

ANNEX 3

CUSTOMS CO-OPERATION AND MUTUAL ADMINISTRATIVE ASSISTANCE

Article 1

Definitions

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

- (a) **“Customs”** means the Government service responsible for the administration of the Customs Law and the collection of duties and taxes and which also has the responsibility for the application of other laws and regulations relating to the importation, exportation, movement or storage of goods;
- (b) **"Customs Authority"** means the administrative authority responsible for administering Customs Laws in a State Party;
- (c) **“Customs Cooperation”** means collaboration among Customs Authorities aimed at the simplification of procedures and the improvement of Trade Facilitation, with the intention to enhance regulation of trade flows and enforcement of applicable laws in the State Parties by establishing international customs standards and harmonised customs procedures as outlined in this Annex;
- (d) **“Customs Law”** means the statutory and regulatory provisions related to importation, exportation and movement or storage of goods, the administration and enforcement of which are specifically charged to the Customs Authorities and any regulations made by the Customs Authorities under their statutory powers;
- (e) **"Customs Offence"** means any breach or attempted breach of Customs Laws of a State Party;
- (f) **“Mutual Administrative Assistance”** means actions of a Customs Authority on behalf of or in collaboration with another Customs Authority for the proper application of Customs Laws and for the prevention, investigation and repression of Customs Offences;
- (g) **“Trade Facilitation”** means the simplification and harmonisation of international trade procedures, including activities, practices, and formalities involved in collecting, presenting, communicating, and processing data required for the movement of goods in international trade.

Article 2

Objectives and Scope

1. State Parties, through their Customs Authorities, and in accordance with the provisions set out in this Annex, shall afford each other:

- (a) cooperation in all areas of Customs administration aimed at improving the regulation of trade flows and the enforcement of applicable laws within the State Parties, by:
 - (i) providing for common measures for which State Parties are encouraged to comply with in the formulation of their Customs Law and procedures; and
 - (ii) establishing appropriate institutional arrangements at continental, regional and national levels.
 - (b) Mutual Administrative Assistance within the scope of this Annex to:
 - (i) ensure that the Customs Law in their territories are observed;
 - (ii) prevent, investigate and combat customs offences;
 - (iii) make available documents necessary for the application of Customs Law;
 - (iv) facilitate the simplification and harmonisation of their customs procedures; and
 - (v) ensure the smooth flow of trade and the integrity of the international supply chain.
2. State Parties shall cooperate in the form of Mutual Administrative Assistance in accordance with the framework of the Agreement within their competence and available resources of their Customs Authorities.
 3. Cooperation in Customs matters shall apply to any administrative authority of State Parties that is competent in matters covered by Customs Law. This co-operation shall be channeled through the Customs Authorities of the State Parties.
 4. The provisions of this Annex shall not provide a right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of a request.

Article 3

Harmonisation of Customs Tariff Nomenclatures and Statistical Nomenclatures

1. The Council of Ministers may allow exceptions in the application of the provisions of this Article as would be allowed in the application of the provisions of the Harmonised System (HS) convention, provided that it is satisfied that such exceptions will not hinder the comparison of customs tariffs and trade statistics among State Parties.
2. Subject to the exceptions referred to in paragraph 1 of this Article:
 - (a) each State Party undertakes to adopt customs tariff nomenclatures and statistical nomenclatures which are in conformity with the applicable version

of the HS. Accordingly, in respect of its nomenclatures, each State Party shall:

- (i) use all the headings and sub-headings of the HS without addition or modification, together with their related numerical codes;
 - (ii) apply the general rule for the interpretation of the HS;
 - (iii) follow the numerical sequence of the HS; and
- (b) each State Party shall regularly publish, in a format that is easily accessible, its import and export trade statistics in conformity with the six-digit codes of the HS, or at the initiative of the State Party, beyond that level, unless publication is precluded for exceptional reasons such as commercial confidentiality or national security.
3. In complying with the undertakings in paragraph 2(a) of this Article, each State Party may make such textual adaptations as may be necessary to give effect to the HS in its domestic law.
 4. Nothing in this Article shall prevent a State Party from establishing, in its customs tariff or statistical nomenclatures, sub-divisions classifying goods beyond the six-digit level of the HS, provided that such sub-divisions are as set out in the HS.

