

AAdministrative

Monetary

Penalty

System

November 2001

Importance of Compliance

- ✦ CCRA's mandate is to promote compliance with the law through
 - education
 - quality service
 - enforcement
- ✦ Obligation of importers, exporters and their service providers is to comply with the laws

Importance of Compliance

- ✦ Non-compliance is detrimental to the economic and social well-being of Canadians
 - Import / export data
 - Level playing field
 - Health and welfare
 - Security
- ✦ There are consequences for non-compliance

Consequences Of Non-Compliance

Consequences:

- ✦ Financial
- ✦ Exposure to foreign audits
- ✦ Customs facilitation
- ✦ Privilege revocation
- ✦ Monetary penalties

The Questions To Ask Yourself

- ✦ Is your firm well positioned to avoid the consequences associated with non-compliance?
- ✦ Is Customs compliance (for Border and Trade) a priority within your firm?

What Is the CCRA Doing to Enhance Compliance?

- ✦ Education and client assistance focus
- ✦ Compliance levels
 - measure
 - verify
 - monitor
- ✦ Increased use of compliance verification and audit
- ✦ Introduction of a comprehensive administrative monetary penalty system (AMPS)

The Importance of AMPS

- ✦ Fulfills the commitment resulting from the *Customs Act* review
 - flexible and encompassing sanctions
 - not dependent on seizure process
 - viewed as fair and transparent
 - supportive of the CCRA's new way of doing business
 - ensure integrity and quality of trade data

Purpose of AMPS

- ✦ A more comprehensive sanctions regime
- ✦ Designed to be corrective, not punitive
- ✦ Will replace seizure for most technical infractions
- ✦ Seizure and forfeiture will be retained only for the most serious contraventions

Principles of AMPS

- ✦ Sanctions are graduated and match the severity and frequency of contravention
- ✦ Compliance history will be taken into account
- ✦ Consistent application of penalties

Legislation

Authority broadened to include:

- ✦ violations of or failure to comply with the regulations of
 - *The Customs Act*
 - *The Customs Tariff*
 - *The Special Import Measures Act (SIMA)*

- ✦ failure to comply with the terms and conditions of:
 - Licensing agreements
 - Undertakings

Legislation

- ✦ Legislation will provide for combination of AMPS, seizure or prosecution
 - All three together would be possible but rare
- ✦ Contraventions must be named in a regulation

Legislation

- ✦ Minister may direct
 - Criteria
 - Penalty Amount
 - Retention Period
- ✦ Penalties range from warnings up to the maximum penalty of \$25,000 per contravention

Legislation

- ✦ Seizure and ascertained forfeiture provisions remain untouched (but usage will be restricted)
 - they will be reserved for serious offences
 - terms of release penalty equate to AMPS penalties
- ✦ Prosecution provisions and guidelines remain untouched

Legislative Update

Current Status:

- ✦ On October 24, 2001, the third reading of Bill S-23 was passed in the House of Commons
- ✦ Royal Assent was received on October 25, 2001
- ✦ We are currently reviewing our different initiatives for the “coming into force” of the various provisions

Implementation...

Phase 1 -

- ✦ AMPS penalties for commercial contraventions
- ✦ Initial administrative tolerance up to April 2002
- ✦ Warnings will be issued for other than select CSA infractions

Implementation

Phase II

- ✦ Travellers contraventions will convert to AMPS
- ✦ New seizure and forfeiture for Travellers
- ✦ Automated system will cover all functions

AMPS vs. Seizure

AMPS

- ✦ In personam”
- ✦ Duties and taxes paid separately
- ✦ Goods may be detained for collection

Seizure

- ✦ “In rem”
- ✦ Presently, duties and taxes are factored in penalty
- ✦ Goods are seized until payment of terms of release

Prior Records

- ✦ AMPS penalty calculations start fresh
 - prior non-compliance not a factor
- ✦ Seizure penalties will continue to escalate based on prior non-compliance

Reason to Believe

Section 32.2

AMPS cannot be applied retroactively; however, previous rulings, court decisions, etc. are applicable in establishing whether the importer has “reason to believe”

Penalties...

