

**AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE SWISS CONFEDERATION
REGARDING MUTUAL ASSISTANCE
BETWEEN THEIR CUSTOMS ADMINISTRATIONS**

The Government of the United States of America and the Government of the Swiss Confederation, hereinafter referred to as "the Contracting Parties";

Considering that offenses against customs laws are prejudicial to the economic, fiscal and commercial interests of their respective countries;

Considering the importance of ensuring the accurate assessment of customs duties and other taxes;

Recognizing the need for international cooperation in matters related to the administration and enforcement of the customs laws of their respective countries;

Affirming their intent to implement this Agreement in good faith;

Convinced that action against customs offenses can be made more effective by cooperation between their Customs Administrations;

Have agreed as follows:

ARTICLE 1

DEFINITIONS

For the purposes of the present Agreement:

1. the term "Customs Administration" means in the United States of America, United States Customs and Border Protection and United States Immigration and Customs Enforcement, which are both components of the Department of Homeland Security, and in the Swiss Confederation, the Federal Customs Administration, Federal Department of Finance;
2. the term "customs laws" means the laws and regulations enforced by the Customs Administrations concerning the importation, exportation, and transit or circulation of goods as they relate to customs duties, charges, and other taxes or to prohibitions, restrictions, and other similar controls relating to the movement of controlled items across national boundaries;
3. the term "information" means data in any form, documents, records, reports, or certified copies thereof relating or not relating to an identified or identifiable individual;
4. the term "customs offense" means any violation or attempted violation of the customs laws;
5. the term "person" means any natural or legal person;
6. the term "requesting Administration" means the Customs Administration that requests assistance;

7. the term "requested Administration" means the Customs Administration from which assistance is requested;
8. the term "territory" means for the United States of America: the customs territory of the United States; for Switzerland: the territory of the Swiss Confederation.

ARTICLE 2

SCOPE OF AGREEMENT

1. The Contracting Parties, through their Customs Administrations, shall assist each other, in accordance with the provisions of this Agreement, in preventing, investigating, and detecting any customs offense.
2. Each Customs Administration shall execute requests for assistance made pursuant to this Agreement in accordance with and subject to the limitations of its domestic law and regulations, and within the limits of its competence and available resources.
3. This Agreement is applicable solely between the Contracting Parties; the provisions of this Agreement shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence or to impede the execution of a request.
4. This Agreement is intended to enhance and supplement mutual assistance practices in effect between the Contracting Parties. No provision in this Agreement may be interpreted in a manner that would restrict agreements and practices relating to mutual assistance and cooperation in effect between the Contracting Parties.

ARTICLE 3

GENERAL ASSISTANCE

1. Upon request, a Customs Administration shall provide assistance in the form of information in order to ensure the enforcement of the customs laws and the accurate assessment of customs duties and other taxes by the Customs Administrations, including information relating to transportation and shipment of goods showing value, destination, and disposition of those goods and whether goods exported from the territory of one Contracting Party have been lawfully imported into the territory of the other Contracting Party. A Customs Administration may also provide such assistance on its own initiative. If requested, the information shall contain the customs procedure used for clearing the goods.
2. Upon request or upon its own initiative, a Customs Administration may provide assistance in the form of information, including but not limited to information concerning:
 - a. methods and techniques for customs processing of passengers and cargo;
 - b. the successful application of enforcement aids and techniques;
 - c. enforcement actions that might be useful to suppress customs offenses and, in particular, special means of combating customs offenses; and
 - d. new methods used in committing customs offenses.
3. The Customs Administrations shall cooperate in:
 - a. establishing and maintaining channels of communication to facilitate the secure and rapid exchange of information;
 - b. facilitating effective coordination;
 - c. the consideration and testing of new equipment or procedures; and
 - d. any other general administrative matters that may from time to time require their joint action.

ARTICLE 4

SPECIFIC ASSISTANCE

1. Upon request, a Customs Administration shall exercise surveillance of:
 - a. persons known to the requesting Administration to have committed a customs offense or suspected of doing so, particularly those moving into and out of the territory of the Contracting Party of the requesting Administration;
 - b. goods either in transport or in storage identified by the requesting Administration as giving rise to suspected illicit traffic towards or through the territory of the Contracting Party of the requesting Administration; and
 - c. means of transport suspected of being used in customs offenses within the territory of the Contracting Party of the requesting Administration.
2. Upon request, the Customs Administrations shall furnish to each other information regarding activities that may result in customs offenses within the territory of the other Contracting Party. In situations that could involve substantial damage to the economy, public health, public security, or similar vital interest of the other Contracting Party, the Customs Administrations, wherever possible, shall supply such information without being requested to do so. Nothing in this Agreement otherwise precludes the Customs Administrations from providing on their own initiative information regarding activities that may result in customs offenses within the territory of the other Contracting Party.
3. The requested Administration may conduct, to the fullest extent possible, inspections, verifications, fact-finding inquiries, or other investigative steps, including the questioning of experts, witnesses, and persons suspected of having committed a customs offense, as are necessary to execute a request. For greater certainty, the requested Administration reserves the right to determine whether to initiate such activities in response to a request.

