GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

VAL/1/Add.14/Suppl.3*
24 August 1989

Special Distribution

Commitee on Customs Valuation

Original: English

INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Supplement

Legislation of Australia

The following communication has been received from the Permanent Mission of Australia.

Notification of Amendments made to the Customs Act 1901 by the Customs and Excise Legislation Amendment Act 1989

Two pieces of legislation were passed by the Federal Parliament in April 1989, and received Royal Assent from the Governor-General on 5 May 1989. Informally described as the CELA Bills, they are more correctly entitled:

(i) Customs & Excise Legislation Amendment Act, 1989, (Act No. 23 of 1989); and

(ii) Customs & Excise Legislation Amendment Act, (No. 2), 1989, (Act No. 24 of 1989).

Accordingly, in pursuance of the provisions of Article 25 of the Agreement on Implementation of Article VII of the General Agreement, the following documents are provided for the information of interested contracting parties as foreshadowed in VAL/1/Add.14/Suppl.2:

- ACN 89/49 Amendments to Customs Valuation Legislation
- ACN 89/63 Customs Legislation Amendments - Administrative Penalties
- ACN 89/64 Customs Legislation Amendments - New Audit Powers, etc.
- ACN 89/67 Customs Legislation Amendments - Amber Entries
- ACN 89/69 Amnesty from Prosecution for Duty Short-Payments on Customs Entries

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*English only/anglais seulement/inglés solamente

- ACN 89/80 Customs Legislation Amendments - Penalty Exempt Statements
- ACN 89/88 Revised Formal Tariff and Valuation Advice
- A copy of the CELA Acts and of the Explanatory Memoranda are available in the secretariat for examination (Technical Barriers to Trade Division).

The attached legislation should be read in conjunction with previous Australian customs valuation legislation which was notified to contracting parties in VAL/1/Add.14.

Intention of amendments

The CELA Act 1989 (No. 23) does not represent a fundamental change in Australian Customs Service (ACS) approach to the principles of valuation:

. Australia continues to meet its obligations under Article VII of the General Agreement.

. Concept of a f.o.b. valuation base remains.

. Transaction value, which is centred on the price paid or payable, remains the primary method of valuation

  - it is expected that about 99 per cent of all commercial importations will fall to this method.

. The other sequential methods remain in place, i.e.

  - identical, similar, deductive, computed and fall-back methods.

. Additions to "price" remain only those permitted under Article 8 of the GATT Valuation Agreement.

. Deductions (or matters disregarded) from "price" remain only those permitted under Article 1 of the GATT Valuation Agreement.

. Power to review determinations of Australian Customs Value (ACV) has not changed.

The significant changes presented in the CELA Act 1989 (No. 23) are:

. A rearrangement, rewriting and expansion of definitions within Division 2 of Part VIII of the Customs Act to restrict certain practices and to provide a measure of certainty in valuing goods for customs purposes.

. Removal of the so-called "third party" inland freight option.

. Removal of the Canadian inland freight concession.

. A provision whereby the ACS, in certain circumstances, may deem that determinations of values have been made.

. Replacement of a "fair" rate of exchange for currency conversion purposes with a "ruling" rate.

. Removal of the reference to "advertising" and "warranty" in the definition of "price".

Operative date of amendments

The amendments contained in the CELA Act 1989 (No. 23) operate on and from 1 July 1989. These amendments do not involve any retrospectivity nor do any "in-transit" provisions apply in relation to these amendments.

Explanation of amendments made to Customs Act 1901 by CELA Act 1989 (No. 23)

The Act contains a complete redraft of Division 2 of Part VIII of the Customs Act 1901. Changes include:

(A) New Division 2 inserts 19 new sections into the Principal Act - S.154 to S.161L. The focus of the redrafted Division is to give primacy to the principal method employed in the valuation of goods (the transaction value). The provisions highlight the various types of costs, charges and agreements relating to the goods which are to be included or excluded when assessing the customs value of goods.

(B) An amendment to provide, as far as possible, that goods are valued at free-on-board (f.o.b.) point. The definition of "place of export" does not result in any change in the treatment of "foreign inland freight" and "foreign inland insurance" in relation to goods after the point of containerization.

- transportation and insurance costs incurred after the container has been packed, whether ex-factory or ex-container depot, are not included in ACV.

However, there is a change in the treatment of "foreign inland freight and insurance" in relation to non-containerized cargo and the movement of goods to the point of containerization. All costs for transportation and insurance incurred prior to the "place of export" are now included in ACV irrespective of to whom such payments are made.

Note: The definition of "place of export" in relation to containers uses the expression "(b) ..., were packed in a container ...". This is to be taken as the container that is exported from the country of exportation.

(C) New definitions of "overseas freight" and "overseas insurance". The provisions now provide that where the amount was paid in an arms-length transaction, and the Collector is satisfied as to the correctness of the amount, the actual amount paid is taken into consideration.

However, where the amount was paid in a non-arms-length transaction, and the Collector is not satisfied that the amount paid is the same or substantially the same as would be paid in an arms-length transaction, the Collector shall have regard to the ordinary costs payable in a corresponding arms-length transaction.

(D) A definition of activities that may not be carried out by an agent if a buying commission is to be allowed as a deduction in "price related costs".

The definition restricts allowable activities to those cases where the agent is acting solely for the purchaser in the import sales transaction and prevents abuse in cases where an agent acts for both parties or is, in fact, the vendor.

If a buying agent carries out any of the following activities in relation to the imported goods any commission paid to the agent is included in ACV:

(a) produce or control the production of the goods;

(b) supply any services relating to the goods that are required to be taken into account when determining the price of the imported goods;

(c) transport the goods;

(d) purchase, exchange, sell or otherwise trade the goods, or supply any services relating to the goods, other than in the capacity as agent of the purchaser;

(e) in respect of the goods to be valued, act as agent for, or in any other way represent, the producer, supplier or vendor, or otherwise be associated with any such person except as the agent of the purchaser;

(f) claim or receive, directly or indirectly, the benefit of any commission, fee or other payment as a result of the "import sales transaction", other than the buying commission payable by the purchaser.

Note: In (b) above activities undertaken solely on the purchaser's account such as quality control, drawing of samples, etc. on behalf of the purchaser are not directly of benefit to the vendor and therefore are not taken into account when "price" is determined and thus such activities do not disqualify the appropriate buying commission.

Note: This definition will not preclude a buying commission being allowed by reason that the buying agent has made the arrangements, as distinct from performing the matters listed.

(E) A statutory definition of royalty. Royalties (and licence fees) relating to the imported goods may form part of the transaction value. S.157 now defines royalties, for the purposes of the Division, as being amounts paid or credited as consideration for one or more of the following:

(a) the making, use, exercise or vending of an invention or the right to make, use, exercise or vend an invention;

(b) the use, or the right to use, a design or trademark, confidential information, or machinery, implements, apparatus, or other equipment;

(c) the supply of scientific, technical, industrial, commercial or other knowledge or information;

(d) the supply of any assistance that is ancillary or subsidiary to the above;

(e) a total or partial forbearance in respect of any of the above.

Note: The definition of "royalty" is wide. However, not all amounts that may fall within the scope of the definition are amounts that form part of ACV.

For example, payments that:

. are not related or connected with an "import sales transaction";

. do not relate to the imported goods in the condition, or substantially in the condition, in which they are imported into Australia;

. whose only relationship to the imported goods is insubstantial or incidental (i.e. some marketing/franchise costs); or

. are merely for the right to reproduce the imported goods within Australia,

cannot be included in ACV.

