

## **ANNEX VIII**

**REFERRED TO IN ARTICLE 2.15**

**CUSTOMS PROCEDURES AND TRADE FACILITATION**



## ANNEX VIII

### REFERRED TO IN ARTICLE 2.15 (TRADE FACILITATION)

#### CUSTOMS PROCEDURES AND TRADE FACILITATION

##### ARTICLE 1

###### *Definitions*

For the purpose of this Annex:

- (a) “customs authority” means the authority that according to the domestic laws and regulations of each Party is responsible for the administration and enforcement of its customs laws;
- (b) “customs laws” means domestic laws and regulations administered and enforced by the customs authority of each Party concerning the importation, exportation and transit of goods, relating to customs duties, charges, and other taxes, or to prohibitions, restrictions, and other similar controls with respect to the movement of controlled items;
- (c) “customs procedures” means the treatment applied by the customs authority of the relevant Party to goods which are subject to that Party’s customs laws and regulations;
- (d) “competent authorities” means governmental agencies other than customs authorities which are responsible for the implementation of commitments within the scope of this Annex.

##### ARTICLE 2

###### *General Principles*

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 customs authorities and other competent authorities:

- (a) transparency, efficiency, simplification, harmonisation and consistency of customs and other border procedures;
- (b) laws, regulations and administrative rulings relevant to international trade in goods shall be administered in a consistent, impartial, predictable and reasonable manner;
- (c) follow relevant international standards;

- (d) consistency with multilateral instruments to which Malaysia and the EFTA States are parties;
- (e) best possible use of information technology;
- (f) customs controls based on risk management;
- (g) cooperation within each Party among customs authorities and other competent authorities; and
- (h) consultations between the Parties and their respective business communities.

### ARTICLE 3

#### ***WTO Agreement on Trade Facilitation***

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 apply.

### ARTICLE 4

#### ***Transparency***

1. Each Party shall make publicly available and update, via any officially designated medium, and where feasible and possible, an official website, as far as practicable in English, the following:
  - a) all laws, regulations, administrative rulings of general application and procedures relevant to trade in goods;
  - 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 Party; and
  - d) 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 via the internet and other electronic means. Answers to enquiries in English shall be in English. No Party shall require the payment of a fee for answering enquiries.
3. Each Party shall consult its business community on its needs including the needs of small and medium-sized enterprises with regard to the development and implementation of trade facilitation measures.

4. Each Party shall, to the extent practicable and in a manner consistent with its domestic laws and regulations and legal system, publish in advance and in particular on the internet, any proposed laws and regulations of general application related to the movement, release, and clearance of goods, including goods in transit, with a view to affording interested persons an opportunity to comment on them.

5. Each Party shall, to the extent practicable and in a manner consistent with its domestic laws and regulations 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, in order to enable traders and other interested parties to become acquainted with them.

## ARTICLE 5

### *Advance Rulings*

1. A Party shall issue a written binding advance ruling in a reasonable, time bound manner to an applicant<sup>1</sup> who submitted a written request containing all necessary information. An advance ruling shall be issued with regard to:

- (a) tariff classification of goods;
- (b) the rules of origin that will apply to goods<sup>2</sup>; and
- (c) any other matters the Parties may agree on.

2. A Party that declines to issue an advance ruling shall without delay notify the requesting importer, producer or exporter in writing, setting forth the basis for its decision.

3. Each 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 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.

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<sup>1</sup> For greater certainty, an applicant may be an importer, producer or exporter established in the territory of the requested Party, or an exporter or producer in the territory of another Party. An importer, exporter or producer may submit a request for an advance ruling through a duly authorised representative thereof.

<sup>2</sup> For greater certainty, Malaysia shall provide advance ruling on the origin of goods only when it is provided for in its domestic legislation.

## ARTICLE 6

### *Simplification of Procedures*

1. The Parties shall apply trade and border procedures that are simple, reasonable and impartial.
2. The 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 import, export and transit formalities and their complexity and to decreasing and simplifying import, export and transit documentation requirements, each Party shall ensure that such formalities and documentation requirements:
  - (a) are applied with a view to a rapid release and clearance of goods;
  - (b) are applied in a manner that aims at reducing the time and cost of compliance; and
  - (c) are the least trade restrictive measure chosen, where two or more alternative measures are reasonably available.
3. No importing Party shall require an original or a copy of the export declaration from the importer as a requirement for importation.
4. The Parties 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 International Organization for Standardization (ISO), the World Customs Organization (WCO) including the principles of the International Convention on the Simplification and Harmonisation of Customs Procedures, as amended (the Revised Kyoto Convention).
5. 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) allow 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;
  - (c) provide to the extent possible for electronic payment for duties, taxes, fees and charges incurred upon importation or exportation; and
  - (d) allow goods intended for import to be moved within the Party under customs control from the customs office of entry to another customs office from where the goods would then be released or cleared, provided all regulatory requirements are met.
6. As a condition for release according to paragraph 5(b), a Party may require:

- (a) payment of customs duties, taxes, fees and charges determined prior to or upon arrival of goods and a guarantee for any amount not yet determined in the form of a surety, a deposit or another appropriate instrument provided for in its domestic laws and regulations; or
  - (b) a guarantee in the form of a surety, a deposit or another appropriate instrument provided for in its domestic laws and regulations.
- 7. In order to avoid deterioration of perishable goods,<sup>3</sup> each 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; and
  - (d) either arrange, or allow an importer to arrange, for the proper storage of perishable goods pending their release. Each Party may require that any storage facilities arranged by the importer have been approved or designated by its relevant authorities.

