

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

AND

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

REGARDING MUTUAL ASSISTANCE BETWEEN THEIR

CUSTOMS ADMINISTRATIONS

The Government of the Republic of South Africa and the Government of the United States of America (hereinafter jointly referred to as the "Parties" and in the singular as the "Party");

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

HAVING regard to the international conventions containing prohibitions, restrictions and special measures of control in respect of specific goods;

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

RECOGNIZING the need for international cooperation in matters related to the application and enforcement of their customs laws;

CONVINCED that efforts to prevent offences against customs laws and to achieve greater accuracy in the assessment of customs duties would 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:

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 South Africa, the South African Revenue Service and for the Government of the United States of America, the United States Customs Service, Department of the Treasury;
- (b) the term “customs laws” means the laws, regulations and rules enforced by the customs administrations in connection with the importation, exportation and transit of goods, including the assessment of duties, taxes and other charges and measures of prohibition, restriction or control;
- (c) the term “customs offence” means any civil or criminal violation or attempted violation of customs laws;
- (d) the term “person” means any natural or legal person;
- (e) the term “information” means data in any form, documents, reports or certified or authenticated copies thereof or other communications;
- (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;
- (h) the term “provisional measures” includes:
 - (i) “seizure” or “freezing”, which means temporarily prohibiting the conversion, disposition, movement, or transfer of property, or temporarily assuming custody or control of property on the basis of an order issued by a court or competent authority, or other means; and
 - (ii) “forfeiture” means the deprivation of property by order of a court or competent authority and includes confiscation where applicable;
- (i) the term “property” means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or an interest in such assets.

Article 2

Scope of Application

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 their respective customs laws are properly observed;
 - (b) to prevent, investigate and repress customs offences.
2. Assistance within the framework of the Agreement shall be rendered in accordance with the domestic laws, regulations and rules of the requested Party and within 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 customs duties, taxes and any other charges incurred in the territory of the requesting Party.
4. The Agreement shall apply to the territory of the Republic of South Africa, and to the territory of the United States of America.
5. 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 upon request or on its own initiative, all available information which may help to ensure proper enforcement of customs laws and the prevention, investigation and combating of customs offences.
2. 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.
3. Upon request, the customs administrations shall inform each other whether goods exported from the territory of one Party have been lawfully imported into the territory of the other Party. If requested, the information shall contain the customs procedure used for clearing the goods.

4. Upon request, the customs administrations shall provide information relating to the transportation and shipment of goods showing value, origin, destination, and disposition of those goods.
5. Each customs administration shall, on its own initiative, or upon request, supply to the other customs administration all available information on transactions, completed or planned, which constitute a customs offence in the territory of that Party. All relevant information for the interpretation or utilization of the material shall be supplied at the same time. In situations that could involve substantial damage to the economy, public health, public security, or similar vital interests of the other Party, the customs administrations, wherever possible, shall supply such information without being requested to do so.

Article 4

Files and Documents

1. A requesting administration may request originals of files, documents, and other materials only where copies would be insufficient. Upon request, the requested administration shall provide properly authenticated copies of such files, documents, and other materials.
2. Unless the requesting administration specifically requests originals or copies, the requested administration may transmit computer-based information in any form. The requested administration shall supply all information relevant for interpreting or utilizing computer-based information at the same time.
3. Originals of files, documents, and other materials that have been transmitted shall be returned at the earliest opportunity. Rights of the requested Party or of third parties relating thereto shall remain unaffected.

Article 5

Technical Assistance

1. Upon request, the requested administration shall provide all information about its customs laws and procedures.
2. A customs administration shall communicate upon request or on its own initiative, any available information relating to:
 - (a) new effective customs law enforcement techniques;
 - (b) new trends, means or methods of committing customs offences;

- (c) methods and techniques of processing passengers and cargo.
- 3. The customs administrations shall share information on work procedures for the purposes of advancing their understanding of each other's procedures and techniques.
- 4. The customs administrations shall, to the extent of their ability and within the limits of their available resources, cooperate in the modernization of their administrations through the exchange of technical experts, trainers and other personnel.

Article 6

Provisional Measures

- 1. The Parties shall provide assistance through the use of provisional measures and in proceedings involving property, proceeds, and instrumentalities subject to these provisional measures.
- 2. The Parties may:
 - (a) dispose of property, proceeds, and instrumentalities forfeited as a result of assistance provided under this Agreement in accordance with the domestic law of the Party in control of the property, proceeds, and instrumentalities; and
 - (b) to the extent permitted by their respective domestic laws, transfer forfeited property, proceeds, or instrumentalities, or the proceeds of their sale, to the other Party upon such terms as may be agreed.

Article 7

Surveillance of Persons, Goods, Places and Means of Transport

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

- (a) the movements and, in particular, the entry into and exit from its territory, of persons known to have committed a customs offence, or suspected of doing so;
- (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 which are suspected of being used in customs offences within the territory of the requesting Party.

Article 8

Execution of Requests

1. The requested administration shall take all reasonable measures to execute a request and shall endeavor to secure any official or judicial measure necessary for that purpose.
2. If the requested administration is not the appropriate agency to execute a request, it shall promptly transmit it to the appropriate agency and so advise the requesting administration.
3. The requested administration shall conduct such inspections, verifications, fact-finding inquiries, or other investigative steps, including the questioning of experts, witnesses, and persons suspected of having committed an offence, as are necessary to execute a request.
4. The requested administration shall communicate the results of such inquiries without delay to the requesting administration.
5. Upon request, the requesting administration shall be advised of the time and place of action to be taken in execution of a request.
6. The requested administration shall comply with a request that a certain procedure be followed to the extent that such procedure is not prohibited by the domestic law of the requested Party.

Article 9

Visits by Officials

1. Upon 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 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) take copies of the documents, registers and other data relevant in respect of that customs offence;

- (c) be present during an inquiry conducted by the requested administration relevant to the requesting administration.
2. 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 not be in uniform nor carry arms.

Article 10

Experts and Witnesses

1. Except in extraordinary circumstances, the requested administration shall authorize its employees to appear as witnesses in judicial or administrative proceedings in the territory of the other Party and to produce files, documents, or other materials or authenticated copies thereof.
2. Where a customs official requested to appear as a witness is entitled to diplomatic or consular immunity, the requested Party will sympathetically consider a waiver of immunity under such conditions as it determines to be appropriate.

Article 11

Confidentiality of Information

1. Information obtained under this Agreement shall be afforded the same degree of confidentiality by the receiving Party that it applies to similar information in its custody.
2. Information obtained under the Agreement may only be used or disclosed for the purposes specified in the Agreement, including use in judicial, administrative, or investigative proceedings. Such information may be used or disclosed for other purposes or by other authorities if the supplying customs administration has expressly approved such use or disclosure in writing.
3. Upon request of the requested Party, the requesting Party shall treat information received as confidential except to the extent necessary to fulfill the purposes of the Agreement or to the extent that the requested administration has given its consent. The requested Party shall state its reasons for making a request for confidentiality.
4. This Article shall not preclude the use or disclosure of information to the extent that there is an obligation to do so under the Constitution of the requesting Party in connection with a criminal prosecution. The requesting Party shall give advance notice of any such proposed disclosure to the requested Party.

Article 12

Communication of Requests

1. Assistance under this Agreement shall be exchanged directly between the customs administrations.
2. Requests for assistance under the 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 promptly confirmed in writing.
3. Requests made pursuant to paragraph 2 of this Article, 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) the names and addresses of the persons concerned.
4. The information referred to in the Agreement shall be communicated to officials who are specially designated for this purpose by each customs administration. A list of officials so designated shall be furnished to the customs administration of the other Party.

Article 13

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 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. In no case shall the provisions of this Agreement be construed so as to impose on the customs administrations the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, the disclosure of which would be inconsistent with domestic law.

3. The requested administration may postpone assistance on the ground that it will interfere with an ongoing investigation, prosecution, or proceeding. In such instance, 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. In the event that a request cannot be complied with, the requesting administration shall be promptly notified and provided with a statement of the reasons for postponement or denial of the request. Circumstances that might be of importance for the further pursuit of the matter shall also be provided to the requesting administration.
5. 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 14

Costs

1. Each customs administration shall normally 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 10 and to interpreters, other than government employees. Such allowances shall be paid by the Party which has requested that the officials be summoned to appear as witnesses or experts.
2. If expenses of a substantial and extraordinary nature are or will be required to execute the request, the customs administrations 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 15

Implementation of the Agreement

1. The assistance provided for under this Agreement shall be supplied directly between the customs administrations of the Parties.
2. The customs administrations shall jointly consult regarding any administrative directives necessary for the implementation of the Agreement.
3. The customs administrations shall endeavor by mutual accord to resolve problems or questions arising from the interpretation or application of the Agreement.

4. Any differences for which no solutions can be found shall be settled by diplomatic means.

Article 16

Entry into Force and Termination

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 Agreement may be terminated by either Party by giving written notice to the other Party through the diplomatic channel.
3. 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.
4. 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.

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

DONE in duplicate at Washington, D.C. on the 24th day of August 2000.

(Signed)

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

(Signed)

**FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA**

In terms of paragraph 1 of Article 16 of the Agreement, the date of entry into force is 1 August 2001.