

PROTOCOL

ON MUTUAL ADMINISTRATIVE ASSISTANCE

IN CUSTOMS MATTERS

Article 1

Definitions

For the purposes of this Protocol:

- (a) "customs legislation" shall mean any legal or regulatory provisions applicable in the customs territories of the Contracting Parties, as defined in their respective legislation, governing the import, export and transit of goods and their placement under any other customs regime or procedure, including transshipment and measures of prohibition, restriction and control;
- (b) "requesting authority" shall mean a competent administrative authority which has been designated by a Contracting Party for this purpose and which makes a request for assistance on the basis of this Protocol;
- (c) "requested authority" shall mean a competent administrative authority which has been designated by a Contracting Party for this purpose and which receives a request for assistance on the basis of this Protocol;
- (d) "personal data" shall mean all information relating to an identified or identifiable individual;
- (e) "customs violation" shall mean any violation or attempted violation of customs legislation.

Article 2

Scope

- 1. The Contracting Parties shall assist each other in customs matters in accordance with their legislation and in the manner and under the conditions laid down in this Protocol, to ensure the correct application of the customs legislation in particular by preventing, investigating and combating customs violations.
- 2. Assistance in customs matters, as provided for in this Protocol, shall apply to any administrative authority of the Contracting Parties which is competent for the application of this Protocol. It shall not prejudice the rules governing mutual assistance in criminal matters. Nor shall it cover information obtained under powers exercised at the request of a judicial authority, except where communication of such information is authorised by that authority.
- 3. All assistance given in the framework of the Protocol shall be executed in accordance with the legal and regulatory provisions of each Contracting Party.
- 4. Assistance to recover duties, taxes or fines is not covered by this Protocol.

Article 3
Assistance on request

1. At the request of the requesting 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 regarding activities noted or planned which are or could be customs violations.
2. At the request of the requesting authority, the requested authority shall inform:
 - (a) whether goods exported from the territory of one of the Contracting Parties have been properly imported into the territory of the other Contracting Party, specifying, where appropriate, the customs procedure applied to the goods;
 - (b) whether goods imported into the territory of one of the Contracting Parties have been properly exported from the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods.
3. At the request of the requesting authority, the requested authority shall, within the framework of its legal or regulatory provisions, take the necessary steps to ensure special surveillance of:
 - (a) natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in customs violations;
 - (b) places where stocks of goods have been or may be assembled in such a way that there are reasonable grounds for believing that these goods are intended to be used in customs violations;
 - (c) 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 customs violations;
 - (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 customs violations.

Article 4
Spontaneous assistance

The Contracting Parties shall assist each other, at their own initiative and in accordance with their legal or regulatory provisions, if they consider that to be necessary for the correct application of customs legislation, particularly by providing information obtained pertaining to:

- activities which are or appear to be customs violations and which may be of interest to the other Contracting Party;
- new means or methods employed in carrying out customs violations;
- goods known to be subject to customs violations;
- natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in customs violations;
- means of transport in respect of which there are reasonable grounds for believing that they have been, are, or may be used in customs violations.

Article 5
Delivery, Notification

At the request of the requesting authority, the requested authority, in accordance with legal or regulatory provisions applicable to the latter, shall take all necessary measures in order:

- to deliver any documents or
- to notify any decisions,

emanating from requesting authority and falling within the scope of this Protocol, to an addressee residing or established in the territory of the requested authority.

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 6
Form and substance of requests for assistance

1. Requests pursuant to this Protocol shall be made in writing. They shall be accompanied by the documents necessary to enable compliance with the request. When required because of the urgency of the situation, oral requests may be accepted, but must be confirmed in writing immediately.
2. Requests pursuant to paragraph 1 shall include the following information:
 - (a) the requesting authority;
 - (b) the measure requested;
 - (c) the object of and the reason for the request;
 - (d) the legal or regulatory provisions and other legal elements involved;
 - (e) indications as exact and comprehensive as possible on the natural or legal persons who are the target of the investigations;
 - (f) a summary of the relevant facts and of the enquiries already carried out.
3. Requests shall be submitted in an official language of the requested authority or in a language acceptable to that authority. This requirement shall not apply to any documents that accompany the request under paragraph 1.
4. If a request does not meet the formal requirements set out above, its correction or completion may be requested; in the meantime precautionary measures may be ordered.

Article 7
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, as though it were acting on its own account or at the request of other authorities of that same Contracting Party, by supplying information

already possessed, by carrying out appropriate enquiries or by arranging for them to be carried out. This provision shall also apply to any other authority to which the request has been addressed by the requested authority when the latter cannot act on its own.

2. Requests for assistance shall be executed in accordance with the legal or regulatory provisions of the requested Contracting Party.
3. Duly authorised officials of a Contracting Party may, with the agreement of the other Contracting Party involved and subject to the conditions laid down by the latter, be present to obtain in the offices of the requested authority or any other concerned authority in accordance with paragraph 1, information relating to activities that are or may be customs violations which the requesting authority needs for the purposes of this Protocol.
4. Duly authorised officials of a Contracting Party involved may, with the agreement of the other Contracting Party involved and subject to the conditions laid down by the latter, be present at enquiries carried out in the latter's territory.

Article 8

Form in which information is to be communicated

1. The requested authority shall communicate results of enquiries to the requesting authority in writing together with relevant documents, certified copies or other items.
2. This information may be in electronic format.

Article 9

Exceptions to the obligation to provide assistance

1. Assistance may be refused or may be subject to the satisfaction of certain conditions or requirements, in cases where a Party is of the opinion that assistance under this Protocol would:
 - (a) be likely to prejudice the sovereignty of Vietnam or that of a Member State which has been requested to provide assistance under this Protocol; or
 - (b) be likely to prejudice public policy, security or other essential interests, in particular in the cases referred to under Article 10 (2); or
 - (c) violate an industrial, commercial or professional secret.
2. Assistance may be postponed by the requested authority on the ground that it will interfere with an ongoing investigation, prosecution or proceeding. In such a case, the requested authority shall consult with the requesting authority to determine if assistance can be given subject to such terms or conditions as the requested authority may require.
3. Where the requesting 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. For the cases referred to in paragraphs 1 and 2, the decision of the requested authority and the reasons therefor must be communicated to the requesting authority without delay.

Article 10
Information exchange and confidentiality

1. Any information communicated in whatsoever form pursuant to this Protocol shall be of a confidential or restricted nature, depending on the rules applicable in each of the Contracting Parties. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to similar information under the relevant laws of the Contracting Party that received it and the corresponding provisions applying to the Institutions of the European Union.
2. Personal data may be exchanged only where the Contracting Party which may receive them undertakes to protect such data in a manner that is considered adequate by the Contracting Party that may supply them.
3. The use, in administrative proceedings or subsequent appeal proceedings instituted in respect of customs violations, of information obtained under this Protocol, is considered to be for the purposes of this Protocol. Therefore, the Contracting Parties may, in their records of evidence, reports, testimonies and in such proceedings, use as evidence information obtained and documents consulted in accordance with the provisions of this Protocol. The competent authority which supplied that information or gave access to those documents shall be notified of such use.
4. Information obtained shall be used solely for the purposes of this Protocol. Where one of the Contracting Parties wishes to use such information for other purposes, 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.

Article 11
Assistance expenses

The Contracting Parties shall waive all claims on each other for the reimbursement of expenses incurred pursuant to this Protocol, except, as appropriate, those to interpreters and translators who are not public service employees.

Article 12
Implementation

1. The implementation of this Protocol shall be entrusted on the one hand to the customs authorities of Vietnam and on the other hand to the competent services of the European Commission and the customs authorities of the Member States as appropriate. They shall decide on all practical measures and arrangements necessary for its application, taking into consideration the rules in force in particular in the field of data protection.
2. The Contracting Parties shall consult each other and subsequently keep each other informed of the detailed rules of implementation which are adopted in accordance with the provisions of this Protocol.

Article 13
Other agreements

1. Taking into account the respective competencies of the European Union and the Member States of the European Union, the provisions of this Protocol shall:

- not affect the obligations of the Contracting Parties under any other international agreement or convention;
 - be deemed complementary to Agreements on mutual assistance which have been or may be concluded between individual Member States of the European Union and Vietnam; and shall
 - not affect the European Union's provisions governing the communication between the competent services of the European Commission and the customs authorities of the Member States of the European Union of any information obtained under this Protocol which could be of interest to the Union.
2. Notwithstanding the provisions of paragraph 1, the provisions of this Protocol shall take precedence over the provisions of any bilateral Agreement on mutual assistance which has been or may be concluded between individual Member States of the European Union and Vietnam insofar as the provisions of the latter are incompatible with those of this Protocol.
 3. In respect of questions relating to the applicability of this Protocol, the Contracting Parties shall consult each other to resolve the matter in the framework of the XXX Committee [set up under Article XXX of this Agreement].