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

**Subject: -GUIDELINES FOR IMPLEMENTAION OF ARTICLE 167.**

With a view to streamline the procedure for imposing fine so as to punish persons responsible for committing customs offences, the following guidelines are prescribed for compliance by all concerned. Since this procedure is laid down for implementing Article 167, therefore this Article is reproduced verbatim below for ease of reference.

**1: Article 167 (penalties).**

- (1) Persons committing class 2 offences shall be punished by a fine of 10 % to 50 % of the value of goods, taking into account the condition provided for in Article 20 and guidelines as provided in this procedure.
- (2) Persons committing class 3 offences shall be punished by a fine of 50 % to 100 % of the value of goods taking into account the conditions provided for in Article 20 and guidelines as provided in this procedure.
- (3) The payment of cash penalty under this Article does not negate the payment of principal customs debt.

**2: Definitions:**

I. Class 2 Offences are:

- 1- a person who violates Articles 17, 46, and 48, and is provided a written warning of violation and an order to correct, and fails to comply with such written warning within the time required by Customs.
- 2- A person who fails to comply with Articles 39 and 49(1) or fails to comply with the instructions of Customs concerning goods under Customs supervision or control in violation of 34(5) and 49(2).
- 3- A person who moves customs goods mentioned in Articles 34(5), 35, 38(1), 36, 80, 83, 123, and 132, from an authorized location to a non-authorized location.

II. Class 3 Offences are:

- 1- Intentional misrepresentation of facts required to be submitted to Customs for the purpose of benefiting from a more favorable customs tariff
- 2- Executions in violation of Articles 50(2), 61(2), 66, 134, and 135, with the intent to frustrate the enforcement of customs legislation.

III. Competent authority means a Customs officer authorized to take a decision in a case. For class 2 offences, the Deputy Director (Muawin) is authorized to take a

decision and also to impose penalty against the offender. While in class 3 offences, the Director (Raees) is authorized to take a decision and also to impose a fine against the offender. If the situation so demand, the Director (Raees) may exercise the power of Deputy Director (Muwin) by deciding a case pertaining to class 2 offences. But in no situation Deputy Director has got a legal authority to decide a case pertaining to class 3 offences.

- IV. Malafide intention of the importer, exporter, broker and passenger, with reference to any consignment, means a deliberate and willful act on their part with ill intention to evade legitimate customs duty and also to violating the prescribed customs laws and other relevant laws of the land.
- V. Bonafide act means an act which is committed by mistake and error and in which no ill intention is involved for evading customs duty.

**3: Parameters for deciding a case and imposing penalty.**

- I. The concerned Customs officer would accord opportunity of hearing to the person before deciding the case. If the person fails to avail the opportunity of hearing which is given to him, he can not complain of violation of the principles of natural justice.
- II. Before exercising statutory powers, the Customs officer must ensure to comply with the provisions of the Customs Code, rules and the procedures prescribed there under. The Custom office must issue a transparent, self speaking and impartial decision based on justice and fair play.
- III. 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.
- IV. Full opportunity should be given to both the parties i.e. to the 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.
- V. Each plea advanced by the person should be brought out in the decision and if not admitted it should only be rejected with reasoning.
- VI. 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.
- VII. Stereo and cyclostyled form and order should be avoided because such decision indicates non application of mind by the deciding authority.
- VIII. The date of dispatch of must invariably be indicated in the decision to enable the aggrieved person to prefer an appeal.
- IX. The penalties and fines may be waived by Customs if it is proved that the misrepresentation was caused by a mistake of calculation or errors made in good faith during the preparation of the customs declaration and this shall be duly recorded in writing.

**4: Amount of Penalty and fine.**

**TABLE FOR LEVY OF FINES.**

Sr. No.	Violation of Article No.	Class of Offence	Percentage Range of fine to be levied
1.	17	2	10% - 25%

2.	46	2	10% - 20%
3.	48	2	10% - 20%
4.	34 (5)	2	20% - 30%
5.	39	2	20% - 30%
6.	49 (1)	2	20% - 30%
7.	49 (2)	2	10% - 25%
8.	35	2	25% - 40%
9.	36	2	15% - 30%
10.	38 (1)	2	15% - 30%
11.	80	2	25% - 40%
12.	83	2	25% - 40%
13.	123	2	35% - 50%
14.	132	2	35% - 50%
15.	166 (3)-1	3	80% - 100%
16.	50 (2)	3	50% - 70%
17.	61 (2)	3	50% - 70%
18.	66	3	70% - 90%
19.	134	3	70% - 100%
20.	135	3	70% - 100%

### **5: Appeal against the Decision for Payment of a Fine**

I. Customs are obliged to take a decision within a maximum of 30 days. A Customs decision to impose a fine under this law has to be delivered and notified to the person accused within 24 hours from the time of the decision by Customs officials.

II. The person responsible for paying the fine may object to the decision of the Customs imposing a fine in accordance with Article 18. This means that the aggrieved person can file an application for review of such decision to the Director General Customs. The review application shall be filed before the Director General within 10 days from the day of notification of the decision by Customs

III. In case of an 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.

VI. If the decision of the Customs Arbitration Administration is unacceptable to the appellant, the appellant shall deposit the remaining 60% of the fine prior to appealing from the opinion of the Customs Arbitration Administration which has been issued in accordance with article 18.

V. In accordance with articles 20 and 21 of this law, the deposit shall be returned within 5 days after any decision, customs opinion or order of court rendered in favor of the appellant.

Director Legislation  
& Procedures

Director General Customs

Deputy Minister