

CHAPTER 403

THE CUSTOMS (MANAGEMENT AND TARIFF) ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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SCHEDULES

CHAPTER 403

THE CUSTOMS (MANAGEMENT AND TARIFF) ACT

An Act to provide for the management and administration of customs, transfer tax and related matters.

[1st November, 1954]

Act No. 2 of 1952

EAC. Cap. 27

Ords Nos.

10 of 1955

3 of 1958

5 of 1960

14 of 1961

2 of 1962

2 of 1963

12 of 1964

1 of 1966

10 of 1967

12 of 1969

13 of 1969

10 of 1970

13 of 1976

L.N. 49/1954

L.N. 84/1961

L.N. 1/1967

(E.A.C.)

L.N. 64/1970

Acts Nos.

13 of 1989

16 of 1994

13 of 1996

25 of 1997

27 of 1997

2 of 1998

8 of 1998

12 of 1999

15 of 1999

11 of 2000

15 of 2000

14 of 2001

10 of 2002

18 of 2002

PART I

PRELIMINARY PROVISIONS (ss 1-2)

[PCh403s1]1. Short title

This Act may be cited as the Customs (Management and Tariff) Act.

[PCh403s2]2. Interpretation Ords Nos. 2 of 1963; 1 of 1966; 10 of 1970; 12 of 1976; 9 of 1977; 19 of 1977; 20 of 1978; 12 of 1981; 16 of 1983; 15 of 1985; 9 of 1988; L.N. 84/1961; L.N. 1/1967; G.N. No. 122 of 1977; Acts Nos. 18 of 1991; 14 of 1992; 15 of 2000 s. 39; 10 of 2002 s.

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In this Act, unless the context otherwise requires—

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

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

"aircraft" includes every description of craft used in aerial navigation;

"appropriate legislation" means any legislation imposing any rate of duty on the importation into or exportation from of any goods;

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

"Board or Tribunal" means the Tax Revenue Appeals Board or the Tax Revenue Appeals Tribunal established under the Tax Revenue Appeals Act *;

"boarding station" mean any place appointed by the Commissioner-General by notice in the arriving at or departing from any port or place to bring to for the boarding by or the disembarkation of officers;

"bonded warehouse" means any warehouse licensed by the Commissioner-General for the deposit of dutiable goods on which import duty has not been paid and which have been entered to be warehoused;

"by authority" means by the authority of the Commissioner-General or of any officer doing his duty in the matter in relation to which the expression is used;

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

"Commissioner-General" means the person having charge of the Customs and Excise Department;

"Customs" or "the Customs" means the Customs and Excise Department;

"Customs area" means any place appointed by the Commissioner-General by notice in writing under his hand for the deposit of goods subjected to Customs control;

"Customs laws" includes this Act and any enactment relating to the Customs or to the importation, exportation, or carriage coastwise, of any goods, and any subsidiary legislation made under the authority of this Act or any such enactment;

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

"Customs warehouse" means any place approved by the Commissioner-General for the deposit of unentered, unexamined, detained, or seized, goods for the security thereof or of the duties due thereon;

"days" does not include Saturdays, Sundays or public holidays;

"drawback" means a refund of all or part of any import duty paid in respect of goods exported or used in a manner or for a purpose prescribed as a condition for granting drawback;

"dutiable goods" means any goods chargeable with duty;

"duty" includes any cess, levy, imposition, transfer tax, tax, or surtax, imposed by any law;

"export" with its grammatical variations and cognate expressions means to take or cause to be taken out of the Tanzania;

"foreign port" means any place beyond the limits of the Tanzania;

"goods" includes all kinds of articles, wares, merchandise, and livestock, and, where any such goods are sold under this Act, the proceeds of such sale;

"goods under drawback" means any goods in relation to which a claim for drawback has been or is to be made;

"Government warehouse" means any place provided by the Government of Tanzania, and approved by the Commissioner-General for the deposit of dutiable goods on which duty has not been paid and which have been entered to be warehoused;

"import" with its grammatical variations and cognate expressions means to bring or cause to be brought into Tanzania from a foreign country;

"import duty" means any duty (including any fiscal entry or suspended fiscal entry) imposed by a Customs Tariff Act or a Customs Tariff (Dumping and Subsidies) Act of Tanzania;

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

"Minister" means the Minister responsible for finance;

"name" includes the registered mark of an aircraft;

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

"owner" in respect of—

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

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

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

"port" means any place, whether on the coast or elsewhere, appointed by the Authority by notice in the Gazette, subject to any limitations specified in such notice, to be a port for the purpose of the Customs laws; and, in relation to aircraft, a port means a Customs airport;

"postal article" includes any letter, postcard, newspaper, book, document, pamphlet, pattern, sample, packet, small packet, parcel, package, or other article whatsoever, in cause of transmission by post;

"Post Office" means the Tanzania Posts Corporation Act *;

"prohibited goods" means any goods the importation, exportation, or carriage coastwise of which is prohibited under the provisions of the Customs laws;

"proper officer" means any officer whose right or duty it is to require the performance of, or to perform, the act referred to;

"refiner" means the holder of a licence granted in respect of a refinery;

"refinery" means a bonded warehouse licensed by the Commissioner-General for the treatment of oils;

"regulations" means any regulations made under this Act;

"restricted goods" means any goods the importation, exportation, transfer, or carriage coastwise of which is prohibited, save in accordance with any conditions regulating such

importation, exportation, transfer or carriage coastwise, and any goods the importation, exportation, transfer, or carriage coastwise of which is in any way regulated by or under the Customs laws;

"smuggling" with its grammatical variations and cognate expressions means the importation, exportation, or carriage coastwise, or the transfer or removal, of goods with intent to defraud the Customs revenue, or to evade any prohibition of, restriction on, regulation or condition as to, such importation, exportation, carriage coastwise, transfer, or removal, of any goods;

"sufferance wharf" means any place, other than an approved place of loading or unloading, at which the Commissioner-General may, subject to such conditions as he may either generally or in any particular case impose, allow any goods to be loaded or unloaded;

"tons register" means the tons of a ship's net tonnage as ascertained and registered according to the tonnage regulations of the Merchant Shipping Act *, or in the case of a ship which is not registered under that Act, ascertained in like manner as if it were to be so registered;

"transfer" with its grammatical variations and cognate expressions means the movement of goods from Tanzania directly or indirectly to another country, but shall not include goods in transit, goods for transshipment or goods for warehousing in a bonded warehouse;

"transshipment" with its grammatical variations and cognate expressions means the transfer, either directly or indirectly, of any goods from an aircraft, vehicle or vessel, arriving in Tanzania from a foreign place, to an aircraft, vehicle or vessel, departing to a foreign destination;

"transit" with its grammatical variations and cognate expressions means the movement of goods imported from a foreign place through the country, to a foreign destination;

"transit shed" means any building, appointed by the Commissioner-General by notice in writing under his hand, for the goods subject to Customs control;

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

"vehicle" includes every description of conveyance for the transport by land of human beings or goods;

"voyage" includes flight by aircraft;

"warehoused" means deposited in a Government or bonded warehouse with the authority of the person in charge of such warehouse;

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

"wharf owner" includes any owner or any occupier of any approved place of loading or unloading or of any sufferance wharf.

(2) For the purposes of this Act—

(a) goods shall be deemed to be entered when the entry, made and signed by the owner in the prescribed manner, is accepted and signed by the proper officer and when any duty

due or deposit required under this Act in respect of the goods has been paid, or security has been given for compliance with this Act;

(b) the time of importation of any goods shall be deemed to be the time at which such goods come within the boundaries of Tanzania;

(c) the time of exportation of any goods shall be deemed to be the time at which the aircraft or vessel departs from its final position, anchorage, or berth, at the port within Tanzania where such goods are shipped for exportation:

Provided that in the case of goods exported overland the time of exportation shall be deemed to be the time at which such goods pass across the boundaries of Tanzania;

(d) where any aircraft or vessel arrives in Tanzania from any foreign port, then, in relation to each port or place within Tanzania where such aircraft or vessel may arrive, such aircraft or vessel shall be deemed to have arrived from a foreign port;

(e) where any aircraft or vessel proposes to depart from Tanzania to any foreign port, then, in relation to each port or place within Tanzania from which such aircraft or vessel may depart, such aircraft or vessel shall be deemed to be departing therefrom to a foreign port;

(f) any reference to Tanzania shall be deemed to include a reference to Tanzania Zanzibar, Tanzania Mainland and the territorial waters thereof;

(g) where under this Act any power is conferred on, or any duty imposed on, the Commissioner-General, then, subject to any express directions by the Commissioner-General to

the contrary consistent with the provisions of this Act, such power may be exercised by, or such duty may be performed by, the Deputy Commissioner-General, a Commissioner or a Chief Collector;

(h) every act, matter, or thing, required or authorised by this Act to be done or performed by, with, to, or before, the Commissioner-General, if done or performed by, with, to, or before, any officer appointed by the Commissioner-General for such purpose, shall be deemed to be done or performed by, with, to, or before, the Commissioner-General;

(i) every person employed on any duty or service relating to the Customs by order, or with the concurrence, of the Commissioner-General shall be deemed to be the proper officer for that duty or service; and every act required by law at any time to be done by, with, to, or before, any particular officer nominated for such purpose, if done by, with, to, or before, any person appointed by the Commissioner-General, to act for such particular officer, shall be deemed to be done by, with, to, or before, such particular officer.

PART II

ADMINISTRATION (ss 3-13)

[PCh403s3]3. Provisions relating to staff Ord. No. 2 of 1963; L.N. 84/1961; L.N. 1/1967

(1) Subject to any law relating to the appointment of officers and their terms and conditions of service in Tanzania, the Authority may appoint a Commissioner-General of Customs, a Deputy Commissioner-General, Chief Collectors, and such other officers as may be necessary for the due administration of this Act and the efficient working of the Customs and

Excise Department; and the Commissioner-General of Customs so appointed shall, subject to the control of the Authority and to the provisions of this Act, be responsible for the control and management of the Customs and for the collection of, and accounting for, Customs revenue, and shall be known as the Commissioner-General of Customs and Excise.

(2) Every officer shall for the purposes of the Penal Code be deemed to be a person employed in the public service of Tanzania.

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

(4) Every officer shall be liable to serve in any place within the country and shall perform such duties as may be required of him by the Commissioner-General.

(5) Every officer who is appointed to any permanent office of employment in the Customs shall, on his appointment thereto, make and subscribe before a magistrate, justice of the peace, or commissioner for oaths, a declaration in the form set out in the First Schedule.

[PCh403s4]4. Customs seal and flag

(1) There shall be a seal of the Customs which shall be officially and judicially noticed.

(2) There shall be a flag of the Customs which shall distinguish vessels employed in the service of the Customs from other vessels.

[PCh403s5]5. Officer to have powers of police officer

For the purpose of carrying out this Act, every officer shall, in the performance of his duty, have all the powers, rights, privileges, and protection, of a police officer.

[PCh403s6]6. Hours of attendance Ord. No. 12 of 1964

(1) The working days and hours of general attendance of officers shall be such as may be prescribed.

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

(a) in the case of any person arriving in, or departing from Tanzania overland or by inland waters, be refused by the proper officer;

(b) in any other case, be unreasonably refused by the proper officer.

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

[PCh403s7]7. Offences by or in relation to officers Acts Nos. 13 of 1989 s. 3; 16 of 1994 s. 11

(1) Any officer who—

(a) directly or indirectly asks for, or takes, in connection with any of his duties any payment or other reward whatsoever whether pecuniary or otherwise, or any promise or security for any such payment or reward not being a payment or reward which he is lawfully entitled to claim or receive; or

(b) enters into or acquiesces in any agreement to do, abstain from doing, permit, conceal, or connive at, any act or thing whereby the Customs revenue is or may be defrauded, or which is contrary to the provisions of the Customs laws or the proper execution of his duty; or

(c) discloses, except for the purposes of this Act or when required to do so as a witness in any court or with the approval of the Authority, any information acquired by him in the performance of his duties relating to any person, firm, or business of any kind,

commits an offence and on conviction shall be liable to a fine not exceeding two million five hundred thousand shillings if the offender is a resident or if he is a foreigner an equivalent to that amount in U.S. dollars or to imprisonment for a term not exceeding three years or to both such fine and such imprisonment.

(2) Any person who—

(a) directly or indirectly offers or gives to any officer any payment or reward whatsoever, whether pecuniary or otherwise, or any promise or security for any such payment or reward; or

(b) proposes or enters into any agreement with any officer,

in order to induce him to do, abstain from doing, permit, conceal, or connive at, any act or thing whereby the Customs revenue is or may be defrauded, or which is contrary to the provisions of the Customs laws or the proper execution of the duty of such officer, shall be guilty of an offence and liable to a fine not exceeding two million five hundred thousand shillings if the offender is a resident or if he is a foreigner, an equivalent of that amount in U.S. dollars or to imprisonment for a term not exceeding three years or to both such fine and such imprisonment.

[PCh403s8]8. Appointment of ports, etc.

(1) The Authority may, by notice in the Gazette, appoint and fix the limits of—

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

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

[PCh403s9]9. Appointment of Customs areas, etc. Ord. No. 5 of 1960

(1) The Commissioner-General may by notice in the Gazette, appoint—

- (a) boarding stations;
- (b) Customs areas;
- (c) sufferance wharves;

- (d) places for the landing and embarkation of persons;
- (e) places for the examination of goods (including baggage);
- (f) roads or routes within Tanzania over which goods in transit, or goods transferred shall be conveyed;
- (g) entrances and exits, whether general or special, to and from any Customs area or Customs airport within Tanzania;
- (h) transit sheds.

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

[PCh403s10]10. Accommodation on wharves

- (1) Every wharf owner shall provide, to the satisfaction of the Commissioner-General—
 - (a) suitable office accommodation on his wharf or sufferance wharf for the exclusive use of the officer employed at the wharf; and
 - (b) such shed accommodation for the protection of goods as the Commissioner-General may in writing declare to be requisite.

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

(a) the appointment of a place of loading or unloading or a sufferance wharf may be withheld until the required accommodation is provided to the satisfaction of the Commissioner-General; and

(b) any existing appointment may be revoked.

[PCh403s11]11. Offences in respect of Customs areas, etc. Acts Nos. 13 of 1989 s. 13; 16 of 1994 s. 11

(1) No person or vehicle shall enter or leave any Customs area or Customs airport, and no goods, whether dutiable or not, shall be brought into or out of any such area or airport, except through an entrance or exit appointed in accordance with section 9.

(2) No person shall enter any part of a Customs area or Customs airport when forbidden by any officer, nor remain in such area or airport, or any part thereof, when requested to leave such area or airport, or part thereof, by any officer.

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

(4) Any person who contravenes this section shall be guilty of an offence and liable to a fine not exceeding two hundred and fifty thousand shillings if the offender is a resident or if he is

a foreigner an equivalent to that amount in U.S. dollars and any goods in respect of which such offence has been committed shall be liable to forfeiture.

[PCh403s12]12. Customs control of goods Ord. No. 10 of 1955; L.N. 1/1967

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

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

(b) all goods under drawback from the time of the claim for drawback until exportation;

(c) all goods subject to any export duty from the time when the goods are brought to any port or place for exportation, until exportation;

(d) all goods subject to any restriction on exportation from the time the goods are brought to any port or place for exportation, until exportation;

(e) all goods which are with the permission of the proper officer stored in a Customs area pending exportation;

(f) all goods on board of any aircraft or vessel whilst within any port or place in Tanzania;

(g) all goods which have been declared for or are intended for transfer to another country.

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

(a) any officer may at any time examine such goods;

(b) except by authority or in accordance with this Act, no person shall interfere in any way with such goods.

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

(4) Any person who contravenes subsection (2)(b) commits an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

[PCh403s13]13. Liability for loss, etc., through negligence of officer

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

PART III

IMPORTATION (ss 14-37)

Prohibited and Restricted Imports (ss 14-16)

[PCh403s14]14. Prohibited and restricted goods Ord. No. 10 of 1955

(1) The goods specified in Head A of any of the parts of the Second Schedule are prohibited goods and the importation thereof is prohibited.

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

[PCh403s15]15. Power to prohibit, etc., imports Act No. 16 of 1983 s. 3

(1) The Authority may, by order published in the Gazette, amend the Second Schedule and any such order may provide that the importation or retention of any goods, or class of goods—

(a) is prohibited, either generally or in relation to Tanzania or to any area within the country;

(b) is prohibited, save in accordance with any conditions regulating their importation or retention either generally or in relation to Tanzania or to any area within the country.

(2) The President of Tanzania may, by order published in the Gazette—

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

(b) limit in respect of Tanzania the application of the provisions of the Second Schedule in respect of all or any of the goods specified therein,

and thereupon in respect of such goods the provisions of this Act shall apply as if such goods are, or are not, as the case may be, included in the Second Schedule.

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

[PCh403s16]16. Exemption of goods in transit, etc. Ord. No. 10 of 1955

(1) Subject to subsection (2), sections 14 and 15 shall not apply to goods imported in transit, or for transshipment, or as stores of any aircraft or vessel, unless such goods come within paragraph 2 of Head A of Part I of the Second Schedule, or are goods of which the importation in transit, or for transshipment, or as stores for any aircraft or vessel, is expressly prohibited or restricted in any order made under this Act prohibiting or restricting the importation of goods.

(2) Where, under subsection (1), sections 14 and 15 do not apply to any goods imported in transit, or for transshipment, or as stores for any aircraft or vessel, then such goods shall be duly re-exported within such time as the Commissioner-General may specify; and if such goods are not so re-exported, then, as from the last date on which they should have been so re-exported, they shall be deemed to be prohibited goods, or restricted goods, as the case may be, and to have been imported on that date.

Arrival and Report of Aircraft and Vessels (ss 17-24)

[PCh403s17]17. Procedure on arrival

(1) Save as provided in section 24, the master of every aircraft or vessel arriving in Tanzania—

(a) shall not, except where so allowed by the proper officer in any special circumstances, cause or permit such aircraft or vessel to land, touch at, or enter, any place in the country other than a port;

(b) shall, on arriving at any such port or place, come as quickly as the conditions of the port or place admit up to the proper place of mooring or unloading without touching at any other place;

(c) shall, in proceeding to such proper place, bring to at the station appointed for the boarding of aircraft or vessels;

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

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

(2) Any master who contravenes this section shall be guilty of an offence.

[PCh403s18]18. Place of mooring, etc.

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

[PCh403s19]19. Restriction on boarding vessels before proper officer Act No. 13 of 1989 s. 13; 16 of 1994 s. 11

(1) No person, except the port pilot, the health officer, or any other public officer in the exercise of his duties and duly authorised, shall, save with the permission of the proper officer, board any vessel before the proper officer.

(2) Any person who contravenes this section shall be guilty of an offence and liable to a fine not exceeding two hundred and fifty thousand shillings if the offender is a resident or if he is a foreigner an equivalent of that amount in U.S. dollars.

[PCh403s20]20. Report

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

(2) Every such report shall show separately any goods which are in transit, any goods for transshipment, any goods which are to remain on board for other ports outside the country, and any goods for re-exportation on the same aircraft or vessel.

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

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

(5) Any master or agent of any aircraft or vessel who—

(a) fails to make report in accordance with this section; or

(b) makes a report of which any of the particulars contained therein is false; or

(c) except with the knowledge and consent of the proper officer, causes or permits bulk to be broken contrary to this section; or

(d) except with the knowledge and consent of the proper officer, at any time after arrival causes or permits any goods to be staved, destroyed, or thrown overboard, or any packages to be opened,

shall, unless such contravention is explained to the satisfaction of the proper officer, be guilty of an offence and any goods in respect of which an offence contrary to paragraphs (a), (b), or (d), of this subsection has been committed shall be liable to forfeiture.

[PCh403s21]21. Master to answer questions, etc.

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

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

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

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

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

(2) Any master or agent who contravenes this section shall be guilty of an offence.

[PCh403s22]22. Goods in transit shed, etc., deemed in aircraft or vessel

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

[PCh403s23]23. Goods reported to be unloaded

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

[PCh403s24]24. Master of wreck, etc., to report

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

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

(3) Any master or agent who contravenes subsection (1) shall be guilty of an offence.

Arrival Overland (ss 25-26)

[PCh403s25]25. Vehicles arriving overland Ord. No. 2 of 1963; L.N. 1/1967

(1) The person in charge of every vehicle, whether or not such vehicle is conveying goods and whether or not such goods (if any) are dutiable, arriving overland at a frontier of the neighbouring country from a place outside the country shall not, except where otherwise

permitted by the proper officer, cause or allow the vehicle to enter the country at any place other than at a port appointed under section 8, and shall before unloading or disposing of the vehicle or of any goods therein—

(a) report his arrival to the officer stationed at the frontier port at which he entered the country;

(b) furnish on the prescribed form such information as may be required concerning the vehicle or any such goods;

(c) make and subscribe a declaration as to the truth of all particulars contained in such form;

(d) fully and immediately answer all relevant questions put to him by the proper officer;

(e) produce all consignment notes or other relevant documents demanded of him by the proper officer.

(f) save as otherwise provided in the Customs laws, make due entry of the vehicle and of any such goods.

(2) No vehicle or goods to which this section applies shall be removed from the Customs area until after due entry thereof has been and or until permission for removal has been granted by the proper officer.

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

[PCh403s26]26. Arrival overland otherwise than by vehicle L.N. 1/1967

(1) Every person (other than the person in charge of any vehicle) arriving overland in the country from a foreign place, if he has any goods in his possession, shall, before in any way disposing of any such goods—

(a) report his arrival to the officer stationed at the Customs house nearest to the point at which he crossed the frontier;

(b) furnish on the prescribed form such information as may be required concerning any such goods;

(c) make and subscribe a declaration as to the truth of all particulars contained in such form;

(d) fully and immediately answer all relevant questions put to him by the proper officer;

(e) produce all consignment notes or other relevant documents demanded of him by the proper officer;

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

(2) No goods to which this section applies shall be removed from the Customs area until after due entry thereof has been made or until permission for removal has been granted by the proper officer.

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

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

Unloading and Removal of Cargo (s 27)

[PCh403s27]27. Unloading, etc.

(1) Subject to this Act, save with the written permission of the proper officer and subject to such conditions as he may impose—

(a) no goods shall be unloaded from any aircraft or vessel arriving from a foreign port unless such goods have first been duly entered;

(b) no goods shall be unloaded or removed from any aircraft or vessel arriving from a foreign port on Saturdays, Sundays or public holidays at any time whatsoever, or on any other day except between the hours of six o'clock in the morning and six o'clock in the afternoon;

(c) no goods shall be unloaded from any aircraft or vessel arriving from a foreign port except at an approved place of unloading or at a sufferance wharf:

Provided that—

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

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

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

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

(e) no goods shall be removed from any part of a Customs area or from a transit shed or a Customs warehouse unless such goods have first been duly reported and entered and authority for their removal or delivery has been given by the proper officer:

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

remove the goods when called upon, the proper officer may have them removed at the risk and expense of such agent;

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

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

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

Entry, Examination, and Delivery (ss 28-35)

[PCh403s28]28. Entry of cargo

(1) Save as otherwise provided in the Customs laws, the whole of the cargo of any aircraft or vessel which is unloaded or to be unloaded shall be entered by the owners within such period after the commencement of discharge as may be prescribed, or such further period as may be allowed by the proper officer, either for—

(a) home consumption;

- (b) warehousing;
- (c) transshipment; or
- (d) transit.

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

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

(4) Where any goods remain unentered at the expiration of the prescribed period, or of such further period as may have been allowed by the proper officer, then such goods shall, if the proper officer so requires, be removed by, or at the expense of, the agent of the aircraft or vessel in which such goods were imported to a Customs warehouse.

