

FTAA – Free Trade Area of the Americas

Draft Agreement

Chapter XII Customs [Procedures][Matters]

CHAPTER XII Customs [Procedures][Matters]

Section A General Aspects

[Article 1. Definitions]

1.1. For the purposes of this Chapter:

[**Advertising films** means recorded visual media, with or without sound-tracks, consisting essentially of images showing the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of any Party, provided that the films are of a kind suitable for exhibition to prospective customers but not for broadcast to the general public, and provided that they are imported in packets that each contain no more than one copy of each film and that do not form part of a larger consignment;]

[**Business confidential information** means information that is, by nature, confidential and which is not already published, not generally available to third parties, or [otherwise] in the public domain. [Business confidential information includes information the disclosure of which would provide a significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information. Examples of such information may include [but are not limited to]:

- the terms of sale or contracts relating to importations, including information with respect to transaction quantities and prices;
- internal costs and prices, including manufacturing costs;
- manufacturing processes; and
- profit margins.];]

[**Commercial samples of negligible value** means commercial samples having a value, individually or in the aggregate as shipped, of not more than one U.S. dollar (US\$1), or the equivalent amount in the currency of another Party, or so marked, broken, perforated or otherwise treated that they are unsuitable for sale or for use except as commercial samples;]

[**Confidential information** means information that, if disclosed, would have an adverse effect on the person providing the information or for a third person from which it had been received;]

[**Customs matters** means matters pertaining to the classification and valuation of goods for customs purposes, rates of duty, border taxes and all other import and export charges, origin determination and eligibility for preferential treatment under this Agreement, and to all other procedural and substantive requirements, restrictions and prohibitions on imports and exports, including such matters pertaining to goods imported or exported by or on behalf of travelers;]

[**Customs procedures** means the set of rules that regulate customs activities, formalities and requirements applied or controlled by Customs Administrations;]

[**Entry** means...;]

[Low value shipments means importations whose value does not exceed the amount of [one thousand United States Dollars (US\$1,000)] or its equivalent amount in the country's currency or such higher amount as a Party may establish, provided that such importation does not form part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of meeting the minimum value requirement, and subject to the exceptions listed in Annex XX;]

[Preshipment inspection activities means all activities related to the verification of classification, [valuation][prices], country of origin, and eligibility for preferential treatment under this Agreement of goods to be exported to the territory of a Party that contracts for or mandates the use of such activities;]

[Printed advertising materials means those goods classified in Chapter 49 of the Harmonized System, including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials and posters, that are used to promote, publicize or advertise a good or service, are essentially intended to advertise a good or service, and are supplied free of charge;] and

[Vehicle means a truck, truck tractor, tractor, trailer or trailer unit, locomotive, railway car or other railroad equipment.]

Article 2.

2.1. Each Party shall ensure that the preparation, adoption and application of their laws and regulations related to customs [procedures] [matters] do not constitute unnecessary obstacles to international trade.

[2.2. Each Party shall administer in a [uniform][consistent], impartial, and reasonable manner all its laws, administrative rulings and judicial decisions governing customs matters.]

Section B Substantive Provisions

Article 3. Transparency and Dissemination

3.1. Each Party shall promptly make known to the general public and to the other Parties, through broad means of dissemination, the laws, regulatory provisions, and general administrative rulings, including their modifications, governing customs [matters][procedures]. Each Party shall also [where feasible] publish the information simultaneously on the Internet.

3.2. Nothing in this Article shall require a Party to make available on the Internet [and/or] other broad means of dissemination, administrative rulings issued prior to the entry into force of this Agreement.

3.3. Each Party shall promptly communicate administrative decisions affecting individuals.

3.4. Each Party shall designate and/or maintain, one or more points of contact to address and to respond to inquiries from interested persons pertaining to customs [matters][procedures], and shall publish on the Internet and/or by other broad means of dissemination information concerning steps for making inquiries.

[3.5. Each Party shall publish [in advance] any regulations governing customs matters that it proposes to adopt, and shall provide interested persons and Parties a reasonable opportunity to submit their comments on such proposed regulations. In exceptional circumstances, where a Party may need to adopt regulations on a provisional or interim basis without first providing an opportunity for comments from interested

persons and Parties, a Party shall provide interested persons and Parties with a reasonable opportunity to comment before adopting the final regulations. Parties shall issue and publish written responses to the comments received from interested persons and Parties.]

