

This Agreement was
previously published as
South Africa
No. 1 (2000) Cm 4570

SOUTH
AFRICA



Treaty Series No. 88 (2000)

Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the Republic of South Africa

regarding Mutual Administrative Assistance between their Customs Administrations

Cape Town, 27 August 1997

[The Agreement entered into force on 1 June 2000]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
July 2000*

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AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA REGARDING MUTUAL ADMINISTRATIVE ASSISTANCE BETWEEN THEIR CUSTOMS ADMINISTRATIONS

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of South Africa (hereinafter jointly referred to as the “Parties” and in the singular as the “Party”);

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;

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;

RECOGNISING the need for international co-operation in matters related to the application and enforcement of their customs laws;

CONVINCED that efforts to prevent the contravention of customs laws 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 instruments promoting bilateral mutual assistance, and in particular the Recommendations of the Customs Co-operation Council of 5 December 1953;

Have agreed as follows:

ARTICLE 1

Definitions

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

- (a) the term “customs administration” means, for the Government of the United Kingdom, Her Majesty’s Customs and Excise, and for the Government of the Republic of South Africa, the South African Revenue Service;
- (b) the term “customs laws” means all the legal and administrative provisions enforceable by the customs administrations in connection with the importation, exportation and transit of goods, including:
 - (i) the collection, guaranteeing or repayment of duties, taxes and other charges;
 - (ii) measures of prohibition, restriction or control;
 - (iii) action in relation to illegal trafficking in narcotic drugs and psychotropic substances;
- (c) the term “customs offence” means any violation or attempted violation of customs laws;
- (d) the term “person” means any natural or legal person;
- (e) the term “information” means any data, documents, reports, certified or authenticated copies thereof or other communications;
- (f) the term “intelligence” means information which has been processed and/or analysed to provide an indication relevant to a customs offence;
- (g) the term “requesting administration” means the customs administration which requests assistance;

- (h) the term “requested administration” means the customs administration from which assistance is requested.

ARTICLE 2

Scope of Application

1. The Parties shall, through their customs administrations and in accordance with the provisions set out in this Agreement, afford each other mutual assistance;
 - (a) to ensure that their respective customs laws are properly observed;
 - (b) to prevent, investigate and repress customs offences;
 - (c) in cases concerning the delivery of documents regarding the application of customs laws.
2. Assistance within the framework of this Agreement shall be rendered in accordance with the domestic law and legal provisions of the requested Party and within the competence and available resources of the 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 shall apply to the territory of the United Kingdom of Great Britain and Northern Ireland, 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 and intelligence which may help to ensure proper enforcement of customs laws and the prevention, investigation and combating of customs offences.
2. 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 laws.
3. Each customs administration shall supply to the other lists of goods which are likely to be the subject of illegal trafficking between their respective territories. These lists shall be updated, as necessary.
4. 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;
 - (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.

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, which constitute or appear to constitute a contravention of the customs laws of that Party. All relevant information for the interpretation or utilisation of the material shall be supplied at the same time.

6. The documents provided for in this Agreement may be replaced by computerised information produced in any form for the same purpose.

7.(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 transmitted shall be returned at the earliest opportunity.

ARTICLE 4

Technical Assistance

1. On request, the requested administration shall provide all information about its customs law 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 law enforcement techniques having proved their effectiveness;

(b) new trends, means or methods of committing customs offences.

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.

ARTICLE 5

Surveillance of Persons, Goods, Places and Means of Transport

Each customs administration shall on its own initiative or on written request from the other, under the terms of 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 laws of the requesting Party;

(b) suspect movements of goods and means of payment notified by the requesting administration as giving rise to substantial illicit trade in the territory of that Party;

(c) places used for storing goods which may be used in connection with substantial illicit trade in the territory of the requesting Party;

(d) means of transport which are suspected of being used in contravening customs laws in the territory of the requesting Party.

The results of such surveillance shall be communicated to the other customs administration.

ARTICLE 6

Investigations

1. If the requested administration does not have the information requested, it shall in accordance with its domestic law and administrative provisions, either:
 - (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 7

Visits by Officials

On written request, officials specially designated by the requesting administration may, 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 inquiry conducted by the requested administration relevant to the requesting administration.

ARTICLE 8

Arrangements for Visiting Officials

When, in the circumstances provided for by this Agreement, officials of the customs administration of one Party are present in the territory of the other Party, they must at all times be able to furnish proof of their official capacity. They shall, while there, enjoy the protection accorded to customs officials of that other Party, in accordance with the domestic law in force there. They shall not be in uniform nor carry arms.

