



Australian Government
Australian Customs and
Border Protection Service

CHIEF EXECUTIVE OFFICER

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Mr Ben Wotu Leeshi
Director
Department of Customs and Inland Revenue
Ministry of Finance and Treasury
Vanuatu

Dear Mr Leeshi

Cooperative Arrangement in Customs Matters between Australian Customs and Border Protection Service and the Department of Customs and Inland Revenue

I am writing to propose the establishment of a Cooperative Arrangement between the Australian Customs and Border Protection Service (Customs and Border Protection) and the Department of Customs and Inland Revenue to cover the exchanges of information that previously occurred under the terms of the Customs Asia Pacific Enforcement Reporting System (CAPERS) Memorandum of Understanding, which is no longer in operation.

I propose that an exchange of letters (consisting of this letter and your acceptance in writing) constitute a Cooperative Arrangement to permit the sharing, use and disclosure of information between our agencies for the purpose of prevention, detection and repression of breaches of customs and border regulatory related laws. This includes the sharing of information in relation to the movement of small craft in the Pacific.

Our agencies share a positive working relationship and Customs and Border Protection values the exchange of information, including in relation to the movement of small craft in the Pacific. In order for Customs and Border Protection to continue to share information with Department of Customs and Inland Revenue, Customs and Border Protection must comply with its obligations under Australian legislation, including section 16 of the *Customs Administration Act 1985* ('the Act').

Subsection 16(3D) of the Act permits me or my delegate, to authorise the disclosure of protected information to an agency of a foreign country if satisfied that certain

circumstances are met. To satisfy the requirements of Australian law, I seek your confirmation of the following matters:

1. This letter, together with your written acceptance of its terms and conditions, will constitute a Cooperative Arrangement between Customs and Border Protection and Department of Customs and Inland Revenue to permit the sharing, use and disclosure of information between our agencies for the purpose of prevention, detection and repression of breaches of customs and border regulatory related laws. This includes the sharing of information in relation to the movement of small craft in the Pacific;
2. Department of Customs and Inland Revenue undertakes not to use or further disclose any information provided to it by Customs and Border Protection pursuant to this Cooperative Arrangement except for the purpose for which it was provided or as otherwise authorised or required by law;
3. In the event that information is proposed to be used or disclosed as authorised or required by law, Department of Customs and Inland Revenue will inform Customs and Border Protection in writing of the proposed use or disclosure as soon as practicable;
4. This Cooperative Arrangement is not intended to create any legally binding rights or obligations nor is it intended to affect any existing international obligations;
5. Any information given under this Cooperative Arrangement is provided on the understanding that it will not be used in the prosecution of crimes for which the death penalty could be applied. Additionally, Customs and Border Protection and Department of Customs and Inland Revenue each retain the right to refuse a request for the disclosure of information where a person has been:
 - (a) arrested or detained on suspicion of having committed an offence; or
 - (b) charged with, or convicted of, an offence; and
 - (c) the offence is one in respect of which the death penalty may be imposed;
6. Nothing in this Cooperative Arrangement compels either Customs and Border Protection or Department of Customs and Inland Revenue to disclose information to the other;
7. The Cooperative Arrangement will commence on the date of Customs and Border Protection receiving written acceptance of Department of Customs and Inland Revenue of the terms and conditions of this proposed Cooperative Arrangement contained in this letter;
8. After commencement, the Cooperative Arrangement will be of unlimited duration, but either Department of Customs and Inland Revenue or Customs and Border Protection remain free to terminate the Arrangement at any time by giving three months notification in writing. It is accepted that if such termination occurs, then the obligations in paragraphs 2-5 will continue

after termination in respect of any information provided by either Party prior to that termination.

I look forward to your positive response to my proposal. Please do not hesitate to contact Chris Dennis, if you or your staff require additional information. Mr Dennis may be contacted by telephone on (+61) 2 6275 6809 or by email at chris.dennis@customs.gov.au.

Yours sincerely



Michael Carmody
Chief Executive Officer

29 August 2012