

CHAPTER 5

CUSTOMS AND TRADE FACILITATION

Article 5.1

Customs and Trade Facilitation

1. Each Party shall ensure that its customs laws, regulations, and procedures are applied in a manner that is consistent, transparent, and non-discriminatory.
2. The Parties affirm their rights and obligations under the Trade Facilitation Agreement.
3. Each Party shall endeavour to ensure that its import, export or transit formalities and procedures conform to international standards and recommended practices established by the World Customs Organization (the “WCO”) and under other relevant international agreements to which the Parties are party.
4. Each Party shall adopt or maintain simplified customs procedures, as set out in Article 5.4 (Simplified Customs Procedures), and work towards further simplification of its customs procedures, including by conducting periodic reviews, in order to facilitate trade.
5. The Parties shall seek to reinforce their cooperation to promote trade facilitation while ensuring effective customs control.

Article 5.2

Transparency and Publication

1. Each Party shall promptly publish online, in a non-discriminatory and easily accessible manner, and to the extent possible and practicable in the English language, its customs laws, regulations, and procedures, including:
 - (a) hours of operation, and general operating procedures related to importation, exportation and transit, for customs offices at ports and border crossing points;
 - (b) details of its enquiry points including points of contact and modes for making information enquiries;
 - (c) its laws, regulations, and procedures for becoming a customs broker, for issuing customs broker licenses and regarding the use of customs brokers; and
 - (d) provisions to correct or disclose an error in a customs transaction, including the information required and, if applicable, the circumstances when penalties will not be imposed.

2. Each Party shall, as appropriate, provide for regular consultations between its border agencies and traders or other stakeholders located within its territory.
3. Each Party shall, in a manner consistent with its law and legal system, ensure that new or amended customs laws and regulations are published online, or information on them made otherwise publicly available, as early as possible before their entry into force to enable traders and other interested parties to become acquainted with them.
4. Paragraph 3 shall not apply to:
 - (a) changes to the rates of customs duties;
 - (b) measures that have a relieving effect;
 - (c) measures the effectiveness of which would be undermined as a result of compliance with paragraph 3;
 - (d) measures applied in urgent circumstances; or
 - (e) minor changes to a Party's law and legal system.
5. Each Party shall establish or maintain one or, if within its available resources, more enquiry points to address reasonable enquiries of interested parties or persons concerning customs matters.
6. Each Party shall endeavour not to require the payment of a fee for answering enquiries or providing required forms. If payment of a fee is required, the Party shall limit the amount of its fees and charges to the approximate cost of services rendered.
7. Each Party shall ensure that enquiry points answer enquiries and provide the forms and documents within a reasonable time period set by each Party, which may vary depending on the nature or complexity of the request.

Article 5.3

Data, Documentation and Automation

1. Each Party shall ensure, while maintaining appropriate customs controls, that data and documentation requirements are adopted or applied:
 - (a) with the intention to facilitate a rapid release of goods; and
 - (b) in a manner that aims to reduce the time and cost of compliance for traders and operators.
2. Each Party shall:
 - (a) make electronic systems accessible to customs users, where appropriate and practicable, in an accessible format;

- (b) allow a customs declaration to be submitted in electronic format;
 - (c) employ an electronic or automated risk management system;
 - (d) permit the electronic payment of duties, taxes, fees and charges collected by its customs authority and incurred upon importation and exportation;
 - (e) endeavour to implement common standards and elements for import and export data in accordance with the WCO Data Model;
 - (f) take into account, as appropriate, standards, recommendations, models and methods developed by various international organisations, including the WCO, the United Nations Centre for Trade Facilitation and Electronic Business (“UNCEFACT”) and the WTO; and
 - (g) work towards recognising each other’s data elements that may be drawn from the WCO Data Model and related WCO recommendations as well as for facilitating government-to-government electronic sharing of customs data.
3. The Parties shall endeavour to cooperate on the development of interoperable electronic customs systems in order to facilitate trade and data exchange between the Parties.

