

p. B. 14. 21. Am. 3.1.
p. B. 11. 42. Am. 0.1.
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MEMORANDUM OF UNDERSTANDING

BETWEEN THE GOVERNMENT OF SWITZERLAND AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS AND ANCILLARY ADMINISTRATIVE PROCEEDINGS

I. Introduction

1. This Memorandum of Understanding (MOU) is a statement of intent setting forth the understandings reached by the delegations of Switzerland and the United States acting on behalf of their respective executive authorities (the Parties) to improve their cooperation in the field of international law enforcement. These understandings continue a long tradition of law enforcement cooperation between Switzerland and the United States and were reached in the course of consultations between representatives of Switzerland and the United States.

On the basis of the foregoing consultations, the Parties reaffirmed the two countries' interest in mutual assistance in criminal matters and ancillary administrative proceedings under Article 1 of the Treaty between the Government of Switzerland and the Government of the United States of America on Mutual

Assistance in Criminal Matters (the Treaty) in accordance with mutually acceptable procedures and with a view to avoiding or minimizing conflicts as to questions of sovereignty.

2. During the consultations the delegations engaged in an exchange of opinions pursuant to Article 39(1) of the Treaty. Sections II through IV of this MOU memorialize the exchange of opinions and related understandings that the Parties have reached in order, in particular, to avoid or minimize conflicts arising from the exercise of jurisdiction in law enforcement matters. Section V of this MOU memorializes the exchange of opinions and related understandings that the Parties have reached in order more effectively to utilize the Treaty to combat all forms of organized crime.

II. Use of Existing Mechanisms

1. The Parties note the importance of the Treaty and other treaties and domestic legislation such as the Swiss Federal Act on International Mutual Assistance in Criminal Matters (IMAC), as contemplated by Article 38 of the Treaty (hereinafter called the instruments). The Parties note that the instruments provide mechanisms for cooperation between the law enforcement authorities of the Parties in connection with investigations or court proceedings involving criminal offenses, including a duty

or tax fraud as defined under Swiss law. Such cooperation may include assistance in locating and hearing witnesses, producing and authenticating judicial or business records and serving judicial or administrative documents.

2. The Treaty, in particular, has been used on numerous occasions by the law enforcement authorities of both countries. The Parties understand that the procedures provided by the instruments should be used as a first resort whenever available and to the extent applicable. The Parties will use their best efforts to interpret and apply the instruments to provide assistance when requested by the Central Authority of the other Party and to streamline the implementation process of the instruments in order to improve their practical availability and effectiveness.

III. Early Warning/Consultations

1. In order to continue and improve international law enforcement cooperation in a manner consistent with the interests of both countries, the Parties understand that the appropriate authorities will undertake contacts or consultations in the future when the need to do so is recognized mutually.

2. The Parties understand that each Central Authority will exercise its best efforts to inform the other, as appropriate, when its authorities seek the production of evidence located or believed to be located in the territory of the other in connection with a criminal matter arguably within the scope of the instruments. Communications and consultations will occur, as appropriate, as the matter proceeds, with a view to production of the evidence while avoiding or minimizing jurisdictional conflicts.

3. The Parties understand that both Parties will use best efforts to avoid using unilateral compulsory measures to which the other objects for the production of evidence located in the territory of the other in any criminal matter arguably within the scope of the instruments unless:

(a) the Central Authority of the Party seeking the evidence has made a request for assistance under Article 29 of the Treaty or has sought informally the views of the Central Authority of the other Party regarding the availability of the instruments as a means of obtaining assistance;

(b) the Central Authority of the requesting Party, by providing the reasons therefor, has informed the Central Authority of the requested Party that denial or unreasonable delay in securing production of the evidence

may prejudice the successful completion of an investigation or proceeding; and

(c) the Central Authorities have had 30 days, or other mutually agreed period of time, within which to consult in an effort to resolve the matter to their mutual satisfaction.

Even where the above conditions have been met, the Parties will continue to exercise moderation and restraint in undertaking to enforce unilateral compulsory measures to which the other objects or to block enforcement of such measures.

4. The Parties understand further that they will use their best efforts to insure that the information obtained in such communications is handled with appropriate care to prevent it from becoming public and, in particular, will not be disclosed to any person except officials dealing with the case concerned and, once an official request has been presented, parties having a right of appeal in connection with the handling of the request.

IV. Moderation and Restraint

Where the above-mentioned mechanisms are not available to obtain evidence in areas covered by this MOU the Central Authorities will, with a view to avoiding or minimizing

conflicts of jurisdiction, use best efforts to convince the authorities concerned to apply moderation and restraint including the procedures provided by Article III of this MOU when considering unilateral compulsory measures for the production of evidence or measures aimed at blocking its production.

V. Organized Crime

The Parties recognize that organized criminal groups often abuse existing laws in different countries in order to conceal their illicit activities, most notably in the field of drug trafficking. The Parties also recognize their compelling mutual interest in investigating and prosecuting those who traffic in dangerous drugs. Indeed, groups of drug traffickers and money launderers almost always resort to acts of intimidation and attempts to gain influence in legitimate bodies so as to shield themselves from criminal prosecution, thereby meeting the elements of Article 6, Paragraph 3 of the Treaty.

The Parties therefore reaffirm the two countries' interest in mutual assistance, in conformity with agreed procedures, with a view to combatting organized crime. They consider that such forms of criminal activity as drug trafficking,

counterfeiting, extortion, robbery or terrorism (which may also involve money laundering) can be circumstantial evidence of the existence of organized crime.

In view of these considerations, the Parties understand that the Central Authorities will continue their practice of using their best efforts to interpret and apply the instruments, in particular, such provisions that deal with organized crime and drug trafficking, in such a way as to provide assistance to the widest extent possible.

VI. Legal Status

This MOU is not intended to create legal obligations. It embodies statements of intent of the two Parties. The Parties further understand that this MOU does not modify or supersede any laws or regulations in force in Switzerland or in the United States. This MOU is not intended to create any rights enforceable by private parties and does not impose any obligations on the legislative and judicial branches of the Parties.

IN WITNESS WHEREOF, the respective representatives, duly authorized for this purpose, have signed this Memorandum of Understanding.

DONE at Washington, in duplicate, this 10th day of November, 1987.

ON BEHALF OF THE
GOVERNMENT OF SWITZERLAND:

Joseph Cyp

ON BEHALF OF THE GOVERNMENT OF
THE UNITED STATES OF AMERICA:

Edwin Meese III