



THE EAST AFRICAN COMMUNITY

The East African Community Customs Management Act, 2004

*This Edition of the East African Community Customs Management Act, 2004
incorporates all amendments up to 8th December, 2008 and is printed under the
authority of Section 12 of the Acts of the East African Community Act, 2004*

Revised Edition 2009 (2004)
Printed and Published by the Government Printer
Nairobi

THE EAST AFRICAN COMMUNITY CUSTOMS
MANAGEMENT ACT, 2004

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THE EAST AFRICAN COMMUNITY

No. 1 of 2005

Date of assent: 31st December, 2004

Date of commencement: 1st January, 2005

An Act of the Community to make provisions for the management and administration of Customs and for related matters.

PART I

PRELIMINARY PROVISIONS

1. (1) This Act may be cited as the East African Community Customs Management Act, 2004.

Short title, application and commencement.

(2) This Act shall apply to the Partner States.

(3) This Act shall commence on the date to be appointed by the Council.

2. (1) In this Act, unless the context otherwise requires—

Interpretation.

“agent” in relation to an aircraft, vehicle or vessel, includes any person who notifies the proper officer in writing that he or she intends to act as the agent and who, or on whose behalf any person authorised by him or her, signs any document required or authorised by this Act to be signed by an agent:

Provided that the owner of any aircraft, vehicle or vessel, if resident or represented in a Partner State, shall either himself or herself or through his or her representative be deemed to be the agent for all the purposes of this Act if no such agent is appointed;

“approved place of loading” and “approved place of unloading” mean any quay, jetty, wharf, or other place, including any part of a Customs airport, appointed by the Commissioner by notice in the Gazette to be a place where goods may be loaded or unloaded;

“boarding station” means any place appointed by the Commissioner by notice in the Gazette to be a place for aircraft or vessels arriving at or departing from any port or place to bring to for the boarding by or the disembarkation of officers;

“bonded warehouse” means any warehouse or other place licensed by the Commissioner for the deposit of dutiable goods on which import duty has not been paid and which have been entered to be warehoused;

“cargo” includes all goods imported or exported in any aircraft, vehicle or vessel other than such goods as are required as stores for consumption or use by or for the aircraft, vehicle or vessel, its crew and passengers, and the bona fide personal baggage of such crew and passengers;

“COMESA” means the organisation established by the Treaty establishing The Common Market for Eastern and Southern Africa, 1994;

“Commissioner” means Commissioner of Customs appointed under section 5 of this Act;

“countervailing duty” means a specific duty levied for the purposes of offsetting a subsidy bestowed directly or indirectly upon the manufacture, production or export of that product;

“countervailing measures” means actions taken to counter the effect of subsidies;

“Customs” or “the Customs” means the customs departments of the Partner States;

“Customs area” means any place appointed by the Commissioner by notice in writing under his or her hand for the deposit of goods subject to Customs control;

“Customs laws” includes this Act, Acts of the Partner States and of the Community relating to Customs, relevant provisions of the Treaty, the Protocol, regulations and directives made by the Council and relevant principles of international law;

“Customs Co-operation Council” means the council established by the Convention establishing the Customs Cooperation Council, 1952;

“Customs revenue” means any amounts collectable by the Customs in accordance with the provisions of the Customs laws;

- “Customs warehouse” means any place approved by the Commissioner for the deposit of unentered, unexamined, abandoned, detained, or seized, goods for the security thereof or of the duties due thereon;
- “Directorate” means the Directorate of Customs established by the Council under Article 75 (3) of the Treaty;
- “Director General” means the Director General of Customs in the Directorate of Customs;
- “document” includes magnetic tapes, disks and microfilms;
- “dollar” means United States dollar and includes the equivalent in the currency of the Partner States;
- “duty drawback” means a refund of all or part of any import duty paid in respect of goods exported or used in a manner or for a purpose prescribed as a condition for granting duty drawback;
- “dutiable goods” means any goods chargeable with duty;
- “duty” includes any cess, levy, imposition, tax, or surtax, imposed by any Act;
- “export” means to take or cause to be taken out of the Partner States;
- “export duties” means Customs duties and other charges having an effect equivalent to customs duties payable on the exportation of goods;
- “export processing zone” means a designated part of Customs territory where any goods introduced are generally regarded, in so far as import duties and taxes are concerned, as being outside Customs territory but are restricted by controlled access;
- “foreign country” means any country other than a Partner State;
- “foreign port” means any port in a foreign country;
- “goods” includes all kinds of articles, wares, merchandise, livestock, and currency, and, where any such goods are sold under this Act, the proceeds of such sale;

“Government warehouse” means any place provided by the Government of a Partner State, and approved by the Commissioner, for the deposit of dutiable goods on which duty has not been paid and which have been entered to be warehoused;

“green channel” means that part of the exit from any customs arrival area where passengers arrive with goods in quantities or values not exceeding those admissible;

“import” means to bring or cause to be brought into the Partner States from a foreign country;

“import duties” means any customs duties and other charges of equivalent effect levied on imported goods;

“manufacturing under bond” means a facility extended to manufacturers to import plant, machinery, equipment and raw materials tax free, for exclusive use in the manufacture of goods for export;

“master” includes any person for the time being having or taking charge or command of any aircraft or vessel;

“officer” includes any person, other than a laborer, employed in the service of the Customs, or for the time being performing duties in relation to the Customs;

“owner” in respect of—

(a) an aircraft, vessel, or vehicle, includes every person acting as agent for the owner, or who receives freight or other charges payable in respect of, or who is in possession or control of, the aircraft, vessel, or vehicle;

(b) goods, includes any person other than an officer acting in his or her official capacity being or holding himself or herself out to be the owner, importer, exporter, consignee, agent, or the person in possession of, or beneficially interested in, or having control of, or power of disposition over, the goods;

“package” includes every means by which goods for conveyance may be cased, covered, enclosed, contained, or packed;

- “port” means any place, whether on the coast or elsewhere, appointed by the Council by notice in the Gazette, subject to any limitations specified in such notice, to be a port for the purpose of the Customs laws and, in relation to aircraft, a port means a Customs airport;
- “postal article” includes any letter, postcard, newspaper, book, document, pamphlet, pattern, sample packet, small packet, parcel, package, or other article whatsoever, in course of transmission by post;
- “Post Office” means a Partner State Posts body established in accordance with a Partner States' Communication law;
- “prohibited goods” means any goods the importation, exportation, or carriage coastwise, of which is prohibited under this Act or any law for the time being in force in the Partner States;
- “proper officer” means any officer whose right or duty it is to require the performance of, or to perform, the acts referred to in this Act;
- “Protocol” means the Protocol on the Establishment of the East African Community Customs Union and any annexes thereto;
- “re-exports” means goods, which are imported and are under Customs control for re-exportation;
- “red channel” means that part of the exit from any customs arrival area where passengers arrive with goods in quantities or values exceeding passenger allowance;
- “refinery” means a bonded warehouse licensed by the Commissioner for the treatment of oils;
- “registered user” person authorised to access the customs computerised system;
- “restricted goods” means any goods the importation, exportation, transfer, or carriage coastwise, of which is prohibited, save in accordance with any conditions regulating such importation, exportation, transfer, or carriage coastwise, and any goods the importation, exportation, transfer, or carriage coastwise, of which is in any way regulated by or under the Customs laws;
- “SADC” means the organisation established by the Treaty of the Southern African Development Community, 1992;

- “smuggling” means the importation, exportation, or carriage coastwise, or the transfer or removal into or out of a Partner State, of goods with intent to defraud the Customs revenue, or to evade any prohibition of, restriction on, regulation or condition as to, such importation, exportation, carriage coastwise, transfer, or removal, of any goods;
- “stores” goods for use in aircraft, vessels and trains engaged in international transport for consumption by passengers and crew and goods for sale on board;
- “subsidy” means assistance by a government of a Partner State or a public body to the production, manufacture, or export of specific goods taking the form of either direct payments, such as grants or loans or of measures with equivalent effect such as guarantees, operational or support services or facilities and fiscal incentives;
- “sufferance wharf” means any place, other than an approved place of loading or unloading at which the Commissioner may allow any goods to be loaded or unloaded;
- “tons register” means the tons of a ship’s net tonnage as ascertained and registered according to the tonnage regulations applied in a Partner State;
- “transfer” means the movement of goods from one Partner State directly or indirectly to another Partner State, but shall not include goods in transit, goods for transshipment or goods for warehousing in a bonded warehouse;
- “transshipment” means the transfer, either directly or indirectly, of any goods from an aircraft, vehicle or vessel arriving in a Partner State from a foreign place, to an aircraft, vehicle or vessel, departing to a foreign destination;
- “transire” means a certificate of clearance issued to any person under section 100 of this Act to carry goods coastwise or to transfer goods;
- “transit” means the movement of goods imported from a foreign place through the territory of one or more of the Partner States, to a foreign destination;

“transit shed” means any building, appointed by the Commissioner in writing for the deposit of goods subject to Customs control;

“uncustomed goods” includes dutiable goods on which the full duties due have not been paid, and any goods, whether dutiable or not, which are imported, exported or transferred or in any way dealt with contrary to the provisions of the Customs laws;

“vehicle” includes every description of conveyance for the transport by land of persons or goods;

“vessel” includes every description of conveyance for the transport by water of persons or goods;

“voyage” includes flight by aircraft;

“warehoused” means deposited in a Government or bonded warehouse with the authority of the person in charge of that warehouse;

“warehouse keeper” means the holder of a licence granted in respect of a bonded warehouse;

“wharf owner” includes any owner or any occupier of any approved place of loading or unloading or of any sufferance wharf;

(2) For the purposes of this Act—

- (a) goods shall be deemed to be entered when the entry, made and signed by the owner in the prescribed manner, is accepted and signed by the proper officer and any duty due or deposit required under this Act in respect of the goods has been paid, or security has been given for compliance with this Act;
- (b) goods shall be deemed to be entered for home consumption when they have been declared for use in a Partner State, other than temporary use, and the provisions of paragraph (a) have been fulfilled;
- (c) the time of importation of goods shall be deemed to be the time at which the goods come within the boundaries of the Partner States;

- (d) the time of exportation of goods shall be deemed to be (i) the time at which the carrying aircraft or vessel departs from its final position, anchorage or berth at the port or place within boundaries of the Partner State at which the goods are shipped for exportation; in the case of goods exported overland, the time at which the goods pass across the boundaries of the Partner States;
- (e) where any aircraft or vessel arrives within a Partner State from any foreign port, in relation to each port or place within a Partner State at which such aircraft or vessel may arrive, such aircraft or vessel shall be deemed to have arrived from a foreign port;
- (f) where any aircraft or vessel proposes to depart from a Partner State to any foreign port, then, in relation to each port or place within a Partner State from which such aircraft or vessel may depart, such aircraft or vessel shall be deemed to be departing therefrom to a foreign port;
- (g) any reference to a Partner State, or any of the neighbouring Partner States, shall be deemed to include a reference to the territorial waters thereof;
- (h) every act, matter, or thing, required or authorised by this Act to be done or performed by, with, to, or before, the Commissioner, if done or performed by, with, to, or before, any officer appointed by the Commissioner for such purpose, shall be deemed to be done or performed by, with, to, or before, the Commissioner;
- (i) every person employed on any duty or service relating to the Customs by order, or with the concurrence, of the Commissioner shall be deemed to be the proper officer for that duty or service; and every act required by this Act at any time to be done by, with, to, or before, any particular officer nominated for such purpose, if done by, with, to, or before, any person appointed by the Commissioner, to act for such particular officer, shall be deemed to be done by, with, to, or before, such particular officer.

PART II
ADMINISTRATION

3. The Directorate of Customs as established by the Council under the Treaty shall be responsible for the initiation of policies on Customs and related trade matters in the Community and the coordination of such policies in the Partner States.

Directorate
of Customs.

4. (1) Without prejudice to the generality of section 3, the Directorate shall, in relation to management and administration of Customs, coordinate and monitor

Functions of
the
Directorate.

- (a) administration of the Common External Tariff;
- (b) enforcement of the Customs law of the Community;
- (c) trade facilitation as provided for in Article 6 of the Protocol;
- (d) administration of the Rules of Origin;
- (e) compilation and dissemination of trade statistics;
- (f) application and interfacing of information technology in Customs administration;
- (g) training in Customs related matters;
- (h) quality control in Customs operations and enforcement of compliance;
- (i) Customs related negotiations; and
- (j) activities of the Commissioners in the implementation of this Act.

(2) The Directorate shall in the performance of its functions under this Act—

- (a) be subject to the general direction of the Council and perform such other functions as may be prescribed by the Council; and
- (b) consult with, and where necessary, delegate any of its functions to, any Commissioner.

(3) For the purposes of this Act, the Council shall make regulations for the working arrangements between the Directorate and the Customs.

(4) The Council shall establish within the Community's institutional framework, a committee charged with facilitating—

- (a) the Directorate's formulation of policies and programmes on Customs management and administration;
- (b) exchange of information between the Directorate and the Commissioners; and
- (c) any other matters on working arrangements between the Directorate and the Customs.

Provisions relating to staff.

5. (1) There shall be appointed, in accordance with Partner States' legislation, a Commissioner responsible for the management of Customs by each of the Partner States and such other staff as may be necessary for the administration of this Act and the efficient working of the Customs.

(2) The Commissioner shall be responsible for the management and control of the Customs including the collection of, and accounting for, Customs revenue in the respective Partner State.

(3) The Commissioner may authorise any officer to exercise any of the powers conferred by this Act upon the Commissioner subject to such limitations as the Commissioner may impose.

(4) An officer appointed to any permanent office or employment in the Customs shall, on his or her appointment thereto, make and subscribe before a magistrate or a commissioner for oaths, a declaration in the form set out in the First Schedule.

Customs Union seal and flag.

6. (1) There shall be a seal of the Customs Union which shall be officially and judicially noticed and whose design and description shall be prescribed by regulations.

(2) The seal of the Customs Union shall be used as the official seal of the Customs.

(3) There shall be a flag of the Customs Union whose design and description shall be prescribed by regulations.

(4) The flag of the Customs Union and the flag of the Community shall be used to distinguish vessels employed in the service of the Customs from other vessels.

(5) In this section, Customs Union has the meaning assigned to it in the Protocol.

7. For the purpose of carrying out the provisions of this Act, every officer shall, in the performance of his or her duty, have all the powers, rights, privileges, and protection, of a police officer of the Partner State in which such officer performs his or her duty.

Officer to have powers of police officer.

8. (1) The Commissioner shall prescribe the working days and hours of general attendance of officers.

Hours of Attendance.

(2) Where any person desires the attendance of any officer at a time outside the hours of general attendance, then such person shall make request therefore on the prescribed form to the proper officer at the port or place where such attendance is desired; and, subject to any regulations and to the payment of the prescribed fees, the grant of such request shall not—

- (a) in the case of any person arriving in, or departing from, a Partner State overland or by inland waters, be refused by the proper officer;
- (b) in any other case, be unreasonably refused by the proper officer.

(3) Where any person desires the attendance of any officer at any premises or place at which customs business is not normally carried on, then such person shall make request therefor on the prescribed form to the proper officer and, subject to any regulations and to the payment of the prescribed fees, the grant of such request shall be in the discretion of the proper officer.

9. (1) An officer who—

- (a) directly or indirectly asks for, or takes, in connection with any of his or her duties any payment or other reward whatsoever, whether pecuniary or otherwise, or any promise or security for any such payment or reward, not being a payment or reward which he or she is lawfully entitled to claim or receive; or
- (b) enters into or acquiesces in any agreement to do, abstain from doing, permit, conceal, or connive at, any act or thing whereby the Customs revenue is or may be defrauded, or which is contrary to the provisions of this Act or the proper execution of his duty;

Offences by, or in relation to officers.

commits an offence and shall be liable on conviction to imprisonment for a term not exceeding three years.

(2) A person who discloses, except for the purposes of this Act or when required to do so as a witness in any court or with the approval of the Commissioner, any information acquired by him or her in the performance of his or her duties relating to any person, firm, or business of any kind commits an offence and shall be liable on conviction to a fine not exceeding two thousand five hundred dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(3) A person who—

- (a) directly or indirectly offers or gives to any officer any payment or reward whatsoever, whether pecuniary or otherwise, or any promise or security for any such payment or reward; or
- (b) proposes or enters into any agreement with any officer, in order to induce him or her to do, abstain from doing, permit, conceal, or connive at, any act or thing whereby the Customs revenue is or may be defrauded, or which is contrary to the provisions of this Act or the proper execution of the duty of such officer, commits an offence and shall be liable on conviction to imprisonment of a term not exceeding three years.

Exchange of
information
and
common
border
controls.

10. (1) The Commissioners shall furnish each other with such information, certificate, official report or document on matters relating to—

- (a) prevention, investigation and suppression of offences under this Act; and
- (b) any other relevant information relating to customs.

(2) The Commissioners shall establish common border posts, carry out joint customs controls and take joint steps as may be deemed appropriate to ensure that goods exported or imported through common frontiers pass through the competent and recognised Customs offices and along approved routes.

(3) Subject to reciprocal arrangements agreed upon by the Commissioner, the Commissioner may request from, or furnish to, the competent authorities of a foreign state any information, certificate, official report or other document in order to prevent, investigate or suppress offences against the laws applicable to the importation or exportation of goods into or from the territory of such foreign state.

11. (1) The Council may, by notice in the Gazette, appoint and fix the limits of— Appointment of ports, etc.

- (a) ports;
- (b) Customs airports;
- (c) places of loading and unloading within ports.

(2) Ports, Customs airports, and places of loading and unloading, may be appointed for specified limited purposes.

12. (1) The Commissioner may, by notice in the Gazette, appoint— Appointment of Customs areas.

- (a) boarding stations;
- (b) Customs areas;
- (c) sufferance wharves;
- (d) places for the landing and embarkation of persons;
- (e) places for the examination of goods, including baggage;
- (f) roads or routes in a Partner State over which goods in transit, or goods transferred between the Partner States, shall be conveyed;
- (g) entrances and exits, whether general or special, to and from any Customs area or Customs airport within a Partner State;
- (h) transit sheds;
- (i) internal container depots.

(2) An appointment made under subsection (1) may be subject to such conditions, including the provision of suitable accommodation for officers, as the Commissioner may deem fit; and the Commissioner may, in any particular case and subject to such conditions as he or she may deem fit, permit any boarding station, area, wharf, place, road, route, entrance, or exit, to be used as if it had been so appointed and in any such case this Act shall apply thereto as if it had been so appointed.

(3) The Commissioner may by notice in the Gazette revoke appointment of any Customs area if he or she is satisfied that the conditions imposed under subsection (2) have not been complied with.

Accommodation on wharves.

13. (1) A wharf owner shall provide, to the satisfaction of the Commissioner—

- (a) suitable office accommodation on his or her wharf or sufferance wharf for the exclusive use of the officer employed at the wharf; and
- (b) such shed accommodation for the protection of goods as the Commissioner may in writing declare to be requisite.

(2) Where any wharf owner contravenes any of the provisions of this section—

- (a) the appointment of a place of loading or unloading or a sufferance wharf may be withheld until the required accommodation is provided to the satisfaction of the Commissioner;
- (b) any existing appointment may be revoked.

Licensing internal container depot.

14. (1) The Commissioner may, on application, license any internal container depot for the deposit of goods subject to Customs control, and the Commissioner may refuse to issue any such licence and may at any time revoke any licence which has been issued.

(2) The Commissioner shall give reasons for his or her refusal to grant a licence or for revoking a licence under subsection (1).

(3) The owner of an internal container depot shall—

- (a) provide such office accommodation and weights, scales, measures, and other facilities, for examining and taking account of goods and for securing them as the proper officer may require;
- (b) keep a record of all goods in the depot and shall keep such record at all times available for examination by the proper officer;
- (c) provide all necessary labour and materials for the storing, examining, packing, marking cooping, weighing, and taking stock of goods in internal container depot whenever the proper officer so requires;

(d) maintain such records and accounts relating to goods and to operations, in such form and manner, as the proper officer shall require; and **keep such records and accounts at all times available for examination by the proper officer.**

(e) fulfill any other requirement as may be specified by the Commissioner.

(4) Where any internal container depot owner contravenes this section, the Commissioner may direct that no other goods shall be kept in the depot until the owner has, in the opinion of the Commissioner, complied with this section.

(5) The owner of an internal container depot who contravenes any of the provisions of this section or of any direction given by Commission under this section commits an offence and shall be liable to a fine not exceeding one thousand dollars.

15. (1) A person or vehicle shall not enter or leave any Customs area or Customs airport, and goods, whether dutiable or not, shall not be brought into or out of any such area or airport, except through an entrance or exit appointed in accordance with section 12.

Offences in respect of Customs areas, etc.

(2) A person shall not enter any part of a Customs area or Customs airport when forbidden to do so by any officer nor remain in such area or airport, or any part thereof when requested to leave such area or airport, or part thereof, by any officer.

(3) A person or vehicle entering or leaving any Customs area or Customs airport, and all goods which are being brought into or out of such area or airport, may be detained by any officer for the purposes of search or examination.

(4) A person who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding one thousand dollars and any goods in respect of which such offence has been committed shall be liable to forfeiture.

16. (1) The following goods shall be subject to Customs control—

Customs control of goods.

(a) imported goods, including goods imported through the Post Office, from the time of importation until delivery for home consumption or until exportation, whichever first happens;

- (b) goods under duty drawback from the time of the claim for duty drawback until exportation;
- (c) goods subject to any export duty from the time when the goods are brought to any port or place for exportation until exportation;
- (d) goods subject to any restriction on exportation from the time the goods are brought to any port or place for exportation until exportation;
- (e) goods which are with the permission of the proper officer stored in a Customs area pending exportation;
- (f) goods on board any aircraft or vessel whilst within any part or place in a Partner State;
- (g) imported goods subject to duty where there is a change of ownership over such goods from an exempt person to a non exempt person;
- (h) goods which have been declared for or are intended for transfer to another Partner State;
- (i) seized goods.

(2) Where any goods are subject to Customs control, then—

- (a) any officer may at any time examine such goods;
- (b) except with the authority of the Commissioner or in accordance with this Act, no persons shall interfere in any way with such goods;

(3) Where any goods are subject to Customs control, then the Commissioner may permit the owner of such goods to abandon them to the Customs; and on such abandonment such goods may, at the expense of the owner thereof, be destroyed or otherwise disposed of in such manner as the Commissioner may direct and the duty thereon shall be remitted or refunded, as the case may be.

(4) A person who contravenes subsection (2) (b) commits an offence and shall be liable on conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three years, or both and any goods in respect of which such offence has been committed shall be liable to forfeiture.

17. Where any loss or damage is occasioned to any goods subject to Customs control through the wilful or negligent act of a Commissioner or an officer, an action shall lie against the Commissioner or such officer in respect thereof.

Liability for loss, etc., through negligence of officer.

PART III
IMPORTATION

Prohibited and Restricted Imports

18. (1) The goods specified in Part A of the Second Schedule are prohibited goods and the importation thereof is prohibited.

Prohibited and restricted imports.

(2) The goods specified in Part B of the Second Schedule are restricted goods and the importation thereof, save in accordance with any conditions regulating their importation, is prohibited.

19. (1) The Council may by order published in the Gazette amend the Second Schedule so as to provide that the importation of any goods or class of goods—

Power to prohibit, etc., imports.

(a) is prohibited, either generally or in relation to any Partner State;

(b) is prohibited, save in accordance with any conditions regulating their importation, either generally or in relation to a Partner State.

(2) The Council may, by order published in the Gazette—

(a) provide that the importation into a Partner State, or any area thereof, of any goods, or class of goods, shall be prohibited or shall be prohibited save in accordance with such conditions as may be specified in such order;

(b) limit in respect of a Partner State the application of the provisions of the Second Schedule in respect of all or any of the goods specified therein; and thereupon in respect of such goods the provisions of this Act shall apply as if such goods are, or are not, as the case may be, included in the Second Schedule.

(3) An order made under this section may specify goods, or any class of goods, either generally or in any particular manner and may prohibit or restrict the importation thereof either from all places or from any particular country or place.

Exemption
of goods in
transit, etc.

20. (1) Subject to subsection (2), sections 18 and 19 shall not apply to goods imported in transit, or for transshipment, or as stores of any aircraft or vessel, unless such goods come within paragraph 2 of Part A of the Second Schedule, or are goods of which the importation in transit, or for transshipment, or as stores for any aircraft or vessel, is expressly prohibited or restricted in any order made under this Act prohibiting or restricting the importation of goods.

(2) Where, under subsection (1), sections 18 and 19 do not apply to any goods imported in transit, or for transshipment, or as stores for any aircraft or vessel, then such goods shall be duly re-exported within such time and subject to such conditions as the Commissioner may specify; and where such goods are not so re-exported, then, as from the last date on which they should have been so re-exported, they shall be deemed to be prohibited goods, or restricted goods, as the case may be, and to have been imported on that date.

Arrival and Report of Aircraft and Vessels

Procedure
on arrival.

21. (1) Save as provided in section 28, the master of every aircraft or vessel arriving in the Partner States—

- (a) shall not, except where so allowed by the proper officer in any special circumstances, cause or permit such aircraft or vessel to land, touch at, or enter, any place in the Partner States other than a port;
- (b) shall, on arriving at any such port or place, come as quickly as the conditions of the port or place admit up to the proper place of mooring or unloading without touching at any other place;
- (c) shall, in proceeding to such proper place, bring to at the station appointed for the boarding of aircraft or vessels;

(d) shall not, after arriving at such proper place, depart therefrom except directly to some other approved place of mooring or unloading, or directly to some other port or place in the Partner States, or directly on any voyage to a foreign port, in accordance with this Act;

(e) shall not, after any such departure on any voyage to a foreign port, bring to within the Partner States except in accordance with this Act, or with the permission of the proper officer, or for some cause which the master explains to the satisfaction of such proper officer.

(2) A master who contravenes this section commits an offence.

22. The proper officer may, unless other provision is lawfully made, direct at what particular part of any port or other place any aircraft or vessel shall moor or discharge its cargo.

Place of mooring, etc.

23. (1) A person, except the port pilot, the health officer, or any other public officer in the exercise of his or her duties and duly authorised, shall not, save with the permission of the proper officer, board any vessel before the proper officer.

Restrictions on boarding vessel before proper officer.

(2) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding two hundred and fifty dollars.

24. (1) The master or agent of every aircraft or vessel, whether laden or in ballast, shall, except where otherwise provided in any regulations, within twenty-four hours after arrival from a foreign port at any port, or other place Especially allowed by the proper officer, make report of such aircraft or vessel, and of its cargo and stores, and of any package for which there is no bill of lading, to the proper officer on the prescribed form and in the prescribed manner.

Report.

(2) A report under subsection (1) shall show separately any goods which are in transit, any goods for transhipment, any goods which are to remain on board for other ports in the Partner States, and any goods for re-exportation on the same aircraft or vessel.

(3) In the case of a vessel of less than two hundred and fifty tons register, such report shall, except where otherwise allowed by the proper officer, be made before bulk is broken.

(4) The proper officer may permit the master or agent of an aircraft or vessel to amend the destination, ownership or status of goods specified in the report where a change in such destination, ownership or status is intended.

(5) The proper officer may permit the master or agent of an aircraft or vessel to amend an obvious error in the report, or to supply an omission, which in the opinion of the proper officer results from accident or inadvertence.

(6) A master or agent of any aircraft or vessel who—

- (a) fails to make report in accordance with this section;
- (b) makes a report of which any of the particulars contained in the report are false;
- (c) except with the knowledge and consent of the proper officer, causes or permits bulk to be broken contrary to this section; or
- (d) except with the knowledge and consent of the proper officer, at any time after arrival causes or permits any goods to be staved, destroyed, or thrown overboard, or any packages to be opened, shall, unless such contravention is explained to the satisfaction of the proper officer;

commits an offence and any goods in respect of which an offence contrary to paragraphs (a), (b), (c) or (d), of this subsection has been committed shall be liable to forfeiture.

Master to
answer
questions,
etc.

25. (1) The master or agent of every aircraft or vessel—

- (a) shall answer fully and immediately all such questions relating to the aircraft or vessel, its cargo, stores, baggage, crew, and passengers, as may be put to him or her by the proper officer;

(b) shall produce all such books and documents in his or her custody or control relating to the aircraft or vessel, its cargo, stores, baggage, crew, and passengers, as the proper officer may require;

(c) shall, before any person, unless permitted to do so by the proper officer, disembarks, deliver to the officer who boards such aircraft or vessel on arrival at any port or place, a correct list in the prescribed form containing separately the names of the passengers disembarking and of those remaining on board such aircraft or vessel, and also, when required by such officer, the names of the master and of each officer and member of the crew;

(d) shall, when required, deliver to the proper officer at the time of making report the clearance, if any, of such aircraft or vessel from the port from which such aircraft or vessel has arrived.

(2) A master or agent who contravenes this section commits an offence.

26. (1) Goods which have been unloaded and landed into a transit shed or a Customs area shall be deemed to be still in the importing aircraft or vessel until they are delivered from such transit shed or Customs area; and so long as they remain in the transit shed or the Customs area the owners or agents of the aircraft or vessel shall continue to be responsible for the goods as if such goods had not been removed from such aircraft or vessel.

Goods in transit shed etc. deemed to be in aircraft or vessel.

(2) Where the goods are handed over to an owner of a transit shed who is not an agent of the importing aircraft or vessel the owner of the transit shed shall be responsible and accountable for the goods.

(3) The owner or agent of an aircraft or vessel or the owner of a transit shed, as the case maybe, shall be liable for payment of duty on the goods if the goods are not subsequently delivered or otherwise accounted for to the satisfaction of the proper officer or for reshipment or destruction of goods which are condemned while still in the dry port or inland transit shed.

(4) The owner or agent of an aircraft or vessel or a transit shed owner referred to in subsection (2) who fails to account for any of the goods for which he is responsible to the satisfaction of the proper officer, within such period as may be prescribed or such further period as the proper officer may allow, commits an offence.

(5) The owner or agent of an aircraft or vessel or the owner of a transit shed shall be liable to pay for the reshipment or for the destruction of any condemned goods.

(6) The owner or agent of an aircraft or vessel or the owner of a transit shed as the case may be, who fails to meet the cost of reshipment or destruction of any condemned goods pursuant to subsection (5) commits an offence.

Goods reported to be unloaded.

27. Where any goods reported for discharge at a port, or place specially allowed by the proper officer, are not duly unloaded and deposited in a transit shed or a Customs area, then the master or agent of the aircraft or vessel shall pay duty on the goods unless he or she explains, to the satisfaction of the proper officer, the failure to unload and deposit such goods.

Master of wreck, etc. to report.

28. (1) When any aircraft or vessel is lost or wrecked or is compelled to land or bring to, within the Partner States owing to accident, stress of weather or other unavoidable cause, the master or agent of such aircraft or vessel shall, with all reasonable speed, make report of such aircraft or vessel and of its cargo and stores to the nearest officer or administrative officer.

(2) Where any aircraft or vessel is found abandoned within the Partner States, then, unless the master or agent thereof satisfies the Commissioner that all the provisions of this Act in relation to such aircraft or vessel and its cargo and stores have been complied with, such aircraft or vessel and its cargo and stores shall be liable to forfeiture.

