



**Tuvalu**

# **CUSTOMERS REVENUE AND BORDER PROTECTION ACT**

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Tuvalu

# CUSTOMERS REVENUE AND BORDER PROTECTION ACT

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Tuvalu

## CUSTOMERS REVENUE AND BORDER PROTECTION ACT<sup>1</sup>

**AN ACT TO REFORM AND MODERNIZE THE LAW RELATING TO CUSTOMS CONTROLS AND ENFORCEMENT, AND TO PROVIDE FOR REVENUE ADMINISTRATION, BORDER MANAGEMENT, TRADE AND TRAVEL FACILITATION, SECURITY, AND RELATED PURPOSES**

Commencement [13th January, 2015]

### 1 Short Title

This Act may be cited as the Customers Revenue and Border Protection Act.

### 2 Commencement

This Act shall come into operation on the date of publication by exhibition.

### 3 Interpretation

(1) In this Act, unless the context otherwise requires:

“**aircraft**” means a machine that can derive support in the atmosphere from the reactions of the air;

“**appeal**” means the act of which a person is directly affected by a decision or omission of the Customs and who considers themselves to be aggrieved and seeks redress before a competent authority;

“**approved form**” means in this Act a reference to a form that is approved by an instrument in writing, by the Director;

**“assessment of duties and taxes”** means the determination of the amount of duties and taxes payable;

**“assessment notice”** means the document generated by the Customs automated system, advising an importer of the amount of duties and taxes determined as payable on a particular entry;

**“arrival”** means:

- (a) in relation to a craft, includes the arrival of a craft in Tuvalu from a point outside Tuvalu whether or not the craft lands at, hovers above, berths, moors, anchors, or stops at, or otherwise arrives at any place within the territorial waters or the air space of Tuvalu; and
- (b) in relation to a person, means the entry of the person by any means, into Tuvalu from a point outside Tuvalu and **“arriving”** and **“arrived”** have same meanings;

**“arrival hall”** means a place licensed under section 21 for the processing of persons arriving in Tuvalu;

**“authorised person”** means a person for the time being authorised under section 11;

**“boat”** means a vessel other than a ship;

**“cargo declaration”** means information submitted to Customs prior to the arrival of the means of transport of which the commercial goods are on;

**“carrier”** includes the means of transport or the person actually transporting the cargo, in charge of or responsible of the operation;

**“clearance”** means the completion of the Customs procedures necessary to allow goods to enter home use, to be exported or to be placed under another Customs procedure;

**“clearance for home use”** means the completion of the Customs procedures which provides that imported goods enter into free circulation in Tuvalu;

**“contractor”** means a person who does work for valuable consideration on or in respect of any goods at the request of any person (otherwise than as an employee of that other person) in circumstances where that other person supplies, but retains ownership of, some or all of the material used in the work;

**“court”** as defined under the Magistrates’ Court Act;

**“Counterfeit”** goods are any goods including packaging having without authorization, a trademark, which is identical to a validly registered trademark in respect of such goods or cannot be distinguish in its essential character from such a trademark and by which, infringes the rights of the owner of the trademark in question under the law of Tuvalu;

**“craft”** includes any aircraft, ship, boat or other machine or vessel, used or capable of being used for the carriage or transportation of persons or goods, or both, by air or water or over or under water;

**“Customs”** means the Government Department responsible for the administration of Customs laws;

**“Customs Agent”** has the same meaning as a customs broker;

**“Customs Broker”** means a Broker within the meaning of Part 18 of this Act;

**“Customs control”** means measures applied by the Customs to ensure compliance with Customs laws;

**“customs controlled area”** means an area that is required, for one or more of the purposes described in section 21, to be licensed and that is so licensed;

**“customs direction”** means a lawful request, order, command or instruction given by a Customs officer to any person to do or to refrain from doing an act or to submit to a procedure for the purposes of this Act; and includes any notice, poster or sign publicly displayed in a customs place or customs controlled area; and includes a direction contained in a form approved under this Act;

**“customs duties”** means the duties laid down in the Tuvalu Customs Tariff to which goods are liable on entering or leaving the Customs territory;

**“Customs procedures”** means all the operations which must be carried out by the persons concerned and by the Customs in order to comply with the Customs law;

**“Customs procedures prior to the lodgments of the goods declaration”** means operation carried by the person concerned and the Customs as soon as goods are introduced into Tuvalu;

**“Customs law”** means the statutory and regulatory provisions under this Act; Customs offence means any breach, or attempted breach, of customs law; Customs office means a Customs administrative unit;

**“customs officer”** or **“officer”** means any person employed as a customs officer to discharge any duty connected with the administration of customs law or any person authorised by the Director to carry out or to assist to carry out the provisions of this Act;

**“customs revenue”** or **“revenue of customs”** means revenue managed by the Customs on behalf of the Government;

**“customs seal”**, is a seal approved by the Director;

**“Customs territory”** means the territory in which Tuvalu Customs has jurisdiction;

**“Customs transit”** means the Customs procedure under which goods are transported under Customs control from one Customs office to another;

**“customs value”** or **“value”**, in relation to goods, means the customs value of those goods determined in accordance with Schedule 1

**“Day”** means Monday to Friday excluding public holidays;

**“declaration”** means the provision of all information to Customs whether verbal or in a document or in electronic form by a person relating to the import or export of goods; or the arrival or departure of a craft; or arrival or departure of a person;

**“declarant”** means any person who makes a declaration or in whose name such a declaration is made;

**“Detention”** means the restraint of a person or goods, preventing their removal;

**“Director”** means the Director of Customs referred to in section 8;

**“Domestic cargo”** means goods of Tuvalu origin that are not subject to Customs control or imported goods which have been cleared for home use;

**“Document”** means any record of information and includes a document in electronic form;

**“domestic passenger”** means a passenger not being an international ticketed passenger who is entitled to travel on a domestic sector of an international voyage or flight;

**“drawback”** means the amount of import duties and taxes repaid on goods or material contained in them or consumed in their production when they are exported;

**“due date”** means the date when payment of duties and taxes is due;

**“dutiable goods”** means goods of a kind subject to duty within the meaning of this Act;

**“duties and taxes”** means import duties and taxes and/or export duties and taxes;

**“duty”** means duties and excise duties under Part 8.

**“Entry”** means a declaration lodged by an importer or exporter for the clearance of goods from customs control;

**“electronic publication”** means a thing on which is recorded or stored information that, by the use of a computer or other electronic device, is capable of being reproduced or shown as 1 or more images, representations, signs, statements or words;

**“excisable goods”** means good on which excise duty is payable;

**“exportation”** means the movement of goods from Tuvalu to a point outside Tuvalu

**“exporter”** means a person by or for whom goods are exported;

**“export warehouse”** means a place licensed under section 23 for the purpose described in paragraph 21(b);

**“export duties and taxes”** means Customs, taxes or charges which are collected in connection with the exportation of goods;



**“forfeited goods”** means goods that are forfeited to the State under section 228;

**“goods”** means all kinds of movable personal property including animals, documents and self transported craft;

**“goods declaration”** means a statement made in the manner approved by the Customs for the importation or exportation of goods;

**“importation:”** in relation to any goods, means the arrival of the goods in Tuvalu in any manner, from a point outside of Tuvalu;

**“importer”** means the consignee, the owner, agent, buyer or any person holding a beneficial interest in the goods when they arrive in Tuvalu and includes any person making a declaration under customs law concerning those goods;

**“import duties and taxes”** means Customs duties and taxes or charges which are collected on the importation of goods;

**“international cargo”** means any cargo that has arrived from a point outside of Tuvalu or is destined to be exported from Tuvalu;

**“international crew”** means the crew or any member of the crew of a craft that is on a journey that:

- (a) began outside Tuvalu; or
- (b) began in Tuvalu and is to continue outside Tuvalu;

**“international passenger”** means a person who is entitled to travel on a craft within Tuvalu where that travel is part of an international journey that:

- (a) began outside Tuvalu; or
- (b) began in Tuvalu and is to continue outside Tuvalu;

**“Manufacture”** means all processes of the manufacture of excisable goods;

**“manufacturing area”** means a place licensed under section 23 for the purposes described in paragraph 2(a);

**“master”** means the person in charge or in command of a ship or aircraft;

**“Minister”** means the minister responsible for Customs;

**“operator”** in relation to a business, means:

- (a) the person actively engaged, whether alone or with others, in the carrying on of the business; or
- (b) in the case of a body corporate, includes every director, manager, secretary or other similar officer engaged in the direct control or management of its business, and a person who purports to act in any of those capacities;

**“owner:”** means any person being or claiming to be the owner, importer, exporter, consignee, agent, buyer or person possessed of or beneficially interested in or having control of or power of disposition over the goods;

**“person”** means both natural and legal persons including individuals, entities, partnerships, businesses, and corporations;

**“prohibited exports”** means goods that are prohibited to export, under section 79

**“prohibited goods”** means goods prohibited to export or prohibited import;

**“prohibited imports”** means goods the importation of which is prohibited under section 78;

**“protected information”** means information that comes to the knowledge of or into the possession of a customs officer or authorised person while they are performing their duties

**“public service”** has the meaning as in the Public Service Act;

**“release of goods”** means the lawful release of goods from customs control;

**“relief from import duties and taxes”** means the clearance of goods for home use free of import duties and taxes;

**“repayment”** means the refund, in whole or in part, of duties and taxes paid on goods and the remission, in whole or in part, of duties and taxes where payment has not been made;

**“securities”** is the surety for the payment of duty that is payable under the provisions of this Act including any additional costs incurred by the Customs in administering such surety;

**“security”** means that which ensures to the satisfaction of customs that an obligation to customs will be fulfilled;

**“Ship”** means any vessel used in navigation in water not propelled by oars only;

**“Single administrative document (SAD)”** means an electronic declaration for the purposes of the Customs automated system;

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

**“stores”** means - stores for consumption or stores to be taken away;

**“stores for consumption”** means;

- (a) Goods intended for consumption by passengers or crew on board a craft;
- (b) Goods necessary to the operation and maintenance of craft;

**“Stores to be taken away”** means goods for sale to passengers and the crew of craft with a view of being landed;

**“Tax”** means any tax imposed by any Act or law in Tuvalu;

**“temporary importation”** means the procedure which certain goods can be brought into Tuvalu conditionally relieved totally or partially from payment of

import duties and taxes provided that, goods must be imported for a specific purpose and must be intended for re-exportation within a specified period and without having undergone any change except normal depreciation due to the use made of them;

**“temporary storage of goods”** means storing of Goods under Customs control in premises or spaces approved by the Director pending the Goods declaration;

**“territorial waters”** has the meaning in the Maritime Zones Act;

**“third party”** means any person who deals directly with Customs, for and on behalf of another person, relating to the importation, exportation, movement or storage of goods;

**“time of exportation”** means the time deemed to occur when a craft departs the limits of the last port or airport in Tuvalu with the intention of making an international voyage or flight;

**“time of importation”** means the time deemed to occur when a craft carrying the goods arrives at the first port or airport in Tuvalu or at the time the goods are unloaded in Tuvalu, whichever occurs first;

**“transshipment”** means the Customs procedure under which goods are transferred under Customs control from the importing means of transport to the exporting means of transport within Tuvalu;

**“traveller”** means:

- (a) any person who temporarily enters the territory of a country in which he or she does not normally reside (**“non-resident”**) or who leaves that territory; and
- (b) any person who leaves the territory of a country in which he or she normally resides (**“departing resident”**) or who returns to that territory (**“returning resident”**);

**“Tribunal”** means the customs appeals tribunal established under section 249;

**“uncustomed goods”** means goods on which duty has become due and payable but is unpaid;

**“unlawfully exported”** means exported in breach of this Act or any other written law;

**“unlawfully imported”** means imported in breach of this Act or any other written law;

**“vehicle”** means a conveyance for use on land, whether or not it is also capable of being used on or over water.

## **PART 2 GENERAL PROVISIONS**

### **4 Purpose**

The purpose of this Act is to—

- (a) reform, modernize and consolidate the law relating to Customs controls and enforcement; and
- (b) provide mechanism for revenue collection and administration; and
- (c) provide flexible, enabling and empowering legal framework that takes an integrated agency approach to border management; and
- (d) provide for trade and travel facilitation; and
- (e) assist legitimate traders and travellers and apply appropriate sanctions for those who violate the law; and
- (f) make Customs law clear and more easily understood; and
- (g) comply with international conventions; instruments; standards protocols or obligations; and
- (h) provide and establish a security framework to secure trade and enhance identification of risk travellers.

### **5 Act Binds the Government**

This Act binds the government.

### **6 Application of the Act in Certain Circumstances**

- (1) The Minister may make regulations prescribing the circumstances and conditions on which the powers conferred by Part 13 may be exercised in relation to—
  - (a) A member of the Armed Forces; or
  - (b) A craft under the control of the Armed Forces.
- (2) Subject to subsection (6), sections 42 to 50 do not apply to any member of the Armed Forces or any craft under the control of the Armed Forces during such time as that person or craft is required to respond to a public emergency.
- (3) For the purposes of this section, public emergency means—
  - (a) an emergency due to an actual or imminent attack on Tuvalu by an enemy, or to any actual or imminent warlike act whether directed against Tuvalu or not, if loss of life or injury or distress to persons or danger to the safety of the public is caused or threatened to be caused in Tuvalu or in any part of the Tuvalu; or

- (b) an actual event, or a high probable risk, involving serious disruption to the functioning of a community causing widespread human, material, economic or environmental loss and which it exceeds the ability of the affected community to cope using its own resources (as a “disaster” defined in section 3 of the National Disaster Management Act); or
  - (c) an actual or imminent event that endangers or threatens life, property or the environment and which requires a significant coordinated response (as a Public emergency referred to in section 34 and 35 of the Constitution and regulations made under the Emergencies and Threatened Emergencies (Special Powers) Act); or
  - (d) such other circumstances as are agreed after consultation by the Head of State with the advice of the Prime Minister.
- (4) Subject to subsection (6), sections 33 to 41 do not apply to any member of the Armed Forces or any craft under the control of the Armed Forces during such time as that person or craft is involved in public emergency described in subsection (3).
- (5) Where a craft under the control of the Armed Forces that is involved in, or is required to respond to, an emergency departs from or returns to Tuvalu, the Armed Forces must, within a period of 48 hours or such longer period as the Director may reasonably determine, notify the Customs that the craft has departed from or arrived in Tuvalu, as the case may be, and provide to Customs such details relating to goods and persons on the craft as the Director specifies.
- (6) The power of the Director under subsection (6) to determine a time or specify details required may be exercised generally or in respect of any particular case.
- (7) Nothing in this Act or in any regulations made under this Act may be interpreted as limiting the immunities of—
  - (a) any foreign warship or other foreign governmental ship operated for non-commercial purposes; or
  - (b) any foreign military aircraft; or
  - (c) members of the crew of any ship or aircraft to which paragraph (a) or paragraph (b) of this subsection applies.
- (8) Sections 33 to 43 do not apply to any craft under the direction of the National Disaster Committee responding to a disaster or state of emergency.

## PART 3 ADMINISTRATIONS

### 7 Customs Revenue and Border Protection Department

- (1) The Department of the Government formerly known as the Customs Department existing on the commencement of this Act is to be called Tuvalu

Customs Revenue and Border Protection Service under this Act and to continue in existence on and after the commencement of this Act.

- (2) The Tuvalu Customs Revenue and Border Protection Service is responsible for administering this Act.

## **8 Director of Customs**

- (1) Subject to subsection (2), the Public Service Commission is to appoint the Director of Customs in accordance with section 153 of the Constitution.
- (2) The person holding the office of the Director of Customs on the commencement of this Act continues as the Director, on and after the commencement of this Act, on the same terms and conditions of service.
- (3) The Director is responsible for the administration and efficient working of the Tuvalu Customs Revenue and Border Protection Service.
- (4) The Minister may give general or special directions to the Director in relation to the administration of this Act that is not inconsistent with the provisions of this Act.

## **9 Director's Powers**

Without limiting section 38(2), the Director may, in writing, approve any matter relating to the administration of this Act including the approval of documents, forms and fees.

## **10 Customs Officers and Others**

- (1) The Public Service Commission is to appoint persons to be Customs officers in accordance with section 153 of the Constitution.
- (2) A Customs officer must act under the direction of the Director.
- (3) Where a person holds a position as a Customs officer on the commencement of this Act, the person is to continue as a Customs Officer, on and after that commencement, on the same terms and conditions of service.
- (4) Any other person who holds a position in the Customs Department on the commencement of this Act is to continue in that position, on and after that commencement, on the same terms and conditions of service.

## **11 Authorised Persons**

- (1) The Director may authorize in writing a suitable qualified and trained person who is not a Customs Officer to perform or exercise any functional power that may be performed or exercised by a Customs Officer under this Act for whatever period of time the Director authorizes.

- (2) The authorization under subsection (1) must be in writing (including any writing in electronic form) and must specify—
  - (a) the function or power that may be performed or exercised by the authorized person; and
  - (b) the term of the authorization, which must be such period, not exceeding 3 years, as the Director determines.
- (3) The Director may from time to time renew any authorization given under this section for such further period, not exceeding 3 years, as the Director deems necessary.
- (4) A person who is authorized under this section must for the purposes of this Act be treated as a Customs officer when performing or exercising a function or power in accordance with that person's authorization.
- (5) The Director may revoke an authorization given under this section for incapacity, neglect of duty, or misconduct, or where the authorized person gives written notice to the Director that he or she wishes the authorization to be revoked, or in any other circumstance where, in the opinion of the Director, the authorization is no longer necessary.
- (6) Where a person ceases to be an authorized person under this section, that person must surrender to the Director all articles and documents received by him or her in relation to the authorization.

## **12 Delegation by Director**

- (1) The Director may, in writing, delegate to a Customs officer or any other officer any of the Directors powers or functions under the Act, other than this power of delegation.
- (2) A delegation may be in relation to a particular matter or a class of matters.
- (3) The Director may at any time revoke or vary a delegation.
- (4) A delegation does not prevent the Director from exercising the power or function that has been delegated.

## **13 Assistance by the Police**

- (1) A Customs officer may request a police officer to assist in the performance of a function or the exercise of a power.
- (2) A police officer must, if requested by a Customs officer, assist the Customs officer.

**14 Disclosure of Protected Information**

A Customs officer or an authorised person shall not disclose to any person any protected information except as authorised by section 15.

**15 Authority to Disclose Information**

- (1) The Director may in writing, authorize disclosure of information or a class of information for any permissible purpose to:
  - (a) a Department of the Government of Tuvalu; or
  - (b) an instrumentality or agency of a foreign country; or
  - (c) an international Organisation.
- (2) Any authorization approved under this section will specify the manner in which or the conditions under which the disclosure is to be made, and the Director is satisfied that:
  - (a) a department of the Government of Tuvalu; or
  - (b) an instrumentality or agency of a foreign government; or
  - (c) an international Organisation,

will not use or further disclose such information or class of information except for the purposes for which the disclosure is authorised.

**16 Permissible Purpose**

For the purposes of subsection 15(1) a permissible purpose includes -

- (a) the administration or enforcement of a law of Tuvalu or of another country that relates to:
  - (i) criminal law; or
  - (ii) a law imposing a pecuniary penalty or providing for the forfeiture of property;
- (b) the prevention of crime or the detection or analysis of criminal conduct, in respect of the law referred to in paragraph (a);
- (c) a purpose relating to the protection of public health, or prevention or elimination of risks to the life or safety of an individual or a group of individuals;
- (d) the protection of the revenue of the government of Tuvalu;
- (e) a purpose relating to the law of customs;
- (f) a purpose relating to immigration, quarantine or border control between Tuvalu and another country;
- (g) the administration or enforcement of laws with respect to commerce between Tuvalu and another country.



**17 Identity Cards**

- (1) The Director must issue an identity card or other means of identification to each Customs officer and any authorised person.
- (2) If a Customs officer or authorised person is performing a function or exercising a power for the purposes of any of the provisions under this Act, the officer must on demand by a person produce to the person:
  - (a) an identity card issued by Customs; or
  - (b) other means of identification establishing identity as a Customs officer.

**18 Customs Flag**

The Customs flag is the Tuvalu national flag with the addition of the words – Tuvalu Customs Revenue and Border Protection Service.

**19 Working Days and Hours**

- (1) The regulations may prescribe the days and hours of working of Customs.
- (2) A Customs officer must not perform work outside of the prescribed days and hours, including work in relation to:
  - (a) embarkation or disembarkation of passengers; or
  - (b) the discharge, landing, loading or receipt of cargo or other goods; unless he or she has the permission of the Director to do so.
- (3) Where, at the request in writing of a person requiring the service of the Customs, the Director may permit any work to be performed outside of the prescribed days or hours, and
- (4) The person making the request must pay to Customs the approved charges and costs of the attendance and services of Customs officers involved in the work.

## **PART 4 PORTS, AIRPORTS AND CUSTOMS CONTROLLED AREAS**

**20 Appointment of ports and airports**

- (1) The Minister in consultation with the Director may, by order in writing, for the purposes of this Act:
  - (a) appoint ports and specify the limits of those ports; or
  - (b) appoint airports and specify the limits of those airports.
- (2) An appointment is subject to such terms and conditions as are specified in the order.

- (3) The wharf on Funafuti and the warehouse standing adjacent to it situated to the north of the village of Funafuti in the area known as Tegie is taken to have been appointed as port under subsection 1.
- (4) The airport known as the Funafuti International Airport is deemed to have been appointed as airport under subsection (1).
- (5) Notwithstanding section 21, ports and airports appointed under this Act are considered Customs Controlled Areas for the purpose of this Act.

## **21 Customs Controlled Areas**

All areas used for;

- (a) manufacture of excisable goods; or
- (b) the deposit, keeping or securing of imported or excisable goods without payment of duty on the goods, pending the export of those goods or their entry for home use; or
- (c) the temporary holding of imported goods for the purposes of the examination of those goods by Customs; or
- (d) the disembarkation, embarkation or processing of persons arriving in or departing from Tuvalu; or
- (e) the processing of craft arriving in or departing from Tuvalu or the loading or unloading of goods onto or from such craft; or
- (f) any other approved purposes;

are to be licensed as Customs Controlled Areas.

## **22 Application for Licence**

A person may make an application in the approved form to the Director for a licence to declare an area as a Customs Controlled Area if that person is:

- (a) the owner of the area; or
- (b) the occupier of the area; or
- (c) is operating in the area.

## **23 Grant or Refusal of Licence**

- (1) On receipt of an application for a licence the Director may grant a licence for the area subject to such terms and conditions the Director thinks fit and upon payment of the annual licence fee.
- (2) The licence must:
  - (a) specify the area in respect of which it is granted; and
  - (b) specify the applicant as the licensee; and

- (c) specify the purpose or purposes described; and
  - (d) Specify the terms and conditions which the Director considers necessary.
- (3) Where, on an application for an area to be licensed as a Customs controlled area, the Director is of the opinion that—
  - (a) it is not in the public interest; and
  - (b) it is impracticable or unnecessary that the area should be licensed as a Customs controlled area,the Director may, in his or her discretion, and under such conditions as the Director determines, direct that the area need not be licensed as a Customs controlled area.
- (4) A direction given under subsection (3) may be given in respect of the whole or any specified part of the business carried on in the area, and must exempt the area from such provisions of this Act as may be specified in the direction.
- (5) The applicant must be advised by notice in writing of any decision or direction of the Director under this section.

## **24 Variation and Revocation of Conditions**

The Director may, by notice in writing, vary or revoke the terms, conditions, or restrictions to which the licence is subject or revoke those terms, conditions, or restrictions and impose new terms, conditions, or restrictions

## **25 Revocation or Suspension of Licence**

A licence issued under section 23 may, at any time, be revoked or suspended in writing by the Director if:

- (a) a term, condition or restriction specified in the licence has been contravened; or
- (b) the area in respect of which the licence was granted ceases to be used for any of the purposes approved; or
- (c) the licensee ceases to be the owner or occupier of, or operator in, the area in respect of which the licence was granted; or
- (d) the Director considers that the licensee is no longer a fit and proper person to hold a licence; or
- (e) the prescribed annual fee (if any) is due has not been paid.

## **26 Surrender of licence**

A licence for a customs controlled area may be surrendered at any time by the licensee by the giving of one month's notice in writing to the Director.

**27 Closing of Customs Controlled Area**

If any licence issued under section 23 is suspended, revoked or surrendered, duty becomes due and payable on all goods within that area that are or were subject to the control of Customs, immediately prior to the suspension, revocation or surrender, unless the permits the goods to be removed to another Customs controlled area or to be exported.

**28 Liabilities Not Affected by Ceasing To Act As Licensee**

The obligations and liabilities under this Act of a licensee in respect of anything done or omitted to be done by the licensee while licensed will not be affected by the fact that the licensee ceases to act as such nor by the fact that the licence is surrendered or suspended or revoked.

**29 Customs Facilities in Customs Controlled Areas**

- (1) The licensee of any Customs controlled area under this Act are to provide and maintain such operating areas, accommodation, facilities, buildings, equipment and storage as the Director determines are reasonably necessary and suitable for the carrying out of the functions and responsibilities of the Customs.
- (2) No charge is to be levied on the Customs in respect of an area operated in a Customs controlled area where that operating area is used for:
  - (a) the processing of the persons arriving or departing from Tuvalu;
  - (b) the processing of craft arriving or departing from Tuvalu;
  - (c) the processing of postal articles arriving or departing from Tuvalu.

**30 Storage charges**

In such circumstances and for such period of time as may be prescribed, no charges may be made by the licensee of a Customs controlled area for the reception or storage in that area of any imported goods.

## **PART 5 ARRIVAL AND DEPARTURE OF GOODS, PERSONS AND CRAFT**

**31 Goods Subject to the Control of Customs**

- (1) All Goods are subject to the control of the Customs in the following circumstances:
  - (a) if:

- (i) the goods have been imported, from the time of importation until the goods are lawfully removed from a customs controlled area; and
    - (ii) the goods are so removed under a conditional permit granted pursuant to section 59(1)(c), until such time as the Director is satisfied that the conditions of the permit have been met; or
  - (b) the goods are to be exported under drawback, from the time of the lodgment with Customs the claim for drawback until the exportation of the goods.
  - (c) the goods are to be exported otherwise than under drawback, from the time when goods are brought to a Customs controlled area for export;
  - (d) the goods are on board any craft described in subsection 35(1) and the craft is within Tuvalu;
  - (e) the goods are manufactured in a Customs controlled area, from the time of manufacture until the goods are lawfully removed for home consumption from a Customs controlled area, or the goods are exported to a point outside Tuvalu, whichever happens first; or
  - (f) the goods are owned by or in the possession of an internationally ticketed passenger, or an international crew member who is using air or sea travel for a domestic sector or a domestic passenger who is using air or sea travel for a domestic sector, the goods are brought into a Customs controlled area licensed for the disembarkation, embarkation or processing of persons arriving in or departing from Tuvalu.
- (2) Customs control extends to postal articles and to goods contained in postal articles, and including postal articles and the goods contained in postal articles conveyed in diplomatic bags, in the same manner as this provision applies to other goods.

### 32 Advice of Arrival, etc

- (1) The Master in charge of a craft that is en route to Tuvalu from a point outside Tuvalu must, unless otherwise approved by the Director:
- (a) give to the Customs, in such form and manner as may be approved by the Director advance notice of a minimum 3 hours for aircraft and a minimum 48 hours for vessels of any or all of the following matters:
    - (i) the impending arrival of the craft;
    - (ii) its voyage;
    - (iii) its passenger;
    - (iv) its cargo for discharge within Tuvalu;
    - (v) its cargo not intended for discharge within Tuvalu (if any);
    - (vi) the appointed port or airport at which the craft will arrive and

- (b) on arriving within Tuvalu proceed directly to a port or airport, unless directed elsewhere by a Customs officer, or an authorised person acting with the authority of the Director
- (2) The owner or operator of the craft referred to in subsection (1) or an agent of the owner or operator, may provide the information referred to in paragraph (a) of that subsection to the Customs on behalf of the person in charge of the craft.

### **33 Requirement to Answer Questions**

- (1) This section applies to:
  - (a) a craft that has arrived in Tuvalu from a point outside Tuvalu;
  - (b) a craft departing from Tuvalu for a point outside Tuvalu;
  - (c) a craft that is carrying international cargo or international crew or any international passenger;
  - (d) any other craft that a Customs officer has reasonable cause to suspect has been, or is about to be, involved in the commission of an offence against this Act or the importation or exportation of any dutiable, uncustomed, prohibited or forfeited goods.
- (2) The person in charge of, the owner of, any member of the crew of, and any passenger on a craft to which this section applies must:
  - (a) answer any questions asked by a Customs officer or authorised person under this Act relating to the craft and its voyage and any persons or goods that are or have been carried by the craft; and
  - (b) forthwith at the request of any Customs officer or authorised person produce any documents within that person's possession or control relating to any of those matters.

### **34 Bringing to board of Ship**

- (1) The master of a ship arriving in Tuvalu must, on being directed by a Customs officer or authorised person acting with the authority of the Director:
  - (a) stop and bring the ship for boarding; and
  - (b) ensure that the ship remains stopped until a Customs officer or authorized person or the Director directs that the ship may proceed.
- (2) The craft carrying the Customs officer or officers or other authorised persons is to identify itself as being a craft in the service of the State.
- (3) The master of the ship or the person in charge must by all reasonable means facilitate the boarding of the ship by Customs officers or authorised persons.
- (4) The master of a ship within Tuvalu must, if so directed by any Customs officer or authorised person acting with the authority of the Director, cause that ship to leave Tuvalu immediately.

**35 Craft to Arrive at Nominated Port or Airport**

- (1) The Master in charge of a craft that arrives within Tuvalu from a point outside Tuvalu, that is carrying persons or goods subject to the control of Customs must ensure that the craft lands, anchors or otherwise arrives at an appointed port or airport.
- (2) On arrival at the appointed port or airport, or Customs controlled area within that port or airport, and until an inward report in accordance with section 36 has been made, no person is to leave or board the craft unless authorised to do so by a Customs officer, with the exception of:
  - (a) port pilot; or
  - (b) the medical Officer for the port or airport; or
  - (c) any other person authorised by the Director.

**36 Craft Arriving at Place other than Nominated Port or Airport**

- (1) Section 35 does not apply to a craft that is required or compelled to berth, land, anchor, or otherwise arrive at a place other than the appointed port or airport nominated in accordance with section 35(1) if the arrival:
  - (a) is required by any statutory or other requirement relating to navigation; or
  - (b) is compelled by accident, stress of weather, or other necessity; or
  - (c) is authorised by the Director.
- (2) The master of the craft ;
  - (a) must immediately report to a Customs officer or Police Officer ; and
  - (b) must not, without the consent of a Customs officer or Police Officer permit any goods carried in the craft to be unloaded from it or any of the crew or passengers to depart from its vicinity; and
  - (c) must comply with any directions given by a Customs officer or Police Officer in respect of any goods, crew or passengers carried in the craft.
- (3) No member of the crew and no passenger on the craft may without the consent of a Customs officer or Police Officer:
  - (a) unload goods from the craft; or
  - (b) depart from the vicinity of the craft,and all such persons must comply with any directions given by a Customs officer or Police officer..
- (4) If a craft to which this section applies is directed by a Customs officer to arrive at a place other than the appointed port or airport, no person is to depart from or board the craft unless authorised to do so by a Customs officer.

**37 Inward Report**

- (1) This section applies to a craft that arrives within Tuvalu on a journey from a point outside Tuvalu that is carrying persons or goods subject to the control of Customs.
- (2) On the arrival at a port or airport to which this section applies, the master or the owner of the craft must:
  - (a) deliver to Customs the certificate of clearance granted to the master at the port or place outside Tuvalu at the last place of departure, immediately prior to the craft's arrival in Tuvalu.
  - (b) deliver to the Customs within 12 hours an inward report and containing such particulars verified by declaration as may be approved and accompanied by such supporting documents as the Director may require; and
  - (c) comply with any Customs direction as to the movement of the craft within the Customs place, and as to the unloading of goods or the disembarkation of crew or passengers from the craft.

**38 Persons Arriving in Tuvalu to Report to Customs Officer or Police Station**

- (1) Unless otherwise required under any provision of this Act, every person arriving in Tuvalu must, on their arrival, report to a Customs officer or Police station.
- (2) A person who reports to a Customs officer or an authorised person in accordance with subsection (1) is to remain at the place where the person reported for such time as the Customs may require for the purposes of enabling any Customs officer to exercise, in relation to that person, any power under this Act.
- (3) For the purpose of this section, the Director may appoint the Pule Fenua of Niulakita to perform the functions of a Customs officer under this section.

**39 Disembarkation**

- (1) A person who is on board a craft that has arrived in Tuvalu must comply with any Customs direction concerning disembarkation.
- (2) Every person who has disembarked from a craft to which this section applies must, unless otherwise directed by the Customs:
  - (a) go to a Customs controlled area; and
  - (b) remain there for the purposes of enabling any Customs officer to exercise, in relation to that person, any power under this Act.



**40 Baggage to be presented**

- (1) Every person who disembarks from a craft that has arrived in Tuvalu must:
  - (a) make their accompanying baggage available for examination by a Customs officer; and
  - (b) comply with any Customs direction relating to the movement of the baggage within the Customs port, airport, or Customs controlled area or from any craft to a Customs controlled area.
- (2) Every person who is moving or handling the baggage subject to Customs control must comply with any Customs direction relating to the movement of the baggage.

**41 Persons Departing from Tuvalu**

Unless otherwise authorised by the Customs, a person must not depart from Tuvalu unless he or she departs from an appointed port or airport

**42 Embarkation**

Every person preparing to board a craft for departure from Tuvalu must comply with any Customs direction given to that person concerning embarkation.

**43 Outgoing Baggage to be presented**

Every person who arrives at a port or airport or a Customs controlled area for embarkation on to a craft that has, as its destination, a point outside Tuvalu must:

- (a) make his or her accompanying baggage available for examination by a Customs officer; and
- (b) comply with any Customs direction relating to the movement of the baggage within the Customs port, airport or Customs controlled area or from a Customs controlled area to any craft.

**44 Use of Electronic Communication Devices Prohibited in Certain Places**

- (1) This section applies to any Customs controlled area that is used by persons arriving in or departing from Tuvalu.
- (2) A Customs officer may erect a sign prohibiting in a place or area to which this section applies the use of any electronic communication device identified on the sign (by words, or images or both).
- (3) If a sign has been erected in a place under subsection (2), a Customs officer may require a person in that place not to use, or to stop using, an electronic communication device identified on the sign.

- (4) Every person must comply with a requirement by a Customs officer under subsection (3).
- (5) In this section electronic communication device includes an electronic communication device (except for a device that is being used to assist with a disability) that is capable of any or all of the following actions:
  - (a) transmitting sound;
  - (b) computing information;
  - (c) functioning as a telephone;
  - (d) communicating in any other way using any technology (including telecommunication, radio communication and broadcasting technology).

#### **45 Departure of Craft and Clearance of Craft**

- (1) No master in charge of a craft that has, as its destination, a point outside Tuvalu is to cause that craft to depart from any port or airport unless the master has received a certificate of clearance in the approved form.
- (2) No master in charge of a craft that has arrived in Tuvalu is to cause that craft to depart from the place in Tuvalu that it first arrived at, or from any subsequent place of call within Tuvalu, without the permission of Customs and subject to the production to Customs of any documents that the Director may require and to any conditions imposed by the Director.

#### **46 Certificate of Clearance**

Before any certificate of clearance is granted to the master of any departing craft the master must:

- (a) deliver to the Customs an outward report, verified by declaration, as approved, and accompanied by such supporting documents as the Director may require; and
- (b) answer any questions asked by a Customs officer relating to the craft and its passengers, crew, cargo, stores and its intended voyage or journey; and
- (c) produce such other documents as may be required by a Customs officer relating to the craft and its passengers crew, cargo, stores and its intended voyage of journey; and
- (d) comply with all requirements in this or any other Act concerning the craft and its passengers, crew, cargo, stores, and its intended voyage or journey; and
- (e) pay or produce evidence of payment of all duties, taxes or other dues and fees that are payable in respect of the craft.

**47 Boarding of Outward craft**

The master of a craft departing from a port or airport, whether or not the immediate destination of the craft is a point outside Tuvalu, is to, if required to do so, facilitate boarding by Customs Officers.

**48 Production of Certificate of Clearance**

The master to whom a certificate of clearance has been granted must, on demand by a Customs Officer, produce the certificate of clearance for examination by the officer and answer any question that the Officer may ask concerning the craft and its passengers, crew, cargo, stores and its intended voyage or journey.

**49 Departure to be from Port or Airport only**

- (1) Except with the prior permission of the Director no master of any craft is to:
  - (a) cause that craft to depart for a point outside Tuvalu from a place inside Tuvalu other than an appointed port or airport; or
  - (b) having obtained a certificate of clearance from a port or airport in Tuvalu to depart for any point outside Tuvalu, cause that craft:
    - (i) to not depart immediately within 24 hours from that port or airport;
    - (ii) to go to any other place in Tuvalu.
- (2) Subsection (1) does not apply to a craft that is compelled by accident, stress of weather, or other necessity to return to a place in Tuvalu, and in such case the provisions of section 36 apply subject to such modification as may be necessary.

## **PART 6 ENTRY AND ACCOUNTING FOR GOODS**

**50 Entry of Imported Goods**

- (1) Subject to any regulations made under section 51, goods that are imported or that are to be imported must be entered by the importer—
  - (a) in such form and manner (including by electronic means into a computer or other device) as may be prescribed; and
  - (b) within such time as may be prescribed or such further time as the Director may allow.
- (2) Where any entry required by this section relates to goods that are dutiable in accordance with the volume of alcohol present in the goods, the person making the entry must specify the volume of alcohol in the prescribed manner.

- (3) The owner of imported goods or goods that are to be imported must complete a Customs declaration in the approved form at the first port or airport of unloading within such time as may be prescribed by regulation of the arrival of the vessel or aircraft.
- (4) A person entering goods under this section must;
  - (a) respond to questions asked by a Customs officer with respect to the goods;
  - (b) present the goods upon request by a Customs officer;
  - (c) remove any covering from the goods, unload any conveyance or open any part of it, or open and unpack any package that the officer wishes to examine.
- (5) If a default is made in the entry of goods under this section or the goods not claim on such period duty becomes due and payable on the goods, and the goods may be sold or disposed of by the Director.
- (6) If a declaration cannot be registered by Customs under this section due to errors in the entry or any other grounds deemed valid by Customs to ensure compliance with customs laws, Customs may cancel the registration of the entry and such cancellation shall —
  - (a) be in writing; and
  - (b) state the reasons for the cancellation.<sup>2</sup>
- (7) The person entering goods under this section may apply to Customs to withdraw the entry made under this section and apply for another customs procedure, provided that the request to do so is made to the Customs before the goods have been released and that the reasons are deemed valid by Customs.<sup>3</sup>

#### **50A Provisional entries<sup>4</sup>**

- (1) The importer or importer's agent shall make a provisional entry in the prescribed form if he —
  - (a) cannot immediately supply the full particulars for making an entry; and
  - (b) makes (importer or importer's agent) a declaration to that effect before the Director or other Customs officer.
- (2) Customs may upon receipt of a declaration under subsection (1), authorise the lodgement of a provisional entry upon payment of estimated duty together with such amounts as Customs may require as security.
- (3) The importer of the goods included in a provisional entry:
  - (a) shall make a complete entry within 5 days after the passing of that entry or within any further time allowed by the Director; and

- (b) if the importer makes default in so doing, the goods may be dealt with by the Director as if no provisional entry had been made.
- (4) A complete entry of the goods included in a provisional entry shall be made in the same manner as if the provisional entry had not been made.

#### **50B Delivery of goods on provisional entry<sup>5</sup>**

The Director may, if the Director thinks fit, deliver goods from the control of the Customs for home consumption pursuant to a provisional entry but only on receiving any security as he thinks sufficient to cover the full amount of duty.

#### **50C Production of documents supporting the goods declaration<sup>6</sup>**

- (1) On the first entry (other than an entry for removal of any goods,) the importer or the importer's agent shall —
  - (a) produce to the Director or other Customs officer in original or electronic form —
    - (i) the invoice for the goods; and
    - (ii) transport documents; and
  - (b) make, and deliver to the Director or other Customs officer, a declaration in the prescribed form, setting out the true value for duty purposes of the goods and any other prescribed particulars.
- (2) The Director may direct, in relation to any class or classes of goods or transactions, that a Customs officer, shall retain the invoice so produced, or a legible copy made by carbon, or other duplicating process by or on behalf of the seller or Consignor of the goods.
- (3) If any failure to produce the invoice or transport documents as required by this section is accounted for to the satisfaction of the Director or Customs officer, proof of its contents by a copy or otherwise may be received instead of its production.”

### **51 Regulations Relating to Entry of Imported Goods**

Without limiting the power to make regulations under section 268, the Minister in consultation with the Director may from time to time, make regulations—

- (a) prescribing when an entry is deemed to have been made for the purposes of this Act; and
- (b) prescribing the conditions under which an entry is deemed to have been passed for the purposes of this Act; and
- (c) exempting specified goods or goods of a specified class from the requirements of section 50(1), subject to such conditions as may be prescribed; and

- (d) prescribing goods or classes of goods that are deemed to have been entered under section 50(1) and the circumstances in which and the conditions subject to which those goods are to be so deemed.

## **52 Fees and charges relating to importation of goods**

- (1) Without limiting the power to make regulations under section 268, the Minister in consultation with the Director may make regulations under paragraph 268(1)(a) prescribing fees or charges, or both, that are payable to Customs to meet or assist in meeting costs and expenses incurred by Customs in exercising functions or powers, or performing duties, or providing services, under this Act that relate to the importation of goods.
- (2) The provisions of Part 9 that relate to the assessment and recovery of duty apply to fees and charges prescribed by regulations of the kind described in subsection (1), as if those fees and charges were a duty.
- (3) Before making regulations, the Minister must be satisfied that the persons that the Minister considers are representative of interests likely to be substantially affected by the proposed regulations have been consulted about the proposed regulations to the extent that is reasonably practicable having regard to the circumstances of the case.
- (4) For the purpose of subsection (3), the Minister may take into account any relevant consultation undertaken by or on behalf of the Minister before this section comes into force.

## **53 Imported Goods to be dealt with According to Entry**

Goods in respect of which entry has been made and passed must immediately be dealt with in accordance with the entry and with the provisions of this Act in respect of the goods so entered.

## **54 Cancellation and Amendments of Entries**

- (1) The Director may cancel or amend an entry for the purpose of preventing duplication of entries or for the purpose of correcting any entry or any part of an entry already accrued or incurred in respect of that entry by the person making it.
- (2) No cancellation or amendment of an entry by the Director in accordance with subsection (1) affects any penalty, liability for seizure, or criminal liability already accrued or incurred in respect of that entry by the person making it.
- (3) Subject to the provisions of this Act, the Director may make a refund of duty in accordance with any such cancellation or amendment of an entry.

**55 Unloading Goods**

A person must not unload goods that are subject to the control of the Customs from a craft, unless:

- (a) under a permission by the Director to do so; or
- (b) under an authorization by the Director on conditions as the Director determines; or
- (c) the goods in the craft are threatened by collision, fire, the stress of weather or similar circumstances; or
- (d) any other circumstances as may be approved.

**56 Craft Imported Otherwise than as Cargo**

- (1) Despite anything in this Act, such entries must be made in respect of a craft imported into Tuvalu otherwise than as cargo as the Director may from time to time determine in relation to any craft or class of craft by public notice.
- (2) For the purpose of making entries in respect of a craft imported into Tuvalu otherwise than as cargo, the craft is deemed to have been imported as cargo and unloaded as such on its arrival.

**57 Samples or Illustrations<sup>7</sup>**

- (1) The importer of goods shall provide free-of-charge, any samples, illustrations, drawings, documents or plans relating to the goods as may be required by a Customs officer for the purposes of analysis, classification or record.
- (2) The Director, on receipt of a request from an importer in the approved form, may —
  - (a) allow an importer free of duty or subject to conditions to —
    - (i) inspect the goods;
    - (ii) take samples; or
    - (iii) take copies, of illustrations or of drawings; or
  - (b) refuse the request if the goods are restricted or prohibited imports.
- (3) Samples taken under subsection (2)(a) shall not require a separate entry under section 50.

**58 Transportation of Imported Goods**

Subject to the Director's permission, goods that are under the control of the Customs must not be placed in a craft, vehicle, or any other conveyance for transportation within Tuvalu unless entry has been made or permission has been granted vide to paragraph 59(1)(c).

**59 Removal of Goods from Customs Controlled Area**

- (1) Goods that are subject to the control of the Customs must not be delivered or removed from a Customs controlled area, unless:
  - (a) the Act provides for such delivery or removal; or
  - (b) the Customs officer permits, after entry has been made and passed
  - (c) the Director permits on conditions as may be determined; or
  - (d) by the performance of the Customs officer's duty under this Act.
- (2) The Director may, by notice in writing, vary or revoke any conditions to paragraph (1)(c), or may revoke those conditions and impose new conditions or may revoke the permit completely.
- (3) Despite paragraph (1)(b), while goods remain under the control of the Customs, the Director may revoke any notice of delivery given in respect of those goods.

**60 Temporary Removal of Goods from Customs Controlled Area.**

- (1) The Director may permit goods to be temporarily removed from a customs controlled area without payment of duty.
- (2) Goods that are temporarily removed remain under the control of the Customs.

**61 Entry of Goods for Export**

- (1) The owner of exported goods that are exported or that are to be exported must complete a Customs Export entry in the approved form prescribed by regulation at least 4 hours prior to the departure of the vessel or aircraft at the loading port or airport.
- (2) A person who makes an entry under this section must:
  - (a) answer any question relevant to matters arising under this Act that is asked by a Customs officer; and
  - (b) at the request of a Customs officer, the person making the entry must present the goods to the officer, remove any covering from the goods, unload any conveyance or open any part of it, or open and unpack any package that the officer wishes to examine.
- (3) In the case of goods to be exported under drawback, the making of such entry is deemed to be the making of claim for drawback.
- (4) Unless the Director determines, there is no right to drawback exists in goods placed on a craft before entry has been made and passed.
- (5) Subject to the Director's permission, goods are not to be loaded for export until entry has been made in the approved form and manner.



- (6) Despite an entry being passed in accordance with subsection (5), the Director may revoke the good's permission to export if the Director has reasonable cause to suspect the goods endanger, or threaten to endanger,—
- (a) border security; or
  - (b) the Tuvalu trade interests or international obligations; or
  - (c) the life, health, or safety of a person or group of persons; or
  - (d) the safety of the craft that will carry the goods, or of other goods to be carried on that craft.

## 62 Regulations relating to entry of goods for export

Without limiting the power to make regulations under section 268, the Minister in consultation with the Director, may from time to time make regulations—

- (a) exempting specified goods or goods of a specified class from the requirements of section 103(1), subject to such conditions as may be prescribed; and
- (b) prescribing goods or classes of goods that are to be deemed to have been entered under section 103(1) and the circumstances in which and the conditions subject to which those goods are to be so deemed.

## 63 Tuvalu Certificate of Origin for Goods for Export to Party to Free Trade Agreement

- (1) A certification body authorized by the Director under section 64 in relation to a party to a free trade agreement may issue a Tuvalu certificate of origin in respect of goods for export to that party.
- (2) A Tuvalu certificate of origin, in respect of goods for export to a party to a free trade agreement, is a document issued by a certification body that—
  - (a) identifies the goods to which it relates; and
  - (b) certifies that those goods originate in Tuvalu.
- (3) Goods originate in Tuvalu if, for the purposes of the relevant free trade agreement, the goods satisfy the requirements of the rules of origin prescribed for that agreement.
- (4) For the purposes of this section,—

“**PICTA**” means the Agreement establishing the Pacific Island Countries Trade Agreement done at Nauru on 18 August 2001;

“**free trade**” agreement means:

  - (a) the PICTA; or
  - (b) a Free Trade agreement which Tuvalu is a party to it.

**64 Bodies Authorized to Issue the Tuvalu Certificate of Origin**

- (1) The Director may designate a body as a certification body if the Director is satisfied that the body meets the prescribed criteria (if any).
- (2) A designation may be subject to any prescribed terms and conditions and any additional terms and conditions the Director determines.

**65 Regulations relating to the Tuvalu certificate of origin and certification bodies**

Without limiting the power to make regulations conferred by section 268, regulations may be made for any of the following purposes:

- (a) prescribing forms for the purposes of sections 63 and 64; and
- (b) prescribing the manner in which applications for designation as a certification body must be made; and
- (c) prescribing criteria for certification bodies; and
- (d) prescribing terms and conditions subject to which designations as a certification body may be made; and
- (e) prescribing fees.

**66 Goods for Export to be Dealt with According to Entry**

- (1) Any goods that have been entered for export, the owner must export the goods immediately to a point outside Tuvalu in accordance with the entry and with provisions of this Act.
- (2) If the goods that are entered for export are not exported according to the entry requirements, the owner must immediately give notice to the Customs of the failure to export and the reasons for the failure after which the Director:
  - (a) may cancel or amend the entry; and
  - (b) where applicable may allow the goods to be released from the control of the Customs.
- (3) Despite subsection (1) and subject to a Customs controlled area licence conditions, an export entry may be made to goods that are removed from that area for sales made for delivery to persons on their arrival in Tuvalu from a point outside Tuvalu.

**67 Goods for Export not to be Landed**

Subject to the Director's permission, goods that are loaded for export must not be landed in any points in Tuvalu.

**68 Time of Exportation**

For the purposes of this Act, the time of exportation is the time when the exporting craft leaves the last Customs place at which that craft calls immediately before proceeding to a point outside Tuvalu.

**69 Customs Seal may be Applied to Goods for Export**

- (1) The Director may, by notice in writing specifying the date on and after which the appointment takes effect, appoint a Customs officer or other person to apply Customs seals to packages of goods to be exported.
- (2) The notice must specify the circumstances in which the officer or other person may apply a Customs seal to a package of goods, and must prohibit him or her from applying a Customs seal in all other circumstances.
- (3) Without limiting the generality of subsection (2), the notice must specify that the officer or other person may apply a Customs seal to a package of goods to which no Customs seal has earlier been applied only if—
  - (a) the exporter concerned (or his or her agent or employee) consents to the seal being applied; or
  - (b) the seal is applied incidental to, and immediately after, the exercise by any person of a power under this Act to examine or search for goods of any kind.
- (4) The notice must also specify the circumstances in which the Customs officer or other person may alter, remove, damage, dispose of, or otherwise interfere with a Customs seal applied to a package of goods, and must prohibit him or her from interfering in any way with a Customs seal of that kind in all other circumstances.
- (5) A notice of appointment under this section may be amended or revoked by the Director by a further notice in writing given to the Customs officer or other person concerned and specifying the date on or after which the amendment or revocation takes effect.

**70 Warning Notices for Packages to Which Seal Applied**

A notice of appointment under section 69 must also require Customs officer or other person concerned, on applying a Customs seal to a package of goods that are not goods to be exported under a Customs-approved secure export scheme, to ensure that there is attached to the package a warning notice that explains in terms approved by the Director—

- (a) that the goods in the package are, from the time when a Customs seal is first applied to the package until the exportation of the goods to a point outside the Tuvalu, goods subject to the control of Customs:

- (b) that the powers of detention and search under section 138 are available in respect of a vehicle in Tuvalu if there are to be in or on the vehicle goods that are, or suspected to be—
  - (i) subject to the control of Customs; and
  - (ii) in a package to which a Customs seal has been applied:
- (c) that a Customs officer may, under section 140, question 1 or more of the following persons about any cargo destined to be exported from the Tuvalu —
  - (i) a person who is the owner or operator of a vehicle that a Customs officer has reasonable cause to suspect has in or on it or has within the previous 72 hours had in it or on it, goods subject to the control of Customs and in a package to which a Customs seal has been applied:
  - (ii) a person who is the owner or occupier of premises that a Customs officer has reasonable cause to suspect have in or on them, or have within the previous 72 hours had in or on them, goods subject to the control of Customs and in a package to which a Customs seal has been applied:
  - (iii) a person employed by a person described in subparagraph (i) or (ii):
- (d) that the powers in section 153 (which include powers of examination) are available in respect of goods that are, or are suspected to be—
  - (i) subject to the control of Customs; and
  - (ii) in a package to which a Customs seal has been applied.

## **71 The Director May Approve Secure Export Scheme**

- (1) On an application in writing by a person for the purpose involved in the carriage, handling, transportation, or exportation of goods for export (in this section and sections 74 and 77 called an exporter), the Director may approve a secure exports scheme, and so make it a Customs approved secure exports scheme.
- (2) The Director must ensure that the exporter concerned is notified promptly and in writing of any decision to give or to decline an approval under this section.
- (3) An approval under this section must be in writing, may be given subject to any conditions the Director specifies in the approval, and takes effect either on the day after the date on which it is given or on any later date specified in the approval.
- (4) An approval under this section may be revoked by the Director by notice in writing given to the exporter concerned and specifying both any conditions to which the revocation is subject and the date on or after which the revocation takes effect.

- (5) Subsections (1) to (4) apply (with all necessary modifications) to any amendment to a secure exports scheme.
- (6) On an application for the purpose by the exporter concerned, the Director must revoke an approval under this section of all of a secure exports scheme. However, the revocation must be subject to the condition that goods remain subject to the scheme until exported if, at the time the revocation takes effect the goods have been secured in a Customs-approved secure package under the scheme but not yet exported.

## **72 Purpose of Secure Export Scheme**

The purpose of a secure exports scheme is to help to ensure that goods to be exported under the scheme are—

- (a) packaged securely and with no other goods; and
- (b) conveyed securely and without interference to the place of shipment and shipped.

## **73 Matters to be Specified in Secure Export Scheme**

- (1) A secure exports scheme must specify how the goods to be exported under the scheme are to be packed, including—
  - (a) the secure package to be used;
  - (b) the seal or markings to be applied to the package, as soon as it is secured—
    - (i) to show that, when it was secured, the package contained only the goods, and was secured in an approved way; and
    - (ii) to help to identify tampering or interference with the package after it is secured.
- (2) A secure exports scheme must also specify any conditions required by the Director as to—
  - (a) the persons who are to pack the goods, and the security checks to be applied to those persons;
  - (b) the conditions in which packing is to occur (for example, the area or areas in which parking is to occur, and the controls on the entry and exit of persons and goods to that area or those areas);
  - (c) any other requirements relating to how the goods are to be packed.
- (3) A secure exports must also specify how, on the completion of the packing of the goods, the goods are to be conveyed to the place of shipment and shipped, including any conditions required by the Director as to—
  - (a) the persons who are to convey the goods, and the security checks to be applied to those persons;

- (b) the manner in which the goods to be conveyed:
- (c) any place or places of security en route to the place of shipment in which the goods are to be stored in the course of being conveyed to the place of shipment and shipped.

#### **74 Matters to be acknowledged in Secure Exports Scheme**

A secure exports scheme must include express acknowledgement by the exporter concerned—

- (a) that the goods to be exported under the scheme are, from the time when they are first secured in a Customs-approved secure package until the exportation of the goods to a point outside Tuvalu, goods subject to the control of Customs:
- (b) that the powers of detention and search in section 138 are available in respect of a vehicle in Tuvalu if there are suspected to be in or on the vehicle goods that are, or are suspected to be—
  - (i) subject to the control of Customs; and
  - (ii) in a Customs approved secure package:
- (c) that a Customs officer may, under section 143 question 1 or more of the following persons about any cargo destined to be exported from Tuvalu —
  - (i) a person who is the owner or operator of a vehicle that a Customs officer has reasonable cause to suspect has in or on it, has within the previous 72 hours had in or on it, goods subject to the control of Customs and in a Customs- approved secure package:
  - (ii) a person who is the owner or occupier of premises that a Customs officer has reasonable cause to suspect have in or on them, goods subject to the control of Customs and in a Customs-approved secure package:
  - (iii) a person employed by a person described in subparagraph (i) or (ii):
- (c) that the powers in 153 (which include powers of examination) are available in respect of goods that are, or are suspected to be—
  - (i) subject to the control of Customs; and
  - (ii) in a Customs-approved secure package.

#### **75 Goods Exported under Customs Approved Secure Exports Scheme may be Exported under Drawback**

- (1) Goods to be exported under a Customs-approved secure exports scheme may be exported under drawback.

- (2) If goods to be exported under a Customs-approved secure exports scheme are exported under drawback, then all conditions (if any) as may be prescribed for allowing drawback of duty must be satisfied, even though satisfying those conditions may involve conveying or handling or storing the goods in a way not specified in the scheme.

## **76 Use of Customs Seals in relation to Goods to be exported under Customs Approved Secure Schemes**

- (1) Nothing in this Act prevents a Customs seal from being used in relation to a Customs-approved secure package after an approved seal or markings of the kind referred to in section 73(1)(b) have been applied to the package in accordance with the relevant Customs-approved secure exports scheme.
- (2) If Goods to be exported under a Customs-approved secure exports scheme must not be regarded as no longer to be exported under the scheme just because 1 or more Customs seals have been applied by Customs to the approved secure package concerned.

