

Customs and Excise Management Act

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CUSTOMS AND EXCISE MANAGEMENT ACT

AN ACT RELATING TO THE MANAGEMENT OF CUSTOMS AND EXCISE¹

Commencement [1 February 2008]²

PART 1 - PRELIMINARY

1 Short title

This Act may be cited as the Customs and Excise Management Act.

2 Interpretation

In this Act, unless the context otherwise requires —

“**agent**” includes, in relation to the master or owner of a ship or aircraft, a person who —

- (a) is a representative of the master or owner;
- (b) notifies the Minister in writing that he intends to act as an agent; or
- (c) signs any document required or permitted by Customs to be signed by an agent, or on whose behalf such a document is signed by a person authorized by such agent;

“**aircraft**” includes balloons, kites, gliders, aeroplanes, seaplanes, helicopters and hovercrafts;

“**airport**” means a place or geographical area for the landing and departure of aircraft appointed by the Minister under section 124;

“**approved place**” means any quay, jetty, wharf, airport or other place appointed by the Minister under section 124 where goods under Customs control may be loaded and unloaded and includes a place where Customs controlled goods are stored;

“**cargo**” means any goods carried on board a ship or aircraft but does not include stores, or crew member’s or passenger’s effects;

“**cargo manifest**” means a document made to a Customs officer providing information concerning the arrival of the aircraft and ship including the details of the cargo on board an aircraft or ship arriving in the Kingdom;

“**carriage**” includes transportation by any ship or aircraft of goods, people and animals;

“**Minister**” means the Minister responsible for revenue services;³

“**coastal ship**” means a ship that is not engaged in making an international voyage;

“**commercial documentation**” in relation to goods, means any document prepared in the ordinary course of business for the purposes of a commercial transaction regarding the goods or the carriage of the goods, and includes documents prescribed by Regulations, whether in hard copy or electronic format;

“**container**” includes any bundle, package, box, cask, shipping container or other receptacle;

“**counterfeit goods**” are any goods, including packaging, having without authorisation, a trademark which is identical to a validly registered trademark in respect of such goods, or which cannot be distinguished in its essential character from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the Kingdom;

“**counterfeit goods**” includes pirated copyright goods which are copies of such originals made without the consent of the rights holder and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the Kingdom;

“**crew**” includes every person employed or engaged in any capacity on board any aircraft or ship, but does not include the master;

“**Crown’s warehouse**” means a government warehouse which is specified in writing as such by the Minister, where goods under Customs control and goods otherwise detained by Customs may be temporarily stored;

“**Customs**” means the Customs and Trade Division of the Ministry of Revenue;⁴

“**Customs area**” means any place appointed under section 124(1)(a)⁵;

“**Customs broker**” means a licensed representative of an owner of goods, who is contracted to perform Customs requirements on behalf of such owner under Part 15;

“**Customs clearance**” means the completion of all Customs formalities to the satisfaction of a Customs officer;

“**Customs control**” has the meaning ascribed to it in section 5;

“**Customs duty**” is an amount payable to the Government in accordance with the Customs Act;

“**Customs laws**” means the Customs Act⁶, Excise Tax Act⁷ and this Act;

“**Customs officer**” means any person employed as a customs officer to discharge any duty connected with the administration of customs laws;

“**Customs warehouse**” means a place operated by a person licensed by Customs for the storage of goods while they are under Customs control and may be licensed as —

- (a) general;
- (b) private; or
- (c) duty free warehouse;

“**declaration**” means the provision of all information to Customs whether verbal, in a document, or in electronic form by a person relating to particular imported and exported goods;

“**document**” —

- (a) means documents in any form, whether or not signed or initialled or otherwise authenticated by their maker; and
- (b) includes —
 - (i) all forms of written material;
 - (ii) all information recorded, transmitted, or stored by means of tape recorders, computers, or other devices, and all material subsequently derived from information so recorded or stored;
 - (iii) labels, marking and other forms of writing that identify any thing of which they form part or to which they are attached by any means;
 - (iv) books, maps, plans, graphs and drawings; or
 - (v) photographs, films, negatives, tapes and other devices in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment of being reproduced;

“**dutiable goods**” means goods subject to Customs duty under the Customs Act;

“**entered**”, in relation to —

- (a) goods imported, warehoused, exported or put on board an aircraft or ship as stores, means —
 - (i) the acceptance and signature by the Customs officer of a declaration signed by the importer or exporter on the prescribed form, together with the payment to the Customs

- officer by the importer or exporter of all rents and charges due to the Crown in respect of the goods; and
- (ii) in the case of dutiable goods (except on the entry of warehoused goods), the payment by the importer or exporter to the Customs officer of the full duties due thereon, or else, where authorised, the deposit of a sum of money or the giving of Customs security for the duties as provided by law, or, in the case of goods for which security by bond is required on the exportation, putting on board a ship or aircraft of goods as stores or the removal of such goods, the giving of such Customs security; or
- (b) excisable goods imported, warehoused, exported or put on board an aircraft or ship as stores, means —
- (i) the acceptance and signature by the Customs officer of a declaration signed by the importer, exporter or licensed manufacturer on the prescribed form, together with the payment to the Customs officer by the importer, exporter or licensed manufacturer of all rents and charges due to the Crown in respect of the goods; and
 - (ii) in the case of an entry for warehousing of imported goods, the payment by the importer or licensed manufacturer to the Customs officer of the full excise tax due thereon, or else, where permitted, the deposit of a sum of money or the lodging of Customs security with Customs;

“**entry**”, in relation to the importation or exportation of goods, means the provision of the prescribed declaration to Customs;

“**excisable goods**” means goods in respect of which excise tax is imposed by the Excise Tax Act;

“**excise tax**” means the excise tax imposed by the Excise Tax Act;

“**export**” means the transportation of goods beyond the Kingdom;

“**exporter**” in relation to exported goods, means the consignee, owner, agent, buyer or any person holding a beneficial interest in those goods when they leave the Kingdom and includes any person making a declaration under any Customs laws concerning those goods;

“**export goods**” means goods which are to be or have been exported from the Kingdom;

“**goods**” includes excisable goods, documents, tangible personal property, commercial cargo, currency, livestock, motor vehicles, aircraft and ship’s stores, accompanied and unaccompanied baggage, aircraft and ships, including self-transported ships and aircraft;

“**import**” means to bring goods or cause goods to be brought into the Kingdom;

“**importer**” in relation to imported goods, means the consignee, owner, agent, buyer or any person holding a beneficial interest in those goods when they arrive in the Kingdom and includes any person making a declaration under any Customs laws concerning those goods;

“**inter-island aircraft**” means an aircraft that is not engaged in making an international flight;

“**to land**” in relation to the landing of aircraft, includes to land on water;

“**licensed manufacturer**” means a person who is licensed under the Excise Tax Act to manufacture excisable goods;

“**manufacture**” includes all processes in the manufacture of excisable goods including —

- (a) filtering, diluting or blending the excisable goods with other goods;
- (b) putting the excisable goods for the first time into a container in which they might be presented or from which they might be dispensed; and
- (c) labelling or marking, for the first time, of containers filled with the excisable goods;

