

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA

AND THE GOVERNMENT OF THE STATE OF ISRAEL

REGARDING MUTUAL ASSISTANCE

IN CUSTOMS MATTERS

The Government of the Republic of Austria and the Government of the State of Israel, hereinafter referred to as the “Contracting Parties”;

Considering that the customs infringements are prejudicial to the economic, fiscal and commercial interests and to the public health 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 legislation;

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

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 legislation” shall mean such laws and regulations in force in the Contracting Parties concerning importation, exportation and transit of goods, as they relate to customs duties, charges and other taxes, or to prohibitions, restrictions and other controls in respect of the movement of goods across national boundaries.
2. “Customs Authorities” shall mean, in the Republic of Austria, the Federal Ministry of Finance and its subordinate Customs Authorities, in the State of Israel, the Customs Directorate of the Israel Tax Authority of the Ministry of Finance.
3. “Customs infringement” shall mean any violation or attempted violation of customs legislation.
4. “Requesting authority” shall mean the Customs Authority making a request for assistance in customs matters or which receives assistance on a Customs Authority’s own initiative.
5. “Requested authority” shall mean the Customs Authority receiving the request for assistance in customs matters or which provides such assistance on its own initiative.
6. “Narcotic drug” shall mean any substance, natural or synthetic, enumerated in Lists I and II of the 1961 United Nations Single Convention on Narcotic Drugs as amended by the Protocol of 1972.
7. “Psychotropic substances” shall mean any substance, natural or synthetic, or any natural material enumerated in Lists I, II, III and IV of the 1971 United Nations Convention on Psychotropic Substances.

8. "Precursors" shall mean under control chemical substances used in the production of narcotic drugs and psychotropic substances enumerated in Lists I and II of the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.
9. "Controlled delivery" shall mean the method providing for the exportation from, passing through or the importation into the territory of one or more countries of illegally consigned or suspected of being illegally consigned narcotic drugs, psychotropic substances and precursors, or substances substituted for them, or other goods as agreed upon by the Customs Authorities, with the knowledge of or under the control of the competent authorities in these countries and for the purpose of identifying and detecting the persons committing the customs infringements.
10. "Information" shall mean, inter-alia, reports, records, documents and documentation, whether computerized or not, as well as authenticated copies thereof.
11. "Personal data" shall mean information relating to an identified or identifiable individual.

Article 2

SCOPE OF AGREEMENT

1. The Contracting Parties agree to assist each other through their Customs Authorities in ensuring the correct application of customs legislation, including the prevention, investigation, combating and prosecuting of customs infringements in accordance with the provisions of the present Agreement.
2. All assistance under the present Agreement by either Contracting Party will be performed in accordance with its domestic law. Assistance as provided in this Agreement shall be provided for use in all proceedings in the requesting Contracting Party, whether judicial, administrative or investigative and shall include, but not be limited to proceedings on classification, value, origin and other characteristics relevant to the enforcement of the customs legislation and proceedings involving fines, penalties, forfeitures and liquidated joint debts and guarantees.
3. The provisions of the present Agreement shall be without prejudice to mutual assistance within the framework of mutual assistance in criminal matters. However, requests for assistance in criminal cases falling under the scope of this Agreement and investigated by one or both Customs Authorities, shall be carried out within the framework thereof.
4. Any request for the arrest or detention of persons shall be excluded from assistance under this Agreement. The collection and forced collection of customs duties, other taxes, fines and other monies shall also be excluded from such assistance.

Article 3

ASSISTANCE ON REQUEST

1. Upon request, the Customs Authorities shall inform each other whether goods exported from or imported into the territory of one Contracting Party have been

lawfully imported into or exported from the territory of the other Contracting Party. The information shall contain the customs procedure used for clearing the goods.

2. The Customs Authority of one Contracting Party, upon request of the Customs Authority of the other Contracting Party, shall to the extent of its ability, exercise special surveillance over :
 - means of transport suspected of being used in customs infringements within the territory of the requesting Contracting Party;
 - goods designated by the requesting authority as the subject of an extensive illicit trade of which the requesting Contracting Party is the country of destination;
 - particular persons known to be or suspected of being engaged in a customs infringement against the customs legislation of the requesting Contracting Party;
 - places where goods are stored, when the requesting authority has reason to believe that the goods are connected with activities that may result in a customs infringement in the territory of the requesting Contracting Party.

