

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

AND

THE GOVERNMENT OF THE KINGDOM OF NORWAY

REGARDING MUTUAL

ASSISTANCE BETWEEN THEIR CUSTOMS ADMINISTRATIONS

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

CONSIDERING that offences against customs legislation are prejudicial to the economic, fiscal, social and commercial 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 as well as proper implementation of provisions relating to prohibition, restriction and control;

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

CONVINCED that action against customs offences can be made more effective by co-operation between their customs authorities;

BEARING IN MIND the existing friendly relations between Norway and South Africa;

WISHING to enhance and supplement the present mutual assistance between the Parties;

HAVING regard to international instruments promoting bilateral mutual assistance, and in particular the Recommendation of the Customs Co-operation Council on mutual administrative assistance of 5 December 1953;

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 Kingdom of Norway, the Directorate of Customs and Excise, and for the Republic of South Africa, the South African Revenue Service;
- (b) the term “customs legislation” means any provisions laid down by law, regulation or rules governing the importation, exportation, manufacturing and transit of goods and their placing under any customs procedure, any provisions relating to assessment of duties or any other liabilities and charges, or to measures in respect of prohibition, restriction or control;
- (c) the term “offence” means any violation or attempted violation of customs legislation;
- (d) the term “duties” means all export and import duties, excises, fees or other charges which are levied and collected in application of customs legislation;
- (e) the term “person” means any natural or legal person;
- (f) the term “personal data” means all information relating to an identified or identifiable natural or legal person;
- (g) the term “information” means any data, documents, reports, certified or authenticated copies thereof or other communications;
- (h) the term “requesting administration” means the customs administration which requests assistance;
- (i) 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 their domestic law, and the provisions in this Agreement, afford each other mutual assistance:
 - (a) in order to ensure that customs legislation is correctly applied, in particular by the prevention, investigation and detection of offences against that legislation;
 - (b) by exchange of information to be used in assessment of duties and administering and enforcing customs legislation;

- (c) in cases concerning delivery and notification of documents regarding the application of customs legislation.
2. Assistance within the framework of the Agreement shall be rendered in accordance with the domestic law and legal provisions of the requested Party and within the limits of the competence and available resources of the customs administration.
3. The Agreement shall not provide for the recovery in the territory of the requested Party of duties incurred in the territory of the requesting Party.

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:
 - (a) the assessment of duties and the exact determination of customs value and tariff classification of goods;
 - (b) the implementation of import and export prohibitions and restrictions;
 - (c) the identification of transportation and shipment of goods showing value, disposition and destination;
 - (d) the prevention, investigation and combating of offences.
2. In the case of a request, if the customs administration of the requested Party does not have the information asked for, it shall at its own discretion make enquiries to obtain that information in accordance with the provisions of its customs legislation.
3. 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 a Party have been lawfully exported from the territory of the other Party;
 - (b) whether goods which are exported from the territory of a Party have been lawfully imported into the territory of the other Party and the nature of the customs procedure, if any, under which the goods have been placed.
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, which constitute or appear to constitute a contravention of the customs legislation of that Party. All relevant information for the interpretation or utilization of the material shall be supplied at the same time.

5. The documents provided for in the Agreement may be replaced by computerized information produced in any form for the same purpose.
6.
 - (a) Original files and documents shall be requested only in cases where certified copies would be insufficient.
 - (b) Original files and documents which have been transmitted shall be returned at the earliest opportunity.

Article 4

Technical Assistance

1. On request, the requested administration shall provide all information about its customs legislation and procedures which are relevant to enquiries relating to an offence.
2. Either customs administration shall communicate on request or on its own initiative, any available information relating to:
 - (a) new customs legislation enforcement techniques having proved their effectiveness;
 - (b) new trends, means or methods of committing 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 5

Surveillance of Persons, Goods, Places and Means of Transport

Each customs administration shall on its own initiative or on request from the other, under the terms of its domestic law and in accordance with its administrative practices, maintain special surveillance over:

- (a) natural persons moving within and in particular entering and leaving the customs territory when there are grounds for believing that they are or have been in breach of customs legislation;

- (b) legal persons of whom there are grounds for believing that they have been, are or may be used in breach of customs legislation;
- (c) 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;
- (d) places used for storing goods which may be used in connection with substantial illicit trade in the territory of the requesting Party;
- (e) means of transport which are suspected of being used in contravening customs legislation in the territory of the requesting Party.

The results of such surveillance shall be communicated to the other customs administration.

Article 6

Investigations

1. If the requested administration does not have the information requested, it shall in accordance with its domestic law and administrative provisions, either:
 - (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. Any enquiry under paragraph 1 of this Article may include the taking of statements from persons from whom information is sought in connection with an offence and from witnesses and experts.
3. The requested administration shall communicate the results of such enquiries without delay to the requesting administration.

Article 7

Visits by Officials

On written request, officials specially designated by the requesting administration may, with the authorization of the requested administration and subject to conditions the latter may impose, for the purpose of investigating an 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 offence;
- (b) take copies of the documents, registers and other data relevant in respect of that offence;

- (c) be present during an inquiry conducted by the requested administration relevant to the requesting administration.

