



WORLD CUSTOMS ORGANIZATION

1

ATF Article 6 : Penalty and Voluntary Disclosure

9 July 2014

Table of Contents



Disciplines on Fees and Charges

Penalty Disciplines and Voluntary Disclosure

Voluntary Compliance Framework

Client Segmentation

Structure of Voluntary Compliance Frameworks

Voluntary Disclosure Programme

Data Quality

1. Disciplines on Fees and charges

General Disciplines

- Information on fees and charges shall be published and include.
 - the fees and charges that will be applied;
 - the reason for being imposed;
 - the responsible authority;
 - and when and how payment is to be made.
- An adequate time period shall be accorded between the publication of new or amended fees and charges and their entry into force.
- Member shall periodically review its fees and charges with a view to reducing their number and diversity, where practicable.

Specific Disciplines

- Fees and charges shall be limited in amount to the approximate cost of the services rendered.

2. Penalty Disciplines & Voluntary Disclosures

Penalty Disciplines

- The penalty shall be imposed **only** on the person responsible for the breach.
- The penalty shall **depend** on the facts and circumstances of the case and shall **be commensurate** with the degree and severity of the breach.
(Paragraph 3.3) → [RKC](#)
- Member shall maintain measures to avoid :
 - Conflict of interest in the assessment and collection of penalties and duties
 - Creating an incentive for the assessment or collection of a penalty that is inconsistent with paragraph 3.3
- When a penalty is imposed, and **explanation in writing** should be provided.
 - the nature of the breach;
 - the applicable law, regulation or procedure;
 - the amount or range of penalty for the breach.

RKC General Annex Std 3.39 :

The Customs shall not impose substantial penalties for errors where they are satisfied that such errors are **inadvertent** and that there has been **no fraudulent intent** or **gross negligence**. Where they consider it necessary to discourage a repetition of such errors, a penalty may be imposed but **shall be no greater than is necessary for this purpose**.

RKC Specific Annex H Std 24:

Where untrue particulars are furnished in a Goods declaration and **the declarant can show that all reasonable steps had been taken to provide accurate and correct information**, **the Customs shall take that factor into account** in considering the imposition of any penalty.

RKC Specific Annex H Std 25:

Where a Customs offence occurs **as a result of force majeure or other circumstances beyond the control** of the person concerned and **there is no question of negligence or fraudulent intent** on his part, **no penalty shall be applied** provided that the facts are duly established to the satisfaction of the Customs.

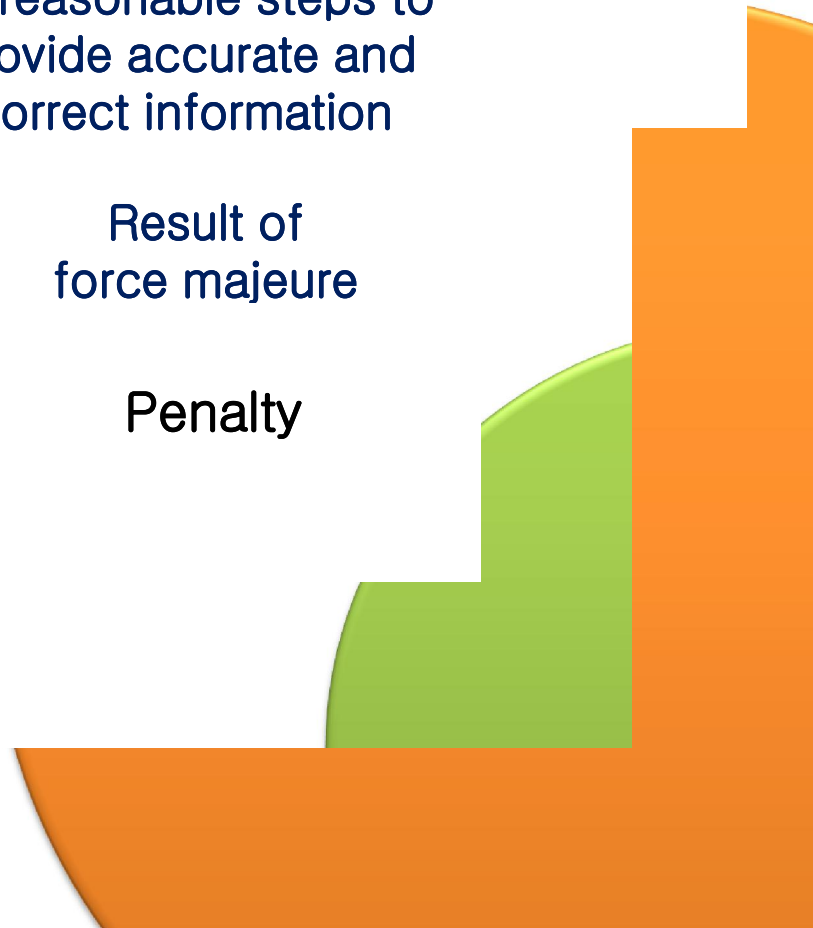
2. Penalty Disciplines & Voluntary Disclosures

Inadvertent and no fraudulent intent

All reasonable steps to
provide accurate and
correct information

Result of
force majeure

Penalty



2. Penalty Disciplines & Voluntary Disclosures

Voluntary Disclosures

- [Article 6 : 3.6.]

When a person **voluntary discloses** to a customs administration the circumstances of a breach **prior to the discovery** by the administration,

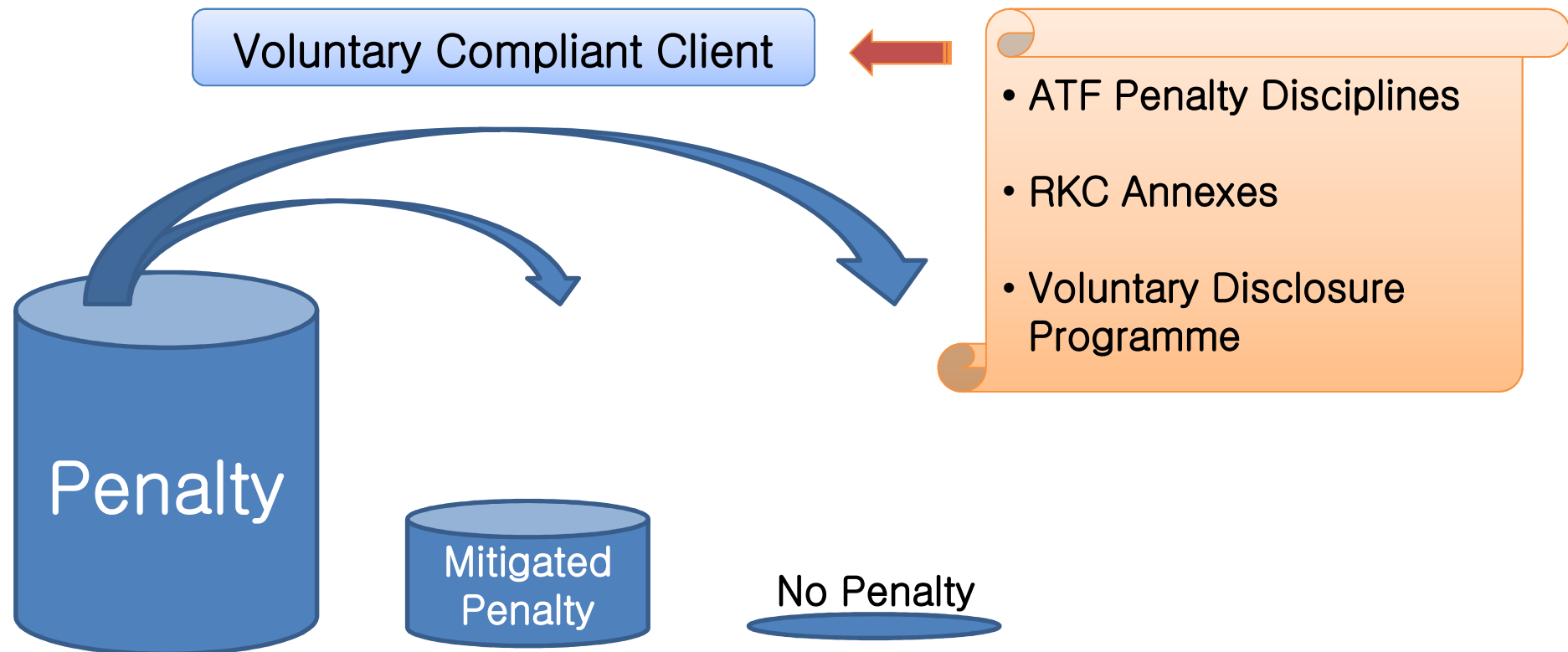
→ the Member is encouraged to **consider this fact as a potential mitigating factor** when establishing a penalty for that person.

- [Article 12(Customs cooperation) : 1.1.]

Members agree on the importance of:

- ensuring that **trader are aware of their compliance obligations**;
- encouraging **voluntary compliance to allow importers to self-correct without penalty** in appropriate circumstance;
- and **applying compliance measures to initiate stronger measures for non-compliant traders**.

2. Penalty Disciplines & Voluntary Disclosures



(ATF) The penalty shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.

3. Voluntary Compliance Framework



Objective

- Voluntary Compliance Framework(VCF) aims to:
 - improve the level of voluntary compliance by traders;
 - and **creates the conditions** necessary to facilitate voluntary compliance as the most cost effective and efficient approach.

Effect

- Helping traders comply voluntarily and correctly with Customs law, regulations or Customs' requirements.
 - Decreasing Customs' burden like inspection, efforts to improve data quality.
- VCF can make all customs procedure **more effective, more efficient and more transparent**. In addition, it can **increase revenue collection**.

4. Client Segmentation



Objective

- Customs should strive to continually **monitor** and **assess how clients respond and comply with requirements** related to customs procedures.
 - The instances of noncompliance will range from entirely innocent mistakes to blatant fraud or other intentional illegality.
- For the framework to be effective, it will **have to be tailor-made to different categories of clients.**

Segmentation

- Customs clients can be divided into four broad-based categories (WCO Risk Management Compendium)
 - (1) those who are **voluntarily compliant**;
 - (2) those who **try to be compliant but do not necessarily always succeed**;
 - (3) those who **will avoid complying if possible**; and
 - (4) those who **deliberately do not comply**

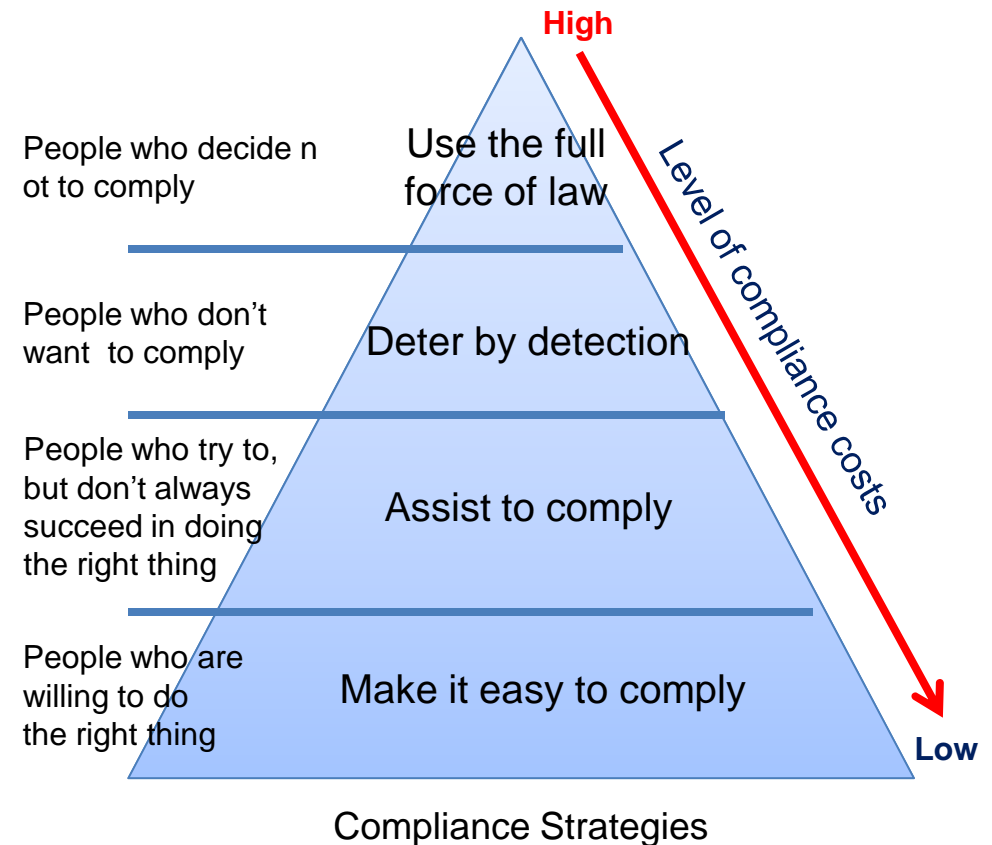
4. Client Segmentation

Best Practice for Segmentation & Compliance Strategies

Canada's Model

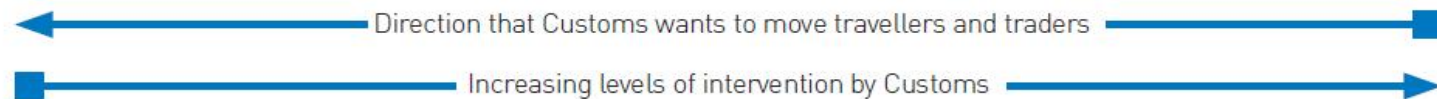


New Zealand's Model



WCO Customs Risk Management Compendium (Compliance management model) 42

	RISK LEVEL			
	LOW ←			→ HIGHT
Client Categories	Voluntary compliance People who want to comply	Assisted compliance People who try to comply, but don't always succeed	Directed compliance People who will avoid complying if they can	Enforced compliance People who deliberately do not comply
Client Behaviours	<ul style="list-style-type: none"> • Voluntary compliance • Informed clients 	<ul style="list-style-type: none"> • Attempting to comply • Uninformed clients 	<ul style="list-style-type: none"> • Resistance to compliance • Will avoid if possible 	<ul style="list-style-type: none"> • Criminal intent • Illegal activity
Customs' Competencies	Interventions			
Information High quality, timely, and accurate information about the arrival and departure of all persons, goods and craft	<ul style="list-style-type: none"> • Advanced cargo/passenger/craft information (in and out). • Monitoring of physical movement of all people, goods and craft across (in and out) the border 	Patterns of non-compliance by: <ul style="list-style-type: none"> • Industry, product, location, ethnicity, destination or port of origin • Type of non compliance (e.g., incorrect documentation) 	<ul style="list-style-type: none"> • Profile of individual non-compliant traders/travellers • Identification of specific compliance problem (e.g., bad systems, poor data entry etc) 	<ul style="list-style-type: none"> • Profile and ongoing intelligence (on and offshore) about offenders/potential offenders and their associates
Assessment Assessment of the level of risk posed by arriving and departing people, goods and craft	<ul style="list-style-type: none"> • FrontLine Pax/Goods staff intuition • Intelligence profiles • Statistically valid random checks 	<ul style="list-style-type: none"> • Comply information on client behaviours • Identify and monitor compliance trends/patterns 	<ul style="list-style-type: none"> • Problem solving approach to specific compliance problems • Investigation 	<ul style="list-style-type: none"> • Assess risk and information needs in relation to seriousness of offence • Investigation
Action Actions required to mitigate identified risk(s) without unduly disrupting legitimate trade and travel	<ul style="list-style-type: none"> • Compliance programmes (e.g., FrontLine, Call Centre) • Education and advice • Visible deterrence • Cargo and baggage screening 	<ul style="list-style-type: none"> • Targeted compliance guidance • Punitive sanctions • Rolling audit programme • Increased attention 	<ul style="list-style-type: none"> • Deter by detection and surveillance • Comprehensive audits • Prosecution 	<ul style="list-style-type: none"> • Pre and post clearance interventions • Comprehensive audits • Passenger/cargo searches • Prosecution



5. The Structure of VCF



Focus Client

- This VCF focuses on the clients of types (1), (2).
 - * But it could be applied to Type (3) clients as well if they show the necessary improvement to be changed into higher level clients (type 1 or 2).
 - It's important to steer Type (3) client towards Type(1) (2).
- High Risk client (Type 4) should be continuously managed by enforced compliance

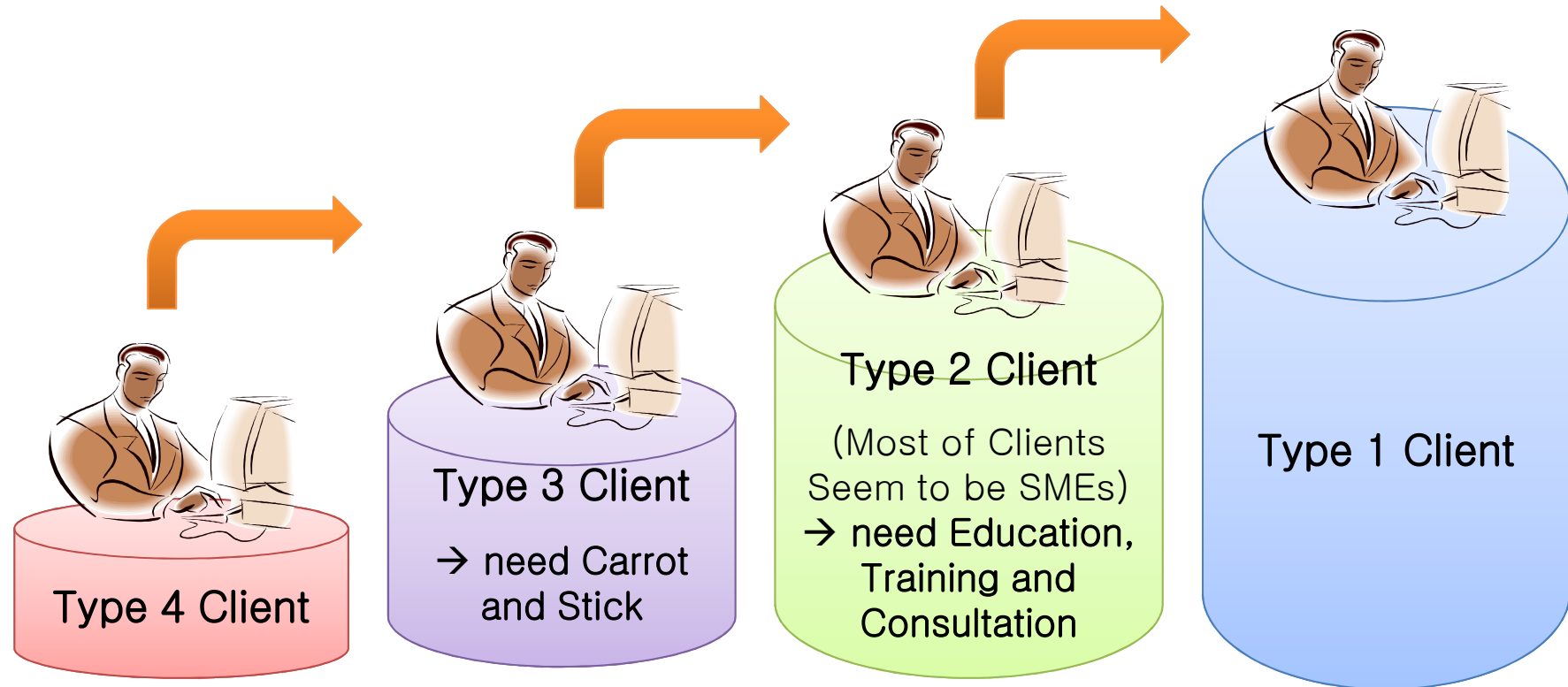
Basic Direction

- Under the VCF, the strategy is to create a trend away from enforced compliance towards informed compliance.

The Structure

- The structure of VCF composes three general aims.
 - (1) Decreasing Compliance Cost;
 - (2) Increasing Incentives on Compliance; and
 - (3) Increasing Probability of Exposure

5. The Structure of VCF



5. The Structure of VCF

Voluntary Compliance Framework

Decreasing Compliance Cost

- Decreasing Tariff Rate
- Clarification & Simplification of Customs Procedure
- Advance Ruling

Incentives on Voluntary Compliance

- Building Customs to Business Partnership
- simpler clearance and fewer inspections for V C
- Support concerning tax payment for SMEs
- Voluntary Disclosure Programme

Increasing probability of Exposure

- Effective Risk Management
- Information exchange through GNC

More effective, More efficient and More transparent with [Data Quality](#)

5. The Structure of VCF



(1) Decreasing Compliance Cost

- **Decreasing Tariff Rate**
 - Low tariff rates can reduce the incentive of circumventing customs requirements.
- **Clarification and Simplification of Customs procedure**
 - Ambiguous regulations and complicated customs procedures can create loopholes and lead traders to attempt tax evasion.
- **Advance rulings**
 - Advance rulings facilitate the declaration, and consequently ease the release and clearance process, as e.g. the classification of the goods has already been determined in the advance ruling.

5. The Structure of VCF



(2) Incentive on Voluntary Compliance

- Building a Customs to Business Partnership
 - A good relationship between Customs and Business can **build the trust** required **to create the conditions** for a successful voluntary compliance.
 - The private sector **plays a major role** in border management.
 - (Consultation) Customs can develop tools and mechanisms to consult with private sector stakeholders about reform needs and initiatives.
 - (Collaboration) Customs authorities can partner with the private sector to encourage compliance with trade controls and procedures.
 - **Publication and availability of information** → help clients to get better understanding.
 - **Education(E), Training(T) and Consultation(C)** → For effective E. T. C., Customs have to **build an adequate communication mechanism with clients, particularly with Type (3) clients.**

5. The Structure of VCF



(2) Incentive on Voluntary Compliance

- Simpler clearance, Fewer inspections for voluntary compliant client
 - The mitigation for the voluntary compliant clients could include **simpler customs clearance, fewer customs inspections.**
 - Customs can **concentrate their capacity on non-compliant clients.**
- Support concerning tax payment for SMEs
 - SMEs have a difficulty with paying taxes. → Supporting programme such as **deferment of payment and payment in installments** can help them and facilitate their voluntary compliance.
- Voluntary Disclosure Programme [. Voluntary Disclosure Programme](#)

5. The Structure of VCF



(3) Increasing the probability of exposure

- Increasing the probability of exposure will make it difficult for traders to try not to report or underreport due to raised risk of discovery.
 - Increasing the probability of exposure can be achieved **by effective risk management and information exchange** through the GNC.
- **Effective Risk Management**
 - Effective risk management allows Customs to **concentrate on high risks**, therefore, it will increase the probability of exposure.
- **Customs-to-Customs Information exchange**
 - At bilateral and multilateral levels, Customs administrations continue to work toward arrangements and agreements that fully allow for sharing of information in the most effective way possible.

6. Voluntary Disclosure Programme



(1) Definition and Effect

- (Opportunity of self-correct without Penalty)
 - Voluntary Disclosure Programme (VDP) gives clients a chance to **correct** inaccurate or incomplete information or to disclose information clients have not reported during previous dealings with Customs **without penalty** in appropriate circumstance.
 - VDP can **decrease the burden** of customs' inspections and **increase the revenue** from customs duties and other indirect taxes.

(2) Key Element

- Process for making voluntary disclosure
- Future compliance activities
- Penalties and Interest
- Criminal Prosecution

6. Voluntary Disclosure Programme



(2) Key Element

- (Process for making voluntary disclosure)
 - VDP should outline the process, the person to contact and the documentation required.
 - (Future compliance activities)
 - Clients may have concerns that a disclosure will give rise to further investigation of their affairs or affect their risk profile and thus future compliance monitoring and audits.
- Where possible, these broad principles could be made public.
- Where information obtained from the disclosure is only made available to certain designated officials outside the assessment and audit function,
- further compliance activity is unlikely to be affected.

6. Voluntary Disclosure Programme



(2) Key Element

- (Penalties and Interest)
 - VDP should include **the circumstances** in which **penalties and interest** will be sought and **the basis** on which they are calculated.
 - It could also detail **the circumstances** in which **penalties and interest** will be **mitigated** or not imposed.
- (Criminal Prosecution)
 - A VDP should set out the circumstances under which **no criminal charges** will be brought.
 - This could include both statements of principles and examples.

6. Voluntary Disclosure Programme

(3) Basic Design

(Coverage) VDP can cover not only **customs duty** but also **all regulations** related to customs procedure and **other taxes** such as sales tax.

Client

(Eligible Client) should not be subject of audit or investigation by the customs or another government agency.

(Agree to comply with VDP)

Eligible clients must :

- **report the information** they did not disclose before;
- **enter an agreement to pay** customs duties and other taxes that they owe;
- and **agree to pay them on time** in the future.

Customs Authority

(Waive) The customs authority agrees to waive penalties, and waive prosecution of cases that were criminal offenses.

(How to participate)

The customs authority can allow those who want to participate in VDP to apply e.g. online.

7. Data Quality



(1) Automated environment

- Many Customs administrations have introduced automated systems to support cross-border procedures.
- Traders enter relevant information in these systems for further processing by Customs.
- These submitted data are further used downstream for many functions such as computation of customs duties and other revenue collections, risk analysis, forecasting of trends, collation of statistics, analysis, compliance and enforcement checks, consignment targeting and pre-clearance, and other regulatory controls.

If the data submitted are not true and accurate, re-using of these inaccurate data can lead to damaging consequences.

7. Data Quality

(2) Ensuring Data Quality

Ensuring the accuracy, integrity or completeness of these data is vital.

Non-system measures

Voluntary Compliance Framework

System or Technical measures

- ① Use of International standard codes
→ Uniformity and Consistency
- ② Registration and Authentication of automated system users
→ Competency and Professionalism of the users in submitting quality data
- ③ Setting up a Declaring Agent (or Customs Broker) Governance Framework
→ Proficiency and Professionalism of the Declaring Agent

Thank you

byoung-kwan.bae@wcoomd.org