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## **RAPID Task Order 2.1 Activity**

### **INSTITUTIONAL AND LEGAL ROAD MAP TO ONE-STOP BORDER POSTS / JOINT CUSTOMS CONTROLS BOTSWANA**



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## PREFACE

During 2001, Rapid Task Order (TO) 2.1 advised the Department of Customs and Excise in Botswana on the legal implications of implementing joint customs controls at common borders. This advice was documented in the *Legislative Report on Joint Customs Controls*, dated 21 May 2001. After studying the report, Botswana customs indicated that existing co-operation procedures within SACU would guide further action on their part. Botswana also indicated that it would take its lead from South Africa, in the spirit of intra-SACU co-operation, with regard to any amendments that may be needed to the *Customs and Excise Duty Act, 1970* to support the introduction of one-stop arrangements.

Subsequently, the one-stop concept also received attention from the SADC Trade Facilitation and Transit Procedures Customs Advisory Working Groups. To this end, TO 2.1 also briefed these groups on international experiences in implementing joint controls and one stop border posts and recommended that individual SADC states develop their own national policy frameworks for joint controls. These findings and recommendations are contained in the *Regional Backgrounder on the One Stop Border Post Concept / Joint Customs Controls, 18 June 2002*.

Rapid TO 2.1 concludes on 30 June 2002. The intention of this paper is to round off its assistance to Botswana Customs by providing legal guidelines on the further implementation of the one-stop concept. It also accommodates the results of further research into the concept and advances in planning by various SADC customs administrations. For this purpose, this paper should be read in conjunction to the *Regional Backgrounder* mentioned earlier.

## 1. BACKGROUND

### *Overcoming institutional and legal obstacles to one-stop border post arrangements*

- 1.1 Proposals to introduce joint customs controls and one-stop border posts have been under consideration in Botswana and the SADC region for several years. These proposals are motivated both by the need to improve customs controls (through closer co-operation and sharing of information) and the economic benefits of reducing transit times for commercial traffic<sup>1</sup>. A number of events emphasize the need for Botswana Customs to start planning for the actual implementation of one-stop arrangements. For example, Botswana has been piloting the use of the SADC single transit document along the Trans Kalahari corridor with Namibia and South Africa. The good co-operation achieved with this project has created a favourable climate to expand co-operation to include joint controls, eg at Pioneer Gate / Skilpadshek border post. Elsewhere, the bridge planned for the Kazungula border crossing with Zambia is being planned on the assumption that one-stop border controls will be undertaken. These developments underline the need for Botswana to adopt a clear **strategy** on how to approach the one-stop concept.
- 1.2 The introduction of the one-stop concept has proved challenging for *institutional and legal* reasons. **Institutional** difficulties arise from the fact that several agencies fulfil functions at border posts. Of these, the most important are customs, immigration and police (followed by health and agriculture). Public works is also involved in providing and maintaining facilities. The full benefits of one-stop arrangements are only gained when all border agencies co-operate to ensure that they start performing their function on a one-stop basis. This implies that all ministries need to develop a common **understanding** of what is involved and to share a mutual **vision** of what they would like to achieve. To date, no common understanding or vision yet exists in Botswana.
- 1.3 **Legally**, it has been pointed out that Botswana lacks an adequate legal framework for the establishment of one-stop border posts (see *Legislative Report on Joint Customs Controls, 21 May 2001* attached as exhibit 1). This difficulty is also faced by Botswana's neighbours and by other SADC states. This roadmap argues that the existing gaps in the customs law need not, however, prevent Botswana from moving ahead and negotiating one-stop arrangements at the earliest opportunity. International experience has demonstrated that the legal obstacles are relatively simple to resolve. This roadmap also contains recommendations on how this can be achieved.
- 1.4 Against this background, the aim of this document is to:
- To briefly discuss the **legal issues** involved and suggest an approach to remove all legal obstacles; and
  - Propose a **strategy** to assist Botswana in advancing implementation of the concept.

### *To recap: One-stop border posts defined*

- 1.5 There is no single definition of one-stop border posts. The outstanding features of one-stop arrangements found internationally are:

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<sup>1</sup> For example, it is estimated that if commercial vehicles require an average time of 1 hour to transit Pioneer Gate border post, this amounts to an additional transport cost of P 1,829,718 per annum. This cost increases to P 9,148,594 in the case of a 5-hour average transit time.

- Customs offices of both states (and preferably offices of other agencies as well) are moved closer together (“juxtaposed”), so that persons crossing the border need only “stop once”;
- A control zone (or zones) is demarcated within which customs (and other) officers from both states conduct controls in terms of their respective laws;
- The control zone consists of the customs offices, inspection areas and related facilities and is usually located within the national territory of only one state;
- Import and export formalities are handled as a seamless transaction between the two customs administrations;
- Inspections and searches of cargoes or vehicles are generally conducted in the presence of customs officers from both states; and
- In many cases, especially private traffic, controls are done “on the road” with toll-booth type arrangements, so that travellers do not need to leave their vehicles.

A detailed discussion of these arrangements is contained in the report entitled *Regional Backgrounder on the One-Stop Border Post Concept / Joint Customs Controls, 18 June 2002*, attached as exhibit 2.

- 1.6 Most examples of one-stop posts include all the above features. It is, however, possible to phase in the concept through hosting arrangements that do not initially require facilities to be moved or extensive investment in new facilities. Under such arrangements, each state keeps its existing infrastructure, but creates space in its facility for counterpart officers from the other state. Such arrangements provide an opportunity to test the concept, build confidence and gather practical experience before one-stop posts are fully introduced. This approach is recommended as part of Botswana’s strategy as discussed in more detail under 3 below.

## 2. LEGAL ISSUES

### *The need for legality*

- 2.1 Based on the definition in 1.5, a one-stop arrangement involves that customs officers from state A join their colleagues in the territory of state B to perform functions in terms of their own law in state B. Such an arrangement is an exception to the general legal principle that a state’s national laws only apply within its *own* territory. Under a one-stop arrangement, one state’s customs laws are being extended to apply in another state. This is called “extraterritorial jurisdiction”. As this is an exceptional arrangement, it needs to be mandated in the laws of *both* states.
- 2.2 The *Customs and Excise Act, 1970* does provide limited authority for Botswana customs officers to work outside Botswana. Sec 6(2) allows the Minister to deem any place outside Botswana as a place of entry through which goods may (1) be imported or exported (2) be landed for transit or removal through contiguous territories or (3) where goods may be entered for customs and excise purposes. These provisions imply that the Minister may station Botswana customs officers outside the country for customs purposes. It does *not*, however, mandate an arrangement whereby Botswana acts as host to foreign customs officers on its soil. As it stands, the law would mandate one type of arrangement (where Botswana officers are stationed outside the country), but not the reverse (where Botswana hosts foreign customs officers).
- 2.3 Unfortunately, this provision is of limited use in negotiating bilateral agreements with countries such as South Africa and Namibia. These countries laws contain provisions similar to Botswana’s, which means that they may also station officers outside their territories. If Botswana were, for example, to negotiate an arrangement with South Africa to station Botswana officers at the Skilpadshek side of Pioneer Gate, such an

arrangement would be valid under the *Customs and Excise Act, 1970*. However, South African law does not mandate it to host foreign customs officers on its territory. Hence, present restrictions in the South African law would prevent the implementation of the arrangement. The same constraint applies in the case of Namibia (The position with Zambia has not been verified, but is presumably similar). This example illustrates the need for legal reform not only in Botswana, but also in its neighbouring states.

- 2.4 It is also worth noting that Sec 6 (2) was not drafted with joint controls or one-stop arrangements in mind. Therefore, it is an unsatisfactory provision on which to base such an arrangement. As argued in the *Legislative Report on Joint Customs Controls, 21 May 2001*, it is preferable that the Act be amended and amplified to provide a blanket authority for all possible one-stop arrangements that Botswana may wish to implement.
- 2.5 Finally, it is necessary to ensure the legality of one-stop arrangements to avoid conflicts about jurisdiction. For example, if goods are seized during joint control operations, it must be clear whether the exporting or importing customs administration has custody of the seized goods. This means that the rules that govern such procedures must be clear and that there should be no doubt about the validity of the rules.

#### ***Ensuring legality at international and national level***

- 2.6 The basis for any one-stop arrangement will be a bilateral agreement concluded between Botswana and one of its neighbours. For the reasons discussed above, such agreement must enjoy the force of law *nationally*.
- 2.7 In Botswana, international agreements can acquire national legal force in one of two ways: (a) each agreement can be enacted through a separate statute by the National Assembly; or (b) legislation, such as the *Customs and Excise Duty Act*, can authorise the conclusion of such agreements and provide that they enjoy national legal force. For obvious reasons the second option is preferable. If authorisation is provided in the Act, each and every bilateral agreement need not be submitted to the National Assembly for approval. Although it may initially be more time-consuming to amend the Act, the benefits of creating a fully enabling legal framework will become apparent in the long run. This is the approach formerly recommended in the *Legislative Report on Joint Customs Controls, 21 May 2001*.
- 2.8 The above does not mean that Botswana must wait until the Act is amended before it negotiates a bilateral agreement to implement a one-stop arrangement. In practice, there is no legal obstacle to concluding the agreement *now*. While an agreement is being negotiated, the time can be used to amend the customs law to mandate the agreement. If the agreement is concluded before the legislation is amended, then it can be enacted either through the amended Act or by way of a separate statute. The latter would be a simple legislative act that merely confirms that the agreement enjoys the force of law in Botswana.
- 2.9 A model agreement that can be used to negotiate such an arrangement is attached as exhibit 3.

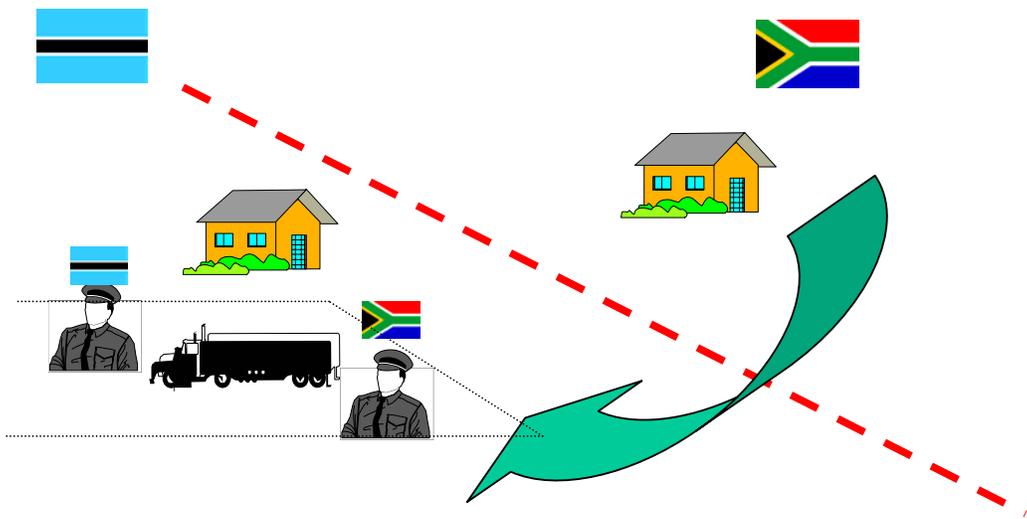
### **3. A STRATEGY TO IMPLEMENT ONE-STOP ARRANGEMENTS**

