



**COUNCIL OF
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NOTE

from: General Secretariat

to: Working Party on Customs Union (Customs Legislation and Policy)

Subject: Implementation of the EC-China agreement on customs cooperation and mutual administrative assistance - handling of mutual assistance requests

Delegations will find attached a revised note containing guidelines for handling requests under MAA provisions, forwarded by the Commission services.

**China-EC Agreement
on Cooperation and Mutual Administrative Assistance in Customs Matters**

I. Guidelines for handling requests under Mutual Administrative Assistance provisions (Title IV and relevant general provisions in Title I)

The following non-binding arrangements are intended to identify best practice to assist the administrative authorities involved, and in no way to replace the legal text of the Agreement.

A. MAKING REQUESTS (OUTWARD REQUESTS – ACTION BY REQUESTING AUTHORITY)

1. **Scope of Assistance:** Assistance covers all matters relating to the application of the customs legislation of either Party (in the case of assistance on request, potential breaches of the legislation of the Requesting Party).

N.B. If at the outset the request is intended for the primary purpose of legal or judicial proceedings, and not in the context of an administrative enquiry, the Requesting Authority shall refrain from use of the CCMAA. (cf. Article 10(2))

Similarly, if the request relates exclusively to the application of the administrative cooperation provisions of the GSP origin rules (which impose certain obligations on beneficiary countries), it shall not be sent under the mutual assistance provisions of the customs agreement.

2. **Nature of irregularity:** The request must describe the nature of the fraud or irregularity (breach of legislation), including relevant legal provisions (Requesting Party's legislation concerned by the fraud or irregularity), and the reason for the request for assistance.

3. **Information for prioritisation:** For purposes of prioritisation by the Receiving Authority in terms of the urgency and/or importance of the request, the description of the suspected or established irregularity should include an indication of the potential financial and/or other impact involved.

4. **Object of the request:** The specific information/action requested from the Receiving Authority must be described.

5. **Enquiries carried out:** *(Except when the request is for a meeting to present such information in the context of a request to participate in enquiries in the territory of the Requested Party)* A summary of the facts involved and enquiries already carried out by the Requesting Party in the context of the fraud/irregularity concerned must be included. In the case of requests addressed to China, these should include the result of attempts made to identify the Chinese name of the person(s) mentioned in the request for assistance, i.e. the Chinese characters corresponding to the name(s) of persons/companies given in transliterated form in any documents provided with the request. *Indications concerning any persons who are the subject of the enquiry should be "as exact and comprehensive as possible".*

6. **Annexes:** The documents necessary to enable the Requested Party to respond to the request must be attached, organised in a way that facilitates action by the authority concerned: for requests addressed to China, this means that only requests relating to the same company in the same location should be grouped together; requests relating to different companies in different locations should each be the subject of a separate letter.

7. **Personal data protection:** where the information transmitted by the Requesting Authority includes personal data, the documents attached to the request may include a specific document relating to personal data protection issues (e.g. undertaking with respect to the handling of such data by the Requested Authority).

8. **Reciprocity:** 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.

9. **Signatory/Addressee:** Requests must be made by and to the designated competent authorities of the respective Parties.

10. **Languages:** Requests addressed to China to be established in English and include as much information as possible in the original Chinese.

B. RECEIVING REQUESTS (INWARD REQUESTS – ACTION BY REQUESTED AUTHORITIES)

1. **Preliminary scrutiny:** Upon receipt of a request, the relevant contact point shall examine it with a view to determining whether or not it meets the conditions laid down in the Agreement and in these guidelines.

2. **Completion:** If the request is incomplete or if the information received is insufficient to enable the Receiving Authority to take the action requested, it shall request its completion

3. **Reciprocity:** The Requested Authority shall determine how to respond to a request for assistance which the Requesting Authority advises it could not itself have provided in the same circumstances (cf. §A.8 above).

4. **Acknowledgement:** All requests received shall be acknowledged, indicating the action being taken. If the request cannot be complied with, whether because it falls outside the scope of the Agreement or for other reasons, the Requested authority shall inform the applicant authority of that fact within a reasonable period of time (if at all possible, within 1 month from the date of receipt of the request) with a statement of the reasons and any other information which may be of assistance.

5. **Transmission to another authority:** The Requested Authority shall determine which aspects of the request it can handle on its own and, where necessary, forward it to any other competent service or authority for action. [In the Community, this may include the customs authority of another Member State.]

6. Coordination between authorities of the Requested Party: If the competent service for taking the action requested in the country concerned is not the receiving authority, the latter shall coordinate with the service concerned to determine how long it may require to take the action requested, and inform the Requesting Authority as appropriate.

7. Enquiries by Requested Authority: In addition to carrying out enquiries in response to a specific request (or arranging for these to be carried out), if the information available in the Requested Authority's own records or those of other authorities does not answer the questions raised in the request, the Requested Authority shall in any case carry out the necessary checks, or arrange for these to be carried out by another authority with the appropriate competences. Such checks shall include whatever actions are necessary to establish the facts at stake in the case in question e.g. visit to the premises of an economic operator to verify production facilities or capacities, examine the company's records and/or to clarify facts with representatives of the company (cf. Art. 14: the requested authority has to comply with a request for assistance "*by supplying information already possessed, by carrying out appropriate enquiries or by arranging for them to be carried out.*")

8. Contents of response: Unless one of the conditions for refusal applies, or in the case of an acknowledgement or other response indicating that a complete reply is to follow, the response to a request for assistance shall contain all the information needed to answer the questions raised, including that obtained by the Requested Authority by means of operational enquiries or other activities undertaken in order to clarify the facts with respect to the goods/ transactions/ companies/ persons etc. which were the subject of the request.

