

Act on Special Measures Concerning Cargo Inspections Conducted by the Government Taking into Consideration United Nations Security Council Resolution 1874

(Act No. 43 of June 4, 2010)

(Purpose)

Article 1 Taking into account that a series of acts by North Korea, such as the implementation of nuclear tests and the launching of ballistic missiles that can be used as a means of delivery for weapons of mass destruction, constitute a threat to the peace and security of the international community, and that the threat is particularly prominent for Japan as a neighboring country; and also taking into account that, in response to the above-mentioned situation, the United Nations Security Council (hereinafter referred to as "UNSC"), in its Resolution 1718, decided to ban exports to and imports from North Korea of nuclear-related or ballistic missile-related or other weapons of mass destruction-related materials, arms, and other related material; and that UNSC, in its Resolution 1874, sharpened the ban and called upon all States to implement cargo inspections, etc. with the objective of ensuring the strict implementation of the ban, the purpose of this Act is to ensure the effective implementation of the ban based on the relevant UNSC resolutions on a series of acts by North Korea, as well as to remove a threat to the peace and security of the international community, including Japan, by stipulating special measures for implementing inspections of specified cargo connected with North Korea and other measures to be conducted by the government, in conjunction with the measures under the Foreign Exchange and Foreign Trade Act (Act No.228 of 1949), the Customs Act (Act No.61 of 1954), and other related laws and regulations.

(Definitions)

Article 2 In this Act, the meanings of the terms listed in the following items are as prescribed respectively in those items:

- (i) "specified North Korean cargo" means cargo that falls under either of the following categories (excluding cargo intended for export from Japan for which permission must be received pursuant to the provisions of Article 48, paragraph (1) of the Foreign Exchange and Foreign Trade Act and cargo intended for export from Japan which is subject to the obligation to receive export approval pursuant to the provisions of paragraph (3) of the same Article; cargo exported from Japan for which the relevant permission or the

relevant approval has been received; cargo intended for import into Japan which is subject to the obligation to receive import approval pursuant to the provisions of Article 52 of the same Act and cargo imported into Japan for which the approval has been received):

- (a) North Korea bound cargo with nuclear-related, ballistic missile-related or other weapons of mass destruction-related materials, arms, or other materiel specified by Cabinet Order, whose export to North Korea has been determined to be prohibited by UNSC Resolution 1718, Resolution 1874, or any other resolution specified by Cabinet Order;
- (b) North Korea-originated cargo with nuclear-related, ballistic missile-related or other weapons of mass destruction-related materials, arms, or other materiel stipulated by Cabinet Order, whose import from North Korea is prohibited by UNSC Resolution 1718, Resolution 1874, or any other resolution specified by Cabinet Order.
- (ii) "vessel" means a vessel other than a warship, etc. (meaning a warship or a vessel owned or operated by each government only for non-commercial purposes; hereinafter the same applies in this item), which is not being escorted by a warship, etc.;
- (iii) "master of the vessel, etc." mean the master or the person who commands the vessel on behalf of the master of the vessel;
- (iv) a "Japanese vessel" means a Japanese vessel prescribed in Article 1 of the Ship Act (Act No.46 of 1899).

(Inspection)

Article 3 (1) The Commandant of the Japan Coast Guard may order Coast Guard Officers to undertake the following measures, if there are sufficient grounds to find that a vessel in the internal waters of Japan is carrying specified North Korean cargo:

- (i) to stop the vessel for inspection;
 - (ii) to enter the vessel, inspect the cargo, documents, and other items, or question the crew and other relevant persons of the vessel;
 - (iii) to collect samples, limited to the minimum amount necessary for inspection;
 - (iv) to unload or reload the cargo or to instruct the master, etc. of the vessel, etc. to unload or reload the cargo, to the extent necessary for inspection.
- (2) The Commandant of the Japan Coast Guard may order Coast Guard Officers to undertake the following measures, if there are sufficient grounds to find that a vessel in the territorial waters of Japan or on the high seas (including the Exclusive Economic Zone set forth in the United Nations Convention on the Law of the Sea; the same applies hereinafter) is carrying specified North Korean cargo:

