

No. 53311*

**Canada
and
Cuba**

Agreement between the Government of Canada and the Government of the Republic of Cuba regarding the sharing of forfeited assets or their equivalent funds. Havana, 8 July 2003

Entry into force: *3 June 2004 by notification, in accordance with article 8*

Authentic texts: *English, French and Spanish*

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**Canada
et
Cuba**

Accord entre le Gouvernement du Canada et le Gouvernement de la République de Cuba concernant le partage de biens confisqués ou des sommes d'argent équivalentes. La Havane, 8 juillet 2003

Entrée en vigueur : *3 juin 2004 par notification, conformément à l'article 8*

Textes authentiques : *anglais, français et espagnol*

Enregistrement auprès du Secrétariat des Nations Unies : *Canada, 22 janvier 2016*

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[ENGLISH TEXT – TEXTE ANGLAIS]

AGREEMENT
BETWEEN
THE GOVERNMENT OF CANADA
AND
THE GOVERNMENT OF THE REPUBLIC OF CUBA
REGARDING THE SHARING OF FORFEITED
ASSETS OR THEIR EQUIVALENT FUNDS

THE GOVERNMENTS OF CANADA AND OF THE REPUBLIC OF CUBA,
hereinafter referred to as "the Parties",

CONSIDERING the commitment of the Parties to co-operate on the basis of the *United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances* of December 20, 1988;

DESIRING to improve the effectiveness of law enforcement in both countries in the investigation, prosecution and suppression of crime and in the tracing, freezing, seizure and forfeiture of assets related to crime; and

DESIRING also to create a framework for sharing the proceeds of disposition of such assets,

HAVE AGREED as follows:

ARTICLE 1

Interpretation

In this Agreement:

- a) References to "forfeiture" shall be taken to be references to any procedure under national law resulting:
 - i. In the case of Canada, an order of forfeiture of assets related to crime or an order for the payment of funds equivalent to a forfeiture, made on behalf of Her Majesty the Queen in right of Canada, which is not, or no longer capable of being the subject of appeal proceedings; and
 - ii. In the case of Cuba, an order of forfeiture of assets related to crime, made by a Court of competent jurisdiction which is not, or no longer capable of being the subject of appeal proceedings;
- b) Reference to "co-operation" shall be taken to be references to any assistance, including operational, legal or judicial assistance, which has been given by one Party and which has contributed to, or significantly facilitated, forfeiture in the territory of the other Party;

- c) References to “assets” shall be taken to be references to assets which are in the possession of a Party, and which comprise the net proceeds realised as a result of forfeiture, after deduction of the costs of realisation;
- d) References to “Requesting Party” shall be taken to be references to the Party making a request in accordance with Article 3 of this Agreement;
- e) References to “Requested Party” shall be taken to be references to the Party receiving a request in accordance with Article 3 of this Agreement.

And the provisions of this Agreement are to be interpreted in accordance with this article.

ARTICLE 2

Scope of application

The provisions of this Agreement are not limited to the forfeiture of the proceeds of drug offences as laid down in Article 3 of the *1988 UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances*.

ARTICLE 3

Requests for asset sharing

- 1. A request for asset sharing may be made by a Party (Requesting Party), which has cooperated with the other Party (Requested Party), and shall be made in accordance with the provisions of this Agreement.
- 2. The Requesting Party shall in its request set out the circumstances of the co-operation to which it relates, and shall include sufficient details to enable the Requested Party to identify the assets, property owners, case reference and agency involved.

ARTICLE 4

Allocation of shares

- 1. A party that has forfeited assets may, at its discretion and in accordance with its domestic laws, share with the other Party the assets comprising the net proceeds realized from the forfeiture. Upon receipt of a request made in accordance with Article 3, the Requested Party may, at its discretion and in accordance with its domestic laws, share with the Requesting Party the assets comprising the net proceeds realised from the forfeiture.
- 2. Where the Party that has forfeited assets proposes or agrees to share assets as set out in paragraph 1 of this Article, it shall:
 - a) Determine, at its discretion and in accordance with its domestic law, the proportion of the assets to be shared which, in its view, represents the extent of the co-operation afforded by the other Party, and
 - b) Pay a sum equivalent to that proportion to the other Party in accordance with Article 5 below.

ARTICLE 5

Payment of shared assets

1. Any sum paid pursuant to Article 4(2)(b) above shall be paid in Canadian dollars unless the Parties agree otherwise.
2. Payment of any such sum shall be made:
 - a) In any case in which Canada is the Co-operating Party, to the Receiver General of Canada (Proceeds Account), and sent to the Director of the Seized Property Management Directorate, and
 - b) In any case in which Cuba is the Co-operating Party, to the Ministry of Economy and Planning.

ARTICLE 6

Imposition of conditions

Where it pays any sum pursuant to Article 4(2)(b) above, the Party proposing or agreeing to share assets may not impose on the Co-operating Party any conditions as to the use of that sum, and in particular may not require the Co-operating Party to share the sum with any other state, government, organisation or individual.

ARTICLE 7

Channels of communication

Save where otherwise indicated by this Agreement, all communications between the Parties pursuant to the provisions of this Agreement shall be conducted:

- a) On the part of Canada, by the Director of the Strategic Prosecution Policy Section, and
- b) On the part of Cuba, by the Head of the Department of International Relations, Ministry of Interior,

or by such other nominees as the Parties may from time to time for their own part specify by notification for the purposes of this Article.

ARTICLE 8

Entry into force

This Agreement shall enter into force on the date on which each Party receives final notification from the other, through Diplomatic channels, that the internal legal requirements for its ratification have been fulfilled.

ARTICLE 9

Modification or termination of the Agreement

1. This Agreement may be modified upon the consent of the Parties, and any modifications shall enter into force in accordance with Article 8.
2. Either Party may terminate this Agreement, at any time, by giving written notice to the other Party via Diplomatic channels. Termination shall become effective six months after receipt of the notice.

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

DONE in duplicate at *Havana*, this *8th* day of *July*, two thousand and three, in the English, French and Spanish languages, each version being equally authentic.



**FOR THE GOVERNMENT
OF CANADA**



**FOR THE GOVERNMENT OF THE
REPUBLIC OF CUBA**