MEMORANDUM OF UNDERSTANDING
ON ROAD TRANSPORTATION IN THE COMMON CUSTOMS AREA
PURSUANT TO THE CUSTOMS UNION AGREEMENT
BETWEEN THE GOVERNMENTS OF
BOTSWANA, LESOTHO, SOUTH AFRICA AND SWAZILAND

### SYLLABUS OF MEMORANDUM OF UNDERSTANDING

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MEMORANDUM OF UNDERSTANDING ON ROAD TRANSPORTATION IN THE COMMON CUSTOMS AREA PURSUANT TO THE CUSTOMS UNION AGREEMENT BETWEEN THE GOVERNMENTS OF BOTSWANA, LESOTHO, SOUTH AFRICA AND SWAZILAND

With reference to the Customs Union Agreement 1969 and in particular Article 15 thereof, the Governments of the Republic of Botswana, the Kingdom of Lesotho, the Republic of South Africa and the Kingdom of Swaziland (hereinafter referred to as the 'Contracting Parties') being desirous of facilitating and maintaining effective road transportation arrangements, and in particular, equitable shares in road transportation between their countries;

Have agreed as follows:

## ARTICLE I

In this Memorandum of Understanding, unless inconsistent with the context -

- (a) "carrier" means, respectively, any inhabitant of Botswana, Lesotho, South Africa or Swaziland or any legal person registered in Botswana, Lesotho, South Africa or Swaziland to engage in the conveyance of passengers or carriage of goods by road for hire or reward or in course of his industry, trade or business by means of vehicles registered in Botswana, Lesotho, South Africa or Swaziland as the case may be;
- (b) "competent authority" means:
  - (i) for Botswana, the Director of Transport, Gaborone;
  - (ii) for Lesotho, the Road Transport Board, Maseru;
  - (iii) for South Africa, the National Transport Commission, Pretoria;
  - (iv) for Swaziland, the Road Transportation Board, Mbabane; or
  - (v) any other body designated for that purpose by the respective Contracting Party;
- (c) "international circular tour" means:
  - (i) any occasional conveyance of a group of passengers by road for reward or by means of a hired vehicle, from a place of departure in the territory of one Contracting Party, into the territory of another Contracting Party and back to such place of departure by means of the same vehicle without any member of such group of passengers being picked up or set down, except in cases of emergency during the journey through the territory of such other Contracting Party; or
  - (ii) the conveyance of a group of passengers by road for reward or by means of a hired vehicle, from a place of departure in the territory of one Contracting Party to one or more holiday resorts or places of tourist interest in the territory of another Contracting

Party where they will stay, and the return conveyance of the same group by the same vehicle after the completion of their stay;

- (d) "international transit tour" means any occasional conveyance of a group of passengers by road for reward or by means of a hired vehicle:
  - (i) from the territory of one Contracting Party through the territory of another Contracting Party en route to a third country; or
  - (ii) from a third country through the territory of one Contracting Party to the territory of another Contracting Party; or
  - (iii) between the territories of the Contracting Parties;

by means of the same vehicle without any member of such group being picked up or set down, except in cases of emergency, during the journey through the territory of the Contracting Party whose territory is so traversed;

- (e) "occasional international passenger service" means the ad hoc conveyance of passengers by road by means of a hired vehicle from a point in the territory of one Contracting Party to a point in the territory of another Contracting Party, or between the territories of the Contracting Parties through the territory of a third Contracting Party;
- (f) "scheduled international passenger service" means the regular conveyance of passengers by road for reward or by means of a hired vehicle by a prescribed route in accordance with predetermined timetables and tariffs, as approved by the relevant competent authority of the Contracting Party in whose territory the conveyance is undertaken, from a point in the territory of one Contracting Party to a point in the territory of another Contracting Party, and back from a point in the territory of the latter Contracting Party to a point in the territory of the former Contracting Party;
- (g) "Transport Liaison Committee" means the Transport Liaison Committee of the Southern African
   Customs Union Commission;