Article 4

Harmonisation of Valuation Systems and Practices

State Parties undertake to adopt a system of valuing goods for customs purposes based on the principles of non-discrimination, transparency and uniform application of such a system in accordance with Article VII of GATT on Valuation for Customs Purposes.

Article 5

Simplification and Harmonisation of Customs Procedures

1. State Parties are encouraged to cooperate on the use of relevant international standards or parts thereof as a basis for their import, export or transit formalities and procedures except as otherwise provided for in this Annex.
2. Pursuant to paragraph 1 of this Article, State Parties undertake:
 - (a) that their respective Customs Laws and procedures shall be based on internationally accepted instruments and standards, practices and guidelines applicable in the field of customs and trade such as the Revised Kyoto Convention on the Simplification and Harmonisation of Customs Procedures and WTO Trade Facilitation Agreement;

- (b) to use internationally accepted standards, practices and guidelines, as a basis for designing and standardising their trade documents and the information required to be contained in such documents; and
- (c) the principles of promotion and facilitation of legitimate trade through effective enforcement of commitments contained in this Annex.

Article 6

Automation of Customs Operations

1. State Parties undertake to establish, use and continually upgrade modern data processing systems to facilitate effective and efficient Customs operations and transmission of trade data amongst themselves.
2. State Parties are encouraged to ensure that their respective Customs Authorities shall:
 - (a) use internationally accepted standards, especially those adopted by the World Customs Organisation (WCO);
 - (b) develop or adopt interconnectivity of computerised Customs clearance and information systems in collaboration with stakeholders; and
 - (c) facilitate the exchange of data with stakeholders.

Article 7

Advance Exchange of Information

1. State Parties shall endeavour to exchange information covered by this Annex in advance of the arrival of persons, goods and means of transport in their respective territories, which may be done manually or electronically on an automatic basis.
2. State Parties may, electronically on an automatic basis under set terms and conditions consistent with the Agreement, exchange any information covered by this Annex in advance of the arrival of persons, goods and means of transport in the territory of another State Party

Article 8

Prevention, Investigation and Suppression of Customs Offences

1. State Parties shall co-operate in the prevention, investigation and suppression of Customs offences. In this regard, each State Party shall designate and inform other State Parties of its Customs contact point.
2. For purposes of paragraph 1 of this Article, State Parties shall:

- (a) exchange lists of Goods the importation of which is prohibited in their respective territories;
 - (b) prohibit the exportation of Goods referred to in sub-paragraph (a) of this paragraph to the relevant territories;
 - (c) in cases where they share a common border:
 - (i) exchange lists of Customs offices located along the common border together with details of their powers, working hours, and any changes thereto;
 - (ii) consult each other on the establishment of border posts in close proximity to each other and take such steps as may be appropriate to ensure goods pass through those border posts and along jointly approved routes; and
 - (iii) endeavour to align the capabilities and harmonise the working hours of their corresponding Customs offices; and
 - (d) maintain special surveillance over the following:
 - (i) entry into, sojourn in, and exit from their territories of persons reasonably suspected of involvement in activities that are contrary to the Customs Laws of any State Party;
 - (ii) movement of goods reasonably suspected of being the subject of illegal traffic;
 - (iii) places in proximity to the border where stocks of goods have been built up causing reasonable suspicion of being used for illegal cross-border trade; and
 - (iv) vehicles, ships, aircraft, or other means of transport under reasonable suspicion of being used to commit Customs Offences in any State Party.
3. State Parties shall provide, upon request, and without delay, all available information regarding:
- (a) operations which cause reasonable suspicion of the commission of Customs Offences in any State Party;
 - (b) persons, vehicles, ships, aircraft and other means of transport reasonably suspected of involvement in activities that may violate the Customs Laws of any State Party;
 - (c) Goods known to be the subject of illegal traffic;

- (d) Customs documents relating to importation and exportation of goods which are reasonably suspected of being in violation of the Customs Laws of the requesting State Party;
- (e) Customs documents relating to such exchange of goods between State Parties that are suspected of being in violation of the Customs Law of the requesting State Party; and
- (f) Certificates of Origin, invoices or any other documents, that are or reasonably suspected to be forged or otherwise fraudulently produced.

Article 9

Request, Exchange and Provision of Information

1. In case of reasonable doubt as to the truthfulness or accuracy of an import or export declaration, State Parties shall, upon request and subject to the provisions of this Article, promptly provide all necessary information orally or in writing or through any other appropriate means including specific information as set out in, but not limited to the import or export declaration, commercial invoice, packing list, certificate of origin and bill of lading. This shall not affect the right of the economic operators to confidentiality and privacy under the relevant national law.
2. In order to ensure the effective implementation of paragraph 1 of this Article, and upon entry into force of the Agreement, each State Party shall notify the details of the responsible national contact points to the Secretariat.
3. Before submitting a request for information, a State Party shall undertake all necessary verifications relating to the relevant import or export declaration.
4. Each State Party undertakes, whenever expressly requested by another State Party, to:
 - (a) make enquiries, record statements and obtain evidence concerning a Customs Offence under investigation in the requesting State Party and transmit the results of the enquiry and any documents or other evidence, to the requesting State Party; and
 - (b) notify the competent authorities of the requesting State Party of actions and decisions taken by the competent authorities of the State Party where the alleged Customs Offence took place in accordance with the law in force in that State Party.
5. The requesting State Party shall take into account the associated resource and cost implications for the requested State Party in responding to requests for information. In doing so, the requesting State Party shall consider the proportionality between its fiscal interest in pursuing its request and the efforts to be made by the requested State Party in providing the information.

6. Modalities for the implementation of this Article shall be subject to arrangements to be made on a case by case basis between the requesting and the requested State Parties.

Article 10 Protection and Confidentiality

To ensure the protection and confidentiality of information requested, pursuant to this Annex, the requesting State Party shall:

- (a) grant the requested information the same level of confidentiality as that which is provided under the domestic law of the requested State Party;
- (b) use the information solely for the purpose stated in the request;
- (c) not disclose the information without the written consent of the requested State Party;
- (d) not use any unverified information as the deciding factor towards alleviating the doubt in any given circumstance;
- (e) respect any case-specific conditions set out by the requested State Party regarding retention and disposal of confidential information and personal data; and
- (f) upon request, inform the requested State Party of any decisions and actions taken on the matter as a result of the information provided.

Article 11 Technical Cooperation

1. In order to continue to enhance their capacities in customs matters, State Parties shall endeavour to:
 - (a) develop joint training programmes;
 - (b) exchange staff and share training facilities and resources;
 - (c) exchange professional, scientific and technical data relating to Customs Laws and procedures;
 - (d) support each other in the modernisation of customs procedures including e-customs and electronic data interchange applications;
 - (e) support each other in the implementation of trade facilitation measures and simplification of customs procedures; and
 - (f) exchange any other data that can assist Customs Authorities with risk management for control and facilitation purposes.
2. States Parties shall notify the Secretariat of all activities undertaken pursuant to paragraph 1 of this Article.

Article 12

Communication of Customs Information

1. State Parties shall exchange information on matters relating to customs particularly on the following:
 - (a) changes in Customs Law or any other relevant domestic legislation, procedures and duties and commodities subject to import or export restrictions;
 - (b) information relating to the prevention, investigation and suppression of Customs Offences;
 - (c) information required to implement and administer Customs Laws and regulations; and
 - (d) any other information deemed necessary by the Sub-Committee.
2. For purposes of paragraph 1 of this Article, State Parties may adopt loose-leaf editions of national customs tariff schedules.

Article 13

Sub-Committee on Trade Facilitation, Customs Cooperation and Transit

1. The Committee on Trade in Goods shall, in accordance with Article 31 of the Protocol on Trade in Goods, establish a Sub-Committee on Trade Facilitation, Customs Cooperation and Transit.
2. The Sub-Committee shall be composed of duly designated representatives from State Parties and shall carry out the responsibilities assigned to it under this Annex or by the Committee on Trade in Goods.

Article 14

Dispute Settlement

Any dispute between the State Parties arising out of or relating to the interpretation or application of any provision of this Annex shall be settled in accordance with the Protocol on Rules and Procedures on the Settlement of Disputes.

Article 15

Review and Amendment

This Annex shall be subject to review and amendments in accordance with Articles 28 and 29 of the Agreement.