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**Islamic Republic of Afghanistan
Ministry of Finance
Customs and Revenue**

Procedure for filing of appeals to the General Directorate of Customs in accordance with Article 18 of the Customs Code.

In compliance with Article 18 of the Customs Code, the following procedure is prescribed for filing and disposal of application for review of customs decisions.

(A) Definitions

For the purpose of this Article:

(a) The term “decision” means the individual act by which the Customs authorities decide upon with regard to a particular customs transaction including a matter relating to the laws and regulations which the Customs is responsible for enforcing. Such decision is to be made in accordance with Article 17 of the Customs Code. An appeal against such decision could be filed to the General Directorate of Customs under Article 18.

(b) The term “appeals” means the act by which a person who is directly affected by a decision of the Customs authorities and who deems himself to be aggrieved thereby seeks redress before the General Directorate of Customs in accordance with Article 18.

(c) The term “time period” means the time limit required for filing and disposing of appeals like;

(1) An interested party may request a review of a disputed customs decision to the General Directorate of Customs within 10 days of notification of the decision by Customs,

(2) That the General Directorate of Customs must issue a decision within 20 days on the outcome of the review,

(3) In case of objection to the decision of the General Directorate of Customs, an appeal could be filed to the Customs Arbitration Administration within 15 days of receipt of decision of General Directorate of Customs.

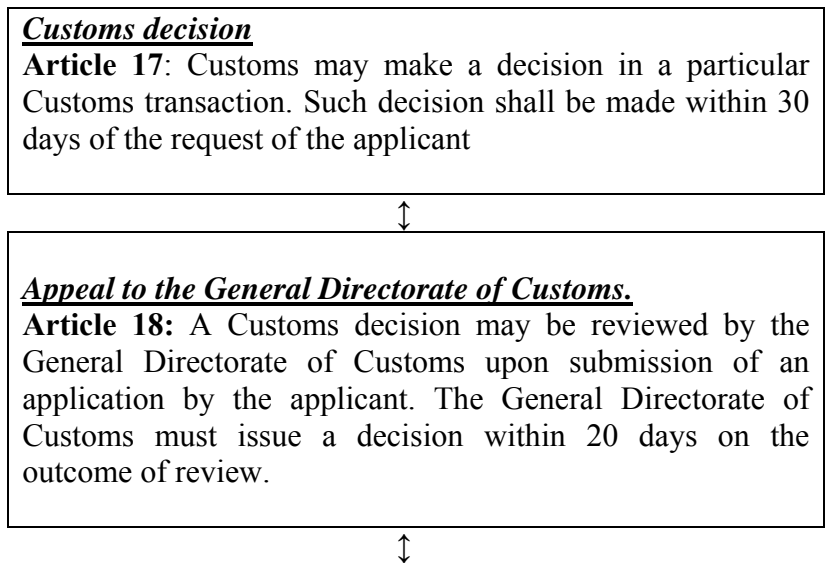
(B) Article 18 (Review of Customs Decisions)

- (1) A customs decision may be reviewed upon submission of an application by the applicant. In case a decision was due to the submission of incorrect information by the applicant, review will not be permitted except in accordance with Article 186.
- (2) Customs decisions mentioned in paragraph 1 shall be enforceable and the customs debt assessed (other than penalties paid in accordance with Article 186) shall be collected and shall remain in trust until final decision.
- (3) An interested party may request a review of a disputed customs decision through any competent regional customs authority to the General Directorate of Customs, within 10 days from the day of notification of the decision by Customs. The General Directorate of Customs must issue a decision within 20 days on the outcome of the review. In the event the General Director of Customs does not issue a decision within this time period, the request shall be presumed to have been decided in the favor of the person making it.
- (4) In case of an objection to a decision made by the General Directorate of Customs or the rejection of the request by the General Directorate of Customs, it may be submitted to the Customs Arbitration Administration.
- (5) An objection to a customs decision shall be made by filing a notice of objection mentioned in paragraph 4 and it shall be presented to the Customs Arbitration Administration within fifteen days of receiving a customs decision from the General Directorate of Customs, along with security for costs in the amount of 2 percent of the contested amount.

(C) Available legal remedies:

Although this procedure exclusively relates to Article 18 regarding review of decision, however, the following table is inserted with a view to highlight various legal remedies available from initial step of taking a decision by customs and finally culminating on filing of a reference in the Commercial Court.

TABLE



Customs Arbitration

Article 18(4): In case of an objection to a decision made by the General Directorate of Customs, it may be submitted to the Customs Arbitration Administration within 15 days of the receipt of such decision from the Directorate General of Customs.



