

## **SAARC AGREEMENT ON MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS, 2005**

The Governments of the SAARC (South Asian Association for Regional Cooperation) Member States comprising the People's Republic of Bangladesh, the Kingdom of Bhutan, the Republic of India, the Republic of Maldives, the Kingdom of Nepal, the Islamic Republic of Pakistan and the Democratic Socialist Republic of Sri Lanka hereinafter referred to as "Contracting States",

MOTIVATED by the commitment to promote regional cooperation for the benefit of their peoples, in a spirit of mutual accommodation, with full respect for the principles of sovereign equality, independence and territorial integrity of all States;

RECALLING the common desire to promote the South Asian Free Trade Area (SAFTA) which is to come into effect on 1<sup>st</sup> January 2006 and convinced that closer cooperation amongst their Customs Administrations will facilitate intra-regional trade;

RECOGNIZING the need for regional co-operation in matters related to the application and enforcement of their Customs laws;

CONSIDERING the importance of accurate assessment of Customs duties and other taxes and of ensuring proper enforcement by Customs Administrations of prohibitions, restrictions and measures of control in respect of specific goods;

CONSIDERING that offences against Customs law are prejudicial to the security of the Contracting States and their economic, commercial, fiscal, social, public health and cultural interests;

CONVINCED that action against Customs offences can be made more effective by close co-operation between their Customs Administrations based on clear legal provisions;

HAVING REGARD to the relevant instruments of the Customs Cooperation Council (World Customs Organisation);

HAVING REGARD also to international Agreements containing prohibitions, restrictions and special measures of control in respect of specific goods; Have agreed as follows:

## **CHAPTER-I**

### **Definitions**

#### **Article 1**

For the purposes of this Agreement

1. "Customs Administration" shall mean the Customs authority and any other authority of a Contracting State authorized under national law and designated by that Contracting State to apply any provision of this Agreement.
2. "Customs law" shall mean any legal and administrative provisions applicable or enforceable by the Customs Administration of a Contracting State 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;
3. "Customs offence" shall mean any breach or attempted breach of Customs law;
4. "person" shall mean both natural and legal persons, unless the context otherwise;
5. "personal data" shall mean any data concerning an identified or identifiable natural person;
6. "information" shall mean any data, whether or not processed or analysed, and documents, reports, and other communications in any format, including electronic, or certified or authenticated copies thereof;
7. "intelligence" shall mean information which has been processed and / or analyzed to provide an indication relevant to a Customs offence;
8. "requesting Administration" shall mean the Customs Administration which requests assistance;
9. "requested Administration" shall mean the Customs Administration from which assistance is requested;

10. “official” shall mean any Customs officer or other government functionary designated by a Customs Administration;

## **CHAPTER-II**

### **Scope of the Agreement**

#### **Article 2**

1. The Contracting States shall through their Customs Administrations provide each other administrative 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.
2. All assistance under this Agreement by a Contracting State shall be performed in accordance with its national legal and administrative provisions and within the limits of its Customs Administration's competence and available resources.
3. This Agreement only covers mutual administrative assistance between the Contracting States and is not intended to have an impact on mutual legal assistance agreements between them. If mutual assistance is to be provided by other authorities of a requested Contracting State, the requested Administration shall indicate those authorities and, where known, the relevant agreement or arrangement applicable.
4. The provisions of this Agreement shall not give rise to a right on the part of any person to impede the execution of a request for assistance.

## **CHAPTER-III**

### **Scope of assistance**

#### **Article 3**

1. The Customs Administrations shall provide each other, either on request or on their own initiative, with information and intelligence which helps to ensure proper application of the Customs law and the prevention, investigation and combating of Customs offences.
2. The Customs Administrations shall, in making inquiries on behalf of the other Customs Administrations, act as if they were being made on its own account or at the request of another authority in that Contracting State.

### **Article 4**

The Customs Administrations shall provide each other, either on request or on their own initiative, with information which helps to ensure proper application of Customs law and the prevention, investigation and combating of Customs offences. Such information may include:

- (a) new 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 assessment for control and facilitation purposes.

## **CHAPTER-IV**

### **Special Assistance**

### **Article 5**

1. On request, the requested Administration shall, in support of the proper application of Customs law or in the prevention of Customs fraud, provide information to assist a 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 has undertaken or attempted and the specific information requested.
3. On request, the requested Administration shall provide the requesting Administration, who has reason to doubt the accuracy of information provided to it in a Customs matter, with information relative to:
  - (a) whether goods imported into the territory of the requesting Contracting State have been lawfully exported from the territory of the requested Contracting State;
  - (b) whether goods exported from the territory of the requesting Contracting State have been lawfully imported into the territory of the requested Contracting State and the Customs procedure, if any, under which the goods have been placed.

## **Article 6**

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 State;
- (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 State;
- (c) premises 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 State;
- (d) persons known to have committed or suspected of being about to commit a Customs offence in the territory of the requesting Contracting State, particularly those moving into and out of the territory of the requested Contracting State.

## **Article 7**

- 1. The Customs Administrations shall provide each other, either on request or on their own initiative, with information and intelligence on transactions, completed or planned, which constitute or appear to constitute a Customs offence.
- 2. In serious cases that could involve substantial damage to the economy, public health, public security or any other vital interest of one Contracting State, the Customs Administration of the other Contracting State shall, wherever possible, supply information and intelligence on its own initiative.

## **Article 8**

The Customs Administrations shall:

- a) assist each other with respect to the execution or provisional measures and proceedings, including the seizing, freezing or forfeiture of property;
- b) dispose of property proceeds or instrumentalities forfeited as a result of the assistance provided for under this Agreement, in accordance with the national legal and administrative provisions of the Contracting State in control of the property, proceeds or instrumentalities.

## **CHAPTER-V**

### **Information and Intelligence**

#### **Article 9**

1. Original information shall only be requested in cases where certified or authenticated copies would be insufficient, and shall be returned as soon as possible; rights of the requested Administration or of third parties relating thereto shall remain unaffected. Any document accompanying such requests shall be translated, to the extent necessary, into English.
2. Any information and intelligence to be exchanged under this Agreement shall be accompanied by all relevant information for interpreting or utilizing it.

## **CHAPTER-VI**

### **Experts and witnesses**

#### **Article 10**

On request, the requested Administration may authorize its officials to appear before a court or tribunal in the territory of the requesting Contracting State as experts or witnesses in a matter related to the application of Customs law.

## **CHAPTER-VII**

### **Communication of requests**

#### **Article 11**

1. Requests for assistance under this Agreement shall be communicated directly between the Customs Administrations concerned. Each Customs Administration shall designate an official Nodal Point (s) for this purpose and shall provide details thereof to the SAARC Secretariat, which shall communicate this information and any updates thereof to the other Customs Administrations. Each Customs Administration shall furnish a quarterly return to the SAARC Secretariat informing the number of requests made to different Customs Administrations and the responses received.
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 the requested and requesting Administrations, by electronic means.

3. Requests shall be made in English language. Any document accompanying such requests shall be translated, to the extent necessary, into English language.
4. Requests made pursuant to paragraph 2 of this Article, 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 legal and administrative provisions that apply;
  - (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 15, if applicable;
  - (f) the verifications made in accordance with paragraph 2 of Article 5.
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 national legal and administrative provisions.

## **CHAPTER-VIII**

### **Execution of requests**

#### **Article 12**

1. If the requested Administration does not have the information requested, it shall in accordance with its national legal and administrative provisions, either:
  - (a) initiate inquiries to obtain that information; or
  - (b) promptly transmit the request to the appropriate agency; or
  - (c) indicate which relevant authorities are concerned.
2. Any inquiry 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**

1. On request, officials specially designated by a requesting Administration may, with the authorization 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 an inquiry conducted by the requested Administration in the territory of the requested Contracting State which is relevant to the requesting Administration; these officials shall only have an advisory role.
2. When officials of the requesting Administration are present in the territory of the other Contracting State in the circumstances provided for in paragraph 1 of this Article, they must at all times be able to furnish proof of their official capacity.
3. Officials shall, while in the territory of another Contracting State under the terms of this Agreement, be responsible for any offence they may commit and shall enjoy, to the extent provided by that State's national laws, the same protection as accorded to its own Customs officers.

## **CHAPTER-IX**

### **Use and Confidentiality of Information**

### **Article 14**

1. Any information communicated under this Agreement shall be used only by the Customs Administration for which it was intended and solely for the purpose of administrative assistance under the terms set out in this Agreement.
2. On request, the Contracting State that supplied the information may, notwithstanding paragraph 1 of this Article, authorize its use for other purposes or by other authorities, subject to any terms and conditions it may specify. Such use shall be in accordance with the legal and administrative provisions of the Contracting State which seeks to use the information. The use of information for other purposes includes its use in criminal investigations, prosecutions or proceedings.

3. Any information communicated 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 national legal and administrative provisions of the Contracting State where it is received.
4. Personal data exchange between two or more Contracting States under this Agreement shall not begin until the Contracting States concerned have, by mutual arrangement in accordance with paragraph 2 of Article 17, decided that such data will be afforded, in the territory of the receiving Contracting State, a level of protection that satisfies the requirements of the national law of the supplying Contracting State.

## **CHAPTER-X**

### **Exemption**

#### **Article 15**

1. Where any assistance requested under this Agreement may infringe the sovereignty, laws and treaty obligations, security, public policy or any other substantive national interest of a requested Contracting State, or prejudice any legitimate commercial or professional interests, such assistance may be declined by that Contracting State or provided subject to any terms or conditions it may require.
2. Where a requesting Administration would be unable to comply if a similar request were made by the requested 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 any 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 declined or postponed, reasons for declining or postponement shall be given.

## **CHAPTER-XI**

### **Costs**

#### **Article 16**

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 State.
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 State.
3. If the execution of a request requires expenses of a substantial or extraordinary nature, the Contracting States 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.

## **CHAPTER-XII**

### **Implementation and Dispute Settlement**

#### **Article 17**

1. The Customs Administrations shall take measures so that their officials responsible for the investigation or combating of Customs offences 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, between them.

#### **Article 18**

1. The Customs Administrations shall endeavor to resolve by mutual accord any problem or doubt arising from the interpretation or application of this Agreement.

2. The Contracting States shall hold periodic consultations, as appropriate, of Nodal Points and other relevant officials, with a view to facilitating the effective implementation of this Agreement and resolving disputes, if any.
3. The Heads of Customs Administrations may address any disputes referred by the Nodal Points.
4. Disputes for which no solutions are found shall be settled through Diplomatic channels.

## **CHAPTER-XIII**

### **Application**

#### **Article 19**

This Agreement shall be applicable to the Customs territories of the Contracting States as defined in their national legal and administrative provisions.

## **CHAPTER-XIV**

### **Withdrawal**

#### **Article 20**

1. Any Contracting State may withdraw from this Agreement at any time after its entry into force. Such withdrawal shall be effective six months from the day on which written notice thereof is received by the SAARC Secretariat, the depositary of this Agreement.
2. The rights and obligations of a Contracting State which has withdrawn from this Agreement shall cease to apply as of that effective date with the exception that ongoing proceedings at the time of termination shall nonetheless be completed in accordance with the provisions of this Agreement.

## **CHAPTER-XV**

### **Entry into force**

#### **Article 21**

This Agreement shall enter into force on 1<sup>st</sup> January 2006 upon completion of formalities including ratification by all Contracting States and the issuance of notification thereof by the SAARC Secretariat.

## **CHAPTER-XVI**

### **Reservations**

#### **Article – 22**

This Agreement shall not be signed with reservations, nor will reservations be admitted at the time of notification to the SAARC Secretariat of the completion of formalities.

## **CHAPTER-XVII**

### **Amendments**

#### **Article – 23**

This Agreement may be amended by consensus. Any such amendment will become effective upon the deposit of instruments of acceptance with the Secretary General of SAARC by all Contracting States.

## **CHAPTER-XVIII**

### **Review**

#### **Article 24**

The Contracting States 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 one another in writing that no such review is necessary.

## **CHAPTER-XIX**

### **Depository**

#### **Article – 25**

This Agreement will be deposited with the Secretary General of SAARC, who will promptly furnish a certified copy thereof to each Contracting State.

**IN WITNESS WHEREOF** the undersigned being duly authorized thereto by their respective Governments have signed this SAARC Agreement on Mutual Administrative Assistance in Customs Matters.