

KWE CANADA COMPLIANCE

MEMO 2010 . IX

1. **CUSTOMS AUTOMATED EXPORT DECLARATION:** Statistics Canada and the Canada Border Services Agency (CBSA) released an updated version of the Customs Automated Export Declaration, CAED for short, on September 17, 2010. This is version 10.50. The CAED gives registered exporters and their agents an opportunity to report exported goods electronically, rather than on paper. This is an easy and inexpensive alternative to using the paper form

CAED users are warned that they must use [this latest version 10.50](#) (or a prior version, 10.00) or the export report will not be acknowledged.

2. **WHEAT PRODUCTS TARIFF RATE QUOTA:** The under access Tariff Rate Quota (TRQ) for wheat products will be exhausted by October 15, 2010. All wheat products which are contemplated under items 162 through 181 of the Import Control List (ICL) must be accounted for on or before that date, or be subject the above access TRQ rates until the quota re-sets in the new year. Note that a shipment of subject goods in transit to Canada on 15 October, 2010, or even released from customs control into Canada but as of that date not officially accounted for, will be subject to the appropriate over access rate.

The TRQ system provides for low, so-called under-access duty rates for certain agricultural commodities and products (among other things) *up to* a threshold quantity of imports in the year. After this quantity has been imported, the under access rates shut down and the higher — sometimes prohibitively high — over access rates come into effect. It is, accordingly and obviously, in the interest of the importer of the subject products to try to import such goods during the time the under-access rates are available.

3. **EMANIFEST:** The implementation of eManifest in the highway mode, scheduled for September, 2010, has been delayed. The Electronic Data Interchange (EDI) testing process encountered some problems with the system, which requires carriers to transmit advance cargo and conveyance data. However the eManifest EDI functionality for road carriers should be available by October 31, 2010.

4. **ADMINISTRATIVE MONETARY PENALTY SYSTEM (AMPS) PENALTY REINVESTMENT AGREEMENT (PRA):** This is only new in name, replacing the previous Penalty Reduction Agreement, so-called. In any event the re-naming may occasion a revisit of [the PRA remedy](#), which allowed for AMPS penalty reductions in those cases where the offense was committed as a result of a fault in the penalized

party's Commercial Information Systems (CIS). This is arguably a very broad designation, one which might cover a whole spectrum of errors and omissions, *and offenses*. But if the penalized party can show investments it has made in its CIS that would serve to preclude the offense happening in the future, the Crown, under a PRA, would contemplate reducing the subject AMPS penalty or penalties.

If this remedy is whole-heartedly embraced by the CBSA, it might provide a very useful fig leaf for its decision to treat AMPS offenses as "absolute liability" offenses in considering appeals therefrom. Absolute liability offenses are those in respect to which a defense of "due diligence" is irrelevant; in contrast, "strict liability" offenses are those wherein a defense of "due diligence" may succeed. See article 5 in KWE Compliance Memo 2010.VII, which raises this issue concerning a case that went to the Federal Court of Canada (*Jean-Pierre Samson v. Minister of National Revenue*, 2007 FC 975).

Seen in this light — and always provided the CBSA will adopt a broad and liberal construction of what constitutes a Commercial Information System — the PRA would in effect walk-back the CBSA from its rigid (and wrong) position that AMPS offenses are absolute liability offenses. That is, it would give the penalized party a chance to recover some or all of the penalty paid if it could be shown *after the fact* that all steps and investments necessary to preclude the future commission of the offense (i.e., "due diligence") have been taken and made.

5. CERTAIN WHOLE POTATOES & ANTI-DUMPING DUTY: The Canadian International Trade Tribunal (CITT) issued an order on September 10, 2010 extending the imposition of anti-dumping duties through another anti-dumping cycle on certain whole potatoes originating in the U.S. for use or consumption in British Columbia.

6. GRACE PERIOD FOR ACI REPORTING OF U.S. FREIGHT REMAINING ON BOARD (FROB) CARGO: The exemption for ACI notification of US-loaded FROB cargo has been extended to 31 December, 2010. See [Customs Notice 10-007](#).

7. PET FOOD: Import policy on the import of pet food and treats and chews containing animal products or by-products has been amended. See the [Pet Food Program](#) and [this policy statement](#).

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