



TRILATERAL AGREEMENT

AMONG

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

**THE GOVERNMENT OF THE FEDERATIVE
REPUBLIC OF BRAZIL**

AND

**THE GOVERNMENT OF THE REPUBLIC OF
INDIA**

CONCERNING

**MERCHANT SHIPPING AND OTHER MARITIME
TRANSPORT RELATED MATTERS**

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PREAMBLE

The Government of the Republic of South Africa, the Government of the Federative Republic of Brazil and the Government of the Republic of India (hereinafter jointly referred to as the "Parties", and in singular as a "Party");

CONSCIOUS of the friendly relations existing among the Parties;

DESIROUS of establishing effective co-operation among the three countries on the basis of their well known interest for their national sovereignty and respect for principles of international law and sovereign equality of States;

CONVINCED that the strengthening and development of relations in merchant shipping and maritime transport matters will contribute to the growth of trilateral economic and commercial relations among the three countries;

HEREBY AGREE as follows:

ARTICLE I DEFINITIONS

In this Agreement unless the context otherwise indicates-

- (a) "competent authority" means-
- (i) in respect of the Government of the Republic of India, the Minister of Shipping, Road Transport and Highways or officials vested with all or part of his or her powers;
 - (ii) in respect of the Government of the Federative Republic of Brazil, the National Agency for Waterway Transportation (ANTAQ), in accordance with the guidelines established by the Ministry of Transport;
 - (iii) in respect of the Government of the Republic of South Africa, the Minister of Transport, Public Entities or officials vested with all or part of his or her powers.
- (b) "domestic law" means the national law of the country of a Party and including statutes, regulations, bye-laws and common law etc.
- (c) "member of crew of the vessel" means the Master and any person employed aboard the vessel during a voyage in the performance of functions related to the management, operation and maintenance of the vessel and any other person whose name appears on the crew list of that vessel.

- (d) "National Shipping Company" means any shipping company registered with the competent maritime authority of each Party.
- (e) "vessel" and "vessel of a Party" means any merchant vessel registered as such in the shipping register of that Party and flying its flag in accordance with its domestic law, but does not include -
 - (i) vessels exclusively used by the Armed Forces; and any vessel not used in commercial activities;
 - (ii) vessels used for hydrographic, oceanographic and scientific research and survey;
 - (iii) vessels destined for cabotage between the ports of each Party;
 - (iv) vessels used for inland waterway navigation;
 - (v) vessels destined for providing port and beach services, including pilotage, towing, assistance and rescue at sea;
 - (vi) fishing boats;
 - (vii) tourism vessels.

ARTICLE II

SCOPE

- (1) This Agreement is applicable to the international maritime transport of goods between the ports of the Parties subject to the internal legislations of the Parties and is not applicable to :
 - (a) cabotage and inland waterway transport;
 - (b) the activities and transport of cargo that, according to the legislation of each country, are reserved for its own national shipping companies or citizens, especially including cabotage traffic, rescue, towage and other port services;
 - (c) pilotage legislation and regulations, compulsory to foreign ships; and
 - (d) legislation and regulations concerning the collection of the Lighthouse Use Tariff;
- (2) The provisions of this Agreement shall not impede third-flag vessels to participate in the international transport of goods between the ports of the Parties.
- (3) The maritime transport of goods among the Parties, shall be accomplished on the basis of the principles of free, equal, and non-discriminatory access to cargoes subject to domestic laws and prevailing domestic practices.
- (4) In the maritime transport referred to in the above paragraph, the freight and its conditions shall be freely negotiated between shipping service providers and users.

**ARTICLE III
DEVELOPMENT AND CO-OPERATION**

- (1) The Parties shall co-operate with each other to develop a mutually beneficial relationship in the field of Merchant Shipping and other related maritime matters on the basis of sovereign equality and reciprocity.
- (2) The Parties shall -
 - (a) encourage and facilitate the development of maritime relationship between their shipping organizations and enterprises and also co-operate very closely in the task of enhancing and stimulating the steady growth of maritime traffic among their countries.
 - (b) encourage and facilitate the exchange and training of staff and students from various maritime establishments such as Maritime Educational Institutions.
 - (c) encourage and facilitate the exchange of information necessary for accelerating and facilitating the flow of commercial goods at sea and at port and encourage the strengthening of the co-operation between merchant fleets, subject to the provisions of the respective domestic laws concerning tax secrecy.
 - (d) strive to eliminate obstructions and other conditions tending to prevent the development of mutual maritime co-operation.
 - (e) encourage and/or facilitate their private sector to collaborate with each other in the field of maritime transportation and other related maritime matters.

