

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2003 Nr. 147

A. TITEL

Verdrag tussen het Koninkrijk der Nederlanden en de Republiek Indonesië inzake wederzijdse administratieve bijstand ten behoeve van de juiste toepassing van de douanewetgeving en de voorkoming, opsporing en bestrijding van inbreuken op de douanewetgeving; 's-Gravenhage, 24 juni 2003

B. TEKST

Agreement between the Kingdom of the Netherlands and the Republic of Indonesia on mutual administrative assistance for the proper application of customs law and for the prevention, investigation and combating of customs offences

The Kingdom of the Netherlands
and
the Republic of Indonesia,
hereinafter referred to as the Contracting Parties,

Considering the importance of accurate assessment of Customs duties and other taxes collected at importation or exportation and of ensuring proper enforcement of measures of prohibition, restriction and control;

Considering that offences against Customs law are prejudicial to their economic, fiscal, social, cultural, public health and commercial interests;

Considering that cross-frontier trafficking in narcotic drugs and psychotropic substances, hazardous goods, endangered species and toxic waste constitutes a danger to society;

Considering that illegal cross-border trafficking of weapons, explosives, chemical, biological and nuclear substances constitutes a danger to society;

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

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 Co-operation Council, in particular the Recommendation on Mutual Administrative Assistance of 5 December 1953;

Having regard also to international conventions 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. the term “Customs administration” shall mean, for the Kingdom of the Netherlands, the central administration responsible for the implementation of Customs law and, for the Republic of Indonesia, the Directorate General of Customs and Excise, Department of Finance;

2. the term “Customs law” shall mean: any legal and administrative provisions applicable or enforceable by the Customs administrations in connection with the importation, exportation, movement or storage of goods;

3. the term “Customs offence” shall mean: any breach or attempted breach of Customs law;

4. the term “Customs claim” shall mean: any amount of duties and taxes to which this Agreement applies and of increases, surcharges, overdue payments, interests and costs pertaining to the said duties and taxes that cannot be collected in one of the Contracting Parties;

5. the term “person” shall mean: either a human being or a legal entity;

6. the term “personal data” shall mean: any data concerning an identified or identifiable human being;

7. the term “information” shall mean: any data, either processed or not, documents, reports, certified or authenticated copies thereof or other communications in any format, including electronic;

8. the term “requesting administration” shall mean: the Customs administration which requests assistance;

9. the term “requested administration” shall mean: the Customs administration from which assistance is requested.

CHAPTER II

Scope of the Agreement

Article 2

1. The Contracting Parties shall through their Customs administrations afford 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, as well as for the recovery of Customs claims.

2. All assistance under this Agreement by either Contracting Party 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 is without prejudice to the obligations of the Kingdom of the Netherlands under the legislation of the European Union concerning its present and future obligations as a Member State of the European Union and to any legislation enacted to implement those obligations, as well as its present and future obligations resulting from international agreements between the Member States of the European Union, and to the obligations of the Republic of Indonesia under the Association of South East Asian Nations (ASEAN) Agreement on Customs, signed in Phuket, Thailand, on March 1st, 1997.

4. This Agreement is intended solely for the mutual administrative assistance between the Contracting Parties; 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.

5. This Agreement is without prejudice to rules governing mutual assistance in criminal matters. If mutual assistance should be afforded in accordance with another agreement in force between the Contracting Parties, the requested administration shall indicate which relevant authorities are concerned.

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 which helps to ensure proper application of Customs law and the prevention, investigation and combating of Customs offences, as well as the recovery of Customs claims.

2. Either Customs administration shall, in making inquiries on behalf of the other Customs administration, act as if the inquiries were being made on its own account or at the request of another authority of its own state.

Article 4

1. On request, the requested administration shall provide all information about Customs law and procedures applicable in that Contracting Party and relevant to inquiries relating to a Customs offence.

