

Customs (Mutual Administrative Assistance Agreement (Pakistan)) Regulations 2008

GN No. 15 of 2008

Government Gazette of Mauritius No. 9 of 26 January 2008

THE CUSTOMS ACT

Regulations made by the Minister under section 163(1)(a)(ii) of the Customs Act

1. These regulations may be cited as the **Customs (Mutual Administrative Assistance Agreement (Pakistan)) Regulations 2008**.
2. In these regulations -

"Agreement" means the Agreement on Mutual Administrative Assistance in Customs Matters entered into with the Islamic Republic of Pakistan and set out in the Schedule to these regulations.
3. The Agreement shall have the force of law.
4. The Agreement shall come into operation on a date to be notified in the Gazette.

Made by the Minister on 16 January 2008.

SCHEDULE

(regulation 2)

AGREEMENT ON MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS BETWEEN THE REPUBLIC OF MAURITIUS REPRESENTED BY THE MAURITIUS REVENUE AUTHORITY AND THE ISLAMIC REPLUBLIC OF PAKISTAN

The Governments of the Islamic Republic of Pakistan and the Mauritius Revenue Authority, agent of the Government of the Republic of Mauritius, hereinafter referred to as "Contracting Parties":

MOTIVATED by the commitment to promote mutual 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 the Contracting Parties;

RECALLING the common desire to promote the Trade, and convinced that closer cooperation amongst their Customs Administrations will facilitate trade between the Contracting Parties;

RECOGNIZING the need for mutual 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 Parties 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 (WCO);

HAVING FURTHER 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, unless the context otherwise requires -

"Agreement" means this agreement on Mutual Administrative Assistance in Customs Matters between the Islamic Republic of Pakistan and the Republic of Mauritius;

"authenticated or certified Copy" means a document duly signed and stamped or sealed by the Customs Administration or other competent authority of the Contracting Party;

"Customs Administration" means the customs authority and any other authority of a Contracting Party authorized under national law and designated by that Contracting Party to apply any provision of this Agreement;

"customs duties" mean all duties, taxes, fees or any other charges which are levied in the territories of the Contracting Parties in application of Customs law, but not including fees and charges for services rendered;

"Customs law" means any legal, regulatory and administrative provisions applicable or enforceable by the Customs Administration of a Contracting Party in connection with the importation, exportation, transshipment, transit, storage and movement of goods, including legal, regulatory and administrative provisions relating to measures of prohibition, restriction and control;

"customs offence" means any breach or attempted breach of Customs law;

"information" means 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;

"intelligence" means information which has been processed and/or analyzed to provide an indication relevant to a Customs Offence;

"official" means any Customs Officer or any officer of any other Authority or any other government functionary designated by a Customs Administration;

"person" means both natural and legal persons;

"personal data" means any data concerning an identified or identifiable natural person;

"requested Administration" means the Customs Administration from which assistance is requested;

"requesting Administration" means the Customs Administration which requests assistance.

CHAPTER II

Scope of the Agreement

ARTICLE 2

1. The Contracting Parties shall through their Customs Administrations provide each other administrative assistance within their competence 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 Party shall be performed in accordance with its national legal, regulatory 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 Parties and is not intended to prejudice the provisions of other mutual assistance agreements between them, respecting criminal or legal matters. If mutual assistance is to be provided by other authorities of a requested

Contracting Party, the requested Administration shall indicate those authorities and, were known, the relevant agreement or arrangement applicable.

4. Subject to paragraph 2, 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 Party.

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 offence;
- (c) goods known to 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; and
- (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 proper application of Customs law or in the prevention of customs fraud, provide information to assist a requesting Administration which 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 the requesting Administration, which has reason to doubt the accuracy of information provided to it in a Customs matter, with information related to whether -
 - (a) goods imported into the territory of the requesting Contracting Party have been lawfully exported from the territory of the requested Contracting Party;
 - (b) 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 6

On request, the requested Administration shall, to the extent possible, maintain surveillance over and provide the requesting Administration with information on -

- (a) goods whether 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 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; and .
- (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.

ARTICLE 7

1. The Customs Administrations shall provide each other, either on request or on their own initiative, with information and intelligence on transaction noted, planned or completed 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 Party, the Customs Administration of the other Contracting Party shall, wherever possible, supply information and intelligence on its own initiative.
3. In view of the growing concern over cases of violations of Intellectual Property Rights and movement of counterfeit and pirated goods, the Customs Administrations shall, as far as possible, provide necessary administrative assistance to detect and prevent such cases of violations and movement of such goods between the territories of the Contracting Parties.

ARTICLE 8

The Customs Administrations shall -

- (a) assist each other in respect of the execution of measures, whether provisional or final, and proceedings against persons suspected of having committed an offence or involved in operations in breach of Customs Law, including the seizing, freezing or forfeiture of property, to the extent that and wherever the national legislation so permits;
- (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. The 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 Party as experts or witnesses in a matter relating to the application of Customs law.

CHAPTER VII

Communication of requests

ARTICLE 11

1. Request for assistance under this Agreement shall be communicated directly between the Customs Administrations. Each Customs Administration shall designate an official Nodal Point(s) for this purpose and shall provide details thereof to the other Customs Administrations.
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; and
 - (f) the verification made in accordance with paragraph 2 of Article 5.

5. Whenever 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, regulatory and administrative provisions.

CHAPTER VIII

Executions 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;
 - (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 any inquiry conducted by the requested Administration in the territory of the requested Contracting Party 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 Party 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 Party 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 requests, the Contracting Party 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 Party, 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 Party where it is received.
4. Personal data exchange between the two Contracting Parties under this Agreement shall not begin until the Contracting Parties 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 Party, a level of protection that satisfies the requirements of the national law of the supplying Contracting Party.

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 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 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, prosecutions 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 Party.
2. Expenses and allowances paid to experts and witnesses, as well as costs of translators and interpreters, other than government officials, shall be borne by the requesting Contracting Party. The recourse to experts, witnesses, translators and interpreters shall be made by the requested Contracting Party after prior consultation and approval of 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.

CHAPTER XII

Implementation

ARTICLE 17

1. The Customs Administration 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 between them on mutual arrangements to facilitate the implementation and application of this Agreement.

CHAPTER XIII

Dispute Settlement

ARTICLE 18

1. The Customs Administrations shall endeavour to resolve by mutual accord any problem or doubt arising from the interpretation or application of this Agreement.
2. The Contracting Parties 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 XIV

Application

ARTICLE 19

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

CHAPTER XV

Withdrawal

ARTICLE 20

1. Any Contracting Party may withdraw from this Agreement at any time after its entry into force. Such withdrawal shall be effective six (6) months from the day on which written notice thereof is received by the other Customs Administration.
2. The rights and obligations of a Contracting Party, 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 XVI

Entry into force

ARTICLE 21

This Agreement shall enter into force on the 15th day after the Contracting Parties have notified each other in writing through diplomatic channels that all the necessary domestic legal requirements for the entry into force of this Agreement have been complied with.

CHAPTER XVII

Review

ARTICLE 22

The Contracting Parties shall meet in order to review this Agreement on request from either Contracting Party, or at the end of five (5) years from the date of its entry into force unless they notify one another in writing that no such review is necessary.

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

DONE in Port Louis, Mauritius the 30th Day of July Two Thousand and Seven in two Original copies in the English Language

Mr. Nasim QURESHI,
Additional Secretary,
Ministry of Commerce,
Islamic Republic of Pakistan

Mr. Sudhamo LAL
Director General,
Republic of Mauritius