



ANNEX E

ANNEX TO THE SACU AGREEMENT ON MUTUAL ADMINISTRATIVE ASSISTANCE

Article 1

Definitions

In this Annex, unless the context otherwise requires:

- (a) **“Controlled Delivery”** means an operation during which the Customs Administrations of the Member States, in accordance with their domestic 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 Administrations”** means the administrative authority responsible for administering Customs Law;
- (c) **“Customs Law”** means all the legal and administrative provisions applicable or enforceable in the territories of the Member States 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; and
 - (iii) action in relation to illegal trafficking in narcotic drugs and psychotropic substances;
- (d) **“Customs Offence”** means any violation or attempted violation of Customs Law;
- (e) **“Electronic Data Interchange”** means the electronic transfer of structured data, by agreed and established message standards, from one computer application to another;
- (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) **“International Trade Supply Chain”** means all processes involved in the cross-border movement of goods from the place of origin to the place of final destination;
- (h) **“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;
- (i) **“Official”** means any Customs officer or other government agent designated by the Customs Administration of a Member State;
- (j) **“Person”** means both natural and legal Persons;
- (k) **“Requested Administration”** means the Customs Administration of a Member State from which assistance is requested;
- (l) **“Requested Member State”** means the Member State whose Customs Administration is requested to provide assistance;

- (m) **“Requesting Administration”** means the Customs Administration of a Member State that requests assistance;
- (n) **“Requesting Member State”** means the Member State whose Customs Administration requests assistance; and
- (o) **“Substances Frequently used in the Illicit Manufacture of Narcotic Drugs or Psychotropic Substances”** means substances listed in the Annex to the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of December 20, 1988.

Article 2

Scope of the Annex

1. The Member States shall, through their Customs Administrations and in accordance with the provisions set out in this Annex, afford each other mutual administrative assistance:
 - (a) to ensure that the Customs Law in force in their respective territories is properly observed;
 - (b) to prevent, investigate and combat Customs Offences;
 - (c) to facilitate the simplification and harmonisation of their Customs procedures; and
 - (d) to ensure the security of the International Trade Supply Chain.
2. Assistance within the framework of this Annex shall be rendered in accordance with the domestic law and administrative provisions of the requested Member State and within the competence and available resources of its Customs Administration.
3. This Annex shall not provide for the recovery in the territory of the requested Member State of Customs duties, taxes and any other charges incurred in the territory of the requesting Member State.
4. This Annex is intended solely for mutual administrative assistance between the Member States. The provisions of this Annex shall not give rise to a right on the part of any Person to obtain, suppress or exclude any evidence or to impede the execution of a request for assistance.
5. The Member States may, by mutual arrangement, co-operate in the exchange of Information taking into account the Framework of Standards to Secure and Facilitate Global Trade of the World Customs Organization.

Article 3

Communication of Requests

1. Requests for assistance under this Annex shall be exchanged directly between the Customs Administrations concerned. Each Customs Administration shall appoint a central co-ordination unit for this purpose and shall provide details thereof to the Executive Secretary of SACU who shall communicate this Information and any updates thereof to the other Customs Administrations.

2. The central co-ordination unit shall be responsible for:
 - (a) receiving all requests for assistance;
 - (b) co-ordinating all requests for assistance; and
 - (c) maintaining contact with the central co-ordination units of the other Member States.
3. 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, provided that the central co-ordination units shall be informed without delay of such direct contact or co-operation.
4. Requests for assistance under this Annex 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 as soon as possible or, if acceptable to the requested and Requesting Administrations, by electronic means.
5. Requests made pursuant to paragraph 4 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;
 - (d) the names and addresses of the Persons to whom the request relates, if known;
 - (e) a reference in accordance with paragraph 2 of Article 25 of this Annex, if applicable; and
 - (f) the verifications made in accordance with paragraph 2 of Article 6 of this Annex.
6. 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 domestic law and administrative provisions.
7. In serious cases that could involve substantial damage to the economy, public health, public security or any other vital interest of any Member State, the Customs Administration of any Member State shall, wherever possible, supply such Information on its own initiative without delay.

Article 4

Information for the Application and Enforcement of Customs Law

1. The Customs Administrations shall supply to each other, either on request or on their own initiative, with Information that may help to ensure proper application of Customs Law and the prevention, investigation and combating of Customs Offences and to ensure the security of the International Trade Supply Chain. Such Information may include:
 - (a) new Customs Law 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) Persons known to have committed a Customs Offence or suspected of being about to commit a Customs Offence;
 - (e) categories of goods known to be the subject of illicit trafficking;
 - (f) the application of the rules concerning the origin of goods;
 - (g) the assessment of customs duties and the correct determination of Customs value and tariff classification of goods; and
 - (h) any other data that may assist Customs Administrations with risk assessment for control and facilitation purposes.
2. On request, the Requested Administration shall provide the Requesting Administration, who has reason to doubt the accuracy of Information supplied to it in a customs matter, with Information on:
 - (a) whether goods that are imported into the territory of the requesting Member State have been lawfully exported from the territory of the requested Member State;
 - (b) whether goods that are exported from the territory of the requesting Member State have been lawfully imported into the territory of the requested Member State and the nature of the Customs procedure, if any, under which the goods have been placed.

Article 5

Information Relating to Customs Offences

The Customs Administration of a Member State shall, on its own initiative, or upon request, supply to the Customs Administration of any other Member State concerned, reports, records of evidence, or certified copies of documents giving all available Information on transactions, completed or planned, that constitute or appear to constitute a contravention of the Customs Law of the Member State concerned. All relevant Information for the interpretation or utilisation of the material shall be supplied at the same time.

Article 6

Information for the Assessment of Customs Duties

1. On request, the Requested Administration shall, without prejudice to Article 25 of this Annex, in support of the proper application of Customs Law or in the prevention of Customs fraud, provide Information to assist the Requesting Administration that has reasons to doubt the truth or accuracy of a declaration made in respect of the assessment of Customs Duties.
2. The request shall specify the verification procedures that the Requesting Administration has undertaken or attempted and the specific Information requested.

Article 7

Automatic Exchange of Information

Member States may, by mutual arrangement in accordance with Article 28 of this Annex, exchange any Information covered by this Annex on an automatic basis.

Article 8

Advance Exchange of Information

Member States may, by mutual arrangement in accordance with Article 28, exchange specific Information in advance of the arrival of consignments in the territory of any other Member State.

Article 9

Notification

1. On request, the Requested Administration shall take all necessary measures to notify a Person, residing or established in the territory of the requested Member State of any decision concerning that Person taken by the Requesting Administration, in application of Customs Law, that fall within the scope of this Annex.
2. Such notification shall be made in accordance with the procedures applicable in the territory of the requested Member State, subject to its domestic law and administrative provisions.

Article 10

Technical Assistance

1. Member States shall provide each other with technical assistance in Customs matters including:
 - (a) exchange of Customs Officials when mutually beneficial for the purposes of advancing the understanding of each other's techniques;
 - (b) training and assistance in developing specialised skills of Customs Officials;
 - (c) exchange of experts knowledgeable about Customs matters;

- (d) exchange of professional, scientific and technical data relating to Customs Law and procedures;
- (e) Information on the computerisation of customs procedures including e-customs and Electronic Data Interchange applications; and
- (f) trade facilitation measures and simplification of Customs procedures.

Article 11

Surveillance of Persons, Goods, Places and Means of Transport

1. The Customs Administration of a Member State shall on its own initiative or on written request from the Customs Administration of another Member State, subject to its domestic 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 Law of the requesting Member State;
 - (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 Member State;
 - (c) premises used for storing goods that may be used in connection with substantial illicit trade in the territory of the requesting Member State;
 - (d) means of transport that are suspected of being used in contravening Customs Law in the territory of the requesting Member State.
2. Each Customs Administration shall, on written request or in meeting the requirements of any other agreements between the Member States, subject to 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 that may apply to those specified goods.
3. The results of such surveillance shall be communicated to the Customs Administration of the requesting Member State as soon as is reasonably possible.

Article 12

Controlled Delivery

1. Subject to the domestic law of each Member State, the Customs Administrations of the Member States shall co-operate, 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 and psychotropic substances, in order to detect offences relating to such goods and identify Persons committing such offences.
2. Illicit shipments subject to Controlled Delivery may, by mutual agreement of the competent authorities of the Member States, be intercepted and allowed to continue their journey either intact, or after the narcotic drugs or substances mentioned in paragraph 1 of this Article have been removed or replaced in whole or in part.

3. Decisions concerning the use of Controlled Delivery are to be taken on a case-by-case basis, and may, if necessary, take into account financial arrangements and understandings between the competent authorities of the Member States.
4. If such movements cannot be carried out under the control of the Customs Administration, that Customs Administration shall endeavour to initiate co-operation with the national authorities that have such competence or shall transfer the case to them.

Article 13

Experts and Witnesses

At the request of the Customs Administration of a Member State, the Customs Administration of another Member State may authorise its Officials to appear before a court or tribunal in the territory of the requesting Member State as experts or witnesses in the matter of a Customs Offence. Such Officials shall give evidence regarding facts established by them in the course of their duties. The request for appearance shall specify, in particular, in what case and what capacity the Official is to be heard.

Article 14

Presence of Officials in the Territory of the Other Member State

1. Officials specially designated by the Requesting Administration of a Member State may, on written request, with the authorisation of the Requested Administration of a Member State 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) be provided with 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 and relevant to the Requesting Administration.
2. Where the Requested Administration considers it useful or necessary for an Official of the Requesting Administration to be present when, pursuant to a request, measures of assistance are carried out, it shall inform the Requesting Administration accordingly.

Article 15

Arrangements for Visiting Officials

1. When, in the circumstances provided for by this Annex, Officials of a Member State are present in the territory of another Member State, they must at all times be able to furnish proof of their Official identity and status in their Customs Administration and of their Official status as granted in the territory of the Requested Administration.

2. The Officials so designated shall be present in an advisory role only and may not exercise the powers conferred on Officials of the Requested Administration by the domestic law of the requested Member State. The Officials shall, however, for the sole purpose of the enquiry being carried out and in the presence of and through Officials of the Requested Administration, have access to the same premises and same documents as those Officials of the Requested Administration.
3. The Officials shall, while in the territory of another Member State, enjoy the **same** protection accorded to Customs Officials of the requested Member State, in accordance with the domestic law of the requested Member State, and be responsible for any offence they might commit. The Officials shall not be in uniform and shall not carry arms.

Article 16

Joint, One-stop or Juxtaposed Border Post

The Customs Administrations of the Member States may, in accordance with their respective Customs Law, enter into an arrangement for the establishment of a joint, one-stop or juxtaposed border post. The arrangement shall set out the rules for the establishment and operation of such border post and shall be subject to review by the competent authorities of the Customs Administrations as and when considered necessary.

Article 17

Right of Pursuit and Extradition

1. Officials of a Member State pursuing in their State's territory an individual observed in the act of committing a Customs Offence, or participating in such an offence, may request the assistance of another Member State in the pursuit and apprehension of such an individual, subject to any conditions the requested Member State may impose.
2. Where the pursuit takes place on the sea, it shall, where it extends to the high seas, be carried out in conformity with the international law of the sea as reflected in the United Nations Convention on the Law of the Sea.
3. Subject to the provisions of its domestic law, its extradition treaties or other agreements, a Member State may upon being satisfied that the circumstances so warrant and are urgent, and at the request of the requesting State, take into custody a person whose extradition is sought and who is present in its territory, or take other appropriate measures to ensure that the person is present at the extradition proceedings.
4. Member States shall develop and agree on procedures governing implementation of this Article.

Article 18

Cross-Border Surveillance

Officials of a Member State, keeping under surveillance in their State's territory a Person about whom there are serious grounds to believe that he or she is involved in a Customs Offence, may continue the surveillance in the territory of another Member State subject to a prior request, authorisation and any conditions the requested Member State may impose.

Article 19

Covert Investigations

1. A requested Member State may authorise Officials of a requesting Member State to investigate in its territory, using covert methods, to ascertain or clarify facts about a Customs Offence where it would be extremely difficult to do so otherwise. The Officials in question shall be authorised to collect Information and to make contact with the subjects of investigations or other Persons associated with them in the course of their investigative activities.
2. Such investigations shall be carried out in accordance with the domestic law and procedures of the Member State in whose territory the investigations are being conducted.

Article 20

Joint Control and Investigation Teams

1. Member States may establish joint control or investigation teams to detect and prevent particular types of Customs Offences requiring simultaneous and co-ordinated activities.
2. Such teams shall operate in accordance with the domestic law and procedures of the Member State in whose territory the activities are being carried out.

Article 21

Means of Obtaining Information

1. If the Requested Administration does not have the Information requested, it shall take any necessary measures to obtain such Information. If necessary, the Requested Administration may be assisted by another competent authority of the requested Member State in providing the assistance. However, answers to requests shall be conveyed solely by the Requested Administration.
2. In cases where the Requested Administration is not the appropriate authority to comply with a request, it shall either promptly transmit the request to the appropriate authority, which shall act upon the request according to its powers under the domestic law of the requested Member State, or advise the Requesting Administration of the appropriate procedure to be followed regarding such a request.
3. Any enquiry under paragraph 1 of this Article may include the taking of statements from Persons from whom Information is sought in connection with a Customs Offence and from witnesses and experts.

Article 22

Use of Information

1. Any Information received under this Annex shall be used only by the Customs Administration for which it was intended and solely for the purpose of administrative assistance under the terms set out in this Annex.

2. On request, the Member State that supplied the Information may, notwithstanding paragraph 1 of this Article, authorise its use by other authorities or for other purposes, subject to any terms and conditions it may specify. Such use shall be in accordance with the domestic law and administrative provisions of the Member State which seeks to use the Information. The use of Information for other purposes includes its use in criminal investigations, prosecutions or proceedings.

