

India-Australia Economic Cooperation & Trade Agreement (ECTA): Understanding Custom Procedures & Trade Facilitation

written by Jidesh Kumar | April 25, 2022



India Australia ECTA

Custom procedures simply means the measures applied by the customs authority of each country in accordance with their customs laws concerning importation, exportation, and transit of goods.

Due to cumbersome customs procedures, international trading is difficult for organizations and particularly so for small and medium-sized businesses.

Trade facilitation is a set of policies designed to streamline border-clearance procedures.

The India Australia ECTA aims to ease these restrictions and facilitate smooth trade by implementing predictable and consistent standards clearly and simply by adhering to the World Customs Organization's ["WCO"] policy recommendations.

According to the agreement:

- "Each Party shall endeavour to apply its customs procedures and practices in a predictable, consistent, and transparent manner, to facilitate trade including through the expeditious clearance of goods where possible.
- Each Party shall ensure that its customs procedures, where possible and to the extent permitted by its customs laws, conform with the standards and recommended practices of the World Customs Organization ("WCO").
- The customs administration of each Party shall, to the extent possible, review its customs procedures to simplify such procedures to facilitate trade."

Other procedures and variables for trade convenience and process are also specified in the agreement. They are as follows:

- Transparency
- Release of Goods
- Risk Management
- Data, Documentation, and Automation
- Temporary Admission of Goods
- Pre-Arrival Processing
- Customs Cooperation
- Review and Appeal Mechanism
- Advance Rulings
- Formation of a Joint-Technical Subcommittee

Transparency

Under the India Australia ECTA, both parties are required to publish all the relevant laws and regulations over the internet. Furthermore, they need to maintain “enquiry points” for any such amendments in an online mode. The ECTA states:

- “To the extent practicable and in a manner consistent with its laws and regulations, each Party shall publish in advance on the internet, or otherwise make publicly available, draft laws and regulations of general application relevant to trade between the Parties, to afford the public, especially interested persons, an opportunity to become acquainted with them.
- To the extent possible, each Party shall publish regulations of general application governing customs matters that it proposes to adopt to enable all interested parties to become acquainted with them. Each Party shall provide, to the extent possible, and in a manner consistent with its laws and legal system, interested persons the opportunity to comment before it adopts the regulation.
- Each Party shall, subject to its available resources, establish or maintain one or more enquiry points to address reasonable enquiries from interested persons concerning customs matters and shall make information concerning the enquiry points available online.”

Release of Goods

Both countries are bound by the agreement to maintain a simplified customs procedure to facilitate trade through the “Release of Goods”. The “Release of Goods” should occur within the time frame specified and as soon as possible, with all essential information and paperwork. The information can be submitted electronically, and the products can be temporarily released to warehouses before the final decision on the customs duties and taxes to be charged.

The “Release of Goods” might be based on a security amount, which cannot be larger than the needed amount, in cash or any other legal financial instrument. This security deposit should be immediately reimbursed following the release.

India and Australia have the right to “examine, detain, seize, confiscate or refuse entry of goods, or to carry out post-clearance audits, including in connection with the use of risk management systems.” They can also prevent any release on a valid non-fulfilment of a requirement.

Perishable goods should be issued as soon as feasible and in the smallest amount of time possible to minimize any deterioration or losses. In the event of a delay, the importer should arrange for adequate storage.

Risk Management

The India Australia ECTA requires a risk management system. Both parties must allow inspection activities on high-risk consignments. During the risk management evaluation, there shall be no discrimination or unreasonable limits. To eliminate such disparities, an adequate selectivity criterion includes the following points: “HS code, nature and description of the goods, country of origin, country from which the goods were shipped, the value of the goods, compliance record of traders, and type of means of transport”.

Data, Documentation and Automation

The parties should allow for standard electronic localized data processing at a single-entry point, using international standards such as the WCO Data

Model taking into account the recommendations of the United Nations Centre for Trade Facilitation and Electronic Business and the World Trade Organization. It should also allow for the submission of a customs declaration and the use of an automated risk analysis system.

Temporary Admission of Goods

The India Australia ECTA permits parties to accept goods temporarily if they partially follow the laws and regulations, as long as the goods are brought into the territory for a defined purpose, have not depreciated rapidly, and are to be re-exported within a specific time frame.

Pre-Arrival Processing

A simple procedure for submitting relevant papers before products arrive in the territory should be maintained. This early filing of documents can also be done electronically.

Customs Cooperation

Both sides are expected to keep each other updated on customs matters. This information exchange will take place under the Memorandum of Understanding on Customs Cooperation and Mutual Administrative Assistance in Customs Matters signed between the Central Board of Excise and Customs of the Republic of India and the Australian Customs Service. They should cooperate in the implementation of this agreement, develop best customs practices, and promote the use of the Customs Valuation Agreement.

Review and Appeal

According to the India Australia ECTA, each party must ensure that any legal decision issued has a procedure of administrative appeal or review by the appropriate administrative and judicial body. These administrative decisions should be justified.

Advance Rulings

Both parties must provide an advance ruling on the products being brought into the area. This decision should be based on the information provided, such as the tariff classification, provenance of the items, and customs valuation methodology.

If all essential material is filed on time, these advanced judgments should be granted within three months. Such a ruling may be denied if the facts and circumstances on which the advance ruling is based are under administrative or judicial review, or if the application is not based on factual information or does not relate to an intention to import or export. Such a decline should be communicated as soon as the decision is made.

The importing Party may alter an advance ruling under applicable rules and regulations, or as a result of improper application of law or facts. If the elements of fraud and misrepresentation are present, such a judgment can be reversed or deemed non-binding. A public announcement of revocation is required in the event of revocation for valid reasons. These should be made available online within the specified time frame. These decisions, however, can be reconsidered if the applicant makes a specific request.

Joint Technical Committee

Concerns about customs processes and trade facilitation should be directed first to the Joint Technical Subcommittee on Rules of Origin and Customs Procedures and Trade Facilitation.

Conclusion

These factors regarding customs procedures are expected to significantly boost the import-export trade between the two countries and regulate the

exchange of goods in a clean and efficient manner. It is hoped that facilitating such smooth trade between the two countries will provide India a boost in the international trading economy and while potentially laying the foundation for full, free trade agreements with other countries as well. The development is also expected to generate interesting new employment opportunities across a variety of up-and-coming sectors and contribute significantly to the ease of doing business with the use of updated procedures such as the automated risk analysis system and the temporary admission of goods.

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