

**Observação**

À luz do crescente interesse do público nas negociações recentemente concluídas entre o MERCOSUL e a União Europeia, os governos dos países do MERCOSUL decidiram publicar os textos do pilar comercial, a fim de garantir tanto o efetivo exercício do direito de acesso à informação pública quanto a transparência da gestão pública.

Esses textos são publicados, no entanto, apenas para fins informativos e podem sofrer modificações adicionais em decorrência do processo de revisão legal a que estarão sujeitos, sem prejuízo dos compromissos assumidos.

Os textos só serão definitivos quando o Acordo for assinado. O Acordo será vinculante para as Partes, conforme o direito internacional, somente após a conclusão dos procedimentos legais internos necessários para a entrada em vigor.

**CHAPTER**

**CUSTOMS AND TRADE FACILITATION**

*Article 1*

**Objectives and scope**

1. The Parties recognize the importance of customs and trade facilitation in the evolving global trading environment.
2. The Parties recognize that international trade and customs instruments and standards are the basis for import, export and transit requirements and procedures.
3. The Parties recognize that legislation should be non-discriminatory and customs and other trade related procedures should be based upon the use of modern methods and effective controls to combat fraud, protect consumer health and safety and promote legitimate trade. Each Party should periodically review its legislation and customs procedures. The Parties also recognize that their customs and other trade related procedures should be no more administratively burdensome or trade restrictive than necessary to achieve legitimate objectives and that they should be applied in a manner that is predictable, consistent and transparent.
4. The Parties agree to reinforce their cooperation with a view to ensuring that the relevant legislation and procedures, as well as the administrative capacity of the relevant administrations,

*Without Prejudice*

fulfill the objectives of promoting trade facilitation while ensuring effective control of import, export and transit at the border.

5. The Parties agree to work together towards supporting the development of regional integration within both Parties.

## *Article 2*

### **Customs cooperation**

1. The Parties shall cooperate on customs and other trade related matters between their respective authorities, in order to ensure that the objectives set out in Article 1(Objectives and scope) are attained.

2. Cooperation may include in particular:

(a) exchanging information concerning customs and other trade related legislation, its implementation, and customs procedures; particularly in the following areas:

- simplification and modernisation of customs procedures;
- enforcement of intellectual property rights by the customs authorities;
- international instruments and standards applicable in the area of customs and trade;
- free circulation of goods and regional integration;
- facilitation of transit movements and transshipment;
- interagency coordination at borders;
- relations with the business community;
- supply chain security and risk management; and
- exchanges on the use of information technology, data and documentation requirements and single window systems, including work towards their future interoperability.

(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 (WCO);

(c) considering developing joint initiatives related to import and export procedures including technical assistance, capacity building, and measures aiming at providing an effective service to the business community;

(d) strengthening their cooperation in the fields of customs and trade facilitation in international organizations such as the World Trade Organization (WTO), the World

*Without Prejudice*

Customs Organization (WCO) and the United Nations Conference on Trade and Development (UNCTAD);

(e) establishing, where relevant and appropriate, mutual recognition of trade partnership programmes and customs controls, including equivalent trade facilitation measures;

(f) fostering cooperation between customs and other government authorities or agencies in relation to authorized economic operator programmes. This collaboration may be achieved, inter alia, by aligning requirements, facilitating access to benefits and minimising unnecessary duplication;

(g) working together with a view to reaching a common approach to issues relating to customs valuation; and

(h) working together to further reduce release times and to release goods without undue delay, in particular perishable goods.

3. The Parties shall provide each other with mutual administrative assistance in customs matters in accordance with the provisions of [Protocol X].

### *Article 3*

#### **Customs and other trade related provisions and procedures**

1. The Parties agree 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 WTO Trade Facilitation Agreement; the International Convention on the Harmonized Commodity Description and Coding System, the Framework of Standards to Secure and Facilitate Global Trade and the Customs Data Model of the WCO; and to the extent possible the substantive elements of the Revised Kyoto Convention on the Simplification and Harmonisation of Customs Procedures;

(b) the facilitation of legitimate trade through effective enforcement of and compliance with 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.

2. In order to improve working methods, as well as to ensure non-discrimination, transparency, efficiency, integrity and accountability of operations, the Parties shall:

(a) simplify and review requirements and formalities wherever possible with a view to the rapid release and clearance of goods;

*Without Prejudice*

- (b) work towards the further simplification and standardisation of data and documentation required by customs and other agencies;
- (c) ensure that the highest standards of integrity be maintained, through the application of measures reflecting the principles of the relevant international conventions and instruments in this field.

*Article 4*

**Release of Goods**

Each Party shall adopt or maintain requirements and procedures that:

- (a) provide for the prompt release of goods within a period no greater than that required to ensure compliance with its customs and other trade-related laws and formalities. Each party shall work to further reduce release times and release the goods without undue delay;
- (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<sup>1</sup>;
- (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<sup>2</sup>.

*Article 5*

**Perishable Goods<sup>3</sup>**

1. Each Party shall give appropriate priority to perishable goods when scheduling and performing any examinations that may be required.
2. At the request of an economic operator, each Party shall, where practicable and consistent with domestic legislation:

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<sup>1</sup> Mercosur countries shall comply with this paragraph in accordance with article 16 (Notification of definitive dates for implementation of Category B and Category C) commitments of the WTO Trade Facilitation Agreement.

<sup>2</sup> Mercosur countries shall comply with this paragraph in accordance with article 16 (Notification of definitive dates for implementation of Category B and Category C) commitments of the WTO Trade Facilitation Agreement.

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

*Without Prejudice*

- (a) provide for the clearance of a consignment of perishable goods outside the business hours of Customs and other relevant authorities; and
- (b) allow consignments of perishable goods to be cleared at the premises of the economic operator.

## *Article 6*

### **Advance Rulings**

1. Each Party shall issue, through its customs authorities, an advance ruling that sets forth the treatment to be provided to the goods concerned. That ruling shall be issued in a reasonable, time bound manner to the applicant that has submitted a written request, including in electronic format, containing all necessary information in accordance with the laws and regulations of the issuing Party.
2. The advance ruling shall be valid for at least a three-year period of time after its issuance unless the law, facts or circumstances supporting the original advance ruling have changed.
3. A Party may decline to issue an advance ruling where the question raised is the subject of administrative or judicial review, or where the application does not relate to any intended use of the advance ruling. 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:
  - (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. Where a Party revokes or modifies or invalidates an advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. Where the Party revokes or modifies or invalidates an advance ruling with retroactive effect, it may only do so where 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 of an applicant, a review of the advance ruling or of the decision to revoke, modify or invalidate it.<sup>4</sup>

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<sup>4</sup> Under this paragraph, a review may, either before or after the ruling has been acted upon, be provided by the official, office, or authority that issued the ruling, a higher or independent administrative authority, or a judicial authority.

*Without Prejudice*

8. Subject to any confidentiality requirements substantive elements of these rulings shall be published, e.g. on the Internet.
9. An advance ruling is a written decision provided to an applicant prior to the importation of a good covered by the application that sets forth the treatment that the Party shall provide to the good at the time of importation with regard to:
  - (a) the good's tariff classification; and
  - (b) the origin of the good.
10. To facilitate trade, the Parties shall include in their bilateral dialogue regular updates on changes in their respective legislation on the matters listed above.
11. The Parties may agree upon advance rulings on any other matter.

*Article 7*

**Transit and Transshipment**

1. The Parties shall ensure freedom of transit through their territories via the route most convenient for transit.
2. Without prejudice to legitimate control, the Parties shall accord to traffic in transit to or from the territory of any party, treatment not less favourable than that accorded to domestic goods, exports and imports, and their movement. This principle refers to like products being transported on the same route under like conditions.
3. The Parties shall, to the extent possible, adopt less burdensome customs procedures to transhipped goods than to those applied to traffic in transit.
4. The Parties shall operate bonded transport regimes that allow the transit of goods without payment of customs duties or other charges subject to the provision of an appropriate guarantee.
5. The Parties shall promote and implement regional transit arrangements with a view to facilitating traffic in transit and reducing trade barriers.
6. The Parties shall draw upon and use international standards and instruments relevant to transit.
7. The Parties agree that the customs transit procedures may be used also when the transit of goods begins or ends in the territory of a party (inland transit).
8. The Parties shall ensure cooperation and coordination between all concerned authorities and agencies in their respective customs territories to facilitate traffic in transit.

*Article 8*

**Authorized Economic Operator – AEO**

1. Each Party shall establish or maintain a trade facilitation partnership programme for operators who meet specified criteria, hereinafter, called authorized economic operators.
2. The specified criteria to qualify as authorized economic operators shall be related to compliance, or the risk of non-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 fulfill 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.
3. The specified criteria to qualify as an authorized 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 trade facilitation partnership programme shall include at least four of the following benefits:
  - (a) low documentary and data requirements, as appropriate;
  - (b) low rate of physical inspections and examinations as appropriate;
  - (c) rapid release time as appropriate;
  - (d) deferred payment of duties, taxes, fees and charges;
  - (e) use of comprehensive guarantees or reduced guarantees;
  - (f) a single customs declaration for all imports or exports in a given period; and
  - (g) clearance of goods at the premises of the authorized economic operator or another place authorized by customs.
5. The Parties are encouraged to ensure coordination between Customs and other border agencies in the development of their AEO programmes through means such as the alignment of requirements, the minimization of unnecessary duplication

and the access of benefits related to controls and requirements administered by agencies other than customs.

