

# TFA Article 4

## Procedures For

# Appeal Or Review

May 29, 2017



KOREA CUSTOMS SERVICE

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# 1. Objective

## Purpose

To guarantee relevant parties' right to appeal against and request a review of Customs' administrative decisions regarding clearance and transit of goods (*i.e.* dispositions by acts or omissions)

## Scope

Members are encouraged to make appeals procedures applicable to administrative decisions issued by border agencies other than Customs

## Reaffirming GATT Article X

Guaranteeing the right to appeal is a prerequisite for enhancing transparency in the event that traders believe agencies made a wrong decision on export / import procedures

## 2. Definition & Summary

### Right to appeal

- The right to an administrative (by authorities higher than or independent of Customs) and/or judicial review of Customs' administrative decision
- Optional: Members may disallow petitioners from filing a judicial appeal or requesting a judicial review before a decision is made on an administrative appeal/review

### Right to further appeal

- Where the decision on an appeal or review is not given within set periods or without undue delay, petitioners have the right to:
  - Further appeal to or further review by the administrative or judicial authority
  - Any other recourse to the judicial authority
- TFA encourages Members to apply appeals procedures to decisions by other border agencies

## 3. TFA Articles

### Article 4.1

- Guarantees people's right to appeal against or request a review of Customs' administrative decisions by higher/independent administrative authorities or judicial authorities
- The right to appeal/review is the basic tool for enhancing transparency, preventing agencies from taking arbitrary action and ensuring rule of law

### Reference

1. Each Member shall provide that any person to whom customs issues an administrative decision has the right, within its territory, to:
  - (a) an administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision; and/or
  - (b) a judicial appeal or review of the decision.

## 3. TFA Articles

### Article 4.2-3

- Para 2: Members may require administrative appeals/review precede judicial process
- Gives Customs/administrative authorities a chance to review their decision before judicial process begins
- Para 3: Appeal/review procedures should be carried out in a non-discriminatory manner
- Declaratory clause: Applies principles of non-discrimination (MFN / National Treatment)

### Reference

2. The legislation of a Member may require that an administrative appeal or review be initiated prior to a judicial appeal or review.
3. Each Member shall ensure that its procedures for appeal or review are carried out in a non-discriminatory manner.

## 3. TFA Articles

### Article 4.4

- Dictates petitioners' right if the decision on appeal/review is not made within set periods of time
- If the decision on appeal/review is not made within set periods of time:
  - TFA gives petitioners the right to further appeal to/review by administrative or judicial authority
- Members has the discretion over the time period as long as it is reasonable
- (Article 1.1) Members should make their time period publicly available

### Reference

4. Each Member shall ensure that, in a case where the decision on appeal or review under subparagraph 1(a) is not given either:

- (a) within set periods as specified in its laws or regulations; or
- (b) without undue delay,

the petitioner has the right to either further appeal to or further review [...].

## 3. TFA Articles

### Article 4.5-6

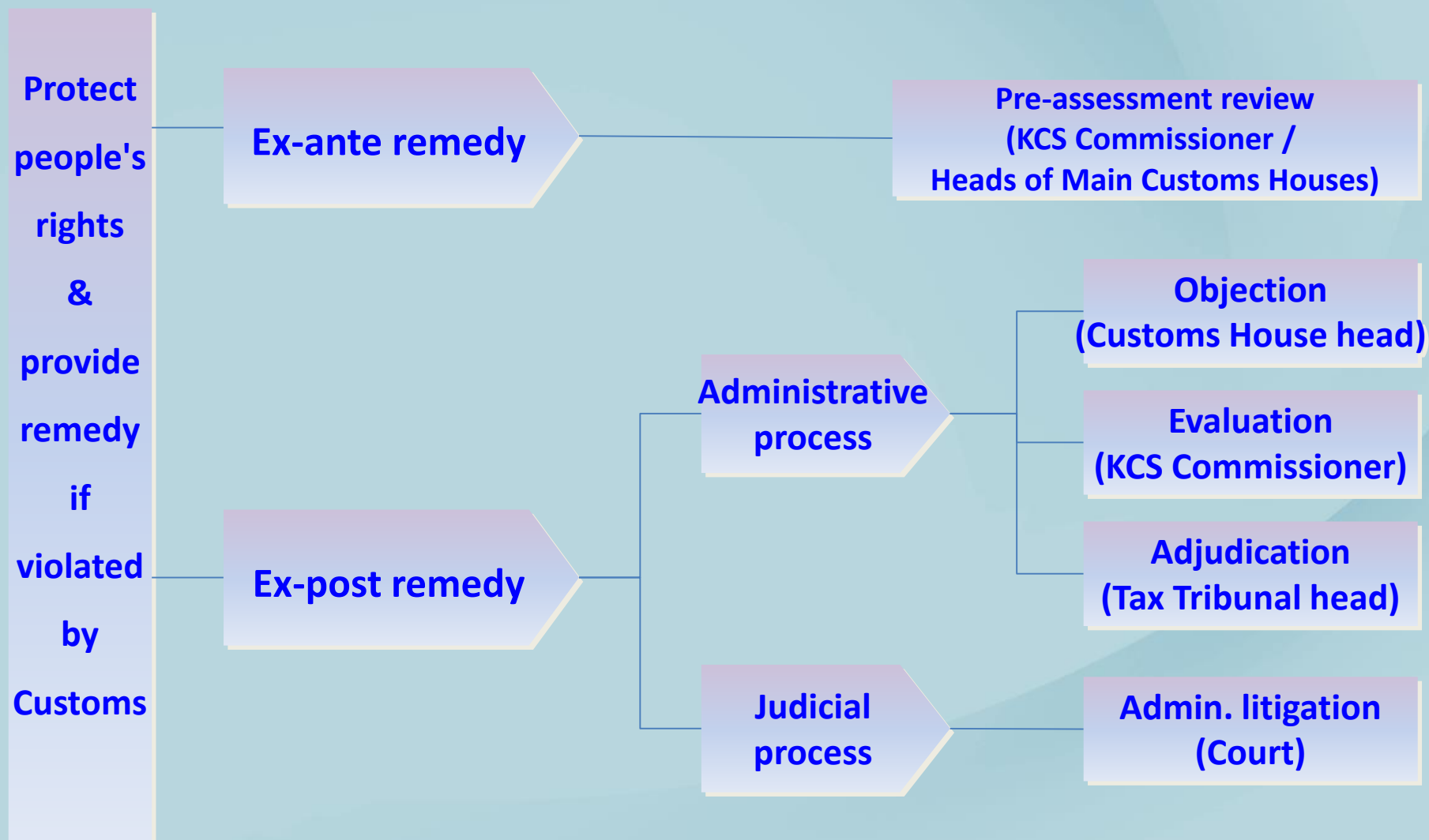
- Para 5: Petitioners should have access to necessary info for appeals (reason for admin. decisions)
- Petitioners need the reason for administrative decisions to claim Customs' acts/omissions were illegal/unfair; TFA guarantees petitioners' right to obtain this information
- Ensures fair and trustworthy procedures
- Para 6: Encourages Members to apply appeals procedures to decisions of other border agencies
- Korea's border agencies have appeals procedures similar to those of Customs

### Reference

5. Each Member shall ensure that the person referred to in paragraph 1 is provided with the reasons for the administrative decision so as to enable such a person to have recourse to procedures for appeal or review where necessary.
6. Each Member is encouraged to make the provisions of this Article applicable to an administrative decision issued by a relevant border agency other than customs.



## 4. Korea's Legal Framework (Overview)



## 4. Korea's Legal Framework (Appeals Procedure in Customs Act)

### Appeal against Customs' decision

- A person can request evaluation/adjudication if his/her rights/interests were violated by illegal or unfair dispositions
- The person may file an objection before requesting evaluation/adjudication (Customs Act, Article 119.1) – TFA Article 4.1

### Relationship with Administrative Litigation Act

- Petitioners cannot initiate legal action against Customs before an evaluation/adjudication request is filed and the decision is made (Customs Act Article 120) – TFA Article 4.2

### Principle of equity

- The principle of equity prevails in applying Korea's Customs Act (Customs Act Article 5.1) – TFA Article 4.3

## 4. Korea's Legal Framework (Appeals Procedure in Customs Act)

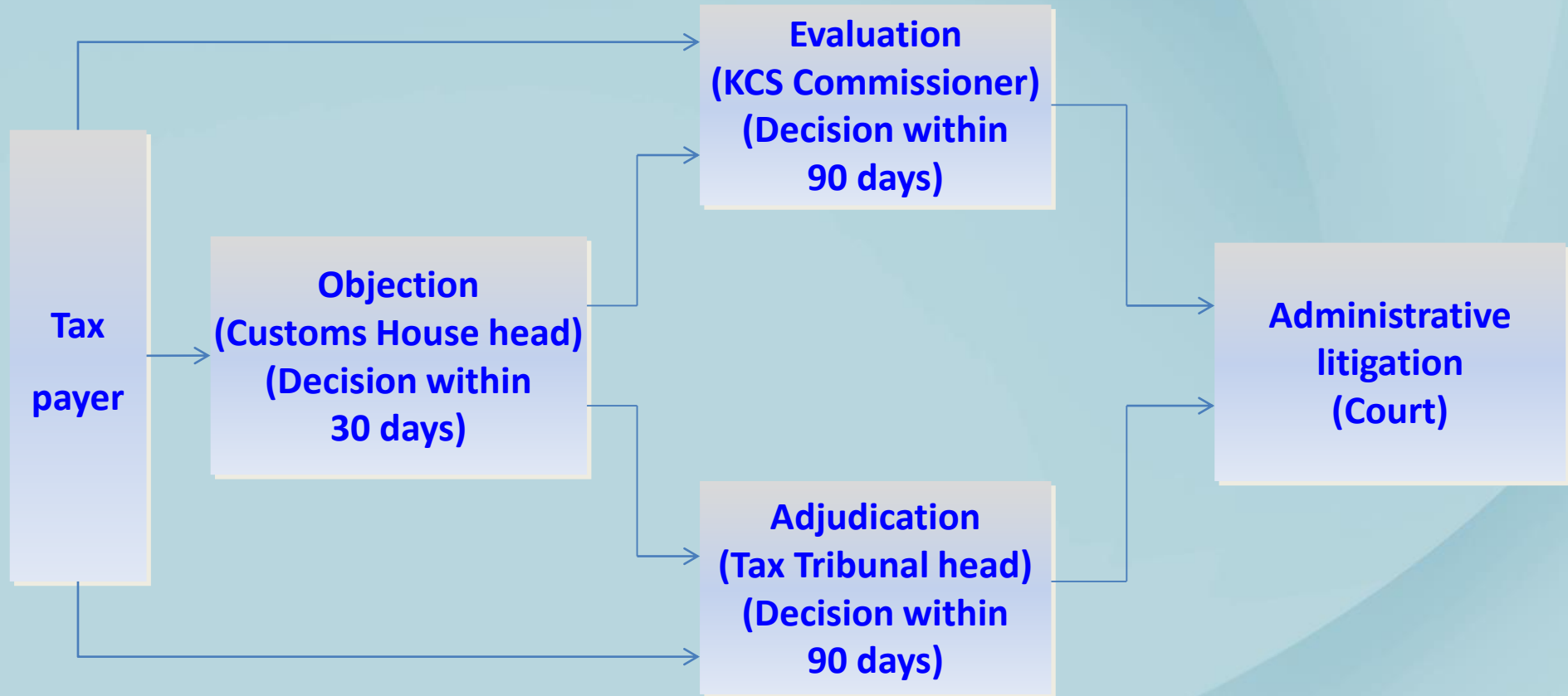
### Notifying methods of appeals

- Petitioners should be notified of ruling agency's decision on appeals within set period of time
  - If the decision cannot be made within the set period,
    - The agency sends written notice to petitioners that they can appeal to higher authorities / law court
- (Customs Act Article 129) – TFA Article 4.4

### Access to relevant documents & notifying decision

- For objection, evaluation and adjudication: petitioners can peruse documents relevant to the case
- Petitioners can state their opinion to the ruling agency (Customs Act Article 130) – TFA Article 4.5
- When a decision is made on appeals, the ruling agency must notify petitioners of its decision in a written notice within a set period of time (Customs Act Article 128) - TFA Article 4.5

## 4. Korea's Legal Framework (Types of Administrative Appeals)



- Objection is an optional procedure (Customs Act Article 121)
- Administrative appeals must precede legal action against Customs (Customs Act Article 120, TFA Article 4.2)

## 4. Korea's Legal Framework (Types of Administrative Appeals)

Category	Objection	Evaluation	Adjudication
Procedural requirements	Optional procedure	Petitioners can choose one process (cannot request both at the same time)	
Appeals filed to	Head of Customs House	KCS Commissioner (via head of Customs House)	Head of Tax Tribunal (via head of Customs House)
Time period for decision	Within 30 days after application	Within 90 days after request	Within 90 days after request
Time period for administrative litigation	N/A (evaluation/adjudication must precede litigation)	Within 90 days after decision is notified	

## 4. Korea's Legal Framework (Statistics)

### # of Appeals (Pre-assessment review, objection, evaluation & adjudication)

Category	2013	2014	2015	2016
Filed	543	740	542	482
Processed	455	660	477	590
Accepted	168	240	128	144
Acceptance rate	40.9%	42.3%	37.4%	26.1%

### # of legal cases

Category	2013	2014	2015	2016
Filed	89	103	101	100
Petitioner won	87	118	78	80
Petitioner lost	15	12	19	14
Acceptance rate	14.7%	9.2%	19.6%	15.8%

Q & A

***Thank You!***

**Multilateral Cooperation Division**