- (i) to request the master of the vessel, etc. to stop the vessel for inspection;
 - (ii) to take the measures listed in item (ii) or item (iii) of the preceding paragraph, with the consent of the master of the vessel, etc.;
 - (iii) to unload or reload the cargo with the consent of the captain of the vessel, etc., or to request the master of the vessel, etc. to unload or reload the cargo, to the extent necessary for inspection.
- (3) The Director-General of Customs may order customs officials to undertake the following measures, if there are sufficient grounds to find that a vessel or an aircraft (excluding military aircraft and aircraft owned or operated by a foreign government for non-commercial purposes; the same applies hereinafter) is carrying specified North Korean cargo at a port or an airport in Japan:
- (i) to enter the vessel or aircraft and inspect cargo, documents, and other items or question the crew and other relevant persons;
 - (ii) to collect samples, limited to the minimum amount necessary for inspection;
 - (iii) to unload or reload the cargo, or to give instructions to the master of the vessel, etc., the pilot in command of the aircraft, or the person who performs the duty on behalf of the pilot in command (referred to as the "pilot in command of the aircraft, etc. in paragraph (2) of the following Article) to unload or reload the cargo, to the extent necessary for inspection.
- (4) The Director-General of Customs may order customs officials to undertake an inspection of cargo, documents, and other items, to question the owner, possessor, manager, or other relevant persons, or to collect samples, limited to the minimum amount necessary for inspection, if there are sufficient grounds to find that the cargo placed in a bonded area (meaning an area as prescribed in Article 29 of the Customs Act, including those designated by the Director-General of Customs pursuant to the provisions of Article 30, paragraph (1), item (ii) of the Customs Act; the same applies in paragraph (2) of the following Article).
- (5) Pursuant to Order of the Ministry of Land, Infrastructure, Transport and Tourism and Order of the Ministry of Finance, coast guard officers and customs officials must wear uniforms, carry their identification, and present them upon request of the person concerned, when conducting the inspections prescribed in each of the preceding paragraphs.
- (6) The authority of inspection pursuant to the provisions of paragraphs (1) through paragraph (4) must not be construed as being granted for criminal investigation purposes.

(Order to Submit)

Article 4 (1) If the presence of specified North Korean cargo has been verified as a result of an inspection under the provisions of paragraph (1) or paragraph (2)

of the preceding Article, the Commandant of the Japan Coast Guard may order the master of the vessel, etc. to submit the cargo. The same applies when a Japan Coast Guard Officer has found specified North Korean cargo on a vessel as the result of an on-site inspection pursuant to the provisions of the Japan Coast Guard Act (Act No.28 of 1948) and other Acts other than this Act, and when the Commandant has received a report to that effect from the Japan Coast Guard Officer.

- (2) If the presence of specified North Korean cargo has been verified as a result of an inspection under the provisions of paragraph (3) or paragraph (4) of the preceding Article, the Director-General of Customs may order the master of the vessel, etc., the pilot in command of the aircraft, etc., or the owner/possessor of the specified North Korean cargo to submit the cargo. The same applies when a Customs official has found specified North Korean cargo on a vessel or aircraft or in a bonded area as the result of an on-site inspection pursuant to the provisions of Article 105 of the Customs Act, and when the Director-General has received a report to that effect from an official.

(Storage)

Article 5 (1) The Commandant of the Japan Coast Guard or the Director-General of Customs must store specified North Korean cargo (hereinafter referred to as "submitted cargo" in this Article) after such cargo has been submitted pursuant to the provisions of the preceding Article.

- (2) When the Commandant of the Japan Coast Guard or the Director-General of Customs has stored submitted cargo pursuant to the provisions of the preceding paragraph, the Commandant is to issue public notice of the content of the submitted cargo and of any other particulars prescribed by Order of the Ministry of Land, Infrastructure, Transport and Tourism and Order the Ministry of Finance, by publication in an Official Gazette, via the internet, or by other appropriate means. If the owner of the submitted cargo and the owner's location has been identified, the Commandant or the Director-General is to notify the owner of the particulars of the public notice.

- (3) If the Commandant of the Japan Coast Guard or the Director-General of Customs has stored submitted cargo pursuant to the provisions of paragraph (1), and the situation falls under any of the following, the Commandant is to return the submitted cargo to its owner or submitter:

(i) when the submitted cargo no longer falls under the category of material prescribed in each of the following items in accordance with the category set forth in the relevant item:

- (a) submitted cargo under Article 2, item (i)(a): materials specified by Cabinet Order as prescribed in (a) of the same item;
(b) submitted cargo under Article 2, item (i)(b): materials specified by

- Cabinet Order as prescribed in (b) of the same item.
- (ii) when the owner or submitter of submitted cargo has taken the measures specified by Order of the Ministry of Land, Infrastructure, Transport and Tourism and Order of the Ministry of Finance to prevent export to North Korea, and when the owner or submitter of the submitted cargo (limited to submitted cargo under Article 2, item (i)(a)) requests the return of the submitted cargo.
- (4) The provisions of paragraph (2) apply mutatis mutandis to the case stipulated in item (i) of the preceding paragraph. In this case, the term "the content of the submitted cargo" in paragraph (2) is deemed to be replaced with "the change due to which the submitted cargo has come to fall under item (i) of the following paragraph."
- (5) The Commandant of the Japan Coast Guard or the Director-General of Customs must destroy submitted cargo, pursuant to the provisions of Cabinet Order, when the submitted cargo falls under the category of a biological weapon specified in Article 2, paragraph (3) of the Act to Implement the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, etc. (Act No.61 of 1982), a toxin weapon specified in paragraph (4) of the same Article, or a chemical weapon specified in Article 2, paragraph (2) of the Act Prohibiting Chemical Weapons and Regulating Specified Substances, etc. (Act No.65 of 1995).
- (6) The Commandant of the Japan Coast Guard or the Director-General of Customs may sell submitted cargo, pursuant to the provisions of Cabinet Order, if the cargo falls under either of the following categories (when it falls under item (ii), the sale must take place when three months have passed since the date of the public notice under the provisions of paragraph (2)):
- (i) when there is a risk of loss of or damage to the submitted cargo during storage;
 - (ii) when its storage requires excessive expense or difficulty.
- (7) The proceeds resulting from a sale pursuant to the provisions of the preceding paragraph (hereinafter in this Article simply referred to as a "sale") may be allocated to cover the expenses required for the sale.
- (8) If submitted cargo has been sold, with regard to the storage, return, and ownership of the submitted cargo, the remaining amount after deducting the expenses required for the sale from the proceeds of the sale is deemed to be the submitted cargo.
- (9) The Commandant of the Japan Coast Guard or the Director-General of Customs may dispose of the submitted cargo or implement other disposition pursuant to the provisions of Cabinet Order, if the submitted cargo falls under any of the items of paragraph (6) and when there is no purchaser of the cargo

for sale or it is found that the expected amount of the proceeds from the sale thereof will be less than the amount of the expenses required for the sale.

- (10) Ownership of submitted cargo is vested in the State in a case under paragraph (3), item (i), when the submitted cargo cannot be returned because the person to whom the submitted cargo should be returned or the person's whereabouts remain unknown even after one year has passed since the date of the public notice pursuant to the provisions of paragraph (2) as applied *mutatis mutandis* pursuant to paragraph (4), or when the submitted cargo cannot be returned because the person does not take back the submitted cargo,.
- (11) Beyond what is prescribed in each of the preceding paragraphs, other necessary particulars in connection with the storage and the sale, destruction, and other disposition of submitted cargo is provided by Order of the Ministry of Land, Infrastructure, Transport and Tourism and Order of the Ministry of Finance.

(Order to Direct a Vessel to Port)

Article 6 When the Commandant of the Japan Coast Guard intends to take any of the measures listed in the following items and when the grounds prescribed in the relevant item are present, the Commandant may order the masters etc. of the vessel, etc. to direct the vessel to a Japanese port or to any other place designated by the Commandant, where it is found to be convenient and appropriate to implement the measures listed in the relevant item:

- (i) inspection pursuant to the provisions of paragraph (1) or paragraph (2) of Article 3: when the inspection of the cargo cannot be conducted on the site because of weather, stowage conditions of the cargo, or other compelling reasons;
- (ii) inspection pursuant to the provisions of Article 3, paragraph (2): when the master of the vessel, etc. does not respond to a request pursuant to the provisions of item (i) or item (iii) of said paragraph, or does not give consent pursuant to item (ii) or item (iii) of said paragraph;
- (iii) an order to submit specified North Korean cargo pursuant to the provisions of Article 4, paragraph (1): when the submission of the relevant specified North Korean cargo cannot be accepted on the site because of weather, stowage conditions of the cargo, or other compelling reasons.

