

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2011 Nr. 67

A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden en de Republiek
Filipijnen inzake wederzijdse administratieve bijstand in douanezaken;
Manilla, 4 februari 2011*

B. TEKST

**Agreement between the Kingdom of the Netherlands and the
Republic of the Philippines on mutual administrative assistance in
customs matters**

The Kingdom of the Netherlands

and

the Republic of the Philippines,

hereafter 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 in weapons, explosives, chemical, biological and nuclear substances constitutes a danger to society;

Considering that both the business community as customs administrations will benefit from the development of facilitation and security in the international trade supply chain;

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 Recommendation on Mutual Administrative Assistance and the Declaration on the Improvement of Customs Co-operation and Mutual Administrative Assistance (the Cyprus Declaration), adopted in December 1953 and June 2000 respectively by the Customs Co-operation Council, now known as the World Customs Organization;

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:

- a) the term “customs administration” shall mean:
 - for the Kingdom of the Netherlands: the central administration responsible for the implementation of customs law in each part of the Kingdom of the Netherlands mentioned in the second paragraph of Article 21;
 - for the Republic of the Philippines: the Bureau of Customs;
- b) the term “customs law” shall mean: any legal and administrative provisions applicable or enforceable by the customs administrations in connection with the importation, exportation, transshipment, transit, storage and circulation of goods, including legal and administrative provisions relating to measures of prohibition, restriction and control;
- c) the term “customs offence” shall mean: any breach or attempted breach of customs law as defined by the legislation of each Contracting Party;
- d) the term “customs claim” shall mean: any amount of Customs duties that cannot be collected in one of the Contracting Parties;

e) the term “customs duties” shall 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;

f) the term “person” shall mean: both natural and legal persons, unless otherwise required;

g) the term “personal data” shall mean: any data concerning an identified or identifiable natural person;

h) the term “information” shall mean: any data, documents, reports, certified or authenticated copies thereof or other communications in any format, including electronic;

i) the term “international trade supply chain” shall mean all processes involved in the cross-border movement of goods from the place of origin to the place of final destination;

j) the term “official” shall mean: any Customs officer or other government agent designated to apply Customs law;

k) the term “requesting administration” shall mean: the customs administration which requests assistance;

l) 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 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 present and future obligations of the Contracting Parties resulting from other international agreements.

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 the proper application of customs law and the prevention, investigation and combating of customs offences and the security of the international supply chain 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, 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;
- c) other data that can assist Customs administrations with risk assessment for control and facilitation purposes.

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 transport suspected by the requesting administration of being used to commit customs offences in the customs territory of the requesting Contracting Party;
- d) 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.

2. The customs administrations may permit, according to their national legislation, by mutual agreement and arrangement, under their supervision, the controlled 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 such information without delay on its own initiative.

Article 9

The customs administrations may, by mutual arrangement exchange any information covered by this Agreement on an automatic basis. Such exchange will be arranged in accordance with paragraph 2 of Article 20 of this Agreement.

Article 10

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, subject to the consent which may be required from other national government agencies, by common agreement prescribe rules concerning the application of this Article in accordance with paragraph 2 of Article 20 of this Agreement.

CHAPTER V INFORMATION

Article 11

1. Original information shall only be requested in cases where certified or authenticated copies or computer-based information 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 12

On request, the requested administration may authorize its officials to appear before a court or tribunal or before an administrative or quasi-judicial body in the territory of the requesting Contracting Party as experts or witnesses in a matter related to the application of customs law.

CHAPTER VII

COMMUNICATION OF REQUESTS

Article 13

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. In urgent circumstances, 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 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 20 of this Agreement.

CHAPTER VIII

EXECUTION OF REQUESTS

Article 14

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.

Article 15

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) examine 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 in an advisory role 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 either customs administration are present in the territory of the other Contracting Party under the terms of this Agreement, 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 16

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 informa-

tion. 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 of 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.

Article 17

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 20 of this Agreement that the level of protection is equivalent in either Contracting Party.

CHAPTER X

EXEMPTIONS

Article 18

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 ground that it will interfere with an ongoing investigation, prosecution or proceeding. In such a case the requested administration shall con-

sult 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 19

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 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 is or will be made as well as the manner in which the costs shall be borne.

CHAPTER XII

IMPLEMENTATION OF THE AGREEMENT

Article 20

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 endeavor 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

TERRITORIAL APPLICATION

Article 21

1. This Agreement will be applicable in the territories of both States in accordance with international law.

2. As far as the Kingdom of the Netherlands is concerned, this Agreement shall be applicable in the European part of the Netherlands, in Aruba, Curaçao and Sint Maarten, and in the Caribbean part of the Netherlands (Bonaire, Saba and Sint Eustatius).

CHAPTER XIV

ENTRY INTO FORCE AND TERMINATION

Article 22

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 or internal requirements for the entry into force of this Agreement have been complied with.

Article 23

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

2. The Contracting Parties may terminate the application of this Agreement in respect of each separate part of the Kingdom of the Netherlands.

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.

Article 24

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 one another in writing that no such review is necessary.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Agreement.

DONE at Manila, Philippines, on this 4th day of February 2011, in duplicate, in the English language.

For the Kingdom of the Netherlands,

R. G. BRINKS

For the Republic of the Philippines,

A. ALVAREZ

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 22 in werking treden op de eerste dag van de tweede maand nadat de verdragsluitende partijen elkaar schriftelijk langs diplomatieke weg ervan in kennis hebben gesteld dat is voldaan aan de grondwettelijke of nationale vereisten voor de inwerkingtreding van het Verdrag.

Uitgegeven de *vijfde* april 2011.

De Minister van Buitenlandse Zaken,

U. ROSENTHAL