

AGREEMENT
BETWEEN THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA AND THE
GOVERNMENT OF THE REPUBLIC OF AZERBAIJAN ON MUTUAL ASSISTANCE
AND CO-OPERATION IN CUSTOMS MATTERS

The Government of the Republic of Austria and the Government of the Republic of Azerbaijan, hereinafter referred to as the Contracting Parties;

Considering that the infringements against customs legislation 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 co-operation in matters related to the administration and enforcement of the customs legislation;

Convinced that action against customs infringements can be made more effective by co-operation between their competent administrative authorities;

Having regard to obligations imposed under international conventions already accepted by or applied to the Contracting Parties and having regard also to the Recommendation of the Customs Co-operation Council on Mutual Administrative Assistance of December 5, 1953;

Have agreed as follows:

DEFINITIONS

Article 1

For the purposes of this Agreement,

1. „Customs Authorities“ shall mean, in the Republic of Austria, the Federal Ministry of Finance, in the Republic of Azerbaijan, the State Customs Committee.
2. „Customs legislation“ shall mean any legal or regulatory provision applicable in the territories of the Contracting Parties concerning the import, the export and transit of goods as they relate to Customs duties, charges and other taxes, including measures in the field of prohibition, restriction and control.
3. „Customs infringements“ shall mean any offence or attempted offence of the customs legislation.
4. „Applicant Authority“ shall mean the Customs Administration making a request for assistance in customs matters.
5. „Requested Authority“ shall mean the Customs Administration receiving the request for assistance in customs matters.
6. „Narcotic drug“ shall mean any substance, natural or synthetic, enumerated in the Lists I. and II. of the 1961 United Nations Single Convention of 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 the Lists I., II., III. and IV. of the 1971 United Nations Convention on Psychotropic Substances.
8. „Precursors“ shall mean chemical substances under control used in the production of narcotic drugs and psychotropic substances, enumerated in the Lists I. and II. of the 1988 United Nations Convention Against the Illicit Traffic of Narcotic Drugs and Psychotropic Substances.
9. „Controlled delivery“ shall mean the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances and precursors, or substances substituted for them, to pass out, through or into the territory of one or more countries, with the knowledge and under supervision of their competent authorities, with the view to identifying persons involved in the commission of offences.
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 all information relating to an identified or identifiable individual.

SCOPE OF AGREEMENT

Article 2

1. The Contracting Parties agree to assist each other through their Customs Authorities in order to ensure the correct application of the customs legislation, in particular by preventing, investigating, repressing and prosecuting any customs infringement in accordance with the provisions of this Agreement.

2. All assistance under this Agreement by either Contracting Party will be performed in accordance with its domestic legislation. Assistance as provided for in paragraph 1 shall be provided for use in all proceedings, in the applicant Contracting Party, whether judicial, administrative or investigative and shall include, but not be limited to, proceedings on classification, value, origin, and other customs procedures relevant to the enforcement of the Customs legislation and proceedings involving fines, penalties, forfeitures and liquidated joint debts and guarantees.

3. Mutual assistance under this agreement does not affect the provisions applicable regarding mutual assistance in criminal matters, but the Customs Administrations of the Contracting Parties may request or provide mutual assistance in the course of any investigation or in connection with any judicial or administrative proceedings carried out by a Customs Administration of one of the Contracting Parties.

4. Mutual assistance under this Agreement shall not cover the arrest of persons or the recovery of duties or taxes on importation and exportation and of pecuniary penalties or other charges.

ASSISTANCE ON REQUEST

Article 3

1. The Contracting Parties shall assist each other in the areas within their competences, in the manner and under the conditions laid down in this Agreement, to ensure that customs legislation is correctly applied and the customs duties and taxes are assessed accurately, including all relevant information regarding activities noted which are or could be operations which may result in customs infringements.

2. At the request of the applicant authority, the requested authority shall inform :

- whether goods exported from the territory of one of the Contracting Parties have been properly imported into the territory of the other Contracting Party, specifying where appropriate, the customs procedure applied to the goods;
- whether goods imported into the territory of one of the Contracting Parties have been properly exported from the territory of the other Contracting Party, specifying where appropriate, the customs procedure applied to the goods.

SPONTANEOUS ASSISTANCE

Article 4

The Contracting Parties shall assist each other, at their own initiative and in accordance with their legal or regulatory provisions, if they consider that to be necessary for the correct application of customs legislation and the accurate assessment of customs duties and taxes, particularly by providing all relevant information about:

- activities which are or appear to be an infringement of customs legislation within the territory of the other Contracting Party;
- new means and methods used in committing customs infringements;
- goods known to be subject to a infringement of customs legislation;
- means of transport in respect of which there are reasonable grounds for believing that they have been, are, or may be used in infringements of customs legislation.

SURVEILLANCE OF PERSONS; GOODS; MEANS OF TRANSPORTS AND LOCALITIES

Article 5

At the request of the applicant authority, the requested authority shall, within the framework of its legal or regulatory provisions and to the extent of its abilities, take the necessary steps to ensure special surveillance of:

1. natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in an infringement against the customs legislation within the territory of the applicant Contracting Party;
2. goods that are or may be transported in such a way that there are reasonable grounds for believing that they are intended to be used in an infringement against the customs legislation in the territory of the applicant Contracting Party;
3. means of transport suspected of being used in customs infringements within the territory of the applicant Contracting Party;
4. places where goods have been or may be assembled in such a way that there are reasonable grounds for believing that they are connected with activities that may result in customs infringements in the territory of the applicant Contracting Party.

FORM AND SUBSTANCE OF REQUESTS

Article 6

1. Requests pursuant to this Agreement shall be made in writing. Documents necessary for 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. The documents provided for in this Agreement may be replaced by computerized information produced in any form for the same purpose.

2. Requests pursuant to paragraph 1 of this Article shall include the following information:

- the authority making the request;
- the measure requested;
- the object of and the reason for the request;
- the names and addresses of the natural or legal person concerned in the proceedings, if known;
- a brief description of the matter under consideration and the legal or regulatory provisions involved and
- a summary of the relevant facts and of the enquiries already done.

3. Originals of files, documents and other materials shall be requested only in cases where copies would be insufficient. Upon specific request, copies of such files, documents and other materials shall be appropriately authenticated.

4. Originals of files, documents and other materials which have been transmitted shall be returned at the earliest opportunity.

CHANNEL OF COMMUNICATION

Article 7

1. Assistance shall be carried out by direct communication between the respective Customs Authorities.

2. 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 domestic legislation, or advise the applicant authority of the appropriate procedure to be followed regarding such a request.

EXECUTION OF REQUESTS

Article 8

1. Requests for assistance shall be executed in accordance with the legal or regulatory provisions of the requested Contracting Party.

2. The requested Authority shall proceed, within the limits of its competence and available resources, as though it were acting on its own account.

3. The Customs Authority of either Contracting Party shall, at the request of the Customs Authority of the other Contracting Party, conduct any necessary investigation within its competence, 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 this Agreement.

4. The requested Authority may allow appointed officials of the applicant Authority to be present in the territory of the requested Contracting Party, when its officers are carrying out inquiries of interest to the applicant 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 shall, 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 as those officials of the requested Authority.

5. The officials of the applicant Authority, authorized to investigate infringements of customs legislation, may ask that officials of the requested Authority review relevant books, registers and other documents or computerized data and supply copies thereof or provide any information relating to the infringements.

6. When officials of the applicant Authority are present in the territory of the requested Contracting Party pursuant to this Agreement, they always have to be able to identify themselves and shall be responsible for any offences they might commit.

7. The applicant 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 co-ordinated.

EXPERTS AND WITNESSES

Article 9

1. An official of a requested Authority may be authorized to appear, within the limitations of the authorization granted, as an expert or witness in judicial or administrative proceedings regarding the matters covered by this Agreement in the territory of the applicant Contracting Party, and produce such files, documents or authenticated copies thereof, as may be needed for the proceedings.

