



# Memorandum D11-6-4

Ottawa, November 25, 2015

## Relief of Interest and/or Penalties Including Voluntary Disclosure

### In Brief

This memorandum is being updated to rectify the mailing address showing in paragraph 15 of Appendix B.

This memorandum provides information on the discretionary authority of the Minister or a delegated official to grant relief. Part I describes the circumstances that may be eligible for relief, such as extraordinary circumstances, certain actions of the Canada Border Services Agency (CBSA) and voluntary disclosures.

The CBSA will consider, on a case-by-case basis, whether or not it is appropriate to provide relief. Clients should consider how closely their situation is to the circumstances described in Part I and in most cases must fulfill the eligibility requirements described or referenced in Part II. In all cases, clients must provide a detailed explanation for the request.

The CBSA's capacity to provide discretionary relief is not intended to serve as a vehicle for clients to intentionally avoid their legislated obligations. Nor is it a substitute for the recourse mechanisms or other remedies available to resolve disagreements with CBSA decisions. For more information on how to appeal a decision taken by an official of the CBSA, refer to the [CBSA's Web site](#).

## Legislation

### [Customs Act](#)

Penalty or Interest

3.2 – Prescribed rate may be authorized

3.3 – Waiver of penalty or interest

### [Federal Courts Act](#)

Section 18.1 – Application for judicial review

### [Customs Tariff](#)

125 – Prescribed rate may be authorized

126(1) – Waiver of interest

126(2) – Interest on interest refunded

### [Special Import Measures Act](#)

2(10) – Application of [Customs Act](#)

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## Guidelines and General Information

### Definitions

1. For the purposes of this memorandum,

**Cancellation** – means the reduction in full or in part of interest that has already been assessed to the client, whether or not it has been paid.

**Client** – means any person who has obligations under the legislation and is liable to be, or has been, assessed interest, and/or penalties. Depending on the context, “client” may include, but is not limited to, travellers, commercial and non-commercial importers, customs brokers, carriers, exporters, and warehouse operators.

**Delegated Official** – means the CBSA official formally delegated to make a decision, on behalf of the Minister, on the client’s application.

**Penalty** – means an administrative monetary penalty (AMP) referred to in sections 109.1-109.3 of the Act.

**Interest** – means interest for which a client may be liable under the [Customs Act](#), the [Customs Tariff](#) or the [Special Import Measures Act](#):

(a) at the prescribed rate as defined in [Memorandum D17-1-9, Remission of Underpayment Due to Customs Entry Error](#); or

(b) at the specified rate as defined in section 2 of the [Customs Act](#).

Visit the [Interest Rates Table](#) posted, and updated quarterly, on the CBSA Web site. The term does not include interest assessed under the legislation of other government departments which the CBSA administers, unless incorporated in the [Customs Act](#).

**Reason to believe date** – means the date referred to in section 32.2 of the Act by which the importer must file a correction and described in [Memorandum D11-6-6, “Reason to Believe” and Self-adjustment to Declarations of Origin, Tariff Classification, and Value for Duty](#).

**Relief** – means waiver or cancellation of interest, and/or waiver of penalties.

**Restricted goods for export** – has the same meaning as “restricted goods” as defined in [Memorandum D20-1-1, Export Reporting](#).

**Reviewing Officer** – means the CBSA officer assigned to liaise with the client, organize the information, and provide a recommendation on the client’s application to the delegated official.

**Voluntary Disclosure** – means the circumstances in which clients come forward voluntarily to inform the CBSA of their non-compliance (this may include voluntary self-correction under section 32.2 of the Act). It may lead to waiver of penalties and a reduction of interest as described, and based on the conditions set out, in Part I – Criteria for Relief, of this memorandum.

**Waiver** – means the full or partial relief by the CBSA of interest, full relief of penalties, otherwise payable by a client **before** these amounts are assessed or charged to the client.

### Application and Scope

2. The CBSA can provide relief under the [Customs Act](#), and the [Customs Tariff](#). This includes interest that is unpaid or late-paid anti-dumping and countervailing duty, and penalties associated with the information or record requirements of the [Special Import Measures Act](#), which are assessed under the [Customs Act](#).

3. The CBSA has authority to waive or cancel interest assessed under certain sections of the [Customs Tariff](#) at any time. The CBSA has authority to provide relief under the Act up until the time a Notice of Arrears is issued by the Canada Revenue Agency (CRA). Clients may send requests for cancellation of interest to CRA Collections after issuance of this notice.