- (h) "vehicle" means,
  - (i) in relation to passengers, any mechanically propelled road vehicle which:
    - is constructed or adapted for, and used on the roads for the conveyance of passengers;
    - (bb) has at least nine seats in addition to that of the driver; and
    - (cc) is registered in the territory of one Contracting Party and owned and operated by or on behalf of any carrier authorised in that territory to convey passengers and is temporarily imported into the territory of another Contracting Party for the purpose of the international conveyance of passengers to, from or in transit through that territory; and
  - (ii) in relation to goods, any mechanically propelled road vehicle or trailer or semi-trailer which is:
    - (aa) constructed or adapted for, and used on the roads for the carriage of goods; and
    - (bb) registered in the territory of one Contracting Party and is temporarily imported into the territory of another Contracting Party for the purpose of the international carriage of goods for delivery at or collection from any point in or in transit through the latter territory.

## ARTICLE II OBJECTIVES

- 1. The objectives of the Contracting Parties are:
  - (a) to regulate the carriage of goods and the conveyance of passengers by road for reward, or in the course of a carrier's own industry or trade, between or across the territories of the Contracting Parties, in such a manner as to ultimately achieve an equal distribution of traffic among the carriers of the Contracting Parties;
  - (b) to achieve an equal distribution of permits by January 1992; and
  - (c) to achieve and maintain an equitable non discriminatory infrastructure cost recovery system which shall not inhibit the operation of this Memorandum of Understanding.
- 2. The competent authorities shall monitor the progress towards achieving these objectives.
- 3. At regular intervals to be specified by the Transport Liaison Committee, or at the request of the competent authority of any Contracting Party, the competent authorities of the other Contracting Parties shall provide all relevant information available concerning the manner in which traffic covered by this Memorandum of Understanding has developed.
- 4. At regular intervals, or at the request of any representatives of a Contracting Party, the Transport Liaison Committee shall meet at a mutually convenient time and venue to review the operation of this Memorandum of Understanding.

## ARTICLE III PERMITS

- A permit shall be required for the carriage of goods or the conveyance of passengers under this Memorandum of Understanding except as otherwise provided for at Article VIII.
- The Transport Liaison Committee shall agree on the quota for journeys and or permits, under this Memorandum of Understanding, for carriers in their respective territories as set out at Annexure 'A'.
- 3. (a) If, during a period for which a quota has been agreed under subarticle 2, the competent authority of one Contracting Party foresees that there would be a shortage of any type of permit for its carriers that competent authority may apply to the competent authority in question with a request for the transfer of the authority to issue the relevant permits for the quota without any erosion of the quota of the transferring party;
  - (b) the Contracting Parties agree that they will accede to such requests if possible; and
  - (c) any dispute arising under this subarticle shall be resolved by the Transport Liaison Committee.
- 4. The following permits may be issued:
  - (a) single journey permits valid for one journey outward and return within a period of six months; and
  - (b) multiple journey permits valid for a specified number of journeys, outward and return, within a period of twelve months:

Provided that all permits shall expire on a date to be determined by the Transport Liaison Committee.

5. The Transport Liaison Committee may decide that the types of journeys described in subarticle 1(a) and subarticle 1(b) of Article IV shall require different types of permits.

- 6. Permits issued under this Memorandum of Understanding shall be as set out at Annexure 'B'.
- 7. A permit shall be issued by the applicant's competent authority if that competent authority is satisfied that the applicant has the means and ability to provide the carriage or conveyance for which the permit is sought.
- 8. Each competent authority shall collect a fee payable in respect of the issuing of a permit to recover:
  - (a) its administrative costs; and
  - (b) infrastructure costs

and thereafter within a period and in a manner agreed between the Contracting Parties over which the conveyance or carriage authorised by the permit is undertaken, reimburse the other Contracting Parties for infrastructure costs incurred by them:

Provided that the recovery of infrastructure costs by means of permit fees shall only be compulsory from a date to be determined by the Transport Liaison Committee.

- 9. A permit shall be valid for the use of one vehicle, or a combination of vehicles, articulated vehicle or road train at any one time.
- 10. A permit shall be used only by the authorised carrier to whom it is issued and shall not be transferable.
- 11. Each competent authority shall keep a register of permits issued under this Memorandum of Understanding containing the information set out at Annexure 'C'.

