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ADMINISTRATIVE MONETARY PENALTY SYSTEM

This Memorandum outlines and explains the policy and procedures to be followed in the application of the Administrative Monetary Penalty System (AMPS) for commercial clients for contraventions of the *Customs Act*, the *Customs Tariff*, and related regulations. It also outlines and explains the policy and procedures to be followed for requesting a review of these penalties as well as entering into a Penalty Reduction Agreement with customs. The roles and responsibilities of both customs personnel and commercial clients in the AMPS process are also outlined.

The AMPS will impose monetary penalties in proportion to the type, frequency, and severity of the infraction. Most penalties are graduated and will take the contravention history of the client into consideration. AMPS will not affect businesses that continue to comply with customs requirements set out in the legislation.

The AMPS implementation date is October 7, 2002, with the exception of five contraventions relating to the Customs Self Assessment program, which became effective December 3, 2001.

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DEFINITIONS

Prohibited Goods – Goods, which are, prohibited importation into Canada under tariff items 9897.00.00, 9898.00.00, and 9899.00.00 of the *Customs Tariff* or under other legislation. For example, obscene publications, child pornography, and hate propaganda are prohibited importation under tariff item 9899.00.00. Certain types of agricultural goods are prohibited under legislation enforced by the Canadian Food Inspection Agency due to the risk of disease.

Provisional Duty – Duty levied under the *Special Import Measures Act* when a preliminary decision is issued by the Commissioner concerning the dumping or subsidizing of imported goods. Provisional anti-dumping duty is equal to the estimated margin of dumping. Provisional countervailing duty is equal to the estimated amount of subsidy. The duty is collected provisionally pending the decision of the Canadian International Trade Tribunal. The duty will be refunded if proceedings are terminated by the Commissioner or if the tribunal makes a "no injury" finding or makes only a "future injury" finding.

Specified Goods as listed in the AMPS Reference Manual:

- Alcohol, ethyl alcohol and spirits;
- Beer or malt liquor;
- Wine;
- Tobacco products;
- Weapons and ammunition set out under tariff item 9898.00.00;
- Firearms;
- Controlled substances (drugs) as defined in the *Controlled Drugs and Substances Act*;
- Child pornography; and
- Conveyance modified for smuggling purposes.

Note: This list may be extended in the future.

Specified Contraventions as listed in the AMPS Reference Manual:

- Failure to report imports (section 12 of the *Customs Act*) – AMPS contraventions C019 and C020.
- Possession of illegally imported goods (section 15 of the *Customs Act*) – AMPS contravention C031
- Failure to report exports (sections 95 and 96, of the *Customs Act*) - contravention C345.
- Untrue statements in respect of imports (section 13 of the *Customs Act*) – AMPS contravention C025.

- Untrue statements in respect of exports (section 95 of the *Customs Act*) – AMPS contravention C346.
- False information in respect of imports or exports (section 7.1 of the *Customs Act*) – AMPS contravention C348.

Customs Information System – A Customs Information System (CIS) is defined for the Penalty Reduction Agreement as being a system employed to record import and export trade activities for the purpose of complying with the reporting provisions of the Customs Act. The CIS may be either manual, automated (computerized) or a combination of both manual and computerized.

DRAFT

THE AMPS

1. AMPS authorizes customs to assess a range of monetary penalties for contraventions of the *Customs Act*, *Customs Tariff*, and the regulations pursuant to these Acts. A flowchart of a typical AMPS contravention process can be found in Appendix A. AMPS penalties will be issued on a form E360, Notice of Penalty Assessment (NPA); an example of this form can be found in Appendix E.

APPLICATION OF THE AMPS

2. AMPS applies to all commercial traders including importers, exporters, brokers, warehouse and duty free shop operators, carriers and freight forwarders. AMPS penalties largely replace seizures and ascertained forfeitures for commercial importations and exportations of goods. It will contribute to a fairer customs sanctions regime overall, and simplify the administration of penalties in the customs business line.

3. AMPS are applied against the person as opposed to seizures, which are applied against goods. This is a significant change, which enables the use of the collections provisions in the *Customs Act* when payment of penalties becomes an issue.

4. An AMP will not be applied in relation to section 32.2 of the *Customs Act* when the correction of the import documents will result in a refund of duties.

EFFECT OF AMPS

Improved Traders' Contravention With Customs Regulations

5. The most important objective of AMPS is to correct non-compliance and establish a level playing field for all traders. Providing comprehensive penalty coverage for contraventions of customs requirements and obligations will result in a significant overall improvement in the level of client contravention nationally. This should eliminate the competitive advantage which non-complying traders currently have over those who have invested in contravention.

Fairness, Consistency, and More Effective Administration of the CCRA's Customs Sanction Regime

6. The AMPS penalty structure and penalty application process, as well as the redress process, allows customs to treat its clients fairly, consistently, transparently and impartially. The ICS enforcement system ensures that the level of penalties assessed is consistent across the country, in line with the policies established for each contravention.

AMPS CLIENT CONTRAVENTION HISTORY

7. It is the policy of the CCRA, in accordance with the guidelines set out in this Memorandum, to apply Administrative Monetary Penalties under the authority of sections 109.1 and 109.2 of the *Customs Act*, for specified contraventions of the *Customs Act*, and the *Customs Tariff*, and any regulations made under these two acts including contraventions of the terms and conditions of licensing agreements and undertakings.

Customs will apply AMPS as a “first response” to instances of non-compliance in the vast majority of cases. This Memorandum reflects policy administration relating to the enforcement of legislation for commercial clients only. AMPS will be introduced into the traveller environment at a later date.

8. Each time clients are issued a penalty, this information is added to their contravention history. Clients who demonstrate a poor compliance record can expect to receive increased attention from customs. This may range from Client Services officers arranging to meet with them to assist in identifying corrective action, to increased examinations at the border or compliance verifications of the company books and records.

9. Under section 107 of the *Customs Act*, clients will be able to request copies of their own contravention history maintained by customs. Memorandum D1-3-1, *Fees for Information and Documents*, outlines the process for requesting documents from the CCRA, as well as the costs involved.

10. AMPS are assessed against a Business Number (BN) at the company’s customs account level, carrier code or sub-location office number. If a company has several divisions with different customs BNs, a poor contravention history for one division will not affect the contravention history or the penalty levels of the other divisions.

11. The contravention history for a company will include the following data fields:

- Notice of Penalty Assessment (NPA) number;
- date;
- status;
- work location number;
- contravention number;
- level; and
- total amount of penalty.

12. The AMPS contravention history is sorted by the contravention code in sequential order, then by the status of the penalty assessment starting with the most recent. Special reports or formatting other than described above are not available.

13. A company’s AMPS contravention history is available **only** to the particular person whose information is contained therein and requests must be received on company letterhead with a senior representative of the company as contact to verify any questions from customs in regard to the request.

PENALTY STRUCTURE

14. Under AMPS, customs may assess monetary penalties for any one of the almost 250 contraventions of requirements and obligations stipulated in the *Customs Act*, the *Customs Tariff*, and the regulations developed under these Acts. All of the customs offices responsible for enforcing these Acts and their regulations have the authority to

assess and issue monetary penalties. Seizure and ascertained forfeiture enforcement actions will continue to be used, but their use will be restricted to a select group of contraventions of a more serious nature.

15. The AMPS penalty structure is graduated in most cases, providing for higher monetary penalties for repeat incidences of the same contravention. For some contraventions, the first level penalty is zero rated to provide a written warning, with a monetary penalty being assessed for a second and subsequent offences. Penalties are based on the higher of a specific percentage of the value for duty of the goods involved or a flat rate monetary penalty, whichever is higher, for others, the penalty consists simply of a flat rate monetary penalty.

16. All AMPS contraventions are listed in a Master Penalty Document (Appendix B). Each contravention relates to a specific requirement set out in the legislation. In some cases there may be several contraventions relating to a single legislative requirement. This has been done in order to establish penalty amounts that will reflect the seriousness of the particular contravention.

PAYMENT

17. A penalty assessed under AMPS becomes payable on the day the Notice of Penalty Assessment (NPA) is served on the person. An NPA may either be delivered to the person by hand or sent by registered mail.

18. Interest is payable on penalties at the prescribed rate, beginning on the day after the penalty is served. However, if the penalty is paid within 30 days after the date of the NPA, no interest will apply.

MAXIMUM PENALTY AMOUNT

19. The maximum penalty for a single contravention is \$25,000, although the combined penalty amount for a single transaction may exceed this amount if more than one contravention is identified.

