

## Reminder: Elimination of Paper Release Service Options

In its continuing efforts toward the implementation of phase three of the Advance Commercial Information (ACI) program, also known as eManifest, the Canada Border Services Agency (CBSA) is reminding importers that effective October 15, 2007, paper versions of the Release on Minimum Documentation (RMD) and the Pre-Arrival Review System (PARS) release service options will no longer be accepted. Both service options will still be available through EDI (electronic data interchange) transmission.

The CBSA also intends to phase out the Frequent Importer Release System (FIRST) release service option by January 2008. An alternative release option for importers currently using FIRST is the Customs Self Assessment (CSA) program, which provides approved importers with a streamlined clearance process for eligible goods.

ACI is based on the provision of electronic pre-arrival cargo information transmitted to the CBSA for risk assessment purposes. ACI will eventually include electronic pre-arrival importer admissibility data.

Currently, limitations exist to the eManifest program as electronic transmission is not possible in all release situations and locations. Some examples when a paper release must still be presented are:

- Goods subject to the requirements of another government department or agency that has not established an EDI link with the CBSA.

## Anti-Dumping Duty to Apply to Certain Copper Pipe Fittings

As a result of the findings of injury by the Canadian International Trade Tribunal (CITT) and in accordance with section 3 of the *Special Import Measures Act* (SIMA), anti-dumping duty will be applied to importations of certain copper pipe fittings. The copper pipe fittings affected originate in or are exported from the US, Korea, or China. Countervailing duty will also be applied to imports of certain copper pipe fittings originating in or exported from China.

The following goods are the subject of the CITT's findings, as defined in Customs Memorandum D15-2-50, dated August 1, 2007

- The customs invoice contains more than 999 invoice lines.
- There is more than one warehouse sub-location code per release transaction.
- The shipment is covered by multiple highway cargo control numbers.
- A paper Y50 form, *Reject Control Document*, has been issued by the CBSA for courier/low-value shipments.
- Goods are destined for a bonded warehouse.
- Goods are being released from a Queen's warehouse.
- E29Bs, value-included entries, and entered-to-arrived transactions.
- There is a CBSA, importer, and/or broker system outage.

Importers that have not implemented systems to use EDI by October 15, 2007, will experience delays in the release of their shipments as a fully completed "C" or "D" type entry will be required prior to release.

Will your company be in a position to make a smooth transition on October 15, 2007? KPMG can provide assistance in determining if the ACI program or the CSA program is best suited to your business requirements.

*"Solder joint pressure pipe fittings and solder joint drainage, waste and vent pipe fittings, made of cast copper alloy, wrought copper alloy or wrought copper, for use in heating, plumbing, air conditioning and refrigeration applications."*

The subject goods, when produced or exported by a company in the US, Korea, or China that has not been issued its own normal values by the CBSA, will have the export price of the goods advanced by 242.0 per cent.

Similarly, countervailing duty equal to 17.73 Chinese renminbi per kilogram will be applied to the subject goods from companies in China that did not provide sufficient information regarding their subsidy.

## More Information?

For more information on the articles in this newsletter or any of the services mentioned, contact a KPMG Trade & Customs professional.

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# Trade Matters

TAX

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## Re-Assessment Time Periods Clarified

The administrative process by which the Canada Border Services Agency (CBSA) assesses monetary penalties, under the Administrative Monetary Penalty System (AMPS), is designed to be fair, flexible, and transparent. Penalties are assessed based on the compliance history of the company and the severity of the violation.

However, importers should be aware that section 32.2 of the *Customs Act* requires importers to make corrections to a declaration within 90 days after the importer has "reason to believe" a declaration is incorrect and to pay any monies and penalties owing as a result of the correction. This applies to incorrect declarations of origin, tariff classification, and value for duty, regardless of whether or not additional duty is owed.

Should your company be subject to a verification review by the CBSA, the results of the verification constitute "reason to believe" under section 32.2 of the *Customs Act*. Failure to comply with the verification findings will result in the imposition of AMPS penalties.

### Reassessment Period (No Existing "Reason to Believe")

Where "reason to believe" does *not* exist prior to a verification review, the importer's previous 12-month fiscal period, from the date of the notification of the verification up to and including the end of the verification, becomes the reassessment period. The CBSA will issue a Detailed Adjustment Statement (DAS) for errors found in the sample transactions reviewed.

The "reason to believe" date is the earlier date of either the DAS or the date of the final report. It is the importer's responsibility to self-correct the same errors found during the verification, outside the sample, for the reassessment period identified above. AMPS penalties will not be assessed under these circumstances.

### Reassessment Period (Existing "Reason to Believe")

Where "reason to believe" *does* exist prior to a verification review, such as a previous ruling, previous CBSA verification or audit findings, or clear legislative provisions, the reassessment period is retroactive to a maximum of four years prior to the date of "reason to believe." The CBSA will issue a DAS, and AMPS penalties will be assessed on all errors found in the sample transactions. Importers are then responsible to self-correct all the same errors found outside the sample, back to the date of "reason to believe," and up to the date of the final report. Self-corrections will receive an AMPS penalty and the prescribed rate of interest will apply.

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## Customs Monitoring

Given the final report constitutes “reason to believe,” monitoring by the CBSA of the issues detailed in the report may begin as soon as six months after the date the final report is issued. Sample transactions are selected to verify the importer has been compliant since the findings of the verification were made known. The importer is advised of the results of the monitoring and penalties issued if necessary.

An example of a “reason to believe” penalty based on the results of a CBSA verification review is as follows:

Product Description	Previous “Reason to Believe”	Date of Reason to Believe	Date to Correct From (max. 4 years)
Heat Exchange Units	Legislative Provision (Named in the Heading)	Date is based on the accounting date of the transaction	Fours years from the date of the Final Report

  

Contravention Number	Contravention	Penalty
C082 (duty free goods)	Authorized person failed to make the required corrections to a declaration of tariff classification within 90 days after having “reason to believe” that the declaration was incorrect	1st: \$100 2nd: \$200 3rd and subsequent: \$400  There will be one penalty assessment of \$100 for each declaration not corrected within 90 days of having “reason to believe” to a maximum of \$25,000 for the assessment period. Date is based on the accounting date of the transaction

## Action Taken by the CBSA

Verification Sample Affected	Penalty Assessed	Self Adjustments 4-year period	Penalty on Self-Adjustments	Total AMPS Penalties
2	\$200.00	184	\$18,400	\$18,600

## KPMG Can Help

We strongly encourage importers to consider an annual customs compliance review as part of their annual business operations. A review may provide the right amount of assurance for your customs area and mitigate unforeseen customs duty, tax, and penalty assessments.

Finding and correcting compliance issues in advance of a verification review by the CBSA should enable an importer to avoid a negative audit assessment and unnecessary and costly monetary penalties.

## Canada-Costa Rica Free Trade Agreement (CCRFTA): Costa Rica Free Zone Regime

The CBSA recently updated Appendix A of Canada Customs Memorandum D11-4-27, *Canada-Costa Rica Free Trade Agreement (CCRFTA): Costa Rica Free Zone Regime*. Appendix A lists companies that benefit from the Costa Rica Free Zone regime. Merchandise imported from these companies is not entitled to the Costa Rica Tariff (CRT) preferential duty rate even if it qualifies as originating under the CCRFTA Rules of Origin Regulations.

The Costa Rica Free Zone regime is a group of incentives and benefits the government of Costa Rica awards to manufacturing and service companies that make new investments in the country on the condition that the subject goods are exported. Benefiting companies are effectively being subsidized; some benefits realized are import and export duty exemptions as well as income tax exemptions.

In accordance with the CCRFTA *Non-Entitlement to Preference Regulations*, listed goods, which may qualify as originating, are not entitled to the CRT if they have undergone operations in a specified Costa Rica Free Zone. Exporters and producers completing a CCRFTA Certificate of Origin are required to indicate in fields 1 and 3 whether they have benefited from the Costa Rica Free Zone regime.

Imported goods that have undergone operations by a company receiving benefits from the Costa Rica Free Zone regime must be entered under the Most-Favoured Nation duty rate or, if applicable, the General Preferential Tariff duty rate.

Importers are encouraged to consult the regulations prior to import to ensure compliance and establish that the proper rate of duty is applied to imported goods. Importers should also have procedures in place to ensure certificates of origin are reviewed and ensure fields 1 and 3 have been completed.

## China Alert—China Cuts VAT Export Refund Rates

China recently made adjustments to its value-added tax (VAT) export refund rate policy, affecting over 2,800 commodities. The adjustments cancel or reduce export VAT refund rates for products on the current list of commodities. The adjustments also introduced additional export VAT refund tax exemptions for certain products. The new export VAT refund rates are effective for products declared to Chinese customs on or after July 1, 2007. This means that profits of exporters in many industries will fall significantly. Canadian companies sourcing goods or conducting manufacturing in China could find this new policy significantly affecting their overall cost of goods exported from China.

For products declared to Chinese customs on or after July 1, 2007, the following adjustments to the export VAT refund rates have been made:

- Export VAT refund rates have been repealed for 553 commodities, most of which are produced by energy-inefficient methods, are highly polluting, or use scarce natural resources.
- Export VAT refund rates have been reduced for 2,268 commodities, most of which are considered to be derived from labour-intensive industries, potentially overheated industries or “friction” industries affected by international trade disputes.

- Export VAT refund rates have been fully repealed for 10 commodities; however, their export sale will still be treated as a domestic sale and an output VAT will be imposed. These commodities include peanuts, oil paintings, engraved plaques and postage stamps.

### Transitional Relief

Products declared to Chinese customs on or after July 1, 2007, will be subject to the new export VAT refund policy. The new policy also provides grandfathering provisions by phasing in the new export VAT refund rates for certain exports related to shipbuilding and overseas engineering projects, provided certain conditions are met.

## U.S. Customs and Border Protection Targeting “U.S. Goods Returned” of Subheading 9801.00.10

U.S. Customs and Border Protection (USCBP) is targeting, for enforcement purposes, merchandise entered under the Special Classification Provisions in Chapter 98 of the *Harmonized Tariff Schedule of the United States* (HTSUS), in particular subheading 9801.00.10. Subchapter 1 of Chapter 98 provides for “Articles Exported and Returned, Not Advanced or Improved in Condition; Animals Exported and Returned.”

To qualify for the duty-free rate under subheading 9801.00.10, the following conditions must be met:

- The articles are products of the United States;
- The articles have not been improved in condition or advanced in value while abroad;
- No drawback has been or will be paid; and
- No duty equal to an internal revenue tax is payable under subheading 9801.00.80 of the HTSUS.

In accordance with 19 CFR 10.1(a), articles valued over US\$2,000 that are entered under subheading 9801.00.10 must have the following documents filed with the import entry:

- A declaration by the foreign shipper; or
- A declaration by the owner, importer, consignee, or agent having knowledge of the facts regarding the duty-free claim.

USCBP is verifying not only whether the above-mentioned declarations are on file, but also the value declared on returned merchandise to

ensure compliance with 19 U.S.C. 1484 and 19 U.S.C. 1401a. Supporting documents are reviewed to ensure a clear description, referencing the goods to the import declaration has been provided.

Merchandise must be clearly marked with the name and address of the U.S. manufacturer. It is the responsibility of the importer of record to ensure the goods being returned have not been advanced in value or improved in condition by any manufacturing process or other means while abroad. In accordance with 19 CFR 10.1(b), when goods are not clearly marked, USCBP has the authority to request, in addition to the above-mentioned declaration, any of the following:

- A U.S. manufacturers’ affidavit;
- The U.S. export invoice;
- A copy of the export bill of lading or airway bill; or
- The reason for the export of the article.

The U.S. Customs Modernization Act and Section 484 of the U.S. Tariff Act require an importer of record to use reasonable care in filing information to USCBP. Importers must have internal controls in place to verify that articles being returned under subheading 9801.00.10 qualify for this special classification provision.

If your company is the importer of returned goods, it is imperative to implement procedures to maintain and produce any required customs documentation to support your claim.