

Cooperative Arrangement
between
the New Zealand Customs Service
and
the Australian Customs Service

The New Zealand Customs Service and the Australian Customs Service (hereinafter referred to as "the Participants"):

RECALLING:

- the existing Customs Cooperative Arrangement between the New Zealand Customs Service and the Australian Customs Service, signed on 12 August 1996.

ACKNOWLEDGING:

- the importance of cooperation between the Participants, in order to prevent breaches of customs laws and for the protection of the economic, fiscal, social, environmental and commercial interests of their respective countries including ensuring appropriate and efficient customs duty collection;
- the importance of achieving a balance between compliance and facilitation to ensure the free flow of legitimate trade and travel and to meet the needs of governments to ensure the protection of society, nationhood and revenues;
- their commitment to the objectives of the Customs Co-operation Council, now known as the World Customs Organization (WCO), and the vision and goals of Asia Pacific Economic Cooperation forum (APEC).
- the relevant instruments of the WCO, in particular the Recommendation concerning mutual administrative assistance of 5 December 1953 and the Cyprus Declaration of June 2000;
- the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA), which entered into force on 1 January 1983; and

RECOGNISING:

- that the revised International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention) provides an essential framework for modern, efficient customs procedures. It includes governing principles which commit customs administrations to provide transparency and predictability to all persons involved in international trade;
- the Participants' desire to cooperate to the maximum extent possible in taking action to prevent and detect prohibited/restricted goods crossing their respective borders and any other customs offences;
- that close contact between the Participants is to their mutual domestic and international benefit;
- the provisions of the WCO Framework of Standards to Secure and Facilitate Global Trade;
- that international trade will be facilitated by the adoption of modern control methods, including risk management, by the Participants;
- that the global exchange of information is an essential component of effective risk management and the exchange of such information should be based on clear legal provisions;
- the need for international cooperation to mitigate the threat of terrorist activity to world supply chains and for efforts to combat trans-border criminal activity;
- the United Nations Universal Declaration of Human Rights of 1948.

have reached the following understanding:

Definitions

For the purposes of this Cooperative Arrangement:

"customs administration" means:

In relation to New Zealand, the New Zealand Customs Service;

In relation to Australia, the Australian Customs Service.

"customs laws" means laws and regulations administered, applied, or enforced by the customs administration of a Participant. "customs laws" does not include any legal and administrative provisions relating to measures against dumping, countervailable subsidies and safeguards.

"customs offence" means any breach or attempted breach of customs laws.

"information" means any data, whether or not processed or analysed, and documents, reports, and other communications in any format, including electronic, certified or authenticated copies.

"person" means both natural and legal persons.

"requesting administration" means the customs administration which requests assistance, and "requesting State" has a corresponding meaning.

"requested administration" means the customs administration from whom assistance is requested, and "requested State" has a corresponding meaning.

Scope of Cooperation

1. The Participants have jointly decided that they will cooperate within their capacity and in accordance with the national legislation of each Participant in order to:
 - a) assist in the prevention, identification, investigation and suppression of customs offences;
 - b) secure the supply chain to facilitate the safe movement of goods between New Zealand and Australia;
 - c) cooperate in the research, development, testing and evaluation of new customs procedures, and in the training, exchange of personnel and provision of assistance; and
 - d) maximise the contribution made by them to the work of the WCO and other relevant international organisations, with particular regard to the work of organisations in the Asia-Pacific region, in improving customs techniques and in resolving problems of customs administration, customs enforcement and the facilitation of trade.

To achieve the objectives of this Cooperative Arrangement, the Participants have jointly decided to cooperate in the following areas:

Enforcement

2. The Participants will assist each other in the prevention, identification, investigation and prosecution of customs offences in their respective jurisdictions, and for the purpose of assessing customs duties and other taxes.

Exchange of Information

3. The supply of any information under this section will be in accordance with and subject to any legislation relating to the exchange of information in the country

providing such information, and any stated caveats of the requested administration relating to use and disclosure of the Information provided.

4. The exchange of information is further subject to the arrangements included in Annex 2 of this Cooperative Arrangement.
5. Information should be promptly exchanged between the Participants.

Information for the Application and Enforcement of Customs Law

6. The Participants will provide each other, either on request or on their own initiative, with information which helps to ensure the proper application of customs laws, the prevention, identification, investigation and suppression of customs offences and the security of the international trade supply chain. Such information may include:
 - (a) new law enforcement techniques which have proved their effectiveness;
 - (b) new trends, means or methods of committing customs offences;
 - (c) goods known to be the subject of customs offences, as well as transport and storage methods used in respect of those goods;
 - (d) persons known to have committed a customs offence or suspected of being about to commit a customs offence; and
 - (e) any other information that can assist customs administrations with risk assessment for control and facilitation purposes.
7. On request, the requested administration will provide the requesting administration with information on:
 - (a) whether goods imported into the territory of the requesting State have been lawfully exported from the territory of the requested State and the customs procedure, if any, to which the goods have been subjected;
 - (b) whether goods exported from the territory of the requesting State have been lawfully imported into the territory of the requested State, and the customs procedure, if any, to which the goods have been subjected.

Information for the Assessment of Customs Duties

8. On request, the requested administration will, without prejudice to Paragraphs 3 and 4, in support of the proper application of customs law or in the prevention of customs offences provide information to assist the requesting administration to verify the truth or accuracy of a declaration.
9. The request will specify the verification procedures that the requesting administration has undertaken or attempted and the specific information requested.

Information Relating to Customs Offences

10. Each customs administration will, on request or on its own initiative, provide the other customs administration with information on activities, planned, ongoing, or completed, which present reasonable grounds to believe that a customs offence has been committed or will be committed in the territory of the other State.

Automatic Exchange of Information

11. The Participants may, by mutual arrangement in accordance with Paragraphs 3 to 5, exchange any information covered by this Cooperative Arrangement on an automatic basis.

Particular Information Requirements

12. In particular, the Participants will provide each other, either on request or on their own initiative, with information relating to:
 - (a) the illicit or suspicious movement of goods or persons to New Zealand or Australia;
 - (b) trans-national crime relevant to the application of the customs law of New Zealand or Australia, including the trafficking in drugs, their derivatives and precursor chemicals; and
 - (c) interdictions of goods found to be in breach of Customs laws that are traded between New Zealand and Australia.

Exchange of Personnel

13. The exchange of personnel may be arranged for the purpose of advancing the mutual understanding of the Participants' techniques and procedures, and when carrying out any common/joint activities.

Specific Enforcement Assistance

Surveillance and Information

14. On request, the requested administration will, to the extent possible, maintain surveillance over and provide the requesting administration with information on:
 - (a) goods, either in transport or in storage, involved or suspected of being involved in the commission of a customs offence in the territory of the requesting administration;
 - (b) means of transport known to have been used or suspected of being used in the commission of a customs offence in the territory of the requesting administration;
 - (c) premises known to have been used or suspected of being used in connection with the commission of a customs offence in the territory of the requesting administration;

- (d) persons known to have committed or suspected of being about to commit a customs offence in the territory of the requesting administration, particularly those moving into and out of the territory of the requested State.

Controlled Delivery

15. The Participants may, by mutual arrangement in accordance with Paragraphs 1 and 2, permit under their control the movement of goods involved or suspected of being involved in the commission of a customs offence out of, through, or into their respective territory, with a view to investigating and combating customs offences. If granting such permission is not within the competence of the customs administration, that administration will seek the co-operation of the national authorities that have such competence or it will transfer the case to those authorities.

Joint Control and Investigation Teams

16. The Participants may establish joint control or investigation teams to detect and prevent particular types of customs offences requiring simultaneous and co-ordinated activities.
17. Such teams will operate in accordance with the national legislation, procedures and consent of the State in whose territory the activities are being carried out.

Other Joint Activities

18. The Participants may establish joint working groups to work cooperatively on matters of common interest.
19. In particular, the Participants may consult and cooperate to ensure that ANZCERTA Article 3 (Rules of Origin) is applied in an effective and uniform manner. The Participants may also jointly develop and adopt procedures to review records and observe the facilities of an exporter, producer or principal manufacturer in the territory of the other Participant for goods traded under preference.

Provision of Assistance

20. Any assistance, which includes the exchange of information, exchange of personnel, enforcement assistance, and other forms of joint activity, provided by the Participants under this Cooperative Arrangement will be provided in accordance with national legislation, and within the limits of its customs administration's competence and available resources. The exchange of information is further subject to the arrangements included in Annex 2 of this Cooperative Arrangement.
21. A request for assistance may be conveyed orally but is to be confirmed in writing, either electronically or by way of letter, within five working days of the date of the

original request by the requesting administration's designated contact point listed at Annex I to this Cooperative Arrangement. Any request will be conveyed to the designated contact point of the requested administration.

22. Any written request will state:
 - a) the branch of the requesting administration that is responsible for conducting the investigation, legal proceedings, or for any other action which will be initiated as a result of the assistance provided;
 - b) the assistance requested;
 - c) the reason why assistance is requested; and
 - d) the date by which the assistance is requested.

23. Any request for assistance will be acknowledged by the requested administration within five working days of the date of receipt of the written request. Thereafter, the requested administration will regularly inform the requesting administration of its progress towards satisfying the request. If the requested administration is unable to assist, or assist within the period specified in the request, it will inform the requesting administration of this fact, the reasons for the denial or delay, and in the case of delay, when the assistance is likely to be provided.

24. Where the requesting administration requests assistance that it could not reciprocate, then this fact will be drawn to the attention of the requested administration. The response to such a request will be at the discretion of the requested administration.

25. If the requested administration is not the appropriate authority to assist in the circumstances, it will:
 - (1) transmit the request to the appropriate authority, and advise the requesting administration of this fact; or
 - (2) inform the requesting administration as to which authority should receive the request.

26. Where the requested administration believes that the provision of assistance to the requesting administration would be detrimental to the national sovereignty, security, public policy or contrary to the laws or other important interests of the country concerned, the requested administration may either decline to provide assistance in whole or part, or may stipulate that the provision of assistance is conditional upon the satisfaction of certain conditions by the requesting administration.

Contact Points and Costs Incurred

27. The Participants will designate contact points for the purposes of the Cooperative Arrangement. Contact details for the respective contact points will be listed in Annex 1 to this Cooperative Arrangement.
28. In the absence of any decision to the contrary, the Participant requesting assistance under the provisions of this Cooperative Arrangement will meet the necessary expenses involved in responding to that request other than staff costs, stationery and communications.
29. Expenses incurred in the provision of technical cooperation through the exchange of personnel will be subject to special arrangements jointly decided between the Participants.

Status of this Cooperative Arrangement

30. Nothing in this Cooperative Arrangement will be construed as creating any legal right or obligation in respect of the Participants, nor affect any international treaty to which either Participant's State is party.

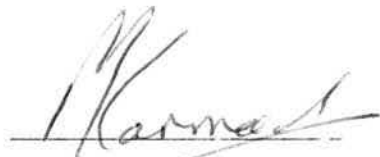
Differences

31. Any differences concerning the implementation of this Cooperative Arrangement will be resolved by consultation between the Participants.

Entry into Effect, Amendment and Duration

32. This Cooperative Arrangement replaces the Cooperative Arrangement concluded on 12 August 1996 between the Government of New Zealand and the Government of Australia regarding Mutual Assistance between their respective Customs Administrations.
33. This Cooperative Arrangement will come into effect on the date of signature and may be amended at any time by the mutual written consent of the Participants.
34. This Cooperative Arrangement will remain in operation until terminated by either Participant, giving three months' written notice.

Signed at Sydney on the 22nd day of November 2006 in duplicate in the English language.

A handwritten signature in black ink, appearing to read 'M Carmody', written over a horizontal line.

Michael Carmody
Chief Executive Officer
Australian Customs Service

A handwritten signature in black ink, appearing to read 'M Dunne', written over a horizontal line.

Martyn Dunne
Comptroller of Customs,
being the Chief Executive of the
New Zealand Customs Service

Annex 1

New Zealand

International Representative:

New Zealand Customs Service Attaché (Sydney)

New Zealand Consulate-General
Level 10, 55 Hunter Street
GPO Box 365
Sydney
New South Wales 2001
Australia

Telephone: +61-2-9238 0280
Cellphone: +61-4-1844 0874
Facsimile: +61-2-9238 0182
E-mail: nzessyd@bigpond.com

Australian Customs Service

Overseas Coordination (OSCORD)
5 Constitution Avenue
Canberra City
ACT 2601
Australia

Tel: +61 2 6275 6599
Fax: +61 2 6275 6996
Email: OSCORD@customs.gov.au

Annex 2

New Zealand

Exchange of Information

- (1) The Chief Executive of the New Zealand Customs Service may disclose information to an overseas agency, body, or person under section 281(8) of the New Zealand Customs & Excise Act 1996 ("the Act"), where the functions of that overseas agency, body or person include the prevention, detection, investigation, prosecution, or punishment of customs offences of any kind or of other offences punishable by imprisonment.
- (2) The Chief Executive of the New Zealand Customs Service is not able to disclose any information under section 281(8) unless satisfied the information relates to a suspected violation of New Zealand law, or of the law of the other Participant.
- (3) Any information will be disclosed subject to the condition that the overseas agency, body, or person may only use this information for the purposes set out in (1).
- (4) It is a condition of the disclosure of information by the New Zealand Customs Service that the overseas agency, body, or person may only disclose this information to another domestic law enforcement authority, and the information must be disclosed for the purpose of law enforcement. The information disclosed may not be used in any legal proceeding without the prior written consent of the New Zealand Customs Service.
- (5) In accordance with Section 281(8)(c) of the Act, the Chief Executive of the New Zealand Customs Service will make and keep a record of the information that was disclosed to the overseas agency, body, or person pursuant to this Cooperative Arrangement.

Australia

Exchange of Information

Section 16 of the Customs Administration Act 1985

- (1) The Customs Administrations each undertake not to use any information received in accordance with this Cooperative Arrangement other than for the purpose for which the information was given, or to disclose any such information, except in cases where:
 - (a) the Administration that furnished the information has expressly approved its use or disclosure for other purposes related to this Cooperative Arrangement; or
 - (b) the national law of the receiving Administration requires disclosure, in which case the receiving Administration will notify the Administration that furnished the information of the relevant law.
- (2) Any information received in accordance with this Cooperative Arrangement will be treated as confidential and will at least be subject to the same protection and confidentiality as the same kind of information is subject to under the national law of the Customs Administration where it is received.
- (3) Nothing in this Chapter will be construed to require a Participant to furnish or allow access to information the disclosure of which would:
 - (a) be contrary to the public interest as determined by its laws, rules or regulations;
 - (b) be contrary to any of its laws, rules and regulations including but not limited to those protecting personal privacy or the financial affairs and accounts of individuals; or
 - (c) impede law enforcement.