

**AGREEMENT BETWEEN THE COMMONWEALTH OF  
AUSTRALIA AND THE KINGDOM OF THE NETHERLANDS ON  
MUTUAL ADMINISTRATIVE ASSISTANCE FOR THE PROPER  
APPLICATION OF CUSTOMS LAW AND FOR THE  
PREVENTION, INVESTIGATION AND COMBATING OF  
CUSTOMS OFFENCES, DONE AT THE HAGUE ON  
24 OCTOBER 2001**

Documents tabled on 12 March 2002

- National Interest Analysis
- Text of the proposed treaty action

**Agreement between the Commonwealth of Australia and the Kingdom of the Netherlands on Mutual Administrative Assistance for the proper application of Customs law and for the prevention, investigation and combating of Customs offences, done at The Hague on 24 October 2001.**

**NATIONAL INTEREST ANALYSIS**

**Proposed binding treaty action**

1. It is proposed that a treaty on Customs mutual administrative assistance with the Netherlands be brought into force through an exchange of Notes.

**Date of proposed binding treaty action**

2. The Notes will be exchanged as soon as practical after 25 June 2002.

3. The Agreement will 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 20).

4. The Agreement was signed on 24 October 2001 by Mr Peter Hussin, the Australian Ambassador in the Hague, and Mr Bos, the Netherlands State Secretary for Finance.

**Date of tabling of the proposed treaty action**

5. 12 March 2002.

**Summary of the purpose of the proposed treaty action and why it is in the national interest**

6. The Agreement sets out mutual assistance arrangements between Australia and the Netherlands for the proper application of customs law and for the prevention, investigation and combating of customs offences.

7. The exchange of information and intelligence is increasingly important in these times of increased terrorism and transnational crime. This increase imposes considerable demands on customs services globally. The only way to respond to these demands is to work more closely together, particularly regarding information and intelligence exchange and the identification of areas of high risk. The Agreement provides the legal and administrative framework necessary for the customs services of Australia and the Netherlands to work together to combat terrorism and transnational crime.

8. The Agreement furthers the close and effective relations between the two customs administrations.

**Reasons for Australia to take the proposed treaty action**

9. The Agreement, once in force, will facilitate and provide the basis for administrative assistance between the customs services of Australia and the Netherlands. Assistance, including the exchange of information and intelligence, will improve the administrative ability of both customs services to identify areas of high risk and to more effectively enforce Customs legislation. The identification of areas of high risk will assist in the:

- proper collection of customs duties and other taxes collected at importation and exportation;
- interception of prohibited imports, illegal drugs, endangered species and hazardous goods; and
- facilitation of the movement of legitimate trade.

10. Australian Customs has a number of mutual administrative assistance arrangements of less than treaty status with customs agencies of other countries, including Canada, the Republic of Korea, the United Kingdom, the USA, Hong Kong, Indonesia, New Zealand and Japan.

11. In this instance, Australian Government agreed to an instrument of treaty status as the domestic legislation of the Netherlands requires that mutual administrative assistance agreements be at treaty level.

12. Amendments to Section 16 of the *Customs Administration Act 1985* regulate the disclosure and recording of protected information by Customs. The definition of 'protected' is very broad and includes all information that 'directly or indirectly comes to the knowledge of, or into the possession of' a customs officer (or a contractor) while that person is 'performing' his or her duties. Under Section 16, Customs can only disclose information to an overseas agency when Customs has an agreement with the agency. Disclosures can only be made for the purpose of the agreement.

## **Obligations**

13. The Agreement outlines assistance measures between Australia and the Netherlands on the proper application of customs law and the prevention, investigation and combating of customs offences.

14. All assistance is to be in accordance with national legislation and within the competence and available resources of the customs administrations (Article 2(2)). This means that the Parties are not required to comply with requests when resources are unavailable or when the request is outside the scope of their customs legislation. The application is limited to customs law (Article 19(1)) and there should be no implications on any other government agency.

15. Mutual assistance in criminal matters, including criminal customs matters, between the Parties shall be exclusively governed by the Treaty between Australia and the Kingdom of the Netherlands on Mutual Assistance in Criminal Matters done at Canberra on 26 October 1988 (Article 2(5)).

16. The Agreement requires each Customs administration to provide information to the other on new customs law enforcement techniques and new trends, means and methods of committing customs offences (Article 4). Each customs administration must, on request, provide information as to whether goods have been lawfully exported from or imported into that country (Article 5). The Agreement requires parties to provide surveillance of suspected customs offenders, goods, transport and premises where requested (Article 6(1)). The Agreement obliges parties to provide information on any transaction suspected of being a customs offence (article 7).

17. The parties are obliged, on request, to provide expert or witness testimony in relation to customs offence proceedings (Articles 10, 12). The parties must allow officials from the other country to consult and copy records relating to customs offences; and to be present during an inquiry into a customs offence (Article 13(1)).

18. The Agreement sets out exemptions to its obligations, based on the protection of public order, an essential interest or commercial secret; where compliance with an obligation would not be reciprocated by the other country; and where compliance would interfere with an ongoing investigation, prosecution or proceeding (Article 16).

19. The Agreement outlines other areas of assistance including the recovery of claims, how the requests will be communicated and executed, the confidentiality of information and costs on the execution of the Agreement.

### **Implementation**

20. The Agreement requires the preparation of further detailed arrangements to facilitate the implementation of the Agreement (Article 18). The arrangements will include measures to ensure that officials responsible for investigating or combating customs offences maintain personal and direct relations with each other.

21. No changes are required to Australia's legislation and administrative practices.

### **Costs**

22. The Agreement will not impose any foreseeable additional financial expenditure on Australia.

### **Consultation**

23. The Agreement is based on the World Customs Organization Model Bilateral Agreement on Mutual Administrative Assistance in Customs Matters.

24. The Agreement will not have any implications on legitimate trade or any direct impact on Australian industry. Therefore there has been no consultation with Australian industry. The Agreement is restricted to the sharing of information and intelligence and is limited to the internal workings of the customs services of the Australia and the Netherlands.

25. Notification of the Agreement has been provided to the States and Territories through the Standing Committee on Treaties' Schedule of Treaty Action and no

comment has been received up to 28 February 2002. The Agreement does not require State or Territory action for its domestic implementation.

### **Regulation Impact Statement**

26. The Office of Regulation Review has been consulted and confirms that a Regulation Impact Statement is not required.

### **Future treaty action: amendments, protocols, annexes or other legally binding instruments**

27. The Agreement provides for its review on request or at the end of five years from the date of its entry into force, unless Parties notify one another by diplomatic means that no such review is necessary (Article 22).

### **Withdrawal or denunciation**

28. Either Party may terminate the Agreement at any time by notifying the other Party by diplomatic means. The termination shall take effect three months from the date of the notification of denunciation to the other Party (Article 21).

### **Contact details**

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