

UNCTAD Trust Fund for Trade Facilitation Negotiations
Technical Note No. 10

**Right of appeal against Customs
and other agency rulings and decisions**

Background

Customs and other government agencies normally take administrative action in the form of rulings related to import, export and transit of goods. It is crucial for affected traders to have recourse to an independent appeal mechanism for review and, where appropriate, for the correction of administrative action or omission. The right of appeal ensures traders the right to appeal against Customs or other border agencies' decision on the basis that such decision or omission is not in compliance with the laws and regulations. An independent and competent authority will then review the application of legislation in the case under appeal and issue a decision. Appeal procedures can be lengthy and it would therefore be important for the traders that, when decisions are disputed and subject to appeal, goods can nevertheless be released against the provision of financial guarantee.

The fundamental principles and the right of appeal of administrative decisions are in most countries regulated by constitutional law, whereas detailed appeal procedures are subject to administrative specific regulation. Chapter 10 of the Revised Kyoto Convention outlines a number of standards concerning (a) the right of appeal, (b) the form and grounds of appeal, and (c) the consideration of appeals, for Customs matters.

Benefits

A functioning appeal system helps protect traders against the application of decisions by the administration which may run against existing legislation and regulation. It ensures a fairer and more transparent application of legislation administered or enforced by Customs and other border agencies.

Appeal procedures, in particular judicial review, can often be lengthy and costly for the traders. The option to request more information on the decision taken prior to an appeal reduces the incidents of appeals without prejudice to the right of appeal. Administrative appeals processes often offer substantive advantages over judicial review. In particular, they enable quick decisions on minor or local appeals and involve fewer costs for traders, reducing at the same time the burden on the administration to adjudicate in appeal matters. The provision of a multiple-stage appeal therefore benefits both the traders and the national administrations. To ensure impartiality and fair treatment the authority to which an appeal is made should be independent from the administration which issued the decision. Such independent review can often only be ensured through judicial appeal.

Appeal system

Multiple-stages appeal

An appeal process typically consists of multiple stages to ensure a fair and impartial review. In general, national legal frameworks provide for administrative and/or judicial appeal.

The administrative stage usually entails an initial right of appeal within the same administration which issued the decision; either at the same level of authority, for example, the Customs office, or to a higher authority supervising the administration. This should then be followed by the right to appeal to an authority independent of the authority which issued the decision, such as an established arbitration procedure or a special administrative tribunal. In many countries, Customs appeal bodies composed of several appointed individuals have been set up with the powers to settle appeals in Customs and tax law related matters.

At a final recourse, appeal to an independent judicial authority should be made available to all individuals. Some administrations allow judicial appeal at any stage whilst others stipulate that all stages of administrative appeal have to be exhausted before the right to judicial appeal.

Requirements for filing an appeal

In general, appeal procedures provide details on who can lodge an appeal, the types of decisions and omissions which can be appealed, forms and grounds of appeal, and the implementation of the appeal decisions.

The legal requirements and procedures for filing an appeal vary from country to country. Mostly, the right of appeal is generally available and accessible to the individual directly affected by the decision without any formal distinction on the basis of nationality. National legislation has to specify who is considered as being directly affected and whether the individual has the right to be represented by a legal representative.

According to the Revised Kyoto Convention (RKC) Standard, an appeal has to be filed in writing referring to the particular decision and the grounds in which the appeal is made. It has to be submitted within a given time period and with supporting evidence. A longer time limit can be granted for submitting the supporting evidence. The decision of the authority on the appeal, including the decision to accept or dismiss the appeal, has to be communicated in writing to the appellant and implemented by the administration, except for cases when the administration lodges an appeal against the decision.

Implementation issues

National legislation has to provide for a right of appeal on Customs and other border agencies related matters. The legislation should include the right to administrative and judicial appeal. Furthermore, the legislation has to clearly lay out the appeal procedures, legal requirements and filing procedures. The legislation needs to be easily available (see Technical Note 1 Publication of Trade related information).

In addition to the legal framework, institutional capacities have to be developed, including when necessary by setting up of Customs appeal bodies and tribunals in Customs and tax matters with powers to adjudicate in appeal matters. It should be ensured that these bodies have sufficient human and technical resources to exercise their

functions. For example, a Customs appeal body may consist of commissioners appointed by the government, but requires a secretary to register and fill the appeals, set the bodies' meeting dates, and handle correspondence related to the decision.

References and tools available

World Customs Organization

Relevant documents include the International Convention on the Simplification and Harmonization of Customs Procedures (as amended) – Revised Kyoto Convention of 1999 and the Compendium of Integrity Best Practices, March 2007. See <http://www.wcoomd.org>.

OECD

The following OECD publications provide useful information and examples on national appeal systems. "Transparency and simplification approaches to border procedures: Reflections on the implementation of GATT Article X – Related proposals in selected countries" (TD/TC/WP(2002)36/FINAL), (TD/TC/WP(2004)36/FINAL) and (TD/TC/WP(2005)27/FINAL) . See www.oecd.org.

The Global Facilitation Partnership for Transportation and Trade (GFP)

The Global Facilitation Partnership for Transportation and Trade (GFP) brings together the world's leading organizations and practitioners in trade and transport facilitation. It creates an open information and exchange platform on major new developments and all aspects of trade and transport facilitation. See www.gfptt.org.

UNCTAD

Various reports on legal aspects of international transport are available via <http://r0.unctad.org/ttl/legal>. In order to subscribe to UNCTAD's Transport Newsletter please visit <http://extranet.unctad.org/TransportNews>.

Further UNCTAD Technical Notes

Further Technical Notes are available via <http://www.unctad.org/technicalnotes>.

See in particular:

Technical Note No.1 (Publication of trade regulations)

Technical Note No.7 (Maintenance of integrity among officials)

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