

ANNEX VI

REFERRED TO IN ARTICLE 2.9

TRADE FACILITATION

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ARTICLE 1

General Principles

1. The State Parties reaffirm their rights and obligations under the WTO Agreement on Trade Facilitation.

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

3. Nothing in this Annex shall be construed to diminish the rights and obligations of the State Parties under Chapters 5 (Technical Barriers to Trade) and 6 (Sanitary and Phytosanitary Measures) of the Agreement.

ARTICLE 2

Transparency

1. Each State Party shall promptly make available online and update, as far as practicable in English, the following:

- (a) all domestic laws, regulations, administrative decisions of general application on importation, exportation, and transit procedures;
 - (b) a description of its importation, exportation and transit procedures, including appeal procedures, that informs interested parties of the practical steps needed to trade or transit goods;
 - (c) the forms and documents required for trade or transit through the territory of that State Party;
 - (d) contact information on enquiry points; and
 - (e) applicable border-crossing requirements for specific products.
2. Each State Party shall establish enquiry points for customs and other matters relevant to trade in goods, which may be contacted online in English. Answers to enquiries in English shall be, as far as possible, in English. The State Parties shall not require the payment of any fees for answering enquiries.
3. Each State 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.
4. To the extent practicable and in a manner consistent with its domestic laws and regulations, each State Party shall publish in advance, online, any proposed domestic laws and regulations relevant to international trade in goods, with a view to affording interested persons an opportunity to comment on them.
5. Each State Party shall ensure that a reasonable interval is provided between the publication of domestic laws and regulations relevant to international trade in goods and their entry into force.

ARTICLE 3

Advance Rulings

1. Upon written request containing all necessary information submitted by an importer, producer or exporter established in its territory, or an exporter or producer in the territory of another State Party¹, a State Party shall, in a reasonable, time-bound manner, issue a binding, written advance ruling with regard to:
- (a) tariff classification and applied rate of duty of a product;
 - (b) the rules of origin it applies to a product;
 - (c) the appropriate method or criteria and the application thereof, to be used for determining the customs value under a particular set of facts; and
 - (d) other matters as the State Parties may agree.

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

2. A State Party that declines to issue an advance ruling shall promptly notify the requesting importer, producer or exporter in writing, setting forth the basis for its decision.
3. Each State Party shall provide that advance rulings take effect on the date they are issued, or on another date specified in the ruling, provided that the facts or circumstances on which the ruling is based remain unchanged.
4. A State Party may limit the validity of advance rulings to a period determined by its domestic laws and regulations.
5. Each Party shall endeavour to make information on advance rulings publicly available, taking into account the need to protect confidential information.

ARTICLE 4

Simplification of International Trade Procedures

1. The State Parties shall apply trade and border procedures that are simple, reasonable and impartial.
2. The State Parties 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 legal requirements and thereby simplify to the greatest extent possible the respective procedures. 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 State 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 measure available.
3. The importing State Party shall not require an original or a copy of the export declaration from the importer.
4. The State Parties shall use efficient trade procedures, with a view to reducing costs and unnecessary delays in trade between them, based, as appropriate, on international instruments and standards applicable in the area of customs and trade, including the WTO Trade Facilitation Agreement, the International Convention on the Harmonized Commodity Description and Coding System, the WCO SAFE Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework), the WCO Data Model and, to the extent possible, the substantive elements of the International Convention on the Simplification and Harmonization of Customs Procedures (as amended) (Revised Kyoto Convention) .
5. Each State 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) allow importers to obtain the release of goods prior to the final determination of customs duties, taxes, fees and charges if the importer provides sufficient guarantees and where it is decided that neither further examination, physical inspection nor any other submission is required and provided that all other regulatory requirements have been met;
- (c) provide for the possibility of electronic payment for duties, taxes, fees and charges collected by customs and other border authorities; and
- (d) allow goods intended for import to be moved within the State Party under customs control from the customs office of entry to another customs office from where the goods would then be released or cleared.

ARTICLE 5

Perishable Goods

In order to avoid deterioration of perishable goods,² each State Party shall:

- (a) provide for the rapid release of perishable goods;
- (b) in cases of delays in the release of perishable goods, provide, upon request, an explanation of the reasons for the delay;
- (c) give appropriate priority to perishable goods when scheduling any examinations that may be required;
- (d) either arrange or allow an importer to arrange for proper storage of perishable goods pending their release. Each State Party may require that any storage facilities arranged by the importer have been approved or designated by its relevant authorities; and
- (e) provide for the release of perishable goods where it would be appropriate to do so and provided that all regulatory requirements have been met, outside the business hours of customs and other relevant authorities.

ARTICLE 6

Competent Customs Offices

1. Each State 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 hours of business, the factors to be taken into account shall include in particular the requirements of trade.
2. Each State Party shall, subject to the availability of resources, perform customs controls and procedures outside the designated business hours or outside the premises of

² 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.

the competent customs offices if so 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 7

Customs Valuation³

For the purposes of this Annex, Article VII of GATT 1994 and the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 apply and are hereby incorporated into and made part of the Agreement, *mutatis mutandis*.

ARTICLE 8

Risk Management

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

ARTICLE 9

Authorised Economic Operator System

A State Party operating an Authorised Economic Operator System or security measures affecting international trade flows shall:

- (a) afford another State Party the possibility to negotiate a mutual recognition agreement on authorisation and security measures for the purpose of facilitating international trade while ensuring effective customs control; and
- (b) draw on relevant international standards, in particular the SAFE Framework.

³ Switzerland applies customs duties based on weight and quantity rather than ad valorem duties.

ARTICLE 10

Customs Brokers

The State Parties shall not require the compulsory use of customs brokers.⁴

ARTICLE 11

Fees, Charges and Formalities

1. For the purposes of this Annex, Article VIII of GATT 1994 applies and is hereby incorporated into and made part of the Agreement, *mutatis mutandis*.
2. Fees and charges of whatever character, other than customs duties on imports and other than taxes within the purview of Article III of GATT 1994, imposed in connection with importation or exportation, including tasks provided under Article 3 (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.
3. The fees and charges referred to in paragraph 2 shall not be calculated on an *ad valorem* basis, unless there is a fixed maximum fee which does not exceed the approximate costs of services rendered. Each State Party shall endeavour to phase out any *ad valorem* based fees and charges.
4. Each State Party shall officially publish information on fees and charges on the internet online, as far as practicable in English. Such information shall include the reason for the fee or charge, 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.
5. Upon request, the customs authorities or any other competent authority of a State Party shall provide information on fees and charges applicable to imports of goods into that State Party, including the methods of calculation.

ARTICLE 12

Penalty Disciplines

1. Each State Party shall ensure that penalties for breaches of its domestic customs laws, regulations or procedural requirements are imposed only on the person legally responsible for the breach.
2. The penalty imposed shall depend on the facts and circumstances of the case and shall be based on the culpability of the responsible person and be commensurate with the degree and severity of the breach.
3. A penalty for minor breaches, such as inadvertent omissions or mistakes, including mistakes in interpretation of a customs law, regulation or procedural

⁴ In accordance with the WTO Agreement on Trade Facilitation, this Article shall not apply to Paraguay and Uruguay.

requirement, made without fraudulent intent or gross negligence, shall not be disproportionate, meaning that the penalty shall not be greater than necessary to discourage a repetition of such errors.

4. Each State Party shall ensure that if a penalty is imposed for a breach of domestic 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, the basis for the penalty and instructions on the rights to appeal.

5. Each State Party shall consider, as a mitigating factor, the voluntary disclosure to the competent authorities of the circumstances of a breach of its domestic customs laws, regulations or procedural requirements prior to the discovery of breach.

6. Each State 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 its domestic customs laws, regulations or procedural requirements.

7. Each State 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 13

Legalisation of Documents

1. A State Party shall not require legalisation or other authentication, in particular consular transaction of commercial invoices, certificates of origin or other customs documentation, including related fees and charges, in connection with the importation of any goods of another State Party.⁵

2. However, if in the case of post-clearance audits irregularities are suspected which might require additional documents, the authorities of the importing State Party may require the documents to be legalised before submission.

ARTICLE 14

Temporary Admission of Goods

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

2. For the purposes of this Article, “temporary admission” means customs procedures under which certain goods may be brought into a customs territory and conditionally relieved from payment of customs duties. Such goods must be imported for a specific purpose and must be intended for re-exportation within a specified period

⁵ This paragraph shall not apply to Paraguay, as long as it applies its domestic laws and regulations in a non-discriminatory manner.

without having undergone any change except normal depreciation due to the use made of them.

ARTICLE 15

Inward and Outward Processing

1. Each State Party shall allow for temporary importation and exportation for inward processing and outward processing in accordance with international standards.
2. For the purposes of this Article;
 - (a) “inward processing” means customs procedures under which certain goods can be brought into a customs territory conditionally relieved from payment of customs duties. Such goods must be intended for re-exportation within a specified period after having undergone manufacturing, processing or repair; and
 - (b) “outward processing” means customs procedures under which certain goods, which are in free circulation in a customs territory, may be temporarily exported for manufacturing, processing or repair abroad and then re-imported with total or partial exemption from customs duties.

ARTICLE 16

Border Agency Cooperation

Each State 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.

ARTICLE 17

Appeal

1. Each State Party shall provide effective, prompt, non-discriminatory and easily accessible procedures to guarantee the right of appeal against administrative actions, rulings and decisions of customs or other competent authorities affecting import or export of goods or goods in transit.
2. Each State 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; or
 - (b) one level of independent judicial appeal.

3. Appeal procedures may also include both administrative review by the supervising authority and judicial review of decisions taken at the administrative level according to the domestic laws and regulations of the State Parties.

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 State Parties and shall be covered by the obligation of professional secrecy, in accordance with the domestic laws and regulations of each State Party. Such information shall not be disclosed by the authorities of a State Party without the explicit permission of the person or authority providing it.

ARTICLE 19

Cooperation

1. The State Parties shall cooperate on customs and other trade related matters, in order to ensure that the objectives set out in Article 1 (General Principles) are attained.

2. Cooperation may include, in particular:

- (a) exchanging information concerning the implementation of customs and other trade related laws and regulations and procedures; particularly in the following areas:
 - (i) simplification and modernisation of customs and other trade related procedures;
 - (ii) international instruments and standards applicable in the area of customs and trade;
 - (iii) border agency cooperation;
 - (iv) single window systems, including work towards their future interoperability;
 - (v) relations with the business community;
 - (vi) supply chain security and risk management; and
 - (vii) customs valuation.
- (b) considering developing joint initiatives related to import and export procedures including technical assistance, capacity building and measures aimed at providing an effective service to the business community; and

- (c) exchanging experiences on national trade facilitation committees, their functions and their work concerning domestic coordination and implementation of WTO commitments.

3. The State Parties may identify and submit to the Joint Committee for consideration additional measures with a view to facilitating trade between them.

4. The State Parties shall promote international cooperation in relevant multilateral fora on trade facilitation. The State Parties shall review relevant international initiatives in order to identify, and if appropriate submit to the Joint Committee for consideration, further areas where joint action could contribute to their common objectives.