## ARTICLE 7

### *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 hours of business or away from 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 8

### *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. In identifying and addressing risks related to the entry, exit, transit, transfer or home consumption of goods moved between the customs territories of the Parties, the Parties shall systematically apply objective risk management procedures and practices.

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<sup>3</sup> For the purposes of this paragraph, “perishable goods” means goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.

3. Each Party shall concentrate customs control and, to the extent possible other relevant border controls, on high-risk consignments and expedite and facilitate the release of low-risk consignments. A Party may also select, on a random basis, consignments for such controls as part of its risk management.

## ARTICLE 9

### ***Authorised Economic Operator System***

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

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

## ARTICLE 10

### ***Customs Brokers***

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

## ARTICLE 11

### ***Fees and Charges***

1. Fees and charges, other than import duties and taxes within the purview of Article III of the GATT 1994, imposed in connection with importation or exportation, including tasks provided under Article 5 (Advanced Rulings), shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic goods or taxation of imports or exports for fiscal purposes.

2. Fees and charges referred to in paragraph 1 shall not be calculated on an *ad valorem* basis.

3. Each Party shall, in accordance with its domestic laws and regulations, publish information on the fees and charges that it imposes, to the extent possible on the internet and in English. Such information shall include the fees and charges that will be applied, the reason for such fees and charges, the customs authority and other competent authority and when and how payment is to be made.

4. Upon request, the customs authorities, or any other competent authority of a Party, shall provide information on fees and charges applicable to imports of goods into that Party.

## ARTICLE 12

### *Penalties*

Each Party shall adopt or maintain measures that provide for the imposition of civil, administrative and, where appropriate, criminal sanctions for violations of its domestic customs laws and regulations.

## ARTICLE 13

### *Legalisation of Documents*

1. No Party shall require certification or authentication (legalisation) of commercial invoices, certificates of origin or other customs documentation, in connection with the importation of any goods from another Party, including related fees and charges. This prohibition includes, in particular, any requirement in connection with the importation of the goods to obtain from a consul of the importing Party in the territory of the exporting Party or in the territory of a third party a consular invoice or a consular visa for commercial invoices, certificates of origin or other customs documentation (consular transactions).

2. However, in certain circumstances, such as where the customs authority of a Party doubts the accuracy of the importer's declaration, and thereby challenges it, the customs authority may require as additional documentary support, legalised, authenticated or consularised documents.

## ARTICLE 14

### *Temporary Admission of Goods*

1. Each Party shall allow, as provided for in its domestic laws and regulations, temporary admission of goods in accordance with international standards and practices which all Parties apply, in particular the standards of the Revised Kyoto Convention and the WTO Agreement on Trade Facilitation.

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 totally or partially from payment of customs duties and taxes. Such goods shall be imported for a specific purpose, and shall be intended for re-exportation within a specified period and without having undergone any change except normal depreciation due to the use made of them.

## ARTICLE 15

### ***Inward and Outward Processing***

1. Each Party shall allow temporary importation and exportation for inward processing and outward processing in accordance with the Party's domestic laws and regulations in force.<sup>4</sup>
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 totally or partially from payment of customs duties and taxes. Such goods must be intended for re-exportation within a specified period after having undergone manufacturing, processing or repair;
  - (b) "outward processing" means customs procedures under which certain goods, which are in free circulation in a customs territory, may be temporarily exported within a specified period for manufacturing, processing or repair abroad and then re-imported with total or partial exemption from customs duties.

## ARTICLE 16

### ***Border Agency Cooperation***

Each Party shall ensure that its authorities and agencies involved in border and other import and export controls cooperate and coordinate their procedures in order to facilitate trade.

## ARTICLE 17

### ***Appeal***

Each Party shall, in accordance with its domestic laws and regulations, ensure that any person to whom an administrative decision in connection with import, export or transit is issued, has the right to at least:

- (a) an administrative appeal to or review by an administrative authority higher than or independent of the office that issued the decision; or
- (b) a judicial appeal or review of the decision.

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<sup>4</sup> For greater certainty, Malaysia shall allow inward and outward processing only when it is provided for in its domestic laws and regulations.

## ARTICLE 18

### ***Confidentiality***

Any information provided in relation with the importation, exportation, advance rulings or transit of goods shall be treated as confidential by the Parties and shall be covered by the obligation of professional secrecy, in accordance with the respective 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 19

### ***Further Cooperation***

1. The Parties shall promote international cooperation in relevant multilateral *fora* on trade facilitation. The Parties shall review relevant international initiatives in order to identify further areas where joint action could contribute to their common objectives.
2. To the extent permitted by their domestic laws and regulations, the customs authority of each Party is encouraged to cooperate regarding:
  - (a) sharing of best practices and knowledge to promote compliance of their laws and regulations and simplification and expedition of customs procedures pertaining to the implementation and operation of the provisions of the Agreement; and
  - (c) any other issues the Parties may agree on.

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