#### ***Hosting arrangements as a precursor to one-stop border posts***

- 3.1 Some customs administrations have been hesitant to enter into uncharted waters and invest in upgrading or building new facilities to establish joint posts, especially where budgetary restrictions exist. In view of these concerns, more simplified one-stop arrangements, such as hosting arrangements mentioned earlier, are viewed as attractive short-term alternatives.
- 3.2 Hosting arrangements involve simplified arrangements that incorporate most elements of the one-stop concept. Such arrangements involve designating control zones within one state where customs officers from both states may conduct controls, *without* necessarily relocating other physical elements of the border post.
- 3.3 Under these arrangements, some form of accommodation for officers would still need to be provided to officers from the other state. Alternatively, they could be permitted to erect temporary accommodation, such as mobile offices, themselves. The option of introducing joint controls through hosting arrangements provides a cheaper solution and one that is potentially quicker to implement. As officers do not occupy premises permanently, they would generally cross the border each day just before opening time and return to their country when the border is closed. The advantage of this arrangement is that an extensive investment in new facilities is usually not required. If circumstances arise that necessitate the reversal of the arrangement, it can be done at short notice. The option provides both states with the opportunity to explore co-operation, test procedures and build confidence to collaborate in moving towards a permanent one-stop arrangement.
- 3.4 From an economic perspective, a hosting arrangement brings about immediate benefits in terms of permitting, at a minimum, joint inspection of vehicles and goods, thereby contributing to less down time for commercial vehicles. If any checks are still undertaken on the other side of the border, these can be routine in nature and need not result in long delays.
- 3.5 Based on the above examples, hosting arrangements that Botswana could consider implementing, can be illustrated graphically as follows:

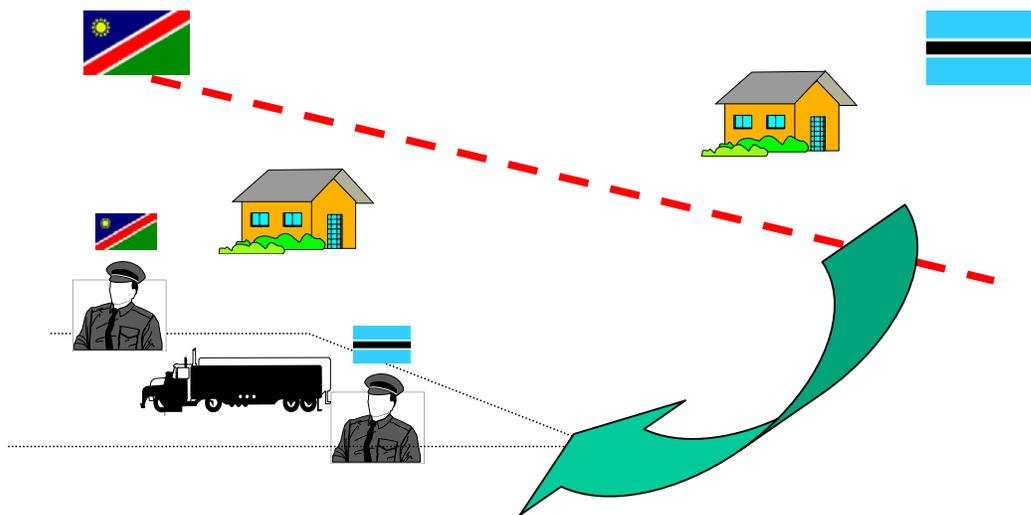
**Type A: Tlokweng**

Within this arrangement, Botswana would host foreign customs officers at its facility at Tlokweng. Botswana officers remain on their national territory as they do presently. Botswana provides office accommodation in the existing facility for South African customs and permits South African officers to conduct inspections within the designated area at the border post. This option can be illustrated graphically as follows:



**Type B: Mamuno**

Within this arrangement, Botswana customs officers are hosted at the Namibian facility, while Namibian officers remain on their national territory as they do presently. This can be illustrated graphically as follows:



***Institutional approach***

3.6 As mentioned, the implementation of the one-stop concept potentially involves several government ministries. Even although these agencies work side-by-side at a border post, the functions that they perform are very different. Each agency will, therefore, have different concerns and requirements when the establishment of a one-stop post is being considered.