ARTICLE 5

PRESENCE OF OFFICIALS

Officials of the requesting Administration may on a case-by-case basis as authorized by the requested Administration and subject to any conditions laid down by the latter:

- a. be present at inquiries, such as inspections, verifications, fact-finding inquiries, or other investigative steps, including the questioning of experts, witnesses, and persons suspected of having committed a customs offense, carried out by the requested Administration;
- b. examine, in the offices of the requested Administration, information relevant to a customs offense and make copies thereof or extract information therefrom.

ARTICLE 6

FILES AND DOCUMENTS

1. A requesting Administration may request originals of files, documents, and other materials only where copies would be insufficient. Upon request, the requested Administration shall provide properly certified copies of such files, documents, and other materials.
2. Originals of files, documents, and other materials that have been transmitted shall be returned at the earliest opportunity; any rights of the requested Administration or of third parties relating thereto shall remain unaffected.
3. Unless the requesting Administration specifically requests originals or copies, the requested Administration may transmit computer-based information in any form. The requested Administration shall supply all information relevant for interpreting or utilizing such computer-based information at the same time.

ARTICLE 7

WITNESSES AND EXPERTS

1. The requested Administration may authorize its officials to appear as witnesses or experts in judicial or administrative proceedings regarding matters covered by this Agreement in the territory of the other Contracting Party and to produce files, documents, and other materials or certified copies thereof.
2. Where a customs official requested to appear as a witness or expert is entitled to diplomatic or consular immunity, the requested Contracting Party may agree to a waiver of immunity under such conditions as it determines to be appropriate.
3. The request for an appearance must indicate specifically on what matters and by virtue of what title or qualification the official will be questioned. The requested Administration may ask for confirmation from the requesting Administration that the customs official is not subject to any investigation or judicial or administrative proceeding in the territory of the requesting Contracting Party.

ARTICLE 8

FORM AND SUBSTANCE OF REQUESTS

1. Requests pursuant to this Agreement shall be made in writing directly between the respective Customs Administrations. Information deemed useful for the execution of requests shall accompany the request. In urgent situations, oral requests may be made and accepted, but shall be promptly confirmed in writing.
2. Requests shall include:
 - a. the name of the Administration making the request;
 - b. the nature of the matter or proceeding;
 - c. a brief statement of the facts and customs offenses involved;
 - d. the reason for the request;
 - e. the names and addresses of the parties concerned in the matter, or proceeding, if known; and
 - f. a description of the assistance requested.
3. Requests shall be submitted in an official language of the requested Administration or in English. The answer may be in an official language of the requested Administration.
4. Where a request fails to meet the requirements set forth in this Article, the requesting Administration may be asked to revise or supplement it.

ARTICLE 9

EXECUTION OF REQUESTS

1. The requested Administration shall take all reasonable measures to execute a request.
2. The execution of the requests for assistance shall be carried out in accordance with the domestic laws and regulations of the requested Contracting Party.
3. The requesting Administration shall, if it so requests, be advised of the time and place of the action to be taken in response to the request.
4. If the requested Administration is not the appropriate agency to execute a request in accordance with this Agreement, it shall promptly transmit the request to the appropriate agency and so advise the requesting Administration.
5. The requested Administration shall make every effort to comply with a request that a certain procedure be followed to the extent that such procedure is not prohibited by the domestic laws and regulations of the requested Contracting Party.

ARTICLE 10

CONFIDENTIALITY AND USE OF INFORMATION

1. Information obtained shall be used solely for the purposes specified in this Agreement. Any information communicated in whatever form pursuant to this Agreement shall be of a confidential nature, unless otherwise stated. The requesting Administration shall provide protection from disclosure, to the fullest extent possible, equivalent to the protection afforded by the requested Administration to similar information.
2. Paragraph 1 shall not impede the use of information in any judicial or administrative proceedings instituted for customs offenses. The Contracting 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 Agreement. The requested Administration shall be notified of any such intended use without delay.
3. Subject to Paragraph 1 of this Article, where one of the Contracting Parties requests the use of such information for other purposes or by other authorities or the disclosure of such information, it shall request the prior written consent of the requested Administration. Such use shall then be subject to any restrictions laid down by that Administration. Because safety and privacy of persons named or identified by the information is a shared concern, the requesting Administration shall ensure that items of information that are to be disclosed shall be limited to what supports the specific purpose of the disclosure concerned, and that personal data can only be used, treated, or stored for the purpose for which it was requested.
4. The requesting Contracting Party may disclose, in a criminal proceeding, information material to a defendant's innocence or the credibility of witnesses testifying against a defendant, as required by the Constitution and domestic law of the requesting Contracting Party. The requesting Contracting Party shall notify the requested Contracting Party in

advance of the disclosure and provide an explanation regarding the legal requirements for disclosure.

5. This Article shall not preclude the disclosure to other government agencies of information exchanged pursuant to this Agreement in connection with terrorism or other national security matters where there is an obligation to disclose such information under the domestic laws of the requesting Contracting Party.
6. Each respective Customs Administration shall ensure the secure transmission, safekeeping, storage, handling and internal dissemination of confidential data, files and documents, in order to protect from unauthorized access.
7. The requested Administration transmits only information that it can assume to be correct. If information supplied is found to be incorrect or should not have been exchanged, notification should be made immediately. The Customs Administration that has received such information shall amend or delete it.
8. The requesting Administration shall destroy the transmitted information as soon as practicable after it is no longer needed or required to be maintained.

ARTICLE 11

EXCEPTIONS TO THE OBLIGATION TO PROVIDE ASSISTANCE

1. The requested Administration may refuse to provide assistance, may withhold assistance, or may grant assistance subject to the satisfaction of certain conditions, where providing assistance may:
 - a. prejudice the sovereignty of the Contracting Party; or
 - b. prejudice public policy, the security or other substantive national interests of the Contracting Party; or
 - c. be inconsistent with the domestic laws and regulations of the Contracting Party.
2. The requested Administration may also refuse to provide assistance where the requested assistance is outside the scope of this Agreement, as defined in Article 2.
3. The requested Administration may postpone assistance on the ground that it will interfere with an ongoing investigation, prosecution, or proceeding. In such instance, the requested Administration shall 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. If the requesting Administration would be unable to comply if a similar request were made by the requested Administration, it shall draw attention to that fact in its request. Compliance with such a request shall be at the discretion of the requested Administration.
5. If assistance is refused, the decision and the reasons for the refusal must be provided to the requesting Administration without delay.

ARTICLE 12

ASSISTANCE EXPENSES

1. The requested Party shall normally pay all costs relating to the execution of the request, with the exception of expenses for experts and witnesses and the costs of translation, interpretation and transcription, which shall be paid for by the requesting Party.
2. If during the execution of a request it becomes apparent that completion of the execution of the request will entail expenses of an extraordinary nature, the Customs Administrations shall consult to determine the terms and conditions under which execution may continue.

ARTICLE 13

ASSET SHARING

The Contracting Parties may, consistent with this Agreement and with other agreements between them pertaining to the sharing and disposition of forfeited assets, share seized and forfeited assets if the assistance provided under this Agreement substantially contributed to the seizure and forfeiture, of those assets, where in accordance with domestic laws and regulations of the Contracting party executing the seizure and forfeiture. The determination as to whether and how to share those assets shall be at the discretion of the Contracting Party seizing and forfeiting the assets.

ARTICLE 14

IMPLEMENTATION OF THE AGREEMENT

1. The Customs Administrations shall:
 - a. communicate directly for the purpose of dealing with matters arising out of this Agreement;
 - b. issue any administrative directives necessary for the implementation of this Agreement; and
 - c. endeavor by mutual accord to resolve problems or questions arising from the interpretation or application of the Agreement.
2. Conflicts for which no solutions can be found will be settled by diplomatic means.
3. The Customs Administrations agree to meet periodically as necessary at the request of either Contracting Party in order to review the implementation of this Agreement.

ARTICLE 15

TERRITORIAL APPLICATION

This Agreement shall be applicable to the territories of both Contracting Parties.

ARTICLE 16

ENTRY INTO FORCE AND TERMINATION

1. The Contracting Parties shall notify each other through diplomatic channels of the completion of the internal procedures necessary for the entry into force of this Agreement. It shall enter into force on the first day of the second month following the date of the latter of these notifications.
2. This Agreement may be terminated by either Contracting Party at any time, provided that at least six months' prior written notice of termination has been given through diplomatic channels. Ongoing proceedings shall nonetheless be completed in accordance with the provisions of this Agreement.
3. This Agreement may be amended at any time by mutual written agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE, in duplicate, at _____ on _____ ,
in the English and German languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE
GOVERNMENT OF THE SWISS
CONFEDERATION: