

04-398

AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF ROMANIA
REGARDING MUTUAL ASSISTANCE
BETWEEN THEIR CUSTOMS ADMINISTRATIONS

The Government of the United States of America and the Government of Romania, hereinafter referred to as "the Parties",

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 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;

Having regard to the international conventions containing prohibitions, restrictions and special measures of control in respect of specific goods;

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

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

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, the United States Customs Service, Department of the Treasury, and in Romania, the General Customs Directorate, Ministry 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 respecting the movement of controlled items across national boundaries;
3. the term "information" means data in any form, documents, records, and reports or certified or authenticated copies thereof;
4. the term "offense" means any violation of customs laws or any attempt to violate said laws, as set forth in the domestic laws of each of the Parties;
5. the term "person" means any natural or legal person;
6. the term "property" means assets of every kind, whether movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or an interest in such assets;
7. the term "provisional measures" includes:
 - a. "seizure" or "freezing," which means:
 - (i) temporarily prohibiting the conversion, disposition, movement, or transfer of property, or
 - (ii) temporarily assuming custody or control of property on the basis of an order issued by a court or competent authority, or other means; and
 - b. "forfeiture" means the deprivation of property by order of a court or competent authority and includes confiscation where applicable;
8. the term "requesting administration" means the Customs Administration that requests assistance;
9. the term "requested administration" means the Customs Administration from which assistance is requested.

ARTICLE 2

SCOPE OF AGREEMENT

1. The Parties, through their Customs Administrations, shall assist each other, in accordance with the provisions of this Agreement, in preventing, investigating, and repressing any offense.
2. Each Customs Administration shall execute requests for assistance made pursuant to this Agreement in accordance with its domestic law.
3. This Agreement is intended solely for mutual legal assistance between the 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.

ARTICLE 3

SCOPE OF GENERAL ASSISTANCE

1. Upon request, a Customs Administration shall provide assistance in the form of information necessary to ensure the enforcement of the customs laws and the accurate assessment of customs duties and other taxes by the Customs Administrations.
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 of processing passengers and cargo;
 - b. the successful application of enforcement aids and techniques;
 - c. enforcement actions that might be useful to suppress offenses and, in particular, special means of combating offenses; and
 - d. new methods used in committing 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

SCOPE OF SPECIFIC ASSISTANCE

1. Upon request, the Customs Administrations shall inform each other whether goods exported from the territory of one Party have been lawfully imported into the territory of the other Party. If requested, the information shall contain the customs procedure used for clearing the goods.
2. Upon request, a requested administration shall exercise, to the extent of its ability and within the limits of its available resources, special surveillance of:
 - a. persons known to the requesting Party to have committed a customs offense or suspected of doing so, particularly those moving into and out of its territory;
 - b. goods either in transport or in storage identified by the requesting Party as giving rise to suspected illicit traffic toward its territory; and
 - c. means of transport suspected of being used in offenses within the territory of the requesting Party.
3. Upon request or on their own initiative, the Customs Administrations shall furnish to each other information regarding the activities that may result in offenses within the territory of the other Party. In situations that could involve substantial damage to the economy, public health, public security, or similar vital interest of the other Party, the Customs Administrations, wherever possible, shall supply such information without being requested to do so.
4. The Parties shall provide assistance through the use of provisional measures and in proceedings involving property, proceeds, and instrumentalities subject to these provisional measures.
5. The Parties may:
 - a. dispose of property, proceeds, and instrumentalities forfeited as a result of assistance provided under this Agreement in accordance with the domestic law of the Party in control of the property, proceeds, and instrumentalities; and
 - b. to the extent permitted by their respective domestic laws, transfer forfeited property, proceeds, or instrumentalities to the other Party upon such terms as may be agreed.

ARTICLE 5

FILES AND DOCUMENTS

1. Upon request, the Customs Administrations shall provide information relating to transportation and shipment of goods showing value, destination, and disposition of those goods.
2. 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 authenticated copies of such files, documents, and other materials.
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 computer-based information at the same time.
4. If the requested administration agrees, officials designated by the requesting administration may examine, in the offices of the requested administration, information relevant to an offense and make copies thereof or extract information therefrom.
5. Originals of files, documents, and other materials that have been transmitted shall be returned at the earliest opportunity; rights of the requested Party or of third parties relating thereto shall remain unaffected.

ARTICLE 6

WITNESSES

1. Except in extraordinary circumstances, the requested administration shall authorize its employees to appear as witnesses in judicial or administrative proceedings in the territory of the other Party and to produce files, documents, or other materials or authenticated copies thereof.
2. Where a customs official requested to appear as a witness is entitled to diplomatic or consular immunity, the requested Party will sympathetically consider a waiver of immunity under such conditions as it determines to be appropriate.