II. Checklist of possible contents of different requests/responses.

A. REQUEST FOR ASSISTANCE

1. I am writing to request assistance under the provisions of the Agreement between the European Community and the Government of the People's Republic of China on cooperation and mutual administrative assistance in customs matters (*cf. Article 11, Assistance on request*)

2. The following breach of customs legislation is suspected with respect to (e.g.) importations into our territory (*cf. Article 13(1) (c) the object of and reason for the request*)

3. This would be an irregularity under (e.g. Article ... of the Community's Customs Code, Council Regulation 2913/92) (*cf. Article 13(1) (d), the laws, regulations or other legally binding instruments involved*).

4. According to our information, the goods concerned by this enquiry were exported from (place) on (date) by (exporter) [transport details], as may be seen from the enclosed documents.

5. We would be grateful if you would kindly provide the following assistance (*cf. Article 13 (1) b the action requested*):

(a) agree to [a meeting in order to discuss possible arrangements for] a visit to your country/territory by duly authorised officials of the Requesting Party, to participate in enquiries into the following specific case.... (*cf. Article 14(3)*)

(b) inform us whether the enclosed official document(s) produced in support of the import declaration in this country is/are authentic (N.B. not preferential origin¹) (*cf. Article 11(2)(a)*)

(c) inform us whether the goods that are the subject of the enclosed documents (e.g. export declaration, bill of lading, invoice), exported from this country/territory, have been legally imported into your territory, and if possible, the customs procedure applied to the goods upon importation, e.g. release for consumption, inward processing, temporary import, warehousing, re-export.. (*cf. Article 11(2)b*)

(d) inform us whether the goods that are the subject of the enclosed documents (e.g. import declaration, bill of lading, invoice), imported into this country/territory, have been legally exported from your territory and if possible, what customs procedure was applied to the goods in your country e.g. export, outward processing..(*cf. Article 11(2)(c)*)

(e) provide the following information on the basis of your records and./or own enquiries e.g. visit to trader's premises including where necessary after obtaining the assistance of other authorities with the necessary competences (*cf. Art. 14(1)*) :

- does the trader exist at this address?

- are the trader's business activities known to be in the area of

- are the production facilities available to this trader and the recorded production/ export/import of (type of goods) consistent with the information provided to the Requesting Authority?

- are there any indications of the intended ultimate destination of the goods in question, which were exported to ...?

- is the enclosed invoice (copy) the same one as may have been presented in connection with the exportation of these goods from your territory and/or does the price indicated in that invoice correspond to that declared to your authorities at the time of export?

- (...)

(cf. Article 11 (2) – activities relating to incorrect customs declarations and certificates of origin, invoices or other documents known to be, or suspected of being, incorrect or falsified)

(f) take the necessary steps to ensure special surveillance of the following persons, places, goods, means of transport: ... (*cf Article 11(3)*)

¹ Requests relating to the authenticity – and regularity, as regards the status of goods imported under cover of these documents - of individual GSP Forms A (issued by China) and/or EUR.1 movement certificates/invoice declarations (issued by/made out in EC MS in the context of cumulation), fall within the scope of the administrative cooperation provisions of the GSP origin rules, in Article 93 et seq. of R. 2454/93 (for which the competent authority in China is AQSIQ and not, as with the MAA provisions, GACC; whereas in the EC, customs administrations are responsible for both).

6. I enclose such information as is available to my service regarding the trader concerned (Annex ...) (e.g. copy of document indicating Chinese version of name, if available) (*cf. Article 13(1)(e), indications as exact and comprehensive as possible on the persons who are the target of the investigations*)

7. The enquiries already carried out by my services indicate the following/ A summary of the enquiries already carried out by my services is attached at Annex ... (*cf. Article 13 (1) (f), a summary of the relevant facts and of the enquiries already carried out*).

8. (If applicable, when the information provided under §§ 6, 7 etc. includes personal data: mention any specific requirements with respect to the protection of personal data by the Requested Authority (*cf Article 17(2)*))

9. (If applicable) I must draw your attention to the fact that this request concerns assistance which this authority would be unable to provide if so requested. *cf Article 16(3)*

10. Signed (person/service designated as competent for requesting assistance under the Agreement on behalf of the country/organisation concerned) (*cf. Article 13(1) a) – formal endorsement of the applicant authority*).

11. Enclosures: documents referred to under §§ 4, 5, 6 etc.

B. RESPONSE TO REQUEST FOR ASSISTANCE

1. I am writing in response to your request for assistance dated (reference.....)

ACKNOWLEDGEMENT OF RECEIPT

2. Your request is being processed by the relevant service and we will inform you of the outcome in due course.

REQUEST FOR COMPLETION

3. The following information which is necessary to enable this service to take the action requested is missing:

- information which is sufficiently precise to enable the export declaration/exporter to be identified;
- description of enquiries carried out regarding this case
- indication of the financial/other impact of the potential irregularity
- (...)

4. In order to enable this service to comply with your request, please provide the necessary details.

NEGATIVE RESPONSE

5. Unfortunately the action requested:

- does not seem to us to fall within the scope of the Agreement
- falls under one of the exceptions listed in Article 16 of the Agreement (sovereignty, public order, security, industrial/commercial/professional secret).
- would not have been provided by your authority in the event of a request from our side.

6. Assistance is therefore refused under the terms of the Agreement.

POSITIVE RESPONSE

7. The information requested/report on the action taken in response to your request is enclosed.
