

AGREEMENT
BETWEEN THE GOVERNMENT OF JAPAN
AND THE GOVERNMENT OF SPAIN
REGARDING COOPERATION
AND MUTUAL ASSISTANCE IN CUSTOMS MATTERS

The Government of Japan and the Government of Spain,
hereinafter referred to as the Parties,

Considering that customs offences are detrimental to
the economic, fiscal, social and commercial interests of
their respective countries, as well as to the interests of
legitimate trade;

Considering that illicit traffic in narcotic drugs,
psychotropic substances, weapons, explosives and chemical,
biological and nuclear substances constitutes a danger to
public health and to society;

Considering the importance of assuring the accurate
assessment of customs duties, and the proper implementation
of the measures of prohibition, restriction and control;

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

Convinced that efforts to prevent customs offences and
efforts to ensure accurate collection of customs duties can
be made more effective through cooperation between their
Customs Authorities;

Having regard to the Recommendation of the Customs Co-
operation Council on Mutual Administrative Assistance of
December 5, 1953;

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

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
January 30, 2008;

Having regard to the Agreement between Japan and the European Union on Mutual Legal Assistance in Criminal Matters of January 2, 2011;

Having regard also to the Single Convention on Narcotic Drugs (New York, 1961), the Convention on Psychotropic Substances (Vienna, 1971) and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna, 1988);

Have agreed as follows:

ARTICLE 1
Definitions

For the purposes of this Agreement:

- (a) "Customs Authority" shall mean:
- in Japan: the Ministry of Finance;
 - in Spain: the Ministry of Finance and Public Administrations without prejudice to the competences corresponding to other Ministries;
- (b) "customs legislation" shall mean any laws and regulations enforced by the Customs Authorities governing the import, export and transit of goods, and also any customs procedures or regimes, whether relating to customs duties or to measures of prohibition, restriction or control falling under the competence of the Customs Authorities;
- (c) "customs offence" shall mean any violation or attempted violation of customs legislation;
- (d) "customs duties" shall mean all duties, taxes and fees levied and collected at importation and exportation by Customs Authorities;
- (e) "person" shall mean any natural or legal person;
- (f) "Requesting Authority" shall mean the Customs Authority which makes a request for assistance in customs matters under this Agreement;

- (g) "Requested Authority" shall mean Customs Authority which receives a request for assistance in customs matters under this Agreement;
- (h) "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 the investigation of an offence and the identification of persons involved in the commission of the offence;
- (i) "information" shall mean any data, documents, reports or other communications;
- (j) "personal data" shall mean all information relating to an identified or identifiable individual; and
- (k) "customs territory" shall mean the territory of the country of each Party in which the customs legislation of that country is in force.

ARTICLE 2
Scope of the Agreement

1. The Parties shall, through their Customs Authorities, assist each other under the terms set out in this Agreement in order to facilitate the lawful movement of goods, to ensure proper application of the customs legislation and also to prevent, investigate and combat any customs offence. Assistance to recover customs duties or fines is not covered by this Agreement.

2. The Parties shall, through their Customs Authorities, make cooperative efforts for simplification and harmonization of their customs procedures, within the legal framework referred to in paragraph 5 of this Article.

3. This Agreement shall be implemented by the Parties in accordance with the laws and regulations in force in the country of each Party and within the competence and available resources of their respective Customs Authorities.

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

5. This Agreement is without prejudice to the obligations of Spain 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 those obligations, as well as its present and future obligations resulting from international agreements between the Member States of the European Union.

ARTICLE 3
Assistance upon request

1. Upon request of the Requesting Authority, the Requested Authority shall provide the Requesting Authority with any useful information related to:

- (a) the proper application of the customs legislation and substantial changes in the customs legislation;
- (b) the accurate assessment of customs duties; and
- (c) the prevention, investigation and repression of customs offences.

2. Upon request of the Requesting Authority, the Requested Authority shall, within the limits of its available resources, subject to the conditions mentioned in Article 12, and within the framework of the laws and regulations of the country of the Requested Authority, provide information on and special surveillance over:

- (a) persons known to the Requesting Authority to have committed customs offences or suspected by the Requesting Authority of having committed customs offences;
- (b) goods, either in transport or storage, notified by the Requesting Authority as giving rise to suspected illicit traffic towards its customs territory;
- (c) means of transport known to the Requesting Authority to have been used to commit customs offences or suspected by the Requesting Authority of having been used to commit customs offences; and

- (d) places known to the Requesting Authority to have been used to commit customs offences or suspected by the Requesting Authority of having been used to commit customs offences.

3. Upon request of the Requesting Authority, the Requested Authority shall provide any information showing if:

- (a) goods imported into the customs territory of the Requesting Authority have been lawfully exported from the customs territory of the Requested Authority; and
- (b) goods exported from the customs territory of the Requesting Authority have been lawfully imported into the customs territory of the Requested Authority, and the nature of the customs procedure, if any, under which the goods have been placed.

ARTICLE 4 Spontaneous assistance

The Customs Authorities shall provide each other assistance without prior request and in accordance with the laws and regulations of their respective countries, where they consider it necessary for the proper application of customs legislation, in situations that could involve substantial damage to any vital interest of the other Customs Authority, particularly when they obtain information pertaining to:

- (a) operations which may give rise to customs offences;
- (b) new means or methods employed for undertaking such operations;
- (c) goods known to be subject to customs offences;
- (d) persons in respect of whom there are reasonable grounds for believing they are or have been involved in customs offences; 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 customs offences.

ARTICLE 5
Controlled delivery

The Customs Authorities, in consultation with the relevant law enforcement agencies, may cooperate in and exchange information on a controlled delivery executed in accordance with the laws and regulations of their respective countries.

ARTICLE 6
Information about illicit traffic in sensitive goods

The Customs Authorities shall, on their own initiative or upon request and without delay, provide each other with all relevant information on activities which constitute or could constitute a customs offence particularly in the field of:

- (a) movement of narcotic drugs, psychotropic substances and precursors;
- (b) movement of weapons, ammunition, explosives and explosive devices;
- (c) movement of objects of art and antiquities, which are of significant historical, cultural or archaeological value for the country of either Customs Authority;
- (d) movement of goods subject to substantial customs duties;
- (e) movement of goods infringing intellectual property rights; and
- (f) movement of poisonous goods, nuclear and radioactive materials as well as other substances which constitute a danger to the environment or the public health.

ARTICLE 7
Form and substance of requests for assistance

1. Requests pursuant to this Agreement shall be made in writing. Information useful for the execution of such requests shall accompany the requests. When the urgency of the situation so requires oral requests may be accepted, but shall be confirmed in writing immediately.

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

- (a) the Requesting Authority;
- (b) the actions requested;
- (c) the object of and the reason for the request;
- (d) the laws and regulations and other legal elements involved;
- (e) indications as exact and comprehensive as possible on the persons and goods that are the target of the investigations and, whenever known, on the means of transport of such goods; and
- (f) a summary of the relevant facts and of the enquiries already carried out.

3. Requests shall be submitted in English, or in the official language of the country of the Requested Authority.

4. If a request does not meet the formal requirements set out in paragraphs 1 to 3 of this Article, its correction or completion may be demanded; the precautionary measures may, however, be taken by the Requested Authority in the meantime.

5. 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 8 Execution of requests

1. The Requested Authority shall take all reasonable measures to execute the request for assistance made under this Agreement. Requests for assistance and enquiries shall be executed in accordance with the laws and regulations of the country of the Requested Authority.

2. In case the Requested Authority is not the appropriate agency to comply with the request, it may transmit the request to the appropriate agency which shall be under no obligation to reply such request.

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.

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 refusal or postponement of the request. The statement may be accompanied by the relevant information which may be useful for the Requesting Authority for its further pursuit of the request.

ARTICLE 9
Presence at the enquiries of officials
of the Requesting Authority

1. Duly authorized officials of the Requesting Authority may, in particular cases where the consent of the Requested Authority is given, within the conditions laid down by the latter, and in accordance with laws and regulations of the country of the latter, be present at enquiries carried out by the Requested Authority in the customs territory of the Requested Authority.

2. When, in the circumstances provided for under this Agreement, officials of the Requesting Authority are present at enquiries carried out by the Requested Authority in the customs territory of the Requested Authority, they must at all times be able to furnish proof of their official capacity and identity. They must not wear uniform nor carry weapons and shall be responsible for any offences against the laws and regulations of the country of the Requested Authority.

ARTICLE 10
Communication of information

1. The Requested Authority shall communicate results of enquiries to the Requesting Authority in writing together with relevant documents or other items.

2. The results of enquiries referred to in paragraph 1 of this Article may be, at the discretion of the Requested Authority, communicated in the form of computerized information produced for the same purpose.

ARTICLE 11
Information exchange and confidentiality

1. Information received pursuant to this Agreement shall be used solely for the purposes of this Agreement. It shall not be communicated to other authorities unless the Customs Authority providing the information has expressly approved in writing its use by those other authorities.

2. Notwithstanding the second sentence of 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 this Article.

3. Information provided from the Customs Authority of a Party to the Customs Authority of the other Party pursuant to this Agreement shall not be used by the latter Party in criminal proceedings carried out by a court or a judge.

4. In the event that information provided from the Customs Authority of a Party to the Customs Authority of the other Party pursuant to this Agreement is needed to be used by the latter Party in criminal proceedings carried out by a court or a judge, the latter 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 Party through diplomatic channels or other channels established in accordance with the laws and regulations of the country of the former Party.

5. Each Party shall maintain the confidentiality of any information received pursuant to this Agreement and shall grant 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 Customs Authority providing the information unless the Customs Authority providing the information gives a prior consent to the disclosure of such information.

6. Personal data shall not be transmitted whenever there are reasonable grounds to believe that the transfer or the use of such data transmitted would be contrary to laws and regulations of the country of Customs Authority providing such data.

7. 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 shall, wherever possible, give advance notice of any such disclosure to the Customs Authority providing the information.

ARTICLE 12

Exemptions from 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 Party of the Requested Authority is of the opinion that assistance under this Agreement would infringe upon the sovereignty, security, public policy, or other essential interest of its country.

In particular, each Party may limit the information communicated to the other Party when the latter Party is unable to give the assurance requested by the former 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 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.

3. Where the Requesting 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 of this Article, the decision of the Requested Authority and the reasons thereof must be communicated to the Requesting Authority without undue delay.

ARTICLE 13
Technical cooperation

The Customs Authorities 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 their officials, and exchange of personnel between them.

ARTICLE 14
Costs of assistance

1. The Customs Authorities shall waive all claims on each other for the reimbursement of costs incurred in the execution of this Agreement.

2. If expenses of a substantial and extraordinary nature are or will be required to execute the request, the Customs Authorities shall consult to determine the terms and conditions under which the request will be executed.

ARTICLE 15
Implementation of the Agreement

1. The Parties may hold, as necessary, consultations through diplomatic channels on any matters which may arise in the implementation of this Agreement.

2. The cooperation and assistance provided for under this Agreement shall be rendered directly by the Customs Authorities. The Customs Authorities may, as necessary, conclude detailed arrangements for that purpose.

3. The Customs Authorities may meet in order to follow up and review the implementation of this Agreement. The Customs Authorities will meet at a place, on a date and with an agenda, fixed by mutual consent.

ARTICLE 16
Territorial application

This Agreement shall apply to the customs territories of both Parties.

ARTICLE 17
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 18
Entry into force and termination

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

2. This Agreement is of unlimited duration and shall stay in force six months after the date of a written notification from either Party to the other Party of its intention to terminate the Agreement through diplomatic channels.

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

Done at Tokyo, on the 3rd day of October in the year 2013, in two originals in the Japanese, Spanish and English languages, all texts being equally authentic.

For the Government
of Japan:

For the Government
of Spain: