

No. 17272

**UNITED STATES OF AMERICA
and
AUSTRIA**

Agreement regarding mutual assistance between their customs services. Signed at Vienna on 15 September 1976

Authentic texts: English and German.

Registered by the United States of America on 24 November 1978.

**ÉTATS-UNIS D'AMÉRIQUE
et
AUTRICHE**

Accord relatif à l'assistance mutuelle entre leurs services douaniers. Signé à Vienne le 15 septembre 1976

Textes authentiques : anglais et allemand.

Enregistré par les États-Unis d'Amérique le 24 novembre 1978.

AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF AUSTRIA REGARDING MUTUAL ASSISTANCE BETWEEN THEIR CUSTOMS SERVICES

The United States of America and the Republic of Austria,

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

Considering the importance of assuring the accurate assessment of duties and other taxes collected on the importation or exportation of goods,

Convinced that action against offenses of the customs laws and efforts toward a more accurate assessment of customs duties can be made more effective by cooperation between their Customs Services,

Having regard to the Recommendation of the Customs Cooperation Council on Mutual Administrative Assistance of December 5, 1953,

Have agreed as follows:

Article 1. DEFINITIONS

For the purposes of the present Agreement,

1) "Customs laws" shall mean such laws and regulations enforced by the Customs Services concerning the importation, exportation and transit of goods, as relate to customs duties and other taxes, or to prohibitions, restrictions and controls respecting the movement of goods across national boundaries.

2) "Customs Services" shall mean, in the United States of America, the United States Customs Service, Department of the Treasury, and in the Republic of Austria, the Federal Ministry of Finance and its subordinate Customs Authorities.

3) "Offense" shall mean any violation of the customs laws as well as any such attempted violation.

Article 2. SCOPE OF ASSISTANCE

1) The Parties agree to assist each other through their Customs Services to prevent, investigate and repress any offense, in accordance with the provisions of the present Agreement.

2) Assistance, as provided in the present Agreement, shall also be extended upon request for the purpose of assessing customs duties and other taxes by the Customs Services.

3) Mutual assistance as provided in paragraphs 1 and 2 shall include all proceedings, whether judicial, administrative or investigative and shall also include, in the United States of America, proceedings on "liquidated damages" and, in the Republic of Austria claims, for compensation (*Ersatzforderungen*). Requests for assistance shall be made through the Customs Services in all proceedings, including judicial proceedings.

4) Any request for the arrest of persons shall be excluded from such assistance. The collection and forced collection of customs duties, other taxes, fines and other monies shall also be excluded from such assistance.

¹ Came into force on 3 July 1978, i.e., the ninetieth day following the date on which the Parties informed each other by an exchange of diplomatic notes of the fulfilment of the legal requirements, in accordance with article 14 (1).

5) All actions under the present Agreement by either Party will be performed in accordance with its laws.

Article 3. OBLIGATION TO OBSERVE SECRECY

1) Inquiries, information, documents and other communications received by either Party shall, upon request of the supplying Party, be treated as confidential. The reasons for such a request shall be stated.

2) Information, documents and other communications received in the course of mutual assistance may only be used for the purposes specified in the present Agreement, including use in judicial or administrative proceedings. Such information, documents and other communications may be used for other purposes only when the supplying Party has given its express consent.

Article 4. EXEMPTIONS FROM ASSISTANCE

1) In cases where the requested Party is of the opinion that compliance with a request would infringe upon its sovereignty, security, public policy (*ordre public*) or other substantive national interests, assistance can be refused or compliance may be made subject to the satisfaction of certain conditions.

2) In cases where a request is made which the requesting Party itself would be unable to provide if requested by the other Party, the requesting Party shall draw attention to this fact in its request. Compliance with such a request shall be within the discretion of the requested Party.

Article 5. FORM AND SUBSTANCE OF REQUESTS FOR ASSISTANCE

1) Requests pursuant to the present Agreement shall be made in writing. Documents necessary for the execution of such requests shall accompany the request.

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 object of and the reason for the request;
- d) The names and addresses of the parties concerned in the proceedings;
- e) A brief description of the matter under consideration and the legal elements involved.

Article 6. CHANNEL

1) Assistance shall be carried out in direct communication between the Customs Services.

2) In case the Customs Service of the requested Party is not the appropriate agency to comply with a request, it shall transmit the request to the appropriate agency.

Article 7. EXECUTION OF REQUESTS

1) The law of the requested Party shall be applicable in the execution of requests; the requested Customs Service shall be required to seek any official or judicial measure necessary to carry out the request.