ARTICLE 7

COMMUNICATION OF REQUESTS

1. Requests pursuant to this Agreement shall be made in writing directly between officials designated by the Heads of 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 authority making the request;
 - b. the nature of the matter or proceedings;
 - c. a brief statement of the facts and offenses involved;
 - d. the reason for the request; and
 - e. the names and addresses of the parties concerned in the matter, if known, or proceeding.

ARTICLE 8

EXECUTION OF REQUESTS

1. The requested administration shall take all reasonable measures to execute a request and shall endeavor to secure any official or judicial measure necessary for that purpose.
2. If the requested administration is not the appropriate agency to execute a request, it shall promptly transmit it to the appropriate agency and so advise the requesting administration.
3. The requested administration shall conduct, or permit the requesting administration to conduct, such inspections, verifications, fact-finding inquiries, or other investigative steps, including the questioning of experts, witnesses, and persons suspected of having committed an offense, as are necessary to execute a request.
4. Upon request, the requesting administration shall, be advised of the time and place of action to be taken in execution of a request.
5. Upon request, the requested Party shall authorize, to the fullest extent possible, officials of the requesting Party to be present in the territory of the requested Party to assist in execution of a request.
6. The requested administration shall comply with a request that a certain procedure be followed to the extent that such procedure is not prohibited by the domestic law of the requested Party.

ARTICLE 9

CONFIDENTIALITY OF INFORMATION

1. Information obtained under this Agreement shall be afforded the same degree of confidentiality by the receiving Party that it applies to similar information in its custody.
2. Information obtained under this Agreement may only be used or disclosed for the purposes specified in this Agreement, including use in judicial, administrative, or investigative proceedings. Such information may be used or disclosed for other purposes or by other authorities if the supplying Customs Administration has expressly approved such use or disclosure in writing.
3. Upon request of the requested Party, the requesting Party shall treat information received as confidential except to the extent necessary to fulfill the purposes of this Agreement or to the extent that the requested administration has given its consent. The requested Party shall state its reasons for making a request for confidentiality.
4. This Article shall not preclude the use or disclosure of information to the extent that there is an obligation to do so under the Constitution of the requesting Party in connection with a criminal prosecution. The requesting Party shall give advance notice of any such proposed disclosure to the requested Party.

ARTICLE 10

EXEMPTIONS

1. Where a requested Party determines that granting assistance would infringe upon its sovereignty, security, public policy or other substantive national interest, or would be inconsistent with its domestic law and regulations, it may refuse or withhold assistance, or may grant it subject to the satisfaction of certain conditions or requirements.
2. 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.
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. In the event that a request cannot be complied with, the requesting administration shall be promptly notified and provided with a statement of the reasons for postponement or denial of the request. Circumstances that might be of importance for the further pursuit of the matter shall also be provided to the requesting administration.

ARTICLE 11

COSTS

1. The Parties shall normally waive all claims for reimbursement of costs incurred in the implementation of this Agreement with the exception of expenses for experts and witnesses, fees of experts, and costs of translators and interpreters other than government employees.
2. If expenses of a substantial and extraordinary nature are or will be required to execute the request, the Customs Administrations shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

ARTICLE 12

CONSULTATIONS

1. The United States Customs Service, Department of the Treasury of the United States of America, and the General Customs Directorate, Ministry of Finance of Romania shall:
 - a. communicate directly for the purpose of dealing with matters arising out of this Agreement;
 - b. after consultation, 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.

ARTICLE 13

APPLICATION

This Agreement shall be applicable to the Customs territories of both Parties as defined in their national legal and administrative provisions.

ARTICLE 14

ENTRY INTO FORCE AND TERMINATION

1. This Agreement shall enter into force on the first day of the month following the date the Parties have notified each other, through diplomatic channels, of the completion of the procedures necessary for this purpose.
2. The Customs Administrations shall meet in order to review this Agreement on request, or after five years from its entry into force, unless they notify one another, in writing, that no review is necessary.
3. Either Party may terminate this Agreement at any time by notification through diplomatic channels. The termination shall take effect three months from the date of notification of termination to the other Party, except that ongoing proceedings at the time of termination shall be completed in accordance with the provisions of this Agreement.

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

DONE at Washington, in duplicate, this sixteenth day of July 1998, in the English and Romanian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA



FOR THE GOVERNMENT OF
ROMANIA

