

ANNEX 4A
ON MUTUAL ASSISTANCE IN CUSTOMS MATTERS

Article 1: Definitions

For the purposes of this Annex:

controlled delivery shall mean the technique of allowing illicit consignments, which contain or are suspected of containing narcotic drugs, psychotropic substances, or substances substituted for them, or other goods as agreed upon by the Customs Authorities, to pass out of, through, or into the customs territories of the Parties, with the knowledge and under the supervision of the competent authorities, with a view to investigating offences and identifying persons involved in their commission.

Customs Authorities shall mean, in the State of Israel, the Customs Directorate of the Israel Tax Authority of the Ministry of Finance, and in the Socialist Republic of Viet Nam, the General Department of Viet Nam Customs of the Ministry of Finance.

customs laws shall mean the laws and regulations in force in the customs territories of the Parties concerning the importation, exportation, and transit of goods, as they relate, among other things, to customs duties, charges and other taxes or prohibitions, restrictions, and other controls in respect of the movement of goods across national boundaries.

information shall mean, among other things, reports, records, documents, and documentation, whether computerized or not, as well as certified copies thereof.

offence shall mean any violation of the customs laws as well as any attempted violation thereof.

personal data shall mean all information relating to an identified or identifiable individual.

person shall mean a natural person or a legal entity.

requested Customs Authority shall mean the Customs Authority that receives a request for assistance under this Annex or that provides such assistance on its own initiative.

requesting Customs Authority shall mean the Customs Authority that makes a request for assistance under this Annex or that receives such assistance on a Customs Authority's own initiative.

Article 2: Scope

1. The Parties shall provide each other assistance in order to ensure the proper application of the customs laws, the accurate assessment of customs duties and other taxes on the importation and exportation of goods and the correct determination of the classification, value and origin of such goods.
2. The Parties shall also assist each other in the prevention, investigation, combat and prosecution of offences.
3. Assistance under this Annex shall be provided in accordance with the domestic law of the requested Party.
4. Assistance under this Annex shall be provided by the Customs Authorities of the Parties.
5. The provisions of this Annex are intended solely to provide for mutual assistance in customs matters between the Parties. They shall in no way give rise to a right on the part of any private person or legal entity to obtain, suppress or exclude any evidence, or to impede the execution of a request.
6. Assistance pursuant to this Annex shall not include the arrest or detention of persons nor the collection or forced collection of customs duties, other taxes, fines, or other monies.

Article 3: Special Instances of Assistance

1. Upon request and in accordance with the domestic law of the requested Party, the Customs Authorities shall inform each other whether goods exported from or imported into the customs territory of one Party have been lawfully imported into or exported from the customs territory of the other Party. This information shall, upon request, contain the customs procedure used for clearing the goods.
2. To the extent of its competence and in accordance with the domestic law of the requested Party, the requested Customs Authority, either upon request or on its own initiative, subject to the subsequent written approval of the requesting Customs Authority, shall exercise special surveillance over:
 - (a) means of transportation suspected of being used in the commission of offences in the customs territory of the requesting Party;
 - (b) goods designated by the requesting Customs Authority as being the subject of an extensive illegal trade destined for the customs territory of the requesting Party;

- (c) particular persons known to be or suspected of being engaged in the commission of an offence in the customs territory of the requesting Party; and
 - (d) particular places where stocks of goods have been built up, giving reason to assume that they are to be used for illegal importation into the customs territory of the requesting Party.
3. The Customs Authorities of the Parties shall, in accordance with the domestic law of the requested Party, furnish each other any necessary information likely to be of use to the requesting Customs Authority, regarding acts related to offences that have been committed or are expected to be committed within the customs territory of the other Party. In cases which could involve narcotic drugs and psychotropic substances, or which could cause substantial damage to the economy, public health, security or any other vital interest of the other Party, such information shall be supplied, whenever possible, without being requested.

Article 4: Professional and Technical Cooperation and Assistance

1. The Customs Authorities of the Parties, on their own initiative or upon request, shall provide each other with information regarding:
- (a) enforcement actions that might be useful in preventing offences and, in particular, special means of combating offences;
 - (b) new methods used in committing offences;
 - (c) observations and findings resulting from the successful application of new enforcement aids and techniques;
 - (d) techniques and improved methods of processing passengers and cargo; and
 - (e) information on their respective customs laws.
2. The Parties, through their respective Customs Authorities shall seek to cooperate in, *inter-alia*:
- (a) initiating, developing, or improving specific training programs for their personnel;
 - (b) establishing and maintaining channels of communication between them to facilitate the secure and rapid exchange of information;
 - (c) facilitating effective coordination between their Customs Authorities including the exchange of personnel, experts, and the posting of liaison officers;
 - (d) the consideration and testing of new equipment and procedures;

- (e) the simplification and harmonization of their respective customs procedures;
and
- (f) any other general administrative matters that may, from time to time, require their joint action.

Article 5: Delivery and Notification of Documents

1. Upon request, the requested Customs Authority shall, in accordance with the domestic law of the requested Party, take all necessary measures to deliver all documents and to notify all decisions falling within the scope of this Annex to an addressee residing or established in its territory.
2. The requested Customs Authority shall, to the extent possible, return a proof of delivery or notification in the manner specified in the request. If this is not possible or if the request cannot be conducted in the manner specified, the requesting Customs Authority shall be so informed and shall be advised of the reasons thereof.

Article 6: Communication of Requests

1. Requests pursuant to this Annex shall be made in writing. Documents that may be of help in the execution of such requests shall, when available, accompany them. When required, because of the urgency of the situation, oral requests may also be accepted, but they shall be promptly confirmed in writing.
2. Requests pursuant to paragraph 1 shall include the following information:
 - (a) the authority making the request;
 - (b) the nature of the proceedings;
 - (c) the assistance sought, the object of and the reason for the request;
 - (d) the names and addresses of the parties involved in the request, if known;
 - (e) a brief description of the matter under consideration and the legal elements involved; and
 - (f) the connection between the assistance sought and the matter to which it relates.
3. All requests shall be submitted in the English language.

4. If a request does not meet the formal requirements as per paragraph 2 , its correction or completion may be requested. This need not delay the taking of precautionary measures that must be taken immediately.
5. Assistance shall be carried out by direct communication between the respective Customs Authorities.

Article 7: Execution of Requests

1. The requested Customs Authority shall take all reasonable measures to execute a request within a reasonable period of time and, if necessary, shall initiate any measure necessary for the carrying out thereof.
2. If the requested Customs Authority does not have the information requested, it shall take any necessary measures to obtain such information. If necessary, the requested Customs Authority may be assisted by another competent authority of the requested Party in providing the assistance. However, answers to requests shall be conveyed solely by the requested Customs Authority.
3. In cases where the requested Customs Authority is not the appropriate authority to comply with a request, it shall either promptly transmit the request to the appropriate authority, which shall act upon the request according to its powers under the domestic law of the requested Party or advise the requesting Customs Authority of the appropriate procedure to be followed regarding such a request.
4. Subject to each Party's domestic law and the limits of its competence and authority, the requested Customs Authority shall, upon the request of the requesting Customs Authority, conduct any necessary investigation, including the questioning of experts and witnesses or persons suspected of having committed an offence, and undertake verifications, inspections and fact-finding inquiries in connection with the matters referred to in this Annex. The results of such investigations, verifications, inspections, and fact-finding inquiries shall be communicated as soon as possible to the requesting Customs Authority. For the avoidance of doubt, in cases where the requested Customs Authority is not the appropriate authority to comply with a request, paragraph 3 shall apply.
5. (a) Upon request, and under any terms and conditions it may set, the requested Customs Authority may allow officials of the requesting Customs Authority to be present in the territory of the requested Party, when its officials are investigating offences which are of concern to the latter, including allowing their presence at investigations.

(b) The presence of officials of the requesting Customs Authority in the territory of the requested Party shall be solely in an advisory capacity. Nothing in sub-paragraph (a) above shall be construed to allow them to exercise any legal or investigative power granted to customs officials of the requested Customs Authority under the domestic law of the requested Party

6. When officials of the requesting Customs Authority are present in the territory of the requested Party pursuant to this Annex, they must be able, at all times, to furnish proof of their identity and shall be responsible for any offences they might commit.
7. Officials of the requesting Customs Authority authorized to investigate offences against customs laws may ask that officials of the requested Customs Authority examine any relevant information, including books, registers and other documents or data media, and supply copies thereof or provide any other information relating to the offence.
8. The requesting Customs Authority shall, if it so requests, be advised of the time and place of the action to be taken in response to a request so that such action may be coordinated.

Article 8: Controlled Delivery

1. The Customs Authorities shall take the necessary measures, within their capacity and in accordance with the domestic law of the Parties, to allow for the appropriate use of controlled delivery at the international level to identify persons involved in the illicit trafficking of narcotic drugs and psychotropic substances or other goods, as the case may be, and taking legal action against them.
2. Decisions to use controlled delivery shall be made on a case-by-case basis and, where necessary, in accordance with any arrangements or agreements which may have been reached concerning a particular case. The Customs Authorities may, if necessary, and provided it is in conformity with the domestic law of the Parties, consider financial arrangements and understandings reached.
3. Illicit consignments, whose controlled delivery is agreed to may, by mutual consent of the competent authorities, be intercepted and allowed to continue with the narcotic drugs and psychotropic substances, or other goods intact or removed or replaced in whole or in part.
4. After the entry into force of the Agreement, the Customs Authorities shall agree upon any necessary procedures for the implementation of this Article.

Article 9: Exemptions from Assistance

1. In cases where the requested Party is of the opinion that the provision of assistance under this Annex would infringe upon its sovereignty, security, public policy, or any other substantive national interest, or involve the violation of a commercial, industrial, or professional secret, assistance may be refused or compliance may be conditioned upon the satisfaction of certain conditions or requirements.
2. If a request is refused or cannot be complied with in full or in part, the requested Customs Authority shall promptly notify of the fact and inform of the reasons thereof.
3. Assistance may be postponed by the requested authority on the ground that it will interfere with an ongoing 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.
4. Where the requesting authority seeks assistance that 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.

Article 10: Confidentiality

1. Information and other communications received pursuant to this Annex may be used only for the purposes specified therein, except in cases where the requested Customs Authority has authorized in writing their use for other purposes.
2. Any information or other communications received by the Customs Authority of either Party, pursuant to this Annex, shall be treated as confidential and shall not be communicated to any person or entity outside the requesting Customs Authority that received them, except as provided for in this Annex.
3. Information and other communications received pursuant to this Annex may be used in investigations and judicial and administrative proceedings in accordance with the relevant applicable domestic law, of the Party who received the information.
4. The provisions of paragraph 2 shall not apply to cases concerning offences relating to narcotic drugs and psychotropic substances. Such information may be communicated to other authorities in the requesting Party directly involved in combating illicit drug traffic. In addition, information on offences relating to the public health, public security or environmental protection of the Party whose Customs Authority received the information may be conveyed to the competent governmental authorities which deal with such matters.

5. Such information shall be treated as confidential and shall enjoy any and all protection afforded to similar information under the laws of confidentiality and secrecy as provided for in the domestic law of the Party whose Customs Authority received them.
6. The requesting Customs Authority shall not use evidence or information obtained under this Annex for purposes other than those stated in the request without the prior written consent of the requested Customs Authority.

Article 11: Costs

1. The Customs Authorities of the Parties shall normally waive all claims for the reimbursement of costs incurred in the execution of this Annex, apart from expenses for witnesses, fees of experts and the cost of interpreters other than government employees.
2. If expenses of a substantial and extraordinary nature are, or will, be required to execute a request, the Customs Authorities of the Parties shall consult to determine the terms and conditions under which the request will be carried out, as well as how the costs shall be borne.

Article 12: Implementation

1. The Customs Authorities shall be responsible for the implementation of this Annex. They shall, *inter alia*:
 - (a) communicate directly for the purpose of dealing with matters arising out of this Annex;
 - (b) after consultation, if necessary, issue any administrative directives, arrangements or agreed upon procedures for the implementation of this Annex;
 - (c) endeavour by mutual accord to resolve any problems or doubts arising from the application of this Annex or any other customs matter which may arise between them;
 - (d) agree to meet, if one of them so requests, to discuss the application of this Annex or to discuss any other customs matters arising out of the relationship between them; and
 - (e) arrange for their investigation departments to be in direct contact with one another.

2. This Annex shall not prejudice the application of any bilateral agreements on mutual assistance in customs matters concluded or that may be concluded between the Parties, nor shall it prejudice the granting of assistance under any other international agreements concerning assistance in customs matters to which both Parties are parties.