

AUSTRALIAN CUSTOMS NOTICE NO. 2003/40

The amber line facility

The purpose of this Customs Notice is to clarify the effect of new offence provisions on the ‘amber line’ facility. This ACN replaces ACN 89/67.

On 1 July 2002, the new Infringement Notice Scheme (INS) for certain strict liability offences in the *Customs Act 1901* commenced as part of the Trade Modernisation legislation package.

These new strict liability offence provisions include new section 243T, which provides that an owner commits an offence if a false or misleading statement resulting in loss of duty is made in respect of the owner’s goods. This provision, in combination with the INS, replaced the old administrative Penalty System in former sections 243T, 243U and 243V. ACN 2002/38 refers.

Section 243V in the old administrative penalty scheme allowed people to avoid an administrative penalty for a false or misleading statement resulting in an underpayment of duty by stating their uncertainty as to the correctness of the information, and their reasons for that uncertainty, at the time of lodging the import entry. This became known throughout Customs and the importing community as the ‘amber line’ facility.

Under the new legislation, the ‘amber line’ facility has been retained in subsections 243T(5) and (6) as exceptions to the strict liability offence for false statements resulting in a loss of duty. As the majority of statements that might be subject to an offence under 243T are made in Customs entries, Customs has continued to provide a field on import entries for amber line statements to be made.

There are some important considerations to be kept in mind when using the ‘amber line’ facility.

# Application

The exception only applies in respect of a false or misleading statement that results in a loss of duty. It does not apply to false or misleading statements for exports, for imports where the statement does not result in loss of duty, in cargo reports or outturn reports.

‘Amber line’ is considered appropriate for false or misleading statements resulting in a loss of duty because the penalty for such statements is directly related to the amount of duty short paid. The greater the short payment, the greater the penalty – with no upper

limit. New sections 243U and 243V (for false or misleading statements not resulting in a loss of duty and in cargo and outturn reports), on the other hand, have maximum penalties of 50 penalty units.

# Authority to deal and an exception to 243T

Customs entry-processing staff apply risk-assessment principles to self-assessed entries in a real-time environment in order to efficiently process imports. If you are provided with an authority to deal by Customs, the entry-processing area will not have considered whether or not an offence has been committed under section 243T.

Therefore, where an entry is declared ‘amber’, the provision of an authority to deal by Customs does not carry any guarantee that the criteria in any one of the exceptions have been satisfied sufficient to avoid a penalty.

In the event that a false statement is located, and is serious enough to warrant consideration for an infringement notice, a delegate of the CEO, a senior executive officer, will then examine the matter to ascertain, among other considerations, if the criteria in subsection (5) or (6) have been satisfied.

Therefore it is incumbent on persons, on making the ‘amber line’ entry, to ensure they have satisfied the criteria contained in subsection 243T (5) or (6), and that any necessary post warrant amendments are entered in a timely and accurate manner.

# Use of the ‘amber line’ facility

The legislation requires that a person making an ‘amber line’ entry must make a statement that includes the following:

A statement that the person making the entry is uncertain about information in the entry and considers that, as a result of including that information, the statement might be false or misleading (or a statement that the person is uncertain whether as a result of omitting information from the entry, the statement might be false or misleading);

Identification of the information in question (or the omission of information); and

Reasons for the uncertainty about the information or about the effect of omitting the information.

If you are uncertain about information contained in the entry, your statement should take the following form:

“In accordance with subsection 243T(5) of the Customs Act 1901, I am uncertain as to information pertaining to [*describe information, e.g., classification*] in lines [ ] and consider that as a result of including that information, this statement might be false or misleading in a material particular. I am uncertain as to the information for the following reasons [ ].”

If you have omitted information that you believe may render the entry false or misleading, your statement should take the following form:

“In accordance with subsection 243T(6) of the Customs Act 1901, I have omitted information pertaining to [*describe information, e.g., valuation*] in lines [ ] and consider that, as a result of omitting that information, this statement might be false or misleading in a material particular. I am uncertain as to the effect of omitting this information for the following reasons [ ].”

If you are lodging electronically, in order to access the space required to make your statement, you can access an amber continuation screen by pressing <enter> with a blank control field and an amber statement continuation screen will be displayed. If there is insufficient space on the statement for all the grounds for the uncertainty to be detailed, an attachment should be attached to the entry. This attachment should:

be on company or agency letterhead

specify the entry number and line/s in question identify the uncertainty or omission

give reasons or grounds for that uncertainty and be signed by the owner of the goods or their agent.

The relevant Customs entry processing area will then assess the entry, and provide advice as to its clearance status within 48 hours. Advice that the goods are available for payment, or may be delivered, does not mean that the criteria in subsection 243T(5) or

(6) have been met.

# It is expected that, if uncertainty exists, reasonable inquiry has been undertaken to clarify the uncertainty before lodging via the ‘amber line’ facility.

Any questions in relation to entry processing should be directed to Manager Import Policy on 02 6275 6519.

Any questions in relation to penalties should be directed to Manager Compliance Policy on 02 6275 6252.

Steve Holloway Philomena Carnell

National Manager National Manager

Compliance Branch Cargo Branch

For

Chief Executive Officer 27 May 2003