## ARTICLE IV GOODS TRANSPORT

- A carrier of one Contracting Party may import either an empty or a laden vehicle temporarily into the territory of another Contracting Party for the purpose of carrying goods including return loads:
  - (a) between any point in the territory of one Contracting Party and any point in the territory of another Contracting Party; and
  - (b) in transit across the territory of a Contracting Party.
- Except as provided in Article VIII, the competent authority of each Contracting Party shall issue permits to carriers authorised in its territory to engage in the carriage of goods referred to in subarticle 1.
- A carrier of one Contracting Party shall not carry goods between two points in the territory of another Contracting Party.
- 4. A carrier of one Contracting Party shall not carry goods between the territory of another Contracting Party and a third country unless the vehicle transits the country in which it is registered.
- 5. A consignment note as set out at Annexure 'D' is required for the carriage of goods under this Memorandum of Understanding.
- 6. A permit under this Memorandum of Understanding shall not entitle a carrier to carry arms and ammunition, military equipment and explosives unless a special permit is obtained from the appropriate authority.

#### ARTICLE V

#### **PASSENGER TRANSPORT**

- A carrier shall apply for a permit for a scheduled international passenger service to its competent authority and such application shall contain all particulars as may be determined by the competent authority.
- 2. The competent authority issuing a permit for a scheduled international passenger service shall formulate the conditions of issue of the permit, namely its validity period, the routes, the service frequencies, stopping points, time-tables, tariffs and other details necessary for the smooth and efficient operation of scheduled international passenger services, in consultation with the other competent authorities.
- 3. In the case of approval of an application for a permit in terms of subarticle (5), the competent authority shall, for record purposes, forward information pertaining to the permit to the competent authority of the other Contracting Party.
- 4. A passenger list as set out at Annexure 'E' shall be required for the conveyance of passengers on international circular tours and international transit tours.
- International circular tours, international transit tours and occasional international passenger services shall not be subject to a quota, although a permit shall be required for their operation.
- 6. Permits for international circular tours, international transit tours and occasional international passenger services shall be issued by the competent authority of the Contracting Party in which the passengers originate, and shall be valid in the territories of all the Contracting Parties, for a period to be determined by the issuing competent authority.

## ARTICLE VI OTHER PROVISIONS

- The provisions of this Memorandum of Understanding shall not derogate from the application of the provisions of national laws and regulations imposing any restrictions and controls on grounds of public health, road traffic, veterinary or phytopathological reasons or the levying of dues chargeable by virtue of such laws and regulations of the Contracting Party.
- In the case of contravention of this Memorandum of Understanding by a carrier the competent authority of the Contracting Party where the permit was issued shall, if requested by the competent authority of the Contracting Party in whose territory the contravention took place, take one of the following steps, depending on the gravity or the frequency of the contravention:
- (a) issue a written warning with an intimation that the permit may be suspended or revoked, or that the carrier may be barred from getting additional permits; or
- (b) suspend or revoke the permit issued according to this Memorandum of Understanding; or
- (c) bar the carrier from getting additional permits, either for a stated period or permanently.
- The competent authority of the Contracting Party in whose territory the contravention took place shall be informed of the measures taken in terms of subarticle 2.
- 4. All vehicles used in international transport pursuant to this Memorandum of Understanding shall be suitable and roadworthy for the transport operations for which they are licensed.
- Registration and licensing of vehicles in the territory of one Contracting Party shall be valid for operations in the territories of the other Contracting Parties without any other requirement or formalities.
- 6. The original permit, consignment note or passenger list referred to in Articles III, IV and V shall be kept in the vehicle on every journey in the territory of a Contracting Party and shall be produced for inspection when required by any officer designated by the competent authority.
- 7. Weighing certificates from checking points in the territory of one Contracting Party shall be valid

in the territories of the other Contracting Parties. This shall not, however, prevent the weighing and checking of the load by the competent inspection authorities at any time.

- 8. Certificates of road-worthiness or fitness issued in the territory of one Contracting Party shall be valid in the territories of the other Contracting Parties. This shall not, however, prevent the checking of a vehicle's road-worthiness or fitness by the competent inspection authorities at any time.
- 9. The Contracting Parties shall endeavour to harmonize vehicle standards as set out at Annexure 'F'.

#### **ARTICLE VII**

#### **IMPLEMENTATION**

- The Transport Liaison Committee shall ensure the satisfactory implementation of this Memorandum of Understanding and its adaptation to development in traffic.
- 2. Any dispute arising from this Memorandum of Understanding shall be settled in a manner contemplated by Article 20 of the Customs Union Agreement.

# ARTICLE VIII EXEMPTIONS

No permit shall be required for -

(a)	goods carriage in a vehicle the permitted maximum gross weight of which does not exceed 3.5 tonnes;
(b)	household removals in specialised vehicles;
(c)	removal of household items by the householder or by an agent of the householder without charging any fee;
<b>(</b> d)	funeral transport, conveyance of wedding parties, cultural groups, religious worshippers, and sport groups;
(e)	the carriage of equipment, accessories and animals to or from theatrical or cinematographic events, circuses, and fairs, and of radio-recording, cinematographic or television equipment;
(f)	the carriage of curios and works of art for exhibition;
(g)	the carriage of mail;
(h)	movement of unladen vehicles;
(i)	movement of breakdown vehicles, or vehicles intended to replace a vehicle that has broken down, or of vehicles carrying requisites for the repair of another vehicle; and
(j)	carriage of goods, not specified above as may be agreed by the competent authorities.

## ARTICLE IX FINAL PROVISIONS

- 1. Each Contracting Party shall, as soon as possible, notify the other in writing through diplomatic channels that it has complied with the formalities for the entry into force of this Memorandum of Understanding, which shall take effect thirty days from the date of the last notification. However, two Contracting Parties may, by Exchange of Notes decide that as between them the Memorandum of Understanding shall take effect thirty days after the second of their notifications.
- This Memorandum of Understanding may be amended by agreement between the Contracting Parties.
- 3. The Annexures to this Memorandum of Understanding may be amended by the Transport Liaison Committee.
- 4. If a Contracting Party wishes to withdraw from this Memorandum of Understanding that Contracting Party shall give notice thereof to all other Contracting Parties. If after consultation the Contracting Parties fail to agree on the date and conditions of withdrawal, this Memorandum of Understanding shall remain in force until six months from the date of such notice and shall then cease to apply to the withdrawing Contracting Party.
- 5. The law of each Contracting Party shall within its territory apply in respect of all matters not regulated by this Memorandum of Understanding.

DONE at Kasane on this 4th day of September One thousand Nine hunderd and Ninety

FOR THE GOVERNMENT OF THE REPUBLIC OF BOTSWANA

FOR THE GOVERNMENT OF THE KINGDOM OF LESOTHO

FOR THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

Lus. Belles

FOR THE GOVERNMENT OF THE KINGDOM OF SWAZILAND

At Muchanga

### ANNEXURE A

METHOD FOR CALCULATING AND PHASING-IN OF QUOTAS

#### METHOD FOR CALCULATING AND PHASING-IN OF QUOTAS

- The Quota for scheduled international passenger services shall be determined on the number of passenger vehicle trips for a period of twelve months.
- 2. The quotas for goods transport shall be calculated based on the number of journeys (outward and return) for a period of twelve months calculated as follows:
  - (a) the total amount of goods measured in tonnes would be determined from the results of annual surveys; and
  - (b) an average vehicle size or average payload in tons would be calculated from the results of annual surveys which would be used to determine the total number of journeys.
- 3. The total number of journeys or passenger vehicle trips between two Contracting Parties and the share of each of the two Parties shall be determined in accordance with paragraphs 1 and 2, for example,
  - a. if the total number of journeys between South Africa and Lesotho (or Swaziland or Botswana) is 30,000 journeys per calendar year, and South Africa's share is 22,500 journeys and Lesotho's share is 7,500 journeys;
  - Lesotho's journeys are then calculated as a percentage of South Africa's journeys.
     Thus Lesotho's journeys are 33.33% of those of South Africa's;
  - c. the difference between Lesotho's share and 100% is divided by the phasing in period, for example, assume a two year period for phasing in, then 66.67% divided by 2 years means 33.33% per year;
  - d. the growth rate of the South African quota shall be restricted by a specified percentage to be determined by the Transport Liaison Committee annually for the phasing in period, for example, assume the total market between Lesotho and South Africa will grow the first year by 15% p.a. and assume that the growth in the South African quota will be restricted to 5%, then the South African quota will be 22,500 journeys plus 5% for the first year, which is 24,000 journeys. At present Lesotho has 33.33% of South Africa's journeys. Increase its share by the calculated 33.33% per year, which means that Lesotho's quota would be 66.66% of the South Africa's quota during the first year, namely 15,998 of which South Africa will have 60% and Lesotho 40%.

4. The same procedure would be followed every year thereafter.

The results would be as follows:

YEAR	RSA QUOTA	LESOTHO'S PERCENTAGE OF RSA QUOTA	LESOTHO'S QUOTA	RATIO
Current	22 500	33.33%	7 500	75 : 25
1	24 000	66.33%	15 998	60 : 40
2	25 200	100%	25 200	50 : 50

5. After the phasing in period the growth in the quota will be shared by the Contracting Parties on a 50 : 50 basis.

### **ANNEXURE B**

SOUTHERN AFRICAN CUSTOMS UNION ROAD TRANSPORT PERMIT

#### XXXXXX XXXXX XXXXXXX

#### **CUSTOMS UNION PERMIT**

XXXXXX XXXXXXXXXX XXXXXX XXXX 

Southern African Customs Union Issued in terms of and subject to the provisions of Memorandum of Understanding on Road Transportation, 1990

This permit entitles the holder mentioned below to temporarily import the vehicle specified herein, subject to the terms and conditions of this permit, into the territory of the country specified

XXXXX XXXXXX XXX XXXXX XXXX	CX XXX XXX XXXX XXXX XX XXXXXXXXXXXXXX		ie terntory of the country specified ing goods or passengers for hire is industry, trade or business.
3000000000	XXXXXXXXX	CARRIER F	PARTICULARS
Xxxx			
2000000000	XXXXXXXXXX	VEHICLE F	ARTICULARS
xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	xxxxxxxxx make	xxxx xxxxxxx type of vehicle	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
 Xxxxxxxx xxxxx xxxxxxxxx			ım gross vehicle mass:
XXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	00000000000000000000000000000000000000		ehicle combination (tonnes)
xxxxxxxxxxxxxx	XXXXXXXX	XXXX XXXXXXXX	xxxxxxxxxxxx
registration number	make	type of vehicle	chassis number
3		1	
,			
XXXXXX XXX			ARTICULARS
Xxxxxx xxxxx			Type of transport Number of journeys Country of origin
Xxxxxxxxxx			Transit country Country of destination
Xxxxxxxxxxxxxxx		,	Permit date of issue
			Permit expiry date Special conditions
	· · · · · · · · · · · · · · · · · · ·		· ·
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	xxx / on behalf of compete		·

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<b>5</b>			10			
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		\$000 - 200 -	Common Custom	ued in terms of a Memorandum of Underst is Area pursuant to the Customit Union Agr no, South Africa and Swaziland.		
			<ol> <li>A permit shall be valid for the use of one vehicle, or one combination of vehicles, articulated vehicle or road train at any one time.</li> </ol>			
			be transf			
			appropria	nai permit shall be carried on the vehicle an ate authorities.		
	n de la companya de La companya de la co		A carrier of one Contracting Party shall not carry goods between two points in the lemitory of another Contracting Party.      A carrier of one Contracting Party shall not carry goods between the territory of another			
	(fig. organis) Symbologica	Contracting Party and a third country unless the vehicle transits the country in which it is registered.				
	peratural de la composition della composition de		explosive	shall not entitle a camer to carry arms and as unless a special permit is obtained from	the appropriate authority.	
	oo saffi oo ka fiifi oo dhaa ka k		7. Transport operations undertaken in terms of the authority of this permit shall be subject to the application of restrictions and controls imposed under national laws and regulations on grounds of public health, road traffic or of vereinarry or phytopathological reasons or the levying of such laws and regulations of a Contracting Party.			
	<ol> <li>All vehicles used in terms of this demat shall be suitable and readworthy for the transport operations for which they are licensed.</li> </ol>				able and readworthy for the (ransport	
			9. A weighing certificate from checking points in the territory of one Contracting Party shall be valid in the territories of the other Contracting Parties. This shall not, however, prevent the weighing and checking of the load by the competent inspection authorities at any time.			
{	SM MARK TO THE TOTAL STATE OF TH		shall be prevent	ate of roadworthiness or fitness issued in valid in the territones of the other Contract the checking of a vahicle's roadworthiness of es at any time.	ting Parties. This shall not, however.	
: 	: 			T FORM MUST BE RETURNED TO THE CO. ERMIT WITHIN 30 DAYS AFTER THE EXP		

### ANNEXURE C

REGISTERS TO BE KEPT

#### REGISTERS TO BE KEPT

Information to be included in register:-

Permit type

Permit serial number

Date of Issue

Name of carrier to whom issued

Vehicle details -

registration number; make; gross permitted weight or maximum

number of passengers

Weight of cargo

Quarterly summaries of permits of each type used.

#### ANNEXURE D

SOUTHERN AFRICAN CUSTOMS UNION CONSIGNMENT NOTE

### logo

XXXXXX XXXXXXXXX XXXXXX XXXXXXXXXXXXXX		SOUTHERN AFRICAN CUSTOMS UNION CONSIGNMENT NOTE		
XXXXXXXX XX XXXXXXXXX				COMPLETE IN PRINT
Xxxx xxx xxxxxxxxxx			Name o	f permit holder
Xxxxxxxxxxx			Permit r	number
Xxxxxx xxx xxxxxxx xxxx			Number	of this journey
	XXXX OUTWARD	XXXXX RETURN		
Xxxxxxxxxxx			Vehicle	registration number
Xxxxxxx xxx xxxx Origin of journey	Xxxxxxxxx xxx xxxx Destination of journey		Xxxxxxxx (Xxx) Payload (Tons)	
		Xxxxxx xxxxxxx: Total payload:		
Xxxxxxxx xxxx/Issued by:				
			,	Xxxxxxxxxxx
				Border post date stamp
Xxxx/Name	Xxxxxxxxx/\$i	gnature		uate stamp

### ANNEXURE E

SOUTHERN AFRICAN CUSTOMS UNION PASSENGER LIST

### **LOGO**

**************************************		AFRICAN CUSTOMS UNION ASSENGER LIST		
xxxxxx xx xxxxxxx		COMPLETE IN PRINT		
Xxxx xxx xxxxxxxxxxx		Name of permit holder		
Xxxxxxxxxx		Permit number		
Xxxxx xxxxxxxx	Xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx			
		realities of passengers		
Xxxxxxxxxxxx xxx xxxxxxxxx		Particulars of passengers		
Xxxx	Xxxxxxxxxxx	Xxxxxxxxxxx		
Name	Nasionality	Passport Number		
8       9         10          11          12          13          14          15          16          17          18          19				
20				
Xxxxxxxxx xxx xxx xxx xxx xxx xxx xxx x				
Xxxxxxx / Issued by:	·	Xxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxx		
Xxxx / Name	Xxxxxxxxx / Signature	date stamp		

#### **ANNEXURE F**

HARMONISED VEHICLE STANDARDS

### **HARMONISED VEHICLE STANDARDS**

Vehicle standards to be harmonised by Contracting Parties:-

Vehicle dimensions
Permissible axle mass loading
Gross weight

CERTIFIED A TRUE AND CONPLETE COPY

CENTER OF LANGUE COPY

29/08/1990

LANGUE

DATE

AND CONPLETE COPY

### PIETER FRAMS KRUGER

KOMBONAPO VANDOS Characholada Of OATAS

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STATE DAY AUTISE (INTERNATIONAL DAY)
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RESTORAL DEBOUAUR DING.

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