



Australian Government
Australian Customs Service

SUBMISSION BY THE AUSTRALIAN CUSTOMS SERVICE

TO THE

REVIEW OF THE

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 1987

Introduction

On 18 April 2006, the Australian Customs Service (Customs) met with representatives of the Attorney-General's Department to discuss the Review of the *Mutual Assistance in Criminal Matters Act 1987* (the Mutual Assistance Act).

The Terms of Reference indicate the Review will consider:

- a. changes needed to reflect the changing nature, scope and extent of transnational and domestic crime, including the types of offences that are captured and the range of circumstances where responses are time critical
- b. increasing the efficiency, effectiveness and quality of current extradition and mutual assistance processes, including by:
 - streamlining the operation of the Acts
 - remedying any anomalies in the operation of the Acts
 - incorporating advancements in technology, such as videolink technology
 - examining the interaction of existing legislation with extradition and mutual assistance processes.

Background

Customs is both a law enforcement and regulatory agency whose role is to manage the security and integrity of the Australian border; juxtaposing the detection and deterrence of unlawful movements of people and goods across the border with facilitation of legitimate passage and collection of duty and taxes.

Customs investigates various types of serious criminal activity, including the importation or exportation of illegal drugs, precursor chemicals, firearms and wildlife and the fraudulent avoidance of revenue through smuggling of goods such as tobacco and other commercial goods.

The international nature of offences investigated by Customs means that close interaction with overseas law enforcement and regulatory agencies is essential to locate and collect evidentiary material. This occurs through several well-established mechanisms, such as through our Australian Customs Representatives in various overseas posts, agency-to-agency communication and the mutual assistance legislation.

General comments

Customs primary expectation for the Mutual Assistance Act is that it provides an efficient and expedient method to access evidentiary material from overseas. This is essential to ensure investigations of offences against Customs legislation are progressed within an appropriate timeframe and that

prosecutions are not adversely impacted by the unavailability of crucial foreign evidence.

Furthermore, while the Mutual Assistance Act is important to Customs investigative function, it is essential that the ability to gain information and progress enquiries through agency-to-agency methods is maintained and recognised as an equally significant mechanism.

Specific comments

6.2.2 How should the Minister approve the assistance?

Customs supports the suggestion that the legislation could be amended to enable the Minister to approve a request in general terms and enable Australian law enforcement agencies (LEA) to action the request by exercising the powers available in ordinary domestic investigations. This would provide more options to LEAs to collect evidence and not rely upon one specific type of assistance.

6.2.4 The grounds of refusal should clearly state that they apply to the investigation stage

Customs supports the suggestion that the grounds of refusal should apply to the investigation stage of the criminal justice process. This would enable the Minister to refuse a request for assistance should it relate to the investigation of an individual for an offence not recognised or supported by Australia.

6.2.5 Are the current grounds of refusal appropriate for requests for proceeds of crime assistance?

The Mutual Assistance Act should be amended to ensure that requests for assistance relating to offences under proceeds of crime legislation are appropriately considered, and that sufficient grounds exist to refuse a request relating to a proceeds of crime investigation, prosecution or proceeding. This would necessitate an additional ground of refusal to ensure domestic proceeds of crime investigations are not negatively impacted by the provision of assistance to a foreign country.

6.2.17 What should be included in mutual assistance requests from other countries?

Customs supports the extension of requirements for Mutual Assistance requests to include details of the contact officer in a foreign country. This would streamline the process by removing unnecessary points of contact.

6.4.3 How should the Mutual Assistance Act allow appropriate information sharing?

Customs supports the suggestion that the Mutual Assistance Act should be amended to expressly identify and authorise personal information flows in the mutual assistance process. This would provide clarification that personal

information provided to overseas countries was disseminated within the constraints of Australian law.