“**master**” means the person in charge or in command of an aircraft or ship and includes an authorised agent⁸ but does not include a person appointed to pilot ships into or out of any port;

“**occupier,**” includes any person who signs as principal any bond in respect of any building or place used for the deposit of goods for the security or of the duties under the customs laws;

“**owner**” in respect of goods includes a licensed manufacturer of excisable goods and any person other than a Customs officer being or holding himself out to be the owner, importer, exporter, consignee, agent, buyer or person possessed of, or beneficially interested in, or having any control of, or power of disposition over the goods;

“**passenger**” means any person other than a crew member who is or has been on any aircraft or ship involved in an international voyage;

“**personal effects**” means all articles, whether used or new, in the possession of the arriving passenger, but not goods for commercial purposes, in commercial quantities, or for sale;

“**postal article**” means any letter, postcard, newspaper, book, document, pamphlet, journal, sample, pattern, parcel or package or other article arriving in or departing from the Kingdom by post and includes any bag, box or other container in which postal articles are conveyed;

“**prohibited goods**” means respectively any goods the importation or exportation of which is prohibited or restricted by law;

“**ship**” includes a vessel of any description and includes sailing boats, motorboats, or pleasure craft;

“**ship’s stores**” means goods which are intended for consumption on an aircraft or ship and includes fuel, spare parts, and other articles or equipment, whether or not for immediate use;

“**smuggling**” means the importation or exportation of goods with the intention to defraud the revenue and includes the importation or exportation of prohibited or restricted goods;

“**sufferance wharf**” means any place other than an approved place of loading or unloading at which the Minister may and under such conditions as he may direct, allow any goods to be loaded or unloaded;

“**Tax Tribunal**” means the Tax Tribunal established under section 58 of the Revenue Services Administration Act;⁹

“**temporary importation**” means the temporary importation of goods under this Act;

“**time of importation**” means the time that an aircraft or ship carrying imported goods with the intention to discharge cargo, arrives at the first airport or port within the Kingdom;

“**time of exportation**” means the time that an aircraft or ship leaves the territory of the Kingdom with the intention of making an international voyage;

“**uncustomed goods**” means goods liable to customs duty or excise tax but on which customs duty or excise tax has not been paid;

“**warehoused goods**” means goods which are under Customs control and are placed in a Customs warehouse or Crown’s warehouse under the Customs and Excise Management Act¹⁰;

“**warrant**” means an authorisation in the form prescribed under this Act by a Magistrate allowing designated Customs officers to enter and search premises and seize goods and documents in accordance with this Act; and

“**wharf**” means any place appointed as such under this Act.

3 General administration

- (1) The Minister¹¹ shall be responsible for the administration of the Customs laws.
- (2) This Act shall apply to the payment and management of customs duty under the Customs Act and excise tax under the Excise Tax Act.

4 Delegation

The Minister may delegate in writing to any Customs officer any duty, power or function imposed on him by the Customs laws but not this power of delegation.

PART 2 - CUSTOMS CONTROL

5 Goods subject to Customs control

The following goods shall be subject to Customs control until released in accordance with the Customs laws —

- (a) imported goods;
- (b) in transit goods;
- (c) Customs' warehoused goods;
- (d) export goods;
- (e) ship's stores;
- (f) postal articles;
- (g) manufactured excisable goods;
- (h) goods on board an aircraft or ship involved in an international voyage, while that aircraft is in or over Tongan territory or that ship is in Tongan waters; and
- (i) aircraft and ships arriving within the Kingdom.

6 Unauthorised movement

- (1) Subject to this Act, a person shall not move, alter, or interfere in any way with goods that are subject to Customs control.
- (2) A Customs officer may —
 - (a) on receipt of a completed Customs prescribed form, approve the movement of goods under Customs control subject to the conditions imposed in the approval;
 - (b) require the applicant to lodge a Customs security under this Act; and
 - (c) seal goods or their containers subject to Customs control.
- (3) Any person authorised under this section to move goods and who cannot account for those goods when requested by a Customs officer, shall be liable for the duty on those goods.

7 Unauthorised entry - approved place

No person shall enter any place containing customs controlled goods without Customs authorisation¹².

8 Indemnity

- (1) No compensation shall be payable by the Crown to an importer, owner, consignee or licensed manufacturer by reason of any loss or damage of any goods under Customs control, unless such loss or damage is the direct result of the wilful act or negligence of a Customs officer.
- (2) No action shall be brought against the Crown for loss or damage sustained by any goods under Customs control or for any wrong or improper delivery of goods therefrom, unless such loss or damage is the direct result of the wilful act or negligence of a Customs officer.

9 Accommodation at wharves and airports

A wharf owner, airport owner or person responsible for the management of a wharf, airport or approved place at which Customs is located, shall provide to the satisfaction of the Minister for the exclusive use of Customs free of charge —

- (a) suitable office accommodation; and
- (b) secure storage for goods under Customs control.

PART 3 - ARRIVAL AND DEPARTURE OF AIRCRAFT AND SHIPS**10 Procedure on arrival**

- (1) The master of an aircraft or ship arriving in the Kingdom shall bring that aircraft or ship directly to a boarding station nominated by a Customs officer or to a place appointed under section 124 as the case may be.
- (2) A Customs officer shall have the power regarding any aircraft or ship arriving within the Kingdom, to —
 - (a) board;
 - (b) stay on board for any period;
 - (c) have free access to every part;
 - (d) secure any part by such means as he considers necessary;
 - (e) examine any goods, and take account of them;

- (f) require any goods to be unloaded and removed for examination at the expense of the owner; and
 - (g) lock up, seal, mark or otherwise secure any goods on board such aircraft or ship.
- (3) The master of an aircraft or ship which has arrived at its place of disembarkation or unloading shall not move that aircraft or ship to another place within the Kingdom without the prior written approval of a Customs officer.
 - (4) The master of an aircraft or ship which is about to depart from its place of embarkation or loading within the Kingdom shall not move that aircraft or ship without the prior written approval of a Customs officer.
 - (5) In this section, “boarding station” means a place publicly nominated as such by the Minister for the purpose of allowing boarding officers to board aircraft or ships on their arrival in or departure from the Kingdom.

11 Advance notice for aircraft

- (1) The master or his agent of an aircraft arriving in the Kingdom shall unless there are prescribed exceptional circumstances provide to a Customs officer advance notice of arrival in writing or electronically, at least one hour in advance with the time and prescribed place of arrival¹³.
- (2) A master or his agent of an aircraft who without reasonable explanation fails to give advance notice under this section, commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding three years or both.

12 Advance notice for ships

- (1) The master or his agent of a ship arriving in the Kingdom shall unless there are prescribed exceptional circumstances provide to a Customs officer advance notice of arrival in writing or electronically, at least 24 hours in advance about the time and prescribed place of arrival¹⁴.
- (2) A master or his agent of a ship, who without reasonable explanation fails to give advance notice under this section, commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding three years or both.