Article 4

SPONTANEOUS ASSISTANCE AND CO-OPERATION

1. The Customs Authorities of the Contracting Parties shall furnish each other with any necessary information in order to ensure the correct application of the customs legislation and the accurate assessment of customs duties and other import taxes by the Customs Authorities and information regarding activities which may result in customs infringements within the territory of the other Contracting Party. In cases which could involve substantial damage to the economy, public health, public security or any other vital interest of the other Contracting Party, such information shall, wherever possible, be supplied without being requested.
2. For the purpose of prevention and detection of customs infringements involving narcotics, the Customs Authorities of the Contracting Parties will communicate to each other to the fullest extent possible, without the necessity of a request, any necessary information regarding possible violations of the customs legislation of the other Contracting Party.
3. Assistance shall include, but not be limited to:
 - enforcement actions that might be useful in preventing, detecting and prosecuting customs infringements and, in particular, special means of combating such customs infringements;
 - new methods used in committing customs infringements;
 - observations and findings resulting from the successful application of new enforcement aids and techniques;
 - techniques and improved methods of processing passengers and cargo; and

- preventing and detecting the illicit traffic in narcotic drugs, psychotropic substances and precursor substances.

4. The Customs Authorities shall also seek to cooperate in:

- initiating, developing or improving specific training programs for their personnel;
- establishing and maintaining channels of communication between their administrations;
- facilitating the secure and rapid exchange of information;
- facilitating effective coordination between their administrations, including the exchange of personnel, experts and the posting of liaison officers;
- the consideration and testing of new equipment or procedures; and
- any other general administrative matters that may from time to time require their joint action.

Article 5

COMMUNICATION OF REQUESTS

1. Requests pursuant to the present Agreement shall be made in writing. Available documents which may assist in the execution of such requests shall accompany the request. When required because of the urgency of the situation, oral requests may also be accepted, but shall be promptly confirmed in writing.
2. Requests pursuant to paragraph 1 of this Article shall include the following details:
 - the authority making the request;
 - the nature of the proceedings;
 - the object of and the reasons for the request;
 - indications as exact and comprehensive as possible on the natural or legal persons involved in the investigations;
 - a brief description of the matter under consideration and the legal elements involved; and
 - the connection between the assistance sought and the matter to which it relates.
3. Assistance shall be carried out by direct communication between the central Customs Authorities or via liaison officers.
4. In case the Customs Authority of the requested Contracting Party is not the appropriate authority to comply with a request, it shall, after appropriate consultation, either promptly transmit the request to the appropriate authority, who shall act upon the request according to its powers under the law, or advise the requesting authority of the appropriate procedure to be followed regarding such a request.

Article 6

EXECUTION OF REQUESTS

1. The requested authority shall take all reasonable measures to execute the request and, if required, shall initiate any official or judicial measure necessary to carry out the request. The requested Customs Authority shall proceed, within the limits of its competence and available resources, as though it were acting on its own account.
2. The Customs Authority of either Contracting Party shall, upon the request of the Customs Authority of the other Contracting Party, conduct any necessary investigation, including the questioning of experts and witnesses or persons suspected of having committed a customs infringement and undertake verifications, inspections and fact-finding inquiries in connection with the matters referred to in the present Agreement.
3. Upon request, the requested authority, subject to any conditions it may impose, may allow appointed officials of the requesting authority to be present in the country of the requested Contracting Party when its officers are carrying out inquiries of interest to the requesting authority, including presence at such inquiries. The appointed officers shall be present in an advisory role only and may not exercise the powers conferred on officials of the requested authority by the domestic law of the requested Contracting Party. They may, however, for the sole purpose of the inquiry being carried out and in the presence of and through officials of the requested authority, have access to the same premises and same documents relevant to the investigation as those officials of the requested authority.
4. The officials of the requesting authority, authorised to investigate customs infringements, may ask that officials of the requested authority review and examine relevant books, registers and other documents or data-media and supply copies thereof or provide any information relating to the customs infringement.
5. When officials of the requesting authority are present in the territory of the requested Contracting Party pursuant to this Agreement, they must be able at all times to furnish proof of their identity and shall be responsible for any offences they might commit.
6. The requesting authority shall, if it so requests, be advised of the time and place of the action to be taken in response to the request so that such action may be coordinated.

