

**CHILEAN PROPOSAL**  
**CHAPTER XX**  
**CUSTOMS PROCEDURES AND TRADE FACILITATION**

**ARTICLE X.1: Definitions**

For the purposes of this Chapter:

**Customs administration** means:

- (a) In the case of Chile, the Servicio Nacional de Aduanas (National Customs Service), or its successor;
- (b) In the case of European Union, .....or its successor;

**Information** means data, documents, reports and other communications in any format, including electronic, as well as certified or authenticated copies thereof;

**Customs law** means legal and administrative provisions, for which the implementation is responsibility of customs administrations in the territory of each Party, regulating importation, exportation and transit of goods regimen or any other customs regimen, including measures of prohibitions, restrictions and control;

**Operations in breach of customs law** means any violation or attempted violation of the customs law of each Party;

**Requested Party** means the customs administration from which cooperation or assistance in customs matters is requested, and

**Requesting Party** means the customs administration seeking cooperation or assistance in customs matters.

**ARTICLE X.2: Confidentiality**

1. Where a Party provides information to another Party in accordance with this Chapter and designates, clearly and specifically the information as confidential, the other Party shall keep the confidentiality of that information in accordance with the provisions of the laws and regulations of that Party.

2. The Party that provides the information may require from the other Party to furnish a written assurance that the information shall be used only for the purposes specified in the information request of the other Party.

3. A Party may decline to provide information requested by another Party if that Party has failed to act in accordance with paragraph 1.

4. Each Party shall, in accordance with its laws and regulations adopt or maintain procedures for protecting the disclosure of confidential information submitted by the other Party including information the disclosure of which could prejudice the competitive position of the person providing the information that violates the terms of this Article.

## **Section A: Trade Facilitation**

### **ARTICLE X.3: Publication**

1. Each Party shall publish, including on the Internet, its customs laws and regulations of general application.

2. Each Party shall designate or maintain one or more enquiry points to address enquiries from interested persons concerning customs matters, and shall make available on Internet information easily accessible for making such inquiries.

3. To the extent possible, each Party shall publish in advance any regulations of general application governing customs matters that it proposes adopt, and shall provide the interested persons the opportunity to provide comments prior to its adoption.

### **ARTICLE X.4: Clearance of Goods**

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties. This paragraph shall not require a Party to release a good where its requirements for release have not been met.

2. In accordance with paragraph 1, each Party shall adopt or maintain procedures that:

(a) Provide for the release of goods as rapidly as possible after arrival, provided all other regulatory requirements have been met; and

(b) As appropriate, provide for advance electronic submission and processing of information before the physical arrival of goods with a view to expediting the release

of goods.

3. Each Party shall, provided that all regulatory requirements have been met, endeavor to adopt and maintain a procedure for the release of perishable goods in order to permit prompt customs clearance.

#### **ARTICLE X.5: Use of Automated Systems**

The customs administrations of each Party shall endeavor to use information technology to support customs operations, including sharing best practices for the purpose of improving their customs procedures, where it is cost-effective and efficient, particularly in the paperless trading context taking into account developments in this area within the WCO.

#### **ARTICLE X.6: Risk Management**

1. Each Party shall adopt or maintain risk management systems in order for assessment and targeting that enables its customs authority to focus its inspection activities on high risk goods and simplifies the release and movement of low risk goods, taking into account the confidential nature of the information obtained through such activities.
2. When applying risk management system, each Party shall examine the imported goods on the basis of appropriate selectivity criteria, including but not limited to non-intrusive inspection instruments, in order to reduce the physical examination of all goods entering its territory.
3. The Parties shall adopt cooperation programs in order to strengthen the risk management system that are based on best practices established between them.

