

AGREEMENT BETWEEN THE GOVERNMENT OF JAPAN AND
THE GOVERNMENT OF THE ITALIAN REPUBLIC
ON MUTUAL ADMINISTRATIVE ASSISTANCE AND COOPERATION
IN CUSTOMS MATTERS

The Government of Japan and the Government of the Italian Republic, hereinafter referred to as the Contracting Parties,

CONSIDERING that customs offences are prejudicial to the economic, commercial, fiscal, social, industrial and agricultural interests of their respective Countries as well as to legitimate trade;

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, the latter also including those on enforcement of legal provisions and regulations on goods infringing intellectual property rights;

RECOGNIZING the need for international cooperation in matters related to the application and enforcement of the customs law;

CONVINCED that action against customs offences can be made more effective by close cooperation between their Customs Administrations, in particular, through the exchange of information;

HAVING REGARD to the Recommendation of the Customs Cooperation Council on Mutual Administrative Assistance of 5 December 1953;

HAVING REGARD to the Agreement between the Government of Japan and the European Community on co-operation and mutual administrative assistance in customs matters of 30 January 2008;

HAVING REGARD to the international conventions containing prohibitions, restrictions, and special measures of control in respect of specific goods;

TAKING INTO ACCOUNT the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988;

TAKING INTO ACCOUNT the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Paris, 14 November 1970), insofar as this property was the subject of customs offences;

TAKING INTO ACCOUNT the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Washington, 3 March 1973) whose purpose is to protect these species by seeking to control international trade;

TAKING INTO ACCOUNT the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal -with Annex- (Basel, 22 March 1989) governing the transboundary movements, the recycling and the disposal of hazardous wastes;

HAVE AGREED AS FOLLOWS:

Article 1
DEFINITIONS

For the purposes of this Agreement:

1. "Customs Administration" shall mean in Japan, the Ministry of Finance, and, in the Italian Republic, the Customs Agency, which may use technical support of Guardia di Finanza for some fulfilment;
2. "customs law" shall mean any laws and regulations applicable or enforceable by the Customs Administration of a Contracting Party, governing the import, export and transit of goods and placing of goods under any other customs procedures, including measures of prohibitions, restrictions and controls falling under the competence of the Customs Administration;
3. "customs territory" shall mean the territory of the Country of each Contracting Party where the respective customs law is applied;
4. "customs offence" shall mean any violation or attempted violation of customs law;
5. "information" shall mean any data, documents, reports, authenticated copies thereof or other communications in any format, including electronic format;

6. "official" shall mean any officer of the Customs Administration;
7. "person" shall mean either a natural or a legal person;
8. "personal data" shall mean any data concerning an identified or identifiable natural person;
9. "Requesting Administration" shall mean the Customs Administration which requests assistance;
10. "Requested Administration" shall mean the Customs Administration from which assistance is requested;
11. "international trade supply chain" shall mean all processes involved in the cross-border movements of goods from the place of origin to the place of final destination;
12. "precursors" shall mean any substance frequently used in the manufacture of psychotropic and narcotic drugs, listed in Table I and in Table II annexed to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988 and any additional substances defined in the laws and regulations of both Countries;
13. "narcotic drugs and psychotropic substances" shall mean materials or products containing such materials as defined in paragraphs (n) and (r) of Article 1 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988 and any additional materials or products containing materials defined in the laws and regulations of both Countries;
14. "controlled delivery" shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the customs territory of a Country, with the knowledge and under the supervision of the competent authorities of that Country with a view to investigating an offence and identifying persons involved in the commission of the offence; and
15. "antiques and archaeological items" shall mean all those objects having an artistic and archaeological value for either Country as defined in the respective laws and regulations.

Article 2
SCOPE OF THE AGREEMENT

1. The Contracting Parties shall, through their Customs Administrations, provide each other with administrative assistance under the terms set out in this Agreement, for the proper application of customs law, for the prevention, investigation and combating of customs offences and to ensure the security of the international trade supply chain.

2. The Contracting Parties shall, through their Customs Administrations, undertake to make cooperative efforts in order to simplify and harmonize customs procedures.

3. This Agreement shall be implemented by the Contracting Parties in accordance with the laws and regulations of each Country and within the competence and the available resources of their respective Customs Administrations.

4. The provisions of this Agreement shall not affect the rights and obligations of either Contracting Party under any other international agreements.

5. This Agreement shall be without prejudice for the present and future obligations stemming from customs law that the Italian Republic shall comply with as a Member State of the European Union and as a Contracting Party to intergovernmental agreements already concluded or to be concluded with the other Member States of the European Union.

Article 3
EXCHANGE OF INFORMATION

1. The Customs Administrations shall, on their own initiative or upon request, provide each other all relevant information necessary to ensure proper application of customs law and to prevent, investigate, and repress any customs offences, particularly the information regarding illicit traffic of the following goods and substances:

- (a) weapons, munitions and explosive material;
- (b) hazardous and toxic waste, nuclear material substances and components intended for the manufacture of atomic, biological and/or chemical weapons;
- (c) dual use goods and goods subject to high customs duties, taxes or charges;

- (d) narcotic drugs and psychotropic substances and precursors;
- (e) other goods and other substances that could represent a danger or are likely to cause substantial damage to the environment, health and public safety and security;
- (f) works of arts of high historical and cultural value including antiques and archaeological items; and
- (g) endangered species of wild fauna and flora.

2. The Customs Administrations shall provide each other, on their own initiative or upon request, with information which helps to ensure proper application of customs law and the prevention, investigation and combating of customs offences and to ensure the security of the international trade supply chain. Such information may include:

- (a) enforcement techniques having proved their effectiveness;
- (b) new trends, means or methods of committing customs offences;
- (c) goods known to be the subject of customs offences, as well as transport and storage methods used in respect of these goods;
- (d) persons known to have committed or suspected of committing customs offences;
- (e) means of transport and containers, known or suspected of being used to commit customs offences in the customs territory;
- (f) premises known to have been used or suspected of being used in connection with customs offences in the customs territory;
- (g) deliveries and notifications of administrative decisions and documents regarding the application of customs law; and
- (h) any other information that may be relevant for the proper application of customs law.

3. Either Customs Administration shall, on its own initiative or upon request, exchange information with the other Customs Administration on planned activities which are being or have been carried out providing enough grounds for thinking that a customs offence has been or will be committed within the customs territory of the latter.

Article 4
ASSISTANCE ON REQUEST

1. The Customs Administrations shall, upon request, supply to each other all information showing:

- (a) whether goods imported into the customs territory of one Contracting Party have been lawfully exported from the customs territory of the other Contracting Party;
- (b) whether goods exported from the customs territory of one Contracting Party have been lawfully imported into the customs territory of the other Contracting Party, and the customs procedure, if any, under which the goods have been placed;
- (c) whether goods which are granted favourable treatment upon exportation from the customs territory of one Contracting Party have been lawfully imported into the customs territory of the other Contracting Party; and
- (d) whether goods which have been transited through the customs territory of one Contracting Party and are destined to the customs territory of the other Contracting Party have been lawfully transited.

2. Either Customs Administration shall also provide the other Customs Administration, upon request, with information on all customs control measures taken in respect of the goods.

Article 5
SPONTANEOUS ASSISTANCE

The Customs Administration of a Contracting Party shall, on its own initiative, supply the available information in cases when it thinks this could concern serious customs offences which could cause substantial damage to the economy, public health, public security, including the security of the supply chain, or any other vital interests of the other Contracting Party.