## **77 Exporter may be involved in Exportation of Goods outside Customs Approved Secure Exports Scheme**

- (1) This section applies to an exporter involved in the carriage, handling, transportation or exportation of goods for export under 1 or more Customs-approved secure exports scheme.
- (2) Nothing in this Act prevents the exporter from being involved in the carrying, handling, transportation or exportation of goods for export otherwise than under that scheme or those schemes.

# **PART 7 PROHIBITED IMPORTS AND PROHIBITED EXPORTS**

## **78 Prohibited imports**

- (1) It is unlawful to import into Tuvalu —
  - (a) any of the goods specified in Schedule 2; or
  - (b) all publications that are objectionable within the meaning of this Act in the hands of all persons and for all purposes; and all other indecent or obscene articles;
  - (c) goods or electronic publications the importation of which is prohibited by a regulation made under subsection (3) or any other written law of Tuvalu where the importation of such goods is prohibited.

- (2) Electronic publications the importation of which is prohibited by subsection (1) must be treated as if they were goods for the purposes of this Act.
- (3) The Minister may from time to time make regulations to prohibit the importation into Tuvalu of—
  - (a) any specified goods or electronic publications; or
  - (b) goods or electronic publications of a specified class or classes,—if in the opinion of the Minister after consulting the Director, the prohibition is necessary in the public interest.
- (4) A prohibition imposed under this section—
  - (a) may be general; or
  - (b) may be limited to the importation of goods or electronic publications from a specified place or by or from a specified person or class of persons; or
  - (c) may, whether general or limited, be absolute or conditional.
- (5) A conditional prohibition may allow the importation of goods or electronic publications—
  - (a) under the authority of a licence or a permit (whether granted before or after the importation of the goods), or a consent, to be granted by the Director or by any other person named in the regulations, on or subject to such terms or conditions (if any) not inconsistent with the provisions of the prohibition, as may be imposed by the Director or other person granting the licence, permit, or consent; or
  - (b) on or subject to any other prescribed conditions.
- (6) No goods otherwise dutiable are exempt from duty because their importation is unlawful.

## **79 Prohibited Exports**

- (1) It is unlawful to export from Tuvalu —
  - (a) all publications that are objectionable within the meaning of this Act in the hands of all persons and for all purposes; and
  - (b) goods or electronic publications the exportation of which is prohibited by a regulation made under subsection (2) or any other written law of the Tuvalu where the exportation of such goods is prohibited.
- (2) Electronic publications the exportation of which is prohibited by subsection (1) must be treated as if they were goods for the purposes of this Act.
- (3) The Minister may from time to time, make regulations to prohibit the exportation from Tuvalu of—
  - (a) any specified goods or electronic publications; or



- (b) goods or electronic publications of a specified class or classes,—  
if in the opinion of the Minister after consulting the Director, the prohibition is necessary in the public interest.
- (4) A prohibition imposed under this section—
  - (a) may be general; or
  - (b) may be limited to the export of goods or electronic publications to a specified place or by or to a specified person or class of persons; or
  - (c) may, whether general or limited, be absolute or conditional.
- (5) A conditional prohibition may allow the exportation of goods or electronic publications—
  - (a) under the authority of a licence, permit or consent, to be granted by the Director or by any other person named in the regulations, on or subject to such terms or conditions (if any) not inconsistent with the provisions of the prohibition, as may be imposed by the Director or other person granting the licence, permit or consent; or
  - (b) on or subject to any other prescribed conditions.
- (6) No prohibition under this section applies to goods that are already loaded into the exporting craft at the time when the prohibition comes into force.
- (7) Unless otherwise specified in the regulations, a regulation under this section prohibiting the exportation of goods extends to and applies to the shipment of the goods for use as stores by a craft.

## **80 Production of licence or permit for goods**

Subject to the provisions of this Act or Regulations made under this Act or any other Acts of Parliament, the importation or exportation of goods is prohibited unless made under the authority of a licence or a permit, the Director may refuse to pass an entry for those goods, or for goods of that class or kind until the Director is satisfied that a licence has been issued.

# **PART 8 DUTIES**

## **81 Customs and Excise Duties**

- (1) The Minister may by Order —
  - (a) impose import or export customs duties and excise duties upon any goods whatsoever which may be imported into or exported from Tuvalu and revoke, suspend, reduce, increase or alter any such duties;
  - (b) impose excise duties upon any goods manufactured or made in Tuvalu and revoke, suspend, reduce, increase or alter such duties:

Provided that such duties and exemptions contained in Schedule 1 shall continue in force until revoked, suspended, reduced, increased or altered in a manner provided in this Act.

## **82 Valuation of goods for the purposes of applying rates of duty<sup>8</sup>**

- (1) The value of goods in respect of which ad valorem duty is payable shall be ascertained -
  - (a) in the case of imported goods - in accordance with the Rules of valuation of Imported goods in accordance with Schedule 1A; and
  - (b) in the case of exported goods - shall be taken to be the price which a purchaser would be prepared to give for the goods on board any aircraft or ship in any port of entry into Tuvalu prior to the exportation of such goods or if such value is not easily ascertainable, the Director may ascertain such value.
- (2) Every importer or agent of an importer who makes an assessment under subsection (1) must—
  - (a) keep the documents, records, and information in respect of that entry in such manner and for such period as is required by section 97 and any regulations made for the purposes of that section; and
  - (b) when required by Customs, produce those documents, records, and information for the purpose of establishing the accuracy of the assessment.

## **83 Amendment of Valuation Assessment**

- (1) If the Director is satisfied that a determination made under subsection (1) in respect of goods is:
  - (a) inconsistent with Schedule 1A – Tuvalu Customs Tariff Imported Goods; or
  - (b) for any other reason, incorrect, the Director may amend that assessment, and that amended assessment is the Customs value.<sup>9</sup>
- (2) Notice in writing must be given to the importer of an amended assessment made pursuant to paragraph (1)(b). Subsection (1) applies whether or not the goods have been released from the control of the Customs or whether or not duty has been paid.

**83A Classification of Goods for the purpose of determining rates of duty and excise taxes<sup>10</sup>**

- (1) For the purposes of ascertaining the duties and taxes applicable to imported or exported goods, such goods shall be classified using the Harmonised System of classification and its related Explanatory Notes as maintained by the WCO.
- (2) The rate of duty applicable to goods to be imported, goods imported or goods to be exported shall be the rate corresponding to the classification of the good in the Customs Tariff Schedule.
- (3) An importer, licensee or owner of goods required to make an entry for goods under this Act shall correctly classify imported goods in accordance with subsection (1).

**83B Access to the Customs Tariff Schedule<sup>11</sup>**

- (1) The Director must —
  - (a) ensure that copies of the documents referred to in subsection (2) are published on an Internet site that is, so far as practicable, publicly available free of charge; and
  - (b) ensure that copies of the documents referred to in subsection (2) are available for purchase at a reasonable price at the Government Printer.
- (2) For the purposes of subsection (1), the documents are Customs Tariff Schedule as from time to time amended, modified, or revoked and replaced on or after every 5 years.
- (3) Every version of the Customs Tariff Schedule referred to in subsection (2) and published or made available under subsection (1) must<sup>o</sup>—
  - (a) indicate that it is the Tariff as in force at the beginning of a stated date; and
  - (b) list all Acts and Orders in Council that are enacted on or after and before the stated date and that amend, modify, revoke, or revoke and replace some or all of the Tariff.
- (4) Nothing in section 81 or this section prevents the Director from ensuring that other information is published or made available with the Tariff, so long as in doing so the Director ensures that it is indicated clearly that the other information does not form part of, or have legal effect as part of, the Tariff.

**83C Guidance to periodical amendments of the Harmonised System<sup>12</sup>**

- (1) The Minister on the advice of the Director may by Order amend the Harmonised System for uniformity with amendments approved by the WCO from time to time —

- (a) by deleting, amending and adding Section Notes, Chapter Notes and any heading number, subheading, heading text or scope of the Customs Tariff Schedule in such manner as is necessary for ensuring that it conforms to international nomenclature introduced by the WCO; or
  - (b) by revoking, suspending, or amending any provision of the notes forming part of the Customs Tariff Schedule, or by inserting any new provision in the notes, for the purpose of ensuring the proper operation of the Tariff.
- (2) Any amendment specified above shall be compatible with the structure of the Harmonised System —
- (a) Code numbers are changed only if there is an amendment to the text of a heading or subheading and if there is a significant change of scope in the subheading(s) concerned;
  - (b) The renumbering referred to in subparagraph (a) above is confined to the specific subheadings (at one-dash level, fifth digit; or at two-dash level, sixth digit); the code numbers of those residual subheadings whose scope has been amended remain unchanged;
  - (c) The code numbers of deleted subheadings are not reused until a certain period has elapsed, unless unavoidable.
- (3) No amendment made under this section, shall alter the duties or exemptions from duty applicable to goods classified under any item or heading in the Tariff.

### **83D Manufacture of excisable goods<sup>13</sup>**

Except as otherwise provided under this Act, no person may manufacture goods prescribed in accordance with section 81 (1) (b), except in a manufacturing area that is licensed under section 21(a).

### **83E Goods deemed to have been manufactured<sup>14</sup>**

- (1) For the purposes of this Act biofuel is deemed to have been manufactured by a licensee of a manufacturing area when biofuel supplied by the licensee to a biofuel fuelling facility is blended at the biofuel fuelling facility.
- (2) A licensee of a manufacturing area who supplies biofuel under subsection (1) will be liable for duty under this Act for the biofuel blend that results from blending at a biofuel fuelling facility the biofuel supplied by the licensee.
- (3) The biofuel blend that results from blending at a biofuel fuelling facility under subsection (2) is, for the purposes of this Part, deemed to be removed for home consumption when the blending is undertaken.
- (4) In this section, biofuel fuelling facility —
  - (a) means any installation, facility, or other place that —

- (i) is used for fuelling any craft, vehicle, or other conveyance; and
  - (ii) is not, for the time being, licensed under section 21(a); and
- (b) includes any vehicle designed for the storage and transport of fuel in which a process of blending occurs.

### **83F Entry of excisable goods<sup>15</sup>**

- (1) Subject to any regulations made under section 30, all excisable goods that are goods prescribed in accordance with section 81 (1) (b) shall, prior to their removal from an area licensed under section 21(a), be entered —
  - (a) in such form and manner (including by electronic means into a computer or other device) as may be prescribed; and
  - (b) within such time as may be prescribed.
- (2) Goods required to be entered under subsection (1) shall be entered —
  - (a) by the licensee of the Customs controlled area from which the goods are removed; or
  - (b) in such circumstances as may be prescribed by regulations made under section 30, by the owner of the goods.
- (3) If any entry required by this section relates to goods that are dutiable in accordance with the volume of alcohol present in the goods, the person making the entry shall specify the volume of alcohol in the prescribed manner.
- (4) Goods in respect of which entry has been made and passed shall forthwith be dealt with in accordance with the entry and with the provisions of this Act in respect of the goods so entered.

### **83G Removal for home consumption<sup>16</sup>**

For the purposes of this Part, goods are deemed to be removed for home consumption when the goods are physically removed from a Customs controlled area otherwise than when they are —

- (a) moved to another Customs controlled area pursuant to an approval given by the Director and for such purposes as may be approved by the Director;
- (b) temporarily removed pursuant to an approval given by the Director and for such purposes as may be approved by the Director; or
- (c) removed for export or to an export warehouse.

**83H Levy of excise tax on goods manufactured in manufacturing areas<sup>17</sup>**

- (1) Except as otherwise provided under this Act, excise taxes shall be levied, collected, and paid, at the appropriate rates, on goods prescribed under section 81 that are manufactured in a licensed manufacturing area.
- (2) If the excise applicable to any goods pursuant to subsection (1) is an ad valorem excise, the value of the goods for the purposes of such excise shall be determined in accordance with Schedule 1A.
- (3) Despite anything in this Part, if the excise is a combination of a specific rate and an ad valorem rate, the excise payable shall be determined as the aggregate of—
  - (a) the amount of excise calculated by applying the specific rate; and
  - (b) the amount of excise calculated by applying the ad valorem rate to the value for duty.

**83I Excise on goods manufactured outside manufacturing area<sup>18</sup>**

- (1) Subject to subsection (2), if goods prescribed under section 81(1) are manufactured in an area that is not licensed pursuant to section 21, the provisions of this Part and Part 3 apply as if the area were licensed as a manufacturing area under this Act.
- (2) Subsection (1) does not apply in respect of goods —
  - (a) that are manufactured in an area that pursuant to a direction of the Director under section 21 is not required to be licensed; or
  - (b) that are manufactured in accordance with the conditions specified by Director.
- (3) If the excise tax applicable to such goods is an ad valorem rate, the value of the goods for the purposes of that excise tax shall be determined in accordance with Schedule I A.

**83J Goods consumed before removal from manufacturing area<sup>19</sup>**

- (1) If before entry for home consumption, the goods are dealt with in breach of a provision of this Act, excise taxes become payable forthwith.
- (2) Notwithstanding subsection (2), no liability for duty arises if excisable products manufactured within a manufacturing area are used in the manufacturing process carried on in that manufacturing area.
- (3) If, after making an allowance of not more than 2% on the quantity of spirits delivered to be rectified or compounded, it is found that the volume of alcohol rectified or compounded is less than the volume delivered, the full excise on the deficiency so found shall immediately be paid by the rectifier or compounder to the Director.

**83K Excise on spirits and other alcoholic beverages if approval not<sup>20</sup>**

- (1) The Director may make an assessment of duty if the Director has reasonable cause to suspect that a person granted an approval to import undenatured ethyl alcohol has not complied with the conditions of the approval.
- (2) If an assessment is made under subsection (1), the rate of duty to be applied shall be the rate that would be applicable if the goods to which the relevant approval relates were entered for home consumption.
- (3) The duty assessed in accordance with this section shall be paid in accordance with subsection (4) by the person to whom the approval was granted.
- (4) The due date for the payment of any duty assessed in accordance with this section is the date that is 20 working days after the date on which written notice of the assessment is given by the Director.
- (5) The Director may, if satisfied that the non-compliance with the conditions was neither intentional nor negligent, remit or refund the duty on the goods.

**84 Currency and Exchange Rate**

- (1) The customs value is determined or declared in the currency used by Tuvalu being the Australian currency and the Tuvaluan currency.
- (2) Where the conversion of the currency is necessary for the determination of customs value, the rate of exchange is to be determined by the National Bank of Tuvalu.
- (3) The conversion rate to be used is to have effect at the time of lodgment of the Customs entry.

**84A Time to pay duty and excise tax**

- (1) Subject to an approval for deferred payment under subsection (3), duty and excise tax on goods becomes payable to Customs by the importer, warehouse operator or owner —
  - (a) in the case of imported goods for home consumption, when the entry has been passed for home consumption;
  - (b) in the case of warehoused goods, before their physical removal from the customs licensed warehouse for home consumption;
  - (c) in the case of goods to be removed from a licensed manufacturing area, prior to the physical removal of the goods from the licensed manufacturing area;
  - (d) in the case of goods destined for export, prior to their removal for export;
  - (e) in the case of goods wrongfully landed, or otherwise wrongfully dealt with, without having been entered in accordance with this Act; and

- (f) in the case of a good in relation to which an offence has been committed, when the offence is committed.
- (2) The rate of duty and excise tax applicable to imports, exports and locally manufactured excisable goods shall be the rate applicable at the time the goods are entered.
- (3) The methods of payment of duty and taxes shall be in cash, electronically or by any other means as prescribed by the Minister.

## **85 Customs Right of Acquisition**

- (1) For the protection of the revenue against the undervaluation of goods subject to ad valorem duty, goods in respect of which entry is made may, at any time while they remain subject to the control of Customs, be acquired by Customs.
- (2) The right of taking goods under subsection (1) may be exercised by the Director, and the acquisition of the goods is effected as soon as a warrant in the prescribed form for their acquisition is signed by the Director.
- (3) Goods become the property of Customs under this section on the signing of the warrant.
- (4) Notice in writing that the Director has signed a warrant under this section must be given to the importer immediately after the signing of the warrant.
- (5) Goods acquired by Customs under this section must, where no appeal is made under section 250, be sold by the Director or by his or her agent and the proceeds of sale must be accounted for as Customs revenue.
- (6) The price payable by Customs for the goods acquired under this section must be—
  - (a) equal to their declared Customs value with the addition of—
    - (i) such charges for freight, insurance and other matters incidental to their importation as the Director thinks reasonable; and
    - (ii) any duties already paid on the goods; and
  - (b) paid to the importer without further appropriation than this section within 20 working days of the acquisition of the goods.
- (7) Nothing in this section limits or affects any other powers of Customs in respect of the goods or any liability of the importer or any other person in respect of any offence committed in respect of the goods.

## **86 Origin of Fish or Other Produce of the Sea**

- (1) In the case of fish or other produce of the sea, or goods produced or manufactured wholly or partly from such fish or produce at sea, anything done by or on board a ship belonging to a country other than Tuvalu is deemed, for the purposes of this Act and any other written law to have been done in that



country, and any such produce of the sea or goods so produced or manufactured at sea, if brought direct to Tuvalu, are deemed to be imported into Tuvalu from that country.

- (2) If any question arises as to the country to which any ship belongs for the purposes of subsection (1), the question must be determined by the Director, whose decision is final.

## **87 Regulations for Determining Country of Produce or Manufacture**

Without limiting the power to make regulations conferred by section 268, the Minister may from time to time make regulations for all of the following purposes:

- (a) prescribing the goods or any type or class of goods that are deemed to be the produce or manufacture of any company or any group of countries for the purposes of this Act; and
- (b) prescribing the conditions to be fulfilled before goods are deemed to be the produce or manufacture of any country or any group of countries; and
- (c) authorizing the Director to determine (in relation to specific goods)—
  - (i) that the percentage of the goods' factory or works cost is to be increased or decreased:
  - (ii) the valuation or method of valuation (including a reduced or zero valuation) if any material, labour, or overhead used in the goods production has been supplied free of charge or at a reduced cost:
  - (iii) the required percentage of qualified area content in case of unforeseen circumstances that are unlikely to continue:
  - (iv) variations or conditions relating to the goods entering the commerce of another country.

## **88 Conditions Precedent to Entry of Goods at Preferred Rates of Duty**

- (1) Where it is claimed in respect of any goods that they are entitled under this Act or any other Act or authority to be entered free of duty or at any rate of duty lower than as set forth in the normal tariff in respect of such goods, the Director may require the claim to be verified at any time of entry or any subsequent time including any time after the goods have ceased to be subject to the control of Customs).
- (2) Where the Director requires such a claim to be verified at the time of entry of the goods and the claim is not verified to the satisfaction of the Director at that time, the goods in respect of which the claim has been made must not be so entered.

**89 Unsubstantiated Preference Claim**

- (1) If the Director is satisfied, whether as the result of an investigation carried out under section 153 or as the result of an audit, or examination carried out under section 160, or for any other reason, that the country of which goods are the produce or manufacture cannot be ascertained because no evidence can be found, the goods are deemed, for the purposes of this Act or any other Act or authority to be the produce or manufacture of a country subject to the rates of duty set out in the tariff.
- (2) An importer must be advised by notice in writing of a decision of the Director under this section.
- (3) This section applies whether or not the goods have been released from the control of Customs.

**PART 9 ASSESSMENTS AND RECOVERY OF DUTY****90 Duty on Imported Goods a Debt to the State**

- (1) The duty on all goods constitutes, immediately on importation of the goods, a debt due to the State.
- (2) Such duty is owed by the importer of the goods, and if more than one, then jointly and severally by all of them.
- (3) Subject to this Act, such debt becomes due and payable when:
  - (a) goods have been entered in accordance with section 50; or
  - (b) the goods have been entered in accordance with section 50 for removal from a manufacturing area; or
  - (c) the goods have been wrongly landed or otherwise wrongfully dealt with without having been entered in accordance with section 50; or
  - (d) an offence has been committed against this Act in respect of the goods.
- (4) Any duty payable on importation of goods becomes a debt due to the state.
- (5) If an entry has been made in accordance with section 50 but duty remains unpaid within 21 days of the issue of an assessment notice for that entry, the goods may be seized as forfeited to the state.
- (6) If an importer is in debt to Customs in respect to any duty, tax or penalty levied under Part 11, Customs may detain any goods imported by the importer that are held or stored in a customs controlled area until the debt is paid. Customs has a lien on any such goods.
- (7) Any duty, tax, or penalty that is payable is a debt due to the state by the importer and is recoverable in a court in Tuvalu by action in a suit by the Director on behalf of the state.

- (8) The right to recover duty as a debt to the state is not affected by the fact that:
  - (a) the goods have ceased to be subject to the control of customs; or
  - (b) a bond or other security has been given for payment of duty; or
  - (c) no proper assessment of duty has been made under this Act or that a deficient assessment of duty has been made;
- (9) The Director may, subject to such terms and conditions may impose, approve any person or class of person as persons who may defer the payment of duty due under this section, and, for that purpose may determine a duty accounting period; and may suspend or withdraw that approval and vary any term and condition under which the approval has been given or vary the duty accounting period.
- (10) If the Director makes any decision under subsection 9, the person or class of person affected are to be advised by a notice in writing.
- (11) All goods included in the inwards report of any craft are presumed to be actually imported unless the contrary is proved.

## **91 Additional Duty Imposed**

- (1) If the payment of any duty has been deferred and remains unpaid after 5 days of the due date for payment, there will be imposed an additional duty of:
  - (a) 5 percent of the amount of duty unpaid by the due date; and
  - (b) 2 percent of the amount of duty, including additional duty, unpaid at the end of the period of one month after the due date; and
  - (c) 2 percent of the amount of duty, including additional duty, unpaid at the end of each succeeding period of one month.
- (2) Any person who fails to pay duty or additional duty under subsection (1) on the due date may:
  - (a) be suspended from a deferred duty payment scheme by the Director;
  - (b) have prosecution proceedings instituted against that person for recovery of debt; and
  - (c) have the goods and the proceeds of the sale of the goods be forfeited to the State.

## **92 Assessment of Duty**

- (1) An entry for goods made under this Act is deemed to be an assessment by the importer or licensee, as the case may be, as to the duty payable in respect of those goods.

- (2) If the Director has reasonable cause to suspect that duty is payable on goods by a person who has not made an entry in respect of the goods, the Director may assess the duty in accordance with Part 9 of this Act.

### **93 Amendment of Assessment**

- (1) The Director may from time to time make such amendments to an assessment of duty as necessary in order to ensure the correctness of the assessment even though the goods to which the duty relates are no longer subject to the control of the Customs or that the duty originally assessed has been paid.
- (2) If the amendment has the effect of imposing a fresh liability or altering an existing liability, a notice in writing must be given by the Director to the person liable for the duty.

### **94 Due Date for Payment of Assessment**

- (1) The due date for the payment of duty assessed under subsection (2) or reassessed under section 93 or demanded under sections 100 and 101, is the date that is 10 working days after the date on which notice of the amended assessment or demand is given by the Director.
- (2) If all or part of any duty remains unpaid by the due date, the amount outstanding is deemed to have been increased by an amount calculated in accordance with section 83

### **95 Obligation to Pay Duty not Suspended by Appeal**

- (1) Subject to subsection (3), the obligation to pay and the right to receive and recover duty under this Act are not suspended by any appeal or legal proceedings.
- (2) Subject to subsection (3), if the appellant is successful in the appeal or the proceedings, the amount (if any) of the duty or any security received by the Director in excess of the amount that, in accordance with the decision on the appeal or the proceedings, was properly payable is to be immediately refunded to the appellant by the Director or as the case may be, the appellant is to be released from the conditions of the security imposed under section 157.
- (3) Any obligation on the Director under subsection (2) is to be suspended pending the outcome of any appeal filed by the Director under this Act or any other Act against the decision requiring the duty to be refunded.

### **96 Limitation of Time for Amendment of Assessments**

- (1) Where an assessment of duty has been made under this Act, the Director is not entitled to alter that assessment so as to increase the amount of the assessment

after the expiration of 5 years from the date on which the original assessment was made.

- (2) Despite subsection (1), in any case where, in the opinion of the Director, the entry or any declaration made in relation to the goods was fraudulent or wilfully misleading, the Director may amend the assessment at any time so as to increase the amount of the assessment.

## **97 Keeping of Business Records**

- (1) A licensee, importer and exporter must keep or cause to be kept in Tuvalu such records, for a period not exceeding 5 years.
- (2) Every such person must, as and when required by a Customs officer:
  - (a) make the records available to the Customs; and
  - (b) provide copies of the records as required; and
  - (c) answer any questions relevant to matters arising under this Act asked by any officer in respect of them.
- (3) Where, for the purposes of complying with subsection (2), information is recorded or stored by means of an electronic or other device, the licensee, importer, exporter, or agent thereof must, at the request of a Customs officer, operate the device, or cause it to be operated, to make the information available to the Customs officer.

## **98 Giving Customs Access to Business Records**

- (1) This section applies to a person only if the person:
  - (a) is a person to whom subsection 97(1) applies or a person otherwise involved in the carriage, handling, or transportation of goods that are being imported to, or exported from, Tuvalu and
  - (b) has been required by the Director by notice to comply with this section on and after a date specified in the notice.
- (2) On and after the date specified in the notice a person to whom this section applies must provide any document prepared in the ordinary course of business for the purposes of a commercial transaction regarding the purchase and carriage of goods whether in hard copy or electronic format.
- (3) A person to whom this section applies must give the Customs that access in the approved form and manner and must ensure that the Customs has that access at all reasonable times.
- (4) The Director may, by notice in writing, exempt a person to whom this section applies from complying with some or all of the person's obligations under this section in all or any specified circumstances.

- (5) To avoid doubt, nothing in this section affects any obligation under section 97 to keep or cause to be kept, make available, provide copies of, or answer questions in respect of, records.

## **99 Release of Goods Subject to Duty**

- (1) No person is entitled to obtain release of goods from the control of the Customs until the sum payable by way of duty on the goods is paid in full.
- (2) No action or other proceeding is to be instituted against the State or the Director or any Customs Officer in respect of the detention of any such goods during any period before the payment of the full sum.

## **100 Liability for Duty on Goods Wrongfully Removed or Missing**

- (1) The licensee of a Customs controlled area is liable for duty payable on goods that the Director is satisfied have been wrongfully removed from or are missing from that Customs controlled area or cannot be accounted for to the satisfaction of the Director.
- (2) The licensee is not to be released from liability under this section by virtue of any other provisions of this Act or any other written law.
- (3) If:
  - (a) dutiable goods are removed from a Customs controlled area without the authority of the Customs; or
  - (b) dutiable goods are not produced by the licensee to the Customs and are not accounted for as having been lawfully delivered from the Customs controlled area,duty becomes due and payable as if the goods were removed for home consumption, or entry has been made and passed for home consumption.
- (4) The Director may, by notice in writing, demand from the owner or importer of the goods or the licensee of a Customs controlled area payment of any sum that the Director has reasonable cause to suspect owes under this section.
- (5) Duty payable under this section constitutes a debt due to the state by the licensee and the importer of the goods and the owner of the goods whose liability is joint and several.

## **101 Liability of Owners of Craft for Duty on Goods Unlawfully Landed**

- (1) If cargo stores or other goods are unlawfully landed in Tuvalu in or from a craft that is within Tuvalu, the owner or the master of the craft are jointly and severally liable for the payment of the duty on the cargo stores or other goods.

- (2) The Director may demand from the owner or the master in charge of any craft payment of any sum that the Director has reasonable cause to suspect owes under this section.
- (3) In any proceedings for the recovery of duty under this section, or for a refund of duty paid under this section, the sum so demanded by the Director is presumed to be due and payable unless the contrary is proved.

## **102 Effect of Payment of Duty by One Person on Liability of Other Persons.**

The liability of a person under this Act for the payment of duty on goods is extinguished by the payment of that duty by any other person liable for the payment of it under this Act unless that duty is subsequently refunded or remitted.

## **103 Incidence of Altered Duties**

- (1) In the case of an alteration in the law relating to the liability of goods to duty or the rate of duty to which goods are liable, such liability or rate is to, except where otherwise expressly provided, be determined:
  - (a) in the case of goods held in a export warehouse, or produced in a manufacturing area , by the law in force at the time the goods are removed from the export warehouse or manufacturing area;
  - (b) in the case of other goods, by the law in force at the time an entry is lodged for the goods.
- (2) In this section, the term ‘alteration in the law’ includes variation that takes place at any time or periodically in the liability of goods to duty or in the rate of duty to which they are liable.

## **104 Director may Refund Duty Paid in Error**

- (1) If the Director is satisfied that duty has been paid in error either of law or of fact, unless there is good reason not to, the Director is to refund the duty:
  - (a) at any time within 5 years after it has been paid; or
  - (b) at any time on an application made within 5 years after it has been paid.
- (2) This section extends and applies to duties paid in error before the commencement of this Act.

### **104A. Power to apply refunds towards payment of other duties<sup>21</sup>**

If any duty is or becomes refundable under this Act to any person, the Director may, at his or her discretion —

- (a) apply the whole or any part of the sum refundable towards the payment of other duty that is payable by that person; or

- (b) pay the whole sum to that person.

## **105 Other Refunds and Remissions of Duty**

The Director may refund or remit any duty where the Director is satisfied that imported goods, or excisable goods:

- (a) have been damaged, destroyed, pillaged, or lost, or have diminished in value or deteriorated in condition, prior to their release from the control of the Customs; or
- (b) are of faulty manufacture; or
- (c) have been abandoned to the State for destruction or other form of disposal prior to their release from the control of the Customs.

## **106 Recovery of Duty Refunded in Error**

Money refunded by the Customs in error of fact or law is recoverable by action at the suit of the Director on behalf of the state at any time within 5 years after the date of its payment or any time if the refund has been obtained by fraud.

## **107 Goods Temporarily Imported**

- (1) Where the Director is satisfied that goods have been temporarily imported, a sum equal to the amount of the duty payable on the goods is to be secured, in such cases as may be approved by the Director and on receipt of such security the Director may release the goods from the control of the Customs without payment of duty.
- (2) Subject to such conditions as may be prescribed, the person giving the security must be released from the conditions of the security, and a deposit of money made must be returned to the person by whom it was made if, within 12 months from the date of their importation, the Director is satisfied that the goods have been exported.
- (3) If, at the expiry of the period prescribed by subsection (2), the goods have not been dealt with in accordance with that subsection:
  - (a) any sum secured by way of deposit of money must be retained by the state; or
  - (b) any sum otherwise so secured must be paid to the state by the importer within 10 working day after the expiry of that period, and on such payment the security is to be released.
- (4) Subject to any conditions that the Director imposes, duty is not payable on goods temporarily imported in accordance with a treaty, agreement or arrangement concluded by the Government of Tuvalu.<sup>22</sup>



**108 Drawbacks of Duty on Certain Goods**

- (1) Subject to this section, drawbacks of duty may be allowed, at such amounts and subject to such conditions as may be prescribed, on:
  - (a) goods imported into Tuvalu that are later exported from Tuvalu;
  - (b) imported parts, and materials used in, worked into, or attached to, goods manufactured or produced in Tuvalu and exported from Tuvalu;
  - (c) imported materials, except fuel or plant equipment consumed in the manufacture or production of goods produced in Tuvalu and exported from Tuvalu.
- (2) Where the Director is satisfied that goods have been entered and shipped for export, the Director may, for the purposes, pay drawback of duty.
- (3) If drawback has been allowed on any goods consumed in the manufacture of those goods Drawback is not paid until exportation of the goods is verified.

**109 Payment of Duty by Importer, Exporter or Licensee leaving Tuvalu**

- (1) If the Director has reasonable cause to believe that an importer, exporter, or licensee is about to leave Tuvalu, and-
  - (a) that person is liable to pay any duty; or
  - (b) all duty payable by that person has not been paid; or
  - (c) satisfactory arrangements have not been made for the payment of all duty that is or may be payable by that person—

the Director may issue a certificate to the effect that the person is under a liability for duty that is required to be discharged before the person leaves Tuvalu.
- (2) The Director may serve a certificate issued under subsection (1) to the Immigration Department and the Immigration Officer must not allow the person named in the certificate to leave Tuvalu until a certificate is issued by the Director under subsection (4).
- (3) The Director must serve a copy of a certificate issued under subsection (1) on the person named in the certificate and such person must take no further steps to leave Tuvalu by any means whatsoever until the Director has issued a certificate under subsection (4).
- (4) If the Director is satisfied that a person named in a certificate issued in subsection (1) —
  - (a) is not liable to pay any duty; or
  - (b) has paid any duty payable by him or her; or
  - (c) satisfactory arrangements have been or will be made for the payment of all duty that is or may be payable by the person—

the Director may issue a certificate to the effect that the person is not under any liability for duty requiring to be discharged before the person leaves Tuvalu or has made satisfactory arrangements for payment of all duty that is or may be payable to the State, and therefore revoking a certificate issued under subsection (1).

- (5) The Immigration Officer upon receipt of a certificate issued under subsection (4) may allow a person named on the certificate to leave Tuvalu.

## **110 Power to Apply Refund towards Payment of other Duty**

Where under any provision of this Act duty is or becomes refundable to any person, the Director may, apply the whole or any part of the sum so refundable towards the payment of any other duty that is payable by that person, or may refund the whole sum to that person

## **111 Regulations may Prescribe Minimum Duty Collectable or Refundable and Minimum Drawback Allowable**

Regulations may prescribe:

- (a) an amount of duty below which that duty need not be collected, and the circumstances in which that duty need not be collected; and
- (b) the minimum amount of duty refundable on goods, and the circumstances in which duty below the prescribed amount is not to be refunded; and
- (c) the minimum amount of drawback of duty allowable on goods, and the circumstances in which drawback below the prescribed amount will not be allowed.

# **PART 10 CUSTOMS RULINGS**

## **112 Application for customs ruling**

- (1) A person may apply to the Director in respect of particular goods specified in the application, for a Customs ruling regarding any one or more of the following matters:
- (a) the Tuvalu Customs Tariff Classification of those goods under Schedule 1;
  - (b) whether or not those goods are for the purpose of the Tariff, the produce or manufacture of a particular country or group of countries;
  - (c) whether or not those goods are subject to a specified duty concession under Schedule 1 of this Act.

- (2) An application made under subsection (1) may be made with regards for the following goods:
  - (a) imported goods:
    - (i) at any time before the date of importation into Tuvalu of the goods that are subject of the application; or
    - (ii) at any later time, if the Director permits; or
  - (b) excisable goods
    - (i) at any time before the date of manufacture of the goods; or
    - (ii) at any later time, if the Director permits.
- (3) A person may apply to the Director in relation to a particular matter specified in the application, for a Customs ruling as to the correct application of any provision contained in Schedule 1.
- (4) An application made under subsection (1) or (3) must be in the approved form accompanied by the approved fee.

### 113 Making of Customs Ruling

- (1) Subject to subsection (4), the Director must:
  - (a) in the case of an application made under subsection 112(1) make a Customs ruling in respect of any particular goods specified in the application and in respect of the matter or matters on which the ruling is sought; or
  - (b) in the case of an application made under subsection 112(3) of this Act, make a Customs ruling in respect of the particular matter specified in the application.
- (2) The Director must make a Customs ruling under subsection (1) within such time or times as may be prescribed after receiving:
  - (a) in the case of an application under subsection 112(1):
    - (i) a properly completed application in respect of particular goods; and
    - (ii) the goods or a sample of the goods unless the Director has agreed not to require receipt of the goods; and
  - (b) all information that the Director considers relevant to a proper consideration of the application; and
  - (c) payment of the approved fee.
- (3) A Customs ruling may be made subject to such conditions as the Director thinks fit.
- (4) The Director may decline to make a Customs ruling if, in the Director opinion, he or she has insufficient information to do so.

**114 Notice of Customs ruling**

Upon making a decision on an application under this Part, the Director must immediately notify the applicant in writing:

- (a) that a Customs ruling has been made on his or her application, and state the reasons for the ruling, and the conditions of the ruling; or
- (b) that his or her application for a Customs ruling has been declined, together with the reasons for that decision.

**115 Effect of Customs Ruling**

- (1) A Customs ruling in respect of particular goods is conclusive evidence that the goods:
  - (a) have a particular tariff classification under Schedule 1; or
  - (b) is or is not the produce or manufacture of a particular country or a group of countries, for the purposes of Schedule 1; or
  - (c) is or is not subject to a specified duty concession under Schedule 1.
- (2) A Customs ruling that has been made under section 114 is conclusive evidence for the purposes of this Act on which the ruling was made in relation to that matter.

**116 Confirmation of Basis of Customs Ruling**

At any time after a Customs ruling is made, the Director may by notice in writing, request the applicant, within 20 days or such longer period as the Director considers appropriate, to provide information that will convince the Director that:

- (a) the facts or information on which the Customs ruling was made remain correct; and
- (b) any conditions on which the Customs ruling was made have been complied with.

**117 Amendment of Customs Ruling**

- (1) The Director may from time to time amend a Customs ruling to correct any error contained in the ruling.
- (2) The Director must immediately after making the amendment, give notice in writing to the applicant of the amended Customs ruling and, subject to subsection (3).
- (3) The amended ruling is to be applied to the applicant as from the date on which notice of the amendment was given to the applicant.
- (4) Subsection (2), does not apply if the amendment to the ruling has the effect of increasing any duty liability in respect of any goods:

- (a) if the goods are imported within 3 months of the date notice of the amendment is given, pursuant to a binding contract entered into before that date; or
  - (b) if the goods have left the place of manufacture or warehouse in the country from which they are being exported for direct shipment to Tuvalu at the date notice of the amendment of the ruling is given; or
  - (c) if the goods are imported on or before the date notice of the amendment is given but have not been entered for home consumption, then the ruling as given prior to amendment under this section is to be applied to those goods.
- (5) Despite subsection (2), if the amendment to the ruling has the effect of decreasing any duty liability of any goods, then the provisions of section 105 apply as if the higher duty had been paid in error, not be allowed.

## **118 Cessation of Customs Ruling**

- (1) A Customs ruling ceases to have effect on any the following dates, depending on whichever date occurs first:
- (a) the date on which any information on which the Customs ruling was made ceases to be correct in all material respects; or
  - (b) the date of a material change in any of the information or facts on which the Customs ruling was made; or
  - (c) the date on which any of the conditions to which the Customs ruling was made cease to be met or complied with; or
  - (d) the date of a failure to convince the Director under section 117; or
  - (e) the date of expiry of 12 months from the date that notice of the Customs ruling under section 114 is made.
- (2) A Customs ruling will not come into effect if:
- (a) information on which it was made is not correct in all material respects; or
  - (b) a material change has occurred in any information or facts which it was made

## **119 No Liability where Customs Ruling Relied on**

If an applicant has relied on a Customs ruling there is no liability for penalties or seizure under this Act unless the ruling has expired or has amended.

## **PART 11 ADMINISTRATIVE PENALTIES**

### **120 Interpretation**

For the purposes of this Part,

“Entry”, in relation to any goods or class of goods that are deemed to have been entered under subsection 50(1), include a document that the Director requires to be lodged with the Customs before the goods or class of goods will be deemed to be entered.

“materially incorrect” means that the entry contains an error or an omission in relation to any of the following matters:

- (a) the identity of the overseas supplier;
- (b) the identity of the importer;
- (c) the identity of the person making the entry;
- (d) the identification of the importing craft or its voyage number;
- (e) the bill of lading, air waybill or container identification details;
- (f) the supplier’s invoice number and date, and the invoice amount;
- (g) any permit number or code;
- (h) the tariff item in which the goods are classified under the Schedule 1.
- (i) the statistical quantity of the goods;
- (j) the country of currency in which the goods are traded;
- (k) the rate of exchange used to convert the currency to Australian and Tuvaluan currency;
- (l) the value for duty expressed in the currency in which the goods are traded;
- (m) the value for duty expressed in Tuvalu currency;
- (n) the country of origin of the goods;
- (o) the country from which the goods have been exported;
- (p) the amount paid or payable to transport the goods to Tuvalu from the country of exportation, including any amount paid or payable for internal transportation of the goods in that country;
- (q) the insurance costs associated with transporting the goods to Tuvalu, inclusive of any insurance costs in the country of exportation.
- (r) the particulars of shipping containers, packages or break bulk including marks and numbers
- (s) the number of any exemption claimed under schedule 1;

“Administrative offence” means a breach of the Act or Regulations in respect to any obligation for a person to:-

- (a) Communicate information to customs; or
- (b) Deal with goods in accordance with this Act; or
- (c) Deal with a craft in accordance with the Act; or
- (d) Keep, retain or produce documents or records; or
- (e) Comply with any term or condition of a licence or permission issued under the Act; or
- (f) Allow or permit unauthorized entry to a customs controlled area; or
- (g) Fail to answer questions or make a statement which is false or misleading to a customs officer or authorised person; or
- (h) to lodge documents required under the Act for the correct dealing with goods; or
- (i) to use the Customs automated system unique user identifier only as authorised.

## 121 Notice of penalty

Where the Director is satisfied that a goods declaration contains an error or omission and that as a result the amount of duty payable has not been paid or declared for payment or would not have been paid or declared for payment; or the goods declaration is otherwise materially incorrect, the Director may within 5 years after the declaration was made, by notice in writing, require the owner or agent of the goods to pay a penalty within 10 days of the notice being issued.

## 122 Imposition of penalty<sup>23</sup>

- (1) If a particular of an entry lodged with the Customs is found to be materially incorrect, the Director may:
  - (a) impose a penalty of 3 times the duty unpaid, not declared or attempted to be avoided, or where the goods are exempt, free or zero rated from duty then a penalty of 5 percent of the value of the goods or, where the entry is otherwise materially incorrect, a penalty of 5 percent of the value of the goods; and
  - (b) may withhold the delivery of the goods until such time as the penalty, including any additional duty is paid.
- (2) If a person is found to have made entries where a particular contained in that entry is materially incorrect, for more than three consecutive occasions, the Director may refuse to accept any further entries from that person.
- (3) The Director will not impose a penalty on a person, if the person has voluntarily disclosed to Customs at any time prior to the issue of a notice under section 121 that a particular contained in any entry is materially incorrect.

- (4) If a penalty imposed under this section is not paid by the date due for payment, the Director is to impose the following penalties:
  - (a) an additional penalty of 10 percent of the amount of the penalty, unpaid by the due date; and
  - (b) an additional penalty of 5 percent of the amount of the penalty, including any additional penalty unpaid at the end of a the period of 10 days after the due date; and
  - (c) an additional penalty of 5 percent of the amount of the penalty, including additional penalty, unpaid at the end of each succeeding period of 10 days.
- (5) The amount of the penalty constitutes a debt due to the state and is recoverable by action in a court of law.

### **123 Penalty for Administrative Offences**

- (1) Where a person has committed an administrative offence against this Act, the Director may, by notice in writing require the person to pay within 10 days after service of the notice a penalty of \$100.
- (2) A person on whom a notice has been served under (1) and payment of which remains outstanding after the completion of the 10 day period, shall pay, in addition a further \$10 for each day in default.

### **124 Dishonoured Cheques**

A person, who presents a cheque to a customs officer in payment of customs duty, taxes or penalty that is not honoured by the bank, unless failure to do so is an error on behalf of the bank, shall be liable to an administrative penalty of \$100.

#### **124A No penalty in certain cases<sup>24</sup>**

With the exception of section 124 a person is not liable to a penalty under section 122, if—

- (a) that person has voluntarily disclosed the error or omission to Customs before Customs has notified the person that —
  - (i) the goods to which the entry relates have been selected for examination by Customs;
  - (ii) documentation is required to be presented to Customs in relation to that entry;
  - (iii) Customs intends to conduct an audit or investigation on a selection or entries that includes that entry, or on entries made over a period of time that includes the time the entry was made; or



- (b) that person satisfies the Director that the person formed a view as to the relevant facts of the entry which, while incorrect, was reasonable having regard to the information available to that person when the entry was prepared; or
- (c) that person satisfies the Director that the person acted in good faith on information provided by the importer, exporter, or supplier of the goods to which the entry relates, and reliance on the accuracy or completeness of the information so provided was reasonable in the circumstances; or
- (d) the total correct value for duty of the goods to which the error on the entry relates is equal to or less than the minimum value prescribed under the Act; or
- (e) an information for an offence against this Act has been laid in relation to the error or omission; or
- (f) the period between the date of lodgement of the entry of the goods and the date on which the error or omission was first identified exceeds 5 years.

## PART 12 CUSTOMS AUTOMATED SYSTEMS

### 125 Access to Customs Automated Systems

A person must not transmit to, or receive information from a Customs automated system unless that person is an individual who is registered by the Director as a user of that Customs automated system

### 126 Registered Users

- (1) A person who wishes to be registered as a user of a Customs automated system, may apply in writing to the Director in the approved form and is to provide such information in relation to the application as is approved.
- (2) The Director may grant the application to be registered as a user of a Customs computerised processing system on receipt of an application in the approved form, subject to any conditions the Director deems fit to impose, and upon payment of the approved fee.
- (3) The Director may refuse to register the applicant if the Director is satisfied that the Applicant is not capable of complying with the conditions of registration.
- (4) The Director must give notice in writing to the applicant of the Director's decision and if the application is refused, the reasons for refusal.

**127 Registered Users to be Allocated Unique User Identifier**

- (1) A person who is registered as a user of a Customs automated system is to be allocated a unique user identifier for use in relation to that Customs automated system by the Director in such form or of such a nature as the Director determines.
- (2) The unique user identifier allocated under subsection (1) is to be used by the registered user only for purposes of transmitting information to or receiving information from that Customs automated system.
- (3) The Director may, by written notice, impose conditions, on a particular registered user, or on registered users generally, regarding the use and security of unique user identifiers.

**128 Use of Unique User Identifier**

- (1) If information is transmitted to a Customs automated system using a unique user identifier issued to a registered user, the transmission of that information is, in the absence of proof to the contrary, be sufficient evidence that the registered user, to whom the unique user identifier has been issued, has transmitted that information.
- (2) If the unique identifier is used by a person who is not entitled to use it, subsection 1 does not apply if the registered user to whom the unique user identifier was issued has, prior to the unauthorized use of that unique user identifier; notify Customs that the unique user identifier is no longer secure.

**129 Cancellation of Registered User**

If at any time the Director is satisfied that a person who is a registered user of a Customs automated system has:

- (a) failed to comply with a condition of registration imposed by the Director under subsection 126(2), or
- (b) failed to comply with or acted in contravention of any conditions imposed by the Director under subsection 127(3); or
- (c) being convicted of an offence under this Act relating to improper access to or interference with a Customs automated system; or
- (d) being convicted of any other offence under this Act; or
- (e) is considered by the Director not to be a proper person to hold a registration.
- (f) made entries materially incorrect under section 122(2),

the Director may cancel the registration of that person as a user by giving notice in writing to that person and sets out the reasons for that cancellation.

**130 Customs to Keep Records of Transmission**

Customs must keep a record for 5 years of every transmission sent to or received from a registered user using a Customs computerized entry processing unit.

**PART 13 POWERS OF CUSTOMS OFFICERS****131 Patrols and Surveillance**

In the course of administering this Act, a Customs officer or any authorised person may, at any time and in such manner as the officer considers appropriate:

- (a) conduct patrols and surveillance on or over any part of the territorial sea, including the contiguous zone, and any part of the land comprising the territory of Tuvalu and on or over any part of the foreshore or the shore of any lagoon and any structure extending from it, or any part of the adjacent land, or any Customs place or Customs controlled area; and
- (b) enter and inspect any aircraft landing strip and any building on it, and may remain in any such area for the purposes of carrying out investigations or surveillance.

**132 Landing or Mooring of Customs Craft**

A Customs officer or a person in charge of any craft employed in the service of the Customs may:

- (a) anchor, moor, berth, or land the craft; or
- (b) haul the craft ashore,

at any place within Tuvalu and, in such case, no charge is to be levied against the Customs.

**133 Boarding Craft**

- (1) A Customs Officer or an authorised person may at any time board a craft that is within Tuvalu if:
  - (a) the craft has arrived in Tuvalu from a point outside Tuvalu; or
  - (b) the craft is departing from Tuvalu to a point outside Tuvalu, including while the craft is travelling within Tuvalu en route to a point outside Tuvalu;
  - (c) the craft is carrying international cargo while it remains within Tuvalu.
  - (d) the Customs Officer has reasonable cause to suspect that the craft;
    - (i) is carrying any dutiable, uncustomed, prohibited or forfeited goods; or

- (ii) has been, is being or is about to be involved in the commission of an offence under this Act.
- (2) The Director may station Customs Officers onboard any craft that has arrived in Tuvalu from a point outside Tuvalu for the purposes of performing any functions or exercising any power that the Customs Officers may be required, authorised or empowered to perform under this Act.
- (3) Where the Customs Officer is stationed on board a craft, the master or the operator of the craft must ensure the Officer is provided with
  - (a) suitable accommodation; and
  - (b) safe access to any part of the craft: and
  - (c) safe means of disembarking the craft. at no cost.

### **134 Searching of Craft.**

- (1) A Customs Officer or an authorised person may search:
  - (a) a craft that has arrived in Tuvalu from a point outside of Tuvalu; or
  - (b) a craft that is departing from Tuvalu to a point outside of Tuvalu and at all times while the craft is traveling within Tuvalu en route to a point outside Tuvalu; or
  - (c) a craft that is carrying any international cargo while the craft remains within Tuvalu; or
  - (d) a craft that a Customs Officer has reasonable cause to suspect:
    - (i) is carrying any dutiable, uncustomed, prohibited or forfeited goods;
    - (ii) has been, is being, or is about to be involved in the commission of an offence under this Act for the purpose of performing any function or exercising any power that the officer may be required, authorised or empowered to perform under this Act.
- (2) In exercise of the power conferred by subsection (1) a Customs Officer may use such force as may be reasonably necessary in order to enter a part of the craft, open any package, locker or any place, and to examine any other goods found on the craft.

### **135 Securing Goods on Craft**

For the purpose of exercising any power that the Customs is required, authorised, or empowered to perform or exercise under this Act, a Customs officer or an authorised person may at any time while boarding or searching any craft under section 133 or section 134:

- (a) secure, by appropriate means, goods on board that craft; or
- (b) remove goods on board that craft to a secure place.

**136 Firing on Ship**

The officer commanding or in charge of any craft in the service of the State having hoisted and carrying or displaying the proper ensign or the Customs flag must, at the request of the Director, chase any ship if:

- (a) the ship does not immediately respond when signalled or required to do so; or
- (b) the master refuses to permit the ship to be boarded and may, as a last resort after having fired a warning, fire at or into the ship to compel it to bring-to.

**137 Detention of Craft**

- (1) A Customs officer who has reasonable cause to believe that an offence under this Act has been, is being, or is about to be committed on or in a craft while that craft was or is within Tuvalu may direct the craft to proceed to the nearest Customs port or airport or such other place as the officer considers appropriate and detain the craft for such time and for such purposes as necessary to carry out an investigation into the commission of the offence.
- (2) If a person in charge of a craft attempts or threatens to cause the craft to depart from a place to which the craft has been directed under subsection (1) without a certificate of clearance, a Customs officer may detain the craft until a certificate of clearance has been obtained.

**138 Searching Vehicles**

- (1) A Customs officer who has reasonable cause to suspect that:
  - (a) there is in or on any vehicle that is within a Customs port, airport or Customs controlled area, any dutiable, uncustomed, prohibited, or forfeited goods; or
  - (b) there is evidence relating to any dutiable, uncustomed, prohibited, or forfeited goods; or
  - (c) there is evidence relating to any offence under this Act;may stop the vehicle and search it and may detain the vehicle for such period as may be reasonably necessary.
- (2) A Customs officer or any authorised person who has reasonable cause to believe that:
  - (a) there is in, or on, any vehicle (not being a vehicle to which subsection (1) applies) any goods that have been unlawfully exported; or
  - (b) there is evidence relating to the unlawful importation of any goods or an attempt to unlawfully export any goods; or
  - (c) there is evidence relating to any offence under this Act;

may stop the vehicle and search it and may detain the vehicle for such period as may be reasonably necessary.

### **139 Questioning Persons about Goods**

- (1) This section applies to:
  - (a) a person who is within a Customs controlled area;
  - (b) a person who is on board or is in the process of embarking onto or disembarking from a craft that has arrived from, or is departing to a point outside Tuvalu, while the craft is within Tuvalu.
- (2) A Customs officer or an authorised person may question a person on any or all of the following matters:
  - (a) whether or not that person has or has had in their possession any dutiable, prohibited, uncustomed, or forfeited goods;
  - (b) the nature, origin, value or intended destination of any goods described in paragraph (2) (a).

### **140 Questioning Persons about Identity, Address, Travel movement and Entitlement and Other Matters**

- (1) This section applies to the following persons:
  - (a) a person who:
    - (i) has, or is suspected of having disembarked from a craft that has arrived in Tuvalu; and
    - (ii) has not, or is suspected of having not, reported to a Customs officer on his or her arrival, contrary to section 38.
  - (b) a person who is, or is suspected of, attempting to depart from Tuvalu from a place other than from a port or airport, contrary to section 41.
- (2) A Customs Officer may question a person on the following:
  - (a) the person's identity;
  - (b) the person's residential address;
  - (c) the person's travel movements;
  - (d) the craft;
    - (i) from which the person disembarked or is suspected of disembarking; or
    - (ii) on which the person is attempting to depart on, or is suspected of attempting to depart from Tuvalu; or
    - (iii) its voyage and any person or goods carried on it.

- (3) A Customs Officer may question any other person who is, or was, involved in the persons arrival, suspected arrival, departure, attempted departure or suspected departure, whether or not the other person was on the craft;
  - (a) from which the person disembarked or is suspected of disembarking; or
  - (b) on which the person attempted to depart or is suspected of attempting to depart from Tuvalu.

#### **141 Questioning Employees of Airlines, Shipping Companies etc**

A Customs officer may question any of the following persons about any international cargo:

- (a) a person who, as an employee of an airline or shipping company, manages or carries out the receipt, handling, custody or dispatch of international cargo by that airline or shipping company; or
- (b) a person employed by the licensee of a Customs controlled area; or
- (c) a person who is in a Customs controlled area.

#### **142 Detention of Persons about Goods**

- (1) If a Customs Officer or authorised person
  - (a) is not satisfied that the answer to questions put to the person under section 139 is correct; or
  - (b) has not been given an answer to a question put to the person under that section; or
  - (c) the officer has reasonable cause to suspect that an offence has been, is being, or is about to be, committed against this Act by that person or any other person associated with that person,the officer may detain that person.
- (2) The purpose of a detention under subsection (1) is to enable the officer to make such inquiries as are necessary to establish whether the answer to the question or the reason or explanation is correct.
- (3) A person must not be detained under this section for a period exceeding 4 hours.

#### **143 Detention of Person Questioned Under Section 140**

- (1) A Customs officer may detain a person in accordance with section 142 for one or more of the following purposes:
  - (a) to question the person under section 140;
  - (b) to enable the officer to make the inquiries that are necessary to establish whether an answer to a question asked under section 140 is correct;

- (c) to obtain the attendance of, or make inquiries of, another Customs Officer or an officer entitled to exercise a power to question, detain or arrest a person under this Act.
- (2) A Customs Officer may detain a person under subsection (1) for up to 12 hours.
- (3) The questioning of a person under this section must take place as soon as practicable after the person is detained.
- (4) A Customs Officer must release a person detained immediately after the person answers the questions asked under section 140 if the Officer:
  - (a) is satisfied that the person has correctly answered the questions; and
  - (b) has no reasonable cause to suspect that the person questioned under the section has committed an offence.
- (5) A Customs Officer may continue to detain a person under subsection (1) after the person is questioned if the Customs Officer:
  - (a) is not satisfied that the person has correctly answered the question under section 140 or
  - (b) is not satisfied that the person has given an answer to question asked under section 140; or
  - (c) has reasonable cause to suspect that the person questioned under that section has committed an offence by not complying with section 38 or section 41.
- (6) Despite subsection (2), a person may be detained for a further reasonable period if, accident, stress of weather, or some other difficulty of transport or special circumstances makes it impossible for Customs officer to detain and question that person within the 12 hour period.
- (7) A Customs officer may use such reasonable force as is necessary to detain a person for questioning.
- (8) For the purpose of this section, unless the context otherwise requires:

“Detain” in relation to a person, includes moving a person to a Port or Airport or Police Station where the person may be, or may continue to be questioned:

“Further reasonable” period means a period no longer than is necessary in the circumstances for a Customs Officer to do what is specified in subsection 1.

## **144 Detention of Persons Committing or about to Commit Certain Offences**

- (1) A Customs officer or an authorised officer may detain a person who, either that officer has reasonable cause to suspect is committing, or is about to commit, an offence under section 195 if that person:
  - (a) is leaving or boarding a craft, that has arrived at a nominated Customs place or a Customs controlled area within that place, without the



- authority of a Customs officer before an inward report is made as required by section 37 or
- (b) has arrived in Tuvalu and has not reported to a Customs officer or an authorised person as required by subsection 38(1); or
  - (c) has arrived in Tuvalu and has reported to a Customs officer or an authorised person pursuant to subsection 38(1), but has failed to remain at the place where he or she has reported for a reasonable time as required in order for the officer to carry out his or her duties under section 38; or
  - (d) is on board a craft that has arrived in Tuvalu but has not complied with any Customs direction concerning disembarkation as required under subsection 39(1); or
  - (e) fails to remain in a customs controlled area for such reasonable time as is required to enable a Customs officer to exercise their powers under subsection 39(2); or
  - (f) fails to comply with a direction given under subsection 43(b).
- (2) To avoid doubt, a Customs officer or an authorised person may only detain a person under subsection (1) for the purpose of ensuring the person's compliance with one or more of the provisions referred to in subsection (1).
- (3) A Customs officer or an authorised person must release a person detained under subsection (1) immediately after the person has complied with the requirements under which the person was detained.
- (4) Reasonable force may be used, if necessary, to detain a person under subsection (1).
- (5) This section does not prevent a person:
- (a) to be detained or further detained under this Act or under any other Act; or
  - (b) to be arrested under section 176.
- (6) For the purposes of this section, unless the context otherwise requires, detention includes the delivery of a person to a police station or the custody of a Police officer.

## **145 Detention for Law Enforcement Purposes**

- (1) A Customs officer may detain a person who is required to comply with a direction given under section 40(1)(b) and who fails to comply with that direction.
- (2) If a Customs officer has reasonable cause to suspect that a person detained under sections 142 or 143 or 144 is a person to whom subsection 40(2) applies, the officer may:
- (a) detain the person under this section as well as the other sections; or

- (b) if the detention under the other sections has ended or is about to end, further detain the person under this section.
- (3) A Customs officer may detain or further detain a person under this section only for the purposes of obtaining the attendance of, or making inquiries of, another officer who is authorised, in respect of a matter specified in section 40 to do one or more of the following:
  - (a) question the person;
  - (b) ascertain or determine a matter relating to the status of the person;
  - (c) detain the person;
  - (d) arrest the person.
- (4) A person must not be detained or further detained under this section for a period exceeding:
  - (a) 4 hours; or
  - (b) if the person's detention commenced under section 143 or 144, the maximum period for which the person could, at the time of his or her detention or further detention under subsection (2), have been detained under section 143 or, as the case requires, section 144.
- (5) Reasonable force may be used, if necessary, to detain or further detain a person under this section.
- (6) This section does not prevent a person:
  - (a) to be detained or further detained under this Act or under any other Act; or
  - (b) being arrested under section 176
- (7) For the purposes of this section,  
"Detention" includes the delivery of a person to a police station or into the custody of a Police officer.

#### **146 Evidence of Answers to Questions Under section 140**

- (1) A person to whom this section applies must, on the demand of a Customs officer, produce documents that:
  - (a) are in the person's possession or control; and
  - (b) relate to the matters the person has been questioned about under section 140.
- (2) If a person produces a document in response to a demand under subsection (1), a Customs officer may carry out any of the following:
  - (a) inspect the document immediately and return it to that person when the officer has finished inspecting it;

- (b) inspect the document and retain it for the length of the person's detention under section 143;
- (c) inspect the document and retain it for as long as necessary to ascertain whether or not the Director wishes to exercise his or her power under section 166 to retain the document;
- (d) inspect the document and remove it for the purpose of making a copy under section 165
- (e) inspect the document and retain it under section 166.

## **147 Searching of Persons if Reasonable Cause to Suspect hidden Items**

- (1) Subsection (2) applies to a person who:
  - (a) is on board a craft that has arrived in or that is departing from Tuvalu; or
  - (b) is in the process of disembarking from or embarking onto a craft described in paragraph (a) of this subsection; or
  - (c) having entered into Tuvalu at a port or airport remains in that port or airport .
- (2) A Customs officer or authorised person who has reasonable cause to suspect that a person, to whom this subsection applies, has hidden on or about his or her person:
  - (a) any dutiable, uncustomed, prohibited or forfeited goods; or
  - (b) evidence relating to any dutiable, uncustomed, prohibited or forfeited goods; or
  - (c) anything that is or might be evidence of the contravention or possible contravention of this Act,may require the person to be searched.
- (3) Despite subsection (1), if a Customs officer or authorised person has reasonable grounds to believe that:
  - (a) a person has within the preceding 24 hours arrived in Tuvalu at any place other than a port or airport; or
  - (b) a person is about to depart from Tuvalu from any place other than a port or airport and the Customs officer or authorised person has reasonable cause to believe that the person has hidden on or about his or her person anything described in paragraphs (2)(a), (b) or (c),the Customs officer or authorised person may require that person to be detained and searched.
- (4) Despite subsection (2) or (3), if a Customs officer or authorised person has reasonable cause to believe that a person who is in a Customs Controlled Area, other than a person described in subsection (1) or (3), has hidden on or about their person anything described in paragraph (2)(a), (b) or (c), the Customs

officer or authorised person may require that person to be detained and searched.

- (5) Reasonable force may be used if it is necessary to detain and search the person.
- (6) A person detained pursuant to subsections (2), (3) or (4) must be informed of their rights, before being searched.
- (7) A person detained pursuant to subsection (2), (3) or (4) must only be searched by an Officer or authorised person of the same sex as the person detained.
- (8) A Customs officer or authorised person who searches a person under this section may request the assistance of any persons the Customs officer or authorised person thinks necessary to assist him or her with the search.
- (9) If a person is detained under this section and there is no suitable searcher available at the place where the search is to take place, the person detained may be taken to another place to be searched.
- (10) A Customs officer or authorised person may seize anything found in carrying out the search on or about the person that the Customs officer or authorised person has reasonable cause to suspect is a thing described in paragraph (2)(a), (b) or (c).
- (11) The Customs officer or authorised person may use such reasonable force as is necessary in the circumstances to seize anything described in paragraphs (2)(a), (b) or (c).

#### **148 Preliminary Search of Person by Used of Aids**

- (1) A Customs officer may conduct a preliminary search of a person to whom this section applies, and may detain that person for the purposes of conducting that preliminary search.
- (2) A preliminary search is a search that—
  - (a) involves little or no physical contact between the person conducting the search and the person being searched; and
  - (b) is conducted by using an aid or aids such as a dog, or chemical substance, or x-ray or imaging equipment, or some other mechanical, electrical, or electronic device, or other similar aid, but not by any more invasive means.
- (3) If, after a preliminary search under subsection (1), a Customs officer or, an authorized officer has reasonable cause to suspect that a person has hidden on or about his or her person anything described in sections 147 and 149 apply.

**149 Search of Person for Dangerous Items**

- (1) A Customs officer or an authorized person may immediately detain and search a person to whom this section applies if, and only if, the Customs officer or an authorized person has reasonable grounds to believe that—
  - (a) the person has a dangerous item hidden or in clear view on or about his or her person; and
  - (b) the item poses a threat to the safety of the officer, or any other person; and
  - (c) there is a need to act immediately in order to address that threat; and
  - (d) a search under section 147 would expose a Customs officer, or an authorized person, or any other person, to greater risk from the threat, and where necessary, reasonable force may be used for either or both of the following purposes:
    - (i) to detain the person:
    - (ii) to search the person.
- (2) To avoid doubt, a search may be conducted under this section whether or not the person has earlier been the subject of a search under section 148.
- (3) A Customs officer or authorised person who undertakes a search under this section must, within 3 working days of the search, give a written report of the search, the circumstances in which it was conducted, and the matters that gave rise to the reasonable grounds to believe required by subsection (1) to the Director.

**150 Seizure of Items Found**

- (1) A Customs officer or an authorized officer may seize anything found on or about a person when carrying out a search under sections 147 or 149 that the Customs officer or authorized person has reasonable cause to suspect is—
  - (a) a thing described in section 147(1) ; or
  - (b) a dangerous item.
- (2) A Customs officer may seize anything found on or about a person when carrying out a search under section 149 that the Customs officer has reasonable cause to suspect is a dangerous item.
- (3) Reasonable force may be used if it is necessary to seize a dangerous item found during the search under section 149.

**151 Access of customs officers to customs controlled area**

A Customs Officer may, at any time of the day or night, enter any part of a Customs controlled area and examine goods in that area, and may, for that purpose, enter any other area that it is necessary to pass through.

**152 Examination of Goods Subject to Customs Control.**

- (1) A Customs officer may:
  - (a) examine, weigh, analyse or test; or
  - (b) cause to be examined, weighed, analysed or tested, goods subject to the control of the Customs.
- (2) The owner of the goods must meet all costs involved in any examination by Customs and must supply the labour or equipment required to enable the examination to be carried out.
- (3) Customs does not incur any liability to any damages caused during examination, unless the damage was the result of an officer negligence.
- (4) The powers conferred on a Customs officer by subsection (1), extend to the examination, weighting, analyzing or testing of a suitcase, pallet, bulk cargo container, or other package.
- (5) An examination made under this section, may:
  - (a) include physical or chemical testing, or may be facilitated by any means whatever, including the drilling into, or the dismantling of, the goods; and
  - (b) be facilitated by any means such as an examination by using a dog, a chemical substance, x-ray or imaging equipment or some other mechanical, electrical or electronic device.
- (6) Samples of goods subject to the control of the Customs or suspected to be subject to the control of the Customs, may be taken and used by the Customs for the purposes of this section and are to be disposed of in the prescribed manner.
- (7) A sample taken under subsection (5) must be sufficient for the purpose for which it is taken.
- (7)A In scheduling examinations, priority shall be given to the examination of live animals and perishable goods and to other goods which the Director accepts are urgently required.<sup>25</sup>
- (7)B If physical or chemical testing is required under this section, goods may be released before the results are available, except if the goods are suspected of being restricted or prohibited.<sup>26</sup>
- (8) A Customs officer must be allowed free access to all lands, buildings, and places, and to all goods in or on any lands, buildings, or places, for the purpose of exercising powers under this section in respect of goods that are, or are suspected to be subject to the control of the Customs;
- (9) A Customs officer must not enter a private dwelling except with the consent of an occupier or owner of that dwelling or pursuant to a warrant issued under this Act.

**153 Examination of Goods No Longer Subject to the Control of Customs**

- (1) If the Director has reasonable cause to suspect that any offence has been committed under this Act in respect of goods that have ceased to be subject to the control of the Customs, the Director, may require a person who has, or whom the Director believes has, possession or control of those goods, to produce them for inspection by a Customs Officer.
- (2) A Customs officer may exercise, in respect of the goods, all the powers conferred by section 146.
- (3) A Customs officer may take and retain goods produced under subsection (1), for the purposes of exercising the powers conferred by subsection (2), and may retain the goods until investigation into the alleged offence is completed.

**154 Accounting for Goods**

The Director may from time to time by notice in writing, require the licensee of a Customs controlled area to:

- (a) immediately account for goods that the Director believes have been entered into that Customs controlled area; and
- (b) produce any documents relating to the movement of goods into or out of or within that Customs controlled area.

**155 Production of Goods**

A Customs officer may require the licensee of a Customs controlled area to produce to that officer, goods that are shown in any record as being within that area.

**156 Verification of Entries**

- (1) The Director may require from a person making entry of goods proof by declaration or the production of documents of the correctness of the entry and may refuse to deliver the goods or pass the entry before such proof is provided.
- (2) This section extends and applies to entries made for goods subject to excise tax.
- (3) If the Director is not satisfied with the correctness of any entry in relation to any goods, or with any other aspect of the importation or exportation of those goods, the Director may:
  - (a) detain the goods for a period that is reasonably necessary to enable the goods to be examined; and
  - (b) if necessary, make an investigation, whether in Tuvalu or elsewhere, into the importation or exportation of those goods.

**157 Securities for Payment of Duty**

- (1) The Director may require and take securities of such kind as may be prescribed for payment of duty.
- (2) The Director may, pending the giving of the security, refuse to pass an entry or carry out any other act in relation to any matter in respect of which the security is required.
- (3) A security may be required in relation to:
  - (a) a particular transaction; or
  - (b) to transactions generally; or
  - (c) a class of transactions,and for such period and amount, and on such conditions as to penalty or otherwise, as the Director may direct.
- (4) The security is to be in such form as approved by the Director.

**158 New Securities may be required**

- (1) If at any time the Director is not satisfied with the sufficiency of any security, the Director may require a new security in place of or in addition to the existing security.
- (2) If the new security is not given, the Director may refuse to pass an entry or carry out any other act in relation to any matter in which the new security is required.

**159 Written Authority of Agents**

- (1) A Customs officer may require a person acting or holding themselves out as the agent of another person in any matter relating to this Act, to produce a written authority from the principal to whom that person is an agent.
- (2) If the agent fails to produce a written authority, the Customs officer may refuse to recognize the agency.

**160 Audit or Examination of Records**

- (1) A Customs officer may at all reasonable times, enter any premises or places where records are kept pursuant to section 97 for the purposes of auditing or examining those Records either in relation to specific transactions or to the adequacy and integrity of the manual or electronic system or systems by which records are created and stored.
- (2) A Customs officer has full and free access to all lands, buildings and places and to all books, records and documents, whether in the custody or under the control of the licensee, importer, or exporter, or any other person, for the purpose of



inspecting any books, records and documents and any property, process or matter that the officer considers:

- (a) necessary or relevant for the purpose of collecting any duty under this Act or for the purpose of carrying out any other functions lawfully conferred on the officer; or
  - (b) likely to provide any information otherwise required for the purposes of this Act or any of those functions.
- (3) A Customs officer may, make extracts from or copies of any such books, records or documents, at no cost to the Customs.
- (4) A Customs officer must not enter any private dwelling except with the consent of the occupier or owner of that dwelling or pursuant to a warrant issued under this Act.

## 161 Requisition to Produce Documents

- (1) If a Customs officer has reasonable cause to suspect that:
- (a) certain goods have been unlawfully imported, exported, manufactured, undervalued, entered, removed, or otherwise unlawfully dealt with by any person contrary to this Act; or
  - (b) a person intends to import, export, manufacture, undervalue, enter, remove or otherwise deal with the goods, contrary to this Act;

the Customs officer may, by notice in writing, require that person or any person whom the officer suspects to be or to have been the owner, importer, exporter or manufacturer of those goods, or their respective agent, to produce and deliver to that officer, or any other specified Customs officer, any or all of the following documents:

- (c) any books of account;
- (d) invoice-books, or other books;
- (e) records or documents of account,

in which any entry or memorandum appears or may be supposed to appear in respect of the:

- (i) purchase; or
- (ii) importation; or
- (iii) exportation; or
- (iv) manufacture; or
- (v) cost; or
- (vi) value of; or
- (vii) payment for,

the goods and any other goods so imported or exported for, the goods and otherwise dealt within a period of 5 years preceding the date of the notice.

- (3) Subsection (2) also applies to goods that have been seized under this Act.
- (4) In addition to the requirements of subsection (2), the Director may require the owner, importer, exporter or manufacturer of those goods, or their respective agent, to:
  - (a) produce any of the documents referred to in subsection (2) for the inspection by the officer or any specified Customs officer, and to allow the officer to make copies of or extracts of the documents; and
  - (b) answer any question concerning those documents.

## **162 Further Powers in Relation to Documents**

- (1) The Director may, by notice in writing, require a person to:
  - (a) produce for inspection by a specified Customs officer any documents or records that the Director considers necessary or relevant to an investigation or audit under this Act;
  - (b) allow a Customs officer to make copies of or extracts from any such documents or records;
  - (c) appear before a Customs officer and answer all questions concerning:
    - (i) any goods or any transactions relating to goods that are the subject of an investigation; or
    - (ii) the documents or records that are relevant to an investigation.
- (2) For the purposes of this section, a person includes:
  - (a) an officer employed in or in connection with any State department, Corporation, or local authority; or
  - (b) an officer employed in or in connection with any bank or insurance company.

## **163 Documents in Foreign Language**

- (1) If a document presented to a Customs officer is in a foreign language, the officer may require the person who presented the document to supply to the officer the English text of the document prepared by such person as the officer approves.
- (2) The translation of a document required under subsection (1) is to be made at the expense of the person who presented it.

**164 Director May Take Possession of and Retain Documents and Records**

- (1) The Director may take possession of and retain any document or record presented to him or her in connection with any entry or required to be produced under this Act.
- (2) If the Director takes possession of a document or record under subsection (1), he or she may, at the request of the person entitled to the document or record, provide that person with a copy of the document certified by or on behalf of the Director under the seal of the Customs as a true copy.
- (3) A certified copy is admissible as evidence in any court as if it was the original.

**165 Copying of Documents Obtained During Search**

If a Customs officer or an authorized person carries out any lawful search, inspection, audit, or examination under this Act, and has reasonable cause to believe that documents coming into his or her possession during such search, inspection, audit, or examination, are evidence of the commission of an offence against this Act, the officer may remove the documents for the purpose of making copies.

**166 Retention of Documents and Goods**

- (1) If a Customs officer or an authorised person carries out any lawful search, inspection, audit, or examination under this Act, and has reasonable cause to believe that any documents or goods coming into his or her possession during such search, inspection, audit or examination are:
  - (a) evidence of the commission of an offence under this Act; or
  - (b) intended to be used for the purpose of committing an offence under this Act,the officer or authorised person may, subject to subsection (4), take possession of and retain the documents or goods.
- (2) If a Customs officer or authorised person takes possession of a document under subsection (1), he or she may, at the request of the person otherwise entitled to the document, provide that person with a copy of the document certified by or on behalf of the Director under the seal of the Customs as a true copy.
- (3) A certified copy is admissible in evidence in any court as if it was the original.
- (4) If a Customs officer or authorised person takes possession of and retains documents or goods under this section, the following provisions are to apply:
  - (a) in any proceedings for an offence relating to the documents or goods, the Court may order, either on the hearing or on a subsequent application, that:
    - (i) the documents or goods be delivered to the person appearing to the Court to be entitled to them; or

- (ii) the documents or goods be otherwise disposed of in such manner and under such conditions as the Court thinks fit.

## **167 Search Warrants**

- (1) A Magistrate who, on an application by a Customs Officer in writing made under oath, is satisfied that;
  - (a) there are reasonable cause to believe that there may be evidence of the commission of an offence against this Act or any regulations made under this Act; or
  - (b) there is something that provides reasonable cause to believe is intended to be used for the purpose of committing an offence against this Act or any regulations made under this Act; or
  - (c) anything is liable to seizure under this Act;may issue a search warrant in a prescribed form.
- (2) When applying for a warrant, a Customs officer must, after making the necessary enquiries, disclose on the application details of any other applications that the Customs officer knows of the:
  - (a) place or thing specified; and
  - (b) offence or offences alleged; and
  - (c) result of such application or applications.
- (3) A search warrant must be:
  - (a) directed to and executed by a designated Customs officer; or
  - (b) directed to Customs officers generally and be executed by 1 or more Customs officers.
- (4) A warrant may be issued subject to such reasonable conditions specified in the warrant.

## **168 Entry and Search Under Warrant**

- (1) A search warrant must authorize the Customs officer executing the warrant to:
  - (a) enter and search the place or thing on one occasion within 10 working days from the date the warrant is issued, and at any time that is reasonable in the circumstances, but subject to any conditions imposed by the issuer under subsection 167(4); and
  - (b) use such assistance as is reasonable in the circumstances; and
  - (c) use such force to prevent the removal of anything from the premises and using force for making entry including:
    - (i) using force to break down doors;

- (ii) using force to break open anything as is reasonable in the circumstances.
- (2) In addition to searching and seizing anything referred to in subsection 167(1), a Customs officer may also, whilst on the premises executing the warrant, seize any other thing that the officer finds and has reasonable cause to suspect may be evidence of the commission of an offence in respect of which that officer could have obtained a warrant under subsection 167(4);
- (3) A search warrant authorizes; the officer executing it to:
  - (a) detain a person who:
    - (i) is at the place referred to in the warrant when the officer arrives at that place; or
    - (ii) arrives at that place when the officer is executing the warrant, until the Officer is satisfied that the person is not connected to with the matter referred to in the warrant; and
  - (b) to search a person who:
    - (i) is at the place referred to in the warrant when the officer arrives at that place or
    - (ii) arrives at that place referred to in the warrant while the officer is executing the warrant,if, at any time while executing the warrant, the officer reasonably believes that the thing referred to in the warrant may be on the person's body.
- (4) Reasonable force may be used, if necessary, when searching a person.
- (5) A Customs officer or authorised person may seize anything found when carrying out the search if the Customs Officer or authorised person has reasonable cause to believe is a thing referred to in the warrant, and reasonable force may be used to seize the thing.
- (6) A person who is requested to assist the officer executing the warrant has, for that purpose, the powers referred to in paragraph (1)(c) and subsection (2).

## **169 Searching of Person for Dangerous Items when Executing Search Warrant**

- (1) This section applies to any person who is at the place referred to in the search warrant when the Customs officer arrives at that place, or who arrives at that place when the officer is executing the warrant.
- (2) A Customs officer may immediately detain and search a person to whom this section applies for dangerous items, and may seize such items under section 168(2) if, and only if, the officer has reasonable grounds to believe that—

- (a) the person has a dangerous item hidden or in clear view on or about his or her person; and
  - (b) the item poses a threat to the safety of the officer or any other person; and
  - (c) there is a need to act immediately in order to address that threat.
- (3) If necessary, reasonable force may be used for 1 or more of the following purposes:
  - (a) to detain the person:
  - (b) to search the person:
  - (c) to seize any dangerous item found in carrying out a search under subsection (2).
- (4) To avoid doubt, a search may be conducted under this section whether or not the person has earlier been the subject of a search under section 168.
- (5) A Customs officer who undertakes a search under this section must, within 3 working days of the search, give the Director a written report of the search, the circumstances in which it was conducted, and the matters that gave rise to the reasonable grounds to believe required by subsection (2).

## **170 Detention of Dangerous Items**

- (1) A Customs officer may detain goods that he or she seizes in the course of exercising a power of search under sections 168 or 169(2), if he or she believes on reasonable grounds that the goods are dangerous as in section 149.
- (2) If a Customs officer detains goods under subsection (1), he or she must—
  - (a) as soon as practicable, deliver those goods into the custody of the Police; or
  - (b) comply with section 172 and retain those goods if the goods may be required for a proceeding under this Act.
- (3) Once goods have been delivered into the custody of the Police under subsection (2)(a) it is their responsibility for the safekeeping of the goods and where necessary deliver back to Customs upon demand.
- (4) Section 104 of the Criminal Procedure Code Cap 10.05 applies where necessary to goods detained under subsection (1).

## **171 Search warrant to be produced**

- (1) A Customs officer executing a search warrant must produce a copy of the warrant and explain the purpose of it, to or on behalf of the owner or occupier of the premises or owner of the thing upon initial entry to the premises or the thing.

- (2) If the owner or occupier of the premises to be searched or the owner of the thing to be searched, is not present at the time of the search, the Customs officer executing the warrant must leave the warrant in a prominent location at the place to be searched or attached to the thing to be searched, a written notice stating the date and time of the execution of the warrant and the name of the officer in charge of the search.
- (3) If the officer executing the warrant believes that a notice under subsection (3), would unduly prejudice subsequent investigations, that officer may refrain from leaving the notice and, in that event, must, within 5 working days apply to a magistrate for confirmation of his or her decision.
- (4) If the Court refuses to confirm the decision, the officer who is to execute the warrant must immediately notify the owner or occupier of the place searched or the owner of the thing searched, of the particulars referred to in subsection (3).

## **172 Duty to Inform Owner Where Thing Seized**

- (1) Subject to sections 228 and 230 or unless a magistrate because of exceptional circumstances, otherwise orders, the person executing the warrant must and immediately as far as practicable after the seizure, inform the owner or occupier of the place searched or the owner of the thing searched, that as a result of the executing the warrant certain documents or goods have been seized.
- (2) The Customs officer executing the warrant must inform the owner or occupier by:
  - (a) delivering to them a written notice containing such information; or
  - (b) leaving such a notice in a prominent location at the place searched or attached to the thing searched, as the case may be; or
  - (c) by sending such a notice to the owner or occupier by registered mail; or
  - (d) in such other manner as the Customs officer thinks appropriate.

## **173 Emergency Warrants**

- (1) Upon an application made by a Customs Officer, and if the Court is satisfied that circumstances exist that would justify granting a search warrant under section 167, but the urgency of the situation requires that the search should begin before a warrant could be obtained, the court may, orally or in writing, grant an emergency search warrant.
- (2) An application for an emergency warrant may be made orally or in writing.
- (3) The Customs officer making the application must, when making the application, make a note in writing of the particulars of the application.
- (4) If the court grants an emergency warrant, it must immediately make a note in writing of the particulars of the application,.

- (5) The note made under subsection (4) is to be filed in the court registry, and for the purpose of subsection (1), is to be deemed to be an application under that section.
- (6) A Customs Officer executing an emergency warrant must produce the note made in accordance with subsection (3) for inspection upon initial entry and in response to any subsequent request and, when requested, must provide a copy of the note to the owner or occupier as soon as practicable after the request is made.
- (7) Sections 171 and 172 apply to emergency warrants in the same manner as they apply to search warrants.
- (8) An emergency warrant is valid for 12 hours from the time when it is issued.
- (9) As soon as practicable after the expiration of an emergency warrant, the Customs Officer who applied for it, must provide a written report, in the approved form, to the court who granted the emergency warrant setting the manner in which the emergency warrant has been executed and the results obtained by the execution of the warrant.

#### **174 Use of Aids by Customs officer**

- (1) In exercising any power of boarding, entry, or search conferred by this Act, a Customs officer or any Police officer may have with them, and use for the purposes of searching, a dog, a chemical substance, or a mechanical, electrical or electronic device.
- (2) This section does not apply to a search warrant carried out on residential premises except pursuant to a warrant issued under sections 167 to 171.

#### **175 Conditions Applying to Entry of Buildings**

Despite anything in this Act, every provision of this Act that confers on a Customs officer the power to enter any building, whether under the authority of a warrant or otherwise is subject to the following conditions:

- (a) reasonable notice of the intention to enter must be given except where it would frustrate the entry;
- (b) entry must be made at a time that is reasonable in the particular circumstances except where it would frustrate the purpose of entry;
- (c) identification must be produced on initial entry and if requested at any subsequent time;
- (d) the authority for the entry and the purpose of the entry must be clearly stated to the owner or occupier of the building, if they are present.



**176 Arrest of Offenders**

- (1) A Customs officer or an authorised person who has reasonable cause to suspect that a person has committed an offence under section 179, 182, 212 or 215, may at any time within 5 days after the date on which such cause to suspect arises, arrest that person without warrant.
- (2) Despite subsection (1), a Customs Officer may arrest without warrant any person found on a craft that the Officer believes:
  - (a) has committed; or
  - (b) is committing; or
  - (c) is attempting to commit; or
  - (d) is otherwise involved in, abetted, or facilitated the commission of, an offence under this Act being an offence that is punishable by a term of imprisonment.
- (3) If a Customs officer arrests a person under a power conferred under this section, the Officer must, unless is sooner released, immediately call a Police Officer to their aid and deliver the arrested person into the custody of that Police Officer.

**177 Protection of Persons Acting under Authority of the Act**

- (1) There is no liability against the State, a Customs Officer or against any other authorised person, to recover loss or damages for any act, matter or thing done or omitted to be done in good faith arising from a breach of the provisions of this Act.
- (2) A person is not exempted from liability under subsection (1) for any act or omission that constitutes bad faith or gross negligence on the part of that person.

**178 Unlawful Travel Documents**

- (1) In this section—

“false”, in relation to a travel document, means that the travel document contains information purporting to relate to the person to whom it was issued (being information supplied by or on behalf of the person as part of or in connection with the person’s application for the document) that—

  - (a) is false; or
  - (b) relates in fact to some other person.

“forged”, in relation to a travel document, means that the travel document—

  - (a) has not been issued by the state by which it purports to have been issued; or
  - (b) has been altered without authority.

misused in relation to a travel document, means that the travel document has been, is being, or is intended to be used for the purposes of identification by a person who is not the person in respect of whom the document was issued.

“travel document” means any document that is or purports to be—

- (a) a permit within the meaning of the Immigration Act; or
- (b) a passport within the meaning of the Passport Act that has been issued by the state of any country; or
- (c) a certificate of identity that has been issued by the state of any country; or
- (d) a refugee travel document that has been issued by the state of any country.

“unlawful travel document” means—

- (a) a travel document that is false, forged, or misused; and
  - (b) includes any item involved in the production of a document referred to in paragraph (a) or in the unauthorized alteration of a travel document.
- (2) A Customs officer may retain or seize any document presented for inspection if a Customs Officer has reasonable cause to suspect that the document is an unlawful travel document.
- (3) A Customs officer may seize any documents found in the course of a search or examination under this Act if a Customs officer has reasonable cause to suspect that the documents are unlawful travel documents.

