

AGREEMENT
BETWEEN THE GOVERNMENT OF JAPAN
AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY
REGARDING MUTUAL ASSISTANCE AND COOPERATION
IN CUSTOMS MATTERS

The Government of Japan and the Government of the Federal Republic of Germany, hereinafter referred to as "the Contracting Parties",

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

Considering the importance of assuring the accurate assessment of customs duties and other taxes collected at importation and exportation,

Considering that illegal cross-border trafficking in weapons, explosives and chemical, biological and nuclear substances as well as in narcotic drugs, psychotropic substances and precursors constitutes a danger to society,

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

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

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

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

Bearing in mind the Agreement between Japan and the European Union on Mutual Legal Assistance in Criminal Matters,

HAVE AGREED AS FOLLOWS:

Article 1

For the purposes of this Agreement:

- (a) the term "customs law" shall mean any laws and regulations of Japan or the Federal Republic of Germany concerning the importation, exportation, transit of goods and placing of goods under any other customs procedures, which relate to customs duties, any import or export duties or other taxes, or to measures of prohibition, restriction and control of the movement of goods falling under the competence of the Customs Administration;
- (b) the term "Customs Administration" shall mean, in Japan, the Ministry of Finance, and, in the Federal Republic of Germany, the Federal Ministry of Finance;
- (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 customs law;
- (e) the term "person" shall mean any natural or legal person;
- (f) the term "personal data" shall mean any information relating to an identified or identifiable natural person;
- (g) the term "Requesting Administration" shall mean the Customs Administration that requests assistance;
- (h) the term "Requested Administration" shall mean the Customs Administration from which assistance is requested;
- (i) the term "customs territory" shall mean the territory of the country of each Contracting Party in which the customs law of that country is in force; and

- (j) the term "controlled delivery" shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of a country, with the knowledge and under the supervision of the competent authority of that country, with a view to the investigation of an offense and the identification of persons involved in the commission of the offense.

Article 2

(1) The Contracting Parties shall assist each other through their respective Customs Administrations to ensure proper application of customs law, and to prevent and investigate any customs offense, in accordance with the provisions of this Agreement.

(2) The Contracting Parties shall, through their respective Customs Administrations, make cooperative efforts for simplification and harmonization of their customs procedures, as far as such cooperative efforts are compatible with the responsibilities of the Federal Republic of Germany as a Member State of the European Union.

(3) This Agreement shall be applied by the Contracting Parties in accordance with the laws and regulations of each country, and within the available resources of their respective Customs Administrations. The provisions of this Agreement shall not affect the rights and obligations of the Contracting Parties under other international agreements, including the Agreement between Japan and the European Union on Mutual Legal Assistance in Criminal Matters.

(4) This Agreement is without prejudice to the obligations of the Federal Republic of Germany under the legislation of the European Union concerning its present and future obligations as a Member State of the European Union and any legislation enacted to implement such obligations, especially those governing the exchange of information between the competent services of the European Commission of the European Union and the Customs Authorities of the Member States, as well as its present and future obligations resulting from international agreements between the Member States of the European Union.

Article 3

(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 law and to prevent, detect and investigate any customs offense.

(2) Either Customs Administration shall, on its own initiative or upon request, provide the other Customs Administration 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 either Customs Administration considers that available information is 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, if deemed necessary, provide the latter Customs Administration with such information without delay on its own initiative.

Article 4

The Requested Administration shall, within the limit of 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 committing or having committed a customs offense 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 suspected to be used in the commission of a customs offense within the territory of the country of the Requesting Administration; and
- (c) means of transport suspected by the Requesting Administration of being used or having been used in the commission of a customs offense within the customs territory of the country of the Requesting Administration.

Article 5

The Customs Administrations, subject to the decision of a competent authority, may cooperate in and exchange information on a controlled delivery executed in accordance with the laws and regulations of their respective countries.

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, oral requests may also be made and accepted, but shall be in due time confirmed in writing.

(2) Requests pursuant to paragraph (1) of this article shall include the following information:

- (a) Requesting Administration;
- (b) the nature of the proceedings in respect of which the request is made;
- (c) the purpose and the reason for the request;
- (d) the names and addresses or, if not known, indications as exact and comprehensive as possible, of the persons to whom the request relates; 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 offices designated by the respective Customs Administrations.

Article 7

(1) The Requested Administration shall take all reasonable measures to execute the request for assistance made under this Agreement.

(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 laid down 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 to obtain information related to activities that are or are suspected of being customs offenses, which the Requesting Administration needs for the purpose of the request for assistance under this Agreement.

(3) Where the Requested Administration considers it appropriate for officials of the Requesting Administration to be present when measures of assistance are carried out pursuant to a request, the Requested Administration may invite the participation of officials of the Requesting Administration, subject to any terms and conditions it may specify.

(4) When officials of either Customs Administration are present in the customs territory of the country of the other Customs Administration in accordance with the provisions of this Agreement, they must at all times be able to furnish proof of their identity and official capacity.

(5) 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 of the request for assistance.

Article 8

(1) Information received pursuant to this Agreement shall only be used for the purpose specified in paragraph (1) of Article 2 of this Agreement. It shall not be communicated to other authorities unless the Customs Administration providing the information has expressly approved in writing its use by the other authorities. The Customs Administration providing the information may request that the Customs Administration receiving the information will inform on the use of the provided information and the results achieved thereby.

(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 agencies of its country, which may use such information under the conditions stipulated in the first sentence of paragraph (1), paragraphs (3) and (4) of this Article, and Article 9 of this Agreement.

(3) Each Contracting Party shall maintain the confidentiality of any information received pursuant to this Agreement, and shall grant at least the same level of protection under the laws and regulations of the country of the Customs Administration providing the information unless the Customs Administration providing the information consents to the disclosure of such information. In case where a request cannot be executed without disclosing the information contained in such request, the Requested Administration shall so inform the Requesting Administration, which shall then determine whether the request should nevertheless be executed.

(4) In cases where personal data are exchanged under this Agreement, the following provisions shall apply, to the extent permitted by the applicable laws and regulations of each Country.

- (a) In cases where the information provided contains personal data, the Customs Administration which received personal data shall upon request inform the Customs Administration which provided the personal data of the use of such data and the results achieved thereby.
- (b) The Customs Administration providing personal data shall exercise vigilance as to the accuracy of the data to be provided as well as their necessity for and proportionality to the purpose of the request.

- (c) Each Contracting Party shall ensure, in accordance with the laws and regulations of its country, that any person may request its Customs Administration to disclose the personal data of which such person is the subject as well as the information regarding the use of such personal data, which are retained by the Customs Administration. When a Customs Administration receives the request of such disclosure, that Customs Administration, except in cases where the laws and regulations of its country allow the refusal of disclosure based on the circumstances of a given case, shall disclose the retained personal data as well as the information regarding the use of such personal data to the requesting person.
- (d) Each Contracting Party shall ensure, in accordance with the laws and regulations of its country, that any person who suffered from unlawful use of personal data of which that person is the subject by its Customs Administration, including such cases where the Customs Administration provides inaccurate personal data, may claim damages.
- (e) Where the laws and regulations applicable to the Customs Administration providing personal data provide for particular deadlines for the deletion of the personal data provided, the Customs Administration providing the data shall inform the other Customs Administration receiving it accordingly. Irrespective of these deadlines, the personal data provided shall be deleted once they are no longer required for the purpose for which they were provided.
- (f) Each Customs Administration shall take necessary measures for the prevention of unauthorised access, unauthorised modification and unauthorised disclosure of the personal data provided from the other Customs Administration.
- (g) The Customs Administrations shall keep official records of the provision and receipt of personal data.

(5) In cases where the Customs Administration which provided information recognizes that the information provided pursuant to this agreement was inaccurate or should not have been provided, the Customs Administration which received such information shall be notified of that fact without delay. The Customs Administration which received the notification shall correct or delete the information without delay.

(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 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 providing the information.

Article 9

(1) 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 the latter Contracting Party as evidence in criminal proceedings carried out by a court or a judge.

(2) The Requesting Administration shall not use any information, including personal data, received pursuant to this Agreement for investigative purposes unless otherwise the Requesting Administration describes such purposes in the request.

(3) In the event that information provided from the Customs Administration of a Contracting Party to the Customs Administration of the other Contracting Party pursuant to this Agreement is needed to be used by the latter Contracting Party as evidence in criminal proceedings carried out by a court or a judge, the latter Contracting Party shall, in order to use such information as evidence in criminal proceedings, carried out by a court or a judge, submit a request in accordance with the Agreement between Japan and the European Union on Mutual Legal Assistance in Criminal Matters.

Article 10

(1) In cases where the Contracting Party of the Requested Administration is of the opinion that assistance under this Agreement would infringe upon the sovereignty, security, public policy or other substantial interest of its country, the 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 execute 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 the 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 in due time notified of the 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 Administration in its further pursuit of the request.

Article 11

The Customs Administrations shall cooperate, when necessary and appropriate, in the areas of research, development, and test of new customs procedures, enforcement aids and techniques, training activities of customs officers, and exchange of personnel between them.

Article 12

(1) Expenses incurred in the implementation of this Agreement, in particular those incurred in requesting for information as well as in working on such requests under this Agreement, shall in general be borne by the respective Contracting Parties. However, in cases in which officials of the Requesting Administration participate in measures of assistance carried out by the Requested Administration according to paragraph (3) of Article 7 of this Agreement, the expenses incurred due to such participation are to be borne by the Requesting Administration unless the Contracting Parties agree on a different procedure in the individual case.

(2) If during the execution of a request for assistance it becomes apparent that completion of the execution of the request for assistance will entail expenses of an extraordinary nature, the Customs Administrations shall consult to determine the terms and conditions under which the execution may continue.

Article 13

(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

(1) The Contracting Parties shall notify each other, through diplomatic channels, of the completion of their respective internal procedures necessary for the entry into force of this Agreement. This Agreement shall enter into force on the thirtieth day after the latter of the dates of receipt of the notifications.

(2) This Agreement shall continue in effect for an indefinite period. Either Contracting Party may terminate this Agreement by giving three months written notice through diplomatic channels. In such an event, this Agreement shall cease to have effect three months after the date of receipt of the written notice of termination by either 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.

(3) The Contracting Parties may meet in order to review this Agreement, as necessary.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Agreement.

Done at Berlin on the 19th day of November 2014 in duplicate in the Japanese, German and English languages, all three texts being authentic. In case of divergent interpretations of the Japanese and the German texts, the English text shall prevail.

For the Government
of Japan

For the Government
of the Federal Republic
of Germany