

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE FEDERAL ADMINISTRATION OF PUBLIC REVENUE
– GENERAL CUSTOMS DIRECTORATE –
OF THE ARGENTINE REPUBLIC
AND
THE CUSTOMS AND EXCISE DEPARTMENT
OF HONG KONG, CHINA
REGARDING CO-OPERATION
AND
MUTUAL ADMINISTRATIVE ASSISTANCE
IN
CUSTOMS MATTERS

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The Federal Administration of Public Revenue – General Customs Directorate – of the Argentine Republic, and the Customs and Excise Department of Hong Kong, China, hereinafter referred to as “the Customs Administrations”:

CONSIDERING that offences against customs laws are prejudicial to their economic, commercial, fiscal, social, cultural and security interests;

CONSIDERING the importance of ensuring an accurate assessment of customs duties and other taxes collected on imports and exports, and of ensuring the enforcement of prohibition, restriction and control measures;

RECOGNIZING the need for international co-operation in matters related to the application and enforcement of their customs laws;

CONVINCED that action against customs offences can be made more effective through close co-operation between their Customs Administrations;

TAKING INTO ACCOUNT the relevant instruments of the Customs Co-operation Council, in particular the recommendation on mutual administrative assistance of December 5, 1953;

ALSO TAKING INTO ACCOUNT the international Conventions binding both Customs Administrations and containing prohibitions, restrictions and special control measures with respect to specific goods;

Have reached the understanding that the Customs Administrations will co-operate, within the framework of their respective competence, as follows:

CHAPTER I

Definitions

Paragraph 1

For the purposes of this Memorandum:

1. "Customs Administration" means, for the Argentine Republic, the Federal Administration of Public Revenue - General Customs Directorate, and for Hong Kong, China, the Customs and Excise Department;
2. "Customs Laws" means the legal and regulatory provisions concerning the importation and exportation of goods, whose administration and enforcement are specifically entrusted to the Customs Administrations, and any regulations established by the Customs Administrations under their statutory powers;
3. "Customs Offence" means any breach or attempted breach of customs laws;
4. "Customs Territory" means, in relation to the Argentine Republic, the territory in which the customs laws of the Argentine Republic apply; and, in relation to Hong Kong, China, the area in which the customs laws of Hong Kong, China apply;

5. "Person" means any individual or body, whether corporate or not;
6. "Personal Information" means any information about an identifiable individual that is recorded in any form;
7. "Information" means any data, documents, report, certified or authenticated copies thereof or any other communication;
8. "Intelligence" means any information which has been processed and/or analysed to provide data related to a customs offence;
9. "Requesting Administration" means the Customs Administration which requests assistance;
10. "Requested Administration" means the Customs Administration from which assistance is requested.

CHAPTER II

Scope of the Memorandum

Paragraph 2

1. The Customs Administrations will provide each other with mutual administrative assistance under the terms established in this Memorandum, to ensure proper application of customs laws and for the prevention and investigation of and the fight against customs offences.

2. Any assistance under this Memorandum provided by either Customs Administration will be in accordance with its domestic law and administrative provisions and within the limits of its competence and available resources.
3. This Memorandum is intended solely for the mutual administrative assistance between the Customs Administrations; the provisions of this Memorandum will not entitle any private person to obtain, suppress or exclude any evidence or prevent the execution of a request.

CHAPTER III

Scope of Assistance

Paragraph 3

1. The Customs Administrations will provide each other, either on request or on their own initiative, information and intelligence which may ensure the proper application of customs laws and the prevention and investigation of and the fight against customs offences.
2. Either Customs Administration, when making enquiries requested by the other Customs Administration, will act within its competence in accordance with its domestic law.

Paragraph 4

1. The requested administration will, on request, provide all information about the customs laws and procedures applicable in such Customs Administration and relevant to enquiries related to customs offences.

2. Either Customs Administration will, on request or on its own initiative, convey any available information related to:

(a) new customs law enforcement techniques having proved their effectiveness;

(b) new trends, means or methods of committing customs offences.

CHAPTER IV

Special Instances of Assistance

Paragraph 5

On request, the requested administration will in particular provide the requesting administration with the following information:

(a) whether the goods imported into the customs territory of the requesting administration have been legally exported from the customs territory of the requested administration;

(b) whether the goods exported from the customs territory of the requesting administration have been legally imported into the customs territory of the requested administration, and the customs procedure, if any, applied to such goods.

Paragraph 6

On request, the requested administration will provide information and intelligence on and maintain special surveillance over:

- (a) persons known to have or suspected of having violated the customs laws of the requesting administration, including occasional or habitual offenders known to have or suspected of having violated the customs laws of the requesting administration, particularly those entering or leaving the customs territory of the requested administration;
- (b) goods either in transport or in storage notified by the requesting administration as giving rise to known or suspected illicit traffic towards the customs territory of the requesting administration;
- (c) means of transport that the requesting administration knows or suspects are being used to commit customs offences in the customs territory of any of the two Customs Administrations;
- (d) premises that the requesting administration knows or suspects are being used to commit offences in the customs territory of any of the two Customs Administrations.

Paragraph 7

1. The Customs Administrations will, either on request or on their own initiative, provide each other with information and intelligence on transactions made or planned to be made, which constitute or appear to constitute a customs offence in the customs territory of the other Customs Administration.

2. In serious cases that could involve substantial damage to the economy, to public health and public security or to any other essential interest in the customs territory of a Customs Administration, the other Customs Administration will, wherever possible, supply information and intelligence on its own initiative.

CHAPTER V

Information and Intelligence

Paragraph 8

1. Original information will only be requested in cases where certified or authenticated copies are insufficient, and will be returned as soon as possible; the rights of the requested administration or of third parties related thereto will remain unaffected.
2. Information exchanged under this Memorandum may, where applicable, be replaced by computerised information obtained in any other way for the same purpose.
3. Any information and intelligence exchanged under this Memorandum will be accompanied by all relevant information for interpreting or using it.

CHAPTER VI

Communication of Requests

Paragraph 9

1. Assistance under this Memorandum will be exchanged directly between the Customs Administrations.

2. Requests for assistance under this Memorandum will be made in writing and accompanied by any documents deemed useful. Whenever circumstances so require, requests may also be made verbally. Such requests will promptly be confirmed in writing.

3. A request will include the following:
 - (a) the identity of the authority presenting the request;
 - (b) the nature of the procedure in respect of which the request is made;
 - (c) the subject of and reason for the request;
 - (d) the name and address of the parties to whom the request relates, where available; and
 - (e) a short description of the subject matter and the legal issues involved.

4. Any request by either of the Customs Administrations for a certain procedure to be followed will be answered by the requested administration acting within its competence and subject to its domestic law and applicable administrative provisions.

5. Each Customs Administration will convey to the officials specially designated for this purpose the information and intelligence referred to in this Memorandum. The Customs Administrations will exchange a list of the officials designated for this purpose in accordance with subparagraph 2 of Paragraph 14 of this Memorandum.

CHAPTER VII

Execution of Requests

Paragraph 10

If the requested administration does not have the requested information, it may, according to its domestic law and administrative provisions:

- (a) start investigations to obtain such information; or
- (b) promptly send the request to the appropriate agency; or
- (c) indicate which relevant authorities the requesting administration should address.

CHAPTER VIII

Confidentiality of Information

Paragraph 11

1. Any information or intelligence received within the framework of administrative assistance under this Memorandum will not be used in or as evidence in judicial proceedings. Any information or intelligence received within the framework of administrative assistance under this Memorandum will be used by the Customs Administrations solely for the purposes of this Memorandum except in cases in which the Customs Administration conveying such information has approved in writing its use by other authorities or for other purposes.

2. The receiving administration will treat any information or intelligence received under this Memorandum as confidential and such information or intelligence will be subject to the same protection and confidentiality as the same kind of information or intelligence is subject to under its domestic law.
3. The requesting administration will not use personal information obtained under this Memorandum for purposes other than those established in the request without the prior consent of the requested administration.

CHAPTER IX

Exemptions

Paragraph 12

1. Assistance under this Memorandum may be refused where it hinders security, law and order or other essential interests in the customs territory of a Customs Administration, or where it involves violation of industrial, commercial or professional secrecy or is inconsistent with the domestic law and administrative provisions of a Customs Administration.
2. Should the requesting administration be unable to comply with a similar request made by the requested administration, it will specify this in its request to the requested administration. Compliance with such request will be at the discretion of the requested administration.
3. The requested administration may postpone the assistance on the grounds that such assistance interferes with an ongoing investigation, prosecution or proceeding. In such case, the requested administration will consult with the requesting administration to determine if assistance can be given subject to such terms or conditions as the requested administration may require.
4. Where assistance is denied or postponed, reasons for the denial or postponement will be given.

CHAPTER X

Costs

Paragraph 13

1. Subject to subparagraph 2 of this Paragraph, the Customs Administrations will waive all claims for reimbursement of costs incurred in the execution of this Memorandum.
2. If expenses of a substantial and extraordinary nature are required or will be required to comply with the request, the Customs Administrations will consult to determine the terms and conditions under which the request will be executed as well as the way in which the costs will be borne.

CHAPTER XI

Implementation of the Memorandum

Paragraph 14

1. The Customs Administrations will take steps so that the officials in charge of the investigation of or the fight against customs offences maintain personal and direct contacts with each other.
2. The Customs Administrations will decide on the detailed arrangements to facilitate the implementation of this Memorandum.
3. The Customs Administrations will endeavour to solve by mutual consent any problem or doubt that may arise from the interpretation or application of this Memorandum.

CHAPTER XII

Application

Paragraph 15

This Memorandum will be applicable to the customs territories of both Customs Administrations.

CHAPTER XIII

Commencement and Termination

Paragraph 16

Co-operation under this Memorandum will commence upon the signature of this Memorandum by the Customs Administrations.

Paragraph 17

Co-operation under this Memorandum will cease three months after receipt of a written notification of termination sent by either Customs Administration. Requests received before the date of termination will nevertheless be executed in accordance with the provisions of this Memorandum.

Paragraph 18

1. The Customs Administrations will meet whenever necessary to discuss issues relating to this Memorandum.
2. For the avoidance of doubt, and notwithstanding any other provisions contained herein, this Memorandum does not create any binding obligation under international law.

Signed at Brussels, in two copies in the English language, on June 27th, 2013.


**FOR THE FEDERAL ADMINISTRATION
OF PUBLIC REVENUE
– GENERAL CUSTOMS DIRECTORATE –
OF THE ARGENTINE REPUBLIC**



RICARDO ECHEGARAY

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**FOR THE CUSTOMS AND EXCISE
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CLEMENT W C CHEUNG

**COMMISSIONER OF
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