

AGREEMENT BETWEEN
THE GOVERNMENT OF JAPAN AND
THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA
REGARDING MUTUAL ASSISTANCE AND COOPERATION
IN CUSTOMS MATTERS

The Government of Japan and the Government of the People's Republic of China (hereinafter referred to as "the Contracting Parties"),

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

Considering the importance of assuring the accurate assessment and collection of Customs duties, fees and other taxes,

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

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

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

Have agreed as follows:

Article 1
Definitions

For the purposes of the present Agreement:

- (a) the term "Customs laws" shall mean statutory and regulatory provisions relating to the importation, exportation, movement or storage of goods, the administration and enforcement of which are specifically charged to the Customs Administrations, and any regulations made by the Customs Administrations under their statutory powers;
- (b) the term "Customs Administration" shall mean, in Japan, the Ministry of Finance, and in the People's Republic of China, General Administration of Customs;

- (c) the term "information" shall mean any data, documents, reports, or other communications;
- (d) the term "Customs offense" shall mean any violation against the Customs laws as well as any attempt to commit any violation against such laws, including commercial fraud, smuggling of goods or substances harmful to the environment or health, narcotic drugs, arms, ammunition, antiques of historical, cultural or archaeological value and endangered plants and animals, and infringement of intellectual property rights;
- (e) the term "person" shall mean any natural person, any legal person, or any other entity without legal personality carrying on importation, exportation or transit of goods;
- (f) the term "Requesting Administration" shall mean the Customs Administration that requests assistance;
- (g) the term "Requested Administration" shall mean the Customs Administration from which assistance is requested; and
- (h) 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 assist each other through their Customs Administrations to ensure proper application of Customs laws and to prevent, investigate, and repress any Customs offense, in accordance with the provisions of this Agreement.
2. The Contracting Parties shall through their 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 country and within the limits of the mutual competence of both Customs Administrations and their respective available resources.

4. This Agreement is intended solely for mutual assistance between the Contracting Parties. The provisions of this Agreement shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any information, or to impede in the execution of a request for assistance made under this Agreement.

Article 3
Communication of Information

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 laws and to prevent, investigate, and repress any Customs offense, including such information:

- (a) which is likely to be of assistance in the accurate assessment and collection of Customs duties, fees and other taxes;
- (b) which relates to Customs offenses committed or planned in respect of the importation and the exportation; and
- (c) which is involving the other Contracting Party in respect of sources of smuggling goods, new appliances of Customs offenses as well as methods of committing smuggling activities in relation to cases exposed by one Contracting Party.

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

3. When the Customs Administration of either Contracting Party considers that available information may be 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, on its own initiative, provide the latter Customs Administration with such information.

Article 4
Assistance on Request

1. At the request of the Requesting Administration, the Requested Administration shall provide it with information which may enable it to ensure that Customs laws are correctly applied, including information regarding activities detected or planned which are or could be operations in breach of Customs laws. In particular, upon request, the Customs Administrations shall furnish to each other information regarding activities that may result in Customs offenses within the Customs territory of the country of the other Customs Administration, for example, incorrect Customs declarations, certificates of origin and invoices, or any other information known to be, or suspected of being, incorrect or falsified.

2. Upon request, the Requested Administration shall provide the Requesting Administration with the following information:

- (a) whether goods imported into the Customs territory of the country of the Requesting Administration have been lawfully exported from the Customs territory of the country of the Requested Administration; or
- (b) whether goods exported from the Customs territory of the country of the Requesting Administration have been lawfully imported into the Customs territory of the country of the Requested Administration.

3. The information provided pursuant to paragraph 2 of this Article shall, upon request, contain the Customs procedure used for clearing the goods.

4. The Customs Administrations shall, upon request, provide information relating to transportation and shipment of goods showing value, disposition and destination of those goods.

5. Unless otherwise advised by the Requesting Administration, the Requested Administration may transmit any form of computer-based information in response to the request referred to in paragraphs 1 to 4 of this Article.

6. All relevant information for interpreting or utilizing the information provided pursuant to paragraphs 1 to 5 of this Article shall be supplied at the same time.

Article 5
Special Surveillance

Upon request, the Requested Administration shall, within the limits of the mutual competence of both Customs Administrations and its available resources, provide information on and exercise special surveillance of:

- (a) persons known to the Requesting Administration to have committed a Customs offense or suspected by the Requesting Administration of having done so within the Customs territory of the country of the Requesting Administration, particularly those moving into and out of the Customs territory of the country of the Requested Administration;
- (b) goods either in transport or in storage notified by the Requesting Administration as giving rise to a suspicion of controlled items to be transported towards the Customs territory of the country of the Requesting Administration; or
- (c) means of transport suspected by the Requesting Administration of having been used in the commission of a Customs offense within the Customs territory of the country of the Requesting Administration.

Article 6
Form and Substance of Request

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 of this Article shall include the following information:

- (a) the Administration making the request;
- (b) the nature of the proceedings in respect of which the request is made;
- (c) the object and the reason for the request;
- (d) the names and addresses of the persons to whom the request relates, if known; and
- (e) a brief description of the matter under consideration and the 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 7 Execution of Requests

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

2. 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.

3. 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.

4. 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 Use of Information

1. Information received pursuant to this Agreement shall only be used for the purposes specified in paragraph 1 of Article 2 of this Agreement and by the Customs Administrations, unless the Customs Administration providing the information has expressly approved in writing its use by other authorities.

2. Notwithstanding paragraph 1 of this Article, the Customs Administration of a Contracting Party 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 paragraphs 3 and 4 of this Article, provided that the Customs Administration providing the information, upon request by the other Customs Administration, has approved its use by the relevant law enforcement agencies.

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 diplomatic channels or other channel established in accordance with the laws of the country of the requested Contracting Party.

Article 9 Confidentiality

1. Each Contracting Party shall maintain the confidentiality of any information communicated to it in confidence by the other Contracting Party pursuant to this Agreement, and shall grant at least the same level of protection under the laws and regulations of the country of the latter Contracting Party, unless the latter Contracting Party consents to the use or 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 which provided the information.

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

Article 10
Exemption from Assistance

1. In cases where the Contracting Party of the Requested Administration is of the opinion that assistance under this Agreement would infringe upon its sovereignty, security, public policy, or other substantial interest, 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 comply with 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 a statement of the reasons for postponement or denial 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 11
Technical Cooperation

The Customs Administrations shall provide each other with technical cooperation, within the limits of the mutual competence of both Customs Administrations and their respective available resources, when mutually beneficial on Customs matters including:

- (a) the view exchange of Customs experts for the purposes of promoting the understanding of each other's Customs laws, procedures and techniques;
- (b) the training and assistance in developing specialized skills of their Customs officials including exchange of personnel;

- (c) the exchange of professional, scientific and technical data relating to Customs laws and procedures; and
- (d) the cooperation in the areas of research, development and test of new Customs procedures and new enforcement aids and techniques.

Article 12
Costs

Expenses incurred in the implementation of this Agreement shall be borne by the respective Contracting Parties. If expenses of a substantial and extraordinary nature are required in the execution of this Agreement, the terms and conditions under which the request will be executed shall be consulted and arranged by the Contracting Parties.

Article 13
Implementation of the Agreement

1. The Contracting Parties may hold, as necessary, consultations through diplomatic channels on any matters which may arise in the implementation of this Agreement.
2. Detailed arrangements to implement this Agreement will be concluded, as necessary, between the Customs Administrations of the Contracting Parties.

Article 14
Entry into Force and Termination

1. This Agreement shall enter into force upon signature.
2. Either Contracting Party may terminate this Agreement by giving three months written notice through diplomatic channels. Any ongoing assistance at the time of notification of termination shall be completed by the date of termination.
3. The Contracting Parties shall meet in order to review this Agreement as necessary, or at the end of five years from its entry into force, unless they notify one another in writing that no review is necessary.
4. The headings of the Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

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

DONE at Beijing, this second day of April 2006, in duplicate, in the Japanese, Chinese and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of
Japan:

For the Government of
the People's Republic of China: