

AGREEMENT

BETWEEN

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

AND

**THE GOVERNMENT OF
THE REPUBLIC OF INDIA**

ON

CO-OPERATION AND MUTUAL ASSISTANCE

IN

CUSTOMS MATTERS

Preamble

The Government of the Republic of South Africa and the Government of the Republic of India (hereinafter referred to as the “Contracting Parties”);

CONSIDERING the importance of the commercial links between South Africa and India, and desirous of contributing, to the benefit of both Contracting Parties, to the harmonious development of those links;

BELIEVING that, in order to attain this objective, there should be an undertaking to develop Customs co-operation;

TAKING into account the development of Customs co-operation between the Contracting Parties, concerning Customs procedures;

CONSIDERING that operations in violation of Customs law, are prejudicial to the economic, fiscal and commercial interests of both Contracting Parties, and recognising the importance of ensuring the accurate assessment of Customs duties and other taxes;

CONVINCED that action against such operations can be made more effective by co-operation between Customs administrations;

HAVING regard to obligations imposed under International Conventions already accepted by, or applied to the Contracting Parties; and having regard also to the recommendations of the Customs Co-operation Council (World Customs Organization) on mutual administrative assistance of 5 December 1953, as well as Customs related activities undertaken by the World Trade 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 Republic of India, the Central Board of Excise and Customs, Department of Revenue, Ministry of Finance and for the Republic of South Africa, the South African Revenue Service;
- (b) “Customs duties” mean all duties, taxes, fees or any other charges which are levied in the territories of the Contracting Parties in the application of Customs law, but not including fees and charges for services rendered;
- (c) “Customs law” means any legal and administrative provisions applicable or enforceable by either Customs administration in connection with the importation, exportation, transshipment, transit, storage and movement of goods, including legal and administrative provisions relating to measures of prohibition, restriction, and control, and in connection with combating money laundering;
- (d) “Customs offence” means any violation or attempted violation of Customs law;
- (e) “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;
- (f) “international trade supply chain” means all processes involved in the cross-border movement of goods from the place of origin to the place of final destination;
- (g) “official” means any Customs officer or any other government officer designated by either Customs administration;
- (h) “person” means both natural and legal persons;
- (i) “personal data” means any data concerning an identified or identifiable natural person;
- (j) “requested administration” means the Customs administration from which assistance is requested;
- (k) “requested Contracting Party” means the Contracting Party whose Customs administration is requested to provide assistance;
- (l) “requesting administration” means the Customs administration which requests assistance;
- (m) “requesting Contracting Party” means the Contracting Party whose Customs administration requests assistance.

Article 2

Scope of the Agreement

1. The Contracting Parties shall through their Customs administrations provide each other mutual assistance under the terms set out in this Agreement, for the proper application of Customs law and for the prevention, investigation and combating of Customs offences and to ensure the security of the international trade supply chain.
2. All assistance within the framework of this Agreement shall be rendered in accordance with the domestic law and administrative provisions of the requested Contracting Party and within the competence and available resources of its Customs administration.
3. The assistance under this Agreement shall be without prejudice to the mutual legal assistance agreements existing between the Contracting Parties.
4. The provisions of this 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 for assistance.

Article 3

Communication of Information

1. The Customs administrations shall provide each other, either on request or on their own initiative, with information that helps to ensure the proper application of Customs law and the prevention, investigation and combating of Customs offences.
2. In the case of a request, if the Customs administration of the requested Contracting 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.
3. Assistance provided in accordance with this Agreement shall, on request, include the provision of information to ensure the correct determination of Customs value.
4. 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 Contracting 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.
5. Any information to be exchanged under this Agreement shall be accompanied by all relevant information for interpreting or utilising it.
 6. The Customs administrations shall provide each other, either on request or on their own initiative, with any available information relating to:
 - (a) new law enforcement techniques having proved their effectiveness;
 - (b) new trends, means or methods of committing Customs offences;
 - (c) goods known to be the subject of Customs offences, as well as transport and storage methods used in respect of those goods;
 - (d) persons known to have committed a Customs offence or suspected of being about to commit a Customs offence;
 - (e) any other data that can assist Customs administrations with risk management for control and facilitation purposes.

Article 4

Automatic Exchange of Information

The Customs administrations may, by mutual arrangement in accordance with Article 18, exchange any information covered by this Agreement on an automatic basis.

Article 5

Advance Exchange of Information

The Customs administrations may, by mutual arrangement in accordance with Article 18, exchange specific information in advance of the arrival of consignments in the territory of the other Contracting Party.

Article 6

Information for the Application and Enforcement of Customs Law

1. On request, the requested administration shall, without prejudice to Article 16, in support of the proper application of Customs law or in the prevention of Customs fraud, provide information to assist the requesting administration that has reasons to doubt the truth or accuracy of a declaration.

2. The request shall specify the verification procedures that the requesting administration wishes the requested administration to undertake and shall clearly describe the specific information requested.
3. On request, the requested administration shall provide to the requesting administration, who has reason to doubt the accuracy of information provided to it in a Customs matter, with information on:
 - (a) whether goods imported into the territory of the requesting Contracting Party have been lawfully exported from the territory of the requested Contracting Party;
 - (b) whether goods exported from the territory of the requesting Contracting Party have been lawfully imported into the territory of the requested Contracting Party, and the customs procedure, if any, under which the goods have been placed.

Article 7

Surveillance and Information

1. On request, the requested administration shall, to the extent possible, maintain surveillance over and provide the requesting administration with information on:
 - (a) goods, either in transport or in storage, known to have been used or suspected of being used to commit a Customs offence in the territory of the requesting Contracting Party;
 - (b) means of transport known to have been used or suspected of being used to commit a Customs offence in the territory of the requesting Contracting Party;
 - (c) premises in the territory of the requested Contracting Party known to have been used or suspected of being used in connection with the commission of a Customs offence in the territory of the requesting Contracting Party;
 - (d) persons known to have committed or suspected of being about to commit a Customs offence in the territory of the requesting Contracting Party, particularly those moving into and out of the territory of the requested Contracting Party.
2. The results of such surveillance shall be communicated to the other Customs administration as soon as is reasonably possible.

Article 8

Technical Co-operation

The Customs administrations of the Contracting Parties shall co-operate with each other in Customs matters including:

- (a) the exchange of Customs officers or experts when mutually beneficial for the purpose of advancing the understanding of each other's Customs techniques;
- (b) the exchange of information and experience in the use of interdiction and detection equipment;
- (c) the exchange of professional, scientific and technical data relating to Customs law and procedures;
- (d) the exchange of information on actions undertaken with third countries in relation to technical co-operation, with the aim of improving these actions;
- (e) the exchange of information to co-operate in the simplification and harmonisation of their Customs procedures.

Article 9

Information Relating to Customs Offences and Spontaneous Assistance

1. The Customs administrations shall provide each other, either on request or on their own initiative, with information on activities, planned, ongoing, or completed which present reasonable grounds to believe that a Customs offence has been committed or will be committed in the territory of the other Contracting Party.
2. In cases that could involve substantial damage to the economy, public health, public security or any other vital interests of either Contracting Party, the Customs administration of the other Contracting Party shall, wherever possible, provide assistance on its own initiative without delay.
3. In view of the growing concern regarding violation of intellectual property rights and the movement of counterfeit and pirated goods, the Customs administrations shall provide each other the necessary assistance to detect and prevent such violation and the movement of such goods between the territories of the Contracting Parties.

Article 10

Experts and Witnesses

On request, 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 in a matter related to the application of Customs law.

Article 11

Communication of Requests

1. Requests for assistance under this Agreement shall be communicated directly between the Customs administrations of the Contracting Parties. Each Customs administration shall designate a contact point for this purpose and shall communicate the details of the contact point to the other Customs administration.
2. Requests for assistance under this Agreement shall be made in writing or electronically, and shall be accompanied by any information deemed useful for the purpose of complying with such requests. The requested administration may require written confirmation of electronic requests. Where the circumstances so require, requests may be made verbally. Such requests shall be confirmed as soon as possible either in writing or, if acceptable to both Customs administrations, by electronic means.
3. Requests shall be made in the English language. Any documents accompanying such requests shall be translated, to the extent necessary, into the English language.
4. Requests for assistance under this Agreement shall include the following details:
 - (a) the name of the requesting administration;
 - (b) the matter at issue, type of assistance requested, and reasons for the request;
 - (c) a brief description of the case under review and the applicable legal and administrative provisions;
 - (d) the names and addresses of the persons to whom the request relates, if known;
 - (e) a reference in accordance with paragraph 2 of Article 16, if applicable;
 - (f) the verifications made in accordance with paragraph 2 of Article 6.

5. Where the requesting administration requests that a certain procedure or methodology be followed, the requested administration shall comply with such a request, subject to its domestic law and administrative provisions.

Article 12

Means of Obtaining Information

1. If the requested administration does not have the information requested, it shall initiate enquiries to obtain that information.
2. If the requested administration is not the appropriate authority to initiate enquiries to obtain the information requested, it may, in addition to indicating the appropriate authority, transmit the request to that authority.
3. 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.

Article 13

Presence of Officials in the Territory of the Other Contracting Party

1. On request, officials designated by the requesting administration may, with the authorisation of the requested administration and subject to conditions the latter may impose, for the purpose of investigating a Customs offence:
 - (a) examine, in the offices of the requested administration, documents and any other information in respect of that Customs offence, and be supplied with copies thereof;
 - (b) be present during any inquiry conducted by the requested administration in the territory of the requested Contracting Party, that is relevant to the requesting administration; these officials shall only have an advisory role.
2. When, in the circumstances provided for by this Agreement, officials of either Contracting Party are present in the territory of the other Contracting Party, they must at all times be able to furnish proof of their official capacity.
3. Officials shall, while in the territory of the other Contracting Party, under the terms of this Agreement, be responsible for any offence they might commit and shall enjoy, to the extent provided by that Contracting Party's domestic law and administrative provisions, the same protection as accorded to its own Customs officials.

Article 14

Joint Control and Investigation Teams

1. The Contracting Parties may establish joint control or investigation teams to detect and prevent particular types of Customs offences requiring simultaneous and co-ordinated activities.
2. Such teams shall operate in accordance with the domestic law and procedures of the Contracting Party in whose territory the activities are being carried out.

Article 15

Use and Confidentiality of Information

1. Any information received under this Agreement shall be used only by the Customs administrations of the Contracting Parties under the terms set out in this Agreement.
2. Nothing in this Agreement shall preclude the use of information or documents obtained in accordance with this Agreement as evidence in proceedings or charges subsequently instituted before the courts or tribunals in respect of the operations in violation of Customs law. Therefore, the Contracting Parties may, in their records of evidence, reports and testimonies and in proceedings and charges which may subsequently be brought before the courts or tribunals, use as evidence information obtained and documents consulted in accordance with the provisions of this Agreement. The Customs administration which supplied that information or gave access to those documents shall be notified of such use.
3. Information obtained shall be used solely for the purposes of this Agreement. Where one of the Contracting Parties wishes to use such information for other purposes, it shall obtain the prior written consent of the Customs administration which provided the information. Such use shall be subject to any restrictions laid down by that Customs administration.
4. Any information received under this Agreement shall be treated as confidential and shall, at least, be subject to the same protection and confidentiality as the same kind of information is subject to under the domestic law and administrative provisions of the Contracting Party where it is received.
5. Personal data exchange between the two Contracting Parties under this Agreement shall not begin until the Contracting Parties have, by mutual arrangement in accordance with Article 18, agreed that such data will be afforded, in the territory of the receiving Contracting Party, a level of protection that satisfies the requirements of the domestic law of the supplying Contracting Party.

Article 16

Exemptions from Obligation to Render Assistance

1. Where any assistance requested under this Agreement may infringe the sovereignty, domestic law, security, public policy or any other substantive national interest of the requested Contracting Party or prejudice any legitimate commercial or professional interests, such assistance may be declined by that Contracting Party or provided subject to any terms or conditions it may require.
2. Where the requesting administration has requested assistance that it would not itself be able to give if requested by the other Customs administration, it shall draw attention to that fact in its request. Compliance with such a request shall be at the discretion of the requested administration.
3. Assistance may be postponed if there are grounds to believe 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 specify.
4. If the requested administration considers that the effort required to fulfill a request is clearly disproportionate to the perceived benefit to the requesting administration, it may decline to provide the requested assistance.
5. Where assistance is refused or postponed, reasons for the refusal or postponement shall be given.

Article 17

Costs

1. Subject to paragraphs 2 and 3 of this Article, the costs incurred in the application of this Agreement shall be borne by the requested Contracting Party.
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 Contracting Party.
3. If the execution of a request requires expenses of a substantial or extraordinary nature, the Contracting Parties shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

Article 18

Implementation

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 may decide on mutual arrangements to facilitate the implementation and application of this Agreement.

Article 19

Dispute Settlement

1. The Customs administrations shall endeavour to resolve by mutual agreement, any difficulties or doubts arising from the interpretation or application of this Agreement.
2. The Contracting Parties shall hold periodic consultations, as appropriate, of contact points and other relevant officials, with a view to facilitating the effective implementation of this Agreement and resolving difficulties or doubts, if any.
3. The Heads of the Customs administrations may address any difficulties or doubts referred by the contact points.
4. Any disputes arising out of the interpretation, application or implementation of the provisions of this Agreement shall be settled amicably through consultation or negotiations between the Heads of the Customs administrations.

Article 20

Territorial Application

This Agreement shall apply to the territory of the Republic of South Africa and to the territory of the Republic of India.

Article 21

Joint Customs Co-operation Committee

1. A Joint Customs Co-operation Committee is hereby established, consisting of representatives of South Africa and of India. It shall meet at a place, on a date and with an agenda, fixed by mutual agreement.

2. The Joint Customs Co-operation Committee shall, *inter alia*:
 - (a) see to the proper functioning of this Agreement;
 - (b) examine all issues arising from its application;
 - (c) take measures necessary for Customs co-operation in accordance with the objectives of this Agreement;
 - (d) exchange views on any points of common interest regarding Customs co-operation, including future measures and resources;
 - (e) recommend solutions aimed at attaining the objectives of this Agreement.
3. The Joint Customs Co-operation Committee shall adopt its internal rules of procedure.

Article 22

Entry into Force

The Contracting 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. This 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 23

Duration and Termination

1. This Agreement is intended to be of unlimited duration but either Contracting Party may terminate it at any time by notification in writing through the diplomatic channel.
2. The termination shall take effect six months from the date of the notification of the denunciation to the other Contracting Party. Ongoing proceedings at the time of termination shall nonetheless be completed in accordance with the provisions of this Agreement.

Article 24

Review

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

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed and sealed this Agreement in duplicate in the English and Hindi languages, both texts being equally authentic. In case of diversion of interpretation the English text shall prevail.

DONE at Pretoria on this 22nd day of February 2008.

FOR THE GOVERNMENT OF FOR THE GOVERNMENT OF
THE REPUBLIC OF SOUTH AFRICA THE REPUBLIC OF INDIA

Entry into force date: 1 October 2008