

CONVENTION

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

AND

THE GOVERNMENT OF THE FRENCH REPUBLIC

REGARDING MUTUAL ADMINISTRATIVE ASSISTANCE

FOR THE PREVENTION,

INVESTIGATION, DETECTION AND SUPPRESSION

OF CUSTOMS OFFENCES

Preamble

The Government of the Republic of South Africa

and

the Government of the French Republic

(hereinafter jointly referred to as “the Parties” and in the singular as “a Party”)

CONSIDERING that offences against customs law are prejudicial to their economic, fiscal, social, cultural and commercial interests;

CONSIDERING that it is essential to ensure proper application of the control, restriction or prohibition measures applicable to certain merchandise and the prompt collection of customs duties and import and export taxes;

CONVINCED that action against customs offences can be made more effective by close cooperation between their customs administrations;

HAVING regard to international instruments promoting bilateral mutual assistance, and in particular the Recommendations of the Customs Cooperation Council of 5 December, 1953;

Have agreed as follows:

Definitions

Article 1

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

- (a) “customs law” shall mean all legislative provisions and regulations which are enforceable by the customs administrations of the two Parties with regard to:
 - (i) the importation, exportation and transit of merchandise, whether these provisions pertain to customs duties or to any other duty and tax, or prohibitions, restrictions or controls;
 - (ii) financial transactions between the customs territory of one of the Parties and another state relating to funds originating from a customs offence or a violation of legislation on poisonous plants or substances classified as narcotic drugs;

- (b) “customs administrations” shall mean, for the French Republic, the Directorate General of Customs and Indirect Duties (Direction Générale des Douanes et Droits Indirects), and for the Republic of South Africa, the South African Revenue Service;
- (c) “customs offence” shall mean any violation of customs law or any attempt to violate said law;
- (d) “information” means any data, documents, reports, certified or authenticated copies thereof or other communications;
- (e) “person” shall mean any natural or legal person;
- (f) “narcotic drugs and psychotropic substances” shall mean the products and substances defined as such by the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of December 20, 1988;
- (g) “substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances” shall mean the substances listed in the Annex to the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of December 20, 1988;
- (h) “territory” or “customs territory” shall mean, for the French Republic, the customs territory as defined in Article 1 of the Customs Code and for the Republic of South Africa, its territory including the continental shelf;
- (i) “controlled delivery” shall mean an operation during which the customs administrations of the Parties, in accordance with their domestic laws, shall maintain surveillance on or allow to pass through their territories narcotic drugs or psychotropic substances or substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances, with a view to detecting customs offences linked to the importation, exportation or holding of these products and to identifying persons involved in the commission of such offences.

Scope of the Convention

Article 2

The scope of this Convention covers the customs territories of the Parties.

Article 3

1. The customs administrations of the Parties shall assist each other directly for the purpose of preventing, investigating, detecting and suppressing violations of customs law, as set forth in the provisions of this Convention.

2. The assistance specified in the previous paragraph shall not cover the collection by one Party's customs administration of customs duties, taxes, fines or other sums on behalf of the other Party.
3. At the request of the customs administration of a Party, the customs administration of the other Party shall inform interested persons resident in its territory of any notices, decisions, provisions or other documents emanating from the requesting Party and concerning the application of the customs law of the requesting Party.
4. The assistance that each Party shall provide within the framework of the Convention shall be in compliance with the customs and domestic law of the requested Party and within the jurisdictional limits and human and technical resources of its customs administration.

Article 4

The customs administrations of the Parties shall disclose to each other:

- (a) either voluntarily or when so requested, and without delay, any information in their possession, concerning:
 - (i) irregular operations proven or planned, and being, or appearing to be, of an illicit nature;
 - (ii) new means or methods of committing customs offences;
 - (iii) categories of goods known to be the subject of illicit trafficking;
 - (iv) persons suspected of committing or being capable of committing offences against the customs law of the other Party;
 - (v) vehicles, ships, aircraft or other means of transport suspected of being used to commit offences against the customs law of the other Party;
 - (vi) new techniques that have proved effective in combatting customs offences.
- (b) on written request and as promptly as possible any information:
 - (i) that can be extracted from customs declarations relating to exchanges of goods between the territories of the Parties, involving or capable of involving illicit trafficking under the customs law of the requesting Party, where applicable in the form of duly certified or authenticated copies of said documents; or
 - (ii) that may serve to reveal offences against the customs law of the requesting Party.

Such requests must contain the following:

- (i) the name and position of the authority making the request;
- (ii) the nature of the proceedings;
- (iii) the objective and reason for the request;
- (iv) the identities of the parties involved (name, date and, if possible, place of birth for individuals, company name for legal persons) and their addresses (registered office for legal persons);
- (v) a brief description of the matter under consideration and the legal elements involved.

Special Cases of Assistance

Article 5

At the request of the customs administration of a Party, the customs administration of the other Party shall, in accordance with its administrative practices, maintain special surveillance on:

- (a) movements, particularly the entry into or exit from its territory, of persons suspected or known by the requesting Party to be engaged in activities breaching its customs law;
- (b) suspicious movements of goods reported by the requesting Party as being the subject of trafficking from or to its territory in violation of its customs law;
- (c) places where stocks of goods have been stored that the requesting Party has reason to believe are intended to be illicitly imported into its territory;
- (d) vehicles, ships, aircraft or other means of transport which the requesting Party has reason to believe may be used to commit customs offences in its territory;
- (e) operations relating to the illicit traffic in narcotic drugs and psychotropic substances or substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances.

Article 6

1. Within the limits of the domestic law of each Party, the customs administrations of the Parties shall cooperate, as necessary, in the context of international controlled deliveries of narcotic drugs, psychotropic substances or substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances, in order to detect customs offences relating to such goods and identify the persons committing such offences.

2. Recourse to controlled deliveries shall be the subject of decisions on a per case basis.
3. Illicit shipments subject to controlled deliveries may, by agreement, be intercepted and allowed to continue their journey either untouched, or after the narcotic drugs or substances mentioned in paragraph 1 of this Article have been removed or replaced in whole or in part by other products.

Exemptions

Article 7

1. If the requested administration considers that the assistance requested of it might be prejudicial to public policy, or to the sovereignty, 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 its domestic law and administrative provisions, it may refuse to provide assistance or it may provide the assistance only if certain conditions are met.
2. When the customs administration of the Party making a request for assistance is not able to satisfy a request of the same nature which may be made by the customs administration of the other Party, it shall indicate the fact in its request. In such a case, the requested administration shall be free to determine the course of action to be taken.
3. Written reasons must be given for any refusal to assist.

Providing Assistance

Article 8

1. To facilitate the investigation, detection and suppression of customs offences in the territories of the Parties, each customs administration shall, within the limits of its jurisdiction and at the request of the other customs administration, make enquiries and question suspects and witnesses. The findings of such investigations shall be communicated to the requesting customs administration.
2. The customs administration of the requested Party may authorize representatives of the customs administration of the requesting Party to be present during enquiries. These enquiries shall be conducted in accordance with the customs and domestic law of the requested Party and exclusively by the agents of the customs administration of that Party.

Article 9

1. The customs administrations of the Parties shall arrange for their officials responsible for preventing, investigating, detecting and suppressing customs offences to communicate with each other directly with a view to exchanging information.
2. A list of officials especially appointed for this purpose shall be notified to the customs administration of the other Party.

Information, Documents and Testimonies

Article 10

1. Information, communications and other documents obtained pursuant to this Convention may be used only for the purposes specified herein, unless prior written permission is obtained from the customs administration that provided them.
2. Information, communications and documents made available to the customs administrations of a Party by the customs administration of the other Party pursuant to the Convention shall receive the same protection in terms of confidentiality as is afforded by the customs and domestic law of the requesting Party to information of national origin of the same nature.
3. When a request for information involves several people, the request, and any response thereto, shall be given on a separate document for each person involved, in order, should the case arise, to allow the production in court of documents mentioning only the persons accused.