2. Either Customs administration shall communicate either on request or on its own initiative and without delay, any available information relating to:

- a) new Customs law enforcement techniques having proved their effectiveness;
- b) new trends, means or methods of committing Customs offences.

Article 5

The Customs administrations may provide each other technical assistance in Customs matters including:

- a) exchange of Customs officers when mutually beneficial for the purpose of advancing the understanding of each other's techniques;
- b) training and assistance in developing specialized skills of Customs officers;
- c) exchange of information and experience relating to the usage of interdiction and detection equipment;
- d) exchange of experts knowledgeable about Customs matters;
- e) exchange of professional, scientific and technical data relating to Customs law and procedures.

CHAPTER IV

Special instances of assistance

Article 6

On request, the requested administration shall in particular provide the requesting administration with the following information:

- a) whether goods which are imported into the Customs territory of the requesting Contracting Party have been lawfully exported from the Customs territory of the requested Contracting Party;
- b) whether goods which are exported from the Customs territory of the requesting Contracting Party have been lawfully imported into the Customs territory of the requested Contracting Party and about the Customs procedure, if any, under which the goods have been placed.

Article 7

1. On request, the requested administration shall maintain special surveillance over:

a) persons known to the requesting administration to have committed a Customs offence or suspected of doing so, particularly those moving into and out of the Customs territory of the requested Contracting Party;

b) goods either in transport or in storage notified by the requesting administration as giving rise to suspected illicit traffic towards the Customs territory of the requesting Contracting Party;

c) means of the transport suspected by the requesting administration of being used to commit Customs offences in the Customs territory of the requesting Contracting Party.

2. The Customs administrations may permit, according to their national legislation, by mutual agreement and arrangement, under their control, the importation into, exportation from or transit via the Customs territory of their respective states of goods involved in illicit traffic in order to suppress such illicit traffic.

Article 8

1. The Customs administrations shall provide each other, either on request or on their own initiative, with information 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 Party, the Customs administration of the other Contracting Party shall, wherever possible, supply information without delay on its own initiative.

3. The Customs administrations may agree, on conditions to be laid down in accordance with paragraph 2 of Article 19 of this Agreement, to provide information on a systemic basis to contribute to the facilitation of legitimate trade and/or to enhance the enforcement of Customs law in the case of serious danger to society.

Article 9

1. The Customs administrations shall afford each other assistance with a view to the recovery of Customs claims in accordance with their respective national legal and administrative provisions for the recovery of their own duty and tax claims.

2. The Customs administrations shall by mutual agreement prescribe rules concerning the application of this Article in accordance with paragraph 2 of Article 19 of this Agreement. Those rules may include terms

and conditions under which the application by the requested Customs administration of its national legal and administrative provisions as meant in paragraph 1 of this Article shall be at the discretion of that administration.

CHAPTER V

Information

Article 10

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.

2. Any information to be exchanged under this Agreement shall be accompanied by all relevant information for interpreting or utilizing it.

CHAPTER VI

Experts and witnesses

Article 11

On request, the requested administration may authorize its officials to appear before a court or tribunal in the other Contracting Party as experts or witnesses in the matter of a Customs offence.

CHAPTER VII

Communication of requests

Article 12

1. Requests for assistance under this Agreement shall be addressed directly to the Customs administration of the other Contracting Party, shall be made in writing and shall be accompanied by any documents deemed useful. When the circumstances so require, requests may also be made verbally. Such requests shall be promptly confirmed in writing.

2. Requests made pursuant to paragraph 1 of this Article, shall include the following details:

- a) the administration making the request;
- b) the subject of and reason for the request;
- c) a brief description of the matter, the legal elements and the nature of the proceeding;
- d) the names and addresses of the parties concerned with the proceeding, if known.

3. A request by either Customs administration that a certain procedure be followed shall be complied with, subject to the national legal and administrative provisions of the requested Contracting Party.

