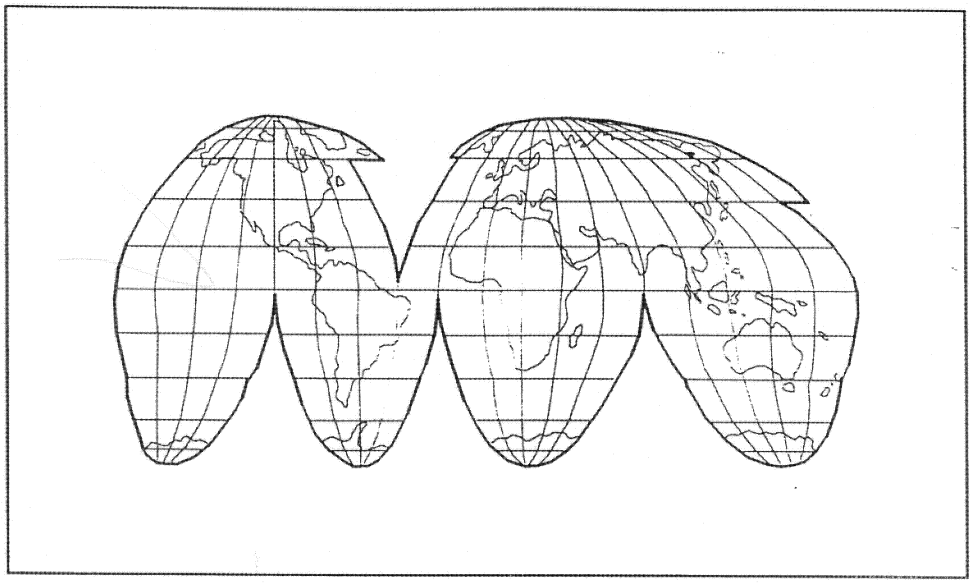

# INTERNATIONAL FORFEITURE COOPERATION AND SHARING OF CONFISCATED ASSETS

The United States Perspective

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## The United States Perspective

## OVERVIEW

Major drug traffickers and other organized criminals often hide their illicitly generated proceeds outside the country where they commit the crimes. Thus, one country's forfeiture efforts, however effective and comprehensive, may not be enough to take the profit out of transnational crime. For forfeiture laws to work effectively, the United States and its international partners must apply and enforce their domestic confiscation measures in increasingly multinational settings.

The United States Department of Justice has placed the development of international forfeiture cooperation among its top priorities. Our paramount objective is to take the profit out of crime. Secondarily, our domestic efforts have taught us that forfeited wealth, when shared with cooperating law enforcement agencies, serves to enhance interagency cooperation by replenishing the resources needed by all to combat crime.

This concept is equally true in the international setting. While law enforcement is always the prime objective, the sharing of forfeited assets among participating nations also creates an incentive for future cooperation and provides the means to carry out such costly efforts.

## BILATERAL TREATIES, EXECUTIVE AGREEMENTS, AND LETTERS ROGATORY

Recent bilateral and multinational agreements, providing for mutual forfeiture assistance, attest to the emergence of forfeiture as an international law enforcement sanction. Currently, the United States has ratified mutual legal assistance treaties (MLATs) with nineteen jurisdictions. The following MLATs provide the basis for making forfeiture requests:

- Anguilla
- Argentina
- Bahamas
- British Virgin Islands
- Canada
- Cayman Islands
- Italy[1]
- Jamaica
- Mexico
- Morocco
- Montserrat
- Netherlands
- Panama
- Spain
- Switzerland
- Thailand
- Turkey
- Turks and Caicos Islands
- Uruguay

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[1] The provision of the mutual legal assistance treaty between the United States and Italy dealing with forfeiture (Article 18), however, is not currently in effect.

The United States has also reached an executive agreement with the United Kingdom, providing for bilateral law enforcement cooperation in drug-related matters including forfeiture, and a drug-related forfeiture agreement with Hong Kong. Most recently, on November 20, 1992, the United States and the Kingdom of the Netherlands (consisting of the Kingdom in Europe, Aruba, and the Netherlands Antilles) signed an executive agreement that supplements the United States-Dutch MLAT and provides for forfeiture cooperation and asset sharing.

In addition, letters rogatory, the more time-consuming but traditional means of obtaining assistance from a foreign court, remain available for use in cases where the United States and the foreign jurisdiction in question are not parties to a forfeiture-related bilateral treaty or agreement.

