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C&L Covers Customs Initiatives

The AMPS Review, the proposed 10 + 2 Security Filing in the U.S., and the PIP consultations generated discussion and many questions at the Customs and Legislation (C & L) Committee meeting held on February 14 at Siemens Canada.

AMPS Review

Shane Brown of Gottlieb & Pearson, who represents I.E.Canada on the Border Commercial Consultative Committee (BCCC) AMPS Subcommittee, reported on the subcommittee's last meeting held on January 30-31 in Toronto. Following are highlights from Shane's report:

-CBSA officials shared the format and content of a new quarterly report on AMPS penalties, which contains significantly more data than has been made available in the past. Subcommittee members provided comments on the presentation of the data, as well as the content. Once finalized, this and future quarterly reports will be made public. Participants in the C & L meeting offered further suggestions for the quarterly report which Shane will pass on to CBSA officials.

-CBSA officials have made significant progress with respect to the collapsing of AMPS contraventions. In order to simplify the AMPS penalty regime, the current 250 contraventions are being reduced by combining several contraventions into one where they present the same level of risk and are of a similar type. Details of CBSA's proposals could not yet be shared as this information is confidential.

-CBSA officials are continuing to work on backgrounders for AMPS penalties and are looking to the format used by Australian Customs for guidance.

-AMPS penalties for Advance Commercial Information (ACI) contraventions in the air and marine modes have been suspended until further notice. The application of AMPS penalties under ACI raises important questions. Carriers argue that they should not be penalized for transmitting inaccurate or false data to CBSA when they have no means of verifying the information. The approach that CBSA is contemplating is to only penalize carriers

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Emerging Issues in Customs Conference

Make sure to mark April 21-23 on your calendars and save those dates for I.E.Canada's 17th Annual Emerging Issues in Customs Conference.

Toronto Airport Hilton and promises to deliver the information and contacts Canadian importers and exporters need to stay on top of the ever-changing customs environment.

This year's event will be held at the

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CBSA Revamps Customs Penalties

The following article was written by Greg Kanargelidis, Partner, Blakes International Trade Group and the Commodity Tax and Customs Group and Elysia Van Zeyl, Associate, international trade and business law, Blake, Cassels & Graydon LLP. Greg can be reached at 416-863-4306 or greg.kanargelidis@blakes.com. Elysia can be reached at 613-788-2208 or elysia.vanzeyl@blakes.com.

The Canada Border Services Agency (CBSA) recently announced much-anticipated changes to the Administrative Monetary Penalty System (AMPS). The changes will result in a wholesale revamping of the existing AMPS penalty regime. While the current AMPS came into effect in October 2002, plans are in the works to essentially replace the existing rules with an entirely new and improved system which should be more acceptable to traders.

AMPS as an Incentive for Customs Compliance

AMPS is a comprehensive regime of sanctions intended to encourage compliance with trade and border legislation in Canada. Under this system, a monetary penalty can be assessed against any person who contravenes the Customs Act (the

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Greg Kanargelidis, partner, Blakes International Trade Group and the Commodity Tax and Customs Group.

Act), the Regulations, the Customs Tariff or who breaches a term of a licence issued under the Act. AMPS penalties may be levied on importers, exporters, brokers, carriers and warehouse operators, up to a maximum of C\$25,000 per instance. The penalties are intended to be corrective, rather than punitive.

The system uses a structure of graduated penalties, designed to reflect the severity and frequency of the contravention. Currently, there are 246 different contraventions, and these are listed in a document entitled the "Master Penalty Document". The Master Penalty Document contains the details of each contravention, including a "backgrounder" which sets out the manner in which each contravention will be addressed by the CBSA.

From a policy perspective, the introduction of AMPS was considered necessary for several reasons. The previous system for customs enforcement was perceived as outmoded and inflexible, with an overreliance on seizures and ascertained forfeitures. Furthermore, increased

adherence to the rules and classification structure in the Customs Tariff were essential for obtaining accuracy in the collection of trade statistics. Finally, a more accurate system for classifying and accounting for goods can be useful in developing appropriate trade policies and advantageous for international negotiations.

CBSA Review of AMPS

In late 2005, the CBSA initiated a review of the system in response to ongoing concerns raised by importers, exporters, customs brokers and CBSA staff. This review involved an examination of the complexity of the penalty structure, the number of penalties, ambiguities in the backgrounders and possible adaptations to accommodate stakeholder concerns regarding the operation of the system. As a result of this review, the CBSA has adopted a number of recommendations aimed at enhancing the system.

Refining the Number and Complexity of Contraventions

In addition to the overwhelming number of contraventions, it was felt that the penalties were unclear, overly complex and that there was a significant amount of duplication. In response to this concern, the CBSA has recommended that the current contraventions be collapsed and streamlined. The recommendations suggest the number of contraventions will decrease by 50% or more, and there will be increased clarity regarding what contraventions apply under certain circumstances. The CBSA will also be drafting new backgrounders pertaining to the modified contraventions. These new backgrounders will be drafted in plain language in an effort to ensure they are understandable to those without customs expertise.

The new contraventions and penalty amounts will reflect a risk-based approach. Contraventions



Elysia Van Zeyl, associate, international trade and business law, Blake, Cassels & Graydon LLP

will be assessed on the risk associated with the potential harm of non-compliance (i.e., health, safety, security and prosperity). The penalty amounts associated with each contravention will also be anchored by a risk-based analysis.

Introduction of Third Party Liability

Of particular importance to brokers and other service providers, the recommendations highlight an intention on the part of the CBSA to seek legislative changes authorizing the application of penalties to third parties. This recommendation is in response to situations under the current system where broker-error has resulted in penalty assessments against clients. Although an evolving practice is for brokers to pay the penalties assessed against their clients, the penalty remains as part of the client's compliance history. The current wording of the legislation does not permit the CBSA to levy penalties on parties that act on behalf of others with legal obligations under the customs legislation. Because the penalty remains as part of

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Shipping and Trade Horizons



Leo Ryan

Shipping and Trade Horizons, a Tradeweek column, is produced by Leo Ryan. The column addresses Canadian industry issues and trade developments of interest to our members.

Ice Exporting Success Story

Now and then, one discovers an export success story that is out-of-the-ordinary. On the other hand, it seems so quintessentially Canadian to carve a living out of ice, thanks to 80% of production exported to foreign markets for sometimes rather astonishing projects. Such is the substance of a family-owned enterprise, aptly-named Iceculture Inc., and based in Hensall, Ontario.

Just over a decade ago, Julian Bayley and his wife Ann converted an ice-carving hobby and sales of ice-punch bowls for local weddings into what became a \$5 million business and a world leader in the ice hospitality field. "It's all about the unusual appeal of living the ice experience," Bayley stated in a recent interview with this observer.

From the outset, he acknowledges, support from Canada's Export Development Corporation (EDC) in providing export insurance has been a critical element. "When we started shipping ice blocks to the

United Kingdom (first export order), our bank wanted security."

From a single machine the size of domestic dishwasher which could turn a mere two ice punch bowls a week, the company, with a staff of 50, now operates a manufacturing plant that produces 25,000 crystal clear, 300-pound ice blocks a year. It uses water from Hensall's town well and transforms it into icy wonders that are shipped by refrigerated containers to the far corners of the world. First, they are generally trucked to Toronto and then railed to such ports as Montreal, Halifax and Vancouver before going on ocean voyages to Europe, Asia, the Middle East and Africa.

The Bayley children are very involved in the family affair. Heidi Bayley runs the carving services division. Her sister, Christine Rose, heads the sales team and looks after major corporate accounts. Sam Bayley manages the division involving fully-automatic ice-carving equipment and exclusive sculpture-packaging machinery.

Icculture offers a wide variety of products - from caviar-serving trays at Elton John's English manor to permanent ice lounges in Australia, New Zealand and South Africa, corporate logos encased in ice, the Wachovia Ice Bridge in New York's Rockefeller Center and sculptures for such world events as the Super Bowl in the United States. It has worked closely with NASA by creating ice projectiles used for tests in the shuttle return-to-flight program.

Ice hotels, ice lounges, ice bars. What had not existed, until last June, was the world's first ice restaurant. And where else would it be located except in Dubai, the land of architectural extravagance!

Not surprisingly, the first eating establishment of its kind is within

proximity of another Dubai creation: Ski Dubai. The Chillout restaurant is the brainchild of the Sharaf Group which has formulated plans for eight similar restaurants in Qatar, Bahrain, Saudi Arabia, Kuwait, Delhi, Singapore and Malaysia.

Delivering the ice blocks to Dubai by refrigerated containers was a 7,000-mile ocean journey which took a month. On site, an eight person Iceculture crew assembled the restaurant.

Powerful freezers maintain room temperature below freezing point, and diners wearing special warm capes and seated on ice sofas and tables are served cold dishes and sushi for a relatively short meal. No alcohol. Incorporated in the ice walls are ice and snow portraits of Arabian dancers. And at the entrance a large portrait of the ruler of Dubai, Sheikh Mohammed Bin Rashid Al Maktoum greets the visitors.

A popular attraction? You bet. The Dubai restaurant made out of ice exported from Canada draws up to 1,500 tourists a week...

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CBP Proposed Tariff Changes

Two recent proposals from U.S. Customs and Border Patrol (CBP) have the potential to drastically affect the way companies that import goods into the U.S. do business.

The first proposal is to eliminate the use of a tariff provision that permits the duty-free return to the U.S. of goods stored at overseas distribution centers, many of which are located in Canada and Mexico. Currently, companies can import certain goods (duty paid and some duty-free) into the U.S., export them under a 'bailment' agreement to a

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where they had accurate and true data but failed to transmit that data accurately. CBSA would also allow corrections for unintentional and non-negligent overages and shortages as a means of fostering the provision of quality data. Shane noted that CBSA appears to be listening to the arguments made by I.E.Canada and others in the trade community that CBSA should treat AMPS contraventions as strict liability - which would allow a due diligence defence - rather than absolute liability offences. Kristina Bryson of IBM, who represents importers on the eSPN End State/Design Working Group, commented that the working group is addressing how corrections will be handled under ACI and this will impact how AMPS penalties are applied.

-CBSA officials also shared documentation with respect to Penalty Reduction Agreements, which will be continued but modified, and the issue of volumetrics.

Minutes of the BCCC AMPS Subcommittee meeting will be shared with the C & L Committee as soon as they become available, together with related documents. CBSA officials will also be providing a report at the BCCC meeting in Ottawa on February 26-27th.

10 + 2 Security Filing

On January 2, 2008, CBP published a Notice of Proposed Rulemaking (NPRM) requiring importers and carriers to electronically submit additional information on marine cargo before it arrives in the U.S. Under this new Security Filing, known as 10 + 2, importers will need to provide 10 (actually 11) additional data elements to CBP, and carriers will have to provide two additional data elements. The additional data elements required from importers that will present particular challenges are the manufacturer name and address, the container stuffing location, the consolidator

name and address, the Harmonized Tariff (six digits), and the master and house bill of lading numbers.

In addition to impacting imports into Canada (in bond or otherwise) through the U.S., it also has implications for foreign cargo remaining on board (FROB). In the case of in bond shipments, bond filers will be responsible for ensuring the filing of five data elements at least 24 hours prior to vessel load for Immediate Exports (IE) and Transportation and Export (T & E) entries. These five data elements are: the booking party name and address, the foreign port of unloading, the place of delivery, the ship to name and address, and the Harmonized Tariff (6 digits). In the case of FROB, the carrier will also have to provide these same data elements to CBP.

Members raised many concerns about how the new security filing will impact Canadian importers. For example, in the case of FROB, there is concern that Canadian bound freight will remain at the foreign port until the carrier receives from the importer the harmonized tariff classification causing significant delays. The HS classification will be required for all invoice lines, information that is not readily available to the carrier or the freight forwarder. Differences in tariff classifications applied in the U.S. and Canada will also create confusion in providing instructions to foreign suppliers in order to satisfy Canadian and U.S. customs requirements.

It is anticipated that the final rule will be published in late spring or early summer with a 90-day phase in period, although the trade community is requesting a longer period. More information on the 10 + 2 security filing is available at: http://www.cbp.gov/xp/cgov/import/carriers/security_filing/.

I.E.Canada is forming a working group to prepare its submission on

the NPRM before the March 18, 2008 deadline.

Proposed PIP Transition Strategy

Carol Osmond, I.E.Canada's senior policy advisor, provided a brief update on the consultations on the proposed changes to the Partners in Protection (PIP) program. (See Tradeweek, January 31, 2008.)

Much of the discussion focused on CBSA's proposed transition strategy. Current PIP members will not be grandfathered into the new program, which comes into effect on June 30, 2008. Instead, existing PIP members will have to re-apply for the PIP program by December 31, 2008 by completing and submitting their Security Profile to the CBSA. CBSA proposes to update the PIP web site with the finalized Security Profile(s), containing the minimum security requirements, by March 31, 2008. Applications will not be accepted for the new program prior to June 30, 2008. (Applications under the old program will only be accepted up to March 31, 2008.)

Some I.E.Canada members are currently participating in a pilot project with CBSA to obtain membership under the new PIP program. Members generally agreed that six months is sufficient time to reapply for the PIP program. However, the question has been raised whether applicants will have to have all the security measures in place at the time they submit their applications or whether they may submit an action plan to meet some of the new measures that will be required. This is an issue that I.E.Canada will raise in its submission to CBSA by the February 20, 2008 deadline. A copy of the proposed transition strategy is available at: www.iecanada.com/mis/transitionstrategy.pdf

I.E.Canada thanks Carol Buckton, Siemens, for hosting the meeting, and Shane Brown for his presentation.

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the client's compliance history, it can lead to elevated sanctions against the client for any future instances of non-compliance. The intent behind this proposed revision to AMPS is to ensure that importers and exporters will not be adversely affected by contraventions for which they are not at fault.

The details of how third party liability will operate in practice have not yet been determined. There is speculation that a Notice of Penalty Assessment (NPA) will continue to be issued initially against an importer. However, when the third party voluntarily accepts responsibility for the error, the NPA will be "corrected" to list the name of that third party, rather than the importer. What remains to be seen is the process for resolving situations where both the third party and the importer deny liability for the non-compliance.

Volumetrics Pilot Tests

Due to a concern that certain importers, exporters and transporters are more vulnerable to AMPS because of the high volumes of customs documents prepared and calculations and declarations made, requests have been made for certain accommodations based on a high percentage of compliance. As a result of these requests, the CBSA will be exploring ways to introduce volumetrics in the AMPS to account for clients with exemplary compliance records.

The volumetrics pilot test will take into account the rate of compliance, over a defined business period, relative to the total amount of trade activity. This should be welcome news particularly to couriers and other carriers.

Streamlining of Appeals Process

A measure that will provide some relief to those who have received an NPA under AMPS, is the CBSA's recommendation for streamlining of

the appeals process. This is in response to a concern amongst those affected that the timeframes between the NPA and a final decision were simply too long. This delay resulted in a financial impact for those affected where the penalty was upheld a significant amount of time after its issuance.

Certain timeframes established by legislation (e.g., a person who receives an NPA has 90 days to request redress review under section 129(1) of the Act) are unlikely to change. However, there will be an internal effort by the Recourse Directorate to speed up the timeframes associated with delivery of decisions by the CBSA and by the Minister.

Creation of a National Framework to Review AMPS Penalties

All customs regions in Canada originally had a committee to review AMPS penalties. However, concerns were raised that this decentralized system introduced the potential for inconsistencies between regions. Thus, the CBSA recommended the establishment of a National Framework. The National Framework will be used in all regions as a means of achieving consistency and accuracy in the review of AMPS penalties. Not every penalty will be reviewed pursuant to the National Framework. Further, the degree of review will depend on the level of risk associated with the penalty. The anticipated date for implementation of the National Framework is April 2008.

Publication of Quarterly Reports

Another one of the recommendations proposed by the CBSA is the publication of quarterly reports. These reports will be used to monitor, analyze and report the penalties assessed under AMPS. The reports will provide statistics, examine trends and make recommendations for future improvements. Public versions of these reports will be

made available via the CBSA's Web site. This is part of an effort by the CBSA to provide AMPS stakeholders with greater information. The first of these quarterly reports is expected to be published in April 2008.

Look For Changes in 2008

It will take time for the recommendations proposed by the CBSA to be fully implemented. A number of technological adaptations must be made to CBSA's automated system in order to accommodate the new contraventions. Legislative changes, third party liability for example, will take some time to review and approve. Further study is necessary in some areas, the volumetrics test pilot for example, before a decision can be made as to the measure's viability. It is expected that these changes will be rolled out starting in 2008 and extending into 2009.

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foreign warehouse facility, and then return them to the U.S. duty-free.

The second proposal would eliminate the First Sale Rule, which is an import valuation method that allows for significant duty savings on internationally sourced goods. Under The First Sale Rule, the value of the first sale in a series of sales transactions is the price used to appraise the value of imported merchandise. CBP is proposing to use the price paid in the last sale occurring before the goods were brought into the U.S. Typically, the first sale price is significantly less than the last price paid by the U.S. buyer, meaning that U.S. imports would face higher duties, resulting in higher prices for U.S. consumers.

In both cases, the proposed actions would reverse nearly 20 years of CBP policy and practice and impose burdensome costs on importers, re-

CBP, cont'd on pg. 6

I.E.Canada Facilitates Intergovernment Meeting

On February 20, officials from Canadian and U.S. government food agencies and industry will meet at I.E.Canada's Food Forum to discuss priorities and share information.

The Food Forum is an annual event, providing businesses with the opportunity to hear the latest from Canada's food regulators, learn best practices from the industry leaders, and network with regulatory officials. This year's agenda will feature a strong focus on compliance.

Critical to Canadian businesses is the issue of getting food products across the border into the United States. The Food Forum is the only venue that brings decision makers from government regulatory bodies in both the U.S. and Canada together to discuss the implications of regulatory changes on the movement of goods across the border.

As well, I.E.Canada has been able to facilitate an intergovernment meeting among, Health Canada, Canadian Food Inspection Agency and U.S. Food & Drug Administration.

Companies interested in taking advantage of this unique Forum can still register by contacting conference@iecanada.com, or by calling 416-595-5333 ext. 37.

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Last year's outstanding slate of speakers touched on all the major CBSA programs, including Partners in Protection (PIP), Automated Commercial Environment (ACE), and Customs Self Assessment (CSA). This year's program will feature a strong focus on compliance. Partici-

pants will hear from industry and government leaders, have the opportunity to attend practical, hands-on workshops, and network with customs leaders.

For companies interested in promoting their services and/or products through the tradeshow, please contact Jason at conference@iecanada.com. For association members who wish to provide input into the program, or for sponsorship opportunities, please contact Fée Kiessling, email: fkießling@iecanada.com, or by phone at 416-223-7072.

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tailers and consumers.

I.E.Canada's Quebec Chapter is holding a seminar to discuss these proposals. Sponsored by Omnitrans Inc., the seminar will be held on February 27 at Ruby Foo's Hotel in Montreal. Leading the discussion is senior attorney Gerald B. Horn of international trade law firm, Sandler Travis & Rosenberg, P.A.. The law firm is leading separate industry coalitions that are fighting these proposals on administrative, legislative and judicial grounds.

For information or to register, contact Geoff Bush, 514-318-3924 or email gbush@iecanada.com.

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If you would like to participate in the working group preparing the submission on the 10 + 2 security filing or have questions regarding any of the issues addressed in this article, please contact Carol Osmond at cosmond@iecanada.com.

New Members!

The following organizations joined I.E.Canada in January. We welcome our new members!

AXYZ Automation

Derek Jackson
Burlington, ON

EZFTZ

Philip Ewing
President
Rochester, NY USA

InterDesign, Inc.

Susan Malames
Import/Export Manager
Solon, OH USA

Johnson And Johnson Medical Products

Tricia Poitras
Logistics Specialist
Markham, ON

Mullen Group Inc. Canadian Dewatering LP (a limited partnership of Mullen)

Sandra Perrigo
Director of Border Services
Edmonton, AB

National Bank of Canada

Luc Fournier
International Trade Manager
Mississauga, ON

Ranger Express Forwarding

Jessica Bryan
Sales Coordinator
Mississauga, ON

Savino Del Bene Corp. (Canada)

Giuseppina Miglietta
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