

**THE BROKER'S ROLE IN AMPS:
A CSCB PRESENTATION TO THE CANADIAN ASSOCIATION OF IMPORTERS
AND EXPORTERS**

September 2002

"My Broker Did It"



MY BROKER DID IT!

This is what we hope won't happen as a result of the implementation of AMPS . . . !

Where We Stand on AMPS

- Joint appearance with CAIE before Senate Committee, May 2001
- Active member of AMPS Working Group
- Consistent support for development of an effective compliance regime
- Effective compliance = equitable and fair processes

The CSCB and the Canadian Association of Importers and Exporters appeared jointly before the Standing Senate Committee on Finance in May 2001.

In addition, the CSCB established a Consultative Committee on AMPS, and we were a very active member of the AMPS Working Group, which was set up under CTACC.

We have consistently supported the development of an effective compliance regime – and, for us, effective compliance equals equitable and fair processes. It also means avoidance of hardship for business, especially for small business.

HOW WE HAVE MADE A DIFFERENCE

How We Have Made a Difference

- Since January, 2000 – raised more than 50 questions, exchanged more than 100 pieces of correspondence with CCRA
- Focused attention on policy which needs to be changed
- Some of our “wins”
 - copies of NPA's issued to brokers
 - exemption of softwood lumber permit requirements
 - streamlined process for Certificates of Origin
 - delay in implementing C003 monetary penalties (zero-rated)

Since January, 2000, the CSCB has raised more than 50 detailed questions and exchanged more than 100 pieces of correspondence with CCRA – customs brokers have been tireless in raising issues and making suggestions to improve AMPS.

One of the positive things which has resulted from all the discussion about AMPS is that we have identified a number of policy areas which need to be changed – because current policy doesn't reflect business reality. In these cases, it isn't the monetary penalty that is the problem in and of itself, it is the requirement for something that can't readily be done. A perfect example of this is C003.

Some of our “wins” are:

1. copies of NPA's will be issued to customs brokers. This is a “win” for everyone – importers, brokers and Customs.
2. we pointed out the need to exempt the softwood lumber permit requirements from the requirement to have a permit before export of goods (contravention 315).
3. we streamlined the process for compliance with respect to Certificates of Origin – email notification is now acceptable between a broker and client.
4. there has been a delay in implementing monetary penalties for the requirements under C003 (those penalties will be “zero rated”). We first expressed concern with C003 more than a year ago – because it includes requirements (such as date of direct shipment) which simply can't be met or can't be met without delaying the release of shipments.
5. we encouraged the establishment of review committees in all regions, following the model set up in Southern Ontario.
6. record keeping infractions will be applied “per audit” rather than “per instance”.

OUTSTANDING ISSUES/CONCERNS

Outstanding Concerns

- Need for greater transparency about implementation criteria.
- Need for collaborative mechanism for monitoring and evaluating AMPS.
- Need for commitment to identify and change policy requirements which do not reflect business reality.

Although we have supported AMPS in general, there are three important areas with which we have concern. And, unfortunately, it doesn't look as though our concerns will be effectively addressed or resolved before the implementation of AMPS on October 7th. These areas are:

1. We need greater transparency about the criteria which have resulted in the decision to implement on October 7th. For example, when we look at the latest statistics about NPA's issued, the Quebec region has issued half as many NPA's as the Atlantic region, but generated twice as much potential revenue. Does this mean that importers in Quebec are not as familiar with NPA's as importers in other parts of Canada? Also, the analysis of NPA's by contravention is not broken down by region. Surely it should be and that information should be made available to us.
2. We need – and have suggested - a collaborative mechanism between government and business for monitoring and evaluating AMPS after implementation. It appears this isn't going to happen, either. Because our association, and others, will be keeping a very close watch on what happens after October 7th, we will have parallel monitoring processes, rather than a forum for input and exchange of views with government. The process should be inclusive and we will continue to press for this. In the meantime, we will be working collaboratively with the Canadian Association of Importers and Exporters on a joint AMPS monitoring project.
3. We need a commitment from CCRA to resolve policy issues which do not reflect business reality. C003 is the perfect – but not the only – example. C274, with its ETA requirements is another. We expect to be actively involved in making concrete suggestions for improvements in the policy areas which need to be changed .

Penalties Applicable to Customs Brokers

- **C010**
- **C012**
- **C014**
- **C260 - C263**
- **C265-C267**
- **C269 – C272**
- **C336**
- **C342**

There may be some confusion about the penalties applicable to customs brokers, and it would be useful to take a few minutes to clarify what those are. Generally, Specifically, customs broker penalties are applied for infractions under the Customs Brokers Licensing Regulations. Let's look at these penalties by grouping them by penalty amounts.

PENALTIES: \$100, \$200, \$300

Penalties – 1st \$100; 2nd 200\$; 3rd and subsequent, \$300

- C014 Broker failed to provide importer or exporter with copy of customs accounting documents/information transmitted, for each transaction
- C260 Broker failed to immediately notify customs in writing of changes in the address of a business office at which he transacts business
- C261 changes in the legal or business name of the partnership or corporation

Penalties ... continued

- C262 ... changes in the membership of the partnership
- C263 ... changes in the officers or directors of the corporation
- C265 ... changes in the ownership of the business or corporation

There are several penalties at the level of \$100 for the first infraction, \$200 for the second infraction and \$300 for third and subsequent infractions. Most of these are housekeeping items – more specifically failure to notify Brokers Licensing of changes in the location or ownership of a customs brokerage firm.

PENALTIES: \$100, \$500, \$1,000

Penalties – 1st \$100; 2nd 500\$; 3rd and subsequent, \$1,000

- C336 Person failed to pay duties on goods accounted for under section 32(2) and 32(3) of the Customs Act.
- C342 Person (Importer / Broker) failed to transmit release information to the correct customs office.

A second group of penalties is at the level of \$100 for the first infraction, \$500 for the second infraction and \$1,000 for the third and subsequent infraction. These include failure to pay duties accounted for under the Customs Act and failure to transmit release information to the correct customs office.

PENALTIES: \$1,000, \$2,000, \$3,000

Penalties –

1st \$1,000; 2nd 2,000\$;
3rd and subsequent, \$3,000

- C226 Broker failed to immediately notify customs in writing of changes in the qualified officer.
- C012 Licensed customs broker transacted business as a customs broker at a customs office not specified by the licence.
- C267 Broker failed to account to a client for funds owed or refunded.

We then jump to \$1,000 for the first infraction, \$2,000 for the second and \$3,000 for the third and subsequent infractions. These are more serious customs broker infractions – failure to notify customs of a change in the qualified officer of a company, transacting business where a broker is not licensed, and failing to account to a client for funds owed or refunded.

PENALTIES: \$1,000, \$5,000, \$10,000 to \$25,000

Penalties –

1st \$1,000; 2nd 5,000\$;
3rd \$10,000; 4th and subsequent \$25,000

- C010 While transacting business as a customs broker, a broker failed to make available to an officer any records that he was required by the regulations to keep.
- C269 A customs broker failed to keep records and books of account indicating all financial transactions made while transacting business as a customs broker.
- C270 A customs broker failed to keep copies of each customs accounting document and supporting documents made while transacting business as a customs broker.

Finally, we have the penalties that reach the maximum \$25,000 level for 4th and subsequent infractions (after moving through \$1,000, \$5,000 and \$10,000 levels). Very recently, the application of penalties for these infractions was changed from a “per instance” to a “per audit” basis, but we do have some concerns if these penalties are rigorously applied, given the volume of documentation customs brokers deal with on a daily basis. These penalties include failure to make records available, as well as failure to keep records of financial transactions, and customs accounting documents and supporting documents.

(CONTINUED)

Penalties

... continued

- C271 While transacting business as a customs broker, a broker failed to keep copies of all correspondence, bills, accounts, statements and other papers received or prepared that related to the transaction of business as a customs broker.
- C272 While transacting business as a customs broker, a broker failed to keep separately, all of the records, books of account and copies of transactions referred to in paragraphs 13(1) (a) to (c) related to business transacted as a customs broker.

We have had some fun – or frustration, depending how you look at it! - with the contravention requiring records to be kept separately, under contravention C272. CCRA has said that a broker will have some discretion on how to maintain records separately (for those transactions completed for direct clients and those completed through a sub-agent). What is important is that brokers can produce separate records when asked, not that brokers necessarily have separately coloured file folders!

What Does This Mean

- So far, only 26 NPA's have been issued for these customs broker infractions.
- That is, 26 out of 9,300.
- Which is less than .3%
- We need to work with you on the other 9,274.

For these contraventions which apply to customs brokers, only 26 NPA's have been issued for these infractions as of July 31, 2002. That is, 26 out of 9,300. Put another way, that is less than 1/3 of 1%.

If you have seen the statistics about NPA's issued during the "grace period", you'll know that there are 9,274 other NPA's out there which we need to work on with our clients— even though these infractions may apply to carriers or warehouse operators, or others in the trade chain. We all need to work together to improve the end-to-end process.

Risk Management Matters

- Brokers' limited responsibility under AMPS
- Brokers depend on third party information
- Brokers' relationship is with their client only – not the exporter, carrier, etc...
- Importers must take an active part in ensuring that information supplied to their broker is accurate

As we work together to make improvements to the end-to-end process, we'll be having more conversations with clients and partners about risk management. More than ever before, risk management matters in your business, whether you are an importer or a customs broker.

As the previous slides have shown, brokers have limited liability under AMPS.

NOTHING HAS CHANGED!

Brokers' - and importers' – liability under the Customs Act will be no different on October 7th than it was on October 6th – but importer liability takes on new significance because of the potential for monetary penalties.

Brokers depend on third party information – and our means of getting that information is through our client – the importer. It is the importer that we have a relationship with, and it is the importer that must take an active part in ensuring that information supplied to the customs broker is accurate. If, as an importer, you don't do that today, you will have to start doing that after October 7th or run the risk of incurring AMPS penalties.

Communication is Key

- Renewed focus on communication between customs brokers and importers
- Potential to transform the relationship between customs brokers and importers
- Both customs brokers and importers will need to invest in compliance – how will that be done and what are the options?

Communication is the key to making compliance work. In the months ahead, there will be a renewed focus on communication between customs brokers and clients. That communication will result in shared information, and shared understanding of business practices.

AMPS presents the potential to transform the relationship between customs brokers and importers – but importers first need to stop thinking of the customs clearance function as a commodity and start thinking of it as a key element of a smart and prudent business strategy .

Both customs brokers and importers need to invest in compliance – and opening up the discussion about that investment is positive. How will importers achieve the level of compliance they need, what are the options they need to consider, and what value can the customs broker add to that process? Talk to your customs broker about a compliance plan.

Communication is Key

... continued

- Others in the supply chain will also need to be involved
- Escalation of “customs” issues to attention of senior management

And because AMPS affects the end to end process, others in the supply chain may also need to be involved in those discussions. Customs brokers are well positioned to facilitate this – because of what we do, we have thousands of relationships in the marketplace. We know how things work and we understand the business practices that today cause headaches, but tomorrow could cause result in financial exposure.

There is no doubt that, if it has not already done so, the implementation of AMPS will result in the escalation of “customs” issues to the attention of senior management. Compliance cannot become a priority without the commitment of senior management – the CFO’s, COO’s and CEO’s of business. And senior management has traditionally been uninterested in customs matters – although the focus on border management since September 11th last had begun to change that. AMPS will have a similar – and, we hope, a positive effect.

WHAT WE CAN EXPECT

What We Can Expect

- Continued use of Standard Trading Conditions
- Greater use of service agreements
- Pricing will reflect service levels
- More open discussion of liability issues (errors and omission insurance)
- More opportunity for collaborative, creative partnership between importers and customs brokers

What will happen in the marketplace as a result of the implementation of AMPS? These are some of the things we'll see:

First, there will be continued, and probably more extensive, use of Standard Trading Conditions which outline obligations between importers and customs brokers. The CSCB, with the involvement of our members and our legal counsel, has developed Standard Trading Conditions which are very useful.

There will be greater use of service agreements, which will outline commitments. This may be developed in conjunction with an overall compliance plan.

Pricing will reflect service levels. Can the current prices in the marketplace support compliance, for importers or for brokers? The simple answer is no. Importers can expect to have more discussion with their brokers about options and choices and value – a positive thing. The CSCB has developed a template of customs brokerage services which will be the basis for these discussions – we hope this will result in importers better understanding what service they will be getting for the business arrangements in place, and the price paid.

AMPS will also result in more open discussion of liability issues. Although many of our members are also freight forwarders and carry e&o insurance for the forwarding part of their business, the CSCB is also developing a customs broker e&o insurance coverage for our members.

Finally, there will be more opportunity for collaborative and creative partnerships between importers and customs brokers. As importers, you have to leverage the value of customs brokers' knowledge and expertise. As customs brokers, you have to respond with a commitment to excellence. The outcome will be a better way to do business, for everyone.

LAST SLIDE

“My Broker Did It – became
my partner in compliance”



So that when you say “My broker did it” – it will be good news for compliance and good news for your business.

Thank you.