Article 6
SURVEILLANCE

At the request of the Requesting Administration, the Requested Administration shall, within the framework of the laws and regulations of the Country of the Requested Administration, provide information on and exercise special surveillance of:

- (a) persons in respect of whom there are reasonable grounds for believing that they are or have been involved in a customs offence in the customs territory of the Requesting Administration;
- (b) places where stocks of goods have been or may be stored or assembled in such a way that there are reasonable grounds for believing that these goods are intended to be used in a customs offence in the customs territory of the Requesting Administration;
- (c) goods that are or may be transported in such a way that there are reasonable grounds for believing that they are the subject of an illicit traffic or that they are intended to be used in a customs offence in the customs territory of the Requesting Administration; and
- (d) means of transport that are or may be used in such a way that there are reasonable grounds for believing or that are intended to be used in a customs offence in the customs territory of the Requesting Administration.

Article 7
CONTROLLED DELIVERY

The Customs Administrations, in accordance with their own competence and procedures as established in the laws and regulations of their respective Countries, may cooperate in and exchange information on a controlled delivery on a case-by-case basis.

Article 8
FORM AND CONTENT OF THE REQUESTS FOR ASSISTANCE

1. Requests for assistance under this Agreement shall be made in writing in English and shall be accompanied by any information deemed useful to fulfil the request. When required because of the urgency of the situation, an oral request may be accepted, but must be confirmed in writing as soon as possible.

2. Requests made pursuant to paragraph 1 of this Article shall include the following information:

- (a) Requesting Administration;
- (b) the action requested;
- (c) the object and the reason for the request;
- (d) indications as exact and comprehensive as possible on the persons who are the target of the investigations;
- (e) a summary of the relevant facts and of the enquiries already carried out; and
- (f) legal elements involved.

Article 9
EXECUTION OF REQUESTS

1. Unless otherwise provided in this Agreement, assistance under this Agreement shall be provided directly by the Customs Administrations.

2. In order to comply with a request for assistance, the Requested Administration shall, within the limits of its competence and available resources, take all reasonable measures by providing information already possessed, by carrying out appropriate inquiries or by arranging for them to be carried out.

3. 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.

4. Duly authorized officials from the Requesting Administration may, with the consent of the Requested Administration and subject to the conditions established by the latter, be present to obtain in the offices of the Requested Administration, information and copies of the documents related to activities that are or may be customs offences, which the Requesting Administration needs for the purposes of this Agreement.

5. 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 with them. 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.

6. If the Requested Administration cannot fulfil the request, it will inform without delay the Requesting Administration with a statement of the reasons which may be accompanied by the relevant information.

Article 10 USE OF INFORMATION AND CONFIDENTIALITY

1. Information obtained shall be used solely for the purposes of this Agreement. Where one of the Contracting Parties wishes to use such information for other purposes, it shall obtain the prior written consent of the Customs Administration which provided the information. Such use shall then be subject to any restrictions laid down by that Customs Administration.

2. Notwithstanding the second sentence of 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 authorities of its Country, which may use such information under the conditions of this Agreement.

3. This Article does not preclude the use and disclosure of information insofar as it is established in the laws and regulations of the Country of the Customs Administration receiving the information. Whenever possible, the Customs Administration receiving the information shall give prior notice of this disclosure to the Requested Administration.

4. Any information communicated in whatever form pursuant to this Agreement shall be of a confidential nature in accordance with the laws and regulations of each Country and shall enjoy the protection extended to the same kind of information under the laws and regulations of the Country of the Customs Administration that received it unless the Contracting Party providing it gives prior authorization to its disclosure.

5. Personal data may be exchanged only when the Contracting Party which may receive it undertakes to protect such data in at least an equivalent way to the one applicable to that particular case in the Contracting Party that may supply it. The Contracting Party that may supply the information shall not stipulate any requirements that are more onerous than those applicable to it in its own jurisdiction. The Contracting Parties shall communicate to each other information on the laws and regulations regarding the protection of personal data of each Country, including those in force in the European Union.

Article 11 CRIMINAL PROCEEDINGS

1. Information provided by either Customs Administration to the other Customs Administration pursuant to this Agreement shall not be used by the Contracting Party of the latter in criminal proceedings carried out by a court or a judge.

