



Treaty Series No.2 (2021)

Agreement

between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland regarding Mutual Assistance in Customs Matters between their Customs Administrations

London, 16 December 2020

[The Agreement entered into force on 1 January 2021]

*Presented to Parliament
by the Secretary of State for Foreign, Commonwealth and Development Affairs
by Command of Her Majesty
February 2021*



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AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND REGARDING MUTUAL ASSISTANCE IN CUSTOMS MATTERS BETWEEN THEIR CUSTOMS ADMINISTRATIONS

The Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as the “United Kingdom”), hereinafter together referred to as the “Parties”;

Considering that offences 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, taxes, and other charges relating to the importation, exportation, and transit or circulation of goods;

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

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

Considering the importance of the relationship between the United States of America and United Kingdom with respect to the facilitation of lawful international trade and travel, and the benefits to both Parties to develop this partnership to the widest possible scope;

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

Referencing the Recommendation of the Customs Cooperation Council regarding Mutual Administrative Assistance of 5 December 1953;

Have agreed as follows:

ARTICLE 1

Definitions

For the purposes of the present Agreement:

1. the term “Data Protection and Privacy Agreement” means the Agreement between the United States of America and the European Union on the Protection of Personal Information relating to the Prevention, Investigation, Detection and Prosecution of Criminal Offences done at Amsterdam, 2 June 2016;

2. 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 U.S. Department of Homeland Security, and in the United Kingdom, Her Majesty’s Revenue and Customs;
3. the term “customs laws” means:
 - a. for the United Kingdom, the laws and regulations applying in the territory of the United Kingdom concerning the importation, exportation, and transit or circulation of goods, which includes cash, currency, and monetary instruments, as they relate to customs duties, taxes, and other charges or to prohibitions, restrictions, and other similar controls respecting the movement of controlled items across national boundaries;
 - b. for the United States of America, the laws and regulations enforced by the United States Customs Administration concerning the importation, exportation, and transit or circulation of goods, which includes cash, currency, and monetary instruments, as they relate to customs duties, taxes, and other charges or to prohibitions, restrictions, and other similar controls respecting the movement of controlled items across national boundaries;
4. the term “information” means data in any form, whether or not processed or analysed, and files, documents, reports, and other communications in any format, including electronic, certified, or authenticated copies thereof;
5. the term “customs offence” means any violation or attempted violation of the customs laws;
6. the term “person” means any natural or legal person;
7. the term “personal information” means information relating to an identified or identifiable natural person. An identifiable person is a person who can be identified, directly or indirectly, by reference to, in particular, an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity;
8. the term “processing of personal information” means any operation or set of operations involving collection, maintenance, use, alteration, organisation or structuring, disclosure or dissemination, or disposition;
9. the term “property” means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or an interest in such assets;
10. the term “provisional measures” includes “seizure” or “freezing,” which means:

- a. temporarily prohibiting the conversion, disposition, movement, or transfer of property, or
 - b. temporarily assuming custody or control of property on the basis of an order issued by a court or competent authority, or other means;
11. the term “forfeiture” means the deprivation of property by order of a court or competent authority and includes confiscation where applicable;
12. the term “requesting Administration” or “requesting Party” means the Customs Administration or Party that requests assistance; and
13. the term “requested Administration” or “requested Party” means the Customs Administration or Party 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, detecting or prosecuting any customs offence.
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 intended solely for mutual assistance between the Parties; the provisions of this Agreement shall not give rise to a right on the part of any private person, including to obtain, suppress, or exclude any evidence or information, or to impede the execution of a request.
4. This Agreement is intended to enhance and supplement mutual customs assistance in effect between the Parties. No provision in this Agreement may be interpreted in a manner that would restrict agreements, arrangements, and practices relating to mutual assistance and cooperation in effect between the Parties.

ARTICLE 3

Scope of 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, taxes, and other charges relating to the

importation, exportation, and transit or circulation of goods 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 for processing passengers and cargo;
- b. the successful application of enforcement aids and techniques;
- c. enforcement actions that might be useful to suppress customs offences and, in particular, special means of combating customs offences; and
- d. new methods used in committing customs offences.

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, and consistent with domestic law and regulations, and within the limits of available resources, a Customs Administration shall exercise surveillance of:

- a. persons known to have committed or suspected of being about to commit a customs offence, moving within, into, out of, or through the territory of the requesting Party;
- b. goods either in transit or in storage located within the territory of the requested Party, and identified by the requesting Party as giving rise to

suspected illicit traffic within, into, out of, or through the territory of the requesting Party; and

- c. means of transport suspected of being used in offences within, into, out of, or through the territory of the requesting Party.

3. Upon request, the Customs Administrations shall furnish to each other information regarding activities that may result in customs offences 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. Nothing in this Agreement otherwise precludes the Customs Administrations from providing, on their own initiative, information regarding activities that may result in customs offences within the territory of the other Party.

4. The Parties may provide assistance through the use of provisional measures and forfeiture, and in proceedings involving property subject to provisional measures or forfeiture.

5. The Parties may, consistent with this Agreement and with other agreements between them pertaining to the sharing and disposition of forfeited assets:

- 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, and without regard to the requirement of reciprocity, transfer forfeited property, proceeds, or instrumentalities, or the proceeds of their sale, to the other Party upon such terms as may be agreed.

6. The Customs Administrations may, by mutual arrangement, permit under their control, the movement of unlawful or suspect goods out of, through, or into their respective territory, with a view to investigating and combating customs offences. If granting such permission is not within the competence of the Customs Administration, that Customs Administration shall endeavour to initiate cooperation with the national authorities that have such competence, or it shall transfer the case to those authorities.

7. The Parties may, in the sole discretion of the Party considering recognition, decide to recognise each other's trusted trader or Authorised Economic Operator programmes, subject to the conditions set forth by the Party granting recognition.

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 status 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 certified and/or 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 utilising 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 a customs offence 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; any rights of the requested Administration or of any entity or individual outside of the requested Administration relating thereto shall remain unaffected.

ARTICLE 6

Witnesses

The requested Administration may authorise its employees to appear as witnesses and/or experts in judicial or administrative proceedings in the territory of the other Party and to produce files, documents, or other materials or certified copies thereof. The request should indicate precisely the judicial or administrative authority before which the customs official should appear and a summary of the matter for which the testimony is requested.

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 as expeditiously as possible, and no later than 10 business days, based upon the requesting Administration's calendar, from the date of the oral request.

2. Requests shall include as much information as possible to assist the requested Administration in responding, including, but not limited to:

- a. the name of the requesting Administration;
- b. the nature of the matter or proceedings;
- c. a brief statement of the facts and the customs offences suspected of being violated;
- d. the reason for the request;
- e. a description of the assistance requested; and
- f. the names and addresses or other appropriate and available information regarding the persons concerned in the matter, or proceeding, if known.

ARTICLE 8

Execution of Requests

1. The requested Administration shall take all reasonable measures to execute a request and shall endeavour to secure any official measure necessary for that purpose.

2. If the requested Administration is not the appropriate agency to execute a request, it may, in addition to advising the requesting Administration of the appropriate authority or applicable agreement, if known, transmit it to the appropriate authority.

3. The requested Administration shall conduct to the fullest extent possible such inspections, verifications, fact-finding inquiries, or other investigative steps, including the questioning of experts, witnesses, and persons suspected of having committed a customs offence, 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 executing a request.
5. Upon request, the requested Party may authorise, to the fullest extent possible and consistent with domestic law and regulations, officials of the requesting Administration to be present in the territory of the requested Party to assist in the execution of a request, including verifications and inspections.
6. The requested Administration shall comply with a request that a certain procedure be followed unless such procedure or request is not in compliance with the domestic law of the requested Party.

ARTICLE 9

Limitations on Use

1. A Party that obtains information under this Agreement shall afford that information the same degree of confidentiality, or restricted nature, that it applies to similar information in its custody in accordance with its domestic law and regulations.
2. Information transferred under this Agreement may only be used or disclosed for the purposes specified in this Agreement, including use by the receiving Party in any proceedings. Such information may only be used or disclosed for other purposes by the receiving Party if the supplying Customs Administration has expressly approved such use or disclosure in writing. Such use shall then be subject to any conditions established by that Customs Administration.
3. In addition to being subject to the limitations on use or disclosure described in paragraph 2 above, any personal information transferred under this Agreement shall be further processed only for purposes compatible with the purposes for which it was transferred. Compatible processing includes processing of personal information for the prevention, investigation, detection or prosecution of any customs offence or other criminal offence.
4. Information received by either Party shall, upon request of the supplying Party, be treated as confidential. The reasons for such a request shall be stated.
5. This Article shall not preclude the use or disclosure of information exchanged pursuant to this Agreement to the extent that there is an obligation to do so under the Constitution or domestic laws of the receiving Party in connection with any criminal proceeding. The receiving Party shall give advance notice of any such proposed disclosure to the supplying Party.
6. This Article shall not preclude the use or disclosure of information exchanged pursuant to this Agreement in connection with terrorism or other national security

matters where there is an obligation to use or disclose such information under the receiving Party's applicable laws.

7. 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, annotate, or delete it.

8. Information made public under this Article may be used for any purpose.

9. Each respective Customs Administration shall establish or maintain local arrangements to ensure appropriate transmission, safekeeping, storage, handling and internal dissemination of confidential information.

10. The provisions of the Data Protection and Privacy Agreement shall be applied *mutatis mutandis* by the Parties to all personal information transferred pursuant to the terms of this Agreement to provide equivalent protections. For the United States of America, the principal laws implementing Article 19 of the Data Protection and Privacy Agreement in this context are the Judicial Redress Act of 2015 and the Freedom of Information Act of 1966, as amended.

11. The processing and transfer of personal information to the other Customs Administration pursuant to this Agreement are compatible with the Parties' respective applicable laws regarding data protection and privacy.

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, including any legal requirement relating to non-compliance with assurances regarding limitations on use or confidentiality, 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 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 12

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. after consultation, issue any administrative directives necessary for the implementation of this Agreement; and
 - c. endeavour by mutual accord to resolve any questions or disputes arising from the interpretation or application of this Agreement.
2. Disputes that are not resolved by the Customs Administrations shall be settled by diplomatic means.
3. The Customs Administrations agree to meet periodically as necessary at the request of either Party in order to review the implementation of this Agreement.

ARTICLE 13

Territorial Application

This Agreement shall apply:

1. in respect to the United States of America, to the territory of the United States of America as defined in its domestic legal and administrative provisions; and
2. in respect to the United Kingdom, to the United Kingdom of Great Britain and Northern Ireland, the Isle of Man, the Bailiwick of Jersey, and the Bailiwick of Guernsey.

ARTICLE 14

Entry into Force and Termination

1. This Agreement shall enter into force on the first day of the month following signature.
2. Upon entry into force of this Agreement, the Memorandum of Understanding between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Regarding Mutual Assistance and Co-operation between their Customs Administrations, signed at Washington, D.C. on 6 July 1989, is hereby discontinued.
3. Either Party may terminate this Agreement at any time by notification through diplomatic channels.
4. The termination shall take effect three months from the date of notification of termination to the other Party. Ongoing requests for assistance made prior to the effective date of termination shall nonetheless be completed in accordance with the provisions of this Agreement.
5. This Agreement may be amended at any time by mutual written agreement.

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

DONE at London on sixteenth December 2020, in duplicate, in the English language.

**For the Government of United
Kingdom of Great Britain and
Northern Ireland:**

**For the Government of the United
States of America:**

JESSE NORMAN

WOODY JOHNSON

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