**ARTICLE IV
TREATMENT TO BE ACCORDED TO VESSELS AT PORTS**

- (1) A Party shall, subject to the domestic law in force in its country, accord vessels of the other Party in its ports the same treatment as is accorded to its own vessels in matters of access to ports, freedom to enter, remain in and leave port, use of port facilities and all other facilities ensured by it in connection with navigation and commercial operations of the vessels.
- (2) Each Party shall grant to the vessels of the other Party the non-discriminatory treatment in respect of port dues and charges.
- (3) The Parties shall, within the framework of the domestic law in force in their countries, make every effort to reduce as far as possible, the turn-around time of vessels in their ports and simplify compliance with the administrative, customs and health formalities in force in these ports.

- (4) The Parties agree that the provisions of all international maritime Conventions and Codes ratified and acceded to by the Parties as well as the appropriate international laws are binding among them.
- (5) The provisions of this Agreement shall not affect the rights and obligations arising from any international Agreements and Conventions, which relates to merchant shipping and other maritime transport matters acceded to by the respective Parties.
- (6) The taxation or exemption from taxation, of income and profit derived from business in the field of maritime transport within the territory of another Party shall be in accordance with the respective bilateral Agreements on Avoidance of Double Taxation.

ARTICLE V ENVIRONMENTAL PROTECTION

- (1) Vessels from the countries of the Parties shall be subject to the domestic law in force in the countries of the Parties as regards environmental protection.
- (2) The vessels from the country of each Party shall take preventive measures against causing pollution or environmental damage to territorial waters of the other Party.
- (3) In the event of any pollution or environmental damage resulting from a breach of the provisions of the paragraph (2) the defaulting vessel shall be liable under the domestic law concerned and international Conventions acceded to by the Party with respect to that pollution or environmental damage.

ARTICLE VI RECOGNITION OF DOCUMENTS

- (1) Each Party shall recognize the nationality of vessels as indicated in the ships' documents on board and issued by the Competent Maritime Authority of the other Party in accordance with the domestic law in force in its country.
- (2) The other documents on board issued or recognized by a Party shall be recognized by the other Parties with respect to the vessels of that Party.
- (3) The tonnage certificates issued by the Competent Maritime Authority of a Party shall be recognized in the harbours of the other Parties; provided that, in the event of a dispute, the competent authorities of the country in which the harbour is situated may direct a surveyor to give a ruling in accordance with domestic laws or, if necessary, in accordance with Article 12 of the IMO International Convention on Tonnage Measurement of Ships 1969.

- (4) Each Party shall recognize the identity documents issued by the responsible authorities of the other Party to its crew members. Each Party shall provide the list of such identity documents to the other Parties.

ARTICLE VII DOMESTIC LAW

All vessels of a Party, as well as all goods, passengers and crew members of such vessels shall, when in the territorial and internal waters of the other Party, be subject to the relevant domestic law in force in the territory of that other Party and in particular, to traffic safety, maritime security, border control and immigration, customs, foreign currency, health, veterinary and phytosanitary measures.

ARTICLE VIII RIGHTS OF TRANSIT AND STAY OF CREW MEMBERS

- (1) The crew members holding the identity documents referred to in Article VI and having a service directive to join a vessel in a port of a Party shall be entitled to the right of transit whenever he or she joins that vessel.
- (2) All persons on board except those referred to in paragraph (1) shall obtain the appropriate visa from the other Party. The Parties shall endeavor to facilitate speedy processing of the visa applications.
- (3) When a crew member on board the vessel of the Party holding the identity documents referred to in Article VI above, disembarks at a port of the other Party for health reasons, purposes of service or for other reasons recognized as valid by the responsible authorities, the latter shall give the necessary authorization for the person concerned to remain in its territory in the event of his or her hospitalization, to return to his or her country of origin or to proceed to another port of embarkation by any means of transport in accordance with the legislation and regulation applicable in the territory of the other Parties.
- (4) The domestic law in force in the countries of the Parties relating to the entry, abode, movement and removal of aliens shall remain applicable.
- (5) The Parties reserve the right to prohibit access to their respective countries to any person possessing the identity documents that they consider undesirable.
- (6) A crew member of a vessel of a Party in a port of the other Party, who is in possession of a valid identity document referred to in Article VI, may disembark from his or her vessel and shall, subject to the relevant domestic law in force in the respective countries of the Parties, have access to the town where the port is situated; provided that the crew list is handed over to the responsible authority concerned, in compliance with the rules that are applicable to that port. Such persons shall comply with regulatory control both on going ashore and returning aboard the vessels.

- (7) All changes in the crew of a vessel shall be recorded in ship's documents with due reference to the date and reason for such a change and shall be communicated to the ports authorities of the State in whose territory the vessel is staying.
- (8) If a crime is allegedly committed against or by a national or crew member of a Party, (a) aboard a vessel of another Party or (b) on any vessel irrespective of its flag in the territorial waters of another Party; then the Party having jurisdiction shall investigate and take action promptly as per its national laws and international conventions acceded to by the Party, ensuring timely delivery of justice. The investigating Party shall fully cooperate and also provide the investigation report and other relevant documents for the benefit of the interested Party.

ARTICLE IX

SPECIAL OBLIGATION WITH RESPECT TO CALLING VESSELS

The vessels of the Parties must refrain from any act that could affect peace, order and security of the Parties as well as any activity that is not directly related to their mission.

ARTICLE X VESSELS IN DISTRESS

- (1) If a vessel of one Party is in distress in the Search and Rescue region of the other Party the latter shall render the same assistance and protection to such vessel as it will have rendered to its own vessels.
- (2) All goods unloaded or salvaged by one Party from a vessel in distress of the other Party, shall not be subject to Customs Duty in cases where such goods are not intended for consumption or use in the country of the first Party.

ARTICLE XI MARITIME LIAISON COMMITTEE

- (1) The Parties hereby establish a Maritime Liaison Committee (herein after referred to as the "Committee") with the purpose of promoting sustained co-operation among the Parties in the field of merchant shipping and maritime transport related matters and to enhance the implementation of this Agreement by making recommendations to the Parties.
- (2) The Committee shall consist of three representatives (each party nominating one) and shall be established as soon as possible after the signing of this Agreement.
- (3) The Committee shall meet at such times and places as agreed upon by the Parties.

- (4) The Committee shall decide upon its own procedure and quorum.

ARTICLE XII CONSULTATION AND SETTLEMENT OF DISPUTES

- (1) The Committee must be consulted on any dispute arising from the interpretation or implementation of this Agreement.
- (2) If the dispute is not settled after consultations in the Committee, it must be submitted to the competent authorities for direct negotiations.
- (3) If the dispute cannot be resolved through direct negotiations among the competent authorities of the Parties, the latter then have recourse to diplomatic channels.

ARTICLE XIII PAYMENT OF CHARGES AND DUES

- (1) The payment of port charges and berthing charges or dues by a vessel of one Party in a port of the other Party shall be made in currency freely convertible in accordance with the relevant domestic law governing exchange control.
- (2) Subject to the domestic law in force in the respective territories of the Parties, receipts and income received in the territory of one Party by shipping companies registered in the territory of the other Party may be used for the payment of any charges and dues in the territory of the first Party or may be transferred in accordance with the applicable provisions governing currency transactions and exchange control of the latter Party.

ARTICLE XIV AMENDMENTS

This Agreement may be amended by agreement in writing among the Parties.

ARTICLE XV ENTRY INTO FORCE

This Agreement shall enter into force on the date on which each Party has notified the other Parties in writing through the diplomatic channel of its compliance with the constitutional requirements necessary for the implementation thereof. The date of entry into force shall be the date of the last notification.

**ARTICLE XVI
DURATION AND TERMINATION**

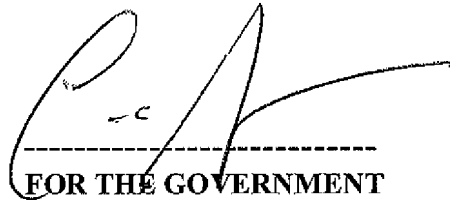
This Agreement shall remain in force for an initial period of five (5) years whereafter it shall be renewed automatically for successive periods of one (1) year, unless terminated by any of the Parties giving six months written notice in advance through the diplomatic channel of its intention to terminate this Agreement.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments, have signed and sealed this Agreement, in three originals in the Hindi, Portuguese and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

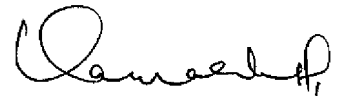
DONE at Brasilia this 13th day of September 2006.



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



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OF THE FEDERATIVE
REPUBLIC OF BRAZIL**



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