

MUTUAL ADMINISTRATIVE ASSISTANCE
IN CUSTOMS MATTERS

ARTICLE 1

Definitions

For the purposes of this Annex, the following definitions apply:

- (a) "applicant authority" means a competent administrative authority which has been designated by a Party for this purpose and which makes a request for assistance on the basis of this Annex;
- (b) "customs legislation" means any legal or regulatory provision applicable in the territory of either Party, governing the import, export and transit of goods and their placement under any other customs regime or procedure, including measures of prohibition, restriction and control;
- (c) "information" means any data, document, image, report or communication, in any format, including electronic, irrespective of whether it has been or not processed or analysed, or authenticated copies thereof;
- (d) "operation in breach of customs legislation" means any violation or attempted violation of customs legislation;
- (e) "person" means any natural or juridical person;

- (f) "personal data" means all information relating to a natural or, if the laws or regulations of a Party so provide, a juridical person; and
- (g) "requested authority" means a competent administrative authority which has been designated by a Party for this purpose and which receives a request for assistance on the basis of this Annex.

ARTICLE 2

Scope

1. The Parties shall assist each other in the areas falling within their respective competence and in the manner and under the conditions laid down in this Annex, to ensure the correct application of customs legislation, in particular by preventing, investigating and combating operations in breach of that legislation.
2. The provisions of this Annex apply to any administrative authority of either Party which is competent for the application of this Annex. That assistance shall neither prejudice a Party's laws and regulations governing mutual assistance in criminal matters nor cover information obtained under powers exercised on request of a judicial authority, except where communication of such information is authorised by that authority.
3. Assistance to recover duties, taxes or fines is not covered by this Annex.

ARTICLE 3

Assistance on request

1. On request of the applicant authority, the requested authority shall provide it with all relevant information which may enable it to ensure that customs legislation is correctly applied, including information related to activities noted or planned which are or could be operations in breach of customs legislation.
2. On request of the applicant authority, the requested authority shall inform it whether:
 - (a) goods exported from the territory of a Party have been properly imported into the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods;
and
 - (b) goods imported into the territory of a Party have been properly exported from the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods.
3. On request of the applicant authority, the requested authority shall, in accordance with its Party's laws and regulations, take the necessary steps to ensure special surveillance of:
 - (a) persons in respect of which there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation;
 - (b) goods that are or may be transported in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation;

- (c) places where stocks of goods have been or may be assembled in such a way that there are reasonable grounds for believing that those goods are intended to be used in operations in breach of customs legislation; and
- (d) means of transport that are or may be used in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation.

ARTICLE 4

Spontaneous assistance

1. The Parties shall assist each other, at their own initiative and in accordance with their respective laws and regulations, if they consider that to be necessary for the correct application of customs legislation, by providing information obtained pertaining to concluded, planned or ongoing activities which constitute or appear to constitute operations in breach of customs legislation and which may be of interest to the other Party.
2. The information referred to in paragraph 1 shall focus in particular on:
 - (a) persons, goods and means of transportation; and
 - (b) new means or methods employed in carrying out operations in breach of customs legislation.

ARTICLE 5

Form and substance of requests for assistance

1. Requests for assistance under this Annex shall be made in writing, either in print or in electronic format. They shall be accompanied by the documents necessary to enable compliance with the request. When required because of the urgency of the situation, the requested authority may accept oral requests, but such oral requests shall be immediately confirmed in writing by the applicant authority.
2. Requests pursuant to paragraph 1 shall include the following information:
 - (a) the applicant authority and requesting official;
 - (b) the information and type of assistance requested;
 - (c) the object of and the reason for the request;
 - (d) the laws, regulations and other legal elements involved;
 - (e) indications as exact and comprehensive as possible on the persons which are the target of the investigations;
 - (f) a summary of the relevant facts and of the enquiries already carried out; and
 - (g) any additional available details to enable the requested authority to comply with the request.

3. Requests shall be submitted in an official language of the requested authority or in a language acceptable to that authority, English always being an acceptable language. This requirement does not apply to any documents that accompany the request pursuant to paragraph 1.

4. If a request does not meet the formal requirements set out in paragraphs 1 to 3, the requested authority may require the correction or completion of the request. In the meantime, precautionary measures may be taken.

ARTICLE 6

Execution of requests

1. In order to comply with a request for assistance, the requested authority shall proceed, within the limits of its competence and available resources, and as though it were acting on its own account or on request of another authority of that same Party, by supplying information already in its possession, by carrying out appropriate enquiries or by arranging for such enquiries to be carried out. This provision shall also apply to any other authority to which the request has been addressed by the requested authority if the latter cannot act on its own.

2. Requests for assistance shall be executed in accordance with the laws and regulations of the requested Party.

ARTICLE 7

Form in which information is to be communicated

1. The requested authority shall communicate results of enquiries to the applicant authority in writing together with relevant documents, certified copies or other items. This information may be provided in electronic format.
2. Original documents shall be transmitted in accordance with each Party's legal constraints, only on request of the applicant authority, in cases where certified copies would be insufficient. The applicant authority shall return these originals at the earliest opportunity.
3. The requested authority shall, in accordance with paragraph 2, deliver to the applicant authority any information related to the authenticity of the documents issued or certified by official agencies within its territory in support of a goods declaration.

ARTICLE 8

Presence of officials of a Party in the territory of another

1. Duly authorised officials of a Party may, with the agreement of the other Party and subject to the conditions specified by the latter, be present:
 - (a) in the offices of the requested authority or any other concerned authority referred to in Article 6(1) to obtain information that the applicant authority needs for the purposes of this Annex relating to activities that are or could be operations in breach of customs legislation;
and

(b) at enquiries carried out in the territory of that other Party.

2. Authorised officials of a Party in the territory of the other Party shall be present solely in an advisory capacity. Such officials shall:

(a) be able to furnish proof of their official capacity at all times;

(b) not wear uniform or carry weapons; and

(c) enjoy the same protection as that afforded to officials of the other Party, in accordance with the laws and regulations in force.

ARTICLE 9

Delivery and notification

1. On request of the applicant authority, the requested authority shall, in accordance with applicable laws and regulations, take all necessary measures in order to deliver any documents or to notify any decisions of the applicant authority falling within the scope of this Annex to an addressee residing or established in the territory of the requested authority.

2. Such requests for delivery of documents or notification of decisions shall be made in writing in an official language of the requested authority or in a language acceptable to that authority.

ARTICLE 10

Automatic exchange of information

1. The Parties may, by mutual arrangement in accordance with Article 15, exchange:
 - (a) any information covered by this Annex on an automatic basis; or
 - (b) specific information in advance of the arrival of consignments in the territory of the other Party.
2. The implementation of the exchanges referred to in points (a) and (b), including arrangements on the type of information to be exchanged, the format and the frequency of transmission shall be made in accordance with Article 15.

ARTICLE 11

Exceptions to the obligation to provide assistance

1. Assistance may be refused or may be subject to the fulfilment of certain conditions or requirements in cases where a Party considers that assistance under this Annex would:
 - (a) be likely to prejudice the sovereignty of a Signatory MERCOSUR State or of a Member State of the European Union which has been requested to provide assistance under this Annex;
 - (b) be likely to prejudice public policy, security or other essential interests, in particular in the cases referred to in Article 12(5); or

(c) violate an industrial, commercial or professional secret.

2. The requested authority may postpone assistance on the grounds that such assistance will interfere with ongoing investigations, prosecutions or proceedings. In such a case, the requested authority shall consult with the applicant authority to determine if assistance can be given subject to such terms or conditions as the requested authority may require.

3. If the applicant authority seeks assistance which it would itself be unable to provide if so requested, it shall draw attention to that fact in its request. It shall then be for the requested authority to decide how to respond to such a request.

4. In the cases referred to in paragraphs 1 and 2, the requested authority shall communicate its decision and the reasons therefor to the applicant authority without delay.

ARTICLE 12

Information exchange and confidentiality

1. The information received under this Annex shall be used solely for the purposes established herein.

2. The use of information received under this Annex in judicial or administrative proceedings instituted in respect of operations in breach of customs legislation shall be considered to fall within the purposes of this Annex. Therefore, each Party may, in their records of evidence, reports and testimonies and in proceedings and charges brought before judicial or administrative authorities, use as evidence information obtained and documents consulted in accordance with this Annex. The requested authority may subject the supply of information or the granting of access to documents to the condition that it is notified of such use.

3. If one of the Parties wishes to use such information for purposes other than those referred to in this Annex, it shall obtain the prior written consent of the authority which provided the information. Such use shall then be subject to any restrictions laid down by that authority.
4. Any information communicated in whatsoever form pursuant to this Annex shall be of a confidential or restricted nature, in accordance with each Party's laws and regulations. That information shall be covered by the obligation of professional secrecy and shall enjoy the protection granted to similar information under the relevant laws and regulations of the Party receiving the information. Each Party shall communicate to the other Party information on its applicable laws and regulations.
5. Personal data may be transferred only in accordance with the data protection rules of the Party providing the data. Each Party shall inform the other Party about the relevant data protection rules and, if needed, make best efforts to agree on additional protections.

ARTICLE 13

Experts and witnesses

The requested authority may authorise its officials to appear, within the limitations of the authorisation granted, as experts or witnesses in judicial or administrative proceedings regarding the matters covered by this Annex, and produce such objects, documents or certified copies thereof as may be needed for the proceedings. The request for appearance must indicate specifically before which judicial or administrative authority the official will have to appear, on what matters and by virtue of what title or qualification the official will be questioned.

ARTICLE 14

Assistance expenses

1. The Parties shall waive any claims for reimbursement of expenses incurred in the execution of this Annex, except for allowances paid to experts, witnesses, interpreters or translators, where applicable.
2. The payment of allowances shall not apply to public-service employees.
3. If expenses of an extraordinary nature are required to execute the request, the Parties shall determine the terms and conditions under which the request will be executed, as well as the manner in which such costs shall be borne.

ARTICLE 15

Implementation

1. The implementation of this Annex shall be entrusted, on the one hand, to the customs authorities of Signatory MERCOSUR States and, on the other hand, to the competent services of the European Commission and the customs authorities of the Member States of the European Union, as appropriate. They shall decide on all practical measures and arrangements necessary for the implementation of this Annex, taking into consideration their respective applicable laws and regulations, in particular those concerning the protection of personal data.

2. Each Party shall inform the other of the detailed implementation measures that it adopts in accordance with the provisions of this Annex, in particular with respect to the duly authorised services and officials designated as competent to send and receive the communications referred to in this Annex.

3. In the European Union, this Annex shall not affect the communication of any information obtained under this Annex between the competent services of the European Commission and the customs authorities of the European Union Member States.

ARTICLE 16

Other agreements

This Annex shall take precedence over any bilateral agreement on mutual administrative assistance in customs matters which has been or may be concluded between individual Member States of the European Union and MERCOSUR or Signatory MERCOSUR States, insofar as the provisions of the latter are incompatible with those of this Annex.

ARTICLE 17

Consultations

The Parties shall consult each other in the framework of the Subcommittee on customs, trade-facilitation and rules of origin, referred to in Article 4.21 of this Agreement, with a view to resolving any matter that might arise with respect to the application or implementation of this Annex.
