

# **Annex E to the SACU Agreement on Mutual Administrative Assistance**

## **Formal Ratification**

# Purpose of the Annex

- To provide an enabling legal basis for Customs Cooperation between the Members of the Southern African Customs Union (SACU) that will give effect to the obligation to ensure the effective and harmonious application of the 2002 SACU Agreement

# Introduction

- The Southern African Customs Union (SACU) established in 1910 (oldest in world)
- SACU consists of 5 Member States: Botswana, Lesotho, Namibia, South Africa and Swaziland
- SACU current international legal basis provided for in 2002 SACU Agreement, ratified by Parliament in 2003
- 2002 SACU Agreement requires members to take appropriate measures regarding customs cooperation to ensure its effective and harmonious application
- Annex E on Mutual Administrative Assistance developed to give effect to this obligation and based on international standards and best practice

# Introduction (2)

- Annex E adopted in September 2011 by SACU Council of Ministers (supreme decision making authority on SACU matters)
- The Office of the Chief State Law Adviser (International Law) at DIRCO found Annex E to be consistent with international law and the Republic's international obligations
- The Office of the Chief State Law Adviser at DOJ&CD found no provision in conflict with the domestic law of the Republic
- Both Offices found Annex E to be an agreement in terms of Section 231(2) of the Constitution and it is therefore presented for ratification
- SARS is competent authority on customs cooperation

# Overview of key Articles in Annex E

# Article 2: Scope

- Obliges Customs Administrations to provide mutual administrative assistance to each other in order to:
  - Ensure the proper application of their respective customs laws;
  - Prevent, investigate and combat customs offences;
  - Facilitate simplification & harmonisation of customs procedures;
  - Ensure security of supply chain.
- Assistance to be afforded subject to domestic laws and limitations such as lack of competence and resources in the Customs Administration
- Excludes recovery of Customs duties, etc. on each other's behalf

# Article 3: Communication of Requests

- Requests to be exchanged directly between Customs Administrations through central coordination units
- Requests to be in writing or electronic and accompanied by information deemed useful
- Requests involving specific procedure or methodology subject to domestic law of requested Party
- Option to provide information “on own initiative”

# Article 4: Information for Application and Enforcement of Customs Law

- Customs Administrations may exchange information on a range of matters:
  - New Customs Law enforcement techniques;
  - New trends for committing Customs offences;
  - Goods known to be the subject of Customs Offences;
  - Persons involved in Customs Offence;
  - Application of the rules concerning the origin of goods;
  - Assessment of customs duties and determination of Customs value and tariff classification;
  - any other data that may assist with risk assessment;
  - Whether imported goods were lawfully exported from Requested Member;
  - Whether exported goods were lawfully imported into Requested Member.

# Articles 7 & 8: Automatic & Advance Exchange of Information

- Members can arrange for information to be exchanged on an automatic basis in advance of the arrival of consignments (Customs-to-Customs Inter-connectivity)
- Automatic refers to the regular transmission of agreed information without the need for individual requests.
- Exchange of specific information in advance helps identify high-risk consignments before arrival
- Timely risk assessment has the benefit of facilitating movement of legitimate trade.

# Article 10: Technical Assistance

- Members may provide each other with Customs technical assistance, including:
  - Exchange of Customs officials and experts;
  - Specialised training and assistance;
  - Exchange of professional, scientific and technical data relating to Customs Law and procedures;
  - On computerisation of customs procedures; and
  - On trade facilitation measures and simplification of procedures

# Article 11: Surveillance

- Customs Administrations may, upon request, maintain special surveillance over:
  - Movements of persons suspected of contravening customs law;
  - Suspect storage or movements of goods and means of payment;
  - Premises used for storing goods used in illicit trade;
  - Means of transport suspected of use in contravening Customs laws.
- This is to be provided within the scope of the requested administration's competence and available resources

# Article 12: Controlled Deliveries

- Where necessary, Customs Administrations may cooperate in detecting offences relating to narcotic drugs, psychotropic substances and substances used in their manufacture and persons involved
- Intercepted shipments containing such goods can be allowed to continue intact or with illicit items removed
- If Customs Administration is not authorised under national law to carry out a controlled delivery, it must approach the agency that has jurisdiction to conduct controlled deliveries and co-operate with it in carrying out the operation or transfer the case to that agency

# Article 13: Experts and Witnesses

- Customs officials may be authorised by their administrations to appear as experts or witnesses in customs matters before a court or tribunal in each others' territories
- Request for appearance must specify the case to be heard and capacity in which official is to be present

# Article 17: Right of Pursuit and Extradition

- Customs officials may request assistance in the pursuit and apprehension of persons observed in act of committing or participating in a customs offence
- Above assistance subject to conditions imposed by Requested Member
- Matters of extradition subject to domestic laws, extradition treaties and other agreements
- Procedures governing implementation of this Article still to be developed

# Article 18: Cross-Border Surveillance

- When necessary, domestic surveillance of persons involved in a Customs offence can continue in each other's territory
- Subject to request being made to and authorisation received from Requested Administration, including any conditions, before surveillance may cross any border

# Article 19: Covert Investigations

- When necessary, covert investigations of Customs offences may be authorised by a Requested Administration
- Subject to domestic laws and procedures in territory where covert investigation is authorised

# Article 20: Joint Control and Investigation Teams

- Joint control or investigation teams can be established to detect and prevent Customs offences that require simultaneous and coordinated activities
- Operations subject to domestic laws and procedures of Member where activities are being carried out

# Article 22: Use of Information

- Information to be used only by Customs Administration for which it was intended and solely for purposes of administrative assistance
- Authorisation may be given for information to be used by other authorities or purposes, if so requested, including for use in criminal investigations, prosecutions or proceedings
- Administration providing information shall specify any terms and conditions of other use
- Use subject to domestic laws and administrative provisions of receiving Member

# Article 23: Confidentiality of Information

- Information to be treated as confidential and afforded protection in terms of relevant domestic laws
- Personal data exchange only possible after Members have agreed in an arrangement to provide protection at least in line with domestic laws of supplying state
- Customs Administrations may use information and documents received in terms of Annex as evidence before courts

# Article 24: Personal Data Protection

- Personal data exchanged only between Customs Administrations, with prior approval required before providing to other authority
- Receiving administration to notify how data was used and results obtained and shall keep data only for time necessary to achieve purpose for which it was supplied
- Records must be kept of all exchanges of personal data
- Security measures to be in place to protect personal data
- Liabilities pertain to misuse of personal data

# Article 25: Exemptions

- Assistance may be refused or subject to conditions if it:
  - Infringes sovereignty, laws or treaty obligations;
  - Infringes security, public policy or essential national interests;
  - Involves violation of industrial, commercial or professional secrecy;
  - Is inconsistent with domestic laws and administrative provisions
- Requesting Administrations must indicate if they would be unable to provide the assistance they are requesting, in which case Requested Administrations has full discretion
- Assistance may be postponed under certain circumstances
- Reasons must be provided for refusal or postponement

# Article 30: Settlement of Disputes

- Customs Administrations to resolve any disputes on interpretation or application of Annex by mutual agreement and through SACU structures
- Disputes not settled through such consultation shall be referred to Council for a decision