*Article 9*

**Single Window**

The Parties shall endeavour to establish single window systems, enabling traders to submit documentation and/or data requirements for importation, exportation, or transit of goods through a single entry point to the participating authorities or agencies.

*Article 10*

**Transparency**

1. The Parties agree:
  - (a) on the importance of timely consultations with trade representatives on legislative proposals and general procedures related to customs and trade issues. To that end, appropriate consultations between administrations and the business community, shall take place in each Party.
    - (b) to ensure that their respective customs and other trade related requirements and procedures continue to meet the needs of the trading community, follow best practices, and remain as little trade-restrictive as possible.
2. Each Member shall, as appropriate, provide for regular consultations between border agencies and traders or other stakeholders within its territory.
3. 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) importation, exportation and transit procedures (including port, airport, and other entry-point procedures and hours of operation) and required forms and documents;
  - (b) applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;
  - (c) fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;
  - (d) rules for the classification or valuation of products for customs purposes;
  - (e) laws, regulations and administrative rulings of general application relating to rules of origin;
  - (f) import, export or transit restrictions or prohibitions;

*Without Prejudice*

- (g) penalty provisions against breaches of import, export or transit formalities;
  - (h) appeal procedures;
  - (i) agreements or parts thereof with any country or countries relating to importation, exportation or transit;
  - (j) procedures relating to the administration of tariff quotas;
  - (k) points of contact for information enquiries; and
  - (l) other relevant notices of an administrative nature in relation to the above.
4. 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.
5. 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;
  - (c) contact information on enquiry points.
6. 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.
7. A Party shall not require the payment of a fee for answering enquiries or providing required forms and documents.
8. The enquiry points shall answer enquiries and provide the forms and documents within a reasonable time period set by each Party, which may vary depending on the nature or complexity of the request.

#### *Article 11*

### **Customs valuation**

The Agreement on the Implementation of Article VII of the GATT (1994) shall govern customs valuation rules applied to reciprocal trade between the Parties. Its provisions are hereby incorporated into and made part of this Agreement.

#### *Article 12*

### **Risk Management**

1. Each Party shall adopt or maintain a risk management system for customs control.

*Without Prejudice*

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.
5. The provisions of this article are, whenever possible, applicable to procedures administered by other border agencies.

### *Article 13*

#### **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 conduct post-clearance audits in a risk-based manner.
3. Each Party shall conduct post-clearance audits in a transparent manner. Where an audit is performed 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.
4. The Parties acknowledge that the information obtained in a post-clearance audit may be used in further administrative or judicial proceedings.
5. The Parties shall, wherever practicable, use the result of post-clearance audit in applying risk management.

### *Article 14*

#### **Customs Brokers**

Each Party shall 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. From the entry into force of this Agreement, the Parties shall not adopt new measures introducing the mandatory use of customs brokers.

### *Article 15*

### **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 16*

### **Appeals**

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 procedures may include administrative review by the supervising authority and judicial review of decisions taken at the administrative level according to the legislation of the Parties.
3. Any person who has applied to the customs authorities for a decision and has not obtained a decision on that application within the relevant time-limits shall also be entitled to exercise the right of appeal.
4. Each Party shall provide a person to whom it issues an administrative decision with the reasons for the administrative decision, so as to enable such a person to have recourse to appeal procedures where necessary.

#### *Article 17*

### **Data and documentation requirements**

1. Each Party shall ensure that import, export and transit formalities, data and documentation requirements:
  - a) are adopted and/or applied with a view to a rapid release of goods, particularly perishable goods, provided the conditions for the release are fulfilled;
  - b) are adopted and/or applied in a manner that aims to reduce the time and cost of compliance for traders and operators;
  - c) are the least trade-restrictive measure chosen, where two or more alternative measures are reasonably available for fulfilling the policy objective or objectives in question; and
  - d) are not maintained, including parts thereof, if no longer required.

2. Mercosur shall work towards applying common customs procedures and uniform customs data requirements for the release of goods.

