

20/12/2019

*This **document** is the European Union's (EU) proposal for a legal text on customs and trade facilitation in the EU-ESA5 deepening of interim agreement. It will be tabled for discussion with ESA5. The actual text in the final agreement will be a result of negotiations between the EU and ESA5.*

DISCLAIMER: *The EU reserves the right to make subsequent modifications to this text and to complement its proposals at a later stage, by modifying, supplementing or withdrawing all, or any part, at any time.*

EU PROPOSAL OF NEGOTIATING TEXT

CHAPTER [XX]

CUSTOMS AND TRADE FACILITATION

Article X.1

Objectives

1. The Parties recognise the importance of customs and trade facilitation matters in the evolving global trading environment. The Parties shall reinforce cooperation in this area with a view to ensuring that the relevant legislation and procedures, as well as the administrative capacity of the relevant administrations, fulfil the objectives of promoting trade facilitation while ensuring effective customs control.
2. To this end, the Parties agree that legislation shall be non-discriminatory and that customs procedures shall be based upon the use of modern methods and effective controls to combat fraud and to promote legitimate trade.
3. The Parties recognise that legitimate public policy objectives, including in relation to security, safety and fight against fraud shall not be compromised in any way.

Article X.2

Customs Cooperation

1. The Parties shall cooperate on customs matters between their respective authorities in order to ensure that the objectives set out in Article X.1 (Objectives) are attained.
2. The Parties shall develop cooperation, *inter alia*:
 - (a) exchanging information concerning customs legislation, its implementation, and customs procedures; particularly in the following areas:
 - (i) simplification and modernisation of customs procedures;
 - (ii) enforcement of intellectual property rights by the customs authorities;

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- (iii) facilitation of transit movements and transshipment;
 - (iv) relations with the business community; and
 - (v) supply chain security and risk management.
- (b) working together on the customs-related aspects of securing and facilitating the international trade supply chain in accordance with the Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework) of the World Customs Organization (hereinafter referred to as “WCO”) and in accordance with the Trade Facilitation Agreement of the World Trade Organisation;
 - (c) considering developing joint initiatives relating to import, export and other customs procedures including technical assistance, as well as towards ensuring an effective service to the business community;
 - (d) strengthening their cooperation in the field of customs in international organisations such as the World Trade Organization (hereinafter referred to as “WTO”) and the WCO;
 - (e) endeavouring to harmonize their data requirements for import, export and other customs procedures by implementing common standards and data elements in accordance with the World Customs Organization (WCO) Data Model;
 - (f) exchanging, where relevant and appropriate, through a structured and recurrent communication between the customs authorities of the Parties, certain categories of customs-related information for specific purposes, namely improving risk management and the effectiveness of customs controls, targeting goods at risk in terms of revenue collection or safety and security, and facilitating legitimate trade; such exchange shall be without prejudice to exchanges of information that may take place between the Parties pursuant to the Protocol on mutual administrative assistance [*insert exact title*];
 - (g) strengthening their cooperation on risk management techniques, including sharing best practices, and where appropriate, risk information and control results. Where relevant and appropriate, the Parties shall also consider mutual recognition of risk management techniques, risk standards and security controls
 - (h) establishing, where relevant and appropriate, mutual recognition of Authorised Economic Operator programmes and customs controls including equivalent trade facilitation measures; and
 - (i) fostering cooperation between customs and other government authorities or agencies in relation to Authorised Economic Operator programmes. This collaboration may be achieved, inter alia, by aligning requirements, facilitating access to benefits and minimising unnecessary duplication.

20/12/2019

3. Any exchange of information between the Parties under this Chapter shall be *mutatis mutandis* subject to the confidentiality and protection of information set out in Article X of the Protocol on mutual administrative assistance in customs matters, as well as any confidentiality and privacy requirements set out in the legislation of the Parties.

Article X.3

Mutual Administrative Assistance

[To be discussed in coordination with OLAF]

Without prejudice to other forms of cooperation envisaged in this Agreement, the customs authorities of the Parties shall provide each other with mutual administrative assistance in customs matters in accordance with the provisions of Protocol YY.

Article X.4

Customs Provisions and Procedures

1. The Parties shall ensure that their respective customs provisions and procedures shall be based upon:
 - (a) international instruments and standards applicable in the area of customs and trade, including the substantive elements of the Revised Kyoto Convention on the Simplification and Harmonisation of Customs Procedures, the International Convention on the Harmonized Commodity Description and Coding System, as well as the Framework of Standards to Secure and Facilitate Global Trade and the Customs Data Model of the WCO;
 - (b) the protection and facilitation of legitimate trade through effective enforcement and compliance of legislative requirements;
 - (c) legislation that is proportionate and non-discriminatory, avoids unnecessary burdens on economic operators, provides for further facilitation for operators with high levels of compliance, including favourable treatment with respect to customs controls prior to the release of goods, and ensures safeguards against fraud and illicit or damageable activities; and
 - (d) rules that ensure that any penalty imposed for breaches of customs regulations or procedural requirements is proportionate and non-discriminatory and that their application shall not unduly delay the release of the goods.
2. Each Party should periodically review its legislation and customs procedures. Customs procedures should also be applied in a manner that is predictable, consistent and transparent.
3. In order to improve working methods, as well as to ensure non-discrimination, transparency, efficiency, integrity and accountability of operations, each Party shall:

- (a) simplify and review requirements and formalities wherever possible with a view to the rapid release and clearance of goods; and
- (b) work towards the further simplification and standardisation of data and documentation required by customs and other agencies.

Article X.5

Release of Goods

Each Party shall adopt or maintain customs procedures that:

- (a) provide for the prompt release of goods within a period that is no longer than necessary to ensure compliance with its laws and regulations;
- (b) provide for advance electronic submission and processing of documentation and any other required information prior to the arrival of the goods, to enable the release of goods on arrival; and
- (c) allow for 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. As a condition for such release, each Party may require a guarantee for any amount not yet determined in the form of a surety, a deposit or another appropriate instrument provided for in its laws and regulations. Such guarantee shall not be greater than the amount the Party requires to ensure payment of customs duties, taxes, fees and charges ultimately due for the goods covered by the guarantee. The guarantee shall be discharged when it is no longer required.

Article X.6

Simplified Customs Procedures

1. Each Party shall adopt or maintain measures allowing traders or operators fulfilling criteria specified in its laws and regulations to benefit from further simplification of customs procedures. Such measures may include customs declaration containing a reduced set of data or supporting documents, or periodical customs declaration for the determination and payment of customs duties and taxes covering multiple imports within a given period, after the release of those imported goods.

Article X.7

Transit and Transshipment

1. Each Party shall ensure the facilitation and effective control of transshipment operations and transit movements through their respective territories.

2. Each Party shall promote and implement regional transit arrangements with a view to facilitating trade.
3. Each Party shall ensure cooperation and coordination between all concerned authorities and agencies in their respective territories to facilitate traffic in transit.
4. Each Party shall allow goods intended for import to be moved within its territory under customs control from a customs office of entry to another customs office in its territory from where the goods would be released or cleared.

Article X.8

Risk Management

1. Each Party shall adopt or maintain a risk management system for customs control.
2. Each Party shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions to international trade.
3. Each Party shall concentrate customs control and other relevant border controls on high-risk consignments and expedite the release of low-risk consignments. Each Party may also select, on a random basis, consignments for such controls as part of its risk management.
4. Each Party shall base risk management on assessment of risk through appropriate selectivity criteria.

Article X.9

Post-clearance Audit

1. With a view to expediting the release of goods, each Party shall adopt or maintain post-clearance audit to ensure compliance with customs and other related laws and regulations.
2. Each Party shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Party shall conduct post-clearance audits in a transparent manner. Where the person is involved in the audit process and conclusive results have been achieved the Party shall, without delay, notify the person whose record is audited of the results, the person's rights and obligations and the reasons for the results.
3. The Parties acknowledge that the information obtained in post-clearance audit may be used in further administrative or judicial proceedings.
4. The Parties shall use the result of post-clearance audit in applying risk management.

Article X.10

Authorised Economic Operators

1. Each Party shall establish or maintain a partnership programme for operators who meet specified criteria, hereinafter referred to as Authorised Economic Operators.
2. The specified criteria to qualify as Authorised Economic Operators shall be related to compliance with requirements specified in the Parties' laws, regulations or procedures. The specified criteria, which shall be published, may include:
 - (a) the absence of any serious infringement or repeated infringements of customs legislation and taxation rules, including no record of serious criminal offences relating to the economic activity of the applicant;
 - (b) the demonstration by the applicant of a high level of control of his or her operations and of the flow of goods, by means of a system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls;
 - (c) financial solvency, which shall be deemed to be proven where the applicant has good financial standing, which enables him or her to fulfil his or her commitments, with due regard to the characteristics of the type of business activity concerned;
 - (d) proven competences or professional qualifications directly related to the activity carried out; and
 - (e) appropriate security and safety standards, which shall be considered as fulfilled where the applicant demonstrates that he or she maintains appropriate measures to ensure the security and safety of the international supply chain including in the areas of physical integrity and access controls, logistical processes and handling of specific types of goods, personnel and identification of his or her business partners.
3. The specified criteria to qualify as an Authorised Economic Operator shall not be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail and shall allow the participation of small and medium-sized enterprises.
4. The partnership programme shall include the following benefits:
 - (a) low rate of physical inspections and examinations as appropriate;
 - (b) prior notification in case of selection for physical or other customs control;
 - (c) priority treatment if selected for control;

- (d) rapid release time as appropriate;
- (e) deferred payment of duties, taxes, fees and charges;
- (f) use of comprehensive guarantees or reduced guarantees;
- (g) a single customs declaration for all imports or exports in a given period; and
- (h) clearance of goods at the premises of the Authorised Economic Operator or another place authorised by customs.

Article X.11

Publication and Availability of Information

1. Each Party shall promptly publish, in a non-discriminatory and easily accessible manner, and as far as possible through electronic means, new legislation and general procedures related to customs and trade facilitation issues prior to the application of any such legislation and procedures, as well as changes to and interpretations of such legislation and procedures. This shall include:
 - (a) relevant notices of an administrative nature;
 - (b) importation, exportation and transit procedures (including port, airport, and other entry-point procedures) and required forms and documents;
 - (c) applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;
 - (d) fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;
 - (e) rules for the classification or valuation of products for customs purposes;
 - (f) laws, regulations and administrative rulings of general application relating to rules of origin;
 - (g) import, export or transit restrictions or prohibitions;
 - (h) penalty provisions against breaches of import, export or transit formalities;
 - (i) appeal procedures;
 - (j) agreements or parts thereof with any country or countries relating to importation, exportation or transit;
 - (k) procedures relating to the administration of tariff quotas;

20/12/2019

- (l) hours of operation and operating procedures for customs offices at ports and border crossing points; and
 - (m) points of contact for information enquiries.
2. Each Party shall ensure there is a reasonable time period between the publication of new or amended legislation, procedures and fees or charges and their entry into force.
3. Each Party shall make available, and update as appropriate, the following through the internet:
 - (a) a description of its importation, exportation and transit procedures, including appeal procedures, informing of the practical steps needed to import and export, and for transit;
 - (b) the forms and documents required for importation into, exportation from, or transit through the territory of that Party; and
 - (c) contact information on enquiry points.
4. Each Party shall establish or maintain one or more enquiry points to answer within a reasonable time enquiries of governments, traders and other interested parties on customs and other trade-related matters. The Parties shall not require the payment of a fee for answering enquiries.

Article X.12

Advance Rulings

1. Each Party, through its customs authorities, shall issue advance rulings upon application by economic operators setting forth the treatment to be accorded to the goods concerned. Such rulings shall be issued in writing or in electronic format in a time bound manner and shall contain all necessary information in accordance with the legislation of the issuing Party.
2. Advance rulings shall be valid for a period of at least three years from the start date of its validity unless the decision in the ruling no longer conforms to the law or the facts or circumstances supporting the original ruling have changed.
3. A Party may refuse to issue an advance ruling if the question raised in the application is the subject of an administrative or judicial review, or if the application does not relate to any intended use of the advance ruling or any intended use of a customs procedure. If a Party declines to issue an advance ruling, it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.
4. Each Party shall publish, at least:

20/12/2019

- (a) the requirements for the application for an advance ruling, including the information to be provided and the format;
 - (b) the time period by which it will issue an advance ruling; and
 - (c) the length of time for which the advance ruling is valid.
5. If a Party revokes, modifies, invalidates or annuls an advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. If the Party revokes, modifies, invalidates or annuls an advance ruling with retroactive effect, it may only do so if the ruling was based on incomplete, incorrect, false or misleading information.
6. An advance ruling issued by a Party shall be binding on that Party in respect of the applicant that sought it. The Party may provide that the advance ruling be binding on the applicant.
7. Each Party shall provide, upon written request from the holder, a review of the advance ruling or of the decision to amend, revoke or invalidate it.
8. Each Party shall make publicly available information on advance rulings, taking into account the need to protect personal and commercially confidential information.
9. Advance rulings shall be issued with regard to:
 - (a) the tariff classification of goods;
 - (b) the origin of goods; and
 - (c) any other matter the Parties may agree upon.