Commercial Courts

Article 20(2): If the amount of customs debt in dispute is greater than Afghanis 50,000. The parties may in cases when dissatisfied refer the opinion to the relevant Commercial Court. The order of the Court shall be final and enforceable.

D: Rationale behind the idea of reviewing of disputed Customs decision by the General Directorate of Customs.

Article 18 provides an opportunity to the aggrieved person to file a review petition against the decision of the customs in the court of General Directorate of Customs. The aggrieved person may be an interested party who does not accept the verdict of the customs. The situation may arise in which a decision or omission of the Customs authorities is not acceptable to the person directly affected thereby. Therefore in the Customs Code a provision has been made for the aggrieved person to have a right of appeal to the Director General (Customs). The aim of Article 18 is primarily to provide protection to the individuals against decision of Customs authorities which are not in compliance with the laws and regulations which they are responsible for enforcing and also provides protection against omissions of those authorities. At the same time the review of disputed decision or omission by the Director General (Customs) and the verdict thereon can be a suitable means of ensuring uniform application of the laws and regulations. These verdicts may constitute legal precedents or official interpretations in respect of like or similar disputes to be settled in the future. This Article covers appeals against customs decisions in all matters relating to the laws, regulations and with regard to a particular customs transaction. Such Customs decisions may relate to tariff classification, origin of goods, Customs valuation, description of goods and customs laws, procedures and regulations etc.

E: General and legal Principles for filing of appeals under Article 18 with the General Directorate of Customs.

- An interested party may request a review of a disputed customs decision through any competent regional Customs authority to the General Directorate of Customs within

10 days from the day of notification of the decision by Customs.

- The request for review of Customs decision shall be made in writing duly signed by the applicant and shall contain reasons for such review. An authentic and legible copy of the disputed Customs decision shall invariably be attached with the application.
- In case of appeal in accordance with Article 18(4), the appellant must deposit, in addition to the customs debt deposited in accordance with Article 18(2), an amount equal to 40 % of the total amount of the fine, provided that the total amount of the deposit shall not exceed the value of the goods subject of the violation.
- The applicant must indicate in his application whether he would like to be heard in person or through authorized legal representative. He should also attach relevant documents and evidence in support of his contention.
- The applicant may submit application personally in the Secretariat of Director General (Customs) or he may send it through registered post service.
- The applicant shall attend hearing himself or through authorized counsel before the General Directorate of Customs.

F: Disposal of appeals by the General Directorate of Customs:

- ❖ The right of appeal given by Article 18 to an interested party aggrieved by a decision of Customs would be illusory if the appeal could be disposed of merely after pursuing departmental reports. The word “appeal” in itself implies a right of audience to the interested party/applicant. These proceedings are quasi-judicial of which the substance of a fair defense are essential incidents. Therefore, the Director General Customs would accord opportunity of hearing to the appellant before deciding the appeals. If one fails to avail the opportunity of hearing which is given to him, he can not complain of violation of the principles of natural justice.
- ❖ Before exercising statutory powers under Article 18, the Director General (Customs) must ensure to comply with the provisions of the Customs Code and the procedures prescribed there under.
- ❖ The notice for hearing should be served upon the relevant persons concerned on their last known address and proof of service of the notice must be kept on record.
- ❖ Full opportunity should be given to both the parties i.e. to the aggrieved person and to the department to rebut the evidence and statements etc against them. The person or his representative should also be allowed to examine the evidence and cross examine witnesses.
- ❖ Each plea advanced by the person should be brought out in the decision and if not admitted it should only be rejected with reasoning.
- ❖ Ex-party decision may be taken only when no reply to hearing notice is received within stipulated time provided it is proved that the service of hearing notice has been made on the person concerned.
- ❖ Stereo and cyclostyled form and order should be avoided because such decision indicates non application of mind by the deciding authority.
- ❖ The date of dispatch must invariably be indicated in the decision to enable the aggrieved person to prefer an appeal to the Customs Arbitration Administration in accordance with Article 18(4).
- ❖ The General Directorate of Customs must issue a transparent, self speaking and

impartial decision based on justice and fair play within 20 days of the outcome of the review. In the event the General Directorate of Customs does not issue a decision within this time period, the request shall be presumed to have been decided in favor of the person making it.

- ❖ In case of an objection to the decision made by the General Directorate of Customs or the rejection of the request by the General Directorate of Customs, it may be submitted to the Customs Arbitration Administration. An objection to a customs decision shall be made by filing a notice of objection and it shall be presented to the Customs Arbitration Administration within 15 days of receiving the customs decision from the General Directorate of Customs, along with security for costs in the amount of 2 per cent of the contested amount.

Director Legislation
& Procedures

Director General (Customs) Deputy Minister