

ANNEX 4-A
MUTUAL ASSISTANCE IN CUSTOMS MATTERS

ARTICLE 1: DEFINITIONS

For the purposes of this Annex:

customs laws means such laws and regulations in force in the customs territories of the Parties, concerning the importation, exportation, transit of goods, transshipment or any other custom procedures as they relate, *inter alia*, to customs duties, charges and other taxes or to prohibitions, restrictions and other controls in respect of the movement of goods across national boundaries;

customs offense means any violation of the customs laws as well as any attempted violation thereof;

information means, *inter-alia*, reports, records, documents and documentation, whether computerized or not, as well as certified or authenticated copies thereof;

person means a natural person or a legal entity;

requested customs authority means the Customs Authority that receives a request for assistance under this Annex or that provides such assistance on its own initiative.

requesting customs authority means the Customs Authority that makes a request for assistance under this Annex or that receives such assistance on a Customs Authority's own initiative;

ARTICLE 2: SCOPE

In accordance with the law of the Parties:

1. The Parties shall provide each other assistance in order to insure the proper application of the customs laws, the accurate assessment of customs duties and other taxes on the importation and exportation of goods and the correct determination of the classification, value and origin of such goods.
2. The Parties shall also assist each other in the prevention, investigation, combating and prosecution of customs offenses.
3. Assistance under this Annex shall be provided in accordance with the law of the requested Party.
4. Assistance under this Annex shall be provided by the Customs Authorities of the Parties.

5. The provisions of this Annex are intended solely to provide for mutual assistance in customs matters between the Parties. They shall in no way give rise to a right on the part of any private person or legal entity to obtain, suppress or exclude any evidence, or to impede the execution of a request.

6. Assistance pursuant to this Annex shall not include the arrest or detention of persons nor the collection or forced collection of customs duties, other taxes, fines, or other monies.

ARTICLE 3: INSTANCES OF ASSISTANCE

1. Upon request, to the extent of its competence, its resources and in accordance with the law of the requested Party, the Customs Authorities shall inform each other whether goods exported from or imported into the customs territory of one Party have been lawfully imported into or exported from the customs territory of the other Party. This information shall, upon request, contain the customs procedure used for clearing the goods.

2. To the extent of its competence, its resources and in accordance with the law of the requested Party, the requested Customs Authority, either upon request or on its own initiative, subject to the subsequent written approval of the requesting Customs Authority, shall exercise surveillance over:

- a) means of transportation suspected of being used in the commission of customs offenses in the customs territory of the requesting Party;
- b) goods designated by the requesting Customs Authority as being the subject of an extensive illegal trade destined for the customs territory of the requesting Party;
- c) particular persons known to be or suspected of being engaged in the commission of a customs offense in the customs territory of the requesting Party;
- d) particular places where stocks of goods have been built up, giving reason to assume that they are to be used for illegal importation into the customs territory of the requesting Party.

3. The Customs Authorities of the Parties shall, in accordance with the law of the requested Party, furnish each other necessary information likely to be of use to the requesting Customs Authority, regarding acts related to customs offenses that have been committed or are expected to be committed within the customs territory of the other Party. In cases which could cause substantial damage to the economy, public health, security or any other vital interest of the other Party, such information shall be supplied, whenever possible, without being requested.

ARTICLE 4: PROFESSIONAL AND TECHNICAL COOPERATION AND ASSISTANCE

1. The Customs Authorities of the Parties, on their own initiative or upon request, shall provide each other with information regarding:

- a) enforcement actions that might be useful in preventing customs offenses and, in particular, special means of combating customs offenses;
- b) new methods used in committing customs offenses;
- c) observations and findings resulting from the successful application of new enforcement aids and techniques;
- d) techniques and improved methods of processing passengers and cargo; and
- e) information on their respective customs laws.

2. The Parties, through their respective Customs Authorities, shall seek to cooperate in, *inter-alia*:

- a) initiating, developing or improving specific training programs for their personnel;
- b) establishing and maintaining channels of communication between their Customs Authorities to facilitate the secure and rapid exchange of information;
- c) facilitating effective coordination between their Customs Authorities including the exchange of personnel, experts and the posting of liaison officers;
- d) the consideration and testing of new equipment and procedures;
- e) the simplification and harmonization of their respective customs procedures; and
- f) any other general administrative matters that may, from time to time, require their joint action.

ARTICLE 5: COMMUNICATION OF REQUESTS

1. Requests pursuant to the present Annex shall be made in writing. Documents that may be of help in the execution of such requests shall, when available, accompany them. When required, because of the urgency of the situation, oral requests may also be accepted, but they shall be confirmed in writing as soon as possible.

2. Requests pursuant to Paragraph 1 shall include the following information:
 - a) the authority making the request;
 - b) the nature of the proceedings;
 - c) the assistance sought, the object of and the reason for the request;
 - d) the names and addresses of the parties involved in the request, if known;
 - e) a brief description of the matter under consideration and the legal elements involved; and
 - f) the connection between the assistance sought and the matter to which it relates.
3. All requests shall be submitted in the English language.
4. If a request does not meet the formal requirements as per paragraph 2, its correction or completion may be requested. This need not delay the taking of precautionary measures that must be taken immediately.
5. Assistance shall be carried out by direct communication between the respective Customs Authorities.

