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TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 1995 Nr. 68

A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden en de Republiek Korea
inzake scheepvaart
Seoel, 3 februari 1995*

B. TEKST

**Agreement on maritime transport between the Government of the
Kingdom of the Netherlands and the Government of the Republic
of Korea**

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

For the purpose of further developing friendly relations between the two countries and of strengthening cooperation in the field of maritime transport,

Taking into account their adherence to the principle of free competition on a fair and commercial basis and in accordance with the principles of equality and mutual benefit,

Have agreed as follows:

Article I

For the purpose of the present Agreement:

1. The "Competent Maritime Authority" in the Kingdom of the Netherlands is the Directorate-General Shipping and Maritime Affairs of the Ministry of Transport, Public Works and Water Management and in the Republic of Korea the Korea Maritime and Port Administration.

2. The term "vessel of a Contracting Party" means merchant vessels registered as such in the ship register of either Contracting Party and flying the flag of the Contracting Party in compliance with its national laws and regulations.

However, this term does not include:

- a) vessels exclusively used by the armed forces;
- b) fishing vessels and factory ships.

3. The term “crew member” means the ship’s master and any person actually employed on board a vessel with regard to the working or service of the vessel, who is included in the crew list and who is a holder of the seaman’s identity document.

Article II

1. Each Contracting Party shall apply this Agreement in accordance with its international obligations; in particular the Kingdom of the Netherlands shall apply this Agreement in accordance with the obligations existing under the Treaties establishing the European Communities.

2. Each Contracting Party, without prejudice to its obligations as a Party to the United Nations’ Convention on a Code of Conduct for Liner Conferences, shall abstain from any discriminatory measures with respect to the vessels of the other Contracting Party in relation to liner trade between the two countries and shall accord to the vessels of the other Contracting Party treatment no less favourable than that accorded to the vessels of third countries in relation to liner and bulk trade between the two countries and between either country and third countries.

Article III

The Contracting Parties agree,

- a) to promote the development of maritime transport in a spirit of consideration of their mutual interests and to remove any difficulties in this field;
- b) to facilitate, within the limits of the national laws and regulations, the transfer of technology and know-how as well as the establishment of joint ventures in the field of shipping.

Article IV

1. Each Contracting Party shall grant to the vessels of the other Contracting Party the same treatment as to its own vessels used in international sea transport, with regard to official formalities, free access to ports, utilisation of such ports for loading and discharging of cargo and embarkment of passengers, payment of tonnage dues and other taxes or charges, utilisation of services and facilities applied for navigation, shipping and normal commercial transactions. This applies also to vessels operated by shipping companies of the other Contracting Party flying the flag of a third country, unless the Competent Maritime Authorities of that Contracting Party object.

2. The provisions of paragraph 1 shall apply to customs formalities, the levying of charges and port dues, freedom of access to and the use of the ports, as well as to all facilities afforded to shipping and commercial operations in respect of vessels, crew members, passengers and cargoes. In particular this refers to the allocation of berths at piers, loading and unloading facilities and port services, including bunker facilities.

Article V

The Contracting Parties shall adopt, within the limits of their domestic laws and regulations, all appropriate measures to facilitate and expedite maritime traffic, to prevent unnecessary delays to vessels and to expedite and simplify as much as possible the carrying out of customs and other formalities required in ports.

Article VI

Profits from the operation of ships in international traffic carried on by an enterprise of one of the Contracting Parties shall be taxable only in the territory of that Contracting Party, in accordance with the Convention between the Kingdom of the Netherlands and the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income of 1978.

Article VII

Each Contracting Party shall grant to the shipping company which has its place of effective management in the territory of the other Contracting Party the right of free transfer in convertible currency to the country designated by the shipping company of the excess of receipts over expenditure earned by that shipping company in the territory of the first Contracting Party. The procedure for such remittance, however, shall be in accordance with the foreign exchange regulations of the Contracting Party in the territory of which the revenue accrued. Such transfers shall be granted regularly and currently and shall be based on official exchange rates of current payments. Regarding the transfer of investments and the returns from it, the Treaty on the Protection of Investments between the Kingdom of the Netherlands and the Republic of Korea of 1974 applies.

Article VIII

1. The Contracting Parties shall mutually recognize the nationalities of vessels on the basis of the certificate of registry duly issued by the competent authorities of either Party in compliance with the relevant laws and regulations.

2. The Contracting Parties shall, in accordance with the relevant international Conventions, mutually recognize the tonnage certificate and other documents of ships duly issued by the competent authorities

of either Party or those recognized by one Contracting Party and met with no objection from the other Party without remeasuring the vessels concerned. All port charges and expenses shall be collected on the basis of these documents.

Article IX

The Contracting Parties shall recognize the seaman's identity documents, issued by the competent authorities of the other Contracting Party.

These identity documents are:

- a. for crew members on Netherlands vessels: the Netherlands "Monsterboekje" (seaman's book),
- b. for crew members on vessels of the Republic of Korea: the Seaman's passport.

Article X

1. Each crew member of a vessel of one Contracting Party holding the identity document referred to in Article IX of this Agreement may go ashore and stay for temporary shore leave without visas during the stay of their vessel in a port of the other Contracting Party provided that the ship's master has submitted the crew list to the competent authorities, in accordance with the regulations in force in that port.

2. When going ashore and returning to the vessel, the person in question shall be subject to the frontier control and customs formalities in force in that port.

Article XI

1. Crew members holding the relevant identity documents, mentioned in Article IX, have the right, regardless of the mode of transport, to enter the territory of the other Contracting Party or pass through that territory in order to rejoin their vessel, to be transferred to another vessel, to return to their country, or to travel for any other purpose with the consent of the competent authorities of that other Contracting Party.

2. When a crew member holding the relevant identity document, mentioned in Article IX, is disembarked in a port on the territory of the other Contracting Party for reasons of health, or other grounds recognized by the competent authorities, these authorities shall give the necessary authorisation in order to enable the crew member to remain on their territory to receive medical attention or to be hospitalized and to return to his country by any means of transport or to go to another port of embarkation.

Article XII

1. Without prejudice to the generality of the Articles IX to XI, the laws and regulations of either Contracting Party concerning the entry, the stay and the termination of the stay of foreigners, are applicable.

2. The authorisations contained in Article X and XI do not imply a restriction to the right of either Contracting Party to refuse any crew member the entry into its territory.

Article XIII

1. Should vessels of either Contracting Party be involved in maritime casualties or encounter any other danger in the territorial sea, internal waters or ports of the other Contracting Party, the latter shall give all possible assistance and attention to the vessels, crew members, cargo and passengers in danger and notify the appropriate authorities of the Contracting Parties concerned without delay. National treatment shall be exercised in the collection of charges incurred.

2. Where cargo on board of a vessel of either Contracting Party involved in a maritime casualty needs to be discharged and stored temporarily in the territory of the other Contracting Party before its return to the country of shipment or carriage to third countries, the other Contracting Party shall provide all facilities required, and such cargo shall be exempt from all customs duties, dues and taxes.

Article XIV

1. The vessels and crew members of either Contracting Party shall observe the relevant laws and regulations of the other Contracting Party during their stay in the latter's territorial sea, internal waters and ports. The authorities of either Contracting Party shall not exercise jurisdiction over or intervene in the internal affairs of the vessels of the other Contracting Party in its territorial sea, internal waters and ports, except in the cases and to the extent expressly provided for in generally accepted international rules and regulations and in treaties in force between Contracting Parties.

2. When a crew member of a vessel of either Contracting Party has committed a crime on board that vessel in the territorial sea of the other Contracting Party, the competent authorities of that Contracting Party shall not prosecute him without the consent of the master of the vessel or of a diplomatic or consular officer of the former Contracting Party, unless

- a) the consequences of the crime extend to their territory; or
- b) the crime is of a kind to disturb the peace of their country or the good order of the territorial sea; or
- c) according to the law of their country, the crime is a serious offence; or

- d) the crime has been committed against a foreigner on board the vessel; or
- e) the crime concerns illicit traffic in narcotic drugs or psychotropic substances.

3. The provisions of paragraph 2 do not affect the right of either Contracting Party to take any steps authorized by its laws for the purpose of arrest or investigation on board a foreign ship passing through the territorial sea after leaving the internal waters.

Article XV

1. With a view to assuring full implementation and application of the present Agreement and facilitating maritime transport between the two States, the Contracting Parties shall establish a Joint Committee, which will be composed of representatives of the competent Government authorities of the two Contracting Parties. Each Contracting Party may invite representatives of the maritime industry.

2. The Joint Committee shall meet regularly at the request of either Contracting Party. The Joint Committee draws up its own rules and procedures. The Joint Committee shall meet alternately in the Netherlands and Korea, on the date agreed upon by both Parties through diplomatic channels.

