

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2001 Nr. 104

A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden en de Republiek Zuid-Afrika inzake wederzijdse administratieve bijstand tussen hun douane-administraties voor de juiste toepassing van douanewetgeving en voor de preventie, het onderzoek en de bestrijding van inbreuken op de douanewetgeving;
Den Haag, 30 mei 2001*

B. TEKST

Agreement between the Kingdom of the Netherlands and the Republic of South Africa regarding mutual administrative assistance between their customs administrations for the proper application of customs law and for the prevention, investigation and combating of customs offences

The Kingdom of the Netherlands and the Republic of South Africa, hereinafter jointly referred to as the “Contracting Parties” and in the singular as the “Contracting Party”,

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 public health and 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 in particular the Recommendations 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:

Article 1

Definitions

For the purposes of this Agreement, unless the context otherwise requires:

(a) the term “customs administration” shall mean:

(i) for the Kingdom of the Netherlands: the central administration responsible for the implementation of customs law;

(ii) for the Republic of South Africa: the South African Revenue Service;

(b) the term “customs law” shall mean: any legal and administrative provisions applicable or enforceable by the customs administrations in connection with the importation, exportation, transshipment, transit, storage and circulation of goods, including legal and administrative provisions relating to measures of prohibition, restriction and control;

(c) the term “customs offence” shall mean: any breach of customs law as defined by the legislation of each Contracting Party as well as any such attempted breach;

(d) the term “customs claim” shall mean: any amount of duties and taxes to which this Agreement applies and of increases, surcharges, over-due payments, interests and costs pertaining to the said duties and taxes that cannot be collected in one of the Contracting Parties;

(e) the term “person” shall mean: any natural or legal person;

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

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

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

(i) the term “requested administration” shall mean: the customs administration from which assistance is requested.

Article 2

Scope of the Agreement

1. The Contracting Parties shall through their customs administrations afford each other mutual 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 by either Contracting Party shall be performed in accordance with its legal and administrative provisions and within the limits of its customs administration's competence and available resources.

3. This Agreement is without prejudice to any obligations stemming from present or future international law and from legislation enacted to implement those obligations. For the Kingdom of the Netherlands those obligations stem in particular from the legislation of the European Union and any international agreements between the Member States of the European Union. For the Republic of South Africa those obligations stem in particular from international agreements between the Member States of the Southern African Development Community and the Member States of the Southern African Customs Union.

4. This Agreement is intended solely for mutual administrative assistance between the Contracting Parties. The provisions of this Agreement shall not give rise to a right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of a request.

5. This Agreement is without prejudice to rules governing mutual assistance in criminal matters. If mutual assistance should be afforded in accordance with another agreement in force between the Contracting Parties, the requested administration shall indicate which relevant authorities are concerned.

Article 3

Scope of Assistance

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.

Article 4

Communication of Information

1. On request, the requested administration shall provide all information about customs law and procedures applicable in that Contracting Party and which are relevant to inquiries relating to a customs offence.

2. Either customs administration shall communicate, on request or 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.

Article 5

Technical Assistance

The customs administrations may provide each other technical assistance in customs matters including:

- (a) exchange of customs officers when mutually beneficial for the purpose of advancing the understanding of each other's techniques;
- (b) training and assistance in developing specialized skills of customs officers;
- (c) exchange of information and experience relating to the usage of interdiction and detection equipment;
- (d) exchange of experts knowledgeable about customs matters;
- (e) exchange of professional, scientific and technical data relating to customs law and procedures.

Article 6

Special Instances of Assistance

1. On request, the requested administration shall in particular provide the requesting administration with the following information:

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

2. Each customs administration shall on its own initiative, or on request supply to the other customs administration information on transactions, completed or planned, which constitute or appear to constitute a customs offence.

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

Article 7

Special Surveillance of Persons, Goods, Places and Means of Transport

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 persons moving into and out of the territory of the requested Contracting Party;

(b) goods either in transport, in transit or in storage, and means of payment used or suspected of being used to commit customs offences;

(c) places which are or may be used for storing goods known to be used or suspected of being used to commit customs offences;

(d) means of transport known to be used or suspected of being used to commit customs offences.

2. The customs administrations may, by mutual agreement and arrangement, permit, 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.

Article 8

Assistance in Recovery

1. The customs administrations shall afford each other assistance with a view to the recovery of customs claims in accordance with their respective legal and administrative provisions for the recovery of their own duty and tax claims, provided that both Contracting Parties have enacted the necessary legal and administrative provisions.

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 customs administration of its legal and administrative provisions as meant in paragraph 1 of this Article shall be at the discretion of that administration.

Article 9

Original Information

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.

Article 10

Experts and Witnesses

On request, the requested administration may authorise its officials to appear before a court or tribunal in the other Contracting Party as experts or witnesses in the matter of a customs offence.

Article 11

Communication of Requests

1. Requests for assistance under this Agreement shall be addressed directly to the customs administration of the other Contracting Party, shall be made in writing and shall be accompanied by any documents deemed useful. When the circumstances so require, requests may also be made orally. Such requests shall be promptly confirmed in writing.

2. Requests made pursuant to paragraph 1 of this Article, shall include the following details:

- (a) the administration making the request;
- (b) the subject of and reason for the request;
- (c) a brief description of the matter, the legal elements and the nature of the proceeding;
- (d) the names and addresses of the parties concerned with the proceeding, if known.

3. A request by either customs administration that a certain procedure be followed shall be complied with, subject to the legal and administrative provisions of the requested Contracting Party.

4. The information referred to in this Agreement shall be communicated only to officials who are designated for this purpose by each customs administration. A list of officials so designated shall be furnished to the customs administration of the other Contracting Party in accordance with paragraph 2 of Article 18 of this Agreement.

Article 12

Execution of Requests

If the requested administration does not have the information requested, it shall initiate inquiries to obtain that information in accordance with its legal and administrative provisions. These inquiries may include the taking of statements from persons from whom information is sought in connection with a customs offence and from witnesses and experts.

Article 13

Visits by Officials

1. On written request, officials designated by the requesting administration may, with the authorisation of the requested administration and subject to conditions the latter may impose, for the purpose of investigating a customs offence:

(a) examine in the offices of the requested administration the documents, registers and other relevant data to extract any information in respect of that customs offence;

(b) take copies of the documents, registers and other data relevant in respect of that customs offence;

(c) be present during an inquiry conducted by the requested administration in the territory of the requested Contracting Party and relevant to the requesting administration.

2. When officials of the requesting administration are present in the territory of the other Contracting Party 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 the same protection as that accorded to customs officials of the other Contracting Party, in accordance with the laws in force there, and be responsible for any offence they might commit.

Article 14

Confidentiality of Information

1. Any information received under this Agreement shall be used solely for the purposes of this Agreement and by the customs administrations, except in cases in which the customs administration which furnished such information expressly approves its use for other purposes or by other authorities. Such use shall then be subject to any restrictions laid down by the customs administration which furnished the information. Any such information may, if the law of the furnishing Contracting Party so prescribes, only be used in criminal prosecutions after the public prosecution or judicial authorities in the furnishing Contracting Party have agreed to such use.

2. Any information received under this Agreement shall at least be subject to the same protection and confidentiality as the same kind of information is subject to under the law of the Contracting Party where it is received.

3. The disclosure by either customs administration of information under the obligations of the Kingdom of the Netherlands or the Repub-

lic of SouthAfrica, referred to in paragraph 3 of Article 2 of this Agreement, will be notified to the other customs administration in advance.

Article 15

Personal Data Protection

1. Personal data exchanged under this Agreement shall be subject to a level of protection equivalent to the level of protection maintained by the Contracting Party providing the data.
2. The Contracting Parties shall provide each other with all legislation concerning personal data protection of their respective States.
3. Personal data exchange shall not begin until the Contracting Parties have agreed in accordance with paragraph 2 of Article 18 of this Agreement that the level of protection is equivalent in either Contracting Party.

Article 16

Exemptions

1. If the requested administration considers that the assistance requested might be prejudicial to public policy, to the sovereignty, security or other essential interests of that Contracting Party, or might in the opinion of that customs administration involve violation of industrial, commercial or professional secrecy, it may refuse to provide assistance or it may provide the assistance only if certain conditions are met.
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.

Article 17

Costs

1. The customs administrations shall waive all claims for reimbursement of costs incurred in the execution of this Agreement, except for

expenses and allowances paid to experts and to witnesses as well as costs of interpreters other than Government employees, which shall be borne by the requesting administration.

2. Pecuniary consequences of acts of recovery which have been found unjustified in respect of the validity of the customs claim concerned or of the instrument permitting enforcement in the requesting Contracting Party, shall be borne by the requesting administration.

3. If expenses of a substantial and extraordinary nature are or will be required to execute the request, the Contracting Parties shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

Article 18

Implementation of the Agreement

1. The customs administrations shall enable their officials responsible for the investigation or combating of customs offences to 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 through the diplomatic channel.

5. The Contracting Parties shall meet in order to review this Agreement on request or at the end of five years from the date of its entry into force, unless they notify one another in writing that no such review is necessary.

Article 19

Application

1. As far as the Republic of South Africa is concerned, this Agreement shall apply to its territory.

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 specified and agreed in notes to be exchanged through the diplomatic channel.

Article 20

Entry into Force

The Contracting Parties shall notify each other in writing, through the diplomatic channel, of the completion of the constitutional requirements for the entry into force of this Agreement. This Agreement shall enter into force on the first day of the second month following the date of receipt of the later of these notifications.

Article 21

Termination

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

2. The termination shall take effect three months from the date of receipt of the notification of termination by 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 or to Aruba if it has been extended thereto in conformity with the provisions of paragraph 2 of Article 19.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments have signed and sealed this Agreement, in duplicate in the English language, both texts being equally authentic.

DONE in duplicate at The Hague on the 30th day of May 2001.

For the Kingdom of the Netherlands

(s.) W. BOS

Mr. W. Bos
State Secretary for Finance

For the Republic of South Africa

(s.) P. JANA

Mrs. P. Jana
Ambassador

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 de Partijen dat aan de constitutionele voorwaarden voor inwerkingtreding is voldaan.

J. GEGEVENS

De Internationale Douaneraad, naar welke Raad in de preambule van 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.

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.

Uitgegeven de *achtste* juni 2001.

De Minister van Buitenlandse Zaken,

J. J. VAN AARTSEN