



# The Importance of Complying with Customs Legislation

Canadian customs legislation sets out an Administrative Monetary Penalty System (AMPS) that is administered by the Canada Border Services Agency (CBSA). Under the AMPS, significant penalties can be levied against persons for failing to comply with or contravening the *Customs Act*, *Customs Tariff*, or any related regulations under those legislative acts.<sup>1</sup>

The AMPS is intended to ensure a level playing field and promote compliance by imposing a cost, in the form of monetary fines, for any instances of non-compliance in respect of commercial transactions. The fines serve as an alternative to harsher enforcement tools, such as seizure, forfeiture, and criminal prosecution—all of which remain available to the CBSA when warranted under the circumstances.

AMPS penalties are not limited to importers; they can be levied on an exporter, broker, warehouse operator, carrier, freight forwarder, or any other person found to be in contravention of the legislation. Note that any person hiring a customs broker remains responsible for the import or export transactions undertaken on their behalf and, as a result, may be subject to applicable penalties.

## Review Recommended

Business systems and procedures should be reviewed regularly to ensure customs compliance and reporting obligations are being met for all import and export activities. As part of this review, it may be necessary to consult with third-party service providers, such as customs brokers or consultants. Organizations should ensure that the correct tariff classification, origin, and valuation are used for all imports and exports. In addition, adherence to any applicable reporting or release requirements should be verified. Equally as important, organizations must ensure adequate supporting documentation is retained to support their compliance during CBSA verification procedures.

## Significant Penalties

AMPS penalties may be applied whenever non-compliance is detected, either at the border or during post-transaction verification procedures. Penalties vary depending on the severity of an infraction. Most AMPS penalties are progressive, with higher penalty amounts levied on subsequent instances of the same infraction, but penalties may also be flat amounts and, less often, a percentage of the value for duty.

Specific penalty amounts have been established using risk management criteria to evaluate the severity of an infraction, including its potential impact on Canada's national security and economy, the health and safety of citizens, and any international commitments by the federal government. Penalties range from a warning (with no fine) to a fine of up to \$8,000 for repeated offences of a serious infraction. The maximum penalty amount for a single contravention is \$25,000. As a matter of policy, the CBSA will typically apply only one AMPS penalty to a single instance of non-compliance, even if multiple infractions have occurred.



<sup>1</sup> This article summarizes information provided by the Government of Canada in Customs Memorandum D22-1-1, "Administrative Monetary Penalty System", published by the Canada Border Services Agency on May 8, 2020.

## Compliance History

Contraventions are tracked by the CBSA using an organization's customs business number (BN). Progressive AMPS penalties are subject to a record retention period of 12 or 36 months, depending on the contravention, and this is used to determine whether a penalty for a subsequent incident should be calculated at a higher level. Note that multiple occurrences of the same infraction identified simultaneously are generally assessed at the same penalty level.

In addition to raising potential penalty levels, a poor compliance record can draw increased CBSA scrutiny of an organization's activities. On the other hand, a strong history of compliance can make an importer eligible to participate in one of the CBSA's expedited processing programs.

## Common Issues

According to the CBSA, AMPS penalties are routinely levied for the following infractions:

- Failing to pay duty;
- Failing to provide required information;
- Failing to report goods;
- Unauthorized removal of goods from a warehouse; and
- Direct delivery of goods prior to proper release from customs.

## Interest and Further Penalties

Details on a contravention and the penalty amount are issued to importers in a Notice of Penalty Assessment (NPA – Form E650). AMPS penalties are in addition to any customs duty owing on related goods and will be subject to interest at prescribed rates (and potential further penalties) if the amount owing remains unpaid 30 days after the NPA date. Formal procedures are in place for organizations to request the reduction or cancellation of an incorrect or unfair AMPS penalty, and certain contraventions may be appealed to the Federal Court of Canada.

Further information on the CBSA's AMPS may be found in [Customs Memorandum D22-1-1](#). Please do not hesitate to contact your Ryan representative if you have any questions or concerns about your organization's customs compliance.



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