

CUSTOMS

Agreement Between the
UNITED STATES OF AMERICA
and JAPAN

Signed at Washington June 17, 1997

with

Exchange of Notes



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89-497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

“ . . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

JAPAN

Customs

*Agreement signed at Washington June 17, 1997;
Entered into force June 17, 1997.
With exchange of notes.*

**AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF JAPAN
REGARDING MUTUAL ASSISTANCE
BETWEEN CUSTOMS ADMINISTRATIONS**

The Government of the United States of America and the Government of Japan (hereinafter referred to as "the Parties"),

Considering that offenses against customs laws 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 international cooperation in matters related to the administration and enforcement of the customs laws 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 action against customs offenses can be made more effective by cooperation between their Customs Administrations, 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 the present Agreement:

- (a) the term "customs laws" shall mean such laws and regulations administered and enforced by the Customs Administrations 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 controlled items across the boundary of the customs territory of each country;
- (b) the term "Customs Administration" shall mean, in the United States of America, the United States Customs Service, Department of the Treasury, and, in Japan, 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 of the customs laws as well as any attempt to commit any violation of such laws;
- (e) the term "person" shall mean any natural or legal person;
- (f) the term "requesting Administration" shall mean the Customs Administration that requests assistance;
- (g) the term "requested Administration" shall mean the Customs Administration from which assistance is requested;
- (h) the term "customs territory" shall mean the territory of the country of each Party in which the customs laws of that country are in force.

ARTICLE 2

1. (a) The Parties shall assist each other through their Customs Administrations to ensure proper application of customs laws and to prevent, investigate, and repress any customs offense, in accordance with the provisions of this Agreement.
(b) The Parties shall through their Customs Administrations make cooperative efforts for simplification and harmonization of their customs procedures.
2. This Agreement shall be implemented by the Parties in accordance with the laws and regulations in force in each country and within the available resources of their respective Customs Administrations.
3. This Agreement is intended solely for mutual assistance between the Parties. The provisions of this Agreement shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any information, or to impede in the execution of a request for assistance made under this Agreement.

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 laws and to prevent, investigate, and repress any customs offense.
2. The Customs Administrations shall also cooperate, when necessary and appropriate, in the area of research, development, and test of new customs procedure and new enforcement aids and techniques, training activities of customs officers, and interchange of personnel between them.

ARTICLE 4

1. (a) The requested Administration shall provide the requesting Administration with the following information:
 - (i) whether goods imported into the customs territory of the country of the requesting Administration have been lawfully exported from the customs territory of the country of the requested Administration; or
 - (ii) whether goods exported from the customs territory of the country of the requesting Administration have been lawfully imported into the customs territory of the country of the requested Administration.
- (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 Administration shall, within the limits 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 having done so 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 giving rise to a suspicion of controlled items to be transported towards the customs territory of the country of the requesting Administration; or
 - (c) means of transport suspected by the requesting Administration of having been used in the commission of a customs offense within the customs territory of the country of the requesting Administration.
3. (a) The Customs Administration of either Party shall, on its own initiative or upon request, provide the Customs Administration of the other Party with available information regarding the activities that may result in customs offenses within the customs territory of the country of the latter Customs Administration.
- (b) When the Customs Administration of either Party considers that available information may be relevant to serious customs offenses that could involve substantial damage to the economy, public health, public secu-

rity, or any other vital interest of the country of the other Customs Administration, the former Customs Administration shall, upon its own initiative, provide the latter Customs Administration with such information.

ARTICLE 5

1. The Customs Administrations shall, upon request, provide documents relating to transportation and shipment of goods showing value, disposition, and destination of those goods.
2. Unless otherwise advised by the requesting Administration, the requested Administration 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.

ARTICLE 6

Officials specially designated by the requesting Administration may, with the consent of the requested Administration and subject to the conditions imposed by the requested Administration, consult, in the offices of the requested Administration, 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 7

1. Requests pursuant to this Agreement shall be made in writing. Information deemed useful for the execution of such requests shall accompany the request. When the urgency of the situation so requires, oral requests may also be made and accepted, but shall be promptly confirmed in writing.
2. Requests made pursuant to paragraph 1 of this Article shall include the following information:
 - (a) the Administration 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 parties 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 Administrations.

ARTICLE 8

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

2. If the Party of the requested Administration agrees to the request of the Party of the requesting Administration, officials specially designated by the requesting Administration may, subject to the conditions imposed by the Party of the requested Administration, be present during the inquiry conducted by the requested Administration in the customs territory of the country of the requested Administration.

3. 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 to the request for assistance so that such action may be coordinated.

ARTICLE 9

1. Information received pursuant to this Agreement shall only be used for the purposes specified in Article 2, paragraph 1, of this Agreement and by the Customs Administrations, unless the Customs Administration 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 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 Article 10 of this Agreement.

3. Either Party shall, when requested, maintain the confidentiality of any information provided by the Customs Administration of the other Party within the framework of this Agreement.

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 Administration receiving the information. Such Customs

Administration shall, wherever possible, give advance notice of any such disclosure to the Customs Administration which provided the information.

ARTICLE 10

1. Information provided from the Customs Administration of a Party to the Customs Administration of the other Party pursuant to this Agreement shall not be used by that other Party as evidence in criminal investigation, prosecution, or judicial proceeding, including grand jury proceeding.

2. In the event that information obtained by the Customs Administration of a Party within the framework of this Agreement is needed as evidence in criminal investigation, prosecution, or judicial proceeding, including grand jury proceeding, that Party shall, in order to use such information as evidence in criminal investigation, prosecution, or judicial proceeding, including grand jury proceeding, submit a request for such information to the other Party through the diplomatic channel.

ARTICLE 11

1. In cases where the Party of the requested Administration 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 Administration would be unable to comply with 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, including grand jury proceeding. In such a case, the requested Administration shall consult with the requesting Administration to determine if 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 promptly notified of that fact, and provided 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 12

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

ARTICLE 13

1. The Parties may hold, as necessary, consultations through the diplomatic channel 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 Administrations of the Parties.

ARTICLE 14

1. This Agreement shall enter into force upon signature.
2. Either Party may terminate this Agreement by giving three months written notice through the diplomatic channel. Any ongoing assistance at the time of notification of termination shall be completed by the date of termination.
3. The Parties shall meet in order to review this Agreement as necessary, or at the end of five years from its entry into force, unless they notify one another in writing that no review is necessary.

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

DONE at Washington, this seventeenth day of June, 1997, in duplicate, in the English and Japanese languages, both texts being equally authentic.

FOR THE GOVERNMENT OF
THE UNITED STATES OF
AMERICA:

George J. Weise

FOR THE GOVERNMENT OF
JAPAN:

[Signature]

OFFSET FOLIO pp.9-20

[EXCHANGE OF NOTES]

The Secretary of State presents her compliments to the Chargé d'Affaires ad interim of Japan and has the honor to refer to the Agreement Between the Government of the United States of America and the Government of Japan Regarding Mutual Assistance Between Customs Administrations, signed at Washington today.

The Secretary of State further wished to inform the Chargé d'Affaires ad interim, on behalf of the Government of the United States of America, that with reference to Articles 9 and 10 of the said Agreement the restrictions on the use of information referred to in the aforementioned articles will continue to be imposed in accordance with the laws and regulations of the United States of America after the termination of the said Agreement.

Department of State,

Washington, June 17, 1997.

EMBASSY OF JAPAN
WASHINGTON, D. C.

No. 64

The Charge d'Affaires ad interim of Japan presents his compliments to the Secretary of State and has the honor to refer to the Agreement Between the Government of Japan and the Government of the United States of America Regarding Mutual Assistance Between Customs Administrations, signed at Washington today.

The Charge d'Affaires ad interim of Japan further wishes to inform the Secretary of State, on behalf of the Government of Japan, that with reference to Articles 9 and 10 of the said Agreement the restrictions on the use of information referred to in the afore-mentioned articles will continue to be imposed in accordance with the laws and regulations of Japan after the termination of the said Agreement.

Washington, D.C., June 17, 1997