

PROTOCOL II
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, governing the import, export and transit of goods and their placing under any other customs regime or procedure, including measures on prohibition, restriction and control thereof;
- (b) "requesting authority" means a competent administrative authority which makes a request for assistance on the basis of this Protocol and which has been designated by a Party for that purpose;
- (c) "requested authority" means a competent administrative authority which receives a request for assistance on the basis of this Protocol and which has been designated by a Party for that purpose;
- (d) "personal data" means all information relating to an identified or identifiable individual;
- (e) "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 of their competence, in the manner and under the conditions laid down in this Protocol, to ensure the correct application of their customs legislation, in particular by preventing, investigating and combating operations in breach of that legislation.
2. The assistance in customs matters, as provided for in this Protocol, shall apply to any administrative authority of the Parties which is competent for the application of this Protocol. It shall not prejudice the rules governing mutual assistance in criminal matters. Nor shall it cover exchange of information obtained under powers exercised at the request of a judicial authority, except where the communication of such information is authorised by that authority.
3. The assistance to recover duties, taxes or fines is not covered by this Protocol.

ARTICLE 3

Assistance upon request

1. Upon request of the requesting authority, the requested authority shall provide the requesting authority with all relevant information which may enable the requesting authority to ensure that customs legislation is correctly applied, including information regarding noted or planned activities which are or could be operations in breach of customs legislation.

2. Upon request of the requesting authority, the requested authority shall inform the requesting authority of the following:

- (a) whether 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 those goods;
- (b) whether 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 those goods.

3. Upon 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 whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation;
- (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 operations in breach of customs legislation;
- (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 operations in breach of customs legislation;
- (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, on 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, in particular by providing information pertaining to:

- (a) activities which are or appear to be operations in breach of customs legislation and which may be of interest to the other Party;
- (b) new means or methods employed in carrying out operations in breach of customs legislation;
- (c) goods known to be subject to operations in breach of customs legislation;
- (d) 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;
- (e) means of transport in respect of which there are reasonable grounds for believing that they have been, are, or may be used in operations in breach of customs legislation.

ARTICLE 5

Delivery and notification

1. Upon request of the requesting 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 originating from the requesting authority and falling within the scope of this Protocol, to an addressee residing or established in the territory of the requested authority.
2. 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, oral requests may be accepted, but must be confirmed in writing immediately.

2. Requests pursuant to paragraph 1 shall include the following information:
 - (a) the requesting authority;
 - (b) the requested measure;
 - (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 regarding the natural or legal persons who are the target of the enquiries, 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. That requirement shall not apply to any documents that accompany a request under paragraph 1.
4. If a request does not meet the formal requirements set out in this Article, 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 upon request of other authorities of that same Party, by supplying information already in the requested authority's 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.
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 concerned authority in accordance with paragraph 1, to obtain information relating to activities that are or may be operations in breach of customs legislation 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. That information may be in a computerised form.
3. Original documents shall be transmitted only upon request in cases where certified copies would be insufficient. Those originals shall be returned at the earliest opportunity.

ARTICLE 9

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 Georgia 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 under Article 10(2) of this Protocol; or
 - (c) violate an industrial, commercial or professional secret.
2. Assistance may be postponed by the requested authority on the ground that it will interfere with an on-going investigation, prosecution or proceeding. 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. For 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, depending on the rules applicable in each of the Parties. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to similar information under the relevant laws of the Party that received it and the corresponding provisions applying to the institutions of the Union.

2. Personal data may be exchanged only where the Party which may receive it undertakes to protect such data in a manner that is considered adequate by the Party that may supply them.
3. The use, in administrative or judicial proceedings instituted in respect of operations in breach of customs legislation, of information obtained under this Protocol, shall be 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 competent authority which supplied that information or gave access to those documents shall be notified of such use.
4. The information obtained under this Protocol shall be used solely for the purposes set out in this Protocol. Where one of the Parties wishes to use such information for other purposes, it shall obtain the prior written consent of the requested authority which provided the information. Such use shall then be subject to any restrictions laid down by requested authority.

ARTICLE 11

Experts and witnesses

An official of a requested authority may be authorised to appear, within the limitations of the authorisation granted, as an expert or a witness in administrative or judicial proceedings regarding the matters covered by this Protocol, and may produce such objects, documents or certified copies thereof, as may be needed for the proceedings. The request to the official is made by the requesting authority and must indicate specifically before which administrative or judicial authority the official will have to appear, on which matters and in which capacity (title or qualification).

ARTICLE 12

Assistance expenses

The Parties shall waive all claims against each other for the reimbursement of expenses incurred pursuant to this Protocol, except, as appropriate, for expenses related to experts and witnesses, and those related to interpreters and translators who are not public service employees.

ARTICLE 13

Implementation

1. The implementation of this Protocol shall be entrusted on the one hand to the customs authorities of Georgia 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 the provisions of this Protocol.

ARTICLE 14

Other agreements

1. Taking into account the respective competencies of the Union and the 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 Georgia; and

(c) not affect the Union's provisions 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 the provisions of 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 Georgia in so far as the provisions of such a bilateral agreement are incompatible with those of this Protocol.

ARTICLE 15

Consultations

In respect of questions relating to the applicability of this Protocol, the Parties shall consult each other to resolve the matter in the framework of the Customs Sub-Committee set up under Article 74 of this Agreement.