Article X.13

Fees and Charges

[To be discussed in coordination with TiG Chapter]

1. Each Party shall prohibit administrative fees having an equivalent effect to import or export duties and charges.
2. The Parties' Customs authorities shall not impose charges for the performance of customs controls or any other application of the customs legislation during the official opening hours of their competent customs offices.
3. The Parties' Customs authorities may impose charges or recover costs where specific services are rendered, in particular the following:
 - (a) attendance, where requested, by customs staff outside official office hours or at premises other than customs premises;

20/12/2019

- (b) analyses or expert reports on goods and postal fees for the return of goods to an applicant;
 - (c) the examination or sampling of goods for verification purposes, or the destruction of goods, where costs other than the cost of using customs staff are involved;
 - (d) exceptional control measures, where these are necessary due to the nature of the goods or to a potential risk.
4. Fees and charges shall not exceed the approximate cost of the service provided and shall not be calculated on an ad valorem basis.
5. The information on fees and charges shall be published via an officially designated medium, and if feasible and possible, official website. This information shall include the reason for the fee or charge for the service provided, the responsible authority, the fees and charges that will be applied, and when and how payment is to be made; and new or amended fees and charges shall not be imposed until information in accordance with the preceding paragraph is published and made readily available.

Article X.14

Customs Brokers

The Parties agree that their respective customs provisions and procedures shall not require the mandatory use of customs brokers. Each Party shall notify and publish its measures on the use of customs brokers. The Parties shall apply transparent, non-discriminatory and proportionate rules if and when licensing customs brokers.

Article X.15

Customs Valuation

1. Each Party shall determine the customs value of goods in accordance with the Agreement on the Implementation of Article VII of the GATT 1994. Its provisions are hereby incorporated into and made part of this Agreement. Minimum customs values shall not be used.
2. The Parties shall cooperate with a view to reaching a common approach to issues relating to customs valuation.

Article X.16

Pre-shipment Inspections

The Parties shall not require the mandatory use of pre-shipment inspections as defined in the WTO Agreement on Pre-shipment Inspection, or any other inspection activity performed at destination, before customs clearance, by private companies.

Article X.17

Review and Appeal

1. Each Party shall provide effective, prompt, non-discriminatory and easily accessible procedures to guarantee the right of appeal against the administrative actions, rulings and decisions of customs or other competent authorities affecting import or export of goods or goods in transit.
2. Appeal or review shall include:
 - (a) an administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision; and/or
 - (b) a judicial appeal or review of the decision.
3. Each Party shall ensure that, in a case where the decision on appeal or review under subparagraph 2 (a) is not given within the period of time provided for in its laws and regulations or without undue delay, the petitioner has the right to further administrative or judicial appeal or review or any other recourse to the judicial authority according to the legislation of the Parties.
4. Each Party shall ensure that the petitioner is provided with the reasons for the administrative decision so as to enable such a person to have recourse to appeal or review procedures where necessary.

Article X.18

Relations with the Business Community

The Parties agree:

- (a) on the need for timely and regular consultations with trade representatives on legislative proposals and general procedures related to customs and trade facilitation issues. To that end, appropriate consultation between administrations and the business community shall be established by each Party; and
- (b) to ensure that their respective customs and related requirements and procedures continue to meet the needs of the trading community, follow best practices, and remain as little trade-restrictive as possible.

Article X.19

Temporary Admission

[To be discussed in coordination with TiG Chapter]

1. For the purposes of this Article, the term “temporary admission” means the customs procedure under which certain goods (including means of transport) can be brought into a customs territory conditionally relieved from payment of import duties and taxes and without application of import prohibitions or restrictions of economic character. Such goods must be imported for a specific purpose and must 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.
2. Each Party shall grant temporary admission, with total conditional relief from import duties and taxes and without application of import restrictions or prohibitions of economic character, as provided for in its laws and regulations, to the following goods:
 - (a) goods for display or use at exhibitions, fairs, meetings or similar events (goods intended for display or demonstration at an event; goods intended for use in connection with the display of foreign products at an event; equipment including interpretation equipment, sound and image recording apparatus and films of an educational, scientific or cultural character intended for use at international meetings, conferences or congresses); products obtained incidentally during the event from temporarily imported goods, as a result of the demonstration of displayed machinery or apparatus;
 - (b) professional equipment (equipment for the press, for sound or television broadcasting which is necessary for representatives of the press, of broadcasting or television organizations visiting the territory of another country for purposes of reporting, in order to transmit or record material for specified programmes; cinematographic equipment necessary for a person visiting the territory of another country in order to make a specified film or films; any other equipment necessary for the exercise of the calling, trade or profession of a person visiting the territory of another country to perform a specified task, insofar as it is not to be used for the industrial manufacture or packaging of goods or (except in the case of hand tools) for the exploitation of natural resources, for the construction, repair or maintenance of buildings or for earth moving and like projects; ancillary apparatus for the equipment mentioned above, and accessories therefor); component parts imported for repair of professional equipment temporarily admitted;
 - (c) goods imported in connection with a commercial operation but whose importation does not in itself constitute a commercial operation (packings which are imported filled for re-exportation empty or filled, or are imported empty for re-exportation filled; containers, whether or not filled with goods, and accessories and equipment for temporarily admitted containers, which are either imported with a container to be re-exported separately or with another container, or are imported separately to be re-exported with a container and component parts intended for the repair of containers granted temporary admission; pallets; samples; advertising films; other goods imported in connection with a commercial operation);