3.7 The implementation of one-stop posts requires intensive inter-agency co-ordination. For this reason, it is proposed that Botswana Customs take the initiative to form an

interministerial working group for this purpose. The brief of such an working group should be to:

- Review the unique requirements of each ministry in respect of the functions that it performs at land borders;
- Promote a common understanding regarding the operational features of the one-stop concept;
- Identify and prioritise border posts where the introduction of one-stop arrangements is desirable;
- Initiate the reform of the laws administered by each ministry to introduce the concept; and
- Adopt a common negotiating position in order to engage neighbouring states in bilateral discussions to formalise an agreement on implementation at one or more borders.

3.8 The following ministries should be represented on the working group:

- Finance (Customs);
- Home Affairs;
- Police;
- Agriculture;
- Health;
- Public Works;
- Transport; and
- Foreign Affairs.

#### 4. CONCLUSIONS AND RECOMMENDATIONS

4.1 Botswana has not yet formulated a national policy on one-stop border post arrangements. Nor has work been done to build a common understanding and approach between ministries that man border posts. Recent developments within Botswana and the SADC region underline that there is an increasing urgency for a harmonized interministerial **strategy** that supports Botswana national policy position. That strategy must include plans to update the customs, immigration and other laws that govern functions performed at border posts.

4.2 For this purpose, it is recommended that:

- **R1: Botswana Customs form an interministerial working group to formulate a common strategy to one-stop arrangements by all ministries working at borders.**
- **R 2: In preparing its strategy, Botswana investigate the feasibility of introducing hosting arrangements as a first step towards implementation of the full one-stop concept.**
- **R 3: Botswana’s strategy include an (a) identification and (b) prioritisation of those border posts where one-stop arrangements are feasible based on the need for transit facilitation, traffic volumes, trade flows and the willingness of counterpart administrations to engage in one-stop arrangements.**
- **R 4: Botswana initiate a process of amendment of the *Customs and Excise Act, 1970* to support all types of hosting arrangement s and one-stop options along the lines recommended in exhibit 1.**

- **R 5: The interministerial working group also identify those laws administered by other ministries that require amendment to allow full one-stop arrangements with participation by all ministries working at borders.**

**DRAFT BILATERAL AGREEMENT BETWEEN  
THE REPUBLIC OF BOTSWANA AND THE REPUBLIC  
OF .....**

**ON THE ESTABLISHMENT OF JUXTAPOSED  
NATIONAL CUSTOMS OFFICES AT LAND BORDER  
CROSSINGS AND THE PERFORMANCE OF JOINT  
CUSTOMS CONTROLS**

**24 June 2002**

## BACKGROUND NOTE

1. This document contains the text of a model agreement to establish juxtaposed customs offices and to introduce joint customs controls.
2. The agreement lays the basis for the one-stop border post model. Its main features are:
  - Customs offices of both states are relocated so as to be placed in close proximity (“juxtaposed”), necessitating only “one-stop” for persons crossing the border;
  - A control zone (or zones) is demarcated within which customs officers from both states conduct controls in terms of their respective laws;
  - The control zone comprises the customs offices, inspection areas and related facilities and is located within the national territory of one state;
  - Import and export formalities are handled as a seamless transaction between the two customs administrations;
  - In many cases, especially private traffic, controls are done “on the road” with toll booth type arrangements, so that travellers do not need to leave their vehicles; and
  - Inspections and searches of cargoes or vehicles are generally conducted in the presence of customs officers from both states.
3. As currently worded, the agreement applies only to the border controls undertaken by customs authorities. The one-stop concept delivers its full benefits, however, only if all border control functions are relocated to ensure joint controls. This agreement can, with minor amendments, be used to introduce the one-stop concept in respect of all border control functions. This is the approach adopted in the international benchmarks listed in paragraph 6.
4. The agreement gives effect to commitments undertaken by the SADC member states under the Trade Protocol and the Transport Protocol to streamline border-crossing procedures. It builds upon previous initiatives undertaken by SADC, including the *SADC Model Bilateral Agreement on Border Post Procedures, Facilities and Management, 1999* and the *Model Legislative Provisions on Border Post Procedures, Facilities and Management*.
5. Once concluded, the agreement can be implemented only if it enjoys national legal force in the respective states. In the case of the host State, the law must permit foreign customs officers to apply their own customs laws within the national territory. In the case of the adjoining State, the law must permit it to station customs officers in foreign territory and to apply their customs laws extraterritorially.
6. The text of the agreement has been prepared using international comparative benchmarks. The most important are:
  - *Convention entre la Confédération Suisse et la République fédérale d'Allemagne relative à la création de bureaux à contrôles nationaux juxtaposés et aux contrôles dans les véhicules en cours de route, 1961* (Convention between the Swiss Confederation and the Federal Republic of Germany regarding the establishment of juxtaposed national control offices and controls on vehicles on the road, 1961)
  - *Protocol concerning Frontier Controls and Policing, Co-operation in Criminal Justice, Public Safety and Mutual Assistance relating to the Channel Fixed Link between the United Kingdom and France;*
  - *Vertrag zwischen der Bundesrepublik Deutschland und der Tschechischen Republik ueber Erleichterung der Grenzabfertigung im Eisenbahn-, Strassen- und Schiffsverkehr, 1995* (Agreement between the Federal Republic of

Germany and the Czech Republic on the Facilitation of Border Controls in respect of Rail-, Road- and Boat Traffic, 1995); and

- *International Convention on the Simplification and Harmonization of Customs Procedures, 2000 (General Annex, Chapter 3).*

**AGREEMENT BETWEEN THE REPUBLIC OF BOTSWANA AND THE  
REPUBLIC OF .....ON THE ESTABLISHMENT OF JUXTAPOSED  
NATIONAL CUSTOMS OFFICES AT .....**

The Government of the Republic of ... and the Government of the Republic of ... (hereinafter referred to as the “Parties” and in the singular as the “Party”);

HAVING REGARD TO Article 7 of Annex II of the SADC Protocol on Trade and Article 3.3 of the SADC Protocol on Transport, Communication and Meteorology;

DESIROUS to reduce the time and cost involved in crossing their common border;

DESIROUS to co-operate in enforcing their customs laws and reducing their infraction,

HAVE AGREED AS FOLLOWS-

**ARTICLE 1**

**DEFINITIONS**

In this Agreement-

“adjoining State” means the Republic of ...;

“competent authority” means-

- (a) for Botswana, means the Director of Customs and Excise;
- (b) for ....., the....

“control zone” means the part of the territory of the host State as described in Article 3(2) and the Schedule to this Agreement within which officers are empowered to effect customs controls;

“customs controls” means the implementation of any statutory or administrative provision of the customs laws of the Parties;

“host State” means the Republic of ... (within whose territory the controls of the adjoining State are effected); and

“officer” means a customs officer as defined in the customs laws of the Parties.

**ARTICLE 2**

**JUXTAPOSED NATIONAL CUSTOMS OFFICES**

1. The Parties agree to establish juxtaposed national customs offices at the..... border crossing within the control zone located in the territory of the host State.
2. The competence of the juxtaposed national customs offices extends to all cross-frontier movement of commercial traffic.

3. The competent authorities of the two States must ensure that their respective customs offices are clearly identified through the display of official signs.
4. The competent authorities of the two States must, by mutual agreement, adopt uniform business hours for their respective offices.
5. The officers of the adjoining State are empowered to keep order within the accommodation appointed for their exclusive use within the host State. They may, if the need arises, request assistance from the authorities of the host State for this purpose.
6. The officers of the host State shall not have access to such accommodation, except at the request of the officers of the adjoining State.

*Explanatory note:*

- *Article 2.2 limits the application of customs controls to commercial traffic. If it is intended to extend controls to private traffic, Art 2.3 should read: "The competence of the juxtaposed national customs offices extends to all cross-frontier movements."*

### **ARTICLE 3**

#### **CONTROL ZONE**

1. The Parties agree that officers of the adjoining State may carry out customs controls under ... law within the control zone.
2. The control zone comprises:....
3. In an emergency, the competent authorities of the Parties may, by mutual agreement, provisionally bring into effect alterations to the delimitation of the control zone which may prove necessary. Any arrangement so reached comes into effect immediately.
4. The Parties may amend the delimitation of the control zone contemplated in Article 3.2. Such amendment must be confirmed through an exchange of diplomatic notes and comes into effect on the date mutually agreed.

*Explanatory note:*

- *Article 3.1 confirms that officers of the adjoining state may apply their customs laws in the control zone in the host State. It is not necessary to expressly state that the host State's customs laws also apply in the control zone, as all national laws – per definition – apply everywhere within the national territory.*
- *Article 3.2 should include a description of the control zone. By way of example, such a description could read:*
  - (a) The section of national road .. between the ... border post and the juxtaposed national customs offices;*
  - (b) The customs offices occupied by officers of the adjoining State;*
  - (c) The parking area and inspection site.*

*If necessary, the above description may be amplified through a detailed map of the control zone annexed to the Agreement.*

- *The Agreement also allows the competent authorities to temporarily adjust the perimeters of the control zone. This is required to ensure that the officers on the ground have the flexibility to respond to operational changes, without the need to embark on the lengthy process of amending the agreement. If permanent changes to the delimitation of the control zone are required, the Agreement allows the parties to agree to such changes through an exchange of diplomatic notes.*

## **ARTICLE 4**

### **APPLICATION OF NATIONAL LAWS**

1. The customs laws of the adjoining State apply in the control zone and may be put into effect by the officers of the adjoining State in the same way as in their own territory.
2. Breaches of the customs laws of the adjoining State which are detected in the control zone are subject to the laws of the adjoining State as if the breaches had occurred in the latter's own territory.
3. Officers of the adjoining State may, in terms of the laws of that State, arrest or detain any person in the control zone who is exiting the adjoining State.
4. Notwithstanding the provisions of sub-article 3, officers of the adjoining State may not arrest or detain a person exiting the host State or conduct such person to the territory of the adjoining State. Officers of the adjoining State may, nevertheless, require such person to present him- or herself to the office of the adjoining State in order that a statement may be taken or otherwise at the office of the host State. In the former case, an officer of the host State must be notified and must be present while a statement is taken and may participate in the questioning and must remain present for as long as the person in question so requests.

*Explanatory note:*

- *This Article confirms that persons exiting the adjoining State are still subject to possible arrest or detention as long as the adjoining State has not completed its exit controls.*
- *In the case of persons exiting the host State, the officers of the adjoining State may not proceed to arrest or detain such persons, as they are still subject to the host State's criminal procedure legislation. However, the agreement allows the officers of the adjoining State to conduct an investigation, provided officers from the host State are present. If it appears that a transgression may have been committed, normal rules of extradition apply.*

**ARTICLE 5**  
**CUSTOMS CONTROLS**

1. The Parties agree to conduct customs controls simultaneously or in immediate succession in the manner contemplated in this Article.
2. The export formalities of the State of departure are carried out before the import formalities of the State of arrival.
3. The officers of the State of arrival are not authorised to begin to carry out controls before the officers of the State of departure have completed their controls.
4. The officers of the State of departure may no longer carry out their controls when the officers of the State of arrival have begun their own operations, except with the consent of the competent officers of the State of arrival.
5. The Parties agree that, whenever reasonably possible, their respective officers shall conduct physical inspections and searches of cargoes or means of transport jointly.
6. If exceptionally, in the course of customs controls, the sequence of operations provided for in sub-article 1 is modified, the officers of the State of arrival may not proceed to detentions, arrests or seizures until the controls of the State of departure are completed. In such a case, these officers must escort the persons, vehicles, merchandise, animals or other goods, for which the controls of the State of departure are not yet completed, to the officers of that State. If these latter then wish to proceed to detentions, arrests or seizures, they shall have priority.
7. If the State of arrival refuses admission to persons, vehicles, animals or goods, or if persons decide not to pass through the customs controls of the State of arrival, or send or take back any vehicles, animals or goods which are accompanying them, the authorities of the State of departure may not refuse to accept back such persons, vehicles, animals or goods. However, the authorities of the State of departure may take any measures to deal with them in accordance with their national law and in a way which does not impose obligations on the other State.

