

REVIEW OF SEIZURE

Issue Date: 15 October 2019

CONTENTS

Purpose

Policy Statement

Procedures

References

Legislation

Customs Act 2014

Other Relevant Policies and Procedures

Definitions

PURPOSE

1. This document outlines the process that must be followed specifically for those who have received a Seizure Notice and wish to request the Comptroller of Customs to reconsider a seizure already undertaken.

POLICY STATEMENT

2. A person, whose goods have been forfeited to the State, has a right to seek a review of the decision to seize those goods. The established review process is intended to provide an inexpensive and timely response to an applicant seeking a review of the seizure.
3. An applicant who is dissatisfied with the Comptroller of Customs' ("the Comptroller") decision on review has a right of appeal to the independent Customs Appeal Authority. Customs Appeal Authority decisions are further appealable to the Supreme Court; and Supreme Court decisions can be referred for appeal to the Court of Appeal.

PROCEDURE

Submission of Application

4. A person who has an interest in the goods that have been seized by Customs must submit an application for reconsideration within 20 working days from the date he/she or it received the Seizure Notice from Customs. Any application submitted outside that timeframe may still be accepted by the Comptroller if satisfied that the applicant either did not receive a notice of seizure, or the extension is in the interest of justice.
5. A review of seizure application (“Application”) should be addressed directly to the Comptroller and must:
 - (a) be in writing;
 - (b) state the ground or grounds on which the application is made; and
 - (c) give an address at which the applicant wishes to receive correspondence relating to the application.
6. An application may be made on either or both of the grounds that:
 - the seizure of the goods was carried out without the requirement of the Customs Act 2014 (“the Act”); or
 - the applicant should, in all the circumstances, be granted relief.
7. Only a person who has an interest in the goods seized under section 268 of the Act can make an Application under section 274(1) of the Act. The applicant must establish his/her/its interest in the seized goods, and that the interest was acquired in good faith as per section 275(4) of the Act.

Assessment of Application by Customs

8. Applications are first submitted to the Comptroller or Acting, who then refers it to the Legal and Technical Division of the Ministry of Customs and Revenue for assessment.
9. The timeframe for Customs to make a decision on an Application is 20 working days from date of receipt of the Application as per requirement under section 276(2) of the Act, provided of course all relevant information have been provided by the applicant.
10. The Act pursuant to section 277 also sets out factors that Customs must take into consideration when reviewing an application for reconsideration of seizure, and these include the following:
 - the seriousness and nature of any act or omission giving rise to the seizure;
 - whether or not the person who is alleged to have done any act or omitted to do any act giving rise to the seizure has previously engaged in any similar conduct;
 - whether the seizure has arisen from, or is related to, a deliberate breach of the law;
 - the nature, quality, quantity, and estimated value of the seized goods;
 - the nature and extent of any loss or damage suffered by any person as a consequence of the seizure;

- whether or not granting relief would undermine the purpose or objective of any import or export prohibition or restriction imposed by this Act; and
 - the effect of any other action that has been taken or is proposed to be taken in respect of any offence related to the seizure.
11. A determination to grant relief cannot be made if any of the goods seized may be required to be produced in evidence in any criminal proceedings.

Condemnation

12. Seized goods can be disposed following condemnation.
13. Condemnation takes place when one of the following occurs:
- (a) No application for review of seizure has been made within the time specified in section 274 (2) of the Act:
 - (i) no later than 20 working days for a person who received a notice of seizure, or
 - (ii) any further time allowed by the Comptroller, if satisfied that the applicant either did not receive a notice of seizure, or the extension is in the interest of justice.
 - (b) The application for review of seizure is discontinued.
 - (c) The Comptroller dismisses the application for review, and no appeal to the Customs Appeal Authority is lodged within 20 working days of the decision.
 - (d) If an appeal made to the Customs Appeal Authority is discontinued or dismissed.
 - (e) Conviction of an offence under the Act where the goods are forfeit on the commission of an offence (section 282 of the Act), unless the Court orders restoration of the goods.
14. It should be noted that the Customs Appeal Authority has not be established yet; but suffice to say that the Ministry of Customs and Revenue has already started preparations for the set up of this vital Authority.
15. As such, in the absence of this Authority, an applicant who is unsatisfied with a decision by the Comptroller in dismissing the Application has recourse in the appropriate Courts of Samoa.

REFERENCES

Legislation

Customs Act 2014

- Division 2: Appeals against seizure

Other relevant Policies and Procedures

Procedures

- GEN0011 Seizure of Goods

Definitions

- **Forfeited goods** - mean goods that are forfeited to the State under section 267 of the Act. Goods become forfeited to the State automatically as a result of some act or omission. Forfeiture applies to both imports and exports. Not all goods that are forfeit are seized.
- **Seize/seizure** – the State (i.e. Customs Service) formally takes possession of the goods. Only goods that are forfeited can be seized. Goods, which are legitimately imported or exported, cannot be seized.
- **Goods** - means all kinds of movable personal property, including animals.