

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 1992 Nr. 8

A. TITEL

*Zetelovereenkomst tussen het Koninkrijk der Nederlanden en het
Gemeenschappelijk Fonds voor Grondstoffen;
's-Gravenhage, 19 december 1991*

B. TEKST

**Agreement between the Kingdom of the Netherlands and the Common
Fund for Commodities concerning the Headquarters of the Fund**

The Government of the Kingdom of the Netherlands
and

the Common Fund for Commodities,

Recalling that, during the United Nations Negotiating Conference on a Common Fund under the Integrated Programme for Commodities, the Government of the Kingdom of the Netherlands proposed Amsterdam as a suitable location for the Headquarters of the Common Fund for Commodities and that, at the First annual Meeting of the Governing Council of the Common Fund for Commodities in 1989, the Government of the Kingdom of the Netherlands gave certain undertakings regarding the provision and financing of office space for the Fund's Headquarters, conference facilities for its meetings and the costs of setting up the Headquarters,

Considering that the Governing Council of the Common Fund for Commodities decided to accept the offer of the Government of the Kingdom of the Netherlands to locate the Headquarters of the Fund in Amsterdam,

Bearing in mind that the Agreement Establishing the Common Fund for Commodities contains in its Articles 40 to 50 certain

provisions regarding the legal status, privileges and immunities of the Fund in its Member States,

Taking into account that the establishment of the Headquarters of the Common Fund for Commodities in the territory of the Kingdom of the Netherlands makes further provisions desirable,

Have agreed as follows:

Article 1

Definitions

In this Agreement:

a) the "Agreement of 1980" means the Agreement Establishing the Common Fund for Commodities, adopted at Geneva on 27 June 1980;

b) "this Agreement" means the Agreement between the Kingdom of the Netherlands and the Common Fund for Commodities concerning the Headquarters of the Fund;

c) "Member" means a State or an Intergovernmental Organization party to the Agreement of 1980;

d) "the Fund" means the Common Fund for Commodities;

e) "the Government" means the Government of the Kingdom of the Netherlands;

f) "Managing Director" means the Managing Director of the Common Fund for Commodities referred to in Article 24 of the Agreement of 1980;

g) "staff members" means persons appointed or recruited for employment with the Fund for the carrying out of its official activities other than persons in the domestic service of the Fund and persons recruited locally and assigned to hourly rates of pay;

h) "official activities of the Fund" means those activities undertaken pursuant to the Agreement of 1980 and to decisions of the Executive Board and Governing Council of the Fund, including the Fund's administrative activities;

i) "Premises of the Fund" or "Headquarters of the Fund" means buildings, parts of buildings, as well as conference facilities in use outside of the buildings normally occupied by the Fund for the fulfilment of its official functions;

j) "archives of the Fund" means all records, correspondence, documents, manuscripts, computer records, photographs, films and recordings belonging to or held by the Fund and any other materials which the Managing Director and the Government may agree to form part of the archives of the Fund;

k) "advisers" means persons designated by Members and notified to the Fund who act in an advisory capacity to the members of the

Executive Board, the Governing Council or the Consultative Committee, and

l) "experts" means persons, other than those referred to in sub-paragraph g. of this Article, designated by the Fund to perform official missions for the Fund.

Article 2

Status, privileges and immunities of the Fund

The status, privileges and immunities of the Fund in the Netherlands shall be governed by the provisions of Chapter X of the Agreement of 1980, as supplemented and augmented by the provisions of this Agreement.

Article 3

Legal Personality of the Fund

With reference to Article 41 of the Agreement of 1980, the Fund shall in the Netherlands possess full juridical personality under Netherlands law. This shall include the capacity:

- a) to contract;
- b) to acquire and dispose of immovable and movable property;
- c) to institute legal proceedings.

Article 4

Immunity from Juridical Proceedings

1. The Fund shall enjoy immunity from every form of legal process, except for actions which may be brought against the Fund:

- a) by lenders of funds borrowed by the Fund with respect to such funds;
- b) by buyers or holders of securities issued by the Fund with respect to such securities, and
- c) by assignees and successors in interest thereof with respect to the aforementioned transactions.

Such actions may be brought only before courts of competent jurisdiction in places in which the Fund has agreed in writing with the other party to be subject. However, if no provision is made as to the forum, or if an agreement as to the jurisdiction of such courts is not effective for reasons other than the fault of the party bringing legal action against the Fund, then such action may be brought before a competent court in the place in which the Fund has its Headquarters or has appointed an agent for the purpose of accepting service or notice of process.

