

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2013 Nr. 122

A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden en de Republiek
Kaapverdië inzake wederzijdse administratieve bijstand in
douanezaken;
(met bijlage)
Brussel, 28 juni 2013*

B. TEKST

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

Preamble

The Kingdom of the Netherlands

and

the Republic of Cape Verde,

hereafter referred to as the Contracting Parties,

Considering the importance of accurate assessment of customs duties and of ensuring proper enforcement by their customs administrations of prohibitions, restrictions and measures of control in respect of specific goods;

Considering that offences against customs law are prejudicial to the economic, commercial, fiscal, social, public health, public security and cultural interests of the Contracting Parties;

Considering that illegal cross-border trafficking in weapons, explosives, chemical, biological and nuclear substances, endangered species, hazardous goods as well as in narcotic drugs, psychotropic substances and precursors 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 mutually agreed legal provisions;

Having regard to the Recommendation on Mutual Administrative Assistance, the Declaration on the Improvement of Customs Co-operation and Mutual Administrative Assistance (the Cyprus Declaration) and the Resolution on Security and Facilitation of the International Trade Supply Chain, adopted in December 1953, July 2000 and June 2002, respectively, by the Customs Co-operation Council, now known as the World Customs Organization;

Having regard to international conventions containing prohibitions, restrictions and special measures of control in respect of specific goods;

Having regard also to the United Nations Universal Declaration of Human Rights of 1948;

Have agreed as follows:

CHAPTER I

DEFINITIONS

Article 1

For the purposes of this Agreement:

a) "customs administration" shall mean:

- for the Kingdom of the Netherlands: the central administration responsible for the implementation of customs law;
- for the Republic of Cape Verde: the central service of the Ministry of Finance which is responsible for the implementation of measures of customs policy as well as the exercise of customs authority;

b) "customs claim" shall mean any amount of customs duties and of increases, surcharges, overdue payments, interests and costs pertaining to the said duties that cannot be collected in one of the Contracting Parties;

c) "customs duties" shall mean all duties, taxes, fees or any other charges which are levied, as well as any reimbursement of refunds or export subsidies which is demanded, in the territories of the Contracting Parties in application of customs law, but not including fees or other charges for services rendered;

d) "customs law" shall mean any legal and administrative provisions applicable or enforceable by either customs administration in connection with the importation, exportation, transshipment, transit, storage and movement of goods, including legal and administrative provisions rela-

ting to measures of prohibition, restriction and control in respect of specific goods, and in connection with combating money laundering and terrorist-financing;

e) “customs offence” shall mean any violation or attempted violation of customs law;

f) “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;

g) “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;

h) “official” shall mean any customs officer or other government agent designated by either customs administration;

i) “person” shall mean any natural or legal person;

j) “personal data” shall mean any data concerning an identified or identifiable natural person;

k) “requested administration” shall mean the customs administration from which assistance is requested;

l) “requesting administration” shall mean the customs administration which requests assistance;

m) “requested Party” shall mean the Contracting Party whose customs administration is requested to provide assistance;

n) “requesting Party” shall mean the Contracting Party whose customs administration requests assistance.

CHAPTER II

SCOPE OF THE AGREEMENT

Article 2

1. The Contracting Parties shall through their customs administrations provide each other with administrative assistance under the terms set out in this Agreement, for the proper application of customs law, for the prevention, investigation and combating of customs offences and to ensure the security of the international trade supply chain.

2. All assistance under this Agreement by either Contracting Party shall be provided 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 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 any legislation enacted to implement those obliga-

tions, as well as its present and future obligations resulting from international agreements between the Member States of the European Union.

4. This Agreement covers mutual administrative assistance between the Contracting Parties 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 the requested Party, the requested administration shall indicate those authorities and where known the relevant agreement or arrangement applicable.

5. 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 INFORMATION

Article 3

Information for the application and enforcement of customs law

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, the prevention, investigation and combating of customs offences and the security of the international trade supply chain. Such information may relate to:

- a) new law enforcement techniques which have 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.

2. On request, the requested administration shall provide the requesting administration with information relative to instances where the latter has reason to doubt the information supplied to it by the person concerned in a matter related to the application of customs law.

Article 4

Information relating to customs offences

1. Either customs administration shall, on request or on its own initiative, provide the customs administration of the other Contracting Party with information on activities, planned, ongoing, or completed, which appear to constitute a customs offence in the territory of the other Contracting Party.

2. In cases that could involve substantial damage to the economy, public health, public security, including the security of the international trade supply chain, or any other vital interest of either Contracting Party, the customs administration of the other Contracting Party shall, wherever possible, supply such information on its own initiative without delay.

Article 5

Information relating to the lawfulness of the importation or exportation of goods

On request, the requested administration shall provide the requesting administration with information on:

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

Article 6

Automatic transmission of information

The customs administrations may, by mutual arrangement in accordance with Article 21 of this Agreement, transmit to one another any information covered by this Agreement on an automatic basis.

