

AGREEMENT BETWEEN
THE GOVERNMENT OF JAPAN AND
THE EUROPEAN COMMUNITY
ON CO-OPERATION AND MUTUAL ADMINISTRATIVE ASSISTANCE
IN CUSTOMS MATTERS

THE GOVERNMENT OF JAPAN and THE EUROPEAN COMMUNITY
(hereinafter referred to as the "Contracting Parties"),

CONSIDERING the importance of the commercial links
between Japan and the European Community (hereinafter
referred to as "the Community"), and desirous of
contributing, to the benefit of both Contracting Parties,
to the harmonious development of those links;

BELIEVING that, in order to attain this objective,
there should be an undertaking to develop customs co-
operation;

TAKING into account the development of customs co-
operation between the Contracting Parties, concerning
customs procedures;

CONSIDERING that operations in breach of customs
legislation are prejudicial to the economic, fiscal and
commercial interests of both Contracting Parties, and
recognising the importance of ensuring the accurate
assessment of customs duties and other taxes;

CONVINCED that action against such operations can be
made more effective by co-operation between customs
authorities;

RECOGNISING the significant role of customs
authorities and the importance of customs procedures in
promoting trade facilitation;

HAVING regard to the high level of commitment of both
Contracting Parties to customs actions and co-operation in
the fight against infringements of intellectual property
rights;

HAVING regard to obligations imposed under
international conventions already accepted by, or applied
to the Contracting Parties, as well as customs related
activities undertaken by the World Trade Organisation
(hereinafter referred to as the "WTO");

HAVING regard to the Recommendation of the Customs Co-operation Council (hereinafter referred to as the "CCC") on Mutual Administrative Assistance of December 5, 1953; and

WHEREAS in 1991 the Joint Declaration on Relations between The European Community and its Member States and Japan provided general guidelines for the relationship and set procedural objectives to further develop relations;

HAVE AGREED AS FOLLOWS:

TITLE I
GENERAL PROVISIONS

Article 1
Definitions

For the purpose of this Agreement:

- (a) "customs legislation" shall mean any laws and regulations of Japan or the Community, 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 authorities;
- (b) "laws and regulations of the Contracting Party" and "laws and regulations of each Contracting Party" shall mean the laws and regulations of Japan or the laws and regulations of the Community, as the context requires;
- (c) "customs authority" shall mean, in Japan, the Ministry of Finance and, in the Community, the competent services of the Commission of the European Communities responsible for customs matters and the customs authorities of the Member States of the Community;
- (d) "applicant authority" shall mean a customs authority of a Contracting Party which makes a request for assistance, on the basis of this Agreement;
- (e) "requested authority" shall mean a customs authority of a Contracting Party which receives a request for assistance, on the basis of this Agreement;

- (f) "personal data" shall mean all information relating to an identified or identifiable individual;
- (g) "operation in breach of customs legislation" shall mean any violation or attempted violation of the customs legislation;
- (h) "person" shall mean any natural person, any legal person, or any other entity without legal personality constituted or organised under the laws and regulations of each Contracting Party, carrying on importation, exportation, or transit of goods; and
- (i) "information" shall mean data, documents, reports, and other communications in any format, including electronic copies thereof.

Article 2 Territorial Application

This Agreement shall apply, on the one hand, to the territory of Japan in which its customs legislation is in force and, on the other hand, to the territories where the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty.

Article 3 Implementation

This Agreement shall be implemented by the Contracting Parties in accordance with the laws and regulations of each Contracting Party, and within the available resources of their respective customs authorities.

Article 4 Scope of the co-operation

1. Under this Agreement, customs co-operation shall cover all matters relating to the application of customs legislation.

2. The Contracting Parties through their customs authorities undertake to develop customs co-operation. In particular, the Contracting Parties shall co-operate in:

- (a) establishing and maintaining channels of communications between their customs authorities to facilitate the secure and rapid exchange of information;

- (b) facilitating effective co-ordination between their customs authorities; and
- (c) any other administrative matters related to this Agreement that may from time to time require their joint action.

3. The Contracting Parties also undertake to make co-operative efforts through their customs authorities in order to develop trade facilitation actions in the field of customs in accordance with international standards.

Article 5 Scope of assistance

1. The Contracting Parties through their customs authorities shall assist each other, in the areas within their competence and within the limits of available resources, and in the manner and under the conditions laid down in this Agreement, to ensure the correct application of customs legislation, in particular by preventing, investigating and combating operations in breach of that legislation.

2. Assistance in customs matters under this Agreement shall be provided between the customs authorities of the Contracting Parties, which are competent for the application of this Agreement. It shall not prejudice the rights and obligations of either Contracting Party on mutual assistance in criminal matters under international agreements or the laws and regulations of each Contracting Party. Nor shall it cover information obtained under powers exercised at the request of a judicial authority.

3. Assistance to recover duties, taxes or fines is not covered by this Agreement.

Article 6 Relation to other international agreements

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

2. Notwithstanding the provisions of paragraph 1, the provisions of this Agreement shall take precedence over the provisions of any bilateral agreement on customs co-operation and mutual administrative assistance which has been or may be concluded between Japan and individual Member States of the Community, insofar as the provisions of the latter are incompatible with those of this Agreement.

