

AGREEMENT

BETWEEN

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

AND

**THE GOVERNMENT OF
THE DEMOCRATIC REPUBLIC OF CONGO**

REGARDING MUTUAL ASSISTANCE

BETWEEN THEIR CUSTOMS ADMINISTRATIONS

Preamble

The Government of the Republic of South Africa and the Government of the Democratic Republic of Congo (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;

CONSIDERING that contravention of customs law is detrimental to the economic, fiscal and social 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 application and enforcement of their customs law;

RECOGNISING that the implementation of the Protocol on Trade in the Southern African Development Community will bring, at regional level, a greater need for such co-operation, particularly in relation to the confirmation of origin and regional transit of goods;

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 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 July 2000, respectively, by the Customs Co-operation Council, now known as the World Customs Organization;

HEREBY AGREE as follows:

Article 1

Definitions

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

- (a) “customs administration” means, for the Government of the Democratic Republic of Congo, l’Office Des Douanes Et Accises and for the Government of the Republic of South Africa, the South African Revenue Service;
- (b) “customs law” 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;
- (c) “customs offence” means any violation or attempted violation of customs law;
- (d) “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;
- (e) “official” means any customs officer or other government agent designated by either customs administration;
- (f) “person” means both natural and legal persons;
- (g) “requested administration” means the customs administration from which assistance is requested;
- (h) “requesting administration” means the customs administration which requests assistance;
- (i) “requested Party” means the Party whose customs administration is requested to provide assistance;
- (j) “requesting Party” means 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 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.
2. Assistance within the framework of the Agreement shall be rendered in accordance with the domestic law and administrative provisions of the country 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 Democratic Republic of Congo and to the territory of the Republic of South Africa.

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 that may help to ensure proper application of customs law and the prevention, investigation and combating of customs offences.
2. Assistance provided in accordance with this Agreement shall, on request, include the provision of information to ensure the correct determination of customs value.

3. 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.
4. 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 law.
5. Upon request, the requested administration shall supply to the requesting administration information concerning instances where the latter has reason to doubt the information supplied by the person concerned in the customs matter.
6. Each customs administration shall supply to the other:
 - (a) lists of goods that are likely to be the subject of illegal trafficking between their respective territories;
 - (b) information on activities that are or appear to be a violation or attempted violation of customs law 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 law.
7. 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.
8. 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 that Party. All relevant information for the interpretation or utilisation of the material shall be supplied at the same time.
9. The documents provided for in this Agreement may be replaced by computerised information produced in any form for the same purpose.

10. (a) Original files and documents shall be requested only in cases where certified copies would be insufficient.
- (b) Original files and documents that have been transmitted shall be returned at the earliest opportunity.

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

Central Co-ordination Units

1. Each customs administration shall appoint a central co-ordination unit responsible for:
 - (a) receiving all requests for assistance;
 - (b) co-ordinating all requests for assistance; and
 - (c) maintaining contact with the co-ordination unit of the other administration.
2. 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. The central co-ordination units shall be informed as soon as possible of any such direct contact or co-operation.

Article 6

Technical Assistance

1. On request, the requested administration shall provide all information about its customs law and procedures that 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 law enforcement techniques having proved their effectiveness;
 - (b) new trends, means or methods of committing customs offences; and
 - (c) goods known to be the subject of customs offences, as well as transport and storage methods used in respect of those goods.
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 officials.

Article 7

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 the domestic law in force in its country 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 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 that may be used in connection with substantial illicit trade 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.

2. Each customs administration shall, on written request or in meeting the requirements of any other agreements between the Parties, subject to the domestic law in force in its country 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 special surveillance and routine monitoring shall be communicated to the other customs administration as soon as is reasonably possible.

Article 8

Experts and Witnesses

1. In the matter of a customs offense, at the request of each Party, the requested administration may authorise its officials to appear as experts or witnesses before a tribunal, court or administrative authority in the State of the requesting Party.
2. The officials may, within the limits assigned to them by their administration, produce such documents and other elements or certified copies of the latter relating to their observations made while on duty.
3. The requesting Party shall supply to the requested Party in the matter, the details of the person required.

Article 9

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 as soon as possible.
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;
 - (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 in force in its country and administrative provisions.
 5. The information referred to in the 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 10

Means of Obtaining Information

1. If the requested administration does not have the information requested, it shall in accordance with the domestic law in force in its country 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. 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.
3. The requested administration shall communicate the results of such enquiries without delay to the requesting administration.

Article 11

Presence of Officials in the Territory of the Other Party

1. Officials specially designated by the requesting administration 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) take 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.

Article 12

Arrangements for Visiting Officials

1. When, in the circumstances provided for by this Agreement, officials 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 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. 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 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 officials shall not be in uniform and shall not carry arms.

Article 13

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 domestic law in force in the country of the Party where it is received.

3. The customs administration of the receiving Party may, in accordance with the purposes and within the scope of the Agreement, 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 the Agreement.

Article 14

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 the domestic law in force in its country 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 15

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 officials referred to in Article 8 and to interpreters. Such allowances shall be paid by the Party which has requested that the officials 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 16

Implementation and 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 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 17

Amendments

1. The Parties may, at any time, amend this Agreement by mutual consent in writing through the diplomatic channel.
2. 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 the amendment. The amendment shall enter into force on the date of receipt of the later of these notifications.

Article 18

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. 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.

Article 19

Duration and Termination

1. This Agreement shall remain in force indefinitely but either of the Parties may terminate the Agreement through the diplomatic channel, by giving to the other Party written notice of termination in any calendar year starting five years after the year in which the Agreement entered into force.
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 duplicate in the English and French languages, both texts being equally authentic.

DONE at Pretoria on this 29th day of April 2005.

(Signed)
**FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA**

(Signed)
**FOR THE GOVERNMENT OF THE
DEMOCRATIC REPUBLIC OF CONGO**

Enter into force: 1 May 2008