Bilateral MLATs and executive agreements have helped to regularize international forfeiture cooperation between treaty partners. However, the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, more commonly referred to as the Vienna Convention, is perhaps the single most important development in international forfeiture cooperation to date.

## THE VIENNA CONVENTION

The Vienna Convention, which went into effect on November 11, 1990, has been ratified by over one hundred fifteen countries. The United States was eighth among the first twenty countries to ratify and bring the Convention into force.

Article V of the Vienna Convention details the obligations of the parties to seek the forfeiture of (or, in the term used in the Convention, confiscate) drug trafficking and money laundering proceeds, as well as the instrumentalities used to commit such offenses.[2] It mandates each signatory country to enact laws with domestic and international forfeiture application.

For example, Article V requires each signatory country to enact domestic forfeiture legislation enabling the country in question to locate, freeze, and forfeit all manner of property derived from, or used in, drug trafficking or drug money laundering. As importantly, Article V requires each signatory country to identify, trace, seize, freeze, or forfeit property or proceeds located in the requested country, which were derived from, or used in, drug trafficking or drug money laundering in violation of the laws of the requesting country. Explicitly, Article V provides that bank secrecy laws must not serve as a barrier to domestic and international asset forfeiture investigations.

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[2] Article V of the Vienna Convention, dealing with confiscation or forfeiture, is attached as Appendix A to this publication.

Recognizing the diversity of legal systems among nations, the Vienna Convention provides that a requested country may seek the forfeiture of property at the request of another country in one, or both, of two ways. The requested country may initiate its own forfeiture proceedings against the property in question using the evidence provided by the requesting country. Alternatively, the requested country may give full faith and credit to a forfeiture judgment rendered by the competent authorities of the requesting country.

The United States has adopted the first approach in complying with the Vienna Convention. In the case of drug violations committed wholly in violation of foreign law, the United States can, under 18 U.S.C. § 981(a)(1)(B), file a civil forfeiture action against the foreign drug proceeds found in the United States. Because Section 981(a)(1)(B) is an in rem action against the property itself, the Government may seek to confiscate the property in question regardless of whether the property's owner is dead, a fugitive, or incarcerated in another country.

## REQUESTS BY THE UNITED STATES

One of the first steps in the international forfeiture process is to identify and locate assets beyond our borders that may be forfeitable. Typically, this involves making requests under a treaty, convention, executive agreement, or letter rogatory for bank records that may reveal the movement or location of forfeitable wealth.[3] The United States may then request the country where the assets are found to issue a freeze or restraining order. Such a request can be based upon contemplated or actual forfeiture proceedings in the United States or in the requested country.[4]

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[3]Formal means for forfeiture cooperation, such as treaties and multinational conventions, do not replace the day-to-day cooperation among law enforcement agencies to different countries. Such cooperation, although fully sanctioned by the governments in question, is often requested and provided outside diplomatic channels. For example, at the request of their foreign counterparts, one country's law enforcement representatives may be able to provide investigative leads to a forfeiture matter pending in the other jurisdiction (e.g., assist in locating the forfeitable property or evidence or identifying potential witnesses and claimants). Officers from different countries may also work together in task force efforts, requiring even more extensive cooperation among them.

[4]In instances where the forfeiture can best be accomplished under the laws of the foreign jurisdiction where the assets are located, the United States, of course, will make every reasonable effort to furnish the foreign jurisdiction with the relevant evidence in its possession.

Once assets forfeitable under United States laws have been traced overseas, the United States must then consider how to advance the forfeiture process, while addressing the legal requirements of the country where the assets are located.
United States forfeiture laws which focus both on the property (in rem civil actions) or on the owner (in personam criminal actions).

In both civil and criminal forfeiture cases, the United States will often seek to repatriate the property for forfeiture. Sometimes, this can be accomplished through the cooperation of the property's owner or a defendant who agrees to forfeit the property as part of a plea agreement. However, if the property in question has been frozen or restrained by the foreign authority in question, it cannot be returned to the United States unless the competent foreign authorities agree to lift the freeze for the purpose of repatriation. Such a request may occur in connection with the criminal case, a civil forfeiture case related to the criminal investigation, or as part of an extradition where property (e.g., cash, weapons) was found within the immediate control of the subject at the time of his detention.

In cases where foreign-based property has been forfeited under United States law as a result of the criminal conviction of its owner or a civil forfeiture action, the United States may also request that the foreign government, upon enforcing the order, either repatriate the assets to the United States or share the forfeited assets with us and any other country or countries that assisted in the forfeiture.

Civil Forfeiture - In 1992, Congress enacted 28 U.S.C. §1355(b)(2), a statute vesting United States district courts with extraterritorial jurisdiction over assets located abroad that are subject to civil forfeiture under United States law. Section 1355(b)(2) enhances the United States' ability to lend international forfeiture assistance. This provision is particularly useful in cases where the foreign country in question cannot forfeit the property under its own laws, but may be able to take other steps that assist the United States forfeiture effort (e.g., seize the property, enforce a United States forfeiture judgment, or repatriate the assets). In such cases, once the assets have been civilly forfeited in the United States[5], we can transmit the final civil forfeiture judgment to the foreign country for enforcement or repatriation of the assets.

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[5]In a §1355(b)(2) action, the United States will require assistance from the foreign authorities to enable it to perfect the court's in rem jurisdiction over the property. Such assistance may include restraining the property, providing notice to the property and to other individuals and entities who may have an interest in the property, and arranging for publication of notice of the United States forfeiture action in a newspaper of general circulation where the property is located.

The Department recognizes, however, that cases brought under Section 1355(b)(2) must be closely coordinated with the authorities of the foreign government where the forfeitable assets are located. In both practical and legal terms, extraterritorial jurisdiction in civil forfeiture cases can be successfully asserted only where the foreign country in question has no objection to the exercise of such in rem jurisdiction by a United States court and cooperates with the U.S. efforts.

Criminal Forfeiture - In the United States, the plea bargaining process is an important part of our criminal justice system. Through a plea agreement, a defendant can consent to the forfeiture of his or her property regardless of its location. To that end, a plea agreement may require that the defendant transfer title to foreign-based assets to the United States or to liquidate the property and transfer the proceeds to the United States. In such cases, the United States may request assistance from the foreign government in repatriating the property for forfeiture. Where repatriation is not possible, the United States may be able to assist the foreign jurisdiction to forfeit the property under its own law by structuring the United States plea agreement so that the defendant is required to cooperate with foreign authorities in their own law enforcement efforts. Similarly, where explicit admissions regarding the illicit source of the property will enable a foreign country to obtain a forfeiture order, the plea agreement might also contain an admission by the defendant that the foreign- based property constitutes proceeds of the particular illegal conduct alleged.

## REQUESTS TO THE UNITED STATES FROM FOREIGN COUNTRIES

Foreign criminals, like their American counterparts, often attempt to protect their illegal profits from their own countries' laws by transferring them elsewhere, including to the United States. In response, Congress enacted legislation, 18 U.S.C. § 981(a)(1)(B), authorizing the seizure and forfeiture of assets within our borders that represent the proceeds of drug-related crimes committed abroad.[6]

Section 981(a)(1)(B) permits the United States to forfeit assets even where there has been no violation of domestic law. Generally, it provides for the civil forfeiture of property in the United States that is derived from, or traceable to, the violation of a foreign law involving the manufacture, importation, sale, or distribution of a controlled substance. In addition, the drug offense must be one

[6] The text of 18 U.S.C. § 981(a)(1)(B) is set out in Appendix B to this publication.

which is punishable by in excess of one year's imprisonment in the country where it was committed, and would have been punishable for such a term had the offense occurred in the United States.

One of the more notable features of section 981 is the provision's use of foreign forfeiture orders and foreign convictions to support a civil forfeiture action against foreign drug proceeds found in the United States. Under the statute, a certified copy of a foreign forfeiture judgment encompassing the subject property is admissible into evidence to establish the government's initial case in court. Similarly, the statute also authorizes the admission into evidence of a certified foreign judgment of conviction for a felony offense involving the manufacture, importation, sale, or distribution of a controlled substance giving rise to the proposed forfeiture under section 981. The certified foreign judgment of conviction creates a rebuttable presumption that the unlawful drug activity giving rise to the forfeiture has occurred.

As the result of legislation taking effect on October 28, 1992, it is now a violation of United States law to launder the proceeds of foreign fraud offenses committed by or against a foreign bank, and also foreign kidnapping, robbery, and extortion offenses. Such proceeds, and the property that is used to facilitate their laundering, is now civilly (18 U.S.C. § 981(a)(1)(A)) and criminally (18 U.S.C. § 982(a)(1)) forfeitable. In all such cases, while the underlying offense may have violated only foreign law, the laundering offense must be shown to have occurred at least in part in the United States or to have involved a United States citizen.

Not all foreign requests will require judicial measures such as those available under Section 981(a). For example, a foreign jurisdiction may ask us to help locate and identify forfeitable assets located in the United States. In such cases, United States law enforcement agents would carry out the investigation much as they would a domestic law enforcement matter, gathering the evidence for transmittal to the requesting country through the appropriate channels.

In other cases, a foreign official may interview witnesses in the United States who are willing to cooperate with an investigation by, for example, voluntarily submitting to a deposition. The United States does not require foreign government representatives to obtain official authorization from our government before interviewing willing witnesses in the United States.

In cases where a witness is not willing to submit voluntarily to a deposition or to produce records and other evidence, the United States may be able to secure such assistance through compulsory process under 28 U.S.C. § 1782. In such instances, a United States district court will usually designate a federal prosecutor to serve as a commissioner charged with obtaining testimony and gathering evidence on behalf of the requesting foreign authority.

The United States may also be able to provide assistance to foreign governments in recovering the proceeds of foreign fraud offenses that are located here. The United States can seek to forfeit such property relying on the interplay of, inter alia, 18 U.S.C. §§ 981 or 982 and 1956, our money laundering statutes, and 18 U.S.C. §§ 2314 and 2315, which prohibit knowingly transmitting or receiving through foreign commerce the proceeds of theft, fraud, or conversion. Upon the forfeiture of foreign fraud proceeds, the United States will work with foreign officials to make restitution to the fraud victims.

## ASSET SHARING

It is the policy and practice of the United States, pursuant to statutory authority, to share the proceeds of successful forfeiture actions with countries that made possible or substantially facilitated the forfeiture of assets under United States law. As of March 1995, the Department of Justice, with the concurrence of the Secretary of State, has transferred a total of over $36 million to twenty nations in recognition of their forfeiture assistance.

From its practice of sharing forfeited property with state and local governments, the United States has learned that, over a period of time, dividing forfeited property among cooperating law enforcement agencies increases interagency cooperation and forfeiture revenues. Similarly, we believe that asset sharing among nations enhances international forfeiture cooperation by creating an incentive for countries to work together, regardless of where the assets are located or which jurisdiction will ultimately enforce the forfeiture order.

The United States does not view international asset sharing as the bartering or selling of law enforcement cooperation among jurisdictions. To the contrary, we stand ready to cooperate with the forfeiture efforts of other nations whether or not there is asset sharing. At the same time, we encourage reciprocal sharing with and among our foreign law enforcement partners.

There are three statutory provisions in the United States Code, authorizing the Attorney General and/or the Secretary of the Treasury to transfer forfeited property to a foreign country:

* 18 U.S.C. § 981(i)(1)
* 19 U.S.C. § 1616a(c)(2)
* 21 U.S.C. § 881(e)(1)(E)

Title 18, United States Code, Section 981(i)(1) authorizes the Attorney General or the Secretary of the Treasury to transfer money laundering proceeds and

instrumentalities forfeited under 18 U.S.C. §§ 981 and/or 982 to a foreign country that participated directly or indirectly in acts leading to the seizure and forfeiture of the property.[7] Title 19, United States Code, Section 1616a(c)(2) authorizes the Secretary of the Treasury to transfer forfeited property in recognition of foreign assistance to a forfeiture case under the jurisdiction of the United States Customs Service. Title 21, United States Code, Section 881(e)(1)(E) authorizes the Attorney General to transfer forfeited assets to a foreign country that participated in the seizure or forfeiture under the federal drug laws.

Each provision conditions international sharing upon:

(1) direct or indirect participation by the foreign government in the seizure and/or forfeiture of the property subsequently forfeited under United States law;

(2) authorization by the Attorney General or the Secretary of the Treasury to transfer all or a portion of the forfeited property to the cooperating foreign country;

(3) approval by the Secretary of State of the transfer;

(4) authorization in an international agreement (which may be a standing bilateral agreement, such as a mutual legal assistance treaty, or a case-specific agreement reached for the purpose of effecting the transfer) between the United States and the foreign country to which the property is to be transferred; and

(5) if applicable, certification under 22 U.S.C. § 2291(h) [Section 481(h) of the Foreign Assistance Act of 1961] of the foreign country in question.

