

AGREEMENT
BETWEEN
THE GOVERNMENT OF JAPAN
AND
THE GOVERNMENT OF THE REPUBLIC OF KOREA
REGARDING MUTUAL ASSISTANCE IN CUSTOMS MATTERS

The Government of Japan and the Government of the Republic of Korea (hereinafter referred to as "the Contracting Parties"),

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

Considering the importance of assuring the accurate assessment of customs duties and other taxes,

Recognizing the need for bilateral cooperation in matters related to the application and enforcement of the customs laws and regulations of their respective countries,

Having regard to the international conventions containing prohibitions, restrictions, and special measures of control in respect of specific goods,

Convinced that actions against customs offenses can be made more effective by cooperation between their Customs Authorities, and

Having regard to the Recommendation of the Customs Cooperation Council regarding Mutual Administrative Assistance of December 5, 1953,

Have agreed as follows:

ARTICLE 1

For the purposes of this Agreement:

- (a) the term "customs laws and regulations" shall mean such laws and regulations administered and enforced by the Customs Authorities concerning the importation, exportation, and transit of goods, as they relate to customs duties, charges, and other taxes, or to prohibitions, restrictions, and other similar controls with respect to the movement of goods across the boundary of the customs territory of each country;
- (b) the term "Customs Authorities" shall mean, in Japan, the Ministry of Finance, and, in the Republic of Korea, the Korea Customs Service;
- (c) the term "information" shall mean any data, documents, reports, or other communications;

- (d) the term "customs offense" shall mean any violation or attempted violation of the customs laws and regulations;
- (e) the term "person" shall mean any natural person, any legal person, 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;
- (f) the term "Requesting Authority" shall mean the Customs Authority that requests assistance;
- (g) the term "Requested Authority" shall mean the Customs Authority 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 and regulations of that country are in force.

ARTICLE 2

1. (a) The Contracting Parties shall assist each other through their Customs Authorities to ensure proper application of customs laws and regulations, and to prevent, investigate, and repress customs offenses, pursuant to the provisions of this Agreement.

(b) The Contracting Parties shall, through their Customs Authorities, make cooperative efforts for the simplification and harmonization of their customs procedures.
2. This Agreement shall be implemented by the Contracting Parties in accordance with the laws and regulations in force in each country, and within the available resources of their respective Customs Authorities.

ARTICLE 3

1. The Customs Authorities shall provide each other, either on request or on their own initiative, with assistance that they consider necessary to ensure proper application of customs laws and regulations, and to prevent, investigate, and repress customs offenses.
2. The Customs Authorities shall also cooperate, when necessary and appropriate, in the areas of research, development, and testing of new customs procedures, enforcement aids and techniques, training activities of customs officers, and exchange of personnel between them.

ARTICLE 4

1. (a) The Requested Authority shall provide the Requesting Authority with the following information:
 - (i) whether goods imported into the customs territory of the country of the Requesting Authority have been lawfully exported from the customs territory of the country of the Requested Authority; or

(ii) whether goods exported from the customs territory of the country of the Requesting Authority have been lawfully imported into the customs territory of the country of the Requested Authority.

(b) The information provided pursuant to sub-paragraph (a) of this paragraph shall, upon request, contain the customs procedure used for clearing the goods.

2. The Requested Authority shall, within the limits of its available resources, provide information on and exercise special surveillance of:

(a) persons known to, or suspected by the Requesting Authority to have committed a customs offense within the customs territory of the country of the Requesting Authority, particularly those who move into and out of the customs territory of the country of the Requested Authority;

(b) goods either in transport or in storage notified by the Requesting Authority as suspicious of any controlled items to be transported towards the customs territory of the country of the Requesting Authority; or

(c) means of transport suspected by the Requesting Authority of having been used to commit a customs offense within the customs territory of the country of the Requesting Authority.

3. (a) Either Customs Authority shall, on its own initiative or upon request, provide the other Customs Authority with available information regarding the activities that may result in customs offenses within the Customs territory of the country of the latter Customs Authority.

(b) When either Customs Authority considers that available information is relevant to serious customs offenses (e.g. smuggling of drugs and firearms, infringement of intellectual property rights, etc.) that could involve substantial damage to the economy, public health, public security, or any other vital interest of the country of the other Customs Authority, the former Customs Authority shall, if deemed necessary, provide the latter Customs Authority with such information.

ARTICLE 5

1. The Customs Authorities shall, upon request, provide documents relating to the transportation and shipment of goods which show the value and identify the disposition and destination of those goods.

2. Unless otherwise advised by the Requesting Authority, the Requested Authority may transmit any form of computer-based information in response to the request referred to in paragraph 1 of this Article.

3. All relevant information for interpreting or utilizing the information provided pursuant to

paragraphs 1 and 2 of this Article shall be supplied at the same time.

4. Officials specially designated by the Requesting Authority may, with the consent of and subject to the conditions imposed by the Requested Authority, consult, in the offices of the Requested Authority, the relevant books, registers, and other documents or data media held in those offices and take copies of relevant parts of such books, registers, and other documents or data media.

ARTICLE 6

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, requests may be made and accepted in other forms, including oral requests, but shall be promptly confirmed in writing.
2. Requests made pursuant to paragraph 1 of this Article shall include the following information:
 - (a) the Authority 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 Authorities.

ARTICLE 7

1. The Requested Authority shall take all reasonable measures to execute the request for assistance made under this Agreement.
2. If the Requested Authority agrees to the request of the Requesting Authority, officials specially designated by the Requesting Authority may, subject to the conditions imposed by the Requested Authority, be present at the inquiry conducted by the Requested Authority in the customs territory of the country of the Requested Contracting Party.
3. The Requested Authority shall, upon request by the Requesting Authority and when it deems appropriate, advise the Requesting Authority 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.

ARTICLE 8

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

2. Notwithstanding paragraph 1 of this Article, unless otherwise notified by the Customs Authority providing the information, the Customs Authority 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 Article 9 of this Agreement.
3. Any information received by either Contracting Party under this Agreement shall be treated as confidential and shall be 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 Contracting Party, unless the Requested Authority gives a prior consent to the disclosure of such information.
4. 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 Authority receiving the information. Such Customs Authority, wherever possible, shall give advance notice of any such disclosure to the Customs Authority which provided the information.

ARTICLE 9

1. Information provided from the Customs Authority of a Contracting Party to the Customs Authority of the other Contracting Party pursuant to this Agreement shall not be used by that other Contracting Party as evidence in criminal investigations, prosecutions, or judicial proceedings.
2. In the event that information obtained by the Customs Authority of a Contracting Party pursuant to this Agreement is needed as evidence in criminal investigations, prosecutions, or judicial proceedings, that Contracting Party shall submit a request for such information to the Contracting Party that provided the information through diplomatic channels or other channels established in accordance with the laws of the country of the Requested Contracting Party.

ARTICLE 10

1. In cases where the Contracting Party of the Requested Authority 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 Authority would be unable to comply with a similar request in case such a request were made by the Requested Authority, it shall draw attention to that fact in its request. Execution of such a request shall be at the discretion of the Requested Authority.
3. Assistance may be withheld by the Requested Authority 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 Authority shall consult with the Requesting Authority to determine if assistance can be given subject to any

terms or conditions as the Requested Authority may require.

4. In the event that a request cannot be executed, the Requesting Authority shall be promptly notified of that fact, and provided with 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 Authority in its further pursuit of the request.

ARTICLE 11

Expenses incurred in the implementation of this Agreement shall be borne by the respective Contracting Parties.

ARTICLE 12

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 between the Customs Authorities of the Contracting Parties.

ARTICLE 13

1. This Agreement shall enter into force on the date of 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 may meet in order to review this Agreement as necessary, or at the end of five years from its entry into force.

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

DONE at Seoul, this thirteenth day of December, 2004, in duplicate, in the Japanese, Korean 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 REPUBLIC
OF KOREA: