

**AGREEMENT**  
**BETWEEN**  
**THE GOVERNMENT OF**  
**THE REPUBLIC OF SOUTH AFRICA**  
**AND**  
**THE GOVERNMENT OF**  
**THE FEDERATIVE REPUBLIC OF BRAZIL**  
**REGARDING MUTUAL ASSISTANCE**  
**BETWEEN THEIR CUSTOMS**  
**ADMINISTRATIONS**

## **Preamble**

The Government of the Republic of South Africa and the Government of the Federative Republic of Brazil (hereinafter referred to as “the Parties” and in the singular as “a Party”);

**CONSIDERING** that offences against customs law are detrimental to the economic, fiscal and social interests of their respective countries;

**CONSIDERING** the importance of ensuring the accurate assessment of customs duties, taxes and other charges collected on the importation or exportation of goods and a proper implementation of provisions of prohibition, restriction and control;

**CONSIDERING** that trafficking in narcotic drugs and psychotropic substances constitutes a danger to public health and to society;

**TAKING INTO ACCOUNT** the threat of transnational organised crime and groups with their substantial resources and the need to effectively combat them;

**RECOGNISING** the increased global concern for the security and facilitation of the international trade supply chain and the Customs Co-operation Council’s Resolution of June 2002 to that effect;

**RECOGNISING** the importance of achieving a balance between compliance and facilitation to ensure the free flow of legitimate trade and to meet the needs of governments for the protection of society and revenues;

**RECOGNISING** the need for international co-operation in matters related to the application and enforcement of their customs law;

**CONVINCED** that efforts to prevent the contravention of customs law and to achieve greater accuracy in the collection of customs duties would be made more effective by close co-operation between their customs administrations;

**CONVINCED** that international trade will be facilitated by the adoption of modern control techniques, such as risk management, by customs administrations;

**HAVING REGARD** to international Conventions containing prohibitions, restrictions and measures of control in respect of specific goods;

**HAVING** regard to the Recommendation on Mutual Administrative Assistance and the Declaration on the Improvement of Customs Co-operation and Mutual Administrative Assistance (the Cyprus Declaration), adopted in December 1953 and June 2000, respectively, by the Customs Co-operation Council, now known as the World Customs Organization;

**HEREBY AGREE** as follows:

## **Article 1**

### ***Definitions***

For the purposes of this Agreement, unless the context otherwise requires:

- (a) “customs administration” means, for the Government of the Federative Republic of Brazil, the Federal Revenue Secretariat, Ministry of Finance and for the Government of the Republic of South Africa, the South African Revenue Service;
- (b) “customs law” means all the legal and administrative provisions applicable or enforceable by the customs administrations in connection with the importation, exportation, transhipment, transit, storage, and movement of goods, including:
  - (i) the collection, guaranteeing or repayment of duties, taxes and other charges;
  - (ii) action in relation to measures of prohibition, restriction or control;
  - (iii) action in relation to illegal trafficking in narcotic drugs and psychotropic substances;
- (c) “customs offence” means any violation or attempted violation of customs law;
- (d) “international trade supply chain” means all processes involved in the cross-border movement of goods from the place of origin to the place of final destination;
- (e) “person” means both natural and legal persons;

- (f) “official” means any customs officer or other government agent designated by either customs administration;
- (g) “information” means any data, whether or not processed or analysed, any documents, reports, and other communications in any format, including electronic, or certified or authenticated copies thereof;
- (h) “controlled delivery” means the method which permits the passage through the territory of each State of illegal merchandise, known or suspected to constitute illicit traffic, under the control of the competent authorities of the Parties, in order to identify the persons involved in customs offences;
- (i) “narcotic drugs and psychotropic substances” means the products in the list of the Single Convention of the United Nations relating to Narcotic Drugs of 30 March 1961, the Convention of the United Nations on Psychotropic Substances of 21 February 1971, as well as chemical substances in the list of Annexes I and II of the Convention of the United Nations against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances of December 20, 1988;
- (j) “requested administration” means the customs administration from which assistance is requested;
- (k) “requested Party” means the Party whose customs administration is requested to provide assistance;
- (l) “requesting administration” means the customs administration which requests assistance;
- (m) “requesting Party” means the Party whose customs administration requests assistance.

