

ICC CHARTER FOR CUSTOMS AND TRADE FACILITATION

CHARTER

Key messages:

1. The ICC Charter sets forth guiding principles and a series of fundamental rights to facilitate the day-to-day processes of cross-border trade and provides a common approach to the harmonization and simplification of border processes.
2. Establishing trust and further collaboration between business and customs is essential to ensuring that legislation, regulation and policies respond to the evolving and collective needs of the trading community.
3. The ICC Charter aims to enhance predictability and procedural certainty, which are important drivers for trade and investment.

I. INTRODUCTION

The International Chamber of Commerce (ICC), as the world business organization, seeks to promote international trade, responsible business conduct and a global approach to regulation. Furthermore, ICC seeks to eliminate obstacles to cross-border trade and investment and promote the simplification and harmonisation of customs procedures.

ICC has developed a Charter for Customs and Trade Facilitation, which recognises the rights and responsibilities of traders, customs administrations and, when applicable, border agencies, in an effort to advocate for a balanced trading system. In line with ICC's mission to promote open, rules-based multilateral trade, the ICC Charter provides a common approach to the harmonisation and simplification of border processes. The ICC Charter intends to serve as a roadmap of responsibilities and rights of all stakeholders, including importers, exporters, foreign and domestic manufacturers, national customs administrations and other border agencies, as applicable, as well as other interested parties, regardless of their Authorized Economic Operator (AEO) status.

However, AEO programmes are an effective tool to streamline customs procedures and strengthen the relationships between traders, customs administrations and relevant stakeholders across the supply chain. ICC emphasizes that the benefits awarded to AEOs should not in any way diminish the trade facilitation measures already offered to non-AEO traders. AEO programmes should provide additional benefits.¹

The ICC Charter sets forth guiding principles and a series of fundamental rights to facilitate the day-to-day processes of cross-border trade, and aims to guide the working relationship between traders, customs administrations and, when applicable, border agencies. These guiding principles apply across various trading circumstances, including during customs audits of all duties collected at the border and in relation to disputes with customs administrations, in order to foster cooperation and collaboration.

Creating trust and efficient cooperation between governments and the business community is essential to achieving a balanced and effective trade facilitation environment. Customs-Business partnerships are essential to good governance. Such collaboration helps to ensure that legislation, regulation and policies respond to the evolving and collective needs of the trading community.

The ICC Charter builds upon existing international agreements and country commitments, including specific guidance from the provisions of the World Trade Organization (WTO) Trade Facilitation Agreement (TFA). ICC further acknowledges the important role of the World Customs Organization (WCO) and its innovating tools and instruments, with particular reference to the Revised Kyoto Convention (RKC)² and Customs-Business Partnership Guidance³ in facilitating trade and trust at the border.

The need for improved mutual global recognition of the respective rights and responsibilities

¹ [ICC Recommendations on Authorized Economic Operators](#)

² [World Customs Organization \(WCO\) Revised Kyoto Convention \(RKC\)](#)

³ [WCO Customs-Business Partnership Agreement](#)

between stakeholders has never been greater, given the increased complexity, intensity and velocity of international trade following the contemporary proliferation of free trade agreements (FTAs) and subsequent impact on global value chains (GVCs). At this time, the establishment of mutual trust, respect and clear responsibility between traders and Customs administrations is critical.

The ICC Charter presents an effective roadmap to achieving this greater cooperation and trust, based on liberty and the responsibility of relevant stakeholders. The ICC Charter is intended to achieve the following objectives:

- Enhance business predictability and procedural certainty, which are important drivers for trade and investment;
- Improve trade compliance by ensuring transparent administration, clarity and consistency of rules;
- Promote the implementation of the WTO TFA to enhance the efficiency of border procedures and facilitate trade;
- Improve the administrative efficiency of customs authorities and applicable border agencies by simplifying administrative processes and reducing administrative burdens;
- Establish simplified and transparent regulatory frameworks benefiting companies of all sizes, especially small- and medium-sized enterprises (SMEs);
- Further Business-Customs engagement to ensure collaboration for efficient and effective approaches to regulatory objectives and to enhance economic facilitation; and
- Encourage further cooperation between stakeholders to enhance SME's awareness and competitiveness, as well as enable fair access to global markets.

Reflected in the forthcoming sections, the ICC Charter seeks to reinforce the requisite fundamental rights and principles to ensure an inclusive and dynamic international trading system. Part II outlines the guiding principles and accompanying obligations of both traders and relevant Customs and border authorities. Part III outlines three basic categories of traders' rights, in line with the trade facilitation principles presented in the TFA. These categories of rights include (1) Rights in their day-to-day relationship with customs, (2) Rights during customs audits, and (3) Rights in the context of dispute with customs. Collaboration between governments and business is essential to helping define the contours of a suitable customs framework that encourages business activities, job creation and economic growth.

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II. GUIDING PRINCIPLES

Within the context of an increasingly complex global economy, establishing mutual trust and clear responsibilities are paramount to ensuring an efficient, balanced international trading system. In recognition of the fundamental role played by trading businesses in supporting global economic, intellectual and social exchange, the obligations set out below serve to create a foundation for predictable, clear and indiscriminate cross-border trade for both traders and customs and border agencies alike.

Within each guiding principle, traders should:

Fairness

- Fulfil responsibilities in good faith
- Be truthful, honest, and ethical and act within the law
- Provide complete, comprehensive and accurate information
- Inform customs administrations promptly, and without delay, when there is a change of relevant circumstances

Non-Discrimination

- Respect customs' impartiality and independence, and not seek to influence their consideration or conduct of affairs inappropriately

Rule of Law

- Respect customs' right to administer the customs regime according to law (including sanctions)
- Meet legal obligations
- Only undertake transactions and/or operations aligned with legitimate commercial and economic activity
- Understand that when laws change, advance rulings may no longer be applicable. In these justified circumstances, appropriate and timely notification is essential
- Pay customs duties on time without deduction or offset unless otherwise permitted, subject to the right to appeal

Reasonable Compliance Burden

- Provide information efficiently and ask questions if clarity is needed
- Contact customs authorities as soon as possible if help is needed
- Inform customs authorities if there is a challenge with meeting obligations
- Use available services to seek assistance and when relevant information cannot be found, ask for advice on where to find it
- Voluntarily submit correct and complete information if there are elements that may need to be corrected, or if the correct amount of duty has not been paid

Privacy

- Respect customs' right to hold, disclose and withhold information, where permitted by law

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- Ensure openness and cooperation, where relevant for customs administrations' functions

Efficiency

- Be cooperative in dealings with administration, filing returns and information reporting, conduct of an audit, and payment of duties
- Comply with responsibilities and seek assistance, if necessary
- Provide information on a timely basis and when reasonably required
- Engage constructively with internal or administrative appeals process
- Comply with appeal procedures and make every effort to keep procedures efficient and short
- Be truthful and specific in making complaints to administration or another relevant complaint investigative body and have a dialogue about the complaint as needed
- Understand that in many cases a complaint does not interfere with or postpone procedures, including collection

Representation

- Be accountable for the accuracy and completeness of all necessary information supplied to the administration, whether or not another person has been engaged to prepare, assemble and/or submit the information
- Be cognizant of the information and payments a representative submits to the administration

Within each guiding principle, customs administrations and related border agencies should:

Fairness

- Regard operators as honest and acting in good faith and allow them to benefit from a presumption of innocence
- Ensure that the customs system is designed and administered fairly, honestly and with integrity, according to the law which states that the burden of proof for breaches of customs law lies with customs authorities
- Fight against customs fraud in order to ensure a level playing field for compliant traders

Non-Discrimination

- Be consistent with the principle of non-discrimination, and promote equality of treatment before law, free from any inappropriate influence, without bias or preference

