

ANNEX V

REFERRED TO IN ARTICLE 2.15

TRADE FACILITATION

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TRADE FACILITATION

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 trade procedures;
- (b) consistent, impartial, predictable and reasonable administration of international laws and 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) 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. Nothing in this Annex shall be construed as to diminish the rights and obligations of the Parties under Articles 2.8 (Technical Regulations) and 2.9 (Sanitary and Phytosanitary Measures) of the Agreement.

ARTICLE 2

WTO Agreement on Trade Facilitation

For the purposes of Chapter 2 on Trade in Goods of the Agreement, the WTO Agreement on Trade Facilitation applies and is hereby incorporated into and made part

of the Agreement, *mutatis mutandis*. In addition, the measures provided for in this Annex shall apply.

ARTICLE 3

Transparency

1. Each Party shall promptly make available, as far as practicable in English, on the internet:

- (a) all domestic laws and regulations, administrative decisions of general application and procedures relevant to trade in goods; and
- (b) a description of its trade procedures that informs interested parties of the practical steps needed to trade or transit goods, including contact information on enquiry points.

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 publish in advance, and on the internet, 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.

3. Each Party shall ensure that a reasonable time period is provided between the publication of domestic laws and regulations relevant to international 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. Each Party shall, prior to the importation or exportation of a product, in a reasonable time bound manner, issue a written advance ruling to an importer, exporter, or any person with a justifiable cause, or a representative thereof, who has submitted a written request containing all necessary information. An advance ruling shall be issued 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 applicant;¹
- (c) any applicable fees and charges or, where appropriate, information on the way such fees and charges are calculated;
- (d) applicable border-crossing 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. Fees and charges of whatever character, other than import duties and other than taxes in accordance with Article III of the GATT 1994, imposed in connection with importation, exportation or transit, including tasks provided under Article 5 (Advance

¹ Switzerland applies customs duties based on weight or quantity rather than *ad valorem* duties.

Rulings), shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection of 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 applicable fees and charges and their method of calculation as well as the time and method of payment.

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 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 requirement, made without fraudulent intent or gross negligence, shall not be greater than necessary to discourage a repetition of such errors. Penalties shall not be inflicted for obvious formal errors.

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 as a mitigating factor 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.

6. Each Party shall specify in its domestic legislation 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 of duties, taxes, fees and charges collected by customs and other border authorities; and
 - (c) allow importers to obtain the release of goods prior to meeting all import requirements of that Party if the importer provides sufficient guarantees and where it is decided that neither further examination, physical inspection nor any other submission is required.
3. In order to avoid deterioration of perishable goods,² each Party shall provide:
 - (a) for the rapid release of perishable goods; 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 the 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 examinations, physical examinations or post-audit examinations, shall not be more burdensome than necessary to limit its exposure to the risks referred to in paragraph 2.

² For the purposes of this paragraph, "perishable goods" means goods which rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.

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 domestic laws and regulations 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 trade 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) including the principles of the International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention).

ARTICLE 12

Customs Brokers

The customs systems and procedures of each Party shall enable exporters and importers to submit their customs declaration without requiring recourse to customs brokers.

ARTICLE 13

Temporary Admission of Goods and Inward and Outward Processing

1. Each Party shall allow 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 conditionally relieved from payment of customs duties.

3. Each Party shall allow for inward processing 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 hours of business, 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 a mutual recognition agreement on authorisation for the purpose of facilitating international trade while ensuring effective customs control; and
- (b) base its respective domestic laws and regulations on relevant international standards, in particular the WCO Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework).

ARTICLE 16

Legalisation of Documents

No Party shall 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 goods from another Party.

ARTICLE 17

Confidentiality

All information provided in relation with this Annex shall be treated as confidential by the Parties in accordance with the domestic laws and regulations of each Party. Such

information shall not be disclosed by the authorities of a Party without the express permission of the person or authority providing it.

ARTICLE 18

Cooperation

1. The Parties may identify and submit additional measures with a view to facilitating trade between them to the Sub-Committee on Trade in Goods for consideration.

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.