4. This memorandum does not cover situations related to relief on the grounds of financial hardship or the inability to pay. Clients should initiate discussions with the CRA during the collection process. For further information, refer to the [CRA's Web site](#).

## **Part 1 – Criteria for Relief**

### **General**

5. This part sets out the conditions that in most cases will be considered and the factors that influence or guide delegated officials in exercising their discretion when they consider applications for relief. Relief may be denied if a client has outstanding debts payable to the CBSA other than for the interest or penalty.

### **Extraordinary Circumstances**

6. The legislative provisions allowing the CBSA to provide relief recognize that extraordinary or other compelling circumstances that contribute to non-compliance may warrant it; and that the CBSA may sometimes achieve the legislation's compliance objectives more efficiently or effectively with or without penalties or with reduced interest.

7. CBSA may provide relief when extraordinary circumstances beyond the clients' control prevented them from complying with their legislative obligations. Examples of such circumstances may be:

(a) Natural or human-made disasters, such as fire, flood, earthquake or extraordinary weather conditions causing uncontrollable service disruptions;

(b) Unforeseeable civil or criminal disturbances or disruptions in services, such as strikes, lockouts, riots, acts of terrorism or war;

(c) Death or incapacity (e.g., a serious illness or accident) of the client or of the person directly responsible for ensuring the client's compliance.

8. With respect to paragraph 7 above, the CBSA seeks to balance the client's circumstances with their obligations. In doing so, consideration will be given to the following:

(a) The CBSA expects commercial clients (including their service providers) to maintain their systems appropriately and have appropriate contingency plans in place to minimize, if not avoid, reliance on this criterion;

(b) CBSA expects that the clients have a person designated as directly responsible. The "person directly responsible" refers to the individual in the client's operations who approves, or has signing authority for, documentation that is required for compliance with customs legislation, and/or payments for duty and taxes owing when no other person in the organization can immediately fulfill the required role. This would include, but is not limited to, individuals occupying positions such as comptrollers, import and/or export specialists, finance officers/managers and traffic managers;

(c) A serious illness or death (it is recognized that serious illness or death may have a more significant impact on the operations of a sole proprietor or small family business than on a large corporation);

(d) Clients are responsible for errors made by their service representatives, as an example, customs brokers or freight forwarders in the case of export shipments; and

(e) A client's failure to apply for relief during a trade compliance verification process.

### **Certain Actions of the CBSA**

9. The CBSA will, in most cases, provide relief when a client's failure to comply with the legislative obligations or the ability to seek other legislative redress is primarily the result of actions of the CBSA, or when actions of the CBSA contributed significantly to the amount of interest to which the client became liable (for information regarding the waiver and cancellation of late accounting penalties and interest please refer to [Memorandum D17-1-5, Registration, Accounting and Payment for Commercial Goods](#)). Examples of such actions may include:

(a) Errors in CBSA publications, including the CBSA Web site;

- (b) Incorrect **written** advice or information provided or given to the client by the CBSA;
- (c) Certain CBSA equipment or software malfunctions or communication outages inhibiting the client's capacity to account for their goods or transmit other required data on time;
- (d) CBSA errors or substantial delays unrelated to the behavior of the client in the processing or subsequent adjustment of import information or amendment of export information.

## Voluntary Disclosures

### Scope and Purpose

10. The purpose of voluntary disclosures is to promote compliance with the requirements of the [Customs Act](#), the [Customs Tariff](#), the [Special Import Measures Act](#), and their related regulations, by encouraging clients to come forward voluntarily to:

- (a) Disclose previously unreported information; or
- (b) Correct inaccurate or incomplete information.

11. In the case of corrections submitted under section 32.2 of the Act presented more than 90 days after having "reason to believe", other than for a reassessment period in a trade verification, the CBSA may accept these submissions as voluntary disclosures and conditionally waive the whole penalty as per the conditions in paragraph 15.

12. In cases of an accepted voluntary disclosure, the CBSA will:

- (a) Waive penalties and, when interest is to be assessed at the specified rate to reduce it to an amount calculated at the prescribed rate on commercial goods; or
- (b) Waive interest in full and opt to not take action against the goods or the person for non-commercial goods (casual goods).

13. When a voluntary disclosure related to imported goods is accepted as valid, clients are still required to pay all duties and taxes owing and for commercial goods will pay interest at the prescribed rate. For export goods please refer to the Appendix B for details.

14. Should there be difficulties in making a single complete payment in relation to commercial goods; clients may be able to make arrangements for a schedule of payments with CRA Collections.

