

ANNEX VII

ANNEX ON MUTUAL ADMINISTRATIVE ASSISTANCE BETWEEN THE CUSTOMS ADMINISTRATIONS OF THE COMMON MARKET OF THE SOUTH (MERCOSUR) AND THE SOUTHERN AFRICAN CUSTOMS UNION (SACU) REGARDING CUSTOMS CO-OPERATION MATTERS

Article 1

Definitions

For the purposes of this Annex, unless the context otherwise requires:

- (a) “Customs administration” means, for:
 - (i) the Government of the Republic of Argentina, the Federal Administration of Public Income;
 - (ii) the Government of the Federative Republic of Brazil, the Federal Revenue Secretariat of Brazil, Ministry of Finance (Ministério da Fazenda - Receita Federal);
 - (iii) the Government of the Republic of Paraguay, the Customs Administration;
 - (iv) the Government of the Oriental Republic of Uruguay, the Customs Administration;
 - (v) the Government of the Republic of Botswana, the Botswana Unified Revenue Service;
 - (vi) the Government of the Kingdom of Lesotho, the Lesotho Revenue Authority;
 - (vii) the Government of the Republic of Namibia, the Directorate of Customs and Excise in the Ministry of Finance;
 - (viii) the Government of the Republic of South Africa, the South African Revenue Service; and
 - (ix) the Government of the Kingdom of Swaziland, the Department of Customs and Excise;
- (b) “Customs law” means all the legal and administrative provisions applicable or enforceable by the Customs administrations in connection with the importation, exportation, transshipment, transit, storage, and movement of goods, including:
 - (i) the collection, guaranteeing or repayment of duties, taxes and other charges; and
 - (ii) action in relation to measures of prohibition, restriction or control;

- (c) “Customs offence” means any violation or attempted violation of Customs law;
- (d) “official” means any Customs officer; or other government agent designated by the Customs administration of the Parties;
- (e) “person” means both natural and legal persons;
- (f) “information” means any data, whether or not processed or analysed, any documents, reports, and other communications in any format, including electronic, or certified or authenticated copies thereof;
- (g) “narcotic drugs and psychotropic substances” means the products in the list of the Single Convention of the United Nations relating to Narcotic Drugs of 30 March 1961, the Convention of the United Nations on Psychotropic Substances of 21 February 1971, as well as chemical substances in the list of Annexes I and II of the Convention of the United Nations against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances of December 20, 1988;
- (h) “requested administration” means the Customs administration from which assistance is requested;
- (i) “requested Signatory Party” means the Signatory Party whose Customs administration is requested to provide assistance;
- (j) “requesting administration” means the Customs administration which requests assistance;
- (k) “requesting Signatory Party” means the Signatory Party whose Customs administration requests assistance.

Article 2

Objective

The main objective of this Annex is to promote co-operation between the Customs administrations of the Signatory Parties in all matters pertaining to Customs.

Article 3

Scope

1. The assistance provided under this Annex shall apply to the Customs territories of the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay, the Oriental Republic of Uruguay, the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia, the Republic of South Africa and the Kingdom of Swaziland, hereinafter referred to as the Signatory Parties.
2. The Signatory Parties shall assist each other, in the areas within their competence, in the manner and under the conditions laid down in this Annex, to ensure the correct application of Customs law, in particular by preventing, investigating and combating Customs offences.
3. The assistance given under this Annex shall satisfy the legal and administrative provisions in force in the territory of the requested Signatory Party and shall be performed within the competence and available resources of its Customs administration.
4. This Annex is limited to mutual administrative assistance among the Signatory Parties and does not modify the contents of the mutual legal assistance agreements already concluded. In case other authorities of the requested Signatory Party should render assistance, the requested administration shall determine the names of said authorities and, where known, the applicable instrument or pertinent agreement.
5. The assistance provided for in this Annex does not include collection proceedings by the requested administration regarding Customs rights, taxes or any other amount owed to the requesting administration.