- (d) goods imported in connection with a manufacturing operation (matrices, blocks, plates, moulds, drawings, plans, models and other similar articles; measuring, controlling and checking instruments and other similar articles; special tools and instruments, imported for use during a manufacturing process); replacement means of production (instruments, apparatus and machines made available to a customer by a supplier or repairer, pending the delivery or repair of similar goods);
- (e) goods imported exclusively for educational, scientific or cultural purposes (scientific equipment, pedagogic material, welfare material for seafarers, and any other goods imported in connection with educational, scientific or cultural activities); spare parts for scientific equipment and pedagogic material which has been granted temporary admission; tools specially designed for the maintenance, checking, gauging or repair of such equipment;
- (f) personal effects (all articles, new or used, which a traveller may reasonably require for his or her personal use during the journey, taking into account all the circumstances of the journey, but excluding any goods imported for commercial purposes); goods imported for sports purposes (sports requisites and other articles for use by travellers in sports contests or demonstrations or for training in the territory of temporary admission);
- (g) tourist publicity material (goods imported for the purpose of encouraging the public to visit another foreign country, in particular in order to attend cultural, religious, touristic, sporting or professional meetings or demonstrations held there);
- (h) goods imported for humanitarian purposes (medical, surgical and laboratory equipment and relief consignments, such as vehicles and other means of transport, blankets, tents, prefabricated houses or other goods of prime necessity, forwarded as aid to those affected by natural disaster and similar catastrophes); and
- (i) animals imported for specific purposes (dressage, training, breeding, shoeing or weighing, veterinary treatment, testing (for example, with a view to purchase), participation in shows, exhibitions, contests, competitions or demonstrations, entertainment (circus animals, etc.), touring (including pet animals of travellers), exercise of function (police dogs or horses; detector dogs, dogs for the blind, etc.), rescue operations, transhumance or grazing, performance of work or transport, medical purposes (delivery of snake poison, etc.)).

3. Each Party shall, for the temporary admission of the goods referred to in paragraph 2 and regardless of their origin, accept A.T.A. carnets issued in the other Party, endorsed there and guaranteed by an association forming part of the international guarantee chain, certified by the competent authorities and valid in the customs territory of the importing Party.

Article X. 20

Institutional Provisions

[placeholder – ESA-EU iEPA Customs Cooperation Committee body in charge of ensuring the proper functioning of this Chapter and of other customs-related provisions of the Agreement, including the enforcement of Intellectual Property Rights by Customs, Rules of Origin and Administrative Cooperation, and Mutual Administrative Assistance in Customs Matters.]

Article X. 21

Repaired Goods

[To be discussed in coordination with TiG Chapter]

1. No Party shall apply a customs duty to a good, regardless of its origin, that re-enters the Party's customs territory after that good has been temporarily exported from its customs territory to the customs territory of the other Party for repair.
2. Paragraph 1 does not apply to a good imported in bond, into free trade zones, or in similar status, that is then exported for repair and is not re-imported in bond, into free trade zones, or in similar status.
3. No Party shall apply a customs duty to a good, regardless of its origin, imported temporarily from the customs territory of the other Party for repair.

DEFINITION

(a) “Repair” means any processing operation undertaken on a good to remedy operating defects or material damage and entailing the re-establishment of the good to its original function or to ensure compliance with technical requirements for its use, without which the good could no longer be used in the normal way for the purposes for which they were intended. Repair of goods includes restoration and maintenance but does not include an operation or process that:

- (i) destroys the essential characteristics of a good, or creates a new or commercially different good;
- (ii) transforms an unfinished good into a finished good; or
- (iii) is used to improve or upgrade the technical performance of goods.

20/12/2019

Article X. 22

Capacity Building

[To be discussed in coordination with DG DEVCO]

1. The parties agree to address the developmental needs of the ESA States in order to implement the provisions of this Chapter.
2. The parties agree that cooperation will be based on (to be completed with the instrument providing EPA implementation support).