



TPP APPAREL COALITION PROPOSAL FOR CUSTOMS TEXT

The Trans-Pacific Partnership is the first Free Trade Agreement negotiated by the United States since the expiration of the final textile and apparel quota agreement. The text of this twenty-first century agreement should reflect that new reality and we believe that this draft text accomplishes that goal.

Key Points:

- There is no need for a separate textile and apparel chapter.
- Full integration of apparel into the global trading system eliminates the need for special treatment, as well as many of the separate provisions that have been contained in these chapters. U.S. proposals (if patterned after existing FTA Textile and Apparel Customs Chapters) feature provisions that are burdensome, onerous, out of date and unnecessary for effective enforcement and compliance.
- The TPP Apparel Coalition supports full integration of the customs provisions into one chapter that provides for the following best practices:
 - common procedures among TPP parties
 - fair and transparent enforcement
 - consistency with other Customs programs and security measures (similar to C-TPAT)
 - trade facilitation and commitments for annual training for government and private sector parties
 - annual meetings of a Working Group on Customs to monitor implementation and facilitate cooperation
- The TPP Apparel Coalition supports strong and effective enforcement language in the TPP.

CHAPTER Y
CUSTOMS ADMINISTRATION AND TRADE FACILITATION

ARTICLE Y.1: PUBLICATION

1. Each Party shall publish, including on the Internet, its customs laws, regulations, and general administrative procedures.
2. Each Party shall designate or maintain one or more inquiry points to address inquiries by interested persons concerning customs matters and shall make available on the Internet information concerning the procedures for making such inquiries.
3. To the extent possible, each Party shall publish in advance any regulations of general application governing customs matters that it proposes to adopt and shall provide interested persons the opportunity to comment before adopting them.

ARTICLE Y.2: RELEASE OF GOODS

1. In order to facilitate bilateral trade, each Party shall adopt or maintain simplified customs procedures for the efficient release of goods.
2. Pursuant to paragraph 1, each Party shall ensure that its customs authority or other competent authority adopts or maintains procedures that:
 - (a) provide for the release of goods within a period no greater than that required to ensure compliance with its customs laws and, to the extent possible, within 48 hours of the goods' arrival;
 - (b) provide for customs information to be submitted and processed electronically before goods arrive in order for them to be released on their arrival;
 - (c) allow goods to be released at the point of arrival, without temporary transfer to warehouses or other facilities;
 - (d) allow importers to withdraw goods from customs before, and without prejudice to, its customs authority's final determination of the applicable customs duties, taxes, and fees.¹

ARTICLE Y.3: AUTOMATION

Each Party shall use information technology that expedites procedures for the release of goods and shall:

- (a) make electronic systems accessible to customs users;

¹ A Party may require importers to provide guarantees in the form of sureties, deposits, or other appropriate instruments sufficient to cover payment of the customs duties, taxes, and fees its customs authority ultimately applies in connection with the importation of the good.

- (b) endeavor to use international standards;
- (c) endeavor to develop electronic systems that are compatible with the other Party's systems, in order to facilitate bilateral exchange of international trade data; and,
- (d) endeavor to develop a set of common data elements and processes in accordance with World Customs Organization (WCO) Customs Data Model and related WCO recommendations and guidelines.

ARTICLE Y.4: RISK MANAGEMENT

Each Party shall adopt or maintain electronic or automated risk management systems for assessment and targeting that enable its customs authority to focus its inspection activities on high-risk goods and that simplify the clearance and movement of low-risk goods.

ARTICLE Y.5: COOPERATION

1. With a view to facilitating the effective operation of this Agreement, each Party shall endeavor to provide the other Party with advance notice of any significant modification of administrative policy or other similar development related to its laws or regulations governing importations that is likely to substantially affect the operation of this Agreement.

2. The Parties shall cooperate in achieving compliance with their respective laws and regulations pertaining to:

- (a) the implementation and operation of the provisions of this Agreement governing importations or exportations, including claims for preferential tariff treatment, procedures for making claims for preferential tariff treatment, and verification procedures;
- (b) the implementation and operation of the Customs Valuation Agreement;
- (c) restrictions or prohibitions on imports or exports; and
- (d) other customs matters as the Parties may agree.

The Parties recognize that providing technical or other assistance, including joint training, particularly within the first two years of the Agreement, to advance these purposes is an essential part of this Article. This joint training should include Government-to-Government training, as well as Government-to-Private Sector training.

3. Where a Party has a reasonable suspicion of unlawful activity related to its laws or regulations governing importations, the Party may request the other Party to provide specific confidential information normally collected in connection with the importation of goods.

4. A Party's request under paragraphs 3 or 9 shall be in writing, shall specify the purpose for which the information is sought, and shall identify the requested information with sufficient specificity for the other Party to locate and provide the information.

5. The Party from which the information is requested shall, in accordance with its law and any relevant international agreements to which it is a party, provide a written response containing the information.

6. For purposes of paragraph 3, a reasonable suspicion of unlawful activity means a suspicion based on relevant factual information obtained from public or private sources comprising one or more of the following:

- (a) historical evidence of non-compliance with laws or regulations governing importations by an importer or exporter;
- (b) historical evidence of non-compliance with laws or regulations governing importations by a manufacturer, producer, or other person involved in the movement of goods from the territory of one Party to the territory of the other Party;
- (c) historical evidence that some or all of the persons involved in the movement from the territory of one Party to the territory of the other Party of goods within a specific product sector have not complied with a Party's laws or regulations governing importations; or
- (d) other information that the requesting Party and the Party from whom the information is requested agree is sufficient in the context of a particular request.

7. Each Party shall endeavor to provide the other Party with any other information that would assist the other Party in determining whether imports from or exports to the other Party's territory are in compliance with the other Party's laws or regulations governing importations, in particular those related to unlawful activities, including smuggling and similar infractions.

8. On the request of the importing Party, the exporting Party shall conduct a verification for purposes of enabling the importing Party to determine that a claim for preferential tariff treatment for a good is accurate. The exporting Party also may conduct such a verification on its own initiative.

9. Where the importing Party has a reasonable suspicion that a person of the exporting Party is engaging in unlawful activity relating to trade in goods, the exporting Party shall conduct, on the request of the importing Party, a verification for purposes of enabling the importing Party to determine that the person is complying with applicable customs measures affecting those goods, including measures that the exporting Party adopts and maintains pursuant to this Agreement, or to determine that a claim for preferential tariff treatment regarding a good exported or produced by that person is accurate.

10. The importing Party, through its competent authorities, may assist in a verification conducted pursuant to paragraph 3 or 9, including by conducting, along with the competent

authorities of the exporting Party, visits in the territory of the exporting Party to the premises of an exporter, producer, or any other enterprise involved in the movement of goods from the territory of the exporting Party to the territory of the Importing Party.

(a) The competent authority of the importing Party shall provide a written request to the competent authority of the exporting Party no less than 30 days before the proposed date of a verification visit. The request shall include:

- (i) the names of the exporters or producers whose premises are to be visited;
 - (ii) the dates and places of the proposed verification visit;
 - (iii) the object and scope of the proposed verification visit, including the specific reference to the good that is the subject of the verification;
 - (iv) the names and titles of the officials to be performing the verification visit;
- and
- (v) the legal authority for the verification visit.

(b) The competent authority of the exporting Party shall respond within ten days of receipt of the request, and shall indicate the date on which authorized personnel of the importing Party may perform the visit. The exporting Party shall seek, in accordance with its laws, regulations and procedures, permission in advance from the enterprise to conduct the site visit. Such permission shall be sought no less than seven days prior to the proposed visit. If consent to a visit by the appropriate officials of the importing Party is not provided, the importing Party may deny preferential tariff treatment to the type of goods of the enterprise that would have been the subject of the verification, except that the importing Party may not deny preferential tariff treatment to such goods based solely on a postponement of the visit, if there is adequate reason for such postponement.

(c) Authorized personnel of the importing and exporting Parties shall conduct the visit in accordance with the laws, regulations, and procedures of the exporting Party. During such visits, the authorized personnel of the importing and exporting Parties shall provide identity cards to the enterprise visited and the enterprise may be asked to produce records necessary to demonstrate that a good for which the producer or exporter provided a certification within the two year period preceding the date of the visit and for which preferential tariff treatment was claimed by an importer was an originating good, including records concerning:

- (i) the purchase of, cost of, (and, for those products subject to a regional value content rule of origin, value of) and payment for, the exported good;
- (ii) the purchase of, cost of (and, for those products subject to a regional value content rule of origin, value of), and payment for all materials, including indirect materials, used in the production of the exported good; and
- (iii) the production of the good in the form in which it was exported.

(d) Each Party shall provide to the other Party, consistent with its law, production, trade, and transit documents, and other information necessary to conduct a verification under paragraph 3 or 9. Each Party shall consider any documents or information exchanged between the Parties in the course of such a verification to have been designated as confidential within the meaning of Article 7.6 (Confidentiality). Notwithstanding the preceding sentence and Article 7.6, a governmental entity of a Party may share information provided to it under this Article with other governmental entities of that Party for a purpose set forth in paragraph 1.

(e) If, as a result of a verification conducted under paragraph 3 or 9, the importing Party determines that the information to support a claim for preferential tariff treatment is insufficient, the importing Party may, consistent with its law, take appropriate action, which may include suspending the application of preferential tariff treatment to:

(i) the good for which a claim for preferential tariff treatment has been made, in the case of a verification under paragraph 3; or

(ii) any goods exported or produced by the person subject to a verification under paragraph 9, where the suspicion of unlawful activity relates to those goods.²

(f) On completion of the visit, the importing Party shall provide the exporting Party with an oral summary of the visit and within 45 days of the visit the Party conducting a verification under paragraph 3 or 9 shall provide the other Party with a written report on the results of the verification, which shall include:

(i) the name of each enterprise visited;

(ii) particulars of the shipments that were checked;

(iii) all observations made at each enterprise;

(iv) an assessment of whether each enterprise's production records and other documents support its claims for preferential tariff treatment;

(v) all documents, factual findings and the legal basis supporting any conclusion that the Party reaches; and

(vi) the actions that the importing Party will take with respect to each enterprise based upon the results of the visit.

Article [] (Confidentiality) shall apply to any information contained in the report that the Party providing the report designates as confidential.

² For greater certainty, nothing in this paragraph shall be construed to preclude the release of goods in accordance with Article [] (Release of Goods).

(g) On the request of either Party, the Parties shall consult to resolve any technical or interpretive difficulties that may arise under this Article or to discuss ways to improve the effectiveness of their cooperative efforts. In addition, either Party may request technical or other assistance from the other Party in implementing this Article. The Party receiving a request under this paragraph shall make every effort to respond favorably and promptly to it.

(h) Any request for cooperation under this Article shall be made in writing and shall include a brief statement of the matter at issue and the cooperation requested.

11. In order to facilitate bilateral trade, each Party shall to provide the other Party with technical advice and assistance for the purpose of improving risk management techniques, facilitating the implementation of international supply chain standards, simplifying and enhancing procedures for clearing goods through customs in a timely and efficient manner, advancing the technical skill of personnel, and enhancing use of technologies that can lead to improved compliance with the Party's laws or regulations governing importations.

12. In order to facilitate bilateral trade, each Party should allow importers, either following the arrival of goods or on request of a Party's customs authority, a reasonable period of time (at least thirty days) to provide documentation demonstrating that the goods qualify as originating.

13. The Parties shall conduct joint training programs and shall exchange information on customs laboratory techniques.

14. The Parties shall endeavor to enhance each Party's ability to enforce its regulations governing importations. The Parties shall further endeavor to establish and maintain channels of communication, including by establishing contact points, that will assist them in exchanging information rapidly and securely and to improve bilateral coordination on importation issues.

ARTICLE Y.6: CONFIDENTIALITY

1. Where a Party that provides information to the other Party in accordance with this Chapter designates the information as confidential, the other Party shall keep the information confidential. The Party providing the information may require the other Party to furnish written assurance that the information will be held in confidence, will be used only for the purposes the other Party specified in its request for information, and will not be disclosed without the specific permission of the Party that provided the information or the person that provided the information to that Party.

2. If a Party receives information designated as confidential in accordance with paragraph 1, the Party receiving the information may nevertheless use or disclose the information for law enforcement purposes or in the course of judicial proceedings.

3. A Party may decline to provide information that the other Party has requested where that Party has failed to act in conformity with paragraph 1.

4. Each Party shall adopt or maintain procedures for protecting from unauthorized disclosure confidential information submitted in accordance with the administration of the

Party's customs laws, including information the disclosure of which could prejudice the competitive position of the person providing the information.

ARTICLE Y.7: EXPRESS SHIPMENTS

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

- (a) provide a separate and expedited customs procedure for express shipments;
- (b) provide for information necessary to release an express shipment to be submitted and processed electronically before the shipment arrives;
- (c) allow submission of a single manifest covering all goods contained in an express shipment, through, if possible, electronic means;
- (d) to the extent possible, provide for certain goods to be cleared with a minimum of documentation;
- (e) under normal circumstances, provide for express shipments to be cleared within four hours after the necessary customs documents have been submitted, provided the shipment has arrived;
- (f) apply without regard to an express shipment's weight or customs value; and
- (g) under normal circumstances, provide that no customs duties or taxes will be assessed on, nor will formal entry documents be required for, express shipments valued at 2,500 U.S. dollars or less.³

ARTICLE Y.8: REVIEW AND APPEAL

Each Party shall ensure that with respect to its determinations on customs matters, importers in its territory have access to:

- (a) a level of administrative review independent of the employee or office that issued the determinations; and
- (b) judicial review of the determinations.

For greater certainty, each Party shall allow an exporter or producer to provide information directly to the Party conducting the review and to request that Party to treat that information as confidential in accordance with Article Y.6.4.

ARTICLE Y.9: PENALTIES

³ Notwithstanding subparagraph (g), a Party may require express shipments to be accompanied by an airway bill or other bill of lading. For greater certainty, a Party may assess customs duties or taxes, and may require formal entry documents, for restricted goods.

Each Party shall adopt or maintain measures that allow for the imposition of civil or administrative penalties and, where appropriate, criminal sanctions for violations of its customs laws and regulations, including those governing tariff classification, customs valuation, country of origin, and claims for preferential treatment under this Agreement.

ARTICLE Y.10: ADVANCE RULINGS

1. Each Party shall issue, through its customs authority, before a good is imported into its territory, a written advance ruling at the written request of an importer in its territory, or an exporter or producer in the territory of the other Party⁴ with regard to:

- (a) tariff classification;
- (b) the application of customs valuation criteria for a particular case, in accordance with the Customs Valuation Agreement;
- (c) the application of duty drawback, deferral, or other relief from customs duties;
- (d) whether a good is originating;
- (e) whether a good re-entered into the territory of a Party after being exported to the territory of the other Party for repair or alteration is eligible for duty free treatment in accordance with Article [2.6] (Goods Re-entered after Repair or Alteration);
- (f) country of origin marking;
- (g) whether a good is subject to a quota or tariff-rate quota; and
- (h) such other matters as the Parties may agree.

2. Each Party shall issue an advance ruling within 90 days after its customs authority receives a request, provided that the requester has submitted all information that the Party requires, including, if the Party requests, a sample of the good for which the requester is seeking an advance ruling. In issuing an advance ruling, the Party shall take into account facts and circumstances the requester has provided. For greater certainty, a Party may decline to issue an advance ruling if the facts and circumstances forming the basis of the advance ruling are the subject of administrative or judicial review. A Party that, pursuant to this paragraph, declines to issue an advance ruling shall promptly notify the requester in writing, setting forth the relevant facts and the basis for its decision to decline to issue the advance ruling.

3. Each Party shall provide that advance rulings shall take effect on the date they are issued, or on another date specified in the ruling, provided that the facts or circumstances on which the ruling is based remain unchanged.

⁴ For greater certainty, an importer, exporter, or producer may submit a request for an advance ruling through a duly authorized representative.

4. The issuing Party may modify or revoke an advance ruling after the Party notifies the requester. The issuing Party may modify or revoke a ruling retroactively only if the ruling was based on inaccurate or false information.
5. Each Party shall ensure that requesters have access to administrative review of advance rulings.
6. Subject to any confidentiality requirements in its laws, each Party shall publish its advance rulings, including on the Internet.
7. If a requester provides false information or omits relevant facts or circumstances relating to the advance ruling, or does not act in accordance with the ruling's terms and conditions, the importing Party may apply appropriate measures, including civil, criminal, and administrative actions, monetary penalties, or other sanctions.

ARTICLE Y.11: Working Group on Customs

1. The Parties hereby establish a Working Group on Customs, comprising representatives of each Party, to ensure effective administration of the customs-related aspects of the Agreement.
2. The Working Group shall meet at least once each year and on the request of any Party.
3. The Working Group shall:
 - (a) monitor the implementation, administration and application by the customs administrations of the Parties of this Chapter;
 - (b) endeavor to agree on the uniform interpretation, application and administration of the customs provisions of this Agreement;
 - (c) endeavor to agree on tariff classification and valuation matters relating to determinations of origin, including mutual recognition of rulings on tariff classification, valuation and origin;
 - (d) address issues that arise with respect to verification activities;
 - (e) address any sector specific issues related to customs administration and enforcement;
 - (f) consider any other customs-related matter arising under this Agreement; and
 - (g) coordinate joint training programs and the provision of technical assistance.
4. Nothing under this Chapter shall be construed to prevent a Party from issuing a determination of origin or an advance ruling relating to a matter under consideration by the Working Group or from taking such other action as it considers necessary, pending a resolution of the matter under this Agreement.

Explanation of the proposed text

The Trans-Pacific Partnership is the first free trade agreement negotiated by the United States since the expiration of the last textile and apparel quota agreement.¹ The text of this unprecedented agreement should reflect that new reality. In particular, there is a strong basis for a significant reconsideration and reorientation of the customs and enforcement provisions that the United States has previously sought to include in each FTA text. Even beyond the absence of any basis for a separate textile and apparel chapter, no longer can a distinction in customs treatment between textile products and other consumer goods be rationalized. In place of concerns about origin and circumvention of quotas, the focus should now be on duty collection issues, that is, whether claims of preferential tariff treatment, are justified. This can best be accomplished by including customs rules for textiles and apparel goods within the overall customs provisions of the TPP, in place of redundant or contradictory terms in a separate textile chapter.

Toward that end, using the Peru Free Trade Agreement and the Korea Free Trade Agreement as baselines, the following customs-related changes are proposed for the Market Access chapter that covers Textiles and Apparel, and the chapter on Customs Administration and Trade Facilitation:

Customs and Cooperation Provisions Specific to Textile and Apparel Goods

A customs cooperation provision specific to textile and apparel goods is not necessary since the cooperation provisions of the general customs chapter also apply to textile and apparel products.

Article 4.3.2, as it appeared in the Korea FTA, is deleted in its entirety. That Article, if it were to be included in the TPP, would establish a requirement that one Party – Vietnam and/or Malaysia – annually obtain and provide to the United States extensive and highly detailed information about entities that produce and export textile and apparel products and their customers in the United States. These provisions appear to be based on customs cooperation agreements that the United States negotiated when the United States had quotas in force and was concerned about illegal transshipment that would have allowed quantitative restraints to be exceeded (and inadmissible goods to be entered into the United States). Absent quotas and the issue of admissibility/restricted merchandise, there is no justification for such a system. The regime is also contrary to the current system of administering FTAs, which has evolved from permitting importers to rely upon exporter-executed certificates of origin (e.g., NAFTA) to placing responsibility on the importer to ensure that the goods presented as qualifying for preferential tariff treatment comply with all applicable rules, as a matter of reasonable care.

Language which appeared in KORUS Article 4.3.3 is moved to the general customs chapter, under Article Y.5 (cooperation), with appropriate wording changes to make it applicable

¹ Even during the negotiation of the Colombia and Korea FTAs, quotas still applied to products of China.

to all goods. That was the case under NAFTA, as originally negotiated. The revised provision is explained as part of Article Y.5.

Chapter Y: Customs Administration and Trade Facilitation

Article Y.2 makes clear that an importer making a claim that goods qualify for preferential tariff treatment should be given a reasonable period of time to provide documentation demonstrating that the goods qualify as originating under the TPP. An importer need not have in its possession at the time of entry all of the documents that would establish that a good, including its component parts, was manufactured in the TPP region. This is consistent with existing U.S. Customs and Border Protection practice, under which the amount of time deemed reasonable for an importer to provide requested documents depends on how recently the goods were presented for entry.