#### **ARTICLE X.7: Express Shipments**

Each Party shall adopt or maintain expedited customs procedures for express shipments, while maintaining appropriate customs control and selection. These procedures shall:

- (a) provide a separate and expedited customs procedure for express shipments;
- (b) provide for information required to release an express shipment to be submitted and processed before the shipment arrives;

- (c) allow a single submission of a manifest covering all goods contained in a express shipment, such as a manifest, though, if possible, electronic means;
- (d) to the extent possible, provide for the release of certain goods with a minimum of documentation;
- (e) provide for express shipments to be released, to the extent possible, within six hours after submission of the necessary customs documents, provided that the shipment has arrived; and
- (f) provide that, under normal circumstances, no customs duties will be assessed on express shipments value at or below a fix amount set under the laws and regulations of each Party.<sup>1</sup>

#### **ARTICLE X.8: Authorized Economic Operator**

1. The customs administrations of both Parties shall encourage the implementation and strengthening of the Authorized Economic Operator programs (hereinafter referred to as "AEO") in accordance with the WCO Framework of Standards to Secure and Facilitate Global Trade (hereinafter referred to as "WCO SAFE Framework").
2. The customs administrations of the Parties shall promote the signing of mutual recognition agreements (hereinafter referred to as "MRA") on AEO programs of the Parties.

#### **ARTICLE X.9: Single Window for Foreign Trade**

The Parties shall implement and promote their Single Windows for Foreign Trade (hereinafter referred to as "Single Windows") to expedite and improve trade, and shall endeavour to work in the interoperability between them in order to exchange information to expedite trade and allow the Parties, inter alia, to verify the information on the foreign trade operations carried out.

#### **ARTICLE X.10: Review and Appeal**

Each Party shall ensure that with respect to its administrative determinations on customs

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<sup>1</sup> Notwithstanding sub-paragraph (f), a Party may assess customs duties, or may require formal documents for the entry of restricted goods.

matters that any person subject to such acts on its territory have access to:

- (a) an administrative review independent of the instance or official who has issued the administrative determination, in accordance with its laws and regulations, and
- (b) a judicial review of such administrative determinations.

#### **ARTICLE X.11: Penalties**

Each Party shall adopt or maintain measures that allow the imposition of civil or administrative penalties and, where applicable, criminal sanctions for a breach of its customs laws and regulations relating to entry, exit or transit of goods, including, among others, those governing tariff classification, customs valuation, rules of origin and preferential tariff treatment applications under this Agreement.

#### **ARTICLE X.12: Advance Rulings**

1. Each Party shall issue prior to the importation of goods into its territory, a written advance ruling at the written request of an importer in its territory, or an exporter or producer in the territory of the other Party, with regard to:

- (a) tariff classification of the goods;
- (b) whether a good qualifies as originating in accordance with Annex (Rules of Origin and Procedures related to Origin);
- (c) the application of customs valuation criteria, in accordance with the Customs Valuation Agreement<sup>2</sup> ; or
- (d) such other matters as the Parties may agree.

2. Each Party shall adopt or maintain procedures for the issuing of an advance ruling which includes:

- (a) information reasonably required in order to process the application;

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<sup>2</sup> The customs authority shall render a decision only on the valuation method to be applied for determining the customs value under the provisions of the Customs Valuation Agreement; this means that the decision will not determine the amount to be declared for the customs valuation concept.

- (b) the possibility of the customs authority to request additional information from the applicant during the assessment of the application, and
  - (c) the obligation of the customs authority to issue a complete and justified advance ruling;
3. Each Party shall issue an advance ruling as provided by its laws and regulations, in no case later than 150 days from the date that the applicant has submitted all the information that the Party requires, including if requested by the Party, a sample of the good for which the requester is seeking an advance ruling. In issuing an advance ruling, the Party shall take into account the facts and circumstances that the applicant has provided.
4. Advance rulings shall take effect on the date of issuance, or such later date specified in the ruling and shall remain in effect for at least three years, provided that the facts or circumstances on which the decision was based have not changed.
5. The advance ruling may be modified or revoked, automatically or by the holder petition as applicable, in the following cases:
- (a) when the advance ruling was based in error;
  - (b) if there is a change in the facts or circumstances on which the ruling was based; or
  - (c) to comply with an administrative or judicial decision, or to adjust to an amendment in the law of the Party that issued the advance ruling.
6. The party issuing the advance ruling may modify or revoke it and shall notify the applicant of the measure adopted.
7. The Party shall not apply a revocation or modification of an advance ruling retroactively, unless the ruling was based on inaccurate or false information provided by the applicant.
8. A Party may decline to issue an advance ruling if the facts and circumstances which form the basis of the advance ruling are under administrative or judicial review. In such cases, the Party shall notify the applicant in writing, setting out the relevant facts and circumstances for its decision.
9. Subject to any confidentiality requirements in its laws and regulations, each Party

shall make its advance rulings publicly available including on the internet.

