



STANDARD OPERATING PROCEDURE

Administrative Penalties

Owner : **Manager Customs Revenue Unit**
 Manager Border
 Manager North
 Manager PCA

Issue Date:	
Review Date (Annually)	
Approved by Director (Name)	
Signature	

1. Legislation

Part 10 Customs Act – Sections 102 - 106

Customs Regulations – Regulations 34 - 35

2. Introduction

- 2.1 Administrative penalties are not intended as a means of collecting extra revenue. They are primarily an effective tool to leverage, and to encourage compliance.
- 2.2 There are two types of administrative penalties. Penalties applied for customs entries lodged, which are materially incorrect and penalties applied for offences involving less serious infringements, technical offences, which reflect non-compliance rather than criminal intent. The option of prosecution remains for those offences identified as more serious, and which are wilfully committed.
- 2.3 Where there is evidence that customs legislation has been breached with intent to defraud the revenue or circumvent customs control, prosecution should be considered with a view of obtaining a judgement involving heavier penalties and a more effective deterrent to illegal behaviour.
- 2.4 If an administrative penalty has been applied, a subsequent prosecution cannot be pursued for the same offence. It is either an administrative penalty or prosecution – it cannot be both.

3. Entries Materially Incorrect

- 3.1 Section 102 Customs Act contains legislative provisions designed to reduce errors and omissions on entries.
- 3.2 Administrative penalties are designed to ensure data integrity and to encourage compliance, reasonable care, self-assessment and voluntary disclosure of errors. Customs relies on those making entries to ensure they are correct and complete, as errors and omissions can:
 - Cause incorrect duty payments
 - Impact upon Government revenue

- Result in incorrect data being used for risk management
- Affect the integrity of data on which trade and industry rely

3.3 The types of errors or omissions which would cause an entry to be considered materially incorrect are contained in Section 102(a) – (s).

3.4 When errors do occur which render an entry materially incorrect, a penalty is not be issued as a matter of course. Before penalties are issued, officers should issue warnings either verbally or written, and engage with brokers to address problems. Penalties normally are only proceeded with in the event of non-cooperation or a continued recurrence of defective entries with no evidence of improved compliance.

3.5 Penalties are only to be issued on the authority of the Managers, CRU, Northern, PCA or DDC. The Form for Administrative Penalties for entries materially incorrect is attached to this SOP.

3.6 The amount of the penalty to be levied is contained in Section 104 (a) Customs Act.

3.7 A person is not liable to an administrative penalty if the error or omission is voluntarily disclosed to Customs, prior to Customs taking any action.

4. Late Payment of Penalties for Entries Materially Incorrect

4.1 The time permitted to pay a penalty levied under Section 104, Customs Act is 10 days. If the penalty is not paid within that time, an additional penalty of 10% of the unpaid penalty is to be imposed.

4.2 A further 5% is imposed for each subsequent period of 10 days that the penalty remains unpaid.

4.3 The Form used for Administrative Penalties (Materially Incorrect) is able to be issued in 4 parts to accommodate for late payment of penalties.

4.4 If the penalty remains unpaid it is recoverable by legal action in the courts.

5. Technical Offences

5.1 The technical offences sanctioned by administering an administrative penalty are:

- Fail to communicate information to customs (VT20,000)
- Fail to deal with goods according to the Act (VT50,000)
- Fail to deal with a craft according to the Act (VT40,000)
- Fail to keep, retain or produce documents or records (VT40,000)
- Fail to comply with a term or condition of a licence or permission issued under the Act (VT40,000)
- Permits unauthorised entry to a customs controlled area (VT20,000)
- Fails to answer questions, or in answering those questions makes a statement to a Customs Officer or authorised person which is false or misleading (VT40,000)

- Fails to lodge documents required under the Act for the correct dealing with goods (VT30,000)
- Uses the Customs computerised entry processing system unique user identifier in an unauthorised manner (VT30,000)

5.2 An administrative penalty is also payable by any person who presents a cheque which is subsequently dishonoured.

5.3 Administrative penalties for technical offences are not issued arbitrarily, the elements of the offence must be established, as with any prosecution, and with proof on the balance of probabilities.

5.4 Penalties for technical offences are only to be issued on the authority of Managers CRU, PCA, Border, Northern or DDC.

5.5 The Form for the issue of Administrative Penalties for Technical Offences is attached.

6. Late Payment of Penalties for Technical Offences

6.1 The time permitted to pay a penalty for a technical offence levied under Section 105, Customs Act is 10 days.

6.2 If the penalty is not paid within that time a further penalty of VT1000 is payable for each day in default.

6.3 If the penalty remains unpaid it is recoverable by legal action in the courts.

ADMINISTRATIVE PENALTY (ENTRY MATERIALLY INCORRECT) NOTICE

(Section 104 of the Customs Act No. 7 of 2013)

Penalty notice number:

1. OWNER/AGENT

Name:	
Principal Broker/Importer or Exporter:	
Telephone number:	

2. DECLARATION DETAILS

Registration number:
Registration date:
ASYCUDA Office:

3. DETAILS OF ERROR OR OMISSION

CUSTOMS OFFICER: _____ **SIGNATURE:** _____ **DATE:** _____

4. MANAGERS DECISION

Penalty imposed: Yes / No	Reason:
Amount of penalty:	Penalty code:
Action taken:	Date of notice:

5. OFFICIAL USE ONLY

Receipt number:	Date:
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Note: All penalties are payable within 10 days of the notice date. Payments not made within the permitted time, will be subject to further penalties.

ADMINISTRATIVE PENALTY (TECHNICAL OFFICE) NOTICE

(Regulation 35 of the Customs Regulation No.7 of 2013)

Penalty notice number:

1. OFFENDER DETAILS

Name:	
Address:	
Contact details:	
Telephone number:	
Email address	

2. DETAILS OF THE OFFENCE

CUSTOMS OFFICER: _____ **SIGNATURE:** _____ **DATE:** _____

3. MANAGERS DECISION

Penalty imposed: Yes / No	Reason:
Amount of penalty:	Penalty code:
Action taken:	Date of notice:

4. OFFICIAL USE ONLY

Receipt number:	Date:
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Note: All penalties are payable within 10 days of the notice date. Payments not made within the permitted time, will be subject to further penalties.