AUSTRALIAN CUSTOMS NOTICE NO. 2006/34

Infringement Notice Scheme Guidelines (2006)

Under section 243XA of the *Customs Act 1901* (Customs Act) the CEO must make written guidelines in respect of the administration of the Infringement Notice Scheme contained in Division 5 of Part XIII of the Customs Act. The guidelines must be considered when exercising powers under Division 5 of Part XIII of the Customs Act.

Following industry consultation the guidelines have been updated. The new guidelines replace the Infringement Notice Scheme Guidelines tabled in Parliament on

16 November 2004.

The Infringement Notice Scheme Guidelines (2006) commenced on 20 June 2006 and are located on the Customs Internet website at <http://www.customs.gov.au/webdata/resources/files/InfrinNoticeGuidelinesDiv5.pdf>.

A detailed list of the changes that have been made to the guidelines is contained in attachment A.

**Enquiries Concerning this Notice**

Any queries relating to the Guidelines may be directed to Alison Whatson, A/g Manager Infringement Notice Scheme by email [**INSG@customs.gov.au**](mailto:INSG@customs.gov.au).

Sharon Nyakuengama A/g National Manager Compliance Branch

June 2006



Attachment A

**Infringement Notice Scheme Guidelines (2006) – Key changes**

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| **Section Reference** | **Topic** | **Changes** |
| 2 | Delegation | The preferred level of officer for deciding to serve an infringement notice or withdraw an infringement notice for any offence under subsections 64(13), 64AA(10), 64AAB(7), 64AAC(6), 64AB(10), 64ABAA(9), 71AAAQ(1), 71G(1),  74(6), or 243V(1) has changed. For these offences, the preferred level of officer is SES officers only. |
| 3.1.1 | What are the relevant offences | The tense has been changed to reflect the fact that all offences have commenced. The table has been updated to better describe the offences. |
| 3.2.7 | Australia – United States Free Trade Agreement – section 243T and 243U | Guidance on the impact of the Australia – United States Free Trade Agreement (AUSFTA) on the false and misleading statement offences in the Customs Act has been included. |
| 3.3.1 | Significance of the breach | A new indicator has been inserted for and against serving an infringement notice in relation to the number (3) of false and misleading statement particulars or omissions in the relevant cargo or outturn report. |
| 3.3.2 | Effort/attempt to comply | Further explanation has been provided to the discretionary consideration of effort/attempt to comply to provide that:   * the context of the person’s compliance history will be considered when considering whether a breach is part of an ongoing pattern of   non-compliance; and   * when considering indicators for serving an infringement notice, any |

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|  |  | previous non-compliance with the particular regulatory requirement that was due to difficulties experienced with the operation of the ICS shall not adversely impact on a person’s efforts/attempts to comply. |
| 3.3.4 | Discretionary consideration - Reasons beyond the persons control | Clarification that a person acting on behalf of the person who committed the offence could include overseas agents. |
| 3.3.5 | Discretionary consideration - Difficulties experienced during the introduction of the Integrated Cargo System (ICS) | A new consideration has been inserted to make it clear that an infringement notice will not be served where a person has made reasonable efforts to comply with regulatory requirements and the person has been unable to comply due to an identified Customs system problem.  An explanation of what an identified Customs-system problem includes is provided. |
| 4.5 | Method of serving infringement notices | An explanation on how an infringement notice would be served is provided. |
| Appendix A | Guide to elements of strict liability offences | The Guide has been amended to better describe the cargo reporting related offences. |
| Appendix B | Moratorium | The Moratorium has been updated to take account of the republished moratorium in relation to the new imports-related strict liability offences in ACN 2005/37. |
| Appendix C | Information Sheet on what to do if you receive an infringement notice | Minor changes to wording in relation to withdrawal options have been made. The heading has been changed to fit the explanation that the person named in the notice can seek withdrawal of an infringement notice. |