[PCh403s29]29. Entry of transfer goods Ord. No. 13 of 1969

(1) Save as otherwise provided in the Customs laws, any goods liable to transfer tax which are unloaded or to be unloaded or to be unloaded from any aircraft, vessel or vehicle, shall be entered by the owners in the manner and within the period prescribed, or within such further period as may be allowed by the proper officer.

(2) Where any goods liable to transfer tax remain unentered at the expiration of the period prescribed or such further period as may have been allowed by the proper officer, then such

goods shall, if the proper officer so requires, be removed to a Customs warehouse by, or at the expense of, the owner of the aircraft, vessel or vehicle in which such goods were transferred.

[PCh403s30]30. Surplus stores may be entered

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

[PCh403s31]31. Provisions relating to mail, personal baggage, etc. Act No. 13 of 1989 s.

13

(1) Notwithstanding sections 27 and 28–

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

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

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

(2) Any owner who contravenes any undertaking given under section (1)(c) shall be guilty of an offence and liable to a fine not exceeding five hundred thousand shillings if the offender is a resident or if he is a foreigner the equivalent of that amount in U.S. dollars.

[PCh403s32]32. Entry in absence of documents

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

(2) Upon such examination having been made the proper officer may, subject to section 33, permit the owner to enter such goods for home consumption, or for warehousing, if he is satisfied that the description of the goods for tariff and statistical purposes is correctly made in such entry, and also—

(a) in the case of goods liable to a duty ad valorem, that the value declared on the entry is approximately correct; and

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

(3) Where the proper officer has permitted entry to be made under subsection (2), the delivery of such goods may accordingly be made, but the proper officer may, in the case of goods

liable to duty ad valorem, retain such samples of the goods for such period up to the passing of perfect entry as he may think fit.

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

[PCh403s33]33. Provisions relating to goods liable to ad valorem duty Ord. No. 3 of 1958

(1) Where any goods entered in accordance with section 32 are goods liable to duty ad valorem, then such entry shall be deemed to be a provisional entry.

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

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

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

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

[PCh403s34]34. Delivery from Customs area in special circumstances

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

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

[PCh403s35]35. Re-packing, etc., in Customs area, etc.

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

Provisions Relating to a Customs Warehouse (ss 36-37)

[PCh403s36]36. Goods deposited in a Customs warehouse may be sold, etc. Ords. Nos. 3 of 1958; 5 of 1960

(1) Where any goods which have been deposited in a Customs warehouse are not lawfully removed within two months after deposit, then such goods may be sold by public auction after

one month's notice of such sale has been given by the proper officer by publication in such manner as the Commissioner-General may see fit:

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

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

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

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

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

(a) if the goods were prohibited goods, or restricted goods in relation to which there had been any contravention or if no application for such balance is made as provided in paragraph (b) hereof, be paid into the Customs revenue;

(b) in any other case be paid to the owner of the goods if he makes application therefor within one year of the date of the sale.

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

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

[PCh403s37]37. Goods deemed to be in a Customs warehouse

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

(2) Where any goods are deemed to have been deposited in a Customs warehouse then such goods shall, in addition to the rent and other charges to which they are liable under section 36, be chargeable with such expenses incurred in the securing, guarding, and removing of them as the proper officer may consider reasonable; and neither the Commissioner-General nor any officer shall be liable for the loss of or damage to such goods which may be occasioned by reason of their being so deposited and dealt with.

PART IV

WAREHOUSING OF GOODS (ss 38-60)

General Provisions (ss 38-52)

[PCh403s38]38. Dutiable goods may be warehoused L.N. 1/1967

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

(2) On, or as soon as practicable after, the landing of any goods to be warehoused, the proper officer shall take a particular account of such goods and shall enter such account in a book; and such account shall, subject to sections 43 and 49, be that upon which the duties in respect of such goods shall be ascertained and paid.

[PCh403s39]39. Procedure on warehousing L.N. 1 of 1967

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

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

name of the owner of such goods, the number of packages, the mark and number of each package, the value and particulars of the goods.

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

(4) Subject to section 41, all goods entered to be warehoused shall forthwith be removed to the warehouse for which they are entered and deposited therein in the packages in which they were imported:

Provided that where any goods are permitted to be repacked, skipped, bulked, sorted, looted, or packed, in accordance with section 35, then such goods shall be deposited in the packages in which they were contained when the account thereof was taken.

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

[PCh403s40]40. Removal to warehouse of goods entered therefor

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

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

[PCh403s41]41. Entry of warehoused goods

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

- (a) home consumption;
- (b) exportation;
- (c) removal to another warehouse;
- (d) use as stores for aircraft or vessels; or
- (e) re-warehousing.

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

[PCh403s42]42. Operations in a warehouse Ord. No. 2 of 1963.

(1) Where any goods are warehoused, the Commissioner-General may, subject to such conditions as he may impose—

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

- (b) permit samples of such goods to be taken by the owner;
- (c) permit the name of the owner of such goods in the account taken under section 38 to be changed if application therefor is made on the prescribed form and signed by both the owner and the intended owner;
- (d) permit the assembly or manufacture in the warehouse of any article consisting wholly or partly of such goods; and for such purpose the Commissioner-General may permit the receipt in a warehouse of duty free or locally produced articles required as components of the article to be so assembled or manufactured therein:

Provided that where the finished article is entered for home consumption, duty shall be paid on the goods forming part thereof according to the first account thereof taken upon the warehousing of the goods except in the case of oils which are warehoused in a refinery in which case duty shall be paid on the goods which are entered for home consumption.

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

[PCh403s43]43. Re-gauging and re-valuation

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

- (a) re-gauge, re-measure, re-weigh, examine, or take stock of, any warehoused goods;

(b) re-value any warehoused goods liable to duty ad valorem which have deteriorated in quality,

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

[PCh403s44]44. Delivery from warehouse in special circumstances

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

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

[PCh403s45]45. Removal to another warehouse

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

(a) shall require the owner of such goods to deliver an entry thereof in such form and manner as the proper officer may direct;

(b) shall require such owner to give security in such amount, not being less than the duty chargeable on such goods, as the proper officer may think fit for the due arrival and re-warehousing of such goods within such time as the proper officer may consider appropriate; and

(c) shall transmit to the proper officer of the place where such goods are to be re-warehoused in such other warehouse an account containing the particulars of such goods.

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

- (a) the conditions attaching thereto have been satisfied; or
- (b) the full duty payable on such goods has been paid in accordance with this Act; or
- (c) such goods are otherwise accounted for to the satisfaction of the proper officer, and any duties due in respect of any deficiency in such goods not so accounted for has been paid.

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

[PCh403s46]46. Warehoused goods may be delivered as stores

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

Provided that warehoused goods shall not be entered for use as stores for a vessel of less than ten tons register to be delivered for that purpose.

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

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

[PCh403s47]47. Abandonment, etc., of warehoused goods

(1) The Commissioner-General may, subject to such conditions as he may impose—

(a) permit the owner of any warehoused goods to abandon such goods to the Customs;

(b) permit the owner of any warehoused goods which in the opinion of the proper officer, are not worth the duty payable thereon or have become damaged, or are surplus, by reason of any operations in connection therewith carried out under section 42 to destroy such goods,

and in either such case the duty on such goods shall be remitted.

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

(a) abandoned to the Customs, then such goods may be destroyed or otherwise disposed of in such manner as the Commissioner-General may direct and at the expense of the owner thereof;

(b) permitted to be destroyed and such goods were warehoused in a Government warehouse, then the owner of such goods shall nevertheless be liable to pay to the proper officer the rent and other charges due on such goods.

[PCh403s48]48. Period of warehousing and sale of goods Ords. Nos. 3 of 1958; 5 of 1960; Acts Nos. 18 of 1991 s. 12; 15 of 1999

(1) All warehoused goods which have not been removed from a warehouse in accordance with this Act within six months of the date on which they were warehoused shall be entered for re-warehousing:

Provided that, clothes, soft drinks, wines, beer and spirits shall be warehoused for a period not exceeding three months.

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

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

- (a) the duties;
- (b) the expenses of the sale;
- (c) any rent and charges due to the Customs or to the warehouse keeper;

(d) the port charges; and

(e) the freight and any other charges.

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

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

[PCh403s49]49. Examination of warehoused goods on delivery

(1) Where any warehoused goods are delivered for home consumption, for exportation, for removal to another warehouse, or for use as stores for aircraft or vessels, or are to be re-warehoused or sold under section 48, then the proper officer may examine and take stock of such goods.

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

(a) that the deficiency is not excessive or that it was not wilfully or negligently caused, he may allow the deficiency and direct that the duties on such goods shall be payable, or that the re-warehousing entry shall be made, as the case may be, on the result of such examination;

(b) that the deficiency is excessive or that it was wilfully or negligently caused, he shall require the duties on such goods to be paid by the owner, according to the warehouse account:

Provided that—

(i) where the goods are to be re-warehoused, the duty on such deficiency shall be forthwith paid by the owner of such goods and the re-warehousing entry shall be made according to the result of such examination;

(ii) where the goods are to be sold under section 48, the duty on such deficiency shall be forthwith paid by the warehouse keeper in any case where the goods were warehoused in a bonded warehouse.

[PCh403s50]50. Access to warehouse Act No. 13 of 1989 s. 13

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

(2) No person, other than the proper officer or, in the case of a bonded warehouse, the warehouse keeper or any duly authorised employee, shall open any warehouse or gain access to any goods therein save with the approval of the proper officer; and any person who contravenes this subsection shall be guilty of an offence and liable to a fine not exceeding two million shilling if the offender is a resident or if he is a foreigner, an equivalent of that amount in U.S. dollars.

(3) No person shall enter any warehouse, or part thereof, contrary to the orders of the proper officer or shall refuse to leave any warehouse, or part thereof, when directed to do so by the proper officer; and any person who contravenes this subsection shall be guilty of an offence and liable to a fine not exceeding five hundred thousand shillings if the offender is a resident or if he is a foreigner, an equivalent of that amount in U.S. dollars.

[PCh403s51]51. Removal of goods after entry for home consumption, etc.

Where any goods remain in any warehouse for a period of more than fourteen days after they have been entered for home consumption or after they have been sold in accordance with this Act, then such goods shall, unless the Commissioner-General in any special case otherwise directs, be forfeited and may be destroyed or otherwise disposed of in such manner as the Commissioner-General may direct.

[PCh403s52]52. Penalty for unlawfully taking, etc., warehoused goods Act No. 16 of 1994
s. 11

Any person who—

(a) takes, or causes or permits to be taken, any goods from any warehouse otherwise than in accordance with this Act; or

(b) wilfully destroys or damages any warehoused goods otherwise than in circumstances specifically provided for in this Act,

commits an offence and upon conviction is liable to imprisonment for a term not exceeding two years or to a fine not exceeding two million five hundred thousand shillings or an equivalent of that amount in U.S. dollars if the offender is a foreigner, or to both such fine and imprisonment.

Bonded Warehouses (ss 53-58)

[PCh403s53]53. Commissioner-General may license warehouses Acts Nos. 13 of 1989 s. 13; 16 of 1994 s. 11

(1) The Commissioner-General may, on application, license any building as a warehouse for the deposit of goods liable to import duty; and the Commissioner-General may, without assigning reason, refuse to issue any such licence and may, subject to a refund of the proportionate part of the licence fee, at any time revoke any licence which has been issued.

(2) The Commissioner-General may license any building as either—

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

(3) Every licence shall be in the prescribed form and shall be subject to the payment of the prescribed annual fee and shall expire on the 31st December in each year.

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

the licence and the Commissioner-General may, at any time, require a warehouse keeper to furnish new security in a different amount or on different terms.

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

(6) No building shall be used as a bonded warehouse unless there is in force in relation thereto a valid licence.

(7) Any warehouse keeper who uses, or permits to be used, his warehouse in contravention of any of the terms of his licence shall be guilty of an offence.

(8) Any owner or occupier of a building who uses, or permits to be used, such building as a bonded warehouse without being the holder of a valid licence in respect thereof, shall be guilty of an offence and liable to a fine not exceeding one million and, in addition there to, to a fine not exceeding two hundred and fifty thousand shillings if the offender is a resident or if he is a foreigner an equivalent of that amount in U.S. dollars and fifty U.S. dollars, for any day, or part of a day, during which the building was so used.

[PCh403s54]54. Procedure on revocation or expiry of licence

(1) Where the Commissioner-General revokes any licence under section 53, then he shall cause to be served on the warehouse keeper notice of such revocation by leaving such notice with the person in charge of the bonded warehouse; and thereupon such service shall be deemed to be notice of such revocation to the owners of all goods warehoused therein.

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

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

(4) Where any goods have not been so entered and delivered in accordance with subsection (3), then the proper officer may cause such goods to be taken to a Customs warehouse and thereupon such goods shall be dealt with in accordance with section 36.

[PCh403s55]55. Warehouse keeper to provide facilities Acts Nos. 13 of 1989 s. 13; 16 of 1994 s. 11

(1) Every warehouse keeper shall—

(a) provide such office accommodation and just weights, scales, measures, and other facilities, for examining and taking account of goods and for securing them as the proper officer may require;

(b) keep a record of all goods warehoused therein and shall keep such record at all times available for examination by the proper officer;

(c) stack and arrange the goods in the bonded warehouse so as to permit reasonable access to and examination of every package at all times;

(d) provide all necessary labour and materials for the storing, examining, packing, marking, cooping, weighing, and taking stock, of the warehoused goods whenever the proper office so requires;

(e) maintain such records and accounts relating to the operations of a refinery, in such form and manner, as the proper officer shall require, and shall keep such records and accounts at all times available for examination by the proper officer.

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

(3) Any warehouse keeper who contravenes any of the provisions of this section or of any direction given by the Commissioner-General under this section shall be guilty of an offence and liable to a fine not exceeding two hundred and fifty thousand shillings if the offender is a resident or if he is a foreigner, an equivalent to that amount in U.S. dollars.

[PCh403s56]56. Stowage and storage of goods in bonded warehouse Acts Nos. 13 of 1989 s. 13; 16 of 1994 s. 11

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

(2) Subject to section 42, where any goods have been warehoused in a bonded warehouse, then, except with the approval of the proper officer, such goods shall not be moved or interfered with in any way, nor shall any alteration be made in the marks or numbers of any package.

(3) Any warehouse keeper who contravenes, or who causes or permits a contravention of, this section shall be guilty of an offence and shall be liable to a fine not exceeding two hundred and fifty thousand shillings if the offender is a resident or if he is a foreigner an equivalent of that amount in U.S. dollars and any goods in respect of which any offence under subsection (2) has been committed shall be liable to forfeiture.

[PCh403s57]57. Removal of goods from private to general warehouse

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

(2) Where any warehouse keeper contravenes any requirement given under subsection (1), the proper officer may cause such goods to be taken to a Customs warehouse and thereupon such goods shall be dealt with in accordance with section 36.

[PCh403s58]58. Warehouse keeper to produce goods deposited Acts Nos. 13 of 1989 s. 13; 16 of 1994 s. 11

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

(2) Any warehouse keeper who contravenes this section shall, in the absence of satisfactory explanation to the proper officer, be guilty of an offence and liable to a fine not

exceeding two hundred and fifty shillings if the offender is a resident or if he is a foreigner, an equivalent of that amount in U.S. dollars in respect of each package not so produced and, in addition, the warehouse keeper shall forthwith pay the duties in respect of each such package.

Government Warehouses (ss 59-60)

[PCh403s59]59. Goods in Government warehouse liable to rent, etc.

Where any goods are deposited in a Government warehouse, then they shall be subject to such rent and other charges as may be prescribed or as may be provided for in this Act; and, if such rent and other charges are not paid to the proper officer when lawfully demanded, the goods in respect of which such rent and other charges are due may be sold, and the proceeds thereof applied, in accordance with section 36.

[PCh403s60]60. Removal, etc., of goods in Government warehouse

Where any goods are deposited in a Government warehouse, then the proper officer may—

(a) remove, at the expense of the Customs, such goods from that warehouse to another Government warehouse;

(b) perform, in relation to such goods and at the expense of the owner thereof, all such acts as he may consider reasonably necessary for the proper custody and preservation of such goods:

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

(c) by notice inform the owners of such goods that it is proposed to close such warehouse at the end of such period, not being less than three months from the date of such notice, as may be specified in such notice; and in any such case regulations shall be made providing for the manner in which any such goods shall be dealt with on such warehouse being closed.

PART V

EXPORTATION (ss 61-76)

Prohibited and Restricted Exports (ss 61-63)

[PCh403s61]61. Prohibited and restricted goods Ord. No. 10 of 1955

(1) The goods specified in Head A of any of the Parts of the Third Schedule are prohibited goods and the exportation thereof is prohibited.

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

[PCh403s62]62. Power to prohibit, etc., exports

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

(a) is prohibited, either generally or in relation to any of the neighbouring countries or to any area within any of the neighbouring countries;

(b) is prohibited, save in accordance with any conditions regulating their exportation, either generally or in relation to any of the neighbouring countries or to any area within any of the neighbouring countries;

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

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

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

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

[PCh403s63]63. Exemption of goods in transit, etc.

(1) Subject to subsection (2) of this section, sections 61 and 62 shall not apply to goods in transit, or for transshipment, or exported as stores of any aircraft or vessel, unless such goods come within the provisions of paragraph 2 of Head B of Part I of the Third Schedule, or are goods of which the exportation as stores for any aircraft or vessel, is expressly prohibited or restricted in any order made under this Act prohibiting or restricting the exportation of goods.

(2) Where under subsection (1) of this section, sections 61 and 62 do not apply to any goods in transit, or for transshipment, or, exported as stores for any aircraft or vessel, then such goods shall be duly exported within such time as the Commissioner-General may specify; and if such goods are not so exported, then as from the last date on which they should have been so exported, they shall be deemed to be prohibited goods or restricted goods, as the case may be.

Entry Outwards and Loading of Aircraft and Vessels (ss 64-73)

[PCh403s64]64. Entry outwards of vessel

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

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

(a) no such entry outwards of a vessel shall be made before the whole of the cargo reported in such vessel for discharge has been discharged;

(b) no goods shall be loaded on such vessel before such entry outwards is made.

(3) Any master or agent who contravenes subsection (1), and any master who permits any goods to be loaded contrary to subsection (2) or contrary to the terms of any permission given under such subsection (2), shall be guilty of an offence.

[PCh403s65]65. Entry of cargo for export Ord. No. 5 of 1960

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

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

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

[PCh403s66]66. Loading, etc.

(1) Subject to this Act, save with the written permission of the proper officer and subject to such condition as he may impose—

(a) no goods shall be put on board any aircraft or vessel departing to a foreign port unless such goods have first been duly entered;

(b) no goods shall be put on board any aircraft or vessel departing to a foreign port on Saturdays, Sundays or public holidays at any time whatsoever, or on any other day except between the hours of six o'clock in the morning and six o'clock in the afternoon;

(c) no goods shall be put on board any aircraft or vessel departing to a foreign port except from an approved place of loading or from a sufferance wharf:

Provided that—

(i) goods may be put on board any such aircraft or vessel from another vessel on to which they had been put on board in order to be loaded on to such aircraft or vessel;

(ii) with the permission of the proper officer and subject to such conditions as he may impose, goods reported for transshipment may be loaded on to such aircraft or vessel from another vessel;

(d) no goods shall be put on board any vessel departing to a foreign port before entry outwards of such vessel;

(e) no goods shall be put on board of any vessel to be loaded on to any aircraft or other vessel departing to a foreign port if such goods may not, under the provisions of this subsection, be directly put on board such aircraft or other vessel;

(f) all goods put on board of any vessel to be loaded on to any aircraft or other vessel departing to a foreign port shall be so loaded within the limits of the port.

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

[PCh403s67]67. Provisions relating to personal baggage, etc.

(1) Notwithstanding section 66, the proper officer may, subject to any regulations, permit—

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

(b) goods intended for sale or delivery to passengers, or members of the crew, of any aircraft or vessel to be put on board such aircraft or vessel, subject to such conditions as he may impose, without entry;

(c) mail bags and postal articles in the course of transmission by post to be put on board and exported without entry;

(d) goods to be put on board any aircraft or vessel departing to a foreign port without entry subject to an application being made by the owner on the prescribed form and in the prescribed manner and to an undertaking being given by the owner of such goods to furnish the necessary entry within ninety-six hours, or such further time as the proper officer may specify, of the departure of the aircraft or vessel and to such security, if any, being given by such owner for the due payment of any export duties as the proper officer may consider appropriate.

(2) Any person who—

- (a) contravenes any conditions imposed under subsection (1)(b); or
- (b) contravenes any undertaking given under subsection (1)(d),

shall be guilty of an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

[PCh403s68]68. Goods for export not to be discharged in neighbouring countries

(1) No goods which have been put on board any aircraft or vessel for export, or for use as stores, or as passenger's baggage, save with the written permission of the proper officer and in accordance with such conditions as he may impose, be discharged at any place within the neighbouring countries.

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

[PCh403s69]69. Provisions relating to export of certain goods Ord. No. 10 of 1955

(1) Before any—

- (a) warehoused goods; or
- (b) goods in which drawback may be claimed; or
- (c) dutiable goods intended for transshipment; or

(d) restricted goods,

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

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

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

(4) Where any bonded goods—

(a) are short-shipped, the owner thereof shall so notify the proper officer within twenty-four hours, or such further time as the proper officer may allow, of the departure of the aircraft or vessel;

(b) have been removed from a warehouse for delivery on board any aircraft or vessel but are not put on board such aircraft or vessel, the owner thereof shall forthwith enter the goods for warehousing, or for exportation, or for use as stores for aircraft or vessels.

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

(a) not to agree with the particulars of the entry thereof; or

(b) being goods under drawback, not to be goods entitled to drawback,

then the owner of such goods shall be guilty of an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

(6) Any owner who—

(a) contravenes any condition imposed on him under this section in respect of any bonded goods; or

(b) contravenes subsection (4),

shall be guilty of an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

(7) Where any master contravenes, or causes or permits the contravention of, subsection (2), he shall be guilty of an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

[PCh403s70]70. Stores for aircraft and vessels

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

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

[PCh403s71]71. Short-shipment of non-bonded goods Act No. 13 of 1989 s. 13

(1) Where any goods (other than bonded goods within the meaning of section 69) are entered for exportation and such goods are not exported in the aircraft or vessel for which they were so entered or are short-shipped, the owner thereof shall so notify the proper officer within forty-eight hours, or such further time as the proper officer may allow, of the departure of the aircraft or vessel.

(2) Any owner who contravenes this section shall be guilty of an offence and liable to a fine not exceeding one million and twenty five thousand shillings if the offender is a resident, or if he is a foreigner, an equivalent of that amount in U.S. dollars.

[PCh403s72]72. Export goods stored at risk of owner

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

- (a) they shall be subject to such rent and other charges as may be prescribed; and
- (b) notwithstanding section 13, they shall be so stored at the risk of the owner.

[PCh403s73]73. Goods liable to export duty

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

(2) No goods liable on export to any duty shall be exported until the export duty has been paid or security therefor given to the satisfaction of the proper officer.

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

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

Departure Overland (ss 74-75)

[PCh403s74]74. Vehicles departing overland Ord. No. 2 of 1963

(1) The person in charge of every vehicle, whether or not such vehicle is conveying goods and whether or not such goods (if any) are dutiable, departing overland from the neighbouring countries shall not, except where otherwise permitted by the proper officer, cause or allow the vehicle to depart from the neighbouring countries at any place other than at a port appointed under section 8, and before so departing shall—

(a) report his intended departure to the officer stationed at the Custom house nearest to the point at which he proposes to cross the frontier;

(b) furnish on the prescribed form such information as may be required concerning the vehicle or any such goods;

(c) fully and immediately answer all relevant questions put to him by the proper officer;

(d) produce any consignment notes or other relevant documents demanded from him by the proper officer;

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

(2) No vehicles or goods to which this section applies shall, except under and in accordance with the terms of any permission granted by the proper officer, be removed across the frontier until after due entry thereof has been made.

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

[PCh403s75]75. Departure overland otherwise than by vehicle

(1) Every person (other than the person in charge of any vehicle) departing overland from the neighbouring countries shall, if he has any goods in his possession, before crossing the frontier—

(a) report his intended departure to the officer stationed at the Custom house nearest to the point at which he proposes to cross the frontier;

(b) furnish on the prescribed form such information as may be required concerning any such goods;

(c) fully and immediately answer all relevant questions put to him by the proper officer;

(d) produce all consignment notes or other relevant documents demanded of him by the proper officer;

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

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

(3) No goods to which this section applies shall, except under and in accordance with the terms of any permission granted by the proper officer, be removed across the frontier until after due entry thereof has been made.

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

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

Goods in Transit or for Transhipment (s 76)

[PCh403s76]76. In transit, etc., goods

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

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

PART VI

DEPARTURE AND CLEARANCE OF AIRCRAFT AND VESSELS (ss 77-81)

[PCh403s77]77. Clearance required for departure to foreign port Acts Nos. 13 of 1989 s. 13; 16 of 1994 s. 11

(1) No aircraft or vessel, whether laden or in ballast, shall depart from any port or place in the neighbouring countries to any foreign port unless a certificate of clearance has been granted in respect of such aircraft or vessel.

(2) The master or agent of any vessel or aircraft which departs from any port or place within the neighbouring countries in contravention of subsection (1) shall be guilty of an offence and liable to a fine not exceeding two million five hundred thousand shillings if the offender is a resident or if he is a foreigner an equivalent to that amount in U.S. dollars.

[PCh403s78]78. Grant of clearance

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

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

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

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

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

(b) produce to the proper officer all such documents as he may require relating to such aircraft or vessel and its cargo, stores, baggage, crew, and passengers;

(c) answer all questions which the proper officer may ask relating to such aircraft or vessel and its cargo, stores, baggage, crew and passengers.

(4) Where the master or agent of any vessel of two hundred and fifty tons register or more makes application for a certificate of clearance, then the proper officer may grant such clearance

subject to an undertaking by such master or agent to deliver to the proper officer, within twenty-four hours of the grant of such certificate of clearance, the outward manifest of such vessel in the prescribed form and in the prescribed manner, and to answer all such questions as he may be asked relating to such vessel, its cargo, stores, baggage, crew, and passengers.

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

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

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

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

[PCh403s79]79. Clearance to be produced

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

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

[PCh403s80]80. Deficiency or surplus in cargo or stores Acts Nos. 13 of 1989 s. 13; 16 of 1994 s. 11

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

(2) Where, on any aircraft or vessel being boarded by the proper officer, any goods which were reported on the arrival of such aircraft or vessel as remaining on board for other ports in the neighbouring countries, or for re-exportation, or as stores, or which after arrival were put on board for removal under bond to another port in the neighbouring countries, or for exportation or use as stores, are not on board (due allowance being made in the case of stores for any goods

which might fairly have been consumed or used) then the master of such aircraft or vessel shall be guilty of an offence.

(3) Where, on any aircraft or vessel being boarded by the proper officer after its return to the neighbouring countries from a voyage to a foreign port, any goods which on the previous arrival of such aircraft or vessel were reported as stores or were then put on board as stores are not on board (due allowance being made for any goods which might fairly have been consumed or used) the master of such aircraft or vessel shall be guilty of an offence and liable to a fine not exceeding two hundred and fifty thousand shillings if the offender is a resident or if he is a foreigner an equivalent of that amount in U.S. dollars and in addition, such master shall be liable to pay the duty on the deficiency of such goods at the rate chargeable on the importation of similar goods.

[PCh403s81]81. Aircraft or vessel to bring to at boarding station

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

(2) Any master of an aircraft or vessel who contravenes this section shall be guilty of an offence.

PART VII

IMPORTATION AND EXPORTATION BY POST (ss 82-83)

[PCh403s82]82. Application of Act to postal articles

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

Provided that—

(i) postal articles may be entered at such place and in such manner as the Commissioner-General may direct;

(ii) any provision of this Act may, in its application to postal articles, be modified or adapted by regulations.

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

(3) This section shall be in addition to, and not in derogation of, the provisions of the Tanzania Posts Corporation Act *.

[PCh403s83]83. Time of entry of postal articles Ord. No. 10 of 1955; L.N. 1/1967

In the case of goods—

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

(b) exported by post, the time of entry of such goods for export shall be deemed to be the time of the posting of such goods;

(c) transferred by post to a neighbouring country where the goods are liable to transfer tax, the time of entry of such goods for transfer tax purposes shall be deemed to be the time when the mail bag containing the goods is received at the Post Office of destination.

PART VIII

COASTWISE AND TRANSFER TRADE (ss 84-94)

[PCh403s84]84. Power to prohibit, etc., carriage coastwise and transfer L.N. 1/1967

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

(a) is prohibited either generally or in relation to any of the neighbouring countries, and thereupon such goods shall, for the purpose of carriage coastwise or transfer, be prohibited goods;

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

(2) The President of Tanzania, and in the case of Kenya and Uganda, the Minister may, by order published in Gazette—

(a) provide that the carriage coastwise within such neighbouring country of any goods or class of goods shall be prohibited in accordance with such conditions as may be specified in such order;

(b) limit in respect of such neighbouring country the application of any order made under subsection (1) in respect of all or any of the goods specified therein, and thereupon within such neighbouring country and in respect of such goods the provisions of this Act shall apply as if such goods are or are not, as the case may be, included in any order made under subsection (1).

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

(4) Where, under any law of any of the neighbouring countries, the carriage coastwise or transfer within such neighbouring country or countries is prohibited or restricted, then such goods, as the case may be, in relation to their carriage coastwise or transfer within such neighbouring country or countries.

[PCh403s85]85. Meaning of carriage coastwise and transfer L.N. 1/1967; Act No. 16 of 1983 s. 4

(1) Subject to section 86, all goods conveyed by land, sea or air, from any part of the neighbouring countries to another part thereof shall be deemed to be carried coastwise, and any aircraft or vessel conveying such goods by air or by sea shall be deemed to be a coasting aircraft or coasting vessel, as the case may be.

(2) All goods, including locally grown or locally produced goods, conveyed by any means from any place in one neighbouring country to any place in another neighbouring country shall be

deemed to be goods transferred and such goods shall be subject to regulations made under section 191(1)(f):

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

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

[PCh403s86]86. Carriage coastwise or transfer in vessel from foreign port L.N. 1/1967

(1) When any aircraft or vessel carrying cargo arrives at a port in a neighbouring country from a foreign place, then the proper officer may permit such aircraft or vessel to carry goods coastwise from such port to another port within that neighbouring country, or to carry goods on port transfer from such port to a port in another neighbouring country, upon the presentation by the master of a declaration as set out in section 88.

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

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

[PCh403s87]87. Loading, etc., of coastwise and transfer cargo Acts Nos. 13 of 1989 s. 13; 16 of 1994 s. 11

(1) Subject to this Act, save with the written permission of the proper officer and subject to such conditions as he may impose—

(a) no goods shall be loaded on, or unloaded from, any aircraft or vessel for carriage coastwise on Saturdays, Sundays or public holidays at any time whatsoever, or on any other day except between the hours of six o'clock in the morning and six o'clock in the afternoon;

(b) no goods for carriage coastwise or transfer shall be unloaded from or loaded onto any aircraft or vessel except at an approved place of loading or at a sufferance wharf:

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

(c) all goods which have been unloaded or landed from a coasting vessel or a coasting aircraft shall, if the proper officer so requires, be conveyed forthwith to a Customs area or transit shed;

(d) all goods which have been transferred by road shall, if the proper officer so requires, be conveyed forthwith, to a Custom house or such other place as the proper officer may direct.

(2) Any person who contravenes this section, or any of the conditions which may have been imposed by the proper officer, shall be guilty of an offence and shall be liable to a fine not exceeding five hundred thousand shillings if the offender is a resident or if he is a foreigner an equivalent of that amount in U.S. dollars and any goods in respect of which such offence has been committed, and any vehicle in which such goods were transferred, shall be liable to forfeiture and any coasting aircraft or coasting vessel in relation to which such offence has been committed may be seized and detained until the fine is paid.

[PCh403s88]88. Transire required for departure coastwise and transfer L.N. 1/1967; Act No. 13 of 1989 s. 13

(1) No coasting aircraft or coasting vessel, nor any aircraft or vessel which is carrying goods coastwise or goods for transfer in accordance with section 86, shall depart from any port or place within the neighbouring countries unless transire has been granted by the proper officer.

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

the case of a coasting aircraft or coasting vessel, be the certificate of clearance for such aircraft or vessel for the coastwise voyage.

(3) Any master or agent who contravenes this section, or who delivers an account of which any of the particulars contained therein is false, shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings if the offender is a resident or if he is a foreigner an equivalent of that amount in U.S. dollars, and the coasting aircraft or coasting vessel in relation to which such offence has been committed may be seized and detained until the fine is paid.

[PCh403s89]89. Transire to be delivered on arrival L.N. 1/1967; Acts Nos. 13 of 1989 s. 13; 16 of 1994 s. 11

(1) The master of any aircraft or vessel arriving at a port or place within the neighbouring countries carrying goods coastwise or goods for transfer—

(a) shall forthwith deliver the transire to the proper officer of that port or place;

(b) shall not, save with the permission of the proper officer and subject to such conditions as he may impose, permit any goods to be unloaded before the delivery of such transire:

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

(2) Any master who contravenes this section shall be guilty of an offence and liable to a fine not exceeding five hundred thousand shillings if the offender is a resident or if he is a

foreigner an equivalent of that amount in U.S. dollars and any goods in respect of which such offence has been committed shall be liable to forfeiture, and the coasting aircraft or coasting vessel in relation to which such offence has been committed may be seized and detained until the fine is paid.

[PCh403s90]90. Power of Commissioner-General to vary procedure L.N. 1/1967; Acts Nos. 13 of 1989 s. 13; 16 of 1994 s. 11

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

(2) The master of any coasting aircraft or coasting vessel who contravenes any conditions imposed by the Commissioner-General under this section shall be guilty of an offence and liable to a fine not exceeding five hundred thousand shillings if the offender is a resident or if he is a foreigner, an equivalent of that amount in U.S. dollars, and any goods in respect of which such offence has been committed shall be liable to forfeiture, and the coasting aircraft or coasting vessel in relation to which such offence has been committed may be seized and detained until the fine is paid.

[PCh403s91]91. Entry outwards of aircraft, etc., carrying goods coastwise L.N. 1/1967

The Commissioner-General may, subject to such conditions as he may impose, permit the master or agent of any aircraft or vessel carrying any goods coastwise to enter outwards such

aircraft or vessel and to enter any goods carried coastwise therein for exportation without discharging such goods.

[PCh403s92]92. Coasting vessel, etc., not to deviate from voyage

The master of any coasting aircraft or coasting vessel—

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

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

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

[PCh403s93]93. Conveyance by road of transferred goods only in licensed vehicles L.N. 1/1967; Acts Nos. 13 of 1989 s. 13; 16 of 1994 s. 11

(1) Any goods transferred by land, other than by post or rail, between a port or place in one neighbouring country to a port or place in another neighbouring country shall be conveyed in vehicles duly licensed by the Commissioner-General in accordance with section 186.

(2) Any person who uses any unlicensed vehicle for the transfer of goods in contravention of subsection (1), without the written permission of the Commissioner-General, shall be guilty of an offence and shall be liable to a fine not exceeding one million shillings if the offender is a resident or if he is a foreigner an equivalent of that amount in U.S. dollars and the vehicle and goods in respect of which such offence has been committed shall be liable to forfeiture.

[PCh403s94]94. Examination of coasting vessel and goods Acts Nos. 13 of 1989 s. 13; 16 of 1994 s. 11

(1) Any officer may go on board any coasting aircraft or coasting vessel in any port or place in the neighbouring countries or at any period of the voyage of such aircraft or vessel, and search such aircraft or vessel and examine all goods on board such aircraft or vessel.

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

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

(4) Any master who—

(a) refuses to answer any such question or to produce any such books or documents;

or

(b) makes any incorrect reply to any such question,

shall be guilty of an offence and liable to a fine not exceeding two hundred and fifty thousand shillings if the offender is a resident or if he is a foreigner an equivalent of that amount in U.S. dollars and the aircraft or vessel in relation to which such offence has been committed may be seized and detained until the fine is paid.

PART IX

PROVISIONS RELATING TO SECURITIES (ss 95-98)

[PCh403s95]95. Commissioner-General may require security

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

[PCh403s96]96. General provisions relating to giving of security

(1) Where any security is required to be given under this Act, then such security may be given to the satisfaction of the Commissioner-General either—

(a) by bond, in such sum and subject to such conditions and with such sureties as the Commissioner-General may reasonably require; or

(b) by cash deposit; or

(c) partly by bond and partly by cash deposit.

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

(3) All bonds required to be given under this Act shall be so framed that the person giving such bond, and any surety thereto, is bound to the Commissioner-General of Customs and Excise by that name for the due performance of the conditions of such bond; and all such bonds may, unless sooner discharged by the due performance of the conditions thereof, be discharged by the Commissioner-General on the expiration of three years from the date thereof, but without prejudice to the right of the Commissioner-General to require fresh security.

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

(5) All bonds given under this Act shall, notwithstanding that any such bond or any surety thereto is given by any person under the age of twenty-one years, be valid and enforceable as if it were so given by a person of full age.

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

(2) If any person who gives a surety—

(a) dies; or

(b) becomes a bankrupt or enters into any arrangement or composition with, or for the benefit of, his creditors; or

(c) departs from the neighbouring countries without leaving sufficient property therein to satisfy the whole amount of the bond,

the Commissioner-General may require the person giving the bond to enter into fresh security.

[PCh403s98]98. Enforcement of bond

(1) Where the conditions of any bond have not been complied with, the Commissioner-General may, by name of the Commissioner-General of Customs and Excise, take legal proceedings for the enforcement thereof.

(2) Where any such proceedings are taken, then production of the bond shall, without further proof, entitle the Commissioner-General to judgment for the stated liability unless any person against whom such proceedings are taken proves compliance with all the conditions of the

bond, or that the bond or surety was not executed by him, or that he has been released from the provisions of the bond or surety, or that he has already made satisfaction for the full amount thereof.

PART X

DUTIES (ss 99-124)

Liability to Duty (ss 99-105)

[PCh403s99]99. Rates, etc., of duty specified in neighbouring country legislation Ord. No. 5 of 1960

(1) Subject to the provisions of the Customs laws, duty shall be paid on the goods and at the rates and in the circumstances specified in the appropriate neighbouring country legislation.

(2) Where under the provisions of the appropriate neighbouring countries legislation goods are liable—

(a) to duty on leaving a neighbouring country, whether or not such goods are intended ultimately for exportation from the neighbouring countries then this Act shall apply as if such goods on so leaving that neighbouring countries were exported;

(b) on entering a neighbouring country, to a rate of duty different from that to which such goods were liable on their importation into the neighbouring countries, then, where such goods so enter that neighbouring country on transfer from another neighbouring country, the amount of such difference shall be collected or refunded, as the case may be, in such manner as

may be prescribed and this Act shall apply as if such goods on so entering that neighbouring country were imported:

Provided that if the rate of duty on the goods at the time of their importation into the neighbouring countries was the same in each neighbouring country, no difference shall be collected or refunded when such difference arises from a subsequent change in the rate of duty if a similar change has been made in each neighbouring country.

[PCh403s100]100. Exemption from duty of goods remaining on board

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

[PCh403s101]101. Exemption from import duty of goods entered for exportation, etc.

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

- (a) for exportation, for transshipment, or in transit; or
- (b) for use as stores for aircraft or vessels,

and proved to the satisfaction of the Commissioner-General to have been duly exported or used as such stores, as the case may be, shall be exempt from liability to import duties.

[PCh403s102]102. Exemption from import duty or transfer tax of certain re-imports Ord. No. 5 of 1960; L.N. 1/1967

(1) Subject to the provisions of the Customs laws, where any goods which are liable to import duty or transfer tax have been exported from and are subsequently re-imported into the neighbouring countries, then, if the Commissioner-General is satisfied—

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

(i) no drawback of such import duty or transfer tax was allowed on exportation; or

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

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

(c) that the owner of such goods prior to such exportation gave notice thereof in writing to the proper officer and produced such goods for inspection by him at the port or place from which they were exported,

the goods shall, save as otherwise provided in the Customs laws, be exempt from liability to import duties or transfer taxes:

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

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

[PCh403s103]103. Exemption from import duty of temporary imports

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

(2) No goods shall be exempt from liability to import duties under this section unless the proper officer has given permission for such importation; and the proper officer shall not give such permission—

(a) unless he is satisfied that the goods are imported for a temporary use or purpose only; and

(b) unless the owner thereof has deposited, or given security for, the amount of the import duty to which the goods would otherwise be liable.

(3) Where the proper officer gives permission for the importation of any goods under this section, he may impose such conditions as he thinks fit, and, whether or not he imposes any conditions, it shall be a condition of such importation that such goods shall be exported within twelve months of the date of their importation.

(4) Where any condition of the importation of such goods has been contravened, then such goods shall become liable to import duties as from the date of their importation, and any deposit given under subsection (2) shall be brought to account as duty, or, if security therefor was given, the owner shall be required to pay duty; but if all such conditions are complied with, then, on the exportation of such goods, such deposit shall be refunded or such security discharged, as the case may be.

(5) The Authority may, by notice in the Gazette, declare that the goods specified in such notice shall not be imported in accordance with this section, or may only be so imported subject to such goods being liable to such proportion of the import duty thereon as may be specified in such notice.

[PCh403s104]104. Derelict goods, etc., liable to duty Ord. No. 10 of 1955

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

[PCh403s105]105. Goods imported duty free by Community, etc., liable to import duty or transfer tax on disposal Ord. No. 1 of 1966; L.N. 84/1961; L.N. 1/1967

(1) Where any goods liable to import duty have been imported, or purchased prior too entry for home consumption, by or on behalf of the neighbouring country, the Government of any of the neighbouring country, or any person, either free of import duty or at a reduced rate to

import duty and such goods are subsequently disposed of in any manner inconsistent with the purpose for which they were granted any relief from import duty, then, unless the President of Tanzania, or the Minister, in the case of Kenya or Uganda, as may be appropriate, otherwise directs, such goods shall on such disposal be liable to import duty at the rate applicable to goods of that class or description at the time of such disposal.

(2) Where any goods liable to transfer tax have been transferred into a neighbouring country in which their liability to transfer tax arises, by or on behalf of the Government of that neighbouring country, and such goods are subsequently disposed of either free of transfer tax or at a reduced rate of transfer tax in any manner inconsistent with the purpose for which they were granted any relief from transfer tax, then, unless the President of Tanzania, or the Minister, in the case of Kenya or Uganda, as may be appropriate, otherwise directs, such goods shall on such disposal be liable to transfer tax at the rate applicable to goods of that class or description at the time of such disposal.

(3) Where it is proposed to dispose of any goods to which subsection (1) applies, then the person responsible for the disposal of such goods shall unless the President of Tanzania, or the Minister, in the case of Kenya or Uganda, as may be appropriate, otherwise directs, furnish the Commissioner-General with the particulars of such proposed disposal and shall cause the duty thereon to be paid.

(4) Where it is proposed to dispose of any goods to which subsection (2) applies, then the person responsible for the disposal of such goods shall, unless the President of Tanzania, or in the case of Kenya or Uganda, the Minister, as may be appropriate, otherwise directs, furnish the

Commissioner-General with the particulars of such proposed disposal and shall cause the transfer tax thereon to be paid.

(5) Where any goods to which subsection (1) or subsection (2) applies are disposed of without the payment of the import duty or transfer tax to which they are liable, then such goods shall be liable to forfeiture.

(6) Any person who knowingly disposes of or knowingly acquires any goods to which subsection (1) or subsection (2) applies without the import duty or transfer tax thereon having been paid in accordance with the provisions of this section shall be guilty of an offence.

Computation of Duty (ss 106-113)

[PCh403s106]106. Time of entry determines rate of duty Ords. Nos. 10 of 1955; 2 of 1963

(1) Subject to section 83, and subsection (3) of this section, import duty shall be paid at the rate in force at the time when the goods liable to such duty are entered for home consumption:

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

(2) Subject to the provisions of the Customs laws and of section 83, export duty shall be paid at the rate in force at the time when the goods liable to such duty are entered for export:

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

(3) Where, in accordance with section 28(3), goods are entered before the arrival at the port of discharge of the aircraft or vessel in which such goods are imported, the import duty upon such goods shall be paid at the rate in force at the time of arrival of such aircraft or vessel at such port of discharge.

[PCh403s107]107. Duties, etc., to apply proportionately ORd. No. 10 of 1967

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

[PCh403s108]108. Determination of value of goods liable to ad valorem import duty Ord No. 3 of 1958; L.N. 1/1967; Act No. 11 of 2000 s. 10

(1) Where imported goods are liable to ad valorem import duty, then the value shall be that laid down in the Fourth Schedule A and import duty shall be paid on that value.

(2) The provisions of this section and the paragraphs of Part I of the Fourth Schedule A shall be read and applied in conjunction with their respective notes in Part II of the Schedule.

(3) In applying or interpreting this section and the provisions of the Fourth Schedule A due regard shall be taken of the decisions, rulings, opinions, guidelines, and interpretations given

by the Secretariat, Committees and other organs of the World Trade Organisation and the Customs Co-operation Council (World Customs Organisation).

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

(5) The Commissioner-General shall publish judicial decisions and administrative rulings of general application giving effect to the Schedule.

(6) Where, in the course of determining the customs value of imported goods, it becomes necessary for the Customs to delay the final determination of such customs value, the delivery of the goods shall, at the request of the importer be made; provided that before granting such permission the proper officer may require the importer to provide sufficient guarantee in the form of a surety, a deposit or some other appropriate security as the proper officer may determine, to secure the ultimate payment of customs duties for which the goods may be liable.

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

[PCh403s109]109. Duty computed on gross weight of package in certain cases

Where any goods liable to duty according to weight are imported in any package, and such goods are intended for sale, or are normally sold retail, in such package, then, if such package is not—

- (a) marked or labelled with the net weight thereof; or

(b) commonly sold as containing, or as reputed to contain, a specific quantity or weight,

and in either such case, the owner of such goods is unable to satisfy the proper officer of the correct net weight thereof, the goods shall be liable to duty according to the gross weight of such package and its contents.

[PCh403s110]110. Duty computed on reputed quantity in certain cases Ord. No. 12 of 1969

Where any goods liable to a specific duty are imported in any package and such goods are intended for sale, or are normally sold retail, in such package, then, if such package is—

(a) marked or labelled as containing a specific quantity of such goods; or

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

[PCh403s111]111. Commissioner-General may fix litre equivalent of other liquid measurement

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

(a) such goods are intended for sale, or are normally sold, in such package; and

(b) such package is of a standard capacity according to any liquid measurement based on fractions or multiples of a litre,

then the Commissioner-General may, by notice in the Gazette, declare that any such package, having a capacity within such limits as may be specified in such notice, shall be deemed to contain such fractions or multiples of a litre as may be specified in such notice.

[PCh403s112]112. Allowance for tare

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

[PCh403s113]113. Duty on package in certain cases

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

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

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

Payment, etc., of Duty (ss 114-118)

[PCh403s114]114. Recovery of duty

Where any goods are liable to duty, then such duty shall constitute a debt due to all neighbouring countries and be charged on the goods in respect of which the duty is payable; and such duty shall be payable by the owner of such goods and may, without prejudice to any other means of recovery, be recovered by legal proceedings brought by the Commissioner-General of Customs and Excise.

[PCh403s114A]114A.Appointment and duties of agent Act No. 13 of 1999 s. 13

(1) In this section—

"agent" means a person appointed as such under subsection (2) of this section;

"appointment notice" means a notice issued by the Commissioner under subsection (2) of this section;

"money" includes any debt, deposit or credit, salary, wages and pensions payments and any other remuneration whatsoever;

"principal" means the person in respect of whom an agent is appointed.

(2) The Commissioner may, by a written notice addressed to any person—

(a) appoint him to be the agent of another person for the purpose of collection and recovery of duty due from such other person; and

(b) specify the amount of such duty to be collected and recovered.

(3) An agent shall pay the duty specified in his appointment notice out of moneys which may, at any time during the twelve months following the date of the notice, be held by him for, or become due from him to, his principal.

(4) Where an agent claims to be, or to have become, unable to comply with subsection (3) of this section by reason of the lack of moneys held by, or due from him, he shall, as soon as may be practicable, notify the Commissioner accordingly in writing setting out fully the reasons for his inability so to comply, and the Commissioner may—

(a) accept the notification and cancel or amend the appointment notice accordingly);
or

(b) if he is not satisfied by such reasons, reject the notification.

(5) Unless and until a notification is given by an agent under subsection (4) of this section—

(a) sufficient moneys for the payment of the duty specified in his appointment notice shall be presumed to be held by him for, or due from him to, his principal; and

(b) in any proceedings for the collection or recovery of such duty, he shall be stopped from asserting the lack of such moneys.

(6) For the purposes of this section, the Commissioner may, by notice in writing, at any time require any person to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return showing any moneys which may be held by such person for, or become due to him by, any other person from whom duty is due.

(7) Where an agent fails to pay any amount of duty specified in his appointment notice within thirty days of the date—

- (a) of service of such notice on him; or
- (b) on which any moneys come into his hands for or become due by him to, his principal,

whichever is the later; and—

- (i) he has not given a notification under subsection (4) of this section; or
- (ii) he has given such notification which has been rejected by the Commissioner,

the provisions of this Act relating to the collection and recovery of duty shall apply to the collection and recovery of such amount as if it were duty due and payable by the agent, the due date for the payment of which was the date upon which such amount should have been paid to the Commissioner under this subsection.

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

(9) Any person who, in giving a notification under subsection (4) of this section, wilfully makes any false or misleading statement, or wilfully conceals any material fact, commits an offence.

(10) For the purposes of this section, cases where moneys are held by an agent for, or due by him to his principal, shall include cases where the agent—

- (a) owes or is about to pay or becomes liable to pay money to the principal; or
- (b) holds moneys for or on account of the principal; or
- (c) holds money on account of some other person for payment to the principal; or
- (d) has authority from some other person to pay money to the principal.

[PCh403s114B]114B. Collection of tax by suit Act No. 13 of 1996 s. 13

(1) Where payment of any duty has not been made on or before the due date, the duty due by such person may be sued for and recovered as a debt due to the Government in a court of competent jurisdiction by the Commissioner in his official capacity.

(2) In any suit under this section, the production of a certificate signed by the Commissioner giving the name and address of the person concerned and the amount of duty due and payable by him shall be sufficient evidence that such amount of duty is due and payable by such person.

(3) Notwithstanding the provision of subsection (1) of this section, and before the commencement of a suit under this section the Commissioner may by any other means of

recovery provided for under this Act recover the duty due and payable by such person under section 114 of this Act.

[PCh403s114C]114C. Collection of tax by distraint Act No. 13 of 1996 s. 13

(1) Where duty is recoverable in the manner provided by section 114B, the Commissioner may, instead of suing for recovery of such duty, recover the same by distress, and for that purpose, may by order under his hand authorise any public officer or an officer of a court to execute such distress upon the goods and chattels of the person from whom such duty is recoverable and such officer may, at the cost of the person from, whom such duty is recoverable, employ such servants or agents as he may think necessary to assist him in the execution of the distress:

Provided that where the full amount of the duty due and payable—

(a) is not recovered by such distress the Commissioner may forthwith recover the deficiency in the manner provided for by section 114B, without prejudice to any other means of recovery provided under this Act;

(b) has been paid after the issue of the order and before the execution of distress, any costs and expenses incurred by the Commissioner prior to the payment of the duty shall be deemed to be a debt due and payable to the Government by the person in respect of whom the order was issued and may be recovered by the Commissioner as duty under this Act.

(2) For the purposes of levying any distress under this section, an officer authorised under subsection (1) of this section together with such servants or agents as such person may consider

necessary, may break open in the daytime any premises and any such officer may require any police officer to be present while such distress is being levied and any police officer so required shall comply with such requirement.

(3) A distress levied under this section shall be kept for ten days, either at the premises at which such distress was levied or at such other place as the authorised officer may consider appropriate, at the cost of the person from whom the duty is recoverable.

(4) If the person from whom duty is recoverable by distress does not pay such duty together with the costs of the distress within ten days, the goods and chattels distrained upon, shall be sold by public auction for payment of the duty due and payable and all such costs.

(5) The proceeds of the sale done under subsection (4) of this section, shall be applied first towards the costs of taking, keeping and selling the goods and chattels distrained upon and then towards the duty due and payable and any remainder of such proceeds shall be restored to the owner of the property distrained.

[PCh403s115]115. Effect of obligation to pay duty

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

[PCh403s116]116. Effect of alteration in classification of goods

If any practice of the Customs relating to the classification or enumeration of any goods for the purposes of the liability to duty is altered with the result that less duty is thereafter

charged on goods of the same class or description, no person shall thereby become entitled to any refund of any duty paid before such alteration took effect.

[PCh403s117]117. Short-levy, erroneous refund or rebate Act No. 16 of 1983 s. 5

(1) Subject to the following provisions of this section, where any duty or part of it has been short-levied or erroneously remitted, refunded, or rebate allowed in respect of it, the person who should have paid the amount short-levied or to whom the refund, remission or rebate has been erroneously allowed shall, on demand by the Commissioner-General, pay the amount short-levied or remitted, or repay the amount erroneously refunded or rebate allowed in respect of it, as the case may be; and such amount shall be a debt due to the Government which may be recovered as civil debt by a suit at the instance of the Commissioner-General.

(2) Where a demand is made for any amount pursuant to subsection (1), the amount shall be deemed to be due from the person liable to pay it on the date on which the demand note is served upon him, and if payment is not made within thirty days of the date of such service, a further duty of a sum equal to five per centum of the amount demanded shall be due and payable by that person by way of a penalty and a subsequent penalty of two per centum per each month for which he defaults to pay.

(3) No amount of duty shall be recovered under this section after the expiration of thirty-six months from the date of the short-levy on erroneous refund, remission or rebate, as the case may be, unless that short-levy or erroneous refund, remission or rebate is considered to have been caused by fraud or negligence on the part of the person from whom it is proposed to recover the duty.

[PCh403s118]118. Samples may be taken without immediate payment of duty

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

Drawback, Remission, Rebate and Refund (ss 119-123)

[PCh403s119]119. Drawback of duty

(1) Subject to this section, drawback of import duty may on exportation or the performance of such conditions as may be prescribed, be allowed in respect of such goods, in such amount, and on such conditions, as may be prescribed.

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

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

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

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

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

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

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

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

(a) the value of such goods for home consumption is less than the amount of the drawback which may be otherwise allowed;

(b) the import duty thereon was less than forty shillings.

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

(a) have been destroyed by accident on board such aircraft or vessel; or

(b) have been materially damaged on board such aircraft or vessel and that such goods have, with the permission of the proper officer, been discharged at any port or place within the neighbouring countries and abandoned to the Customs,

then drawback may be allowed in respect of such goods as if such goods had actually been exported or used as stores.

[PCh403s120]120. Remission of duty

Where any goods are lost or destroyed by accident either—

- (a) on board any aircraft or vessel; or
- (b) in removing, loading, unloading, or receiving them into, or delivering them from, any Customs area or warehouse; or
- (c) in any Customs area or warehouse, before they are delivered out of Customs control to the owner thereof,

then, if the proper officer is satisfied that such goods have not been and will not be consumed in the neighbouring countries, he may remit the duty payable in respect of such goods.

[PCh403s121]121. Rebate of duty

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

(2) No rebate of duty shall be allowed under this section in respect of any goods (not being goods to which section 104 applies) except where the proper officer is satisfied that the carrier or insurer of the goods has made an allowance to the owner in respect of the damage; and in no case shall the rebate exceed such proportion of the duty as the amount of the allowance so made bears to the value, calculated in accordance with section 108, of the undamaged goods.

[PCh403s122]122. Repayment of Customs duty when goods returned or destroyed by fire
Ord. No. 3 of 1958

(1) Subject to section 123(2) and to such conditions as the Commissioner-General may see fit to impose, where it is shown to the satisfaction of the Commissioner-General—

(a) that goods were imported in pursuance of a contract of sale and that the description, quality, state or condition of the goods was not in accordance with the contract or that the goods were damaged before such goods were delivered out of Customs control; and

(b) that the importer with the consent of the seller either—

(i) returned the goods unused to the seller and for that purpose complied with the provisions of section 66 as to entry in like manner as if they had been goods to which that section applies; or

(ii) destroyed the goods unused, the Commissioner-General shall refund any Customs duty paid on the importation of the goods.

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

[PCh403s123]123. Refund of duty Ords. Nos. 13 of 1969; 10 of 1970

(1) Subject to this section, and to any regulations, the Commissioner-General may grant a refund—

(a) of any transfer tax which has been paid in respect of goods which have been damaged or destroyed while subject to Customs control, or of any import duty (or part thereof) which has been paid in respect of goods which have been damaged or pillaged during the voyage or damaged or destroyed while subject to Customs control:

Provided that nothing in this paragraph shall apply to any import duty (or part thereof) which has been paid on goods declared for transfer or in respect of which notification of intention to transfer has been given;

(b) of any import or export duty or transfer tax which has been paid in error.

(2) No refund of any import or export duty or transfer tax, or part thereof, shall be granted under subsection (1) unless the person claiming such refund presents such claim within a period of twelve months from the date of the payment of the duty.

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

Disputes (s 124)

[PCh403s124]124. Settlement of disputes Ords. Nos. 10 of 1955; 3 of 1958, L.N. 1/1967; Acst Nos. 2 of 1963; 11 of 2000 s. 11

Any matter or dispute in respect of an amount of duty or tax payable on imported goods, drawback payable on goods or refund of the amount overpaid, shall be settled in accordance with the procedure set out in the Tax Revenue Appeals Act *.

PART XI

CUSTOMS AGENTS (ss 125-127)

[PCh403s125]125. Authority of agents Ord. No. 5 of 1960

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

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

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

(b) such person is a Customs agent duly licensed as such in accordance with any regulations,

and, in either such case, such person is authorised in writing by the owner, either generally or in relation to any particular act, to perform the act on behalf of the owner.

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

[PCh403s126]126. Liability of duly authorised agent

Any duly authorised agent who performs any act on behalf of the owner of any goods shall, for the purposes of this Act, be deemed to be the owner of such goods, and shall, accordingly, be personally liable for the payment of any duties to which such goods are liable and

for the performance of all acts in respect of such goods which the owner thereof is required to perform under this Act:

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

[PCh403s127]127. Liability of owner for acts of duly authorised agent

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

Provided that—

(i) an owner shall not be sentenced to imprisonment for any offence committed by his duly authorised agent unless such owner actually consented to the commission of the offence;

(ii) nothing herein contained shall relieve the duly authorised agent from any liability to prosecution in respect of any such offence.

PART XII

PREVENTION OF SMUGGLING (ss 128-153)

Powers of Officers (ss 128-139)

[PCh403s128]128. Power to require vessels, etc., to bring to Acts Nos. 13 of 1989 s. 13; 16 of 1994 s. 11

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

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

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

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

(a) in the case of the master of a vessel of less than two hundred and fifty tons register, to a fine not exceeding one million shillings if the offender is a resident or if he is a foreigner, an equivalent of that amount in U.S. dollars and the vessel in respect of which such offence has been committed shall be liable to forfeiture;

(b) in the case of the master of an aircraft or of a vessel of two hundred and fifty tones register or more, to a fine not exceeding six million two hundred and fifty thousand shillings if the offender is a resident or if he is a foreigner an equivalent of that amount in U.S. dollars and

the aircraft or vessel in respect of which such offence has been committed may be seized and detained until the fine is paid or security therefor given.

[PCh403s129]129. Power to require vessel, etc., to depart Acts Nos. 13 of 1989 s. 13; 16 of 1994 s. 11

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

Provided that this subsection shall not apply in the case of any aircraft or vessel which is registered in any of the neighbouring countries.

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

(a) in the case of the master of a vessel of less than two hundred and fifty tons register, to a fine not exceeding one million shillings if the offender is a resident or if he is a foreigner, an equivalent of that amount in U.S. dollars and the vessel in respect of which such offence has been committed shall be liable to forfeiture;

(b) in the case of the master of an aircraft or of a vessel of two hundred and fifty tons register or more, to a fine not exceeding six million two hundred and fifty thousand shillings if the offender is a resident or if he is a foreigner, an equivalent of that amount in U.S. dollars and

the aircraft or vessel in respect of which such offence has been committed may be seized and detained until the fine is paid or security therefor given.

[PCh403s130]130. Power to patrol freely and moor vessel, etc.

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

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

(3) No officer shall be liable to any legal proceedings for any action taken in good faith in accordance with this section.

[PCh403s131]131. Power to board vessel, etc., and search Act No. 16 of 1994 s. 11

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

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

(3) Any officer boarding any vessel under this section may remain thereon for such time as he may consider necessary and the master of that vessel shall either provide such officer with proper and sufficient food and suitable bedding accommodation under the deck or, with the approval of the proper officer and subject to such conditions as he may impose, pay such sum as may be prescribed in lieu thereof; and any master who contravenes this subsection, or of any such conditions, shall be guilty of an offence and liable to a fine not exceeding ten thousand U.S. dollars or an equivalent of that amount in Tanzania Shillings if the offender is a resident.

(4) Any master of an aircraft or vessel—

(a) who refuses to unload or remove any goods when required to do so in accordance with the provisions of this section; or

(b) in which any goods which have been locked up, sealed, marked, or otherwise secured, in accordance with this section are in any way interfered with except in accordance with the permission of the proper officer; or

(c) in which lock, seal, or mark, placed on any place or goods in accordance with this section is in any way opened, broken, or altered,

shall be guilty of an offence.

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

(6) No officer shall be liable to any legal proceedings for any action taken in good faith in accordance with this section.

(7) Where, on any aircraft or vessel being boarded under this section, any goods are found therein and on that aircraft or vessel being subsequently boarded, whether by the same or another officer, such goods or any part thereof are no longer therein, then, unless the master of that aircraft or vessel accounts for such goods to the satisfaction of the proper officer, that master shall be guilty of an offence.

[PCh403s132]132. Power to stop vehicle suspected of conveying uncustomed goods, etc. Ord. No. 3 of 1958

(1) Any officer may, if he has reasonable grounds to believe that any vehicle is conveying any uncustomed goods, or goods in transit through the neighbouring countries or being transferred from one neighbouring country to another, stop and search any that vehicle; and for the purposes of that search, that officer may require any goods in that vehicle to be unloaded at the expense of the owner of that vehicle.

(2) Any officer who is unable to obtain free access to any place or container in the course of any such search of any vehicle under this section may open such place or container in that manner, if necessary by force, as he may think necessary.

(3) Any person in charge of a vehicle who refuses to stop or to permit that vehicle to be searched in accordance with this section, shall be guilty of an offence.

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

(5) No officer shall be liable to any legal proceedings for any action taken in good faith in accordance with this section.

[PCh403s133]133. Persons entering or leaving neighbouring countries to answer questions concerning baggage Ord. No. 2 of 1962; L.N. 1/1967

(1) Any person entering or leaving the neighbouring countries shall answer such questions as the proper officer may put to him with respect to his baggage and any article contained therein or carried with him.

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

[PCh403s134]134. Power to search persons

(1) Subject to this section, any officer may, if he has reasonable grounds to believe that any person has in his possession, whether upon his person or in his baggage, any uncustomed goods, search that person; and that officer may, for that purpose, use all reasonable force.

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

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

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

(5) No officer shall be liable to any legal proceedings for any action taken in good faith in accordance with this section.

[PCh403s135]135. Power of arrest Ords. Nos. 10 of 1955; 14 of 1961

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

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

(3) No officer shall be liable to any legal proceedings for any action taken in good faith in accordance with this section.

(4) Without prejudice to the powers of a police officer to arrest any person for an offence under this Act which is cognizable to the police under any enactment of any of the neighbouring countries, for the purposes of this section the expression "officer" includes a police officer.

[PCh403s136]136. Power to search premises Ords. Nos. 3 of 1958; 2 of 1962

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

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

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

(b) he may examine and take copies of any such book or document;

(c) he may seize and detain any such book, document, or thing, if in his opinion, it may afford evidence of the commission of any offence under this Act;

(d) he may require such owner or occupier to answer such questions relating to any such book, document, or thing, or to any entry in any such book or document.

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

(4) No officer shall be liable to any legal proceedings for any action taken in good faith in accordance with this section.

[PCh403s137]137. Search warrants Ord. No. 3 of 1958

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

(2) Any officer in possession of a search warrant may require any police officer to assist him in the execution of such warrant and any police officer to assist him in the execution of such assistance accordingly.

[PCh403s138]138. Power to require production of books, etc.

(1) Where—

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

(b) any thing has been seized under this Act,

then the proper officer may require the owner of such goods or thing forthwith to produce all books and documents relating in any way to such goods or thing, or to any other goods imported, exported or transferred by such owner within a period of five years immediately preceding such requirement.

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

[PCh403s139]139. Power to call for aid Ord. No. 2 of 1963

Any person making any seizure or arrest in accordance with the provisions of this Act may call upon any other person to assist him, and such assistance shall be rendered accordingly.

Offences (ss 140-153)

[PCh403s140]140. Assembling to contravene provisions of this Act

Any person who—

(a) assembles with two or more persons for the purpose of contravening any of the provisions of this Act; or

(b) having so assembled, contravenes any of the provisions of this Act,

shall be guilty of an offence and liable to imprisonment for a term not exceeding five years.

[PCh403s141]141. Offences with violence, etc.

(1) Any person who—

(a) maliciously shoots at any aircraft, vessel or vehicle in the service of the Customs;

or

(b) maliciously shoots at, maims or wounds any officer while in the execution of his duty; or

(c) commits with violence any of the offences referred to in subsection (4),

shall be guilty of an offence and liable to imprisonment for a term not exceeding twenty years.

(2) Any person who—

(a) while committing any offence under this Act is armed with any firearm or other offensive weapon; or

(b) while being so armed, is found with any goods liable to forfeiture under this Act, shall be guilty of an offence and liable to imprisonment for a term not exceeding ten years.

(3) Any person who—

(a) while committing any offence under this Act is disguised in any way; or

(b) while being so disguised, is found with any goods liable to forfeiture under this Act,

shall be guilty of an offence and liable to imprisonment for a term not exceeding three years.

(4) Any person who—

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

(b) rescues, staves, breaks, destroys, or throws overboard from any aircraft, vessel or vehicle any goods for the purpose of preventing the securing of such goods after they have been seized; or

(c) rescues any person arrested for any offence under this Act; or

(d) in any way obstructs any officer in the execution of his duty,

shall be guilty of an offence.

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

[PCh403s142]142. Inducing another to commit offence

Any person who by any means procures or induces, or authorises another person to procure or induce, any other person to commit or assist in the commission of any offence under

this Act, shall be guilty of an offence and liable to imprisonment for a term not exceeding one year.

[PCh403s143]143. Offence to warn offender Acts Nos. 13 of 1989 s. 13; 16 of 1994 s. 11

(1) Any person who, with intent to obstruct any officer in the execution of his duty, warns, or does any act for the purpose of warning, any another person engaged in the commission of an offence under this Act, either or not such other person is in a position to take advantage of such warning or act, shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine not exceeding one million shillings if the offender is a resident or if he is a foreigner an equivalent to that amount in U.S. dollars, or to both such imprisonment and such fine.

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

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

[PCh403s144]144. Offence to assume character of officer

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

(a) obtaining admission to any aircraft, vessel, vehicle, premises or place; or

(b) doing or procuring to be done any act which he would not be entitled to do or procure to be done on his own authority; or

(c) doing any unlawful act,

shall be guilty of an offence and liable to imprisonment for a term not exceeding two years in addition to any other punishment to which he may be liable for the commission of any such unlawful act.

[PCh403s145]145. Master of vessel, etc., used for smuggling guilty of offence Acts Nos. 13 of 1989 s. 13; 16 of 1994 s. 11

Any master of any aircraft or vessel, and any person in charge of a vehicle, which is within the neighbouring countries and—

(a) which has any secret or disguised place adapted for concealing goods, or any device adapted for smuggling goods; or

(b) which has in it, or in any manner attached to it, or which is conveying, or has conveyed in any manner, any goods imported, or carried coastwise, or intended for exportation, contrary to this Act; or

(c) from or in which any part of the cargo of such aircraft, vessel or vehicle has been thrown overboard, destroyed or staved, in order to prevent seizure,

shall be guilty of an offence and liable—

(i) in the case of the master of a vessel of less than two hundred and fifty tons register, to a fine not exceeding one million shillings if the offender is a resident, or if he is a foreigner, an equivalent to that amount in U.S. dollars and any vessel and goods in respect of which such offence has been committed shall be liable to forfeiture;

(ii) in the case of the master of an aircraft or vessel of two hundred and fifty tons register or more, to a fine not exceeding six million two hundred and fifty thousand shillings if the offender is a resident, or if he is a foreigner, two thousand U.S. dollars, and the aircraft or vessel in respect of which such offence has been committed may be seized and detained until the fine is paid or security therefor given, and any goods in respect of which such offence has been committed shall be liable to forfeiture;

(iii) in the case of the person in charge of a vehicle, to a fine not exceeding one million two hundred and fifty thousand shillings if the offender is a resident, and if he is a foreigner, an equivalent of that amount in U.S. dollars and the vehicle and goods in respect of which such offence has been committed shall be liable to forfeiture.

[PCh403s146]146. Offences related to prohibited, restricted, and uncustomed goods Ord. No. 3 of 1958; L.N. 1/1967; Act No. 16 of 1994 s. 11

Any person who—

(a) imports or carries coastwise—

(i) any prohibited goods, whether or not such goods are unloaded; or

(ii) any restricted goods contrary to any condition regulating the importation or carriage coastwise of such goods, whether or not such goods are unloaded;

(b) unloads after importation or carriage coastwise—

(i) any prohibited goods; or

(ii) any restricted goods which have been imported or carried coastwise contrary to any condition regulating such importation or carriage coastwise;

(c) exports, carries coastwise, or puts on board any aircraft, vehicle or vessel, or brings to any Customs airport, Customs area, or place, to be so put on board, for exportation or for use as stores or for carriage coastwise—

(i) any prohibited goods; or

(ii) any restricted goods contrary to any condition regulating the exportation, use as stores, or carriage coastwise, of such goods;

(d) acquires, has in his possession, keeps or conceals, or procures to be kept or concealed, any goods which he knows, or ought reasonably to have known, to be—

(i) prohibited goods; or

(ii) restricted goods which have been imported or carried coastwise contrary to any condition regulating such importation; or

(iii) uncustomed goods, carriage coastwise,

shall be guilty of an offence and liable to imprisonment for a term not exceeding three years or to a fine not exceeding three hundred per centum of tax evaded and equivalent of that amount in U.S. dollars or to both such imprisonment and such fine.

[PCh403s147]147. Offence to import or export concealed goods Ord. No. 3 of 1958; Act No. 13 of 1996 s. 14

Any person who imports or exports any goods—

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

commits an offence and upon conviction is liable to a fine of two million shillings and a term of imprisonment for two years, and shall in addition pay the duty relating to the concealed goods.

[PCh403s148]148. Offence to make or use false documents Ords. Nos. 10 of 1955; 3 of 1958; Acts Nos. 13 of 1989 s. 14; 13 of 1996 s. 15

Any person who, in any matter relating to the Customs—

- (a) makes any entry which is false or incorrect in any particular; or
- (b) makes or causes to be made any declaration, certificate, application, or other document, which is false or incorrect in any particular; or

(c) when required in accordance with this Act to answer any question put to him by an officer, refuses to answer such question or makes any false or incorrect statement in reply thereto; or

(d) obtains any drawback, rebate, remission, or refund, of duty which to his knowledge he is not entitled to obtain; or

(e) in any way is knowingly concerned in any fraudulent evasion of the payment of any duty; or

(f) except by authority moves, alters, or in any way interferes with, any goods subject to Customs control; or

(g) brings into the neighbouring countries, or has in his possession, without lawful excuse any blank or incomplete document, capable of being filled up and used as an invoice for imported goods; or

(h) counterfeits or in any way falsifies, or knowingly uses when counterfeited or in any way falsified, any document required or issued by, or used for the purposes of, the Customs, commits an offence and on conviction is liable to a fine of two million shillings and to a term of imprisonment for two years, and shall in addition pay the evaded duty; save that if the offender is a foreign national he shall pay the fine in foreign convertible currency.

[PCh403s149]149. Offence to refuse to produce documents, etc.

Any person who, when required in accordance with this Act—

(a) to produce any book, document, or other thing, in his possession or under his control; or

(b) to perform any act,

refuses or fails to do so shall be guilty of an offence.

[PCh403s150]150. Offence to interfere with Customs gear Acts Nos. 13 of 1989 s. 13; 16 of 1994 s. 11

Any person who cuts away, casts adrift, destroys, damages, defaces, or in any way interferes with, any aircraft, vessel, vehicle, buoy, anchor, chain, rope, mark, or other thing, used for the purposes of the Customs shall be guilty of an offence and liable to a fine not exceeding five hundred thousand shillings if the offender is a resident or if he is a foreigner an equivalent of that amount in U.S. dollars.

[PCh403s151]151. Uncustomed goods found to be reported Acts Nos. 13 of 1989 s. 13; 16 of 1994 s. 11

Any person who, on finding any uncustomed goods on land or floating upon or sunk in the sea, fails to report such discovery to the nearest officer shall be guilty of an offence and liable to a fine not exceeding two hundred and fifty thousand if the offender is a resident or if he is a foreigner an equivalent of that amount in U.S. dollars and any goods in respect of which such offence has been committed shall be liable to forfeiture.

[PCh403s152]152. Goods offered on pretence of being smuggled

Where any goods are offered for sale under the pretence that they are uncustomed goods, then such goods, whether or not they are in fact uncustomed goods, shall be liable to forfeiture.

[PCh403s153]153. Aiders, abettors, etc. Act No. 13 of 1996 s. 16

(1) Any person who aids, abets, counsels, or procures the commission of an offence under this Act, shall be deemed to have committed such offence.

(2) Any person who aids, abets, counsels or procures the commission of any offence under section 147 or 148 is liable upon conviction to a fine of one million shillings and imprisonment for a term of one year.

PART XIII

PENALTIES, FORFEITURES AND SEIZURES (ss 154-163)

[PCh403s154]154. General penalty Acts Nos. 13 of 1989 s. 13; 16 of 1994 s. 11

(1) Any person guilty of an offence under this Act for which no specific penalty is provided shall be liable to a fine not exceeding one million shillings if the offender is a resident or if he is a foreigner, an equivalent of that amount in U.S. dollars.

(2) Where, on conviction for an offence under this Act, any person becomes liable to a fine not exceeding a specified amount, then the court may impose a fine not exceeding three times the value of any goods in respect of which such offence was committed or such specified amount, whichever is greater; and for the purpose of determining the value of any such goods—

(a) the Commissioner-General shall cause such goods to be appraised by the proper officer;

(b) the proper officer shall appraise such goods according to the rate and price for which goods of the like kind but of the best quality upon which duties have been paid were sold at or about the time of the offence, or according to the rate and price for which goods of the like kind of the best quality were sold in bond at or about the time of the offence with the duties thereon added to such rate or price in bond; and no regard shall be had to any damage or injury sustained by such goods;

(c) a certificate of such appraised value given under the hand of the Commissioner-General shall be prima facie evidence of the value of such goods.

[PCh403s155]155. Goods liable to forfeiture Ord. No. 3 of 1958; L.N. 1/1967

In addition to any other circumstances in which goods are liable to forfeiture under this Act, the following goods shall be liable to forfeiture—

- (a) any prohibited goods;
- (b) any restricted goods which are dealt with contrary to any condition regulating their importation, exportation or carriage coastwise;
- (c) any uncustomed goods;

(d) any goods which are imported, exported or transferred concealed in any manner, or packed in any package (whether with or without other goods) in a manner appearing to be intended to deceive any officer;

(e) any goods which are imported, exported or transferred contained in any package of which the entry, application for shipment, or application to unload does not correspond with such goods;

(f) any goods subject to Customs control which are moved, altered, or in any way interfered with, except with the authority of any officer;

(g) any goods in respect of which, in any matter relating to the Customs, any entry, declaration, certificate, application or other document, answer, statement or representation, which is knowingly false or knowingly incorrect in any particular has been delivered, made or produced; and

(h) any goods in respect of which any drawback, rebate, remission, or refund of duty has been unlawfully obtained.

[PCh403s156]156. Vessels, etc., liable to forfeiture Acts Nos. 13 of 1989 s. 13; 16 of 1994 s.

11

(1) Any vessel of less than two hundred and fifty tons register, and any vehicle, animal, or other thing, made use of in the importation, landing, removal, conveyance, exportation, or carriage coastwise of any goods liable to forfeiture under this Act shall itself be liable to forfeiture.

(2) Any aircraft or any vessel of two hundred and fifty tons register or more made use of in the importation, landing, removal, conveyance, exportation, or carriage coastwise of any goods liable to forfeiture under this Act shall not itself be liable to forfeiture but the master of any such aircraft or vessel shall be guilty of an offence and liable to a fine not exceeding six million two hundred and fifty thousand shillings if the offender is a resident, or if he is a foreigner, an equivalent of that amount in U.S. dollars; and such aircraft or vessel may be seized and detained until the fine is paid or security therefor given.

(3) Where any vessel, vehicle, animal, or other thing, is liable to forfeiture under this Act, then the tackle, apparel, furniture, and all other gear used in connection therewith shall also be liable to forfeiture.

[PCh403s157]157. Provisions relating to goods liable to forfeiture

(1) Where any goods are liable to forfeiture under this Act, then the package in which such goods are, and all the contents of such package, shall also be liable to forfeiture.

(2) Where any goods which are prohibited goods or restricted goods have been shipped for importation without knowledge by the shipper of such prohibition or restriction and before, in the opinion of the Commissioner-General, the expiration of a reasonable time for such information to be available at the port of shipment, then, notwithstanding this Act, such goods shall not on importation be liable to forfeiture but shall be re-exported, or otherwise disposed of, in such manner as the Commissioner-General may determine; and pending such re-exportation or disposal such goods shall be subject to Customs control.

[PCh403s158]158. Power to seize goods liable to forfeiture, etc. Ord. No. 2 of 1963

(1) Any officer, or any police officer, may seize any vessel, vehicle, goods, animal or other thing liable to forfeiture under this Act or which he has reasonable grounds to believe is liable to such forfeiture and any such vessel, vehicle, goods, animal or other thing may be seized whether or not any prosecution for an offence under this Act which rendered such vessel, vehicle, goods, animal, or other thing, liable to forfeiture has been, or will be, taken.

(2) Any vessel, vehicle, goods, animal, or other thing, seized under this section, and any aircraft, vessel or other thing which may be seized and detained under this Act, shall be taken to a Customs warehouse or to such other place of security as the proper officer may consider appropriate.

(3) Subject to the approval of the Authority, which approval may be given either generally or in any special case, the Commissioner-General may, at any time prior to the commencement of any proceedings under this Act, relating to any aircraft, vessel, vehicle, goods, animal or other thing which has been seized under this Act, release any such aircraft, vessel, vehicle, goods, animal or other thing and return it to the person from whom it was seized.

[PCh403s159]159. Procedure on seizure

(1) Where any thing has been seized under this Act, then, unless such thing was seized in the presence of the owner thereof or, in the case of any aircraft or vessel, of the master thereof, the officer effecting the seizure shall, within one month of such seizure, give notice in writing of

such seizure and of the reasons therefor to the owner or, in the case of any aircraft or vessel, to the master:

Provided that—

(a) no such notice of seizure shall be given in any case where any person has, within such period of one month, been prosecuted for that offence by reason of which such thing has been seized, or of the offence has been compounded under Part XV, and if, after any such notice has been given but before condemnation of such thing in accordance with this Act—

(i) any such prosecution is brought, then such thing shall be dealt with in accordance with section 160 as if no such notice had been given;

(ii) the offence is so compounded, then such thing shall be dealt with in accordance with Part XV as if no such notice has been given;

(b) where any such thing has been seized in the presence of any person coming within the definition of owner for the purposes of this Act, then it shall not be necessary for the officer effecting the seizure to give notice thereof to any other person coming within such definition;

(c) a notice given to any person coming within such definition of owner shall be deemed to be notice to all other persons coming within such definition;

(d) where no person coming within such definition of owner is known, then it shall not be necessary for the officer effecting the seizure to give notice to any person.

(2) Where any goods which are of a perishable nature or are animals are seized, the Commissioner-General may direct that such goods shall be sold forthwith, either by public

auction or by private treaty, and that the proceeds of such sales shall be retained and dealt with as if they were such goods.

(3) Where any thing liable to forfeiture under this Act has been seized, then—

(a) if any person is being prosecuted for the offence by reason of which such thing was seized, such thing shall be detained until the determination of such prosecution and dealt with in accordance with section 160;

(b) in any other case, such thing shall be detained until one month after the date of the seizure, or the date of any notice given under subsection (1), as the case may be; and if no claim is made therefor as provided in subsection (4) within such period of one month, such thing shall thereupon be deemed to be condemned.

(4) Where any thing liable to forfeiture under this Act has been seized, then, subject to proviso (a) to subsection (1) and subsection (3)(a), the owner may, within one month of the date of the seizure or the date of any notice given under subsection (1), as the case may be, by notice in writing to the Commissioner-General claim such thing.

(5) Where any notice of claim has been given in accordance with subsection (4), then the thing seized shall be detained by the Commissioner-General to be dealt with in accordance with this Act:

Provided that the Commissioner-General may permit such thing to be delivered to the person making such claim (hereinafter in this Part referred to as the claimant) subject to such

claimant giving security for the payment of the value thereof, as determined by the Commissioner-General in the event of its condemnation.

[PCh403s160]160. Effect of conviction, etc., on things liable to forfeiture

(1) Where any person is prosecuted for an offence under this Act and any thing is liable to forfeiture by reason of the commission of such offence, then the conviction of such person of such offence shall, without further order, have effect as the condemnation of such thing.

(2) Where any person is prosecuted for an offence under this Act and any thing is liable to forfeiture by reason of the commission of such offence, then, on the acquittal of such person, the Court may order such thing either—

- (a) to be released to the person from whom it was seized or to the owner; or
- (b) to be condemned.

[PCh403s161]161. Procedure after notice of claim

(1) Where any notice of claim has been given to the Commissioner-General in accordance with section 159, then the Commissioner-General may, within a period of two months from the receipt of such claim, either—

- (a) by notice in writing to the claimant, require the claimant to institute proceedings for the recovery of such thing within two months of the date of such notice; or
- (b) himself institute proceedings for the condemnation of such thing.

(2) Where the Commissioner-General fails within such period of two months either to require the claimant to institute proceedings, or himself to institute proceedings, in accordance with subsection (1), then such thing shall be released to the claimant:

Provided that if any such thing is prohibited goods, or is restricted goods which have been imported, or carried coastwise, or attempted to be exported, in contravention of any regulations relating thereto, such thing shall not be released to the claimant but may be disposed of in such manner as the Commissioner-General may direct.

(3) Where the Commissioner-General has, in accordance with subsection (1), required the claimant to institute proceedings within such period of two months and the claimant has failed to do so, then on the expiration of such period such thing shall be condemned and shall be forfeited and may be sold or otherwise disposed of as the Commissioner-General may direct.

(4) Where any proceedings have been instituted in accordance with this section, then—

(a) if the Court is satisfied that such thing was liable to forfeiture under this Act, such thing shall be condemned;

(b) if the Court is not so satisfied, such thing shall be released to the claimant:

Provided that the Court shall not so release such thing to the claimant unless it is satisfied that the claimant is the owner thereof or, by reason of any interest therein, is entitled to the possession thereof; and if the Court is not so satisfied, such thing shall be condemned as if no claim had been made.

(1) Where any thing has been seized under this Act as being liable to forfeiture, then the condemnation of such thing shall in no way be affected by the fact that any owner of such thing was in no way concerned with the act which rendered such thing liable to forfeiture.

(2) Where any thing is condemned under this Act, then—

(a) subject to section 163, such thing shall be forfeited and may be sold, destroyed, or otherwise disposed of, in such manner as the Commissioner-General may think fit;

(b) the condemnation of such thing shall have effect as from the date when the liability to forfeiture arose;

(c) such condemnation shall, subject to any appeal in any proceedings which resulted in such condemnation, be final and, save as provided in section 163, no application or proceedings for restoration or in detinue by any person shall lie.

[PCh403s162A]162A.Power to order disposal of forfeited uncustomed goods Act No. 16 of 1983
s. 6

(1) Where any uncustomed property or article or other thing liable to forfeiture under this Act has been seized whether as an exhibit in proceedings before any court or as abandoned or lost property, and is forfeited to the United Republic pursuant to the provisions of any written law, the Commissioner-General may direct that property or article be disposed of as goods liable to forfeiture in accordance with the provisions of the Act.

(2) Where the Commissioner-General makes a direction under subsection (1), any officer or authority having custody of the property or article concerned shall deliver it to the

Commissioner-General for disposition under this Act, notwithstanding the provisions of any other written law providing to the contrary.

[PCh403s163]163. Restoration of seizures

Where any thing has been seized under this Act, then the Authority 1 may, whether or not such thing has been condemned, direct that such thing shall be released and restored to the person from whom it was seized or to the owner thereof, upon such conditions as it may think fit.

PART XIV

LEGAL PROCEEDINGS (ss 164-172)

[PCh403s164]164. Proceedings triable in subordinate court of first class

(1) Without prejudice to the powers of any other Court of competent jurisdiction, any prosecution for any offence under this Act may be heard and determined before a subordinate court of the first class; and where any such court hears and determines any such prosecution then, notwithstanding anything contained in any legislation of any of the neighbouring countries, such court shall have jurisdiction to impose any fine or any sentence of imprisonment which may be imposed under this Act on any person convicted of the offence.

(2) Without prejudice to the powers of any other court of competent jurisdiction, any proceedings under Part XIII relating to any claim to any thing which has been seized under this Act, and any claim to any duties, rents charges, expenses, or other sums, payable under this Act, may be heard and determined, without limit of amount, in civil proceedings before a subordinate court of the first class.

(3) Save where otherwise expressly provided, any person brought before a Court for any offence under this Act shall be dealt with in accordance with the Criminal Procedure Act * of the neighbouring country in which the Court is situate.

[PCh403s165]165. Actions by or against the Commissioner-General

(1) Where under this Act any proceedings may be brought by or against the Commissioner-General, then the Commissioner-General may sue or be sued by the name of the Commissioner-General of Customs and Excise and may for all purposes be described by that name, and, notwithstanding that any such action may lie in tort, the Commissioner-General shall be responsible for the acts and defaults of any officer as if such officer were his servant or agent:

Provided that nothing herein contained shall confer any right of action against the Commissioner-General in his representative capacity, whether in contract or in tort, unless such right of action is specifically given in any other provision in this Act.

(2) Where under this Act any proceedings are brought by or against the Commissioner-General in his representative capacity, then costs may be awarded to or against Commissioner-General.

(3) Where under the Act any proceedings are brought by or against the Commissioner-General in his representative capacity and—

(a) any sums or costs are recovered by the Commissioner-General, then such sums or costs shall be credited to the Customs revenue;

(b) any damages or costs are ordered to be paid by the Commissioner-General,^a then such damages or costs shall be paid out of the monies appropriated for the administration of the Customs and the Commissioner-General shall not be personally liable.

[PCh403s166]166. Limitation of proceedings

Any proceedings for an offence under this Act may be commenced, and anything liable to forfeiture under this Act may be seized, within five years of the date of the offence.

[PCh403s167]167. Provisions relating to proof, etc., in proceedings L.N. 84/1967

(1) In any proceedings under this Act—

(a) it shall not, unless it is expressly so provided, be necessary to prove guilty knowledge;

(b) the onus of proving the place of origin of any goods, or the payment of the proper duties, or the lawful importation, landing, removal, conveyance, exportation, carriage coastwise, or transfer, of any goods, shall be on the person prosecuted or claiming anything seized under this Act;

(c) the averment by the Commissioner-General—

(i) that any person is or was an officer or is or was employed in the prevention of smuggling;

(ii) that any goods were staved, broken, destroyed, or thrown overboard, or were so staved, broken, destroyed or thrown overboard for the purpose of preventing the seizure or the securing after seizure;

(iii) that any act was done within the limits of any port or at, in, or over, any part of the neighbouring countries;

(iv) that the Commissioner-General, or any officer, is or is not satisfied as to any matter as to which he is required to be satisfied under this Act;

(v) that the Commissioner-General has directed or requested any proceedings under this Act to be instituted,

shall be prima facie evidence of such fact;

(d) a certificate purporting to be signed by the Government Analyst or the Government Chemist of any of the neighbouring countries shall be receivable in evidence and shall be prima facie evidence of the matters recorded therein;

(e) the production of any document purporting to be signed or issued by the High Commission, the Commissioner-General or any person in the service of the Government of any of the neighbouring countries, shall be prima facie evidence that such document was so signed or issued;

(f) a copy, certified under the hand of the Commissioner-General, of any entry in any book or document required to be kept for the purposes of the Customs laws shall be receivable in evidence and shall be prima facie evidence of such entry and of the matters recorded therein;

(g) any certificate or copy of an official document purporting to be certified under the hand and seal or stamp of an officer of any of the principal officers of Customs and Excise in the United Kingdom, or of the principal officer of Customs and Excise in any member country of the Commonwealth, or of any British Consul or British Vice-Consul in any foreign country, shall be receivable in evidence and shall be prima facie evidence of the matters recorded therein;

(h) an officer shall be deemed to be a competent witness notwithstanding that such officer is entitled to any reward;

(i) the fact that security has been given by bond or otherwise for the payment of any duty or for the compliance with any condition in respect of the non-payment of which or non-compliance with which the proceedings are brought shall not be a defence.

[PCh403s168]168. Provisions relating to penalties for offences Acts Nos. 13 of 1989 s. 13; 16 of 1994 s. 11

(1) Where any court imposes on any person a fine for any offence under this Act, then that Court may order that person, in default of payment of that fine, to be imprisoned for any term not exceeding—

(a) six months, where the fine imposed does not exceed one million shillings if the offender is a resident, or if he is a foreigner, an equivalent of that amount in U.S. dollars;

(b) twelve months, where the fine imposed exceeds one million shillings if the offender is a resident, or if he is a foreigner, an equivalent of that amount in U.S. dollars.

(2) Where any person is convicted of an offence under this Act involving intent to defraud, then the maximum fine which may be imposed on such person shall be double that otherwise provided under this Act.

(3) Where any person is convicted of an offence under this Act and is liable to a fine of one million shillings if the offender is a resident or if he is a foreigner, an equivalent of that amount in U.S. dollars or more and such person has previously been convicted of an offence under this Act or has previously been ordered to pay any sum of money under Part XV and such order has been enforced by any court, then the court before which such person is so convicted may order that person to be imprisoned for any term not exceeding three years, or to pay the fine to which he is so liable, or to both imprisonment and fine.

(4) Where any offence under this Act is committed by a body corporate and it is proved that that offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary, or similar officer of the body corporate, or any person purporting to act in any such capacity, then he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

[PCh403s169]169. Place of trial

Any person charged with an offence under this Act may be proceeded against, tried, and punished, in any place in which he may be in custody for that offence as if the offence had been committed in that place; and the offence shall for all purposes incidental to, or consequential upon, the prosecution, trial, or punishment, be deemed to have been committed in that place:

Provided that nothing herein contained shall preclude the prosecution, trial, and punishment of that person in any place in which, but for the provisions of this section, such person might have been prosecuted, tried, and punished.

[PCh403s170]170. Protection of witnesses

(1) No witness on behalf of the Government of any of the neighbouring countries or of the Commissioner-General in any proceedings under this Act shall be compelled to disclose the fact that he received any information relating to any Customs matter, or the nature of any such information, or the name of the person who gave any such information.

(2) No officer appearing as a witness in any proceedings shall be compelled to produce any confidential reports made or received by him in his official capacity or any confidential information received by him in that capacity.

[PCh403s171]171. Reasonable grounds a defence in any action against officer

(1) Where any proceedings, whether by way of prosecution or otherwise, are taken under this Act, and—

(a) such proceedings result in a determination in favour of any person prosecuted, or in favour of any owner claiming any thing which has been seized; and

(b) such proceedings arise out of any act done, whether by way of seizure or otherwise, by any officer in the execution or intended execution of his duty under this Act; and

(c) the Court before which such proceedings are determined finds that there were reasonable grounds for such act,

then that Court shall, on request made by or on behalf of that officer, so certify on the record; and a certified copy of such finding shall, on the request of that officer, be delivered to him and shall be receivable in evidence in any proceedings in proof of such finding.

(2) No officer shall be liable to any action or other proceedings on account of any act in respect of which a Court has, under subsection (1), found that there were reasonable grounds for such act.

(3) Where any proceedings are brought against any officer on account of any act done, whether by way of seizure or otherwise, in the execution or intended execution of his duty under this Act and judgment is given against such officer, then, notwithstanding that in any proceedings referred to in subsection (1) a Court has not found that there were reasonable grounds for such act, if the Court before which such proceedings are heard is satisfied that there were reasonable grounds for such act, the plaintiff shall be entitled to recover any thing seized, or the value thereof, but shall not otherwise be entitled to any damages and no costs shall be awarded to either party.

[PCh403s172]172. Power of officer to prosecute

Any officer may appear and prosecute in any prosecution before a subordinate court for any offence under this Act.

PART XV

SETTLEMENT OF CASES BY THE COMMISSIONER-GENERAL (ss 173-174)

[PCh403s173]173. Power of Commissioner-General to compound offence by agreement

(1) The Commissioner-General may, where he is satisfied that any person has committed an offence under this Act in respect of which a fine is provided or in respect of which any thing is liable to forfeiture, compound such offence and may order that person to pay such sum of money, not exceeding the amount of the fine to which such person would have been liable if he had been prosecuted and convicted for the offence, as he may think fit; and he may order any thing liable to forfeiture in connection therewith to be condemned:

Provided that the Commissioner-General shall not exercise his powers under this section unless such person in writing admits that he has committed the offence and requests the Commissioner-General to deal with such offence under this section.

(2) Where the Commissioner-General makes any order under this section then—

(a) such order shall be put into writing and shall have attached to it the request of that person to the Commissioner-General to deal with the matter; and

(b) such order shall specify the offence which that person committed and the penalty imposed by the Commissioner-General; and

(c) a copy of such order shall be given to that person if he so requests; and

(d) that person shall not be liable to any further prosecution in respect of such offence; and if any such prosecution is brought it shall be a good defence for that person to prove that the offence with which he is charged has been compounded under this section; and

(e) that order shall be final and shall not be subject to appeal and may be enforced in the same manner as a decree or order of the High Court.

[PCh403s174]174. Power of Commissioner-General to compound offence without agreement

(1) The Commissioner-General may, where he is satisfied that any person has committed any offence under this Act in respect of which a fine is provided or in respect of which any thing is liable to forfeiture, compound that offence and may summarily order that person to pay such sum of money, not exceeding two hundred shillings, as he may think fit; and he may summarily order any thing liable to forfeiture in connection therewith and which does not exceed two hundred shillings in value to be condemned.

(2) Where the Commissioner-General makes any summary order under this section then—

- (a) such order shall be put into writing; and
- (b) such order shall specify the offence which that person committed and the penalty imposed by the Commissioner-General; and
- (c) a copy of such order shall be given to that person if he so requests; and

(d) that person shall not be liable to any further prosecution in respect of that offence; and if any such prosecution is brought it shall be a good defence for that person to prove that the offence with which he is charged has been compounded under this section; and

(e) such order shall be final and shall not be subject to appeal and may be enforced in the same manner as if it were an order of a subordinate Court of the first class.

PART XVI

MISCELLANEOUS PROVISIONS (ss 175-191)

[PCh403s175]175. Attendance of master before Commissioner-General

Where under the provisions of this Act the master or agent of any aircraft or vessel is required to answer any questions put to him by the Commissioner-General, or any officer, and such aircraft or vessel has not left its final position, anchorage, or berth, preparatory to leaving the neighbouring countries, then the Commissioner-General, or such officer, may require the master to attend before him at the office of the Commissioner-General, or of such officer, as the case may be, for the purpose of answering such questions:

Provided that the master may, with the consent of the Commissioner-General or that officer, depute a senior officer of that aircraft or vessel to attend at such office for such purpose; and in any such case any reply made to any question put to such senior officer by the Commissioner-General or that officer shall, for the purposes of this Act, be deemed to be a reply made by such master.

[PCh403s176]176. Provisions relating to prescribed forms

(1) Where the form of any entry, bond, invoice, or other document, required or authorised for the purposes of this Act has been prescribed, then all such entries, bonds, invoices, or other documents, shall be in the prescribed form and shall contain all the prescribed particulars.

(2) Where any prescribed form contains, by way of note or otherwise, a clear direction or indication of any requirement as to—

- (a) the colour or size of the form;
 - (b) the number of copies of the form to be tendered (and the word "in duplicate" or similar words shall be sufficient indication of the number required);
 - (c) the nature or form of the information to be furnished;
 - (d) any action to be taken by the person concerned, or his agent, in the transaction in which the form is used;
 - (e) the receipts to be signed by any person in proof of the fact that the goods described in the form have been received for carriage or otherwise,
- then the requirements so indicated shall be deemed to have been prescribed.

(3) The proper officer may require copies of any prescribed form in addition to the numbers indicated on that form.

[PCh403s177]177. Provisions relating to all documents L.N. 1/1967

(1) Where any document required or authorised for the purposes of this Act contains any words not in the English language, then the person producing or using such document may be required to produce therewith a correct English translation of such words.

(2) Where any person is required to submit any form for the purposes of this Act, then the proper officer may require that person to submit as many copies thereof as he may think necessary.

(3) Where the proper officer requires any invoice to be produced for any goods which have been imported, exported, transferred, or entered in transit, then he may require that invoice to be submitted in original and duplicate and he may retain both.

[PCh403s178]178. Production of documents L.N. 1/1967

(1) The proper officer may, within two years of the date of importation, exportation or transfer of any goods, require the owner thereof—

- (a) to produce all books and documents relating in any way to such goods; and
- (b) to answer any question in relation thereto; and
- (c) to make such declaration with respect to the weight, number, measure, strength, value, cost, selling price, origin, destination or place of transshipment of such goods, as the proper officer may think fit.

(2) Where any owner fails to comply with any requirement made by the proper officer under this section, then the proper officer may refuse entry or delivery, or prevent exportation or

transfer, of the goods, or may allow such entry, delivery, or exportation or transfer, upon the deposit of such sum, pending the production of the books and documents, as he may think fit; and any deposit so made shall be forfeited and paid into the Customs revenue if such documents are not produced within three months, or such further time as the proper officer may permit of the date of the deposit.

(3) Where any requirement made by the proper officer under this section relates to goods which have already been exported or transferred and the owner fails to comply with such requirement, then the proper officer may refuse to allow such owner to export or transfer any other goods.

(4) The proper officer may retain any document produced by any owner under the provisions of this section but such owner shall be entitled to a copy thereof certified under the hand of the Commissioner-General; and such certified copy shall be receivable in the evidence in all Courts and shall have equal validity with the original.

(5) Any owner who fails to comply with any requirement made under this section shall be guilty of an offence.

[PCh403s179]179. Provisions relating to declarations and signatures

(1) Where under this Act any declaration is required or authorised to be made, then such declaration may be made before any magistrate, justice of the peace, notary public, or commissioner for oaths, or before any officer authorised by the Commissioner-General for that purpose.

(2) Where under this Act any document is required or authorised to be signed in the presence of the Commissioner-General or of any particular officer, then, if such document is signed in the presence of a witness who is approved by, and whose signature is known to, the Commissioner-General or such particular officer, such document shall be deemed for the purposes of this Act to have been signed in the presence of the Commissioner-General or such particular officer.

[PCh403s180]180. Receipts for payment on entry

Where any person requires a receipt for any money paid and brought to account in respect of any entry, then that person shall furnish the proper officer with an additional copy, marked as such, of the entry and such additional copy duly signed by the proper officer and acknowledging receipt of the money shall be given to that person and shall constitute the receipt for such payment.

[PCh403s181]181. Service of notices, etc.

(1) Where under this Act any notice or other document is required or authorised to be served on or given or delivered to, the Commissioner-General or any other officer, then such notice or other document may be so served, given, or delivered—

- (a) by delivering it personally to the Commissioner-General or such other officer; or
- (b) by leaving it at the office of the Commissioner-General or such other officer; or
- (c) by sending it by post to the Commissioner-General or such other officer.

(2) Where under this Act any notice or other document is required or authorised to be served on, or given or delivered to, any person by the Commissioner-General or any other officer, then such notice or other document may be so served, given, or delivered—

- (a) by delivering it personally to that person; or
- (b) by leaving it at the usual or last known place of address of that person; or
- (c) by sending it by post addressed to the person at his usual or last known place of address.

[PCh403s182]182. Provisions relating to loading, etc., of goods L.N. 1/1967

Where under this Act any goods are required or authorised to be—

(a) loaded, unloaded, or removed to any place for security, examination, weighing, sorting, or any another purpose, prior to delivery or, in the case of goods for export, to exportation, or in the case of goods to be transferred, to transfer, then all such operations shall be performed by or at the expense of the owner of such goods;

(b) unpacked, sorted, piled, or otherwise prepared for examination, then all such operations shall be performed by and at the expense of the owner of such goods and in such manner as the proper officer may require so as to enable him to examine and take account of such goods.

[PCh403s183]183. Proper officer may take samples

The proper officer may take samples of any goods subject to Customs control for such purposes as the Commissioner-General may think necessary; and such samples shall be disposed of and accounted for in such manner as the Commissioner-General may direct.

[PCh403s184]184. Rewards Ord. No. 4 of 1970

The Commissioner-General may award to any officer or person—

(a) who has arrested or has assisted in the arrest of any other person under this Act such reward, not exceeding two hundred shillings, as he may think fit on the conviction of such other person;

(b) who has seized any goods or by whose aid any goods are seized under this Act such reward, not exceeding the value of the goods seized, as he may think fit;

(c) by whose aid a conviction is obtained in any prosecution under this Act such reward as he may think fit;

(d) by whose aid any offence is compounded in accordance with Part XV of this Act such reward as he may think fit.

[PCh403s185]185. Auctioneers legislation not to apply to sales

Where any goods are sold under this Act, then the provisions of any legislation of any of the neighbouring countries relating to auctioneers shall not apply to such sale.

[PCh403s186]186. Licensing of vessels conveying goods subject to Customs control L.N. 1/1967; Act No. 13 of 1989 s. 13

(1) The Commissioner-General may license any vessel or vehicle intended to be used for the conveyance of any goods subject to Customs control upon application made in such manner and upon payment of such fees, as may be prescribed.

(2) Any person who, without the permission in writing of the proper officer, uses any unlicensed vessel for the conveyance of any goods subject to Customs control or uses any unlicensed vehicle for the conveyance of goods to which the East African Transfer Traffic Regulations apply shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings if the offender is a resident or if he is a foreigner one hundred U.S. dollars.

[PCh403s187]187. Application of Act to importation, etc., overland

The provisions of this Act in relation to the importation or exportation of goods, or to the arrival or departure of persons, by aircraft or vessels arriving from or proceeding to a foreign port shall apply, subject to any necessary adaptations or modifications, in like manner to the importation or exportation of goods or to the arrival or departure of persons, overland or by the inland waters of the neighbouring countries.

[PCh403s188]188. Provisions relating to commissioned vessels

Where any aircraft or vessel under commission from any foreign state arrives in the neighbouring countries having on board any goods other than stores for use in such aircraft or vessel, then—

(a) such aircraft or vessel may be boarded and searched by the proper officer in the same manner as any other aircraft or vessel and the proper officer may cause any such goods to be taken ashore and placed in a Customs Warehouse;

(b) the person in command of such aircraft or vessel shall—

(i) deliver an account in writing of such goods and of the quantity, marks and names of the shippers and consignees;

(ii) answer all questions put to him by the proper officer in relation to such goods.

[PCh403s189]189. Power of Commissioner-General in special cases

Notwithstanding anything contained in this Act, the Commissioner-General may, in order to meet the exigencies of any special case—

(a) permit any goods to be loaded on to, or unloaded and removed from, any aircraft or vessel on such days, at such times, at such places, and under such conditions, as he may either generally or in any particular case direct;

(b) permit the entry of any goods, and the report or clearance of any aircraft or vessel, in such form and manner, and by such person, as he may either generally or in particular cases direct.

[PCh403s190]190. Application of air legislation

Where any legislation of the Community relating to air navigation in East Africa contains any provision contrary to the provisions of this Act, then the provision contained in such legislation shall have effect to the exclusion of the corresponding provision contained in this Act.

[PCh403s191]191. Regulations Ords. Nos. 3 of 1958; 5 of 1960; 2 of 1963; L.N. 1/1967; Act No. 11 of 2002 s. 12

(1) The Minister may make regulations generally for giving effect to the provisions of this Act and for the conduct of any business relating to the Customs and, without prejudice to the generality of the foregoing, with respect to—

- (a) the application of this Act to postal articles and the powers of any officer in the service of the Post Office in relation to any goods imported, exported or transferred by post;
- (b) the conditions upon which goods may pass through the neighbouring countries in transit;
- (c) the fee to be paid for any licence issued under this Act;
- (d) the rents and other charges to be paid in respect of any goods warehouse or deposited in any Customs warehouse, Government warehouse, transit shed, or Customs area;
- (e) the conditions under which goods may be transferred between the neighbouring countries and the control, collection, management and administration of transfer tax generally;

(f) the total partial exemption from import duty for a limited period of any vehicle or article of an everyday kind in actual use, brought into the neighbouring countries by any person making only a temporary stay therein;

(g) the transmission by post without prepayment of postage of any return or declaration required or authorised under the provisions of this Act;

(h) the terms and conditions of a Preventive Service and the control, discipline, and management, of all officers in such Service;

(i) the information to be supplied by the importer or transferee, or any other person concerned with the importation or transfer of goods, for the purpose of the proper valuation thereof, and the production of books of accounts or other documents relating to the purchase, importation or transfer, or sale of the goods;

(j) the regulation and control of the conduct of business and operations of refineries and the manner in which petroleum products shall be distinguished for the purpose of customs control.

(2) Any regulations made under subsection (1) may provide that any person contravening any of the provisions thereof shall be guilty of an offence and liable to a fine not exceeding two thousand shillings.

(3) Regulations made under this section shall be laid before the Assembly at the next meeting after the publication of such regulations; and if the Assembly within a period of seven days after such regulations are so laid resolves that such regulations shall be annulled, such

regulations shall cease to have effect as from the date of such resolution but without prejudice to the validity of anything previously done thereunder, or to the making of new regulations.

PART XVII

CUSTOMS TARIFF (ss 192-210)

[Act No. 12 of 1976]

[19th November, 1976]

[PCh403s192]192. Application

This Part applies to Mainland Tanzania as well as Tanzania Zanzibar.

[s. 2]

[PCh403s193]193. Interpretation Acts Nos. 15 of 1985 s. 20; 14 of 1992 s. 8; 27 of 1997 s. 15; 10 of 2002 s. 18

(1) In this Part, unless the context requires—

"commencement of commercial production" in relation to a mine means the first day of the month following commencement of regular production for sale;

"domestic" means suitable for use in a house, an hotel, a restaurant or a retail or similar establishment;

"industrial" in relation to an article, means that the article has been shown to the satisfaction of the Commissioner-General to be made for use solely or principally as industrial apparatus, plant or machinery or as a specialised part thereof;

"Management Act" means the East African Customs and Transfer Tax Management Act of the East African Community *;

"mine", when used as a noun, means any place, excavation or working in or on which any operation connected with mining is carried on together with all buildings, premises, erections and appliances belonging or appertaining thereto, above or below the ground for the purpose of mining, treating or preparing minerals, obtaining or extracting any mineral or metal by any mode or method or for the purpose of dressing mineral ores;

"mining operations" means prospecting, mining or operations connected with prospecting or mining carried out pursuant to rights granted under the Mining Act *;

"phased elimination of tariffs period" means a yearly reduction of rates of import duties being a gradual process towards eventual elimination of import duties;

"PTA" means the Preferential Trade Area for Eastern and Southern Africa;

"suspended duty" means the duty chargeable under paragraph (b) of subsection (1) of section 4 of this Act;

"%" means percentage of value.

(2) Subject to subsection (1) of this section, this Act shall be read construed as one with the Management Act.

(3) The interpretation of the Fourth Schedule to this Act shall be governed by the principles set out at the beginning of the Schedule and titled "GENERAL RULES FOR THE INTERPRETATION OF THE HARMONISED CUSTOMS TARIFF".

[s. 3]

[PCh403s194]194. Import duty and suspended duty Acts Nos. 15 of 1985 s. 21; 14 of 1992 s. 9; 13 of 1996 s. 10; 27 of 1997 s. 16; 10 of 2002 s. 19; 18 of 2002 s. 11

(1) There shall be charged—

(a) in respect of the goods specified in the Fourth Schedule to this Act which are imported into Tanzania, import duties at rates specified in the fifth column of that Schedule; and

(b) in respect of the goods specified in PART B and PART C of the First Schedule to this Act which are imported into Tanzania from the Southern African Development Community and the Republic of South Africa, import duties at the rates specified respectively in the third column in a year during which phased elimination of tariff period relate;

(c) in respect of the goods specified in Part B of the Fourth Schedule to this Act which originate in a Member State of the PTA and which are imported into Tanzania, import duties at the respective rates specified in the third column of that Schedule;

(d) subject to section 199 of this Act in respect of the goods specified in the Fifth Schedule to this Act which are imported into Tanzania, suspended duties at the rates specified in

the order made under the said section, and such import duties and suspended duties shall be levied, collected and paid in accordance with this Act;

(e) from oil companies cess on petroleum products being, the difference between the FOB price and the selling price in the world market.

(2) Notwithstanding subsection (1), where the total amount of import duty or suspended duty computed with reference to any of the Customs document—

(a) is less than one shilling, no import duty or suspended duty shall be charged;

(b) exceeds one shilling but is less than one hundred shillings and includes a fraction of a shilling, the fraction shall be disregarded;

(c) exceeds one hundred shillings and includes a fraction of a shilling, the fraction shall be treated as a complete shilling.

(3) Notwithstanding subsection (1), where any imported crude petroleum or partly-refined petroleum is removed for refining at a refinery licensed as a bonded warehouse, the import duty and suspended duty on the crude petroleum or partly refined petroleum shall, instead of being charged on importation of the petroleum or partly-refined petroleum, be charged on the goods produced from the crude petroleum or partly-refined petroleum and delivered from the refinery for home use and shall be the same as that which would be payable on the importation of like goods.

(4) Notwithstanding subsection (1), the import duty and suspended duty on capital goods imported—

(a) by the holder of a certificate of incentives issued by the Tanzania Investment Centre pursuant to the Tanzania Investment Act *, for use in investments in the priority sectors specified in the Fourth Schedule to this Act, shall, instead of being charged on importation or capital goods under the First Schedule to this Act, be charged at the rate of zero per centum;

(b) by persons engaged in the sectors of economic infrastructure (including construction of roads, bridges, railways, airports, installation of electricity, telecommunication, water services and the like services) and in the sector of export processing zones, shall instead of being charged on importation of capital goods under the First Schedule to this Act, be charged at the rate of zero per centum.

(5) Notwithstanding subsection (1)–

(a) no import duty or suspended duty shall be charged on the goods listed in Part A of the Sixth Schedule to this Act, when imported, or purchased before clearance through the Customs, for use of one of the persons named in that Part in accordance with any condition attached thereto as set out in that Part; and

(b) no import duty or suspended duty shall be charged on the goods listed in Part B of the Sixth Schedule to this Act when imported in accordance with any condition attached thereto as set out in that Part.

[s. 4].

[PCh403s194A]194A.Payment of customs duty when importing Act No. 27 of 1997 s. 17

A person engaged in mining operations, or any person subcontracted by such person for the purpose of carrying on any such mining operations, shall be entitled in relation to any mine after the first anniversary of the commencement of commercial production from that mine to import upon payment of customs duty at a rate not exceeding five percent, explosives, fuels, lubricants, industrial items and other supplies, machinery, vehicles and other capital equipment and spare parts for such equipment, where such equipment has been verified to the satisfaction of the Commissioner after consultation with the Minister responsible for minerals to be reasonably necessary for, and for use solely in carrying on, mining operations in relation to that mine.

[PCh403s194B]194B. Exemption from customs duty after the first anniversary Act No. 27 of 1997 s. 17

A person engaged in mining operations which are not mining operations in respect of any mine after the first anniversary of the commencement of commercial production from that mine, or any person subcontracted by that person for the purpose of those mining operations, shall be entitled to import without payment of customs duty explosives, fuels, lubricants, industrial items and other supplies, machinery, vehicles and other capital equipment and spare parts for such equipment where such equipment has been verified to the satisfaction of the Commissioner after consultation with the Minister responsible for minerals to be reasonably necessary for, and for use solely in carrying on, mining operation relating to that mine.

[PCh403s194C]194C. Payment of customs duty on sale or transfer of any item Act No. 27 of 1997 s. 17

A person who sells or transfers any items which have been imported into the United Republic without payment of customs duty by any person engaged in mining operations, or any person subcontracted by that person for the purpose of such mining operations, to any person in the United Republic, shall pay customs duty on the value thereof, if any, on the date of the sale or transfer:

Provided that no such customs duty shall be payable if that sale or transfer occurs by way of sale or assignment of any interest under the Mining Act *.

[PCh403s195]195. Registration of registered dealers Act No. 14 of 1992 s. 10

(1) Where the Commissioner-General is satisfied that—

(a) a person is engaged in manufacturing a scheduled article and uses, for the purpose of such manufacture, any other scheduled article, whether manufactured locally or imported;

(b) any body corporate is engaged in the import of a scheduled article, and that it is convenient so to do,

the Commissioner-General may, subject to such terms and conditions as he may determine, register such person or, as the case may be, body corporate, as a registered dealer in respect of such scheduled products as the Commissioner may specify.

(2) Where any person is registered as a registered dealer in respect of any scheduled article—

(a) it shall be lawful for any person otherwise liable to pay duties under this Act to sell to the registered dealer the scheduled article in respect of which he is so registered free of

custom duties and such person shall not be liable to pay duties on such article imported by the registered dealer;

(b) the registered dealer may acquire the article in respect of which he is registered as a registered dealer from customs control without payment in import duties under this Act.

(3) A person registered under this Act shall be deemed to have been registered for the purposes of the Value Added Tax Act *.

[s. 4A]

[PCh403s196]196. Application for registration

Every application for registration as a registered dealer shall be as is prescribed in the Value Added Tax Regulations *, and shall be submitted to the Commissioner-General.

[PCh403s197]197. Application of certain provisions of the Value Added Tax Act G.N. No. 152 of 1969

The provisions of the Value Added Tax Act *, and of the Value Added Tax Regulations, on returns, forms and records shall apply mutatis mutandis in relation to returns, forms and records relating to the affairs of registered dealers in scheduled articles under this Act.

[s. 4C]

[PCh403s198]198. Definitions Act No. 12 of 1976

In sections 195 and 196—

"Act" means the Customs Tariff Act 2;

"goods" means goods which are locally produced or imported which are subject to further processing in an industry;

"industry" means any industry with an industrial licence, business licence and is situated in a registered plot;

"registered dealer" means any person registered as a registered dealer under section 195;

"registered dealer certificate" means certificate granted to a registered dealer upon satisfaction by the Commissioner-General that the conditions of section 4A of this Act and the Value Added Tax Regulations have been fulfilled.

[s. 4D].

[PCh403s199]199. Provisions as to suspended duty Act No. 9 of 1988 s. 6

(1) No suspended duty shall be charged until it has been imposed by the Minister, by order in the Gazette.

(2) An order made under subsection (1) may be revoked by the Minister by order in the Gazette.

(3) An order made under subsection (1) or subsection (2) shall—

(a) come into operation on the date specified in the order for its commencement; and

(b) expire at the end of ten weeks from its commencement, unless during the said ten weeks it has been approved by the National Assembly by resolution.

(4) Where an order made under subsection (1) or subsection (2) expires by virtue of subsection (3)(b) of this section, so much of any suspended duty paid under the order in respect of any article as may be in excess of the suspended duty, if any, payable on such article immediately after such expiration shall be repaid to the person who paid it.

(5) The suspended duties specified in the column headed "Amount Imposed" in the Second Schedule to this Act shall have effect as if they were lawfully imposed by an order made under subsection (1) of this section, and subsection (2) of this section shall apply in relation to the variation or revocation of the imposition of any such suspended duties as it applies in relation to suspended duties imposed by an order under this section.

[s. 5]

[PCh403s200]200. Payment of duty may be deferred Act No. 9 of 1988 s. 6

Notwithstanding section 194 the Minister may, by regulations or by order published in the Gazette, provide for payment of import duty or suspended duty by any person or category of persons liable to pay the duty on any day other than the day on which such person or persons would be liable to pay customs duty or suspended duty.

[PCh403s201]201. Power of Commissioner-General to grant refund of import duty and suspended duty Act No. 12 of 1981 s. 5

(1) Notwithstanding section 194 the Commissioner-General may, out of Customs revenue, make a refund of any import duty or suspended duty paid in respect of goods imported into Tanzania, subject to such conditions as he may determine, where the goods are motor spirit or products ordinarily used as such or lubricating oil, and are purchased by—

(a) an embassy, consulate or diplomatic mission of another country, for its official use; or

(b) a member of a diplomatic mission or a consular officer who is a permanent and pensionable member of the foreign service of another country, for his personal use, and that country accords a similar privilege to permanent members of the Tanzanian Diplomatic Service; or

(c) one of the international organisations specified in the Third Schedule to the Diplomatic and Consular Immunities and Privileges Act * for its official use; or

(d) a high official, namely a Secretary-General, a Deputy or Assistant Secretary-General, a Director-General or a Deputy or Assistant Director-General of one of the organisations listed in the Third Schedule to the Diplomatic and Consular Immunities and Privileges Act * for his personal use; or

(e) any other international organisation prescribed by the Minister, by order in the Gazette, for the purposes of this section, or its entitled personnel.

(2) For the purpose of obtaining a refund of import duty or suspended duty under subsection (1) of this section, the person who purchased the goods shall submit an application in such manner, and containing such particulars, as the Commissioner-General may require.

(3) No refund of any import duty or suspended duty shall be made under subsection (1) except on a claim made within twelve months from the date of the payment of the import duty or suspended duty.

(4) No refund of any import duty or suspended duty shall be granted under the Customs laws, if the amount of the refund claimed in respect of any separate item is less than one shilling.

(5) Notwithstanding section 4, the Commissioner-General may, in accordance with the Customs laws, grant a remission or rebate of any import duty or suspended duty payable, or make a refund of any import duty or suspended duty paid; but the Commissioner shall not grant a remission or rebate of any import duty or suspended duty in excess of the maximum amount remittable under this section, which may be specified by the Minister by order published in the Gazette;

(6) The Commissioner shall, as soon as may be after he has granted any remission or rebate, or made a refund of any import duty, or suspended duty, prepare and submit to the Minister a full report on the matter, setting out the circumstances and the reasons leading to or justifying the remission, rebate, or, as the case may be, refund.

(7) Upon receipt of a report submitted to him pursuant to subsection (6) the Minister may give such direction to the Commissioner, in relation to the subject matter of the report, as he sees fit and may, in addition, take any other action which he deems necessary.

(8) No action taken or thing done by the Commissioner in pursuance of any of the provisions of this section shall be subject to review or question by or in any court.

[s. 6]

[PCh403s202]202. Power of Commissioner-General to forgo claims for payment of duty Act No. 16 of 1983 s. 8

(1) Where the amount of import duty or suspended duty payable by any person does not exceed ten thousand shillings and the Commissioner-General is of the opinion that it is impossible, or it would be unduly difficult or unreasonably expensive to assess or recover the duty, he may, subject to the following provisions of this section, elect to abandon the claim.

(2) The Commissioner-General shall submit to the Minister a report specifying all the facts, reasons and circumstances pertaining to the abandonment or remission of duty pursuant to subsection (1), and the Minister may give such directions to the Commissioner-General as he deems fit which shall be final and binding and shall be given effect to by the Commissioner-General.

(3) The refusal or failure of the Commissioner-General to elect to abandon any import duty or suspended duty under this section shall not be called into question in any court.

[s. 6A]

(1) Notwithstanding any other written law, any amount of import duty, penalty or other sum payable under or for the purposes of this Act shall be a debt due to the Government and may be recovered as a civil debt by a suit at the instance of the Commissioner-General or any proper officer on behalf of the Commissioner-General.

(2) Where any import duty, suspended duty or penalty payable under this Act is due from any person and that person fails to pay the amount due and—

(a) no appeal or other action is pending in any court in relation to that person's liability to pay the amount or, if there has been any appeal or other action it has been disposed of and the amount is payable in accordance with the decision of the court; or

(b) the Commissioner-General does not choose to forego the claim pursuant to section 6A,

the Commissioner-General may lodge in a court of a resident magistrate having jurisdiction over the area in which the person from whom the amount is due ordinarily resides or carried on business or works for gain, a certificate signed by him and stating—

(i) the name and address of the person from whom the duty, suspended duty or penalty is due; and

(ii) the amount of the duty, suspended duty or penalty; and

(iii) the fact that the amount of duty, suspended duty penalty or other payment is due, and upon such certificate being lodged in that court, the certificate shall be deemed to be a decree passed by the court against the person named in the certificate for payment by him to the Government of the amount stated in the certificate and every such decree may be executed in the same manner as a decree passed by a court of a resident magistrate in a civil suit.

(3) The provisions of subsection (2) shall apply notwithstanding that the amount involved exceeds the pecuniary jurisdiction of a court of a resident magistrate.

(4) Every certificate filed pursuant to subsection (2) shall be conclusive evidence of the truth of the statements contained in it.

(5) The method for recovery of duty, suspended duty, penalty or other payment due under this Act prescribed by subsection (2) shall be without prejudice to any other method for recovery of such tax or penalty.

[s. 6B].

[PCh403s204]204. Power of Minister to remit suspended duty and import duty

(1) The Minister may, by order in the Gazette, remit in whole or in part any suspended duty or import duty or import duty payable by any person on any goods imported, if he is satisfied that it is in the public interest so to do.

(2) Any such remission may apply to specific instances or generally in respect of specified persons or persons of a specified category.

(3) Any order made under this section shall be laid before the National Assembly 3.

[s. 7]

[PCh403s205]205. Payment of duty instalments Acts Nos. 18 of 1991 s. 7; 14 of 1992 s. 11

Where the Minister directs the payment of any suspended duty or import duty by way of instalments, the duty shall be payable and be paid by instalments within a period of not more than twelve months and interest shall be charged on the amount paid by instalments at the prevailing rate of interest chargeable by the Central Bank on the Government advances.

[s. 7A].

[PCh403s206]206. Minister may amend the Schedules Act No. 9 of 1988 s. 7

(1) The Minister may, by order in the Gazette, amend the First Schedule, Second Schedule or Third Schedule.

[s. 8].

(2) Every order made under subsection (1) shall be submitted for the approval, to be signified by resolution, of the National Assembly within fifteen days of the order being made, or, if the National Assembly is not meeting, within fifteen days after it next meets.

(3) If any such order is not approved by the National Assembly within the time specified in subsection (2), or is disapproved by the National Assembly, the order shall thereupon either expire forthwith or cease to have effect, as the case may be, but without prejudice to anything previously done or suffered to be done under the order.

[PCh403s207]207. Effect of alteration of import duty and suspended duty on contract for sale

If, after any contract has been entered into for the sale or delivery of any goods at a price which includes import duty or suspended duty, an alteration takes place in the rate or amount of the import duty or suspended duty before the goods are entered for home consumption, then, in the absence of express written provision in the contract to the contrary, the contract shall have effect as follows—

(a) in the event of the alteration being the increase of an existing import duty or suspended duty or the imposition of a new import duty or suspended duty payable, may add the difference caused by the alteration to the agreed price;

(b) in the event of the alteration being the reduction or abolition of an existing import duty or suspended duty, the purchaser may deduct the difference caused by the alteration from the agreed price;

(c) in the event of the alteration not being finally adopted, the agreed price shall be adjusted so as to allow for any resultant refund or payment of import duty or suspended duty.

[s. 9].

[PCh403s208]208. Application of agreement by SADC Member States Act No. 10 of 2001 s.

20

Articles 3 and 4 of the Protocol on Trade for Southern African Development Community which provide for elimination of barriers to intra-SADC trade and elimination of import duties

respectively on goods imported into Tanzania from Southern African Development Community Member States shall apply to the United Republic of Tanzania and have full force of law.

[s. 10]

[PCh403s209]209. Repealed

[Repealed by Act No. 20 of 1978 s. 22.]

[s. 11]

[PCh403s210]210. Repealed

[Repealed by Act No. 54 of 1969 with savings.]

[s. 12]

Note: SCHEDULES:

[First Schedule: Omitted.]

[Second Schedule (Suspended Duty): Omitted.]

[Third Schedule (Exemptions Duty): See the Sixth Schedule.]

PART XVII

CUSTOMS AND EXCISE MANAGEMENT(ss 211-217)

[Act No. 19 of 1977]

[PCh403s211]211. Date of coming into operation of this Part

This part shall be deemed to have come into operation on 1st July, 1977.

[PCh403s212]212. This part to apply notwithstanding Community laws

Except as provided in section 214, the provisions of this Part shall have effect notwithstanding the provisions of any Act of the Community.

[PCh403s213]213. Interpretation

In this Part, unless the context otherwise requires—

"Commissioner-General" means the Commissioner-General of Customs appointed under section 3 of the Management Act or the Commissioner-General of Excise appointed under section 3 of the Excise Management Act;

"customs and excise revenue" means any import duties chargeable under this Act and excise duties chargeable under the Excise Tariff Act *;

"the Department" means the Department of Customs and Excise established under section 5 of this Act;

"the East African Department" means the East African Customs and Excise Department;

"Excise Management Act" means the East African Management Act *;

"the Management Act" means the East African Customs and Transfer Tax Management Act *.

[PCh403s214]214. Certain Acts of the Community to apply

(1) Until such time as Parliament makes provision imposing, or relating to the collection of Customs and Excise duties, the Customs Management Act and the Excise Management Act shall continue to apply to and have effect within the United Republic subject to the modifications set out in subsection (2).

(2) The Customs Management Act and the Excise Management Act shall apply to and in relation to the United Republic as if there were substituted for the references in those Acts to—

(a) the Community, but in section 114 of the Management Act and in section 56 of the Excise Management Act, references to the Government of the United Republic;

(b) the Authority or Minister of the Community, references to the Minister responsible for Finance;

(c) the Commissioner-General of Customs, references to the Commissioner of Customs appointed or deemed to have been appointed under section 5 of this Act;

(d) the East African Department or to officers of the East African Department, unless the context otherwise requires, references respectively to the Department or to the officers of the Department.

[PCh403s215]215. Establishment of the Department of Customs and Excise

(1) There is hereby established a Department of the Government to be known as the Customs and Excise Department.

(2) There shall be a Commissioner of Customs and Excise who shall be appointed by the President and such other officers as may be necessary for the proper administration and efficient

performance of the functions of the Department, and the Commissioner of Customs and Excise so appointed shall, subject to the general direction and control of the Minister responsible for Finance, be responsible for the control and management of the Department and for the collection on behalf of the Government of, and for accounting to the Government for, all Customs and Excise revenue levied or collected in the United Republic under the Customs Management Act or the Excise Management Act and other written laws which relate to the imposition and the collection of Customs and Excise duties:

Provided that until the appointments under this subsection have been made, the Commissioner of Customs and Excise, Tanzania, and all other Tanzanian Officers of the East African Department serving in that Department at the commencement of this Act shall, unless they otherwise elect, be deemed to be officers of the Department in the equivalent posts and exercising the same powers they held and exercised immediately before the commencement of this Act.

[s. 4]

[PCh403s216]216. No payment to be made to the General Fund of the Community

No payments or contributions to the General Fund of the Community shall be made out of Customs and Excise revenue chargeable in the United Republic after the commencement of this Act.

[s. 5]

[PCh403s217]217. Amendment of laws

[Amends the Customs Management Act and the Excise Management Act.]

[s. 6]

FIRST SCHEDULE

[Omitted.]

SECOND SCHEDULE

SUSPENDED DUTY

[Omitted.]

THIRD SCHEDULE

EXEMPTIONS DUTY

[See the Sixth Schedule.]

FOURTH SCHEDULE - A Act No. 11 of 2000 s. 13

[Note: The Fourth Schedule - A: HARMONISED CUSTOMS TARIFF is published separately in book form obtainable from the Commissioner-General of Customs.]

FOURTH SCHEDULE - B

(Section 108)

PART I

VALUE OF IMPORTED GOODS LIABLE TO AD VALOREM IMPORT DUTY (ss 1-9)

1.

(1) In this Schedule—

"customs value of imported goods" means the value of goods for the purposes of levying ad valorem duties of customs on imported goods;

"identical goods" means goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance shall not preclude goods otherwise conforming to the definition from being regarded as identical;

"identical goods" and "similar goods" do not include, as the case may be, goods which incorporate or reflect engineering, development, art-work, design work, and plans and sketches for which no adjustment has been made under subparagraph (1)(b)(iv) or paragraph 9 because such elements were undertaken in Tanzania;

"produced" includes grown, manufactured and mined;

"similar goods" means goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially inter-changeable. The quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar.

(2) For the purposes of this Schedule—

(a) goods shall not be regarded as "identical goods" or "similar goods" unless they were produced in the same country as the goods being valued.

(b) Goods produced by different persons shall be taken into account only when there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued.

(3) For the purposes of this Schedule, persons shall be deemed to be related only if:

- (a) they are officers or directors of one another's businesses;
- (b) they are legally recognised partners in business;
- (c) they have an employer and employee relationship;
- (d) any person directly or indirectly owns, controls or holds five percent or more of the outstanding voting stock or shares of both of them;
- (e) one of them directly or indirectly controls the other;
- (f) both of them are directly or indirectly controlled by a third person;
- (g) together they directly control a third person; or
- (h) they are members of the same family.

(4) Any person who associates with another person in business, such that one is the sole agent, distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purposes of this Schedule if they fall within the criteria of subparagraph 3.

2. Transaction value

(1) The customs value of imported goods shall be the transaction value, which is the price actually paid or payable for the goods when sold for export to Tanzania adjusted in accordance with the provisions of paragraph 9, but where—

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which:

- (i) are imposed or required by law or by the public authorities in Tanzania;
- (ii) limit the geographical area in which the goods may be re-sold; or
- (iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of paragraph 9; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is acceptable for customs purposes under the provisions of subparagraph (2).

(2) (a) In determining whether the transaction value is acceptable for the purposes of subparagraph (1), the fact that the buyer and the seller are related within the meaning of

paragraph (1) shall not in itself be a ground for regarding the transaction value as unacceptable. In such case the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the importer or otherwise, the proper officer has grounds for considering that the relationship influenced the price, he shall communicate his grounds to the importer and such importer shall be given a reasonable opportunity to respond and where the importer so requests, the communication of the grounds shall be in writing;

(b) In the sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of subparagraph (1) whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time:

(i) the transaction value in sales to unrelated buyers of identical or similar goods for export to Tanzania;

(ii) the customs value of identical or similar goods are determined under the provisions of paragraph 6;

(iii) the customs value of identical or similar goods as determined under the provisions of paragraph 7:

Provided that, in applying the provisions under subparagraph (2) (a) and (b) of this paragraph, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in paragraph 9 and costs incurred by the seller in sales in which

the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related.

The tests set forth in subparagraph (2)(b) are to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under the provisions of subparagraph (2)(b).

3. Transaction value of identical goods

(1) (a) Where the customs value of the imported goods cannot be determined under the provisions of paragraph 2, the customs value shall be the transaction value of identical goods sold for export to Tanzania and exported at or about the same time as the goods being valued;

(b) In applying this paragraph, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value and where no such sale is found, the transaction value of identical goods sold at a different commercial level or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

(2) Where the costs and charges referred to in subparagraph (2) of paragraph 9 are included in the transaction value, an adjustment shall be made to take account of significant

differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.

(3) Where in applying this paragraph, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

4. Where the customs value of the imported goods cannot be determined

(1) (a) Where the customs value of the imported goods cannot be determined under the provisions of paragraph 2 and 3, the customs value shall be the transaction value of similar goods sold for export to Tanzania and exported at or about the same time as the goods being valued;

(b) In applying this paragraph, the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value and where no such sale is found, the transaction value of similar 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, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

(2) Where the costs and charges referred to in subparagraph (2) of paragraph 9 are included in the transaction value, an adjustment shall be made to take account of significant

differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.

(3) Where, in applying this paragraph, more than one transaction, value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

5. Determination of value when transaction value is not available

Where the customs value of the imported goods cannot be determined under the provisions of paragraph 2, 3 and 4, the customs value shall be determined under the provisions of paragraph 6 or, if the customs value cannot be determined under that paragraph, under the provisions of paragraph 7 save that, at the request of the importer, and with the approval of the proper officer, the order of application of paragraphs 6 and 7 shall be reversed.

6. Deductive value

(1) (a) If the imported goods or identical or similar imported goods are sold in Tanzania in the condition as imported, the customs value of the imported goods under the provisions of this paragraph shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to deductions for the following:

(i) either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with the sales in such country of imported goods of the same class or kind;

(ii) the usual costs of transport and insurance and associated costs incurred within Tanzania;

(iii) where appropriate, the costs and charges referred to in subparagraph (2) of paragraph 9; and

(iv) the customs duties and other national taxes payable in Tanzania by reason of the importation or sale of the goods;

(b) Where neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value shall, subject to the provisions of subparagraph (1) (a), be based on the unit price at which the imported goods or identical or similar imported goods are sold in Tanzania in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of 90 days after such importation.

(2) Where neither the imported goods nor identical nor similar imported goods are sold in Tanzania in the condition as imported, then, if the importer so requests, the customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in Tanzania who are not related to the persons from whom

they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in subparagraph (1)(a).

7. Computed value

(1) The customs value of imported goods under the provisions of this paragraph shall be based on a computed value which shall consist of the sum of:

(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;

(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to Tanzania;

(c) the cost or value of all other expenses necessary to reflect the costs added under subparagraph (2) of paragraph 9.

(2) No person not resident in Tanzania may be required or compelled to produce for examination, or to allow access to, any account or other record for the purposes of determining a computed value. However, information supplied by the producer of the goods for the purposes of determining the customs value under the provisions of this paragraph may be verified in another country by a proper officer with the Schedule of the producer and provided sufficient advance notice is given to the government of the country in question and the latter does not object to the investigation.

8. Fallback method

(1) Where the customs value of the imported goods cannot be determined under the provisions of paragraph 2 through 7, inclusive, the customs value shall be determined using reasonable means consistent with the principles and general provisions of this Schedule and on the basis of data available in Tanzania.

(2) No customs value shall be determined under the provisions of this paragraph on the basis of:

- (a) the selling price in Tanzania of goods produced in Tanzania;
- (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
- (c) the price of goods on the domestic market of the country of exportation;
- (d) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of paragraph 7;
- (e) the price of the goods for export to a country other than Tanzania;
- (f) minimum customs values; or
- (g) arbitrary or fictitious values.

(3) If the importer so requests, he shall be informed in writing of the customs value determined under the provisions of this paragraph and the method used to determine such value.

9. Adjustments for costs and services

(1) In determining the customs value under the provisions of paragraph 2, there shall be added to the price actually paid or payable for the imported goods as follows:

(a) to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods—

(i) the commissions and brokerage, except buying commissions;

(ii) the cost of containers which are treated as being one for customs purposes with the goods in question;

(iii) the cost of packing whether for labour or materials;

(b) the value, apportioned as appropriate, of the goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable as follows—

(i) materials, components, parts and similar items incorporated in the imported goods;

(ii) tools, dies, moulds and similar items used in the production of the imported goods;

(iii) materials consumed in the production of the imported goods;

(iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in Tanzania and necessary for the production of the imported goods;

(c) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

(d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller.

(2) In determining the value for duty purposes of any imported goods in accordance with paragraphs 2 to 7, there shall be added to the price actually paid or payable for the goods:

(a) the cost of transport of the imported goods to the port or place of importation into Tanzania; provided that in the case of air freight only 25% of the freight actually paid or payable shall be added;

(b) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation into Tanzania; and the cost of insurance.

(3) Additions to the price actually paid or payable shall be made under this paragraph only on the basis of objective and quantifiable data.

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

PART II

INTERPRETATIVE NOTES

General Note

Sequential Application of Valuation Methods

1. Paragraphs 2 through 7 define how the customs value of imported goods is to be determined under the provisions of this Schedule. The methods of valuation are set out in a sequential order of application. The primary method for customs valuation is defined in paragraph 2 and imported goods are to be valued in accordance with the provisions of this paragraph whenever the conditions prescribed therein are fulfilled.

2. Where the customs value cannot be determined under the provisions of paragraph 2, it is to be determined by proceeding sequentially through the succeeding paragraphs to the first such paragraph under which the customs value can be determined. Except as provided in paragraph 5, it is only when the customs value cannot be determined under the provisions of a particular paragraph that the provisions of the next paragraph in the sequence can be used.

3. If the importer does not request that the order of paragraphs 6 and 7 be reversed, the normal order of the sequence is to be followed, and if the importer does so request but it then proves impossible to determine the customs value under the provisions of paragraph 7, the customs value shall be determined under the provisions of paragraph 6, if it can be so determined.

4. Where the customs value cannot be determined under the provisions of paragraphs 2 through 7 it is to be determined under the provisions of paragraph 8.

Use of Generally Accepted Accounting Principles

1. "Generally accepted accounting principles" refers to the recognised consensus or substantial authoritative support within Tanzania at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures.

2. For the purposes of this Schedule, the proper officer shall utilise information prepared in a manner consistent with generally accepted accounting principles in Tanzania which is appropriate for the paragraph in question. For example, the determination of usual profit and general expenses under the provisions of paragraph 6 would be carried out utilising information prepared in a manner consistent with generally accepted accounting principles of Tanzania. On the other hand, the determination of usual profit and general expenses under the provisions of paragraph 7 would be carried out utilising information prepared in a manner consistent with generally accepted accounting principles of the country of production. As a further example, the determination of an element provided for in subparagraph (1)(b)(ii) of paragraph 9 undertaken in Tanzania would be carried out utilising information in a manner consistent with the generally accepted accounting principles of Tanzania.

Note to paragraph 1

Subparagraph (3)(e)

For the purposes of this Schedule, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

Subparagraph (4)

For the purposes of paragraph 1, the term "persons" includes a legal person, where appropriate.

Note to paragraph 2

Price Actually Paid or Payable

1. The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

2. Activities undertaken by the buyer on the buyer's own account, other than those for which an adjustment is provided in paragraph 8, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the customs value.

3. The customs value shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:

(a) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;

(b) the cost of transport after importation;

(c) duties and taxes of Tanzania.

4. The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

Subparagraph (1)(a)(iii)

Among restriction which would not render a price actually paid or payable unacceptable are restrictions which do not substantially affect the value of the goods. An example of such restrictions would be the case where a seller requires a buyer of automobiles not to sell or exhibit them.

Subparagraph (1)(b)

1. If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes. Some examples of this include:

(a) the seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities;

(b) the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods:

(c) the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the seller on condition that the seller will receive a specified quantity of the finished goods.

2. However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in Tanzania shall not result in rejection of the transaction value for the purposes of paragraph 2. Likewise, if the buyer undertakes on the buyer's own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, the value of these activities is not part of the customs value nor shall such activities result in rejection of the transaction value.

Subparagraph (2)

1. Subparagraphs (2)(a) and (2)(b) provide different means of establishing the acceptability of a transaction value.

2. Subparagraph 2(a) provides that where the buyer and the seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the customs value provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the

acceptability of the price. Where the proper officer has no doubts about the acceptability of the price, it should be accepted without requesting further information from the owner. For example, the proper officer may have previously examined the relationship, or it may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.

3. Where the proper officer is unable to accept the transaction value without further inquiry, it should give the owner an opportunity to supply such further detailed information as may be necessary to enable it to examine the circumstances surrounding the sale. In this context, the proper officer should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organise their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of paragraph 1, buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to the seller, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realised over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced.

4. Subparagraph (2)(b) provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a "test" value previously accepted by the proper officer and is therefore acceptable under the provisions of paragraph (2). Where a test under subparagraph (2)(b) is met, it is not necessary to examine the question of influence under paragraph 2(a). If the proper officer has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in subparagraph (2)(b) has been met, there is no reason for it to require the importer to demonstrate that the test can be met. In subparagraph (2)(b) the term "unrelated buyers" means buyers who are not related to the seller in any particular case.

Subparagraph (2)(b)

A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and, whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the "test" values set forth in subparagraph (2)(b) of paragraph 2.

Note to paragraph 3

1. In applying paragraph 3, the proper officer shall, wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:

- (a) a sale at the same commercial level but in different quantities;
- (b) a sale at a different commercial level but in substantially the same quantities; or
- (c) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made as the case may be, for:

- (a) quantity factors only;
- (b) commercial level factors only; or
- (c) both commercial level and quantity factors.

3. The expression "and/or" allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purposes of paragraph 3, the transaction value of identical imported goods means a customs value, adjusted as provided in subparagraphs (1)(b) and (2), which has already been accepted under paragraph 2.

5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be

made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustments, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognised that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of paragraph 3 is not appropriate.

Note to paragraph 4

1. In applying paragraph 4, the proper officer shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of similar goods that takes place under any one of the following three conditions may be used:

- (a) a sale at the same commercial level but in different quantities;
- (b) a sale at a different commercial level but in substantially the same quantities; or
- (c) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

- (a) quantity factors only;
- (b) commercial level factors only; or
- (c) both commercial level and quantity factors.

3. The expression "and/or" allows the flexibility to use the soles and make the necessary adjustments in any one of the three conditions described above.

For the purpose of paragraph 4, the transaction value of similar imported goods means a customs value, adjusted as provided for in subparagraphs (1) (b) and (2), which has already been accepted under paragraph 2.

A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only similar imported goods for which a transaction value exists involved a sale of 500 units, and it is recognised that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of paragraph 4 is not appropriate.

Note to paragraph 6

1. The term "unit price at which goods are sold in the greatest aggregate quantity" means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.

2. As an example of this, goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

Sale quantity	Unit price	Number of sales	Total quantity
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Sold at each price			
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1-10 units	100	10 sales of 5 units	65
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5 sales of 3 units			
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11-25 units	95	5 sales of 11 units	55
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over 25 units	90	1 sale of 30 units	80
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1 sale of 50 units			
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The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

3. As another example of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this example, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is 95.

4. A third example would be the following situation where various quantities are sold at various prices.

(a) Sales

Sale quantity	Unit price
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40 units	100
----------	-----

30 units	90
----------	----

15 units	100
----------	-----

50 units	95
----------	----

25 units	105
----------	-----

35 units	100
----------	-----

5 units	90
---------	----

(b) Totals

Total quantity sold	Unit price
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65	100
----	-----

50	90
----	----

60	100
----	-----

25	95
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In this example, the greatest number of units sold at a particular price is 65; therefore, the unit price in the greatest aggregate quantity is 90.

5. Any sale in the importing country, as described in subparagraph 1 above, to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in subparagraph 1 (b) of paragraph 9, should not be taken into account in establishing the unit price for the purposes of paragraph 6.

6. It should be noted that "profit and general expenses" referred to in subparagraph (1) of paragraph 6 should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis of information supplied by or on behalf of the importer unless the importer's figures are inconsistent with those obtained in sales in Tanzania of imported goods of the same class or kind. Where the importer's figures are inconsistent with such figures, the

amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the owner.

7. The "general expenses" include the direct and indirect costs of marketing the goods in question.

8. Local taxes payable by reason of the sale of the goods for which a deduction is not made under the provisions of subparagraph (1)(a)(iv) of paragraph 6 shall be deducted under the provisions of subparagraph (1)(a)(i) of paragraph 6.

9. In determining either the commissions or the usual profits and general expenses under the provisions of subparagraph (1) of paragraph 6, the question whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis by reference to the circumstances involved. Sales in Tanzania of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of paragraph 6, "goods of the same class or kind" includes goods imported from the same country as the goods being valued as well as goods imported from other countries.

10. For the purposes of subparagraph (1)(b) of paragraph 6, the "earliest date" shall be the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.

11. Where the method in subparagraph (2) of paragraph 6 is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to

the cost of such work. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis of the calculations.

12. It is recognised that the method of valuation provided for in subparagraph 2 of paragraph 6 would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However, there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty. On the other hand, there can also be instances where the imported goods maintain their identity but form such a minor element in the goods sold in Tanzania that the use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case-by-case basis.

Note to paragraph 7

1. As a general rule, customs value is determined under this Agreement on the basis of information readily available in Tanzania. In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside Tanzania. Furthermore, in most cases the producer of the goods will be outside the jurisdiction of the authorities of Tanzania. The use of the computed value method will generally be limited to those cases where the buyer and seller are related and the producer is prepared to supply to the authorities of Tanzania the necessary costings and to provide facilities for any subsequent verification which may be necessary.

2. The "cost or value" referred to in subparagraph (1) (a) of paragraph 7 is to be determined on the basis of information relating to the production of the goods being valued

supplied by or on behalf of the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.

3. The "cost or value" shall include the cost of elements specified in subparagraphs (1)(a)(ii) and (iii) of paragraph 9. It shall also include the value, apportioned as appropriate under the provisions of the relevant note to paragraph 9, of any element specified in subparagraph (1)(b) of paragraph 9 which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods. The value of the elements specified in subparagraph (1)(b)(iv) of paragraph 9 which are undertaken in Tanzania shall be included only to the extent that such elements are charged to the producer. It is to be understood that no cost or value of the elements referred to in this paragraph shall be counted twice in determining the computed value.

4. The "amount for profit and general expenses" referred to in subparagraph (1)(b) of paragraph 7 is to be determined on the basis of information supplied by or on behalf of the producer unless the producer's figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to Tanzania.

5. It should be noted in this context that the "amount for profit and general expenses" has to be taken as a whole. It follows that if, in any particular case, the producer's profit figure is low and the producer's general expenses are high, the producer's profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same

class or kind. Such a situation might occur, for example, if a product were being launched in Tanzania and the producer accepted a nil or low profit to offset high general expenses associated with the launch. Where the producer can demonstrate a low profit on sales of the imported goods because of particular commercial circumstances, the producer's actual profit figures should be taken into account provided that the producer has valid commercial reasons to justify them and the producer's pricing policy reflects usual pricing policies in the branch of industry concerned. Such a situation might occur, for example, where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in Tanzania and accept a low profit to maintain competitiveness. Where the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to Tanzania, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods.

6. Where information other than that supplied by or on behalf of the producer is used for the purposes of determining a computed value, the proper officer shall inform the importer, if the latter so requests, of the source of such information, the data used and the calculations based upon such data, subject to the provisions of section 108.

7. The "general expenses" referred to in subparagraph (1)(b) of paragraph 7 covers the direct and indirect costs of producing and selling the goods for export which are not included under subparagraph (1) (a) of paragraph 7.

8. Whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of paragraph 7, sales for export to Tanzania of the narrowest group or range of goods, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of paragraph 7, "goods of the same class or kind" must be from the same country as the goods being valued.

Note to paragraph 8

1. Customs values determined under the provisions of paragraph 8 should, to the greatest extent possible, be based on previously determined customs values.

2. The methods of valuation to be employed under paragraph 8 should be those laid down in paragraph 1 through 6 but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of paragraph 8.

Some examples of reasonable flexibility are as follows:

(a) Identical goods - the requirement that the identical goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of paragraphs 6 and 7 could be used.

(b) Similar goods - the requirement that the similar goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of paragraphs 6 and 7 could be used.

(c) Deductive methods - the requirement that the goods shall have been sold in the "condition as imported" in subparagraph (1)(a) of paragraph 6 could be flexibly interpreted; the "90 days" requirement could be administered flexibly.

Note to paragraph 9 *

Subparagraph (1)(a)(i)

The term "buying commissions" means fees paid by importer to the importer's agent for the service of representing the importer abroad in the purchase of the goods being valued.

Subparagraph (1)(b)(ii)

1. There are two factors involved in the apportionment of the elements specified in subparagraph (1)(b)(ii) of paragraph 9 to the imported goods - the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements should be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

2. Concerning the value of the element, if the importer acquires the element from a seller not related to the importer at a given cost, the value of the element is that cost. If the element was

produced by the owner or by a person related to the importer, its value would be the cost of producing it. If the element had been previously used by the owner, regardless of whether it had been acquired or produced by such owner, the original cost of acquisition or production would have to be adjusted downward to reflect its use in order to arrive at the value of the element.

3. Once a value has been determined for the element, it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first shipment if the importer wishes to pay duty on the entire value at one time. As another example, the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment. As a further example, the importer may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production. The method of apportionment used will depend upon the documentation provided by the importer.

4. As an illustration of the above, an importer provides the producer with a mould to be used in the production of the imported goods and contracts with the producer to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The importer may request the proper officer to apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units.

Subparagraph 1(b)(iv)

1. Additions for the elements specified in subparagraph (1)(b)(iv) of paragraph 9 should be based on objective and quantifiable data. In order to minimise the burden for both the importer

and proper officer in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible.

2. For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the cost of obtaining copies of them.

3. The ease with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods.

4. It is possible for example, that a firm which imports a variety of products from several countries maintains the records of its design centre outside Tanzania in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of paragraph 9.

5. In another case, a firm may carry the cost of the design centre outside Tanzania as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of paragraph 9 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.

6. Variations in the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation.

7. In cases where the production of the element in question involves a number of countries and over a period of time, the adjustment should be limited to the value actually added to that element outside Tanzania.

Subparagraph (1)(c)

1. The royalties and licence fees referred to in subparagraph (1)(c) of paragraph 9 may include, among other things, payments in respect to patents, trademarks and copyrights. However, the charges for the right to reproduce the imported goods in Tanzania shall not be added to the price actually paid or payable for the imported goods in determining the customs value.

2. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to Tanzania of the imported goods.

Subparagraph (3)

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of paragraph 9, the transaction value cannot be determined under the provisions of paragraph 2. As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial

arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.

FIFTH SCHEDULE

SUSPENDED DUTY

(formerly the 2nd Schedule of Act No. 12 of 1976)

[Omitted.]

SIXTH SCHEDULE

(Section 194(4))

PART A

EXEMPTIONS FROM DUTY G.Ns. Nos. 122 of 1967; 122 of 1977; Acts Nos. 9 of 1977 s. 4; 9 of 1988 s. 9; 18 of 2002 ss. 14 and 15; 11 of 2000 s. 8

Goods imported or purchased before clearance through the Customs by or on behalf of Government, Public Bodies, Privileged and Institutions:

1. The President:

Goods for use by the President.

The Government:

1A. With the exception of white petroleum products, goods for the use of the Government of Tanzania.

1B. With the exception of white petroleum products, goods for the use by the Local Government Authorities.

2. East African Community and the Corporations within the Community:

Goods of the following description imported or purchased prior to clearance through Customs by the Community or a Corporation within the Community for its own use and not for re-sale or other disposition for any material consideration—

- (a) railway locomotives and rolling stock and spare parts thereof;
- (b) ships of over 100 tonnes dead weight;
- (c) aircraft and aircraft engines and spare parts thereof; air navigational instruments, lighting, radio and radar apparatus and equipment of a specialised nature for the repair of aircraft, specialised aircraft loading and unloading equipment, aircraft maintenance and servicing equipment, ground signs stairways for boarding aircraft; catering stores;
- (d) lifting machinery (including fork lift trucks) and spare parts thereof;
- (e) telephone and telecommunications apparatus and machinery and spare parts thereof;
- (f) kerosene and aviation spirit imported or purchased by the East African Airways Corporation solely for use in aircraft engines;

(g) distillate and residual fuel oils imported or purchased by the East Africa Railways Corporation solely for use in locomotive and marine engines.

3. Commonwealth and other Governments:

(1) Goods consigned to officers or men on board a naval vessel belonging to another Commonwealth for their personal use or for consumption on board such vessel.

(2) Goods for the use of any of the armed forces of any allied power.

4. Diplomatic Privileges:

(1) Goods for the official use of the United Nations or its specialised Agencies or any Commonwealth High Commission or of any foreign Embassy Consulate or Diplomatic Mission.

(2) Goods for the use of a high official of the United Nations or its specialised Agencies or a member of the diplomatic staff of any Commonwealth or foreign country, where specific provision for such exemption is made by the Minister responsible for foreign affairs.

(3) On first arrival in the country of accreditation, or within three months of that date, the household and personal effects (including one motor vehicle), of an employee of the United Nations or of its specialised Agencies, any Commonwealth High Commission or United Nations or any foreign Embassy, Consulate or Diplomatic Mission, provided such employee is not engaged in any other business or profession in East Africa.

5. Contractors to Government and the East African Community:

(1) Machinery, plant, materials and rolling stock for use by an individual or a firm under contract to the Government of Tanzania where the machinery, plant, materials and rolling stock will be used exclusively for the execution of the contract.

(2) With the prior approval of the Government of the United Republic, machinery, plant, materials and rolling stock for use by an individual or firm under contract to the East African Community, where such exemption forms part of the terms of the contract.

6. Boundary or other Special Commissioners:

Goods for the private use of Boundary or other Special Commissioners and their assistants, while executing their duty, and with the prior sanction of the President.

7. Educational Institutions:

School stationery, (excluding exercise books), instruments, appliances and similar requisites including furniture used in the classroom, workshop or laboratory for use by educational institutions, approved for the purpose of this exemption by the Chief Education Officer and subject to such limitations and conditions as the Commissioner-General may impose.

8. British Council:

Goods for use by the British Council which are or will be a charge against the funds of the Council, not including goods for re-sale or for the personal use of the staff of the Council.

9. Red Cross:

Goods consigned to the Tanzania Red Cross for free distribution in relief work, subject to such limitations and conditions as the Commissioner-General may impose.

10. Seafarers' Welfare:

Articles of equipment not intended for re-sale and not including consumable stores or provisions, for use by the Missions to Seamen or other similar organisations approved for the purpose of this exemption by the Government, subject to such limitations and conditions as the Commissioner-General may impose.

11. Religious Bodies:

Furniture, including altars, fonts and pulpits, ornaments of a non-consumable nature, stained glass windows, altar bread and communion wafers, sacramental wine, altar linen and vestments, bells, organs and blowers therefor and harmoniums, and parts or accessories thereof, imported by or for presentation to any religious body, for use in the conduct of religious services.

12. Youth Associations:

Uniforms and appointments for the use of the Boy Scout, Girl Guide or other similar Associations.

13. Disabled Drivers:

Motor vehicle controls and equipment specially designed for the use of disabled drivers.

14. Blind Persons:

Materials and articles specially designed for the educational, scientific or cultural advancement of the blind for the use of an organisation approved by the Government for the purpose of this exemption.

15. Red Locust Control Service:

Goods for the use of the International Red Locust Control Service.

16. Export Processing Zones:

Goods imported or purchased by the investor licensed under the Export Processing Zones Act *, for use as raw materials, equipment and machinery, including all goods directly related to the manufacturing in the Export Processing Zones, but shall not include motor vehicles, spare parts and consumables.

PART B

GENERAL EXEMPTIONS Acts Nos. 9 of 1977 s. 4; 9 of 1988 s. 4

1. Aircraft Operations:

(1) Any of the following goods which are imported for use by any airline designated under an air services agreement between the Government of Kenya, the Government of Uganda and the Government of Tanzania and a foreign Government—

Aircraft, aircraft engines, parts and accessories thereof; air navigational instruments; lighting, radio and radar apparatus and equipment; equipment of a specialised nature

for the repair, maintenance and servicing of an aircraft on the ground; specialised aircraft, loading and unloading equipment; ground signs, stairways for boarding aircraft catering stores.

(2) Kerosene and aviation spirit imported or purchased before clearance through the Customs solely for use in aircraft engines by any airline under an air services agreement between the Government and foreign government.

2. Containers and Pallets:

Boxes, tins, bottles, jars and similar packaging units in which any goods not liable to an ad valorem duty are packed and imported, being ordinary packaging units for the goods contained therein, containers and pallets.

(2) Pallets of any material.

3. Deceased Persons' Effects:

Used personal effects, subject to such limitations as the Commissioner-General may impose which are not for re-sale and have been the property of a deceased person and have been inherited by or bequeathed to the person to whom they are consigned.

4. Films:

(1) Film strips and slides of a scientific, educational or religious nature.

(2) Cinematograph films, exposed and developed, of a scientific, technical or educational nature for exhibition free of charge solely to or by scientific or technical societies or in educational institutions, or for exhibition free of charge solely for the purpose of training.

5. Film Projectors:

Cinematograph, film strip and slide projectors and epidiscopes imported for use by scientific educational or religious institutions.

6. Fish, Crustaceans and Molluscs:

Fish, crustaceans and molluscs, fresh (liver or dead), chilled or frozen, caught and landed by canoes or vessels based in Tanzania.

7. Life Saving Apparatus:

Lifebelts, lifebuoys and other saving equipment.

8. Packing and Lagging:

Materials for the packing and lagging of industrial machinery, piping and tanks.

9. Passengers' Baggage:

Goods imported by passengers arriving from places outside East Africa, subject to the limitations and conditions specified in the following paragraphs.

(1) The goods shall be—

(a) the property of, and accompany, the passenger, except as provided in paragraph (7) of this item;

(b) for the personal or household use of the passenger in East Africa;

(c) of such kinds in such quantities as the proper officer may allow; and

(d) retained by the passenger in East Africa and—

(i) in the case of a motor vehicle, shall not be disposed of by the passenger in Tanzania; and

(ii) in any other case, shall not be disposed of by the passenger in East Africa within two years of the date of importation.

(2) The following goods shall not be exempted under this item—

(a) alcoholic beverages of all kinds, perfumed spirits and tobacco and manufactures thereof, except as provided in paragraph (6) of this item;

(b) fabrics in the piece;

(c) motor vehicles, except as provided in paragraph (3) of this item;

(d) any trade goods, or goods for sale or disposal to other persons.

(3) Subject to paragraphs (1) and (2) of this item, the following goods may be exempted under this item when imported as baggage by a person who the proper officer is satisfied is bona fide changing his residence from a place outside to a place within East Africa—

(a) wearing apparel;

(b) personal and household effects of any kind which were in his personal or household use in his former place of residence;

(c) one motor vehicle which the passenger personally has owned and used outside East Africa for at least 12 months (excluding the period of the voyage in the case of shipments).

(4) Subject to the provisions of paragraphs (1) and (2) of this item, the following goods may be exempted under this item when imported as baggage by a person who the proper officer is satisfied is making a temporary visit not exceeding six months to East Africa—

(a) non-consumable goods imported for his personal use during his visit which he intends to take out with him when he leaves East Africa at the end of his visit;

(b) consumable provisions and non-alcoholic beverages in such quantities and of such kinds as are in the opinion of the proper officer consistent with his visit.

(5) Subject to paragraphs (1) and (2) of this item, the following goods may be exempted under this item when imported as baggage by a person who the proper officer is satisfied is a resident of East Africa returning from a visit to any place outside East Africa—

(a) wearing apparel;

(b) personal and household effects which have been in his personal use or household use, but not including bicycles, cine or still projectors, record players, amplifiers, loudspeakers, gramophones, gramophone records, provisions, sound recording machines, tuners, radio and television receiving sets and radiograms;

(c) instruments and tools for his personal use in his profession or trade.

(6) (a) Subject to paragraph (1) of this item, and subject to subparagraph (b) of this paragraph, import duty shall not be levied on the following goods imported by, and in the possession of a passenger–

(i) spirits (including liqueurs) or wine, not exceeding in all one litre;

(ii) perfume and toilet water not exceeding in all one half litre of which not more than a quarter may be perfume;

(iii) cigarettes, cigars, charoots, cigarillos, tobacco and snuff not exceeding in all 250 gram in weight;

(b) these duty free allowances shall be granted to all passengers of seventeen years and over, except such passengers who are returning to East Africa from visits to countries contiguous to East Africa.

(7) Subject to paragraphs (1) and (2) of this item, the exemptions granted in accordance with paragraphs (3), (4) and (5) of this item may be allowed in respect of baggage imported within two months of the arrival of the passenger or such further period as the Commissioner-General may allow. The import duty and free allowances granted in accordance with paragraph (6) of this item shall not be allowed in respect of goods specified in that paragraph (6) of this item shall not be allowed in respect of goods specified in that paragraph imported in unaccompanied baggage.

10. Printed Matter:

Carnets de passage, pass sheets and similar international temporary importation forms; posters, framed or unframed photographs and photographic enlargements and printed window transparencies advertising the tourist attractions of foreign countries provided that such goods are for free distribution and do not contain more than twenty-five percent private commercial advertising.

11. Protective Apparel, Clothing Accessories and Equipment:

Articles of apparel, clothing, accessories and equipment, specially designed for safety or protective purposes in industry or public undertakings, including hospitals, but not including articles of general use; safety belts and crash helmets.

12. Samples and Miscellaneous Articles:

Samples and miscellaneous articles not imported as merchandise, which in the opinion of the Commissioner-General have no commercial value.

13. [Repealed by Act No. 9 of 1988 s. 9.]

14. Ship and Boat Parts, Accessories and Fittings:

Parts designed for ships, boats and canoes and specialised accessories and fitting therefor but not including batteries or sparking plugs.

15. Signs, Name-Plates, Licence Plates and Badges:

(1) Warning signs to protect the public from danger or to protect property.

(2) Street name-plates, road and traffic signs and signals, road and traffic sign materials.

(3) Licence plates and badges, street lighting equipment imported solely for use by a Local Government Authority.

16. [Repealed by Act No. 9 of 1988 s. 9.]

17. [Repealed by Act No. 9 of 1988 s. 9.]

18. Museum Exhibits and Equipment:

(1) Museum and natural history exhibits and specimens imported for public museums or for scientific purposes.

(2) Museum showcases, display stands, mounting materials and other similar equipment imported for the preparation, storage and display of exhibits in museums approved for the purpose of such importation by the Government.

19. Tombstones and Memorials:

Tombstones, memorials and commemorative brasses, engraved with a commemorative inscription to a deceased person, and ornaments for graves.

20. Educational Articles and Materials:

Blackboards, blackboard cleaners and blackboard instruments; crayons, lead pencils (but not including propelling pencils and the like), eraser rubbers, rulers (not exceeding 31 cm), compasses, set squares, dividers and similar articles comprising mathematical and science

instrument sets; pen-holders, pen nibs other than fountain and stylograph pen nibs, ink wells, not including ink wells in desk sets, writing ink powder.

21. Packing Materials:

(1) Greaseproof paper bags designed for the packing of locally produced fats and printed with the names of the local products and the producer thereof.

(2) Waxed-ply lined bags designed for the packing of locally produced dried whole milk powder and printed with the name of the local product and the producer thereof.

(3) Empty seed packets.

(4) Proofed paper for the manufacture of milk containers and printed with the name of the local products and the producer thereof.

22. [Repealed by Act No. 9 of 1988 s. 9.]

23. [Repealed by Act No. 9 of 1988 s. 9.]

24. [Repealed by Act No. 9 of 1988 s. 9.]