

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2001 Nr. 189

A. TITEL

Verdrag tussen het Koninkrijk der Nederlanden en het Gemenebest van Australië inzake wederzijdse administratieve bijstand ten behoeve van de juiste toepassing van de douanewetgeving en van de voorkoming, opsporing en bestrijding van inbreuken op de douanewetgeving; 's-Gravenhage, 24 oktober 2001

B. TEKST

Agreement between the Kingdom of the Netherlands and the Commonwealth of Australia 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 Commonwealth of Australia,
hereafter referred to as the 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;

Recognising 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, now known as the World Customs Organization, 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 Commonwealth of Australia: the Australian Customs Service;
for the Kingdom of the Netherlands: the central administration responsible for the implementation of customs law;
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, transshipment, transit, storage and circulation of goods, including legal and administrative provisions relating to measures of prohibition, restriction and control;
3. the term “customs offence” shall mean: any breach of customs law as defined by the legislation of each Party as well as any such attempted breach;
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 Parties;
5. the term “person” shall mean: either an individual or a legal entity;
6. the term “personal data” shall mean: any data concerning an identified or identifiable individual;
7. the term “information” shall mean: any data, 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;

10. the term “requesting State” shall mean: the Party whose customs administration requests assistance;

11. the term “requested State” shall mean: the Party whose customs administration is requested to provide assistance.

CHAPTER II

Scope of the Agreement

Article 2

1. The 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.

2. All assistance under this Agreement shall be performed in accordance with the legislation of the requested State and within the competence and available resources of the requested administration.

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

4. This Agreement is intended solely for the mutual administrative assistance between the 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. If mutual assistance should be afforded in accordance with another agreement in force between the Parties, the requested administration shall indicate which relevant authorities are concerned. In particular, mutual assistance in criminal matters, including criminal customs matters, between the Parties shall be exclusively governed by the Treaty between the Kingdom of the Netherlands and Australia on Mutual Assistance in Criminal Matters done at Canberra on 26 October 1988.

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.

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, provided that it is made known, as appropriate, to a person who is about to be questioned that the inquiries are on behalf of the other customs administration.

Article 4

1. On request, the requested administration shall provide all information about customs law and procedures applicable in the requested State 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.

CHAPTER IV

Special Instances of Assistance

Article 5

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

Article 6

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 State;
- 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 State;
- c) means of transport suspected by the requesting administration of being used to commit customs offences in the customs territory of the requesting State;

d) premises suspected by the requesting administration of being used to commit customs offences in the customs territory of the requesting State.

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. If granting such permission is not within the competence of the customs administration, that administration shall endeavour to initiate co-operation with national authorities with such competence or shall transfer the case to such an authority.

Article 7

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 State, the customs administration of the other State shall, wherever possible, supply information without delay on its own initiative.

Article 8

1. When the necessary legal and administrative provisions of both States will have entered into force, their customs administrations shall assist each other in the recovery of customs claims in accordance with paragraph 2 of this Article.

2. The customs administrations shall by common agreement prescribe rules concerning the application of this Article in accordance with paragraph 2 of Article 18 of this Agreement. Those rules may include terms and conditions under which the application by the requested 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 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; 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 utilising it.

CHAPTER VI

Experts and Witnesses

Article 10

On request, the requested administration shall authorise its officials to appear before a court or tribunal in the requesting State as experts or witnesses in the matter of a customs offence.

CHAPTER VII

Communication of Requests

Article 11

1. Requests for assistance under this Agreement shall be made directly to the customs administration of the other Party, shall be in writing and shall be accompanied by any documents deemed useful. When the circumstances so require, requests may also be made orally. Such requests shall be confirmed promptly 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 involved and the nature of the possible proceeding;
- d) the names and addresses of the persons concerned, 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 State.

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 each customs administration in accordance with paragraph 2 of Article 18 of this Agreement.

CHAPTER VIII

Execution of Requests

Article 12

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 inquir-

ies may include the taking of statements from persons from whose information is sought in connection with a customs offence and from witnesses and experts.

Article 13

1. On written request, officials designated by the requesting administration may, subject to the requirements of the law of the requested State and with the authorisation 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 State and relevant to the requesting administration.

2. When officials of the requesting administration are present in the territory of the requested State in the circumstances provided for in Article 10 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 such protection from the requested State as is available under its national law, and be responsible for any offence they might commit.

CHAPTER IX

Confidentiality of Information

Article 14

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 and any such further use is allowed by the law of the receiving State. 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 law of the State of the furnishing customs administration so prescribes, only be used in criminal prosecutions after the public prosecution or judicial authorities of the State of the furnishing customs administration 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 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 of this Agreement shall be notified to the Australian Customs Service in advance.

Article 15

1. Personal data exchange under this Agreement shall not begin until Parties have mutually agreed, in accordance with paragraph 2 of Article 18 of this Agreement, that the level of protection in the other State satisfies the requirements of national law of their own State.

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

CHAPTER X

Exemptions

Article 16

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 State 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 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 17

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. If expenses of a substantial and extraordinary nature are or will be required to execute the request, the customs administrations 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 18

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 by diplomatic means.

CHAPTER XIII

Application

Article 19

1. As far as the Commonwealth of Australia is concerned, this Agreement shall apply to the territory to which the Australian customs laws apply.

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 agreed by the Parties.

CHAPTER XIV

Entry into force and Termination

Article 20

This Agreement shall enter into force on the first day of the second month after the Parties have notified each other by diplomatic means that any national procedures necessary for the entry into force of this Agreement have been complied with.

Article 21

1. This Agreement is intended to be of unlimited duration but either Party may terminate it at any time by notifying the other Party by diplomatic means.

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

Article 22

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 by diplomatic means that no such review is necessary.

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

DONE at The Hague on the 24th day of October 2001, in duplicate in the English language.

For the Kingdom of the Netherlands,

(sd.) W. BOS

For the Commonwealth of Australia,

(sd.) PETER A. HUSSIN

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 20 in werking treden op de eerste dag van de tweede maand na de ontvangst van de kennisgevingen door Partijen dat aan de nationale vereisten voor inwerkingtreding is voldaan.

J. GEGEVENS

De Internationale Douaneraad, naar welke Raad in de preambule tot het onderhavige Verdrag wordt verwezen, is ingesteld bij het op 15 december 1950 te Brussel tot stand gekomen Verdrag houdende instelling van een Internationale Douaneraad. Van dit Verdrag is de tekst geplaatst in *Trb.* 1951, 120 en de vertaling in *Trb.* 1953, 51. Zie ook, laatstelijk, *Trb.* 1991, 111.

Van de op 5 december 1953 door de Internationale Douaneraad aangenomen Aanbeveling inzake wederzijdse administratieve bijstand, naar welke Aanbeveling in de preambule tot het onderhavige Verdrag wordt verwezen, is de tekst geplaatst in rubriek J van *Trb.* 1985, 63.

Van het op 26 oktober 1988 te Canberra gesloten Verdrag tussen het Koninkrijk der Nederlanden en Australië inzake wederzijdse rechtshulp in strafzaken, naar welk Verdrag in artikel 2, vijfde lid, van het onderhavige Verdrag wordt verwezen, is de tekst geplaatst in *Trb.* 1989, 13. Zie ook *Trb.* 1991, 89.

Uitgegeven de *negenentwintigste* november 2001.

De Minister van Buitenlandse Zaken,

J. J. VAN AARTSEN