3. The provisions of this Agreement shall not affect the Community provisions governing the communication between the competent services of the Commission and the customs authorities of the Member States of the Community of any information obtained under this Agreement which could be of interest to the Community.

TITLE II
CUSTOMS CO-OPERATION

Article 7
Co-operation in customs procedures

For the purpose of facilitating the legitimate movement of goods, the customs authorities shall exchange information and expertise on measures to improve customs techniques and procedures and on computerised systems in accordance with the provisions of this Agreement.

Article 8
Technical co-operation

The customs authorities may provide technical co-operation to each other and exchange personnel and expertise on measures to improve customs techniques and procedures and on computerised systems with a view towards achieving these objectives in accordance with the provisions of this Agreement.

Article 9
Discussions in international organisations

The customs authorities shall seek to develop and strengthen their co-operation on topics of common interest with a view to facilitating discussions on customs matters in the framework of relevant international organisations such as the CCC and the WTO.

TITLE III
MUTUAL ADMINISTRATIVE ASSISTANCE

Article 10
Assistance on request

1. At the request of the applicant authority, the requested authority shall provide it with all relevant information which may enable it to ensure that customs legislation of the Contracting Party of the applicant authority is correctly applied, including information regarding activities detected or planned which are or could be operations in breach of such customs legislation. In particular, upon request, the requested authority shall furnish the applicant authority with information regarding activities that may result in operations in breach of customs legislation of the Contracting Party of the applicant authority, for example, incorrect customs declarations and certificates of origin, invoices, or other documents known to be, or suspected of being, incorrect or falsified.

2. At the request of the applicant authority, the requested authority shall inform it:

- (a) whether goods exported from the territory of one of the Contracting Parties have been properly imported into the other, specifying where appropriate, the customs procedure applied to the goods; and
- (b) whether goods imported into the territory of one of the Contracting Parties have been properly exported from the other, specifying where appropriate, the customs procedure applied to the goods.

3. At the request of the applicant authority, the requested authority shall, within the framework of the laws and regulations of the Contracting Party of the requested authority, 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 operations in breach of customs legislation of the Contracting Party of the applicant authority;

- (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 operations in breach of customs legislation of the Contracting Party of the applicant authority;
- (c) goods that are or may be transported in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation of the Contracting Party of the applicant authority; and
- (d) means of transport that are or may be used in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation of the Contracting Party of the applicant authority.

Article 11
Spontaneous assistance

The Contracting Parties shall assist each other, at their own initiative and in accordance with the laws and regulations of each Contracting Party, if they consider that to be necessary for the correct application of customs legislation, in particular, in situations that could involve substantial damage to the economy, public health, public security, or similar vital interest of the other Contracting Party, particularly by providing information obtained pertaining to:

- (a) activities which are or appear to be operations in breach of customs legislation and which may be of interest to the other Contracting Party;
- (b) new means or methods employed in carrying out operations in breach of customs legislation;
- (c) goods known to be subject to operations in breach of customs legislation;
- (d) persons in respect of whom there are reasonable grounds for believing they are or have been involved in operations in breach of customs legislation; and
- (e) means of transport in respect of which there are reasonable grounds for believing that they have been, are, or may be used in operations in breach of customs legislation.

Article 12

Form and substance of requests for assistance

1. Requests pursuant to this Agreement shall be made in writing. They shall be accompanied by the documents necessary to enable compliance with the request. When required because of the urgency of the situation, an oral request may be accepted, but must be confirmed immediately in writing.

2. Requests pursuant to paragraph 1 shall include the following information:

- (a) the applicant authority;
- (b) the action requested;
- (c) the object of 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.

3. Requests shall be submitted in a language acceptable to both requested and applicant authorities. This requirement may also apply, to the extent necessary, to any documents that accompany the request under paragraph 1.

4. If a request does not meet the formal requirement set out above, its correction or completion may be requested; precautionary measures may be taken by the requested authority in the meantime.

Article 13

Execution of requests

1. In order to comply with a request for assistance, the requested authority shall, within the limits of its competence and available resources, take all reasonable measures by supplying information already possessed, by carrying out appropriate enquiries or by arranging for them to be carried out.

2. Requests for assistance shall be executed in accordance with the laws and regulations of the Contracting Party of the requested authority.

3. Duly authorised officials from the applicant authority, may, with the agreement of the requested authority and subject to the conditions laid down by the latter, be present to obtain in the offices of the requested authority, information related to activities that are or may be operations in breach of customs legislation which the applicant authority needs for the purpose of this Agreement.

4. Duly authorised officials from the applicant authority may, with the agreement of the requested authority and subject to the conditions laid down by the latter, be present at enquiries carried out in the latter's jurisdiction into specific cases.

5. In the event that the request cannot be complied with, the applicant authority shall be notified promptly of that fact with a statement of the reasons. The statement may be accompanied by the relevant information that the requested authority considers may be of assistance to the applicant authority.

6. The requested authority shall, upon request by the applicant authority and when it deems appropriate, advise the applicant 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 co-ordinated.

Article 14

Form in which information is to be communicated

1. The requested authority shall communicate results of enquiries to the applicant authority in writing together with relevant documents or other items.

2. This information may be in computerised form.

Article 15

Exceptions to the obligation to provide assistance

1. Assistance may be refused or withheld, or may be made subject to the satisfaction of certain conditions or requirements, in cases where the Contracting Party of the requested authority is of the opinion that assistance under this Agreement would infringe upon the sovereignty of Japan or of a Member State of the Community, or upon its security, public policy, or other essential interest such as that referred to in paragraph 2 of Article 16. In particular, each Contracting Party may limit the information it communicates to the other Contracting Party when the latter 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.

2. 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 and administrative proceedings. In such a case, the requested authority shall consult with the applicant authority to determine if assistance can be given subject to such terms or conditions as the requested authority may require.

3. Where the applicant authority 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 authority to decide how to respond to such a request.

4. For the cases referred to in paragraphs 1 and 2, the decision of the requested authority and the reasons thereof must be communicated to the applicant authority without undue delay.

Article 16

Information exchange and confidentiality

1. Any information communicated in whatsoever form pursuant to this Agreement shall be treated as of a confidential nature, depending on the laws and regulations of each Contracting Party and shall enjoy the protection extended to similar information under the relevant laws and regulations of the Contracting Party of the customs authority that received it and the corresponding provisions applying to the Community authorities, unless the Contracting Party which provided the information gives a prior consent to the disclosure of such information.

2. Personal data may be exchanged only where 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 of each Contracting Party, including where appropriate, those in the Member States of the Community.

3. 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 authority which provided the information. Such use shall then be subject to any restrictions laid down by that authority.

4. Paragraph 3 shall not impede the use of information obtained in accordance with this Agreement as evidence in administrative proceedings subsequently instituted in respect of operations in breach of customs legislation. Therefore, the Contracting Parties may in their records of evidence, reports and testimonies and in administrative proceedings use as evidence information obtained in accordance with the provisions of this Agreement. The customs authority which supplied that information shall be notified of such use.

5. Notwithstanding paragraph 3 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 Contracting Party. These agencies may only use this information for the correct application of customs legislation and shall be subject to the conditions set out in Article 16 and 17 of this Agreement.

6. 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 Contracting Party of the customs authority that received it. Such customs authority shall, wherever possible, give advance notice of any such disclosure to the customs authority which provided the information. The receiving Contracting Party shall, unless otherwise agreed by the Contracting Party which provided the information, wherever appropriate, use all available measures under the applicable laws and regulations of the former Contracting Party to maintain the confidentiality of information and to protect personal data as regards applications by a third party or other authorities for disclosure of the information concerned.

Article 17 Criminal proceedings

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 the latter Contracting Party in criminal proceedings carried out by a court or a judge.

Article 18 Assistance expenses

1. Expenses incurred in the implementation of this Agreement shall be borne by the respective Contracting Parties.
2. If during the execution of a request it becomes apparent that completion of the execution of the request will entail expenses of an extraordinary nature, the customs authorities shall consult to determine the terms and conditions under which the execution may continue.

TITLE IV FINAL PROVISIONS

Article 19 Headings

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

Article 20
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 21
Joint Customs Co-operation Committee

1. A Joint Customs Co-operation Committee is hereby established, consisting of officials from the Ministry of Finance and the Ministry of Foreign Affairs of Japan and of officials of the European Community responsible for customs matters. Other officials of both Contracting Parties with the necessary expertise relevant to the issues to be discussed may be included on an ad hoc basis. It shall meet at a place, on a date and with an agenda, fixed by mutual consent.

2. The Joint Customs Co-operation Committee shall *inter alia*:

- (a) see to the proper functioning of this Agreement;
- (b) take measures necessary for customs co-operation in accordance with the objectives of this Agreement;
- (c) exchange views on any points of common interest regarding customs co-operation, including future measures and the resources for them;
- (d) recommend solutions aimed at attaining the objectives of this Agreement; and
- (e) adopt its internal rules of procedure.

Article 22
Entry into force and duration

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

2. This Agreement may be amended by mutual consent of the Contracting Parties through diplomatic notes exchanged between them. Amendments shall enter into force within the same conditions as mentioned in paragraph 1, except as otherwise agreed by the Contracting Parties.

3. Each Contracting Party may terminate this Agreement by giving notice to the other in writing. The termination shall take effect three months from the date of notification to the other Contracting Party. Requests for assistance which have been received prior to the termination of the Agreement shall be completed in accordance with the provisions of this Agreement.

Article 23
Authentic texts

This Agreement shall be drawn up in duplicate in the Japanese, Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic. In case of divergence of interpretation, the Japanese and English texts shall prevail over the other language texts.

In witness whereof, the undersigned, being duly authorised to do so, have signed this Agreement.

Done at Brussels, this thirtieth day of January, 2008.

For the Government of Japan

For the European Community