

29 (1996) Nr. 1

# TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

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JAARGANG 1996 Nr. 331

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A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden en de Verenigde Staten van Amerika inzake wederzijdse administratieve bijstand ten behoeve van de juiste toepassing van de douanewetgeving en de voorkoming, opsporing en bestrijding van inbreuken op de douanewetgeving, met  
Bijlage;  
Washington, 28 oktober 1996*

B. TEKST

**Agreement on mutual administrative assistance for the proper application of customs law and for the prevention, investigation and combating of customs offenses between the Kingdom of the Netherlands and the United States of America**

The Kingdom of the Netherlands

and the United States of America, hereinafter referred to as the Contracting Parties

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

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 offenses against customs laws are prejudicial to their economic, fiscal, social, cultural and commercial interests;

Convinced that action against customs offenses 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 laws;  
for the United States of America: the United States Customs Service, Department of the Treasury;
2. the term “customs law” shall mean: any legal and administrative provisions applicable or enforceable by the Customs Administrations of both Contracting Parties in connection with the importation, exportation, transshipment, transit, storage and circulation of goods, including legal and administrative provisions relating to prohibitions, restrictions and other similar controls on the movement of controlled items across national boundaries;
3. the term “customs offense” shall mean: any contravention of customs law as defined by the national legislation of each Contracting Party as well as any such attempted contravention;
4. the term “person” shall mean: either a natural or a legal person;
5. the term “personal data” shall mean: data concerning an identified or identifiable natural person;
6. the term “information” shall mean: any data, documents, reports, certified or authenticated copies thereof, or other communications;
7. the term “requesting administration” shall mean: the Customs Administration which requests assistance;
8. the term “requested administration” shall mean: the Customs Administration from which assistance is requested.

## CHAPTER II

### *Scope of Agreement*

#### Article 2

1. The Customs Administrations shall afford each other administrative assistance under the terms set out in this Agreement for the proper application of customs laws and for the prevention, investigation and combating of customs offenses.

2. All assistance under this Agreement by either Contracting Party shall be performed in accordance with its domestic law and within the limits of its Customs Administration's competence and available resources.

3. This Agreement is intended solely for the mutual administrative assistance between the Contracting Parties. Without prejudice to the constitutional law of 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.

4. If assistance on matters dealt with in this Agreement should be afforded in accordance with another co-operation agreement in force between the Contracting 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 bilateral Treaty on Mutual Assistance in Criminal Matters, signed at The Hague on 12 June 1981, the bilateral Agreement Regarding Mutual Cooperation in the Tracing, Freezing, Seizure and Forfeiture of Proceeds and Instrumentalities of Crime and the Sharing of Forfeited Assets, signed at Washington, on 20 November 1992 and, as the case may be, any multilateral Convention in force between the Contracting Parties dealing with legal assistance in criminal proceedings with respect to illicit traffic in controlled items.

### CHAPTER III

#### *Scope of Assistance*

##### Article 3

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 laws and for the prevention, investigation and combating of customs offenses.

##### Article 4

On request, the requested administration shall provide all information about the customs laws and procedures applicable in its customs territory.

##### Article 5

The Contracting Parties shall allow officials of the Customs Administration of one Contracting Party to be present in the territory of the other Contracting Party on a permanent basis. The conditions under which

these officials will operate, regardless of their diplomatic status, shall be settled through diplomatic channels.

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

###### Article 7

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

- a) persons known to the requesting administration to have committed a customs offense or suspected of doing so, particularly those moving into and out of its territory;
- b) goods known or suspected by the requesting administration of being the subject of illicit traffic towards its territory; and
- c) means of transport known or suspected by the requesting administration of being used to commit customs offenses in its territory.

###### 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 offense.

2. In serious cases that could involve substantial damage to the economy, public health, public security or any other vital interest of the other Contracting Party, either Customs Administration shall, wherever possible, supply information without delay on its own initiative.

#### CHAPTER V

##### *Information*

###### Article 9

1. On request, copies of information shall be appropriately authenticated. 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 may be replaced by computer based information produced in any form for the same purpose. All relevant information for interpreting or utilizing that information shall be supplied at the same time.

## CHAPTER VI

### *Experts and Witnesses*

#### Article 10

1. On request, the requested administration shall authorize its officials to appear before a court or tribunal of the other Contracting Party as experts or witnesses in the matter of a customs offense. Such officials shall produce information or authenticated copies thereof, as may be considered essential for the proceedings.

2. In cases where a customs official requested to appear as a witness is entitled to diplomatic or consular immunities at the time of the request, the requested Contracting Party will sympathetically consider a waiver of such immunity under such conditions as the requested Contracting Party determines to be appropriate.

## CHAPTER VII

### *Communication of Requests*

#### Article 11

1. Assistance under this Agreement shall be exchanged directly between the Customs Administrations.

2. Requests for assistance under this Agreement shall be made in writing and shall be accompanied by any documents deemed useful by the requesting administration. When the circumstances so require, requests may also be made verbally. Such requests shall be promptly confirmed in writing.

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

- a) the administration making the request;
- b) 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.

4. The information referred to in Article 3 of this Agreement shall be communicated to officials who are specially designated for this purpose by each Customs Administration and of whom a list shall be furnished to the Customs Administration of the other Contracting Party.

## 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 the provisions of its national law or promptly transmit the request to the appropriate agency. These inquiries shall include the taking of statements from persons from whom information is sought in connection with a customs offense and from witnesses and experts. In making such inquiries the requested administration shall use all means available to provide the requested assistance.

#### Article 13

1. On written request, officials specially 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 offense:

- a) consult in the offices of the requested administration the documents, registers and other relevant data held in those offices to extract any information in respect of that customs offense;
- b) take copies of the documents, registers and other data relevant in respect of that customs offense;
- c) be present during any inquiry by the requested administration relevant to the requesting administration in its customs territory; and
- d) communicate the result of an inquiry under c) as well as any other information to their Customs Administration.

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

3. The officials of the requesting administration shall, while present in the territory of the other Contracting Party, enjoy such protection and assistance from the requested administration as is available under the domestic law of the other Contracting Party. Notwithstanding this provision, and to the extent consistent with any applicable immunities, the officials will be responsible for offenses they might commit.

## Article 14

1. A request by a Customs Administration that a certain procedure be followed shall be complied with, subject to the domestic law of the requested Contracting Party.

2. The requesting Administration shall, if it so requests, be advised of the time and place of the action to be taken in response to the request so that such action may be co-ordinated.

## CHAPTER IX

*Confidentiality of Information*

## Article 15

1. Any information received within the framework of administrative assistance under this Agreement shall be used solely for the purposes of this Agreement and solely by the Customs Administrations. The use of the information for other purposes or by other authorities is subject to the express approval of the Customs Administration furnishing that information.

2. Where the national law of the furnishing Contracting Party so prescribes, no information furnished within the framework of administrative assistance under this Agreement shall be used in evidence in criminal prosecutions in the receiving Contracting Party without the prior consent of the public prosecution or judicial authorities of the furnishing Contracting Party.

3. Paragraph 1 shall not preclude the disclosure of the received information in connection with a criminal prosecution, where the law of the receiving Contracting Party provides for an obligation for its Customs Administration to do so. The furnishing Customs Administration shall be given advanced notice of the envisaged disclosure.

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

5. Personal data shall not be exchanged whenever there are reasonable grounds for believing that the transfer or the use made of the data transmitted would be contrary to the basic legal principles of one of the Contracting Parties or shall be exchanged subject to the satisfaction of certain conditions or requirements. On request, the receiving Customs Administration shall inform the furnishing Customs Administration of the use made of personal data supplied and of the results achieved.

6. This Article is without prejudice to the obligations of the Kingdom of the Netherlands under the legislation of the European Union to

provide information to the European Commission or any of the Customs Administrations of the European Union's Member States. The United States Customs Service shall receive notification of any intended transfer of such information.

#### Article 16

1. Where personal data are exchanged under this Agreement, the national legal and administrative provisions of the Contracting Parties that ensure a standard of data protection at least equivalent to that described by the basic principles set out in the Annex to this Agreement, which is an integral part of this Agreement, shall apply. The Customs Administrations shall provide each other with the most recent text of the relevant provisions.

2. The Customs Administrations shall inform each other of any change in their data protection legislation occurring after the entry into force of this Agreement. They will draw particular attention to changes that would make their provisions no longer conform to the standard of data protection described by the basic principles set out in the Annex to this Agreement.

### 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. Compliance may be made subject to the satisfaction of certain conditions or requirements.

2. If the requesting administration is unable to comply with a similar request 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 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 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 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 offenses maintain personal and direct relations with each other.

2. The Customs Administrations will decide, within the framework of this Agreement, on further detailed arrangements 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.

## CHAPTER XIII

*Application*

## Article 20

1. This Agreement shall apply to the customs territory of the United States of America.

2. This Agreement shall apply to the territory of the Kingdom of the Netherlands in Europe. This agreement or some of its provisions may be extended to the Netherlands Antilles and/or Aruba by exchange of diplomatic notes.

## CHAPTER XIV

*Entry into Force and Termination*

## Article 21

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 22

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 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.

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

## Article 23

The Customs Administrations 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 in duplicate at Washington on October 28<sup>th</sup>, 1996, in the English language.

*For the Kingdom of the Netherlands:*

(sd.) A. P. R. JACOBVITS DE SZEGED

*For the United States of America:*

(sd.) S. H. BANKS

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**Annex****Basic Principles of Data Protection**

Each Customs Administration shall to the extent consistent with applicable national legal and administrative provisions, abide by principles at a minimum equivalent to the following:

1. Personal data undergoing automatic processing shall be:

- a) obtained and processed fairly and lawfully;
- b) stored for specified and legitimate purposes and not used in a way incompatible with those purposes;
- c) adequate, relevant and not excessive in relation to the purposes for which they are stored;
- d) accurate and, where necessary, kept up to date;
- e) preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored.

2. Personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may not be processed automatically unless authorized by domestic law under appropriate safeguards. The same shall apply to personal data relating to criminal convictions.

3. Appropriate security measures shall be taken for the protection of personal data stored in automated data files against unauthorized destruction or accidental loss as well as against unauthorized access, alteration or dissemination.

4. Appropriate measures shall be taken to enable a person:

- a) to establish the existence of an automated personal data file, its main purposes, as well as the identity and location of the controller of the file;
- b) to obtain at reasonable intervals and without excessive delay or expense confirmation of whether personal data relating to him are stored in the automated data file as well as communication to him of such data in an intelligible form;
- c) to obtain, as the case may be, rectification or erasure of such data if they have been processed contrary to the provisions of domestic law giving effect to the basis principles set out in principles 1 and 2 of this Annex;
- d) to have a remedy if a request for communication or, as the case may be, communication, rectification or erasure as referred to in paragraphs b and c of this principle is not complied with.

5.1. No exception to the provisions under principles 1, 2 and 4 of this Annex shall be allowed except within the limits defined in these principles.

5.2. Derogation from the provisions under principles 1, 2 and 4 of this Annex shall be allowed when such derogation is provided for by the law of the Contracting Party and constitutes a necessary measure in a democratic society in the interest of:

a) protecting State security, public safety, the monetary interests of the State or the suppression of criminal offenses; and

b) protecting the data subject or the rights and freedoms of others.

5.3. Restrictions on the exercise of the rights specified in principle 4, paragraphs b, c and d of this Annex, may be provided by law with respect to automated personal data files used for statistics or for scientific research purposes where there is obviously no risk of an infringement of the privacy of the data subjects.

6. Each Contracting Party undertakes to establish appropriate sanctions and remedies for violations of provisions of domestic law giving effect to the basic principles set out in this Annex.

7. None of the provisions of this Annex shall be interpreted as limiting or otherwise affecting the ability of a Contracting Party to grant data subjects a wider measure of protection than that stipulated in this Annex.

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#### 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 21 in werking treden op de eerste dag van de tweede maand nadat de Verdragsluitende Partijen elkaar langs diplomatieke weg schriftelijk hebben medegedeeld dat aan de grondwettelijke of nationale vereisten voor de inwerkingtreding van dit Verdrag is voldaan.

#### J. GEGEVENS

Van de op 5 december 1953 tot stand gekomen Aanbeveling van de Internationale Douaneraad 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 12 juni 1981 te 's-Gravenhage tot stand gekomen Verdrag tussen het Koninkrijk der Nederlanden en de Verenigde Staten van Amerika aangaande wederzijdse rechtshulp in strafzaken, naar welk Verdrag in artikel 2, vierde lid, wordt verwezen, is de tekst geplaatst in *Trb.* 1981, 188; zie ook, laatstelijk, *Trb.* 1993, 186.

Van de op 20 november 1992 te Washington tot stand gekomen Overeenkomst tussen het Koninkrijk der Nederlanden en de Verenigde Staten van Amerika inzake wederzijdse samenwerking bij de opsporing, inbeslagneming en confiscatie van opbrengsten van en hulpmiddelen bij het plegen van misdrijven en de verdeling van geconfisqueerde voorwerpen, naar welke Overeenkomst in artikel 2, vierde lid, wordt verwezen, is de tekst geplaatst in *Trb.* 1993, 5; zie ook *Trb.* 1994, 171.

Uitgegeven de *vijfde* december 1996.

*De Minister van Buitenlandse Zaken,*

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