13 Passenger manifest

- (1) The master of an aircraft or ship arriving into the Kingdom shall provide Customs with a passenger manifest at least one hour prior to the arrival of the aircraft or four hours prior to the arrival of the ship.

- (2) The master of an aircraft or ship departing from the Kingdom shall provide Customs with a passenger manifest at least one hour prior to the departure of the aircraft or four hours prior to the departure of the ship.

14 Embarkation and disembarkation

- (1) No person shall disembark from or embark onto an aircraft or ship arriving or departing on an international voyage into or from the Kingdom at any place other than a place appointed under section 124(1)(a).
- (2) Any unauthorised person disembarking from or embarking onto an aircraft or ship arriving or departing on an international voyage into or from the Kingdom at any place other than a place appointed under section 124(1)(a) commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years, or both.¹⁵

15 Loading and unloading cargo

- (1) The master shall load an aircraft or ship —
- (a) at ports, airports, wharves or sufferance wharves appointed or approved under section 124; and¹⁶
 - (b) during normal Customs working hours,
- unless the permission of a Customs officer is obtained as prescribed to load or unload at a place other than the prescribed place or at a time outside normal Customs working hours.
- (2) A master shall unload an aircraft or ship —
- (a) directly after the arrival of that aircraft or ship;
 - (b) at ports, airports, wharves or sufferance wharves appointed or approved under section 124¹⁷; and
 - (c) during normal Customs working hours,
- unless the permission of a Customs officer is obtained as prescribed to load or unload at a place other than the prescribed place or at a time outside of normal Customs working hours.

16 Discrepancies

The master of an aircraft or ship shall immediately inform a Customs officer in the prescribed form of any discrepancy between the cargo manifest or loading list and the actual goods landed.

17 Unloaded cargo

- (1) Cargo unloaded from an aircraft or ship shall be placed in a Customs area and shall be under Customs control.
- (2) Access to cargo under Customs control shall be as authorised by a Customs officer.
- (3) Goods under Customs control shall only be removed upon the acceptance by Customs of a prescribed Customs entry.
- (4) Imported goods unloaded from any aircraft or ship which had not been cleared to the owner from a Customs area four days from the completion of unloading may be deposited by a Customs officer in a Crown's warehouse or approved place¹⁸.
- (5) The owner shall be liable for all costs, charges, and expenses involved in moving imported goods from the place of unloading to the Crown's warehouse or Customs area including the rent and other charges in connection with the storage of those goods.

18 Sufferance wharf

Goods under Customs control shall not be unloaded from or loaded onto an aircraft or ship at a sufferance wharf unless in accordance with the conditions under section 124.

19 Breaking of bulk

The master of a ship or aircraft shall not break bulk unless a cargo manifest has been provided in accordance with this Part or the written permission of the Minister is first obtained.

20 Master to provide information

- (1) The master of an aircraft or ship or his authorised agent shall as required by a Customs officer —
 - (a) provide all such information relating to the aircraft or ship, its cargo, baggage, crew, passengers and flight or voyage;
 - (b) produce all books and documents in his custody or control relating to the aircraft or ship, its cargo, stores, baggage, crew, passengers and flight or voyage; and
 - (c) before any person disembarks, deliver to the boarding Customs officer, a passenger list, and the name of the master, officers and crew.

- (2) A master of an aircraft or ship or his authorised agent, who without reasonable explanation fails to comply with sub-section (1), commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years or both.

21 Passenger's arrival declaration

- (1) A master of an aircraft or ship arriving in the Kingdom shall provide to passengers a prescribed passenger's declaration form for completion prior to arrival in the Kingdom.
- (2) A passenger shall give a completed prescribed passenger's declaration to a Customs officer or if there is no Customs officer on duty, to the nearest police station on arrival.
- (3) A passenger arriving in the Kingdom shall be deemed not to have legally entered until Customs clearance is obtained.

22 Passenger's departure declaration

- (1) Passengers of an aircraft or ship departing from the Kingdom shall as required complete a prescribed declaration form prior to departure.
- (2) Subject to sub-section (1) a passenger shall give a completed prescribed declaration to a Customs officer on departure¹⁹.

23 Customs clearance

- (1) A Customs officer may grant Customs clearance when —
 - (a) not less than 24 hours have elapsed after an application for the clearance has been made to a Customs officer; and
 - (b) all inward cargo and stores of the ship or aircraft have been duly accounted for and all other requirements of the law in regard to the ship or aircraft and her inward and outward cargo in stores have been duly complied with.
- (2) A Customs officer may refuse Customs clearance when —
 - (a) application is not lodged in the prescribed form;
 - (b) any document required by the Customs officer is not produced;
 - (c) the Customs officer has reasonable grounds to suspect a breach of any Customs laws; or
 - (d) any other law that states that clearance should be refused.²⁰
- (3) The master of an aircraft or ship about to depart on an international voyage shall not leave the Kingdom until Customs clearance is obtained.

- (4) A master who allows an aircraft or ship to depart contrary to this section, commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years or both.

24 Cargo manifests or loading list

- (1) A master of an aircraft or ship arriving into the Kingdom shall provide Customs with a cargo manifest or loading list at least one hour prior to the arrival of the aircraft or four hours prior to the arrival of the ship.
- (2) A master of an aircraft or ship departing from the Kingdom shall provide Customs with a cargo manifest or loading list at least one hour prior to the departure of the aircraft or four hours prior to the departure of the ship.
- (3) A master of an aircraft or ship, who without reasonable explanation fails to provide Customs with a cargo manifest or loading list under this section, commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding three years or both.

25 Export cargo manifest or loading list

The master of a departing aircraft or ship prior to leaving the Kingdom shall —

- (a) provide a completed export cargo manifest or loading list to a Customs officer; and
- (b) not leave the Kingdom until the export cargo manifest or loading list has been approved by a Customs officer.²¹

26 Ship stores

The procedures for loading and unloading of ship's stores onto and from an aircraft and ship may be prescribed by Regulations.

27 Boarding of departing aircraft and ships

- (1) A Customs officer may board at any time, any aircraft or ship about to depart on an international voyage from the Kingdom to verify compliance with this Act.
- (2) The master of an aircraft or ship about to depart on an international voyage shall —
 - (a) assist the Customs officer to embark and disembark; and
 - (b) provide such further assistance as required by the Customs officer.

28 Detention of aircraft and ships

The Minister may detain an aircraft or ship about to depart on an international voyage by not issuing Customs clearance until all Customs requirements, costs, fees or charges imposed by the Customs laws are paid.

29 Clearance in ballast

- (1) A master of a ship in ballast about to depart on an international voyage shall apply in the prescribed form to a Customs officer for clearance.
- (2) The Customs officer shall approve an application under sub-section (1), if such ship does not have any goods, on board except ship's stores.

PART 4 - CLEARANCE OF IMPORTED GOODS

30 Goods entry

- (1) An owner of imported goods shall complete a prescribed Customs entry form for those goods at the first port of unloading.
- (2) An owner of goods may apply in the prescribed form to a Customs officer for authorisation for the goods to be moved to another prescribed port or place other than the first port of unloading where the Customs entry will be completed.
- (3) Authorisation to move goods to another prescribed port or place other than the first port of unloading shall not prevent a Customs officer from examining the imported goods at the first port of unloading.
- (4) Where authorisation is approved under subsection (2), the applicant shall be responsible for —
 - (a) any Customs duty or excise tax liability arising; and
 - (b) complying with the Customs entry requirements at the port of unloading.

