

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

AND

THE GOVERNMENT OF THE REPUBLIC OF MOZAMBIQUE

REGARDING MUTUAL ASSISTANCE

BETWEEN THEIR CUSTOMS ADMINISTRATIONS

Preamble

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

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;

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;

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

RECOGNISING that the implementation of the SADC Trade Protocol will bring, at regional level, a greater need for such co-operation, particularly in relation to the confirmation of origin and regional transit of goods;

RECOGNISING the need to protect the interest of legitimate trade within the Region;

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

HAVING REGARD to international instruments promoting bilateral mutual assistance;

Have agreed as follows:

Article 1

Definitions

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

- (a) the term “customs administration” means for the Government of the Republic of Mozambique, the Customs of Mozambique (Alfândegas de Moçambique), and for the Government of the Republic of South Africa, the South African Revenue Service;

- (b) the term “customs law” means all the legal and administrative provisions enforceable by the customs administrations in connection with the importation, exportation and transit of goods, including:
 - (i) the collection, guaranteeing, or repayment of duties, taxes and other charges;
 - (ii) measures of prohibition, restriction or control;
 - (iii) actions in relation to illegal trafficking in narcotic drugs and psychotropic substances;
- (c) the term “customs offence” means any violation or attempted violation of customs law;
- (d) the term “person” means any natural or legal person;
- (e) the term “information” means any data, documents, reports, certified or authenticated copies thereof or other communications in any format, including electronic;
- (f) the term “requesting administration” means the customs administration which requests assistance;
- (g) the term “requested administration” means the customs administration from which assistance is requested.

Article 2

Scope of Application

1. The Parties shall, through their customs administrations and in accordance with the provisions of this Agreement, afford each other mutual assistance:
 - (a) to ensure that their respective customs law is properly observed;
 - (b) to prevent, detect, investigate and combat customs offences;
 - (c) in cases concerning the delivery of documents regarding the application of customs law.
2. Assistance within the framework of this Agreement shall be rendered in accordance with the domestic law and administrative provisions of the requested Party and within the competence and available resources of the customs administration.
3. This Agreement shall not provide for the recovery in the territory of the requested Party of customs duties, taxes and other charges incurred in the territory of the requesting Party.

4. This Agreement shall apply to the territory of the Republic of Mozambique, and to the territory of the Republic of South Africa.

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 which may help to ensure proper enforcement of customs law and the prevention, detection, 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 the case of a request, if the requested administration does not have the information asked for, it shall on its own initiative make enquiries to obtain that information in accordance with the provisions of its customs law.
4. Each customs administration shall supply to the other lists of goods which are likely to be the subject of illegal trafficking between their respective territories. These lists shall be updated, as necessary.
5. Upon request, the requested administration shall supply to the requesting administration information concerning the following matters:
 - (a) whether goods which are imported into the territory of the requesting Party have been lawfully exported from the territory of the requested Party;
 - (b) whether goods which are exported from the territory of the requesting Party have been lawfully imported into the territory of the requested Party and the nature of the customs procedure or regime, if any, under which the goods have been placed;
 - (c) in relation to any official document issued in the territory of the requested Party, which is presented to the requesting administration in support of a goods declaration, verification of the authenticity of that official document.
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, which constitute or appear to constitute a customs offence. All relevant information for the interpretation or utilisation of the material shall be supplied at the same time.

7. Original files and documents shall be requested only in cases where certified copies would be insufficient; provided that those files and documents which have been transmitted shall be returned at the earliest opportunity.

Article 4

Central Co-ordination Units

1. Each customs administration shall appoint a central co-ordination unit responsible for:
 - (a) receiving all requests for assistance;
 - (b) co-ordinating all requests for assistance;
 - (c) maintaining contact with the co-ordination unit of the other administration.
2. The activities of the central co-ordination units shall not exclude, particularly in an emergency, direct contact or co-operation between operational areas of the respective customs administrations. The central co-ordination units shall be informed as soon as possible of any such direct contact or co-operation.

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. 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.
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.

Article 6

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, in terms of its domestic law and in accordance with its administrative practice, 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 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 which may be used in connection with substantial illicit trade in the territory of the requesting Party;
 - (d) means of transport suspected of being used to commit customs offences in the territory of the requesting Party.
2. Each customs administration shall, on written request or in meeting the requirements of any other agreement between the Parties, in terms of its domestic law and in accordance with its administrative practice, maintain routine monitoring over the movement of specified goods and any agreed quantitative restrictions or quotas which may apply to those specified goods.
3. The results of such special surveillance and routine monitoring shall be communicated to the other customs administration. Where agreed quotas or quantitative restrictions are exceeded the requested administration shall communicate this information to the other as soon as is reasonably possible.

Article 7

Visits by Officials

1. On written request, officials specially designated by the requesting administration may, 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 the information in respect of that customs offence;

- (b) take 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 relevant to the requesting administration.
2. When, in the circumstances provided for in this Agreement, officials of the customs administration of a Party are present in the territory of the other Party, they must at all times be able to furnish proof of their official capacity. They shall, while there, enjoy the same protection accorded to customs officials of that other Party in accordance with the domestic law in force there. They shall not be in uniform nor carry arms.

Article 8

Use and Confidentiality of Information

1. Any information received shall be used solely for the purposes of this Agreement, except in cases where the customs administration of the supplying Party expressly approves in writing and the domestic law governing the customs administration of the receiving Party allows such other use.
2. The customs administration of the receiving Party may, in accordance with the purposes and within the scope of this Agreement, in its records of evidence, reports, and testimonies, and in proceedings and charges brought before the courts, use as evidence, information received in accordance with this Agreement.
3. Any information received under this Agreement shall be treated as confidential and shall at least be subject to the same protection and confidentiality as the same kind of information is subject to under the domestic law of the receiving Party.

Article 9

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 10

Delivery of Documents

1. At the request of the requesting administration, the requested administration shall assist in the delivery to a person or persons, residing or established in its territory, documents relating to proceedings and decisions taken by a competent authority of the requesting State in the application of its customs law.
2. Delivery of documents under this Agreement shall be made in accordance with the domestic law and practice of the requested Party. The request for delivery shall contain a summary of the contents of the document.
3. If the requesting administration so wishes, delivery may be made or evidenced by a particular method, provided that the requested procedure can be complied with under the domestic law and practice of the requested Party. Evidence of delivery may take the form of a dated and certified acknowledgement of receipt by the person concerned or of a certificate of the competent authority in the requested Party, indicating the method and date of the delivery.

Article 11

Communication of Requests

1. Requests for assistance under this Agreement shall be exchanged directly between the customs administrations.
2. Requests for assistance under this Agreement shall be made in writing and shall be accompanied by any documents deemed useful. When the circumstances so require, requests may also be made orally. Such requests shall be confirmed in writing as soon as reasonably possible.
3. Requests made pursuant to paragraph 2, shall include the following details:
 - (a) the name of the administration making the request;
 - (b) the subject of and reason for the request;
 - (c) a brief description of the matter, and the legal elements involved;
 - (d) full details to enable the requested administration to economically and effectively comply with the request.

4. The information referred to in this Agreement shall be communicated to designated officials within the central co-ordination units of each customs administration. A list of officials so designated shall be furnished to the customs administrations of each Party.

Article 12

Exception from the Obligation to Render Assistance

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, or is outside its resource capabilities, it may refuse to provide assistance or it may provide the assistance only if certain conditions are met, or it may provide a reduced level of assistance.
2. If assistance is refused or a reduced level only can be provided, the decision and the reasons therefor shall be notified in writing to the requesting administration without delay.

Article 13

Costs

Each customs administration shall waive all claims for reimbursement of costs incurred in the execution of this Agreement with the exception of any allowances paid to the officials referred to in Article 9 and to interpreters. Such allowances shall be paid by the administration which has requested that the officials be summoned to appear as witnesses or experts.

Article 14

General

1. The assistance provided for under this Agreement shall be supplied directly between the customs administrations of the Parties.
2. The customs administrations of the Parties shall jointly decide the detailed arrangements for the implementation of this Agreement.

3. Any differences which may arise in the interpretation or application of the provisions of this Agreement which cannot be resolved by the customs administrations by mutual accord, shall be settled by diplomatic means.

Article 15

Final Provisions

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 Agreement. This Agreement shall enter into force on the date of receipt of the later of these notifications.
2. This Agreement may be terminated by either Party by giving written notice to the other Party through the diplomatic channel. Ongoing proceedings at the time of termination shall nonetheless be completed in accordance with the provisions of this Agreement.
3. The customs administrations shall meet in order to review this Agreement on request, or at the end of three years from the date of its entry into force unless they notify one another in writing that no such review is necessary.

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 language, both texts being equally authentic.

DONE at Maputo on the 18th day of March 2002.

Y J DUARTE
FOR THE GOVERNMENT OF
THE REPUBLIC OF SOUTH AFRICA

B DOS SANTOS
FOR THE GOVERNMENT OF
THE REPUBLIC OF MOZAMBIQUE

In terms of paragraph 1 of Article 15 of the Agreement, the date of entry into force is 12 January 2006.