



NUMBER 14 ADMINISTRATIVE PENALTIES

Administrative penalties allow Customs to impose a monetary penalty on importers/agents for errors or omissions on import entries.

What legislation governs administrative penalties?

Part X (sections 128 to 130) of the Customs and Excise Act 1996 contains the legislative provisions dealing with administrative penalties. (There are no regulations relating to administrative penalties.) Anyone who makes an import entry could be liable to an administrative penalty (subject to the exemptions in the Act) where that entry is found to contain certain types of error or omission.

What is the purpose of administrative penalties?

Customs relies on a self-assessment by the importer/agent in relation to the goods on the import entry. Errors and omissions on import entries can:

- cause incorrect duty payments and incorrect import data
- impact on the revenue position of the Government
- impact on the effectiveness of industry assistance policies at the border
- affect the integrity of the import data on which trade and industry assistance policies are based.

The administrative penalties system is intended to reduce errors and omissions on certain types of import entries by encouraging makers of those entries to take reasonable care in their preparation. It is also designed to encourage people to make voluntary disclosure of subsequently identified errors. The system provides fair and effective sanctions for lack of reasonable care.

What is the amount of the administrative penalty?

Where an error or omission on an entry has resulted in Customs duty not being paid, or not being declared for payment, the penalty is either \$50 or an amount equal to 20 percent of the unpaid or undeclared duty, whichever is the greater, up to a maximum of \$10,000. Customs duty includes duty under the Tariff Act, excise and excise equivalent duty, anti-dumping duty, and Goods

and Services Tax (GST). However, if the duty unpaid or undeclared consists **solely** of GST, the penalty is \$50.

Errors or omissions that make the entry 'materially incorrect' (as defined in section 128(7) of the Act), other than as specified above, are subject to a penalty of \$50.

Is every error or omission on an import entry liable to a penalty?

No. Only those that cause a shortfall in duty or which are materially incorrect are subject to penalty.

What is the definition of 'materially incorrect'?

'Materially incorrect' means that the entry contains an error or omission in relation to any of the following matters:

- (a) The identity of the overseas supplier.
- (b) The identity of the importer.
- (c) The identity of the person making the entry.
- (d) The identification of the importing craft or its voyage number.
- (e) The Bill of Lading, Air Waybill, or container identification details.
- (f) The supplier's invoice.
- (g) Any permit number or code.
- (h) The Tariff item under which the goods are classified under the Tariff Act 1988.
- (i) The statistical quantity of the goods.
- (j) The currency code for the currency in which the goods are traded.
- (k) The value for duty expressed in the currency in which the goods are traded.
- (l) The value for duty expressed in New Zealand currency.
- (m) The country of origin of the goods.
- (n) The country from which the goods have been exported.

- (o) The amount paid or payable to transport the goods to New Zealand from the country of exportation, including any amount paid or payable for internal transportation of the goods in that country.
- (p) The insurance costs associated with transporting the goods to New Zealand, inclusive of any insurance costs in the country of exportation.

What happens if an entry or omission is found?

Where an entry is found to contain a relevant error or omission that makes the entry materially incorrect or relates to an under declaration of duty, a letter may be sent to the maker of the entry asking for an explanation. This letter is called a pre-penalty notice. (The maker of that entry would include the importer and/or the importer's agent and/or the declarant.) An explanation should be provided as soon as possible and, in any event, within 20 working days. On receipt of an explanation, consideration is given to whether an exemption applies or whether a penalty is to be issued. The decision will be given in writing to the maker of the explanation. If the decision is to impose a penalty then the advice includes a penalty notice.

What are the exemptions from penalty?

A person is not liable to an administrative penalty in the following circumstances:

(a) Voluntary disclosure

That person has voluntarily disclosed the error or omission to Customs before Customs has notified the person that:

- (i) the goods to which the entry relates have been selected for examination by Customs
- (ii) documentation is required to be presented to Customs in relation to that entry
- (iii) Customs intends to conduct an audit or investigation that includes the particular entry.

This is consistent with the Customs Service's policy of encouraging voluntary disclosure of errors or omissions that come to light through the importer's/agent's internal check procedures.

(b) Reasonable view of the facts

The person satisfies the Chief Executive of Customs that they formed a view as to the relevant facts pertaining to the entry, which, while incorrect, was reasonable, having regard to the information available to that person when the entry was prepared. This is consistent with the Customs Service's policy of encouraging all reasonable care to be taken in the preparation of an entry and not penalising a person who makes a mistake on an entry despite all due care having been taken. An example would be a person who relied, in good faith, on incorrect advice from a freight forwarder. Another example would be a

person who enters an incorrect voyage number or bill of lading number, based on information available at the time the entry is prepared, which changed after the entry had been made.

(c) Reasonable reliance on information from importer or supplier

The person satisfies the Chief Executive of Customs that he or she acted in good faith on information provided by the importer or supplier of the goods, and reliance on the accuracy or completeness of the information so provided was reasonable in the circumstances.

(d) Correct value for duty less than \$1,000

The total correct value for duty (VFD) of the goods to which the error on the entry relates is less than \$1,000. For example, if three lines on the entry are affected by an incorrect supplier code in the entry header, but the total (correct) value for duty of those three lines is less than \$1,000, no penalty applies. Where the error affects one line only, and the value for duty of that line is less than \$1,000, no penalty applies.

(e) Prosecution initiated

Information for an offence against the Customs and Excise Act 1996 has been laid in relation to the error or omission. (Similarly, if an administrative penalty has been paid, the person by or on whose behalf the penalty has been paid is not liable to prosecution for an offence in relation to that error or omission.)

(f) Entry more than four years old

The period between the date of the entry of the goods and the date on which the error or omission was first identified exceeds four years.

(g) Customs Ruling relied on

The person satisfies the Chief Executive of Customs that he or she prepared the entry in reliance on a Customs Ruling (that was current at the time the entry was made) in relation to the matter found to be in error. This exemption applies only in relation to the matter on which the Ruling was given and only during the life of the Ruling in terms of section 125 of the Act.

When does the administrative penalty system not apply?

The penalty system is not applied to:

- (a) entries made in Form C4 for:
 - (i) unaccompanied personal baggage
 - (ii) passengers' motor vehicles, ships, or aircraft
 - (iii) permit entries
 - (iv) sight entries
 - (v) temporary import entries
- (b) entries made in Form C4D for transportation within New Zealand or removal for export
- (c) entries made in Form C4G for temporary entry of yachts and small vessels.

Can I appeal a Customs decision?

A person who is dissatisfied with a decision to impose an administrative penalty may appeal to the Customs Appeal Authority against that decision.

- A Notice of Appeal must be on Form 14. This can be found in the Second Schedule of the Customs and Excise Regulations 1996 and is available from your nearest office of the New Zealand Customs Service, the Customs website www.customs.govt.nz, or call Customs on 0800-428 786.
- The Notice of Appeal, together with the filing fee of \$400, should be sent to The Registrar, Customs Appeal Authority, Tribunals Unit, Ministry of Justice, Box 5027, Wellington.

An applicant is still obliged to pay the penalty appealed against. However, if, on appeal to the Customs Appeal Authority, it is held that a penalty should not have been paid, the penalty together with interest thereon is refunded.

For further information, contact your nearest office of the New Zealand Customs Service, visit the Customs website www.customs.govt.nz, or call Customs on 0800-428 786 (0800 4 CUSTOMS).

