

**COOPERATIVE FRAMEWORK ON CUSTOMS MATTERS
BETWEEN
THE CUSTOMS ADMINISTRATION OF JAPAN
AND
THE DEPARTMENT OF IMMIGRATION AND BORDER
PROTECTION OF AUSTRALIA**

Introduction

The Customs Administration of Japan represented by the Japanese Ministry of Finance and the Department of Immigration and Border Protection of Australia (hereinafter referred to as “**the Participants**”):

Considering that offences against customs laws are prejudicial to the economic, fiscal, social, cultural, security and commercial interests of their respective countries,

Considering the importance of assuring the accurate assessment of customs duties and other taxes,

Recognizing that the Participants play an important role in economic development through facilitating the flow of goods and in protecting society from the threat of transnational organized crime and terrorism,

Recognizing the need for international cooperation in matters related to the administration and enforcement of their customs laws,

Having regard to international conventions containing prohibitions, restrictions, and special measures of control in respect of specific goods,

Convinced that action against customs offences can be made more effective by cooperation between the Participants,

Acknowledging, and wishing to supersede by this Cooperative Framework, the *Cooperative Framework Between the Customs administration of Japan and the Customs administration of Australia* on 27 June 2003,

Bearing in mind the Agreement between Japan and Australia for an Economic Partnership (hereinafter referred to as the ‘JAEPA’), especially Chapter 4 (*Customs Procedures*), and the *Implementing Agreement between the Government of Japan and the Government of Australia for an Economic Partnership* (hereinafter referred to as the ‘IA of the JAEPA’), especially Chapter 3 (*Customs Procedures*),

Having regard to the recommendation on *Mutual Administrative Assistance* adopted in December 1953 by the Customs Co-operation Council, now known as the World Customs Organization,

With the aim of enhancing the efficiency of the cooperation under Chapter 4 (*Customs Procedures*) of the JAEPA and Chapter 3 (*Customs Procedures*) of the IA of the JAEPA,

Have decided to cooperate in accordance with the following framework:

Paragraph 1 Status

1.1 This Cooperative Framework:

- a) Sets out the overall framework within which the Participants will work together collaboratively on all matters of mutual interest and responsibility including upon the relevant provisions of the JAEPA and the IA of the JAEPA;
- b) is not intended to create, maintain or govern legal rights or obligations between the Participants or between the Participants and any third party;
- c) will be implemented in accordance with the domestic laws and regulations, such as those set out in the JAEPA and the IA of the JAEPA and international legal obligations of each country and within the available resources of each of the Participants; and
- d) replaces the *Cooperative Framework Between the Customs Administration of Japan and the Customs Administration of Australia* of 27 June 2003 with a new.

1.2 Subject to paragraph 1.3, the Participants acknowledge that this Cooperative Framework does not prejudice any existing or future arrangements relating to mutual assistance in criminal matters, or other arrangement.

1.3 The *Cooperative Framework Between the Customs Administration of Japan and the Customs Administration of Australia* of 27 June 2003 is hereby terminated.

Paragraph 2 Definitions

2.1 Unless the contrary intention appears, a term used in this Cooperative Framework has the meaning expressed in this Paragraph:

- a) **Controlled Delivery** means the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of a country, with the knowledge and under the supervision of the competent authority of that country, with a view to the investigation of an offense and the identification of persons involved in the commission of the offense.

- b) **Customs Law** means the statutory, regulatory and administrative provisions related to the importation, exportation, movement or storage of goods, the administration and enforcement of which are specifically charged to the customs administrations of the Participants, and any regulations made by the Participants under their statutory powers;
- c) **Customs Offence** means any violation or attempted violation of a Customs Law;
- d) **Information** means any data, whether or not processed or analysed, and documents, reports, and other communications in any format, including electronic, or certified or authenticated copies of such data;
- e) **Person** means any natural or legal person;
- f) **Personal Information** means all information relating to an identified or identifiable individual;
- g) **Requested Participant** means the Participant from which assistance is requested pursuant to this Cooperative Framework; and
- h) **Requesting Participant** means the Participant who requests assistance pursuant to this Cooperative Framework, or receives such assistance where it was not requested.

Paragraph 3

Scope of Cooperative Framework

3.1 This Cooperative Framework sets out the overall framework within which the Participants will work together collaboratively on all matters of mutual interest and responsibility.

3.2 The Participants will assist each other to ensure proper application of Customs Laws and to monitor, prevent, investigate and combat any Customs Offences, in accordance with the relevant provisions of the JAEPA and IA of the JAEPA as well as this Cooperative Framework.

3.3 The Participants will make cooperative efforts for simplification and harmonization of their customs procedures and for enhancements to their respective capabilities.

3.4 This Cooperative Framework does not prevent the Participants using alternative avenues of cooperation and assistance where that is appropriate and consistent with the laws, regulations and procedures of their own countries.

Paragraph 4

Communication of information

4.1 Subject to paragraphs 8 and 9, the Participants will provide each other, either on request or on their own initiative, with information necessary to ensure proper application of Customs Laws and to monitor, prevent, investigate and combat any Customs Offences.

4.2 Subject to paragraphs 8 and 9, either Participant will, on its own initiative or upon request, provide the other Participant with information regarding the activities that may result in Customs Offences within the customs territory of the country of the latter Participant.

4.3 Subject to paragraphs 8 and 9, when either Participant considers that information is relevant to serious Customs Offences that could involve substantial damage to the economy, public health, public security or any other vital interest of the country of the other Participant, the former Participant will, wherever possible, provide the latter Participant with such information without delay.

Paragraph 5

Requests for assistance

5.1 Either Participant may make a request for assistance in writing from the other Participant pursuant to this Cooperative Framework. However, in cases of urgency, the Requested Participant may accept an initial oral request with a promptly confirmation of that request in writing.

5.2 Subject to any administrative arrangements, laws or regulations that may govern a particular request, the Requested Participant will ensure before meeting a request that:

- a) the request is within the scope of this Cooperative Framework;
- b) the request relates to the functions of the Requested Participant;
- c) any conditions that are necessary to be observed before meeting a request are made known by the Requesting Participant; and
- d) the provision of cooperation and assistance is not governed by another mechanism such as that concerning mutual assistance in criminal matters.

- 5.3 A request for assistance will ordinarily include the following information:
- a) the nature of the matter or proceedings in respect of which the request is made;
 - b) the object of and reason for the request;
 - c) the names and addresses of any parties to whom the request relates, if known;
 - d) a brief description of the matter under consideration and the legal elements involved; and
 - e) any other information that may assist in allowing the request to be met.

5.4 On a request being made, the Requested Participant will advise the Requesting Participant of any special instructions that may need to be met before meeting a request including those necessary to protect the interests of third parties.

5.5 The Requested Participant may ask for additional information if this will assist in meeting the request.

Paragraph 6 Special assistance

- 6.1 Upon request, the Requested Participant will, within the limits of its competence and available resources and where allowed by laws and regulations, maintain surveillance over and provide information on:
- a) goods either in transport, or in storage known to have been used or suspected of being used in connection with a Customs Offence;
 - b) particular persons known to have been or suspected of being connected with the commission of Customs Offences;
 - c) means of transport known to have been used or suspected of being used to commit a Customs Offence; and
 - d) premises known to have been used or suspected of being used to commit a Customs Offence.

Paragraph 7 Controlled delivery

7.1 The Participants, in consultation with the relevant law enforcement agencies, may cooperate in and exchange information on a Controlled Delivery conducted in accordance with the laws and regulations of their respective countries.

Paragraph 8

Exceptions to meeting a request

8.1 Where a Participant receives a request that is inconsistent with laws or administrative arrangements applicable to its country, then the Requested Participant may refuse the request and may, if appropriate, advise the other Participant of the reasons for being unable to meet the request and any alternative means of meeting that request.

8.2 A request for cooperation and assistance may also be refused at the discretion of the Requested Participant where:

- a) the meeting of the request may prejudice the sovereignty, public policy, security or other essential interests of the Requested Participant's country;
- b) the Requested Participant considers that meeting a request may interfere with or adversely affect any ongoing or proposed investigation, criminal prosecution or proceedings in its country;
- c) the request concerns a matter which should more properly be addressed under mutual assistance in criminal matters legislation and related administrative arrangements;
- d) the request concerns Personal Information sourced from a country or group of countries such as the European Union which is subject to restrictions based on privacy or data protection in an agreement with that country or group of countries;
- e) the request concerns a matter which may violate or prejudice a legitimate industrial, commercial or professional interest; or
- f) the request does not fall within the scope of this Cooperative Framework or the scope of the Requested Participant's domestic laws and regulations.

8.3 If the Requested Participant decides that it cannot provide requested assistance or that it may only do so under certain conditions, the Requesting Participant will promptly be informed in writing of such decision, together with any reasons for that decision.

8.4 If the Requesting Participant would be unable to assist with a similar request in the event that such a request was made of it by the Requested Participant, the Requesting Participant will draw attention to that fact in its request. Responding to such a request will be at the discretion of the Requested Participant.

Paragraph 9

Exchange of information and Confidentiality

9.1 Subject to article 3.7 of the IA of the JAEPA, and this Cooperative Framework, each Participant may exchange and use the information.

9.2 Information provided pursuant to this Cooperative Framework will be provided and treated in accordance with the Participants' laws and regulations governing use and disclosure of information and under the presumption that any instructions attached to the provision of that information will be duly observed by the other Participant

9.3 The Participants will not use or further disclose the information provided under this Cooperative Framework or any subsidiary arrangements, except for in accordance with this Cooperative Framework, or otherwise as required or authorized by law. The Requesting Participant will, wherever possible, give advance notice of any such required use or disclosure of information to the Requested Participant.

9.4 Subject to the other provisions of this paragraph , any information provided under this Cooperative Framework will not be communicated to other authorities of the Requesting Participant's country unless prior consent in writing is given by the Participant providing the information. The Requesting Participant will take all reasonable steps to ensure that the other authority uses such information in accordance with this Cooperative Framework.

9.5 The Participants acknowledge the importance of protecting Personal Information including the privacy of individuals. Such information will be protected in accordance with any instructions given by the Participant providing that information as well as the applicable privacy and data protection laws and regulations in the country of the Participant receiving that information.

Paragraph 10
Facilitating the clearance of goods

10.1 For prompt customs clearance of goods traded between Japan and Australia, each Participant will endeavor to:

- a) make use of information and communications technology wherever possible;
- b) simplify its customs procedures; and
- c) harmonise its customs procedures, to the extent possible, with relevant international standards and recommended practices, such as those made under the auspices of the World Customs Organization.

10.2 The Participants intend to promote the use of information and communications technology in their customs procedures, and to exchange information, including information on best practices and on the use of information and communications technology for the purpose of improving customs procedures.

10.3 In order to facilitate customs clearance of goods traded between Japan and Australia, each Participant intends to continue to use risk management and promote the improvement of risk management techniques.

10.4 Each Participant will exchange information, including information on best practices, risk management techniques and other enforcement techniques.

Paragraph 11
Technological developments

11.1 The Participants will endeavor to exchange information about technological developments that enhance the effectiveness and/or efficiency of customs practices and procedures so that each Participant's customs administration can continually find ways of better meeting its responsibilities.

Paragraph 12
Sharing expertise

12.1 In order to promote further cooperation and mutual understanding, the

Participants intend to continue to provide opportunities for selected officers to be attached as trainees to each other's customs administrations. The costs incurred in such attachments will be met by the sending Participant.

Paragraph 13
Cooperation at international and regional level

- 13.1 The Participants will endeavour to exchange views and work cooperatively on:
- a) customs issues being considered by international forums such as the World Customs Organization and the Asia-Pacific Economic Cooperation (APEC);
 - b) planning and providing of technical and development assistance to other customs administrations in the Asia-Pacific region; and
 - c) Supporting the activities of the Regional Intelligence Liaison Office and the Regional Office for Capacity Building in the Asia-Pacific region.

Paragraph 14
Disputes

14.1 The Participants recognize the importance of openly sharing issues of concern between them as a way of improving co-operation and enhancing the relationship. Any questions or disputes related to the interpretation or implementation of this Cooperative Framework will be settled by consultation between the Participants and will not be referred to any court, tribunal or third party for resolution.

Paragraph 15
Costs

15.1 The Participants will bear their own costs in implementing this Cooperative Framework or meeting any commitments under it; unless prior consent in writing has been reached between them as to the sharing or apportionment of those costs.

Paragraph 16
Liaison and consultation

16.1 As set out in Annex 1, each Participant designates a particular liaison contact for requests for assistance under this Cooperative Framework to be received and for liaison purposes. Where a Participant's liaison contact details change, it will notify the information to the other Participant in writing as soon as possible.

16.2 The Participants may convene joint meetings of their customs officials to progress bilateral customs cooperation at such venues and times and by such means as may be mutually determined by the Participants.

16.3 The Participants intend to consult when necessary to ensure the effectiveness of this Cooperative Framework and of any subsidiary arrangements made under Paragraph 17.

16.4 This Cooperative Framework will be reviewed every five (5) years from the date on which it commences, or within such other period as mutually determined by the Participants.

Paragraph 17 Subsidiary arrangements

17.1 The Participants may by mutual consent in writing make one, or more subsidiary arrangements which will be subject to, and in accordance with this Cooperative Framework, with the aim of enhancing their cooperation.

Paragraph 18 Commencement, duration and termination

18.1 This Cooperative Framework:

- a) will commence on the date it is signed by representatives of both Participants;
- b) will continue in effect indefinitely unless terminated; and
- c) may be amended or modified by mutual written consent of the Participants.

18.2 Either Participant may terminate this Cooperative Framework at any time by

providing at least three (3) months' written notice to the other Participant of its intention to terminate, or by providing such other notice as jointly decided by the Participants.

18.3 Any assistance or cooperation already commenced prior to termination of this Cooperative Framework will remain subject to the terms of this Cooperative Framework until that activity has been completed.

Signed in duplicate in the English language at Brussels on 7 July 2017.

For and on behalf of the **Customs Administration of Japan:**

For and on behalf of the **Department of Immigration and Border Protection of Australia:**

.....
Signature
INSERT NAME AND POSITION OF PERSON
SIGNING

.....
Signature
INSERT NAME AND POSITION OF PERSON
SIGNING