## **Article 2**

### ***Scope of the Agreement***

1. The Parties shall, through their customs administrations and in accordance with the provisions set out in this Agreement, afford each other mutual assistance:
  - (a) to ensure that the customs law in force in their respective territories is properly observed;
  - (b) to prevent, investigate and combat customs offences;

- (c) in cases concerning the delivery of documents regarding the application of customs law; and
  - (d) to ensure the security of the international trade supply chain.
- 2. The assistance set out in paragraph 1 of this Article shall not include any collection by the customs administration of one Party of customs rights, taxes, duties, fees, or any other amount on behalf of the customs administration of the other Party.
- 3. Assistance within the framework of the Agreement shall be rendered in accordance with the domestic law and administrative provisions in force in the country of the requested Party and within the competence and available resources of its customs administration.
- 4. The Agreement only covers mutual administrative assistance between the Parties and shall not affect any mutual legal assistance agreements between them. If mutual assistance is to be provided by other authorities of a requested Party, the requested administration shall indicate those authorities and, where known, the relevant agreement or arrangement applicable.
- 5. The provisions of the Agreement shall not give rise to a right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of a request.

### **Article 3**

#### ***Scope of General Assistance***

- 1. The customs administrations of the Parties shall provide each other, either on request or on their own initiative, with assistance through the exchange of information which helps to ensure the proper application of the customs law and the prevention, investigation and repression of customs offences relating to:
  - (a) recovery, by the customs administrations, of customs rights and duties as well as the correct evaluation of the customs value of the goods and their tariff classification;
  - (b) observance of measures of prohibition, preferential taxation or exemption relating to importation, exportation, transit of goods or other customs regimes;
  - (c) application of the rules concerning the origin of goods;

- (d) prevention and repression of customs offences and illicit traffic of narcotic drugs and psychotropic substances.
- 2. In the case of a request, if the customs administration of the requested Party does not have the information asked for, it shall make enquiries to obtain that information in accordance with the provisions of its customs law.
- 3. Each customs administration shall supply to the other:
  - (a) lists of goods that are likely to be the subject of illegal trafficking between their respective territories;
  - (b) information on activities that are or appear to be a violation or attempted violation of customs law within the territory of the other Party; and
  - (c) information on means of transport in respect of which there are reasonable grounds for believing that they have been, are, or may be used in violation or attempted violation of customs law.
- 4. Each customs administration shall, on its own initiative, or upon request, supply to the other customs administration reports, records of evidence, or certified copies of documents giving all available information on transactions, completed or planned, that constitute or appear to constitute a contravention of the customs law of that Party. All relevant information for the interpretation or utilisation of the material shall be supplied at the same time.
- 5. The documents provided for in this Agreement may be replaced by computerised information produced in any form for the same purpose.
- 6. Original files and documents:
  - (a) shall be requested only in cases where certified copies would be insufficient;
  - (b) that have been transmitted shall be returned at the earliest opportunity.

#### **Article 4**

##### ***Notification***

On request, the requested administration shall notify a person, residing or established in the territory of the requested Party, of any formal decision concerning that person taken by the requesting administration, in application of customs law.

## **Article 5**

### ***Technical Assistance***

1. On request, the requested administration shall provide all information about its customs law and procedures that are relevant to enquiries relating to a customs offence.
2. The customs administrations shall communicate on request or on their own initiative, any available information relating to:
  - (a) new customs law enforcement techniques having proved their effectiveness;
  - (b) new trends, means or methods of committing customs offences;
  - (c) goods known to be the subject of customs offences, as well as transport and storage methods used in respect of those goods;
  - (d) persons known to have committed a customs offence or suspected of having the intention to commit a customs offence; and
  - (e) risk assessment for control and facilitation purposes.
3. Each customs administration shall share with the other information on its work procedures for the purposes of advancing their understanding of each other's procedures and techniques.
4. Each customs administration shall provide the other, within the limits of its competence and available resources, with technical assistance including secondments, consultancy, training and exchanges of officials.

## **Article 6**

### ***Particular Types of Information***

1. On request, the requested administration shall provide the requesting administration, who has reason to doubt the accuracy of information provided to it in a customs matter, with information relative to:
  - (a) whether goods imported into the territory of the requesting Party have been lawfully exported from the territory of the requested Party;

- (b) whether goods exported from the territory of the requesting Party have been lawfully imported into the territory of the requested Party.
- 2. If requested, the information shall indicate the customs procedures, if any, under which the goods have been placed and, in particular, the procedures used for clearing the goods.

