



Republic of Namibia
Annotated Statutes

Customs and Excise Act 20 of 1998

(GG 1900)

brought into force on on 1 August 1998 by GN 186/1998 (GG 1918)

as amended by

Government Notice 208 of 1998 (GG 1943)

under the authority of section 54 of the Act;
with effect from 1 August 1998 (as stated in GN 208/1998)

Government Notice 209 of 1998 (GG 1943)

under the authority of section 54 of the Act;
came into force on date of publication: 1 September 1998

Government Notice 71 of 1999 (GG 2092)

under the authority of section 54 of the Act;
came into force on date of publication: 30 April 1999

Government Notice 93 of 2000 (GG 2305)

under the authority of section 54(2)(b) of the Act;
with effect from 1 April 2000 (as stated in GN 93/2000)

Government Notice 187 of 2000 (GG 2386)

stated as being under the authority of section 54(2)(v) of the Act,
but should refer to section 54(2)(a)(v);
with effect from 1 August 2000 (as stated in GN 187/2000)

Government Notice 116 of 2001 (GG 2548)

under the authority of section 54(2) of the Act;
came into force on date of publication: 4 June 2001, with the exception of “the rates of duty specified in the SADC column” of the Schedule to the Government Notice; these were to be brought into force by notice in the *Gazette*, but no such notice was issued

Government Notice 13 of 2002 (GG 2688)

under the authority of section 54(2)(a)(v) of the Act;
came into force on date of publication: 1 February 2002

Government Notice 61 of 2004 (GG 3181)

under the authority of section 54(4) of the Act;
with effect from 1 April 2004 (as stated in GN 61/2004)
(as amended by GN 145 of 2004 (GG 3237), with effect from 1 April 2004)

Government Notice 115 of 2004 (GG 3207)

under the authority of section 54 of the Act;
with effect from 18 February 2004 (as stated in GN 115/2004)

Government Notice 116 of 2004 (GG 3207)

under the authority of section 54(1) of the Act;
with effect from 18 February 2004 (as stated in GN 115/2004)

Government Notice 146 of 2007 (GG 3896)

under the authority of section 54(4) of the Act;
came into force on date of publication: 15 August 2007

Government Notice 213 of 2013 (GG 5264)

under the authority of section 54(4) of the Act;
came into force on date of publication: 15 August 2013

(temporarily withdrawing one levy imposed by GN 61 of 2004)

Government Notice 246 of 2013 (GG 5286)

under the authority of section 54 of the Act;

with effect from 27 February 2013 (as stated in GN 246/2013)

Government Notice 307 of 2013 (GG 5344)

under the authority of section 54(4) of the Act;

with effect from 15 December 2013 (as stated in GN 307/2013)

Government Notice 198 of 2014 (GG 5590)

under the authority of section 54(4) of the Act;

with effect from 14 November 2014 (as stated in GN 198/2014)

(reinstating the levy imposed by GN 61 of 2004 and temporarily withdrawn by GN 213 of 2014)

Government Notice 66 of 2015 (GG 5724)

under the authority of section 54(1) of the Act;

with effect from 25 February 2015 (as stated in GN 66/2015)

Government Notice 100 of 2016 (GG 6019)

under the authority of section 65(1) of the Act;

came into force on date of publication: 30 May 2016

Government Notice 101 of 2016 (GG 6019)

under the authority of section 54(1) of the Act;

with effect from 24 February 2016 (as stated in GN 101/2016)

Government Notice 219 of 2016 (GG 6125)

under the authority of section 65(1) of the Act;

with effect from “the time of the tabling of the relevant taxation proposal in the National Assembly” (as stated in GN 219/2016)

Government Notice 230 of 2016 (GG 6132)

under the authority of section 54(1) of the Act;

came into force on date of publication: 26 September 2016

Government Notice 300 of 2016 (GG 6198)

under the authority of section 54(1) of the Act;

with effect from 10 October 2016 (as stated in GN 300/2016)

Customs and Excise Amendment Act 17 of 2016 (GG 6203)

brought into force on 31 March 2017 by GN 74/2017 (GG 6277)

Government Notice 93 of 2017 (GG 6289)

under the authority of section 54(1) of the Act;

with effect from 22 February 2017 (as stated in GN 93/2017)

Government Notice 302 of 2017 (GG 6472)

in terms of Section 13 of the Interpretation of Laws

Proclamation 37 of 1920, read with section 65(1) of the Act;

new rates of fuel levy to come into effect “on the date of tabling of the relevant taxation proposal in the National Assembly” (GN 302/2017)

Government Notice 77 of 2018 (GG 6574)

under the authority of section 54(1) of the Act;

with effect from 21 February 2018 (as stated in GN 77/2018)

Government Notice 156 of 2018 (GG 6666)

under the authority of section 65(1) of the Act;

with effect from “the date of tabling of the relevant taxation proposal in the National Assembly” (GN 156/2018)

Schedule 1 was amended by Government Notice 14 of 2002 (GG 2688), under the authority of section 54(2)(a)(v) of the Act. However, this Government Notice was to be brought into force by notice in the *Gazette* and no such notice has been located.

Schedule 1 was also amended by Government Notice 61 of 2007 (GG 3817), but this Government Notice was withdrawn by Government Notice 97 of 2008 (GG 4038).

To provide for the levying, imposition, payment and collection of customs and excise duties, of a surcharge and of a fuel levy; to prohibit and control the import, export or manufacture of certain goods; and to provide for matters incidental thereto.

(Signed by the President on 12 June 1998)

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SCHEDULES

BE IT ENACTED by the Parliament of the Republic of Namibia as follows: -

CHAPTER I DEFINITIONS

Definitions

1. (1) In this Act, unless the context otherwise indicates, any reference to customs and excise, or to any matter relating thereto, shall be deemed to include a reference to surcharge or fuel levy, or to any matter relating thereto, and -

“agricultural distiller” means any owner or occupier of a farm in Namibia and who is licensed under this Act to keep a still on such farm;

“audit-based control” means measures by which the customs and excise office satisfies itself as to the accuracy and authenticity of declarations through the examination of the relevant books, records, business systems and commercial information held by persons concerned;

[definition of “audit-based control” inserted by Act 17 of 2016]

“authorised economic operator” means a legal person registered as an authorised economic operator in terms of section 18B;

[definition of “authorised economic operator” inserted by Act 17 of 2016]

“bill of entry” means a bill of entry in the form prescribed by rule and includes a goods declaration in the form so prescribed;

“cargo declaration” in relation to a ship or an aircraft, means information -

- (a) submitted prior to or on arrival or departure of a ship or an aircraft which is used for commercial purposes; and
- (b) which provides the particulars required by the customs and excise office relating to the cargo brought into or removed from the customs territory;

[definition of “cargo declaration” inserted by Act 17 of 2016]

“Commissioner” means the Commissioner for Customs and Excise designated as such under section 2(2);

“common customs area” means the combined area of Namibia and other territories with the governments of which customs union agreements have been concluded under section 56, or deemed to have been so concluded, or have been acceded to by Namibia;

“container depot” means any container depot contemplated in section 6(1)(j);

“container operator” means any person providing international transportation of containerized goods, and approved by the Commissioner under section 107, for the purpose of operating containers in Namibia;

“container terminal” means any container terminal contemplated in section 6(1)(i);

Customs and Excise Act 20 of 1998

“Controller”, in relation to any area or any matter, means the officer designated by the Commissioner in writing to be the Controller of Customs and Excise in respect of a certain specified area or matter, and includes an officer acting under the control or direction of any officer so designated by the Commissioner;

“crew” includes every person (except the master or pilot) employed in any capacity on board any ship or aircraft;

“customs control” means measures applied by the customs and excise office to ensure compliance with customs legislation;

[definition of “customs control” inserted by Act 17 of 2016]

“customs duty”, subject to subsection (3), means any duty leviable under Schedule 1 (except Parts 4 and 5 thereof) or under Schedule 2 on goods imported into Namibia, and “duty” has a corresponding meaning;

“customs territory” means the territory of Namibia, including its territorial waters and its airspace;

[definition of “customs territory” inserted by Act 17 of 2016]

“declarant” means a person referred to in section 41(1)(a);

[definition of “declarant” inserted by Act 17 of 2016]

“depot operator” means the person having charge of any container depot;

“drawback” means the amount of import duties and taxes repaid under the drawback procedure;

“drawback procedure” means a customs procedure which, when goods are exported, provides for a total or partial refund to be made in respect of the import duties or other taxes charged on or in respect of, or on or in respect of materials contained in, or consumed in the production of, such goods;

“electronic communication” means a communication by means of data which is generated, displayed, sent, received or stored by electronic or similar means;

[definition of “electronic communication” inserted by Act 17 of 2016]

“entry for home consumption” includes entry under any item in Schedule 3, 4 or 6;

“environmental levy” means a duty levied in terms of section 58A on goods manufactured in or imported into Namibia;

[definition of “environmental levy” inserted by Act 17 of 2016]

“excisable goods” means any goods specified in Part 2 of Schedule 1 and which have been manufactured in Namibia;

“excise duty” subject to subsection (3), means any duty leviable under Part 2 of Schedule 1 on any goods manufactured in Namibia;

“excise value” means value as defined in section 78;

“export” means export from Namibia;

Customs and Excise Act 20 of 1998

“exporter” includes any person who, at the time of export -

- (a) owns any goods exported;
- (b) carries the risk in respect of any goods exported;
- (c) represents that or acts as if he or she is the exporter or owner of any goods exported;
- (d) actually takes, or attempts to take, any goods from Namibia;
- (e) has a beneficial interest in any way whatsoever in any goods exported; or
- (f) acts on behalf of any person referred to in paragraph (a), (b), (c), (d) or (e),

and, in relation to imported goods, includes the manufacturer, supplier or shipper of such goods or any person inside or outside Namibia representing or acting on behalf of such manufacturer, supplier or shipper;

“foreign-going aircraft” means any aircraft engaged in the carriage for reward of passengers or goods on any flight between an airport in Namibia and -

- (a) for the purpose of fuel levy or fuel levy goods, an airport in any other country; and
- (b) for the purpose of any duty other than fuel levy or fuel levy goods, any airport in the common customs area,

but excludes any aircraft engaged in such carriage on any intermediate flight between airports within Namibia if such intermediate flight is undertaken solely for the purpose of refuelling or taking on board passengers or goods, or by reason of any emergency;

“foreign-going ship” means any ship or other vessel engaged in the carriage for reward of passengers or goods on any voyage between any port or ports in Namibia, and -

- (a) for the purpose of fuel levy or fuel levy goods -
 - (i) any port in any other country; or
 - (ii) any exploration or production platform which is situated outside the territorial waters of Namibia and which is used in the exploration for or the production of petroleum, as defined in section 1 of the Petroleum (Exploration and Production) Act, 1991 (Act No. 2 of 1991), if such ship or other vessel is stationed at such platform and is used solely in connection with such exploration or production; and
- (b) for the purpose of any duty other than fuel levy or fuel levy goods, any port in the common customs area;

“fuel levy” means any duty leviable under Part 5 of Schedule 1 and on any goods, which have been manufactured in or imported into Namibia;

“fuel levy goods” means any goods specified in Part 5 of Schedule 1, which have been manufactured in or imported into Namibia;

“goods” includes any ware, article, merchandise, animal, currency, matter, item or thing;

“goods declaration” means a statement -

- (a) in terms of which goods are disclosed and which is lodged by a declarant; and
- (b) which indicates the customs procedure to be applied to the goods and furnishes the particulars which the Customs may require;

[definition of “goods declaration” inserted by Act 17 of 2016]

“home consumption” means consumption or use in the common customs area;

“illicit goods”, in relation to imported or excisable goods, surcharge goods or fuel levy goods, means any such goods in respect of which any contravention under this Act has been committed, or in respect of which any duty, surcharge or levy is due and payable, but which has not been paid, and includes any preparation or other product made or manufactured entirely or in part from spirits or other materials which were illicit goods;

“importer” includes any person who, at the time of import -

- (a) owns any goods imported;
- (b) carries the risk in respect of any goods imported;
- (c) represents that or acts as if he or she is the importer or owner of any goods imported;
- (d) actually brings any goods into Namibia;
- (e) has a beneficial interest in any way whatsoever in any goods imported; or
- (f) acts on behalf of any person referred to in paragraph (a), (b), (c), (d) or (e);

“land”, when used as a verb, includes off-loading from any vehicle;

“L.C.L. container” means any container containing goods consigned from one or more exporters to more than one importer;

“manufacture” when used as a noun, includes, at the discretion of the Commissioner, any process -

- (a) relating to the manufacture or assembly of any excisable goods or fuel levy goods;
- (b) relating to the conversion of any goods into excisable goods or fuel levy goods;
- (c) whereby the dutiable quantity or value of any imported goods specified in Section B of Part 2 of Schedule 1, or excisable goods or fuel levy goods is increased in any manner;
- (d) relating to the recovery of excisable goods or fuel levy goods from any other excisable goods or any other goods; or
- (e) relating to the packaging or measuring off of any imported goods specified in Section B of Part 2 of Schedule 1, or excisable goods or fuel levy goods,

and, when used as a verb, has a corresponding meaning; and “manufacturer” has a corresponding meaning;

“master” in relation to any ship, means any person (other than a pilot) having charge of such ship;

“Minister” means the Minister of Finance;

“officer” means a person employed on or in respect of any duty relating to customs and excise by order or with the concurrence of the Commissioner, whether such order has been given or such concurrence has been expressed before or after the performance of such duty;

“owner” includes any person acting on behalf of the owner under any provision of this Act;

“package” includes any container, wrapping or outer cover and its contents, or any bundle or single piece in the case of unpacked goods;

“Permanent Secretary” means the Permanent Secretary: Finance;

“person” means natural persons or legal persons;

[definition of “person” inserted by Act 17 of 2016]

“pilot” in relation to any aircraft, means any person having charge of such aircraft;

“plant” includes any vessel, utensil, appliance or fitting;

“prescribed” means prescribed by regulation or rule, as the case may be, under this Act;

“regulation” means a regulation made by the Minister under this Act;

“risk analysis” means the systematic use of available information to determine how often risks may occur and the magnitude of their likely consequences;

[definition of “risk analysis” inserted by Act 17 of 2016]

“risk criteria” means specific indicators which, when taken together, serve as a practical tool to select and target movements for the potential for non-compliance with customs legislation;

[definition of “risk criteria” inserted by Act 17 of 2016]

“rule” means a rule made by the Permanent Secretary under this Act;

“Schedule” means a Schedule to this Act;

“sample” means any article or articles which are regarded by the Commissioner to be of no or of negligible commercial value and which are to be used solely for soliciting orders for goods of the kind such article or articles represent;

“ship” means any ship, vessel or boat (including a flying boat) of any kind whatsoever, intended to sail on or in, or to land on, water;

“State warehouse” means any premises provided by the State for the purpose of the deposit of goods in order to secure such goods or to hold such goods as security for the duties due in respect thereof, or pending compliance with any law relating to such goods;

“still” means any apparatus used for, or which is capable of, distilling spirits, and includes any part of such still;

“still maker” means a person who manufactures or imports stills for sale, and includes a person who repairs stills for reward;

“surcharge” means any duty leviable under Part 4 of Schedule 1 on any goods, which have been imported into Namibia;

“surcharge goods” means any goods specified in Part 4 of Schedule 1 and which have been imported into Namibia;

“the Customs” means -

- (a) the Commissioner; or
- (b) an officer acting under powers or functions delegated or assigned to the officer in terms of this Act;

[definition of “the Customs” inserted by Act 17 of 2016]

“the customs and excise office” means the Office of the Commissioner of Customs and Excise established under section 2(1);

[definition of “the customs and excise office” inserted by Act 17 of 2016]

“the Trade” means any category of traders, importers, exporters, manufacturers or producers of goods;

[definition of “the Trade” inserted by Act 17 of 2016]

“third party” means any person who deals directly with the customs and excise office, for and on behalf of another person, in respect of the import, export, movement or storage of goods;

[definition of “third party” inserted by Act 17 of 2016]

“this Act” includes any government notice, regulation or rule issued or made, or agreement concluded or deemed to have been concluded there under, or any taxation proposal contemplated in section 65, which is tabled in the House of Assembly;

“transire” means a warrant in the form prescribed by rule and issued by the Controller to permit the passage of goods;

“vehicle” means any aircraft, train, motor car, van, truck, cart, sledge, barrow or other carriage of any kind whatsoever, and includes the fittings, furnishings and equipment thereof, and also pack animals and their harness and tackle;

“wine-grower” means a farmer who cultivates vines on land occupied by him or her and who on such land produces wine from grapes grown on such vines, or who delivers grapes grown on such vines to a wine-growers’ co-operative agricultural society for the manufacture of wine; and

“worts” means any liquid substance containing saccharine matter before fermentation has commenced.

(2) In this section (except in the definition of “package”) and in sections 6, 7, 17, 40 and 72, “container” means transport equipment -

- (a) having an interior net volume of not less than one cubic metre; and

- (b) designed for the transport of goods by any means of carriage, without intermediate reloading,

and “containerised” has a corresponding meaning.

- (3) For the purposes of any customs union agreement concluded under section 56 -
 - (a) “customs duty” includes any duty leviable under Part 4 of Schedule 1 on goods imported into Namibia and, except for the purposes of articles 13 and 14 of such agreement, any duty leviable under Part 5 or 8 of Schedule 1 on goods imported; and
 - (b) “excise duty” includes, except for the purposes of articles 13 and 14 of such agreement, any duty leviable under Part 5 or 8 of Schedule 1 on goods manufactured in the common customs area.

**CHAPTER II
ADMINISTRATION, GENERAL DUTIES AND POWERS OF
COMMISSIONER AND OFFICERS, AND APPLICATION OF ACT**

Commissioner to administer Act

2. (1) There is hereby established an office to be known as the Office of the Commissioner for Customs and Excise.

- (2) The Minister -
 - (a) shall, subject to the Public Service Act, 1995 (Act No. 13 of 1995), in writing designate any staff member in the Ministry of Finance as the head of the Office of the Commissioner for Customs and Excise established by subsection (1), which staff member so designated shall be known as the Commissioner; and
 - (b) may make regulations relating to -
 - (i) the conducting by the Commissioner of the affairs of the Office of the Commissioner for Customs and Excise;
 - (ii) the designation of staff members in the Ministry of Finance to the Office referred to in subparagraph (i); and
 - (iii) such other matters relating to the Office referred to in subparagraph (i) as the Minister may determine.

(3) The Commissioner shall administer this Act.

(3A) Any power conferred on or a duty assigned to the Commissioner under this Act shall be exercised or performed by the Commissioner subject to the direction and supervision of the Minister.

[subsection (3A) inserted by Act 17 of 2016]

(4)

[subsection (4) deleted by Act 17 of 2016]

(5) The Commissioner may, if the needs of commerce or other circumstances justify it, take such measures as he or she considers necessary to streamline the customs controls and customs procedures, but such measures may not jeopardize revenue interest, national security or international security.

[subsection (5) inserted by Act 17 of 2016]

(6) The Commissioner shall institute and maintain formal consultative relationships with the Trade in order to increase co-operation and to facilitate participation in establishing the most effective methods of working which are commensurate with national laws and international laws which apply to Namibia and international agreements which are binding on Namibia.

[subsection (6) inserted by Act 17 of 2016]

(7) The Commissioner may conclude memoranda of understanding with the Trade to enhance customs controls and customs procedures.

[subsection (7) inserted by Act 17 of 2016]

Performance of duties and exercise of powers

3. (1) Any duty imposed or power conferred upon the Commissioner by or under this Act may be performed or exercised by the Commissioner personally or, subject to subsection (2), by an officer under the control or direction of the Commissioner.

(2) Any decision made or any notice or communication signed or issued by any officer referred to in subsection (1)

- (a) may be withdrawn or amended by the Commissioner or by the officer concerned (with effect from the date of the making of such decision or the signing or issuing of such notice or communication, or from the date of withdrawal or amendment thereof); and
- (b) shall, until the decision, notice or communication has been so withdrawn, be deemed, except for the purposes of this subsection, to have been made, signed or issued by the Commissioner.

General duties and powers of officers

4. (1A) The Commissioner, an officer or a staff member of the customs and excise office shall comply with the Public Service Act, 1995 (Act No. 13 of 1995) and other applicable legislation on governance, ethics and integrity, including the Namibian Customs and Excise Code of Ethics.

[Subsection (1A) is inserted by Act 17 of 2016, which directs that it be placed before subsection (1).]

(1) The Commissioner, an officer or a staff member of the customs and excise office shall not have any direct financial interest in the manufacture, sale, trade in, transport, handling or storage of imported exported or excisable goods or fuel levy goods or in the import or export of such goods.

[Subsection (1) is substituted with amendment markings by Act 17 of 2016. A comma appears to have been omitted between the words "imported" and "exported" in the phrase "imported exported or excisable goods"]

(2)

[subsection (2) deleted by Act 17 of 2016]

(3)

[subsection (3) deleted by Act 17 of 2016]

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[subsection (4) deleted by Act 17 of 2016]

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[subsection (5) deleted by Act 17 of 2016]

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[subsection (6) deleted by Act 17 of 2016]

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[subsection (7) deleted by Act 17 of 2016]

(8)

[subsection (8) deleted by Act 17 of 2016]

(9) (a) An officer may, for the purposes of the administration of this Act, at any reasonable time and without prior notice -

- (i) enter any premises and conduct such examination or enquiry in relation to this Act as he or she deems necessary;
- (ii) while he or she is on the premises referred to in subparagraph (i), or at any other time, require from any person the immediate production, or the production at any other place and time determined by the officer, of any book, document or other goods which by this Act is required to be kept or exhibited or which relates to, or which the officer has reasonable cause to suspect to relate to matters dealt with in or by this Act, and which is or has been on the premises or in the possession or custody or under the control of any such person or of any of his or her employees, or may search for such book, document or other goods;
- (iii) at any place require from any person who has, or who is believed to have, the possession or custody or control of any book, document or other goods relating to any matter dealt with in or by this Act, the immediate production thereof, or at any other place and time determined by the officer; or
- (iv) seize, or examine and make extracts from, or copies of, any book, document or other goods referred to in subparagraph (iii), may require from any person an explanation relating to any entry therein, and may attach any such book, document or other goods, including any container or package, as in his or her opinion may afford evidence relating to any matter dealt with in or by this Act.

- (b) An officer may take with him or her onto or into any premises referred to in this section any other officer or a member of the Namibian Police.

(10) Any person in connection with whose business any premises are occupied or used, or any other person employed by such person, shall at any time furnish such facilities as may be required by an officer referred to in subsection (9) for the purpose of entering the premises or relating to the exercise of such officers powers under this section.

- (11) (a) If an officer referred to in subsection (9), after having -
- (i) identified himself or herself;
 - (ii) demanded entry into or onto any premises; and
 - (iii) declared his or her official capacity and his or her purpose for demanding entry into or onto the premises,

is not immediately admitted to such premises, such officer, and any person referred to in subsection (9)(b) assisting him or her may, at any time, but during the period after sunset and before sunrise only in the presence of a member of the Namibian Police, break open any door or window, or break through any wall on or in the premises for the purpose of entry and search.

- (b) An officer referred to in paragraph (a), or any person assisting him or her may at any time break up any ground or floor on or in any premises for the purpose of searching the premises, and if any room, place, safe, chest, container or package in or on the premises is locked and the keys thereof are not produced on demand, may in any manner open such room, place, safe, chest, container or package.

(12) An officer may, in the form and in accordance with the procedures prescribed by regulation, require any person to, at any reasonable time and place determined by the officer, appear before such officer who may question such person, either alone or in the presence of any other person, as such officer may deem appropriate, with respect to any matter dealt with in or by this Act.

(13) An officer may, either alone or in the presence of any other person, as such officer may deem appropriate, with respect to any matter dealt with in or by any provision of this Act, question any person whom he or she finds on any premises such officer has entered under this section, or whom he or she has reasonable grounds to believe to be or to have been -

- (a) employed on any premises; or
- (b) in possession of, or having custody or control of anything,

in respect of which any such provision of this Act is applicable.

- (14) (a) An officer may board any ship within the territorial sea or the exclusive economic zone of Namibia, or may stop and board any vehicle in Namibia, and may, subject to the further provisions of this section, search any such ship or vehicle or any person found therein or thereon, for goods upon which duty has not been paid, or in respect of which the officer has reasonable cause to believe that there has been a contravention of any provision of this Act, and such officer may, pursuant to his or her duties, for any reasonable period of time he or she may deem necessary, remain on such ship or vehicle.

- (b) If any container defined in section 1(2), or any vehicle, room, cabin, place, safe, chest or package is locked and the keys thereof are not produced to the officer on demand, the officer may, for any purpose under this Act but subject to the further provisions of this section, open or enter such container, vehicle, room, cabin, place, safe, chest or package in any reasonable manner he or she deems appropriate.
- (c) An officer shall, subject to the further provisions of this section, have free access to, and the right to rummage any part of, any ship or vehicle referred to in paragraph (a) and to examine all goods on board such ship or vehicle, with the power to fasten down hatchways and to mark any goods before landing, and to lock up, seal, mark or otherwise secure any goods on board such ship or vehicle, including any apparatus pertaining thereto, and such officer may, from the master of such ship or the pilot of such aircraft or the person in charge of such vehicle, demand the production of any document to which any provision of this Act relates.
- (d) If -
 - (i) any lock, seal or mark placed upon any goods on board a ship, aircraft or other vehicle by an officer in terms of this section is wilfully opened, broken, obliterated or altered by any person, as the case may be; or
 - (ii) any goods on any ship, aircraft or other vehicle which have been locked, sealed, marked or otherwise secured in terms of this section are removed by any person; or
 - (iii) a hatchway of any ship, aircraft or other vehicle, after having been fastened down by an officer, is opened by any person without the officers consent,

the master of any such ship, the pilot of any such aircraft or the person in charge of any such other vehicle, as the case may be, shall be guilty of an offence if it is proven that he or she was a party to, or connived at, the act concerned, or that it was possible for him or her to have prevented, and that he or she failed to take all reasonable steps to prevent, such act.

- (15) (a) An officer may stop any person whom he or she has reason to suspect of having dutiable goods, or goods in respect of which a contravention under this Act has been committed, secreted about him or her or in his or her possession, and the officer may, subject to the further provisions of this section, search such person.
- (b) If any person referred to in paragraph (a) fails to stop when ordered by an officer to do so, or fails to allow an officer to search him or her, the officer may, subject to the further provisions of this section, take such action, including the use of force, as he or she may deem necessary to stop or search such person.
- (16) (a) Any person may, subject to paragraph (b) and before being searched in terms of this section, require the officer concerned to take him or her before the Controller, who may in his or her discretion discharge such person or direct that he or she be searched.
- (b) Paragraph (a) shall apply only if a person referred to in that paragraph is stopped within a harbour or airport control area, and during the working hours of the Controller prescribed by regulation.
- (c) A female person searched under this section shall only be searched by, and in the presence of, another female person.

(17) An officer may lock up, seal, mark, fasten or otherwise secure any ship, warehouse, storeroom, cabin, place, vessel, appliance, utensil, fitting, vehicle, container, package or goods if he or she has reason to believe that any contravention under this Act has been or is likely to be committed in respect thereof or in connection therewith.

(18) No person shall be entitled to any compensation for any loss or damage arising out of or caused by any *bona fide* action of or by an officer under this section.

(19) In so far as this section authorizes the interference with a person's right to privacy and the privacy of that person's home as guaranteed by Article 13 of the Constitution, this section is enacted on the authority of Sub-Article (2) of that Article.

[subsection (19) inserted by Act 17 of 2016]

(20) An officer may enter a place referred to in this section and conduct a search in terms of this section only if it is done in accordance with Chapter 2 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) and -

- (a) as if the officer is a police official; and
- (b) if any book, document or object is concerned with the commission of an offence.

[subsection (20) inserted by Act 17 of 2016]

Exchange of information and confidentiality

4A. (1) The Commissioner, an officer or a staff member of the customs and excise office or any person seconded to or contracted by the customs and excise office to work otherwise than as a staff member and a person who was formerly an officer, staff member or a person seconded to or a person contracted by the customs and excise office, shall not disclose, exchange or allow access to any information relating to any person, concern or business acquired in the exercise of his or her powers or the performance of his or her duties in terms of this Act, unless required to do so -

- (a) by a provisions of this Act;
- (b) as a witness in a court of law or tribunal;
- (c) in connection with legal proceedings;
- (d) by a government office, ministry or agency of Namibia in terms of a law; or
- (e) by the written consent of the person that will be affected by the disclosure.

(2) Notwithstanding subsection (1), the Commissioner may authorize the disclosure or exchange of information relating to any person, concern or business which relates to the application of customs procedures, pursuant to a memorandum of understanding with a government office, ministry or agency of Namibia, for the purposes of facilitating trade and improving national security.

(3) A person, including a third party, to whom or with whom information is disclosed or exchanged under this section, shall use the information only for the purpose for which it was disclosed or exchanged.

(4) Notwithstanding subsection (1), the Commissioner may in accordance with an international agreement, in respect of customs co-operation and which is binding on Namibia, disclose or exchange or authorize an officer or a staff member of the customs and excise office or any person seconded to or contracted by the customs and excise office, to disclose or exchange any information relating to any person, concern or business acquired by the officer, staff member or person in the exercise of his or her powers or the performance of his or her duties in terms of this Act.

(5) Disclosure or exchange of confidential information to the customs administrations and other competent authorities of countries or territories outside the customs territory of Namibia shall be permitted only in accordance with an international agreement which is binding on Namibia.

(6) The disclosure or exchange of information under subsection (5), shall take place in full compliance with the data protection legislation in force in Namibia and if there is assurance that the customs administration of the receiving country will protect the information in at least an equivalent way.

(7) Information to be disclosed or exchanged under subsections (1)(d), (2) and (4) may be disclosed or exchanged by means of electronic communication in the form determined by the Commissioner.

(8) Subsection (1), shall not be construed as preventing the Commissioner from using, any information acquired by him or her in the exercise of his or her powers or the performance of his or her duties under this Act or under any other law administered by the Commissioner, for purposes of exercising his or her powers or performing of his or her duties under this Act or any other customs legislation administered by him or her.

(9) The Commissioner may, notwithstanding subsection (1), from time to time by notice in the *Gazette* publish the name of any person in respect of whom a penalty of N\$10 000 or more has been imposed in respect of any offence contemplated in sections 90, 93, or 94, or has in respect of any offence under this Act been imposed under section 101.

(10) A notice published under subsection (9) shall specify:

- (a) the name and address of the person;
- (b) such particulars relating to the offence as the Commissioner may determine; and
- (c) the penalty imposed in respect of the offence, contemplated in that subsection.

[section 4A inserted by Act 17 of 2016]

Territorial application of Act

5. (1) For the purposes of this Act and notwithstanding anything to the contrary in any other law contained -

- (a) the continental shelf referred to in section 6 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act No. 3 of 1990), shall be deemed to be a part of Namibia;

[Act 17 of 2017 directs that “No.” be added to the bracketed phrase in paragraph (a), but it already appears there in the indicated position.]

- (b) any installation or device of any kind whatsoever, including any floating or submersible drilling or production platform, constructed or operating upon, beneath or above the continental shelf referred to in paragraph (a) for the purpose of exploring the continental shelf or of exploiting its natural resources, shall be deemed to be constructed or operating in Namibia;
- (c) any goods mined or produced in the operation of an installation or device contemplated in paragraph (b) and conveyed therefrom to the shore, whether by pipeline or otherwise, and any person or other goods conveyed by any means to and from such installation or device, shall be deemed to be so conveyed in Namibia; and
- (d) certain provisions of this Act may be applied outside the customs territory in accordance with this Act, a specific legislation or international agreements which are binding on Namibia.

(2) Without prejudice to international law which applies to Namibia and international agreements which are binding on Namibia, this Act shall apply uniformly throughout the customs territory.

[section 5 substituted with amendment markings by Act 17 of 2016]

Use of information technology and electronic commerce

5A. (1) For the purpose of facilitating customs controls and customs procedures, the customs and excise office shall use information technology, electronic commerce and other technologies to enhance customs procedures and customs controls.

[Section 5A is inserted by Act 17 of 2016. The subsection number “(1)” appears to be in error as there are no other subsections.]

Electronic communication for the purposes of customs procedures and customs controls

5B. (1) If any information, declaration, report, application, document or communication is required to be submitted to the customs and excise office in terms of this Act, such information, declaration, report, application, document or communication may be submitted to the customs and excise office by means of an electronic communication, in the form prescribed by the Permanent Secretary.

(2) If in terms of this Act, a person is required to sign any information, declaration, report, application, document or communication and that information, declaration, report, application, document or communication is submitted by means of an electronic communication, it must -

- (a) be electronically signed in the manner prescribed by the Permanent Secretary, or

(b) be printed and signed manually, and be delivered to the customs and excise office.

(3) If in terms of this Act, a person is required to make any payment, electronically or to submit to the customs and excise office any information, declaration, report, application, document or communication in a specific electronic form, the -

(a) Commissioner may condone any inability by that person to make payment electronically or to submit the information, declaration, report, application, document or communication in a specific electronic form; and

(b) customs and excise office may accept the payment in cash or in another form determined by the Commissioner or the information, declaration, report, application, document or communication in paper form within such period and at such place as the Commissioner may determine.

(4) Irrespective of whether an application for a license, permit or approval is, in terms of this Act, submitted manually or electronically, the Commissioner, on approval of an application, may issue the license, permit or approval electronically.

(5) If any person is liable for any payment in terms of this Act, the Commissioner may accept or receive such payment electronically in the form determined by the Commissioner.

[section 5B inserted by Act 17 of 2016]

Admissibility of electronic communications as evidence

5C. (1) In any legal proceedings arising from the application of this Act or a customs legislation administered by the Commissioner, the rules of evidence may not be applied so as to deny the admissibility of an electronic communication, in evidence -

- (a) on the mere grounds that it is constituted by electronic communication; or
- (b) if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that it is not in its original form.

(2) Information in the form of an electronic communication must be given due evidential weight.

(3) In assessing the evidential weight of electronic communication, regard must be had to -

- (a) the reliability of the manner in which the electronic communication was generated, stored or communicated;
- (b) the reliability of the manner in which the integrity of the electronic communication was maintained;
- (c) the manner in which its originator was identified; and
- (d) any other relevant factor.

(4) An electronic communication made by a person in the ordinary course of business, or a copy or printout of or an extract from such electronic communication certified to be correct by an individual in the service of such person, is on its mere production in any civil, criminal,

administrative or disciplinary proceedings under any law, the rules of a self-regulatory organisation or any other law or the common law, admissible in evidence against any person and rebuttable proof of the facts contained in such record, copy, printout or extract.

[section 5C inserted by Act 17 of 2016]

CHAPTER III IMPORT, EXPORT, TRANSIT AND COASTWISE CARRIAGE OF GOODS

Designation of places of entry, authorised roads and routes, and related issues

6. (1) The Permanent Secretary may, subject to such conditions as he or she may specify, by rule designate or prescribe -

- (a) places to be places of entry for Namibia, through which places goods may be imported or exported or where goods may be landed for transit or coastwise carriage, where foreign-going ships may call, where persons entering or leaving Namibia may disembark or embark, or where goods may be entered for customs and excise purposes;
- (b) the roads or routes (including railways) with or by which persons may enter or leave Namibia, or imported goods or goods intended for export or transit carriage may enter or leave Namibia or may be carried from any one point to any other point, or the means of carriage of such goods;
- (c) places as warehousing places where customs and excise warehouses may be established;
- (d) places for such particular and limited purposes, and for such periods of time, as may be specified in the rules;
- (e) places to be customs and excise airports at which aircraft entering Namibia shall first land, from which aircraft leaving Namibia shall finally depart, through which goods may be imported or exported or where goods may be landed for transit or coastwise carriage, or where persons entering or leaving Namibia may disembark or embark;
- (f) places, at customs and excise airports contemplated in paragraph (e) or at designated places of entry, for the landing or embarkation of persons and the landing, loading or examination of goods (including baggage);
- (g) sheds as transit sheds into which goods, before due entry thereof, may be removed from a ship, aircraft or vehicle;
- (h) entrances and exits, general or special, to or from any dock or wharf area or customs and excise airport;
- (i) container terminals where containers may be landed for transit, coastwise carriage, delivery to a container depot or, after the contents of the containers have been duly entered, delivery to importers, or where containers may be shipped for export;
- (j) places where container depots may be established for the storage, detention, unpacking or examination of containers or the contents of containers, for the

delivery to importers of the contents of containers after such contents have been duly entered, or for the packaging of containers for export; and

- (k) the hours during which any place, road, route, shed, entrance or exit designated or prescribed under any paragraph of this subsection may be used for the purposes specified in such paragraph.

(2) Any place outside Namibia may in writing be deemed by the Permanent Secretary to be a place of entry for Namibia through which goods may be imported or exported, where goods may be landed for transit or coastwise carriage, or where goods may be entered for customs and excise purposes.

(3) If any place, road, route, means of carriage, shed, entrance, exit or container terminal, as the case may be, has been designated or prescribed by the Permanent Secretary under any paragraph of subsection (1), only such place, road, route, means of carriage, shed, entrance, exit or container terminal so designated or prescribed may, subject to subsection (4), be used or employed for the purposes for which it have been so designated or prescribed under any paragraph of subsection (1), and if any hours have been prescribed under paragraph (k) of subsection (1) during which any place, road, route, shed, entrance, exit or container terminal referred to in that paragraph may be used, such place, road, route, shed, entrance, exit or container terminal shall be used during such hours only.

(4) The owner or occupier of a transit shed designated under this section shall, notwithstanding subsection (3) and if so requested by the Commissioner in writing, for such period of time and subject to such conditions, including conditions relating to reasonable compensation, as the Commissioner may in writing determine, provide accommodation for any officer whom the Commissioner deems necessary to station at such shed.

Places of entry or exit in terms of international agreements with Southern African Customs Union member states or adjoining countries

6A. (1) The President may enter into an agreement with the government of a Southern African Customs Union member state or other country adjoining Namibia, to provide for -

- (a) joint, one-stop or side by side places of entry or exit for Namibia and that state or country;
- (b) a place of entry or exit for Namibia alone at a location in that state or country; or
- (c) a place of entry or exit for that state or country alone at a location in Namibia.

(2) The Permanent Secretary, in accordance with an agreement contemplated in subsection (1) and subject to the approval of the Minister, may -

- (a) designate a joint, one-stop or side-by-side place or a place in the state or country contemplated in subsection (1), as a place of entry or exit for Namibia;
- (b) determine -
 - (i) the purposes for which the place, contemplated in paragraph (a), may be used as a place of entry or exit for Namibia; and
 - (ii) the days and hours of operation during which the place may be used for the purposes contemplated in subparagraph (i); and

- (c) prescribe procedures and conditions to be complied with and the information to be exchanged for the implementation of an agreement contemplated in subsection (1).

(3) The Permanent Secretary, in accordance with an agreement contemplated in subsection (1) and subject to the approval of the Minister, may designate a joint, one-stop or side-by-side place or a place in Namibia, as a place of entry or exit for a state or country contemplated in subsection (1) -

- (a) by allowing the place to be used by the state or country as a place of entry or exit in accordance with the legislation of that state or country -
- (i) through which vehicles may pass from or to that state or country;
 - (ii) through which goods may pass from or to that state or country;
 - (iii) where goods may be declared and processed for that state or country's custom purposes;
 - (iv) through which persons may pass from or to that state or country; and
- (b) by allowing customs officials of that state or country, at the place -
- (i) to carry out customs procedures and customs controls in respect of goods and persons in accordance with the legislation of that state or country; and
 - (ii) to apply and enforce the legislation of that state or country.

(4) If the place of entry or exit for Namibia is at a location in the state or country contemplated in subsection (1), that state or country must have provisions similar to the provisions in Namibia's customs controls and customs procedure to allow the customs and excise office to operate in that state or country.

[section 6A inserted by Act 17 of 2016]

Cooperation between government offices, ministries and agencies

6B. (1) If, in respect of the same goods, controls other than customs controls are, in terms of a law, to be performed by a government office, ministry or agency of Namibia, the customs and excise office shall, in close co-operation with such an office, ministry or agency, endeavor to have those controls performed at the same time and place as customs controls, with the customs and excise office having the coordinating role in achieving this.

- (2) The Commissioner may, for the purposes of -
- (a) customs controls and in order to facilitate the processing of goods moved between Namibia and other territories;
 - (b) minimizing risk and combating of fraud; and
 - (c) effective administration of the place contemplated in subsection (1),

enter into a memorandum of understanding with a government office, ministry or agency of Namibia, relating to the exchange of information received in the context of the movement or storage of goods and as a result of any control.

[section 6B inserted by Act 17 of 2016]

Report of arrival or departure of ships or aircraft

7. (1) The master of any ship arriving at any place of entry designated under section 6, whether laden or in ballast, or the pilot of any aircraft arriving in Namibia at any place designated in terms of section 6 as a customs and excise airport, whether with or without goods or passengers, shall -

- (a) lodge and sign a cargo declaration with the Customs relating to such arrival;
- (b) answer all such questions concerning the ship or aircraft, the cargo and stores, and the crew, passengers and voyage or flight as may be put to him or her by the Customs;
- (c) produce, if so required, the official log books relating to the voyage or flight, the stowage plans and any other information or documents in his or her possession relating to the cargo, stores, crew, passengers and voyage or flight; and
- (d) include with the cargo declaration the information, as prescribed by regulations, relating to -
 - (i) the cargo declaration;
 - (ii) the lists of stores, crew, and passengers on board the ship or flight; and
 - (iii) the place in Namibia where the goods and passengers are scheduled to be discharged.

[Subsection (1) is substituted with amendment markings by Act 17 of 2016.
Not all of the changes are indicated by amendment markings.]

(1A) The cargo declaration and the information contemplated in subsection (1), shall be lodged at the customs and excise office of entry prior to the arrival of the ship or aircraft, as prescribed by regulation.

(1B) The cargo declaration and the information contemplated in subsection (1), may be lodged with the Customs by means of an electronic communication, in the form prescribed by regulation.

[Subsections (1A) and (1B) are inserted by Act 17 of 2016, which directs that they be placed after subsection (3). This direction appears to be an error, since the inserted subsections are numbered as subsections (1A) and (1B). They have been placed after subsection (1) here, as appears to have been intended.]

(2) The master of a foreign-going ship shall not, subject to subsection (3), call at any place in Namibia other than a place of entry designated under section 6, and the pilot of an aircraft arriving in Namibia shall, unless the Permanent Secretary has granted him or her special permission to land elsewhere, make his or her first landing at a place designated as a customs and excise airport under that section.

(3) Subsection (2) shall not apply if the master or pilot, as the case may be, referred to in that subsection, is forced by circumstances beyond his or her control to call or land at a place not designated as contemplated in that subsection, and if he or she reports, within the period of time specified in subsection (1), to the Controller nearest to the place where he or she was so forced to call or land, or to the Controller at the first place of entry or customs and excise airport designated under section 6, at which he or she next arrives.

(4) A master or pilot who is forced by circumstances beyond his or her control to call or land at a place in Namibia not designated as a place of entry under section 6, shall take all precautions necessary to prevent any contravention of this Act in respect of any goods on or in the ship or aircraft concerned.

(5) Subject to section 8, any goods which have not been recorded in any manifest or list of containers as may be prescribed by rule, and within such period of time so prescribed, shall be declared and delivered to the Controller by the master of the ship or the pilot of the aircraft concerned.

(6) The master of any ship or the pilot of any aircraft bound from any place in to any place outside Namibia, shall, within the period of time prescribed by rule, appear before the Controller and deliver to him or her a report outwards in the form so prescribed, together with a full account in writing of the cargo on board such ship or aircraft, and shall, to the satisfaction of the Controller and in the form he or she may determine, in writing make a declaration as to the truth of such report and account, and shall answer all questions as may be put to him or her by the Controller.

(7) The conditions, which shall apply in connection with the departure of any ship or aircraft from any place within to any other place within Namibia, shall be prescribed by rule.

(8) (a) The master of a ship or the pilot of a foreign-going aircraft shall not cause or permit such ship or aircraft, as the case may be, to depart from any designated place of entry contemplated in section 6, or from any place designated as a customs and excise airport under that section without first, in respect of the intended voyage or flight, obtaining from the Controller a certificate of clearance or transire as prescribed by rule, and the master or pilot, as the case may be, shall not after such departure call or land at any place in Namibia other than a designated place of entry or a place designated as a customs and excise airport, unless forced to do so by circumstances beyond his or her control.

(b) The conditions which shall apply if a master or pilot referred to in paragraph (a) has been forced to call or land at a place other than a designated place of entry or a place designated as a customs and excise airport, shall be prescribed by regulation.

(9) If a ship or aircraft in respect of which a clearance has been issued under this section at any place does not depart from such place within a period of 36 hours after such clearance was issued, or within such further period of time as the Controller may in writing allow, such clearance shall lapse and the master or pilot shall obtain a fresh clearance before causing or permitting the ship or aircraft to depart.

(10) The master of a ship or the pilot of an aircraft may, with the written permission of the Controller and subject to such conditions as the Controller may impose, retain on board goods consigned to any port or airport for landing at any other port or other airport, or land at any port or airport goods not consigned to such port or airport.

(11) (a) The Controller may, on such conditions as he or she may impose, grant transires in respect of any ship exclusively engaged in activities prescribed by rule.

(b) The Controller may by notice in writing to the master or owner of the ship referred to in paragraph (a), or to any member of the crew on board such ship, revoke any transire issued under that paragraph.

(12) The Permanent Secretary may by rule exempt any ship or aircraft, or any class or kind of ship or aircraft prescribed by rule, from all or any of the provisions of this section.

Sealing of goods on board ships or aircraft

8. (1) On the arrival of any ship or aircraft at any place in Namibia -

(a) the master of such ship or the pilot of such aircraft, as the case may be, shall in the form and in accordance with the procedures prescribed by rule, declare all sealable goods on board the ship which are unconsumed stores of such ship; and

(b) the master and every member of the crew of such ship, or the pilot and every member of the crew of such aircraft, as the case may be, shall in accordance with the procedures prescribed by rule, declare all sealable goods which are his or her personal property or in his or her possession,

and the Controller may seal up all such sealable goods.

(2) For the purposes of this section “sealable goods” means any goods, or any class or kind of goods, which are prescribed by rule to be sealable goods.

(3) The Controller may in writing permit surplus stores aboard a ship or aircraft referred to in subsection (1) to be entered for home consumption or for warehousing.

(4) The Controller may, at the direction of the Commissioner, in addition to sealable goods, seal up any goods which are unconsumed stores of any ship or aircraft, or which are in the possession of the master or pilot of such ship or aircraft, or of any member of the crew, or of any passenger on board thereof.

(5) While a ship or aircraft referred to in subsection (4) remains at any place in Namibia, no person shall, except in accordance with the rules, break or disturb any seal placed by the Controller on any goods under this section.

(6) Except as provided in subsection (3), no stores of any nature may be landed without the permission of the Controller and all goods acquired on a ship or aircraft shall, if landed, be declared to the Controller for purposes of payment of any duty due and payable in respect thereof.

(7) The Commissioner may in writing exempt any, or by rule exempt any class or kind of, ship or aircraft from all or any of the provisions of this section.

When goods deemed to be imported

9. (1) For the purposes of this Act all goods consigned to or brought into Namibia shall be deemed to have been imported into Namibia -

(a) in the case of goods in or on a ship or aircraft and consigned to a place in Namibia, at the time when such ship or aircraft on the voyage or flight concerned, first came

within the control area of the port or airport authority at such place, or at the time of the landing of such goods at the place of actual discharge thereof in Namibia, if such ship or aircraft did not on that voyage or flight call at the place to which the goods were consigned, or if such goods were discharged before arrival of such ship or aircraft, at the place to which such goods were consigned;

- (b) in the case of goods not consigned to a place in Namibia but brought thereto by, and landed therein from, a ship or aircraft, at the time when such goods were so landed;
- (c) subject to subsection (2), in the case of goods brought to Namibia overland, at the time when such goods entered Namibia;
- (d) in the case of goods brought to Namibia by post, at the time of import in terms of paragraph (a), (b) or (c) according to the means of carriage of such goods; or
- (e) in the case of goods brought to Namibia in any manner not specified in this section, at the time specified in the General Notes to Schedule 1, or, if no such time is specified in such General Notes in respect of such goods, at the time such goods are deemed by the Commissioner to have entered Namibia.

(2) For the purposes of subsection (1), a place outside Namibia deemed by the Permanent Secretary under section 6(2) to be a place of entry for goods consigned to Namibia, shall be deemed to be a place in Namibia in respect of goods consigned to such place for removal to Namibia overland.

Landing of unentered goods

10. (1) All goods imported into Namibia by ship or aircraft shall, if landed before due entry thereof, be placed in a transit shed, container terminal, container depot or State warehouse, or removed to any other place approved by the Controller in writing.

(2) All goods landed from a ship or aircraft before due entry of such goods and placed in a transit shed or other approved place in accordance with subsection (1), shall, for the purposes of this Act, be deemed to be still on board the ship or aircraft, and as long as such goods remain in such shed or place, the master or pilot, as the case may be, shall remain responsible for such goods in all respects and liable for payment of the duty thereon as if the goods had not been removed from such ship or aircraft.

Goods imported or exported overland

- 11.** (1) (a) Where any goods are imported by train, the railway authority concerned shall -
- (i) lodge and sign a declaration, with the Customs, relating to the arrival of such goods;
 - (ii) include with the declaration, the information as may be determined by the Customs, relating to -
 - (aa) the lists of stores, crew, and passengers on board the train; and
 - (bb) the place in Namibia where the goods or passengers are scheduled to be discharged.

[paragraph (a) substituted with amendment markings by Act 17 of 2016]

- (b) The station master or other person in control of railway premises shall not permit any goods contemplated in paragraph (a) to be removed from such premises before due entry thereof, unless the Controller in writing allows such goods to be so removed, subject to such conditions as he or she may, before such removal, in each case impose.

(2) The conductor, guard or other person in charge of a railway train shall on demand by any officer furnish such officer with all the information at his or her disposal in respect of any goods on such train.

- (3) (a) The person in charge of any means of transport that arrives by land at any place in Namibia, whether or not conveying any goods, shall report to the customs and excise office nearest to the point at which he or she crossed the border, or to the customs and excise office which is most conveniently located to the crossing point.

- (b) The person referred to in paragraph (a) shall fully and truthfully answer all questions put to him or her by the Customs.

- (c) The person referred to in paragraph (a), shall not unload any goods or remove the means of transport before he or she lodges a declaration with the Customs concerning the means of transport or goods, the journey and the destination of the goods.

- (d) The person in charge of any means of transport transporting goods or passengers for hire shall -

- (i) lodge and sign a declaration relating to such arrival with the Customs;

- (ii) include with the declaration the information as may be required by the Customs, including -

- (aa) the list of passengers that on board of the means of transport; and

- (bb) the place in Namibia where the goods or passengers are scheduled to be discharged.

- (e) The declaration and the information relating to any goods or passengers on board may be lodged at the customs and excise office of entry prior to the arrival, as prescribed by regulation.

- (f) The -

- (a) declaration and the information relating to the goods or passengers may be lodged with the Customs by means of an electronic communication, in the form prescribed by regulation; and

- (b) the Customs may require that the declaration and information be lodged by means of an electronic communication, in the form prescribed by regulation.

[Subsection (3) is substituted with amendment markings by Act 17 of 2016. Note that the subparagraphs in paragraph (f) should be numbered (i) and (ii) instead of (a) and (b). (Compare paragraph (d) in this subsection.)]

- (3A) (a) The declaration and the information relating to the goods, stores, crew, passengers and rail journey shall be lodged with the customs and excise office of entry prior to the arrival of the train, as prescribed by regulation.
- (b) The declaration and the information relating to the goods, stores, crew, passengers and rail journey may be lodged with the customs and excise office by means of electronic communication, in the form prescribed by regulation.

[subsection (3A) inserted by Act 17 of 2016]

(4) No person shall remove a vehicle referred to in subsection (3) from the office referred to in that subsection until such time as due entry has been made of such vehicle and the goods conveyed in or on such vehicle, or until permission for such removal has been granted by the Controller in writing.

- (5) (a) Any person arriving in Namibia overland, on foot or otherwise, shall, subject to subsection (6), whether or not he or she has any goods in his or her possession, report to the office of the Controller nearest to the point at which he or she crossed the border, or to the office of the Controller which is most conveniently situated in relation to such point, and there in the form prescribed by rule make a report to the Controller relating to the circumstances in which he or she entered Namibia.
- (b) If a person referred to in paragraph (a) has any goods in his or her possession, he or she shall, in the form and in accordance with the procedures prescribed by rule, furnish the Controller with full particulars of such goods, and shall fully and truthfully answer all questions put to him or her by such Controller.
- (c) A person referred to in paragraph (a) shall not in any manner dispose of any goods in his or her possession until such goods have been released by the Controller in writing.

(6) Subsection (5) shall not apply to persons arriving in Namibia by train or by air and who pass through or disembark at a place where a Controller is stationed.

(7) No person in charge of any vehicle (other than an aircraft or a train), whether or not conveying any goods for export overland, shall remove any such vehicle or goods beyond the borders of Namibia unless due entry has been made of such vehicle and the goods conveyed thereon, or permission for the removal of such goods or vehicle has been granted by the Controller in writing.

(8) The Controller may in writing grant a general permission to any person referred to in subsections (4) or (7), as the case may be, in respect of the vehicles concerned.

Goods imported or exported by post

12. (1) For the purposes of entry and collection of duty on goods imported into Namibia by post, any form or label completed by the sender in respect of the postal item concerned and on which the particulars necessary for the assessment of duty are specified, shall be deemed to be an entry made in terms of this Act, and the particulars on any such form or

label shall, for the purposes of this Act, be deemed to be the declaration to be made by the importer under section 40.

(2) The Permanent Secretary may by rule exclude from any provision of this section any goods of a class or kind, or imported in the circumstances, specified in such rule.

(3) Notwithstanding anything in subsection (1) contained -

(a) any goods imported by post which the addressee desires to enter for warehousing, or for removal or export in bond, or under any heading or item of Schedule 1 which requires that a certificate be given or a condition be complied with, or under any item of Schedule 3, or unless exempted by the Permanent Secretary by rule, under any item of Schedule 2 or 4, as the case may be, shall be so entered at a customs and excise office before a Controller; and

(b) any goods of a class or kind imported by post, or imported by post by a class of addressees, as may be prescribed by rule, shall be entered, before a Controller, at a customs and excise office.

(4) (a) In the case of goods exported by post, any form or label affixed to or completed in respect of a postal item and on which a description of the contents and their value are specified, shall be deemed to be a bill of entry for export as required by this Act.

(b) Notwithstanding paragraph (a), the Permanent Secretary may prescribe goods, which shall be entered for export, before a Controller, at a customs and excise office.

(5) Notwithstanding anything in subsection (1) or in any other law contained, but subject to subsection (3), any person importing goods by post shall submit the invoice in respect of such goods to the postal company, and no person shall receive, remove, take, deliver or in any manner deal with or in such goods unless the correct duty has been paid to the postal company.

(6) Any person in charge of a post office referred to in the Post and Telecommunications Act, 1992 (Act No. 19 of 1992), may at any time detain any imported postal item under his or her control and cause such postal item to be delivered to the Controller, who may examine or open such postal item, and if any of the goods contained in such postal item are found not to in all respects conform to the particulars relating to the value, description or quantity specified on the form or label referred to in subsection (1), or on the invoice concerned, such goods shall notwithstanding anything to the contrary in any other law contained, be liable to forfeiture to the State.

(7) For the purposes of this section, "postal company" means the postal company as defined in the Post and Telecommunications Companies Establishment Act, 1992 (Act No. 17 of 1992).

Coastwise traffic and coasting ships

13. (1) The carriage of goods by ship between the coastal ports of Namibia shall, subject to subsection (2), be deemed to be coastwise traffic and all ships employed in such traffic shall be deemed to be coasting ships.

(2) Notwithstanding subsection (1), no ship arriving from a place outside Namibia, although bound for more than one coastal port in Namibia, and no ship clearing from any

coastal port in Namibia for a port outside Namibia, although bound for one or more intermediate coastal ports in Namibia, shall be deemed a coasting ship and its voyage between ports in Namibia shall not be deemed a coastwise voyage.

(3) A foreign-going ship may convey goods coastwise while on a voyage between ports in Namibia, subject to the rules relating to such goods.

(4) Any dutiable goods, which have not been entered for home consumption shall -

(a) not be loaded on board any ship for coastwise carriage unless such goods have been entered for removal or deemed to have been so entered in terms of this Act; and

(b) be reported by the master to the Controller at the port of discharge in Namibia as prescribed by rule.

Persons entering or leaving Namibia, and smugglers

14. (1) Any person entering or leaving Namibia shall, to such officer and in such form and in accordance with the procedures prescribed by the Permanent Secretary, unreservedly declare -

(a) at the time of such entering, all goods (including goods of or belonging to any other person) upon his or her person or in his or her possession and which he or she brought with him or her into Namibia, and which -

(i) were purchased or otherwise acquired outside Namibia or on any ship or vehicle, or in any shop selling goods on which duty has not been paid;

(ii) were remodelled, processed or repaired outside Namibia; or

(iii) are prohibited, restricted or controlled under any law; and

(b) before so leaving, all goods which he or she proposes taking with him or her beyond the borders of Namibia,

and shall furnish such officer with full particulars of such goods, answer fully and truthfully all questions put to him or her by such officer and, if required by such officer to do so, produce and open the container or package containing such goods for inspection by such officer, and shall pay to the Controller the duty, if any, assessed by such officer.

(2) Any declaration made in terms of subsection (1) shall, for the purposes of this Act, be deemed to be an entry for home consumption or export, as the case may be.

(3) The Controller may, if any person is suspected by the Controller of an attempt to illegally import, export, land, ship or remove goods, or to evade the payment of duties on any goods, arrange for such person to, as soon as practicable, be brought before a Magistrates Court, or to have such person placed in custody in or at a police station or other suitable place, until he or she can be brought before such court.

Opening of packages in absence of importer or exporter

15. (1) The Controller may, subject to subsection (2), in the absence of the importer or exporter of any container or package imported into, landed in or exported from Namibia, or

suspected by the Controller to have been so imported into, landed in or exported from Namibia, open and examine such container or package at the importers or exporters risk and expense.

[The subsection number has been omitted in the *Government Gazette*.]

(2) The Controller shall, before opening and examining any container or package in accordance with subsection (1), make all reasonable attempts to ascertain the whereabouts of the importer or exporter concerned and afford such importer or exporter the opportunity of himself or herself appearing before the Controller and opening such container or package.

State warehouse

16. (1) If any goods are taken to and secured in a State warehouse, the Commissioner may require rental, determined at the rates and payable at the time and place, and in the manner, prescribed by rule, to be paid in respect of the period such goods remain in such warehouse.

(2) Any officer who has the custody of any goods in any State warehouse may refuse the delivery or removal of any such goods from such warehouse until he or she has been furnished with proof that -

- (a) the person claiming the goods is lawfully entitled to such goods;
- (b) all relevant provisions of this Act or of any law relating to the import or export or transit or coastwise carriage of goods have been complied with; and
- (c) all freight and other charges (including landing and wharfage charges) and rental due in respect of such goods have been paid.

(3) The State, Minister, the Permanent Secretary, the Commissioner or any officer shall not be liable in respect of any loss of, or damage of whatever nature to, any goods in a State warehouse, or in respect of any loss or damage sustained by reason of the delivery of such goods to a wrong person or at a wrong address or place, if such goods were kept or such delivery took place in good faith and in accordance with this Act.

(4) If a warrant or permission for the removal of any goods from a State warehouse has been granted by the Controller, and the person to whom such warrant or permission has been so granted does not immediately remove such goods from the warehouse, such goods may, notwithstanding any other provision of this Act to the contrary, be dealt with as if they were goods in respect of which no entry has been made under of this Act.

Removal of goods in bond

17. (1) Notwithstanding anything to the contrary in this Act contained -

- (a) the importer or owner of any imported goods landed in Namibia, or the manufacturer, owner, seller or purchaser of any excisable goods or fuel levy goods manufactured in a customs and excise warehouse, or the licensee of a customs and excise warehouse in which dutiable goods are manufactured or stored may, subject to subsection (2), remove such goods in bond to any place in Namibia designated as a place of entry or as a warehousing place under this Act, or to any place outside Namibia;
- (b) the master of a ship, pilot of an aircraft or person in charge of a vehicle from which goods were landed at any place in Namibia to which such goods were not

consigned, may remove such goods in bond to the place to which they were consigned, provided that, before entry for the removal of such goods, proof is produced to the Controller of the identity of such goods and of the fact that such goods were consigned to the place to which they are proposed to be removed;

- (c) the owner of or any person having a beneficial interest in any goods which are in transit through Namibia from any other territory in Africa to any place outside Namibia, may remove such goods in bond from the place where they entered Namibia to the place where they are destined to leave Namibia;
- (d) a container operator may remove any container in bond to the container depot or container terminal to which such container was consigned, without furnishing the security required by the Commissioner under subsection (7), and the manifest of the goods packed in such container shall be deemed to be due entry for removal in bond of such container; or
- (e) the pilot of any aircraft may remove in bond, to their place of entry for Namibia, any goods landed from any aircraft at a place in Namibia and for which an air cargo transfer manifest has been completed, without furnishing the security required by the Commissioner under subsection (7), and such air cargo transfer manifest shall be deemed to be due entry for removal in bond of such goods.

(2) Goods manufactured or stored in a customs and excise warehouse may, notwithstanding subsection (1)(a), only be removed to a warehousing place in Namibia or to any place in a territory in the common customs area approved by the government of such territory for rewarehousing in another customs and excise warehouse at such place.

(3) In addition to any liability for the payment of duty incurred by any person under any other provision of this Act, the person who removes any goods in bond in terms of subsection (1) shall, subject to subsection (4), be liable for payment of the duty payable on all goods which he or she so removes.

(4) Subject to subsection (5), any liability for the payment of duty in terms of subsection (3) shall cease when it is proven by the person concerned -

- (a) in the case of goods removed to a place in the common customs area, that such goods have been duly entered at such place; or
- (b) in the case of goods, which were destined for a place beyond the borders of the common customs area, that such goods have been duly removed from such area.

(5) If any person fails to submit any proof contemplated in subsection (4) within the period of time prescribed by rule, such person shall upon a written demand by the Controller forthwith pay the duty due on such goods.

(6) No goods shall in terms of this section be removed in bond from the place where they were landed in Namibia or where they entered Namibia, until they have been entered for removal in bond, and such entry shall, for the purposes of this Act, be deemed to be due entry at such place in respect of such goods.

(7) No entry for removal in bond shall be tendered by or may be accepted from any person who has not furnished the security in the form, nature or amount as the Commissioner may in writing require, and the Commissioner may at any time require that the form, nature or amount of such security be altered in such manner as he or she may in writing determine.

(8) The removal in bond of goods shall be subject to the rules and to such conditions as the Commissioner may in writing impose in respect of such goods, or of any class or kind of such goods, or goods removed in circumstances specified by the Commissioner, and the Controller may refuse to accept entry for the removal in bond of goods from a remover who has failed to comply with such rules or conditions, or who has committed an offence contemplated in section 90.

(9) Goods removed in bond shall not be delivered or removed from the control of the Controller at the place of destination in Namibia except upon due entry according to the first account taken of such goods on landing or on entry for removal in bond thereof, or according to the contents of the packages containing such goods as reflected on the invoice issued by the supplier in respect of such goods, and payment of any duty due, including, subject to subsection (18) of section 84, any duty due on any deficiency in such goods.

(10) The State, the Minister, the Permanent Secretary, the Commissioner or any officer shall not be liable for any loss of, or any damage of whatever nature to, any goods removed in bond, or for any loss or damage sustained by reason of the delivery of such goods to a wrong person or at a wrong address, if such removal or delivery was done in good faith and in accordance with this Act.

(11) Notwithstanding this section, the Commissioner may, subject to such conditions as he or she may impose in respect of goods in transit through Namibia from any other territory in Africa to any destination outside Namibia, or any class or kind of such goods, or any such goods removed in bond in circumstances specified by him or her, allow such goods to be entered for removal in bond at a place other than the place where the goods entered Namibia.

(12) The Permanent Secretary may prescribe or designate the roads and the routes, and the means of carriage of any goods removed in bond, or any class or kind of such goods, or any such goods carried or conveyed in circumstances specified by him or her in the rules.

- (13) (a) No person shall, without the written permission of the Commissioner, divert any goods removed in bond to a destination other than the destination declared on entry for removal in bond, or deliver such goods or cause such goods to be delivered in Namibia, except into the control of the Controller at the place of destination.
- (b) Notwithstanding paragraph (a), the Permanent Secretary may, in such circumstances and subject to such conditions as he or she may prescribe, permit goods in transit through Namibia, or any class or category or kind of such goods, to be delivered to any place approved by him or her for the purposes of sorting or repackaging.
- (c) The goods referred to in paragraph (a) shall not be removed from the place referred to in that paragraph to the place where such goods are destined to leave Namibia, unless the duty payable on any deficiency in such goods has been paid to the Controller.

(14) The Permanent Secretary may prescribe the particulars to be reflected on the entry for removal in bond referred to in subsection (13), and the documents to be produced by the remover upon entry for such removal in bond in respect of any goods so removed in bond, or any class or kind of such goods, or any such goods removed in circumstances or to a destination specified by him or her in the rules.

Export of goods from customs and excise warehouse

18. (1) Notwithstanding any liability for the payment of duty incurred by any person in terms of any other provision of this Act, any person who exports any goods from a customs and excise warehouse to any place outside the common customs area shall, subject to subsection (2), be liable for payment of the duty on all goods which he or she so exports.

(2) Subject to subsection (3), any liability for the payment of duty in terms of subsection (1) shall cease when it is proven by the exporter, to the satisfaction of the Commissioner, that the goods concerned have been duly removed from the common customs area.

(3) If the exporter fails to submit the proof contemplated in subsection (2) within the period of time prescribed by rule, he or she shall upon demand by the Controller forthwith pay the duty due on the goods concerned.

(4) No goods shall be exported in terms of this section until they have been entered for export.

