

AGREEMENT
BETWEEN THE GOVERNMENT OF JAPAN
AND THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL
REGARDING MUTUAL ADMINISTRATIVE ASSISTANCE AND COOPERATION
IN CUSTOMS MATTERS

The Government of Japan and the Government of the Federative Republic of Brazil (hereinafter referred to as "the Contracting Parties"),

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

Considering the importance of assuring the accurate assessment of customs duties and other taxes collected at importation or exportation, as well as of ensuring proper enforcement of prohibitions, restrictions and control measures by their Customs Administrations;

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 agreements containing prohibitions, restrictions and special measures of control in respect of specific goods;

Convinced that actions against Customs offense can be made more effective by cooperation between their Customs Administrations;

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

Considering that trafficking in narcotic drugs and psychotropic substances constitutes a danger to public health and to society;

Taking into account the threat of transnational organized crime and the need to effectively combat it;

Recognizing the increased global interest for the security and the facilitation of the international trade supply chain;

Recognizing the importance of achieving a balance between compliance and facilitation in ensuring the free flow of legitimate trade as well as in meeting the needs of the Contracting Parties for the protection of society and revenues; and

Convinced that international trade will be facilitated by the adoption of modern control techniques such as risk management,

Have agreed as follows:

Article 1
Definitions

For the purposes of this Agreement:

- (a) "Customs laws" shall mean the legal and regulatory provisions administered and enforced by the Customs Administrations concerning the importation, exportation, transit and storage of goods, including administrative provisions relating to measures of prohibitions, restrictions and other similar controls with respect to the movement of controlled goods across the boundary of the Customs territory of each country;
- (b) "Customs Administration" shall mean, in Japan, the Ministry of Finance, and, in the Federative Republic of Brazil, the Secretariat of the Federal Revenue of Brazil, Ministry of Finance;
- (c) "information" shall mean any data, documents, reports or other communications in any format, including documents or copies endorsed by the Requested Administration;
- (d) "Customs offense" shall mean any violation or attempted violation of the Customs laws;
- (e) "person" shall mean any natural or legal person, or any other entity without legal personality;
- (f) "Requesting Administration" shall mean the Customs Administration that requests assistance;
- (g) "Requested Administration" shall mean the Customs Administration from which assistance is requested;

- (h) "Customs territory" shall mean the territory of the country of each Contracting Party in which the Customs laws of that country are in force;
- (i) "official" shall mean any customs officer or other government agent designated by a Customs Administration;
- (j) "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 of 1988 and any additional materials or products containing materials defined in the laws and regulations of both countries; and
- (k) "precursors" shall mean any substances 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 of 1988 and any additional substances defined in the laws and regulations of both countries.

Article 2 Scope of the Agreement

1. The Contracting Parties shall assist each other through their Customs Administrations with administrative assistance, to ensure proper application of Customs laws, and to prevent, investigate and repress any Customs offense, in accordance with the provisions of this Agreement.
2. The Contracting Parties shall through their Customs Administrations make cooperative efforts for simplification and harmonization of their customs procedures.
3. This Agreement shall be implemented by the Contracting Parties in accordance with the laws and regulations in force in each country, and within the available resources of their respective Customs Administrations.
4. Assistance to recover customs duties, taxes or fines is not covered by this Agreement.

5. This Agreement only covers mutual administrative assistance between the Contracting Parties and shall not affect the rights and obligations of the Contracting Parties under other international agreements.

6. The provisions of this Agreement shall not give rise to a right on the part of any person to obtain, suppress or exclude any evidence, or to impede the execution of a request for assistance made under this Agreement.

Article 3 Mutual Assistance

1. The Customs Administrations shall provide each other, either upon request or on their own initiative, with assistance through the exchange of information that helps to ensure proper application of Customs laws, and to prevent, investigate and repress any Customs offense, including:

- (a) the accurate assessment of customs duties and other taxes including the customs value, tariff classification and origin of goods;
- (b) customs procedures, including Customs laws, regulations and measures of prohibition, restriction and control falling under the competence of the Customs Administration; and
- (c) sources of smuggling goods, new appliances of Customs offense as well as methods of committing smuggling activities in relation to cases exposed by one Contracting Party.

