

AGREEMENT

BETWEEN

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

AND

**THE GOVERNMENT OF
THE PEOPLE'S REPUBLIC OF CHINA**

ON MUTUAL ADMINISTRATIVE ASSISTANCE

IN CUSTOMS MATTERS

Preamble

The Government of the Republic of South Africa and the Government of the People's Republic of China, hereinafter referred to as "the Parties";

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 contravention of Customs law is detrimental to the economic, fiscal and social interests of their respective countries;

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

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;

HAVING REGARD TO international instruments promoting mutual assistance;

HEREBY AGREE as follows:

Article 1

Definitions

For the purposes of this Agreement:

- (a) “Customs administration” means, for the People’s Republic of China, the General Administration of Customs of the People’s Republic of China and for the Republic of South Africa, the South African Revenue Service;
- (b) “Customs law” means any legal and administrative provisions applicable or enforceable by either Customs administration in connection with the importation, exportation, transshipment, transit, storage and movement of goods, including legal and administrative provisions relating to measures of prohibition, restriction and control;
- (c) “Customs offence” means any violation or attempted violation of Customs law;
- (d) “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;
- (e) “official” means any Customs officer or other government agent designated by either Customs administration;
- (f) “person” means both natural and legal persons, unless the context otherwise requires;
- (g) “requested administration” means the Customs administration from which assistance is requested;
- (h) “requested Party” means the Party whose Customs administration is requested to provide assistance;
- (i) “requesting administration” means the Customs administration which requests assistance;
- (j) “requesting Party” means the Party whose Customs administration requests assistance.

Article 2

Scope of the Agreement

1. The Parties shall through their Customs administrations provide each other with administrative assistance under the terms set out in this Agreement, for the proper application of Customs law, for the prevention, investigation and combating of Customs offences and to ensure the security of the international trade supply chain.

2. 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.
3. The Agreement shall not provide for the recovery in the Customs territory of the requested Party of Customs duties, taxes and any other charges incurred in the Customs territory of the requesting Party.
4. The Agreement is intended solely for mutual assistance between the Parties. 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

Communication of Information

1. Each Customs administration shall supply to the other, either on request or on its own initiative, all available information that may help to ensure proper application of Customs law and the prevention, investigation and combating of Customs offences.
2. Assistance provided in accordance with this Agreement shall, on request, include the provision of information to ensure the correct determination of Customs value.
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.
4. 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 Customs territories;
 - (b) information relating to Customs offences within the Customs 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 Customs offences.

5. Upon request, the requested administration shall supply to the requesting administration information concerning the following matters:
 - (a) whether goods that are imported into the Customs territory of the requesting Party have been lawfully exported from the Customs territory of the requested Party;
 - (b) whether goods that are exported from the Customs territory of the requesting Party have been lawfully imported into the Customs territory of the requested Party and the nature of the Customs procedure, if any, under which the goods have been placed.
6. 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.
7. The documents provided for in the Agreement may be replaced by computerised information produced in any form for the same purpose.
8. The Parties may, by mutual arrangement, co-operate in the exchange of information taking into account the Framework of Standards to Secure and Facilitate Global Trade of the World Customs Organization.

Article 4

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. Either Customs administration shall communicate on request or on its 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; and
 - (c) goods known to be the subject of Customs offences, as well as transport and storage methods used in respect of those goods.

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 5

Special Surveillance

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 administrative provisions, maintain special surveillance over:
 - (a) the movements and, in particular, the entry into and exit from the Customs territory of the country of the requesting Party, 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 Customs territory of that Party;
 - (c) places used for storing goods that may be used in connection with substantial illicit trade in the Customs territory of the requesting Party;
 - (d) means of transport that are suspected of being used in contravening Customs law in the Customs territory of the requesting Party.
2. The results of such surveillance shall be communicated to the other Customs administration as soon as is reasonably possible.

Article 6

Experts and Witnesses

An official of a requested authority may be authorised to appear, within the limitations of authorisation granted, as an expert or witness in administrative proceedings regarding the matters covered by this Agreement in the Customs territory of the other Party, and produce such objects, documents or certified copies thereof, as may be needed for the proceedings. The request for appearance must clearly indicate specifically before which administrative authority the official will have to appear, on what matters and by virtue of what title or qualification the official will be questioned.

Article 7

Communication of Requests

1. Requests for 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 administration;
 - (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.

6. Requests shall be submitted either in English or in Chinese.

Article 8

Means of Obtaining Information

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 agency; or
 - (c) indicate which relevant authorities are concerned.
2. The requested administration shall communicate the results of such enquiries without delay to the requesting administration.

Article 9

Execution of Requests

1. If the requested administration agrees to the request of the requesting administration, officials specially designated by the requesting administration may, subject to the conditions imposed by the requested administration, be present at the inquiry conducted by the requested administration in the Customs territory of the country of the requested administration.
2. The requested administration shall, upon request by the requesting administration and when it deems appropriate, advise the requesting administration of the time and place of the action it will take in response to the request for assistance so that such action may be co-ordinated.
3. In the event that the request cannot be complied with, the requesting administration shall be notified promptly of the fact, with a statement of the reasons and of any other information that the requested administration considers may be of assistance to the requesting administration.
4. In case the requested administration is not the appropriate agency to comply with a request for assistance, it shall transmit the request to the appropriate agency which shall be under no obligation to reply to such a request.

Article 10

Use of Information

1. Information provided by the Customs administration of a Party to the Customs administration of the other Party pursuant to this Agreement shall not be used by that other Party in criminal proceedings carried out by a court or a judge.
2. In the event that information obtained by the Customs administration of a Party pursuant to the Agreement is needed for presentation to a court or a judge in criminal proceedings, that Party shall submit a request for such information to the other Party that provided the information through the diplomatic channel or other channel established in accordance with the domestic law in force in the country of the requested Party.

Article 11

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.
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. Nothing in the Agreement shall preclude the use of information or documents obtained in accordance with the Agreement as evidence in administrative proceedings subsequently instituted in respect of operations in violation of Customs law. Therefore, the Parties may, in their records of evidence, reports and testimonies and in administrative proceedings use as evidence information obtained and documents consulted in accordance with the provisions of the Agreement. The competent authority that supplied that information or gave access to those documents shall be notified of such use.

Article 12

Exemptions

1. If the requested administration considers that the requested assistance might be prejudicial to the sovereignty, public policy, public interest, security or other essential interests of that Party, or might in the opinion of that Customs administration involve violation of industrial, commercial or professional secrecy, or would be inconsistent with the domestic law in force in its country and administrative provisions, it may refuse to provide assistance or it may provide the assistance only if certain conditions are met.
2. If the requesting administration has requested assistance which it would not itself be able to give if requested by the other Customs administration, it shall draw attention to the fact in the request. Compliance with such a request shall be entirely within the discretion of the requested administration.
3. Assistance may be postponed by the requested administration on the ground 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 require.
4. If assistance is refused, the decision and the reasons for the refusal shall be notified in writing to the requesting administration without delay.

Article 13

Costs

1. The Customs administrations shall waive all claims for reimbursement of costs incurred in the execution of this Agreement, except for expenses of substantial and extraordinary nature.
2. 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 shall be executed as well as the manner in which the costs shall be borne.

Article 14

Territorial Application

This Agreement shall apply to the Customs territory of the People's Republic of China and the Customs territory of the Republic of South Africa.

Article 15

Implementation and Application of the Agreement

1. Senior officials of both Customs administrations shall meet, if necessary, to discuss issues relating to the implementation of this Agreement and of mutual interest.
2. The Customs administrations shall enable their officials responsible for the investigation or combating of Customs offences to maintain personal and direct relations with each other.
3. The Customs administrations of the Parties shall jointly decide on detailed arrangements to facilitate the application of the Agreement.
4. The Customs administrations shall endeavour to resolve by mutual agreement any difficulties or doubts as to the interpretation or application of the Agreement and shall make every effort, through co-operation and consultation, to arrive at a mutually satisfactory agreement.
5. The Customs administrations shall meet in order to review the Agreement on request or at the end of five years from the date of its entry into force, unless they notify each other in writing that no such review is necessary.

Article 16

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.

Article 17

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 18

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 at least five years after the date of entry into force of the Agreement.
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.

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

DONE at Pretoria on this 22nd day of September 2006, in duplicate in the English and Chinese languages, both texts being equally authentic.

A. Erwin
**FOR THE GOVERNMENT OF
THE REPUBLIC OF SOUTH AFRICA**

Mu Xinheng
**FOR THE GOVERNMENT OF
THE PEOPLE'S REPUBLIC OF CHINA**

Date of Entry into Force: 1 February 2007