### Conditions of a Valid Disclosure

15. A voluntary disclosure must meet the following conditions to be valid:

- (a) It is **voluntary**, as described in paragraph 16;
- (b) It involves the **potential imposition of a penalty** and/or specified interest or the potential of an action against the goods or person;
- (c) It is **complete** when all of the following are disclosed (if applicable):
  - (i) all incidences of trade program(s) non-compliance for which the client could be subject to a trade compliance verification and reassessment (four years) in accordance with the requirements of [Memorandum D11-6-6](#) and [Memorandum D11-6-10, Reassessment Policy](#);
  - (ii) all incidences of non-report or failure to account for the same or similar imported goods for the six years prior to the disclosure; or
  - (iii) in the case of exported goods, all incidences of non-compliance up to six years prior to the disclosure in addition to the current year.
- (d) It takes account of the **special considerations** identified in paragraphs 19 to 24, related to regulated or restricted imports and exports and prohibited goods; and

(e) With the exception of disclosures to comply with section 32.2 of the Act:

(i) it is non-repetitive – A voluntary disclosure may be denied when a previous voluntary disclosure has been granted for the same compliance issue; and

(ii) the client explains, to the satisfaction of the CBSA, how the non-compliance occurred and how it has been corrected or what measures have been put in place to reduce the risk of future non-compliance.

16. With respect to the “voluntary” condition in paragraph 15(a), above:

(a) It is initiated by the client and, subject to subparagraph (c), is not prompted by any activity or action taken by the CBSA or other government department or any action of other persons in authority (e.g., police) related to the client or the subject of the disclosure;

(b) A disclosure is not voluntary if it is made after an officer has informed the client in any manner that the officer is referring (or has referred) goods for examination; and

(c) With respect to trade program verifications:

(i) importers do not contravene the “voluntary” condition if they apply for voluntary disclosure benefits prior to the issuance of a verification “Notification Letter”. This applies even if they may be aware of CBSA’s verification priorities;

(ii) an audit by CRA for tax purposes that includes imported goods does not preclude an importer from making a voluntary disclosure concerning non-compliance with section 32.2 of the Act; and

(iii) a trade program verification does not preclude clients from presenting, or the CBSA from accepting, at any time, voluntary disclosures on:

- another trade program than that which is the subject of the verification for the same or similar goods, as described in [Memorandum D11-6-6](#), imported during the verification period; or
- on other trade program issues for other goods imported during the verification period that are beyond the scope of the verification.

17. If the qualifying conditions of paragraph 15 and 16 above are met, a delegated CBSA officer will consider a disclosure to be voluntary and will decline to take available enforcement actions and/or will approve a reduction in the monetary impacts of such civil actions. Voluntary disclosure is only one of a number of considerations in determining whether a particular enforcement action will be taken. Acceptance of a voluntary disclosure does not preclude criminal prosecution when warranted and does not remove applicable duties and taxes owed on imported goods or other penalties imposed by other government departments (OGD).

18. When a CBSA officer does not consider the qualifying conditions to have been met, the officer may take the appropriate action. Such actions may be compliance verification, seizure or ascertained forfeiture and, in certain instances, prosecution.

### **Special Consideration**

19. Some contraventions of the Act may involve other enforcement actions which do not result in the imposition of a penalty assessed under section 109 of the Act or that are outside of the scope of the relief provided by section 3.3 of the Act, such as terms of release demanded for the return of seized goods, amounts demanded on ascertained forfeitures taken against personal or commercial goods, etc.

20. The CBSA encourages voluntary disclosure of information relating to the possession of goods unlawfully imported or exported.

21. The CBSA has no authority to relieve penalties or interests applicable under the legislation of other government departments (OGDs).

22. Some contraventions of the Act may warrant prosecution. The Voluntary Disclosure Program (VDP) does not grant immunity from prosecution. Nor is the delegated officer reviewing the disclosure in a position to comment on the possibility or probability of prosecution.

23. In situations dealing with goods prohibited entry into Canada, whether by virtue of tariff item 9897.00.00, 9898.00.00 or 9899.00.00 of the [Customs Tariff](#) that have been inadvertently imported or misclassified:

- (a) In all cases, clients who find or suspect they have such goods in their possession must report such importations to the CBSA without delay;
- (b) In some cases:
  - (i) clients may voluntarily forfeit or abandon these goods to the Crown or the police;
  - (ii) clients may be able to arrange for export or destruction of the goods under the supervision of the CBSA, please refer to [Memorandum D20-1-4, Proof of Export, Canadian Ownership, and Destruction of Commercial Goods](#), for more information;
- (c) Goods classifiable as child pornography under tariff item 9899.00.00 of the [Customs Tariff](#) are not eligible for export and will be seized.

24. With respect to goods for importation into or exportation from Canada that are regulated by OGD requirements:

- (a) In all cases, any person must report such importations or exportations to CBSA without delay;
- (b) Other obligations and opportunities similar to those described in paragraph 23 may apply;
- (c) The waiver of a penalty may be conditional on the satisfaction of the relevant OGD requirements. This may require disclosure of non-compliance and other items such as licences and/or permits;
- (d) Clients will usually need to discuss issues of non-compliance with the CBSA's Import, Export and/or OGD Programs.

### **“No Name” Disclosures**

25. Clients or a third party may present a “no-name” disclosure in order to request advice from the CBSA as to the possibility of a successful voluntary disclosure without identifying the client. Discussions are informal, non-binding and general in nature.

26. The option is primarily intended to provide insight into the VDP process – to give the client or representative a better understanding of the risks involved in remaining non-compliant and the relief available under VDP. A no-name disclosure does not remove the client's legal obligations under the Act.

27. CBSA will respond to written requests for no-name disclosures based on the information provided and will be bound by the response given for a period of 90 calendar days after the date of the opinion provided. The response will be based on the facts presented and is subject to change if any new details come to light during the VDP. If a client chooses not to come forward to initiate a full VDP after receiving the response, CBSA will not use any of the information provided for any purpose.

### **Part II: How to Make an Application**

28. Each application must be made in writing, include sufficient detail, and be presented in a clear and coherent manner to allow for review of the facts. Any information submitted is subject to review or verification by the CBSA.

29. To avoid additional interest accumulating (or the risk of specified interest for late payment on trade declarations or adjustments) and recognizing the discretionary nature of interest relief, clients seeking cancellation or reduction of interest already assessed should pay that interest within the time period indicated in the assessment notice or statement of account. The CBSA will pay clients interest at the prescribed rate, or credit their accounts, on any amount refunded, including any interest they have paid if their applications for relief are successful.

30. Please refer to the appropriate appendix for information about other applications:

- (a) Appendix A: To apply for voluntary disclosures when making corrections under section 32.2 of the [Customs Act](#);

(b) Appendix B: To apply for voluntary disclosures other than on corrections under section 32.2 of the Act (including no-name disclosures):

I: Non-commercial Goods

II: Commercial Goods

III: Commercial Export Shipments not reported under section 95 of the [Customs Act](#)

(c) Appendix C: All other applications for relief, including those related to extraordinary circumstances or CBSA errors/delays

31. The requirements in Appendices A and B apply to no-name disclosures except that the party presenting the disclosure does not need to provide information that identifies the client.

### **Part III: How the CBSA Reviews the Application and Makes its Decision**

32. A delegated official will make a final decision about whether or not to grant relief. Before making the decision, the official will consider all information about the case in accordance with the Law.

33. Except for voluntary disclosures filed to comply with section 32.2 of the Act, once the appropriate CBSA office receives the application, an officer will acknowledge its receipt. An officer will then confirm the information received and, if necessary, request additional information and/or arrange a visit to the client's premises, if warranted. If the requested information is not received within the specified time frame (generally 30 days), a decision will be made based on the information on file.

34. For applications related to extraordinary circumstances as described in Part I of this memorandum, the CBSA will consider the following factors in addition to the required information explained in Appendix C of the memorandum :

(a) Whether the client exercised reasonable care and was not negligent or careless; and

(b) Whether the client has acted quickly to remedy any delay or omission.

35. Delegated officials may grant, partly grant or deny any application. A detailed reason for all decisions will be provided in every case.

36. In most cases of waiver of interest and penalties, or cancellation of interest, the reviewing officers will inform clients in advance of a preliminary recommendation to deny or only partly grant the application. Clients may make further submissions within 30 days of being informed of the preliminary recommendation.

37. For commercial transactions, a reviewing officer may receive and make a recommendation on a client's application for waiver of interest or penalties during the trade verification process. The reviewing officer records the application and makes a reference or appends the delegated official's decision in the final trade verification report. That reviewing officer may also subsequently receive and make a recommendation on applications for cancellation of interest when interest has already been assessed and the issue of waiver was not previously raised. (If the issue of waiver was previously raised and denied, refer to Part IV of this memorandum.)

38. Voluntary amendments of corrections under section 32.2 of the Act outside of the scope of a trade verification will be submitted on form B2 and undergo the normal process to produce a Detailed Adjustment Statement (DAS).

