

Further Thoughts on Customs Compliance

One of the commitments made by the Canada Customs and Revenue Agency (CCRA) to importers subjected to a Multi Program Verification Audit (MPV) is that the Interim and Final Reports will contain no surprises. That may well be the intent but, in our experience, it is not always the result. MPV continues to evolve and the CCRA, due to their experiences so far, finite resources and feedback from the trade community, have made significant changes to the audit process. Some of the difficulties encountered are: a lack of experienced auditors available within the CCRA; a learning curve that is apparently taking longer to negotiate than anticipated; the perceived reluctance of some individuals within the CCRA to recognize commercial reality; and a lack of adaptability and commitment to the evolving trade environment.

Our audit files are growing and a review of cases supports these contentions. Surprise, surprise, the interim and final reports contain...SURPRISES! Surprises in the form of errors on the part of the auditors and surprises resulting from a lack of communication by the auditors.

We don't live and work in a perfect world. AMPS looms large on the horizon. The threat of Section 32.2 of the Customs Act with its "reason to believe," coupled with the interpretation of that term by the CCRA, is cause for concern, if not alarm. The current CCRA position includes the claim that, by publishing the Customs

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Season's Greetings

The year 2000 is drawing to a close. Fortunately the beginning of the year proved to be a smoother transition than predicted. Canada's economy has been experiencing a boom and we sincerely hope that you, our clients, have been able to prosper from it. We appreciate the support you have shown us over the past year and wish you all the best during the holiday season and for the coming year. ▲

The Mod Act: What Non-Resident Importers Should Know

The second quarter of 2000 resulted in the export of goods surpassing \$100 billion in value. A number of these exports are cleared into the United States with the Canadian exporter being the importer of record. In view of this, it is worth looking at the U.S. equivalent of the AMPS (Administrative Monetary Penalty System) program. Russell A. Farrow (U.S.) Inc. has provided us with the following information.

U.S. Customs is undergoing significant changes in the way they conduct business. These changes are expected to have a notable impact on import procedures but are ultimately designed to put the U.S. at the forefront of the import process. It is critical that companies remain informed of these changes and how they will affect business. Below are a few examples.

- **Informed Compliance and Reasonable Care** – The importer of record is responsible to learn, apply and adhere to all U.S. Customs regulations. The importer of



record must also exercise reasonable care to ensure all entries and declarations are correct. Hiring a Customs Broker and/or Customs Attorney is one way to show reasonable care; however, this does not completely absolve the importer of record from liability.

- **New Record Keeping Requirements** – The importer of record is responsible for retaining all records for each shipment for a minimum of five (5) years. Documents required for retention are listed on the "A1A," which includes more than 160 specific requirements and can be obtained from Russell A. Farrow (U.S.) Inc. Maximum penalty for failure to retain specified documents is \$100,000 per shipment.

- **New Rules of Origin and Marking Requirements** – The importer of record is responsible to know these rules and apply accordingly.

- **Linking Systems and Sharing Information** – U.S. Customs will soon be linked with the U.S. Internal Revenue Service (IRS). This will allow both entities to access each other's information. Once

this happens, Customs will be able to match clearance values and quantities claimed at time of entry with IRS inventory records.

- **Targeted Industries** – U.S. Customs has selected eight specific industries to concentrate on with regard to documentation and compliance issues. They are: Steel; Textiles; Agriculture; Production Equipment; Autos and Auto Parts; Telecommunications; Advanced Displays, e.g. CRT's, flat panels; and Critical Components, e.g. fasteners, bearings.

- **"Post Release" Compliance Focus** – Pre-clearance inspections are becoming a thing of the past; Customs is now focusing on computerized audits of importers' import documentation after shipments have been cleared and delivered.

RUSSELL A. FARROW (U.S.) INC. can help you ensure that you are meeting U.S. Customs requirements in full. For more information on the above issues, call Russell A. Farrow (U.S.) Inc. at 1-734-955-7799. ▲

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Tariff and placing it in the public domain, they provide importers with reason to believe when an error in tariff classification occurs. Other examples that would provide "reason to believe" include the publishing of rulings, CITT decisions, classification guidelines etc. While it is true that the policy is still under development, the current position does present, in our opinion, cause for concern. Leaving certain aspects of the current draft unchanged would be cause for alarm.

Compliance is here and the impact on importers will continue to grow. It is not an option and the mechanism will soon be in place to enforce compliance. Now is the opportune time to review your procedures and practices and to implement necessary change. It's time to discover the "ugly" truth about compliance – "IT COSTS." That's right, compliance has a price tag, the significance of which will be largely determined by the extent to which re-engineering, downsizing, out-sizing (call it what you will) has resulted in compromise in your procedures. Decisions to cut costs by eliminating the checking of payable invoices against customs entries to ensure accuracy; to eliminate reporting of over-ages and shortages to Customs; to minimize the significance of Customs requirements because everything is "duty free;" these and similar decisions need to be reviewed because in a compliance regime they potentially become bad decisions.

Are you compliant? Can you answer that question? Have you even considered that question? It is now important that you give serious consideration to this issue.

How can we help? There are a number of ways. We can discuss your procedures; we can review our relationship to determine ways to improve communications; we can conduct a micro or mini-audit aimed at providing you with a "Compliance Snapshot;" we can conduct a more extensive review if necessary. ▲

THE SIGNIFICANCE OF NATIONAL CUSTOMS RULINGS IN AN AMPS ENVIRONMENT

Implementation of the Administrative Monetary Penalty System (AMPS) by the Canada Customs and Revenue Agency (CCRA) is fast approaching. The results of the general election all but guarantee passage of the required legislation, soon after parliament is re-convened in the new year.

Much has been written about AMPS and it is not our intent to provide an overview in this article. Here, we will address one method of defense for your consideration, the relatively simple yet significant option that can remove the potential for penalty due to error in tariff classification, the National Customs Ruling (NCR).

AMPS presents us with the opportunity and responsibility to encourage all our clients to apply for NCR's whenever appropriate. The service of applying for NCR's is an important value added service offered by Russell A. Farrow Limited. It is not new and is a service we have offered consistently for many years. What is new is the significance of a NCR in the coming environment.

What is involved in the application process?

- Gather information about the product in issue (brochure; technical specifications; sample; etc.)
- Undertake research to determine the proper classification
- Compile and submit a request to the appropriate CCRA, Client Services Unit

The CCRA will issue a NCR that is binding on all future importations of

the subject goods. That means the decision is binding on the CCRA and the Importer and also extends to any importation of like or similar goods by any other importer. A NCR is a valuable instrument in the event of a subsequent classification dispute.

The CCRA may determine the classification to be other than requested. Indeed, it may not even be favourable. However, published NCR's provide an even playing field as other importers of the same goods are also subject to the same decision as previously mentioned. In addition, a NCR in dispute can be appealed once the subject goods have been imported.

*National Customs Rulings
are a cheap form of
insurance against the threat
of a sanction under AMPS.*

The subjective nature of tariff classification is not known or understood by most. All too often classification is the result of an opinion or interpretation, rather than an absolute statement of fact. Decisions can be impacted on the definition of a single word. One case hinged on the classification, not only of the finished product, but of an intermediate product created during the production process. Tariff classification is a highly complex subject and AMPS brings with it the threat of a fine for failure to arrive at the correct decision.



At a recent meeting in Toronto, CCRA officials stated their position that the mere publication of the Customs Tariff is deemed to provide importers with adequate information relative to the accurate tariff classification of goods. The significant examples of ambiguity often found in the Customs Tariff, resulting in so many classification appeals to the CITT and higher Courts, are not fully appreciated or understood by senior management of the CCRA.

National Customs Rulings are a cheap form of insurance against the threat of a sanction under AMPS. It is not always necessary to obtain NCR's for each individual item being imported. We can help you determine what individual products or product groups should be addressed. We encourage you to notify us before you commence importing new goods or a new product line. If that is not possible then contact us as soon as possible after importation.

Remember, a National Customs Ruling can be a powerful tool. We recommend that you contact us to review your needs. ▲

Voluntary Disclosures Program

On June 12, 2000 the Canada Customs and Revenue Agency published a Customs Notice (N-332) regarding their Voluntary Disclosures Program (VDP). The program is intended to promote voluntary compliance in relation to the Customs Act, the Customs Tariff, the Income Tax Act and the Excise Tax Act. The four conditions provided in N-332 that govern a valid voluntary disclosure are as follows:

- (a) The CCRA determines that the disclosure is voluntary
- (b) The CCRA determines that the disclosure is complete
- (c) The disclosure involves a monetary penalty
- (d) The disclosure involves information one year or more overdue (Income Tax Act and Excise Tax Act) or a prior accounting period (Customs Act and Customs Tariff)

If you are interested in making a voluntary disclosure or want additional information, we can discuss the matter with the CCRA on a no-name or hypothetical basis on your behalf to determine your entitlement to this program. Additional information is available at the CCRA website at www.ccradrc.gc.ca under the Fairness page or contact your nearest Russell A. Farrow Limited Technical Services or Trade Compliance department. ▲



NEXUS is a new pilot program that has been introduced at the Blue Water Bridge crossing between Point Edward/Sarnia, Ontario in Canada and Port Huron, Michigan in the United States effective November 28, 2000. The program, a joint project between the Canada Customs and Revenue Agency, Citizenship and Immigration Canada, the United States Customs Service and the United States Immigration and Naturalization Service, aims at streamlining the processing of pre-approved, low-risk travellers allowing authorities to concentrate their efforts elsewhere. Unlike similar programs, CANPASS and PORTPASS, only one application is required. Approved participants will be directed to use dedicated lanes at the crossing and will not be subject to regular customs and immigration questioning although both countries have the right to conduct examinations at any time. Should you wish additional information regarding this program, please contact one of our Technical Services or Trade Compliance departments. ▲

What is AMPS?

