

**Transatlantic Trade and Investment Partnership (TTIP)**

**Chapter [ ]**

**Consolidated Proposed Customs And Trade Facilitation Text**

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US Note: The proposed text for this chapter is put forth without prejudice to revisions that may be needed in light of further discussions regarding the respective competences of the European Union and its Member States in the substantive areas covered by this Chapter and the question of whether Member States will be “Parties” to the overall agreement.

### **Article [ ]: Internet Publication**

1. Each Party shall make available to the public on the Internet the following information and update such information as necessary:

- (a) a description of its procedures for import into, export from, or transit through its [EU: customs] territory that informs interested parties of the practical steps they need to follow for import into, export from, and transit through its [EU: customs] territory;
- (b) the documentation and data it requires for import into, export from, or transit through its [EU: customs] territory;
- (c) its laws, regulations, and procedures for import into, export from or transit through its [EU: customs] territory;<sup>1</sup> and
- (d) [EU: further trade related information, including relevant trade-related legislation;]
- (e) contact information for its inquiry point or points designated or maintained pursuant to Article [ ] (Inquiry Points).

### **Article [ ]: Inquiry Points**

1. Each Party shall establish or maintain one or more inquiry points to respond to reasonable inquiries by interested persons concerning import, export, and transit procedures [EU: , including providing required forms and documents].
2. [EU: A Party shall not require the payment of a fee for answering inquiries under paragraph 1.]
3. Each Party shall ensure that its inquiry points respond to inquiries within reasonable period of time which may vary depending on the nature or complexity of the request.

### **Article [ ]: Advance Rulings**

1. An advance ruling means a written decision provided by a Party to an applicant prior to the importation of good covered by the application that sets forth the treatment that the Party shall provide to the good at the time of import. An applicant means an exporter, importer [US: , or produce] [EU: or any person with a justifiable cause or representative thereof].
2. Each Party shall provide for advance rulings with regard to:

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<sup>1</sup> For greater certainty, measures subject to this subparagraph shall include applied rates of customs duties, taxes, fees, and other charges imposed by a Party that are imposed on or in connection with import, into export from, or transit through its [EU: customs] territory.

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- (a) the good's tariff classification; [EU: and]
- (b) the origin of the good [EU: .] [US: ;
- (c) application of criteria it uses to determine the customs value of the good, in accordance with the WTO Customs Valuation Agreement;
- (d) application of duty drawback, deferral, or other types of relief that reduce, refund, or waive customs duties;
- (e) the preferential treatment for which the good qualifies;
- (f) country of origin marking requirements, including placement and method of marking;
- (g) whether the good is subject to a quota or tariff-rate quota; and
- (h) such other matters as the Parties may decide.]

[EU: 3. Parties are encouraged to provide advance rulings on:

- (a) the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts;
- (b) the applicability of the Party's requirements for relief or exemption from customs duties, where appropriate;
- (c) the application of the Party's requirements for quotas, including tariff quotas, where appropriate.]

4. Each Party shall issue, prior to the import of a good into its [EU: customs] territory, a written advance ruling to an applicant that has submitted a written [EU: request] [US: application] containing all necessary information within a reasonable period of time not to exceed [EU: X] [US: 90] days from receipt of all necessary information.

5. Notwithstanding paragraph 4, a Party may decline to issue an advance ruling where the question or facts and circumstances raised are the subject of administrative or judicial review [EU: , or where the application does not relate to any intended use of the advance ruling].

6. 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.

7. [EU: 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.]

[US: Each Party shall provide that an advance ruling shall take effect on the date issued, or on another date specified in the ruling, and shall remain in effect until it is modified or revoked.]

8. Each Party shall publish:

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- (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) [EU: the length of time for which the advance ruling is valid].

9. Where a Party revokes, modifies, [US: or] invalidates [EU: , or annuls] an advance ruling, it shall provide written notice to the person to whom it provided the ruling, setting out the relevant facts and the basis for its decision. Where the Party revokes, modifies, [US: or] invalidates [EU: , or annuls] an advance ruling with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, false, or misleading information.