3.6. Nothing in this Article shall require a Party to publish law enforcement procedures and internal operational guidelines related to methods for inspecting goods, conducting risk analysis and targeting, if the Party determines that such publication would interfere with law enforcement.

Article 4. [Automation][Electronic Data Interchange Systems and Common Data Elements]

[4.1. Each Party shall automate their customs procedures and controls taking into account the internationally accepted standards in order to facilitate trade among the Parties.

4.2. Each Party shall establish compatible electronic data interchange systems between traders and customs administrations that foster expedited customs clearance procedures.

4.3. Each Party shall develop a core set of data elements required for the administration of national customs regulations and requirements associated with the customs clearance of goods.

4.4. Each Party shall encourage the establishment of compatible electronic data interchange systems between customs administrations that foster increased cooperation and information exchange. The Parties shall develop parameters for the bilateral or plurilateral exchange of information related to compliance with customs regulations and requirements.

4.5. In adopting and maintaining electronic data interchange systems, each Party shall:

- a) develop electronic systems accessible to the trading community;
- b) develop capacity for electronic submission and processing of information and data prior to arrival of the shipment of good;
- c) develop capacity for customs electronic systems to work in conjunction with risk analysis and targeting;
- d) work toward developing compatible electronic systems among customs administrations;
- e) work toward developing a set of common data elements for the customs clearance of goods;
- f) develop regulations that give full effect to electronic data transfer; and
- g) implement computer security measures that guarantee authenticity, confidentiality and integrity.]

Article 5. Cooperation

[5.1. The Parties recognize the need for and endeavor to administer customs operations in an effective and efficient manner and shall endeavor to promote customs cooperation and consult as deemed necessary for the uniform application and interpretation of administrative or operational provisions on matters relating to this Chapter and Chapter XX ([Customs] Procedures Related to Rules of Origin). The

consulted Party shall give prompt and full consideration to any inquiry received, and shall inform the other Parties of any conduct or actions that could affect the legitimate interests of another Party, where allowed by national law.

5.2. Where feasible, the Parties shall establish mechanisms and procedures to provide Parties needing it with technical and financial assistance with customs modernization. In pursuit of this objective, the Parties shall afford each other mutual assistance, through the exchange of their experience in, and knowledge of customs.]

[5.3. For the purpose of furthering cooperation among customs authorities, the information shall be provided without any consular, notarial, approbatory, or exequatur procedure being necessary.]

Article 6. Code of Conduct

6.1. Each Party shall implement procedures for the recruitment, training and management of personnel to ensure a high standard of customs service to the trading community and shall ensure compliance with national standards of professional integrity.

6.2. Each Party shall elaborate and implement national codes of conduct, legislation, policies or regulatory instruments applicable to customs officials with provisions on standards of conduct, conflict of interest, and possible sanctions and disciplinary action.

Article 7. Combating Illicit Customs

[7.1. Each Party shall adopt and maintain clear and effective provisions in their customs legislation for preventing, detecting, combating [and sanctioning] illicit activities.]

[Article 8. Advance Rulings]

[8.1. Each Party shall adopt expeditious procedures for the issuance of [written] advance rulings, prior to the importation of a good into its territory, including a detailed description of the information required to process an application for an advance ruling [and the procedures for requesting that information contained in that application be treated as confidential].]

[8.2. [The advance rulings may be requested by the importer or the customs agent in its territory or by an exporter or producer in the territory of another Party.] Advance rulings shall be issued on the basis of the facts and circumstances presented by such importer, exporter or producer of the good, concerning the application of the customs legislation to an import transaction in his territory, and will include classification, [application of criteria for customs valuation,] country of origin [, or eligibility for preferential treatment under this Agreement].]

[8.3. Each Party shall provide that its respective customs administration:

- a) may, at any time during the course of an evaluation of an application for an advance ruling, request supplemental information from the person requesting the ruling;
- b) shall, after it has obtained all necessary information from the person requesting an advance ruling, issue the ruling no more than [ninety (90)] [one hundred twenty (120)] days,

[extensions may be obtained, in qualified cases,] including a full explanation of the reasons supporting the ruling, upon request of the person who requested it.]

- c) shall provide, upon request, to the person who requested the advance ruling a full explanation of the reasons for the ruling.

[8.4. Each Party shall apply an advance ruling to importations into its territory of the good for which the ruling was requested, from the date of its issuance or such later date as may be specified in the ruling, except where there is a request for immediate application of a modified ruling under paragraph 8.6 of this Article.]

