

No. 33404

**NEW ZEALAND
and
UNITED STATES OF AMERICA**

Agreement regarding mutual assistance between their customs services. Signed at Hong Kong on 13 June 1996

Authentic text: English.

Registered by New Zealand on 8 December 1996.

**NOUVELLE-ZÉLANDE
et
ÉTATS-UNIS D'AMÉRIQUE**

Accord relatif à l'assistance mutuelle entre les services douaniers. Signé à Hong-Kong le 13 juin 1996

Texte authentique : anglais.

Enregistré par la Nouvelle-Zélande le 8 décembre 1996.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA REGARDING MUTUAL ASSISTANCE BETWEEN THEIR CUSTOMS SERVICES

The Government of New Zealand and the Government of the United States of America (hereinafter referred to as "the Parties");

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

Considering the importance of assuring the accurate assessment of Customs duties and other revenue measures;

Convinced that action against Customs offences can be made more effective by cooperation between the Parties;

Desiring to enhance and supplement mutual assistance practices otherwise in effect between the Parties;

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

Have reached the understanding that, through their respective Customs services, they will cooperate as follows:

Article 1

Definitions

For the purposes of this Agreement:

- 1 "Customs laws" means laws and regulations administered or enforced by the Customs Services of the Parties.
- 2 "Customs Services" means, in New Zealand, New Zealand Customs and in the United States of America, the United States Customs Service, Department of the Treasury.
- 3 "Offence" means any violation of Customs laws or any attempted violation of such laws.

¹ Came into force on 13 June 1996 by signature, in accordance with article 14.

Article 2

Scope of Cooperation

- 1 Subject to the laws of the respective Parties and within the limits of the authority of their Customs Services, the Parties through their Customs Services shall, in accordance with the provisions of this Agreement, assist each other to prevent and repress any Offence.
- 2 Such assistance shall include, upon request, the provision of information apt to assure the accurate assessment of Customs duties and other revenue measures by the Customs Services.
- 3 Assistance provided by the requested Party will be within the terms and spirit of this Agreement but will not include the arrest or detention of any person or persons, or the seizure of property on behalf of the requesting Party.

Article 3

Obligation to Observe Confidentiality

- 1 Information, documents and other communications received by either Party under this Agreement shall be used only for the purposes specified in this Agreement - such information, documents and other communications may be used for other purposes only when the supplying Party has given its express consent in writing.
- 2 Inquiries, information, documents and other communications received by either Party shall be treated as confidential.
- 3 Any intelligence, documents or other information communicated or obtained under this Agreement shall be afforded in the receiving country the same protection in respect of confidentiality and official secrecy as applies in that country to the same kind of intelligence, documents and other information obtained in its own territory.

Article 4

Exemptions from Assistance

- 1 In cases where the requested Party is of the opinion that compliance with a request would infringe upon its sovereignty, security, public policy or other substantive national interest, assistance may be refused in whole or in part or compliance may be made subject to the satisfaction of certain conditions or requirements.

- 2 In cases where a request is made which the requesting Party itself would be unable to provide if requested by the other Party, the requesting Party shall draw attention to this fact in its request. Compliance with such a request shall be within the discretion of the requested Party.

Article 5

Form and Substance of Request for Assistance

- 1 Requests pursuant to this Agreement shall be made in writing and documents necessary for the execution of each request shall accompany the request. When required because of the exigency of the situation, oral requests may be accepted but shall be confirmed in writing without delay.
- 2 Requests pursuant to subparagraph 1 of this article shall include the following information:
 - a the name of the authority making the request;
 - b the nature of the proceedings in respect of which the request is made;
 - c the object of and the reason for the request;
 - d the names and addresses of the parties to whom the request relates, if known; and
 - e a brief description of the matter under consideration and the legal elements involved.

Article 6

Channels of Communication

- 1 Assistance shall be carried out by direct communication between officials designated by the Heads of the respective Customs Services.
- 2 In case the Customs Service of the requested Party is not the appropriate agency to comply with a request, it shall transmit the request to the appropriate agency.

Article 7

Execution of Requests

- 1 The requested Customs Service shall use any reasonable and lawful measure necessary to carry out any request.
- 2 The Customs Service of either Party shall upon the request of the Customs Service of the other Party, undertake verifications, inspections and fact finding inquiries in connection with matters referred to in this Agreement.
- 3 Upon request, the requested Party shall, to the fullest extent possible, authorise officials of the requesting Party to be present in the territory of the requested Party to participate in inquiries into, or the official reporting of, an Offence of concern to the requesting Party.
- 4 In the event that the request cannot be complied with, the requesting Party shall be notified promptly of that fact, with a statement of the circumstances which might be of importance for the further pursuit of the matter.

Article 8

Files, Documents and Witnesses

- 1 Originals of documents and other materials shall be requested only in cases where copies would be insufficient. Upon specific request, copies of such documents and other materials shall be appropriately authenticated.
- 2 Originals of documents and other materials which have been transmitted shall be returned at the earliest opportunity; rights of the requested Party or of the third parties relating thereto shall remain unaffected.
- 3 With the agreement of the requested Party, authorisation may be given for officials specially designated by the requesting Party to consult, in the offices of the requested Party, the relevant books, registers and other documents or data media held in those offices, take copies thereof, or extract any information or particulars relating to an Offence.

Article 9

Provision for Sharing of Forfeited Property

Subject to their respective laws and regulations, the Parties agree that either Party may transfer to the other Party forfeited personal property, the proceeds from the sale of

forfeited real property or other goods or assets, and also forfeited currency, stocks, bonds, bank notes or drafts, postal orders, money orders, or other similar instruments, upon such terms as may be agreed.

Article 10

Costs

The Parties shall waive all claims for reimbursement of costs incurred in the execution of this Agreement with the exception of expenses for witnesses or experts. Upon mutual agreement, expenses for witnesses or experts may be paid by the requested party.

Article 11

Special Instances of Assistance

- 1 Upon request, the Customs Services shall inform each other whether goods exported from the territory of one Party have been lawfully imported into the territory of the other Party.
- 2 The Customs Services of the Parties shall, upon request, furnish each other with all available information regarding activities which may result in offences within the territory of the other Party. In serious cases which could involve substantial damage to the economy, public health, public security, or any other vital interest of the other Party, such information may be supplied without being requested.
- 3 The Customs Services of the Parties shall, upon request, provide documentation relating to transportation and shipment of goods showing value, disposition and destination of those goods.
- 4 Upon request, the requested Party shall notify the person concerned residing in its territory or have them notified by the competent authorities of any action or decision made by the requesting Party concerning the matter falling within the scope of this Agreement.
- 5 Upon request, the respective Customs Services shall, to the extent of its available resources, exercise special assistance with regard to the monitoring or tracking of any activity which is or seems to be contrary to the proper application of the Customs laws.

Article 12

Implementation of the Agreement

New Zealand Customs and the United States Customs Service, Department of the Treasury of the United States of America may communicate directly for the purpose of dealing with matters arising out of this Agreement, which are not questions of foreign policy or international law, and after consultation shall issue any administrative directives for the implementation of the Agreement, and shall endeavour by mutual accord to resolve problems or doubts arising from the interpretation or application of this Agreement.

Article 13

This Agreement shall not apply to Tokelau.

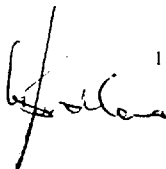
Article 14

Entry into Force and Termination

- 1 This Agreement shall enter into force on signature by the Parties.
- 2 The Parties shall meet in order to review this Agreement at the end of three years counted from the date of its entry into force, unless they notify one another in writing that no review is necessary.
- 3 This Agreement may be terminated by written notice by either Party and shall cease to be in force six months after such notice has been given.

SIGNED at Hong Kong on 13 June 1996 in the English language.

For the Government
of New Zealand:

A handwritten signature in black ink, appearing to be 'G. Ludlow', with a superscript '1' to its right.

Comptroller of Customs

For the Government
of the United States of America:

A handwritten signature in black ink, appearing to be 'Michael H. Lane', with a superscript '2' to its right.

¹ Graeme W. Ludlow.

² Michael H. Lane.