



INITIAL APPEAL PROCESS

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PURPOSE

1. To allow a person directly affected by a decision or omission of Customs to obtain, upon request, an explanation of the reasons for that decision or omission, and offer that person a right to an initial appeal before any other right of appeal to a competent authority is taken.
2. Such an appeal is important to trade facilitation and fundamental to the rule of law based legal systems.
3. This prevents absolute discretionary power and deters corrupt practices, delays in release of the goods, or higher prices of the imported goods.
4. Furthermore it affords the person making the initial appeal a quick response which may avoid costly appeals to an independent authority.

POLICY STATEMENT

5. It is a general principle of the Kyoto Convention that all Customs matters must be treated in a transparent and fair manner. Another fundamental principle governing Customs work is that all persons who deal with Customs must be afforded the opportunity to lodge an appeal on any matter. This right of appeal ensures protection for the individual against decisions of Customs; and also ensures protection against omissions by Customs in any matter.
6. At the same time, the review of challenged decisions or omissions by Customs and the findings of these reviews can be a suitable means of ensuring uniform application of the laws and regulations.
7. The Customs Act 2014 provides for specific types of decisions and omissions that are subject to appeal; and this SOP sets out the process which both Customs and person directly affected by a decision or omission of Customs has to follow when filing an initial appeal to the Comptroller.

WHO CAN APPEAL

8. Any person directly affected by a decision or omission of the Customs shall be given, after having made a request to the Customs, the reasons for such decision or omission.

PROCEDURES

9. The Customs Act 2014 provides the following avenues that any person can use when for reviewing of a Customs decision or omission:
 - a) Customs Appeal Authority;
 - b) Supreme Court; and
 - c) Court of Appeal

10. While the establishment of the Customs Appeal Authority is underway, the Customs Services have created another avenue so that the public can use for the review of decisions or omissions that have affected them. This is referred to as the Initial Appeal process which is covered in more detail below.
11. For more information on appeals to the Supreme Court or to the Court of Appeal, refer to sections 303 and 304. In relation to the Customs Appeal Authority, the public will be informed once this Authority has been fully established.

Format of an initial appeal

12. An initial appeal shall be lodged in writing to the Comptroller of Customs (“the Application”) within **20 working days** from receipt of the original Customs decision; and shall state the following matters:
 - a) The Customs decision and its date to which the appeal relates to;
 - b) Particularized the ground(s) on which the appeal is being made;
 - c) Any other relevant information that may assist the Comptroller to deal effectively with the subject of the application; and
 - d) Contact details of the applicant for communication purposes.

Review Process

13. Upon receiving the Application, Comptroller’s Secretary to stamp receive and submit Application to Comptroller for an independent review.
14. Customs will then undertake an initial review to check completeness of the Application within 3 working days (for simple matters) and 5 working days (for complex matters) from receipt of the Application.
15. The applicant is not required to lodge any supporting evidence together with the appeal; but will only be required to submit such evidence upon instructions from Customs Services within a reasonable timeframe.
16. Once the Comptroller has endorsed the internal memorandum, the Customs officer handling the Application must then issue a letter to the applicant (“Letter of Acknowledgment”) stating the following:
 - a) acknowledgment of receipt of the Application;
 - b) list of supporting evidence or documents to be submitted within 14 working days from receipt of the Letter of Acknowledgment; and
 - c) that Customs will be undertaking a full review of the Application within 10 working days (for simple matters) and 20 working days (for complex matters) from receipt of supporting evidence or documents.

17. Where the applicant fails to provide supporting evidence within timeframe noted under paragraph 11(c) above, the Customs officer handling the Application must advise the Comptroller who will then decide on the appropriate extended lodgement timeframe.