## **PART 14 OFFENCES AND PENALTIES**

### **DIVISION 1 - OFFENCES IN RELATION TO CUSTOMS**

#### **179 Threatening or resisting a Customs officer**

A person who:

- (a) threatens or assaults; or
- (b) by force, resists or intentionally obstructs or intimidates any Customs officer in the execution of his or her duties or a person acting in the officer’s aid,

commits an offence, and shall be liable on conviction to a fine of \$200 or for a term of imprisonment not exceeding one year, or both.

#### **180 Obstructing Customs officer or interfering with Customs Property**

A person who:

- (a) intentionally obstructs any Customs officer or authorised person acting in execution of his or her duties; or
- (b) intentionally interferes with any equipment, vehicle, craft, dog, communications system, or other aid used or intended for use, by the Customs; or
- (c) does any act with the intention of impairing the effectiveness of any equipment, vehicle, craft, dog, communications system, or other aid used, or intended for use, by the Customs,

commits an offence, and shall be liable on conviction to a fine \$200, or imprisonment for a term not exceeding one year, or both.

### **181 Impersonation of a Customs officer**

A person who:

- (a) not being a Customs officer or an authorised person for the purposes of this Act, by words, conduct or demeanour pretends to be a Customs officer or an authorised person, or wears or uses the uniform, name, designation or description of a Customs officer or an authorised person; or
- (b) without authority represents any craft, vehicle or other conveyance as being in the service of the Customs,

commits an offence, and shall be liable on conviction to a fine not exceeding \$200 or imprisonment for a term not exceeding one year, or both.

### **182 Bribery and Collusion**

(1) A person who:

- (a) offers or gives, whether directly or indirectly, to the Director, a Customs officer or an authorised person any payment or reward, whether in money or otherwise; or
- (b) proposes or enters into any agreement with the Director, Customs officer or an authorised person in order to induce them to do, or abstain from doing, permit or conceal any act intended to defraud the state, or is otherwise unlawful under this Act,

commits an offence, and shall be liable on conviction to a term of imprisonment not exceeding 5 years.

(2) If the Director, or a Customs officer, or an authorised person:

- (a) asks for or takes, whether directly or indirectly, any payment or reward, whether in money or otherwise, that is not a payment or reward he or she is lawfully entitled to receive; or

- (b) proposes or enters into any agreement, to do, or refrain from doing, permit or conceal any act to defraud or attempt to defraud the state, or which is otherwise unlawful under this Act or any other law,
- commits an offence, and shall be liable on conviction to a term of imprisonment not exceeding 5 years.

### **183 Disclosure of Information**

A Customs officer or an authorised person who directly or indirectly discloses to any person any protected information without authority of the Director, commits an offence, and shall be liable on conviction to a fine not exceeding \$200.00.

### **184 Counterfeit Seals or Marks**

Any person who;

- (a) without lawful authority or excuse, has in their possession, or makes, or uses any counterfeit, seal, stamp or mark; or
- (b) has in his or her possession, or makes, or uses any seal, stamp or mark, closely resembling any seal, stamp or mark used by the Customs for the purposes of this Act,

commits an offence, and shall be liable on conviction to a fine not exceeding \$200.00.

### **185 Obligations of Persons Arriving in or Departing from Tuvalu**

A person who wilfully fails to comply with any requirements imposed on that person by or under any of sections 38 to 43, commits an offence, and shall be liable on conviction to a fine not exceeding \$100.00.

### **186 Unauthorised Presence in Customs Controlled Areas**

A person who, without permission of a Customs officer, enters into or remains in when directed by a Customs officer to leave a Customs controlled area, commits an offence, and shall be liable on conviction to a fine not exceeding \$200.00.

### **187 Unauthorised Access to or Improper Use of Customs automated system**

A person who:

- (a) knowingly and without lawful authority by any means gains access to or attempts to gain access to any Customs automated system; or

- (b) having lawful access to any Customs automated system, knowingly uses or discloses information obtained from such a computer system for a purpose that is not authorised; or
- (c) knowing that he or she is not authorised to do so, receive information obtained from any Customs automated system and, uses discloses, publishes or otherwise disseminates such information,

commits an offence, and shall be liable on conviction to a fine of \$200.00 or a term imprisonment not exceeding one year, or both.

### **188 Interference with Customs automated system**

- (1) A person who:
  - (a) by any means knowingly falsifies any record or information stored in any Customs automated system; or
  - (b) knowingly damages or impairs any Customs automated system; or
  - (c) knowingly damages or impairs any duplicate tape or disc or other medium on which any information obtained from a Customs automated system is held or stored otherwise than with the permission of the Director,

commits an offence, and shall be liable on conviction to a fine of \$200.00 or a term of imprisonment not exceeding one year, or both.

- (2) In a case of body corporate shall be liable on conviction to a fine of \$500.00.

### **189 Offences in Relation to Security of, or Unauthorized Use of, Unique User Identifiers**

- (1) A registered user of a Customs automated system who fails to comply with or acts in contravention of any conditions imposed by the Director relating to the security of that registered user's user identifier, commits an offence, and shall be liable on conviction to a fine of \$200.00, or, to a term of imprisonment of 1 year, or, both.
- (2) A person who:
  - (a) not being a registered user, uses a unique user identifier; or
  - (b) being a registered user, uses the unique user identifier of any other registered user,

to authenticate a transmission of information to the Customs automated system, commits an offence, and shall be liable on conviction to a fine of \$200.00, or to a term of imprisonment of 1 year, or, both.

**DIVISION 2 - OFFENCES IN RELATION TO CUSTOMS OFFICERS' POWERS****190 Failure to Answer Questions**

A person who, when required under this Act to answer any question put to that person:

- (a) without reasonable excuse, fails or refuses to answer it; or
- (b) gives an incorrect answer,

commits an offence, and shall be liable on conviction to a fine not exceeding \$100.00.

**191 Failure to Produce or Account for Goods**

A person who fails or refuses to produce or account for any goods when required to do so under sections 154 or 155 or section 156, commits an offence, and be liable on conviction to a fine not exceeding \$200.00.

**192 Failure to Comply with Requisition**

A person, who fails or refuses to comply with the requirement of the Director under section 161, commits an offence, and shall be liable on conviction, to a fine not exceeding \$100.00.

**193 Use of Area without Licence**

A person who contravenes section 21 commits an offence, and shall be liable on conviction to a fine not exceeding \$100.00.

**194 Failure to Comply with Conditions of Licence**

A person who fails to comply with or acts in contravention of, any term, condition, or restriction subject to which a licence has been granted under section 23, commits an offence, and shall be liable on conviction to a fine not exceeding \$100.00.

**195 Offences in relation to arrival of craft**

(1) A person who:

- (a) being the master of any craft, fails to comply with subsection 32 (1) or any direction given by a Customs officer under paragraph 32 (1)(b); or
- (b) being the master, or the owner of, or a member of the crew of, or a passenger on, any craft:
  - (i) refuses to answer any question put to that person by a Customs officer under paragraph 33(2)(a) or knowingly gives a false answer to the question; or

- (ii) fails to comply with any request made under paragraph 33(2)(b); or
- (c) being the master of a ship, fails to comply with any direction of a Customs officer under subsection 34(1) or 34(4) or fails to comply with subsection 34(3); or
- (d) being the master of any craft, fails to comply with subsection 35(1); or
- (e) being a member of the crew of, or a passenger on, any craft, acts in accordance in contravention of subsection 35(2) of this Act; or
- (f) being a Master of any craft, fails to comply with, or acts in contravention of, subsection 36(2) of this Act; or
- (g) being a member of the crew of, or a passenger on, any craft, acts in contravention of subsection 36(3) or (4); or
- (h) being the Master of or the owner of any craft:
  - (i) fails to comply with 37(2)(a); or
  - (ii) fails to lodge an inwards report required under 37(2)(b);
  - (iii) fails to obey a Customs direction given under 37(2)(c),

commits an offence.

- (2) A person who commits an offence under paragraph (1)(a), (c) or (d) shall be liable on conviction to fine of \$100.00, or, a term of imprisonment not exceeding one year, or, both;
- (3) A person who commits an offence under paragraph (1)(b) shall be liable on conviction to a fine not exceeding \$200.00.
- (4) A person who commits an offence under paragraphs (1)(e), (f), (g) or (h) shall be liable on conviction to a fine not exceeding \$200.00.

## **196 Offences in Relation to Inward Report**

If:

- (a) an inward report delivered pursuant to section 37 is incorrect, misleading or defective in any material particular; or
- (b) a document delivered in support of the report is not genuine or is incorrect or misleading,

the Master of the craft and the owner of the craft each, commits an offence, and shall be liable on conviction to fine \$500.00.

## **197 Offences in Relation to Departure of Craft**

- (1) A person commits an offence who:
  - (a) being the master of any craft, contravenes section 45 ; or

- (b) being the master of any craft:
    - (i) fails to comply with paragraph 46(a); or
    - (ii) refuses to answer any question put to that person by a Customs officer under paragraph 46(b) or knowingly gives a false answer to the question; or
  - (c) being a master or a member of the crew, of any craft fails to comply with section 44 of this Act; or
  - (d) being a Master of any craft, fails to comply with a demand made by a Customs officer under section 48 or refuses to answer any question put to that person under that section or knowingly gives a false answer to the question; or
  - (e) being a master of any craft, acts in contravention of section 49 .
- (2) A person who commits an offence under paragraph (1)(a), (c) or (e) shall be liable on conviction to a fine of \$500.00.
- (3) A person who commits an offence against paragraphs (1)(b) or (d), shall be liable on conviction to a fine not exceeding \$200.00.

## **198 Offences in relation to outward report**

If:

- (a) an outward report delivered pursuant to section 46 is incorrect, misleading or defective in any material particular; or
- (b) any document delivered in support of the report is not genuine or is incorrect or misleading,

the master and the owner of the craft each commits an offence, and shall be liable on conviction to a fine not exceeding \$200.00.

## **199 Failure to Comply with Requirement to Cease Using Electronic Communication Device**

A person who fails to comply with any requirement imposed on that person by or under subsection 44(3), commits an offence, and shall be liable on conviction to a fine not exceeding \$200. 00.

## **DIVISION 3 OTHER OFFENCES**

## **200 Adapting Craft for Smuggling**

If any craft comes to or is found within Tuvalu having:



- (a) any part or place adapted for the purpose of concealing goods or persons;  
or
- (b) any hole, pipe or device adapted for the purpose of concealing goods or persons,

the master and the owner of the craft each commits an offence, and shall be liable on conviction to a fine not exceeding \$500.00.

## **201 Interference with Seals and Fastenings**

Where any fastening, lock, mark or seal that has been placed by a Customs officer on any goods or on a hatchway, opening or other place or device on any craft is, without the authority of a Customs officer, opened, altered, broken, or erased by any person while the craft is within Tuvalu, the person so acting and the person in charge of the craft each commits an offence, and shall be liable on conviction to a fine of not exceeding \$200.00

## **202 Interference with Cargo**

- (1) If at any time after any craft carrying goods from a point outside Tuvalu arrives within Tuvalu and before a report is made in accordance with section 32;
  - (a) any cargo is interfered with; or
  - (b) any alteration is made in the storage of goods carried, so as to facilitate the unloading of any of the goods before the report has been made; or
  - (c) any of the goods are starved, removed, destroyed, or thrown overboard, or any package is opened the person so acting and the person in charge of the craft each commits an offence.
- (2) Subsection (1) does not apply if the act:
  - (a) was authorised by the Director or a Customs officer; or
  - (b) was required by any statutory or other requirement relating to navigation;  
or
  - (c) was compelled by accident, stress of weather, or other necessity.
- (3) A person who commits an offence against this section and shall be liable on conviction to a fine not exceeding \$500.00.

## **203 Unloading Goods without Authorization**

A person who acts in contravention of section 55 commits an offence punishable, on conviction to a fine not exceeding \$500.00.

**204 Offences in Relation to Movements and Storage of Goods**

A person who:

- (a) fails to comply with subsection 31 (1); or
- (b) acts in contravention of section 48; or
- (c) acts in contravention of section 49; or
- (d) takes good out of a Customs controlled area or does an act in relation to goods taken out of a Customs controlled area that constitutes a contravention of the permission granted by the Director under section 59;

commits an offence punishable, on conviction to a fine not exceeding \$500.00.

**205 Interference with Goods**

A person who, except with the permission of a Customs officer:

- (a) makes any alteration in the condition of goods subject to the control of Customs; or
- (b) interferes with, including by way of addition to or taken away from such goods; or
- (c) unpacks or repacks such goods; or
- (d) removes such goods from any place in which a Customs officer has directed that the goods are to be stored,

commits an offence punishable on conviction to a fine not exceeding \$500.00.

**206 Offences in Relation to Entries**

A person who:

- (a) fails to make an entry required under this Act; or
- (b) makes an entry required under this Act that is incorrect or defective in a material particular,

commits an offence, and shall be liable on conviction to a fine not exceeding \$100.00.

**207 Offences in Relation to Declarations and Documents**

(1) A person who:

- (a) makes a declaration or a written statement under this Act that is incorrect in a material particular;
- (b) produces or delivers to a Customs officer any document that is not genuine;
- (c) produces or delivers to a Customs officer any document that is incorrect in material particular,

commits an offence, and shall be liable on conviction to a fine not exceeding \$100.00.

(2) A person who:

- (a) makes a false declaration under this Act, knowing it to be false;
- (b) produces or delivers to a Customs officer any document that is not genuine, knowing that it is not genuine;
- (c) produces or delivers to a Customs officer any document that is incorrect in any material particular, knowing that it is incorrect,

commits an offence, and shall be liable on conviction to a term of imprisonment not exceeding 6 months or to a fine not exceeding \$200.00, or, both.

## 208 Offences in Relation to Records

- (1) A person who fails to keep records that are required to be kept by section 97 commits an offence punishable on conviction to a fine not exceeding \$500.

(2) Every person who-

- (a) fails without reasonable excuse to make available to the Customs, on the request of a Customs officer, the records that are required to be kept by section 98 ; or
- (b) fails, when requested by a Customs officer, to operate any machine, or electronic device on which any records are, or information is, stored for the purpose of enabling the Customs officer to obtain those records or that information,

commits an offence punishable, on conviction to a fine not exceeding \$500.

- (3) A person who, with intent to defeat the purposes of this Act, destroys, alters, or conceals any book, document, or record required to be kept under this Act, or sends or attempts to send out of Tuvalu any such book, document, or record commits an offence, and shall be liable on conviction to a fine of \$500.00, or, imprisonment for a term not exceeding 2 years, or, both.

## 209 Possession of Incomplete Documents

A person who without lawful authority or excuse, has in his or her possession or brings into Tuvalu any uncompleted document or form capable of being used for any purpose under this Act if the document is signed or certified or bears any such mark or inscription to indicate that it is correct or authentic commits an offence, and shall be liable on conviction to a fine not exceeding \$500.00.

## 210 Offences in Relation to Use of Goods

A person who knowingly:

- (a) uses or deals with those goods for a purpose other than that for which the goods have been so entered; or
- (b) fails to comply with a condition imposed by the Director in respect of the goods so entered,

commits an offence, and shall be liable on conviction to a fine not exceeding an amount equal to 3 times the amount of the duty that would have been payable if the goods had been entered otherwise than under the provision under which they were entered, or a fine not exceeding \$200, whichever sum is the greater.

## **211 Provisions Relating to Offences against sections 206 to 210**

For the purposes of this Act:

- (a) a declaration, invoice, certificate, written statement or other document required or authorized by or under this Act to be made or produced by a person making an entry is deemed to form part of that entry;
- (b) an amendment of an entry is deemed to form part of that entry, but an amendment to an entry does not relieve a person from liability to the imposition of a penalty or liability to seizure of goods or criminal liability incurred in respect of the entry before its amendment.

## **212 Offences in Relation to Importation or Exportation of Prohibited Goods**

- (1) A person who:
  - (a) imports into Tuvalu or ships or lands in Tuvalu goods the importation of which is prohibited under section 78; or
  - (b) exports, or transports with intent to export, goods from Tuvalu the exportation of which is prohibited by regulation made under section 79; or
  - (c) is knowingly concerned in any importation, exportation, transportation, shipment, unshipment, or landing of goods to which paragraph (a) or (b) applies; or
  - (d) without lawful justification or excuse, removes from a Customs controlled area imported goods the importation of which is prohibited under section 78; or
  - (e) is knowingly concerned or conspires, in the removal from a Customs controlled area of goods, the importation of which is prohibited under section 78; or
  - (f) commits a breach of, or fails to comply with, a term or condition on or subject to which a licence, permit, or consent has been granted, under a regulation made under subsection 78(3) or subsection 79(3); or
  - (g) is knowingly concerned in a breach or failure to comply to which paragraph (f) applies.

commits an offence.

- (2) A person who commits an offence against any of paragraphs (c), (e) or (g) of subsection (1), shall be liable on conviction –
  - (a) in the case of an individual, to a fine not exceeding \$1,000.00, or, to imprisonment for a term not exceeding 5 years, or, both,
  - (b) in the case of a body corporate to a fine not exceeding \$2,000.00,
- (3) A person who commits an offence against paragraph (a), (b), (d) or (f) of subsection (1) is liable on conviction to a fine not exceeding \$2,000.00.

## **213 Offences in Relation to Exportation of Goods**

- (1) A person who:
  - (a) acts in contravention of subsection 61(1) or (4) ;
  - (b) fails to comply with a request made under paragraph 61(2)(b);
  - (c) fails or is knowingly concerned in any failure, to comply with section 62;
  - (d) acts in contravention of section 63;
  - (e) is knowingly concerned in a contravention of subsection 108 (3) (which relates to drawback on duty on certain goods),commits an offence.
- (2) A person who commits an offence against paragraph (1)(a), (b) or (c) or (d) shall be liable on conviction to a fine not exceeding \$500.00.
- (3) A person who commits an offence against paragraph (1)(e) shall be liable on conviction to a fine of \$500.00, or, to a term of imprisonment not exceeding 2 years, or, both.

## **214 Defrauding the Revenue of Customs**

- (1) A person who does an act or omits to do an act for the purpose of:
  - (a) evading, or enabling any other person to evade, payment of duty or full duty on goods; or
  - (b) obtaining or enabling any other person to obtain, money by way of drawback or a refund of duty on goods to which that person or that other person is not entitled under this Act; or
  - (c) conspiring with any other person (whether that other person is in Tuvalu or not) to defrauding in any other manner the revenue of the Customs in relation to goods,commits an offence;
- (2) A person who commits an offence under this section be liable on conviction-

- (a) in the case of an individual, to a fine not exceeding \$1,000.00, or, to imprisonment for a term not exceeding 3 years, or, both;
- (b) in the case of body corporate, to a fine not exceeding \$5,000.00; or
- (c) in either case, shall be liable on conviction to a fine of an amount not exceeding 3 times the value the goods to which the offence relates.

## **215 Possession or Custody of Uncustomed Goods or Prohibited imports.**

- (1) A person commits an offence under this section, who knowingly and without lawful justification has in his or her possession or custody goods that the person knows are uncustomed goods or prohibited imports.
- (2) A person who commits an offence against this section shall be liable on conviction—
  - (a) in the case of an individual, to a fine not exceeding \$1,000.00, or to imprisonment for a term not exceeding 3 years, or, both; or
  - (b) in the case of a body corporate, to a fine not exceeding \$10,000, or, in either of the case shall be liable on conviction to a fine of an amount equal to 3 times the value of the goods to which the offence relates, whichever is the lesser.

## **216 Purchase, Sale, Exchange, etc of Uncustomed Goods or Prohibited Imports**

- (1) A person commits an offence who knowingly and without lawful justification purchases, sells, exchanges, or otherwise acquires or disposes of, goods that the person knows are uncustomed goods or prohibited imports.
- (2) A person who commits an offence against this section be liable on conviction—
  - (a) in the case of an individual, to a fine not exceeding of \$5,000.00, or, imprisonment for a term not exceeding 5 years, or, both;
  - (b) in the case of a body corporate to a fine not exceeding \$50,000.00, or, in either of the case, be liable on conviction to a fine of an amount equal to 3 times the value of the goods to which the offence relates, whichever is the lesser.

## **217 Offences in Relation to Seized Goods**

- (1) A person, having custody of goods pursuant to section 228, who acts in breach of any requirements of or imposed pursuant to subsection (8) commits an offence punishable on conviction to a fine not exceeding \$500.00.
- (2) A person who, without the permission of the Director, takes or carries away or otherwise converts to his or her own use goods, including any vehicle or craft, that have been seized as forfeited, commits an offence, and be liable on

conviction to a fine not exceeding \$500.00, or to imprisonment for a term not exceeding one year, or, in either of the case, shall be liable on conviction to a fine of an amount equal to 3 times the value of the goods to which the offence relates, whichever is the lesser.

## **218 Possession or Control of Concealed Goods**

- (1) A person commits an offence who knowingly conceals any goods that the person knows are dutiable or prohibited goods.
- (2) A person who commits an offence against this section shall be liable on conviction—
  - (a) in the case of an individual, to a fine not exceeding \$1,000.00, or, to imprisonment for a term not exceeding 2 years, or, both;
  - (b) in the case of a body corporate, to a fine not exceeding \$10,000, or, in either case, to a fine of an amount not exceeding 3 times the value of the goods to which the offence relates.

## **219 Offences in relation to Customs Appeal Tribunal**

A person who, with intent to deceive, makes any false or misleading statement or any material omission in any information given to the Customs Appeal Tribunal for the purposes of this Act, commits an offence, and shall be liable on conviction to a fine not exceeding \$100.00.

# **DIVISION 4 - MISCELLANEOUS PROVISIONS RELATING TO OFFENCES**

## **220 Liability of Officers of Corporations**

- (1) For the purposes of this section, the term ‘corporation’ includes a company, trust, partnership or other enterprise.
- (2) If a corporation commits an offence against any provision of this Act, every director, manager, secretary, officer or agent of the corporation and every person purporting to act in any such capacity who participated in, directed, authorized acquiesced in, or assented to the act or omission constituting the offence also commits an offence against that provision.
- (3) An individual who commits an offence under this Act as provided in subsection (2) shall be liable on conviction to the penalty prescribed by the section.

**221 Liability of Principal and Agent**

- (1) Every declaration made or other act done by an agent in the course of his or her agency in relation to the report, entry or clearance of any craft or goods or any other matter under this Act is deemed also to have been made or done by the agent's principal, and the principal is liable accordingly to the penalties imposed by this Act.
- (2) For the purposes of this section, the knowledge or intent of the agent is imputed to the principal in addition to the principal's own knowledge or intent.
- (3) For the purposes of this section:
  - (a) an employee of the agent; or
  - (b) a person performing any function of or for the agent; or
  - (c) a person acting under the instruction of the agent; is deemed also to be the agent of the principal.
- (2) Where any person acts or purports to act as the agent of any other person in relation to the report, entry, or clearance of any craft, or goods or any other matter under this Act, that person is liable to the same penalties as if he or she were the principal for whom he or she so acts or purports to act.

**222 Unlawfully Acting as Customs Broker**

- (1) A person not licensed as a Customs Broker under this Act who assumes or uses in connection with a trade, business, calling or profession that would give reasonable cause to believe that it is operated under such a licence commits an offence.
- (2) Any person, who commits an offence against subsection (1), shall be liable on conviction to a fine not exceeding \$100.00.

**223 Attempts**

An attempt to commit an offence against this Act is an offence punishable in the same manner and gives rise to the same cause for seizure as if the offence attempted had been committed.

**224 Offences Punishable on Summary Conviction**

Except where this Act otherwise provides, every offence against this Act, or against any regulations made under this Act, is punishable on summary conviction.

**225 Legal Proceeding**

For any criminal proceeding for an offence under this Act, must be instituted with leave of the Attorney General.



**226 Power of the Director to deal with certain offences**

- (1) This section applies to the following offences:
  - (a) an offence against this Act that is committed—
    - (i) in relation to goods; and
    - (ii) in circumstances that the Director is satisfied would amount to minor offending;
  - (b) an offence against this Act that is not punishable by imprisonment.
- (2) At any time before an information is laid against a person for an offence to which this section applies, the Director may accept from the person—
  - (a) a written admission that he or she committed the offence; and
  - (b) a request that the offence be dealt with summarily by the Director; and
  - (c) payment of an amount, not exceeding the limit specified in subsection (4) that the Director thinks just in the circumstances of the case in full satisfaction of any fine or other penalty to which the person would otherwise be liable under this Act.
- (3) For the purposes of subsection (2), the Director may indicate to the person at the time of the commission of the alleged offence or as soon as practicable after that whether the Director considers that the offence is an offence to which this section applies.
- (4) The amount referred to in subsection (2)(c) must not exceed one-third of the maximum total monetary penalty to which the person would be liable if the person is to be convicted of the offence by a court.
- (5) If the Director accepts payment of an amount under subsection (2)(c), the offender is not liable to be prosecuted for the offence in respect of which the payment was made.
- (6) If the Director declines to exercise his or her power under subsection (2), the admission in writing made by the offender is not admissible as evidence in any prosecution for that offence.

**PART 15 FORFEITURE AND SEIZURE****DIVISION 1 - GENERAL****227 Application of this Part**

This Part applies to all forfeitures that arise under this Act.

**228 Goods forfeited**

- (1) The following goods are to be forfeited to the State:
- (a) goods in respect of which an officer has reasonable cause to suspect an offence has been committed under:
    - (i) section 184 (which relates to counterfeit seals or marks);
    - (ii) section 206 (which relates to offences in relation to entries);
    - (iii) section 207 (which relates to offences in relation to declarations and documents);
    - (iv) section 212 (which relates to offences in relation to importation or exportation of prohibited goods);
    - (v) section 213 (which relates to offences in relation to exportation of goods);
    - (vi) section 214 (which relates to defrauding the revenue of Customs);
    - (vii) section 215 (which relates to possession or custody of uncustomed goods or prohibited imports);
  - (b) goods dealt with in contravention of sections 53, 55 or 59;
  - (c) dutiable or prohibited goods found in the possession of any person who, when questioned under sections 141 or 143, denied or failed to disclose the possession of those goods;
  - (d) dutiable or prohibited goods found in the course of a search pursuant to sections 138 or 147 ;
  - (e) goods in respect of which an erroneous statement, declaration, certificate or claim as to the country of which the goods are the produce or manufacture has been made or produced to any Customs officer;
  - (f) dutiable or prohibited goods found on or in any craft, bulk cargo container, or pallet or a similar device after arrival in any port or airport Tuvalu, not being goods specified or referred to in the inward report or baggage belonging to the crew or passengers and not being accounted for to the satisfaction of a Customs officer;
  - (g) dutiable or prohibited goods found concealed in or on any craft, vehicle, bulk cargo container, pallet or a similar device, or any other thing;
  - (h) goods in any package where those goods are not fully accounted for in the entry or declaration relating to that package;
  - (i) dutiable goods or prohibited goods found so packed as to be likely to deceive the Customs officers;
  - (j) uncustomed goods that are found in any place;
  - (k) goods imported into Tuvalu that have been acquired in a country outside Tuvalu, whether by the importer or some other person, by an act which, if done in Tuvalu would have amounted to a crime ;

- (l) all goods unlawfully exported or in respect which an attempt to do so export has been made;
  - (m) all goods that have been unlawfully imported into Tuvalu.
- (2) For the purposes of paragraph (1) (l), goods the exportation of which is prohibited under this Act are deemed to have been exported as soon as they are placed in or on any craft for exportation.
  - (3) The forfeiture of goods extends to the forfeiture of the case, covering, or other enclosure, not being a bulk cargo container, pallet or a similar device, in or on which the goods are contained at the time of seizure, importation, or exportation.
  - (4) Despite subsection (3), forfeiture of goods extends to the forfeiture of a bulk cargo container, pallet or a similar device where that bulk cargo container, pallet or other similar device has been adapted for the purpose of concealing goods.
  - (5) Every craft, vehicle, or any other thing, including any machinery or equipment on or in the craft or vehicle or thing, or any animal that is being or has been used for the carriage, handling, deposit or concealment of any goods referred to in subsection (1), whether at or after the time of any alleged offence in relation to those goods is also forfeited to the state.

## **229 Procedure for Seizure**

- (1) A Customs officer or any authorized person may seize any forfeited goods or any goods that he or she has reasonable cause to suspect are forfeited.
- (2) Goods may be seized as forfeited whenever the goods are found within Tuvalu.
- (3) Forfeited goods, other than prohibited goods, may be seized at any time within 2 years after the forfeiture has arisen.
- (4) Goods that are forfeited because they are prohibited goods may be seized at any time after the forfeiture has arisen.
- (5) A Customs officer or any authorized person may use such force as is reasonably necessary for effecting the seizure and securing the goods.
- (6) Except as provided in subsections (7) and (8) all goods seized must be taken to such place of security as a Customs officer directs and there detained.
- (7) If goods including any craft, vehicle or animal, have been seized under this section, any Customs officer may leave those goods in the custody of either:
  - (a) the person from whom the goods have been seized; or
  - (b) any other person authorized by the Customs officer and who consents to having such custody.
- (8) Every person who has the custody of goods under subsection (7) must hold them in safekeeping, without charge to the state and in accordance with any

reasonable conditions that may be imposed by the Customs, until a final decision is made as to whether or not they are to remain forfeit, and must:

- (a) make the goods available to a Customs officer on request;
- (b) not alter or dispose of, or remove the goods from Tuvalu unless he or she is authorised to do so by a Customs officer; and
- (c) return the goods on demand to the custody of the Customs.

### **230 Notice of Seizure**

- (1) When any goods have been seized under section 229, Customs must, as soon as is reasonably practicable give notice in writing of the seizure and the reasons for the seizure, in the approved form, to any person known or believed to have an interest in the goods or where that person is overseas, to his or her agent in Tuvalu.
- (2) A seizure is not invalidated or illegal by reason of any failure to give such notice if reasonable steps were taken to give the notice.

### **231 Forfeiture to Relate Back**

If pursuant to section 228 of this Act, goods are forfeited and the goods are seized the forfeiture relates back to the date of the Act or event from which the forfeiture arose.

### **232 Delivery of Goods Seized on Deposit of Value**

- (1) If any goods have been seized as forfeited, the Director may, at any time before their condemnation, deliver the goods to the owner or the person from whom they were seized, on the deposit with the Customs of a cash sum equal to the customs value of the goods.
- (2) The money deposited is deemed to be substituted for goods seized, and all the provisions of this Part so far as they are applicable extend and apply to the money accordingly.

### **233 Sale of Certain Seized Goods**

- (1) Where:
  - (a) a living creature; or
  - (b) anything that, in the opinion of the Director, is of a perishable nature; or
  - (c) anything that, in the opinion of the Director, is likely to deteriorate or diminish in value by keeping; or
  - (d) anything that, in the opinion of the Director, it is desirable to sell has been seized as forfeited;

the Director may sell the thing seized before its condemnation.

- (2) The net proceeds of sale are deemed to be substituted for the thing sold, and all the provisions of this Part so far as they are applicable extend and apply to those proceeds accordingly.

## DIVISION 2 - APPEALS AGAINST SEIZURE

### 234 Application for Review of Seizure

- (1) Any person who has an interest in goods that have been seized under section 229 may, within the time specified in subsection (2), apply in writing to the Director for a review of the seizure.
- (2) The time is—
  - (a) 20 working days after the date on which the notice of seizure is given to the applicant; or
  - (b) any further time allowed by the Director if satisfied that the applicant did not receive the notice of seizure or that a further period is otherwise required in the interests of justice.
- (3) An application under this section may be made on either or both of the following grounds:
  - (a) that there was no legal basis for the seizure of the goods;
  - (b) that the applicant should, in all the circumstances, be granted relief.
- (4) The application must—
  - (a) state the ground or grounds on which it is made; and
  - (b) give an address at which the applicant wishes to receive correspondence relating to the application; and
  - (c) be sent to the Director.

### 235 Conduct of Review

- (1) On receipt of an application under section 234, the Director must conduct the review on the case unless the Director otherwise directs.
- (2) In undertaking the review, the Director—
  - (a) must consider the application and any written submissions made by the applicant; and
  - (b) may consider any statement, document, information, or matter that in the Director's opinion may assist the Director to deal effectively with the subject of the review, whether or not it would be admissible in a court of law.

- (3) The Director may ask the applicant for supplementary information and have regard to that supplementary information.
- (4) The applicant must establish, on the balance of probabilities, that the applicant has an interest in the seized goods and acquired that interest in good faith.

## **236 Decision on Review**

- (1) The Director must dispose of the application for review by making one of the following decisions:
  - (a) to dismiss the application for review;
  - (b) if satisfied that there was no legal basis for the seizure of all or any of the goods, to disallow the seizure (in whole or in part) and to direct that the goods be given (in whole or in part) to—
    - (i) the person from whom the goods were seized; or
    - (ii) if the goods were not seized from a particular person, the person who, in the opinion of the Director, is entitled to possess the goods;
  - (c) to grant relief by making any of the determinations described in section 238 (either unconditionally or subject to any conditions described in that section), if satisfied that it is equitable to do so, having regard to the matters specified in section 238.
- (2) The Director must make his or her decision on the application within 20 working days after the day on which the Director receives the application.
- (3) If, in the opinion of the Director, the circumstances of the case do not permit a decision to be made within the period specified in subsection (2), the Director may extend that period by a further period that is reasonable in the circumstances.
- (4) As soon as practicable after making a decision on the application, the Director must give written notice of the decision to—
  - (a) the applicant; and
  - (b) any other person on whom the notice of seizure was served under section 230; and
  - (c) any person, other than a person referred to in paragraph (b), who claims an interest in the goods.
- (5) If the application for review is dismissed, the written notice must contain the reasons for the decision.
- (6) The written notice must state that a person who is dissatisfied with the decision of the Director has a right to appeal to a Customs Appeal Authority against the decision.

**237 Matters Concerning Grant of Relief**

The matters the Director may take into account when deciding whether or not to grant relief include, without limitation,—

- (a) the seriousness and nature of any act or omission giving rise to the seizure;
- (b) whether or not the person who is alleged to have done any act or omitted to do any act giving rise to the seizure has previously engaged in any similar conduct;
- (c) whether the seizure has arisen from, or is related to, a deliberate breach of the law;
- (d) the nature, quality, quantity, and estimated value of the seized goods;
- (e) the nature and extent of any loss or damage suffered by any person as a consequence of the seizure;
- (f) whether or not granting relief would undermine the purpose or objective of any import or export prohibition or restriction imposed by this Act;
- (g) the effect of any other action that has been taken or is proposed to be taken in respect of any offending related to the seizure.

**238 Determinations of Relief Granted**

- (1) If the Director decides, under paragraph 236(1)(c), to grant relief, the Director may do so by making any of the following determinations:
  - (a) that the goods be given to the applicant or to another person who, but for the seizure, is entitled to their possession;
  - (b) that the goods be sold and that 1 or more of the following persons be paid the part or parts of the proceeds that the Director specifies:
    - (i) the applicant;
    - (ii) any other person who has an interest in the goods;
    - (iii) the State.
- (2) The Director may make a determination described in this section subject to any conditions that the Director thinks just.
- (3) Without limiting subsection (2), the Director may impose any of the following conditions:
  - (a) that there be paid to the Customs in respect of the seized goods a sum equal to the whole or any part of 1 or more of the following:
    - (i) any costs or expenses incurred by the Customs in transporting, storing, or disposing of the goods (including returning or giving the goods to any person), or any incidental costs or expenses relating to their detention;
    - (ii) any duty not already paid;

- (iii) any duty already refunded;
    - (iv) the value of the detained goods, as determined by the Director;
  - (b) that the goods be modified, in a manner directed by the Director, so as to render them inoperable for unlawful purposes;
  - (c) that the costs or expenses incurred by the Customs in modifying the goods in accordance with a direction under paragraph (b) be paid to the Customs.
- (4) The Director must not make a determination described in this section if he or she is of the opinion that all or any of the goods may be required to be produced in evidence in any criminal proceedings.

### **239 Condemnation of Seized Goods**

- (1) If the Director dismisses an application for review, the dismissal is deemed to be an order for condemnation of the goods to the State.
- (2) The order for condemnation of the goods takes effect 20 working days after the Director gives his or her decision on the application unless an appeal against the decision on the application is lodged before then.
- (3) If no application for review is made within the time specified by section 234(2), or if such an application is discontinued, the seized goods are condemned to the State.

### **240 Appeal from Review**

- (1) A person who is dissatisfied with a decision of the Director made under section 236 (including any determination or condition described in section 238) may appeal to a Customs Appeal Authority against the decision or any part of the decision.
- (2) The appeal must be brought within 20 working days after the date on which notice of the decision under section 236 is given.

### **241 Condemnation of Goods subject to Appeal**

The goods that are the subject of an appeal under section 240 are condemned to State if—

- (a) the appeal is discontinued; or
- (b) the decision of the Customs Appeal Authority on the appeal neither—
  - (i) disallows the seizure of the goods under section 236(1)(b) (as applied by section 254); or
  - (ii) grants relief under section 236(1)(c) (as applied by section 254).



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## DIVISION 3 GENERAL PROVISIONS AS TO FORFEITURE

### 242 Condemnation of Seized Goods on Conviction

- (1) Subject to subsection (2), where this Act provides that on the commission of any offence any goods are forfeited, the conviction of any person for that offence has effect as a condemnation, without suit or judgment, of any goods that have been seized in accordance with this Act and:
  - (a) in respect of which the offence was committed; or
  - (b) which were forfeited under any of subsections 228 (3), (4) or (5)
- (2) Where the Court imposes a sentence on any person on the conviction of that person for an offence to which subsection (1) applies, the Court may, if it thinks fit, order the restoration of the goods forfeited to the person from whom the goods were seized and, where such an order is made, the conviction does not have effect as a condemnation of those goods.
- (3) Subsection (2) does not apply where the goods have, before the conviction, been sold, or restored to the person from whom they were seized, or otherwise disposed of by the Director under any other provision of this Act.

### 243 Disposal of Forfeited Goods

- (1) The state has the property in forfeited goods or in any deposit made under section 232 or in the proceeds of sale under section 233, as the case may be.
- (2) The goods may be sold, used, destroyed, or otherwise disposed of after their condemnation as the Director may direct.

## PART 16 EVIDENCE

### 244 Burden of Proof

- (1) In any proceedings under this Act instituted by or on behalf of the state (other than a prosecution for an indictable offence), every allegation made on behalf of the state in any statement of claim, plea or information that relates to:
  - (a) the identify or nature of any goods; or
  - (b) the value of any goods for duty; or
  - (c) the country or time of exportation of any goods; or
  - (d) the fact or time of the importation of any goods; or
  - (e) the place of manufacture, production or origin of any goods; or
  - (f) the payment of any duty on goods,is presumed to be true unless the contrary is proved.

- (2) The presumption in subsection (1) is not be excluded by the fact that evidence is produced on behalf of the state in support of any such allegation.
- (3) The provisions of this section extend and apply to proceedings which the existence of intent to defraud the revenue of the state is in issue.
- (4) Despite the foregoing provisions of this section, in any proceedings for an offence against this Act where it is alleged that the defendant intended to commit the offence, the prosecution has the burden of proving that intent beyond reasonable doubt.

## **245 Documents Made Overseas**

In any proceedings under this Act (other than a prosecution for an indictable offence) the Court may admit in evidence as proof of any fact in issue a document made in a country outside Tuvalu whether the document is legally admissible as evidence in other proceedings or not.

## **246 Proof of Rules Made under section 269**

- (1) The production of a copy of the Gazette purporting to contain a copy of any rule made under subsection 269 (1) that is required to be published in the Gazette is, in all court and in all proceedings, sufficient evidence, until the contrary is proved, of the existence, publication and provisions of the rule, and of the date of its coming into force.
- (2) The production of:
  - (a) any document under the hand of a Customs officer purporting to be a rule or an extract from a rule that is required to be notified in the Gazette in accordance with section 269 , or a copy of any such rule or extract; and
  - (b) a copy of the Gazette in which the rule was notified is, in all courts and in all proceedings, sufficient evidence, until the contrary is proved, of the existence, notification and provisions of the rule, and of the date of its coming into force.

## **247 Customs Record of Computer Transmission Admissible in Evidence**

In any proceedings under this Act or any other Act, a computer printout of an extract of a record kept by the Customs under section 130, certified by or on behalf of the Director under the seal of the Customs as a true copy, is to be admissible in all Courts as evidence of the electronic message received by or sent to the Customs set out in that printout, unless the contrary is proved.

**248 Presumption of Authenticity of Documents**

All documents purporting to be signed by or on behalf of the Director or to be sealed with the seal of the Customs, are, in all courts and in all proceedings under this Act, and any other Act, deemed to have been signed or sealed with the due authority, unless the contrary is proved.

**248A Review by Director<sup>27</sup>**

A person who is dissatisfied with a Customs decision under the Customs laws may, within 30 days from the date on which notice of the decision is given, apply to the Director for a review of that decision.

## **PART 17 CUSTOMS APPEAL TRIBUNAL**

**249 Establishment of Customs Appeal Tribunal**

- (1) The Customs Appeal Tribunal is established.
- (2) The Tribunal may be given such distinctive designation as the Minister responsible for Customs determines.
- (3) The Tribunal is constituted by 3 members appointed by the Minister.
- (4) Subsection to subsections (5) and (6), a person maybe appointed as a member of the Tribunal only if the person has special knowledge, experience or skills relevant to the functions of the Tribunal.
- (5) The following person cannot be appointed members of the Tribunal:
  - (a) A Customs Officer or a Officer of the Department of Customs;
  - (b) A licensed Customs Broker;
  - (c) A person convicted of a Customs or criminal offence;
  - (d) An undischarged bankrupt.
- (6) The members of the Tribunal are appointed for a period 3 years and are eligible for reappointment.
- (7) A member of the Tribunal holds office on such terms and conditions including in relation to remuneration as the Minister determines.
- (8) Any person appointed to the Tribunal may at any time be suspended or remove from office by the Minister for:
  - (a) Inability to perform the functions of the office;
  - (b) Bankruptcy;
  - (c) Neglect of duty;
  - (d) Misconduct,

or if the member resigns from office

## **250 Appeal against the decisions of the Director**

- (1) Any person may appeal to the Customs Appeal Tribunal within 30 days of receipt of a written decision of the Director made under this Act.
- (2) In this part, unless a contrary intention appears, “Decision” of a Director means a decision of the Director relating to:
  - (a) The liability of goods to duty;
  - (b) The amount or rate of Customs duty on any goods;
  - (c) The issue, suspension or revocation of any licence issued under this Act;
  - (d) The assessment of Customs valuation;
  - (e) The deferment of any duty paid;
  - (f) The imposition of administrative penalties under this Act,but does not include any decision in relation to the forfeiture or seizure of goods.

## **251 Validity of Appointment Not to be Questioned in Proceedings**

No appointment of a person under section 249 and no act done by any person by virtue of such appointment are to be questioned in any proceedings.

## **252 Tribunal Not Personally Liable**

No person appointed to the Tribunal is personally liable for an act done or omitted to be done by that person in good faith in pursuance or intended pursuance of the powers and authorities under this Act.

## **253 Procedure**

- (1) The procedure of the Tribunal is to be in accordance with this Act and any regulations made under this Act and as the Tribunal thinks fit.
- (2) Proceedings before the Tribunal is to be commenced by the lodging of an application in the prescribed form, together with the payment of prescribed fee to the Customs.
- (3) If an applicant is successful in the appeal under this Part, that applicant is entitled to the refund of the fee as provided for in subsection (2).

**254 Nature of Appeal**

If under this Act, a person is entitled to appeal to a Customs Appeal Tribunal within a specified time, the Tribunal may, on an application made within the specified time, extend the time within which the appeal may be brought.

**255 Hearing**

- (1) At a hearing of an appeal before the Tribunal the appellant and the Director may call evidence and are to be given the opportunity to be heard either in person or by a person authorised by them.
- (2) If the appellant or the Director or both fail to appear before the Tribunal at the time and place appointed, the Tribunal may proceed to determine the appeal.
- (3) Notwithstanding subsections (1) and (2), the Tribunal may, if it thinks fit and if both parties consent, deal with an appeal without an aural hearing.

**256 The tribunal may dismiss frivolous or vexatious appeal**

The Tribunal may at any time dismiss an appeal if it is satisfied that the appeal is frivolous or vexatious.

**257 Decision of the tribunal**

A decision of the Tribunal is to be in writing, with all the reasoning of its decision to be clearly outlined, and that a copy to be given to the appellant and the Director.

**258 Remuneration of the Tribunal**

The Tribunal is to be remunerated by the payment of sitting allowance for each sitting. The Minister is to decide the amount of sitting allowance payable to the Tribunal.

## **PART 18 MISCELLANEOUS**

### **DIVISION 1 - CUSTOMS BROKERS**

**259 Grant or Refusal of Licence**

- (1) A person who wishes to be licensed as a customs broker may apply in writing to the Director in the approved form and is to provide such information in the application form.
- (2) The Director may:

- (a) grant the application to be licensed as a customs broker on receipt of an application, subject to any conditions the Director deems fit to impose and upon payment of the prescribed fee; or
  - (b) refuse to grant a licence to the applicant if the Director is satisfied that the applicant is not capable to comply with the licence conditions.
- (3) The Director must give notice in writing to the applicant of his or her decision and if the application is refused, the reason for refusal.

## **260 Revocation or suspension of licence**

If at any time the Director is satisfied that a person who is licensed as a customs broker has:

- (a) contravened a term, condition or restriction specified in the licence; or
- (b) ceased to operate as an agent on behalf of owner; or
- (c) been convicted of an offence under this Act; or
- (d) been considered by the Director not to be a fit and proper person to hold a licence; or
- (e) failed to pay the annual fees due; or
- (f) made entries materially incorrect vide section 120,

the Director may cancel the licence of that person as a licensed customs broker by providing a notice in writing of the decision and the reason for cancellation of the licence.

## **261 Authorised Agents**

- (1) The owner of any goods, other than goods of a personal private nature or not imported for commercial purposes, shall comply with this Act by or through a lawfully authorised agent.
- (2) For purposes of subsection (1) a lawful authorised agent shall be a customs broker licensed in the prescribed manner.
- (3) For the purposes of subsection (1) a customs broker shall obtain from the owner of the goods a written authority authorizing that customs broker to act on behalf of the owner in respect to those goods, and such an authority may be for a particular shipment or shipments or for an ongoing period.
- (4) The written authority shall be held by the authorised customs broker for a period of 5 years from the transaction to which the written authority relates.

## **262 Production of Authority**

- (1) A person who:

- (a) is expressly or impliedly authorised by the owner to act as their broker in relation to any goods for all purposes of this Act; or
  - (b) represents or passes themselves self, or acts, as a broker,  
shall be deemed to be the owner of the goods and personally liable for any duties or taxes chargeable or any penalties recoverable under this Act in the same manner and to the same extent as if that person was the owner.
- (2) Subsection (1) does not relieve the owner from personal liability.

### **263 Liability of the Owner for Actions of a Broker**

A declaration authorised by this Act that is made by a broker of a person shall be deemed to have been made with the knowledge and consent of the owner, so that in a prosecution in respect of a declaration made by the broker, the owner is liable as if he or she had made the declaration himself or herself.

## **DIVISION 2 – SECURITIES**

### **264 Requirement of Security**

- (1) Customs may-
- (a) take securities for compliance with customs laws and generally for the protection of the public revenue; and
  - (b) allow a customs security to be provided by a bond, guarantee, or cash or by a combination of these: and
  - (c) impose such conditions as deemed necessary
- (2) Goods subject to a customs security shall not be released from customs control until the security is provided.

### **265 Amount of Security**

The Director may at any time, if not satisfied with the sufficiency of a security, may require fresh security to be given, and the fresh security shall be given accordingly.

### **266 Validity of Security**

- (1) A customs security may be cancelled by the Director after the expiration of the period of 1 year after the date of the security, or the time specified as a condition to the security.
- (2) A customs security shall be forfeited if any condition imposed is not complied with.

**DIVISION 3 – OTHER****267 Declarations under this Act**

A declaration, including a declaration that is made and transmitted electronically, that is required or authorised under this Act must be made on an approved form.

**268 Regulations**

- (1) The Minister may make regulations for the administration of this Act, and without limiting the power to make regulation conferred by any provisions of this Act, may regulate the following matters:
  - (a) prescribing the amounts of fees and charges payable under this Act or the method by which they are to be assessed and the persons liable for payment of the fees and charges;
  - (b) prescribing a rate or rates of charges for the attendance of Customs officers for the purposes of this Act;
  - (c) providing for the liability of any person to pay any actual and reasonable expenses incurred by any Customs officer in respect of any attendance by that officer for the purposes of this Act;
  - (d) prescribing the person or persons or classes of persons by whom the charges or expenses referred to in paragraphs (b) and (c) must be paid, or authorizing the Director to determine the person by whom they must be paid.
- (2) Different rates of fees or charges, or both, may be prescribed in accordance with subsection (1)(a) in respect of different classes of person, or different types of Customs controlled areas, or on any other differential basis.
- (3) Different rates of charges may be prescribed in accordance with subsection (1)(b) in respect of attendances during the working hours of Customs or attendees outside the working hours of Customs, or on any other differential basis.
- (4) Any regulation made under subsection (1) may—
  - (a) prescribe the circumstances in which any fee, charge or expense may be refunded, remitted or waived, in whole or in part;
  - (b) fix a date by which any fee or charge is to be paid.

**269 The Director May Make Rules for Certain Purposes**

- (1) The Director may make rules for the administration of this Act, including prescribing forms, applications, licences and the manner in which goods may be treated.
- (2) A rule made under this section must be signed by the Director.



- (3) The power of the Director to make rules under this section must not be delegated to any other person.
- (4) The Director must publish any rule made under this section prior to effecting it.
- (5) The Director may amend or revoke any rules made under subsection (1), and the provisions of this section are to apply in respect of any such amendment or revocation.

#### **269A General obligation to provide the opportunity to comment<sup>28</sup>**

In exercising any of the powers conferred under this Act, the Minister and Director, shall, to the greatest extent possible, consult with taxpayers and give them an opportunity to comment on any proposed duty, tax or fee to be imposed in accordance with this Act.

#### **269B General obligation to publish administrative procedures<sup>29</sup>**

- (1) The Director shall ensure that all information relating to administrative procedures applied or enforced under this Act is published —
  - (a) promptly; and
  - (b) in such a manner to enable interested persons to become acquainted with them.
- (2) Publication under subsection (1), shall to the extent possible, be published online and if not in any other print form.”

#### **270 Repeal and Savings**

- (1) The following enactments are repealed in their entirety:
  - (a) Customs Act, as amended.
- (2) Notwithstanding the repeal of the Customs Act, as amended, all regulations, orders, schedules, forms and notices made or given, and agreements issued or made under it, shall be except so far as they are inconsistent with this Act, continue to have effect as though made, given or issued under this Act.

**SCHEDULE****SCHEDULES 1 - THE CUSTOMS TARIFF OF TUVALU**

(Harmonized Coding System) (Section 81)

1. This Schedule embodies a classification of goods for import and goods for export for both tariff and statistical purposes.
2.
  - (a) The headings to the sections of this Schedule shall be deemed part of the tariff.
  - (b) Reference to a section, division, group or subgroup in any item of the tariff shall be deemed to refer to the corresponding section, division, group or subgroup of the Commodity Indexes specified in the first proviso to paragraph 4 of this Schedule.
3. The following abbreviations and symbols have the following meanings —

Abbreviations and Symbols	Meaning
%	The symbol % appearing against any rate of duty means per centum <i>ad valorem</i> , and in all other cases means per centum.
C	celsius
c or ¢	cent (s)
cl	centilitre(s)
cm	centimetre(s)
cm <sup>2</sup>	square centimetre(s)
cm <sup>3</sup>	cubic centimetre(s)
g	gram(s)
hl	hectolitre( s)
kg	kilogram(s)
l	litre(s)
m	metre(s)
m <sup>2</sup>	square metre(s)

Abbreviations and Symbols	Meaning
m <sup>3</sup>	cubic metre(s)
mg	milligram(s)
mm	millimetre(s)
mm <sup>2</sup>	square millimetre(s)
n.e.s.	not elsewhere specified or included in the tariff
No.	number
Pk	Pack not exceeding 55 cards
Pr.	pair(s)
\$	dollar(s)
—	-degree(s)
t	1,000 kilograms (metric tonne)
vol. of alc.	volume of alcohol

4. The Customs Officer may for the purpose of applying this Schedule assimilate goods not specified therein by name to the goods which appear to him most closely to resemble the same in character:

Provided that in cases of doubt as to the classification of any items reference shall be made to the Customs Co-Operation Council Nomenclature:

Provided further that in cases where the classification of any article in this Schedule differs from the classification as contained in the said Commodity Indexes the classification of this Schedule shall have effect.

5. When the unit for classification is shown as value, this shall mean the current domestic value, c.i.f. value, or f.o.b. value as the case may be.
6. The current domestic value, c.i.f. value or f.o.b. value shall be stated on the appropriate customs entry forms for statistical purposes whether or not it is specifically required for classification purposes.
7. The item number, description, unit quantity where specified, value, and country of origin shall be shown on all entries.

**IMPORTS****(1) CLASSIFICATION AND TARIFF**

(Specifically omitted)

NOTE. The Classification (harmonized coding) and Tariff of Imports are fixed regularly by a Customs Order.

Copies of the Tariff are obtainable from the Customs Officer, Funafuti, Tuvalu.

**(2) EXEMPTIONS FROM CUSTOMS DUTIES ON IMPORTATION OR TAKING OUT OF BOND****1 Airport ground equipment etc., aircraft fuel, consumable stores for aircraft, etc.**

- (a) Ground equipment and technical supplies required for use within the limits of an airport in connection with the establishment or maintenance of international air services or air services operating within Tuvalu;
- (b) fuel and lubricants solely for use in aircraft specified in subparagraph (a) or in aircraft used for other purposes approved by the Minister;
- (c) consumable stores for use in aircraft employed in international services, provided that the Customs Officer shall be satisfied that such goods are for the services stated.

**2 Containers, coverings, packages, etc.**

- (a) Goods of all kinds which —
  - (i) are required by or on behalf of a manufacturer or producer exclusively for use as containers for the packing of any local product or manufacture, or
  - (ii) will be used exclusively in the manufacture or repair of containers and will form part of such containers;

subject to such conditions as to the keeping or rendering of accounts as to the use or disposal of such goods as the Customs Officer may require:

Provided that this exemption shall not apply to such goods as the Minister shall by notice exclude from this exemption;

- (b) packages or coverings in which any goods not liable to ad valorem duty are imported:

Provided the Customs Officer is satisfied that they are the usual and proper packages or coverings for such goods;

- (c) cylinders for importing ammonia and gas.

**3 Cultural and educational articles**

- (a) Articles of an educational, scientific or cultural nature of the following description being products of any State which is a party to the Agreement on the importation of Educational, Scientific and Cultural Materials approved by the General Conference of the United Nations Educational, Scientific and Cultural Organisation during its Fifth Session at Florence in June 1950, subject to the satisfaction of the Customs Officer as to their description and use —
  - (i) books, documents (printed or produced by duplicating processes, but excluding stationery), periodicals, current newspapers, manuscripts (including typescripts), musical compositions, maps and charts;
  - (ii) paintings and drawings (excluding manufactured wares), hand painted impressions signed and numbered by the artist, original works of art of statuary or sculpture; collectors' pieces and objects of art consigned to approved public institutions and not intended for resale; antiques more than 100 years old;
  - (iii) films, slides and sound recordings;
  - (iv) architectural, industrial and engineering plans, models, wall charts and scientific instruments and apparatus:

Provided that articles specified in paragraphs (iii) and (iv) of this paragraph (except newsreels with or without sound track) may only be imported free of duty by a person, society or body approved for that purpose by the Minister;

- (b) books, stationery, school apparatus and equipment including apparatus and equipment for games and physical training shown to the satisfaction of the Customs Officer to be imported for use in schools and other educational establishments approved by the Minister of Social Services solely for educational purposes and remaining the property of such schools and other educational establishments;
- (c) printing paper and bookbinding materials imported by any person approved by the Minister which are to be used solely for the printing and binding of books, newspapers, magazines, directories and similar publications on the signed undertaking by some person acceptable to the Customs Officer that they will be so used;
- (d) greeting and Christmas cards produced for and sold on behalf of the United Nations Organisation, the United Nations Educational, Scientific and Cultural Organisation, or any charitable Organisation approved by the Minister

#### **4 Fire-fighting and decontamination equipment and protective clothing**

- (a) Fire-fighting and decontamination equipment including fire engines, hoses, couplings, extinguishers, and materials for use therein and decontamination sprayers (other than household and domestic sprayers);

- (b) articles of specialised protective clothing admitted as such by the Customs Officer for use exclusively in industry, fire-fighting, agriculture, forestry, marine and mining undertakings, and hospitals, including helmets, gloves, goggles, gas-masks, safety belts, X-ray aprons, diving suits and similar articles;
- (c) crash helmets admitted by the Customs Officer as suitable for motorcyclists and safety belts specially designed for motor vehicles and aircraft.

## **5 Fishing gear**

Goods which the Customs Officer is satisfied are for use by commercial fishermen in the capture of fish for sale as follows-

- (i) fishing nets and gear therefor;
- (ii) fishing lines of all types;
- (iii) fish hooks;
- (iv) fish wire;
- (v) seine twine and synthetic netting twine;
- (vi) net preservatives admitted as such by the Customs Officer;
- (vii) deck equipment designed solely for use in the fishing industry including line-haulers, capstans, winches, trolling gurdies, hand and powered hand line reels, and rope-leads and fair leads used with such equipment.

## **6 Health aids and goods for the relief etc. of the permanently disabled etc. 3 Cultural and educational articles**

- (a) Goods for the relief, employment, rehabilitation and cultural needs of the permanently bodily and mentally disabled when such goods are imported or taken from bond by organisations approved by the Minister.
- (b) drugs and made up articles of equipment and medical supplies, imported by or on behalf of any hospital, veterinary hospital, dispensary or dressing station:

Provided that the Customs Officer is satisfied that such goods are necessary for the proper functioning of such hospital, veterinary hospital, dispensary or dressing station and that such hospital, dispensary or dressing station has been approved by the Minister of Social Services or such veterinary hospital has been approved by the Minister of Commerce and Natural Resources for the purpose of this concession;

- (c) goods donated to the Red Cross Society and certified by the person for the time being in charge that they are for free distribution;
- (d) goods imported as charitable gifts admitted as such by the Customs Officer imported by any organisation approved by the Minister on production of a certificate from the head of such organisation that such articles are imported for free distribution.

**7 H.M. Forces goods and goods for approved volunteer organisations**

- (a) Goods required solely for the use of any unit of His Majesty's Forces on the declaration in writing to that effect signed by the officer from time to time in command of any such unit;
- (b) arms, ammunition, uniforms, accoutrements and equipment required for the use of any Volunteer Force, Cadet Force or Rifle Association approved by the Minister on the signed declaration of the officer for the time being in command of any such force or of the president or chairman of such association as the case may be;
- (c) arms, accoutrements, equipment and uniforms the property of officers of His Majesty's Armed Forces or of the Armed Forces of His Majesty's Allies or any Volunteer Force or Cadet Force or Rifle Association approved by the Minister imported by such officers for their personal use and as required by the regulations of their respective services and admitted as such by the Customs Officer;
- (d) mess equipment and band instruments imported by and for the use of His Majesty's Armed Forces or of the Armed Forces of His Majesty's Allies on the signed declaration of the officer for the time being in command of such forces.

**8 His Majesty's Civil Service uniforms etc.**

Uniform imported by members of the Civil Service for their own use as prescribed by Regulations, the legal profession, and academic robes, hoods, and headwear of the teaching profession.

**9 H.M. Government**

Goods required for the use of His Majesty's Government of Tuvalu.

**10 Governor General**

Goods required for the use of the Governor-General and his family.

**11 Legacies etc.**

Goods (other than consumable goods such as tobacco products, alcoholic beverages) which the Customs Officer is satisfied were belonging to or in the possession of a deceased person and were used by him before his death and were not used or held for business purposes and that the importation thereof is by or for a person resident in Tuvalu who becomes entitled thereto by virtue of any testamentary disposition or intestacy.

**12 Marine and port equipment and boat and life-saving equipment**

The following equipment which the Customs Officer is satisfied is required for the purposes of ships and shipping —

- (i) life-saving equipment including life jackets, life buoys, buoyant apparatus, and sea marking dye, distress flares, rockets and other pyrotechnic devices for use in life saving;

- (ii) boat equipment including anchors, sea anchors chains, oars, row locks, logs, turnbuckles, thimbles and mooring bitts;
- (iii) communication and signal equipment including morse signalling lamps, code flags, semaphore flags, fog horns and sirens;
- (iv) materials required solely for the purpose of sheathing and caulking ships;
- (v) fixed port navigational and mooring equipment including bollards, buoys, beacons.

### **13 Medals and official decorations**

Medals and official decorations approved by the Minister to be worn by persons in Tuvalu.

### **14 Mining machinery etc.**

The following goods when required by or on behalf of an undertaking licensed to mine or prospect under any law for the time being in force in Tuvalu relating to minerals

- (a) Explosives, milling, smelting, refining and welding supplies, mining and milling machinery and equipment and other related articles admitted as such by the Customs Officer.
- (b) Trucks and trailers (including component parts) having a load carrying capacity of 1.5 metric tons or more for use exclusively for mining or prospecting purposes on the signed undertaking by some person acceptable to the Customs Officer that they will be so used.

### **15 Patterns, samples, advertising matter and documents**

- (a) Patterns and samples cut, mutilated, or otherwise spoiled to the satisfaction of the Customs Officer so as to render them un-merchantable and show cards, trade catalogues, price lists, and printed posters advertising goods sold by firms having no established place of business in Tuvalu.
- (b) Waybills, consignment notes, bills of lading, exchange orders, tickets and labels when imported on behalf of shipping companies and air-lines domiciled outside Tuvalu.

### **16 Religious goods and vestments employed in places of worship and tombstones and memorial tablets**

- (a) Goods of a non-consumable nature which the Customs Officer is satisfied are solely for use, furnishing or decoration in consecrated places of divine worship, or as vestments for use during public worship, on the signed declaration of the head of the denomination for which they are intended that the goods and vestments will be used only for such purposes.



- (b) Altar bread and altar wines imported for the purpose of administering the Sacrament, on the signed declaration of the head of the denomination for which they are intended.
- (c) Candles and incense which the Customs Officer is satisfied are imported solely for use in consecrated places of divine worship.
- (d) Tombstones whether engraved or not and commemorative and memorial tablets.
- (e) Textbooks, Bible card pictures, visual aids, stationery and other items intended solely for use in, or free distribution by, Sunday or Sabbath schools maintained by any religious body registered under the Religious Bodies Registration Act.

#### **17 Scientific and Meteorological research**

Technical equipment admitted as such by the Customs Officer for scientific research or meteorological observation imported by persons or organisations approved by the Minister.

#### **18 United Nations Organisation and agencies, South Pacific Commission and South Pacific Air Transport Council**

Goods required for the use of the United Nations and its specialized agencies, the South Pacific Commission and the South Pacific Air Transport Council.

#### **19 Equipment for agricultural, forestry and stock control purposes**

- (a) Trucks and trailers (including component parts), having a load-carrying capacity of 1.5 metric tons or more, for use exclusively for agricultural or forestry purposes on a signed undertaking by some person acceptable to the Customs Officer that they will be so used;
- (b) branding irons, ear tags and clips and related equipment for use exclusively for agricultural or stock control purposes on a signed undertaking by some person acceptable to the Customs Officer that it will be so used;
- (c) bags and pots of polythene or similar material for use exclusively for agricultural purposes on a signed undertaking by some person acceptable to the Customs Officer that they will be so used.

#### **20 Trophies**

Cups, medals, shields and similar trophies when won abroad or proved to the satisfaction of the Customs Officer to be specially for bestowal as honorary distinctions or prizes, provided that the purpose for which the trophy is to be presented is indelibly inscribed thereon and that this exemption shall not apply or extend to the importation or stocking of the articles for the purposes of trade.

#### **21 Portraits, photographs, films and sound recordings**

Unframed portraits, developed photographs, developed negatives, developed films and sound recordings which the Customs Officer is satisfied have only a personal or

sentimental value to the importer and which are not intended for sale or for public exhibition or performance.

**22 Uniforms and insignia for youth organisations etc.**

Uniforms and insignia required for the use of the Order of St. John, the Red Cross Society, the Boy Scouts' Association, the Girl Guides' Association and such other youth organisation as may be approved by the Minister on the signed declaration of the person for the time being in charge of such branch organisations in Tuvalu.

**23 Sports goods and equipment for clubs**

Sports goods and sporting equipment for use in outdoor sports and games in such quantities as the Customs Officer may deem reasonable and imported by or on behalf of any sports club or Organisation approved by the Minister on the signed undertaking by some person acceptable to the Customs Officer that such goods and equipment will remain the property of such club or Organisation and are not imported for sale or hire: Provided that this exemption shall not extend to clothing or footwear other than special items of protective clothing including pads, gloves, arm guards and masks.

**24 Handicrafts produced in Forum Island Countries**

Handicrafts produced and imported from Forum Island Countries for sale by any organisation or private individuals approved by the Minister.

**25 Cars etc of office-holders**

Cars and motorcycles to which office-holders are entitled under item 5(vi) of Schedule 2 to the Prescription of Salaries Act.

**26 TANGO projects**

Goods imported into Tuvalu by the TANGO (Tuvalu Association of Non-Governmental Organizations) for the exclusive use and purpose of projects (developments for the advancement of the people of Tuvalu).

Such exemption applies subject to the TANGO providing to the satisfaction of the customs officer the following —

- (i) Copy of project proposal,
- (ii) Certificate of project acceptance, and
- (iii) Relevant documents, and the onus rests upon the TANGO to prove that the goods imported are goods of a project.

**EXPORTS****(1) CLASSIFICATION AND TARIFF**

<i>Item of Commodity</i>	<i>Description</i>	<i>Rate</i>	<i>Statistical Unit</i>
031	Fish, fresh, chilled or frozen	Free	Kg
05	Agricultural & horticultural produce n.e.s.	Free	—
051	Fresh coconuts	Free	Kg
221.21	Copra produced in Tuvalu	20% of balance of f.o.b. value above \$75.00 per tonne	tonne
221.22	Copra n.e.s.	20% of f.o.b. value	tonne
271	Phosphate	Free	tonne
276	Other minerals - Scrap metal	Free	tonne
282	Ferrous	\$3.00 per tonne	tonne
284	Non-ferrous*	15 % ad valorem	tonne
291	Sea shells, unworked	Free	—
732	Motor vehicles	Free	No.
734	Aircraft	Free	No.
735	Boats & ships	Free	No.
899	Exports n.e.s. specify kind	Free	—
899.1	Basket-ware and other locally produced handicrafts	Free	—
931.02	Personal & Household effects	Free	—

\*Duty payable on f.o.b. value.

**(2) EXEMPTIONS FROM EXPORT DUTY**

- (1) Goods entered for re-exportation or exported on drawback when so exported.
- (2) Bona fide samples of produce or manufactures of Tuvalu.

**SCHEDULE 1A****CUSTOMS VALUATION OF IMPORTED GOODS****Valuation Methods****Part 1 Transaction Value Of Imported Goods**

- (1) The transaction value of imported goods is the price actually paid or payable for the goods at the time they are sold for export to Tuvalu adjusted by the amounts specified in subsection (2) and (3).
- (2) For the purposes of determining the transaction value of imported goods, the price actually paid or payable for the goods is increased by the sum of the following amounts paid or payable directly or indirectly, by or on behalf of the purchaser in respect of the goods to the extent that the amount is not already included in the price —
  - (a) commission and brokerage, other than buying commission;
  - (b) packing costs, including any labour and material costs;
  - (c) the cost of containers that are treated as being one with the goods;
  - (d) royalties or licence fees payable as a condition of sale, other than for the right to reproduce the goods in Tuvalu;
  - (e) the cost of foreign inland freight and foreign inland insurance;
  - (f) the cost of overseas freight and overseas insurance;
  - (g) the whole or any part of the proceeds of any subsequent use, resale or disposal of the good by or on behalf of the purchaser that accrues to the vendor;
  - (h) finance cost to purchase the finance for imported goods; and
  - (i) the value of any of the following goods and services supplied, directly or indirectly, by the purchaser free of charge or for a reduced consideration for use in connection with the production and sale for export of the imported goods, apportioned to the goods in a reasonable manner and in accordance with generally accepted accounting principles —
    - (i) any materials, components, parts, and other goods incorporated in the production of the imported goods;
    - (ii) any tools, dies, moulds, and other goods utilised in the production of the imported goods;
    - (iii) any materials consumed in the production of the imported goods; and
    - (iv) any engineering work, development work, art work, or design work, plans or sketches undertaken outside Tuvalu and necessary for the production of the goods.
- (3) For the purposes of determining the transaction value of imported goods, the price actually paid or payable for the imported goods is decreased by the sum

of the following amounts to the extent only that these amounts are separately identified in the price paid or payable for the good:

- (a) any expenditure incurred for the construction, erection, assembling or maintenance of, or technical assistance provided in respect of the goods after importation;
- (b) the cost of transportation (including loading, unloading, handling and other expense: associated with transportation) of the goods after importation, and the cost of any insurance relating to such transportation;
- (c) any duties or taxes paid or payable by reason of the importation or sale of the goods in Tuvalu; and
- (d) financing costs paid or payable to the supplier in connection with the purchase of the imported goods.

## **Part 2 The transaction value of identical goods**

- (1) If the customs value of imported goods cannot be determined under Part I, the customs value is the transaction value of identical goods in a sale of those goods for export to Tuvalu if—
  - (a) the transaction value of the identical goods is the customs value of those goods; and
  - (b) the identical goods were exported to Tuvalu on or about the same time as the imported good: and were sold to a purchaser —
    - (i) at the same or substantially the same trade level as the imported goods; and
    - (ii) in the same quantities as the imported goods.
- (2) If subsection (1) does not apply solely because identical goods were not sold under the conditions specified in paragraph (1)(b), the customs value of the imported goods may be determined by reference to the transaction value of identical goods in a sale of those goods for export to Tuvalu if the identical goods were sold under any of the following conditions —
  - (a) to a purchaser at the same or substantially the same trade level, but in different quantities from the imported goods;
  - (b) to a purchaser at a trade level different from the purchaser of the imported goods, but in the same or substantially the same quantities as the imported goods; or
  - (c) to a purchaser at a trade level different from the purchaser of the imported goods and in different quantities from the imported goods.
- (3) The customs value of imported goods under this Part shall be the transaction value of identical goods referred to in subsections (1) or (2) adjusted to take account of—
  - (a) commercially significant differences in the foreign inland freight and foreign inland insurance costs of the identical goods and those costs for

the imported goods attributable to differences in distance and modes of transport; and

- (b) if subsection (2) applies, differences in the trade levels, quantities, or both, as the case may be.
- (4) If, in relation to imported goods, there are two or more transaction values for identical goods that meet the requirements of subsections (1) or (2), as the case may be, the customs value of the imported goods shall be determined on the basis of the lowest of such transaction value.
- (5) Goods shall not be regarded as identical goods unless they were produced in the same country as the goods being valued.
- (6) Goods produced by a different person shall be taken into account only when there are no identical goods produced by the same person as the goods being valued.

### **Part 3 The transaction value of similar goods**

- (1) If the customs value of imported goods cannot be determined under Parts 1 or 2, the customs value shall be the transaction value of similar goods in a sale of those goods for export to Tuvalu if—
  - (a) the transaction value of the similar goods is the customs value of those goods; and
  - (b) the similar goods were exported to Tuvalu on or about the same time as the imported goods and were sold to a purchaser —
    - (i) at the same or substantially the same trade level as the imported goods; and
    - (ii) in the same quantities as the imported goods.
- (2) Part 2 subsections (2) to (6) applies for the purposes of this Part on the basis that the reference to “identical goods” is a reference to “similar goods”.

### **Part 4 The deductive value method**

- (1) If the customs value of imported goods cannot be determined under Parts 1, 2 or 3, the customs value shall be the deductive value of the goods.
- (2) If—
  - (a) the imported goods, or identical or similar goods are sold in Tuvalu at or about the time of importation of the imported goods;
  - (b) the goods were sold in Tuvalu in the same condition in which they were imported;
  - (c) the sale was made at the first trade level after importation; and
  - (d) the Minister is satisfied that the purchaser in the sale was not related to the importer and did not incur any costs referred to in Part 1 (2)(h) in relation to the goods sold, the deductive value of the imported goods is the unit price of the imported goods, or identical or similar goods, as the case may be, at which the greatest number of the goods are sold, at the

earlier date after importation, reduced by the following amounts determined on a per unit basis —

- (i) the amount of any commission;
- (ii) an amount for profit and general expenses, including all costs of marketing the goods based on sales in Tuvalu of goods of the same class or kind as the goods sold;
- (iii) the cost of transportation of the goods in Tuvalu (including loading, unloading, handling and other expenses associated with transportation) and insurance in relation to such transportation to the extent not deducted under sub-paragraph (ii); and
- (iv) any amount referred to in 12(3)(c).

(3) If—

- (a) the imported goods, or identical or similar goods are not sold on or about the same time as the time of importation but are sold within 90 days after the time of importation; and
- (b) subsection (2)(b) to (d) are satisfied,

the deductive value of the imported goods is determined in accordance with subsection (2) by reference to such later sale.

(4) If—

- (a) the imported goods, or identical or similar goods are not sold in Tuvalu at the time of importation or within 90 days after that time;
- (b) the goods are sold in Tuvalu, after being assembled, packaged, or further processed, within 90 days after the time of importation; and
- (c) subsection (2)(b) to (d) are satisfied, the deductive value of the imported goods shall be determined, at the request of the importer, in accordance with subsection (2) by reference to such sale and making a reduction on a per unit basis for the value added attributable to the assembly packaging or further processing in Tuvalu.

(5) Subsection (4) shall not apply if the Minister has insufficient information to determine the amount of the value added attributable to the assembly, packaging or further processing in Tuvalu.

## Part 5 Computed Value

- (1) If the customs value of imported goods cannot be determined under Parts 1, 2, 3 or 4, the customs value shall be the computed value of the goods.
- (2) The computed value of the imported goods, being the exporter's goods, shall be the sum of the following amounts —
  - (a) the cost or value of materials used in producing the goods;
  - (b) the cost of manufacture or processing to produce the goods;
  - (c) any costs referred to in Part I(2) (c), (f) and (g);

- (d) the value of any goods or services referred to in Part I(2)(h); and
- (e) an amount for profit and general expenses equal to that generally applicable in sales of goods of the same class or kind as the imported goods, which are made by producers in the country of exportation and are the exporter's goods.

### **Part 6 Fall Back Method**

If the customs value of imported goods cannot be determined under Part 1, 2, 3, 4 or 5, the fall back method shall be used and is such value as the Minister determines, having regard to the preceding methods of valuation in this Part in the order in which those methods would ordinarily be considered and of such other matters the Minister considers relevant but not including the following —

- (a) the selling price in Tuvalu of goods produced in Tuvalu;
- (b) any system that provides for the acceptance for valuation purposes of the higher of two alternative values;
- (c) the selling price of goods on the domestic market of the country of exportation of the imported goods;
- (d) the cost of production, other than computed value of identical or similar goods in accordance with Part 3;
- (e) the price of the goods for export to a country other than Tuvalu;
- (f) a system of minimum customs values; or
- (g) arbitrary or fictitious values.



**SCHEDULE 2 - PROHIBITED & RESTRICTED IMPORTS**

(Section 78)

**LIST OF PROHIBITED IMPORTS****1 Coin and currency counterfeit**

Base or counterfeit coin, or imitation currency or bank notes of any country.

**2 Food unfit for consumption**

Articles of foods intended for human consumption declared by the competent sanitary authority to be unfit for such purpose.

**3 Indecent articles**

Indecent or obscene prints, paintings, photographs, books, cards, lithographic or other engravings or any other indecent or obscene articles.

**4 Infected cattle etc.**

Infected cattle, sheep or other animals, or carcasses thereof, and hides, skins, horns, hoofs or any other part of cattle or other animals which may be prohibited by order of the Minister to prevent the introduction or spread of any communicable disease.

**5 Matches**

Matches containing white or yellow phosphorus.

**6 Merchandise marks**

All goods of foreign manufacture bearing any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer or trader in Tuvalu or the United Kingdom, unless such trade name or trade mark is accompanied by a definite indication of the country in which the goods were made or produced.

**7 Opium prepared**

Prepared opium and pipes or other utensils for use in connection with the smoking of opium or the preparation of opium for smoking.

**8 Royal Arms**

Goods bearing the Royal Arms of Great Britain or arms so closely resembling the same as to be calculated to deceive unless the manufacturer of such goods holds His Majesty's authority to use them in connection with his trade, business, calling or profession.

**9 Shaving brushes**

Shaving brushes manufactured in or exported from Japan, China, Hong Kong, India, Ceylon or the Philippines Islands, and all goods packed in the same inner container as such shaving brushes.

**10 Stamps**

Fictitious stamps and any die, plate, instrument or materials capable of making any such stamps.

**11 Rick knives, gravity knives and knuckle dusters**

- (a) All knives having a blade which opens automatically by hand pressure applied to a button, spring or other device in or attached to the handle of the knife;
- (b) all knives having a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force and which when so released is locked in place by means of a button, lever or other device;
- (c) solid contraptions made or adapted to be gripped in the fist or fitted to or over 1 or more fingers, equipped with any projection or striking surface and made or adapted for causing injury to the person.

**12 Imitation firearms**

Imitation firearms so closely resembling firearms as to be calculated to deceive.

**13 Gaming machines**

Machines for playing games of chance, being games which require no action by any player other than the actuation or manipulation of the machine.

**14 General**

Goods the importation of which is prohibited by any other law in force in Tuvalu.

## **LIST OF RESTRICTED IMPORTS**

**1 Alcohol**

- (a) Absolute alcohol other than such quantities of absolute alcohol as the Customs Officer shall be satisfied are to be used for purposes approved by the Minister.
- (b) Ethyl alcohol as defined in the British Pharmacopoeia other than such quantities of such ethyl alcohol as the Customs Officer shall be satisfied are to be used for purposes approved by the Minister.

**2 Arms and ammunition**

Arms and ammunition except with the written permission of the proper authority.

**3 Brandy, Whisky and rum**

**(a) Brandy and whisky unless certified to the satisfaction of the Customs Officer that it has been matured by storage in wood for not less than 3 years.**

- (b) Rum unless certified to the satisfaction of the Customs Officer that it has been matured by storage in wood for not less than 2 years.

**4 Cannabis sativa, etc.**

Cannabis sativa (known as Indian hemp or bhang), cannabis indica, choras, or any preparation or mixture thereof, except under licence of the Senior Medical Officer.

**5 Autoclave Certificate Required**

Part worn or second hand clothing, blankets, bedding and other fabrics for sale or distribution within Tuvalu may only be imported on production of an autoclave certificate from the exporting country accompanying the consignment.

**6 Earth, soil, etc.**

Earth, soil, loam, sand, mud, dust, clay and other similar substances. and ashes, from any source whatsoever other than soil which has originated naturally in, and been exported directly from, Australia, New Zealand, Fiji, the Solomon Islands or Hawaii and which is accompanied by a certificate given by an agricultural or scientific officer in the employment of the government of the country of origin proving to the satisfaction of the Customs Officer that such soil is free from disease and any harmful form of animal, insect or plant life

**7 Tear gas**

Stupefying or tear gas in any form whatsoever and all weapons, instruments or appliances for firing or using such gas, and gas containers or cartridges for such weapons or other instruments or appliances except with the licence of the Commissioner of Police.

**8 Tobacco extracts, etc.**

Tobacco extracts, essences or other concentrations of tobacco, or any admixture thereof, tobacco stalks and tobacco stalk flour except under such conditions as the Customs Officer, with the approval of the Minister may either generally or in any particular case allow.

**9 General**

Goods the importation of which is regulated by any other law in force in Tuvalu except in accordance with such law.

**10 Certain motor-bicycles and engines and parts intended therefor**

Except with the written permission of the Minister, any motor-bicycle having as its means of propulsion an internal combustion engine, the cylinder capacity of which is greater than 250 cubic centimeters and any such engine, or other part, intended for use in such motor-bicycle. For the purposes of this paragraph, "cylinder capacity" means the total volume of the space within the cylinder or cylinders of the engine swept by the piston or pistons thereof.<sup>11</sup>

**11 Honey Products**

Honey, products containing a substantial proportion of honey, live or dead bees at any stage of the life cycle, and second-hand equipment, appliances or clothing used for beekeeping, except with the written permission of the Agricultural Officer.

**SCHEDULES 3 - PROHIBITED & RESTRICTED EXPORTS**

(Section 79)

**1 Totally prohibited exports**

All goods of whatsoever nature or kind which are by virtue of any law for the time being in force in Tuvalu absolutely prohibited from being exported.

**2 Restricted exports**

Any goods of whatsoever nature or kind the exportation of which is restricted under any other law for the time being in force in Tuvalu except in accordance with such law.

**SCHEDULES 4 - CUSTOMS FORMS**

(Section 269)

**LIST OF FORMS**

<b>Reference</b>	<b>Regulation</b>	<b>Description</b>
C.1	9	Ship's Stores List
C.2	9	Crew's Stores List
C.3	9	List of Unmanifested Cargo
C.4	14	Ships Report Inwards
C.5	14, 100	General Declaration for Aircraft
C.6	48	Ships Bad Order List
C.7	24	Application to Amend
C.8	98	Certificate of Rummage
C.9	51	Discharges to Small Craft
C.10	27, 28	Application to Unload/Load at a Sufferance Wharf
C.11	84	Passenger's Baggage Declaration (for passengers arriving by sea)
C.12	84	International Passenger Baggage Declaration (for passengers arriving by air)
C.13	98, 99	Entry Outwards/Content—Ship
C.14	103	Customs Clearance
C.15	31, 128	Entry
C.16	31	Provisional Entry
C.17	31	Entry for Warehousing
C.18		Transshipment Shipping Bill

Reference	Regulation	Description
C.19		Permit to Remove Goods Prior to Entry
C.20		Permit to Remove Goods Prior to Entry
C.21		Claim for Abatement of Duty
C.22		Application for a Refund of Duty
C.23		Permit to Ship Stores
C.24		Drawback and Debenture Application
C.25		Shipping Bill for Goods for Exportation or use as Aircraft's or Ship's Store
C.26		Invoice Declaration
C.27		Permission to Unload
C.28		Request to operate on Warehoused Goods
C.29		Transfer of Warehouse Goods
C.30		Entry ex-Warehouse—for Removal of Goods for Re warehousing
C.31		Proceeds of Sale by Auction
C.32		Landing Certificate
C.33		Permit for Small Craft
C.34		Licence to carry Uncustomed Goods
C.35		Coastwise Cargo Book
C.36		Clearing Agents Licence
C.37		Customs Licence to carry Passengers
C.38		Certificate
C.39		Request for Extra Attendance of Officers
C.40		Certificate of Export

Reference	Regulation	Description
C.41		Baggage
	104, 106, 108	Shipping Bill ex-Warehouse for Goods for Exportation or Use as Aircraft's or Ship's Stores
C.43		Air Cargo Docket

### CHARGES FOR FORMS

Charges for forms supplied to the public shall be as notified from time to time by the Director in such manner as he may direct by displaying such information at each Customs office.

### ENDNOTES

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<sup>1</sup> Act 15 of 2014

Amended by Act 4 of 2023, commencement 3 August 2023

<sup>2</sup> Inserted by Act 4 of 2023

<sup>3</sup> Inserted by Act 4 of 2023

<sup>4</sup> Inserted by Act 4 of 2023

<sup>5</sup> Inserted by Act 4 of 2023

<sup>6</sup> Inserted by Act 4 of 2023

<sup>7</sup> Substituted by Act 4 of 2023

<sup>8</sup> Amended by Act 4 of 2023

<sup>9</sup> Amended by Act 4 of 2023

<sup>10</sup> Inserted by Act 4 of 2023

<sup>11</sup> Inserted by Act 4 of 2023

<sup>12</sup> Inserted by Act 4 of 2023

<sup>13</sup> Inserted by Act 4 of 2023

<sup>14</sup> Inserted by Act 4 of 2023

<sup>15</sup> Inserted by Act 4 of 2023

<sup>16</sup> Inserted by Act 4 of 2023

<sup>17</sup> Inserted by Act 4 of 2023

<sup>18</sup> Inserted by Act 4 of 2023

<sup>19</sup> Inserted by Act 4 of 2023

<sup>20</sup> Inserted by Act 4 of 2023

<sup>21</sup> Inserted by Act 4 of 2023

<sup>22</sup> Inserted by Act 4 of 2023

<sup>23</sup> Amended by Act 4 of 2023

<sup>24</sup> Inserted by Act 4 of 2023

<sup>25</sup> Inserted by Act 4 of 2023

<sup>26</sup> Inserted by Act 4 of 2023

<sup>27</sup> Inserted by Act 4 of 2023

<sup>28</sup> Inserted by Act 4 of 2023

<sup>29</sup> Inserted by Act 4 of 2023