



**MINISTRY: FINANCE  
REPUBLIC OF SOUTH AFRICA**

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## **TABLING**

### **PAPERS:**

### **NATIONAL ASSEMBLY AND NATIONAL COUNCIL OF PROVINCES**

#### **THE MINISTER OF FINANCE:**

1. Agreement between the Government of the Republic of South Africa and the Government of the Republic of Uganda regarding Co-operation and Mutual Assistance between their Customs Administrations.
2. Explanatory Memorandum on the Agreement regarding Co-operation and Mutual Assistance on Customs Administrations between the Government of the Republic of South Africa and the Government of the Republic of Uganda.

Tabled in terms of section 231(3) of the Constitution of the Republic of South Africa.

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**AGREEMENT**

**BETWEEN**

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

**AND**

**THE GOVERNMENT OF THE REPUBLIC OF  
UGANDA**

**REGARDING CO-OPERATION AND MUTUAL  
ASSISTANCE**

**BETWEEN THEIR CUSTOMS  
ADMINISTRATIONS**

## **Preamble**

The Government of the Republic of South Africa and the Government of the Republic of Uganda (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 increase in trade between the Parties will bring about a greater need for co-operation in matters of customs administration;

**RECOGNISING** the need to protect the interest of legitimate trade within the African Region;

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

**HAVING REGARD TO** the Recommendation on Mutual Administrative Assistance, the Declaration on the Improvement of Customs Co-operation and Mutual Administrative Assistance (the Cyprus Declaration) and the International Convention on Mutual Administrative Assistance in Customs Matters (the Johannesburg Convention) adopted in December 1953, July 2000 and June 2003 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" means, for the Government of the Republic of South Africa, the South African Revenue Service and for the Government of the Republic of Uganda, the Ugandan Revenue Authority;
- (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) "requested Party" means the Party whose customs administration is requested to provide assistance;
- (i) "requesting administration" means the customs administration which requests assistance;
- (j) "requesting Party" means the Party whose customs administration requests assistance.

## Article 2

### *Objective and 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;
  - (d) in the provision of technical assistance.
2. Assistance within the framework of the Agreement shall be rendered in accordance with the domestic law and administrative provisions in force in the country of the requested Party and within the competence and available resources of its customs administration.
3. The Agreement shall not provide for the recovery in the territory of the requested Party of customs duties, taxes and any other charges incurred in the territory of the requesting Party.
4. The Agreement is intended solely for mutual assistance between the Parties. The provisions of the Agreement shall not give rise to a right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of a request.
5. The Agreement shall apply to the territory of the Republic of South Africa and to the territory of the Republic of Uganda.

## 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 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 customs administrations may, by mutual agreement in accordance with paragraph 2 of Article 15, exchange any information covered by the Agreement on an automatic basis.

10. The customs administrations may, by mutual agreement in accordance with paragraph 2 of Article 15, exchange specific information in advance of the arrival of consignments in the territory of the other Party.
11. The documents provided for in the Agreement may be replaced by computerised information produced in any form for the same purpose.
12. In order to enhance exchange of information, the customs administrations may explore the possibility of interfacing their information technology systems.

#### **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**

##### *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 6

### *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) 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 or suspected to be 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. The results of such surveillance shall be communicated to the other customs administration as soon as is reasonably possible.

## Article 7

### *Experts and Witnesses*

1. On request, the requested administration 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. Such experts and witnesses shall be accorded the same rights, privileges and protection as is available in the domestic laws of the requesting jurisdiction.

## Article 8

### *Communication of Requests*

1. Assistance under this Agreement shall be exchanged directly between the customs administrations of the Parties.

2. Requests for assistance shall be made in writing or electronically, and shall be accompanied by any information deemed useful to comply with the request. The requested administration may require written confirmation of electronic requests. Where the circumstances so require, requests may be made orally. Such requests shall be confirmed in writing 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 9**

### *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 10

### *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) 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.

## Article 11

### *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 12

### *Confidentiality of Information*

1. Any information received under this Agreement shall be used only by the customs administrations and solely for the purposes of the Agreement, except in cases where the customs administration supplying the information has authorised its use by other authorities or for other purposes.
2. Any information received under the Agreement shall be treated as confidential and shall at least be accorded protection and confidentiality similar to that accorded to the same kind of information under the 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 purpose and within the scope of the Agreement, in its records of evidence, reports, and testimonies, and in proceedings and charges brought before courts, use as evidence, information and documents obtained in accordance with the Agreement.
4. Any information received by the customs administration of a Party may be passed to the administration of a Customs Union if it is required to do so under the domestic law in force in its country.

## Article 13

### *Exemptions from Obligation to Render Assistance*

1. If the requested administration considers that the requested assistance might be prejudicial to public policy, or to the sovereignty, security or other essential interests of that Party, or might in the opinion of that customs administration involve violation of industrial, commercial or professional secrecy, or would be inconsistent with the domestic law in force in its country and administration 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 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 the decision and the reasons for the refusal shall be notified in writing to the requesting administration without delay.

## Article 14

### *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 administration.
3. If expenses of a substantial or extraordinary nature are or will be required to execute a request, the Parties shall consult to determine the terms and conditions under which the request shall be executed as well as the manner in which the costs shall be borne.

## Article 15

### *Implementation and Application of the Agreement*

1. The customs administrations shall 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. The customs administrations shall meet in order to review the Agreement on request or at the end of five years from the date of its entry into force, unless they notify each other in writing that no such review is necessary.

## Article 16

### *Amendments*

This Agreement may be amended by mutual consent of the Parties through an Exchange of Notes between the Parties through the diplomatic channel.

**Article 17**

***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 18**

***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 language, both texts being equally authentic.

**DONE** at .....on this ..... day of .....20....

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

\_\_\_\_\_  
**FOR THE GOVERNMENT THE  
OF THE REPUBLIC OF UGANDA**

**EXPLANATORY MEMORANDUM**  
**ON THE CUSTOMS AGREEMENT BETWEEN**  
**THE REPUBLIC OF SOUTH AFRICA**  
**AND**  
**THE REPUBLIC OF UGANDA**

**Preamble**

The Preamble records in broad terms that both Governments are aware of the negative effects which the transgression of customs law have on both the economic and social spheres of a country. Recognising the need for co-operation between the two States in their efforts to prohibit the contravention of customs law and to obtain greater accuracy in the collection of customs duties, taxes and other charges, the Governments of the two countries have agreed to such co-operation. This Agreement follows the Recommendations of the World Customs Organisation.

**Article 1**

***Definitions***

This Article defines various expressions which are used in the body of the Agreement. The majority of these definitions are self-evident and need no further explanation.

The term "customs law" embodies all the legal and administrative provisions applicable or enforceable by the administrations in connection with the importation, exportation, transshipment, transit, storage, and movement of goods including:

- the collection, guaranteeing or repayment of duties, taxes and other charges;
- action in relation to measures of prohibition, restriction or control; and
- action in relation to illegal trafficking in narcotic drugs and psychotropic substances.

**Article 2**

***Objective and Scope of Application***

According to paragraph 1 the Parties will, through their administrations, provide to each other mutual assistance in the application of their customs law, the prevention of customs offences and delivery of customs documents. Provision is also made for the provision of technical assistance.

Paragraph 2 provides for assistance to be rendered in accordance with the domestic law and administrative provisions in force in the country of the requested Party and within the competence and resources of its administration.

Paragraph 3 stipulates that no recovery of custom duties, taxes or any other charges will be undertaken on behalf of the Parties.

Paragraph 4 provides that the Agreement only covers mutual assistance between the Parties and does 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 for assistance.

Paragraph 5 states that the Agreement applies to the territories of the Republic of South Africa and the Republic of Uganda.

### Article 3

#### *Communication of Information*

Paragraph 1 provides that each customs administration will, either on request or spontaneously, forward to the other administration all available information which might contribute to the efficient enforcement of customs law and which may aid in the prevention, investigation and combating of customs offences.

Paragraph 2 provides that assistance provided will, on request, include the provision of information which will ensure that the customs values of goods are accurately determined.

Paragraph 3 endeavours to prevent substantial damage to any area of vital interest of a Party by ensuring that wherever possible, the customs administration of the other Party immediately supplies such information on its own initiative.

Paragraph 4 provides that if the requested information is not at hand, the administration of the requested Party must make enquires within the framework of its customs law, to obtain such information.

Paragraph 5 provides that if an administration has reservations on information furnished by a person, the other administration must verify such information on request.

Paragraph 6 provides for the mutual exchange of lists of goods, activities and means of transport which have been, are, or may be used in violation or attempted violation of Customs law.