3. The Joint Committee shall:

- a. review the situation with regard to the maritime transport of each country;
- b. study the ways of enhancing cooperation in maritime sectors; and
- c. discuss matters which might arise from the application of the Agreement and all other matters relating to the improvement of maritime transport relations, and make appropriate recommendations.

Article XVI

1. As regards the Kingdom of the Netherlands the present Agreement shall apply to the Kingdom in Europe and as regards the Republic of Korea to the territory of the Republic of Korea.

2. The Agreement may be extended to the Netherlands Antilles and Aruba.

Article XVII

This Agreement shall come into force on the first day of the second month following the date on which the Contracting Parties have informed each other in writing that the formalities constitutionally required in their respective countries have been complied with. If either Contracting Party wishes to denounce the present Agreement, it shall

notify the other Contracting Party in writing and the denunciation of the Agreement shall take effect six months after the date of receipt of such notification by the other Contracting Party.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed the present Agreement.

DONE at Seoul, on this February 3, in the year 1995, in duplicate in the English language, which will be the authentic text.

For the Government of the Kingdom of the Netherlands

(sd.) P. LAGENDIJK

For the Government of the Republic of Korea

(sd.) GONG RO-MYUNG

D. PARLEMENT

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

G. INWERKINGTREDING

De bepalingen van het Verdrag zullen ingevolge artikel XVII in werking treden op de eerste dag van de tweede maand volgend op de datum waarop de Verdragsluitende Partijen elkaar schriftelijk hebben medegedeeld dat de in hun onderscheiden landen grondwettelijk vereiste formaliteiten zijn vervuld.

Wat het Koninkrijk der Nederlanden betreft, zal het Verdrag gelden voor Nederland ingevolge artikel XVI, eerste lid, en voor de Nederlandse Antillen ingevolge de notawisseling in overeenstemming met het tweede lid van genoemd artikel (zie rubriek H hieronder).

H. TOEPASSELIJKVERKLARING

Op 3 februari 1995 zijn te Seoel nota's gewisseld inzake de uitbreiding van het Verdrag tot de Nederlandse Antillen. De tekst van de nota's luidt als volgt:

ROYAL NETHERLANDS EMBASSY

No. 030295

The Royal Netherlands Embassy presents its compliments to the Ministry of Foreign Affairs of the Republic of Korea and has the honour to refer to the consultations held on 14 and 15 June 1993 between the representatives of both countries concerning the Agreement between the Government of the Kingdom of the Netherlands and the Government of the Republic of Korea on Maritime Transport, hereinafter referred to as "the Agreement".

In connection herewith the Embassy proposes, on behalf of the Government of the Kingdom of the Netherlands that, in accordance with Article XVI, paragraph 2, of the Agreement, the Agreement be extended to the Netherlands Antilles. With a view to this extension;

– with regard to Article 1, paragraph 1, the Competent Maritime Authority of the Netherlands Antilles would be the Shipping Inspectorate Netherlands Antilles;

– with regard to the application between the Netherlands Antilles and Korea, Article VI of the Agreement shall be read as follows:

profits from the operation of ships in international traffic carried on by an enterprise of either the Netherlands Antilles or Korea, shall be taxable only in that country. This provision also applies to profits from the participation in a pool, a joint business or an international operating agency;

– with regard to Article IX, the identity documents for crew members on vessels of the Netherlands Antilles would be the Netherlands Antillean Seaman's Book (het monsterboekje).

If this proposal is acceptable to the Government of the Republic of Korea, the Embassy has further the honor to propose that this Note and the confirmative reply of the Ministry shall constitute an agreement extending the Agreement to the Netherlands Antilles, in conformity with Article XVI, paragraph 2, of the Agreement, which shall enter into force on the first day of the second month following the date on which both Governments have informed each other in writing that the formalities constitutionally required in their respective countries have been complied with.

The Royal Netherlands Embassy avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Republic of Korea the assurances of its highest consideration.

Seoul, February 3, 1995

*Ministry of Foreign Affairs of the Republic of Korea
Seoul*

Nr. II

MINISTRY OF FOREIGN AFFAIRS
REPUBLIC OF KOREA

OGT-57

The Ministry of Foreign Affairs presents its compliments to the Royal Netherlands Embassy and has the honour to acknowledge the receipt of the latter's Note No. 030295 of today's date, which reads as follows:

(Zoals in Nr. I)

The Ministry of Foreign Affairs has further the honour to inform the Embassy, on behalf of the Government of the Republic of Korea, that the above proposal of the Government of the Kingdom of the Netherlands is acceptable to the Government of the Republic of Korea and to confirm that the Embassy's Note and this Note in reply shall be regarded as constituting an agreement between the two Governments on this matter, which enters into force on the first day of the second month following the date on which both Governments have informed each other in writing that the formalities constitutionally required in their respective countries have been complied with.

The Ministry of Foreign Affairs avails itself of this opportunity to renew to the Royal Netherlands Embassy the assurances of its highest consideration.

Seoul, February 3, 1995

Het in de nota's vervatte verdrag behoeft ingevolge artikel 91 van de Grondwet de goedkeuring der Staten-Generaal, alvorens het Koninkrijk aan het Verdrag kan worden gebonden.

Het in de nota's vervatte verdrag zal ingevolge het in de voorlaatste alinea van Nota I gestelde in werking treden op de eerste dag van de tweede maand volgend op de datum waarop de Verdragsluitende Partijen elkaar schriftelijk hebben medegedeeld dat de in hun onderscheiden landen grondwettelijk vereiste formaliteiten zijn vervuld.

J. GEGEVENS

Van de verdragen tot oprichting van de Europese Gemeenschappen, naar welke verdragen in artikel II, eerste lid, van het Verdrag wordt verwezen, zijn de vindplaatsen de volgende:

– van het op 18 april 1951 te Parijs tot stand gekomen Verdrag tot oprichting van de Europese Gemeenschap voor Kolen en Staal zijn tekst en vertaling geplaatst in *Trb.* 1951, 82; zie ook, laatstelijk, *Trb.* 1994, 257. Dit Verdrag is laatstelijk gewijzigd bij het op 7 februari 1992 te Maastricht tot stand gekomen Verdrag betreffende de Europese Unie. De Nederlandse tekst van dat Verdrag is geplaatst in *Trb.* 1992, 74; zie ook, laatstelijk, *Trb.* 1994, 28.

– van het op 25 maart 1957 te Rome tot stand gekomen Verdrag tot oprichting van de Europese Economische Gemeenschap is de Nederlandse tekst geplaatst in *Trb.* 1957, 91; zie ook, laatstelijk, *Trb.* 1987, 116. Dit Verdrag is laatstelijk gewijzigd bij het hierbovengenoemde Verdrag betreffende de Europese Unie. De naam van de Europese Economische Gemeenschap is sinds de inwerkingtreding van dat Verdrag: Europese Gemeenschap.

– van het op 25 maart 1957 te Rome tot stand gekomen Verdrag tot oprichting van de Europese Gemeenschap voor Atoomenergie (Euratom) is de Nederlandse tekst geplaatst in *Trb.* 1957, 92; zie ook, laatstelijk, *Trb.* 1987, 117. Dit Verdrag is laatstelijk gewijzigd bij het hierboven genoemde Verdrag betreffende de Europese Unie.

– van het op 6 april 1974 te Genève tot stand gekomen Verdrag inzake een gedragscode voor lijnvaartconferenties, naar welk Verdrag in artikel II, tweede lid, van het onderhavige Verdrag wordt verwezen, zijn de Engelse en de Franse tekst geplaatst in *Trb.* 1979, 177 en de vertaling in *Trb.* 1980, 165; zie ook, laatstelijk, *Trb.* 1987, 130.

Van de op 16 oktober 1974 te 's-Gravenhage tot stand gekomen Overeenkomst inzake de bevordering en de wederzijdse bescherming van investeringen tussen het Koninkrijk der Nederlanden en de Republiek Korea, naar welke Overeenkomst in artikel VII van het onderhavige Verdrag wordt verwezen, zijn tekst en vertaling geplaatst in *Trb.* 1974, 220; zie ook *Trb.* 1975, 53.

Van de op 25 oktober 1978 te Seoel tot stand gekomen Overeenkomst tussen het Koninkrijk der Nederlanden en de Republiek Korea tot het vermijden van dubbele belasting en het voorkomen van het ontgaan van belasting met betrekking tot belastingen naar het inkomen, naar welke Overeenkomst in artikel VI van het onderhavige Verdrag wordt verwe-

zen, zijn tekst en vertaling geplaatst in *Trb.* 1979, 13; zie ook *Trb.* 1981, 68.

Uitgegeven de *zevende* maart 1995.

De Minister van Buitenlandse Zaken,

H. A. F. M. O. VAN MIERLO