2. In the event that information provided by the Customs Administration of a Contracting Party pursuant to this Agreement is needed to be used by the other Contracting Party in criminal proceedings carried out by a court or a judge, the latter Contracting Party shall, in order to use such information in criminal proceedings carried out by a court or a judge, submit a request for such information to the former Contracting Party through diplomatic channels or other channels established in accordance with the laws and regulations of the Country of the former Contracting Party.

Article 12
DEROGATION TO ASSISTANCE

1. Where the Contracting Party of the Requested Administration considers that the assistance requested may infringe upon the sovereignty, public policy, security, or any other substantive national interest of its Country or involve violation of any industrial, commercial or professional secrecy in the customs territory of that Contracting Party or may prove to be inconsistent with the laws and regulations of its Country, such assistance may be declined by that Contracting Party, partly provided or provided subject to any terms or conditions it may require.

2. Where the Requesting Administration seeks assistance which it would itself be unable to provide if so requested, it shall draw attention to that fact in its request. It shall then be for the Requested Administration to decide how to respond to such a request.

3. The Requested Administration may postpone assistance when there are firm grounds for believing that it could prejudice investigations or ongoing judicial proceedings. In this case, the Requested Administration shall consult the Requesting Administration to determine whether assistance can be provided within the terms and conditions required by the Requested Administration.

4. The Requesting Administration shall be promptly informed of any decision to refuse or postpone the assistance and the grounds for that decision.

Article 13
TECHNICAL ASSISTANCE

The Customs Administrations shall provide each other with technical assistance in customs matters by:

- (a) exchanging officials with a view to developing mutual knowledge of the respective customs techniques;
- (b) providing training and assistance in building up the capacities of their own officials;
- (c) exchanging experts; and
- (d) providing information on the procedures and simplifications of customs controls to improve the methods and ways of such controls.

Article 14
COSTS

1. The costs incurred for the implementation of this Agreement shall be borne by the respective Contracting Parties.
2. If the execution of a request requires expenses of a substantial or extraordinary nature, the Customs Administrations shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

Article 15
TERRITORIAL APPLICATION

This Agreement shall apply to the customs territories of both Countries as defined in their respective laws and regulations.

Article 16
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 17
CONSULTATION

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

Article 18
IMPLEMENTATION OF THE AGREEMENT

1. The Customs Administrations shall take the necessary measures to ensure that officials responsible for investigating or combating customs offences maintain personal and direct relations with each other. The Customs Administrations will provide each other with detailed information of respective offices responsible for the implementation of this Agreement.
2. Detailed arrangements to implement this Agreement may be concluded, if necessary, between the Customs Administrations.

3. A Joint Commission is hereby established between the Contracting Parties, composed of Director General of Customs and Tariff Bureau of the Ministry of Finance of Japan and Director of the Customs Agency of the Italian Republic, assisted by experts. The Joint Commission shall meet, upon request by either Customs Administration, to monitor the progress of this Agreement as well as to find solutions to any problems that might arise.

Article 19
FINAL PROVISIONS

1. This Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have notified each other, through the exchange of diplomatic notes, of the completion of the procedures necessary for this purpose.

2. The Contracting Parties, upon request and if the case so requires, shall meet to examine this Agreement and to amend it. Amendments shall enter into force within the same conditions as mentioned in paragraph 1 of this Article.

3. This Agreement is of unlimited duration but any Contracting Party may denounce it at any time by notifying it in writing to the other Contracting Party through diplomatic channels. The denunciation shall take effect three months after the notification. The denunciation of this Agreement shall not affect the ongoing cooperation activities, undertaken prior to the date of denunciation.

In witness thereof, we, the undersigned representatives duly authorized by the respective Governments, have undersigned this Agreement.

Done at Rome on the fifteenth day of December, the year 2009 in two originals, in the Japanese, Italian, and English languages all texts being equally authentic. Should any dispute arise as to the interpretation of this Agreement, the English text shall prevail.

FOR THE GOVERNMENT OF JAPAN:

FOR THE GOVERNMENT OF
THE ITALIAN REPUBLIC: