

An AMPS Dilemma

Regular readers will be familiar with the various articles we have published on AMPS (Administrative Monetary Penalty System) during the past couple of years. You will be well aware of the plans of the CCRA (Canada Customs & Revenue Agency) to launch this new program on October 7. You will also know that significant penalties will apply in cases of non-compliance.

So you may ask, what is the dilemma? The answer is money, your money in the form of duties and taxes. To be compliant with the law and eliminate the risk of penalties under AMPS, we must apply the Most Favoured Nation rates of duty when a valid NAFTA Certificate of Origin is not on hand at the time of entry. A conservative estimate has determined that, when literally applied, this would result in the payment of millions of dollars in duty and additional GST to the CCRA. The result will be a significant impact on cash flow. Our receivables will potentially skyrocket! And, from experience, we know that some clients will refuse to reimburse us for the funds disbursed.

That is the dilemma! Applying NAFTA preference without the Certificate makes you noncompliant and at risk under AMPS. If we pay the duty, we are at risk due to potential non-payment.

The solution must be applied now so that we are all ready and equipped to be compliant in this regard by October.

Latest Version of AMPS Master Penalty Document

Clients interested in reviewing the latest version of the AMPS Master Penalty Document will find it at the following address:

<http://www.ccr-a-adrc.gc.ca/customs/general/amps/mpd-e.pdf>

It is our understanding that this version will be used for the full implementation of AMPS on October 7, 2002.

Canada Customs has compiled some statistics regarding penalties that have been waived during the transition period. For the period March – May 2002, Customs has calculated that \$4,553,131 in penalties were forgone and they projected an annual assessment of \$18,212,524. However, that figure does not make any allowances for increases due to repeated offenses. In addition,



fraud and smuggling infractions and late accounting penalties

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What is the solution?

Obtain any missing NAFTA Certificates of Origin NOW!

Additional steps include:

- Make the provision of a valid Certificate a condition of doing business;
- Consider adding a clause to your purchase orders stating that any duty and tax payable as a result of missing or invalid certificates will be deducted from your payment;
- Advise your suppliers that annual renewals of certificates must be provided at least one month prior to the expiry of the current certificate.

Recently, the Canadian Society of Customs Brokers asked this question of the CCRA:

"What happens to the importer who continues to show a lack of care? Will the CCRA allow penalties to be applied to the point where the importer goes out of business?"

This was the response: *"The penalties are designed to be corrective and will graduate based on the frequency and severity of the contravention. If importers continue to ignore their obligations, then they will continue to be penalized. If an importer complies, then this is not an issue. Compliance is necessary to maintain a level playing*

field for all importers. Competition is intense in today's market place and margins are very tight, especially with the falling Canadian dollar. The CCRA would be remiss in its obligations to those importers, who do make the necessary investments to become compliant, if the agency allowed those who did not to enjoy a competitive advantage."

There is still time to improve compliance in this specific area. There is time to make this dilemma go away. The consequences are simply unacceptable. ▲

Import Requirements under Canada's Energy Efficiency Regulations

The following notice was issued recently by Natural Resources Canada (NRCan):

When importing goods regulated under Canada's Energy Efficiency Regulations, the dealer or importer must provide NRCan with the following information on the customs invoice or electronically:

- **the name** of the product (i.e. dishwasher);
- **the model number** of the product, or in the case of motors, the Unique Motor Identifier (UMI);
- **the brand name**, if any;
- **address** of the dealer or importer; and
- **the purpose** of the importation.

The requirements of the Energy Efficiency Regulations are detailed in Memorandum D19-6-3, along with procedures for the control of

shipments of energy-using products. Of particular importance is Section 8 of D19-6-3, "Invoice Requirements", Importers are required to provide a notation on the extra copy of the customs invoice that states that the document is for NRCan.

This extra copy of the invoice is sent to NRCan for compliance monitoring on a weekly basis. Regular reviews reveal that NRCan is receiving thousands of invoices for products that are not regulated under Canada's Energy Efficiency Regulations. Nonetheless, a notation that the invoice is for NRCan does appear on these documents. Some examples of the products that are on these invoices include: TV's, tires (new and used), assorted food items, pharmaceuticals, lumber, various electronics, yachts, fish,

fossils, parts, accessories, and textiles.

Invoices that do not cite a regulated energy-using product are not required by NRCan.

Importers are required to provide a notation on the extra copy of the customs invoice that states that the document is for NRCan.

Please provide the CCRA with an extra copy of the invoice (with NRCan notation) only if a regulated product is included on the importation. The complete list of regulated products and pertinent import information is available at: <http://oe.nrcan.gc.ca/regulations>.

The NRCan contact is Ms. Violet Horvath, Senior Compliance Officer, Office of Energy Efficiency.

Tel:(613) 947-7352 /
Fax:(613) 947-0373 /
mailto: vhorvath@nrcan.gc.ca.

NRCan will continue monitoring the invoices received from CCRA on a regular basis.

We encourage our clients to become familiar with the energy-using products that are currently regulated under the Energy Efficiency Regulations, and to request suppliers to provide the extra copy of the invoice (with NRCan notation) only when a regulated product is included in the importation. In the future, NRCan will contact those who continue to provide the CCRA with extra copies of invoices that do not contain regulated energy-using products to rectify the situation. ▲

Changes to Interest Charges on SIMA Duties

Effective July 1, 2002, legislative changes were enacted regarding the interest provisions under the Special Import Measures Act.

Interest charges, when applicable, will now be calculated in accordance with section 3.1 of the Customs Act. As such, interest on amounts owing will be calculated at the specified interest rate, and interest on amounts returned will be calculated at the prescribed interest rate. In addition, where provisional duties have not been paid or security posted within the prescribed time, interest will be applied at the specified rate. Interest charges will also apply to any unpaid interest where it remains unpaid. Where a determination or re-determination is made, usually in the form of a detailed adjustment statement, the importer will have 30 days from the date of the deci-

sion to pay any additional assessment and interest owing. If the importer does not pay within that time frame, interest will apply to the total amount calculated from the day after the decision until the amount owing is paid.

In those cases where a refund occurs only the interest applicable on the amount in question that was paid due to other than late accounting will be refunded.

A list of those goods that are subject to special import measures is available at: <http://www.ccra-adrc.gc.ca/customs/business/sima/monthly-e.html>. ▲



CFIA Introduces New Publication



The Canadian Food Inspection Agency has introduced a new publication that is intended to inform the public of the work CFIA performs. The new publication is entitled "Frontline" and will be published three times a year. Interested parties can access Frontline at the CFIA website: <http://www.inspection.gc.ca/english/corpaffr/publications/flag/flage.shtml>.

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these numbers will increase even more with additional officers completing training.

A number of contraventions were related to a failure to mark goods from household goods, e.g. aluminum bakeware, candles, china, etc. to novelties and sporting goods, paper products and wearing apparel. In addition, there were several problems with a

failure to report goods for export and to provide export permits where required. There were situations where importers failed to keep any of the necessary records, including certificates of origin to name just a few.

If you think we are dwelling on this subject, we are! **The financial consequences may prove to be devastating.** ▲

NAFTA Audit Goes Awry

Recently, a U.S. forestry company, was awarded \$461,566 US in damages by the NAFTA tribunal.

The tribunal ruled that in requiring Pope & Talbot Inc. to ship their records to Canada concerning a quota audit for softwood lumber, the Canadian government was showing a bias. The tribunal indicated that had the company been a domestic firm, that the Softwood Lumber Division would have conducted the audit at the company's premises. The tribunal also took issue with the treatment Pope & Talbot Inc. received from the Canadian government. ▲

U.S. Customs Introduces Importer Self-Assessment

Effective June 17, 2002 U.S. Customs introduced Importer Self-Assessment (ISA). This new initiative promotes a voluntary trade compliance program that allows importers control over their own Customs compliance. To those importers with effective compliance programs already in place, ISA will afford additional benefit.

To qualify for the ISA program, a company must be a participant of the Customs Trade Partnership Against Terrorism (C-TPAT – See the Spring 2002 Customs Reporter

for more information); be a resident of the U.S.; and have a minimum of two years importing experience. In addition, an importer must sign a Memorandum of Understanding and complete an ISA questionnaire. Both documents are available via U.S. Customs website at: <http://www.customs.gov/imp-exp1/comply/isa.htm>.

The MOU includes the following conditions:

- Compliance with all applicable Customs laws and regulations
- Establishment of tight internal controls
- Performance of periodic testing
- Maintenance of testing records for five years and ability to provide same to Customs upon request
- Maintenance of a clear audit trail

- Disclosure of any material errors
- Submission of an annual report

Among other things, benefits include:

- Removal from focused assessment audit pool
- Inclusion of multiple business units
- Training by Customs auditors, as needed/requested
- Provision of risk assessment
- Management of improvement actions through an account action plan
- Greater business certainty.

If you would like additional information on the above program, please contact Steve Cortelli, General Manager, Russell A. Farrow (U.S.) Inc. at 734-955-7799. ▲

Smart Border Update

On June 28, Canada and the U.S.A. finalized and released a progress report on the Smart Border Initiative. The progress report is available at: <http://www.can-am.gc.ca/menu-e.asp?act=v&mid=1&cat=10&did=1480>.

DFAIT Cracking Down on Ensembles

Recently, we have found that the Department of Foreign Affairs and International Trade is taking a closer look when receiving applications for import permits for ensemble clothing.

The main problem appears to be that some countries require export licences/quota on tops and bottoms but not on ensembles. DFAIT has indicated that there have been instances where abuse has taken place and what is being described as an ensemble does not fit the regulations.

Occasionally we have had to provide DFAIT with illustrations of the garments being applied for under the ensemble classification, which certainly can delay the application procedure. If any of our offices request additional information from you, please be as detailed as possible. Should you wish additional information on the definition of ensembles, please refer to Customs Notice N-457 which is accessible at Customs website: <http://www.ccradrc.gc.ca> or feel free to contact your local Russell A. Farrow Technical Services/Trade Compliance department. ▲

Reporting of Exported Goods Regulations

Customs has issued a draft of the Reporting of Exported Goods Regulations, which are scheduled to come into effect prior to October 7, 2002.

The regulations can be accessed through the Canadian Society of Customs Brokers website at: <http://www.cscb.ca/listinfo/DraftExportRegsJune2002.pdf>. The contraventions of these regulations under AMPS can also be viewed at the CSCB website at: <http://www.cscb.ca/listinfo/AMPSExportContraJune2002.pdf>. ▲

New Requirements for Food

Imported into the U.S.A.

On June 12, 2002, President Bush signed H.R. 3448, the Public Health Security and Bioterrorism Bill. The bill is intended to enhance the protection of the food supply and provide avenues of response to attacks on the health care system among other things.

The bill contains provisions that requires at least 24 hour advance notification to the Secretary of Health and Human Services (HHS) of a food article (unless deemed exempt), including the identity of the food, country of origin, and other information.

In addition, there are new provisions regarding a number of biological agents and toxins listed in Title II of H.R. 3448.

For additional information regarding these new requirements please contact Steve Cortelli, General Manager, Russell A. Farrow (U.S.) Inc. at 734-955-7799. ▲



Canadian Publication
Agreement Number
40006906

Proposed Duty Relief for Least Developed Countries

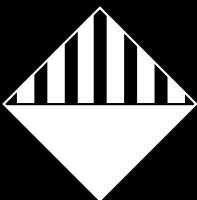
Public consultations have been received on the Department of International Trade's proposal to eliminate import duties and quotas for 48 of the least developed countries.

Overall, most of the feedback was positive. Currently, imports from these countries represent only one tenth of one percent of the total imports into Canada. In addition, half of those imports are already entering Canada duty free.

Least Developed Countries (LDC) is a designation given by the United Nations Committee on Developmental Policy and is based on GDP, adult literacy, population size, quality of life index and an index of economic vulnerability. Since 1971, only Botswana has graduated from LDC status.

For further information regarding the consultations, please visit the Department of Foreign Affairs and International Trade's website at: <http://dfait-maeci.gc.ca/tna-nac/Consult-e.asp#idc>. ▲

Dangerous Goods



Changes to the Transportation of Dangerous Goods Regulations are scheduled to take place on August 15, 2002. Please refer to pages 1415 to 1452 of the May 11, 2002 issue of the Canada Gazette, Part 1, Vol.136, No.19 available on-line at: <http://www.canada.gc.ca/gazette>.

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The Customs Reporter is a quarterly bulletin on Customs and International Trade for the clients of Russell A. Farrow Limited.

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