# AGREEMENT
# BETWEEN
# THE SOCIALIST REPUBLIC OF VIETNAM
# AND
# THE KINGDOM OF THE NETHERLANDS
# ON
# CO-OPERATION AND MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS

## Preamble

The Socialist Republic of Vietnam and the Kingdom of the Netherlands,

hereafter referred to as the Contracting Parties, or individually as "Contracting Party",

CONSIDERING the importance of accurate assessment of customs duties and of ensuring proper enforcement by their customs administrations of prohibitions, restrictions and measures of control in respect of specific goods;

CONSIDERING that offences against customs legislation are prejudicial to the economic, commercial, fiscal, social, public health, public security and cultural interests of the Contracting Parties;

CONSIDERING that illegal cross-border trafficking in weapons, explosives, chemical, biological and nuclear substances, endangered species, hazardous goods as well as in narcotic drugs, psychotropic substances and precursors constitutes a danger to society;

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

CONVINCED that action against customs offences can be made more effective by close co-operation between their customs administrations based on mutually agreed legal provisions;

HAVING REGARD TO the Recommendation on Mutual Administrative Assistance, the Declaration on the Improvement of Customs Co-operation and Mutual Administrative Assistance (the Cyprus Declaration) and the Resolution on Security and Facilitation of the International Trade Supply Chain, adopted in December 1953, July 2000 and June 2002, respectively, by the Customs Co-operation Council, now known as the World Customs Organization;

HAVING REGARD TO international conventions containing prohibitions, restrictions and special measures of control in respect of specific goods;

HAVING REGARD ALSO TO the United Nations Universal Declaration of Human Rights of 1948;

Have agreed as follows:

## CHAPTER I

## Definitions

### *Article 1*

For the purposes of this Agreement:

(a) "Customs administration" shall mean:

- For the Kingdom of the Netherlands: the central administration responsible for the implementation of customs legislation;
- For the Socialist Republic of Viet Nam, the General Department of Viet Nam Customs;

(b) "Customs duties" shall mean all duties, taxes, fees or any other charges which are levied in the territories of the Contracting Parties in application of customs legislation but not including fees or charges for services rendered;

(c) "Customs legislation"shall mean any legal provisions applicable or enforceable by either customs administration in connection with the importation, exportation, transshipment, transit, storage and movement of goods, including legal provisions relating to measures of prohibition, restriction and control in respect of specific goods, and in connection with combating money laundering and terrorist-

financing;

(d) "Customs offence" shall mean any violation or attempted violation of customs legislation;

(e) "Information" shall mean any data, whether or not processed or analysed, and documents, reports, and other communications in any format, including electronic, or certified, or authenticated copies thereof;

(f) "International trade supply chain" shall mean all processes involved in the cross-border movement of goods from the place of origin to the place of final destination;

(g) "Official" shall mean any customs officer or other government agent designated by either Contracting Party;

(h) "Person" shall mean any natural or legal person;

(i) "Personal data" shall mean any data concerning an identified or identifiable natural person;

(j) "Requested administration" shall mean the customs administration from which assistance is requested;

(k) "Requesting administration" shall mean the customs administration which requests assistance;

(l) "Requested Party" shall mean the Contracting Party whose customs administration is requested to provide assistance;

(m) "Requesting Party" shall mean the Contracting Party whose customs administration requests assistance.

## CHAPTER II

## Scope of the Agreement

### *Article 2*

1. The Contracting Parties shall through their customs administrations provide each other with administrative assistance under the terms set out in this Agreement, for the proper application of customs legislation, for the prevention, investigation and combating of customs offences and to ensure the security of the international trade supply chain.

2. All assistance under this Agreement by either Contracting Party shall be provided in accordance with its legal provisions and within the limits of its customs administration's competence and available resources.

3. 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.

4. This Agreement covers mutual administrative assistance between the Contracting Parties and is not intended to have an impact on mutual legal assistance agreements between them. If mutual assistance is to be provided by other authorities of the requested Party, the requested administration shall indicate those authorities and where known the relevant agreement or arrangement applicable.

5. The provisions of this Agreement shall not give rise to a right on the part of any person to impede the execution of a request for assistance.

## CHAPTER III

## Information

### *Article 3*

### *Information for the application and enforcement of customs legislation*

1. The customs administrations shall provide each other, either on request or on their own initiative, with information which helps to ensure the proper application of customs legislation, the prevention, investigation and combating of customs offences and the security of the international trade supply chain. Such information may relate to:

(a) New law enforcement techniques which have proved their effectiveness;

(b) New trends, means or methods of committing customs offences;

(c) Goods known to be the subject of customs offences, as well as

transport and storage methods used in respect of those goods;

(d) Persons known to have committed a customs offence or suspected of being about to commit a customs offence;

(e) Any other data that can assist customs administrations with risk assessment for control and facilitation purposes.

2. On request, the requested administration shall provide the requesting administration with information relative to instances where the latter has reason to doubt the information supplied to it by the person concerned in a matter related to the application of customs legislation.

### *Article 4*

### *Information relating to customs offences*

1. Either customs administration shall, on request or on its own initiative, provide the customs administration of the other Contracting Party with information on activities, planned, ongoing, or completed, which appear to constitute a customs offence in the territory of the other Contracting Party.

2. In cases that could involve substantial damage to the economy, public health, public security, including the security of the international trade supply chain, or any other vital interest of either Contracting Party, the customs administration of the other Contracting Party shall, wherever possible, supply such information on its own initiative without delay.

### *Article 5*

### *Information relating to the lawfulness of the importation or exportation of goods*

On request, the requested administration shall provide the requesting administration with information on:

(a) Whether goods exported from the territory of the requesting Party have been lawfully imported into the territory of the requested Party, and the customs procedure, if any, under which the goods have been placed;

(b) Whether goods imported into the territory of the requesting Party have been lawfully exported from the territory of the requested Party.

*Article 6*

*Automatic transmission of information*

The customs administrations may, by mutual arrangement in accordance with Article 18 of this Agreement, transmit to one another any information covered by this Agreement on an automatic basis.

*Article 7*

*Advanced transmission of information*

The customs administrations may, by mutual arrangement in accordance with Article 18 of this Agreement, transmit specific information to one another in advance of the arrival of consignments in the territory of the other Contracting Party.

## CHAPTER IV

## Types of assistance

*Article 8*

*Surveillance and provision of information*

1. On request, the requested administration shall maintain surveillance, under its legal competence, over and provide information on:

(a) Goods, either in transport or in storage, known to have been used or suspected of being used to commit a customs offence in the territory of the requesting Party;

(b) Means of transport known to have been used or suspected of being used to commit a customs offence in the territory of the requesting Party;

(c) Premises in the territory of the requested Party known to have been used or suspected of being used in connection with the commission of a customs offence in the territory of the requesting Party;

(d) Persons known to have committed a customs offence or suspected of being about to commit a customs offence in the territory of the requesting Party, particularly those moving into and out of the territory of the requested Party.

2. Either customs administration may maintain such surveillance and

provide such information on its own initiative if it has reason to believe that activities planned, ongoing or completed appear to constitute a customs offence in the territory of the other Contracting Party.

### *Article 9*

### *Technical assistance*

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

1. Exchange of customs officers when mutually beneficial for the purpose of advancing the understanding of each other's techniques;

2. Training and assistance in developing specialized skills of customs officers;

3. Exchange of information and experience relating to the usage of interdiction and detection equipment;

4. Exchange of experts knowledgeable about customs matters;

5. Exchange of professional, scientific and technical data relating to customs law and procedures.

## CHAPTER V

## Communication of requests

### *Article 10*

1. Requests for assistance under this Agreement shall be addressed directly to the customs administration of the other Contracting Party. Requests shall be made in writing or electronically and shall be accompanied by any information deemed useful for compliance with the request. The requested administration may require written confirmation of electronic requests. Where the circumstances so require, requests may be made verbally. Such requests shall be confirmed as soon as possible either in writing, or, if acceptable to both customs administrations, electronically.

2. Requests made pursuant to paragraph 1 of this Article shall

include the following details:

(a) The name of the requesting administration;

(b) The matter at issue, type of assistance requested, and reasons for the request;

(c) A brief description of the case under review and the legal provisions that apply;

(d) The names and addresses of the persons to whom the request relates, if known.

3. Where the requesting administration requests that a certain procedure or methodology be followed, the requested administration shall comply with such a request subject to its national legal provisions.

4. Where copies of information are not sufficient nor accepted, certified copies or original information shall be requested. Original information shall be returned at the earliest opportunity. The rights of the requested administration or of third parties relating thereto shall remain unaffected. Where requested original information cannot be provided in accordance with national legislation, it shall be replaced by copies duly certified by the requested administration.

## CHAPTER VI

## Execution of requests

### *Article 11*

### *Means of obtaining information*

1. If the requested administration does not have the information requested, it shall initiate inquiries to obtain that information.

2. If the requested administration is not the appropriate authority to initiate inquiries to obtain the information requested, it may, in addition to informing the requesting administration and indicating the appropriate authority, transmit the request to that authority. Information received from such authority is then provided to the requesting administration by the requested administration.

*Article 12*

***Presence of officials in the territory of the other Contracting Party***

On request of a competent authority of a Contracting Party, officials designated by the requesting administration may, with the authorization of the requested administration and subject to conditions the latter may impose according to its laws and regulations, for the purpose of investigating a customs offence:

(a) Examine, in the offices of the requested administration, documents and any other information in respect of that customs offence, and be supplied with copies thereof;

(b) Be present during an inquiry conducted by the requested administration in the territory of the requested Party, which is relevant to the requesting administration; these officials shall only have an advisory role.

*Article 13*

***Presence of officials of the requesting ContractingParty***

***at the invitation of the requested administration***

Where the requested administration considers it appropriate for officials of the requesting 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 Party subject to any terms and conditions it may specify.

*Article 14*

***Provisions for visiting officials***

1. When officials of either Contracting Party are present in the territory of the other Contracting Party under the terms of this Agreement, they must at all times be able to furnish proof of their identity and official capacity.

2. Officials of either Contracting Party shall, while in the territory of the other Contracting Party under the terms of this Agreement, enjoy the protection accorded to customs officers of the other Contracting Party to

the extent provided by its legal provisions, and be responsible for any offence they might commit.

## CHAPTER VII

## Use, confidentiality and protection of information

### *Article 15*

1. Any information received under this Agreement shall be used only by the customs administrations of the Parties and solely for the purpose and in line with the scope of administrative assistance under the terms set out in this Agreement.

2. On request, the Contracting Party that supplied the information may, notwithstanding paragraph 1 of this Article, authorize its use by other authorities or for other purposes by a written consent, subject to any terms and conditions it may specify.

3. Any information received under this Agreement shall be treated as confidential and shall, at least, be subject to the same confidentiality and protection as the same kind of information is subject to under the legal provisions of the Contracting Party where it is received.

4. Any personal data exchanged under this Agreement shall, at least, be subject to the level of protection afforded to personal data in the national legal or administrative provisions of the Contracting Party whose customs administration provided these personal data.

5. Contracting Parties shall provide each other with all legislation relevant to this Article. Personal data exchange will not begin before this legislation has been received. In case the legislation is amended, both Parties will inform each other about the amendments immediately.

6. Personal data exchange shall not begin before this legislation has been received and a practical guidance specifying the conditions under which the data can be stored and used, and how they have to be protected has been mutually arranged in accordance with Article 18 of this Agreement. In case the legislation is amended, the Contracting Parties shall inform each other immediately and update the practical guidance accordingly.

## CHAPTER VIII

### Exemptions

*Article 16*

1. Where any assistance requested under this Agreement may infringe the sovereignty, security, public policy or any other substantive national interest of the requested Party, or prejudice any legitimate commercial or professional interest, such assistance may be declined by that Contracting Party or provided subject to any terms and conditions it may require.

2. Where 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 if there are grounds to believe 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 provided subject to any terms and conditions the requested administration may require.

4. If the requested administration considers that the effort required to fulfil a request is clearly disproportionate to the perceived benefit to the requesting administration, it may decline to provide the requested assistance.

5. The requested administration declining or postponing assistance shall inform the requesting administration hereof without delay. The reasons for declining or postponement shall be given in writing or electronically.

## CHAPTER IX

### Costs

*Article 17*

1. Subject to paragraphs 2 and 3 of this Article, the Contracting Parties shall waive all claims for reimbursement of costs incurred in the application of this Agreement.

2. Costs of translators and interpreters other than Government

employees, shall be borne by the requesting Party.

3. If the execution of a request requires expenses of a substantial or extraordinary nature, the 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 X

## Implementation and application of the Agreement

### *Article 18*

The customs administrations shall jointly decide on detailed arrangements, within the framework of this Agreement, to facilitate the implementation and application of this Agreement.

## CHAPTER XI

## Territorial application

### *Article 19*

1. As far as the Socialist Republic of Viet Nam is concerned, this Agreement shall be applicable in the customs territory where the customs legislation applies.

2. As far as the Kingdom of the Netherlands is concerned, this Agreement shall be applicable in:

(a) Its territory in Europe and the Caribbean parts of the Netherlands (the islands of Bonaire, Sint Eustatius and Saba);

(b) Aruba;

(c) Curaçao;

(d) Sint Maarten.

3. Notwithstanding paragraph 2 of this Article, paragraph 3 of Article 2 is only applicable in the territory of the Kingdom of the Netherlands in Europe.

## CHAPTER XII

## Settlement of disputes

### *Article 20*

1. The customs administrations shall endeavour to resolve disputes or other difficulties concerning the interpretation or application of this Agreement by mutual accord.

2. Unresolved disputes or difficulties shall be settled through mutual consultations and negotiations between the Contracting Parties.

## CHAPTER XIII

## Final provisions

### *Article 21*

### *Entry into force*

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 met.

### *Article 22*

### *Review and amendment*

On request, the Contracting Parties shall review this Agreement and make relevant amendment, if necessary. Any amendment shall be made in writing and mutually agreed upon by the Contracting Parties. The amendment shall enter into force in accordance with Article 21 of this Agreement and will form an integral part of this Agreement.

### *Article 23*

### *Duration and termination*

1. This Agreement is intended to be of unlimited duration but either Contracting Party may terminate it in its entirety or in respect of

each separate part of the Kingdom of the Netherlands at any time by notification through diplomatic channels.

2. The termination shall take effect three months from the date of the notification of such to the other Contracting Party. Ongoing proceedings at the time of termination shall nonetheless be completed in accordance with the provisions of this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Agreement.

DONE AT Ha Noi on the 9th day of April 2019, in duplicate, in the English language.

| FOR THE SOCIALIST REPUBLIC OF VIET NAM | FOR THE KINGDOM OF THE NETHERLANDS |
|---|---|
| MS. VU THI MAI<br>VICE-MINISTRER OF FINANCE | MR. MENNO SNEL<br>STATE SECRETARY FOR FINANCE |