection. These procedures, subject to TFA commitments, shall:

- (a) provide for information necessary to release an expedited shipment to be submitted and processed before the shipment arrives;
- (b) minimise the documentation required for the release of expedited shipments, and to the extent possible, provide for release based on a

single submission of information on certain shipments through electronic means;¹

- (c) under normal circumstances, provide for expedited shipments to be released as soon as possible after submission of the necessary customs documents, provided the shipment has arrived and applicable customs duties have been assessed where applicable;
- (d) apply to shipments of any weight or value recognizing that a Party may require formal entry procedures as a condition for release, including declaration and supporting documentation and payment of customs duties, based on the good's weight or value; and
- (e) under normal circumstances, provide that no customs duties will be collected on expedited shipments valued or assessed to duty at or below a fixed amount set under the Party's law.² Each Party shall endeavour to review the amount periodically taking into account factors that it may consider relevant.

ARTICLE 6.13 Review and Appeal

1. Each Party shall ensure that any person to whom it issues a decision on a customs matter has access to:
 - (a) an administrative appeal to or review by an administrative authority higher than or independent from the official or office that issued the decision; and/or
 - (b) judicial appeal or review of the decision.
2. Each Party shall ensure that its procedures for appeal and review are carried out in a non-discriminatory and timely manner.
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.

ARTICLE 6.14 Customs Cooperation

1. With a view to further enhancing customs cooperation and exchange of information between the Customs Administrations to secure and facilitate lawful trade through the proper application of customs laws and regulations, for the prevention, investigation and combating of customs offences and to ensure the

¹ Additional documents may be required as a condition for release.

² Notwithstanding this Article, a Party may assess customs duties, or may require formal entry documents, for restricted or controlled goods, such as goods subject to import licensing or similar requirements.

security of the international trade supply chain, each Party shall implement and comply with the obligations in the CMAA.

2. The Parties shall facilitate initiatives for the exchange of pre-arrival customs data as well as information on best practices in relation to the implementation and management of customs procedures described in this Chapter, and in accordance with the CMAA.

ARTICLE 6.15 Confidentiality

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private. Any information received under this Chapter shall be treated as confidential pursuant to the terms of the CMAA.

ARTICLE 6.16 Subcommittee on Customs Procedures and Trade Facilitation

The Parties agree to establish a Subcommittee on Customs procedures and Trade Facilitation (CPTF Subcommittee) under the CTG, consisting of government representatives of each Party's competent authorities.