10. Each Party shall provide, upon written request of an applicant, an administrative review of the advance ruling or of the decision to revoke, modify, [US: or] invalidate [EU: , or annul] it.

11. An advance ruling issued by a Party shall be binding throughout its [EU: customs] territory.

12. Each Party shall make [EU: information on] [US: its] advance rulings publicly available on the Internet [EU: , taking into account the need to protect commercially confidential information]. A Party may redact portions of an advance ruling in accordance with its laws, regulations, and procedures.

### **Article [ ]: Release of goods**

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods that are otherwise eligible for release upon completion of such procedures.

2. Each Party shall

(a) adopt or maintain procedures that provide for the prompt release of goods within a period no greater than that required to ensure compliance with its laws, regulations, and procedures, [US: and to the extent possible, within 48 hours of the goods' arrival,] provided that the goods are otherwise eligible for release; and

(b) promptly inform the importer where a Party does not release goods [US: within 48 hours of arrival.]

3. Each Party shall:

(a) adopt or maintain procedures that provide for the electronic submission of documentation and data required for importation, including manifests, prior to the arrival of the goods;

(b) begin processing such submission prior to the arrival of the goods with a view to enabling the release of goods on their arrival; and

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(c) allow goods to be released at the point of arrival, without temporary transfer to warehouses or other facilities, provided that the goods are otherwise eligible for release.

4. Each Party shall adopt or maintain procedures that provide for the release of goods prior to a final determination and payment of any customs duties, taxes, fees, and charges imposed on or in connection with importation of the goods, provided that the goods are otherwise eligible for release.

5. As condition for the release of goods prior to a final determination and payment of such customs duties, taxes, fees, and charges, a Party may require that an importer provide sufficient guarantee in the form of a surety, a deposit, or some other appropriate instrument subject to the following conditions:

(a) such guarantee shall not be greater than the amount required to ensure that the obligations arising from the importation of the goods will be fulfilled, including payment of any customs duties, taxes, and fees due for the goods covered by the guarantee; and

(b) the guarantee shall be discharged as soon as possible after the Party is satisfied that the obligations arising from the importation of the goods have been fulfilled.

### **Article [ ]: International Standards**

[1. **EU:** The Parties agree that their respective customs provisions and procedures shall be based upon international instruments and standards applicable in the area of customs and trade, including the substantive elements of the International Convention on the Simplification and Harmonization of Customs Procedures, the International Convention on the Harmonized Commodity Description and Coding System, the SAFE Framework of the WCO, the WCO Data Model and related WCO recommendations, and the WTO Agreement on Sanitary and Phytosanitary Measures.]

[1. **US:** Each Party shall share relevant information, and best practices, on the implementation of international standards for import, export, or transit procedures as appropriate. The Parties shall, as appropriate, discuss specific standards for import, export, or transit procedures and whether they contribute to trade facilitation.

2. Each Party shall endeavor to implement common standards and elements for import and export data consistent with the World Customs Organization (WCO) Data Model.]

### **Article [ ]: Use of Information Technology and Electronic Payment**

1. Each Party shall use information technology that expedites procedures for the release of goods [EU: in order to facilitate trade between the Parties].

2. Pursuant to paragraph 1, each Party shall:

(a) make available by electronic means [EU: a customs declaration] [US: any declaration or other form] that is required for the import, export, or transit through its [EU: customs] territory of goods;

(b) [EU: allow [EU: a customs declaration] [US: documentation for import, export, or

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transit through its [EU: customs] territory] to be submitted in electronic format];

(c) [EU: establish [EU: a means] of providing for the electronic exchange of trade-related information between the Party and importers, exporters, and persons engaged in the transit of goods through its [EU: customs] territory;]

(d) make [EU: electronic systems] accessible to importers, exporters, and persons engaged in the transit of goods through its [EU: customs] territory;

(e) [EU: promote the electronic exchange of data between their respective traders and customs administrations, as well as other related agencies];

(f) adopt or maintain procedures allowing the option of electronic payment of duties, taxes, fees, and charges imposed on or in connection with import or export;

(g) [EU: use electronic risk management systems for assessment and targeting that enable its customs authorities to focus their inspections on high-risk goods and that facilitate the release and movement of low-risk goods]; and

(h) work towards developing electronic systems that are compatible with the other Parties' systems, in order to facilitate the government exchange of international trade data.

### **[US: Article [ ]: Single Window**

1. Each Party shall establish or maintain a single window no later than 1 January 2017 that enables importers, exporters, and persons engaged in the transit of goods, or representatives thereof, to submit through a single entry point documentation and data the Party requires for import into, export from, or transit through its [EU: customs] territory.

2. Once a Party establishes its single window, it shall notify importers, exporters, or persons engaged in the transit of goods, or representatives thereof, of the status of the release of the goods and any determination with respect to the goods through the single window in a timely manner.

3. Where a Party receives documentation or data for a good or shipment of goods through its single window, the Party shall not otherwise request the same documentation or data for that good or shipment of goods, except in urgent circumstances or pursuant to other limited exceptions set out in its laws, regulations, or procedures.]

### **Article [ ]: [EU: Data and] Documentation**

1. Each Party shall, subject to paragraph 2, apply uniform import, export, and transit procedures and uniform documentation requirements for release [US: and clearance] of goods throughout its [EU: customs] territory.

2. Nothing in this Article shall prevent a Party from differentiating its import, export, and transit procedures and documentation requirements:

(a) based on the nature and type of goods, or their means of transport;

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(b) for goods, based on risk management; and

(c) in a manner consistent with the WTO Agreement on Sanitary and Phytosanitary Measures.

3. Each Party shall review, and based on the results of the review, ensure, as appropriate, that import, export, and transit procedures [EU: , data,] and documentation requirements are:

(a) adopted and applied with a view to a rapid release [US: and clearance] of goods;

(b) adopted and applied in a manner that aims at reducing the time and cost of compliance with such procedures [EU: , data,] and documentation requirements;

(c) 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) not maintained, including parts thereof, if no longer required to fulfill the policy objective or objectives in question.

4. Each Party shall accept electronic copies of documents required for import into, export from, or transit through its [EU: customs] territory, unless the electronic copy does not provide the necessary information to insure compliance with its law.

5. Where a Party holds the original of a document submitted for the import into, export from, or transit through its [EU: customs] territory, the Party shall not require an additional submission of the same document.

### Article [ ]: Data Requirements

1. The Parties shall work jointly to develop common requirements concerning data elements [US: for import and export data] with a view to facilitate the advance screening of cargo. [US: Each Party shall limit its data elements [US: for import and export data] to those required for effective, risk-based enforcement.]

[US: 2. The Parties shall work towards developing a set of common data elements and processes for import and export data consistent with WCO Data Model and related WCO recommendations and guidelines.]

### Article [ ]: Fees and Charges

1. [EU: Each Party shall ensure, in accordance with Article VIII of the GATT 1994 that all fees and charges of whatever character other than customs duties imposed on or in connection with import or export shall be limited in amount to the approximate cost of services rendered, which shall not be calculated on an *ad valorem* basis, and shall not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.

2. Each Party may impose charges or recover costs only where specific services are rendered, in

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particular:

(a) attendance, where requested, by customs staff outside official hours or at premises other than customs premises;

(b) analyses or expert reports on goods and postal fees for return of goods to an applicant, particularly with respect to decisions relating to binding information, or the provision of information concerning the application of the customs legislation;

(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; and

(d) exceptional control measures, where these are necessary due to the nature of goods or to a potential risk.]

1. [US: Fees and charges for customs processing shall be limited in amount to the approximate cost of the services rendered on or in connection with the specific import or export operation in question, but are not required to be linked to a specific import or export operation, provided they are levied for services that are closely connected to the customs processing of goods.]