Article 7

Advanced transmission of information

The customs administrations may, by mutual arrangement in accordance with Article 21 of this Agreement, transmit specific information to one another in advance of the arrival of consignments in the territory of the other Contracting Party.

CHAPTER IV

SPECIAL TYPES OF ASSISTANCE

Article 8

Technical co-operation

The customs administrations may assist each other by benchmarking, exchanging knowledge, experience and best practices on matters such as:

- a) training of staff;
- b) customs procedures;
- c) risk management;
- d) use of technical equipment for control;
- e) managerial and administrative organization.

Article 9

Recovery of customs claims

1. On request, the customs administrations shall afford each other assistance in the recovery of customs claims in accordance with their respective national legal and administrative provisions for the recovery of their own customs duties.

2. Assistance in recovering customs claims shall be arranged in accordance with Article 21 of this Agreement.

Article 10

Surveillance and information

1. On request, the requested administration shall maintain surveillance over and provide 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 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 Party;
- c) premises in the territory of the requested 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 Party;
- d) persons known to have committed a customs offence or suspected of being about to commit a customs offence in the territory of the requesting Party, particularly those moving into and out of the territory of the requested Party.

2. Either customs administration may maintain such surveillance and provide such information on its own initiative if it has reason to believe that activities planned, ongoing or completed appear to constitute a customs offence in the territory of the other Contracting Party.

Article 11

Controlled delivery

The customs administrations may permit, according to their national legal and administrative provisions, by mutual arrangement, under their control, the importation into, exportation from or transit via the territory of their respective States, of goods involved in illicit traffic in order to suppress such illicit traffic. If granting such permission is not within the competence of the customs administration, that administration shall endeavor to initiate co-operation with the national authorities that have such competence or it shall transfer the case to those authorities.

Article 12

Experts and witnesses

On request, the requested administration may authorize officials to appear before a court or tribunal in the territory of the requesting Party as experts or witnesses in a matter related to the application of customs law.

CHAPTER V

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. Requests shall be made in writing or electronically and shall be accompanied by any information deemed useful for compliance with the request. 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 both customs administrations, electronically.

2. Requests made pursuant to paragraph 1 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.

3. 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.

4. Original information shall only be requested in cases where copies would be insufficient and shall be returned at the earliest opportunity. The rights of the requested administration or of third parties relating thereto shall remain unaffected.

CHAPTER VI

EXECUTION OF REQUESTS

Article 14

Means of obtaining information

1. If the requested administration does not have the information requested, it shall initiate inquiries to obtain that information.

2. If the requested administration is not the appropriate authority to initiate inquiries to obtain the information requested, it may, in addition to indicating the appropriate authority, transmit the request to that authority.

Article 15

Presence of officials in the territory of the other Contracting Party

On 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, 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 Party, which is relevant to the requesting administration; these officials shall only have an advisory role.

Article 16

Presence of officials of the requesting Contracting Party at the invitation of the requested administration

Where the requested administration considers it appropriate for officials of the requesting Party to be present when measures of assistance are carried out pursuant to a request, the requested administration may invite the participation of officials of the requesting Party subject to any terms and conditions it may specify.

Article 17

Provisions for visiting officials

1. When officials of either Contracting Party 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 identity and official capacity.

2. Officials of either Contracting Party shall, while in the territory of the other Contracting Party under the terms of this Agreement, enjoy the protection accorded to customs officers of the other Contracting Party to the extent provided by its legal and administrative provisions, and be responsible for any offence they might commit.

CHAPTER VII

USE, CONFIDENTIALITY AND PROTECTION OF INFORMATION

Article 18

1. Any information received under this Agreement shall be used only by the customs administrations of the Parties and solely for the purpose of administrative assistance under the terms set out in this Agreement.

2. On request, the Contracting Party that supplied the information may, notwithstanding paragraph 1, authorize its use by other authorities or for other purposes, 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 received under this Agreement shall be treated as confidential and shall, at least, be subject to the same confidentiality and protection as the same kind of information is subject to under the legal and administrative provisions of the Contracting Party where it is received.

4. The transmission of personal data under this Agreement shall take place in accordance with the legal and administrative provisions of either Contracting Party and shall be subject to the provisions in the Annex to this Agreement, which is an integral part of this Agreement.

CHAPTER VIII

EXEMPTIONS

Article 19

1. Where any assistance requested under this Agreement may infringe the sovereignty, security, public policy or any other substantive national interest of the requested Party, or prejudice any legitimate commercial or professional interest, such assistance may be declined by that Contracting Party or provided subject to any terms and conditions it may require.

2. Where 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 if there are grounds to believe 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 provided subject to any terms and conditions the requested administration may require.

4. If the requested administration considers that the effort required to fulfil a request is clearly disproportionate to the perceived benefit to the requesting administration, it may decline to provide the requested assistance.

5. The requested administration declining or postponing assistance shall inform the requesting administration hereof without delay. The reasons for declining or postponement shall be given.

CHAPTER IX

COSTS

Article 20

1. Subject to paragraphs 2 and 3 of this Article, the Parties shall waive all claims for reimbursement of costs incurred in the application of this Agreement.

