

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

AND

THE GOVERNMENT OF THE REPUBLIC OF TURKEY

REGARDING MUTUAL ASSISTANCE

BETWEEN THEIR CUSTOMS ADMINISTRATIONS

Preamble

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

CONSIDERING the importance of ensuring the accurate assessment and collection of customs duties, taxes and other charges on the importation or exportation of goods as well as the implementation of provisions of prohibition, restriction and control;

CONSIDERING that contravention of customs legislation is detrimental to the economic, commercial, fiscal, social and cultural 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 proper application and enforcement of their customs legislation;

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

HAVING REGARD TO the Recommendation on Mutual Administrative Assistance and the Declaration on the Improvement of Customs Co-operation and Mutual Administrative Assistance, adopted in December 1953 and July 2000, respectively, by the Customs Co-operation Council, now known as the World Customs Organization;

Have agreed, as follows :

Article 1

Definitions

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

- (a) “controlled delivery” means an operation during which the customs administrations of the Parties, in accordance with their national law, 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 offences linked to the importation or exportation of these products and to identifying persons involved in the commission of such offences;
- (b) “customs administration” means, for the Government of the Republic of South Africa, the South African Revenue Service and for the Government of the Republic of Turkey, the Prime Ministry Undersecretariat for Customs;
- (c) “customs legislation” means all the legal and administrative provisions applicable or enforceable by the customs administrations in connection with the importation, exportation, transshipment, transit, storage, and movement of goods, including:
 - (i) the collection, guaranteeing or repayment of duties, taxes and other charges;
 - (ii) action in relation to measures of prohibition, restriction or control;
 - (iii) action in relation to illegal trafficking in narcotic drugs and psychotropic substances;
- (d) “customs duties and taxes” means customs duties and all other duties, taxes, fees or other charges which are collected on or in connection with the importation or exportation of goods;
- (e) “customs offence” means any violation or attempted violation of customs legislation;
- (f) “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;
- (g) “narcotic drugs and psychotropic substances” means 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;
- (h) “officer” means any customs officer or other government agent designated by either customs administration;
- (i) “person” means any natural or legal person;
- (j) “personal data” means all information relating to an identified or identifiable individual;
- (k) “precursors” means controlled chemical substances used in the production of narcotic drugs and psychotropic substances, enumerated in the Lists I and II of the 1988 UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances;

- (l) “requested administration” means the customs administration from which assistance is requested;
- (m) “requesting administration” means the customs administration which requests assistance;
- (n) “requested Party” means the Party whose customs administration is requested to provide assistance;
- (o) “requesting Party” means the Party whose customs administration requests assistance;
- (p) “territory” means the territory in which the customs legislation of a State applies in full.

Article 2

Scope of the Agreement

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 the customs legislation in their respective territories is properly enforced;
 - (b) to prevent, investigate and combat customs offences;
 - (c) in cases concerning the delivery of documents regarding the application of customs legislation.
2. Assistance within the framework of the Agreement shall be rendered in accordance with the national law and administrative provisions 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 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.
5. The Agreement shall apply to the territory of the Republic of South Africa and to the territory of the Republic of Turkey.

Article 3

Scope of Assistance

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 application of customs legislation and the prevention, investigation and combating of customs offences.

2. 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.
3. 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.
4. Upon request, the requested administration shall supply to the requesting administration information concerning instances where the latter has reasonable grounds to doubt the information supplied by the person concerned in the customs matter.
5. Each customs administration shall supply to the other:
 - (a) lists of goods which are likely to be the subject of illegal trafficking between their respective territories;
 - (b) information on activities which are or appear to be a violation or attempted violation of customs legislation within the 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 violation or attempted violation of customs legislation.
6. 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 and the nature of the customs procedure, if any, under which the goods have been placed;
 - (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, if any, under which the goods have been placed.
7. 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 utilisation of the material shall be supplied as soon as possible.
8. The documents provided for in this Agreement may be replaced by computerised information produced in a mutually agreed format for the same purpose.
9.
 - (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 provided shall be returned at the earliest opportunity.

10. The customs administrations shall, on their own initiative or upon request, provide each other with all relevant information on any action, intended or carried out, which constitute or may constitute an offence against the customs legislation of a Party, concerning illicit traffic of:
 - (a) weapons, missiles, explosive and nuclear materials;
 - (b) works of art of significant historical, cultural or archaeological value;
 - (c) narcotic drugs, psychotropic substances, precursors and poisonous substances, as well as of substances dangerous for the environment and public health.
11. Information received under this Article may be transferred to the relevant governmental departments of the requesting Party. However, they shall not be transferred to third countries without the prior written consent of the other Party.

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 a customs 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 customs offences;
 - (c) goods known to be the subject of customs offences, as well as transport and storage methods used in respect of those goods;
 - (d) the computerisation of customs procedures including e-customs and EDI applications; and
 - (e) trade facilitation measures and simplification of customs procedures.
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 officers.

Article 5

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 customs administration, subject to its national law and in accordance with its administrative practices, 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 legislation 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 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 contravening customs legislation in the territory of the requesting Party.
2. The results of such surveillance shall be communicated to the other customs administration.

Article 6

Controlled Delivery

The Parties may, by mutual arrangement, permit the movement of unlawful or suspect goods out of, through, or into their territories, with the knowledge and under the control of the competent authorities, with a view to investigating and combating customs offences. If granting such permission is not within the competence of the customs administration, that administration shall endeavour to initiate co-operation with national authorities with such competence or shall transfer the case to such an authority.

Article 7

Experts and Witnesses

On request the customs administrations may authorise its officers, within the limitations of the authorisation 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 officer will be questioned.

Article 8

Communication of Requests

1. 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 within ten working days following the date of the oral request.
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.
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 its national law and administrative provisions.
5. For the purposes of the Agreement, the customs administrations of the Parties shall designate the officers responsible for communications and shall exchange a list indicating the names, titles, telephone and fax numbers of those officers.
6. Requests shall be submitted either in English or in another language acceptable to the requested customs administration.
7. If a request does not meet the formal requirements, its correction or completion may be requested; the ordering of precautionary measures may, however, take place.

Article 9

Means of Obtaining Information

1. If the requested administration does not have the information requested, it shall in accordance with its national law 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 10

Presence of Officers in the Territory of the Other Party

Where the requested administration considers it useful or necessary for an officer of the requesting administration to be present when, pursuant to a request, measures of assistance are carried out, it shall inform the requesting administration.

Article 11

Arrangements for Visiting Officers

1. When, in the circumstances provided for by this Agreement, officers of the customs administration of either Party are present in the territory of the other Party, they must at all times be able to furnish proof of their official capacity.
2. The officers so designated shall be present in an advisory role only and may not exercise the powers conferred on officers of the requested administration by the national law of the requested Party. The officers shall, however, for the sole purpose of the enquiry being carried out and in the presence of and through officers of the requested administration, have access to the same premises and same documents as those officers of the requested administration.
3. The officers shall, while there, enjoy the protection accorded to customs officers of the other Party, in accordance with the national law in force in the territory of the other Party, and be responsible for any offence they might commit. The officers shall not be in uniform and shall not carry arms.

Article 12

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 national law of the Party where it is received.
3. Any information received under the Agreement by the customs administration of a Party may be passed to the administration of a Customs Union if it is required to do so under its national law with the prior written consent of the other Party.
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.

5. The Parties shall ensure a level of protection of personal data exchanged at least in accordance with the principles laid down in the Annex to the Agreement. Such an exchange should not be contrary to the national laws of the Parties.

Article 13

Exemptions from Obligation to Render Assistance

1. If the requested administration considers that the requested assistance 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 national law 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 customs administration on the ground that it will interfere with an ongoing investigation, prosecution or proceeding. In such a case the requested customs administration shall consult with the requesting customs administration to determine if assistance can be given subject to such terms or conditions as the requested customs 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 14

Costs

1. 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 officers referred to in Article 6 and to interpreters. Such allowances shall be paid by the Party which has requested that the officers be summoned to appear as witnesses or experts.
2. Expenses and allowances paid to experts and witnesses, as well as costs of translators and interpreters, other than Government employees, shall be borne by the requesting administration.
3. 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 15

Implementation and Application of the Agreement

1. The customs administrations shall, where appropriate, enable their officers responsible for the investigation or combating of customs offences to maintain personal and direct relations with each other.
2. The customs administrations of the Parties shall jointly decide on detailed arrangements to facilitate the application of this Agreement.
3. The customs administrations shall endeavour to resolve by mutual accord any disputes or difficulties arising from the interpretation or application of the Agreement.
4. Disputes for which no solutions are found shall be settled through the diplomatic channel.
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

Entry into Force

The Parties shall notify each other in writing, through the diplomatic channel, of the completion of the constitutional 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 latter of these notifications.

Article 17

Duration and Termination

1. This Agreement is intended to be of unlimited duration but either Party may terminate it at any time by notification through the diplomatic channel.

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 and sealed this Agreement, in two originals in the English and Turkish languages, both texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

DONE AT Pretoria on this 3th day of March 2005.

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

**FOR THE GOVERNMENT OF THE
REPUBLIC OF TURKEY**

ANNEX

Basic Principles of Data Protection

1. Personal data undergoing automatic processing shall be:
 - (a) obtained and processed fairly and lawfully;
 - (b) stored for specified and legitimate purposes and not used in a way incompatible with those purposes;
 - (c) adequate, relevant and not excessive in relation to the purposes for which they are stored;
 - (d) accurate and, where necessary, kept up to date;
 - (e) preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored.
2. Personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may not be processed automatically unless national law provides appropriate safeguards. The same shall apply to personal data relating to criminal convictions.
3. Appropriate security measures shall be taken for the protection of personal data stored in automated data files against unauthorised destruction or accidental loss as well as against unauthorised access, alteration or dissemination.
4. Any person shall be enabled:
 - (a) to establish the existence of an automated personal data file, its main purposes, as well as the identity and habitual residence or principal place of business of the controller of the file;
 - (b) to obtain at reasonable intervals and without excessive delay or expense, confirmation of whether personal data relating to that individual are stored in the automated data file, as well as communication to that individual of such data in an intelligible form;
 - (c) to obtain, as the case may be, rectification or erasure of such data, if they have been processed contrary to the provisions of national law giving effect to the basic principles set out in principles 1 and 2 of this Annex;
 - (d) to obtain remedy if a request for communication or, as the case may be, confirmation, rectification or erasure as referred to in paragraphs (b) and (c) of this principle is not complied with.
5. No exception to the provisions under principles 1, 2 and 4 of this Annex shall be allowed except within the limits defined in these principles.

6. Derogation from the provisions under principles 1, 2 and 4 of this Annex shall be allowed when such derogation is provided for by the law of the Party and constitutes a necessary measure in a democratic society in the interest of:
 - (a) protecting State security, public safety, the monetary interests of the State or the suppression of criminal offences;
 - (b) protecting the data subject or the rights and freedoms of others.
7. Restrictions on the exercise of the rights specified in principle 4, paragraphs (b), (c) and (d) of this Annex, may be provided by law with respect to automated personal data files used for statistics or for scientific research purposes where there is obviously no risk of an infringement of the privacy of the data subjects.
8. None of the provisions of this Annex shall be interpreted as limiting or otherwise affecting the possibility for a Party to grant data subjects a wider measure of protection than that stipulated in this Annex.

Entry into force date 1 November 2009