3. No Party shall apply consular transactions fees [EU:, merchandise processing fees {and ...} or any equivalent fees or charges, on or in connection with the import or export of goods originating under this Agreement].

4. Each Party shall publish a list of fees and charges it imposes on or in connection with import or export. In order to provide an adequate time period for interested persons to become familiar with them, each Party shall publish new or amended fees imposed on, or in connection with, importation or exportation in an adequate period of time before their application, except in urgent circumstances [EU: , or where precluded by law].

5. A Party shall not apply fees and charges imposed on, or in connection with, importation until it has published the amount, method for calculation, and available methods of payment of such fees and charges.

6. Each Party shall periodically review fees and charges that it imposes on, or in connection with, importation.

### Article [ ]: Risk Management

1 . Each Party shall adopt or maintain a risk management system for customs [EU: and other relevant border controls] [US: control], based on assessment of risk through appropriate selectivity criteria.

2. Each Party shall use its risk management system for assessment and targeting to enable its customs authority to concentrate its controls, inspection, and other enforcement activities on high-risk consignments, and simplify the clearance and movement of low-risk consignments. [EU: Each Party may also select, on a random basis, consignments for such controls as part of its risk management.]

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3. Each Party shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions on international trade.
4. Each Party shall use information technology systems, as appropriate, to apply its risk management system in order to facilitate trade while ensuring customs control.
5. In order to facilitate trade, each Party shall periodically review and update, as appropriate, its risk management systems for customs control.

### **Article [ ]: Post-clearance Audit**

1. With a view to expediting the release of goods, each Party shall adopt or maintain post-clearance audit procedures [US: among other risk-based procedures,] to ensure compliance with customs and related laws, and regulations procedures.
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 a Party conducts an audit and reaches a final determination, the Party shall, without delay, notify the person whose record is audited of the determination, the person's rights and obligations with respect to determination, and the basis for the determination.
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 [ ]: Review and Appeal**

- [EU: 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.]

[US: 1. Each Party shall ensure that any person to whom it issues a determination on a customs matter has access to:

- (a) administrative review, independent<sup>2</sup> of the employee or office that issued the determination; and
- (b) judicial review of the determination.]

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<sup>2</sup> The level of administrative review may include any authority supervising the customs administration.

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[EU: 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.]

[US: 4. Each Party shall ensure that an authority conducting a review under paragraph 1 notifies the parties to the matter in writing of its decision in the review and the reasons for the decision.]

5. Each Party shall provide a person to whom it issues an administrative decision [US: on a customs matter] with the reasons for the administrative decision, so as to enable the person to have recourse to appeal procedures [US: , as provided in paragraph 1].

[US: 6. Where a person receives a decision on administrative or judicial review as provided under paragraph 1, that decision shall be applicable in the same manner throughout the [EU: customs] territory of the Party with respect to the same goods. The decisions of administrative and judicial tribunals under paragraph 1 shall govern the practice of the Party throughout its [EU: customs] territory.]

### **Article [ ]: Custom Brokers**

1. A Party shall not require [EU: the mandatory use of] [US: the owner of goods to use] a customs broker [US: or other agent with a commercial presence in the territory of the Party] to file import documentation, data, and other information.

2. Where a Party requires licensing of customs brokers, it shall apply transparent and objective requirements [US: for such licensing].

### **Article [ ]: Pre-shipment inspection**

1. A Party shall not require the use of pre-shipment inspection [US: in relation to tariff classification or customs valuation].

### **[US: Article [ ]: Expedited Shipments**

1. Each Party shall adopt or maintain customs procedures that provide for expedited release of certain shipments while maintaining appropriate customs control. These procedures shall:

- (a) provide a separate customs procedure for expedited shipments;
- (b) provide for information necessary to release an expedited shipment to be submitted electronically and processed before the shipment arrives;
- (c) minimize the documentation required for the release of expedited shipments and, to the extent possible, allow release based on a single submission of information, such as a manifest, covering all goods contained in an expedited shipment;
- (d) under normal circumstances, provide for expedited shipments to be cleared within four hours after arrival, provided that all required customs documentation and data are submitted;

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and

(e) apply to shipments of any weight or value.]

### **Article [ ]: [EU: Facilitation/simplification and] *De Minimis***

1. [EU: Each Party shall allow low-value consignments to benefit from simplifications as determined by that Party.]
2. [US: Each Party shall provide that no customs duties or taxes shall be assessed on, and no formal entry documents shall be required for, shipments valued at US\$ 800 or less.
3. Notwithstanding paragraph 1, for shipments valued at less than US\$ 800, a Party may assess:
  - (a) customs duties and taxes on goods within a shipment that are subject to excise taxes; and
  - (b) customs duties and taxes on goods within a shipment where it considers the shipment to be part of a series of importations carried out or planned for the purpose of evading duties and taxes.]

### **Article [ ]: Transit and Transshipment**

1. [EU: Each Party shall ensure the facilitation and effective control of transshipment operations and transit movements through its [EU: customs] territory.]
2. [EU: Each Party shall ensure cooperation and coordination among all its concerned authorities and agencies to facilitate traffic in transit through its [EU: customs] territory.]
- [EU: 3. Each Party shall allow goods intended for import to be moved under customs control from a customs office of entry to another customs office in its customs territory where the goods would be released.]
4. Each Party's customs controls in connection with traffic in transit shall not be more burdensome than necessary to:
  - (a) identify the goods in transit; and
  - (b) verify that the Party's transit requirements have been met.
5. After a Party has authorized the goods to proceed from the point of entry through a Party's [EU: customs] territory, the Party shall not apply customs charges, customs procedures, or inspections other than those necessary for specific law enforcement purposes with respect to that traffic in transit, until the goods arrive at the point of exit from its [EU: customs] territory.
6. Each Party shall provide for advance filing and processing of documentation and data required for transit prior to the arrival of goods.
7. Once traffic in transit has reached the point of exit from the [EU: customs] territory of a Party

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and transit requirements have been met, the Party shall promptly terminate the transit operation.

8. A Party may require a guarantee, surety, or other instrument for traffic in transit through its [EU: customs] territory, provided the use of the guarantee is limited to ensuring that obligations arising from such traffic in transit are fulfilled.

9. Each Party shall allow comprehensive guarantees for multiple transactions by the same operators.

10. Where a Party requires a guarantee, surety, or other instrument for traffic in transit, it shall discharge the guarantee without delay once it determines that its transit requirements have been satisfied.

11. Each Party shall make available to the public the methodology it uses to set the amount of guarantee for traffic in transit through its [EU: customs] territory.

12. Where a Party limits the time for transiting its [EU: customs] territory, it shall ensure that the time it allows is sufficient to accomplish the transit operation.

13. Each Party shall allow goods in transit to enter its [EU: customs] territory where:

(a) the goods and appropriate information are presented to its customs authorities for examination; and

(b) all duties, taxes, and fees are paid or sufficient security is provided.

14. A Party shall not require the use of customs convoys or customs escorts for traffic in transit.

15. [US: Each Party shall allow goods for importation to be moved within its [EU: customs] territory under customs control from the point of entry into the Party's [EU: customs] territory to another customs office in its [EU: customs] territory from where the goods are intended to be released.]

16. Goods (including baggage), and also vessels and other means of transport, shall be deemed to be in transit across the [EU: customs] territory of a Party when the passage across such [EU: customs] territory, with or without transshipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey beginning and terminating beyond the frontier of the Party across whose [EU: customs] territory the traffic passes. Traffic of this nature is termed in this Article "traffic in transit."

17. The provisions of this Article shall not apply to the operation of aircraft in transit, but shall apply to air transit of goods (including baggage).

### **[EU: Article [ ]]. Goods re-entered after Repair**

1. For the purpose of this Article, repair means any processing operation undertaken on goods to remedy operating defects or material damage and entailing the re-establishment of goods to their original function, or to ensure their compliance with technical requirements for their use, without which the goods could no longer be used in the normal way for the purpose for which they were

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intended. Repair of goods includes restoring and maintenance. It shall not include an operation or process that either:

- (a) destroys the essential characteristics of goods or creates new or commercially different goods;
- (b) transforms the unfinished goods into finished goods; or
- (c) is used to improve the technical performance of goods.

2. A Party shall not apply customs duty to goods, regardless of their origin, that re-enter its customs territory after those goods have been temporarily exported from its customs territory to the customs territory of the other Party for repair, regardless of whether the repair could be performed in the customs territory of the Party from which the goods were exported for repair.

3. Paragraph 2 does not apply to goods imported in bond, into free trade zones, or zones of similar status, that are exported for repair, and are not re-imported in bond, into free trade zones, or zones of similar status.

4. A Party shall not apply customs duty to goods, regardless of their origin, imported temporarily from the customs territory of the other Party for repair.]

### Article [ ]: Penalties

[US: 1. Each Party shall adopt or maintain measures that allow for the imposition of penalties for breaches of its customs laws, regulations, or procedures, including those governing tariff classification, customs valuation, transit procedures, country of origin, and claims for preferential treatment. Each Party shall ensure that such measures are administered in a uniform manner throughout its [EU: customs] territory.]

2. Each Party shall ensure that [EU: its respective customs laws and regulations provide that] any penalties imposed for breach of its customs laws, regulations, or [US: procedure] [EU: procedural requirements] are non-discriminatory and [EU: proportionate] to the degree and severity of the breach.

3. Each Party shall ensure that penalties for a breach of a customs law, regulation, or procedure are imposed only on the person(s) legally responsible for the breach.

4. Each Party shall ensure that any penalty imposed for breach of a customs law, regulation, or procedure shall depend on the facts and circumstances of the case, [US: including the record of the person in its dealings with the Party's customs authority,] and shall be commensurate with the degree and severity of breach.

5. [EU: Each Party shall avoid incentives for the assessment or collection of a penalty or conflicts of interest in the assessment and collection of penalties.] [US: Each Party shall adopt or maintain procedures to avoid conflicts of interest in the assessment and collection of penalties regarding a breach of customs law, regulation, or procedure. No portion of the remuneration of a government

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official shall be calculated as a fixed portion or percentage of any such penalties or duties assessed or collected.]

[**US:** 6. Each Party shall provide that a penalty on a person for a clerical error or other minor breach of a customs law, regulation, or procedure shall be no greater than necessary to serve merely as a warning to avoid future breaches, unless the breach is part of a consistent pattern of such errors by that person.]

7. Each Party shall ensure that when it imposes a penalty for a breach of a customs law, regulation, or procedure, it provides an explanation in writing to the person(s) upon whom the penalty is imposed, specifying the nature of the breach [**EU:** and the applicable law, regulation, or procedure under which the amount or range of penalty for the breach has been prescribed] [**US:**, including the specific law, regulation, or procedure concerned, and the basis for determining the penalty amount, if not set forth specifically in such law, regulation, or procedure].

8. [**EU:** In case of voluntary prior disclosure to a customs administration of 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.]

[**US:** Where a person voluntarily discloses to a Party the circumstances of a breach of a customs law, regulation, or procedure prior to the discovery of the breach by the Party, the Party shall consider this fact as a mitigating factor when determining liability for a penalty. Where the disclosing person can correct the breach, the Party may require, as a condition for using the disclosure as a mitigating factor, that the person correct it within a reasonable period of time, including paying any duties, taxes, or fees owed.]

[**US:** 9. Each Party shall specify a fixed, finite period within which it may initiate proceedings to impose a penalty for breach of a customs law, regulation, or procedure.]