30A²² Recovery from importer

- (1) For the purposes of this section —

“**associate**” in relation to an importer, means any other person who acts or may act in accordance with the directions, requests, suggestions or wishes of the importer, and such person shall be an associate of the importer.
- (2) Where customs duty, excise tax or any penalty imposed under Part 12 Division 1 of this Act remains payable by an importer in respect of a particular importation, the importer or his associate shall pay the amount outstanding prior to the Customs release of that importer's or his associate's subsequent importations.

31 Entry lodgement

A Customs entry in the form prescribed shall be lodged with the Customs officer for —

- (a) immediate clearance of goods for use;
- (b) transshipment goods;
- (c) Customs warehoused goods;
- (d) warehoused goods cleared for use;
- (e) duty-free stores;
- (f) temporary importation;
- (g) re-importation or re-exportation;
- (h) exportation.

32 Entry Clearance fee

A prescribed Customs entry clearance fee shall be charged for every Customs entry form lodged with Customs.

33 Re-importation

- (1) Goods exported from the Kingdom and later re-imported shall be subject to Customs duty as follows —
 - (a) if the goods have not been subject to any process abroad, the goods shall be exempt from any further duty or excise tax when re-imported; or
 - (b) if the goods have been subject to any process abroad, the customs value of those goods will be the cost of the repair, maintenance or value added of the goods.
- (2) Sub-section (1) may be conditional on the person exporting the goods for subsequent re-importation —
 - (a) giving notice in writing to Customs; and
 - (b) producing such goods for identification to a Customs officer at the port, place of shipment or post office.

34 Samples

A Customs officer may on the import, export or manufacture of any goods —

- (a) take samples of the goods for such purpose as the Minister may deem necessary; and
- (b) dispose of and account for such samples in such manner as the Minister may direct.

PART 5 - EXPORTATION OF GOODS BY AIR AND SEA

35 Export goods declaration

Goods for export shall not be loaded onto an aircraft or ship unless the owner of the goods has provided to a Customs officer at the port or place of loading —

- (a) a completed prescribed export goods entry;
- (b) the prescribed fee;
- (c) where required, relevant commercial documentation relating to the export; and
- (d) export duty, as imposed by any Customs laws.

36 Dealing with export goods

An export goods declaration approved by a Customs officer shall be the authority to deal with those goods.

37 Short loading

If goods specified in the export goods entry are not loaded on the aircraft or ship, the exporter shall notify a Customs officer within 24 hours after the departure of the aircraft or ship.

38 Export of imported goods

An importer who wishes to export imported goods that do not conform to the importer's contract for the specification of those goods or for any other reason may apply to the Minister to export the imported goods.

PART 6 - IMPORT AND EXPORT BY POST

39 Postal articles

Postal articles shall be entered in accordance with the Regulations.

40 Opening postal articles

Postal articles arriving in the Kingdom from overseas or to be exported may be opened by a Customs officer in the presence of an authorised postal officer if he reasonably suspects that a provision of the Customs laws have been breached..

PART 7 - TEMPORARY IMPORTATIONS AND PROHIBITED AND RESTRICTED IMPORTS AND EXPORTS

41 Conditional entry

The Minister may, upon written application, exempt from customs duty or excise tax, goods which are imported for temporary use only.

42 Non compliance

If any goods imported under section 41 are not exported within four months of the date of such goods being entered, then the importer or person in possession shall pay to a Customs officer the full duty payable on such goods or the goods shall be seized and forfeited.

43 Extension of time

The Minister may upon a written application approve extension of the four months time limit for temporary importation but such extension shall not exceed 12 months in total.

44 Security

The Minister may within the period allowed under this Part require security to be lodged by the importer for temporary imported goods which shall be —

- (a) refunded if the goods are exported; or
- (b) forfeited if the goods are not exported.

45 Prohibitions and restrictions²³

The Minister may, with the approval of Cabinet by Order prohibit or restrict the importation or exportation of goods into or from the Kingdom.

PART 8 - INTER-ISLAND AND COASTAL TRADE

46 Master to keep cargo manifest and register

- (1) The master of any inter-island aircraft or coastal ship with goods under Customs control on board shall keep or cause to be kept a cargo manifest and register, stating —

- (a) the name of the aircraft or ship;
 - (b) the master and the port to which the aircraft or ship belongs;
 - (c) the port or place to which it is bound and each flight or voyage; and
 - (d) such other matters as prescribed by Regulations.
- (2) The master of an inter-island aircraft or coastal ship to which subsection (1) applies, shall upon requested produce the cargo manifest and register for inspection by a Customs officer.
- (3) A Customs officer inspecting a cargo manifest and register under this section may make any note thereon and, if upon examination, any cargo —
- (a) is found to contain imported goods not entered on the manifest or register, such cargo may be forfeited; or
 - (b) entered on the cargo manifest or register and is unable to be located, the master of the inter-island aircraft or coastal ship shall be liable for the Customs duty of such cargo.

47 Master responsible

- (1) Goods under Customs control carried on an inter-island aircraft or coastal ship shall remain under Customs control until the master obtains authorisation from a Customs officer to unload the goods at the final port of unloading.
- (2) A master who unloads cargo without obtaining Customs authorisation under this section, commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years or both.

48 Approval to leave

A Customs officer shall issue a Customs clearance to a master of an inter-island aircraft or coastal ship that has unloaded Customs controlled goods, to leave that port or place, if the aircraft or ship still has goods under Customs control on board.

49 Search of inter-island aircraft and coastal ships

- (1) If any Customs officer has reasonable cause to suspect that any dutiable, uncustomed, restricted or forfeited goods are on board any inter-island aircraft or coastal ship the officer may board and search such aircraft or ship.

- (2) The master of an inter-island aircraft or coastal ship shall provide all such information and documentation relating to the aircraft or ship and its cargo, passengers and crew as required by the Customs officer.

PART 9 - CUSTOMS SECURITIES

50 Minister' s powers

- (1) The Minister may take securities for compliance with the Customs laws.
- (2) The Minister may —
 - (a) allow a Customs security to be provided by a bond, guarantee, or cash or by a combination of these; and
 - (b) impose such conditions as he deems necessary.
- (3) Securities collected under this Part shall be cancelled or returned by Customs promptly once the Minister is satisfied that the security is no longer required for the purpose of this Act.

51 Release of goods

Goods subject to a Customs security shall not be released from Customs control until the Customs security is provided.

52 Forfeiture of security

A Customs security collected under this Part shall be forfeited to the Crown if any condition imposed is not complied with.

PART 10 - WAREHOUSES AND APPROVED PLACES

53 Appointment of Crown's warehouse

The Minister may specify in writing a place to be a Crown's warehouse.

54 Application for licence

The Minister may, upon an application in the prescribed form, grant a licence to operate a Customs warehouse.

55 Grant or refusal

- (1) A licence may be granted under section 54 on —
 - (a) such terms, conditions or restrictions as the Minister considers appropriate;
 - (b) payment by the licensee of the prescribed annual licence fee; and
 - (c) provision of security in the amount determined by the Minister under Part 9.
- (2) The Minister may refuse the application where he is of the opinion that it is not in the public interest.

56 Revocation

- (1) The Minister may at any time revoke a Customs warehouse licence where the licensee does not comply with the conditions of the licence.
- (2) Where a Customs warehouse licence is revoked under sub-section (1) the following shall be forfeited to the Crown —
 - (a) the security determined by the Minister under Part 9; and
 - (b) all warehoused goods on which Customs duty or excise tax has not been paid, remaining in the Customs warehouse seven days after the date of revocation.

57 Crown responsibility

The Crown shall not be responsible for any loss or damage to goods stored in a Crown's or Customs' warehouse unless the damage is due to negligence by Customs.

58 Assistance to Customs

- (1) The licensee of a Customs warehouse or the owner or occupier of an approved place shall provide —
 - (a) all reasonable assistance to Customs in performing any examination or other activity required by this Act; and
 - (b) facilities reasonably necessary to perform Customs functions.
- (2) Any person who fails to provide reasonable assistance to Customs required under this section commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years, or both.

59 Licensee's Liability

The licensee of a Customs warehouse, owner or occupier of an approved place shall be liable for any customs duty or excise tax of any goods under customs control which he cannot account for.

60 Unauthorised movement

Goods under Customs control which are stored in a Crown's or Custom's warehouse, customs area or an approved place shall not be delivered, altered or interfered with without the written permission of a Customs officer²⁴.

61 Customs auctions

Goods remaining in a Crown's warehouse or approved place for a period of six weeks from the date of completion of unloading, may be auctioned by Customs as prescribed in the Regulations and the proceeds paid to general revenue.

62 Damaged goods not warehoused

Damaged and pillaged goods shall not be warehoused and goods in inadequate packaging shall not be warehoused unless they are re-packaged adequately.

63 Obligation to warehouse goods

- (1) Any goods imported into the Kingdom, that are not entered within four working days from the date of completion of unloading, except goods under Customs control placed in a Customs warehouse or approved place, shall be deposited in a Crown's warehouse or approved place.
- (2) Any goods to which sub-section (1) applies shall be subject to such rent and other charges as prescribed by Regulations.

PART 11 - POWERS OF OFFICERS

64 Examine all goods

- (1) A Customs officer may examine goods subject to Customs control at any time and the expenses for that examination shall be borne by the importer.
- (2) A Customs officer may require the owner of goods to be present at the time of a customs examination.
- (3) If the owner of goods subject to customs control cannot be found or ascertained, a Customs officer may examine those goods at any time.

65 Unload goods

A Customs officer may order the master of any aircraft or ship which has been detained under this Act, to unload goods suspected of being smuggled or are customs controlled goods at any place for further examination.

66 Power to search

- (1) A Customs officer who has reasonable grounds to suspect a breach of any Customs law, shall have the power to access and search any —
 - (a) part of a port, wharf, airport, or any other customs area;
 - (b) vehicle; or
 - (c) goods found at that place or in such vehicle.
- (2) A Customs officer exercising powers under this section shall have the authority to enter any building, vehicle, place, or shipping container which is locked and where the keys are not provided.

67 Boarding

Where a Customs, designated police or Tonga Defence Service officer has reasonable grounds to believe that there are unauthorised goods or persons on board any aircraft or ship, those officers may —

- (a) stop;
- (b) board;
- (c) search; or
- (d) examine,

such aircraft or ship in the Kingdom.

68 Suitable accommodation

Where a Customs, designated Police officer or Tonga Defence Service officer boards and is required to remain on board that aircraft or ship, the master shall provide suitable accommodation and food.

69 Board, search and detain

- (1) A Customs officer may, without warrant, stop, board and search any aircraft, ship, motor vehicle or goods within, to establish that there has been proper compliance with the Customs laws.
- (2) If as a result of subsection (1), it is established that there has been a breach of the Customs laws, such Customs officer may detain the aircraft, ship,

motor vehicle or goods, and issue a prescribed detention notice to the master or owner as the case may be.

70 Customs mooring

A Customs officer in charge of a Customs vessel may take that vessel to or moor that vessel at any place in the Kingdom for the purposes of this Act.

71 Patrol and pass

Any Customs officer when exercising powers under this Act may patrol and pass freely over any part of the Kingdom.

72 Detain persons

Where a person refuses to answer questions about goods under Customs control that are reasonably suspected of being smuggled, the Customs officer may detain that person for the purposes of establishing identity and if necessary convey that person to the nearest police station.

73 Searching persons

- (1) A Customs officer, designated Police officer or officer of the Tonga Defence Service may cause a person to be detained and searched if the officer has reasonable grounds to believe that the person has concealed on or about his person —
 - (a) any dutiable, uncustomed, prohibited, restricted or forfeited goods;
 - (b) evidence including documents relating to any such goods; or
 - (c) any further thing that is or might be evidence of non-compliance with the customs laws.
- (2) Where a Customs officer, designated Police officer or officer of the Tonga Defence Service has reasonable grounds to believe that a person has concealed goods within his body in contravention of customs laws, the officer may request a full body or cavity search of that person by a registered and authorised medical officer.
- (3) A person shall be searched only by a Customs officer of the same gender.

74 Request of information

- (1) Where reasonable grounds exist, a Customs officer may question any person about any matter in the performance of his duties under customs laws, and may include a request to produce any documents.

- (2) Any person to whom sub-section (1) applies shall provide such information and produce such documents.

75 Warrants

- (1) A Customs officer shall apply to a Magistrate for a warrant in the prescribed form to enter any place, ship, aircraft or warehouse to seize —
- (a) goods which he has reasonable grounds to suspect are —
 - (i) uncustomed; or
 - (ii) prohibited or restricted; or
 - (b) any books or documents relating to such goods.
- (2) A warrant issued under this section shall expire 14 days after it has been issued.

76 Arrest

Any Customs officer may arrest and detain any person found committing an offence, or is suspected on reasonable grounds of having committed an offence against customs laws.

77 Obstruction

A Customs officer, designated Police officer or officer of the Tonga Defence Service may, without warrant, arrest any person where that person is involved in obstructing any such officer in the exercise of his duties under customs laws.

78 Notice to produce

- (1) The Minister may, by notice in writing, require a person, as and when specified in the notice —
- (a) to produce for inspection by a specified Customs officer, documents or records that the Minister considers necessary to facilitate —
 - (i) an investigation under the Customs laws;
 - (ii) an audit under this Act; or
 - (iii) the recovery of a debt due and payable to the Crown under the Customs laws; and
 - (b) allow the Customs officer to take extracts from, or make copies of, documents or records of the kind referred to in paragraph (a).

- (2) In this section, person includes an officer employed in, or in connection with, a government department, corporation, or local authority, or employed in or in connection with a bank.

79 Copies of documents

Where a Customs officer considers that a document is relevant for the proper administration of the Customs laws, a copy or extract of that document shall be taken and retained by Customs.

80 Post Clearance Audit

- (1) A Customs officer may at all reasonable times enter, with the consent of the occupier, any premises or place where records are kept and audit or examine those records to verify that that person is complying fully with the Customs laws.
- (2) Notwithstanding subsection (1), a Customs officer shall not enter any premises except with the consent of an occupier or owner thereof or pursuant to a warrant issued under this Act.
- (3) A Customs officer shall provide prior notice to an occupier of the premises before entering such premises to conduct a customs audit.
- (4) A Customs officer entering premises or exercising any compliance powers under this section shall produce an identity card to the occupier.

81 Translation of records

The Minister may, where any document required by this Act is not in English or Tongan, cause a translation to be done of such document, at the owner's expense, by a translator approved by the Minister.

PART 12 - CUSTOMS PENALTIES AND OFFENCES

DIVISION 1 - ADMINISTRATIVE PENALTIES

82 False or misleading statement or declaration

- (1) Any person who —
 - (a) makes a statement or declaration to a Customs officer that is false or misleading in a material particular; or
 - (b) omits from a statement or declaration made to a Customs officer any matter or thing without which the statement is misleading in a material particular,

shall be liable to an administrative penalty treble the value of the goods to which the false or misleading statement or declaration relates to or \$1,000 whichever is the greater amount²⁵.

(2)²⁶ For the purposes of this section, “misleading in a material particular” means that the statement or declaration contains an error or omission in relation to any of the following matters –

- (a) the identity of the overseas supplier;
- (b) the identity of the importer;
- (c) the identity of the person making the entry or the declaration;
- (d) the identification of the importing/exporting craft or its voyage number;
- (e) the Bill of Lading, Air Waybill, or container identification details;
- (f) the supplier’s invoice number and date, invoice details and invoice amount;
- (g) any permit number or code;
- (h) the tariff item in which the goods are classified;
- (i) description of goods;
- (j) the statistical unit and quantity of the goods;
- (k) the country of currency in which the goods are traded;
- (l) the country of origin of the goods;
- (m) the value for duty expressed in the currency in which the goods are traded;
- (n) the value for duty expressed in Tongan pa’anga and exchange rate used to convert the foreign currency into Tongan currency;
- (o) the country for which the goods have been exported;
- (p) the sum of the cost insurance and freight (CIF) value;
- (q) the working slip showing how the CIF value or duty has been calculated;
- (r) details of terms of trade;
- (s) details of commissions and discounts (including any special discounts);
- (t) details of any payments made but not invoiced, any additional payments to be made but not invoiced, any additional payments to be made or remittances of proceeds that will be made; or
- (u) details of duties, taxes, fees and charges payable.

(3) Notwithstanding anything in this Act, if it is proven to the satisfaction of the Commissioner that the importer or exporter had provided the correct information to the customs broker but that the declaration was false or misleading in a material particular, the penalty shall be payable by the customs broker.

83 Failure to submit

Any person who fails to submit any declaration or document required by Customs laws shall be liable to an administrative penalty of \$100 and an additional \$10 for each day of default.

84 Dishonoured cheques

Any person who presents a cheque to a Customs officer in payment of customs duty or excise tax that is not honoured by the bank unless the failure to do so is an error on the part of the bank, shall be liable to an administrative penalty of 100% of the amount stated on the cheque or \$1,000 whichever is less and an additional \$10 for each day of default²⁷.

85 Failure to account

- (1) An owner²⁸ who fails to account for goods under customs control shall be in addition to being liable for customs duty, excise tax, seizure and forfeiture of the goods, be liable to an administrative penalty of \$1,000 and an additional \$10 for each day of default.
- (2) This section shall not apply to Customs officers.

86 Failure to deal

Any person who fails to deal with goods in accordance with a customs declaration or a Customs authorisation shall, in addition to committing an offence and being liable for customs duty, excise tax, seizure and forfeiture of the goods, be liable to an administrative penalty of \$100 and an additional \$10 for each day of default.

87 Enter customs area

Any person who without reasonable cause enters a place where there are goods under customs control shall be liable to an administrative penalty of \$500.

88 Miscellaneous

- (1) Any penalty shall be calculated separately with respect to each section in this Division.
- (2) The Minister shall serve notice of the penalty in the prescribed form on the person subject to the penalty.
- (3) Any person to whom a notice of penalty is issued under this Act, shall not be liable to the corresponding criminal offence for the same action.
- (4) The Minister may, upon application or of his own motion, remit in whole or in part any penalty payable by a person.²⁹

DIVISION 2 - OFFENCES**89 Acceptance of Customs controlled goods**

A master of an inter-island aircraft or coastal ship who knowingly accepts on board Customs controlled goods or leaves a port or place contrary to this Act, commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding three years or both.

90 Rescue or destruction of goods

Any person who wilfully —

- (a) rescues any goods —
 - (i) to avoid seizure; or
 - (ii) after seizure, or
- (b) breaks or destroys any goods or documents relating to the seizure,

commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years, or both.

91 Obstruction of customs officers

Any person who wilfully obstructs a Customs officer exercising powers under this Act commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years, or both.

92 Smuggle

(1) Any person who knowingly —

- (a) smuggles;
- (b) unlawfully conveys any smuggled goods; or
- (c) has in his possession any smuggled goods,

commits an offence and shall be liable upon conviction to a fine of not exceeding treble the value of the goods or \$100,000 whichever is the greater, or to a term of imprisonment not exceeding 10 years, or both.

(2) Any person who knowingly offers for sale smuggled or unlawfully imported goods whether or not customs duty or excise tax was payable on those goods commits an offence and shall be liable upon conviction to a fine of not exceeding treble the value of the goods or \$100,000 whichever is the greater, or to a term of imprisonment not exceeding 10 years, or both.

93A False or misleading statement

Any person who knowingly makes a false or misleading statement or omits from such statement any material particular commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years, or both.

93B³⁰ Any person who knowingly makes a declaration that is false or misleading regarding the country of origin of any imported goods shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years or both.

94 Counterfeit

- (1) Any person who knowingly imports counterfeit goods, documents, seals or marks or has in his possession any such goods, for the purpose of avoiding or evading any law of the Kingdom commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years, or both.
- (2) Any person who knowingly offers for sale imported counterfeit goods, documents, seals or marks whether or not duty was payable on those goods commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years, or both.
- (3) Any person who knowingly receives any imported counterfeit goods, commits an offence and shall be liable upon conviction to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding four years, or both.

95 Prohibited or restricted imports or exports

- (1) Any person who imports or exports or causes to be imported or exported any prohibited goods or who unlawfully imports or exports restricted goods commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years, or both.
- (2) Any person who knowingly offers for sale any prohibited or unlawfully imported restricted goods on those goods commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years, or both.
- (3) Any person who receives any goods knowing or believing them to be prohibited or unlawfully imported restricted goods commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years, or both.

