

ANNEX VII^{ter}

REFERRED TO IN ARTICLE 16

TRADE FACILITATION

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Article 1

General principles

1. The Parties, aiming to serve the interests of their respective business communities and to create a trading environment allowing them to benefit from the opportunities offered by the Agreement, agree that in particular the following principles are the basis for the development and administration of trade facilitation measures by their competent authorities:

- (a) transparency, efficiency, simplification, harmonisation and consistency of exportation, importation and transit procedures;
- (b) consistent, impartial, predictable and reasonable administration of laws, regulations and administrative decisions relevant to trade in goods;
- (c) promotion of international standards;
- (d) consistency with relevant multilateral instruments;
- (e) best possible use of information technology;
- (f) high standards of public service;
- (g) governmental controls based on risk management;
- (h) cooperation within each Party among customs and other border authorities; and
- (i) consultations between the Parties and their respective business communities.

2. For greater certainty, nothing in this Annex shall be construed as to diminish the rights and obligations of the Parties under Articles 14 (Sanitary and phytosanitary measures) and 15 (Technical regulations) of the Agreement.

Article 2

WTO Agreement on trade facilitation

For the purposes of this Annex, Section I of the WTO Agreement on trade facilitation is hereby incorporated into and made part of the Agreement, *mutatis mutandis*.

Article 3

Transparency

1. Each Party shall promptly make available, as far as practicable in English, on the internet:
 - (a) all domestic laws, regulations, administrative decisions of general application and procedures relevant to trade in goods;
 - (b) a description of its exportation, importation and transit procedures that informs interested parties of the practical steps needed to trade or transit goods, including contact information on enquiry points; and
 - (c) information on border-crossing requirements.
2. Each Party shall establish enquiry points for customs and other matters relevant to trade in goods, which may be contacted in English through the internet. Enquiries in English shall be answered in English. The Parties shall not require any fee for answering enquiries.

Article 4

Public consultation and information before entry into force

1. Each Party shall consult its business community on its needs with regard to the development and implementation of trade facilitation measures, giving particular attention to the interests of small and medium-sized enterprises.
2. Each Party shall, to the extent practicable and in a manner consistent with its domestic legal system, publish in advance, and on the internet, any proposed laws and regulations relevant to trade in goods, with a view to affording interested persons an opportunity to comment on them.
3. Each Party shall, to the extent practicable and in a manner consistent with its domestic legal system, ensure that a reasonable time period is provided between the publication of laws and regulations relevant to trade in goods and their entry into force.
4. Paragraphs 1 to 3 shall not apply to:
 - (a) measures having a relieving effect;
 - (b) measures the effectiveness of which would be undermined as a result of compliance with paragraphs 1 to 3;
 - (c) measures applied in urgent circumstances; and
 - (d) minor changes to domestic laws and regulations.

Article 5

Advance rulings

1. A Party shall, in a reasonable time bound manner, issue a binding, written advance ruling upon written request, which contains all necessary information requested by the applicant¹ with regard to:
 - (a) tariff classification and the applied rate of duty of a product, including the method used to calculate the amount of duties;
 - (b) the appropriate method or criteria and the application thereof, to be used for determining the customs value under the facts presented by the applicant²;
 - (c) any fees and charges applied by customs or, where appropriate, information on the way such fees and charges are calculated;
 - (d) applicable border-crossing customs requirements for a specific product;
 - (e) applicable rules of origin; and
 - (f) other matters as the Parties may agree.
2. Each Party shall endeavour to make information on advance rulings publicly available, taking into account the need to protect confidential information.

Article 6

Procedures for appeal

Each Party shall ensure that any person to whom customs or another border authority issues an administrative decision has the right to at least:

- (a) one level of independent administrative appeal, unless the administrative decision has been taken by the highest administrative entity; and
- (b) one level of independent judicial appeal.

Article 7

Fees and charges

¹ For greater certainty, an importer, exporter, or producer may submit a request for an advance ruling through a duly authorised representative.

² Switzerland applies customs duties based on weight or quantity rather than *ad valorem* duties.

1. Fees and charges of whatever character, other than import duties and other than taxes within the purview of Article III of the GATT 1994, imposed by the Parties in connection with importation, exportation or transit, including tasks provided under Article 5 (Advance Rulings), shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.
2. The fees and charges referred to in paragraph 1 shall not be calculated on an *ad valorem* basis.
3. Each Party shall publish information on fees and charges on the internet, as far as practicable in English. Such information shall include the service provided, the responsible authority, the fees and charges that will be applied and how they are calculated, as well as when and how payment has to be made.
4. Upon request, the customs authorities or other competent authorities of a Party shall provide information on fees and charges applicable to imports, exports or transit of goods, including the methods of calculation.

Article 8

Penalty disciplines

1. Each Party shall ensure that penalties for breaches of its customs laws, regulations, or procedural requirements are imposed only on the person or persons legally responsible for the breach.
2. The penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.
3. No Party shall impose substantial penalties for minor breaches of customs regulations or procedural requirements. In particular, no penalty for any omission or mistake in customs documentation, which is easily rectifiable and obviously made without fraudulent intent or gross negligence, shall be greater than necessary to serve merely as a warning.
4. Each Party shall ensure that when a penalty is imposed for a breach of customs laws, regulations, or procedural requirements, an explanation in writing is provided to the person or persons upon whom the penalty is imposed, specifying the nature of the breach, the basis for the penalty and instructions on the rights to appeal.
5. Each Party shall consider whether the voluntary disclosure to the competent authorities of the circumstances of a breach of a customs law, regulation, or procedural requirement prior to the discovery of a breach by the authority, can be regarded as a mitigating factor or not.
6. Each Party shall specify in its domestic laws and regulations a limited period within which it may initiate penalty proceedings in connection with a breach of a customs law, regulation, or procedural requirement.