2. No action shall be brought against the Fund by Members, Associated International Commodity Organizations (ICOs), International Commodity Bodies (ICBs), or their participants, or persons acting for or deriving claims from them, except in cases as in paragraph 1 of this Article. Nevertheless, Associated ICOs, ICBs, or their participants shall have recourse to such special procedures to settle controversies between themselves and the Fund as may be prescribed in agreements with the Fund, and, in the case of Members, in this Agreement and in any rules and regulations adopted by the Fund.

3. Notwithstanding the provisions of paragraph 1 of this Article, property and assets of the Fund, wherever located and by whomsoever held, shall be immune from search, any form of taking, foreclosure, seizure, all forms of attachment, injunction, or other judicial process impeding disbursement of funds or covering or impeding disposition of any commodity stocks or Stock Warrants, and any other interlocutory measures before the delivery of a final judgement against the Fund by a court having jurisdiction in accordance with paragraph 1 of this Article.

The Fund may agree with its creditors to limit the property or assets of the Fund which may be subject to execution in satisfaction of a final judgement.

4. In any event, immunity shall not extend to an action for damages arising out of an accident caused by a vehicle belonging to or operated on behalf of the Fund, where those damages are not recoverable from insurance.

Article 5

Immunity of assets from other actions

The property and assets of the Fund, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference or taking whether by executive or legislative action.

Article 6

The Headquarters

1. In consultation with and with the agreement of the Fund, the Government shall assist the Fund in securing suitable premises and facilities required for its functioning as long as its Headquarters are located in the Netherlands.

2. The Government and the Fund shall, as and when necessary, through an Exchange of Notes specify the respective responsibilities of the Government and the Fund in matters such as the payment of rent, provision of furniture and equipment, insurance, routine maintenance, liability in respect of third parties and any other pertinent matters.

Article 7

Protection of the Headquarters

The Government of the Netherlands shall exercise due diligence to ensure that the security and tranquility of the Headquarters are not impaired by any person or group of persons attempting unauthorized entry into, or creating a disturbance in the immediate vicinity of the Headquarters. When necessary for these purposes, the appropriate authorities shall provide adequate police protection in the vicinity of the Headquarters and within those Headquarters if so requested by the Managing Director when he or she has reasonable grounds for believing that disturbances of a serious nature have occurred or are about to occur in the Headquarters.

Article 8

Inviolability of the Premises

1. The premises of the Fund shall be inviolable. Any person authorized to enter any place under any legal provision shall not exercise that authority in respect of the premises of the Fund unless permission to do so has been given by or on behalf of the Managing Director. Such permission may, however, be presumed in case of fire or other emergencies requiring prompt protective action. Any person who has entered the premises with the presumed consent of the Managing Director, shall, if so requested by the Managing Director, leave the premises immediately. In other cases the Managing Director will give serious consideration to a request for permission from the Netherlands authorities to enter the premises without prejudice to the interests of the Fund.

2. The service of legal process may take place within the Headquarters only in case of an action brought against the Fund under paragraph 1 of Article 42 of the Agreement of 1980 or with the consent of, and under conditions approved by the Managing Director.

3. The Managing Director shall prevent the Headquarters from being used as a refuge by persons who are avoiding arrest under any law of the Netherlands, who are required by the Government for

extradition to another country, or who are endeavouring to avoid service of legal process.

Article 9

Inviolability of Archives

The archives of the Fund, wherever located and by whomever held, shall be inviolable.

Article 10

Facilities and Immunities in respect of Communications

1. The Fund shall have the right to use codes and to dispatch and receive official correspondence and other official communications by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags.

2. No censorship shall be applied to official communications to or from the Fund by whatsoever means of communication.

Article 11

Facilities and Immunities in respect of Publications

The circulation of publications and other information material sent by or to the Fund, in the fulfilment of its purposes, shall not be restricted in any way.

Article 12

Exemption from taxes and duties

1. The Government shall give full effect to all the provisions of Article 48 of the Agreement of 1980. In particular and in addition, the Fund shall, in respect of taxes and duties in the Netherlands:

a) enjoy exemption, within the scope of its official activities from all direct taxes including income tax, capital tax, corporation tax and direct taxes levied by local authorities;

b) enjoy exemption from stock-exchange tax, insurance tax, tax on capital duty and real property transfer tax;

c) be granted exemption from motor vehicle tax in respect of its motor vehicles used for its official activities. In order to obtain this exemption the Fund shall file a request for each purchase to which this exemption is applicable;

d) be accorded a refund of Value Added Tax paid on the supply of

goods or services of substantial value, with the exception of motor vehicles, necessary for its official activities. In this connection it is envisaged that claims for a refund will be made only in respect of goods and services supplied on a recurring basis or involving considerable expenditure as defined from time to time by the Government in respect of international organizations in the Netherlands;

e) be accorded a refund of the excise duty element included in the price of (i) alcoholic beverages and (ii) hydrocarbons such as fuel oils and motor fuels purchased by the Fund for its official activities, and

f) enjoy exemption from all import duties and taxes, including Value Added Tax, in respect of goods and motor vehicles, whose import or export by the Fund is necessary in the performance of its official activities.

2. The provisions of paragraph 1 of this Article shall not apply to taxes and duties which are considered to be charges for public utility services.

3. Goods acquired or imported under paragraph 1 of this Article shall not be sold, given away, or otherwise disposed of, except in accordance with conditions agreed upon with the Government.

Article 13

Freedom of Financial Assets from Restriction

Without being restricted by financial controls, regulations, notification requirements in respect of financial transactions, or moratoria of any kind, the Fund may:

a) hold funds, gold or currency of any kind and operate accounts in any currency;

b) freely transfer its funds, gold or currency to or from the Netherlands or within the Netherlands and convert any currency held by it into any other currency.

Article 14

Permanent Liaison with the Fund

A Member may, after it has given due notification to the Government, assign its head of mission accredited in the Netherlands or any member of his or her diplomatic staff to serve as a permanent liaison between the member concerned and the Fund.

Article 15

Privileges and Immunities of Governors, Executive Directors, Members of the Consultative Committee, Alternates, Advisers and Experts

1. Governors, Executive Directors, members of the Consultative Committee, Alternates of the foregoing, advisers and experts while exercising their functions and in the course of their journeys to or from the Headquarters of the Fund shall enjoy the following privileges and immunities:

a) personal inviolability, including immunity from personal arrest or detention, except in cases of *flagrante delictu*;

b) except as provided in sub-paragraph c) of paragraph 1 of this Article, immunity from legal process of any kind with respect to words spoken or written, and all acts done by them in the performance of their official functions, it being understood that such immunity shall continue notwithstanding that the persons concerned may have ceased to perform such functions;

c) in any event, immunity shall not extend to a civil action by a third party for damage arising from an accident caused by a motor vehicle, belonging to, driven by or operated on behalf of a person mentioned in this paragraph or in respect of a motor traffic offence involving such vehicle;

d) inviolability of all their official papers and documents;

e) the right to use codes and to receive communications by courier or in sealed bags;

f) exemption with respect to themselves and their spouses from all measures restricting entry and alien registration, any visas which may be required shall be granted without charge and as promptly as possible;

g) the same facilities with respect to currency or exchange regulations and as regards their personal luggage as are accorded to representatives of foreign Governments on temporary official missions.

2. Persons other than those referred to in paragraph 1 of this Article, invited by the Common Fund on official business in accordance with the Agreement of 1980, shall enjoy the privileges and immunities referred to in sub-paragraphs (b) and (f) of paragraph 1 of this Article.

Article 16

Privileges and Immunities of the Managing Director and his senior staff

1. In addition to the privileges and immunities accorded to staff members of the Fund, the Managing Director shall, together with

members of the family forming part of his or her household, not being private servants, enjoy the privileges and immunities to which a head of a diplomatic mission is entitled, unless he or she is either a Netherlands national or a permanent resident of the Netherlands.

2. The Chief of Operations and the Chief Finance Officer of the Fund, together with the members of their families forming part of their households, not being private servants, shall be accorded the same privileges and immunities accorded to members of comparable rank of diplomatic missions accredited to the Netherlands.

3. The Managing Director and the staff members referred to in paragraph 2 of this Article shall not practise for personal profit any professional or commercial activity in the Netherlands outside of their official functions with the Fund.

4. The members of the families of the Managing Director and of the staff members referred to in paragraph 2 of this Article shall not, when they practise a professional or commercial activity for personal profit in the Netherlands, enjoy immunity from administrative and civil jurisdiction in respect of acts performed in the course of, or in connection with, the practise of such activity. However, the immunity with regard to the execution of a judgement will stand unless waived in accordance with paragraph 2 of Article 20.

5. With regard to activities referred to in paragraph 4 of this Article the persons concerned shall not enjoy any fiscal privilege or exemption from Netherlands social security provisions.

Article 17

Privileges and Immunities of the Staff of the Fund

1. The staff members of the Fund shall enjoy:

a) immunity from legal process of any kind with respect to words spoken or written, and all acts performed by them in their official capacity, it being understood that such immunity shall continue notwithstanding that the persons concerned may have ceased to be members of the staff of the Fund;

b) in any event, immunity shall not extend to a civil action by a third party for damage arising from an accident caused by a motor vehicle belonging to, driven by or operated on behalf of a staff member or in respect of a motor traffic offence involving such vehicle;

c) inviolability of all their official papers and documents;

d) immunity from inspection of official baggage

e) exemption from Netherlands income tax on the salaries and emoluments and indemnities paid to them by the Fund, except if the Fund operates a system for the payment of pensions and annuities to its former personnel and the dependents.

2. Moreover, staff members who do not have Netherlands nationality shall:

- a) enjoy exemption with respect to themselves and members of their families forming part of their households from all measures restricting entry and alien registration, any visas which may be required shall be granted without charge and as promptly as possible;
- b) be given, together with members of their families forming part of their households, the same repatriation facilities in time of international crisis as officials of comparable rank of diplomatic missions;
- c) not require a work permit as regards their official functions with the Fund;
- d) shall, in accordance with the regulations in force, have relief from import duties and taxes, except payments for services, in respect of their furniture and personal effects and the right on the termination of their function in the Netherlands to export with relief from duties and taxes their furniture and personal effects.

Article 18

Notification

1. The Fund shall notify the Government of:

- a) the appointment of the Managing Director and staff members of the Fund, their arrival and their final departure, or the termination of their functions with the Fund;
- b) the arrival and final departure of members of the families forming part of the households of the persons referred to in sub-paragraph a) of this Article and, where appropriate, the fact that a person has ceased to form a part of the household;
- c) the arrival and final departure of private servants in the employ of persons referred to in sub-paragraph a) of this Article and, where appropriate, the fact that they are leaving the employ of such persons.

2. The notification provided for in paragraph 1 shall be made in a timely manner.

3. The Government shall issue an identity card to staff members and members of their families forming part of their households.

Article 19

Social Security

1. In the event that the Fund shall have established its own social system or has adhered to a social scheme offering coverage comparable to the coverage under Netherlands legislation, the Fund and its staff members and other employees to whom the aforementioned

scheme applies, shall be exempt from social security provisions in force in the Netherlands.

2. The provisions of paragraph 1 of this Article shall apply, *mutatis mutandis*, to the members of the family forming part of the households of the individuals referred to in paragraph 1, unless they are employed in the Netherlands otherwise than by the Fund or unless they are in the domestic service of the aforesaid households.

Article 20

General provisions

1. The privileges and immunities provided for in this Agreement are conferred in the interests of the Fund and not for the personal benefit of the individuals themselves. It is the duty of the Fund and all persons enjoying such privileges and immunities to observe in all others respects the laws and regulations of the Netherlands.

2. The privileges and immunities provided for in this Agreement are granted on the understanding that the Fund or Members, as appropriate, have the duty to waive the immunity of the persons concerned whenever they consider that the immunity would impede the course of justice, and where it could be waived without prejudice to the purpose for which the immunity is accorded.

3. The Fund shall cooperate at all times with the appropriate authorities to facilitate the proper administration of justice and prevent the occurrence of any abuse in connection with the privileges and immunities in this Agreement.

4. This Agreement shall be construed in the light of its primary purpose of enabling the Fund to discharge its functions fully and efficiently.

5. The Fund shall make provision for appropriate modes of settlement of disputes of a private law character arising out of contracts or other transactions to which the Fund is a party and in respect of which the Fund is immune from juridical proceedings under Article 4 of this Agreement. The Fund shall also make provision for appropriate modes of settlement of disputes involving a member of the staff of the Fund who, by reason of his or her official position, enjoys immunity, if such immunity has not been waived.

Article 21

Settlement of Disputes

1. Any dispute between the Parties concerning the interpretation or application of this Agreement, or any supplemental agreement, which

cannot be settled amicably, shall be submitted, at the request of either Party to the dispute, to an arbitral tribunal, composed of three members. Each Party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman.

2. If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Party to make such an appointment, the other Party may request the President of the International Court of Justice to make the necessary appointment.

3. If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either Party may invite the President of the International Court of Justice to make the necessary appointment.

4. Unless the Parties decide otherwise, the tribunal shall determine its own procedure.

5. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Parties to the dispute.

Article 22

Entry into force

1. The provisions of this Agreement will be applied provisionally from the date of signature.

2. This Agreement shall enter into force on the day following the day that both Parties have notified each other in writing that the legal requirements for entry into force have been complied with.

3. With respect to the Kingdom of the Netherlands this Agreement shall apply to the part of the Kingdom in Europe only.

Article 23

Revision and Modifications

1. At the request of either Party at any time, or in the event that the Fund becomes a specialized agency of the United Nations, this Agreement may be revised or modified.

2. Any such revision or modification may be given effect to either in a new Agreement or by an exchange of notes.

Article 24

Termination

This Agreement shall be terminated in the event that the Headquarters are transferred from the territory of the Netherlands. The provisions of this Agreement relevant in connection with the orderly termination of the operations of the Fund in the Netherlands and the disposal of its property shall, however, remain applicable as long as necessary, but no longer than six months after notification to the Government that the Fund will terminate its operations in the Netherlands.

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

DONE at The Hague on 19 December 1991 in duplicate, in the English language.

For the Government of the Kingdom of the Netherlands

(sd.) J. P. PRONK

For the Common Fund for Commodities

(sd.) B. HARTANTYO

D. PARLEMENT

Op grond van artikel 3 van de Wet van 24 december 1947 (*Stb.* H 452), houdende goedkeuring van de toetreding tot het door de Algemene Vergadering van de Verenigde Naties op 13 februari 1946 aangenomen Verdrag nopens de voorrechten en immuniteiten van de Verenigde Naties (*Stb.* I 224), junctis artikel 91 en additioneel artikel XXI, eerste lid, onderdeel b, van de Grondwet en artikel 62, eerste lid, onder a, van de Grondwet naar de tekst van 1972, behoeft de onderhavige Overeenkomst niet de goedkeuring der Staten-Generaal alvorens in werking te kunnen treden.

Dit artikel 3 luidt: „Wij behouden Ons voor verdragen te bekrachtigen en andere maatregelen te nemen teneinde aan andere internationale organisaties overeenkomstige voorrechten en immuniteiten toe te kennen als in het in artikel 1 bedoelde Verdrag worden toegekend aan de Verenigde Naties”.

Deze Wet is gecontrasigneerd door de Minister van Buitenlandse Zaken W. VAN BOETZELAER, de Minister van Justitie J. H. VAN

MAARSEVEEN, de Minister van Financiën P. LIEFTINCK en de Minister van Overzeese Gebiedsdelen a.i. GÖTZEN.

Zie voor de behandeling in de Staten-Generaal: Bijl. Hand. II 1947/48-629; Hand. II 1947/48, blz. 636; Bijl. Hand. I 1947/48, nr. 30; Hand. I 1947/48, blz. 48.

G. INWERKINGTREDING

De bepalingen van de Overeenkomst zullen ingevolge artikel 22, tweede lid, in werking treden op de dag volgende op de dag dat beide Partijen elkaar schriftelijk ervan in kennis hebben gesteld dat aan de wettelijke vereisten voor de inwerkingtreding is voldaan.

Zij worden ingevolge artikel 22, eerste lid, voorlopig toegepast vanaf 19 december 1991.

Wat het Koninkrijk der Nederlanden betreft, zal de Overeenkomst ingevolge artikel 22, derde lid, alleen voor Nederland gelden.

J. GEGEVENS

Van de op 27 juni 1980 te Genève tot stand gekomen Overeenkomst tot instelling van het Gemeenschappelijk Fonds voor Grondstoffen zijn de Engelse en de Franse tekst geplaatst in *Trb.* 1981, 49; zie ook, laatstelijk *Trb.* 1989, 111.

Van het op 26 juni 1945 te San Francisco tot stand gekomen Statuut van het Internationaal Gerechtshof, naar welk Hof in artikel 21 van de onderhavige Overeenkomst wordt verwezen, zijn de Engelse en de Franse tekst geplaatst in *Trb.* 1971, 55 en de herziene vertaling in het Nederlands in *Trb.* 1987, 114.

Uitgegeven de *twintigste* januari 1992.

De Minister van Buitenlandse Zaken,

H. VAN DEN BROEK