Why AMPS?

A review of enforcement sections of the Customs Act disclosed the following weaknesses:

- Current sanctions are limited and inflexible
- Over reliance on seizure processes
- Not perceived as fair or transparent
- Does not support Agency's new way of doing business
- Does not support enforcement of Trade Data Quality

Principles of Proposed AMPS Legislation

- More extensive use of civil penalties to correct non-compliance
- Seizure and ascertained forfeiture will be restricted to the most serious offenses
- The level of penalties will reflect severity of contravention and past compliance history
- Contraventions named will be based on absolute liability
- A graduated approach will be applied
- An informal Regional corrective process will be introduced
- Penalty reduction agreements will be possible
- Appeal time frames will be extended
- All AMPS penalties will be published
- New contraventions will be introduced to support new operational and trade requirements

Penalty Types

1. AMPS
2. Seizure
3. Ascertained forfeiture
4. License revocation
5. Prosecution

Seizure and Ascertained Forfeiture

Seizure and Ascertained Forfeiture will be applied in the most serious of cases only (eg: violation involving large commercial

shipments of designated or controlled goods). Seizure, Ascertained Forfeiture and AMPS will not be combined (eg: If a shipment is seized AMPS will not be applied; if AMPS is applied goods will not be seized).

Timing

- Bill passage through Parliament – Early 2001
- Interim implementation – Spring 2001
- Full implementation – January 2002

What is AMPS? The Administrative Monetary Penalty System (AMPS) has been under development by the Canada Customs and Revenue Agency (CCRA) for several years and is expected to be implemented on a phased approach in the Spring of 2001. Following is a brief overview.

Proposed Penalty Structure

AMPS regime allows the imposition of civil monetary penalties through administrative process

- ensures that Customs can respond to each instance of non-compliance in a manner that embraces the concepts of fairness, flexibility and transparency

Penalties assessed according to the compliance history of the importer and the severity of the violation

- maximum penalty amounts and a range of graduated penalties

Penalties may be imposed in lieu of, or in addition to, other sanctions available under the Acts and Regulations of Other

Government Departments administered by CCRA

Seizure and criminal prosecution will be applied only to the most serious offenses – e.g. smuggling, falsifying record keeping, fraud, or instances where the violation is alleged to have been committed intentionally, repeatedly or with gross negligence

Part of a comprehensive and effective compliance program intended to compliment initiatives that streamline processes & monitoring, including:

- customs self assessment
 - carrier re-engineering
- Most contraventions are found in a master list covering acts and regulations
- tool to support and secure compliance
 - compliance agreements will be used to identify contraventions that are program specific

Penalty Review, Appeal & Waiver

Informal discussion surrounding the circumstances prior to issuance of penalty

- regional problem resolution process
 - development and implementation of action plan
- Independent reviewing officers
- Contravention records will remain on client's record for a limited period

The above material has been compiled from several sources, including draft documents. Development continues however and submissions to the CCRA are still being reviewed. Changes will continue to be made to the proposal and we will continue to monitor this issue as it works its way to Parliament and ultimately becomes law.

Contact any of our offices for further information. ▲

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Return Address: Suite 1450 Scotia Place
10060 Jasper Avenue, Edmonton, AB T5J 3R8

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Customs



What's in the Works

Scheduled for the autumn of 2001, is the requirement for HS codes (Harmonized System tariff classifications) to be supplied to Customs at the time of release. Currently, the policy calls for the ten digit HS number to be assigned to the highest value invoice line for both paper and electronic releases. Shipments worth less than \$1600.00 will be exempted.

As AMPS will be in place at this time,

repeated application of incorrect codes to speed release of goods will be subject to penalty. The CCRA will also monitor the frequency of use of incorrect codes.

Planning on importing something new, let us know in advance so that we can determine the appropriate classification prior to the goods reaching Canada Customs. ▲

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Publisher: Rick Farrow

**Editors: David Hoyland
Susan Love**

**Contributors: John Brooks
Stephen Cortelli**

This publication is not intended to provide legal or other professional advice. Readers are asked to contact their local RAF office for advice specific to their needs.



RUSSELL A. FARROW LIMITED

A FARROW COMPANY CUSTOMS • LOGISTICS • SYSTEMS SOLUTIONS • GLOBAL SERVICE

Head Office: Post Office Box 333, 747 Huron Church Road,
Windsor ON N9A 6L6 Phone: (519) 252-4415 Fax: (519) 252-0982

Website: <http://www.farrow.com>

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