

Recourse Directorate, Admissibility Branch, CBSA	DOCUMENT: DRAFT Policy “Waiver of Penalties and Interest under Section 3.3 of the <i>Customs Act</i>”	PREPARED: APPROVED:
EFFECTIVE DATE:	SUBJECT: SECTION 3.3 OF THE CUSTOMS ACT	Rev. 1 Page 1 of 6

WAIVER OF PENALTIES OR INTEREST UNDER SECTION 3.3 OF THE CUSTOMS ACT – RECOURSE DIRECTORATE

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DEFINITIONS

Penalty: An administrative monetary penalty that is issued under section 109.1 of the *Customs Act*. It does not include seizures and ascertained forfeitures.

Interest: An amount above what is due as a result of not paying an amount owing.

Waiver: To relinquish or forego an amount that is not assessed.

Cancellation: To cancel an amount already assessed when the action taken was not appropriate under the circumstances.

POLICY STATEMENT

It is the policy of the Canada Border Services Agency (CBSA) to waive a penalty and/or interest, or to cancel interest under section 3.3 of the *Customs Act* where the following types of situations exist:

- Extraordinary circumstances
- Actions of the CBSA
- Client voluntarily discloses non-compliance

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Legislative Reference

Customs Act

Waiver of Penalty or Interest

3.3 (1) The Minister or any officer designated by the Minister for the purposes of this section may at any time waive or cancel all or any portion of any penalty or interest otherwise payable by a person under this Act.

Exception

- (1.1) Subsection (1) does not apply if measures may be taken under section 127.1, a request under section 129 is made or the time for making a request set out in that section has not expired.

Interest on Penalty or Interest Refunded

(2) Where, as a result of a waiver or cancellation under subsection (1), a person is given a refund of an amount of penalty or interest that was paid by the person, the person shall be given, in addition to the refund, interest at the prescribed rate for the period beginning on the first day after the day the amount was paid and ending on the day the refund is given, calculated on the amount of the refund.

POLICY OBJECTIVE

The intention of 3.3 is to provide clients a mechanism to request the waiver of penalties and the waiver or cancellation of interest in exceptional circumstances.

SCOPE AND APPLICATION

A request will only be considered if all outstanding debts to the Crown have been paid, and if the client has been diligent in taking corrective action.

Includes

- Voluntary disclosures
- Waiving of penalties prior to issuance

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- Cancellation of interest on penalties/ascertained forfeitures
- Cancellation of interest on duties and taxes

Excludes

- Cancellation of duties and taxes
- Cancellation of terms of release for seizures
- Cancellation of issued ascertained forfeitures or penalties (privative clause section 127 of the *Customs Act*)

CRITERIA FOR CONSIDERING THE WAIVER OF A PENALTY AND/OR INTEREST, OR THE CANCELLATION OF INTEREST

The Minister may grant relief from the application of penalty and interest where the following types of situations exist:

- Extraordinary circumstances
- Actions of the CBSA
- Voluntarily disclosure

Extraordinary Circumstances

Penalties and/or interest may be waived, or interest cancelled, in whole or in part where they result from circumstances beyond the client’s control. Extraordinary circumstances include, but are not limited to the following examples:

- Natural or human-made disasters, such as flood or fire;
- Civil disturbances or disruptions in service, such as a postal strike; or
- Other exceptional circumstances that would prevent a client from carrying out their obligations or instructing others to do so on their behalf.

Actions of the CBSA

Penalties and/or interest may be waived, or interest cancelled, due to verifiable actions of the CBSA, such as:

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- Error in material available to the public;
- Client given incorrect information from a CBSA employee; or
- Errors in processing.

Voluntarily Disclosures

Penalties and specified interest may be waived due to the client voluntarily disclosing non-compliance.

The Minister will consider the voluntary disclosure from the client, if the disclosure:

- Is clearly voluntary – The client initiates disclosure voluntarily and not as a result of any activity taken by CBSA that is or may result in examination, verification or enforcement or that is or may be pending enforcement, examination, and verification. A disclosure will not qualify if it is found to have been made with the knowledge of an audit, investigation, or other enforcement action that has been initiated by the Canada Revenue Agency (CRA) or a related administration, such as other federal and provincial departments;
- Is complete – All facts/information surrounding the non-compliance are disclosed and all incidences of the non-compliance are reported for correction; and
- Is reviewed against the following criteria:
 - Existing corrective and/or adjustment mechanisms do not apply;
 - A determination that the disclosure was not initiated to avoid legal obligations, and/or the disclosure does not form part of, or continue a pattern of, non-compliance (i.e., that the client has not been instructed in the past to take corrective action regarding the same issue and has failed to do so)

Each voluntary disclosure shall include enough detail to allow the facts to be verified. Clients are expected to make all books of account, records, documents, and any other required information available upon request.

It is also necessary to consider the client’s reasonable diligence in taking corrective action.

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RESPONSIBILITIES

A) Client:

It is the responsibility of the client:

- To file a request for a minister’s decision in accordance with the provisions outlined in section 3.3 of the *Customs Act*;
- To include with their request, relevant information and documents to support the validity of their claim;
- To file a request for a second-level review with CBSA, if they are not satisfied with the decision.
- To file a judicial review in accordance with section 18.1 of the *Federal Courts Act* if they are not satisfied with the decision.

B) Policy and Planning Division of the Recourse Directorate:

It is the responsibility of the Policy and Planning Division:

- To be the primary area of responsibility for section 3.3;
- To develop the policies and procedures for section 3.3;
- To propose legislative amendments, as required;
- To propose amendments to the ministerial delegation for section 3.3, as required;
and
- To provide functional advice and guidance on the application of section 3.3.

C) Regional Client Services offices:

It is the responsibility of the Regional Client Services offices:

- To evaluate the client’s request; and
- To render a decision concerning the request.

D) Regional Recourse Divisions:

It is the responsibility of the Regional Recourse Divisions:

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- To evaluate the client’s request for a second-level review;
- To review the prior decision;
- To render a decision concerning the request.

REFERENCES

- Sections 3.3, 127, and 129 of the [Customs Act](#)