Article 4

Communication of Information

1. The Customs administrations shall supply, either on request or on their own initiative, any information that may contribute to ensure the proper application of Customs law and in order to prevent, investigate and combat Customs offences.
2. Each Customs administration shall, either on request or on its own initiative, supply all available information, records of evidence or certified copies of documents as well as any other available information related to concluded, planned or ongoing activities, which constitute or appear to constitute a Customs offence in the territories of the other Signatory Parties, together with the necessary information for its interpretation or utilisation.
3. The aforementioned documents may be substituted with electronic information for the same objective.

Article 5

Spontaneous Assistance

1. The Customs administrations shall, on its own initiative, supply information related to concluded, planned or ongoing transactions, which constitute or appear to constitute a Customs offence.
2. In cases that could involve substantial damage to the economy, public health, public security or other vital interests of the other Signatory Parties, the Customs administrations shall, wherever possible, supply information its own initiative without delay.

Article 6

Information for the Application of Customs Law Enforcement

1. The Customs administrations shall communicate to each other, either on request or on their own initiative, all the available information which may contribute to proper application of Customs law or in the prevention of Customs fraud. This information may include:
 - (a) new law enforcement techniques;
 - (b) new trends, means and methods used to commit Customs offences;
 - (c) goods known to be the subject of Customs offences, as well as means of transport and storage methods used in respect of those goods; and
 - (d) all relevant information, which may be used by the Customs administrations to evaluate risks for the purpose of control and to facilitate trade.
2. The Customs administrations may share information on their work procedures aimed at improving their knowledge on procedures and techniques used by the other Customs administrations.
3. The Customs administrations shall provide each other, within the limits of their competence and available resources, with technical assistance, consulting services, training, secondments and exchanges of officials.
4. Upon request, the requested administration shall supply to the requesting administration information concerning the following matters:
 - (a) whether goods which are imported into the territory of the requesting Signatory Party have been lawfully exported from the territory of the requested Signatory Party;

- (b) whether goods which are exported from the territory of the requesting Signatory Party have been lawfully imported into the territory of the requested Signatory Party and the nature of the Customs procedure or regime, if any, under which the goods have been placed.
- 5. If appropriate, the information shall have to determine the Customs procedures applied to the goods and, in particular, the Customs clearance.

Article 7

Assistance for the Assessment of Import or Export Duties and Taxes

1. On request, the requested administration shall provide information to assist the requesting administration in the proper application of Customs law, including in the areas of Customs value, tariff classification and origin of goods, when the requesting administration has reason to doubt the truth or accuracy of a declaration.
2. The information provided shall include:
 - (a) in respect of the value of goods for Customs purposes, information necessary for verifying the declared value;
 - (b) in respect of the tariff classification of goods, information necessary to determine the accuracy of the declared tariff classification; and
 - (c) in respect of the origin of goods, information necessary to determine the accuracy of the declared origin of goods.

Article 8

Surveillance of Persons, Goods, Places and Means of Transport

Each Customs administration shall, on its own initiative or upon written request , under the terms of its domestic laws and in accordance with its administrative practices, maintain special surveillance over and provide the requesting administration with information on:

- (a) persons known to have committed or suspected of being about to commit a Customs offence in the territory of the requesting Signatory Party, particularly those moving into and out of the territory of the requested Signatory Party;
- (b) suspect movement of goods notified by the requesting administration as giving rise to a Customs offence in the territory of that Signatory Party;

- (c) places used for storing goods which may be used in connection with substantial Customs offences in the territory of the requesting Signatory Party; and
- (d) means of transport known to have been used or suspected of being used to commit Customs offences in the territory of the requesting Signatory Party.

Article 9

Visits by Officials

1. On written request, officials designated by the requesting administration may, with the authorisation of the requested administration and subject to conditions the latter may impose, for the purpose of investigating a Customs offence:
 - (a) examine in the offices of the requested administration the documents, registers and other relevant information in respect of that Customs offence;
 - (b) take copies of the documents, registers and other information relevant in respect of that Customs offence; and
 - (c) be present during an enquiry conducted by the requested administration relevant to the requesting administration.
2. Where the requested administration considers it appropriate for an official of the requesting administration to be present when measures of assistance are carried out pursuant to a request, the requested administration may invite the participation of that official, subject to any terms and conditions it may specify.
3. When, in the circumstances provided for in this Annex, officials of the Customs administration of a Signatory Party are present in the territory of another Signatory Party, they must at all times be able to furnish proof of their official capacity.
4. They shall, while there, enjoy the same protection accorded to Customs officials of that other Signatory Party in accordance with the domestic law of that Signatory Party and be responsible for any offence they might commit. They shall not be in uniform nor carry arms.

Article 10

Communication of Requests

1. Requests for assistance under this Annex shall be exchanged directly between the Customs administrations of the Signatory Parties. Each Customs administration shall designate a contact point for this purpose and communicate the details of the contact point to the other Customs administrations.
2. Requests for assistance shall be made in writing or electronically, and shall be accompanied by any information deemed useful to comply with the request. The requested administration may require written confirmation of electronic requests. Where the circumstances so require, requests may be made orally. Such requests shall be confirmed as soon as possible either in writing or, if acceptable to both Customs administrations, by electronic means. Requests shall be made in the Portuguese or Spanish languages to MERCOSUR and in the English language to SACU.
3. Requests made pursuant to paragraph 2, shall include the following details:
 - (a) the name of the requesting administration and the name of the national point of contact;
 - (b) the subject matter, the type of assistance requested and reasons for the request;
 - (c) a brief description of the subject matter and applicable legal and administrative provisions that apply;
 - (d) the names and addresses of the persons involved in the request if known; and
 - (e) other available information to enable the requested administration to effectively comply with the request.

Article 11

Use of Information

1. Any information received under this Annex shall be used only by the Customs administrations and solely for the purposes of this Annex.
2. On request, the Signatory Party that supplied the information may, notwithstanding paragraph 1, authorise its use by other authorities or for other purposes, subject to any terms and conditions it may specify. Such use shall be in accordance with the legal and administrative provisions of the Signatory Party which seeks to use the information. The use of information for other purposes includes its use in criminal investigations, prosecutions or proceedings.

Article 12

Confidentiality and Protection of Information

1. Any information received under this Annex shall be treated as confidential and shall, at least, be subject to the same confidentiality and protection as the same kind of information is subject to under the legal and administrative provisions of the requesting Signatory Party. Where a higher degree of protection is required by the requested administration for the supplied information, such requirement shall be mandatory once specified by the requested administration.
2. The requesting administration shall be responsible, in accordance with its own legal and administrative provisions, for any damage suffered by a person as a consequence of the information provided by the requested administration, in accordance with the provisions of this Annex.

Article 13

Exception from the Obligation to Render Assistance

1. If the requested administration considers that the assistance requested might be prejudicial to the public policy, sovereignty, security or other essential interests of that Signatory Party, or might involve violation of industrial, commercial or professional secrecy, it may decline to provide assistance or it may provide the assistance only if certain conditions are met, or it may provide a reduced level of assistance.
2. Where the requesting administration would be unable to comply if a similar request were made by the requested administration, it shall draw attention to that fact in its request. Compliance with such a request shall be at the discretion of the requested administration.
3. If assistance is refused or a reduced level only can be provided, the decision and the reasons therefore shall be notified in writing to the requesting administration without delay.

Article 14

Costs

1. The Customs administrations shall waive all claims for reimbursement of costs incurred in the execution of this Annex, except for expenses and allowances paid to experts and to witnesses as well as costs of translators or interpreters other than officials, which shall be borne by the requesting administration.

2. If the expenses that will be required to execute a request are of a substantial or extraordinary nature, the Signatory Parties concerned shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

Article 15

Implementation

The Customs administrations of the Signatory Parties shall jointly determine the detailed arrangements for the implementation of this Annex.

Article 16

Final Provisions

1. This Annex shall complement and not impede application of any agreements on mutual administrative assistance which have been or may be concluded between the Signatory Parties. Neither shall it preclude more extensive mutual assistance granted under such agreements.
2. The provisions of this Annex shall not affect the obligations of the Signatory Parties under any other international agreement or convention.
3. Notwithstanding the provisions of paragraph 1, the provisions of this Annex shall take precedence over the provisions of any bilateral agreement on mutual assistance which has been or may be concluded between individual States Party to MERCOSUR and any Member Status of SACU in so far as the provisions of the latter are incompatible with those of this Annex