96 Customs brokers

- (1) Any person holding himself out to be a Customs broker where he is not licensed to be a Customs broker commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years, or both.
- (2) Any Customs broker who does not immediately pay customs duty to the Minister where there is a legal obligation on him to do so commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years, or both.
- (3) Any Customs broker who aids, abets, advises or assists in any way an importer or exporter to commit an offence under this Act commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years, or both.

97 Failure to make declaration

Any person who fails to make declarations required under the Customs laws commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years, or both.

98 Impersonation

Any person impersonating a Customs officer commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years, or both.

99 Failure to account

Any person who fails to account, when obliged to do so, for goods under customs control or who fails to retain or maintain documents in accordance with this Act³¹ commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years, or both.

100 Failure to deal

Any person who fails to deal with goods in accordance with a customs declaration, approved customs form or authorisation commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years, or both.

101 Unauthorised movement

- (1) Any person involved in any unauthorised movement, alteration or interference with goods which are subject to customs control commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years, or both.
- (2) Any person found guilty under subsection (1) shall be personally liable for the costs incurred by the Government in correcting the consequences of that act.

102 Enter Customs control area

Any unauthorised person entering a place where there are goods under customs control commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years, or both.

103 Unauthorised disembarkation or boarding

- (1) Any unauthorised person who leaves or boards an aircraft or ship having arrived in the Kingdom on an international voyage commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years, or both.
- (2) Any master who knowingly allows an unauthorised person to leave or board an aircraft or ship having arrived in the Kingdom on an international voyage commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years, or both.

104 Unauthorised loading and unloading

The master of any aircraft or ship who, contrary to this Act, allows any unauthorised loading or unloading of goods subject to Customs control onto or from that aircraft or ship commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years, or both.

105 Unauthorised movement of aircraft or ship

The master of any aircraft or ship who, contrary to this Act moves any aircraft or ship that has Customs controlled goods on board, without the authority of a Customs officer commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years, or both.

106 Corruption

Any Customs officer who unlawfully requests or accepts directly or indirectly any money, goods, or services —

- (a) in exchange for that officer performing any customs services;
- (b) in exchange for the non-performance of that officer's official duties; or
- (c) otherwise in connection with the officer's official duties,

commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years, or both.

PART 13 - SEIZURE AND FORFEITURE**107 Forfeiture of aircraft and ships**

The Chief Executive Officer³² shall have the power to order that the following ships and aircraft shall be liable to forfeiture; an —

- (a) aircraft or ship used in smuggling;
- (b) aircraft or ship where the master has refused to allow that aircraft or ship to be boarded by Customs;
- (c) aircraft or ship from which goods are thrown overboard or destroyed to prevent detaining and possible seizure by Customs;
- (d) aircraft or ship which is found to be fitted in any way for the purpose of smuggling;
- (e) aircraft or ship where the Chief Executive Officer is satisfied that the master cannot account for goods under Customs control imported on that aircraft or ship; or
- (f) abandoned aircraft or ship.

108 Goods forfeited

The Chief Executive Officer³³ shall have the power to order that the following goods shall be liable to forfeiture —

- (a) goods which a Customs officer suspects are smuggled;
- (b) bulk goods where the bulk is broken without authorisation;
- (c) goods under the control of Customs that have been moved, altered, or interfered with, without authorisation;
- (d) goods which are required by this Act to be dealt with in a particular way and are dealt with contrary to that authorisation;
- (e) goods used in smuggling;

- (f) counterfeit goods;
- (g) Customs controlled goods that are not included on the cargo manifest or accounted for to the satisfaction of Customs;
- (h) packages which have goods concealed which are not declared or are packed so as to deceive Customs;
- (i) dutiable goods found in the possession of or in the baggage of a passenger which has not been declared in accordance with this Act;
- (j) ship's stores which do not comply with this Act;
- (k) goods under Customs control which are not accounted for under this Act;
- (l) goods declared by the Director of Health to be unfit for human consumption;
- (m) uncustomed goods found in any place; or
- (n) goods in contravention of any other Act.

109 Customs, Police and officers of Defence may seize

Any goods liable to forfeiture under sections 107 or 108 may be seized by —

- (a) a Customs officer; or
- (b) any Police or Tonga Defence Services officer who shall as soon as practicable, provide details of the seizure to the Minister.

110 Seizure notice

- (1) The Minister shall, within 14 days of any seizure, give a prescribed seizure notice to the owner of seized goods or, if the owner cannot be identified, the person from whom the goods were seized.
- (2) Where the goods were seized and the owner is unknown, the notice of seizure shall be by public notice within 14 days after seizure.

111 Secure goods

Seized goods shall be secured and taken immediately by the Customs officer to the Crown's warehouse.

112 Disposing of seized goods

- (1) The owner of any seized goods may within one month from the date of the seizure notice apply to Customs on the prescribed form for the return of those goods.
- (2) The Minister may grant the return of the seized goods if the owner has —

- (a) lodged the prescribed form;
- (b) provided reasonable grounds for the return of the goods; and
- (c) paid any outstanding duty, charges, fees or penalty imposed under Part 12, Division 1 of this Act,

but may otherwise refuse to return the seized goods and such goods shall be deemed forfeited to the Crown.

- (3) The Minister shall sell or otherwise dispose of the goods without further notice where an application has been refused unless the owner has commenced legal proceedings for the return of the seized goods within two months after the date of being notified of the refusal.
- (4) The Minister may dispose of seized goods where no application for the return of seized goods is made.

113 Title

Where goods are forfeited to the Crown, title in those goods transfers absolutely to the Crown.

PART 14 - LEGAL PROCEEDINGS

114 Repayment of short payment

Where any Customs duty or excise tax has been short levied or erroneously refunded, the person who should have paid the amount short levied, or to whom the refund has erroneously been made, shall pay the amount short levied or repay the amount erroneously refunded on demand being made by the Minister.

115 Payment under protest

- (1) Where the amount of Customs duty or excise tax payable is disputed, a person shall pay the disputed amount under protest.
- (2) Where a disputed amount is paid under this section, the person who paid that amount may —
 - (a) request in writing the grounds upon which the Minister may reconsider the amount of duty or excise tax payable in which case the Minister shall provide a written response within 28 days of that request; and
 - (b) lodge an appeal against the Minister's decision under paragraph (a) within 30 days to the Tax Tribunal.

116 Limitation

Proceedings under any Customs law relating to an offence may be commenced only within seven years after the date of the offence.

117 Smuggling prosecutions

The onus of proof shall lie with the accused in any smuggling or counterfeit³⁴ prosecution.

118 Offences by Companies

- (1) Where an offence under any Customs law is committed by a company, every person who, at the time the offence was committed was —
 - (a) a director, principal officer, general manager, secretary, or other similar officer of the company; or
 - (b) acting or purporting to act in that capacity,shall be treated as having committed the offence.
- (2) Subsection (1) shall not apply to a person where —
 - (a) the offence was committed without that person's consent or knowledge; and
 - (b) the person having regard to the nature of the person's functions and all the circumstances has exercised reasonable diligence to prevent the commission of the offence.

119 Retention period

- (1) A person involved directly or indirectly in the importation or exportation of goods shall retain all related commercial documentation for seven years from the date of entry.
- (2) Documents retained under this section shall be produced upon request of a Customs officer.

PART 15 - CUSTOMS BROKERS

120 Application

- (1) The Minister may —
 - (a) upon application in the prescribed form, licence any person to act as a Customs broker and represent an owner of goods for the purposes of the Customs laws; and

- (b) at any time revoke a customs broker's licence for non-compliance with the terms of the licence.
- (2) A Customs broker shall —
- (a) provide security under Part 9 as determined by the Minister; and
 - (b) pay a prescribed annual fee for a Customs broker's licence.

121 Authorisation

An importer or exporter of goods shall provide a written authorisation to Customs before a Customs broker may represent that person.

122 Deeming

(1) Where a customs broker makes a declaration required under this Act to Customs that declaration shall be treated as if it were made by the owner.

(2) Notwithstanding subsection (1), where a false or misleading declaration has been made to Customs and it is proven to the Chief Commissioner that the fault was not that of the owner but by the customs broker, the declaration shall be treated as made by the customs broker.³⁵

123 Companies

A person shall not be required to hold a customs broker's licence if he is —

- (a) an employee of a company, firm or business which is a licensed Customs broker under this Act; and
- (b) is authorised by the company firm or business to transact customs business with Customs in respect of its clients or own goods.

PART 16 - ADMINISTRATION

124 Appointment of ports and airports

- (1) The Minister may by notice published in the Gazette —
- (a) appoint, name, and fix the limits of ports, airports, wharves, sufferance wharves, boarding stations or Customs areas for the purposes of the Customs laws; or
 - (b) revoke or vary any such appointment or any appointment made prior to the commencement of this Act.
- (2) The Minister may approve or revoke in writing places fixed for —

- (a) in an emergency the loading or unloading of goods and the embarkation or disembarkation of passengers; or
- (b) the storage, examination, or security of goods under Customs control.

125 Confidentiality

- (1) A Customs officer shall not communicate or allow to be communicated, any information obtained under the Customs laws, to any person not legally entitled to such information.
- (2) Any person who contravenes this section commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 10 years, or both.
- (3) Nothing in this section shall prevent the disclosure of any document or information to –
 - (a) the Tax Tribunal or Supreme Court in relation to proceedings under this Act;
 - (b) any person in the service of Government where such disclosure is necessary for the performance of the person's official duties;
 - (c) the Auditor General or any person authorised by the Auditor General where such disclosure is necessary for the performance of official duties;
 - (d) the Governor of the National Reserve Bank of Tonga or any person authorised by the Governor where such disclosure is necessary for the performance of official duties;
 - (e) international customs agencies with which Customs has an agreement to the extent permitted under that agreement.³⁶

126 Appeal

Any person may appeal to the Tax Tribunal within 30 days of receipt of a decision of the Minister under Customs laws.

127 Powers of Police and the Tonga Defence Service

- (1) Customs officers may seek assistance from Police or Tonga Defence Service officers in the performance of their duties.
- (2) Where assistance is rendered under subsection (1), such officers shall be authorised by the Minister to have the same powers and authority as Customs officers.

128 Payable to the Crown

All monies collected by Customs shall be paid into the public fund.

128A³⁷ Payment by instalment

- (1) An importer may apply in writing to the Chief Commissioner to pay any customs duty, excise tax or penalty due in instalments.
- (2) The Chief Commissioner shall serve the importer with a written notice of his decision.
- (3) Where an importer is permitted to pay the customs duty, excise tax or penalty by instalments and the importer defaults in payment of any instalment, the whole balance of the amount owing shall become immediately payable.
- (4) Notwithstanding the above, any amount of customs duty, excise tax or penalty due shall be paid in full before subsequent importations of the importer is released from Customs.

128B³⁸ Conditions of exemptions

An importer who is granted an exemption from customs duty or excise tax under the Customs laws shall be liable for the customs duty or excise tax payable at the date of importation if the conditions for which the goods were exempted are not observed, or if the goods are at any time within 5 years of the date of importation used for any other purpose or sold or transferred to any other person.

129 Regulations

- (1) The Minister may, with the consent of Cabinet make regulations required for the administration of this Act, including all entry requirements, loading and unloading of inter-island aircraft and coastal ships, warehousing procedures, customs brokers, drawback procedures and forms and fees.
- (2) Notwithstanding section 10 of the Interpretation Act, Regulations made under this Act may prescribe penalties for any offence not exceeding a fine of \$10,000 or imprisonment for a period not exceeding three years, or both.

130 Agents

Owners of aircraft and ships not registered in Tonga which are obliged to comply with the Customs laws, shall, unless exempted from this requirement by the Minister, appoint agents for the purposes of the Customs laws.

131 Savings

- (1) All appointments made under the Customs and Excise Act (CAP. 67 of 1988 Revised Edition) and existing on the date this Act comes into force shall be treated as appointments made under this Act.
- (2) Any reference in any law in the Kingdom to the Customs and Excise Act (CAP. 67 of 1988 Revised Edition) shall be deemed to be a reference, so far as the context applies, to this Act.

ENDNOTES

- ¹ Act 4 of 2007
- ² G. 4/2008
- ³ Amended by Act 3 of 2010
- ⁴ Amended by Act 3 of 2010
- ⁵ Amended by Act 8 of 2012
- ⁶ Cap. 26.03
- ⁷ Cap. 26.07
- ⁸ Amended by Act 8 of 2012
- ⁹ Cap 26.14
- ¹⁰ Cap. 26.04
- ¹¹ Change from CCOR to Minister Act 5 2012
- ¹² Amended by Act 8 of 2012
- ¹³ Amended by Act 8 of 2012
- ¹⁴ Amended by Act 8 of 2012
- ¹⁵ Amended by Act 8 of 2012
- ¹⁶ Amended by Act 8 of 2012
- ¹⁷ Amended by Act 8 of 2012
- ¹⁸ Amended by Act 8 of 2012
- ¹⁹ Amended by Act 8 of 2012
- ²⁰ Amended by Act 8 of 2012
- ²¹ Amended by Act 8 of 2012
- ²² New section inserted by Act 8 of 2012
- ²³ Amended by Act 42 of 2010
- ²⁴ Amended by Act 8 of 2012
- ²⁵ Amended by Act 8 of 2012
- ²⁶ New section inserted by Act 8 of 2012
- ²⁷ Amended by Act 8 of 2012
- ²⁸ Amended by Act 8 of 2012
- ²⁹ Amended by Act 8 of 2012
- ³⁰ Amended by Act 8 of 2012
- ³¹ Amended by Act 8 of 2012

³² Amended by Act 8 of 2012

³³ Amended by Act 8 of 2012

³⁴ Amended by Act 8 of 2012

³⁵ New subsection inserted by Act 8 of 2012

³⁶ New subsection inserted by Act 8 of 2012

³⁷ New section inserted by Act 8 of 2012

³⁸ New section inserted by Act 8 of 2012