No. 42369. United States of America and Colombia

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF COLOMBIA. BOGOTÁ, 24 JULY 1990 [*United Nations, Treaty Series, vol. 2357, I-42369.*]

SUPPLEMENTAL MEMORANDUM THROUGH WHICH MECHANISMS ARE ESTABLISHED FOR IMPLEMENTING THE JULY 24, 1990, MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF COLOMBIA CONCERNING THE TRANSFER OF FORFEITED ASSETS. WASHINGTON, 28 OCTOBER 1998

Entry into force: 28 October 1998 by signature, in accordance with section IV

Authentic texts: English and Spanish

Registration with the Secretariat of the United Nations: United States of America, 17 April 2013

Nº 42369. États-Unis d'Amérique et Colombie

MÉMORANDUM D'ACCORD ENTRE LE GOUVERNEMENT DES ÉTATS-UNIS D'AMÉRIQUE ET LE GOUVERNEMENT DE LA RÉPUBLIQUE DE COLOMBIE. BOGOTA, 24 JUILLET 1990 [*Nations Unies, Recueil des Traités, vol. 2357, I-42369.*]

MÉMORANDUM COMPLÉMENTAIRE ÉTABLISSANT DES MÉCANISMES POUR LA MISE EN ŒUVRE DU MÉMORANDUM D'ACCORD DU 24 JUILLET 1990 ENTRE LE GOUVERNEMENT DES ÉTATS-UNIS D'AMÉRIQUE ET LE GOUVERNEMENT DE LA RÉPUBLIQUE DE COLOMBIE RELATIF AU TRANSFERT DE BIENS CONFISQUÉS. WASHINGTON, 28 OCTOBRE 1998

Entrée en vigueur : 28 octobre 1998 par signature, conformément à la section IV

Textes authentiques : anglais et espagnol

Enregistrement auprès du Secrétariat de l'Organisation des Nations Unies : États-Unis d'Amérique, 17 avril 2013

[ENGLISH TEXT – TEXTE ANGLAIS]

SUPPLEMENTAL MEMORANDUM
THROUGH WHICH MECHANISMS ARE ESTABLISHED FOR IMPLEMENTING THE JULY 24, 1990, MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF COLOMBIA CONCERNING THE TRANSFER OF FORFEITED ASSETS

I. STATEMENT OF PURPOSE

This Memorandum is designed to provide specific guidelines for the transfer -- pursuant to the July 24, 1990, Memorandum of Understanding between the Government of the United States of America and the Government of the Republic of Colombia ("1990 MOU") -- of forfeited assets or proceeds derived from illicit narcotics trafficking or any other crime related to this activity.

The July 24, 1990, Memorandum of Understanding authorized the United States of America to transfer to the Republic of Colombia (hereinafter "the Parties") assets that the United States of America forfeits with the assistance of the Republic of Colombia. That Memorandum recognized the desire of the Parties to "improve the effectiveness of law enforcement in both countries related to the suppression of narcotics trafficking, and the investigation, prosecution, and forfeiture of property and proceeds of narcotics trafficking."

This document supplements the 1990 MOU by providing specific mechanisms for the transfer by the United States of America of forfeited assets, with the objective of facilitating the coordination and review by the Parties of the delivery of these assets and their effective use and administration by the Republic of Colombia in the fight against illicit drug trafficking and related crimes.

The provisions of this document establish the mechanisms, to the extent permitted by the internal laws of the Parties, to be employed for the transfer of forfeited assets pursuant to the July 24, 1990, agreement, until such time as an agreement can be reached providing for reciprocal sharing of assets from forfeitures achieved by either of the Parties.

The Parties remain committed to presenting, negotiating and concluding a Bilateral International Cooperation Agreement about seizure, forfeiture, and sharing of assets that is reciprocal in nature.

II. GUIDELINES FOR THE USE OF SHARED ASSETS

In order to promote the most effective use of transferred assets, the Parties shall establish a Bilateral Committee comprised of high level officials representing the Colombian Ministerio de Justicia y del Derecho, Ministerio de Hacienda y Crédito Público, Fiscalía General de la Nación, Policía Nacional (DIJIN), Dirección de Impuestos y Aduanas Nacionales (DIAN), Instituto Nacional Penitenciario y Carcelario (INPEC), Departamento Administrativo de Seguridad (DAS), Dirección Nacional de Estupefacientes, and the United States Departments of Justice and Treasury; to determine what anti-narcotic trafficking projects and initiatives should be funded with assets to be transferred to Colombia as the result of the forfeiture by the United States of America of property derived from the illicit traffic of narcotics or any other crime related to that activity.

The Bilateral Committee shall designate a written List of specific law enforcement projects for the Colombian entities covered in this document. The List of Bilateral Committee-Approved Projects is to include descriptions of the proposals for each project enumerated to be financed with forfeited assets.

In the course of their implementation, the projects may be revised by reformulations agreed to by the Parties, without prejudice to the mechanisms established herein for the purposes of accounting, auditing, maintenance, and sustainment.

The Parties accept that projects financed with transferred assets pursuant to the 1990 MOU shall be used solely and exclusively by the entities contained in this document for the purpose of implementing the projects previously agreed upon and approved by the Bilateral Committee. These Colombian entities are: the Ministerio de Justicia y del Derecho, the Ministerio de Hacienda y Crédito Público, the Fiscalía General de la Nación, the Policía Nacional (DIJIN), the Dirección de Impuestos y Aduanas Nacionales (DIAN), the Instituto Nacional Penitenciario y Carcelario (INPEC), the Departamento Administrativo de Seguridad (DAS), and the Dirección Nacional de Estupefacientes.

III. GUIDELINES FOR RECORD MAINTENANCE, REPORTING, AND REVIEW OF PROJECTS FINANCED WITH TRANSFERRED ASSETS

The Ministerio de Justicia y del Derecho of the Republic of Colombia is responsible for the monitoring and evaluation of the projects authorized and approved by the Bilateral Committee. In addition, the Ministerio de Justicia y del Derecho is responsible for presenting the periodic reports of the development, progress and termination of said projects. These reports shall serve as the basis for keeping the Bilateral Committee informed about the development of the projects according to their specified terms. These reports from the Ministerio de Justicia y del Derecho will be presented to the Bilateral Committee within 30 days of the first transfer following the signing of this document and, thereafter, every three months on the first day of each month.

The Ministerio de Justicia y del Derecho is to maintain monthly statements identifying the date, case, and value of each transfer, and specifying the projects funded. These statements also shall include the amount and date of any payment or further disbursement of funds transferred to the entities identified in this document, as well as the name, address, and telephone of all persons, businesses or entities to which such payments or disbursements were made. In addition, the statements shall indicate the value of the balance remaining from each transfer from the United States of America. These monthly statements shall be included in the quarterly reports presented to the Bilateral Committee.

In order to facilitate the preparation of the required records and to ensure their consistent creation and preservation, the Parties understand that a portion constituting not less than U.S.$100,000 of the first funds to be transferred under these guidelines shall be designated for the purpose of hiring such personnel and procuring such equipment as may be necessary to prepare, create, and preserve records of the projects for which shared assets are used and to determine the effectiveness of the projects. Upon the approval of the Bilateral Committee, the Ministerio de Justicia y del Derecho may designate additional shared funds to be allocated for this purpose, as may become necessary. Should these accounting mechanisms reveal a surplus balance, the same shall be distributed proportionally among the Colombian entities identified in this document.

IV. GUIDELINES FOR TRANSFER OF ASSETS

Once the United States of America and the Republic of Colombia have agreed upon the projects and initiatives to be funded, the Government of the United States of America may transfer to the Government of the Republic of Colombia, in accordance with the internal laws and policies of both countries, funds, services, or property representing an equitable share of property forfeited with the assistance of Colombian authorities. At the time of the transfer of any such assets, the authorities transferring and receiving the property shall inform the Bilateral Committee of the transfers.

The United States of America may, at its discretion, choose to transfer the assets in installments following the Bilateral Committee's receipt and review of the periodic statements and reports prepared by the Ministerio de Justicia y del Derecho.

The Parties acknowledge that the United States of America may suspend the transfer of all or part of such assets as may be required by United States law or policy, or to the extent that the projects to be funded are determined to be ineffective, or in the event that the Bilateral Committee does not receive adequate information to conduct its reviews.

This document establishes the procedures to implement the 1990 MOU and to promote mutual assistance between the Governments of the United States of America and Colombia.

The parties understand that the present document does not affect other areas of cooperation that currently exist between the two countries. As a result, its clauses do not create rights in any private person and is not intended to benefit third parties.

This Memorandum shall enter into force on the date of signature by both parties.

Done in duplicate, at Washington, D.C. in the English and Spanish languages, both texts being equally authentic, this 28th day of October of 1998.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

FOR THE GOVERNMENT OF THE REPUBLIC OF COLOMBIA

[SPANISH TEXT – TEXTE ESPAGNOL]

MEMORANDO COMPLEMENTARIO PARA ESTABLECER MECANISMOS CON EL FIN DE EJECUTAR EL MEMORANDO DE ENTENDIMIENTO DEL 24 DE JULIO DE 1990, ENTRE EL GOBIERNO DE LOS ESTADOS UNIDOS DE AMÉRICA Y EL GOBIERNO DE LA REPÚBLICA DE COLOMBIA, RELACIONADO CON LA TRANSFERENCIA DE BIENES DECOMISADOS

I. DECLARACIÓN DEL PROPÓSITO

El presente Memorando se propone estipular pautas específicas para la transferencia (de conformidad con el Memorando de Entendimiento del 24 de julio de 1990, entre el Gobierno de los Estados Unidos de América y el Gobierno de la República de Colombia, en adelante, "el Memorando de 1990") de bienes o utilidades decomisados que provengan del tráfico ilícito de estupefacientes o de cualquier otro delito conexo con dicho tráfico.

El Memorando de 1990 autoriza a los Estados Unidos de América a transferir a la República de Colombia (en adelante, "las Partes") los bienes que los Estados Unidos de América decomisaran con la asistencia de la República de Colombia. Dicho Memorando reconoció el deseo de las Partes de "mejorar la eficacia de la aplicación de la ley en ambos países en cuanto a la represión del tráfico de estupefacientes, y a la investigación, enjuiciamiento y decomiso de los bienes y utilidades que provengan de dicho tráfico".

El presente documento complementa el Memorando de 1990 mediante la estipulación de mecanismos específicos para la transferencia, por los Estados Unidos de América, de bienes decomisados, con el objeto de facilitar la coordinación y revisión por las Partes de la entrega de estos bienes y de su uso y administración eficaces por la República de Colombia en la lucha contra el tráfico ilícito de estupefacientes y los delitos conexos.

Las disposiciones del presente documento establecen los mecanismos, en tanto los permita la legislación interna de las Partes, que se emplearán para la transferencia de bienes decomisados de conformidad con el Memorando de 1990, hasta el momento en que se pueda llegar a un acuerdo que contemple la compartición recíproco de los bienes provenientes de los decomisos efectuados por cualquiera de las Partes.

Las Partes continúan comprometidas a presentar, negociar y concertar un Acuerdo Bilateral de Cooperación Internacional sobre la incautación, el decomiso y la compartición de bienes en forma recíproca.

II. PAUTAS PARA EL USO DE LOS BIENES COMPARTIDOS

Con el objeto de promover el uso más eficaz de los bienes transferidos, las Partes establecerán un Comité Bilateral conformado por funcionarios de alto nivel que representen, por Colombia, al Ministerio de Justicia y del Derecho, el Ministerio de Hacienda y Crédito Público, la Fiscalía General de la Nación, la Policia Nacional (DIJIN), la Dirección de Impuestos y Aduanas Nacionales (DIAN), el Instituto Nacional Penitenciario y Carcelario (INPEC), el Departamento Administrativo de Seguridad (DAS) y la Dirección Nacional de Estupefacientes, y por los Estados Unidos de América, los Departamentos de Justicia y del Tesoro, el cual determinará los proyectos e iniciativas contra el tráfico de estupefacientes que se financiarán con los bienes y las utilidades transferidos a Colombia como resultado del decomiso, por los Estados Unidos de América, de bienes provenientes del tráfico ilícito de estupefacientes u otros delitos conexos.