

Trade Matters

A Newsletter on Customs & International Trade

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Administrative Monetary Penalty System (AMPS)

What is AMPS?

AMPS is a modernized penalty regime implemented by CCRA to secure compliance through the application of monetary penalties through an administrative process. The Minister of National Revenue has made a commitment to the business community and to travelers that AMPS will ensure that all *clients* comply with the provisions of the legislation administered by the Canada Customs and Revenue Agency (CCRA) and that non-compliance will be dealt with fairly and expeditiously. The system will apply penalties to contraventions of the **Customs Act**, the **Customs Tariff**, and the Special Import Measures Act and the regulations there under.

How will AMPS affect the business community?

In theory, AMPS will not affect the businesses that continue to comply with Customs requirements and regulations. Non-compliance, however, will affect a firm's bottom line through the application of penalties that are proportional to the frequency and severity of the infractions.

In addition to monetary penalties, non-compliance and failure to meet undertakings entered into with the CCRA will have a negative effect on performance records, and could possibly result in the withdrawal of special service option privileges and could lead to increased targeting for border examinations and/or audits.

When is AMPS?

This legislation is scheduled to pass into **law at the end of October 2001**. However CCRA has stated that there will be a **grace period until April 2002**, during which time only warning letters will be issued.

The importance of compliance

The CCRA have gradually moved toward believing in the principle of voluntary compliance. In other words most people will obey laws if they understand them, if these laws are reasonable and have intrinsic value to society, and if there are meaningful consequences for failing to comply with these laws. There are, of course, some people who do not comply with the law, whether intentionally or unintentionally. Either way, the actions of these people can have a major impact on the overall health and safety of Canadians, on our economy and ultimately on the success of business in a highly competitive marketplace. The CCRA states that compliance is a shared responsibility and a sound business investment. Compliant traders will benefit from streamlined processing. Compliant importers may benefit from streamlined clearance, accounting and payment processes

For traders who do not comply, however, intervention by Customs will increase costs. In terms of deterrents, continuing non-compliance and lack of due care will increase the probability of a trader being considered higher risk. Those in the higher risk category can expect increased border examinations or audits, with the potential for civil penalties.

AMPS will modernize Customs' sanctions regime

The current sanctions are limited and inflexible. CCRA view current monetary penalties as insufficient and the current reliance on seizure and ascertained forfeiture as too extreme in many cases. AMPS will impose monetary penalties in proportion to the type, frequency, and severity of the infraction. Customs' insists that these will be corrective rather than punitive. Seizure and criminal prosecution will be reserved for only the most serious cases of non-compliance such as fraud, smuggling and other criminal activities.

AMPS – to ensure a level playing field for business in Canada

CCRA's intention is to level the playing field. Focusing on non-compliant traders will reduce the cost to compliant businesses.

How will the graduated penalty system work?

Most penalties will be graduated and will take the compliance history of the client into account. A second incident of the same infraction will result in a higher penalty with a third and subsequent infraction resulting in a penalty that is higher again.

For example, the proposed penalties for "Failure to furnish the proof of origin upon request":

1st infraction - \$500.00; 2nd infraction; \$1000.00; 3rd infraction - \$5000.00; 4th infraction - \$25000.00

Will AMPS be applied retroactively?

When AMPS comes into effect, it will not be applied retroactively to infractions that occurred prior to that date. However, prior rulings, court decisions, etc., respecting tariff classification, value for duty, and origin will still be valid and will be used to determine an importer's awareness of his or her compliance requirements under section 32.2.

Section 32.2 of the Customs Act was implemented in the 1998 revisions to that Act and is not being changed by this amendment. It establishes the obligation of importers to self-correct their declaration (either where money is owing or in revenue neutral situations) within 90 days where they have reason to believe their declaration was incorrect. Under the new AMPS provisions, failure to self-correct revenue neutral errors will result in penalties.

How will the appeal process change with AMPS?

Following the assessment of a penalty, a designated officer at the local or regional level will, on behalf of the Minister, be able to overturn or amend the penalty within 30 days of its issuance if any obvious errors in the assessment have occurred. This will ensure that only true disputes will reach the formal appeal stage. In addition, the time limit for formal appeal to the Minister has been extended from 30 to 90 days.

Where can I get more information about AMPS?

Please do not hesitate to contact us for an evaluation on how this effects your situation. More information is also available on the CCRA website: www.ccr-aadrc.gc.ca/customs/general/amps/index

What is Courtney Agencies Ltd doing to enhance the compliance of our clients?

We intend to increase our efforts to help our clients to comply with Customs legislation and regulations. We plan on a higher focus on education and client assistance. We plan to help our clients focus on their respective risk assessment and to in turn minimize those risks. At the front end, **this may result in more phone calls to clarify description, country of origins, and NAFTA issues.** At the back end, we are developing a compliance communication strategy that will include a compliance manual and some direct one-on-one consultations.

Our email address: info@courtney.ca

If you have an E-Mail address, we would like to know:

Name: _____

Company: _____

E-Mail address: _____

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