ARTICLE 6: EXECUTION OF REQUESTS

1. The requested Customs Authority, to the extent of its competence and its resources, shall take all reasonable measures to execute a request within a reasonable amount of time.
2. If the requested Customs Authority does not have the information requested, it shall: endeavor to take necessary measures within the limits of their law and available resources to obtain such information.
3. In accordance with its competence and its law, the Customs Authority of either Party shall, upon the request of the Customs Authority of the other Party, conduct any necessary investigation and undertake verifications, inspections and fact-finding inquiries in connection with the matters referred to in this Annex.

ARTICLE 7: FILES AND DOCUMENTS

1. The Customs Authorities of the Parties shall, upon request and in accordance with the law of the requested Party, provide information relating to the transportation and shipment of goods showing the value, origin, disposition and destination of those goods.

2. Upon specific written request, copies of information and other materials provided pursuant to this Annex shall be appropriately authenticated or certified. Originals of such information and other materials shall only be requested in cases wherein copies would be insufficient.

3. The provision of the originals of information and other materials pursuant to this Annex shall not affect the rights of the requested Customs Authority nor of third parties thereto. Such originals shall be returned as soon as possible. Upon request, originals necessary for adjudicative or similar purposes shall be returned without delay.

4. Where necessary, the requested Customs Authority may supply, together with the information provided, all necessary instructions for its interpretation or utilization.

ARTICLE 8: SERVICE OF DOCUMENTS

1. Upon request, the requested Customs Authority shall, in accordance with the law of the requested Party, take all necessary measures in order to serve all documents and to notify all decisions falling within the scope of this Annex to an addressee residing or established in its territory.

2. The requested Customs Authority shall, to the extent possible, return a proof of service or notification in the manner specified in the request. If this is not possible or if the request cannot be carried out in the manner specified, the requesting Customs Authority shall be so informed and shall be advised of the reasons thereof.

ARTICLE 9: EXEMPTIONS FROM ASSISTANCE

1. In cases where the requested Party is of the opinion that the provision of assistance under this Annex would infringe upon its sovereignty, security, public policy, or any other substantive national interest, or involve the violation of a commercial, industrial, or professional secret, assistance may be refused or compliance may be conditioned upon the satisfaction of certain conditions or requirements.

2. In the event that a request is refused or cannot be complied with in full or in part, the requesting Customs Authority shall be notified, as soon as possible, of the fact and informed of the reasons thereof.

3. If the requesting Customs Authority requests assistance which it, itself, would not be able to provide, it shall draw attention to that fact in the request. Compliance with such a request shall then be within the discretion of the requested Customs Authority.

ARTICLE 10: CONFIDENTIALITY

1. Information and other communications received pursuant to this Annex may be used only for the purposes specified therein, except in cases where the requested Customs Authority has authorized in writing their use for other purposes.
2. Any information or other communications received by the Customs Authority of either Party, pursuant to this Annex, shall be treated as confidential and shall not be communicated to any person or entity outside the requesting Customs Authority that received them, except as provided for in this Annex.
3. Information and other communications received pursuant to this Annex may be used in investigations and in judicial and administrative proceedings, according with the law of each Party.
4. The provisions of Paragraph 2 shall not apply to cases concerning customs offenses relating to narcotic drugs and psychotropic substances. Such information may be communicated to other authorities in the requesting Party directly involved in combating illicit drug traffic. In addition, information on customs offenses relating to the public health, public security or environmental protection of the Party whose Customs Authority received the information may be conveyed to the competent governmental authorities who deal with such matters. Such information shall be treated as confidential and shall enjoy any and all protection afforded to similar information under the laws of confidentiality and secrecy as provided for in the law of the Party whose Customs Authority received them.
5. The requesting Customs Authority shall not use evidence or information obtained under this Annex for purposes other than those stated in the request without the prior written consent of the requested Customs Authority.

ARTICLE 11: COSTS

1. The Customs Authorities of the Parties shall normally waive all claims for the reimbursement of costs incurred in the execution of this Annex, with the exception of expenses for witnesses, fees of experts and the cost of interpreters other than government employees.
2. If expenses of a substantial and extraordinary nature are, or will, be required to execute a request, the Customs Authorities of the Parties shall consult to determine the terms and conditions under which the request will be carried out, as well as the manner in which the costs shall be borne.

ARTICLE 12: TERRITORIAL APPLICABILITY

This Annex shall apply to the Customs territories of the Parties.

ARTICLE 13: IMPLEMENTATION OF THE ANNEX

1. The Customs Authorities shall be responsible for the implementation of this Annex. They shall, *inter-alia*;

- a) communicate directly for the purpose of dealing with matters arising out of this Annex;
- b) after consultation, if necessary, issue any administrative directives or agreed upon procedures for the implementation of this Annex;
- c) endeavor by mutual accord to resolve any problems or doubts arising from the application of this Annex or any other customs matter which may arise between them;
- d) agree to meet, if one of them so requests, in order to discuss the application of this Annex or to discuss any other customs matters arising out of the relationship between them; and
- e) arrange for their investigation departments to be in direct contact with one another.
- f) this Annex shall not prejudice the application of a bilateral Agreement on mutual assistance in customs matters that may be concluded between the Parties; nor shall it prejudice the granting of assistance under any other international agreements concerning assistance in customs matters to which both sides are parties.