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TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2009 Nr. 66

A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden en de Regering van Japan inzake wederzijdse administratieve bijstand en samenwerking in douanezaken;
's-Gravenhage, 9 maart 2009*

B. TEKST

Agreement between the Government of the Kingdom of the Netherlands and the Government of Japan regarding mutual administrative assistance and cooperation in customs matters

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

Considering that offenses against customs laws are prejudicial to the economic, fiscal, social, public health, cultural and commercial interests and the public security of their respective countries,

Considering the importance of assuring the accurate assessment of customs duties and other taxes collected at importation or exportation,

Considering that illegal cross-border trafficking in weapons, explosives and chemical, biological and nuclear substances as well as in narcotic drugs, psychotropic substances and precursors constitutes a danger to society,

Recognizing the need for international cooperation in matters related to the administration and enforcement of the customs laws of their respective countries,

Convinced that actions against customs offenses can be made more effective by cooperation between their Customs Administrations,

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

Having regard to the recommendation regarding Mutual Administrative Assistance of December 5, 1953 and the resolution regarding the Framework of Standards to Secure and Facilitate Global Trade of June 2006, both adopted by the Customs Co-operation Council,

Have agreed as follows:

Article 1

For the purposes of this Agreement:

a) the term “customs law” shall mean any laws and regulations of Japan or the Kingdom of the Netherlands, governing the import, export and transit of goods and placing of goods under any other customs procedures, including measures of prohibition, restriction and control falling under the competence of the Customs Administration;

b) the term “Customs Administration” shall mean, in Japan, the Ministry of Finance, and, in the Kingdom of the Netherlands, the central administration responsible for the implementation of customs law;

c) the term “information” shall mean any data, documents, reports or other communications;

d) the term “customs offense” shall mean any violation or attempted violation of customs law;

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

f) the term “personal data” shall mean all information relating to an identified or identifiable individual;

g) the term “Requesting Administration” shall mean the Customs Administration that requests assistance;

h) the term “Requested Administration” shall mean the Customs Administration from which assistance is requested;

i) the term “customs territory” shall mean the territory of the country of each Contracting Party in which the customs law of that country is in force; and

j) the term “controlled delivery” shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of a country, with the knowledge and under the supervision of the competent authority of that country, with a view to the investigation of an offense and the identification of persons involved in the commission of the offense.

Article 2

1. The Contracting Parties shall assist each other through their respective Customs Administrations to ensure proper application of customs law, and to prevent, investigate and combat any customs offense, in accordance with the provisions of this Agreement.

2. The Contracting Parties shall through their respective Customs Administrations make cooperative efforts for simplification and harmonization of their customs procedures.

3. This Agreement shall be implemented by the Contracting Parties in accordance with the laws and regulations in force in each of their countries, and within the available resources of their respective Customs Administrations.

4. 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.

Article 3

1. The Customs Administrations shall provide each other, either on request or on their own initiative, with information necessary to ensure proper application of customs law and to prevent, investigate and combat any customs offense.

2. Either Customs Administration shall, on its own initiative or upon request, provide the other Customs Administration with information regarding the activities that may result in customs offenses within the customs territory of the country of the latter Customs Administration.

3. When either Customs Administration considers that information is relevant to serious customs offenses that could involve substantial damage to the economy, public health, public security or any other vital interest of the country of the other Customs Administration, the former Customs Administration shall, if deemed necessary, provide the latter Customs Administration with such information without delay.

Article 4

The Customs Administrations may, with respect to the exchange of information covered by this Agreement, make arrangements in accordance with paragraph 3 of Article 15 of this Agreement under which they shall provide each other with:

- a) predefined sets of information whenever they obtain such information; or
- b) specific information on consignments leaving from the territory of a Contracting Party in advance of their arrival in the territory of the other Contracting Party.

Article 5

The Requested Administration shall provide information on and exercise special surveillance of:

- a) goods that are or may be transported in such a way that there are reasonable grounds for believing that they are intended to be used in the commission of a customs offense within the customs territory of the country of the Requesting Administration;
- b) means of transport that are or may be used in such a way that there are reasonable grounds for believing that they are intended to be used in the commission of a customs offense within the customs territory of the country of the Requesting Administration;
- c) places where stocks of goods have been or may be stored or assembled in such a way that there are reasonable grounds for believing that these goods are intended to be used in the commission of a customs offense within the customs territory of the country of the Requesting Administration; and
- d) persons in respect of whom there are reasonable grounds for believing that they are or have been involved in the commission of a customs offense within the customs territory of the country of the Requesting Administration.

Article 6

The Customs Administrations, in consultation with the relevant law enforcement agencies, may cooperate in and exchange information on a controlled delivery executed in accordance with the laws and regulations of their respective countries.

Article 7

1. Requests pursuant to this Agreement shall be made in writing in English. Information deemed useful for the execution of such requests

shall accompany the requests. When the urgency of the situation so requires, oral requests may also be made and accepted, but shall be promptly confirmed in writing.

2. Requests made pursuant to paragraph 1 shall include the following information:

- a) Requesting Administration;
- b) the action requested;
- c) the object and the reason for the request;
- d) indications as exact and comprehensive as possible on the persons who are the target of the investigations;
- e) a summary of the relevant facts and of the enquiries already carried out; and
- f) legal elements involved.

3. Unless otherwise provided in this Agreement, the information provided pursuant to this Agreement shall be directly communicated between officials designated by the respective Customs Administrations.

Article 8

1. The Requested Administration shall take all reasonable measures to execute the request for assistance made under this Agreement.

2. Duly authorized officials from the Requesting Administration, may, with the agreement of the Requested Administration and subject to the conditions laid down by the latter, be present to obtain in the offices of the Requested Administration, information related to activities that are or may be customs offenses, which the Requesting Administration needs for the purpose of this Agreement.

3. If the Requested Administration agrees to the request of the Requesting Administration, officials specially designated by the Requesting Administration may, subject to the conditions imposed by the Requested Administration, be present at the inquiry conducted by the Requested Administration in the customs territory of the country of the Requested Administration.

4. Where the Requested Administration considers it appropriate for officials of the requesting Contracting 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 Contracting Party, subject to any terms and conditions it may specify.

5. When officials of either Contracting Party are present in the customs territory of the country of the other Customs Administration in

accordance with the provisions of this Agreement, they must at all times be able to furnish proof of their identity and official capacity.

6. The Requested Administration shall, upon request by the Requesting Administration and when it deems appropriate, advise the Requesting Administration of the time and place of the action it will take in response to the request for assistance.

Article 9

1. Information received pursuant to this Agreement shall only be used for the purposes specified in paragraph 1 of Article 2 of this Agreement. It shall not be communicated to other authorities unless the Customs Administration providing the information has expressly approved in writing its use by that other authorities.

2. Notwithstanding the second sentence of paragraph 1, unless otherwise notified by the Customs Administration providing the information, the Customs Administration receiving the information may provide the information received pursuant to this Agreement to the relevant law enforcement agencies of its country, which may use such information under the conditions stipulated in the first sentence of paragraph 1, paragraphs 3, 4 and 5, and Article 10 of this Agreement.

3. Each Contracting Party shall maintain the confidentiality of any information received pursuant to this Agreement, and shall grant at least the same level of protection under the laws and regulations of the country of the Customs Administration providing the information unless the Customs Administration providing the information consents to the disclosure of such information.

4. Personal data may be exchanged only where the Contracting Party which may receive it undertakes to protect such data in at least an equivalent way to the one applicable to that particular case in the Contracting Party that may supply it. The Contracting Party that may supply the information shall not stipulate any requirements that are more onerous than those applicable to it in its own jurisdiction.

5. This Article shall not preclude the use or disclosure of information to the extent that there is an obligation to do so under the laws and regulations of the country of the Customs Administration receiving the information. Such Customs Administration shall, wherever possible, give advance notice of any such disclosure to the Customs Administration providing the information.

Article 10

1. Information provided from the Customs Administration of a Contracting Party to the Customs Administration of the other Contracting Party pursuant to this Agreement shall not be used by the latter Contracting Party in criminal proceedings carried out by a court or a judge.

2. In the event that information provided from the Customs Administration of a Contracting Party to the Customs Administration of the other Contracting Party pursuant to this Agreement is needed to be used by the latter Contracting Party in criminal proceedings carried out by a court or a judge, the latter Contracting Party shall, in order to use such information in criminal proceedings carried out by a court or a judge, submit a request for such information to the former Contracting Party through diplomatic channels or other channels established in accordance with the laws of the country of the former Contracting Party.

Article 11

1. In cases where the Contracting Party of the Requested Administration is of the opinion that assistance under this Agreement would infringe upon the sovereignty, security, public policy or other substantial interest of its country, assistance may be refused or withheld, or may be made subject to the satisfaction of certain conditions or requirements.

2. If the Requesting Administration would be unable to execute a similar request in case such a request were made by the Requested Administration, it shall draw attention to that fact in its request. Execution of such a request shall be at the discretion of the Requested Administration.

3. Assistance may be withheld by the Requested Administration on the ground that it will interfere with an ongoing investigation, including investigation by the relevant law enforcement agencies, prosecution or judicial proceeding. In such a case, the Requested Administration shall consult with the Requesting Administration to determine if assistance can be given subject to any terms or conditions as the Requested Administration may require.

4. In the event that a request cannot be executed, the Requesting Administration shall be promptly notified of that fact, and provided with a statement of the reasons for refusal or postponement of the request. The statement may be accompanied by the relevant information which may be useful for the Requesting Administration in its further pursuit of the request.

Article 12

The Customs Administrations shall cooperate, when necessary and appropriate, in the areas of research, development, and testing of new customs procedures, enforcement aids and techniques, training activities of customs officers, and exchange of personnel between them.

Article 13

1. Expenses incurred in the implementation of this Agreement shall be borne by the respective Contracting Parties.

2. If during the execution of a request it becomes apparent that completion of the execution of the request will entail expenses of an extraordinary nature, the Customs Administrations shall consult to determine the terms and conditions under which the execution may continue.

Article 14

As far as the Kingdom of the Netherlands is concerned, this Agreement shall be applicable in its territory in Europe. It may, however, be extended either in its entirety or with any necessary modifications to the Netherlands Antilles and/or Aruba through the exchange of diplomatic notes.

Article 15

1. The Customs Administrations may hold, as necessary and within their competence, consultations on any matters which may arise in the routine implementation of this Agreement.

2. Notwithstanding paragraph 1, the Contracting Parties may hold, as necessary, consultations through diplomatic channels on any matters which may arise in the implementation of this Agreement.

3. Detailed arrangements to implement this Agreement will be concluded, as necessary, between the Customs Administrations of the Contracting Parties.

Article 16

1. This Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have notified each other of the completion of the procedures necessary for this purpose through the exchange of diplomatic notes.

2. Either Contracting Party may terminate this Agreement by giving three months written notice through diplomatic channels. Requests for assistance which have been received prior to the termination of the Agreement shall be completed in accordance with the provisions of this Agreement.

3. The Contracting Parties may meet in order to review this Agreement, as necessary.

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

DONE at The Hague, on the 9th of March 2009, in duplicate, in the English language.

For the Government of the Kingdom of the Netherlands:

J. K. DE JAGER

For the Government of Japan:

MINORU SHIBUYA

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 16, eerste lid, in werking treden op de eerste dag van de tweede maand nadat de Verdragsluitende Partijen elkaar langs diplomatieke weg ervan in kennis hebben gesteld dat de daartoe vereiste procedures zijn voltooid.

Uitgegeven de zesde mei 2009.

De Minister van Buitenlandse Zaken,

M. J. M. VERHAGEN