Paragraph 7 provides that upon request information must be furnished concerning lawful exportation and importation of goods and the relevant customs procedures.

Paragraph 8 provides that the customs administrations should also supply each other with all documentation that gives information on transactions which 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 must also be supplied.

Paragraph 9 provides for the exchange of information on an automatic basis.

Paragraph 10 provides for the exchange of specific information in advance of the arrival of the consignments in the territory of the other Party.

Paragraph 11 provides for the use of computerized information.

Paragraph 12 provides that the customs administrations should also explore the possibility of interfacing their information technology systems.

#### **Article 4**

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

This Article provides that the requested administration will notify a person, resident in its territory, of any formal decision concerning that person taken by the requesting administration.

#### **Article 5**

##### ***Technical Assistance***

Paragraph 1 provides that the requested administration will provide all information about its customs law and procedures that are relevant to enquiries relating to a customs offence.

Paragraph 2 provides that the administrations will share any available information relating to new customs law enforcement techniques, new trends, means or methods of committing customs offences, goods known to be the subject of customs offences as well as transport and storage methods used in respect of those goods.

Paragraph 3 provides that each administration will share information on its work procedures for the purposes of advancing their understanding of each other's procedures and techniques.

Paragraph 4 provides that each administration will provide technical assistance including secondments, consultancy, training and exchanges of officials within the limits of its competence and resources.

#### **Article 6**

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

Paragraph 1 provides that each administration on its own initiative or on written request, in terms of its domestic law and administrative practices, will maintain special surveillance over the movement, storage and means of transport of persons and goods suspected of contravening customs law.

Paragraph 2 provides that the results of such surveillance will be communicated to the other administration as soon as possible.

#### **Article 7**

##### ***Experts and Witnesses***

Paragraph 1 provides that the requested Contracting Party may authorise its officials to appear before a court or tribunal in the territory of the requesting Contracting Party as experts or witnesses.

Paragraph 2 provides that the requesting jurisdiction must accord such experts and witnesses the same rights, privileges and protection as is available in its domestic laws.

## Article 8

### *Communication of Requests*

Paragraph 1 provides for assistance to be exchanged directly between the administrations of the Parties.

Paragraphs 2 and 3 provide for the form and detail required in respect request for assistance.

Paragraph 4 provides that requests for a certain procedure or methodology to be followed may be made but must comply with the domestic law and administrative provisions of the requested administration.

Paragraph 5 provides for specially designated officials to deal with communication of information referred to in this Agreement. A list of these officials must be supplied to the administration of the other Party.

## Article 9

### *Means of Obtaining Information*

Paragraph 1 provides that if the requested administration does not have the information requested, it should, in terms of its domestic law and administrative provisions, deal with the request by obtaining the information from the appropriate authority and informing the other Party accordingly.

Paragraphs 2 and 3 provide that any enquiry under paragraph 1 may include the taking of statements from persons from whom information is sought in connection with a customs offence and from witnesses and experts and that such information must be communicated to the requesting Party without delay.

## Article 10

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

Paragraph 1 provides that for the purpose of investigating a customs offence the requesting administration, subject to the authorisation of the requested administration and conditions the latter may impose, may designate officials to examine documentation in the offices of the requested administration and be present during any relevant enquiry conducted by the requested administration.

Paragraph 2 provides that where the requested administration considers it useful or necessary for an official of the requesting administration to be present when measures of assistance are carried out, it will inform the requesting administration.

## Article 11

### *Arrangements for Visiting Officials*

Paragraph 1 provides that when officials of the administration of either Party are present in the territory of the other Party in an official capacity, they must at all times be able to furnish proof of their official capacity.

Paragraph 2 provides that the officials so designated will be present in an advisory role only. However, they will, in the presence of and through officials of the requested administration, have access to the same premises and documents as those officials of the requested administration.

Paragraph 3 provides that the officials will enjoy the protection accorded to officials of the other Party, in terms of the domestic law of the other Party, and be responsible for any offence they might commit. These officials must not be in uniform nor carry arms.

## Article 12

### *Confidentiality of Information*

Paragraph 1 provides that information received will only be used by the administrations for the sole purposes of the Agreement unless the administration supplying the information has authorised its use by other authorities.

Paragraph 2 stipulates that information received will be treated as confidential and enjoy protection similar to that accorded to the same information in terms of the receiving Party's domestic law.