(3) A master or agent who contravenes subsection (1) commits an offence.

Arrival Overland

Vehicles arriving overland.

29. (1) A person in charge of any vehicle, whether or not such vehicle is conveying goods and whether or not such goods (if any) are dutiable, arriving overland at a frontier of the Partner States from a place outside the Partner States shall not, except

where otherwise permitted by the proper officer, cause or allow the vehicle to enter the Partner States at any place other than at a port appointed under section 11, and shall before unloading or disposing of the vehicle or of any goods therein—

- (a) report his or her arrival to the officer stationed at the frontier port at which he or she entered the Partner State;
- (b) furnish on the prescribed form such information as may be required concerning the vehicle or any such goods;
- (c) make and subscribe a declaration as to the truth of all particulars contained in such form;
- (d) fully and immediately answer all relevant questions put to him or her by the proper officer;
- (e) produce all consignment notes or other relevant documents demanded of him or her by the proper officer;
- (f) save as otherwise provided in the Customs laws, make due entry of the vehicle and of any such goods.

(2) Vehicles or goods to which this section applies shall not be removed from the Customs area until after due entry thereof has been made or until permission for removal has been granted by the proper officer.

(3) A person who contravenes this section commits an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

30. (1) Upon arrival at any port of the Partner States of any train carrying goods subject to customs control, the station master or other person in charge of the railway station at that port shall deliver to the proper officer copies of all invoices, way-bills, consignment notes or other documents received by him or her and relating to the goods subject to customs control conveyed by that train and consigned to that station or required to be entered at that port.

Trains
arriving.

(2) A station master or other person in charge of a railway station at any port shall not, without the written permission of a proper officer, permit goods subject to customs control required to be entered at that port and conveyed to that station in any train to be removed from the transit shed or customs area appointed for such station, or be forwarded to any other railway station, and it shall be an offence to remove any goods from such shed or area before delivery or removal has been authorised by the proper officer.

(3) A station master or other person in charge of a railway station shall not, without the written permission of the proper officer, deliver to the consignee or any person at the station any goods which are required to be entered at any other station.

(4) An owner or user of a private railway siding or any other person shall not receive railway wagons containing goods subject to customs control into a private railway siding unless he or she has been granted permission in writing by the Commissioner.

(5) A person who contravenes the provisions of this section commits an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

Arrival
overland
otherwise
than by
vehicle.

31. (1) A person arriving overland in the Partner States from a foreign place, if he or she has any goods in his or her possession, shall, before disposing of the goods—

- (a) report his or her arrival to the officer stationed at the Customs house nearest to the point at which he or she crossed the frontier;
- (b) furnish on the prescribed form such information as may be required concerning the goods;
- (c) make and subscribe a declaration as to the truth of all particulars contained in the form;
- (d) fully and immediately answer all relevant questions put to him or her by the proper officer;
- (e) produce all consignment notes or other relevant documents demanded of him or her by the proper officer;
- (f) save as otherwise provided in the Customs laws, make due entry of any such goods.

(2) Goods to which this section applies shall not be removed from the Customs area until after due entry thereof has been made or until permission for removal has been granted by the proper officer.

(3) The Commissioner may, subject to such conditions as he or she may specify, exempt any person or class of persons from the provisions of this section.

(4) A person who contravenes this section commits an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

Clearance by Pipeline

32. (1) The nature and quantities of goods imported or exported through a pipeline shall be recorded and reported by the operator of the pipeline in such manner as the Commissioner may direct.

Operator of pipeline to report.

(2) For the purpose of keeping records and making reports referred to in subsection (1), the operator shall at his or her own expense, provide such apparatus and appliances as the Commissioner may specify.

Unloading and Removal of Cargo

33. (1) Save with the written permission of the proper officer and subject to such conditions as he or she may impose—

Unloading, etc.

(a) goods shall not be unloaded from any aircraft or vessel arriving from a foreign port unless such goods have been duly entered;

(b) goods shall not be unloaded or removed from any aircraft or vessel arriving from a foreign port at any time whatsoever except as prescribed by the Commissioner;

(c) goods shall not be unloaded from any aircraft or vessel arriving from a foreign port except at an approved place of unloading or at a sufferance wharf:

(2) Notwithstanding subsection (1)—

(a) goods may be unloaded from any such aircraft or vessel into another vessel in order to be landed; and in any such case such goods shall be taken directly to and landed without delay at an approved place of unloading or at a sufferance wharf;

(b) with the permission of the proper officer and subject to such conditions as he or she may impose, goods reported for re-exportation by another aircraft or vessel may be unloaded into any other aircraft or vessel pending re-exportation;

(3) All goods, which have been unloaded or landed, shall be conveyed to a Customs area and, if the proper officer so requires, shall be deposited in a transit shed or in a Customs warehouse:

Provided that such goods as the proper officer may consider to be unsuited for storage in a transit shed or a Customs warehouse shall be deposited in such other place as the proper officer may direct, and thereupon such other place shall, for the purpose of such deposit, be deemed to be a transit shed;

(4) Goods shall not be removed from any part of a Customs area or from a transit shed or a Customs warehouse unless such goods have been duly reported and entered and authority for their removal or delivery has been given by the proper officer:

Provided that the proper officer may, if he or she considers it necessary, direct the agent of any aircraft or vessel from which goods have been landed into any transit shed or Customs warehouse to remove such goods to some other place (which other place shall, for such purpose, be deemed to be a transit shed) selected by such proper officer and, if the agent fails to remove the goods when called upon, the proper officer may have them removed at the risk and expense of such agent;

(5) All goods entered for warehousing shall be removed by the importer by such routes, in such manner, and within such time, as the proper officer may direct to the warehouse for which they were entered and shall be delivered into the custody of the person in charge of the warehouse:

Provided that, if the proper officer so requires, the owner shall first enter into a bond for the due warehousing of the goods.

(6) A person who contravenes this section, or any of the conditions which may have been imposed by, or any of the directions which may have been given by, the proper officer commits an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

Entry, Examination and Delivery

34. (1) Save as otherwise provided in the Customs laws, the whole of the cargo of an aircraft, vehicle or vessel which is unloaded or to be unloaded shall be entered by the owner within twenty one days after the commencement of discharge or in the case of vehicles on arrival or such further period as may be allowed by the proper officer, either for—

Entry of cargo.

- (a) home consumption;
- (b) warehousing;
- (c) transshipment;
- (d) transit; or
- (e) export processing zones.

(2) Where any entry is delivered to the proper officer, the owner shall furnish with the entry full particulars supported by documentary evidence of the goods referred to in the entry.

(3) Entries for goods to be unloaded may be delivered to the proper officer for checking before the arrival at the port of discharge of the aircraft or vessel in which such goods are imported; and in such case the Commissioner may in his or her discretion permit any goods to be entered before the arrival of such aircraft or vessel or vehicle.

(4) Where any goods remain unentered within the period specified under subsection (1) then such goods shall, if the proper officer so requires, be removed by, or at the expense of, the agent of the aircraft or vessel in which such goods were imported to a Customs warehouse.

Surplus stores may be entered.

35. The surplus stores of any aircraft or vessel may, with the permission of the proper officer, be entered for home consumption or for warehousing.

Provisions relating to mail, personal baggage, etc.

36. (1) Notwithstanding sections 33 and 34—

(a) mail bags and postal articles in the course of transmission by post may be unloaded and delivered to an officer of the Post Office without entry;

(b) goods which are the bona fide personal baggage of the passengers, or members of the crew, of any aircraft or vessel may, subject to the provisions of any regulations, be unloaded and delivered to such persons without entry;

(c) human remains may be released without entry;

(d) diplomatic bags may be released without entry;

(e) the proper officer may permit the unloading and delivery to the owner of any bullion, currency notes, coin, or perishable goods, without entry subject to an undertaking being given by such owner to furnish the necessary entry within forty-eight hours of the time of delivery.

(2) An owner who contravenes any undertaking given under subsection (1) (e) commits an offence and shall be liable to a fine not exceeding five hundred dollars.

Entry in absence of documents.

37. (1) Where the owner of any goods is, by reason of the absence of any, or of any sufficient, documents or information concerning them, unable to furnish full particulars of such goods, he or she shall make and subscribe a declaration on the prescribed form to that effect, and thereupon the proper officer may permit the owner to examine such goods in his or her presence.

(2) Upon such examination having been made the proper officer may, subject to section 38, permit the owner to enter such goods for home consumption, or for warehousing, if he or she is satisfied that the description of the goods for tariff and statistical purposes is correctly made in such entry, and also—

(a) in the case of goods liable to duty ad valorem, that the value declared on the entry is in accordance with the Fourth Schedule; and

(b) in the case of goods liable to duty according to weight, quantity, number, measurement, or strength, that the weight, quantity, number, measurement or strength declared on the entry is correct.

(3) Where the proper officer has permitted entry to be made under subsection (2), the delivery of such goods may accordingly be made, but the proper officer may, in the case of goods liable to duty ad valorem, retain such samples of the goods for such period up to the passing of perfect entry as he or she may deem fit.

(4) Where the owner of any goods referred to in the declaration does not make, or is not permitted to make, entry thereof in accordance with this section, then the proper officer shall cause the goods referred to in such declaration to be deposited in a Customs warehouse.

38. (1) Where any goods entered in accordance with section 37 are goods liable to duty *ad valorem*, then such entry shall be deemed to be a provisional entry.

Provisions relating to goods liable to duty *ad valorem*.

(2) Where any such goods are provisionally entered for home consumption, then the proper officer may require the owner to deposit, in addition to the amount estimated as the duty for the purpose of making such provisional entry, such further sum as the proper officer may deem fit; and such estimated duty and further sum shall be held on deposit and shall be forfeited unless the owner within three months, or such further period as may be allowed by the proper officer, of the provisional entry produces to the proper officer satisfactory evidence of the value of such goods and makes perfect entry thereof.

(3) Where the owner makes perfect entry in accordance with subsection (2), then where-

(a) the amount of the deposit is more than the full amount of the duty, either the difference shall be refunded to the owner and the balance brought to account as duty or the owner shall pay the full amount of the duty and be refunded the amount of the deposit;

(b) the amount of the deposit is equal to or less than the full amount of the duty, the deposit shall be brought to account as duty, and the difference, if any, shall thereupon be paid by the owner.

Delivery from Customs area in special circumstances.

39. (1) The proper officer may subject to such conditions as he or she may impose and to the giving of such security as he or she may think appropriate for the due return of any goods or the payment of the duties thereon, permit the goods to be removed from any transit shed or Customs area without payment of the duty for such purpose, for such period, and in such quantities, as he or she may deem fit.

(2) A person who contravenes any conditions imposed under subsection (1) commits an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

Re-packing, etc. in Customs area, etc.

40. The proper officer may permit any goods to be re-packed, skipped, bulked, sorted, lotted, or packed, on any approved place of unloading, or on a sufferance wharf, or in a transit shed, or in a Customs area.

Examination of goods.

41. Goods entered under section 34, may in the presence of the owner, be examined by the proper officer to take account and determine the accuracy of the entry made.

Provisions relating to Customs Warehouses

Goods deposited in a Customs warehouse may be sold, etc.

42. (1) Where any goods which have been deposited in a Customs warehouse are not lawfully removed within thirty days after deposit, then the Commissioner shall give notice by publication in the Gazette that unless such goods are removed within thirty days from the date of notice they shall be deemed to have been abandoned to Customs for sale by public auction and may be sold in such manner as the Commissioner may deem fit:

Provided that any such goods which are of a perishable nature, or are animals, may be sold by the proper officer without notice, either by public auction or by private treaty, at any time after deposit in the Customs warehouse.

(2) Notwithstanding subsection (1) the Commissioner may extend the period for the removal of goods imported by the Partner States' Governments, or diplomatic mission or aid agencies.

(3) Where any goods have been deposited in a Customs warehouse then they shall be subject to such rent and other charges as may be prescribed.

(4) Where any goods are sold under this section, then the proceeds thereof shall be applied in the order set out below in the discharge of—

- (a) the duties, if any;
- (b) the expenses of removal and sale;
- (c) the rent and charges due to the Customs;
- (d) the port charges; and
- (e) the freight and any other charges.

(5) Where, after the proceeds of any such sale have been applied in accordance with subsection (3), there is any balance, then such balance shall—

- (a) if the goods were prohibited goods, or restricted goods in relation to which there had been any contravention or where no application for such balance is made as provided in paragraph (b) be paid into the Customs revenue;
- (b) in any other case be paid to the owner of the goods if he or she makes application for the payment within one year of the date of the sale.

(6) Where any goods are offered for sale in accordance with this section and cannot be sold for a sum to pay all duties, expenses, rent, freight, and other charges, they may be destroyed or disposed of in such manner as the Commissioner may direct.

(7) Subject to any other written law restricted or prohibited goods maybe disposed of in the manner the Commissioner may deem fit.

(8) Any officer having the custody of any goods in a Customs warehouse, or place of deposit deemed to be a Customs warehouse, may refuse delivery therefrom until he or she is satisfied that all duties, expenses, rent, freight and other charges due in respect of such goods have been paid.

Goods deemed to be in Customs warehouse.

43. (1) Where under this Act any goods are required to be deposited in a Customs warehouse, the proper officer may, decide that it is undesirable or inconvenient to deposit such goods in a Customs warehouse and direct that such goods shall be deposited in some other place; and thereupon such goods shall for all purposes be deemed to have been deposited in a Customs warehouse as from the time that they are required to be deposited.

(2) Where any goods are deemed to have been deposited in a Customs warehouse then such goods shall, in addition to the rent and other charges to which they are liable under section 42, be chargeable with such expenses incurred in the securing, guarding, and removing, of them as the proper officer may consider reasonable; and neither the Commissioner nor any officer shall be liable for the loss of or damage to such goods which may be occasioned by reason of their being deposited and dealt with.

Passenger Clearance

Disembarkation of persons.

44. (1) A person shall not disembark from any aircraft or vessel except at a place appointed in accordance with section 11 of this Act.

(2) The following persons on landing at any port or place from an aircraft or vessel which has arrived from or called at a foreign port shall, subject to section 46 proceed forthwith to the baggage room or other place set aside for the examination of baggage and there remain until they receive the permission of the proper officer to leave that room or other place—

- (a) any person who is disembarking at that port or place;
- (b) any person, including any person who is returning ashore, who has any uncustomed goods in his possession, whether upon his person or in his baggage;
- (c) the crew of an aircraft or vessel who are leaving that aircraft or vessel either temporarily or for any other reason, and wish to remove their baggage or part thereof, from that aircraft or vessel;
- (d) any passenger who is temporarily leaving that aircraft or vessel and wishes to remove therefrom his baggage, or any part thereof;

(e) any other person who may be required by the proper officer to do so.

(3) The Commissioner may require the owner or agent of an aircraft or vessel conveying passengers to provide advance passenger information prior to the arrival of such aircraft or vessel.

(4) Any person who contravenes this section commits an offence.

45. (1) There shall be established at every place of arrival and within the baggage room at every major port a dual channel system which shall consist of-

Baggage to be taken to examination place.

(a) green channel for passengers with nothing to declare or with baggage consisting of only goods within the prescribed passenger allowance as provided for in Part B of the Fifth Schedule of this Act; and

(b) red channel for passengers carrying dutiable or restricted goods: Provided that crew members of vessels or aircrafts shall use the red channel.

(2) A person to whom section 44 applies shall without delay take his or her baggage and any uncustomed goods in his or her possession, to the place appointed for examination of baggage.

(3) Subject to section 46 a person shall not remove any baggage or goods out of the baggage room or such other place until the proper officer authorises such removal.

(4) A person who contravenes any provision of this section commits an offence.

46. (1) A person shall on entering the Partner States make a declaration to the proper officer of his or her baggage and the articles contained therein or carried with him or her; and that declaration shall be at the discretion of the proper officer.

Baggage declaration.

PART IV WAREHOUSING OF GOODS

General Provisions

47. (1) Subject to any regulations, goods liable to import duty may on first importation be warehoused without payment of duty in a Government warehouse or a bonded warehouse.

Dutiable goods may be warehoused.

(2) On, or as soon as practicable after, the landing of any goods to be warehoused, the proper officer shall take a particular account of such goods and shall enter such account in a book; and such account shall, subject to sections 52 and 58, be that upon which the duties in respect of such goods shall be ascertained and paid.

Procedure
on ware-
housing.

48. (1) Where any goods entered to be warehoused are delivered into the custody of the person in charge of a warehouse, the proper officer shall, save where the Commissioner otherwise directs, take a particular account of such goods, whether or not any account thereof has been previously taken.

(2) The proper officer shall, in taking such account, enter in the book for that purpose the name of the aircraft or vessel or the registered number of the vehicle, as the case may be in which the goods were imported or, in the case of postal articles, the parcel post reference, the name of the owner of such goods, the number of packages, the mark and number of each package, and the value and particulars of the goods.

(3) After such account has been taken and the goods deposited in the warehouse in accordance with the direction of the proper officer, such officer shall certify at the foot of the account that the entry and warehousing of the goods is complete; and such goods shall from that time be considered goods duly warehoused.

"Amended:
Act No. 5"

(4) Subject to section 50, all goods entered to be warehoused, shall within fourteen days of their release be removed to the warehouse for which they are entered and deposited therein in the package in which they were imported:

Provided that—

- (i) in the case of bulk cargo or goods destined for a bonded warehouse located far away from the port of discharge, the Commissioner may allow for such longer period not exceeding forty-five days;
- (ii) where any goods are permitted to be repacked, skipped, bulked, sorted, lotted, or packed, in accordance with section 40, then such goods shall be deposited in the packages in which they were contained when that account thereof was taken.

(5) Any person who contravenes subsection (4) commits an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

49. (1) Where any goods entered to be warehoused and are not duly warehoused by the owner, the proper officer may cause them to be removed to the warehouse for which they were entered.

Removal to warehouse of goods entered therefor.

(2) Where any goods are so removed to a bonded warehouse the warehouse keeper shall pay the cost of the removal of such goods and shall have a lien on such goods for such cost.

50. (1) Goods which have been warehoused may be entered either for—

Entry of warehoused goods.

- (a) home consumption;
- (b) exportation;
- (c) removal to another warehouse;
- (d) use as stores for aircraft or vessel;
- (e) re-warehousing;
- (f) removal to an export processing zone; or
- (g) removal to a freeport.

(2) Where any goods have been entered for warehousing, they may, before they are actually warehoused, be entered for home consumption, for exportation, for removal to another warehouse, or for use as stores for aircraft or vessels, and in any such case such goods shall be deemed to have been so warehoused and may be delivered for home consumption, for exportation, for removal to another warehouse, or for use as stores for aircraft or vessel, as the case may be as if they had been actually warehoused.

51. (1) Where any goods are warehoused, the Commissioner may, subject to such conditions as he or she may impose—

Operations in a warehouse.

- (a) permit such goods to be repacked, skipped, bulked, sorted, lotted, or packed, therein;

- (b) permit samples of such goods to be taken by the owner;
- (c) permit the name of the owner of such goods in the account taken under section 47 to be changed if application is made on the prescribed form and signed by both the owner and the intended owner;
- (d) permit the assembly or manufacture in the warehouse of any article consisting wholly or partly of such goods; and for such purpose the Commissioner may permit the receipt in a warehouse of duty free or locally produced articles required as components of the article to be assembled or manufactured in the warehouse:

Provided that—

- (i) where the finished article is entered for home consumption, duty shall be charged on the goods forming part thereof according to the first account taken upon the warehousing of the goods except in the case of imported crude petroleum or partly-refined petroleum oils which are warehoused in a refinery, in which case duty shall be charged on the goods produced from crude petroleum or partly refined petroleum oils delivered from the refinery for home consumption and shall be the same as that which would be payable on the importation of similar goods; and
- (ii) in respect of blended lubricating oils, duty shall be charged on the resultant volume of the blend at the time of entry for home consumption and shall be the same as that which would be payable on the importation of similar goods; and
- (iii) in respect of any other product as may be prescribed.

(2) A person who contravenes any conditions which may be imposed by the Commissioner under this section commits an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

52. The proper officer may, either on the direction of the Commissioner or on the application and at the expense of the owner—

Re-gauging and re-valuation.

- (a) re-gauge, re-measure, re-weigh, examine, or take stock of, any warehoused goods;
- (b) re-value any warehoused goods liable to duty *ad valorem* which have deteriorated in quality;

and in either such case the duty on any such goods shall be payable according to the result, unless the proper officer considers that any loss or deterioration is excessive or has been wilfully or negligently caused, in either of which events the duty shall, subject to such reduction, if any, as the Commissioner may allow, be payable according to the original account.

53. (1) The proper officer may, subject to such conditions as he or she may impose and to the giving of such security as he or she may think appropriate for the due return thereof or the payment of duties thereon, permit any goods to be removed from any warehouse without payment of the duty for such purpose, for such period, and in such quantities, as he or she may deem fit.

Delivery from warehouse in special circumstances.

(2) A person who contravenes any conditions imposed under subsection (1) commits an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

54. (1) Where any warehoused goods are to be removed to another warehouse, then the proper officer—

Removal to another warehouse.

- (a) shall require the owner of such goods to deliver an entry thereof in such form and manner as the proper officer may direct;
- (b) shall require such owner to give security in such amount, not being less than the duty chargeable on such goods, as the proper officer may deem fit for the due arrival and re-warehousing of such goods within such time as the proper officer may consider appropriate; and
- (c) shall transmit to the proper officer of the place where such goods are to be re-warehoused in such other warehouse an account containing the particulars of such goods.

(2) Security given under this section shall not be discharged unless—

- (a) the conditions attached to the security have been satisfied;
- (b) the full duties payable on such goods have been paid in accordance with this Act;

(3) On the arrival of such goods at such other warehouse they shall be re-warehoused in the same manner as if they were being warehoused on the first importation.

Warehoused goods may be delivered as stores.

55. (1) Where any warehoused goods have been entered for use as stores for any aircraft or vessel, they may be delivered for that purpose to any aircraft or vessel proceeding to a foreign port:

Provided that warehoused goods shall not be entered for use as stores for a vessel of less than two hundred and fifty tons register or be delivered for that purpose.

(2) Where any warehoused goods are delivered for the purpose of being used as stores for an aircraft or vessel, they shall forthwith be put on board the aircraft or vessel for which they are entered.

(3) Where any warehoused goods are dealt with contrary to this section, then the owner of such goods commits an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

Abandonment, etc. of warehoused goods.

56. (1) The Commissioner may, subject to such conditions as he or she may impose—

- (a) permit the owner of any warehoused goods to abandon such goods to the Customs;
- (b) permit the owner of any warehoused goods which, in the opinion of the proper officer, are not worth the duty payable on them or have become damaged, or are surplus, by reason of any operations in connection with the goods carried out under section 51 to destroy such goods; and in either such case the duty on such goods shall be remitted.

(2) Where under subsection (1) any warehoused goods are—

- (a) abandoned to the Customs, then such goods may be destroyed or otherwise disposed of in such manner as the Commissioner may direct and at the expense of the owner;
- (b) permitted to be destroyed and such goods were warehoused in a Government warehouse, then the owner of such goods shall nevertheless be liable to pay to the proper officer the rent and other charges due to such goods.

57. (1) All warehoused goods which have not been removed from a warehouse in accordance with this Act within six months from the date on which they were warehoused may, with the written permission of the Commissioner, be re-warehoused for a further period of three months:

Period of warehousing and sale of goods.
"Amended: Act No. 5".

Provided that in the case of—

- (a) wines and spirits in bulk warehoused by licensed manufacturers of wines and spirits; or
- (b) goods in a duty free shop; or
- (c) new motor vehicles warehoused by approved motor assemblers and dealers;

the Commissioner may, in addition to the period of re-warehousing permitted in this subsection, allow for further period of re-warehousing as he or she may deem appropriate.

(2) Where any goods required to be re-warehoused under subsection (1) are not so re-warehoused, then they shall be sold by public auction after one month's notice of such sale has been given by the proper officer by publication in such manner as the Commissioner may deem fit:

Provided that any such goods which are of a perishable nature may be sold by the proper officer without notice, either by public auction or private treaty, at any time after the expiry of the initial warehousing period.

(3) Where any goods are sold under the provisions of this section, then the proceeds of such sale shall be applied in the order set out below in the discharge of—

- (a) the duties;
- (b) the expenses of the sale;
- (c) any rent and charges due to the Customs or to the warehouse keeper;
- (d) the port charges; and
- (e) the freight and any other charges.

(4) Where, after proceeds of the sale have been applied in accordance with subsection (3), there is any balance, then such balance shall, if the owner of the goods makes application within one year from the date of the sale, be paid to such owner, or, in any other case, be paid into the Customs revenue.

(5) Where any goods are offered for sale in accordance with this section and cannot be sold for a sum to pay all duties, expenses, rent, freight, and other charges, they may be destroyed or disposed of in such manner as the Commissioner may direct.

Examination
of
warehoused
goods on
delivery.

58. (1) Where any warehoused goods are delivered for home consumption, for exportation, for removal to another warehouse, or for use as stores for aircraft or vessels, or are to be re-warehoused or sold under section 57, then the proper officer may examine and take stock of such goods.

(2) Where there is any deficiency between the quantity shown by the warehouse account and that ascertained on such examination, then, if the proper officer considers—

- (a) that the deficiency is not excessive or that it was not wilfully or negligently caused, he or she may allow the deficiency and direct that the duties on such goods shall be payable, or that the re-warehousing entry shall be made, as the case may be, on the result of such examination;
- (b) that the deficiency is excessive or that it was wilfully or negligently caused, he or she shall require the duties on such goods to be paid by the owner, according to the warehouse account:

Provided that—

- (i) where the goods are to be re-warehoused, the duty on such deficiency shall be forthwith paid by the owner of such goods and the re-warehousing entry shall be made according to the result of such examination;
- (ii) where the goods are to be sold under section 57, the duty on such deficiency shall be forthwith paid by the warehouse keeper in any case where the goods were warehoused in a bonded warehouse.

59. (1) The proper officer shall at all times have the right of access to any part of any warehouse and may examine any goods therein; and for the purpose of obtaining such access the proper officer may break open the warehouse or any part thereof.

Access to
warehouse.

(2) A person, other than the proper officer or, in the case of a bonded warehouse, the warehouse keeper or any duly authorised employee, shall not open any warehouse or gain access to any goods therein save with the approval of the proper officer; and any person who contravenes this subsection commits an offence and shall be liable on conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding two years.

(3) A person shall not enter any warehouse, or part thereof, contrary to the orders of the proper officer or shall refuse to leave any warehouse, or part thereof, when directed to do so by the proper officer; and any person who contravenes this subsection commits an offence and shall be liable on conviction to a fine not exceeding two hundred and fifty dollars or to imprisonment for a term not exceeding one year.

60. (1) Goods entered for home consumption or sold in accordance with this Act shall be removed from a warehouse within fourteen days after such entry or sale as the case may be.

Removal of
goods after
entry for
home
consumption,
export, etc.

(2) Where goods are entered for export such goods shall be removed from the warehouse or bonded factory and exported within thirty days or within such further period, not exceeding thirty days, as the Commissioner may, in any particular case, allow.

(3) Where goods are not removed within the period required under this section then such goods shall, unless the Commissioner in any special case otherwise directs, be forfeited and may be destroyed or otherwise disposed of in such manner as the Commissioner may direct.

Penalty for unlawfully taking, etc., warehoused goods.

61. A person who—

- (a) takes, or causes or permits to be taken, any goods from any warehouse otherwise than in accordance with this Act; or
- (b) fails to carry into and deposit in the warehouse, any goods entered for warehousing; or
- (c) willfully destroys or damages any warehoused goods otherwise than in circumstances specifically provided for in this Act,

commits an offence and shall be liable on conviction to imprisonment for a term not exceeding two years or a fine equal to twenty-five percent of the dutiable value of the goods.

Bonded Warehouses

Commissioner may license warehouse.

62. (1) The Commissioner may, on application, license any building or any other place as a warehouse for the deposit of goods liable to import duty; and the Commissioner may, refuse to issue any such licence and may at any time suspend or revoke any licence which has been issued.

(2) The Commissioner may license any building or any other place as either—

- (a) a general warehouse for the warehousing of goods generally; or
- (b) a private warehouse only for the warehousing of goods which are the property of the warehouse keeper.

(3) A licence shall be in the prescribed form and shall be subject to the payment of the prescribed annual fee and shall expire on the thirty-first day of December in each year.

(4) The Commissioner may require the person applying for a licence to furnish such security as the Commissioner may think appropriate as a condition to the grant of the licence.

(5) The Commissioner may, at any time, require a warehouse keeper to furnish new security in a different amount or on different terms.

(6) The Commissioner may, at any time, require a warehouse keeper to make such alterations or additions to his or her bonded warehouse as the Commissioner may consider necessary to ensure the proper security or warehousing of any goods.

(7) A building shall not be used as a bonded warehouse unless there is in force in relation to the warehouse a valid licence to operate as a bonded warehouse.

(8) A warehouse keeper who uses, or permits to be used, his or her warehouse in contravention of any of the terms of his or her licence commits an offence.

(9) The Commissioner shall give reasons for his or her refusal to grant a licence or for revoking or suspending a licence under this section.

63. (1) Where the Commissioner revokes any licence under section 62, then he shall cause to be served on the warehouse keeper notice of such revocation by leaving such notice with the person in charge of the bonded warehouse; and thereupon such service shall be deemed to be notice of such revocation to the owners of all goods warehoused therein.

Procedure
on
revocation
or expiry of
licence.

(2) Where any warehouse keeper proposes not to renew his or her licence in relation to any bonded warehouse, then he or she shall cause notice of such intention to be given to the owners of all goods warehoused therein.

(3) Where the licence in relation to any bonded warehouse has been revoked or has expired, then, within such time as the Commissioner may direct, all goods warehoused therein shall be entered and delivered for home consumption, for exportation, for removal to another warehouse, or for use as stores for aircraft or vessels.

(4) Where any goods have not been entered and delivered in accordance with subsection (3), the proper officer may cause such goods to be taken to a Customs warehouse and thereupon such goods shall be dealt with in accordance with section 42.

Warehouse
keeper to
provide
facilities.

64. (1) A warehouse keeper shall—

- (a) provide such office accommodation and weights, scales, measures, and other facilities, for examining and taking account of goods and for securing them as the proper officer may require;
- (b) keep a record of all goods warehoused and shall keep such record at all times available for examination by the proper officer; keep a record of all goods warehoused therein and shall keep such record at all times available for examination by the proper officer;
- (c) stack and arrange the goods in the bonded warehouse so as to permit reasonable access to and examination of every package at all times;
- (d) provide all necessary labour and materials for the storing, examining, packing, marking, coopering, weighing, and taking stock, of the warehoused goods whenever the proper officer so requires;
- (e) maintain such records and accounts relating to goods and the operations of a refinery, in such form and manner, as the proper officer shall require; and keep such records and accounts at all times available for examination by the proper officer.

(2) Where any warehouse keeper contravenes this section, the Commissioner may direct that no other goods shall be warehoused by such warehouse keeper until such warehouse keeper has, in the opinion of the Commissioner, complied with this section.

(3) A warehouse keeper who contravenes any of the provisions of this section or any direction given by the Commissioner under this section commits an offence and shall be liable on conviction to a fine not exceeding one thousand dollars.

Stowage
and storage
of goods in
bonded
warehouse.

65. (1) The proper officer may direct in what parts or divisions of any bonded warehouse and in what manner any goods shall be deposited therein.

(2) Subject to section 51, where any goods have been warehoused in a bonded warehouse, then, except with the approval of the proper officer, such goods shall not be moved or interfered with in any way, nor shall any alteration be made in the marks or numbers of any package.

(3) A warehouse keeper who contravenes, or who causes or permits a contravention of, this section commits an offence and shall be liable to a fine not exceeding one thousand dollars, and any goods in respect of which any offence under subsection (2) has been committed shall be liable on conviction to forfeiture.

66. (1) Where the warehouse keeper of a private bonded warehouse contravenes any of the provisions of this Act, the proper officer may require him or her within such time as the proper officer may direct, to remove all or any of the goods warehoused in such private bonded warehouse to a general bonded warehouse at the expense of the warehouse keeper or to enter and deliver them for home consumption, for exportation, or for use as stores for aircraft or vessels.

Removal of goods from private to general warehouse.

(2) Where any warehouse keeper contravenes any requirement given under subsection (1), the proper officer may cause such goods to be taken to a Customs warehouse and thereupon such goods shall be dealt with in accordance with section 42.

67. (1) A warehouse keeper shall, on request, produce to the proper officer all goods deposited in his or her bonded warehouse.

Warehouse keeper to produce goods deposited.

(2) A warehouse keeper who contravenes subsection (1), in the absence of satisfactory explanation to the proper officer, commits an offence and shall be liable on conviction to a fine of ten percent of the dutiable value in respect of each package not so produced and, in addition, the warehouse keeper shall forthwith pay the duties in respect of each such package.

(3) A warehouse keeper who takes, substitutes, causes or permits any goods in a bonded warehouse to be taken or substituted commits an offence and shall be liable to a fine of twenty-five percent of the dutiable value of the goods substituted or taken.

68. Where any goods are deposited in a Government warehouse, then they shall be subject to such rent and other charges as may be prescribed or as may be provided for in this Act; and, if such rent and other charges are not paid to the proper officer when lawfully demanded, the goods in respect of which such rent and other charges are due may be sold, and the proceeds thereof applied, in accordance with section 42.

Goods in Government warehouse liable to rent, etc.

Removal,
etc. of
goods in
Government
warehouse.

69. (1) Where any goods are deposited in a Government warehouse, the proper officer may—

- (a) remove, at the expense of the Customs, such goods from that warehouse to another Government warehouse;
- (b) perform, in relation to such goods and at the expense of the owner thereof, all such acts as he or she may consider reasonably necessary for the proper custody and preservation of such goods:

Provided that the proper officer shall not, save where he or she considers immediate action necessary, perform any such act until twenty-four hours after the owner of such goods has been notified that any such act is necessary;

- (c) by notice inform the owners of the goods that it is proposed to close the warehouse at the end of such period, not being less than three months from the date of such notice, as may be specified in the notice;

(2) The Commissioner may prescribe the manner in which the goods deposited in a Government warehouse may be dealt with upon a warehouse being closed under subsection (1).

PART V EXPORTATION

Prohibited and Restricted Exports

Prohibited
and
restricted
exports.

70. (1) The goods specified in Part A of the Third Schedule are prohibited goods and the exportation of the goods is prohibited.

(2) The goods specified in Part B of the Third Schedule are restricted goods and the exportation of the goods, save in accordance with any conditions regulating their exportation, is prohibited.

Power to
prohibit,
etc.
exports.

71. (1) The Council may by order published in the Gazette amend the Third Schedule, and that order may provide that the exportation of any goods, or class of goods—

- (a) is prohibited, either generally or in relation to a Partner State;
 - (b) is prohibited, save in accordance with any conditions regulating their exportation, either generally or in relation to a Partner State.
- (2) The Council may, by order, published in the Gazette—

(a) provide that the exportation from a Partner State of any goods or class of goods shall be prohibited, or shall be prohibited save in accordance with such conditions as may be specified in such order;

(b) limit in respect of a Partner State the application of the provisions of the Third Schedule in respect of all or any of the goods specified therein; and thereupon in respect of such goods the provisions of this Act shall apply as if such goods are, or are not, as the case may be, included in the Third Schedule.

(3) An order made under this section may specify goods, or any class of goods, either generally or in any particular manner and may prohibit or restrict the exportation thereof either to all places, or to any particular country or place, or to any particular person.

72. (1) Subject to subsection (2), sections 70 and 71 shall not apply to goods in transit, or for transshipment, or exported as stores of any aircraft or vessel, unless such goods come within the provisions of paragraph 2 of Part B the Third Schedule, or are goods of which the exportation as stores for any aircraft or vessel, is expressly prohibited or restricted in any order made under this Act prohibiting or restricting the exportation of goods.

Exemption
of goods in
transit, etc.

(2) Where under subsection (1), sections 70 and 71 do not apply to any goods in transit, or for transshipment, or exported as stores for any aircraft or vessel, then such goods shall be duly exported within such time as the Commissioner may specify; and if such goods are not so exported, then as from the last date on which they should have been exported, they shall be deemed to be prohibited goods or restricted goods, as the case may be.

Entry Outwards and Loading of Aircraft and Vessels

Entry of
cargo for
export.

73. (1) Save as otherwise provided in the Customs laws, the whole of the cargo to be loaded for export on any aircraft or vessel shall be entered by the owner of such cargo in the manner prescribed.

(2) Where any owner delivers an entry under this section he or she shall furnish, therewith to the proper officer full particulars, supported by documentary evidence, of the goods referred to in the entry.

(3) A person who contravenes this section commits an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

Entry
outwards of
aircraft or
vessel.

74. (1) The master or agent of every aircraft or vessel in which any goods are to be exported shall make entry outwards of such aircraft or vessel to the proper officer on the prescribed form and in the prescribed manner.

(2) Save with the permission of the proper officer—

(a) no such entry outwards of an aircraft or vessel referred to in subsection (1) shall be made before the whole of the cargo reported in such aircraft or vessel for discharge has been discharged;

(b) goods shall not be loaded on such aircraft or vessel before entry outwards referred to in subsection (1) is made.

(3) Any master or agent who contravenes subsection (1), and any master who permits any goods to be loaded contrary to subsection (2), commits an offence.

Loading,
etc.

75. (1) Save with the written permission of the proper officer and subject to such conditions as he or she may impose—

(a) goods shall not be put on board any aircraft or vessel departing to a foreign port unless such goods have first been duly entered;

(b) goods shall not be put on board any aircraft or vessel departing to a foreign port at any time except as may be prescribed by the Commissioner;

- (c) goods shall not be put on board any such aircraft or vessel departing to a foreign port except from an approved place of loading or from a sufferance wharf:

Provided that—

- (i) goods may be put on board any such aircraft or vessel from another aircraft or vessel on to which they had been put on board in order to be loaded on to such aircraft or vessel;
- (ii) with the permission of the proper officer and subject to such conditions as he or she may impose, goods reported for transhipment may be loaded on to such aircraft or vessel from another vessel;
- (d) goods shall not be put on board any vessel departing to a foreign port before entry outwards of such vessel;
- (e) goods shall not be put on board any vessel to be loaded on to any aircraft or other vessel departing to a foreign port if such goods may not, under the provisions of this subsection, be directly put on board such aircraft or other vessel;
- (f) goods put on board any vessel to be loaded on to any aircraft or other vessel departing to a foreign port shall be so loaded within the limits of the port.

(2) A person who contravenes this section, or any of the conditions which may have been imposed by the proper officer, commits an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

76. (1) Notwithstanding section 75, the proper officer may, subject to any regulations, permit—

Provisions relating to personal baggage.

- (a) goods which are the bona fide personal baggage of the passenger, or members of the crew, of any aircraft or vessel to be put on board such aircraft or vessel and exported without entry;

- (b) goods intended for sale or delivery to passengers, or members of the crew, of any aircraft or vessel to be put on board such aircraft or vessel, subject to such conditions as he or she may impose, without entry;
- (c) mail bags and postal articles in the course of transmission by post to be put on board and exported without entry;
- (d) goods to be put on board any aircraft or vessel departing to a foreign port without entry subject to an application being made by the owner on the prescribed form and in the prescribed manner and to an undertaking being given by the owner of such goods to furnish the necessary entry within forty-eight hours, or such further time as the proper officer may specify, of the departure of the aircraft or vessel and to such security, if any, being given by such owner for the due payment of any export duties as the proper officer may consider appropriate.

(2) A person who—

- (a) contravenes any conditions imposed under subsection (1) (b); or
- (b) contravenes any undertaking given under subsection (1) (d), commits an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

Goods for export not to be discharged in Partner States.

77. (1) Goods which have been put on board any aircraft or vessel for export, or for use as stores, or as passengers' baggage, shall not, save with the written permission of the proper officer and in accordance with such conditions as he or she may impose, be discharged at any place within the Partner States.

(2) A person who contravenes this section, or any such conditions imposed by the proper officer, commits an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

Provisions relating to export of certain goods.

78. (1) Before any—

- (a) warehoused goods; or
- (b) goods on which duty drawback may be claimed; or

- (c) dutiable goods intended for transshipment; or
- (d) restricted goods;

may be entered for exportation, for transshipment, or for use as stores for aircraft or vessels the proper officer may require the owner of such goods to give security, in such amount and subject to such conditions as he or she may deem fit, that such goods shall be duly put on board the aircraft or vessel for which they are entered and either duly exported to and discharged at the place for which they are so entered, or used as stores, as the case may be, within such time as he or she may specify.

(2) All goods in respect of which security is required under this section, in this section referred to as bonded goods, shall, after being put on board, be duly exported to and discharged at the place for which they are entered, or used as stores for aircraft or vessels, as the case may be.

(3) The proper officer may require the owner of any bonded goods which have been put on board any aircraft or vessel for exportation to any place to produce, within such time as the proper officer may consider reasonable, a certificate from the customs authorities at the port of discharge of the due discharge thereat of the goods according to the export entry; and if owner fails to produce the certificate, or if the certificate does not show that the goods have been duly discharged thereat according to the export entry, and the owner fails to account for any such goods to the satisfaction of the proper officer, then the proper officer may refuse to allow the owner to enter for export and to export any other goods in respect of which security may be required under this section.

(4) Where any bonded goods—

- (a) are short-shipped, the owner thereof shall so notify the proper officer within twenty-four hours, or such further time as the proper officer may allow, of the departure of the aircraft or vessel;
- (b) have been removed from a warehouse for delivery on board any aircraft or vessel but are not put on board such aircraft or vessel, the owner shall forthwith enter the goods for warehousing, or for exportation, or for use as stores for aircraft or vessels.

(5) Where any bonded goods are brought to any Customs airport, Customs area, or other place, to be put on board any aircraft or vessel and, on examination by the proper officer, are found—

- (a) not to agree with the particulars of the entry;
- (b) not to be goods entitled to drawback, the owner of such goods commits an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

(6) An owner who—

- (a) contravenes any condition imposed on him or her under this section in respect of any bonded goods; or
- (b) contravenes subsection (4), commits an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

(7) Where any master contravenes, or causes or permits the contravention of, subsection (2), he commits an offence and shall be liable on conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding three years and any goods in respect of which such offence has been committed shall be liable to forfeiture.

Stores for aircraft and vessels.

79. (1) The proper officer may, on application being made on the prescribed form and in the prescribed manner by the master or agent of any aircraft or vessel departing to a foreign port, permit any goods to be put on board any such aircraft or vessel, for use as stores subject to the payment of any export duty and to such conditions as the proper officer may deem fit.

(2) A person who puts, or causes or permits to be put, any goods on board any aircraft or vessel for use as stores in contravention of this section, or of any conditions imposed by the proper officer, commits an offence and any goods in respect of which such an offence has been committed shall be liable to forfeiture.

Short shipment of non-bonded goods.

80. (1) Where any goods, other than bonded goods within the meaning of section 78, are entered for exportation and such goods are not exported in the aircraft or vessel for which they were entered or are short-shipped, the owner of the vessel or aircraft in which the goods are intended to be exported shall notify the proper officer within forty-eight hours, or such further time as the proper officer may allow, of the departure of the aircraft or vessel.

(2) An owner who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding five hundred dollars.

81. Where any goods are, with the permission of the proper officer, stored in a transit shed or a Customs area pending exportation or transshipment or while in transit—

Export goods stored at risk of owner.

(a) the goods shall be subject to such rent and other charges as may be prescribed; and

(b) notwithstanding section 17, the goods shall be stored at the risk of the owner.

82. (1) Where any goods are liable on export to any duty, the amount of such duty shall be stated on the export entry of the goods.

Goods liable to export duty.

(2) Goods liable on export to any duty shall not be exported until the export duty has been paid or security therefore given to the satisfaction of the proper officer.

(3) Where any goods liable on export to any duty are brought to any Customs airport, Customs area, or other place, to be put on board any aircraft or vessel and, on examination by the proper officer, are found not to agree with the particulars of the entry, or application for shipment relating thereto, the owner of such goods commits an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

(4) Subject to the provisions of any law in force in a Partner State, export duty shall not be levied on the exportation from the Partner State of any goods grown, produced, or manufactured, in another Partner State; and such goods shall on exportation, be subject at the place of exportation only to the export duty, restrictions and conditions imposed under the law of the Partner State in which they were grown, produced, or manufactured.

Departure Overland

83. (1) A person in charge of a vehicle, departing overland from a Partner State shall not, whether or not such vehicle is conveying goods and whether or not such goods are dutiable, except where otherwise permitted by the proper officer, cause or allow the vehicle to depart from a Partner State at any place other than at a port appointed under section 11, and before departing shall—

Vehicles departing overland.

- (a) report his or her intended departure to the officer stationed at the Custom house nearest to the point at which he or she proposes to cross the frontier;
- (b) furnish on the prescribed form such information as may be required concerning the vehicle or any such goods;
- (c) fully and immediately answer all relevant questions put to him or her by the proper officer;
- (d) produce any consignment notes or other relevant documents demanded of him or her by the proper officer;
- (e) save as otherwise provided in the Customs laws, make due entry of the vehicle and of any such goods.

(2) Vehicles or goods to which this section applies shall not, except under and in accordance with the terms of any permission granted by the proper officer, be removed across the frontier until after due entry thereof has been made.

(3) A person who contravenes this section commits an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

Departure
overland
otherwise
than by
vehicle.

84. (1) A person departing overland from a Partner State shall, if he or she has any goods in his or her possession, before crossing the frontier—

- (a) report his or her intended departure to the proper officer stationed at the Customs house nearest to the point at which he or she proposes to cross the frontier;
- (b) furnish on the prescribed form such information as may be required concerning any such goods;
- (c) fully and immediately answer all relevant questions put to him or her by the proper officer;
- (d) produce all consignment notes or other relevant documents demanded of him or her by the proper officer;

(e) save as otherwise provided in Customs laws, make due entry of any such goods.

(2) The proper officer may stop and question any person, whether or not he or she has goods in his or her possession, appearing to be about to depart overland from a Partner State, and that person shall fully and immediately answer all such relevant questions concerning his or her movements and any goods in his or her possession as may be put to him or her.

(3) Goods to which this section applies shall not, except under and in accordance with the terms of any permission granted by the proper officer, be removed across the frontier until after entry of the goods has been made.

(4) The Commissioner may, subject to such conditions as may be specified, exempt any person or class of persons from the provisions of this section.

(5) A person who contravenes any of the provisions of this section commits an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

Goods in Transit or for Transshipment

85. (1) The Commissioner may allow imported goods that are entered for transit or transshipment, to be removed under Customs control without payment of import duties, subject to such conditions as the Commissioner may prescribe.

Treatment
of goods
under transit
and trans-
shipment.

(2) Where goods are entered under subsection (1) the Commissioner may require the owner of such goods to furnish security in the prescribed form and in such amount as the Commissioner may deem fit.

(3) Subject to any regulations, the provisions of this Act relating to the importation, prohibition, entry, examination, landing, and exportation, of goods shall, so far as they are applicable, apply to goods in transit to a foreign port.

(4) The provisions of this Act relating to the importation, prohibition, declaration, examination, landing, warehousing, and exportation, of goods shall, so far as they are applicable, apply to goods transhipped from the aircraft or vessel in which they are imported to the aircraft or vessel in which they are exported.

Control of entry.

86. The Commissioner, may in the public interest or for the protection of public morality, safety, health or hygiene, or animal or plant health prohibit, restrict or otherwise control the entry of certain goods or means of transport from entering a Partner State.

Termination of transit procedure.

87. Transit may be terminated by presenting the goods and the relevant entries at the office of destination within the time limit specified by the Commissioner, without the goods having undergone any change and without having been used, and with the Customs seals, fastenings and identification marks intact.

PART VI

DEPARTURE AND CLEARANCE OF AIRCRAFT AND VESSELS

Clearance required for departure to foreign port.

88. (1) An aircraft or vessel, whether laden or in ballast, shall not depart from any port or place in a Partner State to any foreign port unless a certificate of clearance has been granted in respect of such aircraft or vessel.

(2) The master or agent of any aircraft or vessel which departs from any port or place within a Partner State in contravention of subsection (1) commits an offence.

Grant of clearance.

89. (1) The master or agent of every aircraft or vessel, whether laden or in ballast, proposing to depart to any foreign port shall apply to the proper officer for a certificate of clearance.

(2) Where application for a certificate of clearance is made, then the proper officer shall not grant such certificate of clearance until he or she is satisfied that all the provisions of this Act in relation to the aircraft or vessel, its cargo, stores, baggage, crew, and passengers, have been complied with:

Provided that the proper officer may, by reason of the provisions of any other law, refuse to grant such certificate of clearance notwithstanding that he or she may be satisfied that this Act has been complied with.

(3) Where the master or agent of any aircraft, or of any vessel of less than two hundred and fifty tons register, makes application for a certificate of clearance, then he or she shall at the same time—

- (a) deliver to the proper officer an outward manifest on the prescribed form and in the prescribed manner;

- (b) produce to the proper officer all such documents as the proper officer may require relating to such aircraft or vessel and its cargo, stores, baggage, crew, and passengers;
- (c) answer all questions which the proper officer may ask relating to such aircraft or vessel and its cargo, stores, baggage, crew, and passengers.

(4) Where the master or agent of any vessel of two hundred and fifty tons register or more makes application for a certificate of clearance, then the proper officer may grant such clearance subject to an undertaking by such master or agent to deliver to the proper officer, within twenty-four hours of the grant of such certificate of clearance, the outward manifest of such vessel in the prescribed form and in the prescribed manner, and to answer all such questions as he or she may be asked relating to such vessel, its cargo, stores, baggage, crew, and passengers.

(5) Where any aircraft or vessel proposes to depart to a foreign port in ballast, then such aircraft or vessel shall be cleared in ballast, that is to say, the words "in ballast" shall be written in those parts of the forms relating to such aircraft or vessel which contain provisions for the particulars of its cargo; and for the purpose of this subsection, an aircraft or vessel shall be deemed to be in ballast when such aircraft or vessel carries, in addition to the crew and its stores, only passengers and their bona fide personal baggage.

(6) The proper officer may permit the master or agent of any aircraft or vessel to amend any obvious error in the outward manifest, or to supply any omission which, in the opinion of the proper officer, results from accident or inadvertence, by furnishing an amended or supplementary outward manifest in the prescribed manner.

(7) Where any certificate of clearance has been granted but the aircraft or vessel in respect of which it was granted has not left the limits of the port in which it was granted, then the proper officer may inform, either orally or in writing, the master of such aircraft or vessel that such certificate of clearance has been cancelled and may require the return of such certificate, and thereupon such certificate shall be deemed never to have been granted.

(8) A master or agent who contravenes any undertaking given under subsection (4), or who refuses to return any certificate of clearance when required to do so under subsection (7), commits an offence.

Clearance certificate to be produced.

90. (1) An officer may board any aircraft or vessel in a Partner State after clearance and require the master thereof to produce such certificate of clearance and to answer any questions relating to such aircraft or vessel, its cargo, stores, baggage, crew, and passengers.

(2) The master of any aircraft or vessel who fails to produce such certificate of clearance on demand commits an offence.

Deficiency or surplus in cargo or stores.

91. (1) Where, on any aircraft or vessel being boarded by the proper officer, any goods or stores which are not contained in the manifest of such aircraft or vessel are found on such aircraft or vessel, then the master thereof commits an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

(2) Where, on any aircraft or vessel being boarded by the proper officer, any goods which were reported on the arrival of such aircraft or vessel as remaining on board for other ports in a Partner State, or for re-exportation, or as stores, or which after arrival were put on board for removal under bond to another port in a Partner State, or for exportation or use as stores, are not on board, due allowance being made in the case of stores for any goods which might fairly have been consumed or used, then the master of such aircraft or vessel commits an offence.

(3) Where, on any aircraft or vessel being boarded by the proper officer after its return to a Partner State from a voyage to a foreign port, any goods which on the previous arrival of such aircraft or vessel were reported as stores or were then put on board as stores are not on board, due allowance being made for any goods which might fairly have been consumed or used, the master of such aircraft or vessel commits an offence and shall be liable to a fine of ten percent of the value of the goods and to pay the duties on the deficiency of the goods at the rate chargeable upon importation of similar goods.

Aircraft or vessel to bring to at boarding station.

92. (1) The master of every aircraft or vessel departing to a foreign port shall bring to, at the boarding station for the purpose of disembarking any officer on such aircraft or vessel, or for any other purpose of this Act, or when required so to do by the proper officer.

(2) A master of an aircraft or vessel who contravenes this section commits an offence.

PART VII
IMPORTATION AND EXPORTATION BY POST

93. (1) This Act shall apply to the importation, exportation, and carriage coastwise, of postal articles:

Application of Act to postal articles.

Provided that—

- (i) postal articles may be entered at such place and in such manner as the Commissioner may direct;
- (ii) any provision of this Act may, in its application to postal articles, be modified or adapted by regulations.

(2) An officer, or any officer in the service of the Post Office, who, in the performance of any duty under this Act, examines or seizes any postal article shall be subject in all respects to this Act and such article shall be dealt with in accordance with this Act.

(3) This section shall be in addition to, and not in derogation of any law on postal services in the Partner States.

94. In the case of goods—

Time of entry of postal articles.

- (a) imported by post, the time of entry of such goods for home consumption shall, except in the case where actual entry is required, be deemed to be the time when the duty on the goods is assessed by the proper officer;
- (b) exported by post, the time of entry of the goods for export shall be deemed to be the time of the posting of the goods.

95. The Commissioner may allow registered courier companies to land, store and enter goods under customs control subject to such conditions as may be prescribed by regulations.

Registered courier companies to land, store, etc.

PART VIII
CARRIAGE COASTWISE AND TRANSFER OF GOODS

Power to
prohibit and
restrict
carriage
coastwise
and transfer.

96. (1) The Council may, by order published in the Gazette, provide that the carriage coastwise or transfer of any goods, or class of goods—

- (a) is prohibited either generally or in relation to a Partner State, and thereupon such goods shall, for the purpose of carriage coastwise or transfer, be prohibited goods;
- (b) is prohibited, save in accordance with any conditions regulating their carriage coastwise or transfer, either generally or in relation to a Partner State, and thereupon such goods shall, for the purpose of carriage coastwise or transfer, be restricted goods.

(2) The Council may, by order published in the Gazette—

- (a) provide that the carriage coastwise within a Partner State of any goods or class of goods shall be prohibited save in accordance with such conditions as may be specified in such order;
- (b) limit in respect of a Partner State the application of any order made under subsection (1) in respect of all or any of the goods specified therein, and thereupon within a Partner State and in respect of such goods the provisions of this Act shall apply as if such goods are or are not, as the case may be, included in any order made under subsection (1).

(3) Subject to this Act and to any order made under this section, where any goods are prohibited goods or restricted goods in relation to importation or exportation, they shall also be prohibited goods or restricted goods, as the case may be, in relation to carriage coastwise or transfer.

(4) Where, under any law in any of the Partner States, the carriage coastwise or transfer within the Partner State is prohibited or restricted, then such goods shall be deemed to be prohibited goods or restricted goods, as the case may be, in relation to their carriage coastwise or transfer within that Partner State.

97. (1) Subject to section 98, all goods conveyed by sea or air, from any part of a Partner State to another part thereof shall be deemed to be carried coastwise, and any aircraft or vessel conveying such goods by air or by sea shall be deemed to be a coasting aircraft or coasting vessel, as the case may be.

Meaning of carriage coastwise and transfer.

(2) All goods, including locally grown or locally produced goods, conveyed by any means from any place in a Partner State to any place in another Partner State shall be deemed to be goods transferred and such goods shall be subject to regulations made under this Act.

(3) For the purposes of this section, the conveyance of goods by sea shall be deemed to include conveyance by inland waters:

Provided that this subsection shall not apply to goods in transit or for transshipment nor to goods entered for warehousing, nor to goods consigned directly from a foreign place to a Partner State other than that at which the aircraft or vessel conveying the goods first arrives.

98. (1) When any aircraft or vessel carrying cargo arrives at a port in a Partner State from a foreign place, the proper officer may permit such aircraft or vessel to carry goods coastwise from such port to another port within a Partner State, or to carry goods on transfer from such port to a port in another Partner State, upon the presentation by the master of an entry as set out in section 100.

Carriage coastwise or transfer in an aircraft or vessel from foreign port.

(2) Where under subsection (1) an aircraft or vessel conveys goods from one port in a Partner State to another port in the same Partner State, such an aircraft or vessel shall not by virtue thereof be deemed to be a coasting aircraft or coasting vessel within the meaning of this Act.

(3) When any goods are carried coastwise or are transferred under the provisions of this section, then the loading, unloading and delivery of the goods shall be subject to any regulations and to such conditions as the Commissioner may impose.

99. (1) Save with the written permission of the proper officer and subject to such conditions as the proper officer may impose—

Loading, etc. of coastwise and transfer cargo.

- (a) goods shall not be loaded, on or unloaded from, any aircraft or vessel for carriage coastwise at any time whatsoever, except as prescribed by the Commissioner;

- (b) goods for carriage coastwise or transfer shall not be unloaded from or loaded on to any aircraft or vessel except at an approved place of loading or at a sufferance wharf:

Provided that goods may be unloaded from any such aircraft or vessel, or loaded on to any such aircraft or vessel, on to or from any other vessel or vehicle used for the purpose of the carriage of goods between such aircraft or vessel and an approved place of landing or sufferance wharf;

- (c) all goods which have been unloaded or landed from a coasting vessel or a coasting aircraft shall, if the proper officer so requires, be conveyed forthwith to a Customs area or transit shed;
- (d) all goods which have been transferred by road shall, if the proper officer so requires, be conveyed forthwith, to a Custom house or to such other place as the proper officer may direct.

(2) A person who contravenes this section, or any of the conditions which may have been imposed by the proper officer, commits an offence and shall be liable on conviction to a fine not exceeding two hundred and fifty dollars; and any goods in respect of which such offence has been committed, and any vehicle in which such goods were transferred shall be liable to forfeiture and any coasting aircraft or coasting vessel in relation to which such offence has been committed may be seized and detained until the fine is paid.

Transire
required for
departure
coastwise
and transfer.

100. (1) Coasting aircraft or coasting vessel, or any aircraft or vessel which is carrying goods coastwise or goods for transfer in accordance with section 98, shall not depart from any port or place within a Partner State unless transire has been granted by the proper officer.

(2) The master or agent of any aircraft or vessel to which subsection (1) applies intending to depart coastwise or carrying goods for transfer, shall deliver to the proper officer an account in triplicate on the prescribed form containing the particulars of all cargo taken on board for carriage coastwise or for transfer; and the original thereof, dated and signed by the proper officer, shall constitute the grant of transire for the carriage of the goods specified therein and shall, in the case of a coasting aircraft or coasting vessel, be the certificate of clearance for such aircraft or vessel for the coastwise voyage.

(3) A master or agent who contravenes this section, or who delivers an account of which any of the particulars contained therein is false, commits an offence and shall be liable on conviction to a fine not exceeding five hundred dollars and the coasting aircraft or coasting vessel in relation to which such offence has been committed may be seized and detained until the fine is paid.

101. (1) The master or agent of any aircraft or vessel arriving at a port or place within a Partner State carrying goods coastwise or goods for transfer—

Transire to be delivered on arrival.

- (a) shall forthwith deliver the transire to the proper officer of that port or place;
- (b) shall not, save with the permission of the proper officer and subject to such conditions as the proper officer may impose, permit any goods to be unloaded before the delivery of the transire:

Provided that in the case of a vessel of two hundred and fifty tons register or more, such transire may be delivered within twenty-four hours of arrival and the goods may be unloaded therefrom before the delivery of such transire.

(2) A master or agent who contravenes this section commits an offence and shall be liable to a fine not exceeding five hundred dollars and any goods in respect of which such offence has been committed shall be liable to forfeiture, and the coasting aircraft or coasting vessel in relation to which such offence has been committed may be seized and detained until the fine is paid.

102. (1) Notwithstanding any provision of this Act, the Commissioner may permit any coasting aircraft or coasting vessel to be loaded, unloaded, and cleared, subject to such conditions as the Commissioner may in any particular case impose.

Power of Commissioner to vary procedure.

(2) The master or agent of any coasting aircraft or coasting vessel who contravenes any conditions imposed by the Commissioner under this section commits an offence and shall be liable to a fine not exceeding one thousand five hundred dollars and any goods in respect of which such offence has been committed shall be liable to forfeiture, and the aircraft or vessel in relation to which such offence has been committed may be seized and detained until the fine is paid.

Entry
outwards of
aircraft,
etc.,
carrying
goods
coastwise.

103. The Commissioner may, subject to such conditions as he or she may impose, permit the master or agent of any aircraft or vessel carrying any goods coastwise to enter outwards such aircraft or vessel and to enter any goods carried coastwise therein for exportation without discharging such goods.

Coasting
vessel, etc.
not to
deviate
from
voyage.

104. The master or agent of any coasting aircraft or coasting vessel—

(a) which deviates from its voyage, unless forced to do so by circumstances beyond the control of the master or agent, the proof whereof shall lie on the master or agent; or

(b) which, having deviated from its voyage or having taken on board any wreck or other goods or discharged any goods in the course of a voyage from one part of the Partner States to another, does not forthwith proceed directly to the nearest port in the Partner States and explain the circumstances thereof to the satisfaction of the proper officer and deliver any such wreck or other goods taken on board to the proper officer,

commits an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture, and the aircraft or vessel in relation to which such offence has been committed may be seized and detained until the fine is paid.

Examination
of coasting
vessel and
goods.

105. (1) An officer may go on board any coasting aircraft or coasting vessel in any port or place in a Partner State or at any period of the voyage of such aircraft or vessel, and search such aircraft or vessel and examine all goods on board such aircraft or vessel.

(2) Where any such officer goes on board any coasting aircraft or coasting vessel he or she may require the master or agent thereof to answer any questions concerning the aircraft or vessel, its cargo, stores, baggage, crew, and passengers, and to produce any books and documents which are, or should be on board the aircraft or vessel.

(3) An officer may examine any goods which have been unloaded from any aircraft or vessel after carriage coastwise or which are brought to any port or place to be loaded onto any aircraft or vessel for carriage coastwise in a Partner State; and for the purposes of the examination the officer may require the owner of the goods to unpack or open and to repack the goods at the expense of the owner.

- (4) A master who—
- (a) refuses to answer any question or to produce any books or documents as required by an officer under subsection (3); or
 - (b) makes any incorrect reply to any such question, commits an offence and shall be liable on conviction to a fine not exceeding two hundred and fifty dollars and the aircraft or vessel in relation to which the offence has been committed may be seized and detained until the fine is paid.

PART IX

PROVISIONS RELATING TO SECURITIES

106. The Commissioner may require any person to give security for the due compliance by that person with this Act and generally for the protection of the Customs revenue; and, pending the giving of such security in relation to any goods subject to Customs control, the Commissioner may refuse to permit delivery or exportation of such goods or to pass any entry in relation thereto.

Commissioner may require security.

107. (1) Where any security is required to be given under this Act, then that security may be given to the satisfaction of the Commissioner either—

General provisions relating to giving of security.

- (a) by bond, in such sum and subject to such conditions and with such sureties as the Commissioner may reasonably require; or
- (b) by cash deposit; or
- (c) partly by bond and partly by cash deposit.

(2) Where any security is required to be given under this Act for any particular purpose then such security may, with the approval of the Commissioner be given to cover any other transactions which the person giving the security may enter into within such period as the Commissioner may approve.

(3) All bonds required to be given under this Act shall be so framed that the person giving the bond, and any surety thereto, is bound to the Commissioner for the due performance of the conditions of that bond; and any such bond may, unless sooner discharged by the due performance of the conditions

thereof, be discharged by the Commissioner on the expiration of three years from the date thereof, but without prejudice to the right of the Commissioner to require fresh security.

(4) Where any bond given under this Act is discharged, then the Commissioner shall cause such bond to be cancelled and an endorsement to that effect made thereon.

Provisions relating to sureties.

108. (1) Without prejudice to any rights of a surety to any bond given under this Act against the person for whom he or she is surety, a surety shall, for all the purposes of any bond, be deemed to be the principal debtor and accordingly the surety shall not be discharged, nor his or her liability affected, by the giving of time for payment, or by the omission to enforce the bond for any breach of any conditions thereof, or by any other act or omission which would not have discharged the bond if he or she had been the principal debtor.

(2) If a person being a surety—

- (a) dies; or
- (b) becomes bankrupt or enters into any arrangement or composition with, or for the benefit of, his or her creditors; or
- (c) departs from a Partner State without leaving sufficient property therein to satisfy the whole amount of the bond;
- (d) otherwise ceases to have capacity to honour the surety, the Commissioner may require the person giving the bond to enter into fresh security.

Enforcement of bond.

109. (1) Where the conditions of any bond have not been complied with the Commissioner may by notice in writing require the person who has given security under it to pay to him or her the amount of the security within fourteen days of the notice; and on failure to comply with the notice, the Commissioner may enforce payment of the security as though it were duty due and unpaid.

(2) Nothing in this section shall, unless the Commissioner otherwise allows, discharge the person who has given security under section 108 from the obligations entered into by him or her under this Act or under any other law.

PART X
DUTIES

Liability to Duty

110. (1) Shall be paid on goods at the rate and in the circumstances specified in the Protocol. Rates etc. of duty.

(2) Where under the provisions of the appropriate legislation goods are liable to duty on leaving a Partner State, whether or not such goods are intended for exportation from a Partner State, this Act shall apply as if such goods on so leaving the Partner State were exported.

111. (1) Goods originating from the Partner States shall be accorded Community tariff treatment in accordance with the Rules of Origin provided for under the Protocol. Community tariff treatment.

(2) Customs shall require production of a Certificate of Origin and other documents as proof of origin on goods referred to in subsection (1) above.

112. (1) Preferential tariff treatment shall be applied to goods— Preferential tariff treatment under COMESA and SADC.

(a) imported under the COMESA and SADC arrangements in the Partner State as prescribed in the Partner States' legislation;

(b) imported under any other tariff arrangement that may be approved by the Council.

(2) Preferential tariff treatment shall not be applied to goods referred to in subsection (1) (a) after 31st December, 2008.

113. Subject to the provisions of the Customs laws, goods remaining on board and exported in the aircraft or vessel in which they were imported, whether as stores or otherwise, shall be exempt from liability to import or export duties. Exemption from duty of goods remaining on board.

114. (1) Duty shall not be charged on the goods listed in Part A of the Fifth Schedule to this Act, when imported, or purchased before clearance through the Customs, for use by the person named in that Part in accordance with any condition attached thereto as set out in that Part; Exemptions regime.

(2) Duty shall not be charged on the goods listed in Part B of the Fifth Schedule to this Act when imported in accordance with any condition attached thereto as set out in that Part.

(3) The Council may by notice in the Gazette amend the Fifth Schedule.

Exemption
from import
duty of
goods
entered for
exportation,
etc.

115. Subject to the provisions of the Customs laws, goods entered under bond—

(a) for exportation, for re-exportation, for transshipment, or in transit; or

(b) for use as stores for aircraft or vessel, and proved to the satisfaction of the Commissioner to have been duly exported or used as such stores, as the case may be;

shall be exempt from liability to import duties.

Exemption
from import
duty of
certain re-
imports.

116. (1) Subject to the provisions of the Customs laws, where any goods which are liable to import duty have been exported from and are subsequently re-imported into a Partner State, then, the Commissioner if satisfied—

(a) that any import duty to which the goods were liable prior to their exportation has been paid and either—

(i) duty drawback or refund of such import duty was not allowed on exportation; or

(ii) if allowed, such duty drawback has been repaid to the proper officer; and

(b) that such goods have not been subject to any process after being so exported, or, if so subjected to any such process, that their form or character has not been changed and that such goods at the time of re-importation are not liable to duty *ad valorem*; and

(c) that the owner of such goods prior to such exportation gave notice of the exportation in writing to the proper officer and produced the goods for inspection by him or her at the port or place from which they were exported the goods shall, save as otherwise provided in the Customs laws, be exempt from liability to import duties:

Provided that the Commissioner may in any particular case direct that this section shall apply to any goods notwithstanding that paragraph (c) has not been complied with if the Commissioner is satisfied that a failure so to direct would involve hardship.

(2) In the case of any goods to which subsection (1) would apply but for the fact that at the time of re-importation liable to duty, such goods shall on re-importation be chargeable with duty as if the value of such goods were only the amount of the increase in value attributable to any such process; and for the purpose of ascertaining such increase in value, any sum paid for the execution of any such process shall, unless the Commissioner in his or her discretion otherwise directs, be taken to be the amount of such increase.

117. (1) Subject to the provisions of the Customs laws, goods imported in accordance with this section for a temporary use or purpose only shall be exempt from liability to import duties.

Exemption
from import
duty of
temporary
imports.

(2) Goods shall not be exempt from liability to import duties under this section unless the proper officer has given permission for such importation; and the proper officer shall not give such permission—

- (a) unless he or she is satisfied that the goods are imported for temporary use or purpose only; and
- (b) unless the owner thereof has deposited, or given security for, the amount of the import duty to which the goods would otherwise be liable.

(3) Where the proper officer gives permission for the importation of any goods under this section, he or she may impose such conditions as the proper officer deems fit and such goods shall be exported within such period, not exceeding twelve months from the date of importation, as is consistent with the purpose for which the goods are imported.

(4) Where the conditions of the importation of goods have been complied with then, on the exportation of the goods any deposit or security given under subsection (2) shall be refunded or discharged, as the case may be.

(5) Where the conditions of the importation of the goods have been contravened then the goods shall become liable to duty, as from the date of their importation and the owner shall be required to pay duty and on payment of the duty any deposit given under subsection (2) shall be brought into account or, if security was given, security shall be discharged.

(6) Save where goods are allowed to remain in a Partner State under subsection (5)—

(a) an importer who fails to export temporarily imported goods at the end of the period specified in subsection (3); or

(b) a person who sells, alters or re-replaces or otherwise modifies the goods or part thereof;

commits an offence and is liable, on conviction, to a fine equal to twenty percent of the dutiable value and any goods which are the subject of the offence, shall be liable to forfeiture.

(7) The Council may, by notice in the Gazette, declare that the goods specified in the notice shall not be imported in accordance with this section, or declare that the goods may be imported subject to proportion of duty.

Derelict goods, etc., liable to duty.

118. Goods brought or coming into a Partner State by sea otherwise than as cargo, stores, or baggage, carried in a vessel shall be liable to duty and to the provisions of the Customs laws as if they were goods imported in the normal manner; and, if any question arises as to the origin of such goods, they shall be deemed to be the produce of such country as the Commissioner may on investigation determine.

Goods imported duty free liable to certain duties on disposal.

119. (1) Where any goods liable to import duty have been imported, or purchased prior to entry for home consumption, by or on behalf of any person, either free of import duty or at a reduced rate of import duty and such goods are subsequently disposed of in any manner inconsistent with the purpose for which they were granted any relief from import duty, the goods shall on disposal be liable to import duty at the rate applicable to goods of that class or description at the time of disposal:

Provided that such duty on disposal shall not be payable (in the case of a natural person) where that person dies and the ownership of such goods is transferred by way of bequest to or inheritance by another person.

(2) Where it is proposed to dispose of any goods to which subsection (1) applies, then the person responsible for the disposal of such goods shall, furnish the Commissioner with the particulars of such proposed disposal and shall cause the duty thereon to be paid.

(3) A person who knowingly disposes of or knowingly acquires any goods to which subsection (1) applies without the import duty thereon having been paid in accordance with the provisions of this section commits an offence.

(4) Where any goods to which subsection (1) applies are disposed of without the payment of the import duty to which they are liable, then the goods shall be liable to forfeiture.

Computation of Duty

120. (1) Subject to subsection (3) and section 94, import duty shall be paid at the rate in force at the time when the goods liable to such duty are entered for home consumption:

Time of
entry
determines
rate of duty

Provided that in the case of goods imported overland, the time of entry of such goods for home consumption shall be deemed to be the time when the import duty on the goods is paid.

(2) Subject to the provisions of the Customs laws and of section 94, export duty shall be paid at the rate in force at the time when the goods liable to such duty are entered for export:

Provided that where any export duty is imposed, or the rate of any existing export duty is varied, between the time goods are entered for exportation and the time of exportation of such goods, export duty shall be paid at the rate in force at the time of exportation of the goods.

(3) Where goods are entered in accordance with section 34 before the arrival at the port of discharge of the aircraft or vessel in which such goods are imported, the import duty upon the goods shall be paid at the rate in force at the time of arrival of such aircraft or vessel at such port of discharge.

121. Where any drawback is allowed under the Customs laws according to any specified weight, measure, strength, or value the drawback shall be deemed to apply in the same proportion to any greater or less weight, measure, strength, or value, as the case may be, unless specific provision is made to the contrary in any Customs laws.

Duties, etc.
to apply
proportionately.

Determinati
on of value
of imported
goods liable
to *ad
valorem*
import duty.

122. (1) Where imported goods are liable to import duty *ad valorem*, then the value of such goods shall be determined in accordance with the Fourth Schedule and import duty shall be paid on that value.

(2) Upon written request, the importer shall be entitled to an explanation in writing from the proper officer as to how the Customs value of the importer's goods was determined.

(3) Where, in the course of determining the customs value of imported goods, it becomes necessary for the Customs to delay the final determination of such customs value, the delivery of the goods shall, at the request of the importer be made:

Provided that before granting such permission the proper officer may require the importer to provide sufficient guarantee in the form of a surety, a deposit or some other appropriate security as the proper officer may determine, to secure the ultimate payment of customs duties for which the goods may be liable.

(4) Nothing in the Fourth Schedule shall be construed as restricting or calling into question the rights of the proper officer to satisfy himself or herself as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes.

(5) The Council shall publish in the Gazette judicial decisions and administrative rulings of general application giving effect to the Fourth Schedule.

(6) In applying or interpreting this section and the provisions of the Fourth Schedule due regard shall be taken of the decisions, rulings, opinions, guidelines, and interpretations given by the Directorate, the World Trade Organisation or the Customs Cooperation Council.

(7) The rate of exchange to be used for determining the equivalent of a Partner State currency of any foreign currency shall be the selling rate last notified by the Central Bank of the respective Partner State when an entry is presented to and accepted by the proper officer.

- 123.** (1) The value of goods for export shall include—
- The value of goods for export.
- (a) the cost of the goods; and
- (b) transport and all other charges up to the time of delivery of the goods on board the exporting aircraft or vessel, or at the place of exit from the Partner State.
- (2) Where the cost of the goods cannot be determined, the cost of similar or identical goods exported from a Partner State at about or the same time shall apply.
- (3) Where the value of the goods cannot be determined under subsections (1) or (2) then the proper officer may determine the value of such goods.
- 124.** Where the total amount of duty computed with reference to any one customs document—
- Adjustment for fractions of a dollar.
- (a) is equivalent to 1.5 dollars or less, no duty shall be collected;
- (b) exceeds the equivalent of 1.5 dollars and includes a fraction of a dollar the fraction shall be treated as a complete dollar and duty shall be collected.
- 125.** Where any goods liable to duty according to weight are imported in any package, and the goods are intended for sale, or are normally sold retail, in the package then, if the package—
- Duty computed on gross weight of package in certain cases.
- (a) is not marked or labelled with the net weight of the contents; or
- (b) is not commonly sold as containing, or as reputed to contain, a specific quantity or weight, and in either such case, the owner of the goods is unable to satisfy the proper officer of the correct net weight thereof, the goods shall be liable to duty according to the gross weight of such package and its contents.
- 126.** Where any goods liable to a specific duty are imported in any package and the goods are intended for sale or are normally sold retail, in the package, then, if the package—
- Duty computed on reputed quantity in certain cases.

- (a) is marked or labelled as containing a specific quantity of such goods; or
- (b) is commonly sold as containing, or as reputed to contain a specific quantity of the goods, the package shall be deemed to contain not less than such specific quantity.

Commissioner may fix litre equivalent of other liquid measurement.

127. Where any goods liable to duty according to liquid measurement are imported in any package and—

- (a) the goods are intended for sale, or are normally sold, in such package; and
- (b) the package is of standard capacity according to any liquid measurement other than a liquid measurement based on fractions or multiples of a litre,

then such package, having a capacity within such limits as specified by the Commissioner shall be deemed to contain such fractions or multiples of a litre.

Allowance for tare.

128. For the purpose of the computation of the duty to which any goods are liable, the Commissioner may fix the allowance for tare which may be granted and the conditions under which any such allowance may be granted.

Duty on package in certain cases.

129. Where any goods are imported or exported in any package which, in the opinion of the Commissioner—

- (a) is not the normal or proper package of the goods; or
- (b) is designed for use, subsequently to such importation or exportation, other than as a package for any goods of the same or a similar nature,

then, subject to any provision to the contrary in the Customs laws, the package shall be liable to duty as if it were a separate article and shall, for all the purposes of the Customs laws be deemed to be a separate article.

Payment, etc., of Duty

Recovery of duty by distress.

130. (1) Where any goods are liable to duty, then such duty shall constitute a civil debt due to a Partner State and be charged on the goods in respect of which the duty is payable; and such duty shall be payable by the owner of the goods and may, without prejudice to any other means of recovery, be recovered summarily by legal proceedings brought by the Partner State.

(2) Goods under Customs control which belong to any person from whom duty is due, and any goods afterwards imported or entered for export by that person, shall be subject to a lien for such debt and may be detained by the Partner State until such duty is paid and the claim of the relevant Partner State shall have priority over the claims of whatever nature of any other person upon the goods and the goods may be sold to meet the duty due if the duty is not paid within two months after the goods are detained.

(3) Where any duty payable to a Partner State under subsection (1) or as penalty under this Act by a person is not paid one month after the due date of payment, the Commissioner may authorise distress to be levied upon the following items—

- (a) goods, chattels and effects;
- (b) material for manufacturing or plant of a factory;
- (c) premises, vehicles or other property;
- (d) animals, which are in the possession or custody of—
 - (i) that person;
 - (ii) his or her agent; or
 - (iii) any other person on his or her behalf.

(4) The warrant of distress to be issued by the Commissioner shall be as set out in the Sixth Schedule to this Act.

(5) A person authorised to distrain under subsection (3) may, if necessary break open any building or place during the daytime with the assistance of a police officer or other person who can lawfully give assistance.

(6) A person authorised to distrain shall keep the item distrained at the expense of the owner for fourteen days from the date of distress or until the amount due together with the costs and any other charges are paid in full before the end of the fourteen days and if payment is not effected after that period the person authorised to distrain may sell the item.

(7) Where an item is sold under subsection (6) the proceeds of the sale shall be applied as follows—

- (a) payment of the tax due to the relevant Partner State;
- (b) payment of any fine imposed for non-payment of the tax, if any;
- (c) payment of the expenses or other charges for levying of distress and for the sale.

(8) The balance of the proceeds after payment under subsection (7), if any, shall be paid to the owner, on application to the Commissioner within twelve months from the date of the sale of the item.

Agency notices.

131. (1) The Commissioner may, by written notice addressed to any person (in this section called the agent) appoint that person to be the agent of another person (in this section called the principal) for the purposes of collecting duty due under this Act from the principal where the Commissioner is satisfied that the agent—

- (a) owes or is about to pay money to the principal;
- (b) holds money for or on account of the principal;
- (c) holds money on account or some other person for payment to the principal;
- (d) has authority from some other person to pay money to the principal;
- (e) holds goods belonging to the principal which are liable to duty and on which duty has not been paid,

and the Commissioner shall in the notice specify the amount of duty to be collected by the agent, which amount shall not exceed the amount, or value of the goods, held or owing by the agent for or to the principal.

(2) The Commissioner may, by notice in writing, require any person to furnish the Commissioner within thirty days from the date of service of the notice, with a return showing detail of any moneys or goods which may be held by that person from whom duty is due under this Act.

(3) This section shall apply to an agent appointed as though he or she were a duly authorised agent acting on behalf of the owner.

(4) An agent who is appointed under subsection (1) and who claims to be, or to have become unable to comply with the notice for any reason shall notify the Commissioner accordingly in writing stating the reasons for his or her inability, and the Commissioner may accept, amend or reject the notification as the Commissioner may deem fit.

(5) Where an agent fails to remit any amount of duty specified in the notice addressed to him or her within thirty days of the date of service of the notice on him or her, or, of the date on which any moneys came into his or her hands or become due by him or her to his or her principal, whichever is the earlier and he or she has not complied with subsection (4) then, the provisions of this Act relating to the collection and recovery of duty shall apply as if it were duty due and payable by him or her from the date when such duty should have been paid to the Commissioner.

(6) An agent who has made payment of duty under this section shall for all purposes be deemed to have acted therein with the authority of his or her principal and of all other persons concerned, and shall be indemnified in respect of that payment against any proceedings civil or criminal and all process, judicial or extra judicial, notwithstanding any provisions to the contrary in any written law, contract or agreement.

(7) A person who, in giving a notification under subsection (4), wilfully makes any false or misleading statement, or wilfully conceals any material fact, commits an offence and shall be liable on conviction to a fine not exceeding two thousand five hundred dollars or to imprisonment for a term of not more than three years or to both.

132. (1) Where a person, being the owner of land or buildings situated in any Partner State, fails to pay any duty or other sum of money due and payable under this Act, the Commissioner may by notice in writing inform that person of his or her intention to apply to the Registrar of Lands for the land or buildings to be the subject of security for the duty or other sum of an amount specified in the notice.

Security on property for unpaid duty, etc.

(2) If a person on whom a notice has been served under this section fails to pay the whole of the amount specified in the notice within thirty days of the date of service thereof, the Commissioner may by notice in writing direct the Registrar of Lands that the land or buildings, to the extent of the interest of that person therein, be the subject of security for duty or other sum of a specified amount, and the Registrar of Lands that the land or buildings, to the extent of the interest of that person therein, be the subject of security for duty or other sum of a specified amount, and the Registrar shall, without fee, register the direction as if it were a mortgage over or charge on the land or buildings and thereupon the registration shall, subject to any prior mortgage or charge, operate while it subsists in all respects as a legal mortgage or charge to secure the amount payable.

(3) The Commissioner shall, upon the payment of the whole of the amount secured under subsection (2), by notice in writing to the Registrar of Lands, cancel the direction made under that subsection and the Registrar shall, without fee, record the cancellation.

Effect of
obligation
to pay duty.

133. (1) Where any obligation has been incurred, whether by bond or otherwise, for the payment of any duty, then such obligation shall be deemed to be an obligation to pay all duties which are or may become payable or recoverable under the provisions of this Act.

(2) Where the Commissioner is satisfied that the whole or any part of duty or tax due under this Act from any person cannot be effectively recovered by reason of—

(a) impossibility, or undue difficulty, or

(b) excessive cost of recovery, he or she shall notify the Council in writing, who shall consider the matter, and with the approval of the East African Legislative Assembly, remit or write off in whole or in part the duty.

Effect of
alteration in
classification
of goods.

134. Where any practice or method of procedure of the Customs approved by the Commissioner or arising from a ruling by the Directorate or the Customs Co-operation Council relating to the classification or enumeration of any goods for the purposes of the liability to duty is altered with the result that less duty is thereafter charged on goods of the same class or description, no person shall become entitled to any refund of any duty paid before such alteration took effect.

135. (1) Where any duty has been short levied or erroneously refunded, then the person who should have paid the amount short levied or to whom the refund has erroneously been made shall, on demand by the proper officer, pay the amount short levied or repay the amount erroneously refunded, as the case may be; and any such amount may be recovered as if it were duty to which the goods in relation to which the amount was short levied or erroneously refunded, as the case may be, were liable.

Short levy
or erroneous
refund.

(2) Where a demand is made for any amount pursuant to sub-section (1), the amount shall be deemed to be due from the person liable to pay it on the date on which the demand note is served upon him or her, and if payment is not made within thirty days of the date of such service, or such further period as the Commissioner may allow, a further duty of a sum equal to five percent of the amount demanded shall be due and payable by that person by way of a penalty and a subsequent penalty of two percent for each month in which he or she defaults.

(3) The proper officer shall not make any demand after five years from the date of the short levy or erroneous refund, as the case may be, unless the short levy or erroneous refund had been caused by fraud on the part of the person who should have paid the amount short levied or to whom the refund was erroneously made, as the case may be.

136. The proper officer may, subject to such conditions as he or she may impose, permit the owner of any goods subject to Customs control to take samples of the goods without payment of the duty thereon at the times the samples are taken.

Samples
may be
taken
without
immediate
payment of
duty.

Anti-Dumping and Countervailing Duties

137. (1) The Commissioner shall on the advice of the East African Community Committee on Trade Remedies established under the Protocol—

Collection
of anti-
dumping
and counter-
vailing
duties.

- (a) in the case of goods regarded as having been dumped, collect anti-dumping duty;
- (b) in the case of goods in respect of which subsidy has been granted, collect a countervailing duty; or
- (c) take necessary measures in the case of any other matters in respect of anti-dumping and countervailing measures.

(2) Notwithstanding the provisions of this Act, the anti-dumping and countervailing duty imposed in subsection (1) shall be chargeable in addition to any other duty chargeable on the respective goods.

Drawback, Remission, Rebate and Refund

Drawback
of duty.

138. (1) Drawback of import duty may on exportation or the performance of such conditions as may be prescribed, be allowed in respect of such goods, such amount, and on such conditions, as may be prescribed.

(2) Where the owner of any goods claims, or proposes to claim, drawback in respect of goods, then, as a condition to the grant of such drawback, he or she shall—

(a) enter such goods in the prescribed form and in the prescribed manner and produce such goods for examination by the proper officer before the exportation of the goods or the performance of the conditions on which drawback is allowed;

(b) make and subscribe a declaration on the prescribed form to the effect that the conditions under which drawback may be allowed have been fulfilled and, in the case of goods exported or put on board any aircraft or vessel for use as stores—

(i) that such goods have actually been exported or put on board for use as stores, as the case may be;

(ii) that such goods have not been re-imported and are not intended to be re-imported into the Partner State; and

(iii) that such owner at the time of the declaration of such goods for drawback was, and continues to be, entitled to drawback; and

(c) present his or her claim for drawback within a period of twelve months from the date of the exportation of the goods or the performance of the conditions on which drawback may be allowed.

(3) Drawback shall not be allowed in respect of any goods where—

- (a) the value of such goods for home consumption is less than the amount of the duty drawback which may be otherwise allowed; and
- (b) the import duty on the goods was less than one hundred dollars.

(4) Where the proper officer is satisfied that any goods under drawback, after being duly put on board any aircraft or vessel for exportation or for use as stores—

- (a) have been destroyed by accident on board such aircraft or vessel; or
- (b) have been materially damaged on board such aircraft or vessel and that such goods have, with the permission of the proper officer, been discharged at any port or place within a Partner State and abandoned to the Customs, then drawback may be allowed in respect of such goods as if such goods had actually been exported or used as stores.

139. Subject to Section 138 and regulations made under this Act, drawback of import duty may be allowed on goods imported for use in the manufacture of goods which are—

Drawback to be allowed in respect of certain goods.

- (a) exported;
- (b) transferred to a free port; or
- (c) transferred to an export processing zone Provided that—
 - (i) the goods referred to in paragraphs (a), (b) and (c) shall be a direct result of the imported goods used in the manufacture of such goods;
 - (ii) the owner of goods shall have obtained authorisation from the Commissioner prior to manufacture;
 - (iii) the Commissioner shall fix or agree to the rate of yield of the operations;

- (iv) upon fixing or agreeing to the rate of yield, the description and quality and quantity of various compensating products shall be specified;
- (v) the Commissioner shall prescribe duty drawback coefficient applicable.

Council
may grant
remission of
duty on
goods for
manufacture.

140. (1) The Council may grant remission of duty on goods imported for the manufacture of goods in a Partner State.

(2) The Council may prescribe regulations on the general administration of the duty remission under this section.

(3) The manufacturer, and the approved quantity, of the goods with respect to which remission is granted under this section shall be published by the Council in the Gazette.

Remission
of duty.

141. Where any goods are lost or destroyed by accident either—

- (a) on board any aircraft or vessel; or
- (b) in removing, loading, unloading, or receiving them into, or delivering them from, any Customs area or warehouse; or
- (c) in any Customs area or warehouse, before the goods are delivered out of Customs control to the owner, then, if the Commissioner is satisfied that such goods have not been and will not be consumed in a Partner State, the Commissioner may remit the duty payable in respect of the goods.

Rebate of
duty.

142. (1) Where any goods imported into a Partner State are damaged before such goods are delivered out of Customs control, then, subject to the provisions of this section, a rebate of the duty payable in respect of such goods may be allowed in such amount as, in the opinion of the proper officer, is in proportion to the damage sustained by such goods.

(2) Rebate of duty shall be allowed under this section in respect of any goods (not being goods to which section 118 applies) except where the proper officer is satisfied that the carrier or insurer of the goods has made an allowance to the owner in respect of the damage; and in no case shall the rebate exceed such proportion of the duty as the amount of the allowance so made bears to the value, calculated in accordance with section 122, of the undamaged goods.

143. (1) Subject to section 144 and to such conditions as the Commissioner may impose, where it is shown to the satisfaction of the Commissioner—

Repayment of Customs duty when goods are returned or destroyed by fire.

- (a) that goods were imported in pursuance of a contract of sale and that the description, quality, state or condition of the goods was not in accordance with the contract or that the goods were damaged before the goods were delivered out to Customs control: and
- (b) that the importer with the consent of the seller has either—
 - (i) returned the goods unused to the seller and for that purpose complied with the provisions of section 75 as to entry in like manner as if they had been goods to which that section applies; or
 - (ii) destroyed the goods unused, the Commissioner shall refund any Customs duty paid on the importation of the goods.

(2) Repayment of duty shall not be granted under subsection (1) unless the person claiming the repayment presents a claim within a period of twelve months from the date of the payments of the duty.

(3) Nothing in this section shall apply to goods imported on approval, or on sale or return, or other similar terms.

144. (1) Subject to any regulations, the Commissioner shall refund any Customs duty paid on the importation of the goods—

Refund of duty.

- (a) of any import duty, or part thereof which has been paid in respect of goods which have been damaged or pillaged during the voyage or damaged or destroyed while subject to Customs control;
- (b) of any import or export duty which has been paid in error.

(2) Refund of import or export duty or part thereof, shall not be granted under subsection (1) unless the person claiming such refund presents such claim within a period of twelve months from the date of the payment of the duty.

(3) The Commissioner shall refund any import duty paid on goods in respect of which an order remitting such duty has been made under this Act.

PART XI
CUSTOMS AGENTS

Licensing of
agents.

145. (1) The Commissioner may license persons to act as agents for transacting business relating to the declaration or clearance of any goods or baggage other than accompanied non-manifested personal baggage of a person travelling by air, land or sea.

(2) The Commissioner shall not license any person to act as agent under this Act unless the Commissioner is satisfied that, that person has the capability, office equipment, a registered office and documents to effectively transact business in accordance with the provisions of this Act and any other conditions as may be prescribed by regulations.

(3) The Commissioner may refuse to issue a licence or may by order, suspend, revoke or refuse to renew, any such licence on the ground that the applicant or holder has been found guilty of an offence under the Customs laws or has been convicted of an offence involving dishonesty or fraud, or for any other reason that the Commissioner may deem fit.

Authority of
agents.

146. (1) Where under the provisions of the Customs laws the owner of any goods is required or authorised to perform any act then such act, unless the contrary appears, may be performed on his or her behalf by authorised agent.

(2) A person shall not be the duly authorised agent or any owner unless—

(a) such person is exclusively in the employment of the owner; or

(b) such person is a Customs agent duly licensed as such in accordance with this Act, and, in either case, such person is authorised in writing by the owner, either generally or in relation to any particular act, to perform the act on behalf of the owner.

(3) The proper officer may require from any person purporting to be the duly authorised agent of any owner the production of his or her written authority and in default of the production of such authority the proper officer may refuse to recognise such person as a duly authorised agent.

147. A duly authorised agent who performs any act on behalf of the owner of any goods shall, for the purposes of this Act, be deemed to be the owner of such goods, and shall, accordingly, be personally liable for the payment of any duties to which the goods are liable and for the performance of all acts in respect of the goods which the owner is required to perform under this Act:

Liability of
duly
authorised
agent.

Provided that nothing herein contained shall relieve the owner of such goods from such liability.

148. An owner of any goods who authorises an agent to act for him or her in relation to such goods for any of the purposes of this Act shall be liable for the acts and declarations of such duly authorised agent and may, accordingly, be prosecuted for any offence committed by the agent in relation to any such goods as if the owner had himself or herself committed the offence:

Liability of
owner for
act of duly
authorised
agent.

Provided that—

- (i) an owner shall not be sentenced to imprisonment for any offence committed by his or her duly authorised agent unless the owner actually consented to the commission of the offence;
- (ii) nothing herein contained shall relieve the duly authorised agent from any liability to prosecution in respect of any such offence.

