

AGREEMENT
BETWEEN THE GOVERNMENT OF JAPAN
AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA
REGARDING MUTUAL ASSISTANCE AND COOPERATION
BETWEEN THEIR CUSTOMS ADMINISTRATIONS

The Government of Japan and the Government of the Republic of South Africa (hereinafter referred to as "the Contracting Parties");

CONSIDERING the importance of the 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 customs offences are prejudicial to the economic, fiscal, social, cultural and commercial interests of their respective countries;

CONSIDERING that traffic in narcotic drugs and psychotropic substances constitutes a danger to public health and to society;

RECOGNISING growing concern regarding violation of intellectual property rights and the movement of counterfeit and pirated goods;

RECOGNISING the need for international cooperation in matters related to the application and enforcement of the customs laws of their respective countries;

CONVINCED that actions against customs offences can be made more effective by close cooperation between their Customs Administrations;

HAVING regard to international conventions containing prohibitions, restrictions, and special measures of control in respect of specific goods, that the Contracting Parties have concluded,

HAVE AGREED as follows:

ARTICLE 1
DEFINITIONS

For the purposes of this Agreement:

- (a) the term "Customs Administration" shall mean, in Japan, the Ministry of Finance, and in the Republic of South Africa, the South African Revenue Service;

- (b) the term "customs laws" shall mean any laws and regulations or rules administered and enforced by the Customs Administrations in connection with the importation, exportation, 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 Administrations;
- (c) the term "customs offence" shall mean any violation or attempted violation of customs laws;
- (d) the term "information" shall mean any data, documents, reports, and other communications in any format, including electronic copies thereof;
- (e) the term "official" shall mean any customs officer of either Customs Administration;
- (f) the term "person" shall mean both natural and legal persons, or any other entity without legal personality, constituted or organized under the laws and regulations of the country of each Contracting Party, carrying on importation, exportation or transit of goods;
- (g) the term "Requested Administration" shall mean the Customs Administration from which assistance is requested;
- (h) the term "Requesting Administration" shall mean the Customs Administration that requests assistance; and
- (i) the term "customs territory" shall mean the territory of the country of each Contracting Party in which the customs laws of that country are in force.

ARTICLE 2 SCOPE OF THE AGREEMENT

1. The Contracting Parties shall, through their Customs Administrations and in accordance with the provisions set out in this Agreement, assist each other to ensure proper application of the customs laws to prevent, investigate and combat customs offences and to ensure the security of the international trade supply chain.

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

3. This Agreement shall be implemented in accordance with the laws and regulations or rules in force in the country of each Contracting Party and within the competence and available resources of their respective Customs Administrations.

4. Assistance to recover customs duties and other taxes collected at importation or exportation, or fines is not covered by this Agreement.

ARTICLE 3 COMMUNICATION ON INFORMATION

1. Each Customs Administration shall, either upon request or on its own initiative, provide the other with information necessary to ensure proper application of customs laws and to prevent, investigate and combat any customs offence.

2. Each Customs Administration shall, upon request, provide the other with information relating to the transportation and shipment of goods which shows value, country of origin, disposition and destination of those goods.

3. When either Customs Administration considers that available information is relevant to serious customs offences 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, wherever possible, provide the other with such information on its own initiative without delay.

ARTICLE 4 ASSISTANCE ON REQUEST

1. Upon request, the Requested Administration shall provide the Requesting Administration with information concerning the following matters:

- (a) whether goods that are imported into the customs territory of the Requesting Administration have been lawfully exported from the customs territory of the Requested Administration;

- (b) whether goods that are exported from the customs territory of the Requesting Administration have been lawfully imported into the customs territory of the Requested Administration and the nature of the customs procedure, if any, under which the goods have been placed; and
- (c) the customs procedure, if any, used for clearing the goods.

2. All relevant information for the interpretation or utilisation of the information provided pursuant to paragraph 1 of this Article shall be provided at the same time.

3. Unless the Requesting Administration otherwise advises, the Requested Administration may provide computer-based information in any form in response to the request referred to in paragraph 1 of this Article.

ARTICLE 5 SPECIAL SURVEILLANCE

Upon request, the Requested Administration shall exercise special surveillance of and provide information on:

- (a) persons known to the Requesting Administration to have committed customs offences or suspected by the Requesting Administration of having done so, particularly those persons moving into and out of the customs territory of the Requested Administration;
- (b) goods either in transport or in storage known to the Requesting Administration to have been used or suspected by the Requesting Administration of having been used to commit customs offences in the customs territory of the Requesting Administration;
- (c) places which are or may be used for storing goods and which are known to the Requesting Administration to have been used or suspected by the Requesting Administration of having been used to commit customs offences; and
- (d) means of transport known to the Requesting Administration to have been used or suspected by the Requesting Administration of having been used to commit customs offences in the customs territory of the Requesting Administration.

ARTICLE 6
FORM AND SUBSTANCE OF REQUESTS

1. Requests for assistance under this Agreement shall be made in writing or electronically, and shall be accompanied by any information deemed useful to comply with the request. When the urgency of the situation so requires, requests may be made orally. Such requests shall be confirmed in writing as soon as possible.

2. Requests for assistance shall be made in the English language. Any documents accompanying such requests shall be translated, to the extent necessary, into the English language.

3. Requests for assistance made pursuant to paragraph 1 of this Article shall include the following details:

- (a) the name of the Requesting Administration;
- (b) the action requested;
- (c) the object and the reason for the request;
- (d) a brief description of the case under review and legal elements involved; and
- (e) the names and addresses of the persons to whom the request relates, if known.

4. Unless otherwise provided in this Agreement, the information provided pursuant to this Agreement shall be directly communicated between officials who are specially designated by the respective Customs Administrations. A list of officials so designated shall be provided to the other Customs Administration.