**ARTICLE 6**  
**OFFICERS**

1. Officers of the adjoining State are permitted to circulate freely in the control zone for official purposes. In carrying out their functions, they are not required to produce passports or visas and may pass through frontier controls of the host State simply by producing appropriate evidence of their identity and status.
2. The competent authority of the adjoining State must inform the competent authority of the host State in writing of the names and designation of the officers that will be working within their national customs office and control zone within the host State. In the event of any change, information of such changes must be communicated promptly.

3. Officers of the adjoining State may wear their national uniform or visible distinctive insignia in the host State. Such officers may not be armed.
4. The authorities of the host State must grant the same protection and assistance to officers of the adjoining State, in the exercise of their functions, as they grant their own officers.
5. The laws of the host State relating to the protection of officers in the exercise of their functions apply equally to the punishment of offences committed against officers of the adjoining State in the exercise of their functions.
6. Any claim for compensation for loss, injury, or damage caused by or to officers of the adjoining State in the exercise of their functions in the host State are subject to the law and jurisdiction of the adjoining State as if the circumstance giving rise to the claim had occurred in that State.
7. Officers of the adjoining State may not be prosecuted for any acts performed in the control zone whilst in the exercise of their functions, in such a case, they shall come under the jurisdiction of the adjoining State, as if the act had been committed in that State.
8. In the event of an alleged transgression by an officer of the adjoining State in the control zone, the law enforcement authorities of the host State, having taken steps to record the complaint and to assemble the facts relating thereto, shall communicate all the particulars and evidence thereof to the competent authorities of the other State for the purposes of a possible prosecution according to the laws in force in the latter.

## **ARTICLE 7**

### **FACILITIES**

1. The competent authorities of the two States must determine the facilities, installations and communications required by the services of the adjoining State as well as the compensation due for them, in particular, the amount of rental payable or their share in the costs of construction, lighting, air-conditioning, utilities, telephone, cleaning and maintenance of facilities occupied or used by them.
2. All goods, which are necessary to enable the officers of the adjoining State to carry out their functions in the host State, are exempt from all taxes and duties on entry and exit.
3. The officers of the adjoining State whilst exercising their functions in the host State are authorised to communicate with their national authorities and to establish such communications links to the adjoining State as may be required for this purpose. To this end, the authorities of the host State must, where necessary, assist the officers of the adjoining State to obtain telecommunications and other communication services subject to commercial costs and conditions normally prevailing.
4. The officers of the adjoining State may freely transfer to that State sums of money levied on behalf of their Government in the control zone, as well as merchandise and other goods seized there.
5. The officer of the adjoining State may sell seized merchandise and other goods in the host State in conformity with the provisions in force in the host State and transfer the proceeds to the adjoining State.

## **ARTICLE 8**

### **INSTITUTIONAL ARRANGEMENTS**

1. A Joint Commission comprising representatives of the competent authorities is established to oversee the implementation of this agreement.
2. The Commission must determine the administrative measures necessary for the implementation of this agreement and resolve any difficulties that may arise from such implementation.
3. The Commission adopts decisions by consensus.
4. Each party must, if required for the effective implementation of this agreement or any administrative measure agreed by the Commission, adopt or amend the necessary laws, regulations or rules.

## **ARTICLE 9**

### **NATIONAL SECURITY**

1. This agreement does not affect the rights of any Party to take temporary measures for reasons of national security.
2. The Party taking any measure under this Article must inform the other Party of such measure without delay through the diplomatic channel.

## **ARTICLE 10**

### **FINAL PROVISIONS**

1. This Agreement, including the Schedules which form an integral part of it, enters into force on a date to be determined by the Parties and confirmed by an exchange of diplomatic notes.
2. This Agreement may be amended in terms of a decision of the Joint Commission and confirmed by an exchange of notes.
3. Any Party giving ninety days notice through the diplomatic channel may terminate this Agreement.

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

**FOR THE REPUBLIC OF BOTSWANA**

**FROM THE REPUBLIC OF.....**