Certainty

- Ensure that the customs regime provides certainty and clarity
 - Apply the law reasonably and consistently
 - Simplify and be accessible on the intention of laws, rules and procedures
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- Respect the stability of the customs regime to ensure quality and viability of trade
 - Assume responsibility with respect to burden of proof of non-compliance

Rule of Law

- Do not require the trader to pay more than the amount of duty based on law and return the over-payment according to law
- Meet legal obligations
- Provide duty assessments and sanctions only as provided for by law
- Follow established and/or agreed upon procedures and channels
- Ensure effective and consistent interpretation, and application of the WTO TFA provisions

Reasonable Compliance Burden

- Provide a helpful, efficient and effective service and keep costs to a minimum
- Comply with requests for assistance in a comprehensive and timely manner, as well as help traders understand their rights
- Ensure that staff have the level of expertise to correct any errors or omissions
- Encourage clarity and simplicity of returns, reporting requirements and compliance procedures
- Ensure that previous provisions are repealed when new rules have been implemented in a timely manner and are made known through public notification in order to guarantee clarity and predictability

Privacy

- Protect information obtained or held and establish standard protection procedures to mitigate potential privacy risks
- Seek only information relevant for administrative functions and share information with third parties only as permitted by law
- Deal only with authorised representatives and permit only employees with authorisation to access information

Efficiency

- Provide accurate, clear and timely information to enable the fulfilment of customs obligations and clarify repeal and review rights
 - Introduce enhanced and/or proactive ways of communicating, when appropriate
 - Ensure an independent, speedy and effective process for duty liability disputes (subject to national provisions)
 - Encourage arbitration provisions to enable quicker and more efficient dispute resolution
 - Resolve complaints and review cases objectively and in a timely manner, not treating operators differently for having complained
 - Ensure cooperation between customs administrations and relative border agencies to facilitate effective processing of customs procedures and duty collection
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Representation

- Allow traders and duty payers to be represented by a person of their choosing

III. FUNDAMENTAL RIGHTS OF TRADERS

Customs and border processes are central to the international trading system. Ensuring efficient and transparent procedures helps to reduce costs and delays for traders and stimulates growth in cross-border transactions. Within these systems, traders are entitled to certain rights, which can be categorized in three basic classifications, including (1) Rights in their day-to-day relationship with customs, (2) Rights during customs audits, and (3) Rights in the context of dispute with customs.

1. TRADERS' RIGHTS IN THEIR DAY-TO-DAY RELATIONSHIP WITH CUSTOMS

Right to Predictability

- In accordance and consistent with Standard 9.8 of the Revised Kyoto Convention⁴, the right to request a ruling - understood as a prior agreement in accordance with the customs provisions - or to question customs anonymously should be recognised for national and foreign traders alike. Responses to such requests should be made within a reasonable period. ICC considers 'reasonable' to be at maximum a period of six months. This right should not be limited to customs classification, origin, or customs value, but should extend to any issue related to the application of a customs provision.
- In accordance with Article 3.5 of the TFA⁵, the advance ruling shall be valid for a reasonable period of time after its issuance unless the law, facts or circumstances supporting that ruling have changed.
- In accordance with Article 3 of the TFA⁶, each trader that has requested a ruling in a written submitted request with all the necessary information should have the right to an advance ruling in a reasonable, time-bound manner.
- In accordance with Article 3.8 of the TFA⁷, customs administrations should make publicly available any information on advance rulings taking into account the need to protect commercially confidential information.

Right to Certainty

- Apart from criminal proceedings, the maximum reasonable limitation period should be five

⁴ [WCO RKC Standard 9.8 Information, Decisions and Ruling Supplied by the Customs](#): At the written request of the person concerned, the Customs shall notify their decision in writing within a period specified in national legislation. Where the decision is adverse to the person concerned, the reasons shall be given and the right of appeal advised.

⁵ [World Trade Organisation \(WTO\) Trade Facilitation Agreement \(TFA\) Article 3.5 on Advance Rulings](#): An advance ruling issued by a Member shall be binding on that Member in respect of the applicant that sought it. The Member may provide that the advance ruling is binding on the applicant.

⁶ [WTO TFA Article 3.1 on Advance Rulings](#): Each Member shall issue an advance ruling in a reasonable, time-bound manner to the applicant that has submitted a written request containing all necessary information. If a Member 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 [WTO TFA Article 3.8 on Advance Rulings](#): Each Member shall endeavour to make publicly available any information on advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information.

years. Similarly, for the purpose of legal certainty, the recovery period for unpaid duties should reasonably be limited to five years.

- The maximum reasonable limitation period for criminal proceedings should be ten years.
- In the same way, companies are requested by customs to respond to questions; the latter should be required to consider the responses provided.
- Retroactivity in the application of a regulation cannot be used by the customs authorities, particularly regarding decisions that have already been ruled upon.

Right to Simplicity

- Traders claim the right to facilitation and non-complexity of declarative obligations.
- The smooth application of the rules of international customs agreements is essential for the security and stability of trade.
- In accordance with Article 9.1 of the TFA⁸, the rules must be clear and easily understood by a foreign trader and thus avoid unnecessary complexity.
- Traders, while welcoming efforts already undertaken by customs authorities, should encourage them to pursue automation, particularly towards the development of dematerialisation.

Right to Mutual Trust and Confidentiality

- Positions taken by the customs authorities must be opposable by the traders in order to guarantee predictability and reinforce mutual trust.⁹
- Contradictory information cannot be used by customs authorities in a context of dialogue, controls and disputes with traders. The use of data, in particular with regard to customs value, should be prohibited, including the use of minimum and/or reference pricing for customs valuation purposes.
- Expanding upon the rights guaranteed in Article 12.5.1 of the TFA,¹⁰ in a given country, traders must have a right of access to their customs file, including declarations, general information, and any information received from foreign customs authorities. This principle also applies in cases of control.
- The trader concerned should be given due diligence in repairing damage caused by the non-respect of the confidentiality of the data. This repair may take the form of communications, publications and compensation.

Right to Fair Customs Treatment Between Traders

- National and foreign traders should receive the same treatment, especially in customs

⁸ [WTO TFA Article 9.1 on Administrative Burden](#): The requesting Member shall take into account the associated resource and cost implications for the requested Member in responding to requests for information. The requesting Member shall consider the proportionality between its fiscal interest in pursuing its request and the efforts to be made by the requested Member in providing the information

⁹ [WTO TFA Article 4 on Procedures for Appeal or Review](#)

¹⁰ [WTO TFA Article 12.5.1 \(a\)](#): Hold all information or documents provided by the requested Member strictly in confidence and grant at least the same level of such protection and confidentiality as that provided under the domestic law and legal system of the requested Member as described by it under subparagraphs 6.1(b) or (c);(b) provide information or documents only to the Customs authorities dealing with the matter at issue and use the information or documents solely for the purpose stated in the request unless the requested Member agrees otherwise in writing;(c) not disclose the information or documents without the specific written permission of the requested Member;

matters.¹¹

- The confidentiality of data and information shared with customs authorities should be guaranteed. Customs authorities are responsible for the security of documents filed, which should not be distributed beyond the necessary and competent authorities.¹²
- This principle must be applied in law and in practice, and States must, in this sense, work towards a standardisation of practices at a global level of local customs authorities.

2. TRADERS' RIGHTS DURING CUSTOMS AUDITS

Adversarial Process

- The right to an adversarial process as provided by Article 4 of the TFA,¹³ with an imperative response of the customs authorities must be recognised.
- The customs authorities must ensure the integrity, impartiality, objectivity and professionalism of the controllers.
- Traders must be aware of the scope of customs control, including the nature, purpose, period, duration and location.
- Customs control must be limited to a period of time that does not unreasonably affect the activities of the company.

Right to be Heard

- Traders must be able to be heard before notification of the offense with which they are charged.
- This right to be heard must be exercised effectively, which implies in particular a delay opposable both to the trader and the customs authorities.

3. TRADERS' RIGHTS IN THE CONTEXT OF DISPUTE WITH CUSTOMS

Right to a Fair and Prompt Remedy of Customs Disputes

- Non-jurisdictional dispute resolution should be encouraged through conciliation and expertise institutions.
- Before the courts, due to the technical nature of most customs disputes, traders should have the opportunity to request the judge to appoint a “special master” or other expert with relevant customs knowledge and experience to inform the court.
- The use of arbitration in the event of disputes between foreign traders and local customs in relation to international customs agreements should be encouraged with the support of the concerned international organisations (WCO, WTO, etc.).

¹¹ [WTO Foundational Principle of Trade without discrimination](#): Most-favoured-nation (MFN) and national treatment

¹² [WTO TFA Article 12.5 on Protection and Confidentiality](#)

¹³ [WTO TFA Article 4.1 on Procedures for Appeal or Review \(a\)](#): An administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision; and/or (b) a judicial appeal or review of the decision.

- Consistent with and as established by Chapter 10 of the Revised Kyoto Convention¹⁴, traders must have the right to seek a remedy from a decision taken by the customs administration office by lodging an appeal to a superior authority within the customs administration. Payment of duty and fees should not be required for the filing of any such first appeal. The filing of an appeal should not trigger the imposition of a penalty.
- Moreover, traders must be able to lodge an appeal within a reasonable period of time, if possible, in less than one year. In this context, the right to a freely chosen counsel must be reaffirmed. Finally, the right to an adversarial process in which the customs authorities must be obliged to respond and fully participate must be guaranteed.
- The reimbursement of customs claims should be made within a limited period of time and determined by national law.

Right to Proportionality of Sanctions

- As provided by Article 6.3.3 of the TFA¹⁵, any penalties imposed on the trader must comply with the principle of proportionality. The payment of sanctions should be able to be staggered.
- In line with Article 12.1.1 of the TFA¹⁶, customs authorities should take into account voluntary disclosures of breaches as a mitigating factor when establishing a penalty for non-compliant companies. If companies disclose mistakes in good faith to the customs authorities, the focus of the reaction should be on improved internal procedures. Sanctions should be avoided.

Right to Settlement

- The settlement should not be just a prerogative. It should be granted to any company whose good faith cannot be challenged by customs authorities.

Right to a Decision

- As provided by Article 4.4 of the TFA¹⁷, decisions should be provided without unreasonable delay.
- The reasons behind any such decision must be clearly communicated.

¹⁴ [WCO RKC Chapter Standard 10.4 Appeals in Customs Matters](#)

¹⁵ [WTO TFA Article 6.3.3 on Penalty Disciplines](#): The penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.

¹⁶ [WTO TFA Article 12.1.1 on Measures Promoting Compliance and Cooperation](#): Members agree on the importance of ensuring that traders are aware of their compliance obligations, encouraging voluntary compliance to allow importers to self-correct without penalty in appropriate circumstances, and applying compliance measures to initiate stronger measures for non-compliant traders.

¹⁷ [WTO TFA Article 4.4](#): Each Member shall ensure that, in a case where the decision on appeal or review under subparagraph 1(a) is not given either: (a) within set periods as specified in its laws or regulations; or (b) without undue delay, the petitioner has the right to either further appeal to or further review by the administrative authority or the judicial authority or any other recourse to the judicial authority.



About The International Chamber of Commerce (ICC)

The International Chamber of Commerce (ICC) is the world's largest business organization representing more than 45 million companies in over 100 countries. ICC's core mission is to make business work for everyone, every day, everywhere. Through a unique mix of advocacy, solutions and standard setting, we promote international trade, responsible business conduct and a global approach to regulation, in addition to providing market-leading dispute resolution services. Our members include many of the world's leading companies, SMEs, business associations and local chambers of commerce.

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