(F) An amendment to clarify that the value of goods includes any assistance provided by the purchaser to the vendor, free of charge, or at a reduced cost whether by materials or services. See definitions of:

- production assist costs;
- production materials;
- production tooling;
- production work;
- purchaser's material costs;
- purchaser's subsidiary costs;
- purchaser's tooling costs; and
- purchaser's work costs.

(G) An amendment to provide that, where an amount is to be taken into account for the purposes of valuing imported goods, and the amount is in other than Australian currency, the equivalent amount in Australian currency shall be taken into account, having regard to the ruling rate of exchange on the "day of exportation".

The "ruling rate of exchange" will be published in the Gazette after the Comptroller has had regard to prevailing commercial rates of exchange. In practice, this will not change existing arrangements.

"Day of exportation" means:

(a) where the goods were exported by post from the "place of export", and the Collector is satisfied as to the date of posting - that day;

(b) where the goods departed or were transported from the "place of export" in any other way and the Collector is satisfied as to the day of their departure - that day;

(c) in any other case - a day determined by the Collector.

The long-standing administrative practice of accepting reliable information as evidence of the date of exportation will continue. Such evidence may include bills of lading and airway bills. The invoice date is not acceptable for this purpose.

Note: A "ruling rate of exchange" is to be used in all cases where currency conversion is necessary - that is, except where the price of imported goods to be valued is expressed in Australian dollars and is paid for in Australian dollars. Rates of exchange established by agreement between the purchaser and the vendor or by reference to other arrangements such as forward exchange contracts cannot be used as rates of exchange to ascertain the customs value of goods.

(H) An amendment has been made to provide for the deeming of determination of ACV in certain circumstances.

(I) The reference to advertising and warranty in paragraph (e) of the definition of "price" in sub-section 154(1) of the Customs Act 1901 (inserted by Customs (Valuation) Amendment Act 1987) has not been carried through in CELA Act 1989 (No. 23).

CELA Act 1989 (No. 23), in the definition of "value unrelated matter", provides that activities undertaken by the purchaser on his own account are to be disregarded in determining "price".

(J) The original CELA Bill (No. 2) 1987 proposed that a valuation statement be submitted to Customs whenever goods were required to be valued.

This proposal has not been proceeded with.

The new Division 2 inserts 19 new sections into the Principal Act, as follows:

S.154 - Interpretation

S.155 - Interpretation - Buying commission

S.156 - Interpretation - Identical goods and similar goods

S.157 - Interpretation - Royalties

S.158 - Interpretation - Transportation costs

S.159 - Value of imported goods (e.g. the sequence in which the various valuation methods are to be applied)

S.160 - Inability to determine a value of imported goods by reason of insufficient or unreliable information

S.161 - (Method of Valuation): Transaction value

S.161A - (Method of Valuation): Identical goods value

S.161B - (Method of Valuation): Similar goods value

S.161C - (Method of Valuation): Deductive (contemporary sales) value

S.161D - (Method of Valuation): Deductive (later sales) value

S.161E - (Method of Valuation): Deductive (derived goods sales) value

S.161F - (Method of Valuation): Computed value

S.161G (Method of Valuation): Fallback value

S.161H - When transaction value is unable to be determined (e.g. for reasons precluding the use of transaction value method - including transactions between "related" persons, and price-averaging/package deals)

S.161J - Value of goods to be in Australian currency

S.161K - Owner to be advised of value of goods

S.161L - Review of determinations and other decisions.

Explanation of amendments made to Customs Act (1901) by CELA Act (No.2), 1989, (No. 24)

This Act sets out provisions for revised administrative penalties. Broadly speaking, they are:

(i) when duty is or would have been short-paid as a result of a false or misleading statement made in import documentation, Customs may impose a penalty equal to twice the amount short-paid, in addition to the adjustment of the correct duty; and

(ii) all or part of a penalty may be remitted if certain criteria are met.

Details are summarized in ACN's 89/63, 89/67, 89/69 and 89/90.

Australian Customs Service

AUSTRALIAN CUSTOMS NOTICE

No. 89/49

Amendments to Customs Valuation Legislation

Background

Australian Customs Notice (ACN) No. 87/68 advised that the valuation provisions of the Customs Act 1901 would be amended to combat valuation fraud and avoidance of Customs duty.

The first stage to these amendments was by way of the Customs (Valuation) Amendment Act 1987. ACN No. 87/114 gave an explanation of these amendments, which came into effect from 1 July 1987.

Customs and Excise Legislation Amendment Act 1989 (CELA Act 1989) continues the policy of closing down avoidance and minimization practices.

The Act contains a complete redraft of Division 2 of Part VIII of the Customs Act 1901, which governs the valuation of imported goods for Customs purposes.

Intention of amendments

The CELA Act 1989 does not represent a fundamental change in Australian Customs Service approach to the principles of valuation:

. Australia continues to meet its obligations under Article VII of the General Agreement on Tariffs and Trade (the GATT).

. Concept of a f.o.b. valuation base remains.

. Transaction value, which is centred on the price paid or payable, remains the primary method of valuation

  - it is expected that about 99 per cent of all commercial importations will fall to this method.

. The other sequential methods remain in place, i.e.

  - identical, similar, deductive, computed and fallback methods.

. Additions to "price" remain only those permitted under Article 8 of the GATT Valuation Agreement.

. Deductions (or matters disregarded) from "price" remain only those permitted under Article 1 of the GATT Valuation Agreement.

. Power to review determinations of Australian Customs Value (ACV) has not changed.

The significant changes presented in the CELA Act 1989 are:

. A rearrangement, rewriting and expansion of definitions within Division 2 of Part VIII of the Customs Act to restrict certain practices and to provide a measure of certainty in valuing goods for Customs purposes.

. Removal of the so-called "third party" inland freight option.

. Removal of the Canadian inland freight concession.

. A provision whereby the ACS, in certain circumstances, may deem that determinations of values have been made.

. Replacement of a "fair" rate of exchange for currency conversion purposes with a "ruling" rate.

. Removal of the reference to "advertising" and "warranty" in the definition of "price".

Explanation of amendments

Explanation of the redrafting of Division 2 of Part VIII of the Customs Act and the major changes contained in the CELA Act 1989 are set out in Attachment A to this Notice.

Attachment B details how Australian Customs Value (ACV) is arrived at by use of the "Transaction Value" method.

Attachment C is a concordance of the former provisions of S.154 to S.161D of the Customs Act with the provisions of the new Division 2 of Part VIII of the Customs Act.

Operative date of amendments

The amendments contained in the CELA Act 1989 operate on and from 1 July 1989. These amendments do not involve any retrospectivity nor do any "in-transit" provisions apply in relation to these amendments.

Changes to ACS Manual instructions

Australian Customs Service Manual Volume 8 (Valuation and Preference) is being amended and reprint pages will be issued in due course.

(F.I. KELLY)
Comptroller-General

Canberra ACT 2601

27 April 1989

(Valuation - C88/181)

Contact Officer: Ray Blackmore
Phone: (062) 75 6502

Attachment to ACN 89/49

ATTACHMENT "A"

Explanation of Amendments made to Customs Act 1901 by Customs and Excise Legislation Amendment Act 1989

The Act contains a complete redraft of Division 2 of Part VIII of the Customs Act 1901. Changes include:

(A) New Division 2 inserts nineteen new sections into the Principal Act - S.154 to S.161L. The focus of the redrafted Division is to give primacy to the principal method employed in the valuation of goods (the transaction value). The provisions highlight the various types of costs, charges and agreements relating to the goods which are to be included or excluded when assessing the customs value of goods.

(B) An amendment to provide, as far as possible, that goods are valued at free-on-board (f.o.b.) point. The definition of "place of export" does not result in any change in the treatment of "foreign inland freight" and "foreign inland insurance" in relation to goods after the point of containerization:

- all transportation and insurance costs incurred after the container has been packed, whether ex-factory or ex-container depot, are not includible in ACV.