39. When processing voluntary self-correction, any applicable penalties will be considered to be conditionally waived. The CBSA may inform the client that the conditional waiver will no longer apply and that it may assess penalties when subsequent trade verification reveals that:

(a) A correction presented as a voluntary disclosure was for a transaction in a reassessment period identified in a trade verification report or monitoring; or

(b) The voluntary disclosure conditions in Part I were not met.

## Part IV: Where Relief is Denied

40. If a client believes that a request for relief should have been granted, but was denied, a request for a judicial review is the only avenue of appeal. If an enforcement action was taken or if a trade program decision is issued under section 59 of the Act, the client may request an appeal pursuant to the Act. Additional information on how to file an appeal is available on the [CBSA Web site](#).

### Judicial Review

41. Where no alternative review or appeal process in the CBSA exists and the client believes that the CBSA has not exercised the available discretion in a fair and reasonable manner, apply for judicial review. While there is no legislated right of appeal for discretionary decisions, they fall under the jurisdiction of the Federal Court. A client may apply for judicial review of that decision under section 18.1 of the [Federal Courts Act](#). Applications must be made within 30 days of the time the decision is communicated to the client.

42. For more information on how to file an application for judicial review, including the applicable fee, or for other general enquiries, contact the, [Courts Administration Service](#) or consult the [Federal Court of Canada](#).

### Additional Information

43. For more information, call contact the [CBSA Border Information Service](#) (BIS):

Calls within Canada & the United States (toll free): **1-800-461-9999**

Calls outside Canada & the United States (long distance charges apply):  
1-204-983-3550 or 1-506-636-5064

TTY: **1-866-335-3237**

[Contact Us online](#) (webform)

[Contact Us](#) at the CBSA website.



## Appendix A

### Apply for Voluntary Disclosure When Making Corrections Under Section 32.2 of the *Customs Act*

**Note:**

For “no-name disclosures” associated with section 32.2 of the [Customs Act](#) (the Act) corrections, refer to Appendix B.

Further to the guidance in Part II of this memorandum:

1. This process applies only to named clients seeking waiver of specified interest and penalties when they voluntarily disclose non-compliance with their obligation, under section 32.2 of the Act, i.e., when they file corrections to Customs declarations more than 90 days after the “reason to believe” (RTB) date.
2. Such disclosures may be subject to subsequent trade verification.
3. Customs Self-Assessment Program (CSA) clients should refer to Part II of this Appendix.

#### I. General Procedure

4. Use Form [B2, Canada Customs – Adjustment Request](#), to apply for the Voluntary Disclosure Program (VDP) to correct trade data declarations. (For further information about filing corrections, refer to [Memorandum D11-6-6, “Reason to Believe” and Self-adjustments to Declarations of Origin, Tariff Classification, and Value for Duty](#) and [Memorandum D17-2-1, Coding of Adjustment Request Forms](#).)
5. In the B2 field for “legislative reference”, record “32.2 VDP”.
6. Insert the following text in the “justification/explanation” field on the Form B2, identifying the specific trade program(s) for which the voluntary disclosure is being made:

Voluntary disclosure to correct [tariff classification] [value for duty] [origin/tariff treatment] [SIMA duty] [GST rate/status code] and obtain waiver of Cxxx [**indicate relevant contravention code**]. CBSA is not conducting, or has not already conducted, any examination, trade verification or enforcement activity for this trade program error in relation to the goods that are the subject of this disclosure.

7. Also include whichever of the following is applicable in the “explanation” field:
  - (a) The RTB date occurred on or before the date of accounting and [name of importer] has taken measures to avoid this type of error in the future; or
  - (b) The RTB date was [date] because [state what was the specific information that became available on that date, e.g., advance ruling, change in text of tariff item]. [Name of importer] has taken measures to be able to make correct declarations, or corrections of this type within 90 days of the RTB date, in the future.
8. Address and send disclosures to the B2 processing center for self-adjustments (as identified in paragraph 81 of [Memorandum D17-1-5, Registration, Accounting and Payment for Commercial Goods](#)).

#### II. Procedures for Customs Self-Assessment Program (CSA) Importers

9. When a CSA importer chooses to make a voluntary disclosure the importer will adapt the procedures described in Part I of this Appendix by:
  - (a) Using an X-type B3 instead of a B2;
  - (b) Recording and maintaining attestations containing the information and statements referred to in paragraphs 6 and 7, above; and
  - (c) Recording any financial data concerning the disclosures on the monthly Revenue Summary Form (RSF).

#### III. Procedures for CSA-Self Verification (SV) Clients

10. CSA-SV clients will find the procedures for obtaining conditional waivers of penalties for their voluntary disclosures in their CSA handbook.

11. CSA-SV clients will report the following information annually about their voluntary disclosures, if any:
- (a) The amount of prescribed interest waived;
  - (b) The amount of penalties waived.

## Appendix B

### **Apply for Voluntary Disclosure Other Than on Corrections Made Under Section 32.2 of the *Customs Act***

**Notes:**

- (1) This appendix applies to all “no-name” disclosures (even in relation to section 32.2 of the [Customs Act](#) (the Act) corrections), as well as to other named disclosures not related to section 32.2 of the Act corrections.
- (2) Where extraordinary circumstances caused the non-compliance, refer to Appendix C.

Further to the guidance in Part II of this memorandum:

1. To apply for the benefits of the voluntary disclosure program (VDP) other than as described in Appendix A, contact the CBSA in the manner described below:
  - Section I for Non-commercial Goods;
  - Section II for Commercial Goods; or
  - Section III for Commercial Export Shipments not reported under section 95 of the [Customs Act](#)
2. When applying, provide all information required to verify the validity of the voluntary disclosure as described in Parts I and II of this memorandum, including any applicable information set out in the client agreement form for voluntary disclosure application that can be found in Appendix D or the information contained therein.
3. Where the disclosure involves previously unreported goods, the CBSA may require clients to present the goods for inspection and/or determination of value.
4. In cases where the good(s) cannot be presented (e.g., due to damage or theft), the proof of the acquisition (i.e., receipt, sales invoice, purchase agreement or other documentation) can be accepted in lieu of the actual good(s).
5. Take all steps necessary to return to a compliant status, including full payment of all duties, taxes and, for commercial goods, interest owing.

#### **I. Non-commercial Goods**

**Note:**

This applies to all non-commercial goods, no matter how they entered Canada.

6. Clients who have imported non-commercial goods should contact the CBSA office where the goods entered Canada or closest to where the clients reside.
7. Clients may present an application in person or in writing. A detailed explanation for the request will be required during the review process.
8. In cases where the officer must establish the value for duty, the client should be prepared to present a proof of payment (receipt, bill of sale or other proof of payment). In cases where a proof of payment is not available, the client will need to provide sufficient information to determine a value for duty that is consistent with the provisions of the [Customs Act](#). In some instances, the CBSA may need to hold the disclosed goods so an independent third party can appraise the goods.
9. Clients will have to pay any duty and taxes owing on the goods disclosed.

## II. Commercial Goods (Other Than for Corrections Under 32.2 of the Act)

### Notes:

(1) This applies to commercial goods arriving in Canada in any manner, including with a traveler.

(2) For goods already reported but not accounted for and for which the applicable billing period has not yet expired, no formal VDP application need to be made. A non-CSA client may submit a B3-Type V, Canada Customs Coding Form and payment of duties and taxes or account security to the usual CBSA office. (A CSA client is not required to report and submits a normal B3 and captures the duty and taxes payable on the Revenue Summary Form.)

(3) A detailed explanation for the request will be required during the review process.

10. Full payment of duties and prescribed interest made prior to the application for, or completion of, the voluntary disclosure does not automatically entitle the client to the benefits of a voluntary disclosure. Access to a voluntary disclosure will be determined once all available facts related to the disclosure have been reviewed.

11. **Resident** clients must contact the CBSA office in the region where their books and records are kept. **Non-resident** clients must contact the CBSA office in the region where the majority of their imports occur.

12. In areas where geographical considerations impede direct contact with the CBSA, clients may contact the nearest CBSA office. This office will forward the disclosure information to the appropriate office, which will then contact the client to arrange the most convenient method to continue the disclosure process.

13. For **goods already reported but not accounted for within the applicable billing period**, and for **unreported goods not accounted for within the billing period** that would have applied if they had been properly reported and accounted for, non-CSA clients may submit a B3-Type V, Canada Customs Coding Form and payment of duties and taxes or account security to the nearest CBSA office, whichever applies. A Senior Officer Trade Compliance will calculate the prescribed interest owing from the date the goods should have been duty paid when or after a copy of the B3 is received. For unreported goods, the carrier may be subject to penalties, even if the importer is not.

14. For **goods imported by a CSA client that have not been accounted for within the payment period** that would have applied if they had been accounted for within the normal accounting time frames, the clients submit on a B3s and capture the data (including interest) on their Revenue Summary Forms (RSF). The CBSA will consider their liability to penalties at year-end

## III. Commercial Export Shipments Not Reported Under Section 95 of the *Customs Act*

### Note:

This applies to export shipment disclosures, as well as to other no named export disclosures that fall under section 95 of the [Customs Act](#) and that requires all goods exported must be reported.

Further to the guidance in Part II of this memorandum:

15. To apply for the benefits of the VDP clients must contact the CBSA Importer and Exporter Compliance Unit at [IE\\_Compliance-IE\\_Conformite@cbsa-asfc.gc.ca](mailto:IE_Compliance-IE_Conformite@cbsa-asfc.gc.ca) or in writing at 171 Slater Street, 2nd floor, Ottawa, Ontario, K1A0L8. In cases of disclosure of non-report, clients may request a summary template to assist in preparing their voluntary disclosure.

16. When applying, provide all information required to verify the validity of the voluntary disclosure as described in Parts I and II of this memorandum, including any applicable information set out in the Client Agreement Form Voluntary Disclosure Application that can be found in Appendix D of this memorandum or the information contained therein.

17. As mentioned in paragraphs 21 and 24 of this memorandum, **in the case of a shipment which is controlled under OGD Regulations other requirements must also be met.**

18. Where the goods of an export shipment are controlled or regulated by any Act of Parliament and a permit, licence or certificate is required to export these commodities, in addition to providing the details of the disclosure to the CBSA, it is the responsibility of the exporter to contact the applicable permit officer to start the Export VDP

process with the OGD(s). These government departments recognize that, on occasion, exporters inadvertently fail to comply or may be unaware that an export shipment may be controlled or regulated. The CBSA encourages exporters to come forward and will work with the OGD to determine if the exporter is eligible to receive relief from non-compliance.

19. For example Foreign Affairs Trade Development Canada (DFATD) has established procedures for the reporting of voluntary disclosures. DFATD requirements can be found in the [Export Controls Handbook](#).

## Appendix C

### All Other Applications for Relief

The following procedures apply to:

- (a) Applications for relief for reasons other than voluntary disclosure; and
- (b) Applications for cancellation or reduction of interest already assessed except for late transaction payment interest.

These applications arise primarily from the extraordinary circumstances or CBSA errors or delays described in Part I of this memorandum (for information regarding the waiver and cancellation of late accounting penalties and interest, please refer to [Memorandum D17-1-5, Registration, Accounting and Payment for Commercial Goods](#)).

### Information/Documentation Required

Further to the guidance in Part II of this memorandum:

1. When trade verification for commercial goods is planned, in progress, or recently concluded, clients should give or send their related applications for relief to the reviewing officer.
2. When a dispute notice has been filed under section 60 of the Act, clients should give or send their application to the assigned recourse officer.
3. When an appeal has been filed under section 67 of the Act, clients should send their application to the assigned senior appeals officer.
4. For all other applications:
  - (a) CSA importers should send their applications to their CBSA contact;
  - (b) Other resident clients should send their applications to a CBSA office in the region where their books and records are kept; and
  - (c) Non-resident clients should send their applications to the CBSA office in the region where the majority of their imports occur.
5. Clients must provide all relevant information, including the following, where applicable:
  - (a) The name, address, telephone number, business number(s), carrier codes, sub-office locator code(s) or any other identification number assigned by the CBSA to the client;
  - (b) The date(s) of interest assessment and/or time period(s) to which the potential interest and/or penalties or assessed interest apply;
  - (c) The facts and reasons explaining why the liability for interest or penalties were either mainly:
    - (i) caused by extraordinary circumstances beyond the client's control,
    - (ii) the result of actions of the CBSA; or
    - (iii) assessed when a circumstance described in Part I of this memorandum or another CBSA publication warranted waiver of the interest;
  - (d) An explanation of how the circumstances affected the client's ability to meet their obligations;

- (e) Any relevant documentation such as death certificates, doctor's statements, police reports, insurance statements or attestations to support the facts and reasons;
- (f) Supporting details of incorrect information given by the CBSA in the form of written answers, published information, or other objective evidence;
- (g) The contravention code that would apply if a penalty were to be assessed (when applying for waiver of penalty other than through VDP); and
- (h) If the client has paid the interest, a copy of the K21 Cash Receipt or other proof of payment.

## Appendix D

### Client Agreement for Voluntary Disclosure Application

**Note:**

Below is a list of the information required for all Voluntary Disclosure Program (VDP) applications for **commercial goods** except those made to comply with section 32.2 of the [Customs Act](#).

#### Section I: Client identification

In your letter, you must have the following client identification information:

Identify whether you are:

- An importer;
- An exporter;
- A carrier;
- other (specify)

Provide the following applicable information:

- Client identifier number(s) Business Numbers, carrier code(s), Sub-office locator(s) or other identifiers
- Company's name (legal entity)
- Address where books and records are kept
- Name of a contact
- Contact's telephone #
- Address for client contact
- Representative's name
- Representative's telephone #
- Address for representative

#### Section II: Disclosure details and reasons

Please provide details surrounding your disclosure such as the ones listed below as well as any other details or documents that would help an officer get a clear understanding of your situation:

Amount of disclosure in Canadian funds (payable), if applicable, and whether it's comprised of the following (including amounts):

- Duties
- SIMA Duties
- GST
- Other taxes

Time period being disclosed and a list or summary of all transactions or export shipments presented for the disclosure;

Nature of the non-compliance being disclosed, the cause of non-compliance, and how it was discovered, etc.;

For commercial goods, details outlining how you plan to correct the issue to ensure future compliance to the Act;

Copies of bills of lading, freight forwarding, shipping or commercial invoices;

For exported goods, dates of all shipments, mode of transport, and port of exit;

Number of shipments not reported (export);

In the case where a permit or licence is required by an Other Government Department, details of the products concerned including technical specifications; and

Any other documentation relevant to the purpose of the disclosure.

If full details or all documents cannot be provided at the time of initial disclosure, please indicate what will follow and by what date.

### **Section III: Client declarations and acknowledgements**

Please include the following applicable text (**verbatim**) in your letter:

I declare that the information and supporting documentation submitted with my disclosure is, to the best of my knowledge, true and complete and

(a) I have been provided with information about CBSA's Voluntary Disclosures Program guidelines (CBSA Web page and/or [Memorandum D22-1-2, Penalty Reinvestment Agreement \(PRA\) Policy](#));

(b) I have read the conditions set out in those guidelines and believe I qualify for relief; and,

(c) Neither I nor my representative is aware of any verification or enforcement action underway by the CBSA or a non-arm's-length associate;

(d) I understand that if I withdraw my application or if the CBSA determines that the conditions have not been met (either with respect to the information set out above or information submitted or obtained after the disclosure), the disclosure will not be accepted as a valid voluntary disclosure. In such cases, the CBSA may proceed with an audit/verification, investigation, assessment of penalties and/or interest, collection action, or related activity based on the information provided or, when warranted, prosecution.

Ensure you've identified your name and position and that you have signed and dated the letter. Or if you are the representative, ensure that your client's information is provided and signature is present. Include the following:

I am the authorized representative of the client (named or no-name) noted above and I certify that the information provided to me by my client is, to the best of my knowledge, true and complete.

Authorized Representative's name & firm

Signature

Date

### **Section IV: The reviewing officer will identify the following**

The reviewing officer will be identifying the following information to help assess your disclosure:

Identify if resident or non-resident importer

Region where client's books and records are kept for CBSA purposes (residents)

Region where majority of imports occur (non-residents)

Case Management #

Any errors of:

Tariff classification (TC),

Origin (including tariff treatment)

Value for duty are being disclosed,

TRS Decision Record #(s)

Effective date of disclosure

If any CBSA verification are planned or underway

Scope of verification  
 Verification period  
 Date client notified of verification

Following the review the officer will provide his/her findings including the following information such as (but not limited to):

Total duties owing  
 Total taxes owing  
 Prescribed interest applicable  
 Prescribed interest to be waived  
 Specified interest to be waived  
 Contravention code(s) applicable  
 Applicable amount of penalties to be waived  
 Legislative provision(s) contravened  
 Rationale for any decision

<b>References</b>	
<b>Issuing Office</b>	Trade and Anti-dumping Programs Directorate
<b>Headquarters File</b>	
<b>Legislative References</b>	<a href="#"><i>Customs Act</i></a> <a href="#"><i>Federal Courts Act</i></a> <a href="#"><i>Customs Tariff</i></a> <a href="#"><i>Special Import Measures Act</i></a>
<b>Other References</b>	<a href="#">D11-6-6</a> , <a href="#">D11-6-10</a> , <a href="#">D17-1-5</a> , <a href="#">D17-1-9</a> , <a href="#">D17-2-1</a> , <a href="#">D20-1-1</a> , <a href="#">D20-1-4</a> , <a href="#">D22-1-2</a>
<b>Superseded Memorandum D</b>	D11-6-4 dated October 15, 2015