2) To execute a request of the Customs Service of one Party, the Customs Service of the requested Party shall conduct any necessary investigation, including the questioning of persons suspected of having committed an offense, as well as of experts and witnesses.

3) The Customs Service of either Party shall, upon the request of the Customs Service of the other Party, undertake verifications, inspections and fact-finding inquiries in connection with the matters referred to in the present Agreement.

4) A request by a Party that a certain procedure be followed shall be complied with pursuant to the laws applicable according to paragraph 1.

5) A request by a Party that its representative be present when the action to be taken is carried out shall be complied with to the fullest extent possible.

6) The requesting Party shall, if it so requests, be advised of the time and place of the action to be taken in response to the request.

7) In the event that the request cannot be complied with, the requesting Party shall be promptly notified of that fact, with a statement of the reasons and of circumstances which might be of importance for the further pursuit of the matter.

Article 8. FILES, DOCUMENTS AND OTHER MATERIALS; EXPERTS AND WITNESSES

1) Original files, documents and other written materials shall be requested only in cases where copies would be insufficient.

2) Files, documents, original writings and other materials which have been transmitted shall be returned at the earliest opportunity; rights of the requested Party or of third parties relating thereto shall remain unaffected.

3) The Customs Service of one Party shall authorize its employees upon the request of the Customs Service of the other Party, to appear as experts or witnesses in judicial or administrative proceedings in the territory of the other Party and to produce such files, documents or other materials or authenticated copies thereof, as may be considered essential for the proceedings.

Article 9. COSTS

The Parties shall waive all claims for reimbursement of costs incurred in the execution of the present Agreement, with the exception of expenses for experts and witnesses.

Article 10. DELIVERY OF DOCUMENTS

The Customs Service of one Party shall, upon the request of the Customs Service of the other Party, deliver documents of the requesting Party. Such delivery shall be evidenced by a receipt of the addressee bearing the date of delivery or a certificate executed by the requested Party describing the manner and date of the delivery.

Article 11. SPECIAL INSTANCES OF ASSISTANCE

1) Upon request, the Customs Services shall inform each other whether goods exported from the territory of one Party have been lawfully imported into the territory of the other Party. The information shall, upon request, contain the customs procedure used for clearing the goods.

2) The Customs Service of one Party, upon the request of the Customs Service of the other Party, shall, to the extent of its ability, exercise special surveillance of:

- a) Means of transport suspected of being used in offenses within the territory of the requesting Party;
- b) Goods designated by the requesting Party as the object of an extensive clandestine trade of which it is the country of destination;
- c) Particular persons known or suspected by the requesting Party of being engaged in an offense.

3) The Customs Services of the Parties shall, upon request, furnish each other all available information regarding activities which may result in offenses within the territory of the other Party. In serious cases which could involve substantial damage to the economy, public health, public security, or any other vital interest of the other Party, such information shall be supplied without being requested.

4) For the purpose of prevention, investigation and repression of offenses involving narcotics, the Customs Services of the Parties will communicate to each other as far as possible, without the necessity of a request, all information regarding possible violations of the customs laws of the other Party.

5) The Customs Services shall furnish each other all information which may be useful for enforcement actions against offenses, in particular information relating to new methods used in committing such offenses. They shall, furthermore, furnish copies of reports or excerpts from reports on the subject of special means for combatting offenses.

Article 12. IMPLEMENTATION OF THE PRESENT AGREEMENT

The United States Customs Service, Department of the Treasury of the United States of America, and the Federal Ministry of Finance of the Republic of Austria may communicate directly for the purpose of dealing with matters arising out of the present Agreement which are not questions of foreign policy or international law, and after consultation shall issue any administrative regulations for the implementation of the present Agreement, and shall endeavour by mutual accord to resolve problems or doubts arising from the interpretation or application of the present Agreement.

Article 13. TERRITORIAL APPLICABILITY

The present Agreement shall be applicable to the customs territory of the United States of America and to the customs territory of the Republic of Austria. It shall also be applicable to the Virgin Islands of the United States of America.

Article 14. ENTRY INTO FORCE AND TERMINATION

1) The present Agreement shall enter into force on the ninetieth day following the date on which the Parties shall have informed each other in an exchange of diplomatic notes that all the national legal requirements for such entry into force have been fulfilled.

2) The present Agreement may be terminated through diplomatic channels and shall cease to be in effect six months after written notice has been given.