10. If an applicant provides false information or omits relevant facts or circumstances in connection with the advance ruling, or fails to act in accordance with the terms and conditions of such ruling, the Party that issued the ruling may apply appropriate measures, including civil, criminal, and administrative actions, monetary penalties, or other sanctions.

## **Section B: Cooperation and Mutual Assistance in Customs Matters**

### **ARTICLE X.13: Scope of Application**

1. Provisions of this Section shall apply solely to cooperation and mutual assistance in customs matters between the Parties.

2. The Parties, through their customs administrations, shall provide mutual cooperation and assistance in order to ensure proper implementation of customs law, facilitation of customs procedures, and prevention, investigation and a penalty for a breach of customs laws and regulations.

3. Technical cooperation includes the exchange of information, laws and regulations, best practices in customs matters, as well as the exchange of experience, training and any technical support or material suitable for strengthening the customs management of the Parties.

4. Mutual assistance includes the exchange of information and other provisions under this Section, aimed at the prevention, investigation and punishment of operations in breach of customs law.

5. The information provided shall be used solely for the purposes set out in this Section, including cases where is required under administrative, judicial or investigative processes. The information may also be used for other purposes or by other authorities, only if the requested Party expressly authorizes it in writing.

6. The assistance for the collection of duties, taxes or fines is not covered in this Section.

7. The Parties shall cooperate to strengthen the capacity of each customs administration to enforce its regulations governing importations. In addition, the customs administrations shall establish and maintain other channels of communication in order to facilitate rapid and secure exchange of information and improve coordination in connection with matters under this Section

## **ARTICLE X.14: Customs Cooperation**

1. Both Parties recognize that customs cooperation between them is essential to facilitate trade. To this end, they shall cooperate to ensure compliance with their respective customs law, as well as the provisions regarding compliance in this Chapter.

2. A customs administration shall provide to the other customs administration technical assistance and advice for the purposes of improving risk management techniques, customs valuation, facilitating the implementation of international supply chain standards, simplifying and enhancing procedures for efficient release of goods in a timely and efficient manner, advancing the technical skills of staff and enhancing the use of technologies that may lead to improved compliance with the laws or regulations of a Party governing the entry of goods into its territory.

3. Both Parties, in accordance with its laws and subject to the available resources will promote and facilitate cooperation and assistance between their respective customs administrations in order to ensure the application of customs law, and in particular to:

- (a) organize joint training programs on issues related to the trade facilitation and customs matters specific of this Chapter;
- (b) contribute to the gathering and exchange of statistics related to importation and exportation of goods; the harmonization of documentation used in trade and the standardization of data;
- (c) prevent operations in breach of customs law of each Party, and
- (d) promote mutual understanding of the laws and regulations, procedures, and best practices of each Party.

4. The customs administrations of both Parties shall cooperate in:

- (a) the training, among others, for the development of specialized skills in their customs officials;
- (b) the exchange of technical information related to customs laws, regulations and procedures and new technologies applied by the Parties;
- (c) the harmonization on of customs laboratory techniques and the exchange of

information between customs laboratories;

- (d) the fields of research, development and testing of new customs procedures and techniques;
- (e) the development of effective mechanisms for communication with foreign trade operators and the academia;
- (f) any difference related to the tariff classification of goods, and
- (g) the development of initiatives in mutually agreed areas.

#### **ARTICLE X.15: Mutual Assistance**

1. The customs administrations shall assist each other in their areas of competence, in the manner and under the conditions provided for in this Section, in order to ensure the correct application of customs law, particularly to prevent, investigate, and combat operations in breach of customs law.

2. Where the customs administration of a Party has reasonable suspicions of an operation in breach of customs law related to any regime or customs destination within its territory, it may request that the customs administration of the other Party provide information on that operation. In addition, it may require that the requested Party adopt, within the framework of its laws and regulations, the necessary measures to ensure special monitoring over:

- (a) the determination of the customs duties imposed on goods, and in particular, information on the determination of the customs value;
- (b) means of transport and destination of the transported goods, with an indication as to the references that allow the identification of the goods;
- (c) the controls performed on goods in transit toward the territory of one of the Parties from a third country, or
- (d) the operations carried out by importers or exporters.

#### **ARTICLE X.16: Form and Contents of the Requests for Mutual Assistance**

1. Requests for mutual assistance provided for in this Section shall be submitted directly

to the requested Party by the requesting party in writing or by electronic mean with necessary documentation. The requested party may require written confirmation of the requests received by electronic means.

2. In urgent cases, requests may also be made verbally, and shall be confirmed in writing within a period no later than three working days following the request. Otherwise, the implementation of such requests may be suspended.

3. Requests made pursuant to this Article shall include, at least, the following:

- (a) the identification of the requesting Party, the name, signature and title of the officer making the request;
- (b) the identification of the requested Party, the name and title of the officer to whom the request is addressed, if known;
- (c) the purpose and the reasons for the request;
- (d) a brief description of the facts that are the subject to investigation and of the enquiries already carried out, where appropriate;
- (e) the legal elements and the nature of the customs procedure in question;
- (f) the names, addresses, identification document or any other known and relevant information of the persons related to the facts that constitute the subject matter of the request, and
- (g) all the necessary information available to identify the goods, means of transport or the customs declaration related to the request.

4. The information referred to in this Section shall be communicated to the officers who were specially designated for this purpose by each customs administration. To this end, each Party shall provide a list of officers appointed to the customs administrations of the other Parties.

5. The requesting party shall be able to provide the same assistance requested, if it were required.

6. If a request does not meet the requirements of paragraph 3, the requested Party may ask for correction or completion. Meanwhile protective measures may be carried out in accordance with the laws and regulations of the Party concerned.

7. Where the requesting Party requests assistance which it would itself be unable to provide if it were requested, it shall declare this fact in its request. The requested Party will decide how to respond to the request.

#### **ARTICLE X.17: Execution of requests**

1. The requested Party shall respond to the petition of the requesting party within a maximum period of 30 days from the date of reception of the request. If the requested party needs a longer term, it shall notify the requesting party informing them of the time-frame within which it will respond to the request. This period shall not exceed of 30 days.

2. When responding to a request, the requested Party, within its scope of competence, by its own account or at the request of other authorities of that Party, shall provide the information in their possession and conduct or provide for the necessary investigations.

3. If required by the requesting Party, the requested Party shall, conduct an investigation, in accordance with its laws and regulations, in order to provide information related to reasonable doubts to believe that operations in breach of customs law are occurring in the territory of the other Party, and shall provide to the requesting party, the results of the said investigation and all related information considered relevant.

4. If required by the requesting Party, the requested Party may provide information, in accordance with its laws and regulations, related to:

- (a) the persons in respect of whom there are reasonable doubts to believe that they are or have been involved in the commission of a customs offence;
- (b) the goods that, with destination to the customs territory of the requesting party, are forwarded in transit or destined to storage for subsequent transit to such territory;
- (c) the means of transport suspected of being used to carry out customs offences in the territory of the requesting Party;
- (d) activities that are or suspected of being operations to carry out customs offences against laws and regulations and which may be of interest for the requesting Party;
- (e) goods that are or suspected of being shipped and in respect of which there are reasonable doubts to believe that they will be intended for use or used in operations in breach of customs law;

- (f) whether goods exported from the territory of the requesting party have been lawfully imported into the territory of the requested Party specifying where appropriate, the customs procedure applied to the goods;
- (g) whether the goods imported into the territory of the requesting Party, have been lawfully exported from the territory of the requested Party, specifying where appropriate, the customs procedure applied to the goods, or
- (h) whether the import, export or transit operations have complied with the prohibitions and restrictions to imports, exports and transit of goods or with their payment of customs duties, taxes and other tariffs.

5. Duly authorized officials of the requesting Party may, with the agreement of the required Party and subject to the conditions, laws and regulations laid down by the latter, be present at the offices of the requested Party, with the purpose of obtaining relevant information in the context of an investigation aimed at determining if there has been a violation or potential operation in breach of customs law.

#### **ARTICLE X.18: Spontaneous Assistance**

For the proper implementation of their respective customs law and to the extent of their capabilities and resources, the Parties shall assist each other, on their own initiative, providing information in accordance with their laws and regulations, related to:

- (a) cases involving damage to the economy, public health, public safety, the environment or any other vital interest of the other Party;
- (b) new means or methods employed in carrying out operations in breach of customs law, and
- (c) other cases that a Party may consider appropriate.

#### **ARTICLE X.19: Delivery and Communication**

At the request of the requesting Party, the requested Party shall adopt, in accordance with the applicable provisions of its laws and regulations, all necessary measures to deliver any document or communication, or to inform of any decision issued by the requesting party, and that are within the scope of this Section, to a person residing or established in the territory of the requested party.

## **ARTICLE X.20: Exceptions to the Obligation to Provide Mutual Assistance**

1. Mutual assistance under this Section may be refused or be made subject to the compliance of certain conditions or requirements, in cases where a Party considers that such assistance would:

- (a) infringe the sovereignty of the Party to which it has been requested it;
- (b) infringe its public order and its national security;
- (c) violate an industrial, commercial or professional secret, duly protected by its laws and regulations, or
- (d) be unconstitutional or contrary to its law.

2. The requested Party may postpone the mutual assistance if it considers that it will interfere with an ongoing investigation, a criminal prosecution or an administrative proceeding. In such case, the requested Party shall consult with the requesting party to determine if the mutual assistance can be given subject to such terms and conditions the requested party is able to grant.

3. In the event of any of the exceptions provided for in this Article, the requested Party shall promptly inform the requesting party of its decision, and the reasons for such decision, within a term not exceeding 15 days following the request.

## **ARTICLE X.21: Files, Documents and Other Materials**

1. At the request of the requesting Party, the requested Party may certify or authenticate copies of the requested documents, in case the latter cannot provide the originals because its legislation prevents it.

2. The documents provided for under this Section shall not require for its probative value certification, authentication, or any additional formality than the one provided by the customs administration, and shall be considered as authentic and valid.

3. Any information provided under this Section may be accompanied by additional information that is relevant for its interpretation or use.

## **ARTICLE X.22: Experts or Expert Witnesses**

1. Regarding matters covered in this Section, each Party in accordance with its laws and

regulations, may authorize its officials, upon request from other Party, to appear as an expert or expert witnesses in legal or administrative customs procedures in the territory of the other Party, and produce such relevant records, documents and other materials or certified copies thereof, as may be needed for the procedures.

2. The request must indicate the specific matter and judicial or administrative authority before which the official must appear.

#### **ARTICLE X.23: Costs**

1. The customs administrations of each Party shall not seek reimbursement of costs or expenses caused in the performance of requests under this Section, except for those related to experts or expert witnesses, which shall be covered by the requesting Party.

2. If the costs or expenses of extraordinary nature are or will be require to execute a request, the customs administrations shall consult each other to determine the terms and conditions under which the request shall be executed as well as the manner in which the costs or expenses shall be covered.

#### **ARTICLE X.24: Lack of Assistance**

1. For the purposes of this Section, lack of mutual assistance between customs administrations means the repeated or undue delay in the execution of a request or in the communication of its results.

2. In such case, the requesting Party may communicate the fact to the Committee on Customs Cooperation and Rules of Origin in order to promote a solution to the lack of mutual assistance.