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Without prejudice
Mercosur-European Union FTA
MAA Protocol
Agreed

This document contains the consolidated text as it stands at the end of the XXXIInd round of negotiations (21 February – 2 March 2018) on Mutual administrative assistance in customs matters in the Trade Part of the EU-Mercosur Association Agreement. This is without prejudice to the final outcome of negotiations. Both sides reserve the right to make subsequent modifications to their proposals.

PROTOCOL
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 territory of either Party, governing the import, export and transit of goods and their placing under any other customs regime or procedure, including measures of prohibition, restriction and control;
- (b) "applicant 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;
- (c) "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;
- (d) "information" means any data, document, image, report, communication or authenticated copy, in any format, including electronic, whether or not processed or analysed;
- (e) "person" means any natural or legal person;
- (f) "personal data" means all information relating to any natural or, where the legislation of the Parties so provides, legal person;
- (g) "operation in breach of customs legislation" means any violation or attempted violation of customs legislation.

Article 2

Scope

1. The Parties shall assist each other, in the areas within their competence, 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 operations in breach of that legislation.
2. Assistance in customs matters, as provided for in this Protocol, applies to any administrative authority

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of either Party which is competent for the application of this Protocol. That assistance shall neither prejudice the provisions 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. Assistance to recover duties, taxes or fines is not covered by this Protocol.

Article 3
Assistance on request

1. At the request of the applicant 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 related to activities noted or planned which are or could be operations in breach of customs legislation.
2. At the request of the applicant authority, the requested authority shall inform it whether:
 - (a) goods exported from the territory of one of the Parties have been properly imported into the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods;
 - (b) goods imported into the territory of one of the 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 applicant 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 operations in breach of customs legislation;
 - (b) 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 operations in breach of customs legislation;
 - (c) 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 operations in breach of customs legislation; 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 operations in breach of customs legislation.

Article 4
Spontaneous assistance

The 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, by providing information obtained pertaining to concluded, planned or ongoing activities which constitute or appear to constitute operations in breach of customs legislation and which may be of interest to the other Party. The information shall focus in particular on:

- (a) persons, goods and means of transportation; and

- (b) new means or methods employed in carrying out operations in breach of customs legislation.

Article 5

Form and substance of requests for assistance

1. Requests pursuant to this Protocol shall be made in writing either in print or electronic format. 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 oral requests, but such oral requests shall be confirmed by the applicant authority in writing immediately.
2. Requests pursuant to paragraph 1 shall include the following information:
 - (a) the applicant authority and requesting official;
 - (b) the information and/or type of assistance 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; and
 - (g) any additional available details to enable the requested authority to comply with the request.
3. Requests shall be submitted in an official language of the requested authority or in a language acceptable to that authority, English always being an acceptable language. 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, the requested authority may require the correction or completion of the request; in the meantime, precautionary measures may be ordered.

Article 6

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 was acting on its own account or at the request of other authority 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. 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 Party.

Article 7

Form in which information is to be communicated

1. The requested authority shall communicate results of enquiries to the applicant authority in writing together with relevant documents, certified true copies or other items. This information may be provided in electronic format.
2. Original documents shall be transmitted according to each Party's legal constraints, only upon request of the applicant authority, in cases where certified true copies would be insufficient. The applicant authority shall return these originals at the earliest opportunity.

3. The requested authority shall, under the provisions referred to in Paragraph 2, deliver to the applicant authority, any information related to the authenticity of the documents issued or certified by official agencies within its territory in support of a goods declaration.

Article 8

Presence of officials of one Party in the territory of another

1. 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 concerned authority referred to in paragraph 1 of Article 6, to obtain information relating to activities that are or could be operations in breach of customs legislation, which the applicant authority needs for the purposes of this Protocol,
2. Duly authorised officials of a Party may, with the agreement of the other Party concerned and subject to the conditions laid down by the latter, be present at enquiries carried out in the latter's territory.
3. The presence of officials of a Party in the territory of the other Party shall solely be in an advisory capacity, during which time those authorised officials:
 - (a) must at all times be able to furnish proof of their official capacity;
 - (b) shall not wear uniform, nor carry weapons; and
 - (c) shall enjoy the same protection as that afforded to officials of the other Party, in accordance with the legal and administrative provisions in force there.

Article 9

Delivery and Notification

1. At the request of the applicant authority, the requested authority shall, in accordance with legal or regulatory provisions applicable to that authority, take all necessary measures in order to deliver any documents or to notify any decisions of the applicant authority and falling within the scope of this Protocol, to an addressee residing or established in the territory of the requested authority.
2. Such 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 10

Automatic exchange of information

1. The Parties may, by mutual arrangement in accordance with Article 15 of this Protocol:
 - (a) exchange any information covered by this Protocol on an automatic basis;
 - (b) exchange specific information in advance of the arrival of consignments in the territory of the other Party.
2. The Parties will establish arrangements on the type of information they wish to exchange, the format and the frequency of transmission, to implement the exchanges under letters (a) and (b) of paragraph 1.

Article 11

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 a Member State of Mercosur or of the European Union 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 5 of Article 12 of this Protocol; or
 - (c) violate an industrial, commercial or professional secret.
2. The requested authority may postpone the assistance on the grounds that such assistance will interfere with ongoing investigations, prosecutions or proceedings. In such a case, the requested authority shall consult with the applicant authority to determine if assistance can be given subject to such terms or conditions as the requested authority may require.
 3. Where the applicant 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 requested authority shall communicate its decision and the reasons therefor to the applicant authority without delay.

Article 12
Information exchange and confidentiality

1. The information received under this Protocol shall be used solely for the purposes established herein.
2. The use of information obtained under this Protocol in judicial or administrative proceedings instituted in respect of operations in breach of customs legislation, is considered to be for the purposes of this Protocol. Therefore, the Parties may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence information obtained and documents consulted in accordance with the provisions of this Protocol. The requested authority may subject the supply of information or the granting of access to documents to the condition that it is notified of such use.
3. Where one of the 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.
4. 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. That information shall be covered by the obligation of official secrecy and shall enjoy the protection granted to similar information under the relevant laws and regulations of the receiving Party. The Parties shall communicate to each other information on their applicable laws and regulations.
5. 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 other Party. Where a specific degree of protection is required for the supplied information, this shall be specified by the supplying authority. The Party which uses personal data shall communicate in writing, at the request of the Party which supplied them, the purpose for which such information was used and the results obtained.
6. Under no circumstances may personal data related to racial origin, political opinions, religious convictions, health and sexual orientation be supplied.

Article 13
Experts and witnesses

The requested authority may authorise its officials to appear, within the limitations of the authorisation

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granted, as experts or witnesses in judicial or administrative proceedings regarding the matters covered by this Protocol, and produce such objects, documents or certified true copies thereof, as may be needed for the proceedings. The request for appearance must indicate specifically before which judicial or administrative authority the official will have to appear, on what matters and by virtue of what title or qualification the official will be questioned.

Article 14
Assistance expenses

1. The Parties shall waive any claims for reimbursements of expenses incurred in the execution of this Protocol, except for allowance paid to experts, witnesses, interpreters and translators, when applicable.
2. The payment of allowances will not apply to public service employees.
3. If expenses of an extraordinary nature are required to execute the request, the Parties shall determine the terms and conditions under which the request shall be executed, as well as the manner in which such costs shall be borne.

Article 15
Implementation

1. The implementation of this Protocol shall be entrusted on the one hand to the customs authorities of Mercosur Member States and on the other hand to the competent services of the European Commission and the customs authorities of the Member States of the European Union, as appropriate. They shall decide on all practical measures and arrangements necessary for the implementation of this Protocol, taking into consideration their respective applicable laws and regulations in particular for the protection of personal data.
2. The Parties shall keep each other informed of the detailed implementation measures which are adopted by each Party in accordance with the provisions of this Protocol, in particular with respect to the duly authorised services and officials designated as competent to send and receive the communications laid out in this Protocol.
3. In the Union, the provisions of this Protocol shall not affect the communication of any information obtained under this Protocol between the competent services of the European Commission and the customs authorities of the Member States.

Article 16
Other agreements

The provisions of this Protocol shall take precedence over the provisions of any bilateral Agreement on mutual administrative assistance in customs matters which has been or may be concluded between individual Member States and the other Party or its Member States, insofar as the provisions of the latter are incompatible with those of this Protocol.

Article 17
Consultations

In respect to the applicability and implementation of this Protocol, the Parties shall consult each other to resolve the matter in the framework of the [Committee on Customs, Rules of Origin and Trade Facilitation, set up under Article XXX of this Agreement].