The ultimate decision of whether and how much to share is made, subject to the review by the Secretary of State, by the Attorney General or the Secretary of the Treasury. No United States representative has the statutory authority to commit to asset sharing in any given case until an international forfeiture sharing agreement has been approved at the highest levels of the Departments of Justice (or Treasury) and State.

How much to transfer in specific cases is governed by the principle that the shared amount should reflect the contribution of the foreign government relative to the

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[7] Section 981(a)(1), which contains three subsections, provides for the civil forfeiture of (A) assets traceable to, or involved in, money laundering violations; (B) proceeds of foreign drug felonies; and (C) property constituting, or derived from, proceeds traceable to certain banking fraud violations. Section 982 provides for the criminal forfeiture of property involved in money laundering offenses and the criminal forfeiture of proceeds derived from financial fraud offenses.

assistance provided by other foreign and domestic law enforcement participants. Generally, of course, the level or amount of sharing will be in direct relationship with the importance and degree of the foreign assistance. The United States opposes international sharing agreements that fix a specific percentage to be shared in future cases.

Cases that warrant the most sharing are those in which the foreign country takes action on our behalf that proves essential to the success of the forfeiture action in the United States. Examples include cases in which the foreign country repatriates the assets here, takes steps to provide our court with in rem jurisdiction over the property, or where the foreign authorities provide all the evidence needed to confiscate in the United States the proceeds of drug violations committed wholly in violation of foreign law.

Second are those cases where the foreign country provides assistance that is probably essential to the successful forfeiture action of the United States. Such assistance may include enforcement of a United States forfeiture order with subsequent repatriation of the assets to the United States or the expenditure of substantial law enforcement resources to assist the United States.

Third, the United States would share in recognition of foreign assistance that materially facilitates a forfeiture in the United States. Such assistance includes furnishing important investigative leads, producing significant documents for trial, or facilitating the interview or depositions of a key witness.

The United States encourages foreign jurisdictions that confiscate assets under their laws with our assistance to recognize the United States contribution through asset sharing. We have entered into reciprocal asset sharing agreements with Canada, Cayman Islands, Ecuador, and the Netherlands and have received a share of forfeited assets from Switzerland, Isle of Jersey, and the United Kingdom. Such shared proceeds are deposited into the Assets Forfeiture Fund and made available for law enforcement purposes consistent with United States Law.

# Appendix A

## UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES
## Vienna Convention

## Article 5 - CONFISCATION

1. Each Party shall adopt such measures as may be necessary to enable confiscation of:

   (a) Proceeds derived from offenses established in accordance with article 3, paragraph 1, or property the value of which corresponds to that of such proceeds;

   (b) Narcotic drugs and psychotropic substances, materials and equipment or other instrumentalities used in or intended for use in any manner in offenses established in accordance with article 3, paragraph 1.

2. Each Party shall adopt such measures as may be necessary to enable its competent authorities to identify, trace, and freeze or seize proceeds, property, instrumentalities or any other things referred to in paragraph 1 of this article, for the purpose of eventual confiscation.

3. In order to carry out the measures referred to in this article, each Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. A Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

4. (a) Following a request made pursuant to this article by another Party having jurisdiction over an offence established in accordance with article 3, paragraph 1, the Party in whose territory proceeds, property, instrumentalities or any other things referred to in paragraph 1 of this article are situated shall:

   (i) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, give effect to it; or

   (ii) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by the requesting Party in accordance with paragraph 1 of this article, in so far as it relates to proceeds, property, instrumentalities or any other things referred to in paragraph 1 situated in the territory of the requested Party.

   (b) Following a request made pursuant to this article by another Party having jurisdiction over an offence established in accordance with article 3, paragraph 1, the requested Party shall take measures to identify, trace, and freeze or seize

proceeds, property, instrumentalities or any other things referred to in paragraph 1 of this article for the purpose of eventual confiscation to be ordered either by the requesting Party or, pursuant to a request under subparagraph (a) of this paragraph, by the requested Party.

(c) The decisions or actions provided for in subparagraphs (a) and (b) of this paragraph shall be taken by the requested Party, in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting Party.

(d) The provisions of article 7, paragraphs 6 to 19 are applicable mutatis mutandis. In addition to the information specified in article 7, paragraph 10, requests made pursuant to this article shall contain the following:

(i) In the case of a request pertaining to subparagraph (a)(i) of this paragraph, a description of the property to be confiscated and a statement of the facts relied upon by the requesting Party sufficient to enable the requested Party to seek the order under its domestic law;

(ii) In the case of a request pertaining to subparagraph (a)(ii), a legally admissible copy of an order of confiscation issued by the requesting Party upon which the request is based, a statement of the facts and information as to the extent to which the execution of the order is requested;

(iii) In the case of a request pertaining to subparagraph (b), a statement of the facts relied upon by the requesting Party and a description of the actions requested;

(e) Each Party shall furnish to the Secretary-General the text of any of its laws and regulations which give effect to this paragraph and the text of any subsequent changes to such laws and regulations.

(f) If a Party elected to make the taking of the measures referred to in subparagraphs (a) and (b) of this paragraph conditional on the existence of a relevant treaty, that Party shall consider this Convention as the necessary and sufficient treaty basis.

(g) The Parties shall seek to conclude bilateral and multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation pursuant to this article.

5. (a) Proceeds or property confiscated by a Party pursuant to paragraph 1 or paragraph 4 of this article shall be disposed of by that Party according to its domestic law and administrative procedures.

(b) When acting on the request of another Party in accordance with this article, a Party may give special consideration to concluding agreements on:

(i) Contributing the value of such proceeds and property, or funds derived from the sale of such proceeds or property, or a substantial part thereof, to intergovernmental bodies specializing in the fight against illicit traffic in and abuse of narcotic drugs and psychotropic substances;

(ii) Sharing with other Parties, on a regular or case-by-case basis, such proceeds or property, or funds derived from the sale of such proceeds or property, in accordance with its domestic law, administrative procedures or bilateral or multilateral agreements entered into for this purpose.

6. (a) If proceeds have been transformed or converted into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

(b) If proceeds have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to seizure or freezing, be liable to confiscation up to the assessed value of the intermingled proceeds.

(c) Income or other benefits derived from:

(i) Proceeds;

(ii) Property into which proceeds have been transformed or converted; or

(iii) Property with which proceeds have been intermingled.

shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds.

7. Each Party may consider ensuring that the onus of proof be reversed regarding the lawful origin of alleged proceeds or other property liable to confiscation, to the extent that such action is consistent with the principles of its domestic law and with the nature of the judicial and other proceedings.

8. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a Party.

## Appendix B

## 18 U.S.C. § 981 (a)(l)(B)

The following property is subject to forfeiture to the United States:

* * *

Any property, real or personal, within the jurisdiction of the United States, constituting, derived from or traceable to, any proceeds obtained directly or indirectly from an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substance Act), within whose jurisdiction such offense would be punishable by death or imprisonment for a term exceeding one year and which would be punishable under the laws of the United States by imprisonment for a term exceeding one year if such act or activity constituting the offense against the foreign nation had occurred within the jurisdiction of the United States.

# Appendix C

## INTERNATIONAL SHARING STATUTES

### 18 U.S.C. § 981(i)(1)

Whenever property is civilly or criminally forfeited under this chapter, the Attorney General or the Secretary of the Treasury, as the case may be, may transfer the forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such as transfer –

(A) has been agreed to by the Secretary of State;

(B) is authorized in an international agreement between the United States and the foreign country; and

(C) is made to a country which, if applicable, has been certified under the section 481(h) (2291(h)) of the Foreign Assistance Act of 1961.

A decision by the Attorney General or the Secretary of the Treasury pursuant to this paragraph shall not be subject to review. The foreign country shall, in the event or a transfer of property or proceeds of sale of property under this subsection, bear all expenses incurred by the United States in the seizure, maintenance, inventory, storage, forfeiture, and disposition of the property, and all transfer costs. The payment of all such expenses, and the transfer of assets pursuant to this paragraph, shall be upon such terms and conditions as the Attorney General or the Secretary of the Treasury may, in this discretion, set.

* * *

### 19 U.S.C. § 1616a(c)(2)

The Secretary (of the Treasury) may transfer any forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer –

(A) has been agreed to by the Secretary of State;

(B) is authorized in an international agreement between the United States and the foreign country; and

(C) is made to a country which, if applicable, has been certified under section 2291(h) of Title 22.

* * *

**21 U.S.C. s 881(e)(1)(E)**

Whenever property is civilly or criminally forfeited under this subchapter the Attorney General may --

. . .

transfer the forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer --

(i) has been agreed to by the Secretary of State;

(ii) is authorized in an international agreement between the United States and the foreign country; and

(iii) is made to a country which, if applicable, has been certified under section 2291(h) of Title 22.