Paragraph 3 provides that the administration of the receiving Party may, in its records of evidence, reports, and testimonies, and in proceedings and charges brought before the courts, use as evidence the information and documents obtained in accordance with this Agreement.

Paragraph 4 provides for information to be passed to the administration of a Customs Union if such requirement exists in the country's domestic law.

## Article 13

### *Exemptions from Obligation to Render Assistance*

Paragraph 1 provides that where any assistance requested is considered prejudicial to the essential interests of the requested Party, or viewed by that administration to involve violation of industrial, commercial or professional secrecy, or would be inconsistent with domestic law or administrative provisions, such assistance may be declined by that Party or made subject to certain terms or conditions.

Paragraph 2 provides that where the requesting administration would be unable to comply if it received a similar request, it is obliged to draw attention to that fact in its request. Compliance with such request will then be entirely within the discretion of the requested administration.

Paragraph 3 provides that assistance may be postponed if there are grounds to believe that it will interfere with an ongoing investigation, prosecution, or proceeding. Assistance can be given subject to terms or conditions that the requested administration may specify.

Paragraph 4 provides that where assistance is refused, reasons therefore must immediately be given in writing to the requesting administration.

#### **Article 14**

##### **Costs**

Paragraph 1 provides that subject to paragraphs 2 and 3 of this Article, the administrations will waive all claims for reimbursement of costs incurred in the execution of this Agreement.

Paragraph 2 provides that expenses and allowances paid to experts and witnesses and costs of translators and interpreters, other than Government employees, will be borne by the requesting administration.

Paragraph 3 provides that if expenses of a substantial or extraordinary nature will be required to execute a request, the Parties will consult to determine the terms and conditions under which the request will be executed and the manner in which the costs will be borne.

#### **Article 15**

##### ***Implementation and Application of the Agreement***

Paragraph 1 provides that the administrations will communicate directly for the purposes of dealing with matters arising out of the Agreement.

Paragraph 2 stipulates that arrangements for the application of the Agreement will be jointly decided on by the administrations.

Paragraph 3 provides that the administrations will endeavour to resolve any difficulties experienced through the mutual agreement process.

Paragraph 4 stipulates that the customs administrations should meet in order to review the Agreement either on request or at the end of five years from the date the Agreement became effective. However, if they deem that unnecessary, they should notify each other.

#### **Article 16**

##### ***Amendments***

This Article provides that the Parties may at any time amend the Agreement by mutual consent by an Exchange of Notes, through the diplomatic channel.

**Article 17**

***Entry Into Force***

This Article provides that the Parties will 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 will enter into force on the first day of the second month following the date of receipt of the later of these notifications.

**Article 18**

***Duration and Termination***

Paragraph 1 provides that the Agreement will 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.

Paragraph 2 provides that the Agreement will cease to be effective three months after the date of receipt of such notice. Ongoing proceedings at the time of termination will be completed in terms of the Agreement.



## international relations & cooperation

Department:  
International Relations and Cooperation  
REPUBLIC OF SOUTH AFRICA

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10gcz0110318a  
29/2/UGA  
RO 91/2010

For Attention: Victor Rambau  
Directorate: East African Community  
Route: DDA 003

### **DRAFT AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE REPUBLIC OF UGANDA REGARDING COOPERATION AND MUTUAL ASSISTANCE BETWEEN THEIR CUSTOMS ADMINISTRATIONS**

1. Your request for legal advice and our legal advice (RO 510/05) refer.
2. We are of the view that the Agreement is in order and that this text is consistent with international law and South Africa's international obligations.
3. This Agreement appears to be a technical and administrative agreement within the meaning of section 231(3) of the Constitution of the Republic of South Africa, 1996 (the Constitution). Therefore, Presidential approval is required before the Agreement can be signed. Otherwise, SARS is better qualified to establish as to whether the Agreement falls within the ambit of section 231(2) or section 231(3).
4. To facilitate the process for Presidential approval, the Desk should please provide this Office with the following documents in order for us to certify the Agreement:
  - two copies of the finally agreed text of the Agreement;
  - two copies of the President's Minute;
  - two copies of the Explanatory Memorandum setting out the purpose of the Agreement as well as the expected date of signature;
  - a copy of the legal opinion from the State Law Advisers of the Department of Justice and Constitutional Development;
  - a copy of this legal opinion;
  - all documents must be in folder z137; and
  - the certification checklist attached herewith, should be completed and submitted at the time of certification.
5. The Desk is also reminded that the Agreement needs to be bound before signature. An appointment for this purpose must be made with the Treaty Section, at (012) 351

(3) The termination of this Agreement shall not affect the completion of any project, programme or activity undertaken by the Parties prior to the termination thereof, unless otherwise agreed upon in writing by the Parties.”