Article 23

Confidentiality of Information

1. Any Information received under this Annex 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 domestic law and administrative provisions of the receiving Member State.
2. Personal data exchange between two or more Member States under this Annex shall not begin until the Member States concerned have, by mutual arrangement in accordance with paragraph 2 of Article 28, agreed that such data will be afforded, in the territory of the receiving Member State, a level of protection that satisfies the requirements of the domestic law of the supplying Member State.
3. The Customs Administration of the receiving Member State may, in accordance with the purposes and within the scope of this Annex, in its records of evidence, reports, and testimonies, and in proceedings and charges brought before the courts, use as evidence Information and documents obtained in accordance with this Annex.

Article 24

Personal Data Protection

1. Personal data under this Annex shall only be supplied to a Customs Administration. The supply of Personal data to any other authority shall only be allowed after prior approval by the Customs Administration supplying the data concerned.
2. On request, the Customs Administration receiving Personal data shall inform the Customs Administration which supplied that data of the use made of it and the results achieved.
3. Personal data supplied under this Annex shall be kept only for the time necessary to achieve the purpose for which it was supplied.
4. The Customs Administration supplying Personal data shall, to the extent possible, ensure that this data has been collected fairly and lawfully and that it is accurate and up to date and not excessive in relation to the purposes for which it is supplied.
5. If Personal data supplied is found to be incorrect or should not have been exchanged, this shall be notified immediately. The Customs Administration that has received such data shall amend or delete it.
6. The Customs Administrations shall record the supply or receipt of Personal data exchanged under this Annex.

7. The Customs Administrations shall take the necessary security measures to protect Personal data exchanged under this Annex from unauthorised access, amendment or dissemination.
8. A Member State shall be liable, in accordance with its domestic law and administrative provisions, for damage caused to a Person through its use of Personal data exchanged under this Annex. This shall also be the case where the damage was caused by a Member State supplying inaccurate data or supplying data that is contrary to this Annex.
9. If the Member State found liable for damage under paragraph 8 of this Article is not the Member State that supplied the Personal data, the Member States concerned shall agree on the terms and conditions of reimbursement to the liable Member State of any sums it paid out in compensation.

Article 25

Exemptions from Obligation to Render Assistance

1. Where any assistance requested under this Annex may infringe the sovereignty, laws and treaty obligations, or the security, public policy or any other essential national interests of a requested Member State, or might in the opinion of that Member State 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. If the Requesting Administration has requested assistance which it would not itself be able to give if requested by the Requested 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 if there are grounds to believe that it will interfere with an ongoing investigation, prosecution or proceedings. In such a case, 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 specify.
4. If the Requested Administration considers that the effort required to fulfil a request is clearly disproportionate to the perceived benefit to the Requesting Administration, it may decline to provide the requested assistance.
5. Where assistance is refused or postponed, the decision and the reasons for the refusal or postponement shall be notified in writing to the Requesting Administration without delay.

Article 26

Costs

1. Subject to paragraphs 2 and 3 of this Article, the costs incurred in the application of this Annex shall be borne by the requested Member State.
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 Member State.

3. If expenses of a substantial or extraordinary nature are or will be required to execute a request, the Member States 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 27

Territorial Application of the Annex

This Annex shall apply to the territory of the Southern African Customs Union.

Article 28

Implementation and Application of the Annex

1. In applying this Annex, the Member States shall take the necessary measures to ensure, to the extent possible, that their Officials responsible for the investigation or combating of Customs Offences maintain Personal and direct relations with each other.
2. Two or more Member States may decide on the mutual arrangements to facilitate the implementation and application of this Annex between them.
3. Member States shall attach, on the notice to the Secretariat of completion of national processes, procedures for implementing mutual administrative assistance in each Member State.

Article 29

Amendments to the Annex

1. Any Member State desirous of amending this Annex shall put forward its proposal for such amendment, together with its submission in motivation of the proposed amendment, to the Council for consideration and decision.
2. Any amendment to this Annex shall be adopted by a decision of the Council in accordance with Article 43 of the Agreement.

Article 30

Settlement of Disputes

1. The Customs Administrations shall endeavour to resolve, by mutual agreement and through SACU structures, any disputes as to the interpretation or application of this Annex and shall make every effort, through co-operation and consultation, to arrive at a mutually satisfactory agreement.
2. Any disputes that cannot be settled through consultation shall be referred to the Council which shall consider the dispute and make a decision for its settlement.

Article 31

General

The Council shall jointly determine the detailed arrangements for the implementation of this Annex.

Article 32

Entry into Force

This Annex shall enter into force thirty (30) days after the deposit of the instruments of ratification by all the Member States.

ADOPTED BY THE COUNCIL AT MASERU, LESOTHO ON THE 16TH SEPTEMBER 2011