7. Each Party shall maintain procedures to avoid conflicts of interest in the assessment and collection of penalties ensuring that government officials do not personally benefit from any penalty or duties assessed or collected.

Article 9

Release and clearance of goods

1. Each Party shall apply simple, reasonable and impartial trade and border procedures.
2. Each Party shall adopt or maintain procedures that:
 - (a) provide for advance electronic submission and processing of information before the physical arrival of goods in order to expedite their clearance;
 - (b) provide for the possibility of electronic payment for duties, taxes, fees and charges collected by customs and, as far as practicable, such charges collected by other border authorities; and
 - (c) 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 upon arrival, or as rapidly as possible after arrival and provided that all other regulatory requirements have been met.
3. In order to avoid deterioration of perishable goods³, each Party shall provide:
 - (a) for the release of perishable goods within the shortest possible time; and
 - (b) upon request, in case of delays in the release of perishable goods, an explanation of the reasons for the delay.

Article 10

Risk management

1. Each Party shall determine which persons, goods, or means of transport are to be examined and the extent of the examination, based on risk management.
2. Each Party shall systematically apply objective risk management procedures and practices in identifying and addressing risks related to the entry, exit, transit, transfer or end-use of goods moved between the customs territories of Parties, or to the presence of goods that are not in free circulation.
3. Each Party's border procedures and customs controls, including its documentary

³ For the purposes of this Article, "perishable goods" means goods which rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.

examinations, physical examinations or post-audit examinations, shall not be more onerous than necessary to limit its exposure to the risks referred to in paragraph 2.

Article 11

Formalities related to importation, exportation and transit

1. Each Party shall limit controls, formalities, and the number of documents required in the context of trade in goods between the Parties to those necessary and appropriate to ensure compliance with its legal requirements and thereby simplify to the greatest extent possible the respective procedures.

2. With a view to minimising the incidence and complexity of import, export and transit formalities and to decreasing and simplifying import, export and transit documentation requirements, each Party shall ensure that such formalities and documentation requirements are:

- (a) applied with a view to a rapid release and clearance of goods;
- (b) applied in a manner that aims at reducing the time and cost of compliance;
and
- (c) the least trade-restrictive.

3. Each Party shall use efficient import, export and transit procedures, with a view to reducing costs and unnecessary delays in trade between them, based, as appropriate, on international standards, in particular the standards, guidelines and recommendations of the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT), the International Organization for Standardization (ISO) and the World Customs Organization (WCO).

Article 12

Customs brokers

No Party shall introduce the mandatory use of customs brokers. Each Party shall publish its measures on the use of customs brokers. The Parties shall apply transparent, non-discriminatory and proportionate rules if and when licensing customs brokers.

Article 13

Temporary admission of goods and inward and outward processing

Each Party shall allow, as provided for in its domestic laws and regulations, temporary admission of goods, inward and outward processing, in accordance with international standards.

Article 14

Competent customs offices

1. Each Party shall designate the customs offices at which goods may be presented or cleared. In determining the competence and location of these offices and their business hours, the factors to be taken into account shall include in particular the requirements of trade.
2. Each Party shall, subject to the availability of resources, perform customs controls and procedures outside the designated business hours or outside the premises of the competent customs offices if requested by a trader for a valid reason. Any related fee or charge shall be limited to the approximate cost of the services rendered.

Article 15

Authorised economic operator system

A Party operating an Authorised Economic Operator System affecting international trade flows shall:

- (a) afford another Party the possibility to negotiate, through their competent authorities, a mutual recognition agreement on authorisation for the purpose of facilitating international trade while ensuring effective customs control; and
- (b) base its respective laws and regulations on relevant international standards, in particular the WCO Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework).

Article 16

Single windows for foreign trade

Each Party shall endeavour to promote the implementation of a single window or other single-entry point which can expedite trade by enabling its traders to submit import, export or transit information electronically to the participating authorities or agencies.

Article 17

Certification of documents

No Party shall require certification, in particular consular transaction of commercial invoices, statements on origin or other customs documentation, including related fees and charges, in connection with the importation of any goods from another Party.

Article 18

Confidentiality

All information provided in relation with the importation, exportation, advance rulings or transit of goods shall be treated as confidential by the Parties in accordance with the respective domestic laws and regulations of each Party. Such information shall not be made publicly available by the authorities of a Party without the express permission of the person or authority providing it.

Article 19

Cooperation

1. The Parties may identify and submit to the Sub-Committee on trade in goods for consideration, additional measures with a view to facilitating trade between them.
2. The Parties shall promote international cooperation in relevant multilateral fora on trade facilitation. They shall review relevant international initiatives in order to identify, and may submit to the Joint Committee for consideration, further areas where joint action could contribute to their common objectives.