Article 11

1. The customs administrations of the Parties may use as evidence in their minutes, reports and testimonies, and during proceedings and prosecution before a court, the information received or documents produced under the provisions of this Convention.
2. The requesting Party may require that the information or documents referred to in paragraph 1 be certified in accordance with the requirements of its domestic law.
3. The validity of this information and these documents and the legal use made of them shall be determined with reference to the domestic law applied by the requesting Party.

Article 12

1. At the request of a court or the authorities of a Party dealing with a customs offence, the customs administration of the other Party may authorize its officials to appear before the said court or authorities, as witnesses or experts. The officials shall give evidence on facts ascertained by them during the course of their duties and within the limits set by the authorization.
2. The summons to appear must specify in particular the matter on which the official will be questioned and in what capacity.
3. Travel expenses and allowances to experts, witnesses and interpreters shall be paid by the requesting Party.

Final Provisions

Article 13

Each Party waives all rights to reimbursement of costs incurred in pursuance of this Convention except for the expenses incurred under the provisions of Article 12.

Article 14

1. The Parties shall, through consultation, decide on the methods for implementation of the provisions of this Convention.
2. In order to facilitate the implementation of this Convention, the customs administrations may define mutual technical cooperation measures through administrative agreements.
3. A joint committee shall be formed of representatives of the customs administrations of the Parties to examine questions relating to the application of this Convention. The joint committee shall meet as required, on the territory of each Party in turn.
4. Unresolved disputes arising within the joint committee shall be settled through the diplomatic channel.

Article 15

1. 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 Convention. The Convention shall enter into force on the first day of the second month following the date of receipt of the later of these notifications.

2. This Convention shall remain in force indefinitely. Either of the Parties may terminate it at any time by sending to the other Party a notice in writing, through the diplomatic channel, and the Convention shall cease to have effect six months after the date of receipt of such notice.

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

DONE at Midrand, this 26th day of June 1998 in two original copies, in the English and French languages, both texts being equally authentic.

Ms Gill Marcus
FOR THE GOVERNMENT OF
THE REPUBLIC OF SOUTH AFRICA

Mr Dominique Strauss-Kahn
FOR THE GOVERNMENT OF
THE FRENCH REPUBLIC

In terms of paragraph 1 of Article 15 of the Convention, the date of entry into force is 1 July 2000.

**ADMINISTRATIVE AGREEMENT BETWEEN THE DIRECTORATE GENERAL
FOR CUSTOMS AND EXCISE OF THE FRENCH REPUBLIC AND THE SOUTH
AFRICAN REVENUE SERVICE**

In order to give effect to paragraph 2 of Article 14 of the Convention concerning mutual administrative assistance between the Government of the French Republic and the Government of the Republic of South Africa for the prevention, investigation, detection and suppression of customs offences, the general director of the French Customs and the Commissioner for the South African Revenue Service, desiring to promote and strengthen relations between their administrations,

have agreed as follows:

1. exchanges of information and experiences shall take place, as required, between the administrations in the legislative, regulatory and technical fields, on their working methods and technical resources used for clearing and controlling flows of goods and people, and for the better understanding of each others procedures and methods;
2. within their competence and resources, and as required, to provide mutual technical assistance, especially by means of the exchange of customs officers, missions, advice and training.

This administrative agreement may be amended by an exchange of letters and will enter into force on the same date as the Convention concerning mutual administrative assistance between the Government of the French Republic and the Government of the Republic of South Africa for the prevention, investigation, detection and suppression of customs offences.

Signed in duplicate at Paris on the 14th day of September 1998, in the French and English languages, both texts being equally authentic.

(Signed)
Le directeur général
des douanes et droits indirects
de la République française

RP van der Merwe
o.b.o The Commissioner
for the South African
Revenue Service