Article 5.4

Simplified Customs Procedures

1. Each Party shall adopt or maintain measures allowing traders or operators fulfilling criteria specified in its customs laws and regulations to benefit from further simplification of customs procedures.
2. The simplified customs procedures referred to in paragraph 1 shall include:
 - (a) deferred payment of customs duties until after the release of those imported goods;
 - (b) enabling the payment of customs duties and taxes that may cover multiple imports at periodic intervals, including fortnightly or monthly; and
 - (c) use of a guarantee with a reduced amount or a waiver from the use of a guarantee.
3. The Parties shall endeavour to implement simplified customs procedures, as follows:
 - (a) customs declarations containing a reduced set of data or supporting documents including for the movement of low-value consignments; and

- (b) aggregated customs declarations for the payment of customs duties and taxes that may cover multiple imports.
- 4. The Parties shall cooperate on and consider, as appropriate, further measures to reduce the administrative burden for economic operators in relation to imports and exports.

Article 5.5

Release of Goods

1. Each Party shall:
 - (a) provide for goods to be released as rapidly as possible, endeavouring to release goods within 48 hours of arrival at the point of presentation to customs provided that:
 - (i) the Party has received all information and documentation required to release all the goods in the shipment on or prior to presentation to customs;
 - (ii) the goods, or any other goods in the same shipment, are not subject to physical inspection or examination; and
 - (iii) all regulatory checks required for release have been completed;
 - (b) provide for advance electronic submission and processing of customs documentation, including import declarations and manifests, prior to the arrival at the point of presentation to customs of goods to enable their release as rapidly as possible if no risk has been identified or if no other checks are to be performed;
 - (c) allow goods to be released without temporary transfer to warehouses or other facilities, where practicable; and
 - (d) allow for the release of goods prior to the final determination of customs duties, taxes, fees and charges, if such a determination is not done prior to, or as soon as possible after presentation to, customs and provided that all other regulatory requirements have been met. Before releasing the goods, a Party may require that an importer provides sufficient guarantee in the form of a surety, a deposit, or some other appropriate instrument.
2. Nothing in this Article shall require a Party to release a good if regulatory requirements for release have not been met.
3. If a Party allows for the release of goods conditional on a security, it shall adopt or maintain procedures that:

- (a) ensure 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 the security shall be discharged as soon as possible after its customs authority is satisfied that the obligations arising from the importation of the goods have been fulfilled; and
- (c) allow importers to provide security using a form other than cash, where appropriate.

Article 5.6 **Perishable Goods**

1. For the purposes of this Article, “perishable goods” means goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.
2. With a view to preventing avoidable loss or deterioration of perishable goods, each Party shall:
 - (a) provide, in normal circumstances, for perishable goods to be released in the shortest possible time provided that:¹
 - (i) the Party has received all information and documentation required to release all the goods in the shipment on or prior to presentation to customs;
 - (ii) the goods, or any other goods in the same shipment, are not subject to physical inspection or examination; and
 - (iii) all regulatory checks required for release have been completed; and
 - (b) in exceptional circumstances where it would be appropriate to do so, provide for the release of perishable goods outside the business hours of its customs authority.
3. Each Party shall give appropriate priority to perishable goods when scheduling and conducting any inspections or examinations that may be required.
4. Each Party shall either arrange, or allow an importer to arrange, for the appropriate storage of perishable goods pending their release. Each Party may require that its customs authority approve or designate any storage facilities arranged by the importer. Each Party shall, where possible and if appropriate

¹ Each Party shall set internal targets for the expeditious release of perishable goods.

upon the request of the importer, release the perishable goods directly from those storage facilities, in accordance with domestic legislation.