[8.5. Each Party shall provide to any other person [requesting an advance ruling] the same treatment as it provides to a person to whom it issued an advance ruling, provided that the facts and circumstances are identical in all substantial respects.]

[8.6. The issuing Party may modify or revoke an advance ruling upon a determination that:

- a) the ruling was based on an error;
 - i) of fact or law, or
 - ii) in the classification, [value or] origin of the good or material that is the subject of the ruling;
- b) there is a change in law, material fact, or circumstances on which the ruling is based;
- c) the ruling is at variance with a judicial decision; or
- d) the ruling is at variance with a modification to the applicable rules of origin under this Agreement.]

[Each Party shall provide that a modification or revocation of an advance ruling [shall take effect no less than sixty (60) days after it is [issued][published], unless the person who received the ruling requests that it be applied immediately upon its publication][may be effective on the date on which the modification or revocation was issued, or may postpone the effective date for a period of sixty (60) days].] [The issuing Party shall postpone the effective date of such modification or revocation for a period not less than ninety (90) days if the person to whom the advance ruling was issued has relied in good faith [to his detriment] on that ruling.]

[8.7. When an application for an advance ruling is made to its customs administration that involves an issue that is the subject of:

- a) a verification of origin;
- b) a review or appeal to the customs administration; or
- c) judicial or quasi-judicial review in its territory;

the customs administration may decline to issue the ruling.]

[8.8. Each Party may apply such measures as the circumstances may warrant when it issues an advance ruling to a person that has misrepresented or omitted material facts or circumstances on which the ruling is based or that has failed to act in accordance with the terms and conditions of the ruling.]

Article 9. Review and Appeal

9.1. With respect to determinations relating to customs [matters][procedures], each Party shall provide that importers in its territory have access to:

- a) at least one level of administrative review independent of the official or office responsible for the decision under review, [in accordance with its national legislation]; and
- b) judicial [or quasi-judicial] review of the decision taken at the final level of administrative review, [in accordance with its national legislation].

[9.2. Each Party shall grant to any person the same rights of review and appeal on any issue related to its customs administration that it provides to importers in its territory.]

Article 10. Confidentiality

10.1. Each Party shall maintain the confidentiality of business confidential information provided in connection with the administration of its customs laws, and shall not disclose such information without the specific permission of the person or government providing such information, except to the extent that it may be used or disclosed [for law enforcement purposes or] in the context of judicial proceedings [in accordance with its national legislation and international agreements it has signed on confidentiality].

10.2. [Each Party shall specify procedures by which persons or governments may claim that information provided in connection with administration of customs laws is entitled to treatment as business confidential information under this Agreement.] The information provided on a confidential basis by a Party shall be treated as such by the other Party.

10.3. Nothing in this Article shall be construed to limit the collection and publication of aggregate import and export statistics.

10.4. Nothing in this Article shall preclude the Parties from sharing information between governments for law enforcement and customs administration purposes [in accordance with Customs Mutual Assistance Agreements and the legislation of each Party].

Article 11. Penalties

11.1. Each Party shall maintain measures imposing civil and/or administrative penalties and, where applicable, criminal penalties, for violations of its customs laws and regulations.

[Article 12. [Release][Clearance] and Security]

[12.1. Each Party shall adopt procedures providing for the [release][clearance] of goods within a period of time no greater than that required to ensure compliance with its domestic legislation.]

[12.2. Each Party shall adopt procedures allowing goods, to the extent possible, to be [released][cleared] within [seventy two (72)][forty eight (48)][twenty four (24)] hours of [arrival][presentation to customs].]

[12.3. Each Party shall adopt procedures allowing goods, to the extent possible, to be [released][cleared] at the point of arrival, without requiring interim transfer to customs warehouses or other customs designated areas.]

[12.4. Each Party shall adopt procedures allowing for deferred payment of duties arising from the entry of goods.]

[12.5. Each Party shall adopt procedures allowing [importers][exporters] to withdraw goods from customs prior to the final computation or ascertainment of the duties accruing on entry of the goods.]

[12.6. Each Party may require [importers][exporters] to provide security as a condition for the release of goods, when such security is required to ensure that obligations arising from the entry of the goods will be fulfilled [in accordance with the provisions of their national legislation].]

12.7. [Each Party shall ensure that the amount of any security shall be no greater than that required to ensure that obligations arising from the entry of the goods will be fulfilled.] [No security shall be required for: (list to be established - e.g.: commercial samples, business traveler goods).]

[12.8. Each Party shall ensure that any security shall be [discharged][returned] as soon as possible after its customs administration is satisfied that the obligations under which the security was required have been fulfilled.]

[12.9. Each Party shall adopt procedures allowing:

- a) importers to provide security in the form of bonds or other non-cash financial instruments;
- b) importers that regularly enter goods to provide security in the form of continuous bonds or other non-cash financial instruments covering multiple entries; and
- c) importers to provide security in any other forms specified by the customs administration.]

Article 13. Harmonized System

13.1. Each Party shall ensure, in an expeditious basis, that its nomenclature and classification of goods is in conformity with the most recent version of the Harmonized Commodity Description and Coding System.

Article 14. Customs Valuation

14.1. In the reciprocal trade among Parties, the customs valuation of goods shall be governed by the provisions of the WTO Agreement on Implementation of Article VII of GATT 1994 [without having recourse to the reserves and options provided for under said Agreement].

[14.2. Each Party shall determine the customs value of imported carrier media bearing digital products according to the cost or value of the carrier medium alone, without regard to the cost or value of the digital products stored on the carrier medium.]

[Article 15. Risk Analysis / Targeting Methodology]

[15.1. Each Party shall adopt and employ risk management systems, while respecting the confidentiality of information, in order to focus customs enforcement activities on high-risk goods and travelers and to facilitate clearance and movement of low-risk goods and travelers. Such procedures shall include, *inter alia*:

- a) processing and release customs procedures and systems that include risk analysis and targeting to identify high-risk goods and shipments; and
- b) risk analysis through pre-arrival processing of information and data to identify or target high-risk goods and travellers and shipments that will be subject to inspection and/or other customs procedures.]

[Article 16. Pre-shipment Inspection]

[16.1. No Party shall mandate as a condition of importation the use of non-governmental pre-shipment inspection activities relating to the verification of classification, [valuation][prices], country of origin and eligibility for preferential treatment under this Agreement of goods to be exported to the territory of said Party.]

[Article 17. Temporary [Admission][Importation] of Goods]

[17.1. The Parties shall include in their national legislation procedures allowing for the temporary [admission][importation] of goods, in order to facilitate international trade operations.]

[17.2. The Parties shall grant temporary duty-free admission for the goods used by residents of another Party, or under their personal supervision, in the exercise of their business activities, trade or profession, or for display or demonstration in the case of commercial samples, product or service literature and advertising films, regardless of origin, when:

- a) the goods involved are the following:
 - i) professional equipment [including software and broadcasting and cinematographic equipment] needed for exercising the business activities, trade or profession of business people [that meets the requirements for temporary entry under the legislation of the importing country];
 - ii) goods imported for sports-related purposes;
 - iii) goods destined for display or demonstrations, including commercial samples, product or service literature printed advertising material and publicity films [for promoting goods orders];
 - iv) containers and vehicles for the international transport of goods; and
 - v) goods that are to be repaired or altered.
- b) such admission shall be requested by a resident of another Party, except when this involves goods indicated in subparagraph a) iv) of this Article;

- [c) No Party may condition the duty-free temporary admission of goods referred to subparagraph a) of this Article, other than to require that such goods:
- i) are not to be sold or leased [or further manufactured or processed] while in the territory;
 - ii) are identifiable at the time of their exportation;
 - iii) are presented in quantities no larger than reasonable, given their intended use;
 - iv) are exported on the departure of that person within the authorized time period initially up to one year from the date of importation or such longer period as a Party may establish; and
 - v) are otherwise admissible into the Party's territory under its laws.
- [d) if a security is requested, it shall be posted for [...] percent ([...] %) of the charges that would be owed in the case of final importation, which shall become releasable on exportation of the good.]]

[17.3. When a Party requires guarantees, the amount required should not exceed [...] percent ([...] %) of the amount of duties payable in case of final importation of the goods.]

[17.4. When the requirements for temporary [admission][importation] are not met, the Parties [shall] [may] apply the corresponding tariffs and any other charges that would apply in the case of final importation of the good, and penalties pursuant to national legislation.]

[17.5. Each Party, through its customs administration, shall adopt procedures providing for the expeditious [release] [clearance] of the articles subject to temporary admission. To the extent possible, when such goods accompany a resident of another Party seeking temporary [entry][admission][importation] of them, and are imported by that person for use in the exercise of a business activity, trade or profession of that person [or for personal use as household effects for that person], the procedures shall allow for the articles to be [released][cleared] simultaneously with the entry of that person.]

[17.6. Each Party shall, at the request of the person concerned and for reasons deemed valid by the national customs authorities, extend the time limit for temporary [admission][importation] beyond the point initially set [up to the maximum period established in the Party's legislation or regulations on temporary importation].]

[17.7. Each Party shall permit temporarily [admitted][imported] goods to be exported through a customs port other than the one through which they were imported.]

[17.8. Each Party shall relieve the importer of liability for failure to export a temporarily [admitted][imported] good upon presentation of satisfactory proof to customs authorities that the good has been destroyed [under customs supervision] within the original time limit for temporary [admission][importation] or any lawful extension.]

[Article 18. Goods Re-entered After Repair or Alteration]

[18.1. The Parties shall establish in their national legislation procedures allowing for duty-free re-entry of goods provided that these goods were declared to the Customs Authorities upon exportation and returned with the same characteristics with which they were exported.]

[18.2. No Party may apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of another Party for repair or alteration.]

[18.3. Parties shall authorize the duty-free re-entry of goods that have been temporarily exported to the territory of another Party for repair or alteration regardless of its origin. The repairs or alterations shall not destroy the essential characteristics of the good or change it into a new or commercially different good. Operations to transform an unfinished good into a finished good shall not constitute repair or alteration, [without prejudice to a part of the good undergoing repair or alteration].]

[Article 19. [Importation of] Duty-free [Entry] of Certain Commercial Samples and Printed Advertising Materials]

[19.1. The Parties shall promote inclusion in their national legislation of procedures that allow for the duty-free importation of commercial samples and printed advertising materials, in order to facilitate and streamline clearance processes, while maintaining customs control activities.]

[19.2. Each Party shall grant duty-free entry to commercial samples of negligible value or, that are marked, broken, perforated, or treated in any way other than for purposes of sale or use as samples, and printed advertising materials imported from the territory of another Party, regardless of their origin, but may require that:

- a) such samples be imported solely for the solicitation of orders for goods or services from the other Party, regardless of whether the services are being provided from the territory of another Party or from a non-Party country; and
- b) such advertising materials be imported in no greater quantity than is reasonable for their intended use.]

[19.3. For purposes of qualifying for the duty-free importation of printed advertising materials, the following requirements shall be met:

- a) the materials shall correspond to those classified in Chapter 49 of the Harmonized System;
- [b) the materials shall be imported in packages that do not contain more than one (1) copy of each printed item;] and
- c) the materials and packages may not be part of a larger shipment.]

[Article 20. Containers and Vehicles Used in International Traffic]

[20.1. In the case of temporary [admission][importation] of containers and vehicles for the international transport of goods, and subject to Chapters XX (Investment) and XX (Cross-Border Trade in Services), each Party:

- a) shall allow vehicles or containers used in international traffic that temporarily enters its territory from the territory of another Party to exit its territory on any route that is reasonably related to the economic and prompt departure of such vehicle or container;

- b) may not require any bond or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of the vehicle or containers;
- c) may not condition the release of any obligation, including any bond, that it imposes in respect of a vehicle or container that temporarily enters its territory on its exit through any particular port of departure; and
- d) may not require a vehicle or carrier bringing a container from the territory of another Party into its territory be the same vehicle or carrier that takes such container to the territory of another Party.]

Article 21. [Express Shipments]

[21.1. Each Party shall adopt and maintain procedures to facilitate and expedite clearance procedures for express shipments, while maintaining the appropriate customs control and customs selection activities.][Such procedures shall:

- [a) be consistent and as common as possible between the Parties;]
- b) provide for separate expedited customs processing for express shipments;
- c) provide for pre-arrival processing of information and data related to express shipments;
- d) permit submission of a single manifest covering all of the goods in the express shipment by the express service company, through, if possible, electronic means;
- e) where possible, and with the appropriate guarantees, provide for the release of certain goods through submission of minimal documentation [and deferred payment]; and
- f) under normal circumstances, process express shipments for release within six (6) hours of the submission of necessary customs documentation, provided the shipment [has been presented to customs][arrived at the customs facilities].]

[Article 22. Low Value Shipment Transactions]

[22.1. Each Party shall adopt and maintain simplified, streamlined and expedited procedures for the importation of low value shipments, while maintaining the appropriate customs control and selection. Such procedures shall:

- a) establish minimal documentation, data and procedural requirements based on the value of the goods;
- [b) permit and encourage the electronic submission of information prior to arrival of the goods;]
and
- [c) allow importation without the use of a customs broker].]