

**AGREEMENT**

**BETWEEN**

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

**AND**

**THE GOVERNMENT OF CANADA**

**REGARDING MUTUAL ASSISTANCE**

**BETWEEN THEIR CUSTOMS ADMINISTRATIONS**

**The GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA and the GOVERNMENT OF CANADA**, hereinafter jointly referred to as the “Parties”, and in the singular as a “Party”,

**CONSIDERING** the importance of ensuring the accurate assessment of customs duties, taxes and other charges collected on the importation or exportation of goods and a proper implementation of provisions of prohibition, restriction and control by their Customs administrations;

**CONSIDERING** that contravention of Customs law is detrimental to the economic, fiscal, social, cultural, public health, security and commercial interests of their respective countries;

**CONSIDERING** that trafficking in weapons, explosives, chemical, biological and nuclear substances as well as in narcotic drugs, psychotropic substances, hazardous goods and other prohibited, regulated or controlled goods constitutes a danger to public health and to society;

**RECOGNISING** the increased global concern for the security and facilitation of the international trade supply chain and the Customs Co-operation Council’s Resolution of June 2002 to that effect;

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

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

**HAVING REGARD** to international Conventions containing prohibitions, restrictions and measures of control in respect of specific goods;

**HAVING** regard to the Recommendation on Mutual Administrative Assistance and the Declaration on the Improvement of Customs Co-operation and Mutual Administrative Assistance (the Cyprus Declaration), adopted in December 1953 and June 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) “Customs administration” shall mean the administration designated from time to time by either Party to the other as responsible for administering the Customs Law;
- (b) “Customs law” shall mean 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 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;
- (c) “Customs offence” shall mean any violation or attempted violation of Customs law;
- (d) “information” shall mean 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;
- (e) “intelligence” shall mean information which has been processed or analysed to provide an indication relevant to a Customs offence;
- (f) “international trade supply chain” shall mean all processes involved in the cross-border movement of goods from the place of origin to the place of final destination;
- (g) “official” shall mean any customs officer or other government agent designated by the Parties;
- (h) “person” shall mean both natural and legal persons;
- (i) “personal data” shall mean data concerning an identified or identifiable natural person;
- (j) “requested administration” shall mean the Customs administration from which assistance is requested;

- (k) “requested Party” shall mean the Party whose Customs administration is requested to provide assistance;
- (l) “requesting administration” shall mean the Customs administration which requests assistance;
- (m) “requesting Party” shall mean the Party whose Customs administration requests assistance.

## **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 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) in cases concerning the delivery of documents regarding the application of Customs law;
  - (d) to facilitate the simplification and harmonisation of their customs procedures; and
  - (e) to ensure the security of the international trade supply chain.
2. Within the framework of this Agreement, each Party shall render assistance in accordance with its domestic law and administrative provisions and within the competence and available resources of its Customs administration.
3. This 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. This Agreement is intended solely for mutual administrative assistance between the Parties. The provisions of this Agreement 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.

## 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 and intelligence that may help to ensure proper application of Customs law, the prevention, investigation and combating of Customs offences and the security of the international trade supply chain. Such information may relate to:
  - (a) the recovery, by the Customs administrations, of customs duties as well as the correct determination of customs value of the goods and their tariff classification;
  - (b) the application of the rules concerning the origin of goods;
  - (c) the prevention and repression of Customs offences;
  - (d) Customs law and procedures that are relevant to enquiries relating to a Customs offence;
  - (e) new Customs law enforcement techniques having proved their effectiveness;
  - (f) new trends, means or methods of committing Customs offences;
  - (g) goods known to be the subject of Customs offences, as well as transport and storage methods used in respect of those goods; and
  - (h) any other data that can assist Customs administrations with risk management for control and facilitation purposes.
2. Upon request, the requested administration shall, without prejudice to Article 16, in support of the proper application of Customs law or in the prevention of customs fraud, supply to the requesting administration information concerning instances where the latter has reason to doubt the truth or accuracy of a declaration.
3. Each Customs administration shall supply to the other, either on request or on its own initiative, with any available information relating to:
  - (a) goods that are likely to be the subject of a Customs offence between the territories of the Parties;
  - (b) activities that are or appear to be a violation or attempted violation of Customs law within the territory of the other Party;

- (c) 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 law;
  - (d) persons known to have committed a Customs offence or suspected of being about to commit a Customs offence.
- 4. Upon request, the requested administration shall supply to the requesting administration information concerning the following matters:
  - (a) whether goods that are imported into the territory of the requesting Party have been lawfully exported from the territory of the requested Party;
  - (b) whether goods that 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.
- 5. 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, that constitute or appear to constitute a contravention of the Customs law of the other Party. All relevant information for the interpretation or utilisation of the material shall be supplied at the same time.
- 6. 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 and intelligence on its own initiative without delay.

#### **Article 4**

##### ***Notification***

On request, the requested administration shall notify a person, residing or established in the territory of the requested Party, of any formal decision concerning that person taken by the requesting administration, in application of Customs law.

#### **Article 5**

##### ***Automatic Exchange of Information***

The Customs administrations may, by mutual arrangement in accordance with paragraph 2 of Article 18, exchange any information or intelligence covered by this Agreement on an automatic basis.

## **Article 6**

### ***Advance Exchange of Information***

The Customs administrations may, by mutual arrangement in accordance with paragraph 2 of Article 18, exchange specific information or intelligence in advance of the arrival of consignments in the territory of the other Party.

## **Article 7**

### ***Technical Assistance***

1. The Customs administrations may 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.
2. Each Customs administration may share with the other Customs administration information on its work procedures for the purposes of advancing their understanding of each other's procedures and techniques.

## **Article 8**

### ***Surveillance of Persons, Goods, Places and Means of Transport***

1. On request, each Customs administration shall, subject to the domestic law and administrative practices in force in the country of the Party, maintain special surveillance over:
  - (a) persons known to have committed or suspected of being about to commit a Customs offence in the territory of the requesting Party, particularly those moving into and out of the territory of the requested Party;

- (b) suspect storage or movements of goods and means of payment notified by the requesting administration in connection with the commission of a Customs offence in the territory of the requesting Party;
  - (c) places used for storing goods in the territory of the requested Party that may be used in connection with the commission of a Customs offence in the territory of the requesting Party;
  - (d) means of transport that are suspected of being used in contravening Customs law in the territory of the requesting Party; and
  - (e) activities that may result in Customs offences in the territory of the requesting Party.
2. The results of such surveillance shall be communicated to the other Customs administration as soon as is reasonably possible.

## **Article 9**

### *Experts and Witnesses*

1. On request, the requested Party may authorise its officials to appear before a court or tribunal in the territory of the other Party as experts or witnesses in the matter of a Customs offence.
2. When appearing before a court or tribunal under the circumstances of paragraph 1, such witnesses or experts shall be afforded the full protection of the domestic law of the requesting Party pertaining to testimony of a privileged or confidential nature which may be protected from disclosure under that law.

## **Article 10**

### *Communication of Requests*

1. Requests for 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 as soon as possible either in writing or, if acceptable to both Customs administrations, by electronic means.
3. Requests for assistance under this Agreement shall include the following details:

- (a) the name of the requesting administration;
  - (b) the customs matter at issue, type of assistance requested, and reasons 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.
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 the domestic law and administrative provisions in force in its country.
5. The information referred to in this Agreement shall be communicated to officials who are specially designated for this purpose by either Customs administration. A list of officials so designated shall be supplied to the Customs administration of the other Party.

## **Article 11**

### ***Means of Obtaining Information***

1. If the requested administration does not have the information requested, it shall in accordance with the domestic law and administrative provisions in force in its country:
- (a) initiate enquiries to obtain that information; or
  - (b) promptly transmit the request to the appropriate authority; or
  - (c) indicate which relevant authorities are concerned.
2. Any enquiry to which paragraph 1(a) of this Article applies may include the taking of statements from persons from whom information is sought in connection with a Customs offence and from witnesses and experts.
3. The requested administration shall communicate without delay to the requesting administration the procedures followed.

## **Article 12**

### ***Presence of Officials in the Territory of the Other Party***

1. Officials designated by either Party may, on written request, with the authorisation of the requested administration and subject to conditions the latter may impose, for the purpose of investigating a Customs offence:
  - (a) examine in the offices of the requested administration the documents, registers and other relevant data to extract 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 inquiry 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 Party to be present when, pursuant to a request, measures of assistance are carried out, it shall inform the requesting administration accordingly.

## **Article 13**

### ***Arrangements for Visiting Officials***

1. When, in the circumstances provided for by this Agreement, officials designated by 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 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 in force in the country of the requested Party.
3. The officials shall, while there, enjoy the protection accorded to customs officials of the other Party, in accordance with the domestic law in force in the country of the other Party, and be responsible for any offence they might commit. The Parties shall make sure that the officials they have designated not be in uniform and not carry arms.

## **Article 14**

### ***Use and Confidentiality of Information***

1. Any information or intelligence 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 or intelligence has authorised its use by other authorities or for other purposes in writing, subject to any terms or conditions it may specify.
2. Any information or intelligence received under this Agreement shall be treated as confidential and shall at least be accorded protection and confidentiality equivalent to that accorded to the same kind of information under the domestic law in force in the country of the receiving Party.
3. The Customs administration of the receiving Party may, subject to paragraph 1 of this Article and in accordance with the purposes and within the scope of this Agreement, in its records of evidence, reports, and testimonies, and in proceedings and charges brought before the courts, use as evidence information, intelligence and documents obtained in accordance with the Agreement.
4. The receiving Party shall provide protection to information received under this Agreement, as mentioned in paragraph 1 of this Article. In the event that a law or a court order requires the receiving party to disclose the information received, it shall inform the other Party promptly.

## **Article 15**

### ***Personal Data***

1. Personal data exchanged under this Agreement shall be subject to a level of protection equivalent to the level of protection maintained by the Party providing the data.
2. The Parties shall provide each other with all legislation and administrative provisions relevant to this Article, concerning the personal data protection of their respective countries.
3. Personal data exchange shall not occur until the Parties have agreed in accordance with paragraph 2 of Article 18 of this Agreement, that the level of protection in their territories is equivalent.

## **Article 16**

### ***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, 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 that fact in its request. Compliance with such a request shall be entirely within the discretion of the requested administration.
3. Assistance may be postponed by the requested administration on the ground that it will interfere with an ongoing investigation, prosecution or proceeding. 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 require.
4. If 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 17**

### ***Costs***

1. Subject to paragraphs 2 and 3 of this Article, each Customs administration shall waive all claims for reimbursement of costs incurred in the execution of this Agreement.
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 Party.
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 18**

### ***Application of the Agreement***

1. The Customs administrations shall enable their officials responsible for the investigation or combating of Customs offences to maintain personal and direct relations with each other.
2. The Customs administrations shall jointly decide on detailed arrangements to facilitate the application of this Agreement.
3. Any difficulties or doubts between the Customs administrations arising from the interpretation or application of this Agreement shall be settled amicably through consultation or negotiation between them.

## **Article 19**

### ***Settlement of Disputes***

Any disputes arising from this Agreement shall be settled by the Parties by diplomatic means.

## **Article 20**

### ***Review***

The Parties shall meet in order to review this 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 21**

### ***Amendments***

1. The Parties may amend this Agreement by mutual consent.
2. The entry into force of the amendments shall follow the procedure established in Article 23 of this Agreement.

## **Article 22**

### ***Territorial Application of the Agreement***

This Agreement shall apply to the territory of Canada and to the territory of the Republic of South Africa.

## **Article 23**

### ***Entry into Force***

The Parties shall notify each other in writing, through the diplomatic channel, of the completion of the constitutional or internal requirements for the entry into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications.

## **Article 24**

### ***Duration and Termination***

1. This Agreement shall remain in force indefinitely but either of the Parties may terminate it at any time by giving written notice, through the diplomatic channel, to the other Party of its intention to terminate this Agreement.
2. This Agreement shall cease to be effective three months after the date of receipt of such notice.
3. 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 this Agreement.

**DONE** in duplicate at Johannesburg on this 30th day of October 2009, in the English and French languages, each version being equally authentic.

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

**FOR THE GOVERNMENT OF  
CANADA**

**Entry into force date: 9 November 2010**