## **Article 7**

### ***Surveillance of Persons, Goods, Places and Means of Transport***

- 1. Each customs administration shall on its own initiative or on written request from the other customs administration, subject to the domestic law in force in its country and in accordance with its administrative practices, maintain special surveillance over:
  - (a) the movements and, in particular, the entry into and exit from its territory, of persons suspected of being occasional or habitual contraveners of the customs law of the requesting Party;
  - (b) suspect storage or movements of goods and means of payment notified by the requesting administration as giving rise to substantial illicit trade in the territory of that Party;
  - (c) places used for storing goods that may be used in connection with substantial illicit trade in the territory of the requesting Party;
  - (d) means of transport that are suspected of being used in contravening customs law in the territory of the requesting Party; and
  - (e) operations that could be linked to the illicit traffic of narcotic drugs and psychotropic substances.
- 2. The results of such surveillance shall be communicated to the other customs administration as soon as is reasonably possible.
- 3. In serious cases that could involve substantial damage to the economy, public health, public security or any other vital interest of a Party, the customs administration of the other Party shall, wherever possible, supply such information on its own initiative without delay.



## **Article 8**

### ***Controlled Delivery***

Under the domestic law and administrative provisions in force in each Party, the customs administrations may, on a case by case basis, and after having defined the financial manners and practices, agree to use the method of controlled delivery of narcotic products and psychotropic substances, in order to identify any person involved in customs offences.

## **Article 9**

### ***Assistance for the Application and Enforcement of Customs Law***

1. The customs administration of a Party shall provide the customs administration of the other Party, either on its own initiative or on request, with information on activities, planned, ongoing, or completed which provide reasonable grounds to believe that a customs offence has been committed or will be committed in the territory of the Party concerned.
2. 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.

## **Article 10**

### ***Assistance for the Assessment of Import or Export Duties and Taxes***

On request, the requested administration shall, subject to paragraph 3 of Article 11, provide information to assist the requesting administration in the proper application of customs law, including customs valuation, tariff classification and origin of goods, when the requesting administration has reason to doubt the truth or accuracy of a declaration.

## **Article 11**

### ***Communication of Requests***

1. Assistance under this Agreement shall be exchanged directly between the customs administrations of the Parties.

2. Requests for assistance shall be made in writing or electronically, and shall be accompanied by any information deemed useful to comply with the request. The requested administration may require written confirmation of electronic requests. Where the circumstances so require, requests may be made orally. Such requests shall be confirmed in writing as soon as possible.
3. Requests made pursuant to paragraph 2 of this Article, shall include the following details:
  - (a) the name of the requesting authority;
  - (b) the customs matter at issue, type of assistance requested, and reason for the request;
  - (c) a brief description of the case under review and its administrative and legal elements;
  - (d) the names and addresses of the persons to whom the request relates, if known.
4. Where the requesting administration requests that a certain procedure or methodology be followed, the requested administration shall comply with such a request subject to the domestic law in force in its country and administrative provisions.
5. The information referred to in the Agreement shall be communicated to officials who are specially designated for this purpose by either customs administration. A list of officials so designated shall be supplied to the customs administration of the other Party.

## **Article 12**

### ***Execution of Requests***

1. If the requested administration does not have the information requested, it shall in accordance with the domestic law in force in its country and administrative provisions:
  - (a) initiate enquiries to obtain that information; or
  - (b) promptly transmit the request to the appropriate authority; or
  - (c) indicate which relevant authority is concerned.

2. Any enquiry under paragraph 1 of this Article may include the taking of statements from persons from whom information is sought in connection with a customs offence and from witnesses and experts.

### **Article 13**

#### ***Presence of Officials in the Territory of the Other Party***

1. Officials specially designated by the requesting administration may, on written request, with the authorisation of the requested administration and subject to conditions the latter may impose, for the purpose of investigating a customs offence:
  - (a) examine in the offices of the requested administration the documents, registers and other relevant data to extract any information in respect of that customs offence;
  - (b) be provided with copies of the documents, registers and other data relevant in respect of that customs offence;
  - (c) be present during an enquiry conducted by the requested administration and relevant to the requesting administration.
2. Where the requested administration considers it useful or necessary for an official of the requesting administration to be present when, pursuant to a request, measures of assistance are carried out, it shall inform the requesting administration.

### **Article 14**

#### ***Arrangements for Visiting Officials***

1. When, in the circumstances provided for by this Agreement, officials of the customs administration of either Party are present in the territory of the other Party, they must at all times be able to furnish proof of their official capacity.
2. The officials so designated shall be present in an advisory role only and may not exercise the powers conferred on officials of the requested administration by the domestic law in force in the country of the requested Party. The officials shall, however, for the sole purpose of the enquiry being carried out and in the presence of and through officials of the requested administration, have access to the same premises and same documents as those officials of the requested administration.

3. The officials shall, while there, enjoy the protection accorded to customs officials of the other Party, in accordance with the domestic law in force in the country of the other Party, and be responsible for any offence they might commit. The officials shall not be in uniform and shall not carry arms.

## **Article 15**

### ***Experts and Witnesses***

On request, the requested administration may authorise its officials to appear before a court or tribunal in the territory of the other Party as experts or witnesses in the matter of a customs offence.

## **Article 16**

### ***Confidentiality of Information***

1. Any information received under this Agreement shall be used only by the customs administrations and solely for the purposes of the Agreement except in cases where the customs administration supplying the information has authorised its use by other authorities or for other purposes in writing.
2. Any information received under the Agreement shall be treated as confidential and shall at least be accorded protection and confidentiality similar to that accorded to the same kind of information under the domestic law in force in the country of the Party where it is received.
3. The customs administration of the receiving Party may, in accordance with the purposes and within the scope of the Agreement, in its records of evidence, reports, and testimonies, and in proceedings and charges brought before the courts, use as evidence information and documents obtained in accordance with the Agreement.

## **Article 17**

### ***Exemptions from Obligation to Render Assistance***

1. Where any assistance requested under this Agreement may infringe upon the sovereignty, laws and treaty obligations, security, public policy or any other substantive national interest of a requested Party, or prejudice any legitimate commercial or professional interests, such assistance may be declined by that Party or may be provided subject to any terms or conditions it may require.

2. Where 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. Assistance may be postponed if there are grounds to believe that it will interfere with an ongoing investigation, prosecution, or proceeding. In such a case, 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 specify.
4. Where assistance is denied or postponed, reasons for denial or postponement shall be given.

## **Article 18**

### *Costs*

1. Subject to paragraphs 2 and 3 of this Article, the customs administrations shall waive all claims for reimbursement of costs incurred in the execution of this Agreement.
2. Expenses and allowances paid to experts and witnesses, as well as costs of translators and interpreters, other than Government employees, shall be borne by the requesting administration.
3. If expenses of a substantial or extraordinary nature are or will be required to execute a request, the Parties shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

## **Article 19**

### *Implementation of the Agreement*

The customs administrations shall:

- (a) communicate directly for the purposes of dealing with matters arising out of this Agreement;
- (b) after consultation, issue any administrative directives necessary for the implementation of the Agreement;

- (c) endeavour by mutual accord to resolve problems or questions arising from the interpretation or application of the Agreement.

## **Article 20**

### ***Application***

This Agreement shall apply to the territory of the Federative Republic of Brazil and to the territory of the Republic of South Africa.

## **Article 21**

### ***Entry into Force***

The Parties shall notify each other in writing, through the diplomatic channel, of the completion of the constitutional or internal requirements for the entry into force of this Agreement. The Agreement shall enter into force on the first day of the second month following the date of receipt of the later of these notifications.

## **Article 22**

### ***Duration and Termination***

1. This Agreement shall remain in force indefinitely but either of the Parties may terminate the Agreement through the diplomatic channel, by giving to the other Party written notice of termination in any calendar year starting five years after the year in which the Agreement entered into force.
2. The Agreement shall cease to be effective three months after the date of receipt of such notice. Ongoing proceedings at the time of termination shall nonetheless be completed in accordance with the provisions of the Agreement.

## **Article 23**

### ***Amendments***

1. The Parties may, at any time, amend this Agreement by mutual consent in writing through the diplomatic channel.

2. The Parties shall notify each other in writing, through the diplomatic channel, of the completion of the constitutional or internal requirements for the entry into force of the amendment. The amendment shall enter into force on the date of receipt of the later of these notifications.

**IN WITNESS WHEREOF** the undersigned, being duly authorised thereto by their respective Governments, have signed and sealed this Agreement in two originals in the English and Portuguese languages, both texts being equally authentic.

**DONE** at Cape Town on this 11<sup>th</sup> day of May 2008.

**FOR THE GOVERNMENT OF THE  
REPUBLIC OF SOUTH AFRICA**

**FOR THE GOVERNMENT OF  
THE FEDERATIVE REPUBLIC  
OF BRAZIL**

**Entry into force date: 1 December 2012.**