

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 The purpose of this Act is, in light of the fact that the series of acts by North Korea, such as conducting nuclear tests and the launching ballistic missiles that may be used as delivery vehicles for weapons of mass destruction have become a threat to the peace and security of the international community, which is a particularly prominent threat for Japan as a neighboring country and that in response to this situation, the United Nations Security Council (UNSC) has decided in its Resolution 1718 to prohibit exports to and imports from North Korea of nuclear-related materials, ballistic missile-related materials or other materials related to weapons of mass destruction, arms, and other related materials, and in its Resolution 1874 has strengthened those prohibitive measures and requested the member states of the United Nations to implement cargo inspections, etc. for the objective of ensuring strict implementation of the prohibitive measures by providing for the inspection of specified North Korean cargo conducted as special measures of Japan and other measures, in conjunction with the measures under the Foreign Exchange and Foreign Trade Act (Act No.228 of 1949), Customs Act (Act No.61 of 1954), and other related laws and regulations, to ensure the effectiveness of the prohibitive measures through the UNSC Resolutions concerning the series of acts by North Korea, as well as contribute to the elimination of threats to the peace and security of the international community including Japan.

(Definitions)

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

- (i) the term "specified North Korean cargo" means cargo that falls under either of the following items (excluding cargo intended for export from Japan for which permission under the provisions of Article 48, paragraph (1) of the Foreign Exchange and Foreign Trade Act must be received, and cargo intended for export from Japan subject to the obligation to receive export approval under the provisions of paragraph (3) of that Article, cargo exported from Japan for which that permission or that approval has been received, and cargo intended for import into Japan subject to the obligation to receive

import approval under the provisions of Article 52 of that Act and cargo imported into Japan for which that approval has been received):

- (a) among cargoes bound for North Korea, nuclear-related materials, ballistic missile-related materials or other materials related to weapons of mass destruction, arms, or other materials, whose export to North Korea has been determined to be prohibited by the United Nations Security Council (UNSC) Resolution 1718, UNSC Resolution 1874, or other UNSC Resolutions specified by Cabinet Order, which are specified by Cabinet Order; or
- (b) among cargoes shipped from North Korea, nuclear-related materials, ballistic missile-related materials or other materials related to weapons of mass destruction, arms, or other materials, whose import from North Korea is prohibited by UNSC Resolution 1718, UNSC Resolution 1874, or other Resolutions specified by Cabinet Order, which are specified by Cabinet Order;
- (ii) the term "vessel" means a vessel other than a warship, etc. (meaning a warship or a vessel owned or operated by a government of various countries solely for non-commercial purposes; the same applies below in this item), which is not escorted by a warship, etc.;
- (iii) the term "master, etc. of the vessel" means the master of the vessel or a person who instructs vessel protection operations on their behalf; and
- (iv) the term "Japanese vessel" means a Japanese vessel prescribed in Article 1 of the Ship Act (Act No.46 of 1899).

(Inspections)

Article 3 (1) The Commandant of the Japan Coast Guard may order coast guard officers to take the following measures, if there are sufficient grounds to find that a vessel in Japan's inland waters is carrying specified North Korean cargo:

- (i) to stop the vessel for inspection;
 - (ii) to enter the vessel, inspect the cargo, documents, and other objects, or question the crew and other persons concerned with the vessel;
 - (iii) to collect samples, limited to the minimum amount necessary for inspection; and
 - (iv) to unload or reload cargo, or instruct the master, etc. of the vessel to unload or reload cargo, to the extent necessary for inspection.
- (2) The Commandant of the Japan Coast Guard may order coast guard officers to take 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 provided for in the United Nations Convention on the Law of the Sea; the same applies below) is carrying specified North Korean

cargo:

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

(Order for Submission)

Article 4 (1) If the presence of specified North Korean cargo has been confirmed

as a result of an inspection under the provisions of paragraph (1) or (2) of the preceding Article, the Commandant of the Japan Coast Guard may order the master, etc. of the vessel to submit the cargo. The same applies when a coast guard officer has found the specified North Korean cargo on a vessel as a result of an on-site inspection under the provisions of the Japan Coast Guard Act (Act No.28 of 1948) and laws other than this Act, and the Commandant has received a report to that effect from the coast guard officer.

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

(Storage)

Article 5 (1) The Commandant of the Japan Coast Guard or the Director-General of Customs is to store the specified North Korean cargo (referred to as "submitted cargo" below in this Article) which 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 the submitted cargo pursuant to the provisions of the preceding paragraph, the Commandant or the Director-General is to issue public notice of the content of the submitted cargo and other matters prescribed by Order of the Ministry of Land, Infrastructure, Transport and Tourism and Order the Ministry of Finance, by publication in an Official Gazette, using the internet, or by other appropriate means. In such a case, 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 matters concerning the public notice.

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

- (i) when the submitted cargo no longer falls under the material specified in the following items in accordance with the category stated in each of those items:
 - (a) submitted cargo related to Article 2, item (i), sub-item (a): materials specified by Cabinet Order prescribed in sub-item (a) of that item;

- (b) submitted cargo related to Article 2, item (i), sub-item (b): materials specified by Cabinet Order prescribed in sub-item (b) of that item;
 - (ii) when the owner or submitter of the submitted cargo (limited to submitted cargo related to Article 2, item (i), sub-item (a)) requests the return of the submitted cargo after taking 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.
- (4) The provisions of paragraph (2) apply mutatis mutandis to the case prescribed in item (i) of the preceding paragraph. In such a case, the term "the content of the submitted cargo" in paragraph (2) is deemed to be replaced with "the fact that 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 dispose of the submitted cargo pursuant to the provisions of Cabinet Order, when the submitted cargo falls under a biological weapon defined in Article 2, paragraph (3) of the Act on Implementing the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction and the Other Conventions (Act No.61 of 1982) or a toxin weapon defined in paragraph (4) of that Article, or a chemical weapon defined in Article 2, paragraph (2) of the Act on the Prohibition of Chemical Weapons and the Regulation of Specified Substances (Act No.65 of 1995).
- (6) The Commandant of the Japan Coast Guard or the Director-General of Customs may sell the submitted cargo pursuant to the provisions of Cabinet Order, when the cargo falls under either of the following items (when it falls under item (ii), after three months have passed since the date of the issue 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; or
 - (ii) when its storage requires excessive expense or difficulty.
- (7) The proceeds resulting from the sale under the provisions of the preceding paragraph (simply referred to as a "sale" below in this Article) may be allocated to cover the expenses required for the sale.
- (8) If the submitted cargo has been sold, for 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 dispositions pursuant to the provisions of Cabinet Order, when the submitted cargo falls under either of the items of paragraph (6) and there is no purchaser of the cargo for sale, or when it is found that the expected amount of the proceeds

- from the sale is to be less than the amount of the expenses required for the sale.
- (10) The ownership of submitted cargo is vested in the State, when the case comes to fall under paragraph (3), item (i), and the submitted cargo cannot be returned because the person to whom it should be returned or the person's whereabouts remain unknown, even after one year has passed since the date of the issue of the public notice under the provisions of paragraph (2) as applied *mutatis mutandis* pursuant to paragraph (4), or the person does not receive the submitted cargo.
- (11) Beyond what is prescribed in the preceding paragraphs, other necessary matters related to the storage and sale, disposal, or other dispositions of submitted cargo is specified by Order of the Ministry of Land, Infrastructure, Transport and Tourism and Order of the Ministry of Finance.

(Order to Bring a Vessel into Port)

Article 6 When the Commandant of the Japan Coast Guard intends to take the measures stated in any of the following items and when the grounds prescribed in each of those items exist, the Commandant may order the master, etc. of the vessel to bring the vessel into a Japanese port designated by the Commandant or other places that is found to be possible to smoothly and appropriately implement the measures stated in each of those items:

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

(Order to Bring a Japanese Vessel into Port)

Article 7 (1) When Japan does not give consent to a foreign country for conducting an inspection equivalent to the inspection under the provisions of Article 3 that a foreign authority conducts of a Japanese vessel on the high seas (including an order equivalent to an order under the provisions of Article 4 or the preceding Article or other necessary measures for the 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

notice under the provisions of the preceding paragraph, the Minister must order the master, etc. of the Japanese vessel to bring the vessel into a port designated by the Minister to undergo an inspection under the provisions of Article 3, paragraph (1) or (3), or an inspection conducted by a foreign authority which is equivalent to that inspection. In such a 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 port to that effect, and if the Minister designates a port in a foreign country, the Minister is to consult with the Minister for Foreign Affairs.

(Consent of the Flag State)

- Article 8 (1) An inspection under the provisions of Article 3, paragraph 2 or an order under the provisions of Article 4 or Article 6 concerning a vessel other than a Japanese vessel on the high seas may not be conducted or issued without the consent of the flag state (meaning a country that has the right to fly their flag which is 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 the nationality that is provided for in Article 91 (1) of that Convention (including a vessel that is deemed to be such a vessel pursuant to the provisions of Article 92 (2) of that Convention).
- (2) In addition to what is specified in the preceding paragraph, in enforcing this Act, care must be taken not to preclude the sincere implementation of treaties and other international agreements concluded by Japan, and to adhere to established international laws and regulations.

(Cooperation with Relevant Administrative Organs)

- Article 9 The relevant administrative organs are to maintain close contact with each other and cooperate to achieve the purpose referred to in Article 1.

(Delegation of Authority)

- Article 10 The matters that fall under 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 as specified by 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, necessary matters for the enforcement of this Act are specified by Cabinet Order.

(Penal Provisions)

Article 13 A person who has disobeyed an order issued under the provisions of Article 4 is sentenced to imprisonment of not more than two years or a fine of not more than 1 million 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 5 hundred thousand yen:

- (i) a person who has refused, obstructed, or evaded an entry, inspection or landing or reloading of cargo, under the provisions of Article 3, paragraph (1), paragraph (3), or paragraph (4), or who has failed to answer questions or has made a false statement; or
- (ii) a person who has disobeyed an order under the provisions of 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 concerning measures under the provisions of Article 3, paragraph (2) and Article 4 through Article 7 for vessels other than Japanese vessels on the high seas, and actions that obstruct the performance of those duties.

Supplementary Provisions

(Effective Date)

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

(Repeal of This Act)

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