



Memorandum D11-6-9

Ottawa, April 1, 2017

Applications to the President for an Extension of Time to File a Request under Section 60 of the *Customs Act*

In Brief

This Memorandum supersedes Interim Memorandum D11-6-9, *Applications to the Commissioner for an Extension of Time to File a Dispute Notice*, dated May 22, 2002.

This Memorandum has been revised to reflect organizational changes which resulted from the creation of the Canada Border Services Agency on December 12, 2003. It is also part of an overall revision of the Memoranda D11-6 series as a result of the Paper Burden Reduction Initiative. Many of the revisions are aimed at the elimination of obsolete and duplicated requirements, the modification of complex policies, and the simplification of the format.

In addition, changes have been made to the Memorandum to clarify the review process, and to update the guidelines and examples for conditions on which to grant an extension of time.

This Memorandum explains how clients may apply, under section 60.1 of the *Customs Act* (the Act), for an extension of time to file a request under section 60. It also explains on what basis the President of the Canada Border Services Agency (CBSA) issues decisions in response to these applications.

Legislation

[Canada Border Services Agency Act](#)

[Customs Act](#)

43.1 – Advance Rulings

59 – Re-determination or further re-determination

60 – Request for re-determination or further re-determination

60.1 – Extension of time to make a request

60.2 – Extension of time by the Canadian International Trade Tribunal

[Customs Tariff](#)

[Proof of Origin of Imported Goods Regulations](#)

Guidelines and General Information

GENERAL

1. An application for an extension of time (an application) may be an option when the 90-day time period (time period) for filing a request under section 60 of the [Act](#) has expired.
2. A client has a period of one year after the time period elapsed to file an application for an extension of time, for a total of one year and ninety days. However, there are conditions that must be met for the application to be granted. See [paragraphs](#) 12 to 14.
3. Parliament enacted the extension of time provisions of the Act to allow a client to file a request beyond the legislated time period when there are exceptional circumstances or events, generally beyond the control of the client, who is seeking to dispute a CBSA decision and precludes filing a request within 90 days of the decision.
4. The CBSA expects a client will rarely need to invoke these provisions. A client should make every effort to avoid, or at least minimize, delays in filing a request under section 60 of the Act. The CBSA will generally only grant an application for an extension of time when it is clear that the client took reasonable care to try to file the request within the legislated time period.
5. The onus is on the client to provide all necessary information for the officer to make an informed decision under section 60.1 of the Act. The officer may refuse an application if the client fails to provide the requested information within the requested time frame.
6. In commercial transactions, a client is considered to be responsible for both their actions and those of a representative. The extension of time provision is not intended to rectify an error or failure of a representative to act on behalf of the client in accordance with an agreement. In that situation, the client's recourse is with the representative.
7. All applications will be reviewed on a case-by-case basis. The appeals officer will take into account the roles and responsibilities of the client and their representative in assessing whether the client has met the conditions under subsection 60.1(6) of the Act.

HOW TO APPLY FOR AN EXTENSION OF TIME

8. The client may submit their application by filing a single [Form B2, Canada Customs - Adjustment Request](#) or a letter containing all the necessary information (See [Appendix E GUIDELINES FOR FILING A REQUEST BY LETTER WITH THE CBSA UNDER SECTION 60 OF THE CUSTOMS ACT](#) of [Memorandum D11-6-7, Request Under Section 60 of the Customs Act for a Re-determination, a Further Re-determination or a Review by the President of the Canada Border Services Agency](#)).

[Appendix A](#) of this Memorandum contains the prescription instrument which identifies the required documentation.

9. All supporting submissions and documentation for applications for an extension of time should be attached to the [Form B2](#) or letter and the client should indicate "see attached submissions" in the explanation field of the B2 or in the letter.
10. The explanation in support of the application for extension of time should set out the reasons why the request under section 60 of the [Act](#) was not filed on time.
11. To ensure efficient processing, please send your Application directly to Recourse. Requests can be submitted to the President of the CBSA:

By regular, by registered mail or by courier:
Recourse Directorate
Canada Border Services Agency
333 North River Rd, 11th floor Tower A

Ottawa ON K1A 0L8

**By facsimile to the attention of the Recourse Directorate's Trade Appeals Division:
343-291-7239**

For enquiries or assistance with preparing your application, please call one of our Trade Appeals Units Managers:

- If the CBSA decision being contested was issued in the Pacific Region, the Prairie Region or the Greater Toronto Area Region: **416-954-5621**
- If the CBSA decision being contested was issued in the Southern Ontario Region, including Hamilton, Windsor, London and Fort Erie: **905-308-8529**
- If the CBSA decision being contested was issued in the Northern Ontario Region, Quebec Region or Atlantic Region: **514-286-7879 ext. 7105**

CONDITIONS FOR GRANTING AN EXTENSION OF TIME APPLICATION

12. In order for the CBSA to consider an application for extension of time, a request under section 60 of the Act must be made (See: [Memorandum D11-6-7, Request Under Section 60 of the Customs Act for a Re-determination, a Further Re-Determination or a Review by the President of the Canada Border Services Agency](#)) and the conditions set out in section 60 of the Act must have also been met including paying all amounts owing or posting Security.

13. The application for extension of time must be made within one year after the expiry of the time period set out in section 60 of the Act.

14. A client must then demonstrate that the conditions outlined in subsection 60.1(6) of the Act have been met. As these conditions are mandatory, failure to meet any one of them will be sufficient cause for the application to fail:

- (a) In that first 90-day time period:
- i. The client was unable to act (unable to file a request for re-determination or a further re-determination) or was unable give a mandate (unable to instruct another to act in the client's name); or
 - ii. The client had a bona fide intention to file the request;
- (b) It would be just and equitable to grant the application given the reasons set out in the application and the circumstances of the case; and
- (c) The application was made as soon as circumstances permitted (as soon as possible).

ASSESSING THE CONDITIONS

15. Unable to Act or Give a Mandate to act in the person's name

In general, the CBSA considers that a client was unable to act when exceptional circumstances, beyond the control of the client, interfered with the capacity of the client to file a request under section 60 or to give a mandate to someone else to act in the person's name to file a request within the legislated time limit. In such a circumstance, the client must demonstrate that they took reasonable care to comply with the legislation. The following are examples of information needed to support possible explanations.

A rationale should be provided describing the matter in which the circumstances prevented the filing the request within the time period. This should include all actions taken by the client to submit the request within the time period:

- (a) The direct relationship of the circumstance to the parties involved and the extent to which the circumstance prevented or delayed filing the request; for instance, a serious illness may have more impact on a sole proprietor than on a large corporation.
- (b) Whether the client could have anticipated the circumstance and to what extent the delay was within the control of the client.
- (c) A summary of the dates, description and duration of events should be submitted which will support the circumstances that interfered with the client in filing the request within the legislated time limit. The circumstances should correspond with the time periods outlined in the summary.
- (d) The application should include supporting documentation such as police, fire, insurance, accident, medical or hospital reports, and possibly newspaper clippings to determine whether dates and descriptions of events correspond to the explanation of the circumstances mentioned by the client. Some submissions may need to be supported by affidavit.
- (e) In the case of a commercial client, the exceptional circumstances are determined by assessing the inability of the responsible person or persons to file the request within the 90-day time period as specified in section 60 of the [Act](#). This would include, but is not limited to, individuals occupying positions such as controllers, import-export specialists, finance officers or managers, and traffic managers.

16. Bona Fide Intention

In the absence of the establishment of the inability to act or give a mandate, a client must demonstrate that the client had a bona fide intention to file a request. The CBSA will expect a client to show some genuine physical action had been taken with the intention to file the request beyond a simple mental intention:

- (a) A client should provide copies of correspondence between the client and the CBSA or between the client and a representative within the time period that demonstrates a clear intention to file the request.
- (b) A rationale must be submitted which describes that the special or exceptional circumstance(s), generally beyond the control of the client or its representative, that precluded the filing of the request within the prescribed time period. The actions of the client should confirm or be consistent with their explanations. In some cases, the submissions by the client may require substantiation by affidavit.
- (c) A "letter of intent" to file a request within the legislated time period may not be sufficient to provide support of a bona fide intention without documented proof of action taken to file a request within the prescribed time limit.
- (d) A client who is unable to provide all the information necessary to support a request under section 60 of the [Act](#) should not seek to use the provisions of section 60.1 to file a request for an extension of time to file a notice late. The CBSA expects clients to file requests within the time period and ask for a reasonable amount of time in which to file the supporting documentation when it is unavailable within the prescribed time period

17. Just and Equitable

- (a) The expression "Just and equitable" is a concept used to give consideration to the principles of natural justice and fairness. The concept allows a common-sense evaluation of a situation based on objective evidence. From a practical standpoint, the CBSA generally reviews the "just and equitable" condition after the other conditions. This approach permits the CBSA to help a client to resolve problems that arise through no fault of the client and that cause the client to be unable to comply with a statutory requirement.
- (b) In evaluating an application, the appeals officer may weigh such factors as the length of the delay against the consequences to the client if the application was not granted, the unfairness faced by other importers if the application was granted and the reasons for the delay. Applications are granted only in situations where the extension of time does not prejudice other importers and would be unfair to penalize the importer.

18. As Soon as Circumstances Permitted

- (a) Clients must establish that they filed their application as soon as they could after dealing with the effects of the exceptional event that prevented them from filing the request within the legislated 90-day time period. A detailed explanation of the exceptional circumstances and events leading to the submission of the application must be provided. It should include specific references to the dates of various events or action.
- (b) The amount of time, within which the CBSA would expect the submission of the application, will differ with the circumstances for each situation.

19. In the event that application is rejected, the client can submit a revised application provided it is made within one year of the legislated time period set out in section 60.

20. These conditions are further explained with examples in Appendices [B](#) through [E](#).

OVERVIEW OF THE REVIEW AND DECISION-MAKING PROCESS

21. The appeals officer (officer), who possesses the designated authority to review and issue a decision with respect to an application, notifies the client of the decision by mail.

22. During the review of an application, the officer will first consider compliance with the conditions set out in [paragraphs](#) 13 to 21 of this memorandum.

23. The officer will review the application and all pertinent facts and make a fair and impartial decision in a manner that is consistent with the intention of the legislation.

24. If the officer grants the application, the request under section 60 of the [Act](#) will be deemed valid and processed accordingly.

IF THE CBSA REFUSES THE APPLICATION

25. If the officer refuses an application filed under section 60.1 of the Act, the client may make an application to the [Canadian International Trade Tribunal](#) (CITT) under paragraph 60.2(1)(a) of the [Act](#). The client must submit this application, with a copy of the fully supported application that was filed under section 60.1 and a copy of the decision of the CBSA, to the CBSA and the Registrar of the Tribunal within 90 days from the date the application was refused to the following addresses:

The Registrar
 Canadian International Trade Tribunal
 15th Floor 333 Laurier Avenue West
 Ottawa, ON K1A 0G7

Recourse Directorate
 Canada Border Services Agency
 333 North River Rd, 11th floor Tower A
 Ottawa ON K1A 0L8 Ottawa, ON K1A 0L8

IF THE CBSA DOES NOT RESPOND WITHIN 90 DAYS

26. If the officer does not provide a decision within 90 days of the client filing an application under section 60.1 of the Act, the client may make a further application to the CITT under paragraph 60.2(1)(b). The client must submit this application, with a copy of the fully supported application submitted under section 60.1, to the CBSA and the Secretary of the CITT (at the addresses listed above).

27. There is no time limit for a client to bring an application to the CITT when the CBSA has failed to make its decision within the 90-day period. Thus, a client may postpone the submission of an application to the CITT when they are satisfied that the officer is actively reviewing their application (e.g., where there is ongoing interaction between the client and the CBSA). For more details concerning applications refer to the [CITT website](#).

ADDITIONAL INFORMATION

For more information, within Canada call the Border Information Service at **1-800-461-9999**. From outside Canada call 204-983-3500 or 506-636-5064. Long distance charges will apply. Agents are available Monday to Friday (08:00 – 16:00 local time / except holidays). TTY is also available within Canada: **1-866-335-3237**.

APPENDIX A

PRESCRIPTION INSTRUMENT

PRESCRIPTION OF FORM AND MANNER, AND INFORMATION TO FILE AN APPLICATION FOR AN EXTENSION OF TIME UNDER SECTION 60.1 OF THE *CUSTOMS ACT*

AUTHORITY

Pursuant to the Authorization signed by the President of the Canada Border Services Agency on April 1st, 2010, under subsection 2(4) of the [Customs Act](#) and subsections 12(1) and (2) of the [Canada Border Services Agency Act](#), as amended, and for the purpose of section 8 and subsection 60.1(3) of the *Customs Act*, I hereby authorize the following forms and manners of filing the forms and specify the following information to be provided on or with the forms for submitting an application under section 60.1 of the *Customs Act*.

PRESCRIBED FOR AND MANNER

1. [Form B2, Canada Customs - Adjustment Request](#) or a letter may be submitted to apply for an extension of time under section 60.1 of the *Customs Act* in the case of:
 - (a) A request for review of an advance ruling;
 - (b) A request for re-determination or further re-determination of origin by an exporter or producer;
 - (c) A request for re-determination or further re-determination of marking; or,
 - (d) A request for re-determination or further re-determination of tariff classification, value for duty or origin pertaining to goods imported into Canada; or
 - (e) A request for re-determination or further re-determination of tariff classification of goods determined to be classified under tariff items 9897.00.00, 9898.00.00 or 9899.00.00 of the Schedule to the [Customs Tariff](#).
2. Subject to exceptions under the [Proof of Origin of Imported Goods Regulations](#), all information must be submitted in English or French.
3. Supporting submission and documentation must be attached to Form B2 or letter and the explanation field of Form B2 or the letter must indicate: “see attached submission and documentation”.
4. Applications may be delivered in person or sent by regular, registered mail, courier, facsimile or submitted by approved form of electronic filing. The burden of proof that an application was made under section 60.1 of the *Customs Act* lies on the person claiming to have made it.

PRESCRIBED INFORMATION

5. The coding and content of applications filed on Form B2 must be in accordance with instructions set out in [Memorandum D17-2-1, The Coding, Submission and Processing of Form B2 Canada Customs Adjustment Request](#).
6. The expression “section 60.1 of the *Customs Act*” must be stated in the explanation field of Form B2 or clearly identified in the letter as its object.
7. Each application for an extension of time must include the following information:
 - (a) A copy of the notice containing the contested decision issued under sections 43.1, 57.01, 58 or 59 of the *Customs Act*, and where applicable a copy of:

- i. Forms K-26 (entitled “Notice of Detention”), K27 or any other detention forms;
 - ii. The rejection notice in respect of the submitted request for re-determination, further re-determination or review made under section 60 of the *Customs Act*.
- (b) If not otherwise provided on the prescribed forms:
- i. The name, address and contact information of the importer, exporter or producer, including the name, title and telephone number of the contact person;
 - ii. The description of the goods and for goods of tariff item 9899.00.00, include their title, if any.
- (c) A submission to support the application for an extension of time which must:
- i. Set out the reasons for which the request for re-determination, further re-determination or review had not been filed within the time provided for under section 60 of the *Customs Act*;
 - ii. Demonstrate how each of the conditions in paragraph 60.1(6)(b) of the *Customs Act* have been met; and provide evidence in support of the facts.

Dated at Ottawa, Province of Ontario, this 13th day of June, 2013.

Originally signed by Georges Rioux
Vice-President
Corporate Affairs Branch
Canada Border Services Agency

APPENDIX B

Examples for Unable to Act or Give a Mandate to Act in the Person's Name

The following are examples the CBSA regards as representing situations which potentially meet the conditions set out in subparagraph 60.1(6)(b)(i) of the [Customs Act](#). The examples are provided for guidance only. They are not exhaustive and are intended neither to limit the circumstances eligible for consideration, nor to suggest conclusively the circumstances in which the CBSA will grant an application.

1. Natural disasters (fires, floods, ice storms) when the event destroyed books and records, or made them inaccessible, or for other obvious reasons filing a request was delayed or prevented.
2. Local, regional, or national emergencies in the community where the client or representative resides or carries on business.
3. Civil disturbances or disruptions in services such as prolonged postal strikes, strikes within the government, lockouts, and demonstrations, where no alternative services or arrangement is reasonable or possible.
4. Evidence showing that the client acted on erroneous written information given by employees of the CBSA which caused the client to miss the time limit for filing a request.
5. Death or serious illness pertaining to key persons involved in filing the request.

APPENDIX C

Examples for Bona Fide Intention

The following are examples the CBSA regards as representing situations which potentially meet the conditions set out in subparagraph 60.1(6)(b)(i) of the [Customs Act](#). The examples are provided for guidance only. They are not exhaustive and are intended neither to limit the circumstances eligible for consideration, nor to suggest conclusively the circumstances in which the CBSA will grant an application.

1. A client suffers from financial hardship and can substantiate that he was unable to pay or post security for duties owing on section 59 notices within the legislated 90 day time period, which is a requirement for filing a subsection 60(1) request. The client may have arranged a payment schedule within the 90-day period, and has letters to and/or from the CBSA about this situation and the client's intention to file a request within the time limit. This correspondence could support a bona fide intention to file the request.
2. A client provides documentation dated within the filing period, instructing his representative to file a request on his behalf. The representative fails to do so. While this may constitute a bona fide intention on the part of the client, it would not meet the considerations under the heading Just and Equitable in [Appendix D](#).
3. A non-commercial importer does not import on a regular basis and miscalculates the statutory time limit for filing a request by submitting the notice within 3 months rather than 90 days. (For example, the section 59 notice was given on June 20 and the client assumed/miscalculated the filing deadline as September 20, when it was really September 18.) See the considerations under the heading Just and Equitable in [Appendix D](#).

APPENDIX D

Examples for Just and Equitable

The following are examples the CBSA regards as representing situations which potentially meet the conditions set out in subparagraph 60.1(6)(b)(ii) of the [Customs Act](#). The examples are provided for guidance only. They are not exhaustive and are intended neither to limit the circumstances eligible for consideration, nor to suggest conclusively the circumstances in which the CBSA will grant an application.

1. A client files the application within a few weeks after recovering files from his computer that was damaged by an event recognized as meeting the previous conditions.
2. A small business without representation where the owner is the only person in charge of trade issues and he provides credible proof that he was hospitalized and/or seriously ill during the last 10 days before the expiration of the 90-day time limit.
3. A non-commercial, infrequent importer miscalculated the statutory time limit for filing a request by submitting the notice at 3 months rather than at 90 days. If circumstances established a bona fide intention, it may be just and equitable to grant the application as a genuine misunderstanding by an individual unfamiliar with the legislation.
4. A non-commercial, infrequent importer files a request within the filing period to CBSA, but not in the prescribed form or manner.

APPENDIX E

Examples for As Soon as Circumstances Permitted

The following are examples the CBSA regards as representing situations which potentially meet the conditions set out in subparagraph 60.1(6)(b)(iii) of the *Customs Act*. The examples are provided for guidance only. They are not exhaustive and are intended neither to limit the circumstances eligible for consideration, nor to suggest conclusively the circumstances in which the CBSA will grant an application.

1. A client demonstrates that he was unable to file a request within 90 days because of financial hardship, but filed an application as soon as he was able to make payment(s) or to post security.
2. A client is unable to act because of incapacitation of a key employee and must hire and/or train a new employee to replace the employee normally responsible for commercial transactions. In appropriate circumstances, the client would be able to retain an agent. The client would be expected to explain the length of time between the hiring (or retaining of an agent) and the filing of the application. It may be reasonable to allow a few weeks for filing the application.

References	
Issuing Office	Recourse Policy Unit Recourse Directorate Corporate Affairs Branch Canada Border Services Agency Ottawa, ON K1A 0L8
Headquarters File	4502-12-3
Legislative References	<u>Canada Border Services Agency Act</u> <u>Customs Act</u> <u>Customs Tariff</u> <u>Proof of Origin of Imported Goods Regulations</u>
Other References	<u>D11-6-7</u> , <u>D17-2-1</u>
Superseded Memorandum D	D11-6-9, previously titled: Interim Memorandum – <i>Applications to the Commissioner for an Extension of Time to File a Dispute Notice</i> – Dated, May 22, 2002