Article Y.5 describes the customs cooperation provisions of the agreement. Under Article Y.5.2, like Article 3.2.1 of the Peru FTA, the Parties acknowledge that joint training and technical assistance are essential to the effective implementation of the cooperation commitment.

Article Y.5 incorporates, after paragraph 7, the verification provisions, such as Article 4.3 under the Korea FTA or Article 3.2 under the Peru FTA, that were previously included in a textile-specific chapter. The basis for verifications is where “a Party has a reasonable suspicion of unlawful activity related to its laws or regulations governing importations,” (Article Y.5.3) or where “a Party has a reasonable suspicion of unlawful activity relating to trade in goods” (proposed Article Y.5.9).

In paragraph 10 of Article Y.5, the procedures to be followed by an importing Party in requesting and conducting a verification within the territory of an exporting Party are described, including notice and identification requirements. The request/notification to the exporting Party (under subparagraph (a)) must include specific information, based on the precedent provided in earlier FTAs, such as NAFTA Article 506, and continued in the Peru FTA (at Article 3.2.5). Under subparagraph (b), the exporting Party is required to seek permission from each enterprise to be visited, no less than seven days in advance of the planned visit. Advance notice of such visits is essential for a variety of reasons. First, it should ensure that the necessary personnel, including knowledgeable managers, will be available for the visit, and that any relevant records, if normally stored elsewhere, are more likely to be available. Second, many enterprises have established strict C-TPAT protocols, as required by their buyers, to control the entry of person entering their premises; notice and planning are key to ensuring a smooth entry and avoiding situations in which the enterprise responds suspiciously. In areas where corruption is a concern, a surprise visit may be viewed as a possible shakedown of the enterprise. Third, a notified enterprise also can forewarn a visiting importing Party team that a particular date may not be appropriate, such as payroll day, when the enterprise may have more armed guards in place to protect the plant and its employees against robbery (which is an issue when employees are paid in cash). Subparagraph (b) also retains provisions providing that a refusal to permit a verification may permit an importing Party to deny preferential tariff treatment to goods produced in that enterprise, unless there is only a postponement of a visit, based upon an adequate reason.

Subparagraph (c) outlines the appropriate protocol for visits to the enterprise, to ensure that the visit is legitimate and fully recorded. This protocol includes requiring the visiting officials to provide identity cards to the enterprise. It also limits the records that may be requested during the visit, for purposes of proving that the enterprise produced the goods and that they meet the applicable TPP rules of origin, to those related to entries made into the importing Party within the two year period preceding the date of the visit. Informally, CBP officials have indicated that in conducting production verification visits they generally seek records related to a shipment entered into the United States within the last year, but in no case would they request records for a shipment that was more than two years old. This limitation should be expressly included in the TPP, so that an enterprise can be assured that it will not be disadvantaged if it has available for a verification visit only records for shipments within the two year period preceding the visit date. Subparagraph (c) also generally identifies the records that may be requested.

Subparagraph (d) is identical to what was Article 4.3.7 in the KORUS FTA. Subparagraph (e) is a modified version of KORUS FTA Article 4.3.8, and identifies when an importing Party may suspend the application of preferential tariff treatment to products of a visited enterprise. In subparagraph (f), the Party conducting a verification is required to first provide an oral report upon completion of the visits and then provide a written report of the results to the other Party within 45 days of the verification. The necessary contents of that report, including all factual findings and the legal basis for any conclusion reached, are identified.

Article Y.5.11 through 13 appear in the KORUS FTA, but are presented as commitments to provide technical assistance and conduct joint training, rather than merely aspirational goals.

A new Article Y.11 creates a Working Group on Customs to facilitate an on-going discussion among the Parties' customs administrations and monitor the implementation of the customs provisions by the Parties, as well as seek to promote uniform interpretations and administration of the customs rules. Among the issues that would be addressed by such a mandate would be mutual recognition of classification rulings. The Working Group also would seek to address any issues that arise with respect to verifications. Further the Working Group would have responsibility for coordinating technical assistance and joint training. The Working Group would meet four times a year, or more often if requested by a Party.