Article 7

EXEMPTIONS FROM ASSISTANCE

1. In cases where the requested Contracting Party is of the opinion that compliance with a request would infringe upon its sovereignty, security, public policy or other substantive national interest or would involve a violation of a commercial, industrial or professional secret, assistance can be refused or compliance may be made subject to the satisfaction of certain conditions or requirements.

2. In the event that the request cannot be complied with, the requesting authority shall be promptly notified of that fact and informed of the reasons for the denial.
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 asks for assistance which it would itself be unable to provide if so asked by the Customs Authority of the other Contracting Party, it shall draw attention to that fact in its request. It shall then be left to the requested authority to decide how to respond to such a request.

Article 8

FILES, DOCUMENTS AND WITNESSES

1. The Customs Authorities of the Contracting Parties shall, upon request, provide documentation relating to the transportation and shipment of goods showing the origin, value, disposition and destination of those goods, as well as any other relevant customs matter concerning them.
2. Originals of information shall be requested only in cases where copies would be insufficient. Upon specific request, copies of information shall be appropriately authenticated.
3. Originals of information which have been transmitted shall be returned at the earliest opportunity; rights of the requested authority or of third parties relating thereto shall remain unaffected. Upon request, originals necessary for adjudicative or similar purposes shall be returned without delay.
4. The requested authority shall supply together with the information provided all necessary instructions for its interpretation or utilization.
5. An official of the requested authority shall be authorized to appear, if he so consents, as an expert or witness regarding the matters covered by this Agreement in judicial or administrative proceedings in the territory of the requesting Contracting Party and produce such files, documents or authenticated copies thereof, as may be needed for the proceedings. The request for an appearance must indicate specifically on what matters and by virtue of what title or qualification the official will be questioned.

Article 9

DELIVERY OF DOCUMENTS

1. The Customs Authority of one Contracting Party shall, upon the request of the Customs Authority of the other Contracting Party, and in accordance with the legislation in force, deliver documents of the requesting authority falling under the

scope of this Agreement, to an addressee residing or established in the territory of the requested Contracting Party. Additionally, the content of the official document to be notified shall be accompanied by an authenticated translation in an official language of the Contracting Party in which the requested authority is based.

2. Such delivery shall be evidenced by a receipt of the addressee bearing the date and place of delivery or by an official document describing the manner and date of the delivery.

Article 10

COSTS

1. The Customs Authorities of the Contracting Parties shall waive all claims for reimbursement of costs incurred in the execution of the present Agreement, with the exception of expenses for witnesses, fees of experts and costs of interpreters other than government employees.
2. Notwithstanding paragraph 1, if expenses of a substantial and extraordinary nature are or will be required to execute the request, the Customs Authorities of the Contracting Parties 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 11

CONFIDENTIALITY OF INFORMATION AND DOCUMENTS

1. Any information communicated in whatsoever form pursuant to this Agreement shall be of a confidential nature. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to like information under the relevant laws of the Contracting Party which received it and the corresponding provisions applying to the authorities of the other Contracting Party if provided by them.
2. Personal data may only be transmitted if the level of personal protection afforded by the legislation of the Contracting Parties is at least equivalent. The Contracting Parties shall ensure at least a level of protection based on the principles in the Annex to this Agreement, which is an integral part of the Agreement.
3. Information received in the course of mutual assistance may only be used for the purposes specified in the present Agreement, including the use in judicial or administrative proceedings concerning the respective customs case.
4. The requesting authority shall not use evidence or information obtained under this Agreement for purposes other than those stated in the request without the prior consent of the requested authority.
5. The provisions of this Agreement do not affect the provisions applicable to the exchange of information between the European Commission and the customs authorities of the Member States of the European Community relating to customs infringements. If the Austrian Customs Authority conveys information received

pursuant to this Agreement to the European Commission and/or to other Member States of the European Community, it shall give full and prompt notice thereof to the Israeli Customs Authority. The Austrian Customs Authority, in conveying such information, shall require that the receiving authority use that information only for the purpose of the proper application of customs legislation and that the information shall be treated in accordance with Protocol 5 of the Euro-Mediterranean Agreement Establishing an Association between the European Communities and Their Member States, of the One Part, and the State of Israel, of the Other Part.