PART XII PREVENTION OF SMUGGLING

Powers of Officers

149. (1) The master of any vessel within a Partner State shall bring his or her vessel to, for boarding, on being signalled to do so by any vessel in the service of the Customs and flying the Customs flag or of the Government of the Partner State and flying the proper ensign.

Power to
require
vessels, etc.
to bring to.

(2) The master of any aircraft within or over a Partner State shall land such aircraft on being signalled to do so by any person in the service of the Government of a Partner State or in the service of the Customs.

(3) The master of any aircraft which has landed, or of any vessel bringing to, for boarding, shall facilitate by all reasonable means the boarding of the aircraft or vessel by the proper officer, and shall cause such aircraft or vessel to remain stationary for such period as the proper officer may require.

(4) A master of an aircraft or vessel who contravenes this section commits an offence and shall be liable—

- (a) in the case of the master of a vessel of less than two hundred and fifty tons register, to a fine not exceeding two thousand dollars and the vessel in respect of which such offence has been committed shall be liable to forfeiture;
- (b) in the case of the master of an aircraft or of a vessel of two hundred and fifty tons register or more, to a fine not exceeding five thousand dollars and the aircraft or vessel in respect of which such offence has been committed may be seized and detained until the fine is paid or security therefor given.

Power to
require
vessel, etc.
to depart.

150. (1) The master of any aircraft or vessel within or over a Partner State shall, on being required to do so by the proper officer, depart from a Partner State within twelve hours of such requirement:

Provided that this subsection shall not apply in the case of any aircraft or vessel that is registered in any of the Partner States.

(2) A master of an aircraft or vessel who contravenes subsection (1) shall, unless prevented from complying with such subsection by circumstances beyond his or her control, the proof whereof shall lie on the master, commits an offence and shall be liable—

- (a) in the case of the master of a vessel of less than two hundred and fifty tons register, to a fine not exceeding two thousand dollars and the vessel in respect of which such offence has been committed shall be liable to forfeiture;

- (b) in the case of the master of an aircraft or of a vessel of two hundred and fifty tons register or more, to a fine not exceeding five thousand dollars and the aircraft or vessel in respect of which such offence has been committed may be seized and detained until the fine is paid or security given.

151. (1) An officer while on duty may enter upon and patrol and pass freely along any premises other than a dwelling house or any building.

Power to patrol freely and moor vessels, etc.

(2) An officer in charge of any aircraft, vessel, or vehicle, employe in the prevention of smuggling, may take such aircraft, vessel or vehicle, to such place as he or she may consider most convenient for that purpose, and may there keep such aircraft, vessel or vehicle, for such time as he or she may consider necessary for that purpose.

152. (1) An officer may, in the course of his or her duty, board and search any aircraft or vessel within a Partner State and may examine, lock-up, seal, mark, or otherwise secure, any goods on such aircraft or vessel; and for the purposes of the examination or security of any goods, such officer may require such goods to be unloaded, or removed, at the expense of the master of such aircraft or vessel.

Power to board vessel, etc., and search.

(2) An officer acting under this section who is unable to obtain free access to any part of such aircraft or vessel, or to any container therein, may enter such part, or open such container, in such manner, if necessary by force, as he or she may think necessary.

(3) An officer boarding any vessel under this section may remain thereon for such time as he or she may consider necessary and the master of such vessel shall either provide such officer with proper and sufficient foods and suitable bedding accommodation under the deck or, with the approval of the proper officer and subject to such conditions as he or she may impose, pay such sum as may be prescribed in lieu thereof, and any master who contravenes this subsection, or of any such conditions, commits an offence and shall be liable on conviction to a fine not exceeding one thousand dollars

(4) A master of an aircraft or vessel—

- (a) who refuses to unload or remove any goods when required to do so in accordance with the provisions of this section; or
- (b) in which any goods which have been locked up, sealed marked, or otherwise secured, in accordance with this section are in any way interfered with except in accordance with the permission of the proper officer; or
- (c) in which any lock, seal, or mark, placed on any place or goods in accordance with this section is in any way opened, broken, or altered, commits an offence.

(5) Where, on the search of any aircraft or vessel under this section, any goods are found in relation to which any offence under this Act has been committed, such goods shall be liable to forfeiture.

(6) An officer shall not be liable to any legal proceedings for any action taken in good faith in accordance with this section.

(7) Where, on any aircraft or vessel being boarded under this section, any goods are found therein and on such aircraft or vessel being subsequently boarded, whether by the same or another officer, such goods or any part thereof are no longer therein, then, unless the master of such aircraft or vessel accounts for such goods to the satisfaction of the proper officer, such master commits an offence and shall be liable to a fine equal to ten percent of the dutiable value of the goods and to payment of the duties due thereon.

Power to stop vehicle suspected of conveying uncustomed goods, etc.

153. (1) An officer may, if he or she has reasonable grounds to believe that any vehicle is conveying any uncustomed goods whether or not in transit, or being transferred from one Partner State to another, stop and search any such vehicle; and for the purpose of that search, that officer may require any goods in that vehicle to be unloaded at the expense of the owner of the vehicle.

(2) An officer who is unable to obtain free access to any place or container in the course of a search of a vehicle under this section may open the place or container in such manner, including by force, as the officer may deem necessary.

(3) A person in charge of a vehicle who refuses to stop or to permit the vehicle to be searched in accordance with this section commits an offence.

(4) Where, on the search of any vehicle under this section, any goods are found in relation to which any offence under this Act has been committed, such goods shall be liable to forfeiture.

(5) An officer shall not be liable to any legal proceedings for any action taken in good faith in accordance with this section.

154. (1) A person entering or leaving a Partner State shall answer such questions as the proper officer may put to him or her with respect to his or her baggage and any article contained in his or her baggage or carried with him or her.

Persons entering or leaving a Partner State to answer questions concerning baggage.

(2) A person in charge of a vehicle containing goods being transferred from one Partner State to another shall answer such questions as the proper officer may put to him or her with respect to the vehicle and the goods contained in the vehicle or carried with him or her, and shall produce any books or documents relating to the vehicle and the goods contained in the vehicle, which are, or should be, carried in the vehicle.

155. (1) An officer may, if he or she has reasonable grounds to believe that any person has in his or her possession, whether upon his or her person or in his or her baggage, any uncustomed goods, search that person; and the officer may, for that purpose, use reasonable force.

Power to search persons.

(2) A female shall not be searched except by a female officer.

(3) Where any officer informs any person that he or she proposes to search him or her, then such person shall, if he or she so requires, be taken forthwith before a magistrate, the Commissioner, or any other superior officer, who may, if he or she sees no reasonable cause for any search, order such person not to be searched.

(4) Where, on the search of any person under this section, any goods are found in his or her possession, whether upon his or her person or in his or her baggage, in relation to which any offence under this Act has been committed, the goods shall be liable to forfeiture.

(5) An officer shall not be liable to any legal proceedings for any action taken in good faith in accordance with this section.

Power of arrest.

156. (1) An officer may, if he or she has reasonable grounds to believe that any person is committing, or has, within the past year, committed or been concerned in the commission of, any offence under this Act, arrest that person; and the officer may, for such purpose, use reasonable force.

(2) A person arrested in accordance with this section shall forthwith be taken before a magistrate, or to a police station, to be dealt with according to the law.

(3) Without prejudice to the powers of a police officer to arrest any person for an offence under this Act which is cognisable to the police under any written law of a Partner State for the purposes of this section the expression “officer” includes a police officer.

(4) An officer shall not be liable to any legal proceedings for any action taken in good faith in accordance with this section.

Power to search premises.

157. (1) A proper officer may, if he or she has reasonable grounds to believe that there are on any premises any uncustomed goods or documents relating to any uncustomed goods, enter upon and search such premises by day or by night; and for such purpose the proper officer may use all reasonable force and may require the assistance of, and take with him or her, another officer or a police officer.

(2) Where a proper officer enters upon any premises accordance with this section the proper officer may—

(a) require the owner or occupier of the premises to produce, either immediately or at a time and place to be fixed by the proper officer, any book, document, or thing, which the owner or occupier is required to keep under the provisions of the Customs laws or which relates to any imported, exported or transferred goods, or to any goods to be imported, exported or transferred by the owner or occupier;

- (b) examine and take copies of any such book or document;
- (c) seize and detain any such book, document, or thing, if, in his or her opinion, it may afford evidence of the commission of any offence under this Act;
- (d) require the owner or occupier to answer the questions relating to any book, document, or thing, or to any declaration in any such book or document;
- (e) require any container, envelope or other receptacle in the premises to be opened;
- (f) at the risk and expense of the licensee, owner or occupier, open and examine any package or any goods or materials in the premises;
- (g) take and retain without payment such reasonable samples of any goods or materials as he or she may think necessary for the performance of his or her duties;
- (h) lock up, seal, mark, or otherwise secure any such premises, room, place, equipment, tank or container.

(3) Where, on the search of any premises under this section, any uncustomed goods, or any documents relating to any uncustomed goods, are found, the proper officer may seize and carry away any such goods or documents.

(4) A person, not being a proper officer, who opens, breaks, or in any way interferes with any lock, seal, mark or other fastening placed by an officer in accordance with the provisions of this section on any building, room or place commits an offence and shall be liable on conviction to a term of imprisonment not exceeding three years or a fine not exceeding two thousand five hundred dollars.

(5) Where the premises, room or place have been sealed with goods therein and subsequently such goods or any part of the goods are no longer therein, the owner or occupier commits an offence and shall be liable on conviction to a fine equal to twenty-five percent of the value of the goods or to imprisonment for a term not exceeding five years.

(6) An officer shall not be liable to any legal proceedings for any action taken in good faith in accordance with this section.

Search
warrants.

158. (1) Without prejudice to any other power under this Act, where any officer declares on oath before any magistrate that he or she has reasonable grounds to believe that there are in any premises any uncustomed goods or documents relating to any uncustomed goods, then such magistrate may by warrant under his or her hand authorise such officer to enter upon and search, with such force as may be necessary and by day or by night, such premises and to seize and carry away any uncustomed goods or documents relating to any uncustomed goods found therein.

(2) An officer in possession of a search warrant may require an police officer to assist him or her in the execution of such warrant and any police officer so required shall render assistance accordingly.

Power to require production of books, etc.

Power to
require
production
of books,
etc.

159. (1) Where—

(a) information has been given to the proper officer that any goods have been, or are intended to be, smuggled, or undervalued, or dealt with in any way contrary to this Act; or

(b) any thing or goods have been seized under this Act, the proper officer may require the owner of the goods or thing to immediately produce all books and documents, whether in written form or on micro-film, magnetic tape or any other form of mechanical or electronic data retrieval mechanism relating in any way thereto, or to any other goods imported, exported, carried coastwise, manufactured, purchased, sold or offered for sale by that owner within a period of five years immediately preceding the requirement.

(2) On the production of such books or documents the proper officer may inspect and take copies of any entries in the books or documents; and the proper officer may seize and detain any such book or document if, in his or her opinion, it may afford evidence of the commission of an offence under this Act.

PART XIII
MANUFACTURING UNDER BOND

160. (1) The Commissioner may, on application and subject to such conditions as the Commissioner may impose, issue a licence in the prescribed form to any person to manufacture goods under bond in specified premises; and the Commissioner may refuse to issue a licence or, by notice in writing, suspend, revoke or refuse to renew a licence on the grounds stated in the notice.

Licensing of bonded factories.

(2) Application for a licence under this section shall be in the prescribed form.

(3) A licence issued under subsection (1) shall be subject to the payment of the prescribed annual fee and shall expire on the thirty-first day of December in each year.

(4) The Commissioner may require the person applying for a licence to furnish such security as the Commissioner may think appropriate as a condition to the grant of the licence and the Commissioner may, at any time, require a licensee to furnish a new security in a different amount or on different terms.

(5) Premises shall not be used for manufacturing under bond unless there is a valid licence for that purpose in relation to such premises.

(6) A person who uses or permits premises to be used for manufacturing under bond without a licence, or a licensee who uses or permits his bonded factory to be used in contravention of the terms of his or her licence commits an offence and shall be liable on conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding three years or to both; and any goods in respect to which an offence has been committed shall be liable to forfeiture.

161. (1) A licensee shall, before commencing to manufacture under bond, make entry in the prescribed form and in the prescribed manner of each building, room, place and item of plant in his or her factory which he or she proposes to use in the manufacture or storage of raw materials or manufactured goods; and, in each entry, he or she shall specify the purpose for which each building, room, place or item of plant is to be used.

Entry of premises as bonded factories.

(2) A licensee shall not, in the course of manufacturing goods under bond—

- (a) make use of a building, room, place or item of plant in relation to which entry is required under this section unless there is, in respect thereof, a valid entry;
- (b) effect, without prior permission of the Commissioner, an alteration in shape, position or capacity to a building, room, place or plant.

(3) A person who contravenes the provisions of this section commits an offence.

Entry of plant, machinery, etc. for exportation or for home consumption.

162. (1) Where a manufacturer ceases to be licensed under section 160, the manufacturer shall enter and deliver for exportation or for removal to another bonded factory or for home consumption all the plant, machinery and equipment, raw materials or manufactured goods in the bonded factory within such time as the Commissioner may specify.

(2) Where on the expiry of the time specified by the Commissioner under subsection (1), the plant, machinery and equipment, raw materials or manufactured goods are not entered and delivered in accordance with subsection (1) then the plant, machinery and equipment, raw materials or manufactured goods shall be liable to forfeiture.

Manufacturer to provide facilities.

163. (1) A manufacturer shall—

- (a) provide office accommodation and just weights, scales, measures and other facilities for examining and taking account of goods and for securing them as the proper officer may reasonably require;
- (b) keep a record of all types of plant, machinery and equipment, raw materials and goods manufactured in the factory and keep that record at all times available for examination by the proper officer;
- (c) provide all necessary labour and materials for the storing, examining, packing, marking, cooping, weighing and taking stock of the goods in the factory whenever the proper officer so requires.

(2) Where a manufacturer contravenes any of the provisions of this section, the Commissioner may direct that the manufacturer ceases operations until he or she has complied with those provisions to the satisfaction of the Commissioner.

(3) A manufacturer who contravenes any of the provisions of this section or who fails to comply with any direction given by the Commissioner under this section commits an offence.

164. (1) All items of plant, machinery, spares and imported raw materials for use in the manufacture of goods under bond, shall be duly entered and delivered by a manufacturer to the bonded factory within forty-five days and subject to such conditions as the Commissioner may prescribe; and if the goods described in this section are not delivered, then, as from the date of importation, the plant, machinery, spares and raw materials shall be liable to forfeiture, unless a satisfactory explanation is given to the proper officer to account for any delay.

Importation of equipment, machinery, raw materials, etc.

(2) All manufactured goods shall be duly exported or entered for home consumption within such time and subject to such conditions as the Commissioner may impose.

(3) A manufacturer who contravenes this section commits an offence.

165. (1) Where goods are warehoused in a bonded factory the Commissioner may, subject to such conditions as he may impose, permit the name of the owner of the goods in the account to be changed if application is made in the prescribed form and signed by both the owner and the intended owner.

Provisions relating to goods in a bonded factory.

(2) Where goods warehoused in a bonded factory are to be removed to another bonded factory, then the proper officer shall—

- (a) require the owner of the goods to deliver an entry in the form and manner as the proper officer may direct;
- (b) require the owner to give security in the amount not being less than the duty chargeable on the goods, for the due arrival and re-warehousing of the goods within such time as the proper officer may consider appropriate; and

(c) transmit to the proper officer of the bonded factory where the goods are to be re-warehoused an account containing the particulars of the goods.

(3) Security given under subsection (2) shall not be discharged unless—

(a) the conditions attached thereto have been satisfied;

(b) the full duty payable on the goods has been paid in accordance with this Act; or

(c) the goods are otherwise accounted for to the satisfaction of the proper officer, and any duties due in respect of any deficiency in the goods not so accounted for have been paid.

(4) On arrival of the goods at the other bonded factory, a particular account of the goods shall be taken.

Goods from bonded factory may be entered for home consumption.

166. (1) The Commissioner may, subject to such conditions as he may impose and on payment of the duties due, permit goods manufactured in a bonded factory, including waste from the manufacturing process, to be entered for home consumption.

(2) The value for the purpose of determining the duty on goods removed from a bonded factory shall be determined in accordance with section 122.

(3) A licensee who, without the permission of the Commissioner, disposes of, or allows to be disposed of, raw materials or manufactured goods from a bonded factory, within the Partner States, whether on payment or not, or any person who acquires, keeps, conceals or has in his or her possession such raw materials or manufactured goods from a bonded factory, commits an offence and shall be liable on conviction to a fine of five thousand dollars or fifty percent of the ex-factory value of the raw materials or manufactured goods, whichever is the higher, or to imprisonment for a term not exceeding three years or both; and the goods in respect of which the offence has been committed shall be liable to forfeiture.

PART XIV

EXPORT PROCESSING ZONES AND FREEPORTS

167. (1) Subject to the Customs laws, goods in export processing zones or freeports, whether of foreign or of domestic origin shall be entered for—

Goods in export processing zones or freeports.

- (a) export after undergoing processing in an export processing zone; or
- (b) re-export in the same state from a freeport.

(2) Goods entering an export processing zone or a freeport shall be exempt from duty in accordance with the Protocol.

168. (1) The Commissioner may, subject to the Customs laws and to such conditions as the Commissioner may impose and on payment of the duties due, permit removal of goods from an export processing zone or a freeport, including waste from the manufacturing process, to be entered for home consumption.

Removal of goods or waste for home consumption.

(2) The value for the purpose of determining the duty on goods removed from an export processing zone or a freeport shall be determined in accordance with section 122.

(3) A person who contravenes any conditions imposed by the Commissioner under this section commits an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

(4) A person who removes goods from an export processing zone or a freeport for home use without the authority of the Commissioner commits an offence and shall be liable on conviction to a fine of five thousand dollars or fifty percent of the value of the goods, whichever is the higher, or to imprisonment for a term not exceeding three years or both; and the goods in respect of which the offence has been committed shall be liable to forfeiture.

Designated areas in export processing zone or a freeport.

169. (1) The Commissioner may designate areas in export processing zones or in freeports in which customs formalities shall be carried out.

(2) An export processing zone operator or a freeport operator shall—

- (a) provide office accommodation and just weights, scales, measures and other facilities for examining and taking account of goods and for securing them as the proper officer may reasonably require;
- (b) keep a record of all types of plant, machinery and equipment, raw materials and goods manufactured in the export processing zone or a freeport and keep that record at all times available for examination by the proper officer;
- (c) provide all necessary labour and materials for the storing, examining, packing, marking, cooping, weighing and taking stock of the goods in the export processing zone or a freeport whenever the proper officer so requires.

(3) Where an export processing zone operator or a freeport operator contravenes any of the provisions of this section, the Commissioner shall refer the matter to the export processing zone authority or freeports authority which shall deal with the matter in accordance with the Protocol and national legislation.

Notification to Commissioner.

170. (1) The Commissioner shall be notified in advance of any industrial, commercial or service activity authorised by the operator of an export processing zone or a freeport.

(2) The Commissioner may impose conditions on the activities referred to in subsection (1), having regard to the nature of the goods concerned or the requirements of customs control.

(3) The Commissioner shall not permit any person who does not provide the necessary guarantees of compliance with the provisions laid down in this Act from carrying on any activity in an export processing zone in a freeport.

PART XV

INWARD AND OUTWARD PROCESSING

171. In this Part—

Interpretation
of Part XV.

“compensating products” means products resulting from the manufacturing, processing or repair of goods for which the use of the inward or outward processing procedure is authorised;

“equivalent goods” means domestic or imported goods identical in description, quality and technical characteristics to those imported for inward processing which they replace;

“inward processing” means the customs procedure under which certain goods can be brought in a Partner State conditionally exempted from duty on the basis that such goods are intended for manufacturing, processing or repair and subsequent exportation;

“outward processing” means the customs procedure under which goods which are in free circulation in a Partner State may be temporarily exported for manufacturing, processing or repair outside the Partner State and then re-imported;

“rate of yield” means the quantity or percentage of compensating products obtained from the processing of a given quantity of temporary imported or exported goods;

“re-importation in the same state” means the Customs procedure under which exported goods may be taken into home use free of import duties, provided that they have not undergone any manufacturing, processing or repairs outside a Partner State and any sums chargeable as a result of repayment or relief or of remission from duty granted at exportation must be paid;

“replacement system” means a procedure by which an imported product substitutes a compensating product;

“replacement product” means a product imported to substitute a compensating product under the replacement system.

Inward Processing

Procedure of operation.

172. (1) The Commissioner shall, subject to such conditions as the Commissioner may prescribe, allow the following goods to be entered for inward processing in a Partner State in one or more processing operations—

- (a) goods imported directly from a foreign country;
- (b) goods transferred from another Partner State.

(2) Goods entered under subsection (1) shall be exempt from duty.

(3) The right to import goods for inward processing shall not be limited to the owner of the imported goods but shall extend to a contract in which a foreign consignor remains the owner of the goods and the importer only processes the goods under contract.

Time limit for inward processing.

173. (1) Compensating products shall be exported out of the Partner State within a period of one year from the date on which the goods were imported.

(2) The Commissioner may prescribe specific time limits for inward processing.

Compensating products in inward processing.

174. Compensating products—

- (a) may be exported through a customs office other than that through which the goods placed under inward processing were imported;
- (b) may be allowed in partial consignment under separate entries;

- (c) may, subject to such conditions as the Commissioner may impose, be re-exported in an unaltered state.

175. (1) The Commissioner may, subject to the Customs laws and to such conditions as the Commissioner may impose and on payment of the duties, permit goods in an unaltered state or compensating products to be entered for home consumption.

Compensating products entered for home consumption.

(2) Duty on goods entered for home consumption under this section shall be determined in accordance with section 122.

(3) A person who contravenes any condition imposed by the Commissioner under this section commits an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

176. Subject to such conditions as the Commissioner may impose compensating products may be obtained from equivalent goods as a replacement of goods imported for inward processing:

Compensating products obtained from equivalent goods.

Provided that the equivalent products shall be identical in description, quality and technical characteristics as those imported for inward processing, which they replace.

177. (1) The Commissioner shall, where goods are for inward processing, fix or agree to the rate of yield of the operation by reference to the actual conditions made under which it is effected.

Rate of yield in inward processing.

(2) Upon fixing or agreeing to that rate, the description, quality and quantity of the various compensating products shall be specified.

(3) In fixing the rate of yield account may be taken of losses resulting from the nature of the goods used such as evaporation or drying out of the goods.

Outward Processing

178. (1) The Commissioner may authorise goods to be exported temporarily from a Partner State as the Commissioner may prescribe in order to undergo processing operations and the compensating products be re-imported and be released for home consumption with total or partial relief of duties.

Authorisation for outward processing procedure.

(2) The authorisation shall be granted—

- (a) where it is established that the compensating products shall result from processing of the temporary export goods;
- (b) where the outward processing procedure does not prejudice the interests of the Partner State.

Time limit
for outward
processing.

179. (1) Compensating products shall be imported into a Partner State within a period of one year from the date on which the goods were exported.

(2) The Commissioner may prescribe specific time limits for outward processing.

Compens-
ating
products in
outward
processing.

180. Compensating products—

- (a) may be imported through a customs office other than that through which the goods placed under outward processing were exported;
- (b) may be allowed in partial consignment under separate entries;
- (c) may, subject to such conditions as the Commissioner may impose, be re-imported in an unaltered state.

Relief from
payment of
duty.

181. (1) Compensating products or goods in an unaltered state shall be granted total or partial relief from payment of duty where such compensating products or unaltered goods are cleared for home consumption in the name of—

- (a) an authorised person; or
- (b) any other person with the consent of the authorised person.

(2) The total or partial relief from payment of duty referred to in subsection (1) shall not be granted where any of the conditions or obligations relating to the outward processing procedure have not been fulfilled.

(3) Without prejudice to the generality of subsection (2), where temporary exportation of goods is permitted and the goods are re-imported into a Partner State within the prescribed period of their exportation, total or partial relief from payment of duty shall be granted where—

- (a) the re-imported goods were repaired, and such repairs could not have been undertaken in the Partner State;
- (b) equipment or other goods were added to the exported goods that could not be added within the Partner State;
- (c) processing or manufacturing was done on the re-imported goods and the goods exported were the product of, and originated within the Partner State.

182. (1) Where goods on re-importation are liable to duty, the value of such goods shall be the amount of the increase in value attributable to—

Deter-
mination of
duty of re-
imported
goods.

- (a) repairs outside the Partner State;
- (b) equipment or other goods added and related work done outside the Partner State;
- (c) processing or manufacturing done outside the Partner State;
- (d) any other costs incurred outside the Partner State.

(2) Where goods are temporarily exported for the purpose of repair, the goods shall be released for home consumption without payment of duty where it is established to the satisfaction of the Commissioner that the goods were repaired free of charge on account of contractual or statutory obligation arising out of warranty or manufacturing defect.

(3) Subsection (2) shall not apply where account was taken of the manufacturing defect at the time when such goods were first released for home consumption.

Relief from duty on emergency repairs.

183. The total relief from import duties shall be granted in respect of an aircraft, vessel, train, commercial vehicle or conveyance re-imported into the Partner State after exportation where the returned aircraft, vessel, train, commercial vehicle or conveyance was repaired outside the Partner State as a result of an emergency and repairs were necessary to ensure a safe return to the Partner State.

Replacement system.

184. (1) The Commissioner may permit the use of replacement system where the processing operation involves the repair of goods.

(2) Compensating products arising from outward processing procedure shall benefit from the use of a replacement system.

(3) The Commissioner may authorise the importation of replacement products prior to the temporary exportation of goods to be repaired.

Provided that—

(a) exportation of goods shall be effected within a period of two months from the date of entry of the replacement products;

(b) security shall be provided to cover the amount of the duties payable on the replacement products.

(4) Replacement products shall have the same tariff classification, be of the same commercial quality and possess the same technical characteristics as the temporary export goods had the latter undergone the repair in question.

(5) Where the temporary export goods have been used before export, the replacement products must also have been used and may not be new products.

Condition for re-importation in the same state.

185. (1) Goods that are re-imported shall be entitled to re-entry free of import duties and to a refund of any duties paid on exportation.

Provided that—

- (a) the goods have not undergone any manufacturing, processing or repairs;
- (b) the re-imported goods can be identified by an officer as the goods that were exported;
- (c) any amount of duties or taxes chargeable as a result of any repayment or remission of, or conditional relief of any duties or any other amounts granted on exportation are paid;
- (d) re-importation occurs within one year from the time of exportation or such other period as may be determined by the Commissioner.

(2) Subject to paragraph (b) of subsection (1) re-importation of goods in the same state shall be allowed where part of the exported goods is re-imported.

(3) The Commissioner shall not refuse the re-importation of goods in the same state on the grounds that the goods have been used or damaged, or have deteriorated.

186. (1) The Commissioner shall, where goods are for outward processing, fix or agree to the rate of yield of the operation by reference to the actual conditions made under which it is effected.

Rate of yield in outward processing.

(2) Upon fixing or agreeing to that rate, the description, quality and quantity of the various compensating products shall be specified.

(3) In fixing the rate of yield account may be taken of losses resulting from the nature of the goods used such as evaporation or drying out of the goods.

PART XVI

APPLICATION OF INFORMATION TECHNOLOGY.

187. Subject to such conditions as the Commissioner shall prescribe, customs formalities or procedures may be carried out by use of information technology.

Customs formalities may be carried out by information technology.

Users of the
Customs
computerised
system.

188. A person who wishes to be registered as a user of a Customs computerised system may apply in writing to the Commissioner who may—

- (a) grant the application subject to such conditions as he or she may impose; or
- (b) reject the application.

Access to
Customs
computerised
systems.

189. A person shall not access, transmit to, or receive information from, a Customs computerised system unless that person is a registered user of the system.

Cancellation
of
registration
of registered
user.

190. Where at any time the Commissioner is satisfied that a person who is a registered user of a Customs computerised system has—

- (a) failed to comply with a condition of registration imposed by the Commissioner under section 188 of this Act;
- (b) failed to comply with, or has acted in contravention of, any conditions under the regulations; or
- (c) been convicted of an offence under this Act relating to improper access to or interference with a Customs computerised system, the Commissioner may cancel the registration of that user.

Unauthorised
access to or
improper
use of
Customs
computerised
system.

191. (1) A person commits an offence if he or she—

- (a) knowingly and without lawful authority by any means gains access to or attempts to gain access to any Customs computerised system; or
- (b) having lawful access to any Customs computerised system, knowingly uses or discloses information obtained from such a computer system for a purpose that is not authorised; or

- (c) knowing that he or she is not authorised to do so, receives information obtained from any Customs computerised system, and uses, discloses, publishes, or otherwise disseminates such information.

(2) A person who commits an offence under subsection (1) shall be liable on conviction—

- (a) in the case of an individual, to imprisonment for a term not exceeding two years or to a fine not exceeding five thousand dollars; or
- (b) in the case of a body corporate, to a fine not exceeding twenty five thousand dollars.

192. A person commits an offence if he or she knowingly—

Interference with Customs computerised system.

- (a) falsifies any record or information stored in any customs computerised system; or
- (b) damages or impairs any customs computerised system; or
- (c) damages or impairs any duplicate tape or disc or other medium on which any information obtained from a Customs computerised system is held or stored otherwise than with the permission of the Commissioner; and shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding ten thousand dollars.

PART XVII

OFFENCES, PENALTIES, FORFEITURES AND SEIZURES

193. A person who conspires with another person or persons to contravene any of the provisions of this Act commits an offence and shall be liable on conviction to imprisonment for a term not exceeding five years.

Conspiring to contravene provisions of this Act.

Offences
with
violence,
etc.

194. (1) A person who—

- (a) maliciously shoots at any aircraft, vessel or vehicle in the service of the Customs; or
- (b) maliciously shoots at, maims or wounds any officer while in the execution of his or her duty; or
- (c) commits with violence any of the offences referred to in subsection (4), commits an offence and shall be liable on conviction to imprisonment for a term not exceeding twenty years.

(2) A person who—

- (a) while committing an offence under this Act is armed with any firearm or other offensive weapon; or
- (b) while being so armed, is found with any goods liable to forfeiture under this Act, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding ten years.

(3) A person who—

- (a) while committing an offence under this Act is disguised in any way; or
- (b) while being so disguised, is found with any goods liable to forfeiture under this Act, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding three years.

(4) A person who—

- (a) staves, breaks, destroys or throws overboard from any aircraft, vessel or vehicle any goods for the purpose of preventing the seizure of the goods; or

- (b) rescues, staves, breaks, destroys, or throws overboard from any aircraft, vessel or vehicle any goods for the purpose of preventing the securing of such goods after they have been seized; or
- (c) rescues any person arrested for any offence under the Act; or
- (d) in any way obstructs any officer in the execution of his or her duty, commits an offence.

(5) For the purposes of this section, the expression “violence” means any criminal force or harm to any person, or any criminal mischief to any property, or any threat or offer of such force, harm or mischief, or the carrying or use of any dangerous or offensive weapon in such manner that terror is likely to be caused to any person, or such conduct as is likely to cause in any person a reasonable apprehension of criminal force, harm or mischief, to them or to their property.