2. The request for appearance shall indicate the type of the proceeding as well as the status in which the official is called to testify.

DELIVERY OF DOCUMENTS

Article 10

1. At the request of the applicant Authority the requested Authority shall, in accordance with its legal and regulatory provisions take all necessary measures in order to deliver any documents or to notify any decisions emanating from the applicant Authority and falling within the scope of this Agreement, to an addressee residing or established in the territory of the requested Contracting Party.

2. Requests for delivery of documents or notification of decisions shall be made in writing in an official language of the requested Contracting Party or in a language acceptable to the requested Authority. 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.

3. Such delivery shall be evidenced by a receipt of the addressee bearing the date of delivery or by a certificate describing the manner and date of the delivery.

EXEMPTIONS FROM ASSISTANCE

Article 11

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. Assistance may be postponed by the requested Authority on the ground if it interferes with an ongoing investigation, prosecution or proceeding. In such a case, the requested Authority shall consult with the applicant Authority to determine if assistance can be given subject to such terms or conditions as the requested Authority may require.

3. Where the applicant 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 over to the requested Authority to decide how to respond to such a request.

4. Whenever assistance is denied or postponed, reasons for the denial or postponement shall be notified to the applicant Authority without delay.

COSTS

Article 12

1. The Contracting Parties shall normally waive all claims for reimbursement of costs incurred in the execution of this Agreement, with the exception of expenses for witnesses, fees of experts, and costs of 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 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.

CONFIDENTIALITY AND USE OF INFORMATION

Article 13

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 legal and regulatory provisions of the Contracting Party, which received it, and the corresponding provisions applying to the authorities of the other Contracting Party.

2. Personal data may only be transmitted if the level of personal protection afforded by the legislation of the Contracting Parties is equivalent. The Contracting Parties shall ensure at least a level of protection based on the principles mentioned 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 this Agreement, including the use in judicial or administrative proceedings concerning the respective customs infringement.

4. The applicant 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 of the financial interests of the European Community.

CONTROLLED DELIVERY

Article 14

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.

2. Decisions to carry out controlled deliveries shall be made on a case-by-case basis and shall take place 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 the 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 intact or removed or replaced in whole or in part.

IMPLEMENTATION

Article 15

1. The Contracting Parties agree that the Federal Ministry of Finance of the Republic of Austria and the State Customs Committee of the Republic of Azerbaijan may communicate directly for the purpose of dealing with matters arising out of this Agreement or any other customs matter which may be of mutual interest.

2. The Contracting Parties may issue coordinated administrative directives for the implementation of this Agreement.

3. The Customs Authorities undertake by mutual accord to resolve problems arising from the application of this Agreement. This does not exclude the settlement of such disputes by diplomatic means.

ENTRY INTO FORCE AND TERMINATION

Article 16

1. This Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have notified each other by an exchange of diplomatic notes that all necessary national legal procedures for its entry into force have been fulfilled.

2. The Contracting Parties agree to meet in order to review this Agreement upon request. Amendments to the present agreements and the annex thereto will enter into force under the same conditions as laid down in paragraph 1 of this Article.

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 such case, it shall cease to be in force six months after such notice has been given.

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

Done at Vienna, on 19. November 2002, in German, Azerbaijani and English language, all the texts being equally authentic. In case of divergence of the interpretation the English text shall prevail.

For the Government of the Republic of Austria

For the Government of the Republic of Azerbaijan

Dr. Finz

Farhad Alijev

ANNEX**BASIC PRINCIPLES OF DATA PROTECTION**

1. The Authority that communicates 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 national laws the data communicated shall be kept in a database 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 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. In cases where communicated data should, according to the law of the communicating Contracting Party, be erased or amended, the persons concerned must be given the effective right to correct the data.
7. The Contracting Parties shall be liable, in accordance with their own laws, regulations and procedures, for injury caused to a person through processing of data communicated in the Contracting Party concerned.
8. In addition to the above mentioned principles the principles of the Council of Europe Convention No 108 of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data will be applied by the Republic of Azerbaijan upon the ratification of this Convention.