

PROTOCOL 2

ON MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS

ARTICLE 1

Definitions

For the purposes of this Protocol:

- (a) "customs legislation" means any legal or regulatory provision applicable in the territories of the 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) "customs violation" means any violation or attempted violation of customs legislation;
- (c) "personal data" means all information relating to an identified or identifiable individual;
- (d) "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 Protocol;

- (e) "requesting 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 Protocol.

ARTICLE 2

Scope

1. The 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 customs legislation, in particular by preventing, investigating and combating customs violations.
2. Assistance in customs matters, as provided for in this Protocol, applies to any administrative authority of the Parties which is competent for the application of this Protocol. That assistance shall not prejudice the rules governing mutual assistance in criminal matters. It shall not 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 this Protocol shall be executed in accordance with the legal and regulatory provisions of each 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 for the purpose of ensuring the proper application of customs legislation, including information on noted or planned activities that constitute or could constitute customs violations.

2. At the request of the requesting authority, the requested authority shall inform it:
 - (a) whether 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) whether 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. 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 which 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 those 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; 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 customs violations.

ARTICLE 4

Spontaneous Assistance

The Parties shall assist each other on their own initiative and in accordance with their respective domestic laws and regulations if they consider that assistance is necessary for the proper application of customs legislation by the other Party, particularly by providing information relating to:

- (a) activities which are or appear to be customs violations and which may be of interest to the other Party;
- (b) new means of, or methods employed in, carrying out customs violations;
- (c) goods known to be subject to customs violations;

- (d) natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in customs violations; and
- (e) 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 and Notification

At the request of the requesting authority, the requested authority, in accordance with the legal or regulatory provisions applicable to that authority, shall take all necessary measures in order to deliver any documents, or to notify any decisions, of the 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, the requested authority may accept an oral request, but such request shall be immediately confirmed by the requesting authority in writing.

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; and

 - (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 does not apply to any documents that accompany the request under paragraph 1.

4. If a request does not meet the formal requirements set out in paragraphs 1 to 3, its correction or completion may be requested and precautionary measures may be ordered in the meantime.

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 Party, by supplying information already in its possession, by carrying out appropriate enquiries or by arranging for them to be carried out. If the requested authority addresses the request to another authority because it cannot act alone, this paragraph shall also apply to that other authority.

2. Requests for assistance shall be executed in accordance with the legal or regulatory provisions of the requested Party.

3. Duly authorised officials of a Party may, with the agreement of the other Party and subject to the conditions laid down by the latter, be present in the offices of the requested authority or any other authority concerned to obtain information, in accordance with paragraph 1, which relates to activities that constitute or could constitute customs violations and which the requesting authority needs for the purposes of this Protocol.

4. Duly authorised officials of a Party may, with the agreement of the other Party 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 the results of enquiries to the requesting authority in writing together with relevant documents, certified copies or other items.

2. This information may be provided in electronic format.

ARTICLE 9

Exceptions to the Obligation to Provide Assistance

1. Assistance may be refused or may be subject to certain conditions or requirements in cases where a Party considers that assistance under this Protocol would:

- (a) be likely to prejudice the sovereignty of Viet Nam or that of a Member State which has been requested to provide assistance under this Protocol;
- (b) be likely to prejudice public policy, security or other essential interests, in particular in the cases referred to in paragraph 2 of Article 10; or
- (c) violate an industrial, commercial or professional secret.

2. Assistance may be postponed by the requested authority on the grounds that it will interfere with an ongoing investigation or prosecution, or with ongoing proceedings. 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. In 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, in accordance with the laws and regulations applicable in each Party. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to similar information under the relevant laws and regulations of the Party receiving the information.

2. Personal data may be exchanged only where the Party which may receive them undertakes to protect such data in a manner that is considered adequate by the Party which may supply them.

3. The use of information obtained under this Protocol in administrative proceedings or subsequent appeal proceedings instituted in respect of customs violations is considered to be for the purposes of this Protocol. Therefore, the Parties may, in their records of evidence, reports, testimonies and in such proceedings, use as evidence information obtained and documents consulted in accordance with this Protocol. The requested 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. If a Party 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 restriction laid down by that authority.

ARTICLE 11

Assistance Expenses

The Parties shall waive all claims against each other for the reimbursement of expenses incurred pursuant to this Protocol, except, as appropriate, those for 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 Viet Nam 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 Parties shall consult each other and subsequently keep each other informed of the detailed rules of implementation which are adopted in accordance with this Protocol.

ARTICLE 13

Other Agreements

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

- (a) not affect the obligations of the Parties under any other international agreement or convention;
- (b) be deemed complementary to agreements on mutual assistance which have been or may be concluded between individual Member States and Viet Nam; and
- (c) not affect the provisions of Union law governing the communication between the competent services of the European Commission and the customs authorities of the Member States of any information obtained under this Protocol which could be of interest to the Union.

2. Notwithstanding 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 and Viet Nam insofar as the provisions of the latter are incompatible with those of this Protocol.

3. In respect of questions relating to the application of this Protocol, the Parties shall consult each other to resolve the matter in the framework of the Committee on Customs, established pursuant to Article 17.2 (Specialised Committees) of this Agreement.