6. If the Austrian Customs Authority receives information from the European Commission or from a Member State of the European Community, which is of interest to the Israeli Customs Authority regarding the correct application of customs legislation, the former shall notify the entity from which the information of that fact was received and request that authority to convey such information to the Israeli Customs Authority.
7. The provisions of paragraph 4 of this Article 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 Contracting Party directly involved in combating illicit drug traffic. As to information concerning national security, public health and environmental protection the requesting Customs Authority may transfer it to the relevant competent governmental authorities, which deal with such matters. In any case of transference of information under this paragraph, the Customs Authority of the other Contracting Party shall be notified thereof.

Article 12

CONTROLLED DELIVERY

1. The Contracting Parties shall take the necessary measures, within their possibilities, to permit the appropriate use of controlled delivery for the purpose of criminal investigations of extraditable offences with the aim of identifying and detecting persons involved in illicit trafficking in narcotic drugs and psychotropic substances or other goods as agreed upon by the Customs Authorities.
2. Decisions to carry out controlled deliveries shall be made on a case-by-case basis and shall be taken in accordance with the domestic law and procedures of the requested Contracting Party and in accordance with any arrangements or agreements which may have been reached concerning a particular case.
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 or psychotropic substances or other goods as agreed upon by the Customs Authorities intact or removed or replaced in whole or in part.

Article 13

IMPLEMENTATION OF THE AGREEMENT

The Contracting Parties agree that the Federal Ministry of Finance of the Republic of Austria and the Customs Directorate of the Israel Tax Authority of the Ministry of Finance in the State of Israel may:

- communicate directly for the purpose of dealing with matters arising out of the present Agreement or any other customs matters which may be of mutual interest and, if necessary or upon request of one of the Customs Authorities, meet in order to deal with the above matters; and
- issue coordinated administrative directives for the implementation of the present Agreement; and
- endeavour by mutual accord to resolve problems or doubts arising from the application of the Agreement. If they do not succeed in doing so, they may refer the matter to diplomatic channels.

Article 14

ENTRY INTO FORCE AND TERMINATION

1. Each Contracting Party shall notify the other Contracting Party in writing through diplomatic channels of the completion of its internal legal procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the first day of the third month following the date of the latter notification.
2. The Contracting Parties agree to meet in order to review this Agreement upon request or at the end of five years from the date of its entry into force, unless they notify one another in writing that no review is necessary.
3. This Agreement may be terminated by either Contracting Party, upon receipt by the other Contracting Party of a written notice through diplomatic channels, in which case, it shall cease to be in force six months after such notice has been received.

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

Done at Vienna on 19 February, 2009, which corresponds to the 25th day of Shvat 5769, in the German, Hebrew and English languages, all the three texts being equally authentic. In case of divergence of interpretation the English text shall prevail.

FOR THE GOVERNMENT OF THE
REPUBLIC OF AUSTRIA

FOR THE GOVERNMENT OF THE
STATE OF ISRAEL

RUDOLF LENNKH

DAN ASHBEL

ANNEX

1. The authority that communicates personal data shall ensure that they are accurate and up-to-date.
2. If it emerges that inaccurate data have been communicated or data have been communicated which should not have been communicated or that lawfully communicated data are required at a later stage to be erased in accordance with the law of the communicating Contracting Party, the recipient authority shall be informed immediately thereof. It shall be obliged to correct such data or have them erased.
3. If the recipient authority has reason to believe that communicated data are inaccurate or should be erased, it shall inform the communicating Contracting Party.
4. According to the respective national laws of the Contracting Parties, the data communicated shall be kept in a data base for a period not exceeding that necessary for the purposes for which they are communicated.
5. The right of a person concerned to receive information about the personal data communicated, or about the erasure or amendment of personal data communicated or processed, shall be determined in accordance with the national laws, regulations and procedures of the Contracting Party in whose territory the information is requested. Before any decision is taken on providing information, the communicating authority shall be given the opportunity of stating its position.
6. An authority of one Contracting Party having received data under this Agreement may not plead that the communicating authority of the other Contracting Party had communicated inaccurate data or had unlawfully communicated data in order to avoid its liability under its national legislation concerning [or vis-à-vis] an injured party.
7. If the receiving authority is granting compensation for damage caused through the use of inaccurately communicated personal data the communicating authority shall be bound to refund, on request, the total amount paid as compensation.