*Article 18*

**Use of information technology**

1. Each Party shall use information technologies that expedite procedures for the release of goods in order to facilitate trade between the Parties.
2. Each Party shall:
  - a) make available by electronic means customs declarations and, whenever possible, other documents required for the import, transit or export of goods;
  - b) allow a customs declaration and, whenever possible, any other data requirements for the import and export of goods to be submitted in electronic format;
  - c) establish a means of providing for the electronic exchange of Customs information with its trading community;
  - d) promote the electronic exchange of data between their respective traders, customs administrations, and other trade related agencies;
  - e) use electronic risk management systems for assessment and targeting that enable its customs authorities and, whenever possible, other border agencies to focus their inspections on high-risk goods and that facilitate the release and movement of low-risk goods.
3. Each Party shall adopt or maintain procedures allowing the option of electronic payment for duties, taxes, fees and charges incurred upon importation and exportation collected by customs authorities and, whenever possible and applicable, by other border agencies.

*Article 19*

**Penalties**

1. Each Party shall ensure that its respective customs laws and regulations provide that any penalties imposed for breaches of customs regulations or procedural requirements be proportionate and non-discriminatory.
2. Penalties for a breach of a customs law, regulation, or procedural requirement are imposed only on the person(s) responsible for the breach under its laws.
3. Penalties imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach. Each Party shall avoid incentives for the

assessment or collection of a penalty, or conflicts of interest in the assessment and collection of penalties.

4. In case of voluntary prior disclosure to a customs administration of the circumstances of a breach of a customs law, regulation, or procedural requirement, each Party is encouraged to consider this as a potential mitigating factor when establishing a penalty.

5. When a penalty is imposed for a breach of a customs laws, regulations, or procedural requirements, an explanation in writing is provided to the person(s) upon whom the penalty is imposed specifying the nature of the breach and the applicable law, regulation or procedure under which the amount or range of penalty for the breach has been prescribed.

## *Article 20*

### **Temporary Admission**

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. Nothing in this Article should be construed as to relieve imported goods from meeting trade related requirements of non – economic character, in particular sanitary and phytosanitary measures.

2. Each Party undertakes to 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;

(b) Professional equipment for the press or for sound or television broadcasting; cinematographic equipment; 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;

(c) Goods imported in connection with a commercial operation but whose importation does not in itself constitute a commercial operation;

(d) Goods imported in connection with a manufacturing operation (such as plates, drawings, moulds, plans and models, for use during a manufacturing process); replacement means of production;

(e) Goods imported exclusively for educational, scientific or cultural purposes;

(f) Personal effects of passengers and goods imported for sports purposes;

- (g) Tourist publicity material;
- (h) Goods imported for humanitarian purposes;
- (i) Animals imported for specific purposes.

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<sup>5</sup>.

### Article 21

#### **Special Committee on Customs, Trade Facilitation and Rules of Origin**

1. The Parties hereby establish a Special Committee on Customs, Trade Facilitation and Rules of Origin, composed of representatives of the Parties. The Committee shall meet on a date and with an agenda agreed in advance by the Parties. The office of chairperson of the Committee shall be held alternately by each of the Parties and rotate annually. The Committee shall report to the [Association Committee].
2. The Committee shall ensure the proper functioning of this Chapter, , the [*Protocol xx on Rules of Origin*], and the [*Protocol xx on MAA*] and any additional customs and trade facilitation]-related provisions agreed between the Parties, and examine all issues arising from their application.
3. The functions of the Committee shall include:
  - (a) monitoring the implementation and administration of this Chapter and of the Annex/Protocol on rules of origin;
  - (b) providing a forum to consult and discuss all issues concerning customs, including in particular customs procedures, customs valuation, tariff regimes, customs nomenclature, customs cooperation and mutual administrative assistance in customs matters;
  - (c) providing a forum to consult and discuss issues relating to rules of origin and administrative cooperation;
  - (d) enhancing cooperation on the development, application and enforcement of customs [MRS: and trade related] procedures, mutual administrative assistance in customs matters, rules of origin and administrative cooperation.
4. With a view to implementing the relevant provisions in this Chapter, the Joint Council shall have the power to adopt decisions relating to AEO programmes and their mutual recognition as well as to joint initiatives relating to customs procedures and trade facilitation.

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<sup>5</sup> This provision shall apply only in respect of the EU and of those Mercosur States being contracting Parties to the Convention on Temporary Admission done at Istanbul on 26 June 1990 (Istanbul Convention) and according to the commitments undertaken by those Parties in this Convention.

5. The Parties may agree to hold ad hoc meetings for customs cooperation or for rules of origin or mutual administrative assistance.