However, there is a change in the treatment of "foreign inland freight and insurance" in relation to non-containerized cargo and the movement of goods to the point of containerization. All costs for transportation and insurance incurred prior to the "place of export" are now includible in ACV irrespective of to whom such payments are made.

Note: The definition of "place of export" in relation to containers uses the expression "(b) ..., were packed in a container ...". This is to be taken as the container that is exported from the country of exportation.

(C) New definitions of "overseas freight" and "overseas insurance". The provisions now provide that where the amount was paid in an arms-length transaction, and the Collector is satisfied as to the correctness of the amount, the actual amount paid is taken into consideration.

However, where the amount was paid in a non-arms-length transaction, and the Collector is not satisfied that the amount paid is the same or substantially the same as would be paid in an arms-length transaction, the Collector shall have regard to the ordinary costs payable in a corresponding arms-length transaction.

(D) A definition of activities that may not be carried out by an agent if a buying commission is to be allowed as a deduction in "price related costs".

The definition restricts allowable activities to those cases where the agent is acting solely for the purchaser in the import sales transaction and prevents abuse in cases where an agent acts for both parties or is, in fact, the vendor.

If a buying agent carries out any of the following activities in relation to the imported goods any commission paid to the agent is includible in ACV:

(a) produce or control the production of the goods;

(b) supply any services relating to the goods that are requied to be taken into account when determining the price of the imported goods;

(c) transport the goods;

(d) purchase, exchange, sell or otherwise trade the goods, or supply any services relating to the goods, other than in the capacity as agent of the purchaser;

(e) in respect of the goods to be valued, act as agent for, or in any other way represent, the producer, supplier or vendor, or otherwise be associated with any such person except as the agent of the purchaser;

(f) claim or receive, directly or indirectly, the benefit of any commision, fee or other payment as a result of the "import sales transaction", other than the buying commission payable by the purchaser.

Note: In (b) above activities undertaken solely on the purchaser's account such as quality control, drawing of samples, etc. on behalf of the purchaser are not directly of benefit to the vendor and therefore are not taken into account when "price" is determined and thus such activities do not disqualify the appropriate buying commission.

Note: This definition will not preclude a buying commission being allowed by reason that the buying agent has made the arrangements, as distinct from performing the matters listed.

Attachment to ACN 89/49

(E) A statutory definition of royalty. Royalties (and licence fees) relating to the imported goods may form part of the transaction value. S.157 now defines royalties, for the purposes of the Division, as being amounts paid or credited as consideration for one or more of the following:

(a) the making, use, exercise or vending of an invention or the right to make, use, exercise or vend an invention;

(b) the use, or the right to use, a design or trademark, confidential information, or machinery, implements, apparatus, or other equipment;

(c) the supply of scientific, technical, industrial, commercial or other knowledge or information;

(d) the supply of any assistance that is ancillary or subsidiary to the above;

(e) a total or partial forbearance in respect of any of the above.

Note: The definition of "royalty" is wide. However, not all amounts that may fall within the scope of the definition are amounts that form part of ACV.

For example, payments that:

. are not related or connected with an "import sales transaction";

. do not relate to the imported goods in the condition, or substantially in the condition, in which they are imported into Australia;

. whose only relationship to the imported goods is insubstantial or incidental (i.e. some marketing/franchise costs); or

. are merely for the right to reproduce the imported goods within Australia,

cannot be included in ACV.

(F) An amendment to clarify that the value of goods includes any assistance provided by the purchaser to the vendor, free of charge, or at a reduced cost whether by materials or services. See definitions of:

- production assist costs;
- production materials;
- production tooling;
- production work;
- purchaser's material costs;
- purchaser's subsidiary costs;
- purchaser's tooling costs; and
- purchaser's work costs.

(G) An amendment to provide that, where an amount is to be taken into account for the purposes of valuing imported goods, and the amount is in other than Australian currency, the equivalent amount in Australian currency shall be taken into account, having regard to the ruling rate of exchange on the "day of exportation".

The "ruling rate of exchange" will be published in the Gazette after the Comptroller has had regard to prevailing commercial rates of exchange. In practice, this will not change existing arrangements.

"Day of exportation" means

(a) where the goods were exported by post from the "place of export", and the Collector is satisfied as to the date of posting - that day;

(b) where the goods departed or were transported from the "place of export" in any other way and the Collector is satisfied as to the day of their departure - that day;

(c) in any other case - a day determined by the Collector.

The long-standing administrative practice of accepting reliable information as evidence of the date of exportation will continue. Such evidence may include bills of lading and airway bills. The invoice date is not acceptable for this purpose.

Note: A "ruling rate of exchange" is to be used in all cases where currency conversion is necessary - that is, except where the price of imported goods to be valued is expressed in Australian dollars and is paid for in Australian dollars. Rates of exchange established by agreement between the purchaser and the vendor or by reference to other arrangements such as forward exchange contracts cannot be used as rates of exchange to ascertain the Customs value of goods.

(H) An amendment has been made to provide for the deeming of determination of ACV in certain circumstances.

(I) The reference to advertising and warranty in paragraph (e) of the definition of "price" in sub-section 154(1) of the Customs Act 1901 (inserted by Customs (Valuation) Amendment Act 1987) has not been carried through in CELA 1989.

CELA 1989, in the definition of "value unrelated matter", provides that activities undertaken by the purchaser on his own account are to be disregarded in determining "price".

For further commentary see ACN 89/22.

(J) The original CELA Bill (No. 2) 1987 proposed that a valuation statement be submitted to Customs whenever goods were required to be valued.

This proposal has not been proceeded with.

The new Division 2 inserts nineteen new sections into the Principal Act, as follows:

S.154 - Interpretation

S.155 - Interpretation - Buying commission

S.156 - Interpretation - Identical goods and similar goods

S.157 - Interpretation - Royalties

S.158 - Interpretation - Transportation costs

S.159 - Value of imported goods (e.g. the sequence in which the various valuation methods are to be applied)

S.160 - Inability to determine a value of imported goods by reason of insufficient or unreliable information

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S.161H - When transaction value unable to be determined (e.g. reasons precluding the use of transaction value method - including transactions between "related" persons, and price-averaging/package deals)

S.161J - Value of goods to be in Australian currency

S.161K - Owner to be advised of value of goods

S.161L - Review of determinations and other decisions

Attachment to ACN 89/49

ATTACHMENT "B"

Establishing Australian Customs Value by the Transaction Value Method

"Transaction value" equals

"Price" in an "import sales transaction" but

DISREGARDING

"value unrelated matter(s)":

- rebates that have been received when the "price" is being determined
- costs in relation to activities undertaken on the purchaser's own account

ADJUSTED BY DEDUCTING

- "deductible financing costs"
- certain costs for assembly, maintenance, technical assistance etc. incurred in Australia
- "Australian inland freight" and "Australian inland insurance"
- "deductible administrative costs"
- "overseas freight" and "overseas insurance"

ADDING TO "PRICE"

"Price related costs":

- "production assist costs"
- packing costs
- "foreign inland freight" and "foreign inland insurance"
- commission (not being "buying commission")
- "royalties"
- proceeds of subsequent use, resale or disposal of the goods

Note: Words and phrases shown as "quote" are defined in the CELA Act 1989.

Attachment to ACN 89/49

ATTACHMENT "C"

A CONCORDANCE

CURRENT LEGISLATION	CELA ACT 1989
Sub-section 154(1) - definitions	
Acquisition	ss 154(1) "acquire"
Associate	deleted, no reference in "price"
Australian freight	ss 154(1) "Australian Inland Freight"
Australian insurance	ss 154(1) "Australian Inland Insurance"
Computed unit price	ss 154(1) "computed value goods"
Computed value	s 161F
Container	s 4 definitions (see also ss 154(1) "exempted container")
Deductive unit price	{ss 161C(2) "unit price" contemporary { sales {ss 161D(2) "unit price" later sales {ss 161E(2) "unit price" derived goods { sales
Deductive value	ss 154(1)
Inland freight	ss 154(1) "foreign inland freight"
Inland insurance	ss 154(1) "foreign inland insurance"
Overseas freight	ss 154(1)
Overseas insurance	ss 154(1)
Place of export	ss 154(1)
Price	ss 154(1) (see also ss 154(1) "deductible administration costs" and see 161(2)(d))

Produce	ss 154(1)
Purchaser	ss 154(1)
Relevant transaction	ss 154(1) "import sales transaction"
Transaction unit price	deleted
Transaction value	s 161
Vendor	ss 154(1)

Attachment to ACN 89/49

Sub-section 154(2)(a) - matters to be disregarded	Section 154(1) - value unrelated matter
(i) Rebate/decrease in price	while mentioned in definition of "price"
(ii) Activities undertaken on purchaser's own account	"value unrelated matter" has its own definition in ss 154(1)
Sub-section 154(2)(b) - deductions	
	"adjusted price" ss 154(1)(e)
(i) Interest	ss 161(2)(a) (see also ss 154(1) "deductible financing costs")
(ii) Overseas freight and insurance	ss 161(2)(e)
(iii) (a) post importation costs	ss 161(2)(b)
(b) Australian freight and insurance	ss 161(2)(c)
Sub-section 154(3)	
Canadian inland freight	deleted
Sub-section 154(4)	
Related parties definition	ss 154(3) and (4)
Section 155 - Identical and similar goods	
(1) Goods treated as identical	ss 156(1)
(a) same in all respects	
(b) produced in same country	
(c) produced for the producer	ss 161A(1) calculation of "identical goods value" ss 161A(2) definition of "comparable identical goods" and "unit price"
(2) Last may be disregarded	ss 156(2)
(3) Goods treated as similar	ss 156(3)
(a) closely resemble	
(b) interchangeable	
(c) produced in same country	

(d) produced for the producer	ss 161B(1) calculation of "similar goods value" ss 161B(2) "comparable similar goods" and "unit price"
(4) Last may be disregarded	ss 156(4)
(5) Not include goods where artwork, engineering etc.) are of Australian origin	ss 156(1)(d) and (e) - identical ss 156(3)(e) and (f) - similar

Section 156 - Imported goods

Value of goods	ss 159(1)

Section 157 - Sequence of methods

(1) Transaction value method	ss 159(2)
(2) Identical goods	ss 159(3)
(3) Similar goods	ss 159(4)
(4) Requirements to be met for identical and similar goods	ss 161A(2) comparable identical goods ss 161B(2) comparable similar goods
(5) Last requirement may be disregarded	ss 161A(2)(b)(ii) identical goods ss 161B(2)(b)(ii) similar goods
(6) Deductive value	ss 159(5) deductive (contemporary sales) value ss 159(6) deductive (later sales) value ss 159(7) deductive (derived sales) value
(7) Computed value	ss 159(8) and (9) (see also s 161G definition)
(8) "Fallback" method	ss 159(10)
(9) Requirements for "fallback"	s 161G
(10) Importer may reverse deductive/computed methods	
(11) New determination may be substituted	

Attachment to ACN 89/49

Section 158 - Where Customs value cannot be determined

(1)	Insufficient reliable information	s 160 ss 158(2) sufficient and reliable ss 158(3) supporting documents required ss 158(4) relationship to be declared ss 158(5) lower price to be declared ss 158(6) assists to be declared
(2)	Power to determine that Customs value cannot be determined	ss 160(1)
(3)	Where no relevant transaction	ss 161H(1)(a)
(4)	Restrictions on disposition	ss 161H(1)(c)
(5)	Influence by relationship (a) Collector's advice (b) request for further information	ss 161H(3) ss 161H(2)(c) ss 161H(2)(d)
(6)	Transaction value cannot be determined	ss 161H(1)(b)
(7)	"Transaction unit price" defined	deleted
(8)	"Special price" goods (a) Collector's advice (b) request for further information	ss 161H(5) ss 161H(4)(c) ss 161H(4)(d)
(9)	Transaction value cannot be determined	ss 161H(1)(b)
(10)	Services in relation to goods sold at a lower price (a) Collector's advice (b) request for further information	ss 161H(7) ss 161H(6)(c) ss 161H(6)(d)
(11)	Transaction value cannot be determined	ss 161H(1)(b)

Section 159

(1)	Transaction value in accordance with this section	ss 160(1)
(2)	Nexus	ss 161(1)
(3)	Additions to price	ss 154(1) "price related costs"
-	(a) commission	related costs "price related costs" (d) (see also 154(1) "buying agent")
-	(b) packing costs	"price related costs" (b) (includes fumigating, coating, wrapping, etc.)
-	(c) assists - goods or services supplied in connection with the production of the goods	"price related costs" (a)
		"production assist costs" defined ss 154(1)
	(i) materials, components, forming part of the value	(a) purchaser's material costs
	(ii) tools, dies, moulds, used in production	(b) purchaser's tooling costs
	(iii) materials consumed in production	(c) purchaser's work costs
	(iv) engineering work etc. undertaken outside Australia	(d) purchaser's subsidiary costs (see also a 158(a) definition transportation costs)
-	(d) assists to assists	"price related costs" (a)
-	(e) royalties and licence fees	"price related costs" (e) (see also definition s 157)
-	(f) accrual of proceeds of	"price related costs" (f)
-	(g) inland freight and insurance	"price related costs" (e)
(4)	Ascertainment of value of 3(c)(i) or (ii)	ss 154(1) definitions purchaser's material costs
(5)	Ascertainment of value of 3(c)(ii)	"purchaser's subsidiary costs" "purchaser's tooling costs"
(6)	Ascertainment of value of 3(c)(iv) goods	"purchaser's work costs"
(7)	Aascertainment of value of 3(c)(iv) services	
(8)	(4), (5), (6) and (7) above does not apply to assists to assists	

Attachment to ACN 89/49

Section 160 - Adjustment of transaction value of identical or similar goods	
(a) Commercial difference between inland freight and inland insurance	ss 161A(2) "unit price" - identical goods
(b) Difference in trade levels	ss 161B(2) "unit price" - similar goods
(c) Difference in quantities	
Section 161 - Deductive unit price	
(1) Determination of deductive unit price	
(2) Goods sold in Australia at or about the same time	ss 161C deductive (contemporary sales value) (see also definition ss 154(2) 'about the same time')
(3) Up to 90 days after importation	s 161D deductive (later sales) value
(4) Goods to be valued sold after further work	s 161E deductive (derived goods) value
(5) May only be used on owner's request	deleted
(6) Guidelines for sales used as basis for deductive unit	{ss 161C(2) "contemporary sale" {ss 161D(2) "later sale" {ss 161E(2) "derived goods sale"
(7) Deductions to be taken into account	ss 161E(2) "unit price"
(8) "Purchaser" defined "Unit price" defined	ss 154(1) {ss 161C(2) "unit price" {ss 161D(2) "unit price" {ss 161E(2) "unit price"
"Vendor" defined (relating to s 161 only)	deleted
(9) Deductions under ss 154(2)(b) do not apply in definition of "unit price" in ss 161(8)	deleted

Section 161A - Computed value of goods

(1) Only applies if exporter is the producer	ss 161F(1) (see also "exporter's goods" ss 154(1))
(2) Determination in accordance with this section	"
(3) Amounts to take account of the following	"
(a) value of materials	ss 161F(1)(e)
(b) costs incurred in production	ss 161F(1)(f)
(c) packing costs	ss 161F(1)(h)
(d) assists	ss 161E(1)(a) to (d)
(i) materials forming goods	
(ii) tools, dies, moulds, etc.	
(iii) materials consumed	
(iv) engineering work	
(e) assists to assists	ss 161E(1)(a) to (d)
(f) inland freight	ss 161E(1)(j)
(g) profit and general expenses	ss 161E(1)(g)

Section 161B - Currency conversion

(1) Amounts not in Australian dollars to be converted using fair rates at date of export	ss 161J(1)
(2) Comptroller may specify by notice in Gazette	ss 161J(2)(a) and (b)
(a) fair rate for period preceding publication of the notice	
(b) fair rate from date of publication of the notice (or earlier) to revocation of the notice	
(3) Rate specified in the notice shall be the rate which applies in sub-section (1)	ss 161J(3)(a)
(4) Where doubt exists, Comptroller may specify a rate	ss 161J(3)(b)

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Section 161C - Owner to be advised of value

(1)	When amount has been determined owner to be notified	ss 161K(1) and (2)
(2)	If owner requests in specified manner and in specified time, Collector shall advise	ss 161K(3)
(3)	Information to be withheld	ss 161K(4)
(4)	Enactment defined	ss 161K(5)

Section 161D - Review of determinations and decisions

(1)	Comptroller may review any decision or determination	ss 161L(1)
(2)	Section 165 applies where duty has been short levied	ss 161L(2)
(3)	Definition of 'officer'	ss 161L(3)

Australian Customs Service

AUSTRALIAN CUSTOMS NOTICE

No. 89/63

Customs Legislation Amendments - "Administrative Penalties"
Sections 243T, U and V of the Customs Act

Background

Two pieces of legislation were passed by the Federal Parliament in April 1989, and received Royal Assent from the Governor-General on 5 May 1989. Informally described as the CELA Bills, they are more correctly entitled:

(i) Customs & Excise Legislation Amendment Act, 1989, (Act No. 23 of 1989); and

(ii) Customs & Excise Legislation Amendment Act, (No. 2), 1989, (Act No. 24 of 1989).

This paper will concentrate on those parts of the Legislation known as "The Administrative Penalties", contained in Act No. 24 of 1989. Broadly speaking, they are:

(i) when duty is or would have been short-paid as a result of a false or misleading statement made in import documentation, Customs may impose a penalty equal to twice the amount short-paid, in addition to the adjustment of the correct duty; and

(ii) all or part of a penalty may be remitted if certain criteria are met.

Penalties

Where an error is made which results in or would have resulted in a short-payment of duty, a penalty, (calculated at twice the difference between the amount of duty payable on the goods, and the amount which in fact was offered/paid), may be imposed. It may be imposed by the fact of the error - no intention or recklessness need be proved. Note that the short-payment must have been Customs Duty. The penalty applies only to Customs Duty, and any Sales Tax component is to be disregarded in calculating a penalty.

Who may impose a penalty

All errors resulting in a duty short-payment will be referred to the Regional Manager Imports/Exports who will be the only officer authorized by the Comptroller General to impose a penalty.

When penalties may be imposed

Penalties can only be applied to Entries/I.C.D.'s in error lodged after 1 July 1989, and thereafter within twelve months after the error was made. Refunds, Rebates, Drawbacks and the like are not subject to penalty under these provisions. Further, Entries/I.C.D.'s lodged pre-1 July, together with Refunds, Drawbacks and the like, will not be subject to the new penalty provisions, but will however be subject to the duty recovery provisions of the Customs Act.

Guidelines for the imposition of a penalty

It is intended that penalties will be imposed in every instance, except where duty is volunteered under circumstances described below, or where the matter is referred for further investigation and possible prosecution action, during which time the question of any penalty action under S.243T will be deferred. (N.B. Imposition of a penalty precludes any further action such as prosecution.)

Penalties will not be imposed where duty is volunteered under the following circumstances:

(i) after Customs processing has been totally completed;

(ii) after Customs processing has been completed to the extent that the entry is awaiting payment; and

(iii) after lodgement and before Customs audit processing is commenced.

Withdrawal/replacement of an entry

A penalty can and will be imposed, even if the entry in error is withdrawn or replaced, i.e. if an entry is lodged with an error that results in or would have resulted in a short-payment of duty, then the penalty will be applied, other than as described above.

Attachment to ACN 89/63

Penalty Notice

An appropriate "Penalty Notice" will be drawn up. As well as detailing the reasons for the imposition of a penalty, it will inform recipients of their rights of appeal, the grounds for remission, etc. A Penalty Notice will be drawn up using the guidelines at Attachment A.

Delivery of Penalty Notice

While a penalty is payable by an Owner and not an Agent, the Penalty Notice can be served on either the Owner or the Owner's Agent. It is intended that a Penalty Notice will be served by Registered Mail on the Owner, with a copy on the Owner's Agent, if any.

Release of cargo/payment of a penalty

Cargo subject to a penalty will be released on payment of the correct duty only. It is not necessary to pay a penalty to obtain delivery of a shipment.

Unless stayed by an appeal to the AAT in the manner described in Attachment A, a penalty must be paid within ninety days of the service of a Penalty Notice. If it is not, it becomes a "Debt due to the Commonwealth", and debt recovery action will follow.

Remission

The Legislation provides that a person who has to pay a penalty may apply to the Comptroller-General, in writing, for a Remission of that penalty. Only four grounds are specified under which part or all of a penalty might be remitted. Simply put, they are:

(i) whether or not the error was volunteered to Customs;

(ii) the risk to the revenue from the error;

(iii) the capacity of the Agent/Owner to avoid making the error;

(iv) the history of the Agent/Owner since 1 July 1989 in relation to the making of false or misleading statements giving rise to convictions under paragraph 234(1)(d), or to liability for penalty under Section 243T.

Who will adjudicate on Remission Applications

It is intended that only the National Manager and the Assistant National Manager, Imports/Exports, will be authorized by the Comptroller-General to remit a penalty imposed by a Regional Manager.

When must Remission Applications be lodged

A Remission Application must be made within thirty days of the service of the Penalty Notice, subject to any stay of time discussed in Attachment A.

Decisions on Remission Applications

A decision on a Remission Application must be notified within thirty days of its receipt. If this is not done, the Legislation deems the Comptroller-General or his delegate to have decided not to remit the penalty.

Remission Notice

Both successful and unsuccessful applicants for Remission will be notified of the remission decision, by registered mail. Unsuccessful applicants wil be advised of the reasons for the remission decision, and of their rights of appeal to the AAT. A Remission Notice will be drawn up using the guidelines at Attachment B.

(F.I. KELLY)
Comptroller-General
Canberra ACT 2601
24 May 1989

Contact Officer:
Mr. H. Bates
Phone (062) 75-6606

Attachment to ACN 89/63

ATTACHMENT A

Notice of Penalty - Customs Act 1901 Section 243T

1. Particulars

1.1 The form should be addressed to the owner of the goods in respect of which the false or misleading statement (or omission) was made, and the usual particulars and reference numbers should be included.

The Legislation expressly excludes the owner's agent from liability for the penalty (243T(1)).

2. Imposition of penalty

2.1 The form should relate the facts that have led to the imposition of the penalty, in the terms used in 243T itself.

These are:

(a) that a false or misleading statement was made to an officer [or an omission - see S.243T(1)(a)(ii)]; and

(b) as a result, the amount of customs duty paid or payable on the goods in respect of which the statement or omission was made is less than the amount of customs duty properly payable on those goods.

"Regarding [entry] [dated] in respect of [goods]"

Take notice that in relation to the above, a false or misleading statement in a material particular has been made, or [there has been omitted from a statement, a matter or thing without which the statement is misleading in a material particular]

[Details of false or misleading statement, or omission]

and, as a result of which, the amount of duty properly payable on those goods exceeds the amount that would have been payable on the goods if that amount were determined on the basis that the statement was not false or misleading.

Take further notice that you are required to pay, within ninety days of the service of this notice, at the address specified in the notice, the amount of

[amount] as penalty,

calculated as twice the amount by which the duty properly payable exceeds the duty that would have been payable had the statement not been false or misleading.

Take further notice that if the amount is not so paid within ninety days of the date of service of this notice, it becomes a debt due to the Commonwealth and may be recovered in a court of competent jurisdiction.

2.2 The form should clearly set out the statement or omission which is relied upon to apply the section, and a comparison of the duty actually paid, and the duty payable, in order to set out the grounds for applying the penalty.

2.3 Note that the section requires that the notice be served within twelve months of the date of making of the statement or omission.

3. Appeals and related time-limits

3.1 The form should refer to the following rights and time-limits:

(a) that the owner has ninety days from the date of service of the notice to pay the penalty;

(b) that the owner has thirty days from the date of service of the notice to seek a remission of the penalty;

(c) that, if the owner has disputed the amount of duty payable on the goods in the prescribed manner i.e. by payment under protest under Section 167 and application for review by the AAT pursuant to 273GA(2), then the ninety day time-limit will cease to run until the dispute is resolved. However, if for example, the thirty day time-limit for seeking a remission has expired at the date application is made to the AAT, the right to seek a remission is lost.

The following form of words should be included in a box at the bottom of the penalty notice:

(1) Take notice that you may seek a remission of this penalty pursuant to Section 243U of the Customs Act, as follows:

(a) application in writing must be made to the Comptroller-General of Customs, and lodged with the Comptroller-General in Customs House, Canberra, ACT or any Customs House in any capital city within thirty days of the service of the penalty notice.

(b) in considering an application for remission, the Comptroller shall have regard only to the following matters:

(i) whether you or your agent, as the case requires, voluntarily admitted that the statement was, or was as a result of the omission, false or misleading;

(ii) the risk to the revenue occasioned by such a statement or omission;

(iii) the capacity of you or your agent, as the case requires, to avoid making such a statement or omission and the extent to which that capacity was exercised;

(iv) the history of you or your agent, as the case requires, in relation to the making of statements or omissions giving rise to convictions under paragraph 234(1)(d) or to liability for penalty under section 243T of the Customs Act 1901.

(2) Take further notice that where you dispute the amount of duty short-paid, the ninety day time-limit within which this penalty notice is required to be paid is stayed until that dispute is resolved, provided:

(i) the demand for duty short-paid is or has been "paid under protest" in the manner prescribed by Section 167 of the Customs Act 1901; and

(ii) a valid application is made and received by the Administrative Appeals Tribunal under sub-section 273GA(2) of the Customs Act for review of the decision as to the amount of duty payable on the goods.

Attachment to ACN 89/63

ATTACHMENT B

Notice of Remission Decision: Customs Act 1901 Section 243U

In consequence of an application for remission of penalty under sub-section 243U(1) and the decision either to remit the whole or any part of a penalty payable under section 243T, the following is suggested as a form of notice to be provided to applicants for remission.

To:

(Address) (the person liable to pay the penalty e.g. the owner of the goods, not the owner's agent).

Dear Sir/Madam,

I refer to your application for remission of ($X), being the sum imposed as penalty under section 243T of the Customs Act 1901, in respect of (list the details of the false or misleading statement). With regard to the four matters which I might have regard to in considering whether to remit your penalty, I find as follows:

(Application of the criteria in S.243U(4) to the facts)

Your application is therefore [accepted, refused/partially refused] pursuant to sub-section 243U(1) of the Act.

(In the event of a decision to not remit, or remit part only of the penalty, the following statement is necessary):

I draw your attention to sub-section 273GA(ka) of the Act which states that an application may be made to the Administrative Appeals Tribunal for a review of this decision. Such an application, should you wish to pursue this avenue of appeal, must be lodged at the Tribunal Registry in the capital city of the State where the goods were entered within twenty-eight (28) days of this notice having been served on you.

Yours faithfully,

/Delegate of the/Comptroller-General of Customs

Australian Customs Service

AUSTRALIAN CUSTOMS NOTICE

Customs Legislation Amendments
New Audit Powers and Retention of Commercial Documents

- Sections 214AA, 214AB, 214AC, and 240 of the Customs Act

Background

Two pieces of legislation were passed by the Federal Parliament in April 1989, and received Royal Assent from the Governor-General on 5 May 1989. Informally described as the CELA Bills, they are more correctly entitled:

(i) Customs & Excise Legislation Amendment Act, 1989, (Act No. 23 of 1989); and

(ii) Customs & Excise Legislation Amendment Act, (No. 2), 1989, (Act No. 24 of 1989).

This paper will concentrate on those parts of the Legislation known as "New Audit Powers and Retention of Commercial Documents", contained in Act No. 23 of 1989, which will come into force on 1 July 1989.

Audit powers

The new audit powers are intended to facilitate the post-entry verification of information supplied to Customs as part of the process of allowing the quick clearance of imported goods. Such a clearance system relies upon the integrity of the information supplied.

So that the reliability of information can be checked without commercially unacceptable delays in the Customs processing of goods, post-entry audits of information are necessary. Consistent with this, S.39 of the Customs Act authorizing delivery of goods has been amended to allow verification of information concerning the goods after they have been released.

Section 39 now provides that authority to deal with goods is given subject to the proviso that an officer of Customs may within five years after the entry of the goods, require verification of information that has been supplied to Customs for the purposes of the entry of the goods.

The new audit of information powers of S.214AA, 214AB and 214AC were introduced to give effect to S.39 verification provisions.

Section 214AA

Under this section an officer of Customs is authorized to enter commercial non-residential premises, verify, examine and take copies of documents in relation to information on Customs entries with the consent of the person in charge of those premises, and as such an officer of Customs:

- must be authorized in writing by the Comptroller and must produce written evidence of authority;
- may enter and remain on business premises only to inspect commercial documents, not seize;
- must have reasonable grounds for believing commercial documents are on the premises;
- is permitted entry at reasonable times only;
- is to be permitted access to commercial documents for information connected with a particular import entry;
- may inspect, examine and make copies of such documents;
- is to be provided with reasonable facilities and assistance by the person occupying the premises.

Section 214AB

Where entry is refused, or access to the relevant documents is not provided, or the premises on which it is reasonably believed relevant commercial documents are kept are residential premises, to which entry is not consented to, a search warrant may be applied for. The warrant will empower an authorized officer to enter and search the premises for commercial documents relating to the particular entry of the goods concerned, and to inspect and make copies of (but not seize) any documents found.

Section 214AB contains all elements of section 214AA and in addition an officer:

- must have reasonable grounds for believing commercial documents are on premises, (includes residential premises);
- may make application to a Magistrate for a warrant;
- must produce the warrant on request.

Section 214AC

A facility has been provided vide S.214AC to permit in circumstances of urgency an application for such a search warrant to be made to a magistrate by radio, telephone or other means of communication.

Attachment to ACN 89/64

Customs field audits and inspections of commercial documents might realistically have to be undertaken in parts of the country where magistrates are not readily available, and in situations of urgency to preclude the removal or falsification of commercial records. There are a number of safeguards contained in the Section to ensure against improper use. In particular, there is a requirement that a judicially trained magistrate must be satisfied that the situation is one of urgency, which adequately ensures that this provision cannot be used indiscriminately or improperly.

Commercial documents

The definition of "commercial document", contained in section 4 of the Customs Act, is

> "...'commercial document', in relation to goods, means a document prepared in the ordinary course of business for the purposes of a commercial transaction involving the goods or the carriage of goods ..."

The new audit powers provide that commercial documents must be kept for five years from when they are entered for home consumption.

Section 240 applies to all commercial documents relating to the goods, that enable a Collector to ascertain whether the goods are properly described, and/or properly valued or rated for duty (whether they came into existence before or after the time of the entry of the goods).

Originals must be kept, unless the document is of a type that is required to be surrendered to another person by law, or by ordinary commercial practice; in such a case, the person who passes on the original must make a certified true copy.

. This means that the original must be kept in all but a few cases. Microfilm etc. is not sufficient.

. The procedure for making a true copy is set out in the Act, in new sub-section 240(3), and is as follows:

  - the person required to surrender the document shall make a true copy of the document;

  - that person shall attach a certificate, signed by the person, certifying that the copy is a true copy;

  - identifying the person (or agency) to whom the original has been surrendered; and

  - the reason for the surrender of the original.

Note that the person making the true copy does not have to possess any particular qualification - for example, it is NOT necessary that the person be a Justice of the Peace, or a Commissioner for Declarations.

Duration of obligation

The obligation is to keep the commercial documents for five years after the goods are entered for home consumption.

If the goods are never entered for home consumption, the obligation to keep the commercial documents lasts until the goods leave Customs control.

Manner of keeping documents

The Act provides that the documents shall be kept in such a manner as will enable a Collector to readily ascertain whether the goods have been properly described and/or properly valued or rated for duty.

Storing documents in accordance with ordinary commercial practice will be sufficient to comply with this provision.

The provision also requires that the documents shall not be altered or defaced. However, this does not prevent marking or notation in accordance with ordinary commercial practice.

Penalties

The Act provides for the following penalties, for failure to keep commercial documents, or for defacing those documents:

- first offence: Maximum of $2,000

- subsequent offence: Maximum of $5,000

(F.I. KELLY)
Comptroller-General
Canberra ACT 2601
24 May 1989

Contact Officer:
Mr. H. Bates
Phone (062) 75-6606

Australian Customs Service

AUSTRALIAN CUSTOMS NOTICE

No. 89/67

Customs Legislation Amendments - "Amber Entries"
Section 243V of the Customs Act

Background

From 1 July 1989 entries containing an error which results in the understatement of duty paid or that would have been payable may be subject to an administrative penalty.

The object of the administrative penalties legislation is to ensure the accuracy of information in an entry from which the duty payable is assessed.

- Details regarding the operation of the "Administrative Penalties Scheme" are contained in ACN 89/63.

Provisions exist for owner/agents to avoid the imposition of an administrative penalty where they have a doubt or are uncertain of the accuracy of paricular information in an entry. The following two methods are an outline of these provisions and the broad procedures as to their operation:

(a) request for Formal Tariff Advice or Valuation Advice;

(b) section 243V Relief (Amber Entries).

(a) Request for Formal Tariff Advice or Valuation Advice

This facility already exists. However in recent years its use by owners/agents has diminished.

Some revision of the current procedures for the submission and processing of Tariff and Valuation Advices is proposed and these will be the subject of a separate paper. However the following is a broad outline of how the process should be used by the owner/agent to avoid administrative penalty action:

(i) either prior to importation or before an entry is lodged an owner/agent can make a formal application regarding a specific classification or valuation issue;

(ii) the initial entry for the goods against which the decision is sought will require endorsement with the registration number of the application. The registration number is to be shown at the commencement of the "Goods Description" field on the entry;

- whilst it is envisaged that a formal decision will be issued within thirty days, pending issue of that decision, entries carrying an "application for decision endorsement" will be subject to normal red/green line processing;

(iii) where the decision results in additional duty being payable this will be recovered against each of the endorsed entries through normal post action. However the entries will not be subject to penalty action. The existing payment under protest provisions will apply where the owner/agent disputes the decision.

The practice of validation of Tariff Advice applications will cease under these revised arrangements. In this regard part five of Attachment A to ACN 89/18 and the relevant reference in the Australian Customs Tariff Guide are no longer operative.

In respect of Valuation Advices, agents and importers should lodge in a manner similar to the lodgement of Tariff Advices a letter setting out the full details of the particular valuation matter on which advice is sought.

The letter should further state that the contracts, agreements and arrangements referred to in the body of the letter are:

(a) attached to the letter; and

(b) all the contracts, agreements and arrangements that relate to the matter on which valuation advice is sought.

The letter should state full details of the importers or agents understanding of the valuation issue upon which the decision is sought.

The letter will be given a unique identifying number and the application/Advice may then be quoted on an entry lodged under 243V in a manner similar to Tariff Advices.

(b) Section 243V relief - amber entries

This section makes provision for an individual entry to be endorsed by the owner/agent with specific information regarding aspects of the entry of which he/she is uncertain whether Customs might regard such information as false or misleading in a material particular and which may result in the entry being declared in error.

Entries carrying this endorsement will be designated "amber", and must contain the reasons for the uncertainty, sufficient to enable Customs in its scrutiny of the reasons to resolve whether the information nominated is in fact in error.

Once validated the entry will be dealt with in a specified amber area which will be part of Entry Processing except in the case of those entries which receive "Red-Line" designation for other reasons.

Attachment to ACN 89/67

How amber entries are to be identified

It is proposed to have COMPILE II provide an automatic amber clause on the entry at creation. This facility will not be available for manual entry users and agents/owners will be required to place a clause on the fact of the entry in a similar fashion to that being endorsed for payment under protest situations.

A suitable clause would read:

"In accordance with section 243V of the Customs Act 1901 I am uncertain as to ... in line(s) ... for the following reasons ... (see attached statement)."

Attached statements

It is possible that there might be insufficient space on the entry for all grounds of the uncertainty to be endorsed thereon. A statement separate to the entry will therefore be required. The statement so submitted is to be attached to the entry and:

. be on a company or agency letterhead;

. specify the entry number;

. nominate the uncertainty;

. give the reasons or grounds for that uncertainty;

. be signed by the owner of the goods or the agent who signed the entry.

Standard of service

It is envisaged that a decision on "amber" entry queries will be finalized with forty-eight hours. Where a decision cannot be finalized within that time the goods will be released on payment of the "entered" duty, provided those goods are available for delivery, and on the undertaking that any additional duty that may become due will be paid.

If insufficient information is provided to permit a decision to be given, further information will be requested. However delays in providing the requested additional information could result in a delay in the release of the goods.

Amber decisions

A decision given in respect of an "amber" entry will be applicable to that entry only and will not be binding on future consignments. Where a decision given on an "amber" entry is disputed by the owner/agent a review will be available through normal channels. Further adjudication is still available through the existing payment under protest system.

(c) Exemptions for information based on "Overseas Third Party Declarations"

Where an owner is uncertain whether information to be included in a statement might be regarded as false or misleading, and the reason for that uncertainty is that the goods are subject to a Third Party Certificate or endorsement which the owner has no means of reasonably verifying, that information may be exempted from 243T penalty on the basis of the Certificate/endorsement being accepted as prima facie correct. On the basis of such acceptance there is no need for entries with such doubt to be submitted "amber" for resolution of that doubt.

- A list of Third Party Certificates/endorsements and/or certifying agencies which are to be proposed as acceptable to Customs is to be developed, with input from Agents Associations, Retailers representatives and others in the importing community.

(F.I. KELLY)
Comptroller-General
Canberra ACT 2601
31 May 1989

Contact Officer:
Mr. H. Bates
Tel: (062) 75 6606

Australian Customs Service

AUSTRALIAN CUSTOMS NOTICE

No. 89/69

Amnesty from Prosecution for Duty Short-Payments on Customs Entries

It is understood that a number of importers have recently undertaken an in-house audit of their previous twelve months entries and have found many in error resulting in the short-payment of duty.

Whilst these entries are not subject to the "administrative penalties" legislation which comes into operation on 1 July the short-paid duty is recoverable under Section 165 of the Customs Act. In addition, depending on the circumstances attached to the error and duty short-payment, prosecution action for an offence against section 234 of the Customs Act could follow.

Understandably some importers now face the dilemma as to what action they should take in bringing the incorrect entries to the attention of the ACS. The Comptroller-General in recognition of the problem has agreed to a period of amnesty, against prosecution for an offence against Section 234, where an importer brings the matter to the attention of the ACS and pays the additional duty.

It is recognized that this amnesty might encourage other importers to also undertake in-house audits which produce similar results and accordingly the period of amnesty will run from 1 June to 31 July 1989.

Importers wishing to avail themselves of the amnesty provisions should contact the National Manager, Imports/Exports, Canberra, or the Regional Manager, Imports/Exports in their State capital city.

(F.I. KELLY)
Comptroller-General
Canberra ACT 2601
1 June 1989

Contact Officer:
Mr. H. Bates
Tel: (062) 75 6606

(IMPORT/EXPORT CONTROL - C89/3575)

Australian Customs Service

AUSTRALIAN CUSTOMS NOTICE

No. 89/80

Customs Legislation Amendments - Penalty Exempt Statements

ACN 89/67 referred to exemption from penalty under section 243T in circumtances where an owner relies, prima facie, on the accuracy of statements supplied by other parties.

Where owners rely in good faith on statements made in circumstances set out in the attached Table, no section 243T penalty will be applied in the event that the information relied upon is found to be incorrect and additional duty is payable.

(D. O'CONNOR)
A/g Comptroller-General
Canberra ACT
23 June 1989

Contact Officer:
Mr. H. Bates
National Manager
Imports/Exports
Phone: (062) 75 6606

Attachment to ACN 89/80

The Table

(A) Certification/declarations/statements by recognized expert bodies or Government authorities:

(i) Handicrafts certifications, as described in ACN 89/44, that the imported goods qualify for entry under the Handicrafts concession;

(ii) Antiques: certificates by expert bodies such as the British Antique Dealers Association, (as set out in the Australian Customs Tariff Guide Part II Supplementary Explanatory Material: A6/7), that the imported goods are antiques of an age exceeding one hundred years;

(iii) As to standards, tolerances, composition and the like relating to the imported goods.

(B) Freight, insurance, shipping information

(i) Statements as to freight and insurance given by airline and shipping companies, freight forwarders and insurance companies involved in the transportation or insurance of the imported goods.

(ii) Airfreight

For the purposes of determining an amount for foreign inland freight, the amount is:

(a) the actual amount incurred in respect of the transportation of the goods to the "place of export"; or

(b) if the amount is not readily ascertainable, e.g., because the "place of export" is not known, the amount may be calculated on a pro-rata basis of the total freight cost, by taking the "place of export" as the airport in the country of exportation from which scheduled international flights depart which is nearest to the place from which the goods commence their transportation to Australia. The pro-rata calculation is to be pased on the following forumla:

$$A \times \frac{a}{b} = \text{foreign inland freight}$$

where:

A = total freight cost

a = the distance (flying distance or straight-line) from which the goods commence their transportation to Australia to the "place of export"; and

b = the above distance plus the distance (flying distance or straight-line) from the "place of export" to the Australian destination airport.

(iii) Foreign inland insurance

Amounts for this cost may be determined in a similar manner to that set out above for airfreight.

Note: The above procedures have been put in place because of particular difficulties associated with identification of "place of export" in relation to airfreight and the lack or reliable dissections of insurance amounts relating to foreign inland freight, overseas freight and Australian inland freight.

These procedures will be reviewed in the period 1 July 1989 - 30 September 1989.

(iv) Out-turns of bulk cargo

The current practice of dealing with bulk shipments will continue and no penalty will result where out-turns differ from the invoiced quantity.

(v) When an importer uses a rate of exchange for the purposes of section 161J based on the provision of ACN 89/49 Attachment A Section G, and subsequent inquiry indicates a positive duty change, penalty under section 243T will not apply. Similarly, the use of the current practice in relation to entry of goods on a day when a rate of exchange is not available (i.e. use of the previous day's rate when goods arrive in Australia on the day of exportation) will not result in a penalty under section 243T.

(C) Statements by manufacturers and Government Authorities

(i) Certificates made by manufacturers or Government Authorities that the imported goods conform with the relevant preference requirements.

N.B. The certification must not merely refer to origin but must indicate that the imported goods are eligible under the particular preference requirement in section 151 of the Customs Act.

In this regard see Appendix 1 (1:6 to 1:9) of Australian Customs Service Manual Preference Section, Volume 8.

Australian Customs Service

AUSTRALIAN CUSTOMS NOTICE

No. 89/88

Customs Legislation Amendments
Revised Formal Tariff and Valuation Advice

ACN 89/67 ("Amber Entries") foreshadowed revision of existing procedures for the lodgement and processing of formal Tariff and Valuation Advices.

The following amendments to current procedures are designed to ensure that the formal Advice system is used to the greatest extent possible to eliminate uncertainty and error.

It is important to note that the formal Advice system is the only way importers can obtain long-term binding decisions which can be relied upon to provide certainty in regard to duty liability and exemption from penalty under section 243T.

The ACS will not recognize any other form of Tariff and Valuation Advice.

Tariff Advice

- An application for Tariff Advice, Form B102, when received at the principal Customs House in a region, will immediately be given a unique Handiclass registration number. This may then be quoted, at any place where goods are entered, in the beginning of the "goods description field" to avoid possible section 243T penalty as outlined in ACN 89/67.

- From 1 July 1989, Tariff Advice in respect of classification, Quota eligibility and Tariff Concession Order eligibility will be given in sufficient detail to enable an importer/agent to identify the correct rate of duty payable. For example, Tariff Advice in respect of classification will be given to the eight figure level.

- The practice of validation of Tariff Advice applications will cease.

- Tariff Advice will be given irrespective of whether or not a reference to the subject goods exists in a Book of Permanent Record.

- Tariff Advice may be applied for at any principal Customs House, irrespective of the locality of the importer's Head Office.

- Decisions given will normally be valid for three years. Where a decision is rescinded within that period, the owner will be protected from post-entry adjustment and administrative penalty only up to the date of rescinding.

The Australian Customs Tariff Guide will be revised in respect of new Tariff Advice procedures to reflect the changes set out in this ACN and ACN 89/18.

Valuation Advice

In respect of Valuation Advice, agents and importers should lodge in a manner similar to the lodgement of Tariff Advice a letter setting out the full details of the particular valuation matter on which advice is sought.

The letter should further state that the contracts, agreements and arrangements referred to in the body of the letter are:

(a) attached to the letter; and

(b) all the contracts, agreements and arrangements that relate to the matter on which valuation advice is sought.

The letter should state full details of the importers or agents understanding of the valuation issue upon which the decision is sought.

The letter will be given a unique identifying number and the application/Advice may then be quoted on an entry in a manner similar to Tariff Advice.

Australian Customs Service Manual Volume 8 will be amended in due course.

(D. O'CONNOR)
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30 June 1989

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