195. A person who wilfully removes any customs seal from any ship, aircraft, vehicle, train or package without the authority of a proper officer or in circumstances contrary to the regulations or who wilfully alters, defaces, obliterates or imitates, any mark placed by an officer on any package commits an offence and shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding two thousand five hundred dollars or to both.

Removing or defacing Customs seals.

196. A person who by any means procures or induces, or authorises another person to procure or induce, any other person to commit or assist in the commission of any offence under this Act, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding one year.

Inducing another to commit offence.

197. (1) A person who, with intent to obstruct any officer in the execution of his or her duty, warns, or does any act for the purpose of warning, any other person engaged in the commission of an offence under this Act, whether or not such other person is in a position to take advantage of such warning or act, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand five hundred dollars or to both.

Offence to warn offender.

(2) Where any person is charged with an offence under this section, the burden of proving that anything done by him or her was not done with intent shall lie upon that person.

(3) A person may prevent any other person from giving any warning and for that purpose may enter upon any land and shall not be liable to any legal proceedings.

Offence to assume character of officer.

198. A person, not being an officer, who takes or assumes the name, designation, character or appearance of an officer for the purpose of—

- (a) obtaining admission to any aircraft, vessel, vehicle, premises or place; or
- (b) doing or procuring to be done any act which he or she would not be entitled to do or procures to be done on his or her own authority; or
- (c) doing any unlawful act,

commits an offence and shall be liable on conviction to imprisonment for a term not exceeding three years in addition to any other punishment to which he or she may be liable for the commission of any unlawful act.

Master of vessel, etc., used for smuggling commits an offence.

199. A master of any aircraft or vessel, and any person in charge of a vehicle, which is within a Partner State and—

- (a) which has any secret or disguised place adapted for concealing goods, or any device adapted for smuggling goods; or
- (b) which has in it, or in any manner attached to it, or which is conveying, or has conveyed in any manner, any goods imported, or carried coastwise, or intended for exportation, contrary to this Act; or
- (c) from or in which any part of the cargo of such aircraft, vessel or vehicle has been thrown overboard, destroyed or staved, in order to prevent seizure,

commits an offence and shall be liable—

- (i) in the case of the master of a vessel of less than two hundred and fifty tons register, to a fine not exceeding seven thousand dollars and any vessel and goods in respect of which such offence has been committed shall be liable to forfeiture;
- (ii) in the case of the master of an aircraft or vessel of two hundred and fifty tons register or more, to a fine not exceeding ten thousand dollars ; and the aircraft or vessel in respect of which such offence has been committed may be seized and detained until the fine is paid or security given, and any goods in respect of which such offence has been committed shall be liable to forfeiture;
- (iii) in the case of the person in charge of a vehicle, to a fine not exceeding five thousand dollars and the vehicle and goods in respect of which such offence has been committed shall be liable to forfeiture.

200. A person who—

- (a) imports or carries coastwise—
 - (i) any prohibited goods, whether or not the goods are unloaded; or
 - (ii) any restricted goods contrary to any condition regulating the importation or carriage coastwise of such goods, whether or not the goods are unloaded;
- (b) unloads after importation or carriage coastwise—
 - (i) any prohibited goods; or

Offences related to prohibited, restricted, and uncustomed goods.

- (ii) any restricted goods which have been imported or carried coastwise contrary to any condition regulating such importation or carriage coastwise;
- (c) exports, carries coastwise, or puts on board any aircraft, vehicle or vessel, or brings to any Customs airport, Customs area, or place, to be put on board, for exportation or for use as stores or for carriage coastwise—
 - (i) any prohibited goods; or
 - (ii) any restricted goods contrary to any condition regulating the exportation, use as stores, or carriage coastwise, of such goods;
- (d) acquires, has in his or her possession, keeps or conceals, or procures to be kept or concealed, any goods which he or she knows, or ought reasonably to have known, to be
 - (i) prohibited goods; or
 - (ii) restricted goods which have been imported or carried coastwise contrary to any condition regulating such importation or carriage coastwise; or
 - (iii) uncustomed goods,

commits an offence and shall be liable on conviction to imprisonment for a term not exceeding five years or to a fine equal to fifty percent of the dutiable value of the goods involved, or both.

Payment of
duty in
addition to
fine.

201. Where on conviction for an offence under this Act, a person is liable to pay a fine, that person shall, unless the goods are prohibited goods or are ordered to be forfeited under this Act, pay duty on the goods in addition to the fine.

- 202.** A person who imports or exports any goods—
- (a) which are concealed in any way;
 - (b) which are packed in any package, whether or not together with other goods in a manner likely to deceive any officer;
 - (c) which are contained in any package of which the entry or application for shipment does not correspond with such goods,

Offence to import or export concealed goods.

commits an offence and shall be liable on conviction to imprisonment for a term not exceeding five years or to a fine equal to fifty percent of the value of the goods involved.

- 203.** A person who, in any matter relating to the Customs—
- (a) makes any entry which is false or incorrect in any particular, or
 - (b) makes or causes to be made any declaration, certificate, application, or other document, which is false or incorrect in any particular; or
 - (c) when required in accordance with this Act to answer any question put to him or her by an officer, refuses to answer such question or makes any false or incorrect statement in reply thereto; or
 - (d) obtains any drawback, rebate, remission, or refund, or duty which to his or her knowledge he or she is not entitled to obtain; or
 - (e) in any way is knowingly concerned in any fraudulent evasion of the payment of any duty; or
 - (f) except by authority moves, alters, or in any way interferes with any goods subject to Customs control; or
 - (g) brings into a Partner State, or has in his or her possession, without lawful excuse any blank or incomplete invoice, bill head, or other similar document, capable of being filled up and used as an invoice for imported goods; or

Offence to make or use false documents.

- (h) counterfeits or in any way falsifies, or knowingly uses when counterfeited or in any way falsified, any documents required or issued by, or used for the purpose of, the Customs,

commits an offence and shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding ten thousand dollars.

Offence to refuse to produce documents, etc.

204. A person who, when required in accordance with this Act—

- (a) to produce any book, document, or other thing, in his or her possession or under his or her control; or
- (b) to perform any act, refuses or fails to do so;

commits an offence.

Offence to interfere with Customs gear.

205. A person who cuts away, casts adrift, destroys, damages, defaces, or in any way interferes with, any aircraft, vessel, vehicle, buoy, anchor, chain, rope, mark, or other thing used for the purposes of the Customs commits an offence and shall be liable on conviction to a fine not exceeding two thousand five hundred dollars.

Uncustomed goods found to be reported.

206. A person who, on finding any uncustomed goods on land or floating upon, or sunk in, the sea, fails to report such discovery to the nearest officer commits an offence and shall be liable to a fine not exceeding two thousand five hundred dollars and any goods in respect of which such offence has been committed shall be liable to forfeiture.

Goods offered on pretence of being smuggled.

207. Where any goods are offered for sale under the pretence that they are uncustomed goods, then such goods whether or not they are in fact uncustomed, shall be liable to forfeiture.

Aiders, abettors, etc.

208. A person who aids, abets, counsels or procures the commission of an offence under this Act shall be deemed to have committed such offence and shall be liable to the penalty prescribed for such offence under this Act.

209. (1) A person who commits an offence under this Act for which no specific penalty is provided shall be liable to a fine not exceeding five thousand dollars.

General
penalty.

(2) Where, on conviction for an offence under this Act, a person becomes liable to a fine not exceeding a specified amount, the court may impose a fine not exceeding three times the value of any goods in respect of which the offence was committed or the specified amount, whichever is the greater; and for the purpose of determining the value of those goods, the Commissioner shall cause the goods to be appraised by the proper officer who shall appraise the goods according to section 122, and no regard shall be had to any damage or injury sustained by such goods.

(3) A certificate of the appraised value given under the hand of the Commissioner, shall be *prima facie* evidence of the value of those goods.

210. In addition to any other circumstances in which goods are liable to forfeiture under this Act, the following goods shall be liable to forfeiture—

Goods
liable to
forfeiture.

- (a) any prohibited goods;
- (b) any restricted goods which are dealt with contrary to any condition regulating their importation, exportation or carriage coastwise;
- (c) any uncustomed goods;
- (d) any goods which are imported, exported or transferred, concealed in any manner, or packed in any package, whether with or without other goods in a manner appearing to be intended to deceive any officer;
- (e) any goods which are imported, exported or transferred contained in any package of which the entry, application for shipment, or application to unload does not correspond with such goods;

- (f) any goods subject to Customs control which are moved, altered, or in any way interfered with, except with the authority of any officer;
- (g) any goods in respect of which, in any matter relating to the Customs, any entry, declaration, certificate, application or other document, answer, statement or representation, which is knowingly false or knowingly incorrect in any particular has been delivered, made or produced; and
- (h) any goods in respect of which any drawback, rebate, remission or refund of duty has been unlawfully obtained.

Vessels,
etc., liable
to
forfeiture.

211. (1) A vessel of less than two hundred and fifty tons register, and any vehicle, animal, or other thing, made use of in the importation, landing, removal, conveyance, exportation, or carriage coastwise, of any goods liable to forfeiture under this Act shall itself be liable to forfeiture.

(2) An aircraft or any vessel of two hundred and fifty tons register or more made use of in the importation, landing, removal, conveyance, exportation, or carriage coastwise, of any goods liable to forfeiture under this Act shall not itself be liable to forfeiture but the master of any such aircraft or vessel commits an offence and shall be liable to a fine not exceeding ten thousand dollars; and such aircraft or vessel may be seized and detained until the fine is paid or security given.

(3) Where any vessel, vehicle, animal, or other thing, is liable to forfeiture under this Act, then the tackle, apparel, furniture, and all other gear, used in connection therewith shall also be liable to forfeiture.

Provisions
relating to
goods liable
to
forfeiture.

212. (1) Where any goods are liable to forfeiture under this Act, then the package in which such goods are, and all the contents of such package, shall also be liable to forfeiture.

(2) Where any goods which are prohibited goods or restricted goods have been shipped for importation without knowledge by the shipper of the prohibition or restriction and before, in the opinion of the Commissioner, the expiration of a

reasonable time for such information to be available at the port of shipment, then, notwithstanding this Act, the goods shall not on importation be liable to forfeiture but shall be re-exported, or otherwise disposed of, in such manner as the Commissioner may determine; and pending the re-exportation or disposal of the goods shall be subject to Customs control.

213. (1) An officer or a police officer or an authorised public officer may seize and detain any aircraft, vessel, vehicle, goods, animal or other thing liable to forfeiture under this Act or which he or she has reasonable ground to believe is liable to forfeiture; and that aircraft, vessel, vehicle, goods animals or other thing may be seized and detained regardless of the fact that any prosecution for an offence under this Act which renders that thing liable to forfeiture has been, or is about to be instituted.

Power to
seize goods
liable to
forfeiture,
etc.

(2) Where an aircraft, vessel, vehicle, goods, animal or other thing is seized and detained under this Act by a person other than a proper officer, the aircraft, vessel, vehicle, goods, animal or other thing seized and detained under this Act shall be delivered with full written particulars to the nearest Customs office or to such other place of security as the proper officer may consider appropriate;

(3) Where delivery of an aircraft, vessel, vehicle, goods, animal or other thing is not practical under subsection (2), notice in writing shall be given to the Commissioner at the nearest Customs office, of the seizure and detention, with full particulars of the aircraft, vessel, vehicle, goods, animal or thing seized and detained.

(4) Where a person seizing and detaining a thing liable to forfeiture under this Act is a police officer and that thing is or may be required for use in connection with any court proceedings to be brought otherwise than under this Act, the police officer may, subject to subsection (5) keep that thing in the custody of the police until those proceedings are completed or until it is decided that no proceedings shall be instituted.

(5) Where a thing seized is retained in the custody of the police under subsection (4) the following provisions shall apply—

- (a) the police officer shall give notice in writing of the seizure and detention, and the intention to retain the thing in the custody of the police, together with full particulars of the thing, to the nearest Customs office;
- (b) an officer shall be permitted to examine that thing and take account at any time while it remains in the custody of the police;
- (c) where the court orders the release of that thing the Commissioner shall assess and collect any duty payable on that thing prior to restoration of the thing to the owner.

(6) Where a person, not being a proper officer, seizes and detains or has custody of the thing seized and detained, fails to comply with the requirements of this section or with any direction of the Commissioner, he or she commits an offence and shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding two thousand dollars or to both.

(7) The Commissioner may, at any time prior to the commencement of any proceedings relating to any aircraft, vessel, vehicle, goods, animal or other thing which had been seized under this Act, if he or she is satisfied that it was not liable to seizure, release and return it to the person from whom it was seized.

Procedure
on seizure.

214. (1) Where any thing has been seized under this Act, then, unless such thing was seized in the presence of the owner of the thing, or, in the case of any aircraft or vessel, of the master thereof, the officer effecting the seizure shall, within one month of the seizure, give notice in writing of the seizure and of the reasons to the owner or, in the case of any aircraft or vessel, to the master:

Provided that—

- (a) notice of seizure shall not be given in any case where any person has, within a period of one month, been prosecuted for the offence by reason of which the thing has been seized, or the offence has

been compounded under Part XVIII, and if, after any notice has been given but before condemnation of the thing in accordance with this Act—

- (i) any such prosecution is brought, then such thing shall be dealt with in accordance with section 215 as if such notice had been given;
 - (ii) the offence is so compounded, then such thing shall be dealt with in accordance with Part XVIII as if no such notice had been given;
- (b) where any such thing has been seized in the presence of any person coming within the definition of owner for the purposes of this Act, then it shall not be necessary for the officer effecting the seizure to give notice to any other person coming within such definition;
- (c) a notice given to any person coming within such definition of owner shall be deemed to be notice to all other persons coming within such definition;
- (d) where a person coming within such definition of owner is not known, then it shall not be necessary for the officer effecting the seizure to give notice to any person.

(2) Where any goods which are of a perishable nature or are animals are seized, the Commissioner may direct that such goods shall be sold forthwith, either by public auction or by private treaty, and that the proceeds of the sale shall be retained and dealt with as if they were the seized goods.

(3) Where any thing liable to forfeiture under this Act has been seized, then—

- (a) if any person is being prosecuted for the offence by reason of which the thing was seized, the thing shall be detained until the determination of such prosecution and dealt with in accordance with section 215;

(b) in any other case, the thing shall be detained until one month after the date of the seizure, or the date of any notice given under subsection (1), as the case may be; and if a claim is not made as provided in subsection (4) within a period of one month, such thing shall be deemed to be condemned.

(4) Where any thing liable to forfeiture under this Act has been seized, then, subject to subsection (1) (a) and subsection (3).

(a) the owner may, within one month of the date of the seizure or the date of any notice given under subsection (1), as the case may be, by notice in writing to the Commissioner claim such thing.

(5) Where any notice of claim has been given in accordance with subsection (4), then the thing seized shall be detained by the Commissioner to be dealt with in accordance with this Act.

(6) The Commissioner may permit such thing to be delivered to the person making a claim, in this Part referred to as the claimant under subsection (4), subject to the claimant giving security for the payment of the value of the thing, as determined by the Commissioner in the event of condemnation of the thing.

Effect of conviction, etc. on things liable to forfeiture.

215. (1) Where any person is prosecuted for an offence under this Act and any thing is liable to forfeiture by reason of the commission of the offence, then the conviction of the person of the offence shall, without further order, have effect as the condemnation of the thing.

(2) Where any person is prosecuted for an offence under this Act and any thing is liable to forfeiture by reason of the commission of such offence, then, on the acquittal of such person, the court may order the thing either—

(a) to be released to the person from whom it was seized or to the owner thereof; or

(b) to be condemned.

216. (1) Where any notice of claim has been given to the Commissioner in accordance with section 214, the Commissioner may, within a period of two months from the receipt of such claim, either—

Procedure
after notice
of claim.

(a) by notice in writing to the claimant, require the claimant to institute proceedings for the recovery of such thing within two months of the date of such notice; or

(b) himself or herself institute proceedings for the condemnation of such thing.

(2) Where the Commissioner fails within the period of two months either to require the claimant to institute proceedings, or the Commissioner fails to institute proceedings, in accordance with subsection (1), then such thing shall be released to the claimant:

Provided that if the thing is prohibited goods or restricted goods which has been imported, or carried coastwise or attempted to be exported in contravention of this Act, the thing shall not be released to the claimant but may be disposed of in such manner as the Commissioner may direct.

(3) Where the Commissioner has, in accordance with subsection (1), required the claimant to institute proceedings within the period of two months and the claimant has failed to do so, then on the expiration of the period the thing shall be condemned and shall be forfeited and may be sold or otherwise disposed of in such manner as the Commissioner may direct.

(4) Where any proceedings have been instituted in accordance with this section, then—

(a) if the court is satisfied that a thing was liable to forfeiture under this Act, the thing shall be condemned;

(b) if the court is not so satisfied, the thing shall be released to the claimant:

Provided that the court shall not release the thing to the claimant unless it is satisfied that the claimant is the owner or, by reason of any interest in the thing, is entitled to the possession thereof and if the court is not so satisfied, the thing shall be condemned as if no claim had been made.

Provisions relating to condemnation.

217. (1) Where any thing has been seized under this Act, as being liable to forfeiture, then the condemnation of the thing shall in no way be affected by the fact that any owner of the thing was in no way concerned with the act which rendered the thing liable to forfeiture.

(2) Where any thing is condemned under this Act, then—

(a) subject to section 218, the thing shall be forfeited and may be sold, destroyed, or otherwise disposed of in such manner as the Commissioner may deem fit;

(b) the condemnation of the thing shall have effect as from the date when the liability to forfeiture arose;

(c) the condemnation shall, subject to any appeal in any proceedings which resulted in the condemnation be final and, save as provided in section 218, no application or proceedings for restoration or in detinue by any person shall lie.

Restoration of seizures.

218. Where any thing has been seized under this Act then the Council may, whether or not the thing has been condemned, direct that that thing be released and restored to the person from whom it was seized or to the owner, upon such conditions as the Council may deem fit.

PART XVII

SETTLEMENT OF CASES BY THE COMMISSIONER

Power of Commissioner to compound offence.

219. (1) The Commissioner may, where he or she is satisfied that any person has committed an offence under this Act in respect of which a fine is provided or in respect of which any thing is liable to forfeiture, compound the offence and may order such person to pay a sum of money, not exceeding the amount of the fine to which the person would have been liable if he or she had been prosecuted and convicted for the offence, as the Commissioner may deem fit; and the Commissioner may order any thing liable to forfeiture in connection with the offence to be condemned.

(2) The Commissioner shall not exercise his or her powers under subsection (1) unless the person admits in a prescribed form that he or she has committed the offence and requests the Commissioner to deal with such offence under this section.

(3) Where the Commissioner makes any order under this section—

- (a) the order shall be put into writing and shall have attached to it the request of the person to the Commissioner to deal with the matter;
- (b) the order shall specify the offence which the person committed and the penalty imposed by the Commissioner;
- (c) a copy of the order shall be given to the person if he or she so requests;
- (d) the person shall not be liable to any further prosecution in respect of the offence; and if any prosecution is brought it shall be a good defence for the person to prove that the offence with which he or she is charged has been compounded under this section; and
- (e) the order shall be final and shall not be subject to appeal and may be enforced in the same manner as a decree or order of the High Court.

PART XIX

LEGAL PROCEEDINGS

220. (1) Without prejudice to the powers of any other court of competent jurisdiction, a prosecution for an offence under this Act may be heard and determined before a subordinate court; and where any such court hears and determines the prosecution it shall have jurisdiction to impose any fine or any sentence of imprisonment which may be imposed under this Act on a person convicted of the offence:

Proceedings triable in a subordinate court.

Provided that all proceedings of civil nature shall be filed and determined in accordance with the provisions of the relevant procedural legislation in the Partner State.

(2) Without prejudice to the powers of any other court of competent jurisdiction, any proceedings under Part XVII relating to any claim to any thing which has been seized under this Act may be heard and determined, without limit of amount, in civil proceedings before a subordinate court.

(3) Save where otherwise expressly provided, any person brought before a court for any offence under this Act shall be dealt with in accordance with the laws relating to criminal procedure of a Partner State in which the court is situate.

Action by
or against
the
Commissioner.

221. (1) Where under this Act any proceedings may be brought by or against the Commissioner, the Commissioner may sue or be sued in the name of the Commissioner and may for all purposes be described by that name; and, notwithstanding that any such action may lie in tort, the Commissioner shall be responsible for the acts and defaults of any officer as if such officer were his or her servant or agent:

Provided that nothing herein contained shall confer any right of action against the Commissioner in his or her representative capacity, whether in contract or in tort.

(2) Where under this Act any proceedings are brought by or against the Commissioner in his or her representative capacity, then costs may be awarded to or against the Commissioner.

(3) Where under this Act any proceedings are brought by or against the Commissioner in his or her representative capacity and—

(a) any sums or costs are recovered by the Commissioner, the sums or costs shall be credited to the Customs revenue;

(b) any damages or costs are ordered to be paid by the Commissioner, the damages or costs shall be paid out of the monies appropriated for administration of customs in a Partner State and the Commissioner shall not be personally liable.

Limitation
of
proceedings.

222. Proceedings for an offence under this Act may be commenced, and anything liable to forfeiture under this Act may be seized, within five years of the date of the offence.

Provisions
relating to
proof, etc.,
in
proceedings.

223. In any proceedings under this Act—

(a) the onus of proving the place of origin of any goods or the payment of the proper duties, or the lawful importation, landing, removal, conveyance, exportation, carriage coast-wise, or transfer, of any goods shall be on the person prosecuted or claiming anything seized under this Act;

(b) the averment by the Commissioner—

- (i) that any person is or was an officer or is or was employed in the prevention of smuggling;
- (ii) that any goods were staved, broken, destroyed, or thrown overboard, or were so staved, broken, destroyed or thrown overboard for the purpose of preventing the seizure or the securing of the goods after seizure;
- (iii) that any act was done within the limits of any port or at, in, or over, any part of a Partner State;
- (iv) that the Commissioner, or proper officer is or is not satisfied as to any matter as to which it is required to be satisfied under this Act;
- (v) that the Commissioner has directed or requested any proceedings under this Act to be instituted,

shall be *prima facie* evidence of such fact;

- (c) a certificate purporting to be signed by the Government Analyst, the Government Chemist or any designated laboratory of any Partner State shall be admissible in evidence and shall be *prima facie* evidence of the matters recorded in the certificate;
- (d) the production of any document purporting to be signed or issued by the Council, the Commissioner, or any person in the service of the Customs or the Government of any Partner State, shall be *prima facie* evidence that such document was so signed or issued;
- (e) a copy, certified under the hand of the responsible officer of any declaration in any book or document required to be kept for the purposes of the Customs laws shall be admissible in evidence and shall be *prima facie* evidence of such declaration and of the matters recorded in the book or document;

- (f) any certificate, official report or other document purporting to be certified under the hand and seal or stamp of the office of a principal officer of Customs or of any other competent authority in a foreign country and produced by the Commissioner shall be admissible in evidence and shall be *prima facie* evidence of the matters recorded therein;
- (g) a certificate or a copy of a document or publication purporting to be signed or issued by or under the authority of the Customs Co-operation Council and produced by the Commissioner shall be admissible in evidence and shall be *prima facie* evidence of the matters contained therein;
- (h) a certificate or a copy of a document or publication purporting to be signed or issued by or under the authority of the Directorate of Customs and produced by the Commissioner shall be admissible in evidence and shall be *prima facie* evidence of the matters contained therein;
- (i) any certificate or copy of a document purporting to be signed or issued by or under the authority of any institution, organisation or firm recognised and authorised and by the Government under any agreement and produced by the Commissioner shall be admissible in evidence and shall be evidence of the matters contained therein;
- (j) an officer shall be deemed to be a competent witness notwithstanding that such officer is entitled to any reward;
- (k) the fact that security has been given by bond or otherwise for the payment of any or for the compliance with any condition in respect of the non-payment of which or non-compliance with which the proceedings are brought shall not be a defence.

Provisions relating to penalties for offences.

224. (1) Where any court imposes on a person a fine for an offence under this Act in relation to which an alternative of imprisonment is not specified, then the court may order that person, in default of payment of the fine, to be imprisoned for a term not exceeding—

(a) six months, where the fine imposed does not exceed one thousand dollars;

(b) twelve months, where the fine imposed exceeds one thousand dollars.

(2) Where any person is convicted of an offence under this Act involving intent to defraud, then the maximum fine which may be imposed on such person shall be double that otherwise provided under this Act.

(3) Where any person is convicted of an offence under this Act and is liable to a fine of five hundred dollars or more and the person has previously been convicted of an offence under this Act or has previously been ordered to pay any sum of money under Part XVIII and the order has been enforced by any court, then the court before which the person is so convicted may order the person to be imprisoned for any term not exceeding three years, or to pay the fine to which he or she is so liable, or to both imprisonment and fine.

(4) Where any offence under this Act is committed by a body corporate and it is proved that such offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary, or similar officer, of the body corporate, or any person purporting to act in any such capacity, then he or she as well as the body corporate shall be deemed to have committed that offence and shall be liable to be proceeded against and punished accordingly.

225. (1) A person charged with an offence under this Act may be proceeded against, tried, and punished, in any place in which he or she may be in custody for that offence as if the offence had been committed in such place; and the offence shall for all purposes incidental to, or consequential upon, the prosecution, trial, or punishment, thereof be deemed to have been committed in that place:

Place of
trial.

Provided that nothing in this section shall preclude the prosecution, trial, and punishment, of the person in any place in which, but for the provisions of this section, the person might have been prosecuted, tried, and punished.

(2) Notwithstanding subsection (1), a person charged with an offence under this Act may apply to be tried in another place other than the place in which the offence was committed.

Protection
of
witnesses.

226. (1) It shall not be a requirement in any proceedings under this Act to disclose the fact that any person received any information relating to any Customs matter, or the nature of the information, or the name of the person who gave that information.

(2) An officer appearing as a witness in any proceedings shall not be compelled to produce any confidential reports made or received by him or her in his or her official capacity or any confidential information received by him or her in that capacity.

Reasonable
grounds of
defence in
any action
against
officer.

227. (1) Where any proceedings, whether by way of prosecution or otherwise, are taken under this Act, and-

(a) the proceedings result in a determination in favour of any person prosecuted, or in favour of any owner claiming any thing which has been seized;

(b) the proceedings arise out of any act done, whether by way of seizure or otherwise, by any officer in the execution or intended execution of his or her duty under this Act; and

(c) the court before which the proceedings are determined finds that there were reasonable grounds for such act, then the court shall, on request made by or on behalf of the officer, certify on the record; and a certified copy of the finding shall, on the request of the officer, be delivered to him or her and shall be admissible in evidence in any proceedings in proof of such finding.

(2) An officer shall not be liable to any action or other proceedings on account of any act in respect of which a court has, under subsection (1), found that there were reasonable grounds for such act.

(3) Where any proceedings are brought against any officer on account of any act done, whether by way of seizure or otherwise, in the execution or intended execution of his or her duty under this Act and judgment is given against such officer, then, notwithstanding that in any proceedings referred to in subsection (1), a court has not found that there were reasonable grounds for such act, if the court before which proceedings are heard is satisfied that there were reasonable grounds for such act, the plaintiff shall be entitled to recover any thing seized, or the value of the thing, but shall not otherwise be entitled to any damages and no costs shall be awarded to either party.

228. A proper officer may appear and prosecute in any prosecution before a subordinate court for any offence under this Act.

Power of officer to prosecute.

PART XX
APPEALS

229. (1) A person directly affected by the decision or omission of the Commissioner or any other officer on matters relating to Customs shall within thirty days of the date of the decision or omission lodge an application for review of that decision or omission.

Application for review to Commissioner.

(2) The application referred to under subsection (1) shall be lodged with the Commissioner in writing stating the grounds upon which it is lodged.

(3) Where the Commissioner is satisfied that, owing to absence from the Partner State, sickness or other reasonable cause, the person affected by the decision or omission of the Commissioner was unable to lodge an application within the time specified in subsection (1), and there has been no unreasonable delay by the person in lodging the application, the Commissioner may accept the application lodged after the time specified in subsection (1).

(4) The Commissioner shall, within a period not exceeding thirty days of the receipt of the application under subsection (2) and any further information the Commissioner may require from the person lodging the application, communicate his or her decision in writing to the person lodging the application stating reasons for the decision.

(5) Where the Commissioner has not communicated his or her decision to the person lodging the application for review within the time specified in subsection (4) the Commissioner shall be deemed to have made a decision to allow the application.

(6) During the pendency of an application lodged under this section the Commissioner may at the request of the person lodging the application release any goods in respect of which the application has been lodged to that person upon payment of duty as determined by the Commissioner or provision of sufficient security for the duty and for any penalty that may be payable as determined by the Commissioner.

Appeals to tax appeals tribunal.

230. (1) A person dissatisfied with the decision of the commissioner under section 229 may appeal to a tax appeals tribunal established in accordance with section 231.

(2) A person intending to lodge an appeal under this section shall lodge the appeal within forty-five days after being served with the decision, and shall serve a copy of the appeal on the Commissioner.

Establishment of tax appeals tribunal.

231. Subject to any law in force in the Partner States with respect to tax appeals, each Partner State shall establish a tax appeals tribunal for the purpose of hearing appeals against the decisions of the Commissioner made under section 229.

PART XXI
MISCELLANEOUS PROVISIONS

Attendance of master before proper officer.

232. Where under the provisions of this Act, the master or agent of any aircraft or vessel is required to answer any questions put to him or her by the proper officer, and the aircraft or vessel has not left its final position, anchorage, or berth, preparatory to leaving a Partner State, then the proper officer may require the master to attend before the proper officer at the office of the proper officer for the purpose of answering such questions:

Provided that the master may, with the consent of the proper officer, depute a senior officer of the aircraft or vessel to attend at the office for such purpose.

Provisions relating to prescribed forms.

233. (1) Where the form of any entry, bond, or other document, required or authorised for the purposes of this Act has been prescribed, then all the entries, bonds, or other documents, shall be in the prescribed form and shall contain all the prescribed particulars.

(2) Where any prescribed form contains, by way of note or otherwise, a clear direction or indication of any requirement as to—

- (a) the colour or size of the form;
- (b) the number of copies of the form to be tendered;
- (c) the nature or form of the information to be furnished;
- (d) any action to be taken by the person concerned, or his or her agent, in the transaction in which the form is used;

- (e) the receipts to be signed by any person in proof of the fact that the goods described in the form have been received for carriage or otherwise,

the requirements indicated shall be deemed to have been prescribed.

(3) The proper officer may require copies of any prescribed form in addition to the numbers indicated on the form.

234. (1) Where any document required or authorised for the purposes of this Act contains any words not in the English language, the person producing or using such documents may be required to produce a correct English translation of such words.

Provisions relating to all documents.

(2) Where any person is required to submit any form for the purpose of this Act, the proper officer may require that person to submit as many copies as the proper officer may deem necessary.

(3) Where the proper officer requires any document to be produced for any goods which have been imported, exported, transferred, or declared in transit, the proper officer may require the document to be submitted in original and duplicate and the proper officer may retain the original.

(4) Any person who fails to comply with a requirement of the proper officer under this section commits an offence.

235. (1) The proper officer may, within five years of the date of importation, exportation or transfer or manufacture of any goods, require the owner of the goods or any person who is in possession of any documents relating to the goods—

Production of documents.

- (a) to produce all books, records and documents relating in any way to the goods; and
- (b) to answer any question in relation to the goods; and
- (c) to make declaration with respect to the weight, number, measure, strength, value, cost, selling price, origin, destination or place of transshipment of the goods, as the proper officer may deem fit.

(2) Where any owner fails to comply with any requirement made by the proper officer under this section, the proper officer may refuse entry or delivery, or prevent exportation or transfer, of the goods, or may allow the entry, delivery, or exportation or transfer, upon the deposit of such sum, pending the production of the books and documents, as the proper officer may deem fit; and any deposit made shall be forfeited and paid into the Customs revenue if the documents are not produced within three months, or such further time as the proper officer may permit from the date of the deposit.

(3) Where any requirement made by the proper officer under this section relates to goods which have already been delivered, exported, or transferred and the owner fails to comply with the requirement, the proper officer may refuse to allow the owner to take delivery, export or transfer any other goods.

(4) The proper officer may retain any document produced by any owner under the provisions of this section but such owner shall be entitled to a copy of the document certified under the hand of the responsible officer; and the certified copy shall be admissible in evidence in all courts and shall have equal validity with the original.

(5) A person who fails to comply with any requirement made under this section commits an offence.

Inspection
or audit.

236. The Commissioner shall have the powers to—

- (a) verify the accuracy of the entry of goods or documents through examination of books, records, computer stored information, business systems and all relevant customs documents, commercial documents and other data related to the goods;
- (b) question any person involved directly or indirectly in the business, or any person in the possession of documents and data relevant to the goods or entry;
- (c) inspect the premises of the owner of the goods or any other place of the person directly or indirectly involved in the operations; and
- (d) examine the goods where possible for the goods to be produced.

237. (1) Where under this Act any declaration is required or authorised to be made, the declaration may be made before any judge, magistrate, justice of the peace, notary public, or Commissioner for oaths, or before any officer authorised by the Commissioner for that purpose.

Provisions relating to declarations and signature.

(2) Where under this Act any document is required or authorised to be signed in the presence of the Commissioner, where the document is signed in the presence of a witness who is approved by, and whose signature is known to, the Commissioner or any other officer authorised by the Commissioner, the document shall be deemed for the purposes of this Act to have been signed in the presence of the Commissioner.

238. Where any person requires a receipt for any money paid and brought to account in respect of any entry, that person shall furnish the proper officer with an additional copy, marked as such, of the entry and the additional copy duly signed by the proper officer and acknowledging receipt of the money shall be given to that person and shall constitute the receipt for the payment.

Receipts for payment on entry.

239. (1) Where under this Act any notice or other document is required or authorised to be served on, or given or delivered to, the Commissioner or any other officer, the notice or other document may be served, given or delivered—

Service of notices, etc.

- (a) by delivering it personally to the Commissioner;
- (b) by leaving it at the office of the Commissioner;
- (c) by sending it by post to the Commissioner; or
- (d) by any other means of transmission of documents provided for under Partner State legislation.

240. Where under this Act any goods are required or authorised to be—

Provisions relating to loading, etc., of goods.

- (a) loaded, unloaded, or removed to any place for security, examination, weighing, sorting, or any other purpose, prior to delivery or, in the case of goods for export, to exportation, or in the case of goods to be transferred, to transfer, all such operations shall be performed by or at the expense of the owner of the goods;

(b) unpacked, sorted, piled, or otherwise prepared for examination, all such operations shall be performed by and at the expense of the owner of the goods and in such manner as the proper officer may require in order to enable the proper officer examine and take account of the goods.

Proper officer may take samples.

241. The proper officer may take samples of any goods subject to customs control for such purposes as the Commissioner may deem necessary; and any such samples shall be disposed of and accounted for in such manner as the Commissioner may direct.

Rewards.

242. The Commissioner may award to any person—

(a) who has arrested or has assisted in the arrest of any other person under this Act such reward, as the Commissioner may deem fit on the conviction of such other person;

(b) who has seized any goods or by whose aid any goods are seized under this Act such reward, not exceeding the value of the goods seized, as the Commissioner may deem fit;

(c) who has provided information that has led to the recovery of revenue, such a reward as the Commissioner may deem fit;

(d) by whose aid any offence is compounded in accordance with Part XVIII of this Act such reward as the Commissioner may deem fit.

Auctioneers legislation to apply to sales.

243. Where any goods are sold under this Act, then the provisions of any legislation of any of the Partner States relating to auctioneers shall apply to such sale.

Licensing of vessel conveying goods subject to Customs control.

244. (1) The Commissioner may license any vessel of less than two hundred and fifty tons or vehicle intended to be used for the conveyance of any goods subject to Customs control and any transporter upon application made in such manner and upon payment of such fees, as may be prescribed.

(2) A person who, without the permission in writing of the proper officer, uses any unlicensed vessel for the conveyance of any goods subject to Customs control, or uses any unlicensed vehicle for the conveyance of goods to which other legislation of any of the Partner States applies commits an offence and shall be liable to a fine not exceeding five thousand dollars.

245. The provisions of this Act in relation to the importation or exportation of goods, or to the arrival or departure of persons, by aircraft or vessels arriving from or proceeding to a foreign port shall apply, subject to any necessary adaptations or modifications, in like manner to the importation or exportation of goods or to the arrival or departure of persons, overland or by the inland waters of the Partner States.

Application of Act to importation etc., overland.

246. Where any aircraft or vessel under commission from any foreign state arrives in a Partner State having on board any goods other than stores for use in the aircraft or vessel—

Provisions relating to commissioned vessels.

(a) the aircraft or vessel may be boarded and searched by the proper officer in the same manner as any other aircraft or vessel and the proper officer may cause the goods to be taken ashore and placed in a Customs warehouse;

(b) the person in command of the aircraft or vessel shall—

(i) deliver an account in writing of the goods and of the quantity, marks, and names of the shippers and consignees of the goods;

(ii) answer all questions put to him or her by the proper officer in relation to the goods.

247. Notwithstanding anything contained in this Act, the Commissioner may, in order to meet the exigencies of any special case—

Power of Commissioner in special cases, notices, etc.

(a) permit any goods to be loaded on to, or unloaded and removed from, any aircraft or vessel on such days, at such times, at such places, and under such conditions, as the Commissioner may either generally or in any particular case direct;

(b) permit the entry of any goods, and the report or clearance of any aircraft or vessel, in such form and manner, and by such person, as the Commissioner may either generally or in particular case direct.

Re-exportation, destruction and abandonment.

248. (1) Goods imported into a Partner State and are still under Customs control, may be—

- (a) re-exported from a Partner State;
- (b) destroyed;
- (c) abandoned.

(2) A person re-exporting goods under subsection (1) shall comply with all necessary conditions and formalities as prescribed by the Commissioner including commercial policy measures.

(3) Waste or scrap resulting from destruction shall be subject to a customs procedure prescribed for imported goods.

Penalty for late payment.

249. Where an amount of duty or other sum of money which is due under this Act remains unpaid after the date upon which it is payable, an interest of two per cent per month or part of the month, of the unpaid amount shall be charged.

Exemption from liability.

250. The Commissioner, any officer or any authorised officer shall not in his or her personal capacity be liable to any legal proceedings for acts done in good faith in accordance with this Act.

Regulations.

251. (1) The Council may make regulations generally for giving effect to the provisions of this Act and for the conduct of any business relating to Customs and, without prejudice to the generality of the foregoing, with respect to—

- (a) the application of this Act to postal articles and the powers of any officer in the service of the Post Office in relation to any goods imported, exported or transferred by post;
- (b) the conditions upon which goods may pass through the Partner States in transit;

- (c) the fee to be paid for any licence issued under this Act;
- (d) the rents and other charges to be paid in respect of any goods warehoused or deposited in any Customs warehouse, Government warehouse, transit shed or Customs area;
- (e) the conditions under which goods may be transferred between the Partner States;
- (f) the total or partial exemption from import duty for a limited period of any vehicle, or article of an every kind in actual use, brought into a Partner State by any person making a temporary stay;
- (g) the transmission by post without prepayment of postage of any return or declaration required or authorised under the provisions of this Act;
- (h) the operations and management, of a preventive service and terms and conditions of all officers in such service;
- (i) the information to be supplied by the importer or transferee, or any other person concerned with the importation or transfer of goods, for the purpose of the proper valuation, and the production of books of accounts or other documents relating to the purchase, importation or transfer, or sale of the goods;
- (j) the regulation and control of the conduct of business and operations of refineries and the manner in which petroleum products shall be distinguished for the purposes of Customs control;
- (k) the use of information technology in customs operations;
- (l) the security to be given in accordance with section 107.

(2) Any regulations made under subsection (1) may provide that any person contravening any of the provisions thereof commits an offence and may provide penalty therefor.

(3) The Council may, with the approval of the East African Legislative Assembly, make regulations to adjust any penalty or fine prescribed under this Act.

Savings and transitional provisions.

252. (1) The provisions of the Partner States' Customs laws in force at the commencement of this Act and all regulations, warrants and acts of the Commissioners under the Partner States' Customs laws shall continue in force and apply to

(a) the payment of duty payable before the commencement of this Act;

(b) the assessment of and payment of any duty assessed or payable before the commencement of this Act, as if this Act had not been passed.

(2) Where security was given for the doing of any act or for the protection of revenue or for an obligation to pay duty, whether by bond or otherwise, in the Partner States' under the Customs laws in force at the commencement of this Act, that security shall have effect as if undertaken or incurred under this Act, and may be enforced in respect to a default occurring at any time after the date it was given notwithstanding that the date was prior to the commencement of this Act.

(3) Where duty was due to be paid or refunded under the Partner States' Customs laws, whether before or after the commencement of this Act, and was not paid or refunded it shall be paid or refunded as though it were a sum due under this Act.

(4) If, under the Partner States' Customs laws in force at the commencement of this Act, the Commissioner was responsible for the performance of any functions not provided for under this Act, the Commissioner shall continue to perform such functions until the enactment of appropriate national legislation providing for the performance of the functions under that legislation.

(5) Any subsidiary legislation made under the Partner States' Customs laws in force at the commencement of this Act shall remain in force, so far as it is not inconsistent with this Act, until a new subsidiary legislation with respect to the same matter is made under this Act.

(6) If, at the commencement of this Act, a tax appeals tribunal is yet to be established by a Partner State as required by section 231, appeals against the decisions of the Commissioner made under section 229 shall lie to the High Court of that Partner State.

(7) Unless a contrary intention appears, the commencement of this Act shall not—

- (a) revive anything not in force or existing at the time at which the commencement takes effect; or
- (b) affect the previous operation of the Partner States' Customs laws in force at the commencement or anything duly done or suffered under those laws; or
- (c) affect a right, privilege, obligation or liability acquired, accrued or incurred under a written law of a Partner State in force at the commencement;
- (d) affect a penalty, forfeiture or punishment incurred in respect of an offence committed against a written law of a Partner State in force at the commencement; or
- (e) affect an investigation, legal proceeding or remedy in respect of a right, privilege, obligation, liability, penalty, forfeiture or punishment, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed;
- (f) affect the employment or appointment of any person to the service of Customs subsisting at the commencement of this Act;
- (g) affect any contract, undertaking or obligation entered into, made or assumed under a written law in force in a Partner State at the time of the commencement.

253. This Act shall take precedence over the Partner States' laws with respect to any matter to which its provisions relate.

Act to take precedence.

FIRST SCHEDULE (s. 5(4))

DECLARATION OF OFFICER

I, do declare that I will be true and faithful to the best of my knowledge and power in the execution of the trust committed to my charge and inspection in the service of the Customs, and that I will not acquire, take or receive, any fee, perquisite, gratuity, or reward, whether pecuniary or of any sort or description what- ever, either directly or indirectly, for any service, act, duty, matter, or thing, done or performed, or to be done or performed, in the execution or discharge of any of the duties of my office or employment on any account whatsoever, other than my salary and what is, or may be, allowed me by law or by any special order of the Government of..... (Partner State).

SECOND SCHEDULE

(ss. 18, 19, and 20.)

PROHIBITED AND RESTRICTED IMPORTS GENERALLY

PART A—PROHIBITED GOODS

- (1) All goods the importation of which is for the time being prohibited under this Act or by any written law for the time being in force in the Partner State.
- (2) False money and counterfeit currency notes and coins and any money not being of the established standard in weight or fineness.
- (3) Pornographic materials in all kinds of media, indecent or obscene printed paintings, books, cards, lithographs or other engravings, and any other indecent or obscene articles.
- (4) Matches in the manufacture of which white phosphorous has been employed.
- (5) Any article made without proper authority with the Armorial Ensigns or Coat of Arms of a partner state or having such Ensigns or Arms so closely resembling them as to be calculated to deceive.
- (6) Distilled beverages containing essential oils or chemical products, which are injurious to health, including thijone, star arise, benzoic aldehyde, salicyclic esters, hyssop and absinthe. Provided that nothing in this paragraph contained shall apply to “Anise and Anisette” liquers containing not more than 0.1 per cen- tum of oil of anise and distillates from either pimpinella anisum or the star arise allicium verum.
- (7) Narcotic drugs under international control.
- (8) Hazardous wastes and their disposal as provided for under the base conventions.
- (9) All soaps and cosmetic products containing mercury.
- (10) Used tyres for light Commercial vehicles and passenger cars.
- (11) The following Agricultural and Industrial Chemicals:

(a) Agricultural Chemicals

- (i) 2.4 - T
- (ii) Aldrin
- (iii) Caplafol
- (iv) Chlordirneform | Chlorobenxilate | DDT
- (v) Dieldrin
- (vi) 1.2 - Dibroacethanel (EDB)
- (vii) Flouroacelamide
- (viii) HCH
- (ix) Hiplanchlor
- (x) Hoscachlorobenzene
- (xi) Lindone
- (xii) Mercury compounds
- (xiii) Monocrolophs (certain formulations)
- (xiv) Methamidophos
- (xv) Phospharrmion
- (xvi) Methyl - parathion
- (xvii) Parathion

(b) Industrial Chemicals

- (i) Crocidolite
- (ii) Polychlorominatel biphenyls (PBB)
- (iii) Polyuchorinted Biphenyls (PCB)
- (iv) Polychlororinated Terphyenylys (PCT)
- (v) Tris (2.3 dibromopropyl) phosphate
- (vi) Methylbromide (to be phased out in accordance with the Montreal Protocol by 2007).

(12) Counterfeit goods of all kinds. Amended in L.N. EAC/13/2008
dated 30/6/2008

(13) Plastic articles of less than 30 microns for the conveyance or packing of goods.

Amended in L.N. EAC/7/2007
dated 18/6/2007

PART B—RESTRICTED GOODS

- (1) All goods the importation of which is for the time being regulated under this Act or by any written law for the time being in force in the Partner State.
- (2) Postal franking machines except and in accordance with the terms of a written permit granted by a competent authority of the Partner State.

- (3) Traps capable of killing or capturing any game animal except and in accordance with the terms of a written permit granted by the Partner State.
- (4) Unwrought precious metals and precious stones.
- (5) Arms and ammunition specified under Chapter 93 of the Customs Nomenclature.
- (6) Ossein and bones treated with acid.
- (7) Other bones and horn - cores, unworked defatted, simply prepared (but not cut to shape) degelatinized, powder and waste of these products.
- (8) Ivory, elephant unworked or simply prepared but not cut to shape.
- (9) Teeth, hippopotamus, unworked or simply prepared but not cut to shape.
- (10) Horn, rhinoceros, unworked or simply prepared but not cut to shape
- (11) Other ivory unworked or simply prepared but cut to shape.
- (12) Ivory powder and waste.
- (13) Tortoise shell, whalebone and whalebone hair, horns, antlers, hoovers, nail, claws and beaks, unworked or simply prepared but not cut to shape, powder and waste of these products.
- (14) Coral and similar materials, unworked or simply prepared but not otherwise worked shells of molasses, crustaceans or echinoderms and cattle-bone, unworked or simply prepared but not cut to shape powder and waste thereof.
- (15) Natural sponges of animal origin.
- (16) Spent (irradiated) fuel elements (cartridges) of nuclear reactors.
- (17) Worked ivory and articles of ivory.
- (18) Bone, tortoise shell, horn, antlers, coral, mother-of pearl and other animal carving material, and articles of these materials (including articles obtained by moulding).
- (19) Ozone Depleting Substances under the Montreal Protocol (1987) and the Vienna Convention (1985).
- (20) Genetically modified products.
- (21) Non-indigenous species of fish or egg of progeny.
- (22) Endangered Species of World Flora and Fauna and their products in accordance with CITES March 1973 and amendments thereof.
- (23) Commercial casings (Second hand tyres).
- (24) All psychotropic drugs under international control.
- (25) Historical artefacts.
- (26) Goods specified under Chapter 36 of the Customs Nomenclature (for example, percussion caps, detonators, signalling flares).
- (27) Parts of guns and ammunition, of base metal (Section XV of the Harmonised Commodity Description and Coding System), or similar goods of plastics under Chapter 39 of the Customs Nomenclature.
- (28) Armoured fighting vehicles under heading No. 8710 of the Customs Nomenclature.

- (29) Telescope sights or other optical devices suitable for use with arms, unless mounted on a firearm or presented with the firearm on which they are designed to be mounted under Chapter 90 of the Customs Nomenclature.
- (30) Bows, arrows, fencing foils or toys under Chapter 95 of the Customs Nomenclature.
- (31) Collector's pieces or antiques of guns and ammunition under heading No. 9705 or 9706 of the Customs Nomenclature.

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THIRD SCHEDULE (ss. 70, 71, and 72)
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PROHIBITED AND RESTRICTED EXPORTS GENERALLY

PART A—PROHIBITED GOODS

All goods the exportation of which is prohibited under this Act or by any written law for the time being in force in the Partner States.

PART B—RESTRICTED GOODS

- 1.
 - (a) all goods the exportation of which is regulated under this Act or of any law for the time being in force in the Partner States;
 - (b) waste and scrap of ferrous cast iron;
 - (c) timber from any wood grown in the Partner States;
 - (d) fresh unprocessed fish (Nile Perch and Tilapia);
 - (e) wood charcoal.

- 2. The following goods shall not be exported in vessels of less than two hundred and fifty tons register—
 - (a) warehoused goods;
 - (b) goods under duty drawback;
 - (c) transhipped goods.

FOURTH SCHEDULE (ss. 37 and 122.)

DETERMINATION OF VALUE OF IMPORTED GOODS LIABLE TO

AD VALOREM IMPORT DUTY

PART I

INTERPRETATION:

1. (1) In this Schedule—

“customs value of imported goods” means the value of goods for the purposes of levying *ad valorem* duties of customs on imported goods;

“identical goods” means goods which are same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance shall not preclude goods otherwise conforming to the definition from being regarded as identical;

“similar goods” means goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar.

“identical goods” and “similar goods” do not include, as the case may be, goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under subparagraph (1) (b) (iv) or paragraph 9 because such elements were undertaken in the Partner States;

“produced” includes grown, manufactured and mined.

(2) For the purposes of this Schedule—

(a) goods shall not be regarded as “identical goods” or “similar goods” unless they were produced in the same country as the goods being valued;

(b) goods produced by different persons shall be taken into account only when there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued.

(3) For the purpose of this Schedule, persons shall be deemed to be related only if:

(a) they are officers or directors of one another’s businesses;

(b) they are legally recognised partners in business;

(c) they have an employer and employee relationship;

(d) any person directly or indirectly owns, controls or holds five percent or more of the outstanding voting stock or shares of both of them;

(e) one of them directly or indirectly controls the other;

- (f) both of them are directly or indirectly controlled by a third person;
- (g) together they directly control a third person; or
- (h) they are members of the same family.

(4) A person who associates with another person in business, such that one is the sole agent, distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purposes of this Schedule if they fall within the criteria of sub-paragraph 3.

TRANSACTION VALUE

2. (1) The customs value of imported goods shall be the transaction value, which is the price actually paid or payable for the goods when sold for export to the Partner State adjusted in accordance with the provisions of Paragraph 9, but where—

- (a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which:
 - (i) are imposed or required by law or by the public authorities in the Partner State;
 - (ii) limit the geographical area in which the goods may be resold; or
 - (iii) do not substantially affect the value of the goods;
 - (b) the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
 - (c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Paragraph 9; and
 - (d) the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is acceptable for customs purposes under the provisions of subparagraph (2).
- (2) (a) In determining whether the transaction value is acceptable for the purposes of subparagraph (1), the fact that the buyer and the seller are related within the meaning of Paragraph (1) shall not in itself be a ground for regarding the transaction value as unacceptable. In such case the circumstances surrounding the sale shall be examined and transaction value shall be accepted provided that the relationship did not influence the price. If, in light of information provided by the importer or otherwise, the proper officer has grounds for considering that the relationship influenced the price, he shall communicate his grounds to the importer and such importer shall be given reasonable opportunity to respond and where the importer so requests, the communication of the grounds shall be in writing.

- (b) In the sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of subparagraph (1) whenever the importer demonstrates that such value closely approximates to one of the following accruing at or about the same time.
 - (i) the transaction value in sales to unrelated buyers of identical or similar goods for export to the Partner State;
 - (ii) the customs value of identical or similar goods as determined under the provisions of Paragraph 6;
 - (iii) the customs value of identical or similar goods as determined under the provisions of Paragraph 7.

Provided that, in applying the provisions under subparagraph (2) (a) and (b) of this Paragraph, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in paragraph 9 and costs incurred by the seller in sales in which the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related.

The tests set forth in subparagraph (2) (b) are to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under the provisions of subparagraph (2) (b).

TRANSACTION VALUE OF IDENTICAL GOODS

- 3. (1) (a) Where the customs value of the imported goods cannot be determined under the provisions of paragraph 2, the customs value shall be the transaction value of identical goods sold for export to the Partner State and exported at or about the same time as the goods being valued:
 - (b) In applying the provisions of this paragraph, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value and where no such sale is found, the transaction value of identical goods sold at the different commercial level or in different quantities, adjusted to take account of differences attributable to commercial level or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or decrease in the value;
- (2) Where the costs and charges referred to in Paragraph 9 (2) are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods

and the identical goods in question arising from differences in distances and modes of transport.

(3) Where in applying the provisions of this paragraph, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

TRANSACTION VALUE OF SIMILAR GOODS

4.(1) (a) Where the customs value of the imported goods cannot be determined under the provisions of Paragraph 2 and 3, the customs value shall be the transaction value of similar goods sold for export to the Partner State and exported at or about the same time as the goods being valued;

(b) In applying this Paragraph, the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

(2) Where the costs and charges referred to in subparagraph (2) of Paragraph 9 are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.

(3) Where, in applying the provisions of this paragraph, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

REVERSAL OF ORDER OF APPLICATION OF DEDUCTIVE VALUE AND COMPUTED VALUES

5. Where the customs value of the imported goods cannot be determined under the provisions of paragraphs 2, 3 and 4, the customs value shall be determined under the provisions of paragraph 6 or, when the customs value cannot be determined under that paragraph, under the provisions of paragraph 7 save that, at the request of the importer, the order of application of paragraphs 6 and 7 shall be reversed.

DEDUCTIVE VALUE

6. (1) (a) Where the imported goods or identical or similar imported goods are sold in the Partner State in the condition as imported, the customs value of the imported goods under the provisions

of this paragraph shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to deductions for the following:

- (i) either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with the sales in such country of imported goods of the same class or kind;
 - (ii) the usual costs of transport and insurance and associated costs incurred within the Partner State;
 - (iii) where appropriate, the costs and charges referred to in Paragraph 9 (2); and
 - (iv) the customs duties and other national taxes payable in the Partner State by reason of importation or sale of the goods.
- (b) Where neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value shall, subject to the provisions of subparagraph (1) (a), be based on the unit price at which the imported goods or identical or similar imported goods are sold in the Partner State in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of 90 days after such importation.

(2) Where neither the imported goods nor identical nor similar imported are sold in the Partner State in the condition as imported, then, if the importer so requests, the customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the Partner State who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in subparagraph (1) (a).

COMPUTED VALUE

7. (1) The customs value of imported goods under the provisions of this Paragraph shall be based on a computed value which shall consist of the sum of:

- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the Partner State:

- (c) the cost or value of all other expenses necessary to reflect the costs added under Paragraph 9 (2).

(2) A person who is not resident in the Partner State may be required to, or compelled to produce for examination, or to allow access to, any account or other record for the purposes of determining a computed value. However, information supplied by the producer of the goods for the purposes of determining the customs value under the provisions of this Paragraph may be verified in another country by a proper officer with the agreement of the producer and provided sufficient advance notice is given to the government of the country in question and the latter does not object to the investigation.

FALL BACK VALUE

8. (1) Where the customs value of the imported goods cannot be determined under the provisions of Paragraphs 2, 3, 4, 5, 6 and 7, inclusive, the customs value shall be determined using reasonable means consistent with the principles and general provisions of this Schedule and on the basis of data available in the Partner State.

(2) Customs value shall not be determined under the provisions of this paragraph on the basis of:

- (a) the selling price in the Partner State of goods produced in the Partner State;
- (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
- (c) the price of goods on the domestic market of the country of exportation;
- (d) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Paragraph 7;
- (e) the price of the goods for export to a country other than the Partner State;
- (f) minimum customs values; or
- (g) arbitrary or fictitious values.

(3) Where the importer so requests, he or she shall be informed in writing of the customs value determined under the provisions of this paragraph and the method used to determine such value.

ADJUSTMENTS TO VALUE

9. (1) In determining the customs value under the provisions of Paragraph 2, there shall be added to the price actually paid or payable for the imported goods as follows:

- (a) to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:

- (i) the commissions and brokerage, except buying commissions;
 - (ii) the cost of containers which are treated as being one for customs purposes with the goods in question;
 - (iii) the cost of packing whether for labour or materials;
- (b) the value, apportioned as appropriate, of the goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable as follows:
- (i) materials, components, parts and similar items incorporated in the imported goods;
 - (ii) tools, dies, moulds and similar items used in the production of the imported goods;
 - (iii) materials consumed in the production of the imported goods;
 - (iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the Partner State and necessary for the production of the imported goods;
- (c) royalties and license fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
- (d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller.
- (2) In determining the value for duty purposes of any imported goods, there shall be added to the price actually paid or payable for the goods:-
- (a) the cost of transport of the imported goods to the port or place of importation into the Partner State; provided that in case of imports by air no freight costs shall be added to the price paid or payable;
 - (b) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation into the Partner State; and
 - (c) the cost of insurance.
- (3) Additions to the price actually paid or payable shall be made under this paragraph only on the basis of objective and quantifiable data.
- (4) Additions shall not be made to the price actually paid or payable in determining the customs value except as provided in this paragraph.

PART II

INTERPRETATIVE NOTES

General Notes

Sequential Application of Valuation Methods

1. Paragraph 2, 3, 4, 5, 6, 7 and 8 define how the customs value of imported goods is to be determined under the provisions of this Schedule. The methods of valuation are set out in a sequential order of application. The primary method for customs valuation is defined in Paragraph 2 and imported goods are to be valued in accordance with the provisions of this paragraph whenever the conditions prescribed therein are fulfilled.

2. Where the customs value cannot be determined under the provisions of paragraph 2, it is to be determined by proceeding sequentially through the succeeding paragraphs to the first such paragraph under which the customs value can be determined. Except as provided in Paragraph 5, it is only when the customs value cannot be determined under the provisions of a particular paragraph that the provisions of the next paragraph in the sequence can be used.

3. Where the importer does not request that the order of Paragraphs 6 and 7 be reversed, the normal order of the sequence is to be followed, and if the importer does so request but it then proves impossible to determine the customs value under the provisions of paragraph 7, the customs value shall be determined under the provisions of paragraph 6, if it can be so determined.

4. Where the customs value cannot be determined under the provision of Paragraphs 2, 3, 4, 5, 6 and 7 it is to be determined under the provisions of Paragraph 8.

Use of Generally Accepted Accounting Principles

1. "Generally accepted accounting principles" refers to the recognised consensus or substantial authoritative support within the Partner State at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures.

2. For the purposes of this Schedule, the proper officer shall utilise information prepared in a manner consistent with generally accepted accounting principles in the Partner State which is appropriate for the Paragraph in question. For example, the determination of usual profit and general expenses under the provisions of Paragraph 6 would be carried out utilising information prepared in a manner consistent with generally accepted accounting principles of the Partner State. On the other hand, the

determination of usual profit and general expenses under the provisions of Paragraph 7 would be carried out utilising information prepared in a manner consistent with generally accepted accounting principles of the country of production. As a further example, the determination of an element provided for in paragraph 9 (1) (b) (ii) undertaken in the Partner State would be carried out utilising information in a manner consistent with the generally accepted accounting principles of the Partner State.

Note to Paragraph 1

Subparagraph 3 (e)

For the purposes of this Schedule, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

Subparagraph 4

For the purpose of paragraph 1, the term “person” includes a legal person, where appropriate.

Note to Paragraph 2

Price Actually Paid or Payable

1. The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.
2. Activities undertaken by the buyer on the buyer’s own account, other than those for which an adjustment is provided in paragraph 9, are not considered to be an indirect payment to the seller, costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the customs value.
3. The customs value shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:
 - (a) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;
 - (b) the cost of transport after importation;
 - (c) Duties and taxes of the Partner State.
4. The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

Subparagraph (1) (a) (iii)

Among restrictions, which would not render a price actually paid or payable unacceptable, are restrictions, which do not substantially affect the value of the goods.

An example of such restrictions would be the case where a seller requires a buyer of automobiles not to sell or exhibit them.

Subparagraph (1) (b)

1. If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall be acceptable for customs purposes. Some examples of this include:

- (a) the seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities;
- (b) the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods;
- (c) the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the seller on condition that the seller will receive a specified quantity of the finished goods.

2. However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in the Partner State shall not result in rejection of the transaction value for the purposes of paragraph 2.

Likewise, if the buyer undertakes on the buyer's own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, the value of these activities is not part of the customs value nor shall such activities result in rejection of the transaction value.

Subparagraph (2)

1. Subparagraphs (2) (a) and (2) (b) provide different means of establishing the acceptability of a transaction value.

2. Subparagraph 2 (a) provides that where the buyer and the seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the customs value provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the proper officer have no doubts about the acceptability of the price it should be accepted without requesting further information from the owner. For example, the proper

officer may have previously examined the relationship, or it may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.

3. Where the proper officer is unable to accept the transaction value without further inquiry, it should give the owner an opportunity to supply such further detailed information as may be necessary to enable it to examine the circumstances surrounding the sale. In this context, the proper officer should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organise their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of Paragraph 1, buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way seller settles prices for sales to buyers who are not related to the seller, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realised over a representative period of time, e.g. on an annual basis in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced.

4. Subparagraph (2) (b) provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a "test" value previously accepted by the proper officer and is therefore acceptable under the provisions of paragraph (2). Where a test under subparagraph (2) (b) is met, it is not necessary to examine the question of influence under paragraph 2 (a). If the proper officer has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in subparagraph (2) (b) has been met, there is no reason for it to require the importer to demonstrate that the test can be met. In subparagraph (2) (b) the term "unrelated buyers" means buyers who are not related to the seller in any particular case.

Subparagraph (2) (b)

A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and, whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the "test" values set forth in subparagraph (2) (b) of paragraph 2.

Note to Paragraph 3

1. In applying paragraph 3, the proper officer shall wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:

- (a) a sale at the same commercial level but in different quantities;
- (b) a sale at a different commercial level but in substantially the same quantities; or
- (c) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

- (a) quantity factors only;
- (b) commercial level factors only; or
- (c) both commercial level and quantity factors

3. The expression “and/or” allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purposes of paragraph 3, the transaction value of identical imported goods means a customs value, adjusted as provided for in subparagraphs (1) (b) and (2), which has already been accepted under Paragraph 2.

5. A condition for adjustment because of different commercial level or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustments, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognised that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller’s price list and using that price applicable to sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Paragraph 3 is not appropriate.

Note to Paragraph 4

1. In applying paragraph 4, the proper officer shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a

sale of similar goods that takes place under any one of the following three conditions may be used;

- (a) a sale at the same commercial level but in different quantities;
- (b) a sale at a different commercial level but in substantially the same quantities; or
- (c) a sale at a different commercial level and in different quantities;

2. Having found sale under any one of these three conditions adjustments will then be made, as the case may be, for:

- (a) quantity factors only;
- (b) commercial level factors only; or
- (c) both commercial level and quantity factors;

3. The expression “and/or” allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purpose of paragraph 4, the transaction value of similar imported goods means a customs value, adjusted as provided for in subparagraphs (1) (b) and (2), which has already been accepted under paragraph 2.

5. A condition for adjustment because of different quantities is that such adjustment whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only similar imported goods for which a transaction value exists involved a sale of 500 units, and it is recognised that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller’s price list and using that price applicable to a sale of 10 units. This does not require that a sale had to been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of paragraph 4 is not appropriate.

Note to Paragraph 6

1. The term “unit price at which goods are sold in the greatest aggregate quantity” means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.

2. As an example of this, goods are sold from a price list, which grants favourable unit prices for purchases made in larger quantities.

sales of 3 units 65

<i>Sale quantity sold at each</i>	<i>Unit price</i>	<i>Number of sales</i>	<i>Total quantity sold at each price</i>
1-10 units	100	10 sales of 5 units 5 sales of 3 units	65
11-25 units	95	5 sales of 11 units	55
Over 25 units	90	1 sale of 30 units 1 sale of 50 units	80

The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

3. As another example of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this example, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is 95.

4. A third example would be the following situation where various quantities are sold at various prices.

(a) Sales

<i>Sale Quantity</i>	<i>Unit Price</i>
40 units	100
30 units	90
15 units	100
50 units	95
25 units	105
35 units	90
5 units	100

(b) Totals

<i>Total quantity sold</i>	<i>Unit price</i>
65	90
50	95
60	100
25	105

In this example, the greatest number of units sold at a particular price is 65; therefore, the unit price in the greatest aggregate quantity is 90.

5. Any sale in the Partner State, as described in subparagraph 1 above, to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported

goods any of the elements specified in subparagraph 1(b) of paragraph 1(b) of Paragraph 9, should not be taken into account in establishing the unit price for the purposes of Paragraph 6.

6. It should be noted that “profit and general expenses” referred to in subparagraph

(1) of Paragraph 6 should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis of information supplied by or on behalf of the importer unless the importer’s figures are inconsistent with those obtained in sales in The Partner State of imported goods of the same class or kind. Where the importer’s figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the owner.

7. The “general expenses” include the direct and indirect costs of marketing the goods in question.

8. Local taxes payable by reason of the sale of the goods for which a deduction is not made under the provisions of paragraph 6 (1) (a) (iv) shall be deducted under the provisions of paragraph 6 (1) (a) (i).

9. In determining either the commissions or the usual profits and general expenses under the provisions of paragraph 6 (1), the question whether certain goods are “of the same class or kind” as other goods must be determined on a case by case basis by reference to the circumstances involved. Sales in the Partner State of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Paragraph 6, “goods of the same class or kind” includes goods imported from the same country as the goods being valued as well as goods imported from other countries.

10. For the purposes of paragraph 6 (1) (b), the “earliest date” shall be the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.

11. Where the method in paragraph 6 (2) is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry practices would form the basis of the calculations.

12. It is recognised that the method of valuation provided for in Paragraph 6 (2) would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However, there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty. However, there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty. On the other hand, there can also be instances where the imported goods maintain their identity but form such a minor element in the goods sold in the Partner State that the

use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case by case basis.

Note to Paragraph 7

1. As a general rule, customs value is determined under this Schedule on the basis of information readily available in the Partner State. In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information, which has to be obtained from outside the Partner State. Furthermore, in most cases the producer of the goods will be outside the jurisdiction of the authorities of the Partner State. The use of the computed value method will generally be limited to those cases where the buyer and seller are related and the producer is prepared to supply to the authorities of the Partner State the necessary costing and to provide facilities for any subsequent verification which may be necessary.

2. The “cost or value” referred to in Paragraph 7 (1) (a) is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.

3. The “cost or value” shall include the cost of elements specified in subparagraphs 9(1) (a) (ii) and (iii). It shall also include the value, apportioned as appropriate under the provisions of the relevant note to Paragraph 9, of any element specified in Paragraph 9 (1) (b) which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods. The value of the elements specified in paragraph 9(1) (b) (iv) which are undertaken in the Partner State shall be included only to the extent that such elements are charged to the producer. It is to be understood that no cost or value of the elements referred to in this paragraph shall be counted twice in determining the computed value.

4. The “amount for profit and general expenses” referred to in Paragraph 7 (1) (b) is to be determined on the basis of information supplied by or on behalf of the producer unless the producer’s figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the Partner State.

5. It should be noted in this context that the “amount for profit and general expenses” has to be taken as a whole. It follows that if, in any particular case, the producer’s profit figure is low and the producer’s general expenses are high, the producer’s profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind. Such a situation might occur, for example, if a product were being launched in the Partner State and the producer accepted a nil or low profit to offset high general expenses associated with the launch. Where

the producer can demonstrate a low profit on sales of the imported goods because of particular commercial circumstances, the producer's actual profit figures should be taken into account provided that the producer has valid commercial reasons to justify them and the producer's pricing policy reflects usual pricing policies in the branch of industry concerned. Such a situation might occur, for example, where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in the Partner State and accept a low profit to maintain competitiveness. Where the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to a Partner State, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods.

6. Where information other than that supplied by or on behalf of the producer is used for the purposes of determining a computed value, the proper officer shall inform the importer, if the latter so requests, of the source of such information, the data used and the calculations based upon such data.

7. The "general expenses" referred to in Paragraph 7 (1) (b) covers the direct and indirect costs of producing and selling the goods for export, which are not included under Paragraph 7 (1) (a).

8. Whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of Paragraph 7, sales for export to the Partner State of the narrowest group or range of goods, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Paragraph 7, "goods of the same class or kind" must be from the same country as the goods being valued.

Note to Paragraph 8

1. Customs values determined under the provisions of paragraph 8 should, to the greatest extent possible, be based on previously determined customs values.

2. The methods of valuation to be employed under paragraph 8 should be those laid down in Paragraphs 2, 3, 4, 5, 6 and 7 but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Paragraph 8.

Some examples of reasonable flexibility are as follows:

- (a) Identical goods the requirement that the identical goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of Paragraphs 6 and 7 could be used.

- (b) Similar goods the requirement that the similar goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of Paragraphs 6 and 7 could be used.
- (c) Deductive methods – the requirement that the goods shall have been sold in the “condition as imported” in Paragraph 6 (1) (a) could be flexibly interpreted; the “90 days” requirement could be administered flexibly.

Note to Paragraph 9

Subparagraph (1) (a) (i)

The term “buying commissions” means fees paid by importer to the importer’s agent for the service of representing the importer abroad in the purchase of the goods being valued.

Subparagraph (1) (b) (ii)

1. There are two factors involved in the apportionment of the elements specified in paragraph 9 (1) (b) (ii) to the imported goods - the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements should be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

2. Concerning the value of the element, if the importer acquires the element from a seller not related to the importer at a given cost, the value of the element is that cost. If the element was produced by the importer or by a person related to the importer, its value would be the cost of producing it. If the element had been previously used by the importer, regardless of whether it had been acquired or produced by such importer, the original cost of acquisition or production would have to be adjusted downward to reflect its use in order to arrive at the value of the element.

3. Once a value has been determined for the element, it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first shipment if the importer wishes to pay duty on the entire value at one time. As another example, the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment. As a further example the importer may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production. The method of apportionment used will depend upon the documentation provided by the importer.

4. As an illustration of the above, an importer provides the producer with a mould to be used in the production of the imported goods and contracts with

the producer to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units the producer has already produced 4,000 units. The importer may request the proper officer to apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units.

Subparagraph 1 (b) (iv)

1. Additions for the elements specified in paragraph 9 (1) (b) (iv) should be based on objective and quantifiable data. In order to minimise the burden for both the importer and proper officer in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible.

2. For those elements supplied by the buyer, which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the cost of obtaining copies of them.

3. The ease with which it may be possible to calculate the value to be added will depend on a particular firm's structure and management practice, as well as its accounting methods.

4. It is possible for example, that a firm which imports a variety of products from several countries maintains the records of its design centre outside the Partner State in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of Paragraph 9.

5. In another case, a firm may carry the cost of the design centre outside the Partner State as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of paragraph 9 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.

6. Variations in the above circumstances will be of course, require different factors to be considered in determining the proper method of allocation.

7. In cases where the production of the element in question involves a number of countries and over a period of time, the adjustment should be limited to the value actually added to that element outside the Partner State.

Subparagraph 1 (c)

1. The royalties and license fees referred to in paragraph 9 (1) (c) may include, among other things, payments in respect of patents, trademarks and copyrights. However, the charges for the right to reproduce the imported goods in the Partner State shall not be added to the price actually paid or payable for the imported goods in determining the customs value.

2. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to

the Partner State of the imported goods.

Subparagraph 3

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of Paragraph 9, the transaction value cannot be determined under the provisions of Paragraph 2. As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors which have nothing to do with the imported goods such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller, it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.

FIFTH SCHEDULE (s. 114)

THE EXEMPTIONS REGIME

PART A—SPECIFIC EXEMPTIONS

GOODS IMPORTED OR PURCHASED BEFORE CLEARANCE
THROUGH THE CUSTOMS BY OR ON BEHALF OF PRIVILEGED
PERSONS AND INSTITUTIONS

1. *The Presidents*

Goods for use by the Presidents of the Partner States.

2. *Partner States Armed Forces*

All goods, including materials, supplies, equipment, machinery and motor vehicles for the official use of Partner States Armed Forces.

3. *Commonwealth and Other Governments*

Goods consigned to officers or men on board a naval vessel belonging to another Commonwealth Government for their personal use or for consumption on board such vessel.

Goods for the use of any of the Armed Forces of any allied power.

4. *Diplomatic and First Arrival Privileges*

(1) Household and personal effects of any kind imported by entitled personnel or their dependants including one motor vehicle imported or purchased by them prior to clearance through customs within ninety days of their first arrival in a Partner State or such longer period not exceeding three hundred and sixty days from the date of his arrival, as may be approved by the Commissioner in a Partner State in specific cases where the entitled personnel have not been granted an exemption under item 4 (4) of Part A or item 5 (3) of Part B:

Provided that this exemption shall apply to entitled personnel who may have arrived for a new contract notwithstanding their previous residential status in a Partner State while in execution of another assignment, provided further that each contract is for a term not less than two years.

(2) One motor vehicle which the ministry responsible for foreign affairs of a Partner State is satisfied as having been imported as a replacement for a motor vehicle originally imported under paragraph (1) which has been written off due to accident, fire or theft:

Provided that customs duty shall be payable at the appropriate rate if the written off motor vehicle is disposed of locally.

(3) Goods for the official use of the United Nations or its specialised agencies or any Commonwealth High Commission, or of any foreign embassy, consulate or diplomatic mission in a Partner State.

(4) Goods for the use of a high official of the United Nations or its specialised agencies, or a member of the diplomatic staff of any Commonwealth or foreign country, where specific provision for such exemption is made by the minister responsible for foreign affairs.

(5) Goods for the United Nations or any of its specialised agencies for the support of a project in a Partner State.

(6) On first arrival in a Partner State or within three months of that date, the household and personal effects, including one motor vehicle, of an employee of the United Nations, or of its specialised agencies, of any Commonwealth High Commission, or of any foreign embassy, consulate or diplomatic mission, where the employee:

- (a) is not engaged in any other business or profession in a Partner State; and
- (b) has not been granted an exemption under item 4 (1), (2) and (4) of Part A or item 5 (3) of Part B.

(7) Any motor vehicle acquired free of duty pursuant to the provisions of this item shall on re-sale or upon other disposition, whether or not for any material consideration, be liable to duty notwithstanding that the period of two years allowed has elapsed.

5. Donor Agencies with Bilateral or Multilateral Agreements with the Partner States

(1) Household and personal effects of any kind imported by entitled personnel or their dependants, including one motor vehicle imported or purchased by them prior to clearance through customs, within ninety days of their first arrival in a Partner State or such longer period not exceeding three hundred and sixty days from the date of his arrival, as may be approved by the relevant authority in a Partner State in specific cases where the entitled personnel have not been granted an exemption under item 4 (4) of Part A or item 5 (3) of Part B:

Provided that the exemption under this paragraph shall apply:

- (i) to entitled personnel who may have arrived for a new contract for a term of not less than two years, notwithstanding their previous residential status in a Partner State while in execution of another assignment;
- (ii) only once every four years where there is an on going project; and
- (iii) to an additional motor vehicle where there is a bilateral agreement between the Government and aid agency entered into prior to the coming into force of this Protocol.

(2) One motor vehicle, which the Commissioner in a Partner State is satisfied, is imported as a replacement of another motor vehicle originally imported under paragraph (1) and which has been written off due to accident, fire or theft:

Provided that any motor vehicle acquired free of duty pursuant to the provisions of this item shall on resale or upon other disposition whether or not for any material consideration be liable for duty notwithstanding that the period of two years has elapsed.

6. *International and Regional Organisations*

Goods and equipment imported by donor agencies, international and regional organisations with Diplomatic accreditation or bilateral or multilateral agreements with a Partner State for their official use.

7. *The War Graves Commission*

Goods, including official vehicles but not including office supplies and equipment and the property of the Commission's staff, for the establishment and maintenance of war cemeteries by the Commonwealth War Graves Commission.

8. *Disabled, Blind and Physically Handicapped Persons*

Materials, articles and equipment, including one motor vehicle, which:

- (a) are specially designed for use by disabled or physically handicapped persons or;
- (b) are intended for the educational, scientific or cultural advancement of the disabled for the use of an organisation approved by the Government for the purpose of this exemption:

Provided that the exemption in respect of motor vehicles shall not apply to paragraph (b).

9. *Rally Drivers*

(1) One motor vehicle for each driver and spare parts specified in Paragraph (2) which:

- (a) are imported or purchased prior to clearance through customs for use in the rally;
- (b) having been temporarily imported under the Act for use in the rally, are purchased during the period of temporary importation by a rally driver resident in a Partner State for use in a rally;
- (c) having been imported under conditions whereby exemption of duty is granted under this Schedule, or whereby remission or refund of duty has been granted by the Commissioner, are purchased by a rally driver resident in a Partner State for use in the rally; and
- (d) in the case of vehicles only, are assembled in a Partner State and purchased by a rally driver for use in the rally.

(2) Paragraph (1) shall apply to the following spares parts imported by a rally driver for use in the rally:

- (a) one engine assembled complete, or such individual parts making up one engine as the rally driver requires, including, in either case, a starter motor, alternator and clutch;

- (b) one gear box assembly complete;
- (c) one differential assembly and one front and rear axle assembly, or such individual parts making up one front and rear axle assembly as the rally driver requires;
- (d) not more than four front suspension assemblies, or such individual parts making up those assemblies as the rally driver requires: and
- (e) not more than two sets of rear shock absorbers.

(3) Exemption of duty under Paragraph (1) and (2) is made on the condition that:

- (a) it applies only to motor vehicles and parts imported or purchased for use by bona fide rally drivers resident in a Partner State who have been approved and recommended to the Commissioner or a person authorised by him or her in writing, by the rally authorities and accepted as such by him;
- (b) where the motor vehicle or parts ceased to be used or, in the case of parts, to be reassigned for use, for rally purposes or are disposed off in a Partner State to persons not entitled to exemption from, or remission of duty, duty shall, immediately become payable at the appropriate rate; and
- (c) where the motor vehicle parts cease to be used, or in the case of parts, to be assigned for use, for rally purposes or are disposed off in a Partner State to persons not entitled to exemption from, or remission of duty, duty shall subject to paragraph (5), immediately become payable at the appropriate rate.

(4) Nothing in paragraph (3) (a) or (c) shall prevent the motor vehicle or spare parts from being used in other rallies in a Partner State.

(5) Where a person to whom an exemption has been granted under this item, fails to take part in the rally, duty shall become payable at the rate applicable on the date the rally ends.

10. Goods and Equipment for Use in Aid Funded Projects

PART B—GENERAL EXEMPTION

GOODS IMPORTED OR PURCHASED BEFORE CLEARANCE THROUGH CUSTOMS

1. Aircraft Operations

- (a) Any of the following goods, which are imported for use by the national carrier or any airline designated under an air services agreement between the Government of a Partner State and a foreign Government:

Aircraft, aircraft engines, parts and accessories thereof, air navigational instruments; lighting, radio and radar apparatus and equipment of specialised nature for the repair, maintenance and

servicing of an aircraft on the ground; ground signs, stairways for boarding aircraft, imported solely for use in connection with aircraft; catering stores, such as luncheon boxes, cardboard trays, paper plates, paper napkins, imported for use by any airline.

- (b) Any of the following goods, which are imported for use by an approved ground handler or caterer:
 - (i) equipment of a specialised nature for repairs; maintenance and servicing of an aircraft.
 - (ii) specialised aircraft loading and unloading equipment; and
 - (iii) stairways for boarding and loading aircrafts.
- (c) Aircraft spare parts imported by aircraft operators or persons engaged in the business of aircraft maintenance:

Provided that such spare parts shall be imported on the recommendation of the authority responsible for civil aviation in the Partner State and in such quantities as the Commissioner may specify.

2. *Containers and Pallets*

- (a) Containers, including boxes, tins, bottles, jars, and other packages in which any goods not liable to *ad valorem* duty are packed and imported, being ordinary trade packages for the goods contained therein;
- (b) Pallets and pre-packing slings;
- (c) Containers specially designed and equipped for carriage by one or more modes of transport.
- (d) Imported containers, which the Commissioner on the recommendation of the Director of Veterinary Services is satisfied, and specially designed for storing semen for artificial insemination;
- (e) Packing material of any kind designed for packaging goods for export.

3. *Deceased Person's Effects*

Used personal effects, subject to such limitations as the Commissioner may impose, which are not for re-sale and have been the property of the deceased person and have been inherited by or bequeathed to the person to whom they are consigned. The personal effects include one motor vehicle which the deceased owned and used outside a Partner State.

4. *Fish, Crustaceans and Molluscs*

Fish, Crustaceans and Molluscs, fresh (dead or live), chilled or frozen caught and landed by canoes or vessels registered and based in a Partner State.

5. *Passengers' Baggage and personal effects*

(1) Goods imported by passengers arriving from places outside the Partner States shall, subject to the limitations and conditions specified in the following paragraphs:

The goods shall be:

- (a) the property of and accompany the passenger, except as provided in Paragraph 7;
- (b) for the personal or household use of the passenger in a Partner State; and
- (c) of such kinds and in such quantities as the proper officer may allow.

(2) Notwithstanding Paragraph (1) (c), the following goods shall not be exempted under this item:-

- (a) alcoholic beverages of all kinds, perfumes, spirits and tobacco and Manufactures thereof, except as provided in Paragraphs 6 and 7 of this item;
- (b) fabrics in piece;
- (c) motor vehicles, except as provided in Paragraph (3) and (4);
- (d) any trade goods or goods for sale or disposal to other persons.

(3) Subject to Paragraphs (1) and (2), the following goods may be exempted under this item when imported, as baggage by a person on first arrival or a returning resident of a Partner State whom the proper officer is satisfied is bona fide changing residence from a place outside a Partner State to a place within a Partner State,

- (a) wearing apparel;
- (b) personal and household effects of any kind which were in his personal or household use in his former place of residence;
- (c) one motor vehicle, (excluding buses and minibuses of seating capacity of more than 13 passengers and load carrying vehicles of load carrying capacity exceeding two tonnes) which the passenger has personally owned and used outside a Partner State for at least twelve months (excluding the period of the voyage in the case of shipment):

Provided that the person has attained the age of eighteen years.

(4) Subject to Paragraphs (1) and (2) of this item, the following goods may be exempted under this item when imported as baggage by a person whom the proper officer is satisfied is making a temporary visit not exceeding three months to a Partner State:

- (a) non-consumable goods imported for his personal use during his visit which he intends to take out with him when he leaves at the end of his visit;

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- (b) consumable provisions and non-alcoholic beverages in such quantities and of such kinds as are in the opinion of the proper officer consistent with his visit;
- (c) that the goods are imported by a returning resident being an employee of an international organisation the headquarters of which are in a Partner State and who has been recalled for consultations at the organisation's headquarters.

(5) Subject to Paragraphs (1) and (2) of this item, the following goods may be exempted under this item when imported as baggage by a person who the proper officer is satisfied is a resident of a Partner State returning from a visit outside a Partner State and who is not changing residence in accordance with paragraphs (3) and (4):

- (a) wearing apparel;
- (b) personal and household effects which have been in his personal use or household use.

(6) Subject to paragraph (1) of this item, and subject to sub-paragraph (b) of this paragraph, duty shall not be levied on the following goods imported by, and in the possession of a passenger:-

- (a) spirits (including liquors) or wine, not exceeding one litre or wine not exceeding two litres;
- (b) perfume and toilet water not exceeding in all one half litre, of which not more than a quarter may be perfume;
- (c) cigarettes, cigars, cheroots, cigarillos, tobacco and snuff not exceeding in all 250 grammes in weight.

The import duty free allowance shall be granted only to passengers who have attained the age of eighteen years.

(7) Subject to Paragraphs (1) and (2) of this item, the exemptions granted in accordance with Paragraphs (3), (4) and (5) of this Item may be allowed in respect of baggage imported within ninety days of the date arrival of the passenger or such further period not exceeding three hundred and sixty days from such arrival as the Commissioner-General may allow. The duty free allowances granted in accordance with Paragraph (6) of this item shall not be allowed in respect of goods specified in the paragraph imported in unaccompanied baggage.

(8) Where any person who has been granted an exemption under Paragraphs (3) or (4) changes his residence to a place outside a Partner State within ninety days from the date of his arrival, he shall export his personal or household effects within thirty days, or such further period not exceeding sixty days from the date he changes his residence to a place outside a Partner State, as the Commissioner may allow, otherwise duty becomes payable from the date of importation,

(9) Subject to Paragraphs (1) and (2) of this item, goods up to the value of United States Dollars Three Hundred for each traveller in respect of goods, other than goods referred to in Paragraph 8 of this item, shall be exempted when imported by the traveller in his or her accompanied baggage or upon his or her person and declared by him or her to an officer, provided that the person has been outside the Partner State for a period in excess of 24 hours;

6. *Samples and Miscellaneous Articles*

Samples and miscellaneous articles not imported as merchandise which in the opinion of the Commissioner have no commercial value.

7. *Ships and Other Vessels*

Passenger and cargo vessels of all kinds of twenty-five net register tonnage or more, cable ships, floating factories, whale catching vessels, trawlers and other commercial fishing vessels (other than sport fishing vessels), weather ships, hopper barges; lighters, pontoons (being flat decked vessels used for the transportation of persons or goods) and ferry boats; parts and accessories, but not including batteries and sparking plugs.

8. *Preparations for cleaning dairy apparatus*

Surface-active preparations and washing preparations whether or not containing soap, specially prepared for cleaning dairy apparatus.

9. *Mosquito nets and materials for the manufacture of mosquito nets*

10. *Seeds for Sowing*

All seeds spores and cut plants, imported specially treated, which the relevant authority in the Ministry responsible for Agriculture has approved as fit for sowing.

11. *Chemically defined compounds used as fertilisers*

Upon recommendation of the authority responsible for Agriculture in the Partner State.

12. *Museums, Exhibits and Equipment*

- (a) Museum and natural history exhibits and specimens, and scientific equipment for public museums; and
- (b) Chemicals, reagents, films, film strips and visual aids equipment, the importation of which is approved in writing by the relevant authority in a Partner State, imported or purchased prior to clearance through Customs by the National Museums.

13. *Diapers, Urine bags and hygienic bags*

Diapers, Urine bags and hygienic bags for medical use, in such quantities as the Commissioner may allow.

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- L.N. No. 12 of June 30th, 2008, and L.N. No. 12/2008 of 23rd June, 2008.
- 14. *Diagnostic Reagents and Equipment***
Diagnostic reagents and equipment recommended by the Director of Medical Services or the Director of Veterinary Services for use in hospitals, clinics and diagnostic laboratories subject to such limitations as the Commissioner in a Partner State may impose.
- L.N. No. 2 of 15th September 2005.
- 15. *Horticulture, Agriculture or Floriculture Inputs***
Imported inputs by persons engaged in horticulture, agriculture or floriculture which the Commissioner is satisfied are for use in the horticulture, agriculture or floriculture sector.
- L.N. No. 2 of 15th September 2005 and L.N. No. 36 8th December 2008.
- 16. *Packaging Material for Medicaments***
Packaging materials and raw materials for manufacture of medicaments upon recommendation of the authority responsible for manufacture of medicaments.
- 17. *Education***
Educational Articles and Materials as specified in the Florence Agreement.
- L.N. No. 2 of September 15, 2005.
- 18. *Splints for use in the manufacture of matches***
Splints imported by manufacturer for use in the manufacture of matches.
- L.N. No. 2 of September 15, 2005.
- 19. *Inputs for use in the manufacture of agricultural equipment***
Inputs imported by a manufacturer for use in the manufacture of agricultural equipment.
- L.N. No. 12 of June 30, 2006.
- 20. *Relief goods imported for emergency use in specific areas where natural disaster/calamity has occurred in a Partner State***
Goods for emergency relief purposes of such quantities and within a specified period imported by government or its approved agent or a non-governmental organisation or a relief agency as authorised by the Director/Commissioner responsible for disaster management in a Partner State provide that:
- (a) the goods are household utensils, food stuffs, materials for provision of shelter, and equipment and materials for health, sanitary and education purposes,
 - (b) the goods are for use in areas where a natural disaster or calamity has occurred in Partner State,
 - (c) the importation shall be made within 6 months or such further period not exceeding 12 months as the Commissioner of a Partner State may permit in each case,
 - (d) the quantities of imported goods shall be subject to such limitations as the Commissioner may impose, and

- (e) the Commissioner shall submit a notification of the exemption detailing the description of the goods and quantities to the Directorate for circulation to other Partner States.
- 21. *Hotel Equipment*** L.N. No. 2
of
September
15, 2005.
Any of the following goods engraved or printed or marked with the hotel logo imported by a licensed hotel for its use:
- (a) Washing machines;
 - (b) Kitchen Ware;
 - (c) Cookers;
 - (d) Fridges and freezers
 - (e) Air Conditioning Systems;
 - (f) Cutlery;
 - (g) Televisions;
 - (h) Carpets;
 - (i) Furniture;
 - (j) Linen and Curtains;
 - (k) Gymnasium equipment
- 22. (a) *Refrigerated trucks*** L.N. No. 12
of 23rd June
2008.
(b) *Insulated tankers* L.N. No. 2
of
September
15, 2005.
and L.N.
No. 12 of
23rd June
2008.
- 23. *Speed Governors*** L.N. No. 2
dated
September
15, 2005.
- 24. *Computer Software*** L.N. No. 2
dated
September
15, 2005.
Any media containing computer software;
- 25. *Electrical Energy saving bulbs for lighting also known as Compact Fluorescent Bulbs*** L.N. No. 12
dated June
30, 2006 and
L.N. No. 8
dated June
18, 2007.
Compact Fluorescent Bulbs (Energy Saving Bulbs) with power connecting cap at one end.
- 26. *Specialised Solar equipment and accessories*** L.N. No. 12
dated June
30, 2006.
Specialised Solar powered equipment and accessories including deep cycle batteries which exclusively use and/ or store solar power.
- 27. *Unbleached woven fabrics of a width 80 inches and above imported for manufacture of textile materials*** L.N. No. 1
dated 1st
March,
2007.
Woven fabrics made from unbleached yarn and which has not been bleached, dyed or printed of a width 80 inches and above provided that:

- (a) the unbleached woven fabrics are imported by approved Textile Mills in a Partner State for exclusive use in the manufacture of finished fabrics;
- (b) the imported unbleached woven fabrics shall be subject to customs control and such conditions as the Commissioner shall prescribe in accordance with this Act;
- (c) the quantities imported shall be subject to such limitations as the Commissioner shall specify; and
- (d) the exemption of import duty on unbleached woven fabrics of width 80 inches and above shall apply for two years from 1st March 2007.

L.N. Eo 8
dated June
18, 2007.

28. *Items imported for use in licensed hospitals*

Any of the following goods engraved or printed or marked with the hospital logo imported for use in licenced hospitals, as recommended by the Director of Medical Services subject to such conditions and limitations as the Commissioner may impose:

- (a) shadow less lamps for use in operating theatres
- (b) blood freezers
- (c) kitchenware and equipment
- (d) laundry equipment
- (e) mattresses and linen
- (f) bedside screens
- (g) air conditioners
- (h) uniforms for use by hospital staff
- (i) water heating equipment
- (j) trolleys and stretchers
- (k) furniture

L.N. No 12
dated 23rd
June, 2008.

29. Motor vehicles specially designed for refuse/garbage collection and disposal imported or purchased by local authorities or persons contracted by the local authorities to collect refuse/garbage.

SIXTH SCHEDULE (s. 130.)

WARRANT OF DISTRESS

To.....

I,the
Commissioner by virtue of the powers vested in me by 130 (4) of the East
African Community Customs Management Act, 2004 do hereby authorise
you to collect and recover the sum ofdue
for duty from having his or her premises
atand for the recovery thereof I
further authorise that you, with the aid (if necessary) of your assistants and
calling to your assistance any police officer if necessary) which assistance
they are hereby required to give, do forth levy by distress the said sum
together with the costs and charges of and incidental to the taking and keeping
of such distress, on the goods, chattels or other distrainable things of the said
person wherever the same may be found, and all vessels, vehicles, animals,
and other articles, used within the partner states in commercial transactions
which you may find in any premises or any lands in use or possession of the
said tax payer or any person on his or her behalf or in trust for him or her.

And for the purpose of levying such distress you are hereby authorised, if
necessary, with such assistance as aforesaid to break open any building or
place in the daytime.

Given under my hand atthisday of20.....

