



Canada Border  
Services Agency

Agence des services  
frontaliers du Canada

# AMPS Review: Improved Policy and Program

Presented to:  
I.E. Canada Conference  
October 19-21, 2009

Canada The wordmark for Canada, with a small red maple leaf icon above the letter 'a'.

# Background

- **Introduced in 2002, AMPS has many ongoing issues - inconsistent application; too many contraventions; complex structure.**
- **Need for introduction of risk management principles to program.**
- **CBSA began a program review in 2006 with a small team to address those issues – ten recommendations were then developed and approved in May 2007.**

# **AMPS Review**

## **Guiding Principles**

- **Model that would foster optimal compliance**
- **Corrective approach**
- **Regime that would be simplified, clear, coherent, appropriate and forward looking**
- **Fairness for all clients, regardless of size, type and mode**
- **Minimal administrative burden for both clients and Agency**
- **Maximum consistency at both regional and national level**
- **AMPS is only one component of the compliance toolkit**

# Consultation Framework

- **External**

- ✓ **BCCC AMPS Sub-Committee working group to examine issues in detail; 12 formal meetings plus electronic and teleconference consultations expanded to associates member groups (approx. 150 traders).**

- **Internal**

- ✓ **Regions, at start-up and with proposed changes.**
- ✓ **HQ program areas, throughout entire review and obtained formal agreement with final proposals .**

# **Major Changes Proposed**

## **Master Penalty Document (MPD)**

- **Current contraventions re-organized from 246 to 79**
- **Collapsed structure is a logical grouping of like penalties based on risk, for example:**
  - ✓ **Thirty-two records penalties now five**
  - ✓ **Eight “Failure to Correct” infractions now one**
- **Revision of MPD to be placed on CBSA website by spring 2010**
  - ✓ **Consultations continue to improved clarity and fairness**
  - ✓ **Reorganized into like categories of accounting, brokers, couriers, CSA, exports, release, records, reporting, transport, warehousing and untrue statements**
  - ✓ **Guidelines updated for clarity with definitions and examples demonstrating non-compliance**

# **Major Changes Proposed** (cont'd)

## **Risk-based Approach**

- **CBSA developed a Penalty Grid based on Treasury Board approach to risk management to measure harm associated with non-compliance.**
- **Risk-ranking of contraventions is based on a scale of low to very high against four major criteria of National Security, Health and Safety, Economic, and International Commitments.**
- **Each cell of the Penalty Grid composed of three escalating penalty levels.**
- **Moderate increase in penalty amount at second and third levels for low and medium risk groups.**
- **Considerable increase in penalty amount at second and third levels for high and very high risk groups to reflect more severe impact of these infractions.**

<b>IMPACT SCALE</b>	<b>Very High</b> 5	<b>5A</b>	<b>5B</b>	<b>5C</b>	<b>5D</b>
	<b>High</b> 4	<b>4A</b>	<b>4B</b>	<b>4C</b>	<b>4D</b>
	<b>Moderate</b> 3	<b>3A</b>	<b>3B</b>	<b>3C</b>	<b>3D</b>
	<b>Low</b> 2	<b>2A</b>	<b>2B</b>	<b>2C</b>	<b>2D</b>
	<b>Very Low</b> 1	<b>1A</b> <b>Warning</b> <b>\$0</b>	<b>1B</b> <b>Warning</b> <b>\$0</b>	<b>1C</b> <b>Warning</b> <b>\$0</b>	<b>1D</b> <b>Warning</b> <b>\$0</b>
	<b>International</b> <b>Commitments</b> <b>A</b>	<b>Economic</b> <b>B</b>	<b>Health and Safety</b> <b>C</b>	<b>National Security</b> <b>D</b>	
	<b>CRITERIA</b>				

# **Related Penalty Structure Issues (cont'd)**

## **Non-Grid Penalties**

- **Contraventions which do not fit into the Penalty Grid structure because of their nature. Included in structure as an appendix.**
  - ✓ **Penalty escalation not suitable.**
  - ✓ **Very serious nature of contravention.**

# Major Changes Proposed (cont'd)

## Related Penalty Structure Issues

- **Penalty amounts based on percentage of Value For Duty will be eliminated in most cases for consistency and fairness.**
- **Non-Report has been inconsistently applied as materiality was not clearly defined.**
  - ✓ *Definition of non-report clarified to improve consistency in application.*
- **New Penalty Structure to be implemented April 2010.**

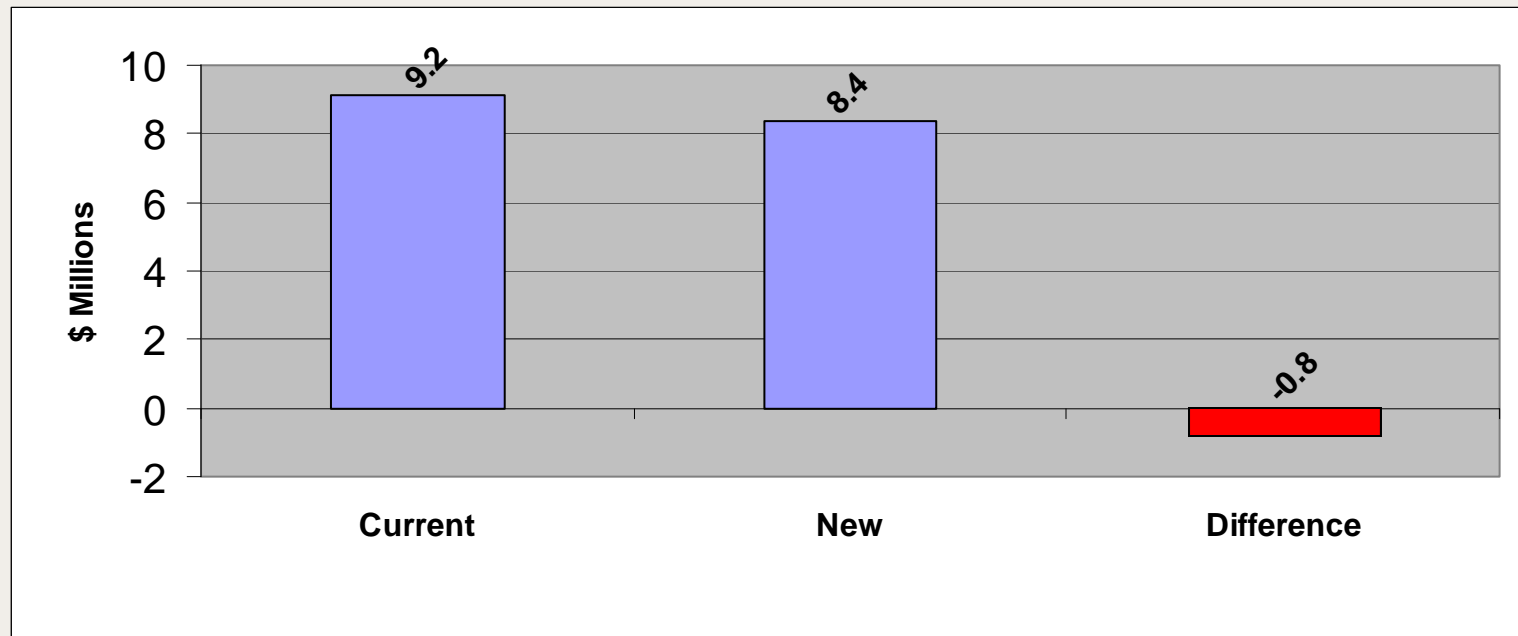
# Major Changes Proposed (cont'd)

- Thirty day non-escalation of penalty levels
  - ✓ Scheduled to be implemented April 2010
- Enhanced appeal process is ongoing
- Improved accessibility of correction process
  - ✓ Consultations continue, revision to stakeholders in November 2009
- Training – courses in development this fall
- Monitoring and internal/external reporting
  - ✓ Statistics on our website in November 2009

# Volumetrics Proposal

- **Large volume clients had requested rebates on penalties.**
- **Analysis shows that higher volume clients are not getting a higher proportion of low and medium risk penalties.**
- **Penalty levels are relatively low and not punitive.**
- **Issue was re-defined as a need to address clerical/administrative errors; CBSA offers:**
  - ✓ **Penalty Reduction Agreements (PRA)**
  - ✓ **Non-escalation of Penalty Level within 30 days**
  - ✓ **Improved Access to Correction Process**

# Current vs. New Penalty Levels Calendar Year 2008



# **Major Changes Proposed** (cont'd)

## **National Review Framework**

**National Review Framework to ensure consistency and quality of decisions**

- **Regional Review Committees (RRC) -100% review of all penalties prior to issue in the post-release environment**
- **Superintendents approving border-related penalties prior to issue and RRC to review them on a quarterly basis to ensure quality, regional consistency and to identify training needs.**
- **Semi annual statistical reports sent to CBSA management for comment and action.**
- **AMPS chapter being written into Trade Verification Manual and adding AMPS portion to Verification Quality Assurance Reviews**

# Absolute Liability Maintained

- **Trade urges strict liability, which allows a defence of due diligence.**
- **Absolute liability: when a contraventions occurs, the person statutorily responsible is assessed a penalty irrespective of whether that person took reasonable care or exercised due diligence to avoid the contravention.**
- **AMPS is applied as absolute liability. In a self-assessing and self-reporting regime, this was thought to be appropriate.**
- **Penalties are set at fair, reasonable and graduated amounts that are sufficient to remove the economic benefit of non-compliance or delayed compliance with the statutory scheme.**

# Third Party Liability

- Members of the trade community want service providers to be penalized for their errors, without affecting compliance history of client.
- Proposed solutions examined thoroughly but found they would rely on a weak and contestable legal base.
- Maintain status quo and let market forces play out.

# Reason to Believe

**Reason to Believe (defined in Memorandum D-11-6-6) is:**

- **Evident (obvious, apparent) and transparent (clear, self-explanatory) legislative provisions**
- **Formal assessment documents such as a determination, re-determination, further re-determination**
- **Tribunal and Court decisions**
- **Information received from exporters and suppliers**
- **Written communication from the CBSA issued directly to an importer such as a ruling, Advance Ruling, verification report**
- **Report resulting from a importer-initiated internal audit or review**
- **Knowledge that a good no longer complies with a condition of relief**

# Implementation Strategy

- **Phased-in Approach:**
  - ✓ **Posting of statistical reports on CBSA website: November 2009**
  - ✓ **Penalty amounts changed, 30-day non-escalation and guidelines: April 2010**
  - ✓ **Preparation of communication and training materials: fall and winter 2009/2010**
  - ✓ **Begin training on revisions: spring /summer 2010**
  - ✓ **Revision of MPD to be placed on CBSA website by spring 2010**
  - ✓ **Penalty collapse: FY 2011-2012**
  - ✓ **Consultations ongoing with the BCCC AMPS Sub-Committee**

# Contact for Information

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