Article 8

Arrangements for Visiting Officials

When, in the circumstances provided for by this Agreement, officials of the customs administration of one 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 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 9

Experts and Witnesses

On request the customs administrations may authorize its officials, within the limitations of the authorization granted, to appear as witnesses or experts in judicial or administrative proceedings in respect of the matters covered by this Agreement in the jurisdiction of the other customs administration, and produce such objects, documents or authenticated copies thereof, as may be needed for the proceedings. The request must indicate specifically on what matter and by virtue of what designation or qualification the official will be questioned.

Article 10

Use of Information and Documents

1. Information obtained shall be used solely for the purposes of this Agreement, and may be used for other purposes only with the prior written consent of the customs administration which furnished the information.
2. Any information communicated in whatsoever form pursuant to the Agreement shall be of a confidential or restricted nature. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to similar information under the relevant laws of the Party which received it.
3. The customs administrations may, in accordance with the purposes and provisions of the Agreement, use the information obtained and documents consulted in their reports, testimonies and records of evidence in judicial or administrative proceedings.

Article 11

Personal Data Protection

Subject to the domestic law of the Parties, the protection of personal data shall at least be subject to the following conditions:

- (a) personal data shall not be transmitted whenever there are reasonable grounds to believe that the transfer or the use made of the data transmitted would be contrary to the basic legal principles of one of the Parties, and, in particular, if the person concerned would suffer undue disadvantages. Upon request of the customs administration furnishing personal data, the receiving customs administration shall inform the furnishing customs administration of the use made of the information supplied and of the results achieved;
- (b) personal data may only be transmitted to customs administrations and other law enforcement authorities, and in the case of need for prosecution purposes, to public prosecution and judicial authorities. Such information shall not be communicated to persons other than those required to use it for such purposes unless the authorities supplying the information expressly agree and the law governing the authorities which receive the data allows such communication;
- (c) the furnishing customs administration must ascertain the validity and correctness of the personal data to be submitted. In case the furnishing customs administration finds that incorrect or restricted personal data have been submitted, it must inform the receiving customs administration of this fact without delay. The receiving customs administration shall correct, destroy, delete or return the personal data, if so required;
- (d) the furnishing customs administration shall together with the personal data provide information on the required deadline regarding data deletion according to the domestic law of its State. Personal data shall be deleted when the need for their use ceases to exist;
- (e) the customs administrations of the Parties shall keep a register on personal data submitted or received, and effectively protect any personal data against unauthorized access, modification, publication, damage or destruction.

Article 12

Delivery of Documents

1. On request, the requested administration shall, in accordance with its domestic law, take all necessary measures in order to deliver all documents and notify all decisions falling within the scope of this Agreement to persons residing or established in its territory.

2. 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 statement by the requested administration, indicating the method and date of the delivery.

Article 13

Communication of Requests

1. Requests pursuant to this Agreement shall be made in writing. Information or documents necessary for the execution of such requests shall accompany the request. Oral requests may be accepted, but must be confirmed in writing as soon as possible.
2. Requests pursuant to paragraph 1 of this Article shall include the following information:
 - (a) the customs administration making the request;
 - (b) the measure requested;
 - (c) the subject of and the reason for the request;
 - (d) a short description of the offences, the legislation and other legal elements involved;
 - (e) details of the persons who are the target of the investigation;
 - (f) a summary of the relevant facts and of the enquiries already carried out.
3. A request by either customs administration that a certain procedure be followed shall be complied with, subject to the domestic law and administrative provisions of the requested Party.
4. Each customs administration shall identify a central co-ordination unit responsible for:
 - (a) making and receiving all requests for assistance;
 - (b) co-ordinating all requests for assistance; and
 - (c) maintaining contact with the co-ordination unit of the other administration.

Article 14

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, it may refuse to provide assistance or it may provide the assistance only if certain conditions are met.

2. If assistance is refused, the decision and the reasons for the refusal shall be notified in writing to the requesting administration without delay.
3. If the requesting administration requests assistance which it would not 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 to whom the request is made.

Article 15

Assistance Expenses

The Parties shall waive all claims on each other for the reimbursement of expenses incurred pursuant to this Agreement, except as appropriate, for expenses to experts and witnesses and to interpreters and translators who are not public service employees.

Article 16

General

1. The provisions of this Agreement shall be effective within the customs territories of the Parties.
2. The application of the Agreement shall be entrusted to the customs administrations of the Parties. They shall decide on all practical measures and arrangements necessary for the application of the Agreement.
3. The assistance provided for under the Agreement shall be supplied directly between the customs administrations of the Parties.

Article 17

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. 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.
2. 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 one another in writing that no such review is necessary.
3. The Parties may, at any time, revise or amend the Agreement by mutual consent in writing through the diplomatic channel.

4. The Agreement may be terminated by either Party by giving written notice to the other Party through the diplomatic channel.
5. 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 authorized by their respective Governments, have signed this Agreement.

DONE in duplicate in the English language at Pretoria on the 11th day of November 2004.

PJ GORDHAN
FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA

(Mrs) M WIIG
FOR THE GOVERNMENT OF
THE KINGDOM OF NORWAY

Entry into force date: 1 November 2006