5. Nothing in this Article requires a Party to release a good if regulatory requirements for release have not been met.

Article 5.7 **Risk Management**

1. Each Party shall adopt or maintain a risk management system using electronic data-processing and, where necessary, other techniques for customs control that enables its customs authority to focus its customs and other relevant border controls including its examination and inspection activities on high-risk consignments and expedite the release of low-risk consignments.
2. Notwithstanding paragraph 1, the adoption or maintenance of a risk management framework shall not prevent a party from using other techniques where necessary.
3. Each Party shall design and apply risk management so as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions to international trade.
4. Each Party shall base risk management on assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include the HS Code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders, and type of means of transport.
5. Each Party may also select, on a random basis, consignments for its customs and other relevant border controls including its examination and inspection activities referred to in paragraph 1 as part of its risk management.
6. In order to facilitate trade, each Party shall periodically review and update, if considered appropriate, the risk management system specified in paragraph 1.

Article 5.8 **Advance Rulings**

1. Each Party shall issue through its customs authority an advance ruling to an applicant that has submitted a written request with respect to:
 - (a) tariff classification;
 - (b) whether a good is originating in accordance with Chapter 3 (Rules of Origin);

- (c) the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts in accordance with the Customs Valuation Agreement; and
 - (d) such other matters as the Parties may mutually agree, subject to domestic customs legislation.
- 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. If any fee is charged it shall be reasonable and aimed at deterring non-serious applications.²
- 3. On receipt of an application and all necessary information, each Party shall issue an advance ruling referred to in subparagraph 1(a) or 1(b) as soon as practicable and in any event within three months or in such shorter time as prescribed in the Party's customs law.
- 4. A Party may request that the applicant provide additional information necessary to evaluate the request at any time during the course of an evaluation of an application for an advance ruling, which may include a sample of the good.
- 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 administrative or judicial review, or in circumstances set out in the Parties' customs laws, regulations and procedural requirements. A Party that declines to issue an advance ruling, shall promptly notify the applicant, in writing, setting out the relevant facts and the basis for its decision and also provide the applicant an opportunity of being heard.
- 6. A Party may, in accordance with its domestic law, modify, revoke or invalidate an advance ruling, as appropriate, if:
 - (a) the ruling was made in error or based on an error of fact;
 - (b) the information provided is false or inaccurate;
 - (c) there is a change in the material facts or circumstances on which the ruling was based; or
 - (d) a change is required to conform with a judicial decision or a change in its laws and regulations.
- 7. A Party may revoke or invalidate an advance ruling with retroactive effect, if the ruling was based on incomplete, incorrect, inaccurate, false or misleading information provided by the applicant.
- 8. When a Party revokes, modifies, or invalidates the advance ruling, it shall adhere to the principles of independence of decision making, procedural

² The United Kingdom does not require a fee.

fairness and providing written communication to the applicant setting out the relevant facts and the basis for its decision.

9. Each Party shall publish online, at least:
 - (a) the requirements for the application for an advance ruling, including the information to be provided and the format;
 - (b) the time period by which it will issue an advance ruling; and
 - (c) the length of time for which the advance ruling is valid.
10. Each Party shall endeavour to make publicly available any advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information.

Article 5.9 Authorised Economic Operator

1. Each Party shall establish or maintain a trade facilitation partnership programme for operators who meet specified criteria, hereinafter referred to as the Authorised Economic Operator (“AEO”) programme, in accordance with the *SAFE Framework of Standards to Secure and Facilitate Global Trade* adopted at the June 2005 World Customs Organization Session in Brussels and as updated from time to time (the “SAFE Framework”).
2. Each Party shall publish its specified criteria to qualify as an AEO. The specified criteria shall relate to compliance, or the risk of non-compliance, in accordance with requirements specified in the Party’s customs laws, regulations and procedural requirements. The Parties may use the criteria set out in paragraph 7.2(a) of Article 7 of the Trade Facilitation Agreement.
3. The specified criteria to qualify as an AEO shall not be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail. The specified criteria shall be designed or applied so as to allow the participation of SMEs.
4. The AEO programme shall include specific benefits for operators that meet the specified criteria, taking into account the commitments of each Party under paragraph 7.3 of Article 7 of the Trade Facilitation Agreement.

Article 5.10 Review and Appeal

1. Each Party shall ensure that its procedures for appeal and review are carried out in a non-discriminatory and timely manner.

2. 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 independent of the official or office that issued the decision; and
 - (b) a judicial appeal or review of the decision.
3. Notwithstanding paragraph 2, a Party may not provide an administrative appeal for a decision on an advance ruling under Article 5.8 (Advance Rulings).
4. Each Party shall provide that any person who has applied to a customs authority for a decision and has not obtained a decision on that application within the relevant time-limits where provided in its laws or regulations and in all other cases without undue delay shall be entitled to exercise right to either appeal to or review by the administrative authority or the judicial authority or any other recourse to the judicial authority.
5. Each Party shall provide a person to whom it issues a decision with the reasons for the decision.

Article 5.11

Penalties

1. Each Party shall ensure that any penalties imposed for breaches of its customs laws, regulations or procedural requirements shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.
2. Each Party is encouraged to require its customs authority, when imposing a penalty for a breach of its customs laws, regulations or procedural requirements, to consider as a potential mitigating factor the voluntary disclosure of the breach prior to its discovery by the customs authority.
3. Each Party shall ensure that, if a penalty is imposed for a breach of its customs laws, regulations or procedural requirements, an explanation in writing is provided to the person upon whom the penalty is imposed, specifying the nature of the breach and the applicable customs laws, regulations or procedural requirements under which the amount or range of penalty for the breach has been prescribed.
4. Each Party shall, where appropriate, provide in its laws, regulations or procedures, or otherwise give effect to, fixed and finite periods within which its customs authority may initiate proceedings to impose a penalty relating to a breach of customs laws, regulations or procedural requirements.

Article 5.12
Customs Cooperation and Mutual Administrative Assistance

1. Without prejudice to other forms of cooperation provided for in this Agreement, the customs authorities of the Parties shall cooperate, including by exchanging information, and provide mutual administrative assistance in the matters referred to in this Chapter in accordance with the *Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of India on Customs Cooperation and Mutual Administrative Assistance in Customs Matters* signed in London on 31 May 2021.
2. The customs authorities shall, while ensuring compliance with their respective customs laws, regulations and procedural requirements and, subject to the availability of resources, enhance cooperation on the matters referred to in this Chapter with a view to further developing trade facilitation in the following areas:
 - (a) simplifying and harmonising customs procedures and documentation requirements for customs purposes;
 - (b) developing and implementing customs best practice and risk management techniques;
 - (c) application of the Customs Valuation Agreement;
 - (d) cooperation between customs authorities in order to expedite the release of goods; and
 - (e) other matters as the Parties may mutually decide.

Article 5.13
Single Window³

1. Each Party shall introduce or maintain single window system enabling traders to submit documentation and any prescribed data requirements for the exportation and importation of goods through a single-entry point to the participating authorities or agencies.
2. Each Party shall, as required, continuously review the operations of its single window system with a view to expanding or improving its functionality to cover all its import and export transactions and shall endeavour to include documentation and any data requirements for the transit of goods within the single window system.

³ For the purposes of Article 5.13, for the United Kingdom, the Bailiwicks of Guernsey and Jersey may introduce or maintain their own respective single window system.

3. If a Party receives documentation or data for a good or shipment of goods through its single window system, that 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 law or procedural requirements. Each Party shall minimise, to the extent possible, the requirement for paper documents if electronic copies are provided and use information technology to support the single window system.
4. Each Party shall endeavour to include in its single window system's functionality the ability to inform a person using its single window system of the results of the examination of the documentation and any data by the participating authorities or agencies and status of the release of goods in a timely manner.
5. In building and maintaining its single window system, each Party shall:
 - (a) incorporate, as considered appropriate, the WCO Data Model for data elements;
 - (b) take into account, as appropriate, standards, recommendations, models and methods developed by various international organisations such as the WCO, UNCEFACT and the WTO; and
 - (c) have regard to the standards and data elements for import, export, and transit developed by international organisations of which the Parties are a member.
6. The Parties shall cooperate on the development of their respective single window systems through discussing best practices, possible interactions and sharing of implementation experience.

Article 5.14

Transit and Transshipment

1. Each Party shall:
 - (a) ensure the facilitation, with effective control, of transshipment operations and transit movements through their respective territories;
 - (b) endeavour to promote and implement regional transit arrangements with a view to facilitating trade;
 - (c) ensure the cooperation and coordination between all concerned authorities and agencies in their respective territories to facilitate traffic in transit, in accordance with its laws and regulations; and
 - (d) allow goods intended for import to be moved within its territory under customs control from a customs office of entry to another customs office in its territory from where the goods would be released or cleared.

Article 5.15
Post-clearance Audit

1. With a view to expediting the release of goods, each Party shall:
 - (a) adopt or maintain post-clearance audit to ensure compliance with its customs laws and procedures;
 - (b) conduct post-clearance audits in a risk-based manner, which may include appropriate selectivity criteria;
 - (c) conduct post-clearance audits in a transparent manner. Where an audit is conducted and conclusive results have been achieved the Party shall, without delay, notify the person whose record is audited of the results, the reasons for the results and the audited person's rights and obligations; and
 - (d) wherever practicable, use the result of post-clearance audit in applying risk management.
2. The Parties acknowledge that the information obtained in a post-clearance audit may be used in further administrative or judicial proceedings.

Article 5.16
Customs Brokers

1. The Parties agree not to require the mandatory use of customs brokers.
2. Each Party shall:
 - (a) publish measures on the use of customs brokers; and
 - (b) apply transparent and objective rules if and when licensing customs brokers.

Article 5.17
Confidentiality

1. Each Party shall maintain, in conformity with its law, the confidentiality of all information collected as part of its customs processes and shall protect that information from use or disclosure that could prejudice the competitive position of the trader to whom the confidential information relates.
2. Each Party shall ensure that the information collected as part of its customs processes shall be used or disclosed solely for the administration and enforcement of customs matters, including in any proceedings before courts or tribunals for failure to comply with customs laws, or as otherwise authorised or required under the Party's law.

3. The Parties shall communicate to each other information on their applicable laws and regulations.

Article 5.18
Customs and Trade Facilitation Working Group

1. The Parties hereby establish a Working Group on Customs and Trade Facilitation (“CTF Working Group”) composed of government representatives of each Party responsible for customs and trade facilitation matters to consider any matters arising under this Chapter.
2. The functions of the CTF Working Group shall include:
 - (a) cooperating in the administration and uniform interpretation of this Chapter;
 - (b) monitoring the effective operation and implementation of this Chapter, including the transparent and consistent application of customs procedures of the Parties and the procedures listed at subparagraph 1(a) of Article 5.5 (Release of Goods) and subparagraph 2(a) of Article 5.6 (Perishable Goods);
 - (c) cooperating in an endeavour to further simplify and implement the customs procedures set out in Article 5.4 (Simplified Customs Procedures);
 - (d) exchanging information on matters related to this Chapter;
 - (e) communicating the necessary contact details of the CTF Working Group members for the purposes of this Chapter;
 - (f) considering any matters referred to it by the Joint Committee or Subcommittee on Trade in Goods; and
 - (g) any other matter as the CTF Working Group mutually agrees.
3. The CTF Working Group shall meet within six months of the date of entry into force of this Agreement and thereafter annually.
4. The CTF Working Group shall share its progress with the Joint Committee.