Customs Act, S.12

Contravention

Failure to Report Imported Goods to Customs

Penalty

Goods Valued >\$1600

1st occurrence - \$1000 or 5% of VFD,
whichever is greater

2nd occurrence - \$2000 or 10% of VFD,
whichever is greater

3rd occurrence - \$3000 or 20% of VFD,
whichever is greater

Penalties

Customs Act, S.12 (Cont'd)

Penalty

Goods Valued <\$1600

1st occurrence - \$100 or 5% of VFD,
whichever is greater

2nd occurrence - \$200 or 10% of VFD,
whichever is greater

3rd occurrence - \$300 or 20% of VFD,
whichever is greater

Penalties...

Customs Act, S.32.2

Correction - Trade Data

Contravention:

Failure to correct declaration of tariff classification, value for duty, or origin where importer has reason to believe the declaration was incorrect

...Penalties

Correction - Trade Data

Penalty

1st - 5% of the value for the duty or \$100,
whichever is greater

2nd - 10% of the value for the duty or \$200,
whichever is greater

3rd and subsequent - 20% or \$400,
whichever is greater

Penalty Information

Information Tools

- ✦ Contraventions and penalty amounts will be published in a D-memorandum
- ✦ All AMPS contraventions and their related penalties will continue to be available to the public electronically
- ✦ The complete penalty document and index is on the internet

www.ccra-adrc.gc.ca/customs/general/amps/menu-e.html

Use of Detention...

- ✦ For commercial AMPS, we will not detain goods unless:
 - the amount exceeds \$5,000
 - contravener has a collections lookout
 - goods are subject to other government departments requirements

...Use of Detention

- ✦ When AMPS process takes place, vehicle will not normally be detained
- ✦ When seizure process takes place, terms of release to obtain release of the vehicle will be replaced by AMPS penalties

Abandonment

- ✦ Persons subject to AMPS may abandon goods, but unlike seizure, they are still subject to an AMPS penalty

AMPS

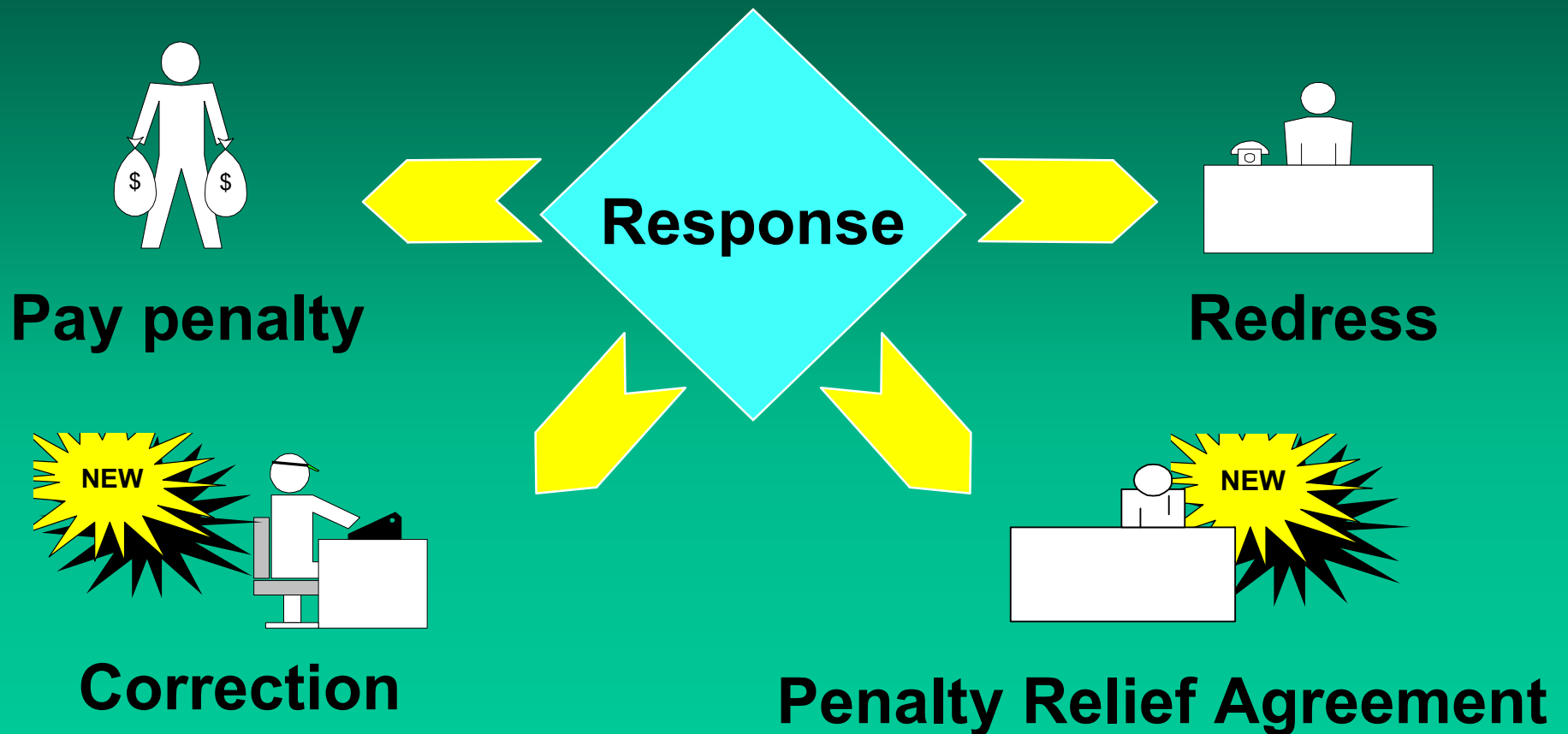
Recap:

- ✦ New sanctions regime for all Customs program
- ✦ Initially for commercial sector
- ✦ Remedial not punitive
- ✦ Proportionate to frequency and severity
- ✦ Fair and transparent process



Notice of Penalty Assessment Served

Served to Client/Trader



Notice of Penalty Assessment Served

Payment of Penalty

- ✦ Penalty payable on the day notice is served
- ✦ Interest is calculated beginning on the day after the notice is served and ending on the day the notice is paid
 - No interest payable if paid in full within 30 days of notice served
- ✦ Interest also applies on ascertained forfeiture demands

Notice of Penalty Assessment Served

Redress

- ✦ Client will continue to have the opportunity to contest any penalty or seizure
- ✦ Right to appeal or redress process extended from 30 days to 90 days
- ✦ Extenuating circumstances will allow time limits up to a year

Notice of Penalty Assessment Served

Request for Correction

- ✦ Clients may initiate request for correction for penalty issued or enforcement action taken on the basis of
 - obvious errors or
 - where no contravention occurred
- ✦ Within 30 days of Notice of Penalty Assessment or seizure action
- ✦ Corrected at point of issuance

Notice of Penalty Assessment Served

Penalty Relief Agreements

- ✦ Offers relief to clients from penalty assessments in specific situations
- ✦ A Penalty Relief Agreement sets out
 - the nature of the problem
 - the corrective action required
 - timeframes to effect correction
 - correction validation
- ✦ Penalty relief ranging from partial to full

Consistency of Application

- ✦ Those currently enforcing the legislation will be able to apply AMPS penalties
- ✦ Automated system will ensure national consistent application of contravention and penalty amounts
- ✦ National training program
- ✦ National monitoring system will be implemented

Voluntary Disclosure (VDP)

- ✦ VDP will apply to AMPS penalties
- ✦ VDP will not apply in regard to controlled, regulated or prohibited importations
- ✦ VDP will not apply in regard to repetitive requests for relief for same type of infraction
- ✦ Disclosure must be voluntary, i.e., not initiated by any Customs action

Suggestions

- ✦ Integrate your systems and records supporting import and export
- ✦ Consult our Client Services, your broker or consultant
- ✦ Inform your trade partners on the importance of the quality of the information
- ✦ Be prepared for an eventual audit
- ✦ Ensure that any systems difficulties are quickly reported to Customs

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