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 Party.

3. If the execution of a request requires expenses of a substantial or extraordinary nature, the 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 X

IMPLEMENTATION AND APPLICATION OF THE AGREEMENT

Article 21

The customs administrations shall jointly decide on detailed arrangements, within the framework of this Agreement, to facilitate the implementation and application of this Agreement.

CHAPTER XI

TERRITORIAL APPLICATION

Article 22

1. As far as the Republic of Cape Verde is concerned, this Agreement shall be applicable in the entire national territory.

2. As far as the Kingdom of the Netherlands is concerned, this Agreement shall be applicable in:

- a) its territory in Europe and the Caribbean parts of the Netherlands (the islands of Bonaire, Sint Eustatius and Saba);
- b) Aruba;
- c) Curaçao;
- d) Sint Maarten.

3. Notwithstanding paragraph 2, as far as the Kingdom of the Netherlands is concerned, paragraph 3 of Article 2 is only applicable in its territory in Europe.

CHAPTER XII

SETTLEMENT OF DISPUTES

Article 23

1. The customs administrations shall endeavour to resolve disputes or other difficulties concerning the interpretation or application of this Agreement by mutual accord.

2. Unresolved disputes or difficulties shall be settled through diplomatic channels.

CHAPTER XII

FINAL PROVISIONS

Article 24

Entry into force

This Agreement shall enter into force on the first day of the second month after the 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 met.

Article 25

Review

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

Article 26

Duration and termination

1. This Agreement is intended to be of unlimited duration but either Contracting Party may terminate it in its entity or in respect of each separate part of the Kingdom of the Netherlands at any time by notification through diplomatic channels.

2. The termination shall take effect three months from the date of the notification of such to the other Contracting Party. Ongoing proceedings at the time of denunciation shall nonetheless be completed in accordance with the provisions of this Agreement.

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

DONE at Brussels on the 28th day of June, 2013, in duplicate, in the English language.

For the Kingdom of the Netherlands,

H. VAN BODEGRAVEN

For the Republic of Cape Verde,

MARINO VIEIRA DE ANDRADE

Annex

Provisions applicable to the customs administrations of the Contracting Parties in respect of the transmission of personal data

1. The customs administrations of the Contracting Parties may use the personal data provided only for the purpose indicated and subject to the conditions laid down by the furnishing customs administration.

2. The recipient shall inform the furnishing customs administration at its request of the use made of the personal data provided and of the results achieved therewith.

3. Personal data shall be provided solely to the competent customs authorities of the Contracting Parties. Further transmission to other authorities may take place only with prior permission from the furnishing customs administration.

4. The furnishing customs administration shall ensure that personal data are accurate as well as necessary and not excessive in relation to the purpose for which they are to be provided. The prohibitions on the provision of personal data applicable under national legal and administrative provisions shall be observed. If it transpires that inaccurate data or data that may not be provided have been furnished, the recipient shall be informed forthwith and is obliged to correct or destroy the data in question.

5. The person concerned shall be informed, upon request, of the personal data present about him and of the use to be made thereof. Such an

obligation shall not exist in so far as the public interest in not informing the person concerned outweighs the interest of that person in being informed. The right to be informed shall otherwise be governed by national legal and administrative provisions.

6. If any person is harmed by an unlawful act on account of the provision of personal data under this Agreement, the recipient customs administration shall be liable vis-à-vis the said person in accordance with its national legal and administrative provisions. It may not claim in its defence vis-à-vis the said person that the damage was caused by the furnishing customs administration.

7. When providing personal data, the furnishing customs administration shall refer to the time limits for the erasure of those data applicable under its national legal and administrative provisions.

8. The customs administrations of the Contracting Parties are obliged to record the provision and receipt of personal data.

9. The customs administrations of the Contracting Parties are obliged to protect the personal data provided effectively against unauthorized access, alterations not authorized by the furnishing customs administration, and unauthorized transmission to third parties.

D. PARLEMENT

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

G. INWERKINGTREDING

De bepalingen van het Verdrag, met bijlage, zullen ingevolge artikel 24 in werking treden op de eerste dag van de tweede maand nadat de partijen elkaar langs diplomatieke weg schriftelijk ervan in kennis hebben gesteld dat aan de grondwettelijke of nationale vereisten voor de inwerkingtreding van dit Verdrag is voldaan.

J. VERWIJZINGEN

- | | |
|-------|--|
| Titel | : Universele Verklaring van de Rechten van de Mens;
Parijs, 10 december 1948 |
| Tekst | : <i>Trb.</i> 1969, 99 (Engels en vertaling) |
| 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.* 2008, 132
- Titel : Verdrag betreffende de Europese Unie;
Maastricht, 7 februari 1992
- Tekst : *Trb.* 1992, 74 (Nederlands)
- Laatste *Trb.* : *Trb.* 2012, 182

Uitgegeven de *tweede* augustus 2013.

De Minister van Buitenlandse Zaken,

F.C.G.M. TMMERMANS