ARTICLE 7
EXECUTION OF REQUESTS

1. The Requested Administration shall take, within the limits of its competence and its available resources, all reasonable measures to execute the request for assistance made under this Agreement in accordance with the laws and regulations or rules in force in the country of the Requested Administration.

2. 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 so that such action may be coordinated.

3. In case the Requested Administration is not the appropriate agency to comply with a request for assistance, it shall transmit the request to the appropriate agency which shall be under no obligation to reply to such a request.

ARTICLE 8
ARRANGEMENTS FOR VISITING OFFICIALS

1. The Requested Administration may authorize the officials of the Requesting Administration to be present at the inquiries conducted by the Requested Administration in its customs territory. The presence of such officials of the Requesting Administration shall be of an advisory character and subject to the terms and conditions established by the Requested Administration.

2. When, in accordance with this Agreement, officials of either Customs Administration are present in the customs territory of the other Customs Administration, they must be able at any time to furnish proof of their identity, official capacity and mandate. They cannot wear uniforms or carry weapons. They are responsible for any offence they may commit and they shall enjoy, to the extent provided by the laws and regulations of the country of the other Customs Administration, the same protection as granted to officials of the other Customs Administration.

ARTICLE 9
USE OF INFORMATION

1. Any information received pursuant to this Agreement shall be used only by the Customs Administrations and solely for the purposes of this Agreement except in cases where the Customs Administration providing the information has expressly approved, in writing, its use by other authorities for such purposes.

2. Notwithstanding paragraph 1 of this Article, 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 and in paragraphs 3 and 4 of this Article, as well as in Article 10.

3. 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 that other Contracting Party in criminal proceedings carried out by a court or a judge.

4. In the event that information obtained by the Customs Administration of a Contracting Party pursuant to this Agreement is needed for presentation to a court or a judge in criminal proceedings, that Contracting Party shall submit a request for such information to the other Contracting Party that provided the information through the diplomatic channels or other channels established in accordance with the laws and regulations of the country of the Requested Contracting Party.

ARTICLE 10 CONFIDENTIALITY OF INFORMATION

1. Any information received pursuant to this Agreement shall be treated as confidential and granted at least the same level of protection as is extended to the same kind of information under the laws and regulations of the country of the Customs Administration receiving the information unless the Customs Administration providing the information gives a prior consent to the disclosure of such information.

2. 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.

3. Each Customs Administration may limit the information it provides to the other Customs Administration when that other Customs Administration is unable to give the assurance requested by the former Customs Administration with respect to confidentiality or with respect to the limitations of purposes for which the information will be used.

ARTICLE 11
EXEMPTIONS FROM THE OBLIGATION TO PROVIDE ASSISTANCE

1. If the Contracting Party of the Requested Administration considers that the requested assistance would infringe upon the sovereignty, security, public policy or other essential interests of its country, it may refuse to provide assistance or it may provide the assistance only if certain conditions are met.

2. If the Requesting Administration would not itself be able to execute a similar request in case such a request was made by the other Customs Administration, it shall draw attention to the fact in its request. Execution of such a request shall be entirely 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 provided subject to any terms and conditions as the Requested Administration may require.

4. In the event that a request cannot be complied with, the Requesting Administration shall be promptly notified of the fact and provided with a statement of the reasons for postponement or denial of the request.

ARTICLE 12
TECHNICAL COOPERATION

1. The Customs Administrations may provide each other with technical cooperation, within the limits of their competence and their respective available resources, in customs matters including:

- (a) exchange of officials when mutually beneficial for the purpose of advancing the understanding of each other's techniques;
- (b) training and assistance in developing specialized skills of officials;
- (c) exchange of information and experience in the areas of research, development and testing of new customs procedures and new enforcement aids and techniques.

2. The Customs Administrations shall provide each other with the necessary cooperation to detect and prevent violation of intellectual property rights and the movement of such goods infringing intellectual property rights between the customs territories of the Customs Administrations.

ARTICLE 13
COSTS

1. The Contracting Parties shall not claim for reimbursement of costs incurred in the implementation of this Agreement.

2. If expenses of a substantial or extraordinary nature are or will be required to execute a request, the Customs Administrations shall consult to determine the terms and conditions under which the request shall be executed.

ARTICLE 14
IMPLEMENTATION OF THE AGREEMENT

1. The Customs Administrations shall, as necessary and within their competence, consult with each other on any matters which may arise in connection with the implementation of this Agreement.

2. The Customs Administrations may, as necessary, conclude detailed arrangements, within the framework of this Agreement, to facilitate the implementation of this Agreement.

3. Any difficulties or disputes related to the interpretation or implementation of this Agreement shall be settled by mutual consultation between the Contracting Parties.

ARTICLE 15
HEADINGS

The headings of the Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

ARTICLE 16
ENTRY INTO FORCE

This Agreement shall enter into force on the date of signature thereof.

ARTICLE 17
AMENDMENTS

The Contracting Parties may, at any time, amend this Agreement by mutual consent in writing through diplomatic channels. Amendments shall enter into force under the same conditions as provided for in Article 16, except as otherwise agreed by the Contracting Parties.

ARTICLE 18
DURATION AND TERMINATION

1. This Agreement is of unlimited duration but either Contracting Party may terminate it, through diplomatic channels, by giving written notice in advance.
2. The termination shall take effect three months after the date of receipt of such notice.
3. Any ongoing assistance at the time of notification of termination shall nonetheless be completed in accordance with the provisions of this Agreement by the date of termination.

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

DONE in two originals at Pretoria on 2nd day of July in the year 2012, in the Japanese and English languages, both texts being equally authentic.

For the Government of
Japan:

For the Government of
the Republic of South Africa: