

CHAPTER 422

CUSTOMS (CONTROL AND MANAGEMENT) ACT

• Act • Subsidiary Legislation •

ACT

Act No. 14 of 1999

Amended by

SRO 33 of 2001

SRO 30 of 2003

Act No. 4 of 2007

Act No. 33 of 2007

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CHAPTER 422

CUSTOMS (CONTROL AND MANAGEMENT) ACT

An Act to make better provisions and consolidate the law relating to Customs.

Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines, and by the authority of the same, as follows.

[Act No. 14 of 1999 amended by SRO 33 of 2001, SRO 30 of 2003, Act No. 4 of 2007, Act No. 33 of 2007.]

[Date of commencement: 13th December, 1999.]

PART I

Preliminary

1. Short title, commencement, and application

(1) This Act may be cited as the Customs (Control and Management) Act, 1999, and shall come into operation on such date as the Governor-General may by Proclamation appoint.

(2) Parts IV, V and VI shall not apply—

- (a) to any vessel or aircraft owned by or in the service of the Government of the State when being used for the purpose of customs, police or coast guard services; and
- (b) to any vessel or aircraft owned by or in the service of the government of any other country where the Comptroller so directs for such periods and subject to such conditions and restrictions as he may see fit to impose.

2. Interpretation

In this Act, unless the context otherwise requires—

“agent” means any person appointed under section 17;

“aircraft” includes any balloon (whether captive or free), kite, glider, airship, helicopter or other flying machine;

“airport” means any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft;

“approved wharf” means any place approved by the Comptroller as such under section 11(1);

“assigned matter” means any matter in relation to which the Comptroller is for the time being required in pursuance of any enactment to perform any duty;

“boarding station” means any place directed to be a boarding station under section 10(2);

“burden”, in relation to the weight of a vessel, means the net registered tonnage;

“cargo” means any goods, other than mail, stores, crew member’s effects and passenger’s accompanied baggage, carried by vessel or aircraft for a consideration;

“claimant”, in relation to proceedings for forfeiture, means a person claiming that anything to be forfeited is not liable to forfeiture;

“coasting aircraft”, “coasting vessel” and “coasting trade” have the meaning given to them by section 40(1);

“commander”, in relation to an aircraft, includes any person other than the commander in charge or taking charge or command of that aircraft;

“common market” means the Caribbean Common Market;

“Community” means the CARICOM community;

“Comptroller” means the Comptroller of Customs referred to under section 4;

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

“crew” means any person employed on board any vessel or aircraft during a voyage or flight, whether or not such a person is on any crew list;

“customs airport” means any place declared as such under section 12;

“Customs Appeal Commissioner” means a person appointed to be a Customs Appeal Commissioner under section 132;

“customs area” means any place approved as such under section 14(1);

“customs enactment” means this Act, any subsidiary legislation made thereunder, and any other enactment which relates to an assigned matter;

“customs port” means a port so declared by the Minister under section 10;

“customs warehouse” means any place appointed as such under section 58(2);

“declaration” means the provision of any information to customs where verbally, in a document, or in electronic form by a person or their agent relating to particular importations or exportations or in transit;

[Definition of “declaration” inserted by Act No. 33 of 2007.]

“document” includes—

- (a) a map, plan, drawing or photograph;
- (b) any written information relating directly or indirectly to goods which are imported, exported or in transit;
- (c) any written declaration required by the Comptroller;

- (d) any information recorded or stored by means of any tape recorder, computer hardware or software and any material subsequently derived from the information recorded or stored;
- (e) anything from which sounds or visual images are capable, with or without the aid of a device of being reproduced;
- (f) a copy, reproduction or duplicate of a document or part of such copy, reproduction or duplicate; or
- (g) anything on which there is writing;

[Definition of “document” inserted by Act No. 33 of 2007.]

“dollar” means the Eastern Caribbean Dollar;

“drawback” means a claim for a refund of duty on the exportation of goods for which customs duties have been paid on exportation;

“dutiable goods” means goods of a class or description subject to any duty of customs whether or not these goods are in fact chargeable with that duty, and whether or not that duty has been paid;

“duty” means a duty of customs chargeable on goods on importation or exportation;

“entry” means, in relation to the importation or exportation of goods, any document delivered to the proper officer in accordance with sections 23, 24(1) or section 31 respectively, and in relation to vessels or aircraft, any document delivered to the proper officer in accordance with section 32;

“entry by bill of sight” means any entry made in accordance with section 24(3);

“examination station” means any place approved under section 15;

“export” means to take goods or cause goods to be taken out of the State;

“exporter”, in relation to goods for exportation or for use as stores, includes the shipper of the goods and any person performing in relation to an aircraft, functions corresponding with those of a shipper;

“functions” includes powers and duties;

“goods” includes stores, baggage and livestock;

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

“importer” includes in relation to any goods at any time between their importation and the time when they are delivered out of customs charge, any owner or other person for the time being possessed of or beneficially interested in the goods and also any person who signs any document relating to any imported goods required by the customs laws to be signed by an importer;

“land” and **“landing”**, in relation to the landing of aircraft, include alighting on water;

“master”, in relation to a vessel, includes a person having or taking charge or command of the vessel;

[Definition of “master” amended by Act No. 4 of 2007.]

“Minister” means the Minister charged with responsibility for Customs;

“occupier”, in relation to any warehouse, means the person who has given security to the Comptroller in respect of those premises;

“officer” means, subject to section 5(2) the Comptroller and Deputy comptroller and any customs officer employed in the Customs Division of the Ministry of Finance;

“owner”, in relation to a vessel or an aircraft, includes the operator of that vessel or aircraft;

“passenger” means any person other than a crew member travelling on or arriving on a vessel or aircraft;

“passenger’s accompanied baggage” means the personal and household effects of a passenger including currency, which is carried on a vessel or aircraft whether in the personal possession of the passenger or not, so long as it is not carried under a contract of carriage or other similar agreement but does not include any article intended for sale or exchange;

“perfect entry” means an entry made in accordance with section 23 or warehousing regulations;

“police officer” means a member of the Royal Saint Vincent and the Grenadines Police Force;

“prohibited or restricted goods” means goods of a class or description of which the importation, exportation or carriage coastwise is for the time being prohibited or restricted under or by virtue of any enactment;

“proper”, in relation to a person or thing, means the person authorised or the place designated by the Comptroller to perform a function or for a function to be performed;

“proper officer”, in relation to any person, means the person who is appointed or authorised by the Comptroller to discharge any duty relating to an assigned matter;

“proprietor”, in relation to any goods, includes any owner, importer, exporter, shipper or other person for the time being possessed of or beneficially interested in those goods;

“shipment” includes loading into an aircraft;

“signature” includes—

(a) an electronic signature which is—

- (i) incorporated into, or otherwise logically associated with, any electronic communication or other electronic data,
- (ii) generated by the signatory or other source of the communication or data,
- (iii) used for the purpose of facilitating, by means of a link between the signatory or other source and the communication or data, the establishment of the authenticity of the communication or data, or the establishment of its integrity or both;

(b) a key, in relation to any electronic data, used by means of a code, password, algorithm or other data the use of which, with or without keys—

- (i) allows access to the data,
- (ii) facilitates the putting of the data into an intelligible form;

[Definition of “signature” inserted by Act No. 33 of 2007.]

“spirits” includes all distilled alcoholic liquor, all liquors mixed with spirits and all mixtures, compounds or preparations made with spirits but does not include methylated spirits or medicated spirits;

“State” means Saint Vincent and the Grenadines;

“stores” includes goods (for use in a vessel or aircraft), fuel and spare parts and other articles or equipment, whether or not for immediate fitting;

“territorial waters” has the same meaning as in the Maritime Areas Act;

“tobacco” includes non-refined and refined tobacco of every description, tobacco stalks and tobacco refill;

“transit” or **“transhipment”**, in relation to the entry of goods, means transit through the state or transhipment with a view to the re-exportation of the goods in question;

“transit shed” means any place approved as such under section 16(1);

“value of imported goods” has the meaning as defined in the Second Schedule;

“vehicle” includes any method of carriage or conveyance, any car or wagon and any trailer attached to any vehicle;

“vessel” includes any ship, hovercraft or boat;

“warehouse” means any place of security approved by the Comptroller under section 47(1) but does not include a custom warehouse;

“warehousing regulations” means any regulations concerning warehouses made under section 136;

“writing” includes a record created, stored, generated, received or communicated on diskettes and forms or any other electronic media which is accessible and capable of retention for subsequent reference;

[Definition of “writing” inserted by Act No. 33 of 2007.]

“writs of assistance” means a writ issued by the Supreme Court under section 89 for a stated period and six months thereafter.

3. Time of importation and exportation

(1) The provisions of this section shall have effect for the purposes of this Act and of any other enactment relating to customs.

(2) The time of importation of any goods shall be deemed to be—

- (a) where the goods are brought by sea, the time when the transporting vessel comes within the limits of the port;
- (b) where the goods are brought by air the time when the transporting aircraft lands in the state:

Provided that, in the case of goods brought by sea of which entry is not required under section 23 of this Act, the time of importation shall be deemed to be the time when the transporting vessel comes within the limits of the port at which the goods are discharged.

(3) The time of exportation of any goods from the State shall be deemed to be the time when the goods are shipped by sea or air for exportation.

(4) In the case of goods of a class or description with respect to the exportation of which any prohibition or restriction is in force by virtue of any enactment, the time of exportation shall be deemed to be the time when the exporting vessel or aircraft departs from the last port or customs airport at which it is cleared before departing for a destination outside of the State.

(5) A vessel shall be deemed to have arrived at or departed from a port at the time when the ship comes within or leaves the limit of that port.

PART II

Administration

4. Comptroller of Customs

(1) There shall be a Comptroller of Customs who shall, subject to the general control of the Minister, be charged with the duty of collecting and accounting for and otherwise managing the revenue of customs.

(2) The Comptroller shall be responsible for the administration of this Act and for any other enactment relating to any assigned matter.

5. Delegation of functions by Comptroller

(1) Any act or thing required or authorised by any customs enactment to be done by the Comptroller may be done by any officer authorised generally or specifically in that behalf in writing by the Comptroller, and where for any reason the post of Comptroller is vacant any authorisation which has not been revoked shall continue in force until revoked by any person subsequently appointed as Comptroller.

(2) Any person appointed by the order or with the concurrence of the Comptroller (whether previously or subsequently expressed) to perform any function relating to an assigned matter which by law may or is required to be performed by an officer, shall be a proper officer.

(3) Any person who by virtue of subsection (2) is appointed a proper officer shall have the powers of an officer in relation to the function to be performed by him.

(4) An officer authorised in writing by the Comptroller to perform any function shall return the written authorisation at the request of the Comptroller.

(5) Where any function is required by an enactment to be performed in any particular place it shall be deemed to be performed if done in any other place authorised by the Comptroller for that purpose.

(6) The Comptroller may give directions specifying the forms to be used in relation to any assigned matter as he thinks fit.

6. Obligation of secrecy

(1) Subject to section (2), any person appointed or employed in the carrying out of any function under this Act or any other customs enactment, who—

- (a) discloses to an unauthorised person any document, information or confidential instruction which has come into his possession or to his knowledge in the course of his duties; or
- (b) permits an unauthorised person to have access to any records in his possession or custody,

unless so authorised by the Comptroller in writing commits an offence and is liable on conviction to a fine not exceeding five thousand dollars, or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment.

(2) Nothing in subsection (1) shall prevent the disclosure by any person of any document, information or confidential instruction where that disclosure is authorised by any Act.

7. Times of attendance of officers

(1) The days on which and the hours between which offices of Customs are to be open to the public or officers are to be available for the performance of particular duties shall be such as the Minister may by Order prescribe.

(2) Any request for an officer to perform any duty outside the normal working hours shall be made in writing to the Comptroller who may grant such request if he thinks fit.

(3) The fees payable for the performance of duties outside of normal working hours approved by the Comptroller shall be such as may be prescribed.

8. Assistance by Police

(1) Every police officer shall when required assist in the enforcement of the law relating to any assigned matter.

(2) In relation to any assigned matter every officer shall have the same powers, authorities and privileges as are given by law to police officers.

9. Disclosure of interest by officers

(1) Any officer authorised by the Comptroller by virtue of section 5(1) shall disclose to the Comptroller where applicable that he—

- (a) owns either in whole or in part any vessel or aircraft engaged in trade; or
- (b) is an agent of the owner of any vessel or aircraft engaged in trade; or
- (c) imports or is concerned in the importation of any merchandise for sale,

and such officer may be requested by the Comptroller in the public interest and where the circumstances so warrant to cease from engaging in such activities, and in case of (b) shall be requested to cease from such activities.

(2) Any officer who fails to disclose any interest under subsection (1) commits an offence and is liable on conviction to a fine not exceeding five thousand dollars.

(3) Any officer who—

- (a) discloses to the Comptroller that he is engaged in the activities specified in subsection (1)(a), (b) or (c);
- (b) is given notice in writing by the Comptroller to cease such activities; and
- (c) fails to comply with such notice,

commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment and may be arrested.

PART III

Customs Controlled Areas

10. Customs ports and boarding stations

(1) The Minister may by Order—

- (a) declare to be and name any area in the State a port;
- (b) alter the name or limits of any port;
- (c) revoke a declaration made at (a) in respect of any port; and
- (d) impose any condition or restriction, or vary or revoke any condition or restriction imposed, on the use of an area in the State as a port.

(2) The Comptroller may direct that any place in a port shall be a boarding station for the purpose of the boarding of or disembarkation from vessels by officers.

(3) Any person who contravenes or fails to comply with any condition or restriction imposed by the Minister under subsection (1)(d) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

11. Approved wharves

(1) The Comptroller may approve, for such periods and subject to such conditions and restrictions as he may see fit to impose, any place in the State for the embarkation and disembarkation of passengers on to and from vessels and for the loading and the unloading of goods or any class or description of goods on to or from vessels, and any place so approved shall be referred to in this Act as an approved wharf.

(2) The Comptroller may at any time for reasonable cause revoke or vary the terms of any approval given under subsection (1).

(3) An officer may at any time enter an approved wharf and inspect the wharf and any goods referred to at subsection (1).

(4) A person who contravenes or fails to comply with any condition or restriction imposed by the Comptroller under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

12. Customs airports

(1) The Minister may, by Order—

- (a) declare to be and name any area in the State a customs airport;
- (b) alter the name or limits of any customs airport;
- (c) revoke an order made at (a) in respect of any customs airport; and
- (d) impose any condition or restriction, or vary or revoke any condition or restriction imposed, on the use of any area in the State as a customs airport.

(2) Any person who contravenes or fails to comply with any condition or restriction imposed by the Minister under subsection (1)(d) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

13. Right of entry

The Airport Manager or Port Manager shall—

- (a) permit an officer at any time to enter upon and inspect a customs airport or customs port and all buildings and goods thereon; and
- (b) if so required by the Comptroller—
 - (i) keep a record, in such form and manner and containing such particulars as the Comptroller may direct, of all aircraft arriving or vessels at or departing from that airport or customs port respectively, and
 - (ii) keep the record required at subparagraph (i) available and produce it on demand to any officer, together with all other documents kept at the customs airport or customs port respectively which relate to the movement of aircraft or vessels, and
 - (iii) permit any officer to make copies of, or take extracts from any record or document referred to at subparagraph (i) or (ii).

14. Customs areas

(1) The Comptroller may approve, for such periods and subject to such conditions and restrictions as he may see fit to impose, any place in the State not being a customs port, approved wharf or customs airport, as a customs area.

(2) The Comptroller may at any time for reasonable cause revoke or vary the terms of any approval given under subsection (1).

(3) A person who contravenes or fails to comply with any condition or restriction imposed by the Comptroller under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

15. Examination stations

(1) The Comptroller may approve, for such periods and subject to such conditions and restrictions as he thinks fit to impose any place at a port, customs airport or other customs area for the loading and unloading of goods and the embarkation and disembarkation of passengers, and any such place so approved is referred to in this Act as an examination station.

(2) The Comptroller may at any time for reasonable cause revoke or vary the terms of any approval given under subsection (1).

(3) Any person who contravenes or fails to comply with any condition or restriction imposed by the Comptroller under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

(4) Save as authorised by any provision of this Act a person who without the consent of the Comptroller enters upon or remains upon a restricted area of a customs port, approved wharf, customs airport, customs area or examination station commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars and may be arrested.

16. Transit sheds

(1) The Comptroller may approve for such periods and subject to such conditions and restrictions as he sees fit, places referred to in this Act as transit sheds for the deposit of goods imported and not yet cleared from customs charge, including goods not yet reported and entered pursuant to this Act.

(2) An officer may at any time enter a transit shed for the purpose of inspecting the shed and any goods stored therein.

(3) The Comptroller may at any time for reasonable cause revoke or vary the terms of an approval given under subsection (1).

(4) A person who contravenes or fails to comply with any condition or restriction imposed by the Comptroller under subsection (1) commits an offence and is liable on conviction to a fine not exceeding five thousand dollars.

17. Agents

(1) The master of a vessel or the commander of an aircraft may appoint as his agent a person of eighteen years or over duly authorised to perform any act required by any customs enactment to be performed by a master or a commander, and, he shall notify the Comptroller of the name and address of any such person and if the Comptroller is satisfied that the person appointed is a fit and proper person to be such an agent, the Comptroller shall, subject to such terms and conditions as he sees fit to impose accept that person as the agent of that master or commander:

Provided that if no such agent be appointed the Comptroller shall deal directly with the owner of the vessel or aircraft if resident or represented in that country for all purposes of an assigned matter.

(2) If any agent appointed under subsection (1) wilfully or persistently neglects or refuses to comply with any requirement imposed by any customs enactment on a master of a vessel or a commander of an aircraft, the Comptroller may, by notice in writing, advise the master of that vessel or the commander of that aircraft that the person appointed is no longer acceptable as the agent of that master or commander, who shall

upon such notification take the necessary steps to appoint a new agent on the same terms and conditions required under subsection (1).

(3) Where any person other than the master of a vessel or the commander of an aircraft is required by any customs enactment to perform any function, he may appoint as his agent any other person to perform that function.

(4) Before accepting any request by an agent to act on behalf of a person in relation to an assigned matter, an officer may require that agent to produce to him written authority from the person whose agent he is, certifying that he is so authorised to act.

(5) The Comptroller may if he sees fit require any person appointed to act as an agent under subsection (1) to give security by bond or otherwise in such form and manner as the Comptroller may direct and such bond—

- (a) shall be taken on behalf of the Government of the State;
- (b) may be cancelled at any time by the order of, the Comptroller.

18. Control of pleasure craft

(1) The procedure as to the arrival, report and departure of pleasure crafts shall be as prescribed.

(2) In this section, “**pleasure craft**” means—

- (a) any vessel which, at the time of its arrival at a place in the State from abroad, is used for private recreational purposes only; or
- (b) any vessel which the proper officer, after application is made to him in writing, permits to be treated as a pleasure craft.

PART IIIA

[Part IIIA inserted by Act No. 4 of 2007.]

Advance Passenger and Cargo Information

18A. Interpretation

In this Part—

“**advance passenger information**” means the information in respect of a passenger, crew member or other occupant transported in a vessel or aircraft;

“**competent authority**” means such person or entity as the Minister may by Order prescribe;

“**domestic space**” means the countries listed in the Sixth Schedule.

[Section 18A inserted by Act No. 4 of 2007.]

18B. Application of Part

This Part applies to a vessel or aircraft which—

- (a) is expected to arrive in the State;
- (b) has left is expected to leave the State.

[Section 18B inserted by Act No. 4 of 2007.]

18C. Advice of arrival

(1) The master of a vessel or commander of an aircraft, as the case may be, shall, at such time as provided in subsection (2), provide to the competent authority in such form and manner as may be approved in writing by the Comptroller, either generally or for a particular case or class of cases—

- (a) data in respect of the vessel or aircraft and each person on board in accordance with Part I of the Fifth Schedule; and
- (b) data in respect of the cargo on board in accordance with Part II of the Fifth Schedule.

(2) Where—

- (a) section 18B(a) applies, the data referred to in subsection (1) shall be provided—
 - (i) in the case of a commercial aircraft, no later than fifteen minutes after departure from the last port of call,
 - (ii) in the case of a private aircraft, no later than thirty minutes prior to the departure from the last port of call,
 - (iii) in the case of a vessel arriving from outside the domestic space, no later than twenty-four hours prior to arrival, and
 - (iv) in the case of a vessel arriving from a destination within the domestic space, no later than one hour prior to arrival of the vessel from the last port of call;
- (b) section 18B(b) applies, then, subject to subsection (3) the data referred to in subsection (1) shall be provided no later than fifteen minutes after departure from the State.

(3) Subsection (2)(b) does not apply to the departure of a vessel or aircraft from the State to a destination within the domestic space.

[Section 18C inserted by Act No. 4 of 2007.]

18D. Waiver

The Minister may, by Order, either generally or for a particular case or class of cases, waive the provisions of section 18C.

[Section 18D inserted by Act No. 4 of 2007.]

18E. Penalty

Where a master or commander intentionally or recklessly—

- (a) fails to transmit the data in accordance with section 18C; or
- (b) transmits incomplete or false data,

the master or commander, as the case may be, commits an offence and is liable on summary conviction to a fine not exceeding two hundred thousand dollars.

[Section 18E inserted by Act No. 4 of 2007 and amended by Act No. 33 of 2007.]

18F. Seizure and detention

(1) Where a master or commander fails to comply with section 18C, the Comptroller may seize and detain the vessel or aircraft to which the non-compliance relates.

(2) Notwithstanding subsection (1), in the case of a commercial vessel or aircraft, the vessel or aircraft shall be released on the lodgement of a bond in the sum of one million dollars or three times the value of the vessel or aircraft.

[Section 18F inserted by Act No. 4 of 2007.]

18G. Release of bond

The Comptroller shall release the bond lodged under section 18F—

- (a) upon—
 - (i) receipt of the data referred to in section 18C, and
 - (ii) payment of the fine imposed under section 18E; or
- (b) in accordance with an order of a court of competent jurisdiction.

[Section 18G inserted by Act No. 4 of 2007.]

18H. Denial of clearance

Where the vessel or aircraft is a non-commercial vessel or aircraft, the proper officer may refuse to grant clearance to the vessel or aircraft until—

- (a) the fine imposed under section 18E has been paid; and
- (b) the data referred to in section 18C has been received.

[Section 18H inserted by Act No. 4 of 2007.]

18I. Amendment of Fifth or Sixth Schedule

The Minister may, by Order, amend the Fifth or Sixth Schedule to this Act.

[Section 18I inserted by Act No. 4 of 2007.]

PART IV

Importation

19. Procedure on arrival of vessels

(1) Subject to the provisions of this section and save as the Comptroller may otherwise permit—

- (a) the master of a vessel arriving in the territorial waters of the State from a place outside the State shall not permit the vessel to dock at any place other than a customs port; and
- (b) no person importing or concerned in importing any goods in any vessel shall bring those goods into the State at any place other than a customs port.

(2) A master or other person who contravenes or fails to comply with any requirement of subsection (1) commits an offence and is liable on conviction to a fine not exceeding five thousand dollars, or three times the value of the goods whichever is the greater, and any goods imported in contravention of this subsection is liable to forfeiture.

(3) Subsection (1) shall not apply in relation to any vessel which is compelled by accident, stress of weather or other unavoidable cause to arrive at a place other than a customs port, but subject to subsection (5)—

- (a) the master of any such vessel—
 - (i) shall immediately report the arrival to an officer or police officer,
 - (ii) shall not, without the consent of an officer, permit any goods carried on the vessel to be unloaded from, or any passenger or member of the crew to depart from the vicinity of the vessel, and

(iii) shall comply with any direction given by an officer in respect of such goods;

(b) no passenger or member of the crew shall, without the consent of an officer or a police officer leave the immediate vicinity of any such vessel.

(4) A master or any other person who contravenes or fails to comply with any requirement of subsection (3) commits an offence and is liable on conviction to a fine not exceeding five thousand dollars and any goods imported in contravention of this subsection is liable to forfeiture.

(5) Nothing in subsection (3) shall prohibit—

(a) the departure of any passenger or member of the crew from the vicinity of a vessel; or

(b) the removal of goods from a vessel,

where the departure or removal is necessary for reasons of health, safety or the preservation of life or property.

20. Procedure on arrival of aircraft

Section 19 shall apply *mutatis mutandis* to any aircraft arriving in the State.

21. Notification of arrival of vessels

(1) Save as the Comptroller may otherwise permit, the master of every vessel intending to visit the State shall notify the Comptroller of the expected time of arrival of that vessel not less than one working day before its arrival.

(2) The master of a vessel who fails to notify the Comptroller commits an offence and is liable on conviction to a fine not exceeding five thousand dollars.

22. Report inwards

(1) The master of every vessel arriving at a customs port—

(a) from any place outside the State; or

(b) carrying goods brought in that vessel from a place outside the State and not yet cleared on importation,

shall, within twenty-four hours of arrival, deliver to the Comptroller a report in such form and manner and containing such particulars as the Comptroller may direct.

(2) The commander of every aircraft arriving at a customs airport—

(a) from any place outside the State; or

(b) carrying goods or passengers taken on board that aircraft at a place outside the State being goods or passengers either—

(i) bound for a local destination and not yet cleared at a customs airport,
or

(ii) bound for a destination outside the State,

shall, upon arrival, deliver to the Comptroller a report in such form and manner and containing such particulars as the Comptroller may direct.

(3) Where any report made under this section is incorrect, the master or commander or other person who made it shall, within seventy-two hours or such longer period as the Comptroller may in any case permit, be allowed to amend it.

(4) Where the Comptroller is satisfied that the error referred to in subsection (3) was not made knowingly or recklessly, then notwithstanding any other provision of any other

customs enactment the master or commander or other person is not liable to prosecution and where the error consists of the omission or incorrect reporting of any goods, those goods are not liable to forfeiture.

(5) A master or commander commits an offence if he—

- (a) fails to make a report as required under this section;
- (b) fails to include on the report any goods which appear on any clearance required to be produced unless the report is amended under subsection (3),

and is liable on conviction to a fine not exceeding five thousand dollars or three times the value of the goods whichever is greater and shall pay to the Comptroller the duty on such goods.

(6) The master or commander or other person shall in making a report under this section—

- (a) answer all such questions as may be put to him by the proper officer relating to the vessel or aircraft, its cargo, stores, baggage, crew, passengers, voyage or flight; and
- (b) produce all books and documents in his custody or control as the proper officer may require relating to the vessel or aircraft, its cargo, stores, baggage, crew, passengers, voyage or flight.

(7) A person who acts in breach of subsection (6) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

(8) If, at any time after a vessel or aircraft carrying goods from a place outside of the State arrives within the territorial waters of the State or lands in the State and before a report has been made in accordance with this section—

- (a) bulk is broken; or
- (b) goods are unloaded from or taken on board that vessel or aircraft; or
- (c) any alteration is made in the storage of any goods carried; or
- (d) any goods are stoved, destroyed or thrown overboard, or any container is opened,

then unless there is reasonable cause, the master or commander commits an offence and is liable on conviction to a fine not exceeding five thousand dollars or three times the value of the goods whichever is the greater and any goods in respect of which the offence was committed is liable to forfeiture.

(9) The Comptroller may require any goods reported as stores on board any vessel or aircraft, or any portion of such goods to be entered for warehousing under section 23 and for the purposes of this subsection the master or commander shall be deemed to be the importer of such goods.

23. Entry of goods on importation

(1) Subject to subsection (2) the importer of any goods, shall—

- (a) in the case of goods imported by air, within seven days of their importation; or
- (b) in the case of goods imported by sea, within fourteen days of their importation,

transmit and deliver to the proper officer a perfect entry of the goods, in such form and manner and containing such particulars as the Comptroller may direct.

[Subsection (1) amended by Act No. 33 of 2007.]

(2) Notwithstanding subsection (1) the following goods are exempt from the requirements of this section—

- (a) fresh fish (including shell fish) caught by local fishermen and imported by them in their vessels; and
- (b) passenger's accompanied baggage.

(3) Subject to subsection (4) goods may be entered under subsection (1)—

- (a) where eligible—
 - (i) for warehousing, or
 - (ii) for home use; or
- (b) for transshipment; or
- (c) in such cases as the Comptroller may permit, for temporary retention with a view to subsequent reexportation.

(4) Notwithstanding subsection (3) the Comptroller may refuse to accept any entry of goods if he is not satisfied that the goods were imported at the time of the delivery of the entry.

(5) Where, in the case of goods which are not chargeable with duty, entry made under subsection (1) is incorrect, the importer shall, within ten days after the delivery of the entry or such longer period as the Comptroller may in any case permit, deliver to the Comptroller a full and accurate account of the goods and where the Comptroller is satisfied that the error was not made knowingly or recklessly, then notwithstanding any other provision of any other customs enactment, the person making the entry is not liable to prosecution and the goods which were the subject of the error are not liable to forfeiture.

(6) The Comptroller may, notwithstanding that no entry has been made under subsection (1) permit the delivery of any bullion, currency notes or coins imported into the State.

24. Entry by bill of sight

(1) Without prejudice to section 23, where the importer of goods is unable for want of any document or information to make perfect entry of the goods, he shall make a signed declaration to that effect to the proper officer.

(2) Where a declaration is made under subsection (1) the proper officer shall permit the importer to examine in his presence the goods imported.

(3) Where an importer has made a declaration under subsection (1), and submits an entry, not being a perfect entry, in such form and manner and containing such particulars as the Comptroller may direct, and the proper officer is satisfied—

- (a) that the description of the goods for tariff and statistical purposes is correct; and
- (b) in the case of goods liable to duty according to number, weight, measurement or strength such particulars are correct,

the proper officer shall, on payment to him of the specified sum, accept that entry as an entry by bill of sight and allow the goods to be delivered for home use.

(4) For the purposes of subsection (3) the specified sum shall be an amount estimated by the proper officer to be the duty payable on such goods, together with such further sum being not less than one half of the estimated duty as he may require.

(5) If within three months from the date of making an entry by bill of sight under subsection (3) or such longer time as the Comptroller may in any case permit, the

importer shall make a perfect entry, and that perfect entry shall show the amount of duty to be more or less than the specified sum—

- (a) the Comptroller shall pay the difference to the importer where the duty is more than the specified sum;
- (b) the importer shall pay the difference to the Comptroller where the duty is less than the specified sum.

(6) Where no perfect entry is made within the time limit laid down by subsection (5), the specified sum paid shall be deemed to be the amount of duty payable on the importation of the goods.

(7) Notwithstanding any other provision of this section, where at any time after the importation of goods the Comptroller is satisfied that in respect of such goods it is impossible for the importer to make perfect entry, the Comptroller may, subject to such conditions and restrictions as he may see fit to impose, permit the goods to be entered at a value which is in his opinion, the correct value of the goods and such entry shall be deemed to be perfect entry.

(8) Where any condition or restriction imposed under subsection (7) is contravened or not complied with, the goods shall be liable to forfeiture.

25. Removal of uncleared goods to customs warehouse

(1) Where in the case of any imported goods for which an entry is required—

- (a) entry has not been made at the expiration of the relevant period; or
- (b) at the expiration of twenty-one clear days from the relevant date, entry having been made the goods have not been unloaded from the importing vessel or aircraft, or in the case of goods which have been unloaded, they have not been produced for examination and clearance; or
- (c) the goods are contained in a small package or consignment,

then at any time after the relevant date, the proper officer may, subject to subsection (2), cause the goods to be deposited in a customs warehouse.

(2) Goods deposited in a customs warehouse shall not be—

- (a) of a type prescribed in the First Schedule; or
- (b) in the opinion of the Comptroller, of a perishable nature,

and such goods which do not satisfy the requirements of this subsection may be sold.

(3) In this section—

“relevant date” means the date when report was made of the importing vessel or aircraft under section 22 or of the goods under section 23 or, where no such report was made, the date when it should properly have been made; and

“relevant period” means a period of seven days in the case of goods imported by air and fourteen days from the relevant date in the case of goods imported by sea.

26. Importation of goods by post

(1) Without prejudice to any other provision of this Act—

- (a) letters arriving in the State from abroad which in the opinion of the proper officer, contains material other than written or printed material, may be required to be opened by the addressee or his agent in the presence of the Postmaster-General or any person authorised by him and in the presence of an officer;

- (b) a postal package consigned to a place in the State from abroad may be required to be opened by the addressee or his agent in the presence of the Postmaster-General or any person authorised by him and in the presence of an officer and where any goods contained in such a package do not correspond with any declaration of contents made in respect of them, those goods shall be liable to forfeiture.

(2) No goods imported into the State by post shall be allowed to be removed from customs charge until all duty chargeable has been paid, and subject to such procedure as may be prescribed.

27. Movement of uncleared goods within or between port, etc.

(1) goods chargeable with duty which has not been paid, drawback goods, and any other goods which have not been cleared out of charge, shall be moved within the limit of any port or customs airport or between any port or customs airport and any other place in accordance with terms and conditions prescribed.

(2) A person who contravenes or fails to comply with any condition or restriction imposed or the terms of any licence granted under regulations commits an offence and is liable on conviction to a fine not exceeding five thousand dollars.

28. Movement of goods to and from inland clearance depot, etc.

(1) The Comptroller may impose conditions and restrictions as respects—

- (a) the movement of imported goods between the place of importation and a place approved by the Comptroller for the clearance out of charge of such goods, or the place of exportation of such goods; and
- (b) the movement of goods intended for export between a place approved by the Comptroller for the examination of such goods or a place designated by the proper officer and the place of exportation.

(2) Pursuant to subsection (1) the Comptroller may in particular—

- (a) require goods to be moved within such period and by such route as may be specified;
- (b) require goods to be carried in a vehicle or container complying with such requirements and secured in such manner as may be specified;
- (c) prohibit, except in such circumstances as may be specified, any loading or unloading of the vehicle or container or any interference with its security.

(3) Any document required to be made or produced under subsection (1) shall be made or produced in the form and manner and contain such particulars as the Comptroller may direct:

Provided that the Comptroller may vary any requirement that a specific document be made or produced and may impose substituted requirements.

(4) Where a person contravenes or fails to comply with any provision under subsection (1) or any requirement imposed by or under any such provision that person as well as the person then in charge of the goods commits an offence and is liable on conviction to a fine not exceeding five thousand dollars and any goods in respect of which the offence was committed shall be liable to forfeiture.

29. Goods improperly imported

(1) Without prejudice to any other provision of any customs enactment, where—

- (a) except as expressly provided by such an enactment, any imported goods, being goods chargeable on their importation with any duty are before payment of that duty—
 - (i) unloaded at any port, or
 - (ii) unloaded from any aircraft, or
 - (iii) removed from their place of importation or from any approved wharf, examination station, transit shed or other customs area; or
- (b) any goods are imported, landed or unloaded contrary to any prohibition or restriction for the time being in force under or by virtue of any enactment; or
- (c) any goods, being chargeable with duty or the importation of which is for the time being prohibited or restricted by or under any enactment, are found, whether before or after the unloading to have been concealed in any manner on board a vessel or aircraft; or
- (d) any goods are imported concealed in a container holding goods of a different description; or
- (e) any imported goods are found whether before or after delivery, not to correspond with any entry made in respect of them; or
- (f) any imported goods are concealed or packed in any manner appearing to be intended to deceive an officer,

such goods shall, subject to subsection (2), be liable to forfeiture.

(2) Where any goods, the importation of which is for the time being prohibited or restricted under or by virtue of any enactment, are on their importation—

- (a) reported as intended for exportation in the same vessel or aircraft; or
- (b) entered for transshipment; or
- (c) entered to be warehoused for exportation or for use as stores,

the Comptroller may, if he sees fit, permit those goods to be dealt with accordingly.

(3) If any person contravenes the provisions of subsection (1)(d), (e) or (f) he commits an offence and is liable on conviction to a fine not exceeding five thousand dollars, or three times the value of the goods, whichever is the greater.

PART V

Exportation

30. Loading of goods on departing vessels and aircraft

Provisions regarding the unloading of goods on departing vessels and aircraft and for forfeiture shall be as prescribed.

31. Entry of goods for exportation

(1) Subject to subsection (2), the exporter of any goods, other than passenger's accompanied baggage, shall deliver to the proper officer an entry of those goods in such form and manner and containing such particulars as the Comptroller may direct.

(2) The Comptroller may vary, subject to such conditions and restrictions as he may see fit to impose, all or any of the requirements imposed under subsection (1) in relation to any goods, or class or description of goods.

(3) Where, in the case of any goods which are not chargeable with any duty, any entry made under subsection (1) is incorrect, the provisions of section 23(5) shall, *mutatis mutandis*, apply.

(4) Where goods which have been entered for exportation or for use as stores are not duly loaded on the vessel or aircraft for which they are entered, then, unless within twenty-four hours of the departure of the vessel or aircraft the person who entered them notifies the proper officer of that short loading, the goods shall be liable to forfeiture.

(5) If any goods for which entry is required under subsection (1) are put on board a vessel or aircraft for exportation or for use as stores or are waterborne for such purpose before entry has been made, those goods shall be liable to forfeiture and, where the placing on board or making waterborne was done with fraudulent intent, a person knowingly concerned in such fraudulent act commits an offence and is liable on conviction to a fine not exceeding five thousand dollars, or three times the value of the goods, whichever is the greater, or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment and may be arrested.

32. Entry outwards of vessels

(1) Save as the Comptroller may otherwise permit—

- (a) before any goods for exportation or for use as stores are loaded on to any vessel; or
- (b) where a vessel carrying goods arrives at a customs port with the intention of proceeding to a destination outside of the State,

the master of that vessel shall deliver to the proper officer an entry outwards of that vessel, in such form and containing such particulars as the Comptroller may direct.

(2) Where an entry made under subsection (1) is incorrect, the person who made it shall, within forty-eight hours of the making or such longer period as the Comptroller may in any case permit, amend it, and provided that the Comptroller is satisfied that the error was not made knowingly or recklessly, then notwithstanding any other provision of any customs enactment, that person shall not be charged with an offence and the goods which were the subject of the error shall not be liable to forfeiture.

(3) Where—

- (a) a person fails to make an entry required to be made by him under subsection (1) he commits an offence and on conviction is liable to a fine not exceeding three thousand dollars; or
- (b) goods are loaded on board any vessel in contravention of subsection (1) those goods shall be liable to forfeiture and the master commits an offence and is liable on conviction to a fine not exceeding three thousand dollars;
- (c) the loading of the vessel is done with fraudulent intent, any person knowingly concerned in that loading commits an offence and is liable on conviction to a fine not exceeding five thousand dollars or three times the value of the goods, whichever is the greater, or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment and may be arrested.

33. Stores

(1) Subject to subsection (2), where an application is made in such form and manner and contain such particulars as the Comptroller may direct, by—

- (a) the master of any vessel of over thirty tons burden; or
- (b) the commander of any aircraft, which is about to leave the State for a destination outside of the State,

the Comptroller may, subject to such conditions and restrictions as he may see fit to impose and having regard to—

- (i) the number of persons on board that vessel or aircraft,
- (ii) the likely destination of the voyage or flight, and
- (iii) the stores, if any, remaining on board that vessel or aircraft,

permit such quantity of goods as he considers reasonable to be removed without payment of duty from any warehouse or on drawback, and loaded on to that vessel or aircraft for use as stores during that voyage or flight.

(2) Where the application under subsection (1) is in respect of fuel and lubricants only, that application may be made by the master of any vessel, regardless of its burden.

(3) If any vessel or aircraft, having left the State for an outside destination returns to the State without reaching that or any other destination and in the opinion of the proper officer the deficiency in the stores on that vessel or aircraft is in excess of the quantity that might reasonably have been consumed having regard to the period between the departure and the discovery of the deficiency, the master or commander of the vessel or aircraft commits an offence and is liable on conviction to a fine not exceeding five thousand dollars, or three times the value of that deficiency whichever is the greater, and shall pay to the Comptroller the duty on that excess.

34. Clearance

(1) Save as the Comptroller may otherwise permit—

- (a) the master of any vessel intending to depart from any customs port; and
- (b) the commander of any aircraft intending to depart from any customs airport,

to a destination outside of the State shall obtain clearance from the proper officer.

(2) Any person applying for clearance under subsection (1) shall—

- (a) deliver to the proper officer an account of all cargo and stores taken on or remaining on board the vessel or aircraft;
- (b) produce all such books and documents in his custody or control relating to the vessel or aircraft, its cargo, stores, baggage, crew, passengers, voyage or flight as the proper officer may require; and
- (c) answer all such questions relating to the vessel or aircraft, its cargo, stores, baggage, crew, passengers, voyage or flight as may be put to him by the proper officer.

(3) Where clearance sought under subsection (1) is in respect of any vessel or aircraft which is in ballast, or has on board stores, passenger's accompanied baggage or empty containers only, upon which no freight or profit is earned, the proper officer shall, on the application of the master or commander, clear that vessel or aircraft as in ballast.

(4) Where it appears to any officer that a vessel or aircraft intends or is likely to depart for a destination outside of the State without clearance, he may give such instructions and take such steps to detain that vessel or aircraft as appear to him necessary.

(5) If any vessel or aircraft departs from any customs port or customs airport for a destination outside the State without a valid clearance in accordance with subsection (1) or after clearance calls at any customs port or customs airport without the permission of the proper officer, the master or commander except where the departure or call was caused by accident, stress of weather or other unavoidable cause, commits an offence and is liable on conviction to a fine not exceeding five thousand dollars.

(6) If twenty-four hours after obtaining clearance under subsection (1), a vessel cleared has not left the limits of the customs port or an aircraft cleared has not taken off for a destination outside the State that clearance shall become void.

(7) If any aircraft is required to obtain clearance from any customs airport under this section and any goods are loaded, or are waterborne for loading, into that aircraft at that customs airport before application for clearance has been made, the goods shall be liable to forfeiture and where the loading or making waterborne is done with fraudulent intent, any person knowingly concerned in such act commits an offence and is liable on conviction to a fine not exceeding five thousand dollars or three times the value of the goods whichever is the greater or to a term of imprisonment not exceeding two years, or to both such fine and imprisonment and may be arrested.

35. Power to refuse or demand return of clearance

(1) For the purpose of securing the detention of a vessel or aircraft in pursuance of a power or duty conferred or imposed by any customs enactment, or for the purpose of securing compliance with the provisions of any such enactment—

- (a) the proper officer may at any time refuse clearance of a vessel or aircraft; and
- (b) where clearance has been granted to a vessel or aircraft, an officer may at any time while the vessel is within the territorial waters of the State or the aircraft is at a customs airport, demand that any clearance granted shall be returned to him.

(2) A demand for the return of a clearance may be made either orally or in writing to the master of the vessel or the commander of the aircraft, and if made in writing may be served—

- (a) by delivering it to him in person; or
- (b) by leaving it at his last known place of abode or business in the State; or
- (c) by leaving it on board the vessel or aircraft with the person in charge or command of the vessel or aircraft.

(3) Where a demand for the return of a clearance is made under subsection (2)—

- (a) the clearance shall forthwith become void; and
- (b) if the demand is not complied with, the master or commander commits an offence and is liable on conviction to a fine not exceeding five thousand dollars.

36. Security for exportation of goods

Where warehoused goods or goods on drawback are to be exported, the Comptroller may require the exporter to—

- (a) give security in the amount of treble the duty which would have been chargeable on those goods if they had been imported into the State for home use; and
- (b) forfeit any security given under subsection (a) if, within one month of the exportation of those goods or such longer period as the Comptroller may in any case permit, the exporter does not produce to the Comptroller a certificate, signed by a customs officer in the country to which the goods were exported certifying—
 - (i) that the goods have been imported into that country, or
 - (ii) otherwise account for those goods to the satisfaction of the Comptroller.

37. Offences in relation to exportation

(1) If any goods which have been loaded or retained on board any vessel or aircraft for exportation or for use as stores are not exported and discharged at a place outside the State or used as stores but are unloaded in the State then unless—

- (a) the unloading was authorised by the proper officer; and
- (b) except where the proper officer otherwise permits, any duty chargeable and unpaid on those goods is paid and any drawback or other allowance made in respect of those goods is repaid,

the master of the vessel or the commander of the aircraft and any person concerned in the unshipping, relanding, landing, unloading or carrying of the goods from the vessel or aircraft without such authority, payment or repayment, commits an offence under this section.

(2) The Comptroller may impose such conditions and restrictions as he may see fit with respect to any goods loaded or retained as mentioned in subsection (1) which are permitted to be unloaded in the State and if any person contravenes or fails to comply with, or is concerned in any contravention or failure to comply with any condition or restriction imposed under this subsection, he commits an offence.

(3) If, after a vessel or aircraft has obtained clearance but before it has left the State it is discovered that any goods cleared for exportation or for use as stores are no longer on board, then, unless those goods have been unloaded with the permission of the proper officer, or are stores which could reasonably have been consumed since the granting of the clearance, the master or the commander shall pay to the Comptroller the duty on that deficiency and commits an offence.

(4) No person may—

- (a) export, cause to be exported or attempt to export any goods—
 - (i) concealed in a container holding goods of a different description, or
 - (ii) packed in a manner appearing to be intended to deceive an officer; or
- (b) directly or indirectly export or cause to be exported or entered goods found not to correspond with the entry made in respect of them; or
- (c) export or attempt to export any—
 - (i) warehoused goods, or
 - (ii) goods chargeable with any duty which has not been paid which have been transferred from an importing vessel or aircraft, or
 - (iii) goods entitled to drawback on exportation.

(5) A person who contravenes subsection (4) commits an offence and is liable on conviction to a fine not exceeding five thousand dollars, or three times the value of the goods, whichever is the greater, and the goods are liable to forfeiture.

38. Exportation of prohibited or restricted goods

(1) If any goods are—

- (a) exported or shipped as stores; or
- (b) brought to any place in the State to be exported or shipped as stores,

contrary to any prohibition or restriction for the time being in force with respect to those goods by virtue of any enactment, the goods shall be liable to forfeiture and the exporter or person attempting to export or his agent if concerned in the exportation or shipment or intended exportation or shipment commits an offence and is liable to a fine not exceeding five thousand dollars or three times the value of the goods, whichever is the greater.

(2) Any person knowingly concerned in the exportation or shipment of goods as stores, or in the attempted exportation or shipment of goods as stores, with intent to evade a prohibition or restriction referred to in subsection (1) commits an offence and is liable to a fine not exceeding five thousand dollars or to three times the value of the goods whichever is the greater, or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment and may be arrested.

39. Goods of community origin

(1) Where on the exportation of goods from the State there is furnished in accordance with any Common market requirement or practice any certificate or other evidence as to the origin of such goods, or as to payments made or relief from duty allowed in any country or territory, then, for verifying or investigating the certificate for evidence, the Comptroller or an officer may require—

- (a) the exporter; or
- (b) any person who the Comptroller or officer has reasonable cause to believe is concerned in any way with—
 - (i) the goods, or
 - (ii) any goods from which, directly or indirectly, they have been produced or manufactured, or
 - (iii) the obtaining or furnishing of the certificate or evidence,

to furnish such information, in such form and within such time, as the Comptroller or officer may specify in the requirement or to produce for inspection, and to allow the taking of copies or extracts from such invoices, bills of lading, books or documents as may be specified.

(2) Any person who without reasonable cause fails to comply with a requirement imposed on him under subsection (1) commits an offence and is liable on conviction to a fine not exceeding five thousand dollars.

PART VI

Coasting Trade

40. Definition of coasting trade

(1) Subject to the provisions of this Part the carriage of goods by sea or air from one part of the State to another shall be deemed to be coasting trade, and any vessel or aircraft whilst so employed shall be deemed to be a coasting vessel or coasting aircraft.

(2) The Minister may by Order exempt from the provision of subsection (1) the carriage of any goods or any class or description of goods from any specified place in the State to another specified place.

41. Limits on coasting trade

(1) Subject to subsection (2), no goods not yet entered on importation and no goods for exportation shall be carried by way of coasting trade in any vessel or aircraft used for that purpose.

(2) The Comptroller may, subject to such conditions and restrictions as he may see fit to impose permit—

- (a) a vessel or aircraft to carry goods by way of coasting trade notwithstanding that the vessel or aircraft is transporting goods not yet entered on their importation from a place outside the State and if such vessel or aircraft

carrying such goods is not for the purposes of this Part a coasting vessel or aircraft;

- (b) goods brought by another vessel or aircraft to a place in the State from a place outside the State which are consigned to and intended to be delivered to another place in the State to be transhipped before due entry of the goods has been made to a vessel or an aircraft for carriage by way of coasting trade to that other place; and
- (c) any vessel or aircraft being loaded with goods for exportation or for use as stores on a voyage to a destination outside the State to carry goods by way of coasting trade until that loading has been completed.

(3) If any goods carried by way of coasting trade in contravention of subsection (1) or any goods are loaded, unloaded, carried or otherwise dealt with contrary to any condition or restriction imposed by the Comptroller under subsection (2), those goods shall be liable to forfeiture and the master of the vessel or the commander of the aircraft commits an offence and is liable on conviction to a fine not exceeding five thousand dollars or three times the value of the goods whichever is the greater.

42. Clearance of coasting vessels and aircraft

(1) Subject to the provisions of this subsection and save as the Comptroller may otherwise permit, no coasting vessel or aircraft shall depart from any port or airport in the State before its master or commander has produced to the proper officer an account of the goods carried in that vessel or aircraft, in such form and manner and containing such particulars as the Comptroller may direct, and such account, when signed by the proper officer, shall be the clearance of that vessel or aircraft.

(2) Where no officer is stationed at the place where an account is required to be produced under subsection (1), the vessel or aircraft may depart from that place and the account shall be produced to an officer at the first place at which the vessel or aircraft arrives where an officer is stationed.

(3) On an application for clearance by the master of a vessel or the commander of an aircraft, the Comptroller may grant, subject to such conditions and restrictions as he may see fit to impose, a general clearance for that vessel or aircraft and any goods, class or description of goods to be carried in it.

(4) Any general clearance granted under subsection (3), may be revoked at any time by the Comptroller by notice in writing delivered to the master or owner of a vessel or the commander or owner of an aircraft or to any member of the crew on board that vessel or aircraft.

(5) Except as provided by this section, if any coasting vessel or aircraft carrying goods—

- (a) departs from any place in the State without clearance, whether obtained before or after that departure; or
- (b) in contravention of any condition or restriction imposed by the Comptroller upon a general clearance of that vessel or aircraft under subsection (3),

the master or the commander commits an offence and is liable to a fine not exceeding five thousand dollars, or three times the value of the goods whichever is the greater and any goods in respect of which the offence was committed is liable to forfeiture.

43. Cargo book

(1) The master and the commander of every coasting vessel or aircraft respectively shall keep a cargo book in such form and manner and containing such particulars as the Comptroller may direct.

(2) The master or the commander of a coasting vessel or aircraft shall, upon a demand made by the proper officer, produce for inspection the cargo book of that vessel or aircraft.

(3) Subject to subsection (4), where—

- (a) goods have been loaded on to or unloaded from a coasting vessel or aircraft at a place in the State and before that vessel or aircraft departs from that place; or
- (b) a coasting vessel or aircraft arrives at a place in the State where goods are to be unloaded, and before any goods are unloaded,

the master or the commander shall produce to the proper officer the cargo book of that vessel or aircraft.

(4) Where no officer is stationed at the place where a cargo book is required to be produced under subsection (3), the vessel or aircraft may depart from that place, or unload, whereupon the cargo book shall be produced to an officer at the first place the vessel or aircraft arrives at which an officer is stationed.

(5) Where the master or the commander fails to keep or produce a cargo book as required by this section, he commits an offence and is liable on conviction to a fine not exceeding five thousand dollars, or three times the value of the goods whichever is the greater and any goods unloaded in contravention of subsection (3) is liable to forfeiture.

44. Examination of goods in coasting vessels

(1) The proper officer may examine any goods carried or to be carried in a vessel—

- (a) at any time while such goods are on board the vessel; or
- (b) at any place in the State to which the goods have been brought for shipment in, or at which they have been unloaded from, the vessel,

and for that purpose may require any container to be opened or unpacked and any such opening or unpacking and any repacking shall be done by or at the expense of the proprietor of the goods.

(2) The proper officer—

- (a) may board and search a coasting vessel at any time during its voyage; or
- (b) may at any time require any document which should properly be on board a coasting vessel to be produced or brought to him for examination.

(3) If the master of the vessel fails to produce or bring any document referred to at subsection (2) to the proper officer when required, he commits an offence and is liable on conviction to a fine not exceeding five thousand dollars.

45. Offences in relation to carriage of goods coastwise

(1) If in the case of any vessel or aircraft—

- (a) goods are taken on board or unloaded at a place outside the State; or
- (b) the vessel or aircraft touches at some place outside the State or deviates from its voyage or flight, and the master of the vessel or the commander of the aircraft does not report that fact in writing to the proper officer at the first place in the State at which the vessel or aircraft arrives and where an officer is stationed,

the master or commander commits an offence and is liable on conviction to a fine not exceeding five thousand dollars or three times the value of the goods whichever is the greater and those goods shall be liable to forfeiture.

(2) If any goods—

- (a) are carried by way of a coasting vessel or aircraft contrary to any prohibition or restriction for the time being in force with respect to those goods under or by virtue of any enactment; or
- (b) are brought to any place in the State for the purpose of being carried or shipped by a coasting vessel or aircraft,

the shipper or person attempting to ship the goods commits an offence and is liable on conviction to a fine not exceeding five thousand dollars or three times the value of the goods whichever is the greater and those goods shall be liable to forfeiture.

46. Use of small craft

The purposes and limits within which any vessel not exceeding fifty tons may be used shall be as prescribed.

PART VII

Warehousing

47. Approval of warehouses

(1) The Comptroller may approve, for such periods and subject to such conditions and restrictions as he may see fit to impose, places of security for the deposit, keeping and securing of—

- (a) any goods chargeable with a duty of customs without payment of that duty;
- (b) subject to such conditions and restrictions, goods for exportation or use as stores, being goods not eligible for home use;
- (c) any goods permitted by or under this Act to be warehoused on drawback,

and any place so approved shall be referred to in this Act as a warehouse.

(2) Without prejudice to the generality of subsection (1), the Comptroller may—

- (a) restrict the goods which may be permitted to be warehoused in a particular warehouse to those goods owned by the occupier of that warehouse; or
- (b) make the approval of any warehouse conditional upon the warehousing of a minimum amount of goods during a specified period,

and different amounts may be required in respect of warehouses restricted under paragraph (a) and warehouses not so restricted.

(3) If, after the approval of a place of security as a warehouse under subsection (1), the occupier of that warehouse contravenes or fails to comply with any condition or restriction imposed by the Comptroller under that subsection, he commits an offence and is liable on conviction to a fine not exceeding five thousand dollars.

(4) Subject to subsection (5), the Comptroller may at any time for reasonable cause revoke or vary the terms of any approval given under subsection (1).

(5) Where the Comptroller intends to revoke or not to renew the approval of a warehouse given under subsection (1), he shall, not later than three months before the date when the revocation is due to take effect or the approval is due to expire, hereinafter in this section referred to as “the date of cessation”, give notice of his intention in writing, and such notice shall be deemed to have been served on all persons interested in any goods then deposited in that warehouse, or permitted by or under this Act to be so deposited between the date of the giving of the notice and the date of cessation, if addressed to the occupier of, and left at, the warehouse.

(6) If, after the date of cessation or such later date as the Comptroller may in any case permit, uncleared goods remain in a place no longer approved as a warehouse under subsection (1), they may be taken by an officer to a customs warehouse and, without prejudice to any other power of earlier sale provided by this Act, if they are not cleared within one month, may be sold.

48. Goods exempted from warehousing on importation

(1) No goods of any class or description specified in the First Schedule may be warehoused on importation.

(2) The Minister may, by Order delete from, vary or add to goods of any class or description specified in the First Schedule.

[First Schedule.]

(3) No damage goods or goods enclosed in any insecure or otherwise defective container, or in a container from which any portion of the contents have been removed, may be warehoused.

(4) Save as the Comptroller may otherwise permit and subject to such conditions and restriction as he may see fit to impose, no warehoused goods may remain warehoused for longer than two years, after which time such goods may be sold.

(5) The Minister may, by Order prescribe goods, and the class or description of goods which may not remain warehoused for a period longer than six months and may from time to time, delete from, vary or add to such goods, class or description of goods.

(6) The Minister may by Order specify goods of any class or description which are required to be warehoused upon their importation.

(7) If any goods are warehoused or fail to be warehoused contrary to the provisions of this section, they shall be liable to forfeiture.

49. Production of goods in warehouse

(1) The occupier of a warehouse shall produce to any proper officer on request any goods deposited therein which have not been lawfully authorised to be removed and if he fails to produce any such goods he commits an offence and is liable to a fine not exceeding five hundred dollars or three times the value of the goods, whichever is the greater.

(2) The occupier of a warehouse shall properly stow every container or lot of goods warehoused so as to afford easy access thereto, and for failure to comply with this section he commits an offence and is liable on conviction to a fine not exceeding five thousand dollars.

50. Inspection and display of goods

(1) Without prejudice to any restriction or condition imposed by the occupier of the warehouse, the proprietor of warehoused goods may with the authority of the proper officer—

- (a) inspect the goods and their containers and prevent any loss therefrom; and
- (b) display the goods for sale.

(2) Where the proper officer requires that the occupier be present at any such inspection or displaying of goods, the occupier shall so far as is practicable attend at any reasonable time requested, but shall not be obliged to attend for the purposes of this section more than once in any period of twenty-four hours at the request of the same person or in respect of the same goods.

(3) The Comptroller may allow the proprietor of any warehoused goods to take such samples of the goods subject to such conditions, and with or without entry or payment of duty, as he thinks fit.

51. Entry, marking, etc., of goods for warehousing

(1) Imported goods which on importation are entered for warehousing shall be deemed to be duly warehoused as from the time when the proper officer certifies that the entry and warehousing of those goods is complete.

(2) Before any other goods are warehoused, the proprietor of the goods shall deliver to the proper officer an entry in such form and manner and containing such particulars as the Comptroller may direct.

(3) Any goods brought to a warehouse for rewarehousing after removal for that purpose from another warehouse shall be dealt with as if they were goods being warehoused for the first time, except that subsections (1) and (2) shall not apply.

(4) Save as permitted under this Act, goods shall be warehoused in the containers or lots in which they were first entered for warehousing.

(5) The proprietor of any warehoused goods shall mark the containers or lots in such manner as the proper officer may direct and shall, subject to any further direction, keep them so marked while they are warehoused.

(6) A person who fails to comply with the provisions of subsection (5) commits an offence and is liable on conviction to a fine not exceeding five thousand dollars.

(7) Where without the authority of the proper officer and save as permitted under this Act—

- (a) any goods are warehoused in containers or lots other than those in which they were entered for warehousing; or
- (b) any alteration is made in any goods in a warehouse, or in the packing or marking of the containers or lots of any such goods after warehousing,

those goods shall be liable to forfeiture.

52. Re-entry of goods entered for warehousing

(1) Subject to subsection (2), any goods which are entered for warehousing or which are permitted to be removed from one warehouse to another may, at any time before they are warehoused or rewarehoused—

- (a) be further entered by their proprietor for—
 - (i) home use (if eligible),
 - (ii) exportation or use as stores,and shall then be dealt with as if they were so entered from warehouse; or
- (b) be removed for transport to another warehouse approved for warehousing of such goods, and shall then be dealt with as if they were duly warehoused.

(2) Where goods are held in containers, no part of those goods shall be further entered or removed under subsection (1) unless that part consists of one or more complete containers.

53. Operations on warehoused goods

(1) Without prejudice to any other provision of this or any other Act by or under which an operation on warehoused goods is or may be permitted, the Comptroller may, in the case of such goods and subject to such conditions and restrictions as he may from

time to time impose, permit the sorting, separating, packing or repacking of goods in warehouses and the carrying out on warehoused goods of such other operations necessary for the preservation, sale, shipment or disposal of the goods as he sees fit, and may designate the warehouses or the part of any warehouse in which any such operations on goods may be carried out.

(2) A person who immediately before the commencement of this Act was permitted to carry out an operation of any kind on goods of any class or description in a warehouse, not being an operation provided for or permitted under this or any other enactment shall be deemed to have been granted similar permission by the Comptroller under subsection (1).

(3) The Comptroller may at any time revoke or vary any permission granted under this section.

(4) If any person carries out any operation on goods in a warehouse otherwise than in accordance with permission granted under this section or otherwise than as permitted by or under any other enactment he commits an offence and is liable on conviction to a fine not exceeding five thousand dollars and the goods shall be liable to forfeiture.

54. Deficiency in warehoused goods

(1) If, at any time after goods have been warehoused and before they have been lawfully removed, all or part of those goods are found to be missing then, without prejudice to any other fine or liability to forfeiture incurred by or under this Act, the occupier of the warehouse shall pay to the Comptroller—

- (a) the duty that such goods would have borne if they had been entered for home use on the date of the discovery of the deficiency; or
- (b) in the case of goods not eligible for home use, an amount which in the opinion of the proper officer was the value of the goods at the date of the deficiency.

(2) A person who removes goods contrary to subsection (1) commits an offence and is liable on conviction to a fine not exceeding five thousand dollars, or three times the value of the goods, whichever is the greater.

(3) Without prejudice to any other fine or liability to forfeiture incurred by or under this Act subsection (1)(a) and (b) shall apply *mutatis mutandis* to the proprietor of goods where any such goods have been lawfully removed without payment of duty for transport from a warehouse to some other warehouse or to some other place, and all or part of such goods fail to reach that other warehouse or place.

(4) A person acting in breach of subsection (3) commits an offence and is liable on conviction to a fine not exceeding five thousand dollars, or three times the value of the goods, whichever is the greater.

(5) Subject to subsection (6), no compensation shall be payable by, and no action shall lie against the Comptroller, for any loss or damage caused to any goods while in a warehouse or for any unlawful removal of goods from a warehouse.

(6) Where warehoused goods are damaged, destroyed or unlawfully removed by or with the assistance or connivance of an officer, and that officer is convicted of an offence in relation to that damage, destruction or removal, then, except where the occupier of the warehouse or the proprietor of the goods was a party to the offence, the Comptroller shall pay compensation for any loss caused by such damage, destruction or removal, and notwithstanding any other provision of any customs enactment, no duty shall be payable on the goods by the occupier or the proprietor and any sum paid by way of duty by him before the conviction shall be repaid.

55. Removal of warehoused goods

(1) Before any goods are removed from a warehouse the proprietor of the goods shall deliver to the proper officer an entry thereof in such form and manner and containing such particulars as the Comptroller may direct.

(2) Subject to any provision of this or any other Act or of any regulations made thereunder as to the purposes for which any goods may be warehoused, goods may be entered under this section for any of the following purposes—

- (a) home use;
- (b) exportation;
- (c) use as stores;
- (d) subject to such conditions and restrictions as the Comptroller sees fit to impose; for—
 - (i) removal to another warehouse approved for the warehousing of such goods,
 - (ii) removal for such other purposes, to such places and for such periods as the Comptroller may allow.

56. Duty chargeable on warehoused goods

(1) Save as permitted by or under this Act, no goods shall be removed from a warehouse until all duties chargeable on those goods have been paid.

(2) Subject to section 63(3) the duties and rates chargeable on warehoused goods shall be those in force on the date of initial registration of a declaration with respect to the goods of that class or description.

[Subsection (2) amended by Act No. 33 of 2007.]

(3) Subject to subsection (4), the amount payable in respect of any duty chargeable on goods shall be calculated in accordance with the account taken of those goods upon their first being warehoused, except that where the goods are—

- (a) spirits;
- (b) wine; or
- (c) tobacco,

the calculation shall be in accordance with the quantity of such goods ascertained by weight, measure or strength at the time of actual delivery of the goods, unless the Comptroller considers that the difference between the first account and the amount delivered is not explained by natural evaporation or other legitimate cause, in which case the calculation shall be in accordance with that first account.

(4) Where warehoused goods have deteriorated or have been damaged to such a degree that the Comptroller is satisfied that they have become unsaleable, he shall allow such abatement of the duty chargeable on them as, in his opinion, the amount of the deterioration or damage bears to the original value of the goods.

57. Removal of warehoused goods without payment of duty

(1) Without prejudice to any other provision of this Act authorising the removal of goods from warehouse without payment of duty, the Comptroller may permit warehoused goods entered for removal for any purpose other than home use to be removed for that purpose subject to such conditions and restrictions as he may see fit to impose, without payment of duty.

(2) Where any condition or restriction imposed under this section is contravened or not complied with, the goods shall be liable to forfeiture.

58. Goods deposited in customs warehouse

(1) The provisions of this section shall have effect in relation to any goods which are deposited in a customs warehouse by virtue of any provision of this Act.

(2) The Comptroller may appoint any place for the deposit of goods for the security of those goods and for any duty chargeable on them, and any place so appointed shall be referred to in this Act as a customs warehouse.

(3) Where in respect of any goods which may be warehoused or are required to be warehoused, the Comptroller is of the opinion that it would be undesirable or inconvenient to deposit such goods in a customs warehouse, he may treat those goods as if deposited in a customs warehouse, and the provisions of this section shall then apply to those goods as if they were deposited in such a warehouse.

(4) Rent shall be payable in respect of any goods deposited in a customs warehouse as the Minister may by Order prescribe.

(5) Cabinet may remit or authorise the refund of any rent payable or paid in respect of any goods deposited in a customs warehouse.

(6) The Comptroller may, in respect of any goods deposited in a customs warehouse, do all such acts as appear to him necessary for the custody and preservation of such goods, and the expenses of so doing shall be in addition to any other charges payable in respect of those goods.

(7) If any goods deposited in a customs warehouse are, in the opinion of the Comptroller, of such a nature as to require special care or treatment, then—

- (a) in addition to the other charges payable on them there shall be such other charge for the securing, watch and guarding of them as the Comptroller may consider necessary;
- (b) the Comptroller shall not be liable to make good any damage which the goods may sustain; and
- (c) unless the goods were deposited under section 25(1)(c), the goods may be sold by the Comptroller if the proprietor of the goods does not within fourteen days from the date of their deposit clear the goods.

(8) Save as the Comptroller may otherwise permit, all goods deposited in a customs warehouse shall be removed from that warehouse within two months from the date of their deposit, and any goods not so removed may be sold.

(9) Save as permitted by or under this Act, no goods shall be removed from a customs warehouse until all duty chargeable on those goods, and any charges—

- (a) in respect of the removal of the goods to the customs warehouse; and
- (b) arising by virtue of subsections (3), (4) and (6), have been paid and in the case of goods requiring entry and not yet entered, until entry of those goods have been made.

(10) An officer having custody of goods in a customs warehouse may refuse to permit their removal until it is shown to his satisfaction that all freight charges due on those goods have been paid.

59. Offences in relation to warehouses and warehoused goods

(1) No person, except with the authority of the proper officer or for just and sufficient cause, may open any door or lock of a warehouse or a customs warehouse or make or obtain access to any such warehouse or to any goods in such a warehouse.

(2) A person who acts in contravention of subsection (1) commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars, or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment and may be arrested.

(3) Where any goods which—

- (a) have been entered for warehousing is taken into a warehouse without the authority of, or otherwise than in accordance with, any direction given by the proper officer; or
- (b) have been entered for warehousing are removed without being duly warehoused or are otherwise not duly warehoused save as permitted by or under this Act; or
- (c) have been deposited in a warehouse or a customs warehouse are unlawfully removed or unlawfully loaded into any vessel, aircraft or vehicle for removal or for exportation or for use as stores; or
- (d) have been entered for warehousing are concealed, whether before or after; or
- (e) have been lawfully permitted to be removed from a warehouse or a customs warehouse without payment of duty for any purpose are not duly delivered at the destination to which they should have been taken,

the goods shall be liable to forfeiture.

(4) Where any person is in any way concerned with the taking, removal, loading, concealing or non-delivery of goods as described in subsection (3), with intent to defraud the Government of the State of any duty chargeable on those goods or to evade any prohibition or restriction for the time being in force with respect to those goods under or by virtue of any enactment, he commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars, or to three times the value of the goods, whichever is the greater or to imprisonment for two years, or to both such fine and imprisonment and may be arrested.

PART VIII

Duties, Drawbacks Prohibition and Restrictions

Duties

60. Time at which duty chargeable and payable

(1) Save as permitted by or under this Act or any other enactment relating to customs, no imported goods shall be delivered or removed on importation until the importer has paid to the proper officer any duty chargeable and that duty shall, in the case of goods of which entry is made, be paid on making the entry.

(2) Save as otherwise permitted by or under this Act, duty shall be chargeable on goods at the rate in force on the date of the initial registration of the declaration with respect to goods of that class or description where—

- (a) an entry for home use is delivered in respect of goods imported into the State or an entry is delivered in respect of goods to be exported out of the State at the time of initial registration in respect of those goods to the proper officer;
- (b) an entry is required in respect of the importation of goods into or the exportation of goods out of the State but no entry is delivered to any officer at the time of the importation or exportation of the goods;
- (c) goods are removed from any vessel, aircraft or transit shed under any bond or other security, at the time of initial registration;
- (d) subject to subsection (3), goods are removed from a warehouse for home or other use at the time of the removal of those goods from warehouse, and in any other case, at the time of the importation or exportation of the goods.

[Subsection (2) amended by Act No. 33 of 2007.]

(3) Where goods are warehoused by virtue of any requirement of section 25(1)(c) or any Order made under section 48(6), then if an entry in respect of those goods is delivered to the proper officer within seven working days of those goods being imported into the State duty shall be chargeable on those goods at the rate in force at the time of the delivery of the entry in respect of those goods to the proper officer.

61. Goods exempted from duty

Any goods which are on their importation permitted to be entered for warehousing shall be allowed to be warehoused without payment of duty.

62. Goods for transit or transshipment

Where goods are entered for transit or transshipment, the Comptroller may allow the goods to be removed for that purpose, subject to such conditions and restrictions as he sees fit, without payment of duty.

63. Calculation of duty

(1) Without prejudice to any other provision of this Act, any amount due by way of customs duty shall be recoverable as a debt due to the Crown.

(2) Any duty, drawback, allowance or rebate the rate of which is expressed by reference to a specified quantity or weight of any goods shall be chargeable or allowable on any fraction of that quantity or weight of the goods, and the amount payable or allowable on any such fraction shall be calculated proportionately:

Provided that the Comptroller may determine the fractions to be taken into account in the case of any weight or quantity.

(3) For the purpose of calculating any amount due from or to any person under any customs enactment by way of duty, drawback, allowance, repayment or rebate, any fraction of a cent in that amount shall be disregarded.

64. Special provisions

(1) If any goods chargeable with any import or export duty—

(a) are imported or exported in any package intended for sale or of a kind normally sold with those goods, and the package is—

(i) marked or labelled or commonly sold or reputed as containing a specified quantity of those goods, then the package shall be deemed to contain not less than that specified quantity,

(ii) not marked or labelled, or commonly sold as, or reputed as containing a specified quantity of those goods unless the importer or exporter is able to satisfy the Comptroller as to the net weight of the goods, the duty shall be calculated on the gross weight of the package and the goods;

(b) are imported or exported in any package or covering which in the opinion of the Comptroller—

(i) is not the usual or proper package or covering for such goods, or

(ii) is designed for separate use, other than as a package or covering for the same or similar goods, subsequent to the importation or exportation,

that package or covering shall be deemed to be a separate article;

- (c) are brought or come into the State as derelict, jetsam, flotsam or as a wreck or part of a wreck, or as droits of Admiralty and are sold in the State, they shall be chargeable with the same duty as goods of that class or description would be subject at the time of their discovery or sale;
- (d) are imported or exported as a part or an ingredient of another article, duty shall be chargeable on those goods according to the proportion of those goods to other goods used in the manufacture or preparation of the article.

(2) The Minister may by Order, specify standard capacities for containers of liquid goods, and where goods liable to duty by liquid volume are, or are reputed to be sold in containers of the size specified in the Order, the quantity of goods in that container shall be deemed to be the specified quantity.

65. Reliefs from duty on re-imported goods

(1) Where goods, previously entered for home use are re-imported into the State after exportation and it is shown to the satisfaction of the Comptroller that—

- (a) no duty was chargeable on those goods on any previous importation into the State or that if any duty was chargeable, it has been paid;
- (b) no drawback has been paid or duty refunded on their exportation or that any drawback paid or duty refunded has been repaid; and
- (c) the goods have not undergone any process outside the State since their exportation,

those goods may be imported without payment of duty subject to such conditions and restrictions as the Comptroller may see fit to impose.

(2) Where under the provisions of any customs enactment, goods are, subject to any condition or restriction, relieved from the duty chargeable on them, and that condition or restriction is contravened or not complied with, the duty relieved shall become payable by the person who, but for that relief, would have had to pay that duty, and the goods in respect of which the relief was granted shall be liable to forfeiture.

(3) Goods relieved from duty by virtue of the provisions of any customs enactment shall, upon a demand made by an officer, be produced or otherwise accounted for to him.

(4) A person who fails to produce or account for such goods commits an offence and is liable on conviction to a fine not exceeding five thousand dollars, or three times the value of the goods, whichever is the greater, and if any goods not produced or accounted for are subsequently found, they shall be liable to forfeiture.

66. Abatement of duty

(1) Subject to subsection (2) where in respect of any imported goods the Comptroller is satisfied that—

- (a) before or subsequent to their importation they have deteriorated or have been damaged, or that all or part of them have been lost or destroyed, and, in the case of lost goods, have not entered or will not enter into home use in the State; and
- (b) the carrier or insurer has made an allowance to the importer in respect of the deterioration, damage, loss or destruction,

the Comptroller shall allow such abatement of the duty chargeable on those goods as, in his opinion, the amount of the deterioration, damage, loss or destruction bears to the original value of the goods.

(2) Where duty has already been paid on goods in respect of which an abatement would be allowable under subsection (1), no payment of the amount of the abatement

shall be made unless the claim is made within six months of the date of the payment of the duty.

67. Goods imported only temporarily for re-exportation

Where the Minister is satisfied that goods are imported only temporarily with a view to subsequent re-exportation, he may declare that the goods shall be delivered on importation subject to such conditions and to the payment of such proportion of the duty thereon as may be prescribed and different conditions may be prescribed for different classes of goods.

68. Goods imported other than as cargo, stores or baggage

Any goods brought or coming into the State by sea other than cargo, stores or baggage carried in a vessel shall be chargeable with the same duty, if any, as would be applicable to those goods if they had been imported as merchandise and if any question arises as to the origin of the goods they shall be deemed to be the produce of such country as the Comptroller may on investigation determine.

69. Personal reliefs by Order

(1) The Minister may, by Order, make provision for conferring on persons entering the State relief from customs duties on goods or classes or description of goods specified in the Order.

(2) Any relief granted under subsection (1) may be either—

- (a) an exemption from duty; or
- (b) a sum payable by way of duty, which is less than the full amount due.

(3) An Order made under subsection (1) may—

- (a) make any relief for which it provides subject to such conditions as the Minister thinks fit including conditions to be complied with after the importation of goods to which the relief applies;
- (b) make different provisions for different cases.

(4) A person acting in contravention of the conditions of an Order under subsection (1) commits an offence and an Order made under that subsection may provide for the imposition of a fine of an amount not exceeding five thousand dollars for any contravention of or failure to comply with any provision of the Order and also for the forfeiture of any goods involved in any such offence.

70. Relief on reimported goods locally produced

Without prejudice to any other enactment relating to customs, and notwithstanding the provisions of section 65, if it is shown to the satisfaction of the Comptroller that any goods manufactured or produced in the State and re-imported into the State after exportation have not undergone any process outside the State after their exportation the goods may on their re-importation be delivered for home use without payment of duty.

71. Refund of duty

(1) Cabinet may remit or authorise the refund of the whole or part of any duty paid or payable by any person in respect of any goods.

(2) Any remission or refund made or authorised to be made under subsection (1) may apply either to specific instances or generally or in respect of specified persons or to persons of a specific class, and may be subject to such conditions and restrictions as Cabinet may see fit to impose.

(3) Notwithstanding the provisions of subsections (1) and (2) if any amount is paid as duty and such amount is in excess of the duty due and payable, the Comptroller may refund the excess.

72. Recovery of amounts due

(1) An amount due and payable to the Comptroller under any customs enactment may be recovered by him in any court of competent jurisdiction.

(2) Where any amount shown on an invoice or other document is expressed in a foreign currency, the value of those goods shall be calculated according to the rate of exchange for that currency posted at the Customs House on the day on which the charge to duty arises.

73. Valuation Second Schedule

Where under any enactment relating to an assigned matter duty is chargeable on goods by reference to their value that value shall in the case of imported goods be determined in accordance with the provisions of the Second Schedule.

Drawback

74. Extent of drawback

(1) Subject to the provisions of this section, where goods are entered—

- (a) for exportation;
- (b) for shipment for use as stores; or
- (c) for warehousing for subsequent exportation or shipment for use as stores,

drawback may be claimed in respect of such proportion of any duty paid on their importation into the State as the Minister may by Order specify.

(2) No drawback may be claimed in respect of goods—

- (a) of a value of less than two hundred and seventy dollars, such value being that at which the goods were originally imported;
- (b) which were imported into the State more than twelve months before the date of the claim for drawback; and
- (c) not in the packages in which they were originally imported into the State or in the case of bulk goods, where that bulk has been broken,

except that where imported goods are re-exported within six months of their importation by their importer to the same country and to the same person or firm from which they were imported or are entered for shipment for use as stores, the provisions of this subsection shall not apply.

(3) The Minister may, by Order, prescribe any goods, class or description of goods in respect of which no drawback shall be claimed.

75. Claims for drawback

(1) A claim for drawback shall be made in such form and manner and contain such particulars as the Comptroller may direct.

(2) No drawback shall be payable—

- (a) unless it is shown to the satisfaction of the Comptroller that all duty due on the goods in respect of which the claim is made has been paid and not otherwise drawn back;

- (b) until the person making the claim has furnished the Comptroller with such information and produced to him such books of account or other documents relating to the goods as the Comptroller may request; and
- (c) subject to section 65, until all the goods which are the subject of the claim have been exported.

76. Goods destroyed or damaged after shipment

(1) Where it is proved to the satisfaction of the Comptroller that after being duly shipped for exportation or for use as stores, goods have been destroyed by accident on board the exporting vessel or aircraft, any amount payable by way of drawback on those goods shall be payable as if they had been exported to their destination.

(2) Where it is proved to the satisfaction of the Comptroller that after being duly shipped for exportation or for use as stores, goods have been materially damaged by accident on board the exporting vessel or aircraft, those goods may, with the consent of and in accordance with such conditions and restrictions as may be imposed by the Comptroller, be reloaded or unloaded again or brought back into the State and—

- (a) if re-entered for home use shall be chargeable with the duty due on the importation of such damaged goods; or
- (b) if abandoned to the Comptroller or destroyed, the importer shall be entitled to such drawback payable on those goods as if they had been duly exported to their destination, and notwithstanding any other provision of any customs enactment, no duty shall be payable on the importation or unloading of those goods.

(3) A person who furnishes any false information under subsection (1), commits an offence and the goods shall be liable to forfeiture but in the case of a claim for drawback the Comptroller may, if he sees fit, instead of seizing the goods either refuse to allow any drawback thereon or allow only such drawback as he considers proper.

(4) Without prejudice to the foregoing provisions of this section, where any goods upon which a claim for drawback, allowance, remission or repayment of duty has been made, do not correspond with the entry made in connection with that claim, the goods shall be liable to forfeiture and any person by whom any such entry or claim was made commits an offence and is liable on conviction to a fine not exceeding five thousand dollars.

77. Offences in relation to drawback

(1) If any person obtains or attempts to obtain or assists any person attempting to obtain any amount by way of drawback in respect of goods for which there is no entitlement, he commits an offence and is liable on conviction to a fine not exceeding five thousand dollars, or three times the amount of the drawback whichever is the greater.

(2) If any person, with intent to defraud, obtains or attempts to obtain or assists any person attempting to obtain drawback in respect of goods for which there is no lawful entitlement, he commits an offence and is liable on conviction to a fine not exceeding five thousand dollars, or three times the amount obtained or which might have been obtained whichever is the greater, or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment and may be arrested.

(3) Any goods in respect of which an offence under subsections (1) and (2) is committed shall be liable to forfeiture.

78. Duty on goods imported after manufacture

(1) If it is shown to the satisfaction of the Comptroller that duty has been paid on goods on importation and that such goods have—

- (a) undergone a process of manufacture; and
- (b) have been exported,

the Comptroller shall, subject to such conditions and restrictions as he sees fit to impose, repay to the importer upon a claim being made, an amount equivalent to the duty paid on the importation of the goods.

(2) Any claim made under subsection (1) shall be made in such form and contain such particulars as the Comptroller may require.

Prohibition and Restrictions

79. General provisions

(1) No goods or class or description of goods, prescribed in Part I of the Third Schedule, may be imported into the State.

(2) No goods or class or description of goods, prescribed in Part II of the Third Schedule may be imported into the State except in accordance with the conditions and restrictions prescribed in that Part.

[Part I, Third Schedule.]

(3) The Minister may, by Order—

- (a) delete from, vary or add to the goods, or class or description of goods prescribed in Part I of the Third Schedule or vary the conditions or restrictions in Part II of the Third Schedule;
- (b) prohibit or restrict, subject to such conditions as the Order may impose—
 - (i) the exportation or carriage coastwise of any goods or class or description of goods, and
 - (ii) the importation, exportation or carriage coastwise of any goods, class or description of goods specified in the Order to or from any specified place in the State.

[Part II, Third Schedule.]

80. Prohibition on carriage of certain goods

(1) Save—

- (a) where the Comptroller may otherwise permit and subject to such conditions and restrictions as he may see fit to impose; or
- (b) where the Comptroller is satisfied that the importation was due to accident, stress of weather or to other unavoidable cause,

the goods listed in Part III of the Third Schedule may not be imported into or exported out of the State in any vessel of less than thirty tons burden.

(2) The Minister may by Order, add to, vary or amend the goods listed in Part III of the Third Schedule.

[Part III, Third Schedule.]

(3) Where goods specified in subsection (1) are imported into or exported out of the State in contravention of subsection (1), they shall be liable to forfeiture and any person concerned in that importation or exportation commits an offence and is liable on conviction to a fine not exceeding five thousand dollars and any vessel carrying such goods shall be liable to forfeiture.

PART IX

81. Declaration of baggage on entry and exit

(1) A person entering the State shall at such place and in such manner as the Comptroller may direct declare anything contained in his baggage or carried with him which—

- (a) he has obtained outside the State; or
- (b) being dutiable goods he has obtained in the State without payment of duty.

(2) A person entering or leaving the State shall answer such questions as the proper officer may put to him with respect to his baggage and anything contained therein or carried with him and shall if required by the proper officer produce that baggage and any such thing for examination at such place as the Comptroller may direct.

(3) Anything chargeable with any duty which is found concealed or is not declared, and anything which is being taken into or out of the State contrary to any prohibition or restriction for the time being in force with respect thereto under or by virtue of any enactment, shall be liable to forfeiture.

(4) A person failing to declare anything contained in his baggage or anything carried with him or to produce his baggage as required by this section commits an offence and is liable on conviction to a fine not exceeding five thousand dollars or three times the value of the goods involved whichever is the greater.

82. Right of access and search

(1) Without prejudice to any other power contained in this Act, an officer shall have a right of access to, and a power of search of, any part of a customs port, approved wharf, customs airport or other customs area, and any vehicle or goods found at such place.

(2) The power of search provided by subsection (1) shall include the power to break into or open any building or container which is locked and to which there is no access.

(3) Any goods found concealed at a customs port, approved wharf, customs airport or other customs area, or in any vehicle found at such a place, shall be liable to forfeiture.

83. Right to board and search vessels

(1) At any time while a vessel is in the territorial waters or an aircraft is at any customs airport, any officer may—

- (a) intercept and board that vessel or aircraft; and
- (b) remain on board the vessel or aircraft; and
- (c) search any part of such vessel or aircraft.

(2) An officer on board any vessel or aircraft in pursuance of subsection (1) may—

- (a) cause any goods to be marked before they are unloaded; or
- (b) examine any goods in the course of their being unloaded; or
- (c) lock up, seal, mark or otherwise secure any goods carried in that vessel or aircraft or in any place or container in which such goods are carried; or
- (d) break open any place or container containing goods which is locked and to which there is no access; or
- (e) require any document or book which should be on board that vessel or aircraft to be produced to him for examination; and

- (f) require answers to all such questions relating to the vessel or aircraft, its cargo, stores, baggage, crew, passengers, voyage or flight as may be put by him.

(3) A person who obstructs an officer in the execution of any of his functions specified in subsection (2) commits an offence and is liable on conviction to a fine not exceeding five thousand dollars.

(4) Any goods found concealed on board a vessel within the limits of the port or an aircraft at any customs airport, shall be liable to forfeiture.

(5) Where the master of any vessel or aircraft refuses to stop or to permit an officer to board when required to do so under subsection (1), the master of that vessel or the commander of that aircraft commits an offence and is liable on conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment and the vessel or aircraft shall be liable to forfeiture.

84. Stationing of officer on vessel

(1) The Comptroller may station an officer on board a vessel at any time while it is within the territorial waters of the State and if the master of a vessel on which an officer is stationed by virtue of this section neglects or refuses to provide—

- (a) proper and sufficient food and water together with reasonable accommodation for such an officer; and
- (b) means of safe access, and egress to and from that vessel as required by the officer,

he commits an offence and is liable on conviction to a fine not exceeding five thousand dollars.

85. Right of entry to premises on foot, by vessel or by aircraft

(1) In relation to any assigned matter, an officer may patrol upon and pass freely either on foot or otherwise along and over and may enter any part of premises in the State other than a dwelling house whether or not that place is private property and any officer so proceeding shall not be liable to any prosecution or any other action for so doing.

(2) An officer in command or in charge of a vessel or aircraft engaged in the prevention of smuggling may haul up and moor that vessel, or land that aircraft, at any place in the State other than premises which comprise a dwelling house.

86. Examination of goods, etc.

(1) Without prejudice to any other power conferred by any customs enactment, an officer may examine and take account of any goods—

- (a) which have been imported; or
- (b) in a warehouse or a customs warehouse; or
- (c) loaded into or unloaded from any vessel or aircraft at any place in the State; or
- (d) entered for exportation or for use as stores; or
- (e) brought to any place in the State for exportation or for use as stores;
- (f) in respect of which any claim for drawback, allowance, rebate, remission or repayment of duty has been made,

and may for that purpose require any container to be opened or unpacked.

(2) An examination of goods by an officer under subsection (1) shall be made at such reasonable time and place as the officer may direct.

(3) The cost of transporting goods to a place directed under subsection (2), and their unloading, opening, unpacking, weighing, repacking, bulking, sorting, lotting, marking, numbering, loading, carrying or landing and any such treatment to the containers in which the goods are kept, for the purposes of and incidental to their examination or use as stores, or warehousing and any facilities or assistance required for examination shall be provided by or at the expense of the owner of the goods.

(4) Any—

- (a) imported goods which an officer has the power under this Act to examine; or
- (b) goods, other than imported goods, which an officer has directed to be brought to a place for the purposes of examination,

removed from customs charge before they have been examined without the prior authority of the proper officer shall be liable to forfeiture.

87. Provision of facilities, etc.

(1) Any person required by the Comptroller under this Act to give security in respect of any premises shall—

- (a) provide and maintain such appliances and afford such other facilities reasonably necessary to enable an officer to take an account or make an examination or search or to perform any other of his duties on the premises of a trader or at any bonded premises or place as the Comptroller may direct;
- (b) keep the appliance so provided in a convenient place approved by the proper officer for that purpose; and
- (c) allow the proper officer at any time access to such appliances and any assistance necessary for the performance of his duties.

(2) Any person who contravenes or fails to comply with any provision of subsection (1) commits an offence and is liable on conviction to a fine not exceeding five thousand dollars.

(3) A trader or other person required to give security under subsection (1) shall provide and maintain any fittings required for the purpose of affixing any lock which the proper officer may require to be affixed to the premises of such trader or other person or to any vessel, utensil or other apparatus kept thereon, and in default—

- (a) the fittings may be provided or any work necessary for its maintenance may be carried out by the proper office and any expenses so incurred shall be paid on demand by the trader or other person; and
- (b) if a trader or other person fails to pay the expenses incurred on demand, he commits an offence and is liable on conviction to a fine not exceeding five thousand dollars.

(4) If any trader or other person or his agent or employee—

- (a) wilfully destroys or damages any fitting, lock or key provided for use or any label or seal placed on any such fitting or lock; or
- (b) improperly obtains access to any place or article secured by any fitting or lock; or
- (c) has any such fitting or lock or any article intended to be secured by means thereof so constructed that that intention is defeated,

he commits an offence and is liable on conviction to a fine not exceeding five thousand dollars and may be arrested.

88. Taking of samples

(1) An officer may at any time take a sample of any goods which he is empowered by the provision of any customs enactment to examine.

(2) Samples taken by an officer under subsection (1) shall be disposed of and accounted for in such manner as the Comptroller may direct.

89. Entry and search of premises and issue of writs of assistance

(1) Where an officer has reasonable grounds to believe that anything which is liable to forfeiture by virtue of any customs enactment is kept at or concealed in any building or other place or any offence has been committed under or by virtue of any customs enactment he may under the authority of a warrant issued by a Magistrate—

- (a) enter that building or place at any time, and search for, seize, detain or remove any thing which appears to him to be liable to forfeiture; and
- (b) so far as is reasonably necessary for the purpose of such entry, search, detention or removal, break open any door, window or container and force and remove any other impediment or obstruction; and
- (c) search for and remove any invoice, bill of lading or any other document or book or other form of information relating to any assigned matter.

(2) For the purpose of this section Writs of assistance may issue from the Supreme Court (which is hereby authorised and required to grant such writs upon application made by the Comptroller) and shall continue in force during the period for which they were granted and for six months afterwards and any officer having such writ, may, by day or by night, enter into and search any house, shop, cellar, warehouse or other place and in case of resistance break open doors, trunks chest and packages and seize and take away any uncustomed or prohibited goods and any relevant books or documents and secure the same in a warehouse.

(3) Where in the case of any entry, search, seizure, detention or removal, damage to property is caused and no goods which are liable to forfeiture are found, the owner of the building, place or goods damaged shall be entitled to recover from the Comptroller the costs of making good the damage to the property.

90. Search of vehicles

(1) Without prejudice to any other power contained in or under this Act, where an officer has reasonable grounds to believe that any vehicles is carrying within a customs area, port or airport anything which is liable to forfeiture, or is proceeding from any beach with contraband goods he may stop and search that vehicle.

(2) If, when so required under subsection (1) the person in charge of a vehicle fails to stop or refuses to permit the vehicle to be searched, he commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars.

91. Search of persons

(1) Where an officer has reasonable grounds to believe that any person has in his possession at any customs port or airport anything which is liable to forfeiture, he may stop and search that person and any article which that person has with him.

(2) No person shall be searched by a person of the opposite sex in pursuance of subsection (1) excepting a medical practitioner on request.

92. Power of arrest

(1) Subject to subsection (2) an officer or a police officer may arrest any person who has committed, or whom there are reasonable grounds to suspect of having committed, any offence for which he is liable to be arrested under any customs enactment.

(2) No person may be arrested for an offence by virtue of subsection (1) more than five years after the commission of that offence, except that where, for any reasonable cause it was not the commission of the offence he may be arrested and proceeded against as if the offence was committed at the time when he was arrested, but such action shall not extend beyond seven years.

(3) Where by virtue of subsection (1) any person is arrested by a police officer, that police officer shall give notice of that arrest to the Comptroller.

93. Right to carry firearms

(1) Where the Comptroller is satisfied that it is necessary for the protection of any officer duly engaged in the performance of any duty, he may authorise that officer in writing to apply for and carry a firearm in accordance with section 15(1)(e) of the Firearms Act, 1993, or other subsequent legislation.

(2) An officer may use a firearm authorised to be carried by subsection (1) only where in the execution of his duty such use is necessary for the preservation of life, or property.

94. Power to summon vessels to bring to

(1) If any part of the cargo of a vessel is thrown overboard or is stowed or destroyed to prevent seizure—

- (a) while the vessel is within the territorial waters of the State; and
- (b) where the vessel, having been properly summoned to bring to by any vessel in the service of the Government of the State, fails to do so and chase is given,

the vessel shall be liable to forfeiture.

(2) If, save for just and sufficient cause, any vessel which is liable to forfeiture or examination under or by virtue of any provision of this Act does not bring to when summoned to do so the master of the vessel commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars and may be arrested.

(3) Where any vessel liable to forfeiture or examination under section (1) has failed to bring to when summoned to do so and chase has been given by any vessel in the service of the Government of the State and after the commander of the Government vessel has caused a gun to be fired as a signal, the vessel still fails to bring to, the vessel may be fired upon.

(4) For the purpose of this section a vessel shall be deemed to have been properly summoned to bring to—

- (a) if the vessel making the summons did so by means of an international signal code or two shots fired in the air or any other internationally recognised means is employed by the summons vessel while flying her proper ensign; and
- (b) if at the time the summons was made the vessel was within the territorial waters of the State.

95. Rewards

The Comptroller may, with the approval of the Minister, provided that such approval need not be sought for a sum not exceeding five hundred dollars, reward any person,

including an officer, for any service in relation to an assigned matter which appears to him to merit reward.

96. Attendance of master or commander before Comptroller

(1) Where under any provision of customs enactment the master of a vessel or the commander of an aircraft is required to answer any question put to him by the Comptroller or any officer, the Comptroller or the officer may, at any time while the vessel is at a customs port or the aircraft is at a customs airport, require the master or commander or other senior officer in charge of that vessel or aircraft to attend before him at his office.

(2) A master or commander who fails to comply with any requirement of subsection (1) commits an offence and is liable on conviction to a fine not exceeding five thousand dollars.

97. Furnishing of information extracts, etc., to officers

(1) An officer may, at any time within five years of the importation, exportation or carriage coastwise of any goods, require any person concerned in that importation, exportation or carriage coastwise, or in the carriage, unloading, landing or loading of such goods to—

- (a) furnish to him in such form and manner as he may require, any information relating to the goods;
- (b) give purpose access to any computer for the purposes of verification and audit; or
- (c) produce and permit the officer to inspect, take extracts from, make copies of or remove for a reasonable period, any invoice, bill of lading or other book or document relating to the goods.

[Subsection (1) substituted by Act No. 33 of 2007.]

(2) The Comptroller may require evidence to be produced to his satisfaction in support of any information provided by virtue of subsection (1) or Parts III to VI and Part VIII, in respect of any goods imported, exported or carried coastwise, or in respect of which any repayment of duty is claimed.

(3) A person who without reasonable cause, fails to comply with any requirement imposed on him under subsection (1) or (2), commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars.

98. Security bonds

(1) Without prejudice to any express requirement as to security provided for by any other customs enactment, the Comptroller may, if he sees fit, require any person over the age of eighteen years to give security by bond or otherwise in such form and manner as the Comptroller may direct for the observance of any condition or restriction in connection with any assigned matter.

(2) Any bond taken for the purposes of any assigned matter—

- (a) shall be taken on behalf of the Government of the State;
- (b) may be cancelled at any time by or by the order of, the Comptroller.

(3) Notwithstanding the provisions of subsection (1) a bond may be entered into on behalf of a minor by his parent, legal guardian or guarantor.

PART X

Offences

99. Impersonation of Comptroller or officer

A person who—

- (a) for the purpose of obtaining unlawful admission to an aircraft, vessel, building or other place; or
- (b) for doing or causing to be done any unauthorised act; or
- (c) for any other unlawful purpose,

impersonates the Comptroller, or an officer or a proper officer commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars, or to imprisonment for two years, or to both such fine and imprisonment, and may be arrested.

100. Bribery and collusion

(1) If an officer or proper officer—

- (a) directly or indirectly asks for or accepts in connection with any of his duties any payment or other reward, whether pecuniary or otherwise or any promise or security for any such payment or reward which he is not 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 by which the Government is or may be defrauded or which is otherwise unlawful, being an act or thing relating to an assigned matter,

he commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment and may be arrested.

(2) A person who—

- (a) directly or indirectly offers or gives to an officer or proper officer any payment or other reward whether pecuniary or otherwise or any promise or security for any such payment or reward; or
- (b) proposes or enters into any agreement with the officer, or proper officer,

in order to induce him to do, abstain from doing, permit, conceal or connive at any act or thing relating to an assigned matter whereby the Government is or may be defrauded or which is otherwise unlawful, or otherwise to act in breach of his duty, he commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars, or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment and may be arrested.

101. Offences against officers

(1) A person who—

- (a) obstructs, molests or assaults any officer engaged in the performance of any function imposed by the Act or conferred on him by any other Act or customs enactment; or
- (b) does anything which impedes or is calculated to impede the carrying out of any search for anything which is liable to forfeiture or detention, seizure or removal; or
- (c) rescues, damages or destroys anything which is liable to forfeiture or does anything calculated to prevent the procuring or giving of evidence as to whether or not anything is liable to forfeiture; or

- (d) prevents the arrest of any person under any customs enactment or rescues any person so arrested; or
- (e) attempts to do any act, specified in subsections (a), (b), (c) and (d) or aids and abets any person doing such an act,

commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars, or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment and may be arrested.

(2) A person who fires upon, maims or wounds any officer in the performance of his duty commits an offence and is liable on conviction to a fine not exceeding fifteen thousand dollars or to imprisonment for a term not exceeding ten years, or to both such fine and imprisonment and shall be arrested.

(3) If any person uses abusive, offensive or threatening language to any officer engaged in the performance of his duty or the exercise of any function imposed or conferred on him by this Act or any other customs enactment, he commits an offence and is liable on conviction to a fine not exceeding five thousand dollars.

102. Liability for officers on board vessel

(1) If a vessel or aircraft departs from the State carrying an officer on board without his consent the master of that vessel or the commander of that aircraft commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars.

(2) Without prejudice to the liability of any person under subsection (1), the amount of expenses incurred by the Comptroller or the Government as a result of the carrying away of an officer may be recovered from the owner or the master or commander of the vessel or aircraft.

103. Interfering with customs vessels

(1) A person who save for just and sufficient cause, interferes in any way with any vessel, aircraft, vehicle, buoy, anchor, chain, rope or mark or anything which is being used by an officer in the performance of his duty, commits an offence and is liable on conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment and may be arrested.

(2) A person who fires upon a vessel or vehicle being used by an officer in the performance of his duty commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years and shall be arrested.

104. Signalling to smugglers

(1) A person who sends any prohibited signal or transmits any prohibited message from any place in the State or from any vessel or aircraft, for the information of a person in a vessel or aircraft, commits an offence and is liable on conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment and may be arrested, and any equipment or apparatus used for the sending of the signal or message shall be liable to forfeiture.

(2) Subsection (1) applies whether or not the intended recipient receives the signal or intended signal or is actually engaged at that time in smuggling.

(3) In any proceedings against a person under subsection (1), if any question arises as to whether or not any signal or message was a prohibited signal or a prohibited message, the burden of proof shall lie on the defendant.

(4) An officer or police officer who has reasonable grounds to believe that a prohibited signal or a prohibited message is being or is about to be made or transmitted from any vessel, aircraft, vehicle, building or other place in the State may board or enter

that place and take such steps as are reasonably necessary to stop or prevent the sending of that signal or message.

(5) In this section, “**prohibited signal**” or “**prohibited message**” means a signal or message connected with the smuggling or intended smuggling of goods into or out of the State.

105. Communicating with arriving vessels

Save as the Comptroller may otherwise permit, if any person on board a vessel communicates in any way with a vessel arriving from a place outside the State before that arriving vessel has been cleared by an officer, he commits an offence and is liable on conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment and may be arrested.

106. Offering goods for sale as smuggled goods

Where person who offers for sale any goods as having been imported without payment of duty, or as having been otherwise unlawfully imported, then, whether or not those goods were in fact chargeable with duty or were so imported, the goods shall be liable to forfeiture and the person offering them for sale commits an offence and is liable on conviction to a fine not exceeding five thousand dollars, or three times the value of the goods, whichever is the greater, or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment and may be arrested.

107. Special penalty where offender armed or disguised

(1) A person concerned in the movement, carrying or concealment of goods who armed with an offensive weapon or disguised in any way—

- (a) contrary to or in contravention of any enactment prohibiting or restricting the importation, exportation or carriage coastwise of those goods; or
- (b) without payment having been made or security given for any duty payable on those goods,

is found in the State in possession of anything which is liable to forfeiture under any customs enactment, commits an offence and is liable on conviction to imprisonment for a term not exceeding five years, and may be arrested.

108. False declarations, etc.

(1) A person who for the purpose of any assigned matter, or who knowingly or recklessly—

- (a) makes or signs, or causes to be made or signed, or delivers or causes to be delivered to the Comptroller or an officer, any declaration, notice, certificate or other document; or
- (b) makes any statement in answer to any question put to him by an officer which he is required by or under any enactment to answer,

which is false in a material particular, commits an offence and is liable on conviction to a fine not exceeding five thousand dollars, and any goods in relation to which the document or statement was made shall be liable to forfeiture.

(2) Where by reason of any such document or statement as is mentioned in subsection (1), the full amount of any duty payable is not paid or any overpayment is made in respect of any drawback, allowance, rebate or repayment of duty, the amount of duty unpaid or the overpayment shall be payable immediately to the Comptroller, and may be recovered accordingly.

109. Counterfeiting documents

A person who—

- (a) counterfeits or falsifies any document which is required by any enactment relating to an assigned matter or which is used in the transaction of any business relating to an assigned matter; or
- (b) knowingly accepts, receives or uses any such document so counterfeited or falsified; or
- (c) alters any such document after it has been officially issued; or
- (d) counterfeits any seal, signature, initial or other mark of, or used by, any officer for the verification of such a document or for any other purpose relating to an assigned matter,

commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars, or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment and may be arrested.

110. Faulty scales

(1) A person required by any customs enactment to provide scales who provides, uses or permits to be used any scale which does not give a true reading, commits an offence and is liable on conviction to a fine not exceeding five thousand dollars.

(2) Where an article is to be weighed, counted, gauged or measured for the purpose of the taking of an account or the making of an examination by an officer, and—

- (a) a person mentioned in subsection (1); or
- (b) a person by whom or on whose behalf the article is or is to be weighed, counted, gauged or measured,

does anything whereby the officer is or might be prevented from, or deceived in the taking of, a true account or the making of a due examination, that person commits an offence and is liable on conviction to a fine not exceeding five thousand dollars.

(3) In this section, “**scales**” include weights, measures and weighing or measuring machines or instruments.

111. Fraudulent evasion

(1) Without prejudice to any other provision of any customs enactment, if any person with fraudulent intent—

- (a) knowingly acquires possession of—
 - (i) goods which have been unlawfully removed from a warehouse or a customs warehouse, or
 - (ii) goods which are chargeable with a duty which has not been paid, or
 - (iii) goods with respect to the importation, exportation or carriage coastwise of which any prohibition or restriction is for the time being in force under or by virtue of any enactment; or
- (b) is in any way knowingly concerned in carrying, removing, depositing, landing, harbouring, keeping or concealing or in any manner dealing with any such goods,

he commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars, or three times the value of the goods, whichever is the greater, or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment and may be

arrested, and the goods in respect of which the offence was committed shall be liable to forfeiture.

(2) Without prejudice to any other provision of any customs enactment, if a person with fraudulent intent in relation to any goods, is in any way concerned in an evasion—

- (a) of duty chargeable on those goods; or
- (b) of any prohibition or restriction for the time being in force with respect to the importation, exportation or carriage coastwise of those goods under or by virtue of any enactment,

he commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars, or to three times the value of the goods, whichever is the greater, or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment and may be arrested, and the goods in respect of which the offence is committed shall be liable to forfeiture.

112. Removal of locks, seals or marks

(1) Where in pursuance of a power conferred by a customs enactment, any lock, seal or mark is used to secure or identify goods, or any place or container in which goods are kept, then if without the authority of the proper officer—

- (a) that lock, seal or mark is unlawfully and prematurely removed or tampered with by any person; or
- (b) at any time before the lock, seal or mark is lawfully removed, any of the goods are wilfully removed by any person,

that person and the person then in charge of the goods commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars or three times the value of the goods removed whichever is the greater and the goods shall be liable to forfeiture.

(2) For the purposes of subsection (1), goods in a vessel or aircraft shall be deemed to be in the charge of the master of that vessel or the commander of that aircraft.

112A. Computer fraud and related offences

(1) Any person who—

- (a) knowingly and with intent to defraud accesses a computer without authorisation or exceeds authorised access and by means of such conduct furthers the intended fraud and obtains anything of value;
- (b) intentionally, without authorisation to access any computer of the Customs Division of the Ministry of Finance that is exclusively for the use of the Customs Division, or in the case of a computer not exclusively for such use is used by or for the Customs Division, access such a computer and such conduct affects the use of the Customs Division of the operation of such computer; or
- (c) knowingly access a computer without authorisation or exceeds authorised access and by means of such conduct obtains any document, information or confidential instruction,

commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars, or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

(2) For the purposes of this section—

“**computer**” means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage facility or communications facility directly related to or operating in conjunction with such

device, but does not include an automated typewriter or typesetter, a portable hand held calculator, or other similar device;

“**exceeds authorised access**” means to access a computer with authorisation and to use such access to obtain or alter information in the computer that the person accessing the computer is not entitled so to obtain or later.

[Section 112A inserted by Act No. 33 of 2007.]

PART XI

Legal Proceedings, Forfeiture and Sale of Goods

General Provisions as to Legal Proceedings

113. Institution of proceedings

(1) Subject to the provisions of subsection (3) and to the powers of the Director of Public Prosecutions under section 64 of the Constitution, no proceedings for an offence under any customs enactment, or for condemnation under the Fourth Schedule, shall be commenced by a customs officer except—

- (a) by order of the Comptroller in writing; and
- (b) in the name of the officer.

[Fourth Schedule.]

(2) In the case of the death, removal, discharge or absence of the officer in whose name a proceedings are commenced by virtue of subsection (1)(b), those proceedings may be continued by an officer authorised in that behalf by the Comptroller.

(3) Notwithstanding the provisions of subsections (1) and (2), where a person has been arrested for an offence for which he is liable to be arrested under any customs enactment the court before which he is brought may proceed to deal with the case although the proceedings were not instituted by order of the Comptroller or were not commenced in the name of an officer.

114. Time limit on proceedings

Save as otherwise expressly provided for in this Act and notwithstanding the provisions of any other enactment, proceedings for an offence under a customs enactment may be commenced at any time within, but not later than, seven years from the date of the commission of the offence.

115. Place of trial

Proceedings for an offence under a customs enactment may be commenced—

- (a) in a court having jurisdiction in the place where the offence was committed or where the person charged with the offence resides or is found; or
- (b) in the case of a body corporate charged with the offence, where that body corporate has its registered or principal office; and
- (c) where any thing is detained or seized in connection with the offence, in a court having jurisdiction in the place where that thing is so detained or seized or is found or condemned as forfeited.

116. Persons who may conduct proceedings

Any proceedings before a Magistrate's Court in relation to an assigned matter may be conducted by an officer or other person authorised in that behalf by the Comptroller.

117. Service of process

(1) A summons or other process issued for the purpose of a customs enactment shall be deemed to have been duly served on a person—

- (a) if delivered to him in person;
- (b) if left at his last known place of abode or business or, in the case of a body corporate, at its registered or principal office; or
- (c) if left on board any vessel or aircraft of which he is the owner.

(2) A summons, notice, order or other document issued for the purposes of proceedings under a customs enactment, or of an appeal from a decision of court in any such proceedings, may be served by an officer.

118. Incidental provisions

(1) Where liability for an offence under a customs enactment is incurred by two or more persons jointly, those persons shall each be liable for the full amount of any fine imposed and may be proceeded against either jointly or severally.

(2) Where an offence under a customs enactment has been committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a director, manager, secretary or other similar officer of that body corporate, or a person purporting to act in such capacity, that person as well as the body corporate commits the offence and is liable to be proceeded against and on conviction punished accordingly.

(3) Where a penalty for an offence under a customs enactment is required to be fixed by reference to the value of the goods, that value shall be taken as the market value of those goods at the date of the commission of the offence for which the penalty is imposed less the duty chargeable on such goods.

(4) Where, in proceedings for an offence under a customs enactment, any question arises as to the duty or rate chargeable on imported or exported goods, or goods which were intended to be exported and it is not possible to ascertain the relevant time specified in section 60, the duty or rate shall be determined as if the goods were imported, exported or brought to a place for exportation at the time when the proceedings were commenced.

(5) In any proceedings for an offence under a customs enactment, or for condemnation under the Fourth Schedule, the fact that security is given for payment of any duty or compliance with any condition in respect of the non-payment or non-compliance with which the proceedings are instituted, shall not be a defence.

[Fourth Schedule.]

119. Mitigation of penalties

(1) Subject to the powers of the Director of Public Prosecutions under section 64 of the Constitution, the Comptroller may—

- (a) where a person—
 - (i) admits his guilt in writing, and
 - (ii) agrees to be dealt with in this manner, and
 - (iii) where the prescribed penalty is a monetary one,

give notice to that person in writing offering to that person the opportunity to discharge any liability to conviction for the offence by payment of a fixed

penalty in keeping with the offence such penalty to be paid within a time to be prescribed in the notice and before the date when proceedings would commence;

- (b) stay the proceedings for condemnation of anything as being forfeited under this Act; or
- (c) restore subject to such conditions if any, anything seized under this Act.

(2) In any proceedings for an offence under this Act the court by which the matter is considered may mitigate any pecuniary fine as it sees fit.

120. Proof of certain documents

(1) Any document purporting to be signed by the Secretary to Cabinet, the Minister, the Comptroller, or by their order, or by any person with their authority, shall, until the contrary is proved, be deemed to have been so signed, and the matters contained in that document may be proved in proceedings under any customs enactment, by the production of that document or a document purporting to be a copy of that document.

(2) Where any book or other document is required to be kept by virtue of a customs enactment, the production of that book or other document or a copy of it certified as a true copy by an officer, shall in any proceedings under such an enactment be sufficient evidence of the matters contained therein unless the contrary is proved.

121. Proof of certain other matters

An averment in any process in proceedings under a customs enactment that—

- (a) those proceedings were instituted by order of the Comptroller; or
- (b) any person is the Minister, the Comptroller, an officer or a police officer; or
- (c) a person is appointed or authorised by the Comptroller to discharge, or was engaged by the order or with the concurrence of the Comptroller in the discharge of, any duty; or
- (d) the Comptroller is or is not satisfied as to any matter as to which he is required by a customs enactment to be satisfied; or
- (e) any place is within the limits of a customs port, approved wharf, customs airport or other customs area, or within the territorial waters of the State; or
- (f) goods thrown overboard, stowed or destroyed were so dealt with in order to prevent or avoid their seizure; or
- (g) that a ship belongs to the State,

shall, until the contrary is proved, be sufficient evidence of the matter in question.

122. Burden of proof as to origin of goods

Where in proceedings relating to an assigned matter instituted by the Comptroller, an officer, a police officer or proceedings instituted against the Comptroller, the question arises as to the place from which goods have been brought or as to whether or not—

- (a) duty has been paid or secured in respect of the goods; or
- (b) the goods or any other thing are of the description or nature alleged in the information, writ or other process; or
- (c) the goods have been lawfully imported or lawfully unloaded from any vessel or aircraft; or
- (d) the goods have been lawfully loaded into any vessel or aircraft or lawfully exported or were lawfully waterborne; or

- (e) the goods were lawfully brought to any place for the purpose of being loaded into any vessel or aircraft, or exported; or
- (f) the goods are or were subject to any prohibition or restriction on their importation, exportation or carriage coastwise,

the burden of proof shall be upon the other party to the proceedings.

123. Detention of persons about to leave the State

Where any person has committed an offence under any customs enactment, and the Comptroller is of the opinion that that person is about to leave the State without that matter being dealt with, the Comptroller may apply to a Magistrate for a warrant for the arrest of that person.

124. Indemnity of officers

No action, suit or other proceedings shall be brought or instituted personally against an officer in respect of any act done by him in the execution of his duty under a customs enactment.

Forfeiture

125. Detention, seizure and condemnation of goods

(1) An officer or police officer may seize and detain anything which is liable to forfeiture under a customs enactment.

(2) Where anything is seized or detained by a police officer, it shall be delivered to the Comptroller within seven days unless—

- (a) such delivery is not practicable; or
- (b) it is or may be required for use in connection with any proceeding to be brought otherwise than under a customs enactment.

(3) Where, by virtue of subsection (2), anything seized or detained is not delivered to the Comptroller within seven days, notice in writing of the seizure or detention, containing full details of the thing seized or detained, shall be given to the Comptroller, and an officer shall be permitted to examine and take account of that thing at any time while it remains in the custody of the police.

(4) The Fourth Schedule shall have effect in relation to appeals against the seizure of anything as liable to forfeiture under any customs enactment, and for proceedings for the condemnation as forfeited of that thing.

[Fourth Schedule.]

(5) Notwithstanding that anything seized as liable to forfeiture has not been condemned as forfeited, the Comptroller may at any time if he sees fit—

- (a) deliver it up to a claimant upon the claimant paying to the Comptroller such sum as the Comptroller thinks proper, being a sum not exceeding that which in the Comptroller's opinion represents the value of the thing, including the duty chargeable thereon which has not been paid; or
- (b) if the thing seized is a living creature or is in the Comptroller's opinion, of a perishable nature, sell or destroy it.

(6) The restoration, sale or destruction under subsection (5) of any thing seized as liable to forfeiture shall be without prejudice to any right of appeal against its seizure.

126. Forfeiture of vessels, etc.

(1) Where anything has become liable to forfeiture under a customs enactment any vessel, aircraft, vehicle, animal, baggage, container or any other things which has been used for the carriage, handling, deposit or concealment of—

(a) any such thing either—

(i) at the time it became liable to forfeiture, or

(ii) at a later date;

(b) any other thing mixed, packed or found with such thing,

shall also be liable to forfeiture.

(2) Where a vessel, aircraft or vehicle constructed, adapted, altered or fitted in any manner for the purpose of concealing goods—

(a) is or has been within the territorial waters of the State; or

(b) is or has been at any place whether on land or water in the State; or

(c) is or has been within the limits of a customs port, approved wharf, customs airport or other customs area,

that vessel, aircraft or vehicle shall be liable to forfeiture.

(3) If, while a vessel is within the territorial waters of the State any part of its cargo is thrown overboard or is stowed or destroyed to prevent seizure, that vessel shall be liable to forfeiture.

(4) Where cargo, has been imported into the State upon any vessel or aircraft and any part of that cargo is afterwards found to be missing, then if the master of the vessel or the commander of the aircraft is unable to account for that missing cargo to the satisfaction of the Comptroller, that vessel or aircraft shall be liable to forfeiture.

(5) Where a vessel, aircraft, vehicle or animal, has become liable to forfeiture, the tackle, apparel or furniture belonging to it shall also be liable to forfeiture.

127. Forfeiture of larger vessels

(1) Notwithstanding any other provision of any customs enactment, no vessel of two hundred and fifty or more tons burden shall be liable to forfeiture unless—

(a) the offence, the commission of which carries a penalty of forfeiture—

(i) was the object of the voyage, or

(ii) was committed while the vessel was under chase after refusing to stop when required to do so; or

(b) the vessel was constructed, adapted, altered or fitted in any manner solely for the purpose of concealing goods; or

(c) subsection (3) applies.

(2) Where a vessel referred to under subsection (1) would, but for that subsection, be liable to forfeiture for or in connection with an offence under any customs enactment and in the opinion of the Comptroller, a responsible officer of the vessel is implicated in that offence by his own act or by neglect, the Comptroller may impose a fine on that vessel in a sum not exceeding five thousand dollars, and until that fine is paid, he may withhold clearance of that vessel.

(3) Without prejudice to any other grounds upon which a responsible officer of a vessel may be held to be implicated by neglect, he may be so liable if goods not owned by a member of the crew are discovered in any place under his supervision in which they could not reasonably have been put if he had exercised proper care at the time of the loading of the vessel or subsequently.

(4) Where a fine is imposed on a vessel by the Comptroller under subsection (2), but the Comptroller is not satisfied that such a fine is adequate in relation to the offence committed, the Comptroller may take proceedings under the Fourth Schedule for the condemnation as forfeited of that vessel in a sum not exceeding ten thousand dollars as the Court thinks fit.

(5) Where condemnation proceedings are taken under subsection (4), the Comptroller may require such sum, not exceeding ten thousand dollars, to be deposited with the Registrar to await the decision of the court, and until that sum is so deposited, he may with-hold clearance of that vessel.

(6) No claim shall lie against the Comptroller for damages in respect of the payment of any deposit or the detention of any vessel under this section.

(7) The exemption from forfeiture of a vessel under this section shall not affect the liability to forfeiture of the goods carried on board.

(8) In this section, “**responsible officer**”, in relation to a vessel, means the master, mate or engineer of the vessel, and in the case of a vessel carrying a passenger certificate, the purser or chief steward, and, in the case of a vessel manned wholly or partly by Asiatic seamen, the searange or other leading Asiatic officer of the vessel.

128. Certificate of Court in proceedings

(1) Where, in proceedings for the condemnation of any thing seized as liable to forfeiture under a customs enactment, judgement is given for the claimant, the Court may if it sees fit certify that there were reasonable grounds for the seizure.

(2) Where proceedings are brought against the Government on account of the seizure or detention of any thing as liable to forfeiture, and judgement is given for the plaintiff then if either—

- (a) a certificate relating to the seizure has been granted under subsection (1); or
- (b) the court is satisfied that there were reasonable grounds for seizing or detaining that thing,

the plaintiff shall not be entitled to recover damages or costs.

(3) Nothing in subsection (2) shall affect the right of any person to the return of anything seized or detained or to compensation in respect of any damage to that thing or in respect of the destruction of it.

(4) A certificate under subsection (1) may be proved by the production of either the original certificate or a certified copy purporting to be signed by an officer of the court by which it was granted.

Sale of Goods

129. Sale of goods condemned as forfeited

(1) Any goods condemned as forfeited or deemed to have been condemned as forfeited by virtue of the Fourth Schedule shall unless it is a prohibited or restricted article, be sold at public auction.

(2) An auction under this section shall be advertised in the *Gazette*, two issues of a local newspaper and on radio not less than fourteen days before the date of auction.

[Fourth Schedule.]

(3) The Comptroller shall appoint a person, who may be an officer, to act as auctioneer at an auction under this section.

(4) The following persons shall not be permitted to bid for any goods at an auction under this section—

- (a) an officer;
- (b) a person who has or had an interest in the goods being auctioned.

(5) A person who bids in contravention of subsection (4) commits an offence and is liable on conviction to a fine not exceeding five thousand dollars.

(6) All monies arising from the sale of goods at an auction under this section shall be used to clear the following debts in the listed order of priority—

- (a) the duty payable on such goods;
- (b) all the charges of and incidental to the sale, warehousing and carriage of such goods;
- (c) all the charges of and incidental to the seizure of those goods and any proceedings for the condemnation of it; and

any residue shall be paid by the Comptroller into the Consolidated Fund.

(7) The value for duty of anything sold at auction under this section shall be the price realised less the included duty.

(8) Any goods not sold at an auction under this section, and all prohibited or restricted goods condemned or deemed to be condemned as forfeited under the Fourth Schedule shall be destroyed or otherwise disposed of as the Comptroller may direct.

(9) Nothing in this section shall prevent the Comptroller from authorising the withholding from sale of any goods condemned or deemed to be condemned as forfeited, for the use of the State where such retention and use would enhance the performance of government officers.

130. Sale of goods not condemned as forfeited

(1) Where goods not being goods condemned or deemed to be condemned as forfeited under the Fourth Schedule is liable for sale by virtue of any customs enactment, it shall, unless it is of a perishable nature, be offered for sale at a public auction.

[Fourth Schedule.]

(2) The provision of section 129(2), (3) and (6) shall apply, *mutatis mutandis*, in connection with this section.

(3) Any residue for deposit in keeping with section 129(6) shall under this section if application is made within six months of the sale, be paid over to any person who satisfies the Comptroller that he was the owner of that thing at the time of its sale.

(4) The Comptroller shall offer for sale anything which is of a perishable nature in the manner which appears to him, bearing in mind its nature, most likely to realise the largest sum.

(5) Anything which cannot be sold at an auction under this section or by the Comptroller under subsection (4) shall be destroyed or otherwise disposed of as the Comptroller may direct.

(6) The provisions of this section shall apply to the sale of a vessel or aircraft which may be sold by virtue of section 129 except that the sum ordered to be paid by that section shall be satisfied out of the moneys arising from the sale before any amount is repaid to the person who was the owner of the vessel or aircraft.

(7) A sale by auction under this section may take place at the same time and place as a sale under section 129.

PART XII

Determination of Disputes

131. Appeal to Comptroller

(1) Where the amount of duty requested by an officer is disputed by the person required to pay the amount, that person shall pay the amount but then may, before the expiration of three months from the date of payment, by notice in writing require the Comptroller to reconsider the amount of duty requested.

(2) A notice under subsection (1) shall state the grounds for disputing the amount of duty requested.

(3) The Comptroller, after reconsidering the amount of duty requested and having taken into account the grounds contained in the notice, may increase, decrease or confirm the amount, and shall notify the person who paid the amount of his decision.

132. Customs Appeal Commissioners

(1) There shall be established a tribunal of Customs Appeal Commissioners which shall consider disputes concerning duty charged under this Act.

(2) The Cabinet shall from time to time appoint by notice in the *Gazette* such persons as it sees fit to be Customs Appeal Commissioners (hereinafter in this Part referred to as “Commissioners”).

(3) The Cabinet shall by instrument in writing appoint a Chairman and Deputy Chairman, and any hearing of the Commissioner shall be before the Chairman or in his absence the Deputy Chairman and two other Commissioners.

(4) The Cabinet shall appoint a Secretary to the Commissioners and any notice or correspondence, other than decisions of the Commissioners themselves, may be issued and signed by or on behalf of the Secretary.

(5) Every decision of the Commissioners shall be given under the signature of the Chairman presiding at that hearing.

(6) At any hearing of the Commissioners, in the event of a division of opinion, the decision of the majority shall prevail.

(7) At any hearing of the Commissioners, they may—

- (a) summon to attend that hearing any person who in their opinion is or might be able to give evidence relevant to the matter being heard;
- (b) where any person is summoned to attend a hearing or is voluntarily at that hearing, examine that person on oath or otherwise;
- (c) require any person to produce any book or other documents which is in his custody or under his control and which may contain evidence relevant to the matter being heard;
- (d) have jurisdiction of a subordinate court with respect to the enforcement of attendance of witnesses, the hearing of evidence on oath and punishment for contempt;
- (e) admit or reject any evidence adduced, notwithstanding that that evidence would or would not be admissible in any court;
- (f) postpone or adjourn that hearing;
- (g) determine the procedure to be followed at any hearing under subsection (6).

133. Appeal to Commissioners

(1) A person hereinafter in this Part referred to as “the appellant” notified of a decision under section 131 and aggrieved by that decision may, subject to subsection (2), appeal against that decision to the Commissioners by serving a notice of appeal on the Secretary and the Comptroller within thirty days of the notification or such longer period as the Commissioners may permit.

(2) No appeal may be made under subsection (1) unless the amount notified as the duty due by the decision of the Comptroller has been paid.

(3) A notice of appeal under subsection (1) shall be in writing and shall state—

- (a) the date of the decision of the Comptroller from which the appellant has appealed;
- (b) the name and address of the person to whom the decision appealed against was sent;
- (c) the amount of duty in dispute; and
- (d) the grounds for claiming that the amount of duty in dispute is not due and payable.

(4) At least thirty days or such shorter time as the parties may agree before the date fixed for the hearing of an appeal, the Secretary to the Commissioners shall by notice in writing, advise the Comptroller and the appellant of the time, date and place where the appeal is to be heard.

(5) The hearing of an appeal under subsection (1) shall be in public unless the Chairman presiding at that hearing shall otherwise direct.

(6) At a hearing of an appeal under subsection (1)—

- (a) the Comptroller and the appellant shall be entitled to appear in person or by representation;
- (b) the burden of proof on any matter shall lie with the appellant; and
- (c) the Comptroller and the appellant shall bear their own costs unless the Commissioners, for special cause, otherwise direct.

(7) On the hearing of an appeal, the Commissioners may increase, decrease or confirm the amount of duty due and shall notify the Comptroller and the appellant of their decision.

(8) A decision of the Commissioners under this section shall be published, except that where a direction has been given under subsection (5) that the hearing of the appeal shall be in private, such details of the decision shall be omitted as the Chairman considers necessary to preserve the privacy that it is considered necessary to protect.

134. Right of further appeal

(1) The Comptroller or the appellant may appeal to the High Court against a decision of the Commissioners which involves a question of law, or a question of mixed fact and law.

(2) The Comptroller or the appellant may appeal to the Court of Appeal against any decision of the High Court, being a decision on an appeal from the Commissioners, which involves a question of law, or a question of mixed fact and law.

(3) On an appeal to the High Court or the Court of Appeal under this section, that court may—

- (a) increase, decrease or confirm the amount of duty due;
- (b) make any such other order as it thinks fit; and

- (c) make such order as to costs as it thinks fit.

135. Payment of duty after appeal

(1) Subject to subsection (2) where the decision of an appeal under this Part is that the amount of duty due shall be—

- (a) increased; or
- (b) decreased,

the appellant shall pay the amount of the increase to the Comptroller in the case of (a) and the Comptroller shall pay the amount of the decrease to the appellant in the case of (b) within thirty days of the decision.

(2) Where the decision referred to in subsection (1) is a decision of the Commissioners or the High Court, no amount shall be payable if, within the thirty days time limit provided by that subsection, an appeal against that decision is lodged with the High Court or the Court of Appeal, as the case may be.

PART XIII

Miscellaneous

136. Regulations

(1) The Minister may make regulations generally in relation to any assigned matter and without prejudice to the generality of the foregoing may in particular make regulations—

- (a) in respect of a vessel or aircraft arriving at a customs port or customs airport by—
 - (i) prescribing the procedure to be followed,
 - (ii) regulating the unloading, landing, movement and removal of goods on their importation;
- (b) prescribing the conditions and the proportion of the duty payable where goods are imported temporarily with a view to exportation;
- (c) as to the manner in which, and the conditions under which, uncleared goods or any class or description of such goods may be moved by persons within the limits of any customs port or customs airport or between any customs port or customs airport and any other place;
- (d) as to the licensing by the Comptroller of persons removing uncleared goods;
- (e) as to the ships, aircrafts vehicles or other transport approved by the Comptroller for the removal of uncleared goods;
- (f) requiring any licence or approval given for moving uncleared goods to be for such period and to be subject to such conditions and restrictions as the Comptroller thinks fit subject to revocation;
- (g) with respect to the arrival, report and departure of pleasure crafts;
- (h) prescribing the procedure to be followed by a vessel or aircraft arriving at a customs port or customs airport respectively;
- (i) regulating the unloading, landing, movement and removal of goods on their importation;
- (j) regulating the storage, putting alongside, making waterborne and loading of goods intended for export or for use as stores;

- (k) prescribing the procedure to be followed by vessels and aircrafts intending to leave customs ports and customs airports respectively for destinations outside the State;
- (l) regulating the loading, unloading or making waterborne for loading of goods carried or to be carried by way of coasting trade;
- (m) prescribing the procedure to be followed by coasting vessels and coasting aircraft on their arrival at and departure from customs ports and customs airport; and different provisions may be made in respect of coasting vessels and coasting aircraft;
- (n) in respect of vessels not exceeding fifty tons and in particular regarding provisions as to the purpose for which and the limits within which such vessels may be used, and different provisions may be made for different classes or description of vessels;
- (o) controlling the depositing, marketing, keeping, securing and treatment of goods in, and removal of goods from, warehouses and in particular prescribing—
 - (i) the registration and maintenance of warehouses,
 - (ii) the payment of licence fees for warehousing,
 - (iii) the conditions for entering into and maintenance of bonds for the security of duty chargeable on warehoused goods,
 - (iv) the conditions for entering into and maintaining contracts of insurance for warehoused goods,
 - (v) the hours and conditions for attendance of officers at warehouses,
 - (vi) the conditions for the production of warehoused goods to, and the making available of such goods for inspection by officers,
 - (vii) the facilities to be provided to officers,
 - (viii) the records to be kept by occupiers of warehouses, and the powers of officers to inspect and remove documents,
 - (ix) the minimum quantities or description of goods which may be deposited in, or removed from, a warehouse at any one time,
 - (x) the operation to be carried out on warehoused goods, including the taking of samples,
 - (xi) the goods to be removed from warehousing without payment of duty and the conditions and restrictions which may apply,
 - (xii) the goods to be destroyed or abandoned to the Comptroller without payment of duty in particular circumstances and the conditions and restrictions to be imposed,
 - (xiii) the proper conduct and management of warehouses, including the imposition of conditions and restrictions subject to which goods may be carried to or from, deposited in, kept in or removed from warehouses or made available to their owners for prescribing purposes,
 - (xiv) different provisions for different types of warehouses or parts of warehouses or for goods of different classes or description, or goods of the same class or description in different circumstances;
- (p) prescribing the procedure on the importation and exportation of postal packets and providing for the exemption of such importation and exportation from the requirements of any provisions of the Act as the Minister thinks fit;

(q) prescribing anything required by this Act to be prescribed.

(2) Notwithstanding the provisions of the Interpretation and General Provisions Act regulations made under this section may carry a penalty not exceeding five thousand dollars on conviction.

(3) Regulations made in respect of subparagraphs (a) and (b) and subparagraphs (k) to (o) of subsection (1) may provide for the forfeiture of goods in addition to the prescribed penalty.

137. Repeal

The Customs Act is repealed.

[Chapter 183 of 1926.]

First Schedule

[Section 48. First Schedule amended by SRO 30 of 2003.]

Goods not Permitted to be Warehoused on Importation

Aircraft

Animals, living

Arms, Ammunition and Explosives

Asphalt, all kinds including pitch and tar

Bottles, empty in bags

Bricks and tiles

Cattle and other animal foods (other than in tins packed in cases)

Cement and cement products

Cheese

Chemicals

Film, cinematographic

Fireworks

Fish (other than in tins packed in cases)

Fruit and nuts (other than in cases)

Grain, flour, and preparations thereof (other than in tins packed in cases)

Hay and chaff

Manures

Matches

Meats (other than in tins packed in cases)

Metals

Molasses

Nuts and kernels, other than food

Oil—

edible

fuel

other kinds, including essential medicinal and perfumed oils

Salt Seeds for expressing oil therefrom
Ships, boats and launches
Starch
Stones and slates
Sugar, (unless packed in tins or cases)
Vegetables (other than in tins packed in cases)
Wood and timber—
 lumber
 shingles
 shooks, staves and headings

Any goods which in the opinion of the Comptroller are likely to cause damage to other goods, stored in the same warehouse.

Second Schedule

[Section 2.]

Value of Imported Goods

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;

“**goods of the same class or kind**” means goods which fall within a group or range of goods produced by a particular industry or industry sector, and includes identical or similar goods;

“**identical goods**” means goods produced in the same country which are the same in all respects, including physical characteristics, quality and reputation and goods with minor differences in appearance otherwise conforming to the definition but do not include goods which incorporate or reflect engineering, development, art work, design work and plans and sketches for which no adjustment has been made under paragraph 8(1)(b);

“**produced**” includes grown, manufactured and mined;

“**similar goods**” means goods produced in the same country 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, taking into consideration the quality of the goods, their reputation and the existence of a trade mark but does not include—

(2) For the purposes of this Schedule—

(a) persons shall be deemed to be related only if—

- (i) they are officers or directors of each others business,
- (ii) they are legally recognized partners in business,
- (iii) they are employer and employee,
- (iv) any person directly or indirectly owns control or holds five per cent or more of the outstanding voting stock or shares of both of them,
- (v) one of them directly or indirectly controls the other,

- (vi) both of them are directly or indirectly controlled by a third person, or
- (vii) together they directly or indirectly control a third person, or
- (viii) they are members of the same family;
- (b) a 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;
- (c) persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related only if they fall within the criteria at (a);
- (d) the term “**person**” includes a body corporate unless a contrary intention appears;
- (e) an event shall be deemed to occur about the same time as another event if the first event occurs on the same day as the other event or within the forty-five days immediately before or after, the day on which the other event occurs.

2. (1) The customs value of imported goods shall be determined under paragraph 3 when-ever the conditions prescribed therein are fulfilled.

(2) Where the customs value cannot be determined under paragraph 3, it shall be deter-mined by proceeding sequentially through paragraphs 4 to 7, inclusive, to the first such paragraph under which it can be determined, subject to the provision that, where the importer requests it and the Comptroller agrees, the order of application of paragraphs 6 and 7 shall be reversed.

(3) Except as provided for in subparagraph (2), only when the customs value of imported goods cannot be determined under a particular paragraph shall the provisions of the next paragraph in the sequence established by subparagraph (2) be applied.

(4) Where the customs value of imported goods cannot be determined under paragraphs 3 to 7, inclusive, it shall—

- (a) be determined using reasonable means consistent with the principles and general provisions of this Schedule;
- (b) to the greatest extent possible, be based on previously determined customs values; and
- (c) be determined by use of the methods of valuation laid down in paragraphs 3 to 7, inclusive, using, where necessary, reasonable flexibility in their application.

(5) No customs value shall be determined under subparagraph (4) on the basis of—

- (a) the selling price in the State, of goods produced in the 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 paragraph 7;
- (e) the price of the goods for export to a country other than this State;
- (f) minimum customs values; or
- (g) arbitrary or fictitious values.

3. (1) The customs value of imported goods determined under this paragraph shall be the transaction value, that is, the price actually paid or payable for the goods when sold for export to the State adjusted in accordance with paragraph 8, and in appropriate cases paragraph 9, provided—

- (a) that 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 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) that 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) that 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 paragraph 8; and
- (d) that 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 subparagraph (2).

(2) In determining whether the transaction value is acceptable for the purposes of subparagraph (1)—

- (a) the fact that the buyer and the seller are related within the meaning of paragraph 1 shall not in itself be grounds for regarding the transaction value as unacceptable and where necessary—
 - (i) the circumstance surrounding the sale shall be examined and the transaction value shall be accepted if the relationship did not influence the price,
 - (ii) if, in the light of information provided by the importer or otherwise the Comptroller has grounds for considering that the relationship influenced the price, he shall communicate the grounds to the importer who shall be given a reasonable opportunity to respond;
- (b) in a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with subparagraph (1) whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time—
 - (i) the transaction value in sales between buyers and sellers who are not related in any particular case, of identical or similar goods for export to the State,
 - (ii) the customs value of identical or similar goods, as determined under paragraph 6 or 7,

and in applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in paragraph 8 and costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related;

- (c) the tests set out in subparagraph (b) shall be used at the initiative of the importer and only for comparison purposes and substitute values may not be established under that subparagraph.

(3) The price actually paid or payable for imported goods is the total payment made or to be made by the buyer to or for the benefit of the seller for the goods and such payments may be made directly or indirectly, need not necessarily take the form of a transfer of money, and shall include—

- (a) all payments made or to be made as a condition of sale of the imported goods by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller; and
- (b) any settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

(4) Activities, including marketing activities, undertaken by the buyer on his own account, other than those for which an adjustment is provided in paragraph 8, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller or have been undertaken by agreement with the seller, and their cost shall not be added to the price or payable in determining the customs value of imported goods.

(5) The customs value of imported goods shall not include the following charges or costs, where 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) customs duties and other taxes payable in the State by reason of the importation or sale of the goods;
- (c) the cost of transport after importation.

(6) The fact that goods which are the subject of sale are entered for home use within the State shall be regarded as adequate indication that they were sold for export to the State and this indication shall also apply where successive sales of the goods have taken place before valuation and where such successive sales have taken place each price resulting from them may be used as a basis for valuation.

(7) Where a declaration regarding the value of goods has been presented under this Act and the Comptroller has reason to doubt the truth or accuracy of any of the particulars stated in the declaration or in any document produced in support of the declaration or the genuineness of any such document, the Comptroller may request the importer to produce further information, including documents or other evidence, to satisfy him that the declared value represents the total amount actually paid or payable for the imported goods, adjusted as provided in subparagraph (1); and if, after considering the further information furnished to him pursuant to any such request, the Comptroller still doubts the truth or accuracy of the value of the imported goods as declared, or the genuineness of any document produced in support of the declaration, or where the further information requested is not produced by the importer, it shall be deemed that the transaction value of the imported goods cannot be determined under the provisions of this paragraph.

(8) Before the Comptroller concludes that the transaction value of the imported goods cannot be determined under the provision of this paragraph, the Comptroller shall if requested by the importer, communicate to him in writing the grounds for such conclusion and the opportunity to make representations in regard to the matter and such representations shall be taken into consideration by the Comptroller.

(9) No person shall be charged with a criminal offence on account of any act or omission that did not, at the time it took place, constitute an offence.

4. (1) The customs value of imported goods determined under this paragraph shall be the transaction value of identical goods sold for export to the State and exported at or about the same time as the goods being valued.

(2) In applying this paragraph—

- (a) 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; or

- (b) where no such sale at (a) is found, the transaction value of identical goods sold at a different commercial level or in different quantities, adjusted to take account of differences attributable to commercial level or to quantity,

shall be used to determine the customs value:

Provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment which leads to an increase or a decrease in value.

(3) Where the costs and charges referred to in paragraph 8(1)(e) 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.

(4) In applying this paragraph—

- (a) if 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;
- (b) a transaction value for goods produced by a different person shall be taken into account only when no transaction value can be found under subparagraph (1) for identical goods produced by the same person as the goods being valued; and
- (c) a condition for adjustment because of different commercial levels or different quantities shall be that such adjustment shall be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment.

(5) For the purposes of this paragraph, the transaction value of similar imported goods means a customs value previously determined under paragraph 3, adjusted as provided for in subparagraphs (2) and (3) of this paragraph.

5. (1) The customs value of imported goods determined under this paragraph shall be the transaction value of similar goods sold for export to and exported at or about the same time as the goods being valued.

(2) The provisions of paragraph 4(2), (3), (4) and (5) shall apply, *mutatis mutandis*, to this paragraph.

6. (1) If the imported goods or identical or similar imported goods are sold in the State in the condition as imported, the customs value of the imported goods, determined under this paragraph, shall be based on the unit price at which the imported goods or identical or similar imported goods are 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—

- (a) either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses (including the direct and indirect costs of marketing the goods in question) in connection with sales in the State of imported goods of the same class or kind;
- (b) the usual cost of transport and insurance and associated costs incurred within the State; and
- (c) the customs duties and other taxes payable in the State by reason of the importation or sale of goods.

(2) If neither the imported goods, nor the identical or similar imported goods are sold at or about the time of importation of the goods being valued, the customs value of imported goods determined under this paragraph shall, subject otherwise to the provisions of subparagraph (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in the State in the condition as imported at the earliest date

after the importation of goods being valued but before the expiration of ninety days after such importation.

(3) If neither the imported goods nor identical or similar imported goods are sold in the State in the condition as imported, then, if the Comptroller so decides 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 State who are not related to the persons from whom they buy such goods, due allowance being made for—

- (a) the value added by such processing; and
- (b) the deduction provided for in subparagraph (1),

and where this method of valuation is used deductions made for the value added by further processing shall be based on objective and quantifiable data related to the cost of such work and accepted industry formulas, recipes, methods of construction and other industry practices shall form the basis of the calculations.

(4) In this paragraph, the unit price at which imported goods or identical or similar imported goods are sold in the greatest aggregate quantity is 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.

(5) Any sale in the State 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 paragraph 8(1)(b), shall not be taken into account in establishing the unit price for the purposes of this paragraph.

(6) For the purposes of this paragraph—

- (a) in subparagraph (1)(a)—
 - (i) **“profit and general expenses”** shall be taken as a whole and the figure for the purposes of this deduction shall be determined on the basis of information supplied by or on behalf of the importer unless his figures are inconsistent with those obtaining in sales of imported goods of the same class or kind and 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 importer,
 - (ii) in determining either the commissions or the additions usually made for profit and general expenses, the question whether certain goods are of the same class or kind as other goods shall be determined on a case by case basis by reference to the circumstances involved and in doing this, sales for which the necessary information can be provided of the narrowest group or range of imported goods of the same class or kind as the goods being valued should be examined,
 - (iii) **“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.
- (b) in subparagraph (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.

7. (1) The customs value of imported goods determined under 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 State;
 - (c) the cost or value of the items referred to in paragraph 8(1)(e).
- (2) For the purposes of this paragraph—

- (a) the cost or value of materials and fabrication referred to in subparagraph (1)(a) shall include—
 - (i) the cost of elements specified in paragraph 8(1)(a), (ii) and (iii),
 - (ii) the value, duly apportioned, of any element specified in paragraph 8(1)(b) which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods,
 - (iii) the value of the elements specified in paragraph 8(1)(b)(iv) which are undertaken in the State to the extent that such elements are charged to the producer,

but no cost or value of an element referred to in this subparagraph shall be counted more than once in determining the computed value;

- (b) the “**cost**” or “**value**” referred to in subparagraph (1)(a) shall be determined on the basis of information relating to the production of the goods being valued, supplied by or on behalf of the producer based upon the commercial accounts of the producer:

Provided that these accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced;

- (c) in subparagraph (1)(b)—
 - (i) the “amount for profit and general expenses” shall be taken as a whole and shall be determined on the basis of information supplied by or on behalf of the producer unless his 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 State,
 - (ii) if the producer’s own figures for profit and general expenses are not consistent with those usually reflected in sales of the goods of the same class or kind referred to at (i) of this subparagraph 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,
 - (iii) “**goods of the same class or kind**” means goods imported from the same country as the goods being valued,
 - (iv) whether goods are “of the same class or kind” as other goods shall be determined on a case by case basis with reference to the circumstances involved and in doing this, sales for export to this State of the narrowest group or range of goods of the same class or kind as the goods being valued for which the necessary information can be provided should be examined,
 - (v) the “**general expenses**” referred to mean the amount to cover the direct and indirect cost of producing and selling the goods for export which are not included under subparagraph (1)(a).

8. (1) In determining the customs value under paragraph 3, there shall be added to the price actually paid or payable for the imported goods—

- (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 the following—
 - (i) commission and brokerage, except buying commissions,
 - (ii) the cost of containers which for customs purposes are treated as being one with the goods in question,
 - (iii) the cost of packing, whether for labour or materials;
- (b) to the extent that such value has not been included in the price actually paid or payable, the value, apportioned as appropriate, for the following 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—
 - (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 State and necessary for the production of the imported goods;
- (c) royalties and licence fees, which among other things, may include payments in respect of patents, trade marks and copyrights, 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;
- (e) the cost of—
 - (i) transport of the imported goods to the port or place of importation,
 - (ii) loading and handling associated with the transport of the imported goods to the port or place of importation, and
 - (iii) insurance.

(2) No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this paragraph.

(3) Additions to the price actually paid or payable shall be made under this paragraph only on the basis of objective and quantifiable data and if such do not exist, a transaction value shall not be determined under the provisions of paragraph 3.

(4) Notwithstanding subparagraph (1)(c)—

- (a) charges for the right to reproduce the imported goods in the State shall not be added to the price actually paid or payable for the imported goods in determining the customs value; and
- (b) 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 State of the goods.

(5) In this paragraph, the term **“buying commissions”** means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.

9. (1) Charges for interest under a financing arrangement entered into by the buyer and related to the purchase of imported goods shall not be included in the customs value determined under paragraph 3:

Provided that—

- (a) the charges are distinguished from the price actually paid or payable for the goods;
- (b) the financing arrangement has been made in writing;
- (c) where required by the Comptroller, the buyer can demonstrate that—
 - (i) such goods are actually sold at the price declared as the price actually paid or payable, and
 - (ii) the claimed rate or interest does not exceed the level for such transactions prevailing in the country, where, and at the time when, the finance was provided.

(2) The provisions of subparagraph (1) shall apply regardless of whether the finance is provided by the seller, a bank or other person and it shall also apply, *mutatis mutandis*, where customs value is determined under a method other than the transaction value.

10. Nothing in this Schedule shall be construed as restricting or calling into question the right of the Comptroller to satisfy himself as to the genuineness, truth or accuracy of any statement, document or declaration presented for customs valuation purposes.

Third Schedule

[Sections 79 and 80. Third Schedule amended by SRO 33 of 2001.]

Imports and Exports

PART I

Prohibited Imports

1. Base or counterfeit coin of any country.
2. Coin legally current in the State or any money purporting to be such, not being of the established standard in weight and fineness.
3. Articles of food intended for human consumption declared by the competent public health authority to be unfit for such purpose.
4. Indecent or obscene prints, painting, photographs books, cards, lithographic or other engravings, phonograph records, videos or any other indecent article or matter.
5. Matches which contain white or yellow phosphorus.
6. Prepared opium and pipes or other utensils for use in connection with the smoking of opium or other narcotic drugs.
7. Preparations of opium or other narcotic drugs for smoking.
8. Any pistol or other apparatus in the form of a stylographic pen or pencil capable of firing any kind of shot or cartridge and any cartridges containing tear gas.
9. Fictitious stamps and any die, plate, instrument or materials capable of making any such stamps.

10. Flick knives, switch knives and blades, night sticks, ratchet knives and other similar knives with flying blades.
11. All publications, articles or other matter associated with black magic, secret magic, obeah, witchcraft or other magical arts and occultism.
12. Firearms or ammunitions prohibited under the Firearms Act, 1993, or any subsequent Act.
13. Goods the importation of which is prohibited by any other enactment of the State.

Restricted Imports

1. Arms and ammunition except with the written permission of the Commissioner of Police.
2. Explosives, except with the written permission of the Commissioner of Police.
3. Handcuffs of any type except with the written permission of the Commissioner of Police.
4. Radio and television transmitting equipment, including walkie talkies except under licence of the Minister of Communications.
5. Cannabis sativa, including parts of the plant, cannabis indica, choras, ganja or any preparation or mixture thereof, except under licence of the Chief Medical Officer.
6. Other Narcotic drugs and psychotropic substances including controlled drugs except under licence of the Chief Medical Officer.
7. Any goods which bear a design in imitation of any currency or bank notes or coin in common use in the State or elsewhere unless with the approval of the Comptroller.
8. Motor vehicles fitted with left hand driving control, that is to say, having the steering wheel placed so as to be controlled from the left hand side of the motor vehicle except under special permit issued by Cabinet.
9. Tear gas and any ingredient which may produce what is commonly known as tear gas or tear smoke except with the written authority of the Minister.
10. Solid rubber tyres for attachment to any mechanically propelled vehicles, except on production of a certificate granted by the Chief Engineer of the Ministry of Communications.
11. Spirits (not being liquors, cordials or perfumed spirits), beer and wine unless specifically reported as such and unless imported in glass or stone bottles properly packed in cases or in demijohns each case or demijohn containing not less than one gallon or if imported in casks or other vessels, such casks or other vessels must be at least nine gallons.
12. Tobacco, cigars, cigarillos and cigarettes, unless specifically reported as such, and unless in whole and complete packages each containing not less than twenty pounds net weight of tobacco, cigars, cigarillos or cigarettes provided that less than twenty pounds may be imported by parcel post.
13. Spirits being whisky, rum or gin, vodka, brandy except—
 - (a) imported by or through a person or firm who is the sole agent or distributor for the particular brand of such spirits and has been registered with and certified as such in writing by the Comptroller;
 - (b) the name of the sole agent or distributor is printed and incorporated in the label affixed to the bottles containing the specified spirits; and

- (c) in bottles containing not more than forty ounces of such spirits provided that a passenger may import in his baggage not more than eighty ounces of any such spirits solely for private consumption and not for sale without the name of the sole agent or distributor appearing on the label.
14. Extracts, essences, or other concentrations of tobacco or any mixture of the same, tobacco stalk stripped from the leaf whether manufactured or not, and tobacco stalks, flour, unless such articles are mixed with ingredients which render them in the opinion of the Comptroller unfit for industrial or horticultural purposes.
 15. Any goods which bear the Coat of Arms or the Flag of Saint Vincent and the Grenadines or any facsimile, imitation or representation thereof, except with the approval of the Minister.
 16. All goods which if sold would be liable to forfeiture under any law and also all goods of foreign manufacture bearing any name or trade mark or purporting to be the name or trade mark of any manufacturer, dealer or trader in the State, unless such trade name or trade mark is accompanied by a definite indication of the country in which the goods were made or produced.
 17. Rare or threatened species of animals or plants, their products and derivatives, whose international trade is regulated by the Convention on International Trade in Endangered Species (CITES) unless such goods are accompanied by the appropriate permits signed by the CITES authorities in the country of exportation or importation.

Such species include whales, elephants, flamingoes, parrots, turtles, tortoises, black coral, tree ferns and orchids.

Parts and derivatives include ivory necklaces, carvings and rings, fur coats of protected species, turtle shell combs, necklaces, bracelets and black coral jewellery.
 18. Chainsaws, except under licence from the Ministry of Agriculture.
 19. All goods imported for commercial purposes as distinct from those meant for personal consumption unless the importer produces to the Comptroller the import licence for the importation of the said goods.
 20. Foreign currency exceeding ten thousand Eastern Caribbean dollars whether or not exchange control permission was granted from the country where the import originated except where such currency is declared in the prescribed form to the Comptroller in the absence of which it is liable to seizure.
 - 20A. For the purposes of this part, foreign currency includes Eastern Caribbean dollars.
 21. Goods the importation of which is regulated by any other enactment except in accordance with such enactment.

PART II

Prohibited Exports

1. Goods the exportation of which is prohibited by any enactment.

Restricted Exports

1. Narcotic drugs and psychotropic substances except under licence of the Chief Medical Officer.

2. Ginger and dry coconuts except under licence from the Minister of Agriculture.
3. Any goods which bear the Coat of Arms or the Flag of Saint Vincent or any facsimile, imitation, or representation thereof, except with the approval of the Minister.
4. Rare protected or threatened species of birds, animals or plants, their products and derivatives except such goods are accompanied by the appropriate permits issued.
5. Foreign currency exceeding the prescribed amount unaccompanied by exchange control permission.
6. Goods the exportation of which is regulated by any other enactment except in accordance with such enactment.

PART III

[Section 79(2).]

Goods with Prohibition on Carriage

Spirits

Wines

Beers

Tobacco

Cigars

Cigarillos

Cigarettes

Goods from warehouse and custom warehouse

Drawback goods

Ship stores

Transshipment goods

Fourth Schedule

[Sections 113, 118, 125, 129 and 130. Fourth Schedule amended by Act No. 33 of 2007.]

Forfeiture

1. (1) The Comptroller shall, except as provided by paragraph 2, give notice of the seizure of any thing seized as liable to forfeiture and of the grounds of that seizure to any person who to his knowledge was the owner at the time of the seizure.
2. Notice shall not be required to be given under paragraph 1 if the seizure was made in the presence of—
 - (a) the person whose offence or suspected offence occasioned the seizure;
 - (b) the owner of the thing seized or his servant or agent; or
 - (c) in the case of any thing seized in a vessel or aircraft, the master or commander of that vessel or aircraft.
3. Notice under paragraph 1 shall be given in writing and shall be deemed to be duly served on the person concerned—

- (a) if delivered to him personally;
- (b) if addressed to him and left or forwarded by post to him at his usual or last known place of abode or business, or, in the case of a body corporate, at its registered or principal office; or
- (c) where he has no address in the State or his address is unknown, by publication of the notice of seizure in the *Gazette* and a local newspaper of wide circulation.

4. Where the owner who was at the time of the seizure claims that anything seized was not liable to forfeiture, he shall, within one month of the date of service of the notice of seizure or where no such notice was served, within one month of the date of seizure give notice of his claim in writing to the Comptroller at any customs office.

5. Any notice under paragraph 4 shall specify the name and address of the claimant and, in the case of a claimant who is outside the State shall specify the name and address of his legal representative who is authorised to accept service and act on his behalf and service upon the legal representative so specified shall be deemed to be proper service upon the claimant.

6. If, on the expiration of the relevant period under paragraph 4 for the giving of a notice of claim, no such notice has been given to the Comptroller, or where such notice is given, that notice does not comply with the requirement of paragraph 5, the thing seized shall be deemed to have been duly condemned as forfeited.

7. Where notice of claim in respect of any thing seized is duly given in accordance with paragraphs 3 and 4, the Comptroller shall take proceedings for the condemnation of such goods by the court, and if the court finds that at the time of its seizure it was liable to forfeiture the court shall order that it be forfeited.

8. Where any thing is forfeited in accordance with either paragraph 5 or 6 then without prejudice to any restoration or sale, the forfeiture shall take effect from the date when the liability to forfeiture arose.

9. Proceedings for the condemnation of any thing shall be civil proceedings and may be instituted—

- (a) in any Magistrate's Court having jurisdiction in the place where—
 - (i) the offence was committed or where any proceedings for such an offence has been instituted,
 - (ii) the claimant resides or, if the claimant has specified a solicitor or lawyer under paragraph 4, where that solicitor or lawyer has his office,
 - (iii) that thing was found, detained, seized or was first brought after being found, detained or seized; or
- (b) in the High Court.

10. (1) In any proceedings for condemnation, the claimant or his solicitor or lawyer shall swear on oath that he is to the best of his knowledge and belief, the owner of the property at the time of the seizure.

(2) In any proceedings for condemnation before the High Court, the claimant shall give such security for the costs of the proceedings as may be determined by the Court.

(3) If any requirement of this paragraph is not complied with, the court shall give judgement for the Comptroller.

11. (1) Any party to condemnation proceedings in a Magistrate's Court may appeal to the High Court against the decision of that Magistrate's Court in those proceedings.

(2) Where any appeal is made against the decision of any court in condemnation proceedings, the thing seized shall remain in the possession of, or be returned to the possession of the Comptroller until the final determination of the matter.

12. In any proceedings arising out of the seizure of any thing, the fact, form and manner of the seizure shall be taken to have been as set out in the process, unless the contrary is proved.

13. Where any property is at the time of its seizure owned by a body corporate, two or more partners or any number of persons exceeding five not being in partnership, the oath required to be taken by paragraph 9, and any other thing required by this Schedule or the Rules of Court to be done by the owner or by any person authorised by him may be taken or done by the following persons respectively where—

- (a) the owner is a body corporate, the Secretary or some other authorised officer of that body;
- (b) the owners are in partnership, any of those owners; or
- (c) the owners are any number of people exceeding five not being in partnership, any two of those persons on behalf of themselves and their co-owners.

14. (1) Where, under section 130(5), any property is restored, sold or destroyed, and it is held in proceedings taken under this Schedule that the property was not liable to forfeiture at the time of its seizure, the Comptroller shall on demand by the claimant tender to him where—

- (a) the property was restored, an amount equal to any amount paid as a condition of that restoration;
- (b) the property was sold, an amount equal to the proceeds of sale; or
- (c) where the property was destroyed an amount equal to its market value at the time of its seizure.

(2) Where an amount tendered under subparagraph (1) includes a sum on account of the duty chargeable on the property which has not been paid, the Comptroller may deduct so much of that amount as represents the duty.

(3) If the owner accepts an amount tendered to him under subparagraph (1), he shall not be entitled to maintain any further action on account of the seizure, detention, restoration, sale or destruction of the thing seized.

(4) Where the owner and the Comptroller are unable to agree upon the market value of any property destroyed under section 129(8), that value shall be determined by the Customs Appeal Commissioners.

Fifth Schedule

[Section 18C. Fifth Schedule inserted by Act No. 4 of 2007.]

Advance Passenger and Cargo Information

PART I

(a) Data relating to the flight or voyage

1. Flight Identification (if applicable)
(IATA Airline code and flight number)
2. Vessel Identification (if applicable)

(Vessel name and voyage number)

3. Vessel or Aircraft Registration

(Vessel or aircraft registration number)

4. Country of Registration

(Country where vessel or aircraft registered)

5. Agent or Owner (where applicable)

(Name of agent for the vessel or aircraft or where no agent, name of owner)

6. Scheduled Departure Date

(Date of scheduled departure of vessel or aircraft based on local time of departure location)

7. Scheduled Departure Time

(Time of scheduled departure of vessel or aircraft based on local time of departure location)

8. Scheduled Arrival Date

(Date of scheduled arrival of vessel or aircraft based on local time of arrival location)

9. Scheduled Arrival Time

(Time of scheduled arrival of vessel or aircraft based on local time of arrival location)

10. Last Place or Port of Call of Vessel or Aircraft

(Vessel or aircraft departed from this last foreign place or port of call to go to place or port of vessel or aircraft initial arrival)

11. Place or Port of Vessel or Aircraft Initial Arrival

(Place or port in the country of destination where the vessel or aircraft arrives from the last place or port of call of vessel or aircraft)

12. Subsequent Place or Port of Call within the Country or domestic space

(Subsequent place or port of call within the country)

13. Number of Persons on Board

(Total number of passengers, crew on board)

14. Place or Port of Onward Foreign Destination

(For departure from the State).

(b) Data relating to each individual on board

Core Data Elements of the Official Travel Document

Official Travel Document Number

(Passport or other official travel document number)

2. Issuing State or Organisation of the Official Travel Document

(Name of the State or Organisation responsible for the issuance of the official travel document)

3. Official Travel Document Type

(Indicator to identify type of official travel document)

4. Expiration Date of Official Travel Document

(Expiration date of the official travel document)

5. Surname/Given Name(s)

(Family name and given name(s) of the holder as it appears on the official travel document)

6. Nationality

(Nationality of the holder)

7. Date of Birth

(Date of birth of the holder)

8. Gender

(Gender of the holder).

PART II

Data relating to Cargo—

The data contained in the Annex to this Schedule with respect to—

- (i) its cargo for discharge within the State, and
- (ii) its cargo not intended for discharge within the State.

ANNEX TO FIFTH SCHEDULE

(a) Data relating to the Manifest

Voyage number

(A number assigned by local Shipping Agent for vessels or the scheduled flight number for aircrafts)

Date and Time of Submission

Scheduled Departure Date

(Date of departure of vessel or aircraft)

Scheduled Arrival Date

(Date of arrival of vessel or aircraft)

Place of Departure

(The last foreign port or place of call for vessel or aircraft)

Destination

(Port or place in the country of destination where the vessel or aircraft first reports)

Agent: Name

(Authorise representative of the vessel or aircraft, where available)

Owner

(Name of owner of vessel or aircraft)

Transport: Mode

(The manner in which the goods are imported or exported)

Transport: Name

(Name of the importing or exporting vessel or aircraft)

Transport: Nationality

(Nationality of vessel or aircraft as determined by its port of registry)

Transport: Place

(Port of Registry)

Registration (Optional)

(International registration number including in respect of vessels, the International Maritime Organisation registration number of Lloyd's registration number, or in respect of aircraft the International Air Transport Authority registration number)

Master

(Name of ship's captain)

Total: Bills

Total: Packages

Total: Containers

Total: Gross mass

Total: Gross

Total: Net

(Ship's registered tonnage)

Date of last discharge

(Date ship last discharged cargo at any port)

(b) Data relating to individual bills of lading or Airway Bill

Manifest Line Number

(Number indicating the order of bills of lading on a manifest)

Transport Document Type

(Type of document issued by vessel or aircraft including bills of airways bill, bill of lading or waybill)

Transport Document Reference Number

Purpose of Shipment

(Whether for import, export, in-transit or transshipment)

Unique Consignment Reference

Place of Loading

Place of Discharge

Exporter

Exporter Address

Consignee

Notify

(Either the consignee or the name and phone number of the representative)

Total Containers

(Total number of containers for each transport document)

Packages: Kind

Packages: Marks and Numbers

Quantity: Package

Quantity: Gross Mass

Volume: Cubic Measurement (cbm)

Description of Goods

(Pursuant to applicable law)

Freight Indicator

(Payment status whether prepaid or payment on collection)

Amount and Currency

Values—

Value of Goods Freight on Board

Insurance

Freight

Additional Seals

Additional Information

(c) Data relating to Container management

Container: Number

(The Bureau International of Containers – BIC identification number of containers)

Container: Type

(Type of container, e.g. 20 feet, refrigerated)

Empty of Full Indicator

(Whether full container load or less than container load)

Seals

(The number of the security seal(s) affixed to the container door)

Marks

(Marks or numbers of the seal(s) affixed to the container door)

Sealing Party

(The authority that affixed the seal(s) to the containers)

Total Containers

Transport Document Reference Number

Sixth Schedule

[Section 18A. Sixth Schedule inserted by Act No. 4 of 2007.]

Domestic Space Countries

Antigua and Barbuda

Barbados

Dominica

Grenada

Guyana

Jamaica

St. Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Trinidad and Tobago

CHAPTER 422
CUSTOMS (CONTROL AND MANAGEMENT) ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

1. Customs (Control and Management) (Declaration of Port) Order
 2. Customs (Control and Management) Act (Competent Authority) Order
-

Customs (Control and Management) (Declaration of Port) Order

SRO 8 of 2004

ARRANGEMENT OF ORDERS

1. Citation.
 2. Notification of area of Chateaubelair as a port for limited purposes.
 3. Description of port.
-

**CUSTOMS (CONTROL AND MANAGEMENT) (DECLARATION OF PORT)
ORDER**

In exercise of the powers conferred by section 10(1) of the of the Customs (Control and Management) Act, No. 14 of 1999, the Minister makes the following Order.

[SRO 8 of 2004.]

[Date of commencement: 23rd March, 2004.]

1. Citation

This Order may be cited as the Customs (Control and Management) (Declaration of Port) Order, 2004.

2. Notification of area of Chateaubelair as a port for limited purposes

For greater certainty the Minister hereby declares and notifies the area of Chateaubelair described as a port in the Port of Entry Regulations and described herein, to be a port for the purpose of entering and clearing yachts only.

3. Description of port

The port of Chateaubelair shall be taken to include all that part of the sea fronting the town of Chateaubelair from Cavelle Rock on the north to the northern end of “The Islet” on the south, thence following the coast line of “The Islet” across “the passage” to the shore.

Customs (Control and Management) Act (Competent Authority) Order

SRO 11 of 2007

ARRANGEMENT OF ORDERS

1. Citation.
 2. Interpretation.
 3. Appointment of competent authority.
-

CUSTOMS (CONTROL AND MANAGEMENT) ACT (COMPETENT AUTHORITY) ORDER

In exercise of the powers conferred by section 18A of the Customs (Control and Management) Act 1999 (No. 14 of 1999), the Minister responsible for Customs makes the following Order.

[SRO 11 of 2007.]

[Date of commencement: *6th February, 2007.*]

1. Citation

This Order may be cited as the Customs (Control and Management) Act (Competent Authority) Order, 2007.

2. Interpretation

In this Order—

“**Act**” means the Customs (Control and Management) Act, 1999;

[Chapter 422.]

“**IMPACS**” means the CARICOM Implementation Agency for Crime and Security, which was established by an intergovernmental agreement concluded on the 6th day of July, 2006, at Basseterre in the Federation of Saint Christopher and Nevis.

3. Appointment of competent authority

The competent authority under section 18C of the Act—

- (a) concerning data in respect of a vessel or aircraft and each person on board in accordance with Part I of the Fifth Schedule to the Act, is IMPACS;
 - (b) concerning data in respect of the cargo on board a vessel or aircraft in accordance with Part II of the Fifth Schedule to the Act, is the Comptroller of Customs.
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