4. The information referred to in this Agreement shall be communicated only to officials who are designated for this purpose by each Customs administration. A list of officials so designated shall be furnished to the Customs administration of the other Contracting Party in accordance with paragraph 2 of Article 19 of this Agreement.

CHAPTER VIII

Execution of requests

Article 13

If the requested administration does not have the information requested, it shall initiate inquiries to obtain that information in accordance with its national legal and administrative provisions. These inquiries 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 14

1. On written request, officials designated by the 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) consult in the offices of the requested administration the documents, registers and other relevant data to extract any information in respect of that Customs offence;
- b) take copies of the documents, registers and other data relevant in respect of that Customs offence;
- c) be present during an inquiry conducted by the requested administration in the Customs territory of the requested Contracting Party and relevant to the requesting administration.

2. When officials of the requesting administration are present in the territory of the other Contracting Party in the circumstances provided for in Article 11 or in paragraph 1 of this Article, they must at all times be able to furnish proof of their official capacity.

3. They shall, while there, enjoy the same protection as that accorded to Customs officials of the other Contracting Party, in accordance with the laws in force there, and be responsible for any offence they might commit.

CHAPTER IX

Confidentiality of information

Article 15

1. Any information received under this Agreement shall be used solely for the purposes of this Agreement and by the Customs administrations, except in cases in which the Customs administration which furnished such information expressly approves its use for other purposes or by other authorities. Such use shall then be subject to any restrictions laid down by the Customs administration which furnished the information. Any such information may, if the national law of the furnishing Contracting Party so prescribes, only be used in criminal prosecutions after the public prosecution or judicial authorities in the furnishing Contracting Party have agreed to such use.

2. Any information received under this Agreement shall at least be subject to the same protection and confidentiality as the same kind of information is subject to under the national law having regard to the citizens of the Contracting Party where it is received irrespective of the nationality, citizenship or residence of the persons concerned.

3. The disclosure of information to the European Commission or any of the Customs administrations of the European Union's Member States under the obligations of the Kingdom of the Netherlands referred to in Article 2, paragraph 3, of this Agreement will be notified to the Customs administration of the Republic of Indonesia in advance.

4. The disclosure of information to any of the Customs administrations of ASEAN Member States under the obligations of the Republic of Indonesia referred to in Article 2, paragraph 3, of this Agreement will be notified to the Customs administration of the Kingdom of the Netherlands in advance.

Article 16

1. Personal data exchanged under this Agreement shall be subject to a level of protection equivalent to the level of protection maintained by the Contracting Party providing the data.

2. Contracting Parties shall provide each other with all legislation relevant to this Article, concerning personal data protection of their respective states.

3. Personal data exchange shall not begin until the Contracting Parties have agreed in accordance with paragraph 2 of Article 19 of this Agreement that the level of protection is equivalent in either Contracting Party.

CHAPTER X

Exemptions

Article 17

1. The requested administration shall not be required to give the assistance provided for by this Agreement if it is likely to jeopardize public order or any other essential interest of the requested Contracting Party or would involve the violation of an industrial, commercial or professional secret.

2. If the 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 by the requested administration on the grounds 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 require.

4. Where assistance is denied or postponed, reasons for the denial or postponement shall be given.

CHAPTER XI

Costs

Article 18

1. The Customs administrations shall waive all claims for reimbursement of costs incurred in the execution of this Agreement, except for expenses and allowances paid to experts and to witnesses as well as costs of translators and interpreters other than Government employees, which shall be borne by the requesting administration.

2. Pecuniary consequences of acts of recovery which have been found unjustified in respect of the reality of the Customs claim concerned or of the validity of the instrument permitting enforcement in the requesting Contracting Party shall be borne by the requesting administration.

3. If expenses of a substantial and extraordinary nature are or will be required to execute the request, 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 of the Agreement

Article 19

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 shall decide on further detailed arrangements, within the framework of this Agreement, to facilitate the implementation of this Agreement.