(Order to Direct a Japanese Vessel to Port)

Article 7 (1) When the Government of Japan decides not to give consent to a foreign state for an inspection of a Japanese vessel on the high seas to be conducted by the authorities of the foreign state which is equivalent to an inspection pursuant to the provisions of Article 3 (including orders which are equivalent to an order under the provisions of Article 4 or the preceding Article

and other measures necessary for an inspection), the Minister for Foreign Affairs must promptly notify the Minister of Land, Infrastructure, Transport and Tourism to that effect.

- (2) When the Minister of Land, Infrastructure, Transport and Tourism receives a notification pursuant to the provisions of the preceding paragraph, the Minister must order the master of the Japanese vessel, etc. to direct the vessel to a port designated by the Minister in order to undergo an inspection pursuant to the provisions of Article 3, paragraph (1) or paragraph (3) or an inspection equivalent thereto by the authorities of the foreign state. In this case, if the Minister of Land, Infrastructure, Transport and Tourism designates a Japanese port, the Minister is to notify the Commandant of the Japan Coast Guard or the Director-General of Customs who has jurisdiction over the relevant port to that effect, and if the Minister of Land, Infrastructure, Transport and Tourism designates a port in a foreign state, the Minister is to consult with the Minister for Foreign Affairs.

(Consent of the Flag State)

Article 8 (1) Inspections pursuant to the provisions of Article 3, paragraph 2 or orders pursuant to the provisions of Article 4 or Article 6 may not be conducted on or given to a non-Japanese vessel on the high seas without the consent of the flag state (meaning the state that has granted the right to fly its flag as prescribed in Article 91 (2) of the United Nations Convention on the Law of the Sea; provided, however, that this does not apply to a vessel that does not have a nationality as provided in Article 91 (1) of that Convention (including one that is deemed to be the relevant vessel pursuant to the provisions of Article 92 (2) of that Convention).

- (2) In the enforcement of this Act, in addition to what is provided for in the preceding paragraph, care must be taken not to prevent the sincere implementation of treaties and other international agreements which Japan has concluded, and established international law must be complied with.

(Cooperation with Relevant Administrative Organs)

Article 9 The relevant administrative organs are to maintain close contact and cooperate to achieve the purpose under Article 1.

(Delegation of Authority)

Article 10 The matter that pertains the authority of the Commandant of the Japan Coast Guard pursuant to the provisions of this Act may be delegated to the Commander of a Regional Coast Guard Headquarters pursuant to the provisions of Order of the Ministry of Land, Infrastructure, Transport and Tourism.

(Exclusion from Application of the Administrative Procedure Act)

Article 11 The provisions of Chapter 3 of the Administrative Procedure Act (Act No.88 of 1993) do not apply to an order under the provisions of Article 4 or Article 6.

(Delegation to Cabinet Order)

Article 12 Beyond what is provided for in this Act, any necessary particulars for the enforcement of this Act are provided for by Cabinet Order.

(Penal Provisions)

Article 13 A person who has disobeyed an order issued under provisions of Article 4 is sentenced to imprisonment of not more than two years or a fine of not more than 1,000,000 yen.

Article 14 A person who falls under any one of the following items is sentenced to imprisonment of not more than one year or a fine of not more than 500,000 yen:

- (i) a person who has refused, obstructed, or evaded entry or inspection or the landing or reloading of cargo pursuant to Article 3, paragraph (1), paragraph (3), or paragraph (4), who has failed to answer questions, or who has made a false statement;
- (ii) a person who has disobeyed an order pursuant to Article 6 or Article 7, paragraph (2).

(Application of Japanese Laws and Regulations)

Article 15 Japanese laws and regulations (including penal provisions) apply to the performance of duties by Japanese public employees outside Japan with regard to measures pursuant to the provisions of Article 3, paragraph (2) and Article 4 through Article 7 for non-Japanese vessels on the high seas and actions that obstruct the performance of such duties.

Supplementary Provisions

(Effective Date)

- (1) This Act comes into effect as of the day on which 30 days have elapsed from the date of promulgation.

(Repeal of This Act)

- (2) This Act is to be promptly abolished if UNSC Resolution 1874 (limited to the part pertaining to the request prescribed in Article 1) ceases to be effective.