Final Ruling

18. When making a final determination on the Application, the Comptroller:
 - must consider the appeal and any written submission made by the applicant; and
 - may consider any statement, document, information or matter that in the Comptroller's opinion may assist the Comptroller to deal effectively with the subject of the application, whether or not it would be admissible in a Court of law.
19. The Comptroller after considering the grounds of the appeal may decide to:
 - dismiss the appeal; or
 - if satisfied that the grounds of the appeal are valid, to reverse or vary the original Customs decision.
20. The Comptroller's final decision must be communicated to the applicant in writing ("Written Notice of Decision"); and where the initial appeal is dismissed, the following must be specified in the Written Notice of Decision:
 - a. reasons for dismissal; and
 - b. that the applicant has the right to lodge any further appeal to the Customs Appeal Authority within **20 working days** after the date on which written notice of the Comptroller's decision was submitted.
21. It should be noted that where the decision being initially appealed involves the obligation to pay Customs duty, that obligation is not suspended pending the determination of the initial appeal.
22. The Customs shall give its ruling upon an initial appeal and written notice thereof to the appellant as soon as possible.
23. Where an initial appeal to the Customs is dismissed, the Customs shall set out the reasons therefore in writing and shall advise the appellant of his right to lodge any further appeal with the Customs Appeal Authority independent and of any time limit for the lodgement of such an appeal.

Matters that can be appealed to the Minister of Customs

24. Under the Excise Tax (Domestic Administration) Act 1984, the Comptroller is given the authority to grant:
 - a. Grant to a person a licence to manufacture excisable goods;
 - b. Issue or set conditions (including amending those conditions) under such licence;

- c. Suspend, cancel or refuse to renew a licence to manufacture excisable goods; and
 - d. Allow or refuse transferral of licence to any other person chosen by the licensee.
25. A person who is affected by a decision of the Comptroller (refusal to issue a licence; issues a licence with conditions; suspends, amends, cancels or refuses to renew a licence; or refuse to transfer a licence) may appeal to the Minister for Customs.
26. A notice of appeal must be given in writing to the Comptroller within 14 days notice of the Comptroller's decision to the applicant or licensee, or within such further time permitted by the Comptroller, outlining the following:
 - a) The Comptroller's decision and its date to which the appeal relates to;
 - b) Particularized the ground(s) on which the appeal is being made;
 - c) Any other relevant information that may assist the Minister to deal effectively with the subject of the application; and
 - d) Contact details of the applicant for communication purposes.
27. The applicant or licensee will be given a reasonable opportunity to be heard by the Minister, prior to a decision to be made. Once the Minister issues his/her decision, such decision is final.

REFERENCES

Legislations

Customs Act 2014

- Section 14 – Variation or revocation of conditions
- Section 15 – Revocation or suspension of licence
- Section 72 – Removal of goods from Customs controlled area
- Section 84 – Comptroller may approve secure exports scheme
- Section 95 – Amendment of valuation assessment
- Section 97 – State's right of compulsory acquisition
- Section 101 – Unsubstantiate preference claims
- Section 102 – Duty on imported goods a State debt
- Section 107 – Due date for payment of duty
- Section 118 – Liability for duty on goods wrongfully removed or missing
- Section 119 – Liability of owners of craft for duty on goods unlawfully landed

- Section 141 – Imposition of penalty
- Section 145 – Registered users
- Section 148 – Conditions may be imposed on registered users
- Section 149 – Suspension or cancellation of registration of registered user
- Section 274 – Application to reconsider seizure
- Section 276 – Decision on review
- Section 294 – Establishment of Customs Appeal Authority
- Section 303 – Appeals to the Supreme Court
- Section 304 – Appeal to Court of Appeal
- Section 305 – Stating case for the Supreme Court

Excise Tax (Domestic Administration) Act 1984

- Section 6 – Licence required to manufacture excisable goods
- Section 11 – amendment and cancellation
- Section 13 – transfer of licence
- Section 88 – Appeals to Minister for refusal to grant licence

Information Sheet

- Matters subject to appeal

Definitions

- **'person who is directly affected'** – includes importers, exporters, Customs brokers or agents and travellers
- **Omission** – when Customs fails to fulfil its obligations under Customs legislations and can take various forms depending on the procedure or operation involved.