

**A**Administrative

**M**onetary

**P**enalty

**S**ystem

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***

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

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

3<sup>rd</sup> 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](http://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

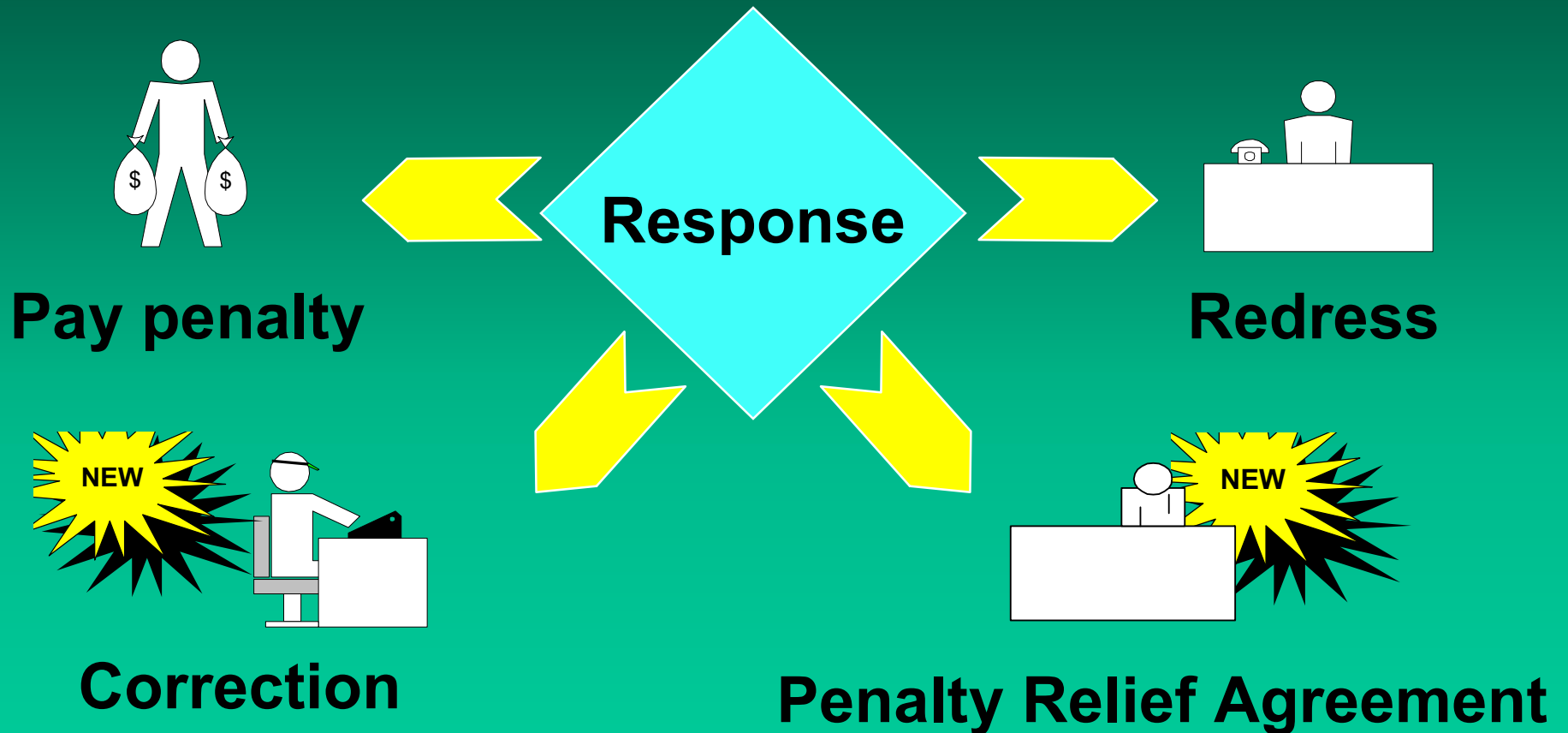
## *Recap:*

- ✦ 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

# Direct written comments to:

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