20. While there may be several contraventions listed in the Master Penalty Document which could apply to a particular situation, customs will not apply more than one penalty to any single contravention.

21. If the value for duty of goods were to result in a penalty exceeding the legislated maximum of \$25,000 **and** it is one of the specified contraventions of section 7.1, 12, 13, 15, 95, or 96 of the *Customs Act* listed below, the goods may be seized rather than subjected to the AMPS. Terms of release will be offered with the penalty calculation being the same as the AMPS penalty calculation for the given contravention.

- Failure to report imports (section 12 of the *Customs Act*) – AMPS contraventions C019 and C020.

- Possession of illegally imported goods (section 15 of the *Customs Act*) – AMPS contravention C031.
- Failure to report exports (sections 95 and 96 of the *Customs Act*) – contravention C345.
- Untrue statements in respect of imports (section 13 of the *Customs Act*) – AMPS contravention C025.
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OFFICER AUTHORITY, RESPONSIBILITY, AND DISCRETION

22. Officers are thoroughly trained in their responsibilities to conduct themselves professionally. Officers have the authority to issue or not issue a penalty, however, once issued, the automated system determines penalty amounts based on the clients contravention history as it relates to the contravention at hand.

APPLICATION OF OTHER ENFORCEMENT MEASURES

23. The policy regarding the use of AMPS does not place any restriction on the application of any other enforcement authority that may be available to Customs in the enforcement of any laws governing the movement of goods and people into or out of Canada for which Customs has legislative responsibility. When serious and willful acts of non-compliance are evident, Customs will respond by taking whatever measures are necessary to deter further non-compliance, up to and including prosecution.

AMPS VS. SEIZURES / ASCERTAINED FORFEITURES

24. AMPS penalties are designed to address non-compliance within the commercial stream of the customs program. These penalties will largely replace the use of seizure and ascertained forfeitures for technical infractions. While duties form part of any amounts assessed under the seizures and ascertained forfeitures policy they do not form part of the penalty amount under AMPS and must be paid separately.

25. When an AMPS penalty is issued seizure action may also be initiated in specific circumstances. These may include instances where goods are prohibited or controlled.

26. The application of an AMPS penalty, or the use of seizure and ascertained forfeiture, does not preclude the CCRA's option to use prosecution. Criminal prosecution procedures will continue to be undertaken where warranted due to the seriousness of the offence or the potential harm to society.

27. A flowchart / decision tree describing this process can be found in Appendix C.

AMPS DISCLOSURE POLICY

28. It is the policy of the CCRA that when clients come forward to disclose non-compliance with requirements of the legislation relating to customs, which they have discovered, that AMPS penalties will not be applied. However, this policy will not be applicable when an audit or investigation has already been initiated, the company has been directed to correct declarations for a specific period, or the disclosure is being used to continue a pattern of non-compliance. Goods that are prohibited by law will continue to be seized as forfeit. In addition, goods that are restricted, controlled, or subject to other government department requirements must be detained and brought into contravention.

29. It should also be noted that certain voluntary disclosures involving customs non-compliance related to the accounting and payment of duty and taxes may be processed under the Voluntary Disclosures Program (VDP) which is set-out on the CCRA Web site.

RETROACTIVITY OF AMPS

30. AMPS will not apply retroactively to infractions that occurred prior to the date that AMPS was implemented. For example, if a person failed to provide a required certificate, licence, permit or information with a release that occurs on or after October 7, 2002 a penalty will be assessed, whether this is identified at the time of importation or during a subsequent audit. (ref. C071).

31. However, prior rulings, court decisions, etc. respecting tariff classification, value for duty, and origin will still be valid and will be used to determine a client's awareness of his or her contravention requirements with respect to section 32.2 of the *Customs Act*. For example, if records are requested under section 40 of the *Customs Act* (ref. C157) prior to October 7, 2002, no AMPS penalty will apply, however, if the same records are requested on or after October 7, 2002 and the record is not produced, there will be an AMPS penalty applied.

REVIEW OF ENFORCEMENT ACTIONS

32. When a Notice of Penalty Assessment (NPA) is received and the person does not agree with the findings outlined in the NPA, there are two types of review available. These are:

- requests for correction of errors made in amounts assessed or the issuance of a penalty pursuant to section 127.1 of the *Customs Act*;
- redress pursuant to section 129 of the *Customs Act*.

33. It is not necessary to pay the penalty assessment amount before requesting a correction or appealing. If, however, it is determined that the penalty was correctly issued, and the penalty was not paid within 30 days, interest (at the prescribed rate) will be calculated on arrears from the day after the NPA was issued, up until the amount owing is paid in full.

Correction Requests

34. Following the assessment of a penalty, a designated officer at the local or regional level can, on behalf of the Minister, overturn or amend the penalty within 30 days of its issuance if any obvious errors in the assessment have occurred. The correction process is intended to be a simple process to resolve issues relating to errors without having to resort to the formal redress process. It should be stressed that this process relates only to errors made by Customs in relation to the issuance of a penalty and **not** to clerical errors by the person, which have resulted in the issuance of a penalty.

35. The information required in a correction request is:

- the client identification number:
 - ? business number (importers / exporters)
 - ? carrier number (carrier / transporter)
 - ? sub-office location number (warehouse operators);
- the name and address of the client; and
- the NPA number.

36. An explanatory note describing the error should also be included, clearly identifying why it is felt that an error has been made.

Redress

37. If a client disputes the assessment of a penalty, there is a formal process established to deal with these disputes through a separate organization within the Appeals Branch. Information on how to access this process is provided on the NPA. While there are no formal requirements, which must be followed to have a review conducted by the

Appeals Branch, it is recommended that a client provide as much information relating to their objection to the penalty as possible.

38. Under normal circumstances, a person has 90 days in which to submit a request for formal review. These requests should be sent to the office, which assessed the penalty. The request will then be forwarded to the appropriate location for review. An acknowledgement letter will be sent to confirm receipt of the request.

39. If a request for correction under section 127.1 of the *Customs Act* is denied, the client still has the option of requesting a formal review as described above.

40. The information required in a correction request is:

- the client identification number:
 - ? business number (importers / exporters)
 - ? carrier number (carrier / transporter)
 - ? sub-office location number (warehouse operators);
- the name and address of the client; and
- the NPA number.

41. An explanatory note describing the error should also be included, clearly identifying why it is felt that an error has been made.

Failure to Pay Penalty Assessment

42. Any amount of money assessed as a penalty in an NPA issued under section 109.3 of the *Customs Act* constitutes a debt due to Her Majesty from the person on whom the NPA is issued to, on the day the NPA is served on the person.

43. Once an NPA has been issued to a client, it becomes the responsibility of the Assessment and Collections Branch to recover the debt where the debtor is in default.

PENALTY REDUCTION AGREEMENT

44. The Penalty Reduction Agreement (PRA) provides customs with the facility to reduce all or a portion of penalty assessments in specific cases. It is intended to be used in situations where substantial AMPS penalties have been applied as a result of unforeseen problems within the client's customs information system.

45. A PRA is an undertaking proposed and entered into by the client. The appropriate program areas will determine whether a PRA that has been proposed by a client is acceptable. PRA's will normally cover penalties resulting from an audit.

46. The PRA defines the nature of the identified problem, what will be done to correct the matter, the time frame required to effect correction, as well as post-correction validation criteria. The level of reduction to be provided may range from partial to the full penalty assessment. The policy regarding PRAs is contained in Appendix E. A template for submitting a PRA proposal is also contained in Appendix E as well as on the CCRA Web site at www.ccra.gc.ca/customs/general/amps/menu-e.html³⁹.

WHERE CAN CLIENTS FIND OUT MORE

47. More information regarding AMPS can be obtained from the AMPS Web pages on the CCRA Web site at www.ccra.gc.ca/customs/general/amps/menu-e.html.

48. More information on the import/export processes and requirements can be obtained from the CCRA Web site at www.ccra.gc.ca/customs/business/menu-e.html.

LEGISLATION

49. Sections 109.1 to 109.5, 127.1 and 129 of the *Customs Act* relate to Administrative Monetary Penalties. The relevant legislation is provided in Appendix G.

APPENDICES

Appendix A – AMPS Process Flowchart

Appendix B – Master Penalty Document

Appendix C – AMPS vs. Seizure / Ascertained Forfeiture Process Flowchart

Appendix D – Penalty Reduction Agreement Policy

Appendix E – Forms

Appendix F – How to Ensure That You Are Compliant: A Sample Checklist for Importers, Exporters and Service Providers

Appendix G – Legislation