



# Customs Action Plan

## The Administrative Monetary Penalty System (AMPS)

*A Key Component of the Customs Program's  
Strategy for Responsible Enforcement*

### *AMPS in a snapshot*

#### ***What is AMPS?***

The Administrative Monetary Penalty System (AMPS) is a modernized sanctions regime that will 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 travellers 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 proposed system will apply penalties to contraventions of the *Customs Act*, the *Customs Tariff*, and the *Special Import Measures Act* (SIMA) and the regulations thereunder, as well as contraventions of the terms and conditions of licensing agreements and undertakings.

#### ***How will AMPS affect the business community?***

AMPS will not affect 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 or audits.

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## ***The importance of compliance***

The CCRA believes in the fundamental principle of voluntary compliance: 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 also 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.

Compliance is a shared responsibility and more than ever before, it is a sound business investment. We believe that our clients will make this investment once they learn about the benefits that they will derive from our new way of doing business, and the costs of non-compliance. Compliant traders will benefit from streamlined processing—a strong incentive to establish and maintain a good performance record with the CCRA. As well, importers who invest in compliance and meet the requirements will benefit from streamlined clearance, accounting and payment processes.

For clients 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. This does not mean we will be doing more audits or border examinations, it means that the ones we do will be more focused and the consequences of non-compliance will be substantial.

## ***The nature of non-compliance***

Non-compliance can happen through a lack of knowledge, a lack of care, or simply because clients have a different interpretation of the law. Non-compliance may also be inadvertent when people and goods arrive at the border unknowingly carrying contagious diseases that threaten health, tainted products that threaten industry, or pests that endanger the environment. The entry of diseased food or animal products into Canada can wipe out an entire industry sector for years. These are some of the higher and unknown risk areas upon which we would like to focus in strengthening our protection mandate.

In contrast, there are those who will find deliberate ways to circumvent the law, because of the perceived potential for monetary gain or because the goods they are bringing into Canada are restricted or prohibited by law.

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## ***What is the CCRA doing to enhance compliance?***

We will increase our efforts to help our clients to comply with Customs legislation and regulations and discourage non-compliance by focusing on these activities:

- ✓ Education and client assistance
- ✓ Measuring compliance levels
- ✓ Monitoring the compliance of individual clients
- ✓ Implementing effective means to combat non-compliance, for example, AMPS

## ***AMPS will modernize Customs' sanctions regime***

Our current sanctions regime is limited and inflexible. Monetary penalties are insufficient and the regime relies too heavily on seizure and ascertained forfeiture. The implementation of AMPS will modernize our sanctions regime to make it fair and more effective. AMPS will impose monetary penalties in proportion to the type, frequency, and severity of infraction. They 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 and smuggling and other criminal activities.

AMPS will ensure that non-compliance will not pay—it will result in additional costs. The important difference in our modernized sanctions regime is that it will affect the bottom line of non-compliers—a major concern to corporate financial managers as well as shareholders.

## ***AMPS – Ensuring a level playing field for business in Canada***

A number of key industries in Canada operate in a highly competitive global marketplace where the margin between success and failure can be quite small. For these industries, non-compliance with trade requirements by foreign or domestic competitors, and the resulting

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loss of a level playing field for both Canadian producers and legitimate Canadian importers, can have a significant impact on their bottom line, and ultimately on Canada's economy.

Focusing our resources on these types of threats, and introducing mechanisms that bring about voluntary compliance will help meet the most demanding expectations of Canadians: that we protect their health—both personal and economic—their safety and security, and the sovereignty of their country. Canadian businesses want assurance that we have effective measures in place to ensure that the integrity of our business practices is not undermined as we seek those efficiencies that are so crucial to maintaining a competitive edge in a global marketplace. AMPS is a key component of our strategy to deliver on this assurance.

By supporting our compliance strategy with a comprehensive, modern sanctions regime such as AMPS, we will ensure and preserve public trust in the CCRA's ability to protect Canadian business interests.

### ***We are asking the business community to get ready for AMPS***

To help ensure the success of our new approach, we are informing the business community of the need to make themselves aware of their obligations and then assess their state of compliance. Our goal is not to improve compliance on a "hit and miss" basis, but to position business to achieve and sustain compliance over time. This means taking a careful look at their overall management of all of their customs-related business systems, processes and procedures.

We are committed to providing quality service and giving the information and answers that the business community needs to ensure sustained compliance. This has been done and continues to be done in relation to AMPS through external consultation and information sessions with industry representatives.

### ***When is AMPS coming?***

Implementation of Phase 1 of AMPS for the Customs commercial stream is planned for the fall of 2001. Implementation of Phase 2 for the Customs travellers stream is planned for 2002.

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## ***Other frequently asked questions about AMPS***

### ***How will the graduated penalty system work?***

Most penalties will be graduated and will take the compliance history of the client into consideration. 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 report” a commercial importation of goods valued at \$1,600 or greater are:

1<sup>st</sup> infraction - \$1,000 or 5% of value for duty whichever is greater

2<sup>nd</sup> infraction - \$2,000 or 10% of value for duty whichever is greater

3<sup>rd</sup> infraction - \$3,000 or 20% of the value for duty whichever is greater

### ***Will AMPS be different for the traveller and the commercial streams?***

The AMP system will be administered in the same manner in both the traveller and the commercial streams. However, AMPS for travellers will not be introduced until 2002.

### ***Will AMPS replace seizure and forfeiture provisions?***

AMPS will largely replace the use of seizure and forfeiture provisions for technical infractions. The use of seizure and forfeiture will be restricted to the most serious offences.

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### ***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 a client'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 current legislation, penalties do not apply in situations where the errors do not result in additional revenue owing. Under the new AMPS provisions, failure to self-correct these revenue neutral errors will result in penalties.

### ***Are there any new contraventions with AMPS?***

The new penalty scheme includes new contraventions including infractions not related to goods or conveyances such as contraventions of licensing provisions.

Also, the failure to comply with conditions related to Customs Self Assessment (CSA), e.g., the failure to fulfill the conditions of a client agreement or undertaking would be considered a contravention. Undertakings will clearly outline clients' responsibilities as well as the potential penalties for non-compliance.

### ***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 filing a written request to the Minister for a review of penalties assessed has been extended from 30 days to 90 days.

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### ***What is the “Penalty Relief Agreement” component of AMPS?***

The objective of the Penalty Relief Agreement (PRA) concept is to provide Customs with the facility to offer relief to clients from penalty assessments in specific cases. It is intended for use in situations where substantial AMPS penalties have been applied as a result of unforeseen systemic problems within the client’s processes.

PRAs, when entered into with a client, will set out the nature of the identified problem, what will be done to correct the matter, the time frame required to effect correction, as well as post-correction validation criteria. The level of relief to be provided may range from partial to full penalty relief, depending on the circumstances of each case.

### ***Will a new automated system be required for AMPS?***

A new automated penalty assessment processing system is currently being developed to generate and record all penalty assessments issued to a client on a national basis. This system will have the functionality required to associate the contravention to the penalty level, calculate the penalty amount and update the accounting process with revenue data.

For the purposes of the assessment of graduated penalties, the retention period for this data will be three years in most cases. In addition, changes to the penalty assessment resulting from a decision taken with respect to a correction or redress request will also be recorded in the automated system.