3. Subject to the aforesaid remarks and our comments and amendments on the text of the Agreement, no provision of the Agreement is, as far as we could ascertain, in conflict with the domestic law of the Republic of South Africa.

  
**CHIEF STATE LAW ADVISER**  
**CJS ZWARTS/ WJJ NEL**

G.P.S. 81/1742448

81/172448



**PRESIDENT'S MINUTE** 94

In terms of section 231 of the Constitution of the Republic of South Africa, 1996, I hereby approve that the attached Agreement between the Government of the Republic of South Africa and the Government of the Republic of Uganda regarding Co-operation and Mutual Assistance between their Customs Administrations, be entered into, and I hereby authorise the Minister of Trade and Industry to sign the Agreement.

Given under my Hand and the Seal of the Republic of South Africa at PRETORIA on this 23<sup>RD</sup> day of MARCH Two Thousand and Ten.

**PRESIDENT**

**MINISTER OF THE CABINET**



## the doj & cd

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

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website: <http://www.doj.gov.za>

Date: 17 March 2010

Director-General  
South African Revenue Service  
Private Bag X 923  
PRETORIA  
0001

Attention: R van der Merwe

### **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE REPUBLIC OF UGANDA REGARDING COOPERATION AND MUTUAL ASSISTANCE BETWEEN THEIR CUSTOMS ADMINISTRATIONS: YOUR UNNUMBERED E-MAIL DATED 17 MARCH 2010**

1. We have scrutinized the draft "Agreement between the Government of the Republic of South Africa and the Government of the Republic of Uganda regarding Cooperation and Mutual Assistance between their Customs Administrations" in terms of *paragraph 5.20(a) of the Manual on Executive Acts of the President of the Republic of South Africa* and have indicated suggested amendments and made certain comments on the copy of the draft Agreement attached hereto.

2. We also wish to make the following comments:

#### **Ad entry into force of the Agreement.**

2.1 We would like to draw the Department's attention to the provisions of section 231 of the Constitution of the Republic of South Africa, 1996, hereinafter referred to as "the Constitution". If it is decided that the Agreement falls within the scope of

section 231(2) of the Constitution we suggest that the provision concerning the entry into force be redrafted along the following lines and inserted into the Agreement:

“This Agreement shall enter into force on the date on which each Party has notified the other in writing through the diplomatic channel of its compliance with the constitutional requirements necessary for the implementation of this Agreement. The date of entry into force shall be the date of the last notification.”

However, if the Agreement falls within the scope of section 231(3) of the Constitution, it can, subject to the constitutional requirements of the Republic of the Uganda in this regard, provide that it shall come into operation on the date of signature thereof.

#### **Ad Settlement of Disputes, Termination and Duration of Agreement**

2.2 We suggest that provisions concerning the Settlement of Disputes, Termination and Duration of Agreement be drafted along the following lines and inserted into the Agreement:

#### **“SETTLEMENT OF DISPUTES**

Any dispute between the Parties arising out of the interpretation, application or implementation of the provisions of this Agreement shall be resolved amicably through consultation or negotiations between the Parties through the diplomatic channel.

#### **DURATION AND TERMINATION**

- (1) This Agreement shall remain in force until terminated in accordance with sub-Article (3).
- (2) This Agreement may, after 5 years since entry into force thereof, be terminated by either Party by giving three (3) months' written notice in advance through the diplomatic channel to the other Party of its intention to terminate this Agreement.

the Treaty Section for safekeeping immediately after signature.

6. Finally, the Agreement once signed, **must** be tabled in Parliament for information purposes within a reasonable time by the responsible line function department. This is a requirement in terms of section 231(3) of the Constitution which must be complied with.
7. It is trusted that our comments would be of assistance to you.

**MR. MICHAEL KABAI**  
**ASSISTANT STATE LAW ADVISER (IL)**

**18 MARCH 2010**  
**PRETORIA**

**CONFIDENTIALITY NOTE:**

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***Batho Pele – putting people first***