ARTICLE 9

Experts and Witnesses

On request, the requested administration may authorise its officials to appear before a court of tribunal in the other Party as experts or witnesses in the matter of a customs offence.

ARTICLE 10

Use of Information and Documents

1. Information, communications and documents obtained shall be used solely for the purposes of this Agreement, except in cases where:
 - (a) the customs administration of one of the Parties is required under its customs laws to inform either the competent authorities in any other country or the administration of a Customs Union, or both, of customs offences or suspected customs offences; or
 - (b) the customs administration of the supplying Party expressly approves in writing and the domestic law governing the customs administration of the receiving Party allows such other use.
2. Any information or intelligence received under this Agreement shall be treated as confidential and shall at least be subject to the same protection and confidentiality as the same kind of information or intelligence is subject to under the domestic law of the Party where it is received.

ARTICLE 11

Use of Information as Evidence

1. The customs administration of the receiving Party may, 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 and documents obtained in accordance with this Agreement.
2. The use made of such information and documents as evidence in the courts and the weight to be attached thereto shall be determined in accordance with the domestic law of the requesting Party.

ARTICLE 12

Delivery of Documents

1. At the request of the requesting administration, the requested administration shall deliver to a person or persons, residing or established in its territory, documents relating to proceedings and decisions taken by a competent authority of the requesting State in the application of its customs laws.
2. Delivery of documents under this Agreement shall be made in accordance with the domestic law and practice of the requested Party. The request for delivery shall contain a summary of the content of the document.
3. If the requesting administration so wishes, delivery may be made or evidenced by a particular method, provided that the requested procedure can be complied with under the domestic law and practice of the requested Party. Evidence of delivery may take the form of a dated and certified acknowledgement of receipt by the person concerned or of a certificate of the competent authority in the requested Party, indicating the method and date of delivery.

ARTICLE 13

Communication of Requests

1. Assistance under this Agreement shall be exchanged directly between the customs administrations.
2. Requests for assistance under this Agreement shall be made in writing and shall be accompanied by any documents deemed useful. When the circumstances so require, requests may also be made orally. Such requests shall be promptly confirmed in writing.
3. Requests made pursuant to paragraph 2 of this Article, shall include the following details:
 - (a) the name of the administration making the request;
 - (b) the subject of and reason for the request;
 - (c) a brief description of the matter, and the legal elements involved;
 - (d) the names and addresses of the persons concerned.
4. A request by either customs administration that a certain procedure be followed shall be complied with, subject to the domestic law and administrative provisions of the requested Party.
5. The information and intelligence referred to in this Agreement shall be communicated to officials who are specially designated for this purpose by each customs administration. A list of officials so designated shall be furnished to the customs administration of the other Party.

ARTICLE 14

Exception from the Liability to Render Assistance

1. If the requested administration considers that the assistance requested of it might be prejudicial to public policy, or to the sovereignty, security or other essential interests of that Party, or might in the opinion of that customs administration 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 assistance is refused, the decision and the reasons for the refusal shall be notified in writing to the requesting administration without delay.
3. If the requesting administration requests assistance which it would not be able to give if requested by the other customs administration, it shall draw attention to the fact in the request. Compliance with such a request shall be entirely within the discretion of the requested administration to whom the request is made.

ARTICLE 15

Costs

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 9 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.

ARTICLE 16

General

1. The assistance provided for under this Agreement shall be supplied directly between the customs administrations of the Parties.
2. The customs administrations of the Parties shall jointly decide the detailed arrangements for the implementation of this Agreement.
3. Any differences which may arise in the interpretation of the provisions of this Agreement shall be settled by diplomatic means.

ARTICLE 17

Final provisions

1. The Parties shall notify each other in writing, through the diplomatic channel, of the completion of the constitutional or internal requirements for the entry into force of this Agreement. The Agreement shall enter into force on the first day of the second month following the date of receipt of the later of these notifications.
2. It may be terminated by either Party by giving written notice to the other Party through the diplomatic channel.
3. The Agreement shall cease to be effective three months after the date of receipt of such notice. Ongoing proceedings at the time of termination shall nonetheless be completed in accordance with the provisions of this Agreement.
4. The customs administrations 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 one another in writing that no such review is necessary.

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

DONE in duplicate at Cape Town on the 27th day of August 1997 in the English language.

On behalf of the Commissioners of Her Majesty's Customs and Excise for the Government of the United Kingdom of Great Britain and Northern Ireland

VALERIE STRACHAN

Deputy Minister of Finance for the Government of the Republic of South Africa

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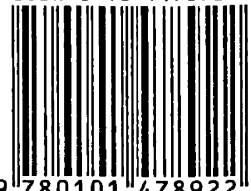
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