3. The Customs administrations shall endeavour to resolve by mutual accord any problem or doubt arising from the interpretation or application of this Agreement.

4. Conflicts for which no solutions are found shall be settled through diplomatic channels.

CHAPTER XIII

Application

Article 20

1. As far as the Republic of Indonesia is concerned, this Agreement shall apply to the territory of the Republic of Indonesia as defined in its laws and the adjacent seas over which the Republic of Indonesia has sovereignty, sovereign rights or jurisdiction in accordance with the provisions of the 1982 United Nations Convention on the Law of the Sea.

2. As far as the Kingdom of the Netherlands is concerned, this Agreement shall apply to its territory in Europe. It may, however, be extended either in its entirety or with any necessary modifications to the Netherlands Antilles or to Aruba.

3. Such extension shall take effect from such date and be subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed in notes to be exchanged through diplomatic channels.

CHAPTER XIV

Entry into force and termination

Article 21

1. This Agreement shall enter into force on the first day of the second month after the Contracting Parties have notified each other in writing through diplomatic channels that the constitutional requirements for the entry into force of this Agreement have been complied with.

2. This Agreement is intended to be of unlimited duration but either Contracting Party may terminate it at any time by notification through diplomatic channels.

3. The termination shall take effect three months from the date of the notification of 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.

4. Unless otherwise agreed, the termination of this Agreement shall not also terminate its application to the Netherlands Antilles or to Aruba if it has been extended thereto in conformity with the provisions of paragraph 2 of Article 20.

Article 22

1. On request, the Contracting Parties shall meet in order to review the Agreement.

2. Any amendment of the Agreement agreed upon by the Contracting Parties shall enter into force on the first day of the second month after the Contracting Parties have notified each other in writing through diplomatic channels that the constitutional requirements for the entry into force of the amendment have been complied with.

IN WITNESS whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

DONE at The Hague on the 24th day of June 2003, in duplicate, in the English language.

For the Kingdom of the Netherlands,

(sd.) MAARTEN BRABERS

For the Republic of Indonesia,

(sd.) EDDY ABDURRACHMAN

D. PARLEMENT

Het Verdrag behoeft ingevolge artikel 91 van de Grondwet de goedkeuring van de Staten-Generaal, alvorens het Koninkrijk aan het Verdrag kan worden gebonden.

G. INWERKINGTREDING

De bepalingen van het Verdrag zullen ingevolge artikel 21, eerste lid, in werking treden op de eerste dag van de tweede maand nadat de Verdragsluitende Partijen elkaar schriftelijk via diplomatieke kanalen ervan in kennis hebben gesteld dat aan de constitutionele vereisten voor de inwerkingtreding van het Verdrag is voldaan.

J. GEGEVENS**Verwijzingen**

- Titel : Verdrag houdende instelling van een Internationale
Douaneraad;
Brussel, 15 december 1950
- Tekst : *Trb.* 1951, 120 (Frans en Engels)
Trb. 1953, 51 (vertaling)
- Laatste *Trb.* : *Trb.* 1991, 111
- Titel : Aanbeveling van de Internationale Douaneraad
inzake wederzijdse administratieve bijstand;
Brussel, 5 december 1953
- Tekst : *Trb.* 1985, 63, Rubriek J (Engels)
- Titel : Verdrag betreffende de Europese Unie;
Maastricht, 7 februari 1992
- Tekst : *Trb.* 1992, 74 (Nederlands)
- Laatste *Trb.* : *Trb.* 1998, 12
- Titel : Verdrag van de Verenigde Naties inzake het recht
van de zee;
Montego-Bay, 10 december 1982
- Tekst : *Trb.* 1983, 83 (Engels en Frans)
Trb. 1984, 55 (vertaling)
- Laatste *Trb.* : *Trb.* 1996, 272

Uitgegeven de zestiende september 2003.

De Minister van Buitenlandse Zaken,

J. G. DE HOOP SCHEFFER