2. Either Customs Administration shall, either upon request or on its own initiative, provide the other Customs Administration with available information regarding Customs offense committed or planned 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 offense 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.

Article 4
Assistance upon Request

1. Upon request, the Requested Administration shall provide the Requesting Administration with following information:

- (a) 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;
- (b) 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; and
- (c) whether goods which have been transited through the Customs territory of the country of one Customs Administration and are destined to the Customs territory of the country of the other Customs Administration have been lawfully transited.

2. The information provided pursuant to paragraph 1 shall, upon request, contain the customs procedures used for clearing of the goods which are the subject of the request.

Article 5
Surveillance

Upon request, the Requested Administration shall, within the limit of its available resources, exercise special surveillance over and provide the Requesting Administration with information on:

- (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 in transport or in storage notified by the Requesting Administration as giving rise to a suspicion of being subject to illicit traffic towards the Customs territory of the country of the Requesting Administration;
- (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; and
- (d) premises known to have been used or suspected of being used in connection with the commission of a Customs offense in the Customs territory of the country of the Requesting Administration.

Article 6 Sensitive Goods

The Customs Administrations shall provide each other, either upon request or on their own initiative, with relevant information on activities, detected or planned, which constitute or appear to constitute a Customs offense, particularly with regard to movement of:

- (a) narcotic drugs, psychotropic substances and precursors; and
- (b) weapons, ammunitions, explosives and explosive devices and radioactive materials as well as other materials dangerous for the environment and the public health.

Article 7 Communication of Requests

1. Requests for assistance 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 promptly confirmed in writing.

2. Requests for assistance 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 object and the reason for the request;
- (d) the names and addresses of the persons to whom the requests relates, if known;
- (e) a brief description of the matter under consideration and the legal elements involved;
and
- (f) a reference in accordance with paragraph 1 of Article 10, if applicable.

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.

4. Any documents accompanying the requests for assistance pursuant to this Agreement shall be translated to English, to the extent necessary.

Article 8 Presence of Officials in the Customs Territory of the country of the Requested Administration

1. If the Requested Administration agrees to the request of the Requesting Administration, officials specially designated by the Requesting Administration may, subject to the conditions imposed 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.

2. 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.

3. Notwithstanding paragraph 1 of this Article, the officials of the Requesting Administration being present at the inquiry conducted by the Requested Administration shall only have an advisory role and shall not be allowed to exercise any legal or investigative power.

4. When officials of the Requesting Administration are present in the Customs territory of the country of the Requested Administration pursuant to paragraph 1 of this Article, they may, with the consent of the Requested Administration and subject to the conditions imposed by the Requested Administration, in the offices of the Requested Administration, consult the documents, registers and other relevant data including those related to activities that are or may be Customs offense and obtain copies of relevant parts of such documents, registers and other relevant data, which the Requesting Administration needs for the purposes of this Agreement.

5. When officials of the Requesting Administration are present in the Customs territory of the country of the other Customs Administration in accordance with this Article, they must at all times be able to furnish proof of their identity and official capacity. They shall not wear uniform nor carry weapons.

6. When officials of the Requesting Administration are present in the Customs territory of the country of the other Customs Administration in accordance with this Article, they shall enjoy, to the extent provided by the laws and regulations of the country of the other Customs Administration, the same protection as that granted to officials of the other Customs Administration, and shall be responsible for any offense they might commit.

Article 9 Confidentiality of Information

1. Information received pursuant to this Agreement shall only be used for the purposes specified in paragraph 1 of Article 2. It shall not be communicated to other authorities unless the Customs Administration providing the information has expressly approved in writing its use by that other authorities.

2. Notwithstanding paragraph 1 of this Article, 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.

3. 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 2, 4, and 6 of this Article and Article 10 of this Agreement.

4. 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 and confidentiality extended to the same kind of information 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.

5. 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.

6. The Requesting Administration may be notified, in writing, by the Requested Administration of any restriction on the use of information.

Article 10 Use of Information in Criminal Proceedings

1. Where the requested information may be or is intended to be used in criminal proceedings carried out by a court or a judge instituted for failure to comply with the Customs laws of the country of the Requesting Administration, the Requesting Administration shall specify the crimes possibly committed.

2. Where one of the Contracting Parties wishes to use received information not covered in paragraph 1 of this Article in criminal proceedings carried out by a court or a judge, the Customs Administration of that Contracting Party shall obtain prior written consent of the Customs Administration of the other Contracting Party which provided the information.

3. Except when supplied in the circumstances of paragraph 1 or 2 of this Article, any information received under this Agreement shall not be used by the Contracting Party of the Requesting Administration in criminal proceedings carried out by a court or a judge.

Article 11 Exemption

1. In cases where the Contracting Party of the Requested Administration is of the opinion that an assistance under this Agreement would infringe upon the sovereignty, security, public policy or other substantial interest of its country, or involve violation of trade, business or professional secrecy in the Customs territory of its country, that assistance may be refused or withheld by the Contracting Party, or may be made subject to the satisfaction of certain conditions or requirements.

2. In case where the Requesting Administration would be unable to execute a similar request if it receives such a request from 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 assistance can be given subject to any terms or conditions as the Requested Administration may require.

Article 12 Technical Cooperation and Assistance

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

2. Either Customs Administration shall communicate, when appropriate, either upon request or on its own initiative, any available information relating to:

- (a) new enforcement techniques having proved their effectiveness; and

- (b) new trends, means or methods of committing Customs offense.

Article 13 Execution of Requests

1. The Requested Administration shall take all reasonable measures to execute a request for assistance made under this Agreement within a reasonable period of time.
2. In the event that a request for assistance cannot be executed, the Requesting Administration shall be promptly notified of that 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.
3. In cases when the Requested Administration is not the appropriate authority to comply with a request, it shall either promptly transmit the request to the appropriate authority which shall be under no obligation to reply to such a request, or advise the Requesting Administration of that appropriate authority and appropriate procedure to be followed regarding such a request.
4. Upon request, the Requested Administration shall provide documents or copies endorsed by the Requested Administration.

Article 14 Costs

1. Expenses incurred in the implementation of this Agreement shall be borne by the respective Contracting Parties.
2. If expenses of a substantial and extraordinary nature are or will be required in order to execute the request for assistance, the Contracting Parties shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs will be borne.

Article 15 Implementation of the Agreement

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

2. Detailed arrangements to implement this Agreement will be concluded, as necessary, between the Customs Administrations of the Contracting Parties.

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 Entry into Force

This Agreement shall enter into force on the ninetieth day after the date on which the Contracting Parties have notified each other, in writing, through diplomatic channels, that their respective internal procedures necessary for the entry into force of this Agreement have been completed.

Article 18 Termination

1. This Agreement is of unlimited duration but either Contracting Party may terminate it at any time by written notification through diplomatic channels. The termination shall take effect on the ninetieth day after the date of receipt of the notification of termination by the other Contracting Party.

2. Requests for assistance which have been received prior to the termination of this Agreement shall be completed in accordance with the provisions of this Agreement.

Article 19 Territorial Application

This Agreement shall be applicable to the Customs territories of both countries as defined in their respective national laws and regulations.

Article 20 Amendments

The Contracting Parties may, at any time, amend this Agreement by mutual consent in writing through diplomatic channels. Amendments shall enter into force under the same conditions as provided for in Article 17.

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

Done at Brasilia on 14th of September, 2017, in duplicate in the Japanese, Portuguese and English languages, each version being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT
OF JAPAN:

FOR THE GOVERNMENT OF
THE FEDERATIVE REPUBLIC
OF BRAZIL: