

**CO-OPERATIVE ARRANGEMENT
BETWEEN
THE CUSTOMS ADMINISTRATION OF JAPAN
AND THE CUSTOMS AND EXCISE DEPARTMENT OF
HONG KONG, CHINA
REGARDING CO-OPERATION AND MUTUAL ADMINISTRATIVE
ASSISTANCE
IN CUSTOMS MATTERS**

The Customs Administration of Japan and the Customs and Excise Department of Hong Kong, China (hereinafter referred to as “the Customs Administrations”):

CONSIDERING that offences against Customs laws are prejudicial to their economic, commercial, fiscal, social, cultural and security interests;

CONSIDERING the importance of ensuring 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;

HAVING REGARD TO the Note Verbale of Japan issued on 8 January 2008 and the Note Verbale of Hong Kong, China issued on 8 January 2008, concerning the use of information exchanged between the Customs Administrations (the Notes Verbales);

RECOGNIZING that Customs Administrations play an important role in economic development through facilitating the flow of goods and in protecting society from the threat of transnational organized crime and terrorism;

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

CONVINCED that action against Customs offences can be made more effective by close co-operation between their Customs Administrations;

HAVING REGARD TO the relevant instruments of the Customs Co-operation Council, in particular the Recommendation of the Customs Co-operation Council regarding Mutual Administrative Assistance of 5 December 1953;

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

Have reached common recognition on that the Customs Administrations will co-operate as follows:

CHAPTER I

Definitions

Paragraph 1

1. For the purposes of this Arrangement:
 - 1.1. the term “Customs Administration” means, for Japan, the Ministry of Finance, and for Hong Kong, China the Customs and Excise Department;
 - 1.2. the term “Customs laws” means the legal and regulatory provisions concerning the importation, exportation, transshipment, transit, storage and movement 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;
 - 1.3. the term “Customs offence” means any violation of the Customs laws (including trafficking in illicit drugs, and unlawful importation of firearms or goods infringing intellectual property rights), and any attempt to commit any violation of such laws;
 - 1.4. the term “Customs territory” means, in relation to Japan, the territory in which the Customs laws of Japan apply, and in relation to Hong Kong, China, the area in which the Customs laws of Hong Kong, China apply;

- 1.5. the term “person” means any natural persons, legal persons, or other entities without a legal personality;
- 1.6. the term “information” means any data, documents, reports or other communications including information that has been processed and/or analysed to provide an indication relevant to a Customs offence;
- 1.7. the term “requesting Administration” means the Customs Administration which requests assistance;
- 1.8. the term “requested Administration” means the Customs Administration from which assistance is requested;
- 1.9. the term “international trade supply chain” means all processes involved in the cross-border movement of goods from the place of origin to the place of final destination.

CHAPTER II

Scope of the Arrangement

Paragraph 2

- 2.1. The Customs Administrations will afford each other administrative assistance under the terms set out in this Arrangement, for the proper application of Customs laws and for the prevention, investigation and combating of Customs offences and to ensure the security of the international trade supply chain.
- 2.2. The Customs Administrations will make co-operative efforts for simplification and harmonization of their Customs procedures.
- 2.3. All assistance under this Arrangement by either Customs Administration will be performed subject to its domestic laws and regulations and within the limits of its competence and available resources.
- 2.4. The provisions of this Arrangement will:
 - (a) not be construed as creating any legal rights or obligations of either Customs Administration; and
 - (b) not affect the rights and obligations of Japan or Hong Kong, China under any other international agreement or convention.
- 2.5. This Arrangement is intended solely for the mutual administrative assistance between the Customs Administrations; the provisions of this Arrangement will not give rise to a right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of a request.

CHAPTER III

Scope of Assistance

Paragraph 3

- 3.1. The Customs Administrations will provide each other, either on request or on their own initiative, with information which helps to ensure proper application of Customs laws and the prevention, investigation and combating of Customs offences.
- 3.2. The Customs Administrations will take all reasonable measures to execute the request for assistance made under this Arrangement.
- 3.3. On request, the requested Administration will provide the requesting Administration with all information about the Customs laws and procedures, applicable in that Customs Administration and relevant to inquiries relating to a Customs offence.

CHAPTER IV

Special Instances of Assistance

Paragraph 4

4. On request, the requested Administration will in particular provide the requesting Administration with the following information:
 - (a) whether goods which 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 which are exported from the Customs territory of the requesting Administration have been lawfully imported into the Customs territory of the requested Administration and about the Customs procedure, if any, under which the goods have been placed.

Paragraph 5

5. On request, the requested Administration will provide information on, and maintain special surveillance over:
 - (a) persons known or suspected of having contravened Customs laws of the requesting Administration, including known or suspected occasional or habitual contraveners of Customs laws of the requesting Administration, particularly those moving into and out of the Customs territory of the requested Administration;

- (b) goods either in transport or in storage notified by the requesting Administration as giving rise to known or suspected illicit traffic towards the Customs territory of the requesting Administration;
- (c) means of transport known or suspected by the requesting Administration of being used to commit Customs offences in the Customs territory of the requesting Administration;
- (d) premises, in the Customs territory of the requested Administration, known or suspected by the requesting Administration of being used to commit Customs offences in the Customs territory of the requesting Administration.

Paragraph 6

- 6.1. The Customs Administrations will provide each other, either on request or on their own initiative, with information on transactions, completed or planned, which constitute or appear to constitute a Customs offence in the Customs territory of the other Customs Administration.
- 6.2. In serious cases that could involve substantial damage to the economy, public health, public security or any other essential interests of the Customs territory of a Customs Administration, the other Customs Administration will, wherever possible, supply information on its own initiative.

CHAPTER V

Information

Paragraph 7

- 7.1. The information exchanged under this Arrangement may be replaced by computerised information produced in any form for the same purpose, where applicable.
- 7.2. Any information to be exchanged under this Arrangement will be accompanied by all relevant information for interpreting or utilizing it.

CHAPTER VI

Communication of Requests

Paragraph 8

- 8.1. Assistance under this Arrangement will be exchanged directly between the Customs Administrations.
- 8.2. Requests for assistance under this Arrangement will be made in writing in English and will be accompanied by any documents deemed useful. When the circumstances so require, requests may also be made verbally. Such requests will be promptly confirmed in writing.
- 8.3. A request will include the following information:
 - (a) the identity of the authority making the request;
 - (b) the nature of the proceedings in respect of which the request is made;
 - (c) the subject of and the reason for the request;
 - (d) the names and addresses of the person to whom the request relates, if known; and
 - (e) a brief description of the matter and the legal issues involved.
- 8.4. A request by either Customs Administration that a certain procedure be followed will be complied with, subject to the domestic laws and regulations of the requested Administration.

8.5. Communication between Customs Administrations referred to in this Arrangement will be made to officials who are specially designated for this purpose by each Customs Administration and specified in the Annex. Any changes to the contact details in the Annex may be notified by one Customs Administration to the other in writing from time to time.

CHAPTER VII

Execution of Requests

Paragraph 9

9. If the requested Administration does not have the information requested, it will in accordance with its domestic laws and regulations either:
 - (a) initiate inquiries to obtain that information; or
 - (b) promptly transmit the request to the appropriate agency; or
 - (c) indicate which relevant authorities are concerned.

CHAPTER VIII

Use and Confidentiality of Information

Paragraph 10

- 10.1. Any information received under this Arrangement will be used solely for the purposes of this Arrangement and by the Customs Administrations, except in cases in which the Customs Administration furnishing such information has approved in writing its use for other purposes or by other authorities.
- 10.2. Any information received under this Arrangement will be treated as confidential by the receiving Administration and will at least be subject to the same protection and confidentiality as the same kind of information is subject to under its domestic laws and regulations.
- 10.3. The requesting Administration will not use information obtained under this Arrangement for purposes other than those stated in the request without the prior consent of the requested Administration.
- 10.4. In addition to paragraphs 10.1. to 10.3. above, the two Customs Administrations will, as regards information exchanged between the two Customs Administrations pursuant to this Arrangement, comply with the terms of the Notes Verbales. Each Customs Administration may limit the information it communicates to the other Customs Administration when the latter Customs Administration indicates that it is unable to comply with the terms of paragraph 10 of this Arrangement, or the Notes Verbales, or is otherwise unable to give the assurance requested by the former Customs Administration with respect to confidentiality.

CHAPTER IX

Exemptions

Paragraph 11

- 11.1. In case where assistance under this Arrangement would infringe upon the security, law and order or other essential interests of the Customs territory of a Customs Administration, or would involve a violation of industrial, commercial or professional secrecy or would be inconsistent with its domestic laws and regulations, assistance may be refused.
- 11.2. If the requesting Administration would be unable to comply if a similar request were made by the requested Administration, it will draw the attention of the requested Administration to that fact in its request. Compliance with such a request will be at the discretion of the requested Administration.
- 11.3. Assistance may be postponed or withheld by the requested Administration on the grounds that it will interfere with an ongoing investigation, including investigation by the relevant law enforcement agencies, prosecution or proceedings. In such a case, the requested Administration will consult with the requesting Administration to determine if assistance can be given subject to such terms or conditions as the requested Administration may require.
- 11.4. Where assistance is denied or postponed, reasons for the denial or postponement will be given.

CHAPTER X

Customs Co-operation

Paragraph 12

12.1. Either Customs Administration will communicate, either on request or on its own initiative, any available information relating to:

- (a) new Customs law enforcement techniques having proved their effectiveness;
- (b) new trends, means or methods of committing Customs offences.

12.2. In order to promote further co-operation and mutual understanding, each Customs Administration may provide opportunities for such officials of the other Customs Administration as may be selected by the latter to be attached as its trainees or experts. The costs incurred in such attachments will be borne by the sending Customs Administration.

CHAPTER XI

Costs

Paragraph 13

13.1. Unless otherwise provided in this Arrangement, each Customs Administration will bear its own costs and expenses incurred in the implementation of this Arrangement.

13.2. If expenses of a substantial and extraordinary nature are or will be required to execute the request, the Customs Administrations will consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs will be borne.

CHAPTER XII

Implementation of the Arrangement

Paragraph 14

14.1. The Customs Administrations will take measures so that their officials responsible for the investigation or combating of Customs offences maintain personal and direct relations with each other.

14.2. The Customs Administrations will endeavour to resolve by mutual accord any problem or doubt arising from the interpretation or application of this Arrangement.

14.3. The Customs Administrations will meet as and when necessary in order to discuss issues relating to this Arrangement.

CHAPTER XIII

Application

Paragraph 15

15. This Arrangement will be applicable to the Customs territories of both Customs Administrations.

CHAPTER XIV

Commencement, Modification and Termination

Paragraph 16

16.1. Co-operation under this Arrangement will commence upon the signature of this Arrangement by the Customs Administrations.

16.2. This Arrangement may be modified by the mutual consent of the Customs Administrations.

16.3. Co-operation under this Arrangement will cease three months after the receipt of a written notice of termination by either Customs Administration. Requests received before the time of termination will nonetheless be completed in accordance with the provisions of this Arrangement.

Signed, in duplicate, at Hong Kong on the 8th day of January 2008, in the English language.

FOR THE CUSTOMS AND
EXCISE DEPARTMENT OF
HONG KONG, CHINA

FOR THE CUSTOMS
ADMINISTRATION OF JAPAN