(5) No entry for export referred to in subsection (4) shall be tendered by, or may be accepted from, a person who has not furnished the security as the Commissioner may in writing require, and the Commissioner may at any time require that the form, nature or amount of such security be altered in such manner as he or she may determine.

(6) The export of goods shall be subject to the rules and to such conditions as the Commissioner may in writing impose in respect of such goods or any class or kind of such goods, or goods exported in circumstances specified by him or her, and the Controller may refuse to accept bills of entry for the export of goods from an exporter who has failed to comply with such rules or conditions, or who has committed an offence contemplated in section 90.

(7) The Permanent Secretary may prescribe -

- (a) the roads and routes and the means of carriage of any goods exported or any class or kind of such goods, or any such goods conveyed in the prescribed circumstances; and
- (b) the documents to be produced by the exporter upon entry for export in respect of any goods referred to in paragraph (a), or any class or kind of such goods, or any such goods exported in prescribed circumstances or to a prescribed destination.

(8) No person shall, without the written permission of the Commissioner, divert any goods referred to in subsection (7) to a destination other than the destination for export declared on entry.

Customs and Excise controls

18A. (1) The Customs may carry out all the customs controls it considers necessary on goods, transport and persons that enter or leave the customs territory, regardless of whether or not the goods or means of transport are liable to duties and taxes in terms of this Act.

(2) Customs controls may in particular consist of conducting audit-based controls, examining goods, verifying declaration data, inspecting transport, inspecting

baggage and other goods carried by or on persons, taking samples and carrying out official enquiries and other similar acts.

(3) Customs controls, other than random checks, shall be based on risk management techniques, which include risk analysis and risk criteria, and the -

- (a) risk analysis shall identify and evaluate the risks and develop the necessary actions to address the risk; and
 - (b) risk criteria shall be developed by the customs and excise office or the office may use risk criteria developed at an international level.
- (4) (a) The Customs may, after releasing the goods and in order to ascertain the accuracy of the particulars contained in the declaration, inspect any documents and information relating to the operations in respect of the goods in question or to prior or subsequent commercial operations involving those goods.
- (b) The Customs may also examine goods contemplated in paragraph (a) and take samples where it is still possible for them to do so.
- (c) Inspections in terms of this section may be carried out at the premises of the holder of the goods, his or her agent, or any other person directly or indirectly involved in those operations in a business capacity or of any other person in possession of those documents and information for business purposes.

(5) In carrying out customs controls, the Customs shall limit its interventions to the minimum necessary to ensure the application of the customs legislation.

[section 18A inserted by Act 17 of 2016]

Authorized economic operator

18B. (1) The Commissioner may register a legal person who complies with this section as an authorised economic operator for the purpose of benefiting from trade facilitations determined by the Commissioner and reduced levels of customs controls.

- (2) (a) A legal person who is registered in the customs territory and who meets the criteria set out in this section may apply to Commissioner to be registered as an authorised economic operator.
- (b) The Minister may prescribe the fee payable for an application under paragraph (a).

(3) The procedures for the granting, suspension and revocation of the economic operator status, as well as the facilities accorded, shall be determined by the Commissioner.

(4) The criteria for the granting of the status of an authorised economic operator shall be the following -

- (a) a good record of compliance with customs and tax requirements;

- (b) a satisfactory system of managing commercial and transport records, which allows appropriate customs controls;
- (c) financial solvency;
- (d) an effective automated systems capable of complying with authorised economic operator requirements;
- (e) skilled employees capable of complying with the authorised economic operator requirements; and
- (f) any other criteria which the Commissioner may consider necessary.

(5) If the Commissioner decides to grant an application in terms of this section, the Commissioner shall register the person concerned as an authorised economic operator and issue to that person an authorised economic operator certificate.

(6) The Commissioner may decide not to approve an application in terms of this section, if the person concerned does not comply with the criteria for registration as an authorised economic operator status set out subsection (4).

(7) The Commissioner may suspend or revoke the registration status of an authorised economic operator -

- (a) if the holder of the status -
 - (i) no longer meets the authorised economic operator criteria referred to in subsection (4); or
 - (ii) has failed to comply with any authorised economic operator requirements; or
- (b) if the holder of the status or a director or an employee of the holder -
 - (i) has contravened or failed to comply with a provision of this Act or any other legislation in which dishonesty is an element; and
 - (ii) has been convicted of an offence under this Act or an offence in terms of any other legislation in which dishonesty is an element; or
- (c) at the request of the holder of the registration status.

(8) A person granted the status of an authorised economic operator status is not absolved from complying with this Act.

[section 18B inserted by Act 17 of 2016]

CHAPTER IV

CUSTOMS AND EXCISE WAREHOUSES: STORAGE AND MANUFACTURE OF GOODS IN CUSTOMS AND EXCISE WAREHOUSES

Customs and excise warehouses

19. (1) The Commissioner may, in the form and in accordance with the procedures prescribed by rule, at any place designated for such purpose under this Act, license warehouses (to be known as customs and excise warehouses) approved by him or her for the storage of the dutiable imported or the dutiable locally-produced goods, or for the manufacture of the dutiable goods from the imported or the locally-produced materials as he or she may approve in respect of each warehouse so licensed.

(2) A warehouse contemplated in subsection (1) may be licensed either for the storage of dutiable goods (to be known as a customs and excise storage warehouse) or for the manufacture of dutiable goods (to be known as a customs and excise manufacturing warehouse), but the Commissioner may license a storage warehouse and a manufacturing warehouse on the same premises, provided they are separated from each other in a manner approved by him or her.

(3) The Controller may, in addition to any lock used by the licensee, cause any entrance to a customs and excise warehouse to be locked by means of a State lock as prescribed by rule for such period as he or she deems appropriate, and no person shall without the written permission of the Controller remove or break such lock, or enter such warehouse or remove any goods from it while it is so locked.

(4) (a) The Controller may at any time take stock of the goods in any customs and excise warehouse, and duty shall, subject to subsection (9) or (10) of section 20, forthwith be paid upon any deficiency in such stock.

(b) If the stock referred to in paragraph (a) is found to be in excess of the quantity which should be in such warehouse, such excess shall, subject to section 84(18), be debited to stock and the duty thereon be paid on entry for home consumption.

(5) The State, the Minister, the Permanent Secretary, the Commissioner or any officer shall not be liable for any loss of, or damage of whatever nature to, any goods in a customs and excise warehouse, or for any loss or damage sustained by reason of the delivery of such goods to the wrong person or to the wrong address, if such goods were kept or delivered in good faith in accordance with this Act.

(6) In addition to any liability for the payment of duty incurred by any person under any other provision of this Act, the licensee of a customs and excise warehouse shall, subject to subsection (7), be liable for the duty on all goods stored or manufactured in such warehouse from the time of receipt into, or the time of manufacture in, such warehouse of such goods, as the case may be.

(7) Subject to subsection (8), any liability for the payment of duty in terms of subsection (6) shall cease when it is proven by the licensee concerned that the goods concerned have been duly entered in terms of section 20, and have been delivered or exported in terms of such entry.

(8) If the licensee concerned fails to submit the proof referred to in subsection (7) within the period of time for which goods of the class or kind concerned may be stored or kept in a customs and excise warehouse, or if the licensee commits an offence under this Act in respect of any goods stored or kept in such warehouse, he or she shall upon demand by the Controller forthwith pay the duty due on such goods.

(9) Except with the written permission of the Commissioner, which shall only be granted in circumstances which he or she deems to be exceptional, and subject to such conditions as he or she may impose in each case, no imported goods entered for storage, or excisable or fuel levy goods manufactured in a customs and excise warehouse, excluding spirits

or wine in the process of maturation or maceration, shall be retained in any customs and excise warehouse for a period of more than five years from the time the imported goods were first entered for storage, or from the time the excisable or fuel levy goods are, in terms of section 47(3), deemed to have been manufactured.

Goods in a customs and excise warehouse

20. (1) Any dutiable imported or dutiable locally-produced goods, or any beverages produced from excisable spirits in pursuance of a permission granted under section 31(2), being goods or beverages of a class or kind approved by the Commissioner in writing in respect of each warehouse, may be entered for storage in a customs and excise warehouse with deferment of payment of duty as the Commissioner may in writing determine, and no such goods or beverages shall be removed to or placed in a customs and excise warehouse until they have been so entered.

(2) An entry of goods contemplated in subsection (1) shall, for the purposes of this Act, be deemed to be due entry in respect of such goods at the place of import or manufacture.

(3) Upon the entry and landing of imported goods for storage in, or the transfer of dutiable locally-produced goods to, a customs and excise warehouse, or the transfer of dutiable manufactured goods from a customs and excise manufacturing warehouse to a customs and excise storage warehouse, the licensee of any such warehouse in which such goods are stored or to which such goods are so transferred, shall take and record an accurate account of such goods, which shall include, subject to any deduction which may be allowed under section 84(22), the debiting to stock of any excess found on receipt of such goods at such warehouse.

(4) The licensee referred to in subsection (3) shall immediately upon the receipt of the goods referred to in that subsection, report to the Controller any excess found in such goods.

(5) Subject to subsection (9) and to section 84(22), no allowance for any loss or decrease in quantity of any nature or in any manner which occurs while goods are being transported to or kept in any warehouse, or transported from one warehouse to another or removed in bond, shall be granted.

(6) Goods on which no duty is payable and of a class or kind approved by the Commissioner in writing in respect of each warehouse, may, subject to such conditions and to the keeping of such records as the Commissioner may in writing in each case determine, be taken, without entry, into a customs and excise warehouse for the purpose of being used in the manufacture of, or for any other purpose relating to, dutiable goods.

(7) No goods which have been stored or manufactured in a customs and excise warehouse shall be removed or delivered from such warehouse except in accordance with the rules and upon due entry of such goods for the purposes of -

- (a) home consumption and payment of any duty due thereon; or
- (b) rewarehousing in another customs and excise warehouse or removal in bond as provided in section 17; or
- (c) export from customs and excise warehouses (including supply as stores for a foreign-going ship or aircraft).

(8) No person shall, without the written permission of the Commissioner, in any manner divert any goods entered for removal from or delivery to a customs and excise warehouse, except goods entered for payment of the duty due thereon, to a destination other

than the destination declared on the entry of such goods, or deliver or cause such goods to be delivered in Namibia, except in accordance with this Act.

(9) The duty payable on any deficiency in a customs and excise warehouse shall, after detection of such deficiency and subject to subsection (10), be paid immediately on a written demand made by the Controller.

(10) In the case of goods manufactured in any customs and excise manufacturing warehouse, or in the case of goods in the process of manufacture being removed from one customs and excise manufacturing warehouse to another such warehouse, the Commissioner may, notwithstanding subsection (9), but subject to section 35(3), allow losses due to working, pumping, handling or processing, or losses due to similar or to natural causes, between the time when liability for payment of duty first arises and the time of removal of such goods from the warehouse in which the goods are so manufactured, or in which such process of manufacture is completed, to the extent specified in Schedule 4 or 6, as the case may be, if no part of such loss was wilfully or negligently caused.

(11) Goods packed for retail sale shall not be entered for storage in a storage warehouse unless such goods, to the satisfaction of the Controllers, are packed in outer containers normally used in the wholesale trade in respect of such goods.

Special customs and excise warehouses

21. (1) The Commissioner may, in the form and in accordance with the procedures prescribed by regulation, and subject to such conditions as he or she in each case may impose, license at any place in Namibia special customs and excise warehouses for such special purposes and for such period as he or she may specify, provided security in such amount and in such form and manner as he or she may require, is furnished.

(2) Unless the Commissioner, when licensing a special customs and excise warehouse under subsection (1) for the storage or manufacture of goods otherwise determines, the provisions of this Act in respect of customs and excise storage warehouses or manufacturing warehouses, as the case may be, or the storage or manufacture of goods in such warehouses, shall apply to such special warehouse or to the storage or manufacture of goods therein, as the case may be.

Samples of goods in a customs and excise warehouse

22. The Controller may, in accordance with the rules, permit samples of goods in a customs and excise warehouse to be taken by the owner of such goods and may permit payment of duty thereon to be deferred until the goods from which such samples have been taken are entered for delivery from such warehouse for any purpose.

Storage or manufacture of prohibited goods

23. The Commissioner may allow the storage or manufacture in a customs and excise warehouse of goods of which the import, manufacture or disposal is prohibited or restricted by or under any law, provided such goods are stored or manufactured in such warehouse for the purposes of export or supply as stores for a foreign-going ship or aircraft, as the case may be.

Ship or aircraft stores consumed in Namibia

24. (1) If any goods shipped under section 20(7) from a customs and excise warehouse as stores for any foreign-going ship or aircraft, or any goods shipped as stores for such ship or aircraft outside Namibia (except any such goods which are used for the operation of

such ship and are, save as provided in the rules, not for consumption by or for sale or disposal to the master or members of the crew or passengers of or visitors to such ship) are consumed, sold or disposed of on such ship in any port in Namibia or on such aircraft at any place in Namibia when the aircraft is not airborne, or on such aircraft on a flight between any places in Namibia, the master of such ship or the pilot of such aircraft, as the case may be, shall be liable for payment of the duty on such goods so consumed, sold or disposed of and shall, upon demand by the Controller, forthwith pay the duty due in respect of such goods.

(2) The Permanent Secretary may by rule exempt any class or kind of stores, or any ship or aircraft, or any stores on a ship or aircraft to which circumstances specified in such rule apply, from any provision of this section.

Sorting, packaging, and similar operations, in customs and excise storage warehouses

25. Subject to this Act, the Controller may permit the licensee of a customs and excise storage warehouse or the owner of any goods in such warehouse to sort, separate, pack or repack any goods in such warehouse and to make such alterations in or in respect of such goods, or such arrangements in respect thereof as may be necessary for the preservation of such goods or for the sale, export or other lawful disposal thereof.

Transfer of ownership or pledging or hypothecation of warehoused goods

26. (1) Except with the prior written permission of the Commissioner and subject to such conditions as may be prescribed by rule -

- (a) the owner of any dutiable goods in a customs and excise warehouse may not enter into any agreement whereby -
 - (i) his or her ownership of such goods is transferred to any other person; or
 - (ii) such goods are pledged or otherwise hypothecated in favour of any other person; or
- (b) any person in whose favour the goods referred to in paragraph (a) have been pledged or hypothecated may not enter into any agreement whereby any rights obtained by him or her by virtue of such pledging or hypothecation are ceded to any other person.

(2) Any agreement entered into contrary to subsection (1) shall for the purposes of this Act be deemed to be null and void.

Special provisions in respect of customs and excise manufacturing warehouses

27. (1) Subject to the further provisions of this Act, goods liable to excise duty or fuel levy may not be manufactured otherwise than in accordance with this section and in any place other than in a customs and excise manufacturing warehouse licensed under this Act.

(2) Spirits distilled by agricultural distillers shall, notwithstanding subsection (1), be excluded from the requirement of being manufactured in a customs and excise manufacturing warehouse, and excisable goods may with the written permission of the Commissioner be manufactured in a special customs and excise warehouse licensed under this Act.

(3) Subject to this Act, the Commissioner may, on such conditions as he or she may in writing impose, permit the manufacture under this Chapter of any goods in any customs and

excise manufacturing warehouse, if any of the goods used in such manufacturing process are liable to duty or if the goods so manufactured are dutiable.

(4) Any dutiable goods brought into and intended for use in a customs and excise manufacturing warehouse in the manufacture of goods liable to excise duty or fuel levy shall be entered for home consumption, and any duty due thereon shall be paid prior to such use.

(5) No manufacturing of goods shall take place in a customs and excise manufacturing warehouse until the premises and the plant intended for use in connection with such manufacturing process, and the purpose for which the premises and plant are to be used, have been approved by and registered with the Commissioner.

(6) Officers may supervise all operations in a customs and excise manufacturing warehouse.

(7) The licensee of a customs and excise manufacturing warehouse shall, if so requested by the Commissioner in writing, provide suitable office accommodation and board and lodging for any officer stationed at or visiting such warehouse for any purpose of this Act.

(8) A person providing board and lodging for an officer referred to in subsection (7) shall be entitled to fair remuneration in respect of such board and lodging as may be prescribed by regulation.

(9) No licensee shall, without the written permission of the Commissioner, conduct any business in a customs and excise manufacturing warehouse, except the business in respect of which the warehouse is licensed, and only if the premises concerned and the plant in or on such premises are registered under this Act.

(10) No person shall, except with the written permission of the Commissioner, in respect of any premises or plant required to be registered under this Chapter -

- (a) use such premises or plant for any purpose other than for the purposes specified in such registration;
- (b) effect any alteration to any structure on such premises or to any such plant;
- (c) bring into or have in or on such premises, any plant other than the plant specified in such registration, or remove any plant from such premises; or
- (d) place below the surface of the ground any pipe or tube for the purpose of conveying any material or product in a warehouse unless such pipe or tube is enclosed in casing capable of being easily opened so that the pipe or tube is exposed to view.

(11) The Permanent Secretary may prescribe the days upon which, and the hours during which, all or any of the operations in a customs and excise manufacturing warehouse (including the removal of goods) may be conducted, and the days upon which and the hours during which such operations shall not be conducted.

(12) No distilling operation shall be commenced with until the whole or any part of the distilling system or plant, as the Commissioner may require, has, at the expense of the licensee, been provided with fittings and other requirements to permit the insertion or affixing of customs and excise meters, gauges, rods, locks and seals according to the rules for the purpose of securing such system or plant, and until such system or plant has been duly secured by the Controller.

(13) If any meter, gauge, rod, lock, seal or fitting referred to in subsection (12), or any pipe, cock, fastening or fitting connected with a still or vessel is tampered with, pierced or damaged, the licensee shall forthwith repair or replace the article concerned, or an officer may, upon the instructions of the Commissioner, effect the repairs or replacement at the expense and for the account of the licensee, which licensee shall reimburse to the Commissioner such costs so incurred within a period of 30 days after a written notice to the licensee requesting such payment.

(14) If any tampering, damage or piercing referred to in subsection (13) has been caused -

- (a) by or as a result of the neglect of the licensee or of any of his or her employees, such licensee or employee, as the case may be, shall, be guilty of an offence and on conviction be liable to the penalties prescribed by section 88(2); or
- (b) by means of a wilful act by, or with the connivance of, the licensee or any of his or her employees, and with the intention to avoid the proper payment of duties in terms of any provision of this Act, such licensee or employee, as the case may be, shall be guilty of an offence and on conviction be liable to the penalties prescribed by section 90,

in addition to the liability of such licensee or employee for payment of an amount equal to the cost pertaining to the repair of the damage or the replacement caused by such tampering, damaging or piercing.

(15) The Permanent Secretary may, subject to such conditions as he or she may impose, by notice in the *Gazette* exempt the manufacture of any class or kind of goods specified in such notice from any provision of this section.

Ascertaining quantity of spirits by measuring the mass or volume

28. (1) The quantity of spirits in any container may be ascertained by means of measuring, in accordance with the method or procedures prescribed by rule, the mass or volume of the contents of the container.

(2) In ascertaining the quantity of spirits by means of measuring the mass or volume in accordance with subsection (1), the tables prescribed by rule shall be used, and the quantity ascertained in accordance with such tables shall, for the purposes of this Act, be deemed to be the true quantity of such spirits.

Classification of spirits

29. No spirits distilled in Namibia shall, for the purposes of this Act, be classified as being spirits of the product of the vine until such spirits have, in the form and in accordance with the procedures prescribed by rule, been so certified by the Controller, and any spirits not so certified shall be deemed to be spirits other than of the product of the vine.

Control of the use of spirits for certain purposes

30. (1) No person shall, subject to subsection (2), use spirits, distilled from the product of the vine, in the manufacture of alcoholic beverages unless such spirits have, in the form and in accordance with the procedures prescribed by rule, been certified by an officer designated by the Commissioner for such purpose, to be suitable for use in such manufacturing process.

(2) If the officer designated under subsection (1) declines to certify any spirits to be suitable for use as required by that subsection, the manufacturer may redistill or treat such spirits by any method approved by such officer in writing, and thereafter such officer may in writing certify the spirits as suitable for use in the manufacture of alcoholic beverages.

(3) The blending of brandy and the production from spirits of any other beverage or any other non-excisable goods shall be subject to the rules relating to such blending or production, and to the supervision by an officer as the Commissioner may in each case deem necessary.

(4) Subsection (1) shall not apply to an agricultural distiller or a wine-grower who manufactures alcoholic beverages in accordance with this Act for his or her own private use.

Entry of spirits for use in manufacturing

31. (1) Spirits which have not been entered for home consumption shall not be used in the production of beverages or other non-excisable goods.

(2) The Commissioner may, on such conditions as he or she may in each case impose, permit the use of spirits which have been entered for home consumption in the production of beverages on premises which have been licensed as a customs and excise storage warehouse and may, subject to section 115, permit payment of the duty on any such spirits used in the production of beverages on any such premises to be deferred until such beverages are delivered from any such warehouse.

(3) (a) No person shall, without the written permission of the Commissioner, redistill spirits which have been entered for home consumption.

(b) Any permission contemplated in paragraph (a) may be granted subject to such conditions as the Commissioner may in each case impose.

(4) Beverages or other non-excisable goods produced in contravention of subsection (1) or any spirits redistilled in contravention of subsection (3), shall be liable to forfeiture to the State.

Ascertaining the strength of spirits for duty purposes

32. The strength of any spirits or spirituous preparations shall, for duty purposes, be ascertained in accordance with the procedures prescribed by rule.

Requirements in respect of stills

33. (1) Subject to subsection (2) of this section and to section 70, no person shall distil spirits in a still which does not comply with the requirements prescribed by rule as to the use, the capacity or the construction thereof.

(2) The Permanent Secretary may, notwithstanding subsection (1), by rule exempt any person or still, or any class of persons or class of stills, from all or any of the provisions of this section.

Special provisions regarding spirits manufactured by agricultural distillers

34. (1) The manufacture of spirits by an agricultural distiller shall be subject to such supervision by an officer as the Commissioner may in each case in writing determine.

(2) For duty purposes, the Controller may allow for natural waste or evaporation relating to all spirits distilled by an agricultural distiller on his or her own farm, or on a farm occupied by him or her, to the extent specified in Schedule 6, if no part of such loss was caused wilfully or negligently.

(3) No agricultural distiller shall use his or her still for the purpose of distilling spirits from any material other than produce grown on a farm of which he or she is the owner or occupier, and which produce is of a kind prescribed by rule in respect of the class of agricultural distiller to which he or she belongs.

(4) Subject to the further provisions of this Act and to the Liquor Ordinance, 1969 (Ordinance No. 2 of 1969), section 20(7) of this Act shall *mutatis mutandis* apply in respect of spirits manufactured from grapes by any class of agricultural distiller prescribed by rule, and for the purpose of such application any reference in that section to a customs and excise warehouse shall be deemed to be a reference to the farm on which such spirits are manufactured.

[The Liquor Ordinance 2 of 1969 was repealed by the Liquor Act 6 of 1998.]

(5) Spirits manufactured by an agricultural distiller in Namibia from any fruit other than grapes and prescribed by rule, shall be solely for his or her private use on the farm where such fruit was produced and such spirits were manufactured.

(6) Notwithstanding subsection (5), the Permanent Secretary may in writing allow spirits manufactured as contemplated in that subsection to be used or disposed of in such circumstances and at such places as he or she may deem appropriate, and subject to such conditions as he or she may in each case impose.

Special provisions regarding wine

35. (1) The Permanent Secretary may, subject to such conditions as he or she may in each case impose, license as a special customs and excise warehouse for the purpose of manufacturing wine, any premises of a wine-grower, of a wine-growers co-operative agricultural society or of a person who holds a licence under any law to deal in wine in wholesale quantities.

(2) A special warehouse licensed under subsection (1) shall, for the purposes of this Chapter, be deemed to be a customs and excise-manufacturing warehouse.

(3) If less than 50 per cent by volume of the wine manufactured in any customs and excise warehouse is manufactured from wine and grapes originating at any place within a distance of 400 kilometres of such warehouse, the Minister may prescribe an allowance in respect of working and processing losses, or losses due to natural causes, which shall be granted in lieu of the allowance in respect of such losses as provided for in section 20(10).

Special provisions regarding cigarettes and cigarette tobacco

36. (1) The Permanent Secretary may by rule prescribe the sizes and types of, and the specifications relating to, containers or packages which may be used by a manufacturer for the packaging of cigarettes and cigarette tobacco.

(2) No manufacturer may, subject to subsection (3), remove any cigarettes or allow any cigarettes to be removed from the customs and excise manufacturing warehouse concerned, unless such cigarettes have been packed in accordance with the procedures prescribed by rule and a stamp impression so prescribed has been made on or affixed to the containers or packages concerned.

(3) The Commissioner may, notwithstanding subsection (2), allow cigarettes packed as contemplated in that subsection to, in such circumstances as he or she in writing may determine, be removed from a warehouse, without a stamp impression contemplated in that subsection having been made on or affixed to the containers or packages concerned.

(4) No cigarettes or cigarette tobacco shall be sold or disposed of, or removed from the customs and excise-manufacturing warehouse concerned in partly or completely manufactured condition, except in accordance with this Act.

(5) No person shall -

(a) counterfeit or make any facsimile of any die or impression stamp prescribed under subsection (2); or

(b) be in possession of, use or offer for sale or for use -

(i) any die or impression stamp counterfeited; or

(ii) any facsimile of any die or impression stamp made,

in contravention of paragraph (a).

Special provisions regarding beer

37. (1) The alcoholic strength by volume of beer made from malt shall, for duty purposes, be ascertained in accordance with the procedures prescribed by rule.

(2) Every manufacturer shall, in respect of beer referred to in subsection (1) and manufactured by him or her in Namibia, register with the Commissioner the names whereunder such beer will be sold or disposed of for home consumption, together with the alcoholic strength by volume and the tariff item of Part 2 of Schedule 1 which shall apply in respect of the beer so sold or disposed of under any such name, and no beer shall be so sold or disposed of unless so registered.

(3) No beer referred to in subsection (1) shall be sold or disposed of by any manufacturer for home consumption, except in a container which bears, in the form and in accordance with the procedures prescribed by rule, the name registered and the registered alcoholic strength by volume of such beer, and any invoice or other document relating to the sale or disposal of such beer shall specify the registered name of such beer.

(4) Any description on any container of beer contemplated in subsection (3) specifying the registered name and alcoholic strength by volume of the contents registered with the Commissioner, shall be deemed to be a declaration for the purpose of the assessment of duty.

(5) The Commissioner may in writing exempt beer of any class or kind from any or all of the provisions of subsection (2) or (3).

(6) If the alcoholic strength by volume of any beer in any container bearing a description specifying the name and alcoholic strength by volume registered with the Commissioner under this section, is ascertained in accordance with subsection (1) and found to be higher than the alcoholic strength by volume specified in the tariff item registered in relation to beer of such brand name, the manufacturer concerned shall be liable for the duty on the full quantity of the brew or blend of brews of beer from which such container was filled, at the rate of duty applicable to beer of the strength as ascertained in respect of the contents of such container.

(7) If the Commissioner is unable to establish the full quantity contemplated in subsection (6) from the records of the manufacturer concerned, the Commissioner may in writing determine a quantity which shall, for the purposes of that subsection, be deemed to be such full quantity.

(8) Any beer of any brew or blend of brews of beer referred to in subsection (6) and not delivered from the stock of the manufacturer concerned, shall be liable to forfeiture to the State.

Special provisions in respect of manufacture of goods, and collection of excise duty, specified in Section B of Part 2 of Schedule 1

38. (1) Every manufacturer of excisable goods specified in Section B of Part 2 of Schedule 1, and every owner of excisable goods specified in that Section B manufactured by or for him or her partly or entirely from materials owned by such owner, shall, subject to subsection (2), in the form and in accordance with the procedures prescribed by regulation, license his or her premises as a special customs and excise warehouse in terms of this Act for purposes of excise duty specified in that Section B, and no such manufacturer or owner shall manufacture, or deal in or with, excisable goods specified in that Section B unless he or she has so licensed his or her premises.

(2) Notwithstanding subsection (1), the Commissioner may, at his or her discretion, to the extent that he or she deems appropriate and on the conditions that he or she may determine, in writing exempt any manufacturer referred to in that subsection from any provision contained in that subsection.

(3) Notwithstanding anything to the contrary in this Act contained -

(a) if the value added by any process in the manufacture of excisable goods specified in the Section B referred to in subsection (1) is, in the opinion of the Commissioner, low in relation to the manufacturers selling price of such goods, or if any process in the manufacture of excisable goods specified in that Section B presents in his or her opinion exceptional difficulties in the collection of excise duty specified in that Section B in respect of such goods, that subsection of this section shall apply, and due entry of such goods shall be effected at such stage in the manufacturing process of such goods as the Commissioner may in writing determine, and the processes which shall be deemed to be included when calculating the value of such goods for the purposes of excise duty specified in that Section B, shall be determined by the Commissioner in writing;

(b) the Commissioner may, subject to such conditions as he or she in each case may impose -

(i) if the production or disposal of any excisable goods specified in Section B referred to in subsection (1) are performed by different persons, or under other circumstances rendering it expedient in the Commissioners opinion to do so, issue one licence under this Act in respect of the premises in the name of two or more persons concerned, and thereupon each such person shall be jointly and severally liable for the excise duty specified in, and payable on, all the excisable goods specified in that Section B, any one of such persons paying, the other or others to be absolved *pro tanto*;

(ii) include in a special customs and excise warehouse licence issued under this Act in respect of the premises of any manufacturer of excisable goods specified in the Section B referred to in subsection (1), any warehouse,

depot, agency, branch or other storage place approved by the Commissioner and in which any such goods owned by such manufacturer are stored, and thereupon such goods so stored shall, for the purposes of this Act, be deemed to be in the licensed special customs and excise warehouse of such manufacturer, and the licensee concerned shall be liable in all respects for compliance with the requirements of this Act and for payment of the excise duty on such goods so stored as specified in that Section B;

- (iii) in such circumstances as he or she may deem expedient, license the premises of any dealer in excisable goods specified in the Section B referred to in subsection (1) as a special customs and excise warehouse under this Act, and thereupon such dealer shall comply with the requirements of this Act relating to the collection of excise duty specified in, and payable on, such excisable goods specified in that Section B as the Commissioner may determine, and be liable for the excise duty on such goods as specified in that Section B; or
- (iv) make such temporary or permanent adjustment to the excise duty value of excisable goods specified in the Section B referred to in subsection (1) as he or she may deem reasonable in circumstances which are in his or her opinion exceptional.

(4) Excisable goods specified in the Section B referred to in subsection (1) and manufactured in Namibia by any person for his or her own use and not for sale or disposal, and in circumstances which in the opinion of the Commissioner do not constitute a business venture, may, subject to such conditions as he or she may in each case impose, be exempted by the Commissioner from the payment of excise duty.

(5) Excisable goods specified in the Section B referred to in subsection (1) and manufactured in Namibia by any person for sale or disposal in circumstances which in the opinion of the Commissioner constitutes a business venture, or any class or kind of such goods, may subject to such conditions as the Permanent Secretary may prescribe, be exempted by the Commissioner from the payment of excise duty thereon as specified in that Section B if -

- (a) the average value of such goods or such class or kind of such goods has during such period or periods as the Permanent Secretary may prescribe by rule, not exceeded such amount as he or she may so prescribe; or
- (b) the value of such goods or such class or kind of such goods is in the opinion of the Commissioner not likely to exceed the amount referred to in paragraph (a) during one calendar year; or
- (c) such circumstances as may be prescribed by rule apply.

Duties applicable to goods manufactured in a customs and excise warehouse

39. (1) In respect of any goods manufactured in a customs and excise warehouse there shall, subject to section 84, on entry for home consumption of such goods, be paid -

- (a) if such manufactured goods are not liable to excise duty, duty at the customs rate of duty applicable in terms of Schedules 1 and 2 on any imported goods used in the manufacture of such manufactured goods and the excise rate of duty applicable in terms of Schedule 1 on any excisable goods used in the manufacture of such manufactured goods; and

- (b) if such manufactured goods are liable to excise duty, duty at the excise rate of duty applicable in terms of Schedule 1 on such manufactured goods.

(2) Notwithstanding subsection (1), but subject to subsections (3) and (6), the Commissioner may, on such conditions as he or she may in each case impose, for the purpose of preserving any goods in a customs and excise storage warehouse or of reconditioning such goods which, as a result of contamination or deterioration or for any other reason, have become unsaleable or not readily saleable, or for the purpose of fulfilling special orders, permit such goods to be reconditioned or to be mixed or blended in such warehouse with other goods, and in such event duty shall, in lieu of the duties in terms of subsection (1), be paid according to the first account taken of any such goods, or the total quantity of such reconditioned, mixed or blended goods, whichever quantity is the greater -

- (a) if such reconditioned, mixed or blended goods are not liable to excise duty -
- (i) at the customs rate of duty applicable in terms of Schedules 1 and 2, on any imported goods; and
- (ii) at the excise rate of duty applicable in terms of Schedule 1, on any excisable goods contained in such reconditioned, mixed or blended goods; and
- (b) if such reconditioned, mixed or blended goods are liable to excise duty, at the customs rate of duty applicable in terms of Schedule 1, on the total quantity of such reconditioned, mixed or blended goods, and, in addition to such duty so payable, duty in an amount equal to the amount by which the customs duty at the rate applicable in terms of Schedules 1 and 2, on any imported goods contained in such reconditioned, mixed or blended goods, exceeds the excise duty at the rate applicable in terms of this paragraph on such proportion of such reconditioned, mixed or blended goods as is represented by such imported goods therein contained.

(3) The reconditioned, mixed or blended goods referred to in subsection (2) shall qualify for any rebate of duty specified in respect of such goods in any applicable item of Schedule 3, 4 or 6.

(4) If the Commissioner has permitted any goods in a customs and excise storage warehouse to be reconditioned or to be mixed or blended with other goods, such warehouse shall, subject to subsection (5) and without being licensed as a customs and excise manufacturing warehouse, and without the premises or plant on such premises having been approved by the Commissioner, for the purposes of this Act be regarded as a licensed customs and excise manufacturing warehouse.

(5) Notwithstanding subsection (4), no rebate for any loss or deficiency in respect of petrol or any distillate fuel reconditioned, mixed or blended as contemplated in that subsection exceeding the deduction specified in section 84(22)(f) and (i), respectively, shall be allowed on such goods.

- (6) (a) Notwithstanding anything to the contrary in this Chapter contained, the Commissioner may, on such conditions as he or she in each case may impose, in writing permit the mixing or blending in such circumstances and at such place as he or she may specify, of any mineral oil products, including fuel levy goods, with one another or with other goods, whether or not such products or goods are in a customs and excise storage warehouse or have been entered for home consumption and have passed out of customs and excise control for any purpose, including the

purpose of rendering such goods saleable, or more readily saleable, or of fulfilling special orders.

- (b) Subsection (2), in so far as it relates to the duty payable and the rebate of duty, shall *mutatis mutandis* apply in respect of mineral oil products mixed or blended under this subsection.
- (c) Any duty paid in respect of any goods used for mixing or blending as contemplated in paragraph (a) shall be deemed to have been paid in respect of any duty payable in accordance with paragraph (b) in respect of the mineral oil products obtained by such mixing or blending.
- (d) Nothing in this section contained shall be construed as authorising a refund of any amount by which any duty already paid or assessed in respect of any goods so used for mixing or blending, exceeds the duty payable under this subsection.
- (e) A mineral oil product referred to in paragraph (a) used in the mixing or blending as set out in that paragraph shall be deemed to consist entirely of imported goods unless it is proven that it consists entirely of excisable goods, or it is proven that it contains such a small proportion of imported goods that the Commissioner deems it negligible, in which event such mineral oil product shall be deemed to consist entirely of excisable goods.

(7) If any goods to which this Act relates have become mixed or blended by an act or omission which by the exercise of reasonable care could not have been avoided, the Commissioner may apply subsection (2), in so far as that subsection relates to the duty payable or to any rebate of duty, as if such goods were mixed or blended in a customs and excise storage warehouse with his or her permission.

(8) Notwithstanding anything to the contrary in this Act contained, the Commissioner may, subject to such conditions as he or she may in each case impose, regard the mixing of mineral oil products of different classes or kinds as a result of transport by means of a pipeline (except a pipeline used in connection with the loading or discharge of ships or vehicles), or the mixing of imported and locally manufactured mineral oil products of the same class or kind in the ordinary course of transport or storage or distribution in Namibia as not constituting the manufacture of a new product, if the quantities of the different products constituting the components of such new product were entered before they became so mixed and are separately accounted for.

(9) There shall be paid on entry for home consumption, in addition to any duty payable in terms of this section, and subject to sections 27(3) and 84, a surcharge or fuel levy at the rate applicable in terms of Schedule 1 on any surcharge goods or fuel levy goods used or incorporated in the manufacture, reconditioning, mixing or blending of any goods to which this section relates and on any such manufactured, reconditioned, mixed or blended goods which are liable to surcharge or fuel levy in terms of that Schedule.

(10) No person shall recondition, mix or blend any fuel levy goods otherwise than in terms of this section.

CHAPTER V CLEARANCE AND ORIGIN OF GOODS: LIABILITY FOR AND PAYMENT OF DUTIES

Entry of goods and time of entry

40. (1) An importer of goods, other than goods imported from any territory in the common customs area, shall, subject to subsection (2), within seven days after the date on which such goods are in terms of section 9 deemed to have been imported, or within such further period of time as the Commissioner may in writing allow, make due entry of such goods, in the form prescribed by regulation, and make a declaration to the truth of such entry.

(2) Notwithstanding subsection (1), but subject to the written permission of the Controller -

- (a) containers temporarily imported;
- (b) human remains;
- (c) goods which in the opinion of the Commissioner are of no commercial value;
- (d) goods imported under an international carnet; or
- (e) goods of a value for duty purposes not exceeding N\$500, and on which no duty is payable in terms of Schedule 1,

need not be so entered.

(3) An importer referred to in subsection (1) may, at any place designated under this Act for the entry of goods, make such entry of goods which have been loaded on a ship or delivered to the carrier which conveys the goods by vehicle to Namibia for discharge at such place, notwithstanding the fact that such ship or vehicle has not yet arrived at such place.

(4) If any goods referred to in subsection (3) have, at the time of entry as provided in section 49(2), not been loaded as required by subsection (3) of this section, the importer concerned shall be guilty of an offence and such goods shall be deemed not to have been entered.

(5) An importer referred to in subsection (1) shall within seven days after the granting of a release order by the Controller in respect of any goods entered in terms of that subsection or, if such goods arrive after the granting of such order, within seven days after the arrival of such goods, present such release order to the authority in possession of such goods for delivery thereof.

- (6) (a) An exporter of goods shall, before such goods are exported from Namibia, deliver, during the hours of any day and at any place prescribed by rule, to the Controller a bill of entry, but the Commissioner may -
 - (i) if no export duty is payable on, and no obligation or condition is to be fulfilled or complied with under any law in respect of, such goods; or
 - (ii) in the case of goods to be exported overland by way of a vehicle (excluding an aircraft or a train) which are loaded for export at a place other than a place designated under section 6 where goods may be entered for customs and excise purposes,

allow such a bill of entry to be delivered at such time as he or she deems reasonable.

- (b) For the purposes of paragraph (a), in relation to the delivery of a bill of entry, the goods referred to therein shall be deemed to have been exported from Namibia -

- (i) in the case of goods to be exported in a ship, at the time when such goods are delivered to the port authority, a depot operator, the master of the ship concerned or a container operator, as the case may be;
 - (ii) in the case of goods to be exported in an aircraft, at the time when such goods are delivered to the pilot of the aircraft concerned or are brought within the control area of the airport authority concerned, as the case may be;
 - (iii) in the case of goods to be exported in a train, at the time when such goods are delivered to the railway authority concerned; or
 - (iv) in the case of goods to be exported overland in a vehicle (excluding an aircraft or a train), subject to paragraph (a), at the time when such goods are loaded on the vehicle concerned.
- (7) (a) The Permanent Secretary may in writing permit any excisable goods or fuel levy goods or any class or kind of imported goods, which goods he or she may prescribe, to be removed from a customs and excise warehouse upon the issuing by the owner of such goods of a certificate, invoice or other document prescribed by rule or approved by the Permanent Secretary in writing, and the payment of duty on such goods at a time and in accordance with the procedures prescribed by rule, and such certificate, invoice or other document shall for the purposes of section 20(4), but subject to section 41(3), be deemed to be a due entry from the time of removal of such goods from the customs and excise warehouse.
- (b) No goods referred to in paragraph (a) may be removed from a customs and excise warehouse or appropriated for use by the owner of such goods prior to the issuing of the certificate, invoice or other document referred to in that paragraph.

Importer and exporter to lodge documents and pay duties

[heading of section 41 amended by Act 17 of 2016]

41. (1) (a) A person entering any imported goods in terms of this Act for any purpose shall be a declarant and shall lodge with the Customs a duly completed goods declaration.
[paragraph (a) substituted with amendment markings by Act 17 of 2016]
- (aA) The goods declaration shall be lodged during the business hours of the customs and excise office.
[paragraph (aA) inserted by Act 17 of 2016]
- (b) A declarant shall, together with the goods declaration, subject to subsection (2), pay all duties due on the goods concerned and deliver such number of duplicates of the goods declaration as may be prescribed by regulation.
[paragraph (b) substituted with amendment markings by Act 17 of 2016]
- (c) The declarant shall deliver to the Customs:

- (i) the transport documents or such other document in the place of transport documents as may be approved by the Commissioner;
- (ii) the invoices prescribed by regulation;
- (iii) the shipper's statement of expenses incurred by the shipper;
- (iv) a copy of the confirmation of sale or other contract of purchase and sale;
- (v) the importer's written clearing instructions, unless exempted by regulation; and
- (vi) other documents relating to the goods as the Customs may require in each case.

[paragraph (c) substituted with amendment markings by Act 17 of 2016]

- (cA) The declarant must answer all questions relating to the goods as may be put to him or her by the Customs and must provide such additional information regarding the tariff classification, customs value and country of origin of the goods as may be required.

[paragraph (cA) inserted by Act 17 of 2016]

- (d) The Commissioner may, subject to the conditions as he or she may determine, allow the declarant to lodge the goods declaration and supporting documents prior to the arrival of the goods in the customs territory.

[paragraph (d) substituted with amendment markings by Act 17 of 2016]

- (e) A person referred to in paragraph (a) shall, in respect of any class or kind of goods prescribed by rule, or any goods to which circumstances so prescribed apply, in addition to the documents referred to in paragraph (a) or (b), produce to the Controller for retention by him or her, a sample as may be so prescribed and a true copy of any invoice or other document relating to such goods, or of any blueprint, illustration, drawing, plan or other illustrated or descriptive literature so prescribed in respect of, or relating to, such goods.

- (f) The -

- (a) goods declaration and the supporting documents contemplated in this section may be lodged by means of an electronic communication, in the form prescribed by regulation; and
- (b) Commissioner may require that the goods declaration and the supporting documents contemplated in this section be lodged by means of an electronic communication, in the form prescribed by regulation.

[paragraph (f) inserted by Act 17 of 2016]

(2) Notwithstanding paragraph (b) of subsection (1), the Commissioner may for such period and on such conditions, including conditions relating to security, as he or she may determine, in writing allow the deferment of payment of duties due in terms of that paragraph in respect of the relevant bills of entry.

- (3) (a) If any goods intended for export are liable to any export duty under this Act, the amount of such duty shall be stated in the bill of entry relating to such goods and shall be payable upon presentation of such entry to the Controller.
- (b) No bill of entry referred to in paragraph (a) shall be valid, nor shall any person export such goods, until the duty referred to in that paragraph has been paid to the Controller.
- (4) (a) Any person who removes goods from a customs and excise warehouse by means of the issuing of a certificate, invoice or other document referred to in section 40(7) shall present to the Controller a validating bill of entry in the form, at the time and in accordance with the procedures prescribed by rule in respect of any such certificate, invoice or other document, and shall pay to the Controller at the time so prescribed the duty due on the goods to which such certificate, invoice or other document relates.
- (b) A person referred to in paragraph (a) shall present to the Controller a validating bill of entry, duly completed to the satisfaction of the Controller, and shall make and sign a declaration in the form prescribed by rule as to the correctness of the particulars specified in such bill of entry.
- (c) A person referred to in paragraph (b) shall, together with the bill of entry referred to in that paragraph, present to the Controller as many duplicates and such supporting documents as may be prescribed by rule or as may be required by the Controller.
- (5) The Permanent Secretary may prescribe -
- (a) the documents to be produced by the exporter upon entry for export in respect of any goods, or any class or kind of goods, exported in circumstances or to a destination so prescribed; and
- (b) the manner in which and the time when bills of entry in respect of goods of any class or kind, or of goods imported or exported in such manner or such circumstances as may be so prescribed, shall be delivered.
- (6) An importer of goods from any territory in the common customs area shall, upon bringing such goods into Namibia and notwithstanding any provision to the contrary in any other law contained, in the form, at the place, to the person and in accordance with the procedures the Permanent Secretary may prescribe, make a declaration and pay the duty, if any, payable in respect of such goods.
- (7) Any person who refuses or fails to make a declaration in terms of subsection (6), or who, in such declaration, makes a false statement, knowing such statement to be false, shall be guilty of an offence and on conviction be liable to the penalties prescribed by section 96.

Sale in transit

42. Notwithstanding anything to the contrary in this Act contained, the importer of any goods purchased from any Namibian consignee after shipment of such goods but before the date of entry thereof, shall produce to the Controller the invoice relating to such purchase, and the price actually paid or payable in respect of such goods by virtue of such purchase shall, for the purposes of section 75(1), be the transaction value of such goods.

Validity of entries

43. (1) No entry made in terms of this Act shall be valid unless -

- (a) in the case of imported or exported goods, the description and particulars of the goods and the marks and particulars of the packages declared in such entry correspond with the description and particulars of the goods and the marks and particulars of the packages as reported in terms of section 7 or 11, or in any certificate, permit or other document by which the import or export of such goods is authorised;
- (b) the goods referred to in paragraph (a) have been properly described in such entry by means of the denomination and with the characters, tariff heading and item numbers, and the circumstances according to which such goods are charged with duty or are admitted under any provision of this Act, or are permitted to be imported or exported;
- (c) the true value of the goods on which duty is leviable or which is required to be declared under this Act, and the true territory of origin, territory of export and means of carriage relating to such goods have been declared;
- (d) in the case of goods purchased by or sold, consigned or disposed of to, any person in Namibia, a correct and comprehensive invoice in respect of such goods, as prescribed by rule, has been produced to the Controller; and
- (e) the correct duty due has, subject to subsection (2), been paid.

(2) Notwithstanding paragraph (e) of subsection (1), no bill of entry shall be invalid by reason of any deferment of payment under section 41(2).

(3) Goods delivered or removed, by virtue of an entry which is not valid, out of or from any ship, aircraft, vehicle, transit shed, container terminal, container depot, customs and excise warehouse or other place where such goods have been deposited with the consent of the Controller, shall, subject to subsection (4), be deemed to be goods landed or removed without due entry thereof.

(4) Notwithstanding subsection (3), if goods referred to in that subsection are included in any entry embracing more than one package, and if it is shown that the invalidity of the entry referred to in that subsection arose without wilful default or negligence of any person connected with such goods, and that such invalidity does not exist in respect of all the packages in such entry, then only the packages not validly entered shall be deemed to have been landed or removed without due entry.

- (5) (a) Subject to sections 85 and 87, and to such conditions as the Commissioner may in writing impose, and against payment of such fees as the Permanent Secretary may prescribe -
 - (i) an importer, exporter or manufacturer of goods shall on discovering that a bill of entry presented by him or her does not in every respect comply with section 41, or is invalid in terms of subsection (1) of this section, forthwith adjust such bill of entry by means of a voucher of correction or in such other manner as the Commissioner may determine; or
 - (ii) if a bill of entry has been passed in error by reason of duty having been paid on goods intended for storage or manufacture in a customs and excise warehouse under section 20, or for any purpose or use subject to a rebate of

duty under section 84, the Commissioner may allow the importer, exporter or manufacturer concerned to adjust such bill of entry by the substitution of a fresh bill of entry and the cancellation of the original bill of entry, provided such goods, where a rebate of duty is being claimed, at the time the duty was paid in all respects qualified for such rebate, subject thereto that acceptance of such voucher or fresh bill of entry shall not indemnify such importer or exporter or manufacturer against any fine or penalty provided for in this Act.

- (b) Paragraph (a)(ii) shall *mutatis mutandis* apply in respect of a bill of entry in which goods have, according to the tariff heading, tariff subheading, item or circumstances according to which such goods are charged with duty, been described in error as goods other than goods intended -
- (i) for storage or manufacture in a customs and excise warehouse under section 20; or
 - (ii) for purposes or use subject to a rebate of duty under section 84, in consequence of the fact that -
 - (aa) a determination of any such tariff heading, tariff subheading or item is, under section 51(8)(d), amended with retrospective effect as from a date before or on the date on which the goods described in such bill of entry have been entered for home consumption;
 - (bb) any such determination is, under section 51(8)(d), withdrawn with the retrospective effect referred to in subparagraph (aa), and a new determination is made under that section with effect from the date of such withdrawal; or
 - (cc) any Schedule is amended with the retrospective effect referred to in subparagraph (aa),

and in which such goods, if such amendment or new determination had been in operation on the date on which such goods were so entered, would have been described as goods intended for such storage or manufacture or such purposes or use.

- (c) No application for such substitution referred to in paragraph (a)(ii) or in that paragraph as read with paragraph (b), shall be considered by the Commissioner unless such application is received by the Controller, supported by the necessary documents and other proof to prove that such substitution is justified, within a period of six months -
- (i) from the date of entry for home consumption of the goods to which the application relates as provided in section 49(2); or
 - (ii) in the case of any amendment of a determination referred to in subparagraph (aa) of paragraph (b)(ii), or of a new determination referred to in subparagraph (bb) of that paragraph, from the date on which such amendment is effected or such new determination is made, or if such amendment or new determination is published by notice in the *Gazette*, the date on which such amendment or new determination is so published; or

- (iii) in the case of an amendment referred to in subparagraph (cc) of paragraph (b)(ii), from the date on which such amendment is published by notice in the *Gazette*.

Particulars on invoices

44. (1) The exporter of any goods imported into or exported from Namibia, or the owner of any excisable goods or fuel levy goods manufactured in any customs and excise warehouse shall, to the satisfaction of the Commissioner and subject to subsection (2), render a true, correct and comprehensive invoice, certificate of value and certificate of origin relating to such goods in such form and declaring such particulars of such goods as may be prescribed by rule and as may be necessary in order to make a valid entry of such goods, and shall furnish such additional information in connection with such invoice, certificate, particulars or goods as the Commissioner may, for the purpose of this Act, at any time require.

(2) Different requirements may be prescribed by rule in respect of invoices and certificates contemplated in subsection (1) relating to goods of different classes, or kinds of goods to which different circumstances apply as specified in the rules.

(3) An exporter or manufacturer shall allocate to any goods of a class or kind of goods prescribed by rule for the purposes of this subsection and exported to or from, or manufactured in, Namibia, a distinctive and permanent identification number, code, description, character or other mark in such manner and in accordance with such method as may be prescribed by rule, and such identification number, code, description, character or other mark shall be quoted or reproduced on all invoices and in all such other documents as may be prescribed by rule, relating to such goods.

(4) All particulars on any invoice prescribed by regulation and on a certificate in respect of imported goods shall relate to the goods in the condition in which they were imported into Namibia, and for the purposes of section 117(2) no change in such condition shall, subject to subsection (5), be deemed to have taken place between the time of import and the time of any examination or analysis decided upon by the Controller or the Commissioner, unless the importer is able to satisfy the Commissioner of any such change and the extent of such change.

(5) Notwithstanding subsection (4), the Commissioner may refuse to accept, or to act upon, the result of any examination or analysis contemplated in that subsection, but may have a further examination or analysis conducted as he or she may deem appropriate.

(6) (a) All particulars necessary to make a valid entry, and all particulars in respect of the transaction value or of any commission, discount, cost, charge, expense, royalty, freight, duty, tax, drawback, refund, rebate, remission or other information whatsoever which relates to or has a bearing on such value, shall be declared by the exporter in any invoice prescribed by regulation in respect of any imported goods, and such particulars shall, except if the Commissioner otherwise determines, relate to the final amount of such transaction value or commission, discount, cost, charge, expense, royalty, freight, duty, tax, drawback, refund, rebate or remission, and to the final particulars or information regarding such goods.

(b) Any particulars referred to in paragraph (a) and declared on any invoice or certificate prescribed by regulation in respect of any imported goods, shall be subject to any credit or debit note passed by the exporter or to any refund made or becoming due by the exporter, or any amount paid or becoming due to the exporter (directly or indirectly, in money or in kind or in any other manner) or to any change of any nature whatsoever in such particulars in respect of such goods after the date of issue of such invoice or certificate, and the exporter shall, when any

such note is passed or such refund is made or becomes due, or such amount is paid or becomes due or such change takes place, forthwith issue an amended invoice or certificate to the importer who shall submit such amended invoice or certificate to the Controller within one month of the receipt thereof, and in writing report the reason for the amended invoice or certificate to him or her.

- (c) If any of the particulars referred to in paragraph (a) relating to any imported goods, are not declared in the invoice or certificate prescribed by regulation and relating to such imported goods, or if any change in the particulars declared in any prescribed invoice or certificate relating to any imported goods which occurs after the date of issue of any such invoice or certificate is not forthwith reported to the Controller by the importer of such goods, or if the Commissioner has reason to believe that an offence contemplated in section 96(f) or (g) has been committed in respect of any imported goods, the Commissioner may determine a transaction value, an origin, a date of purchase, a quantity, a description or the characteristics in respect of such goods according to the best information available to him or her, which shall, subject to a right of appeal to the Minister by the owner of such goods, for the purposes of this Act be deemed to be the transaction value, the origin, the date of purchase, the quantity, the description or the characteristics of such goods.
- (d) The right of appeal referred to in paragraph (c) shall be exercised within a period of three months from the date of the determination made under that paragraph.
- (e) The form of and the procedures relating to an appeal referred to in paragraph (c) shall be prescribed by the Minister.

Entry by bill of sight

45. (1) If any importer makes and signs a declaration that he or she cannot, for want of full or sufficient information, make due entry of any goods, the Controller may accept an entry by bill of sight in respect of such goods by the best description which can be given of such goods, and may grant a warrant in respect of such goods so that the same may be landed and brought to a place designated by the Controller at the risk and expense of the importer for the purpose of being seen and examined by the importer at such place in the presence of the Controller.

- (2) (a) The importer shall make due entry of the goods referred to in subsection (1) within three days of the date on which they were brought to the place of examination, which place shall, for the purpose of securing the duties on such goods, be regarded as a special State Warehouse until the goods are duly entered and removed or delivered in accordance with this Act.
- (b) In default of the due entry of goods referred to in paragraph (a), such goods may after a period of three months from the date of receipt thereof into the place of examination be disposed of in accordance with the procedures prescribed by section 46.

(3) No goods entered by bill of sight under this section shall be removed without due entry after sight, and the penalties prescribed by this Act in respect of the incorrect or false entry of goods shall apply in respect of such due entry after sight.

Disposal of goods on failure to make due entry

46. (1) If entry of any imported goods has not been made under section 40, the master or other person who has physical control of such goods shall, on the expiry of the period

of time prescribed by subsection (1) of that section, remove such goods to the State warehouse or other place determined by the Controller in writing, or the Controller himself or herself may so remove such goods and may recover from such master or such other person the reasonable costs incurred by him or her in connection with such removal.

- (2) (a) The Controller may at any time after the expiry of the prescribed period of time referred to in subsection (1), in writing notify the importer to make due entry of the goods concerned within the period of time specified in such notice, and if such importer fails to make such entry, such goods shall be liable to forfeiture to the State.
- (b) If the goods referred to in paragraph (a) are seized under section 98(1) and sold in terms of section 100, the proceeds of such sale shall be disposed of as provided in subsection (3) of this section.

(3) If after the expiration of a period of three months from the date of removal of the goods to the State warehouse or other place designated by the Controller under subsection (1), or if no such removal has taken place, from the date of expiry of the period prescribed in section 40(1), such goods remain unentered, the Controller may cause such goods to be sold, and if so sold the proceeds of such sale shall be applied in the discharge of any duty payable, expenses incurred by the Commissioner or the Controller, as the case may be, charges due to the State or to Transnamib Limited, to a container operator or to a depot operator, and freight, in respect of such goods, and the surplus, if any, shall, unless such goods were imported in contravention of any law, upon written application be paid to the owner of such goods.

(4) Notwithstanding subsection (3) -

- (a) if the goods referred to in that subsection cannot be sold for a sum sufficient to cover the duty, expenses, charges and freight referred to in that subsection, the Commissioner may accept the sum offered and apply it in discharge of the debits referred to and in the order specified in that subsection, or direct that such goods be destroyed or appropriated to the State; or
- (b) if the goods cannot be sold at a price regarded by the Commissioner as a fair and reasonable price, such goods may be appropriated by him or her to the State; and
- (c) no payment of any surplus in respect of the proceeds of goods sold shall be made to the owner of the goods, unless the application for such payment is supported by proof of ownership of the goods and is received by the Commissioner within a period of two years from the date of the sale of the goods.

(5) Notwithstanding anything to the contrary in this Act contained -

- (a) if any goods referred to in subsection (3) are perishable or may cause any kind of danger, or if the Commissioner is of the opinion that, unless the goods are sold immediately, the proceeds of such a sale would not be sufficient to cover the duties or charges due, or the duties or charges which may become due, in respect of such goods, he or she may forthwith order the sale thereof and apply the proceeds of such a sale as provided in that subsection; or
- (b) if any goods are sold in terms of this section subject to compliance by the purchaser with any condition determined by the Commissioner, and the purchaser fails to comply with such condition within a period of three months from the date of sale of such goods, such sale shall be null and void and the net proceeds of the sale may be refunded to the purchaser, or the Commissioner may direct that such

goods be destroyed or appropriated to the State, or be dealt with in such a manner as he or she may deem appropriate.

Liability for payment of duty

47. (1) Liability for payment of duty on any goods to which section 9 relates shall, subject to subsection (2), commence from the time when such goods are in terms of that section deemed to have been imported into Namibia.

(2) Notwithstanding subsection (1), but subject to subsection (10), any liability contemplated in subsection (1) shall cease if it is proven that the goods concerned (excluding, save in so far as the rules otherwise provide, goods which are missing from any individual package and in respect of which any customs duty, surcharge or fuel levy, does not exceed N\$25 respectively) were not landed at any place in Namibia.

(3) Any excisable goods or fuel levy goods shall, for the purposes of this Act, be deemed to have been manufactured at the stage in the manufacturing process when such goods have acquired the essential characteristics of, and are in the opinion of the Commissioner capable to be used as, such excisable goods or fuel levy goods, and liability for payment of duty shall commence at such stage.

(4) The master of a ship or the pilot of an aircraft or a carrier of goods by means of any other vehicle shall be liable for the duty on all goods which are removed from such ship, aircraft or vehicle at a place in Namibia to which they are not consigned, and such liability shall continue until the goods have been duly entered or otherwise been accounted for.

(5) The master, pilot or carrier referred to in subsection (4), shall be liable for the duty on all goods deemed in terms of section 9 to have been imported, except goods in respect of which a bill of lading, air consignment note or other document was issued upon the loading of such goods onto the ship, aircraft or vehicle by means of which such goods were imported, stating that such goods were accepted for carriage at the risk of the owner thereof in all respects and not only as regards risk in respect of damage to such goods, provided such goods have not been landed and placed in a transit shed designated or prescribed under section 6(1).

(6) The liability of the master or pilot or other carrier for the payment of duty in terms of subsection (5) shall cease -

- (a) upon the lawful delivery of the goods concerned, after due entry thereof has been made, to the importer or to his or her agent; or
- (b) if due entry of the goods has not been made, upon the delivery thereof to the State warehouse or to any other place designated for the purposes of this section by the Controller; or
- (c) upon the delivery of the goods, if containerized, to a container operator; or
- (d) in respect of such goods for which an air cargo transfer manifest has been completed, upon the delivery thereof to Air Namibia (Pty) Ltd, or to any other commercial airways determined by the Minister by notice in the *Gazette*.

(7) The liability of a container operator for duty in terms of subsection (6)(a) shall cease -

- (a) in respect of goods which are containerized, upon the lawful delivery of such goods, after due entry thereof has been made, to the importer or to his or her agent; or
- (b) in respect of goods containerized in -
 - (i) L.C.L. containers; or
 - (ii) other containers delivered to a container operator as contemplated in subsection (6)(c) and specified in a list to be compiled by the container operator concerned,

upon the delivery of such goods to a depot operator; or

- (c) in respect of any goods of which due entry has not been made, upon delivery of such goods to the State warehouse or other place designated by the Controller for the purposes of this section.

- (8) The liability of a depot operator for duty in terms of subsection (9)(b) shall cease -

- (a) in respect of goods containerized in L.C.L. containers or the other containers referred to in subsection (7)(b)(ii), upon the lawful delivery of such goods to the importer or to his or her agent, after due entry thereof has been made; or
- (b) in respect of any goods of which due entry has not been made, upon the delivery of such goods to the State warehouse or other place designated by the Commissioner for the purposes of this section.

(9) In any case where the master, pilot or any other carrier is not liable for the duty on any imported goods or where the liability of such master, pilot or other carrier has ceased in respect of such goods in terms of this section, liability for the payment of duty thereon shall, subject to Chapter VII, rest -

- (a) in the circumstances contemplated in subsection (6)(c), on the container operator concerned;
- (b) in the circumstances contemplated in subsection (7)(b), on the depot operator concerned; and
- (c) in any other circumstances, on the importer or the owner of such goods, or on any person who assumes such liability for any purpose under this Act, subject to the approval of the Commissioner and to such conditions as he or she may determine.

(10) Notwithstanding anything to the contrary in this section contained, no importer shall be granted a refund of customs duty, surcharge or fuel levy paid in respect of any goods missing from any individual imported package, if such customs duty, surcharge or fuel levy does not exceed N\$25 respectively.

(11) The manufacturer, owner, seller or purchaser of any excisable goods or fuel levy goods shall, subject to Chapter VII, be liable for payment of the duty on such goods, and his or her liability shall continue until such goods have been duly entered and the duty due on such goods duly paid.

(12) Notwithstanding anything to the contrary in this Act contained, any person who owns, purchases, removes, receives, takes, delivers or deals with or in any imported goods,

excisable goods or fuel levy goods which, in terms of any agreement concluded under section 56, should have been duly entered in any territory with the government of which such an agreement has been concluded, shall be liable for the duty on such goods brought into Namibia from such territory, and, unless the contrary is proven, it shall be presumed that such goods have not been so entered, and such goods shall be subject to this Act as if they were goods which have, contrary to section 52, not been duly entered in Namibia.

(13) For the purposes of subsection (6) an entry by bill of sight shall be deemed to be due entry.

(14) Any duty for which any person is liable in terms of this section shall be payable upon a written demand made by the Commissioner.

Joint and several liability for payment of duty or certain other amounts

48. Subject to sections 38(3)(b)(i) and 110(2)(c), when in terms of this Act liability for payment of duty, or any amount demanded under section 98(2)(a) devolves on two or more persons, each such person shall, unless he or she proves that his or her relevant liability has ceased in terms of this Act, be jointly and severally liable for payment of such duty or amount, any one paying, the other or others to be absolved *pro tanto*.

Determination of applicable duty

49. (1) (a) Notwithstanding anything to the contrary in this Act contained, all goods consigned to or imported into Namibia, or stored or manufactured in a customs and excise warehouse or removed in bond, shall upon being entered for home consumption, be liable to the duties (including anti-dumping duties, countervailing duties and safeguard duties specified in Schedule 2, and new or increased duties referred to in section 65 and duties imposed under section 58) as may at the time of such entry be leviable upon such goods.
- (b) Notwithstanding paragraph (a), but subject to section 43, any dutiable goods imported into or manufactured in Namibia and which were removed, taken or delivered without due entry for home consumption having been made in respect of such goods, shall be liable to the duties which may be leviable upon such goods at the time of such removal, taking or delivery, or at the time of assessment by an officer, whichever yields the greater amount of duty.
- (2) For the purposes of this section, the time of entry for home consumption of -
- (a) goods imported by post (and not entered at a customs and excise office before a Controller) shall be deemed the time when such goods are assessed for duty; and
- (b) goods imported otherwise than by post shall be deemed the time when the bill of entry concerned is delivered to the Controller in terms of section 41(1)(a) and at a place designated by the Controller, irrespective of whether such bill of entry is returned by the Controller in order to be adjusted as required by the Controller, provided such bill of entry, so adjusted, is redelivered to the Controller within a period of five days calculated as prescribed by rule, after the day on which it was so returned by the Controller.

Origin of goods

50. (1) For the purposes of this Act goods shall not be regarded as having been produced or manufactured in any particular territory unless -

- (a) at least 25 per cent (or such other percentage as may be determined under subsection (2), (3) or (4)), of the production cost of such goods, determined in accordance with the rules, is represented by materials produced and labour performed;
- (b) the last process in the production or manufacture of such goods has taken place; and
- (c) such other processes as the Minister, on the recommendation of the Minister of Trade and Industry, may prescribe in respect of any class or kind of goods, have taken place in the production or manufacture of goods of such class or kind,

in such territory.

(2) The Minister may from time to time, on the recommendation of the Minister of Trade and Industry, by notice in the *Gazette* increase the percentage prescribed by subsection (1), in regard to any class or kind of imported goods, or in regard to any class or kind of such goods imported from a particular territory, to which that subsection applies.

(3) The President may, for the purposes of section 56, by agreement with the government of any territory, increase or reduce the percentage prescribed by subsection (1) of this section in so far as such territory is concerned, in respect of any class or kind of goods to which that subsection applies.

- (4) The Permanent Secretary may -
 - (a) in respect of any excisable or other goods produced or manufactured in Namibia, or any class or kind of such goods, or any goods in respect of which circumstances prescribed by rule apply, by rule increase or reduce the percentage prescribed by subsection (1);
 - (b) by rule exempt from any provision of subsection (1), any goods or any class or kind of goods referred to in paragraph (a); or
 - (c) prescribe that any goods, or class or kind of goods, referred to in paragraph (a), shall not be regarded as having been produced or manufactured in Namibia unless the processes in connection with the production or manufacture of such goods as may be prescribed by rule, have taken place in Namibia.

Payment of duty and rate of duty applicable

51. (1) Subject to this Act, duty shall be paid for the benefit of the State Revenue Fund on all imported goods, all excisable goods, all surcharge goods and all fuel levy goods in accordance with Schedule 1 at the time of entry for home consumption of such goods.

(2) Notwithstanding subsection (1), the Commissioner may condone any underpayment of the duty payable in terms of that subsection, if the amount of such underpayment in the case of -

- (a) goods imported by post is less than 50 cents;
- (b) goods imported in any other manner is less than N\$ Five; or
- (c) excisable goods is less than N\$ Two.

(3) The most-favoured-nation-rate of duty specified in any tariff heading or subheading in Part 1 of Schedule 1 shall apply to any goods to which such heading or subheading relates if such goods were produced or manufactured in any territory -

- (a) with the government of which an agreement has been concluded under section 56 and the agreement makes provision for the application of the most-favoured-nation-rate of duty in respect of the import of such goods from such territory; or
- (b) the government of which has acceded to the General Agreement on Tariffs and Trade concluded in Geneva on 13 October 1947, if in respect of such territory the agreement applies as between the government of such territory and the Government of Namibia.

(4) Any export duty which may become payable in terms of section 54(4) on goods specified in Part 6 of Schedule 1, shall, at the time of entry for export of such goods, be paid for the benefit of the State Revenue Fund.

(5) Any duty, anti-dumping duty, countervailing duty and safeguard duty payable in terms of sections 58, 61, 62 and 63, respectively, shall be paid for the benefit of the State Revenue Fund in accordance with the section concerned.

(6) If the tariff heading or subheading under which any goods are classified in Part 1 of Schedule 1 is expressly quoted in any tariff item, surcharge item or fuel levy item or item of Part 2, 4, 5 or 6 of that Schedule, or in any item in Schedule 2 in which such goods are specified, the goods so specified in such tariff item, surcharge item, fuel levy item or item of that Part 2, 4, 5 or 6, or in such item of Schedule 2, shall be deemed not to include goods which are not classified under such tariff heading or subheading.

- (7) (a) The interpretation of Part 1 of Schedule 1 shall, subject to paragraph (b), be subject to the Explanatory Notes to the Harmonized System and to the Customs Co-operation Council Nomenclature issued by the Customs Co-operation Council, Brussels, from time to time.
- (b) If the application of any part of the Explanatory Notes referred to in paragraph (a), or any addendum thereto or explanation thereof, is optional, the application of such part, addendum or explanation shall, notwithstanding that paragraph, be at the discretion of the Commissioner.
- (c) The Commissioner shall obtain and keep in his or her office two copies of the Explanatory Notes referred to in paragraph (a) and shall effect thereto any amendment of which he or she is notified by the Council referred to in that paragraph from time to time, and shall record the date of effecting each such amendment, and any such amendment so recorded shall, for the purposes of this Act, be effective from such date.
- (d) When in any legal proceedings any question arises as to the contents of the Explanatory Notes referred to in paragraph (a) or as to the date upon which any amendment thereto was effected in terms of paragraph (c), a copy of such Explanatory Notes as amended in terms of this subsection, duly certified by the Commissioner as a true copy, shall be *prima facie* evidence of the contents thereof and of the effective date of any amendment thereto.

- (8) (a) (i) The Commissioner may in writing determine the tariff headings, tariff subheadings or items of any Schedule under which any imported goods or goods manufactured in Namibia shall be classified.
- (ii) The acceptance by any officer of a bill of entry or the release of any goods as entered shall be deemed not to be a determination under subparagraph (i).
- (b) Any determination made under paragraph (a) shall, subject to an appeal to the High Court of Namibia, be deemed to be correct for the purposes of this Act, and any amount due in terms of any such determination shall remain payable as long as such determination remains in force.
- (c) The Commissioner shall within a period of 90 days from the date of any determination made under paragraph (a) or (d), or any withdrawal or amendment of such determination made under paragraph (d), publish such determination by notice in the *Gazette*.
- (d) The Commissioner may, when he or she deems it expedient, in writing amend any determination made under paragraph (a), or withdraw it and make a new determination with effect from -
- (i) the date of first entry of the goods concerned;
- (ii) the date of the notice referred to in paragraph (c);
- (iii) the date of the determination made under paragraph (a);
- (iv) the date of such new determination; or
- (v) the date of such amendment,
- specified in such determination.
- (e) An appeal against any determination made under paragraph (a) or (d), or any amendment of such determination made under paragraph (d), shall lie to the High Court of Namibia.
- (f) An appeal contemplated in paragraph (e) shall, subject to section 106(1), be noted within a period of 30 days from the date of the publication in the *Gazette* of a notice under paragraph (c) relating to the determination or amendment which is appealed against.
- (9) Save where -
- (a) a determination has been made or amended, as the case may be, under subsection (8)(a) or (d); or
- (b) any false declaration is made for the purposes of subsection (8),

there shall be no liability for any underpayment in respect of duty on any goods after a period of two years from the date of entry of such goods, if such underpayment is due to the acceptance of a bill of entry bearing an incorrect tariff heading, tariff subheading or item of any Schedule.

(10) Notwithstanding subsection (9), any determination made under subsection (8)(a) following upon an inspection of the books or documents of any importer or manufacturer, shall

be deemed to have come into operation, in respect of the goods entered for customs and excise purposes, two years prior to the date on which the inspection commenced.

Prohibition of certain acts in respect of certain goods not duly entered

52. Subject to this Act, no person shall remove, receive, take, deliver or deal with or in any imported or excisable goods or fuel levy goods unless such goods have been duly entered.

Disposal of amounts of fuel levy

53. The Commissioner shall, notwithstanding section 51(1), dispose of any fuel levy paid in terms of that section as may be determined jointly by the Minister and any other Minister who may lay claim to any such levy, or part of such levy, by virtue of any provision in any other law.

General amendment of Schedules and amendment of Schedule 1

54. (1) Notwithstanding anything to the contrary in this Act contained, the Minister may, subject to section 65(8), by notice in the *Gazette* amend any Schedule to this Act, whether by means of imposing a new duty, or by increasing or decreasing an existing duty, or in any other manner, in order to conform to any amendment made by any other country in the common customs area and in accordance with the obligations imposed by or under the Customs Union Agreement of 11 December 1969, entered into between the Governments of Botswana, Lesotho, South Africa and Swaziland, and acceded to by the Government of Namibia on 4 December 1992, or by or under any other agreement entered into under section 55 or 56, as the case may be.

- (2) The Minister may from time to time by notice in the *Gazette* -
- (a) amend the General Notes to Schedule 1, or the Notes to Part 1 or to Part 2 of that Schedule in so far as it relates to imported goods -
- (i) in order to give effect to any agreement amending the Geneva General Agreement on Tariffs and Trade concluded at Geneva on 13 October 1947, or to any agreement concluded under section 55;
- (ii) in order to give effect to any request made by the Minister of Trade and Industry;
- (iii) in order to give effect to any amendment to the Explanatory Notes to the Harmonized System or to the Customs Co-operation Council Nomenclature referred to in section 51(7), or to the Nomenclature set out in the Annex to the Convention on Nomenclature for the Classification of Goods in Customs Tariffs signed in Brussels in 1950;
- (iv) by deleting any reference therein to any territory, if the government of such territory has, without the consent of the Government of Namibia, cancelled any preferential customs tariff rate applicable to any goods produced or manufactured in Namibia, on their being import into such territory; or
- (v) when he or she deems it expedient in the public interest to do so;
- (b) amend or withdraw or, if so withdrawn, insert Part 2, Part 3, Part 4 or Part 5 of Schedule 1, when he or she deems it expedient in the public interest to do so; or

- (c) with or without retrospective effect and from a date specified in such notice, reduce any duty specified in any of the Parts referred to in paragraph (b).
- (3) (a) The Minister may from time to time, when he or she deems it expedient in the public interest to do so, by notice in the *Gazette*, authorise the Permanent Secretary to withdraw, with or without retrospective effect, and subject to such conditions as the Permanent Secretary may determine, any duty specified in Part 2 or Part 4 of Schedule 1.
- (b) The Commissioner may at any time cancel, amend or suspend any withdrawal contemplated in paragraph (a).
- (c) Any application for a withdrawal contemplated in paragraph (a) shall, with or without retrospective effect, be submitted to the Commissioner not later than six months from the date of entry for home consumption as provided in section 49(2).
- (4) The Minister may, when he or she deems it expedient or in the public interest to do so, by notice in the *Gazette* impose an export duty, on such basis as he or she may determine, in respect of -
 - (a) any goods intended for export;
 - (b) any class or kind of goods intended for export; or
 - (c) any goods intended for export in circumstances specified in such notice,

and any export duty so imposed shall be set out in the form of a schedule to such notice which shall be deemed to be incorporated in Schedule 1 as Part 6 thereof and to constitute an amendment of that Schedule.

- (5) (a) Notwithstanding anything to the contrary in this Act contained, the Minister may, when he or she deems it expedient in the public interest to do so, by notice in the *Gazette*, insert Part 8 of Schedule 1, and if so inserted withdraw or amend that Part for the purpose of specifying that any duty leviable under any heading or item of Part 1, 2 or 4 of that Schedule shall not be leviable under that Part, but shall be leviable under that Part 8 at the time of entry for home consumption for use by any person, government, Ministry, administration or body as may be specified by him or her in such notice.
- (b) For the purposes of this subsection, any amount leviable under any item of Part 8 of Schedule 1, shall be called an ordinary levy.
- (c) Any ordinary levy contemplated in paragraph (b) shall be paid for the benefit of the State Revenue Fund as specified in section 51(1) and shall, for the purposes of that section, be deemed to be a duty paid in accordance with Schedule 1.
- (d) Notwithstanding section 51(1), any ordinary levy paid in respect of any goods intended for consumption in any territory other than Namibia and which forms part of the common customs area, shall be paid by the Commissioner to the government of such territory at such times as he or she may determine.
- (e) Subsections (6) and (7) shall *mutatis mutandis* apply to any notice published under this subsection.

- (6) (a) If any amendment made under this section has an effect which was not foreseen or intended, the Minister may, whether or not such amendment has ceased to have effect or has lapsed in terms of subsection (7), after consultation with the Minister of Trade and Industry, by notice in the *Gazette* adjust such amendment to the extent he or she deems appropriate, with effect from the date of such amendment or any later date, and any adjustment effected under this subsection shall be deemed to be an amendment under this section.
- (b) Paragraph (a) shall, in so far as it can be applied, *mutatis mutandis* apply in respect of any amendment made by Parliament, which corresponds to an amendment made under this section, before the lapsing of such last-mentioned amendment in terms of subsection (7).

(7) Any amendment, withdrawal or insertion made under this section in any calendar year shall, unless the National Assembly, in consequence of the tabling in the National Assembly of such amendment, withdrawal or insertion under section 65 otherwise determines, lapse on the last day of the ensuing calendar year, but without detracting from the validity of such amendment, withdrawal or insertion before it has so lapsed.

Agreements in respect of rates of duty lower than the general rates of duty

55. The President may conclude an agreement with the government of any territory whereby rates of duty lower than the general rates of duty specified in Part 1 of Schedule 1 shall, on import into Namibia of goods specific in such agreement and produced or manufactured in such territory, be applied to such goods.

Agreements with other territories

56. (1) The President may, with the government of any territory, conclude an agreement in which agreement may, notwithstanding anything to the contrary in this Act contained, be provided that -

- (a) goods produced or manufactured in, or imported into, Namibia shall be admitted into such territory free of duty or at special rates of duty, and that goods produced or manufactured in, or imported into, such territory shall be admitted into Namibia free of duty or at special rates of duty;
- (b) arrangements (including arrangements providing for the prohibition, or quantitative or other limitation or restriction on the import of any goods) shall apply in respect of the admission of any goods into the territory of one of the parties from the territory of the other party, and in respect of the entry of, and the collection of duty on, goods on import into the territory of any party from a territory other than the territory of the other party; or
- (c) each party to the agreement shall be compensated in respect of duty on such goods,

to the extent and in the manner agreed upon between the parties to, and specified in, the agreement.

(2) Payments made by the government of any territory to the Government of Namibia in terms of any agreement concluded under subsection (1) shall accrue to, and payments by the Government of Namibia to the government of any territory in terms of any such agreement shall be made as a drawback of revenue as a charge to, the State Revenue Fund.

(3) For the purposes of this Act, any agreement which purports to have been concluded in terms of any law relating to customs and which was being observed by Namibia immediately prior to the coming into operation of this Act as being in force between Namibia and any territory contemplated in subsection (1), shall be deemed to have been concluded under, and to be subject to, the powers conferred by, this section.

Imposition of a fuel levy by any party to a customs union agreement

57. (a) Notwithstanding anything to the contrary in this Act contained, any fuel levy goods which are removed to the territory of a party to any customs union agreement concluded under section 56, or brought into Namibia from any such territory, shall, if a fuel levy has not been imposed by such party, be deemed to be goods exported from or goods imported into Namibia, as the case may be, and the provisions of this Act relating to the export from, or import into, Namibia of goods shall, subject to such arrangements as the Commissioner may in writing determine, apply to such goods until such time as such fuel levy is imposed by such party as provided in this Act.
- (b) If any party to a customs union agreement referred to in paragraph (a) imposes a fuel levy as provided in this Act, the Commissioner may, with the approval of the Minister and notwithstanding section 51(1), in respect of any fuel levy paid in Namibia on any petrol or distillate fuel entered or removed for consumption in the territory of any such party, pay to such party such fuel levy for any period it remains so imposed.
- (c) For the purposes of paragraph (b), the Commissioner may pay the fuel levy concerned on the strength of any documents, relating to the movement of such petrol or distillate fuel, in possession of any person as may be determined by the Commissioner.

Discrimination by other countries

58. (1) If the government of any territory has -
- (a) directly or indirectly imposed any duty, charge or restriction on any goods entirely or partly produced or manufactured in Namibia and which is not imposed upon similar goods produced or manufactured in any other territory; or
- (b) discriminated against the commerce of Namibia in such a manner as to place it at a disadvantage in comparison with the commerce of any third territory,

the Minister may in order to give effect to any recommendation made by the Minister of Trade and Industry, or when he or she deems it appropriate or in the public interest, by notice in the *Gazette* impose -

- (i) on all goods or any class or kind of goods imported from the territory whose government has so acted; or
- (ii) on all goods or any class or kind of goods imported, entirely or partly produced or manufactured in such territory,

additional duties not exceeding the value for duty purposes of such goods, and from a date to be specified in the notice there shall be paid on such goods, upon entry for home consumption thereof, the additional duties at the rates imposed in the notice, in addition to any other duties payable on such goods under this Act.

(2) Any additional duty imposed under subsection (1) shall be set out in the form of a schedule, which shall be deemed to be incorporated in Schedule 1 as Part 7 thereof and to constitute an amendment of that Schedule.

(3) Sections 54(7) and 65(8), (9) and (10) shall *mutatis mutandis* apply in respect of any amendment made under this section.

Imposition of environmental levy

58A. (1) A levy to be known as the environmental levy shall be leviable on goods imported into and goods manufactured in Namibia as may be specified in any item of Part 3 of Schedule No. 1.

(2) The goods on which an environment levy is imposed in terms of subsection (1), are known as environment levy goods.

[section 58A inserted by Act 17 of 2016]

Rate of environmental levy

58B. The environmental levy shall be levied at a rate as may be specified in any item of Part 3 of Schedule No. 1 and the environmental levy so specified in such item shall be payable in addition to any duty prescribed in respect of the goods concerned in any heading or subheading of Part 1 or Part 2 of Schedule No. 1.

[section 58B inserted by Act 17 of 2016]

Special provisions regarding the import of cigarettes

59. (1) The Permanent Secretary may prescribe the sizes and types of containers or packages, and the manner in which cigarettes shall be packed for import into Namibia.

(2) No person shall, subject to subsection (3), import any cigarettes into Namibia unless such cigarettes have been packed in a container or a package, and in the manner, prescribed under subsection (1), and a stamp impression in the form and manner determined by the Commissioner in writing has been made on or affixed to such container or package.

(3) Notwithstanding subsection (2), the Commissioner may allow cigarettes packed as provided for in that subsection to be imported, in such quantities and in such circumstances as he or she may deem appropriate, without such stamp impression having been made on, or affixed to, such containers or packages.

(4) No imported cigarettes shall be sold or disposed of, or removed from, the customs and excise warehouse concerned, except in accordance with this Act.

CHAPTER VI ANTI-DUMPING, COUNTERVAILING AND SAFEGUARD DUTIES

General provisions regarding anti-dumping, countervailing and safeguard duties

60. (1) The goods specified in Schedule 2 shall, upon entry for home consumption, be liable, in addition to any other duty payable in terms of this Act, to the appropriate anti-dumping, countervailing or safeguard duties provided for in that Schedule in respect of such

goods at the time of such entry, if they are imported from a supplier, or originate in a territory, specified in that Schedule in respect of such goods.

- (2) (a) The imposition of any anti-dumping duty in the case of dumping as defined by regulation, any countervailing duty in the case of subsidised export as so defined, or any safeguard duty in the case of disruptive competition as so defined, and the rate at which or the circumstances in which such duty is imposed in respect of any imported goods shall be prescribed by the Minister, on the recommendation of the Minister of Trade and Industry.
- (b) Any anti-dumping or countervailing duty contemplated in paragraph (a) may be imposed in respect of the goods concerned with effect from the date on which any provisional payment in relation to anti-dumping or countervailing duty is imposed in respect of such goods under section 64.
- (3) (a) When any anti-dumping, countervailing or safeguard duty is imposed on any goods under this Chapter, the owner of any such goods stored in a customs and excise warehouse shall produce the invoice and other documents relating to such goods to the Controller not later than the time of entry of all, or any part of, such goods for removal from such warehouse.
- (b) Paragraph (a) shall not apply in respect of goods entered for export from a customs and excise warehouse.

(4) An anti-dumping, countervailing or safeguard duty imposed under this Chapter shall not apply to any goods entered under any item specified in Schedule 3 or 4, unless such item is specified in Schedule 2 in respect of such goods.

(5) Notwithstanding section 61, 62 or 63, the Commissioner may, subject to such conditions as he or she may impose in each case, in writing exempt from the payment of any anti-dumping, countervailing or safeguard duty, any goods which are imported in such circumstances or in such quantities that the import of such goods does not, in his or her opinion, constitute regular import of such goods for trade purposes.

Imposition of anti-dumping duties

61. (1) The Minister may from time to time by notice in the *Gazette* amend Schedule 2 to impose an anti-dumping duty in accordance with section 60(2).

(2) The Minister may, on the recommendation of the Minister of Trade and Industry, from time to time by notice in the *Gazette* withdraw or reduce, with or without retrospective effect and to such extent as may be specified in the notice, any anti-dumping duty imposed under subsection (1).

(3) Sections 54(7) and 65(8), (9) and (10) shall *mutatis mutandis* apply in respect of any amendment, withdrawal or reduction made under subsection (1) or (2) of this section.

Imposition of countervailing duties

62. (1) The Minister may from time to time by notice in the *Gazette* amend Schedule 2 to impose a countervailing duty in accordance with section 60(2).

(2) The Minister may, on the recommendation of the Minister of Trade and Industry, from time to time by notice in the *Gazette* withdraw or reduce, with or without retrospective

effect and to such extent as may be specified in the notice, any countervailing duty imposed under subsection (1).

(3) Sections 54(7) and 65(8), (9) and (10) shall *mutatis mutandis* apply in respect of any amendment, withdrawal or reduction made under subsection (1) or (2) of this section.

Imposition of safeguard duties

63. (1) The Minister may from time to time by notice in the *Gazette* amend Schedule 2 to impose a safeguard duty in accordance with section 60(2).

(2) The Minister may, on the recommendation of the Minister of Trade and Industry, from time to time by notice in the *Gazette* withdraw or reduce, with or without retrospective effect and to such extent as may be specified in the notice, any safeguard duty imposed under subsection (1).

(3) Sections 54(7) and 65(8), (9) and (10) shall *mutatis mutandis* apply in respect of any amendment, withdrawal or reduction made under subsection (1) or (2) of this section.

Imposition of provisional payment

64. (1) The Minister may by notice in the *Gazette* -

- (a) notify that he or she is investigating the imposition of an anti-dumping duty or a countervailing duty on goods imported from a supplier or originating in a territory; and
- (b) impose a provisional payment in respect of goods contemplated in paragraph (a) for such period and for such amount,

as he or she may specify in such notice.

(2) The Minister may, by notice in the *Gazette*, extend the period for which the provisional payment is imposed under subsection (1)(b), or withdraw or reduce it with or without retrospective effect and to such extent as may be specified in the notice.

(3) Any provisional payment imposed under subsection (1)(b) shall, at the time of entry for home consumption of goods subject to such payment, be paid as security for, or may be set off against the amount of, any anti-dumping or countervailing duty which may retrospectively be imposed under section 61 or 62, as the case may be.

(4) If no anti-dumping or countervailing duty is imposed before expiry of the period for which a provisional payment under subsection (1)(b) in relation to the goods concerned has been imposed, the amount of such payment shall be refunded.

(5) If the amount of any provisional payment imposed under subsection (1)(b) on goods -

- (a) exceeds the amount of any anti-dumping or countervailing duty imposed on such goods under section 61 or 62, the amount of the difference shall be refunded; or
- (b) is less than the amount of the anti-dumping or countervailing duty imposed as contemplated in paragraph (a), such shortfall shall be written off.

AMENDMENT OF DUTIES

Time when new or increased duties become payable

65. (1) The Minister may at any time in the National Assembly table a taxation proposal imposing any new duty under this Act, or increasing the rate of duty payable upon any goods specified in the proposal, or any amendment, withdrawal or insertion made under this Act, and such new duty or increased rate of duty shall, subject to subsection (2), from the time when the proposal was so tabled be payable on all goods which have not at such time been entered for home consumption.

(2) When the Minister, under subsection (1), tables a taxation proposal relating to imported or excisable goods, any goods which the Minister may specify in such proposal for the purposes of this subsection shall, though entered for home consumption prior to the time of such proposal and notwithstanding that such goods have passed out of customs and excise control, become liable to the new duty imposed or to the difference between the rate of duty at the time of the tabling of, and the increased rate provided for in, such proposal, if such goods have at the time of the tabling of such proposal not been delivered from the stock of an importer, manufacturer or such class of dealer as the Minister may in such proposal specify.

(3) For the purposes of this section any goods which are specified by the Minister in any taxation proposal for the purposes of subsection (2) and which, at the time of the tabling of such proposal are in transit to an importer, manufacturer or a class of dealer so specified by the Minister, shall be deemed to form part of the stock of such importer, manufacturer or dealer, as the case may be, notwithstanding any terms to the contrary of any contract relating to the sale or delivery of such goods.

(4) When the Minister has specified any goods in any taxation proposal for the purposes of subsection (2), every importer or manufacturer or dealer specified in such proposal shall, in respect of any goods so specified -

- (a) forthwith take stock of all such goods in his or her stock at the time when the proposal was tabled, and make a clear, accurate and separate record of such imported and excisable goods;
- (b) within seven days from the date on which the proposal was tabled under subsection (1), deliver to the Controller a sworn statement containing a description, including the quantities, of such imported and excisable goods separately, which were in his or her stock at such time, and any other information which the Commissioner may require of such importer; and
- (c) upon or before the last working day of the month following the month in which the proposal was tabled, pay to the Controller the amount of duty payable by him or her under subsection (2) in respect of the goods concerned.

(5) If the Minister, in any taxation proposal for the purposes of subsection (2), states that any goods specified in such proposal shall be liable to the duties so specified, if they have not been delivered from the stock of a wholesale dealer at the time of such proposal, then subsection (4) shall apply to the stock of such wholesale dealer and of any retail dealer conducting his or her business on the same premises as such wholesale dealer.

(6) The Commissioner may, notwithstanding subsection (5), upon production by a wholesale dealer referred to in that subsection of such proof as the Commissioner may require, exclude, for the purposes of subsection (2), from the stock or the liability for payment of duty of such wholesale dealer -

- (a) stock of a class or kind which are sold by such retail dealer only; and
 - (b) such proportion of the total duty payable by such wholesale dealer as is represented by the proportion of retail sales to total sales of the goods concerned during the period of three months immediately preceding the date of such proposal, such proportion to be calculated on the basis of quantities of each commodity concerned.
- (7) For the purposes of this section -
- (a) “dealer” means any person who deals in any goods to which this Act relates and includes a club, a co-operative society of any nature or any statutory body;
 - (b) “retail dealer” means, subject to paragraph (c), any dealer who deals in, or who holds a licence under any law to deal in, as the case may be, retail quantities of goods;
 - (c) “wholesale dealer” means any dealer who deals in, or who holds a licence under any law to deal in, as the case may be, wholesale quantities of goods, and the business and stock of a wholesale dealer shall be deemed to include the business and stocks of any retail dealer who conducts business on the same premises on which the wholesale dealer conducts his or her business; and
 - (d) “deliver” includes any form of delivery, excluding *traditio brevi manu* or *constitutum possessorium*.

(8) A notice in the *Gazette* by means of which the Minister under any provision of this Act amends any Schedule, imposes any new duty, or amends or withdraws any existing duty, shall, notwithstanding subsection (1), be tabled by the Minister in the National Assembly within a period of 21 days after the promulgation of such notice, if the National Assembly is then in ordinary session, or if the National Assembly is not then in ordinary session, within a period of 21 days after the commencement of its next ensuing ordinary session, and shall remain on the Table of the National Assembly for a period of not less than 28 consecutive days, and if that session is terminated before such period of 28 days has lapsed, such notice shall again be tabled in the National Assembly within a period of 21 days after the commencement of its next ensuing ordinary session.

(9) If the National Assembly, during the period of 28 days referred to in subsection (8), passes a resolution relating to the notice on the Table as contemplated in that subsection, such resolution shall not affect the validity of anything done in terms of such notice until the date immediately prior to the date upon which such resolution was passed, or to any right, privilege, obligation or liability acquired, accrued or incurred at such date in terms of such notice.

(10) If in any legal proceedings any question arises as to whether the Minister has in fact tabled a taxation proposal or a copy of a notice as described in this section, or as to the time when such proposal or notice was tabled, or as to the particulars contained in such proposal or notice, a copy of such proposal or notice, certified by the Secretary of the National Assembly to be a true copy, shall be *prima facie* evidence that such proposal or notice was tabled, of the date upon which it was tabled and of the particulars contained therein.

Contract prices may be varied to extent of alteration in duty

66. (1) When any duty on any goods is imposed or increased, directly or indirectly, by the amendment in any manner of any Schedule to this Act, and such goods, in pursuance of a

contract made before such duty or increased duty became payable, are thereafter delivered to and accepted by the purchaser, the seller of the goods may, in the absence of an agreement to the contrary, recover from the purchaser, in addition to the contract price, a sum equal to any additional amount paid by him or her by reason of such duty so imposed, or equal to such increase.

(2) When any duty on any goods is withdrawn or decreased, directly or indirectly, by amendment in any manner of any Schedule to this Act, and such goods in pursuance of a contract made before the withdrawal or decrease became effective, are thereafter delivered to the purchaser, the purchaser of the goods may, in the absence of an agreement to the contrary, if the seller has in respect of such goods had the benefit of the withdrawal or decrease, deduct from the contract price a sum equal to such duty so withdrawn, or equal to such decrease.

(3) This section shall also apply to a contract for the hiring, leasing or use of any goods for the purpose of rendering a service at a contract price, and the expressions “seller” and “purchaser” shall be construed as including the person by whom and the person to whom the goods are hired or leased, or the service rendered respectively.

CHAPTER VIII LICENSING

Licence fees according to Schedule 8

67. (1) No person shall perform any act in relation to, or be in possession of or use anything in respect of, which a licence is required under this Act, unless he or she has obtained the appropriate licence prescribed in Schedule 8, which licence shall not be issued unless the licence fee prescribed in that Schedule has been duly paid.

- (2) The -
- (a) requirements;
 - (b) form of application;
 - (c) application fee;
 - (d) procedures relating to the application, including the period of time allowed for the granting or refusal of the application; and
 - (e) the form of the licence,

pertaining to any licence referred to in subsection (1), or the granting of such licence, may be prescribed by regulation.

(3) An application for a licence referred to in subsection (1) shall, in the form and in accordance with the procedures prescribed by regulation, be submitted to the Commissioner for consideration.

(4) The Commissioner shall consider an application for a licence submitted in terms of subsection (3) and may, subject to subsection (5) -

- (a) refuse the licence; or
- (b) grant the licence; or

- (c) grant the licence subject to such conditions as he or she may determine; or
- (d) refer the application to the applicant with a request for further particulars relating to the application as the Commissioner may deem necessary.

(5) The Commissioner may, subject to an appeal to the Minister, refuse any application for the granting of a new licence or any application for the renewal of an existing licence, or may cancel or suspend for a specified period any existing licence, if the applicant or the holder of such licence, as the case may be -

- (a) has contravened or failed to comply with any provision of this Act; or
- (b) has been convicted of an offence under this Act; or
- (c) has been convicted of any offence of which dishonesty is an element.

(6) The Minister may, whenever he or she deems it expedient in the public interest to do so, by notice in the *Gazette* amend Schedule 8, from such date and subject to such conditions as he or she may determine and specify in such notice.

(7) Sections 54(7) and 65(8), (9) and (10) shall *mutatis mutandis* apply in respect of any amendment made under subsection (6) of this section.

Customs and excise warehouse licences

68. (1) Before an application for the granting of a customs and excise warehouse licence shall be considered, the person applying for such licence shall furnish to the Commissioner security in such manner, form, of such nature and in such amount as the Commissioner may in writing determine.

- (2) The Commissioner may -
 - (a) at any time in writing require the holder of a licence referred to in subsection (1) to alter or renew the manner, form, nature or amount of any security contemplated in that subsection in such manner as the Commissioner may determine; or
 - (b) by endorsement permit a licence to be transferred from one customs and excise warehouse to another customs and excise warehouse in the area controlled by the same Controller and in the possession of the person to whom the licence has been issued, but no customs and excise warehouse licence shall be transferable from one person to another.
- (3) (a) Not more than one licence shall, subject to paragraph (b), be issued in respect of any customs and excise warehouse.
- (b) The Commissioner may, notwithstanding paragraph (a) and on such conditions as he or she may in each case impose, issue a licence to the owner of any customs and excise storage warehouse in which fuel levy goods are stored, and to each person who obtains for distribution for his or her own account such goods from such warehouse.
- (c) The owner of a warehouse referred to in paragraph (a) who is licensed as contemplated in this section shall, subject to paragraph (d), be liable for the fulfilment of all obligations under this Act in respect of or relating to such goods in such warehouse.

- (d) Each person to whom a licence is issued under this section shall be liable for any liability incurred under this Act in respect of goods taken or removed by him or her from such warehouse.

Agricultural distillers

69. (1) After the commencement date of this Act, a licence under this Act as an agricultural distiller shall not be granted to any person -

- (a) who had not at any time before such commencement date been licensed as an agricultural distiller under any law relating to excise; or
- (b) who, after such commencement date, has for any continuous period of time of more than twelve months not been the holder of a licence as an agricultural distiller issued under this Act.

(2) No licence issued under this Act to any person as an agricultural distiller may be transferred to any other person or from one farm to another, excluding -

- (a) in circumstances which the Commissioner may deem exceptional and appropriate; or
- (b) in the event of the death of the licensee or the expropriation in terms of the Expropriation Ordinance 1978 (Ordinance No. 13 of 1978) of a farm in respect of which the licence was issued, with the written permission of the Commissioner and subject to such conditions as he or she may determine.

- (3) (a) Any licence issued under this Act to any person as an agricultural distiller shall, subject to subsection (2), lapse upon the death of the licensee or upon conviction of the licensee of any offence under this Act or any law relating to the illicit manufacture, carriage, supply or possession of intoxicating liquor.

- (b) For the purposes of this subsection the imposition of a penalty by the Commissioner under section 101 shall be deemed to be a conviction under this Act.

(4) Subsections (2) and (4) of section 70 shall not apply in the case of an agricultural distiller who annually produces a quantity of spirits which exceeds a quantity determined by, and who produces such spirits for a purpose approved by, the Permanent Secretary by rule.

Stills to be licensed

70. (1) No person shall, subject to subsection (2), own or have in his or her possession or under his or her control any still, except under a licence prescribed in Schedule 8 and subject to the rules, issued in the name of such person.

(2) Notwithstanding subsection (1), the Permanent Secretary may by rule exempt from all or any of the provisions of subsection (1) -

- (a) any licensed still maker in so far as any still manufactured or imported by him or her for sale and in his or her possession is concerned; or
- (b) any person in so far as any still is concerned which he or she has proved to the Permanent Secretary is in his or her possession solely as a curiosity or ornament or is used solely for any such purpose as the Permanent Secretary may so prescribe.

(3) Subsections (2) and (3) of section 69 shall *mutatis mutandis* apply in respect of any licence issued in respect of a still under this Act to any person to whom a licence as an agricultural distiller under this Act has been or had at any time been issued.

(4) Subsection (3), shall not apply in respect of any licence relating to a still which is held by any agricultural distiller referred to in subsection (4) of section 69.

(5) (a) If any agricultural distiller to whom a licence in respect of a still has been issued under this Act voluntarily surrenders such still to the Minister, the Commissioner may, out of moneys appropriated by Parliament for the purpose, pay to him or her, as compensation, such an amount as the Commissioner deems to be the current market value of such still.

(b) If any person has surrendered any still as contemplated in paragraph (a), no licence to own a still to be used by him or her in the capacity of an agricultural distiller shall after such surrender be granted to him or her unless a new licence as an agricultural distiller has, after such surrender, been issued to him or her under this Act.

(c) Any still surrendered as contemplated in this subsection, or abandoned by any agricultural distiller in any other manner, shall be destroyed by the Commissioner.

Special warehouses for the manufacture of wine

71. No person shall manufacture wine, except -

(a) with the written permission of the Commissioner to manufacture wine, in a customs and excise manufacturing warehouse; or

(b) in a special customs and excise warehouse for the manufacture of wine,

licensed under this Act.

Container depot licenses

72. (1) No person shall store or unpack, or pack for export, any container as the Commissioner may in writing specify, except at or in a container depot licensed under subsection (2).

(2) The Commissioner may, subject to such conditions as he or she may in each case impose, license, for such period as he or she may in each case determine, at any place designated for such purpose under this Act, container depots approved by him or her for the purpose of storing, unpacking or packaging of containers contemplated in subsection (1).

(3) No application for a container depot licence under subsection (2) shall be granted unless security in the manner, form, nature or amount as the Commissioner may in writing determine, is furnished.

(4) The Commissioner may at any time in writing require that the manner, form, nature or amount of the security contemplated in subsection (3) be altered or renewed in such manner as he or she may determine.

(5) The Controller may require any container contemplated in subsection (1) to be detained in any container depot licensed under subsection (2), for examination of the container or of its contents as the Controller may determine.

Clearing agent licences

73. (1) No person shall, for the purposes of section 40, for reward make entry of, or deliver a bill of entry relating to, any goods on behalf of any importer or exporter of goods, as the case may be, unless such person is licensed as a clearing agent under subsection (2).

(2) The Commissioner may, subject to such conditions as may be prescribed by rule, approve and license any person applying to be licensed as a clearing agent for making entry of, or for delivering a bill of entry relating to, goods on behalf of an importer or exporter of goods, as the case may be.

(3) Before any person may be licensed as a clearing agent under subsection (2), he or she shall furnish security in the manner, form, nature or amount as the Commissioner may require.

(4) The Commissioner may at any time in writing require that the manner, form, nature or amount of security contemplated in subsection (3) be altered or renewed in such manner as he or she may determine.

Licences to search wreck or to search for wreck

74. (1) No person shall search, or search for, any wreck contemplated in section 122(1), unless he or she has been licensed by the Commissioner to so search and has furnished security in the manner, form, nature or amount as the Commissioner may require.

(2) The Permanent Secretary may prescribe the circumstances under which and the conditions on which, including the fees payable, if any, a licence may be issued to any person entitling him or her to search for, or to search or explore, any wreck contemplated in subsection (1), and may so prescribe the form of such licence, but no such licence shall give the holder thereof the exclusive right to search for, or to search or explore, any particular wreck.

(3) The Commissioner may at any time in writing require that the manner, form, nature or amount of the security contemplated in subsection (1) be altered or renewed in such manner as he or she may determine.

CHAPTER IX VALUE

Value for customs duty purposes

75. (1) Subject to this Act, the value for customs duty purposes of any imported goods shall, within the meaning of section 76 and at the time of entry for home consumption, be the transaction value of such goods.

(2) If the value of any individual item of any imported goods, contemplated in subsection (1), is -

- (a) N\$ One or more, such value shall for the purpose of assessing the amount of duty payable, be calculated and approximated to the nearest N\$, any amount of 50 cents or less being disregarded for the purposes of such calculations and any amount of more than 50 cents being regarded as N\$ One;

(b) less than N\$ One, such value shall be deemed to be N\$ One.

(3) Unless the context otherwise indicates, any reference in this Act to customs value or to value for duty purposes, in relation to imported goods, shall be deemed to be a reference to value for customs duty purposes.

(4) (a) If the transaction value of any imported goods cannot be ascertained under section 76 or has been incorrectly ascertained by the importer, the Commissioner may in writing determine a value, which value shall, subject to a right of appeal to the High Court of Namibia, for customs duty purposes be deemed to be the value of such goods.

(b) The acceptance by any officer of a bill of entry or the release of any goods as entered shall not be deemed to be a determination under paragraph (a).

(c) Any determination made under paragraph (a) shall, subject to that paragraph, be deemed to be correct for the purposes of this Act, and any amount due in terms of any such determination shall remain payable as long as such determination remains in force.

(5) The Commissioner may, when he or she deems it expedient, but subject to an appeal to the High Court of Namibia, amend or withdraw any determination contemplated in subsection (4) and make a new determination with effect from -

(a) the date of first entry of the goods concerned;

(b) the date of the determination made under subsection (4);

(c) the date of such new determination; or

(d) the date of such amendment.

(6) An appeal contemplated in subsection (4) or (5) shall be noted within a period of 30 days from the date of the determination, amendment or withdrawal, as the case may be.

(7) Except if -

(a) a determination has been made under subsection (4)(a) or (5); or

(b) any false declaration is made for the purposes of subsection (4) or (5),

there shall be no liability for any underpayment of customs duty on any goods after a period of two years from the date of entry of such goods, if such underpayment is due to the acceptance of a bill of entry bearing an incorrect customs value.

(8) Notwithstanding subsection (7), any determination made under subsection (4)(a) following upon an inspection of the books or documents of any importer shall be deemed to have come into operation in respect of the goods entered for customs purposes, on any date two years prior to the date on which the inspection commenced.

(9) (a) Notwithstanding subsections (1) and (4), the value for the purposes of the duty specified in Section B of Part 2 of Schedule 1 shall, in respect of imported goods (other than goods entered in terms of item 412.18 of Schedule 4), be the transaction value thereof plus 15 per cent of such value, plus any non-rebated

customs duty payable in terms of Part 1 and Section A of Part 2 of Schedule 1 on such goods, but excluding the duty on such goods specified in that Section B.

- (b) Subsection (1)(a) or (3), as the case may be, of section 78 shall *mutatis mutandis* apply to the ascertaining or determination of the value for the purposes of the duty specified in Section B of Part 2 of Schedule 1 in respect of any imported goods entered in terms of item 412.18 of Schedule 4.

Transaction value

76. (1) Subject to this Act, the transaction value of any imported goods shall be the price actually paid or payable in respect of the goods when sold for export to Namibia, adjusted under section 77, subject thereto that -

- (a) there are no restrictions as to the disposal or use of the goods by the buyer other than restrictions which -
- (i) are imposed or required by law;
 - (ii) limit the geographical area in which the goods may be resold; or
 - (iii) do not substantially affect the value of the goods;
- (b) the sale or such price of the goods is not subject to any term or condition for which a value cannot be determined;
- (c) no part of the proceeds of any disposal, use or subsequent resale of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made under section 77; and
- (d) subject to subsection (3), the seller and the buyer are not related within the meaning of subsection (2)(a).
- (2) (a) For the purposes of subsection (1)(d), two persons shall be deemed to be related only if -
- (i) they are officers or directors of one another's businesses;
 - (ii) they are legally recognised partners in business;
 - (iii) the one is employed by the other;
 - (iv) any person directly or indirectly owns, controls or holds five per cent or more of the equity share capital of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person;
 - (vii) together they directly or indirectly control a third person; or
 - (viii) they are members of the same household.
- (b) Persons who are associated in business with one another in such a manner that the one is the sole agent, sole distributor or sole concessionary, however described, of

the other shall be deemed to be related only if they are so deemed in terms of paragraph (a).

- (c) Every importer of goods which are not exempted by rule shall, when making entry of such goods, declare, in accordance with the procedures prescribed by rule, whether or not he or she is related to the supplier of the goods within the meaning of this section.

(3) Notwithstanding subsection (1)(d), the fact that a buyer and a seller are related within the meaning of subsection (2)(a) shall not in itself be a ground for not accepting the transaction value, if -

- (a) such relationship did not influence the price paid or payable; or
- (b) the importer proves that the transaction value closely approximates to -
- (i) the transaction value of identical or similar goods sold at comparable trade and quantity levels to unrelated buyers in Namibia at or about the same time as the goods to be valued; or
 - (ii) the value, ascertained in terms of subsection (7), of identical or similar goods imported into Namibia at or about the same time as the goods to be valued; or
 - (iii) the value, ascertained in terms of subsection (8), of identical or similar goods imported into Namibia at or about the same time as the goods to be valued.
- (4) (a) If the transaction value of any imported goods cannot be ascertained in terms of subsection (1), such transaction value shall be deemed to be equal to the price actually paid or payable for identical goods in a sale for export to Namibia at the same commercial level and in substantially the same quantity, and exported at or about the same time as the goods to be valued, which price shall be adjusted, with reference to differences in any costs and charges referred to in section 77, on account of differences in more than one transaction value is ascertained, the lowest value so ascertained shall be the transaction value of the goods to be valued.
- (b) If no sale, referred to in paragraph (a) appears to exist, a sale of identical imported goods at either a different commercial or quantity level, or at a different commercial level and quantity level, adjusted to compensate for such differences, shall be used to ascertain the transaction value.
- (c) If in the application of this subsection more than one transaction value is ascertained, the lowest value so ascertained shall be the transaction value of the goods to be valued.
- (5) (a) If the transaction value of any imported goods cannot be ascertained in terms of subsection (4), such transaction value shall be the price actually paid or payable for similar goods in a sale for export to Namibia at the same commercial level and in substantially the same quantity, and exported at or about the same time as the goods to be valued, which price shall be adjusted, with reference to differences in any costs and charges referred to in section 77, on account of differences in distances and modes of transport to the port or place of export.
- (b) If no sale contemplated in paragraph (a) appears to exist, paragraphs (b) and (c) of subsection (4) shall *mutatis mutandis* apply.

- (6) (a) If the transaction value of any imported goods cannot be ascertained in terms of subsection (5), it shall be ascertained in terms of subsection (7) or, if it cannot be ascertained in terms of either subsection (5) or (7), it shall, subject to paragraph (b) be ascertained in terms of subsection (8).
- (b) Notwithstanding paragraph (a), the order of application of subsections (7) and (8) shall, at a request in writing made by the importer concerned and delivered to the Commissioner, be reversed.
- (7) (a) If the imported goods concerned, or identical or similar imported goods are sold in Namibia in the same condition in which they were when imported, the transaction value of the imported goods in terms of this subsection shall be equal to the unit price at which the imported goods, or identical or similar imported goods, are sold in Namibia in the greatest aggregate quantity and at or about the time of import of the goods to be valued, by the importers thereof to persons not related to them, subject to deductions for -
- (i) commissions usually paid or agreed to be paid, or additions usually made for profit and general expenses, including the direct and indirect costs of marketing the goods relative to sales in Namibia of imported goods of the same kind or class as the goods to be valued, irrespective of the country of export;
 - (ii) the costs of transportation, loading, unloading, handling and insurance, and associated costs incidental to the transportation of the goods from the port or place of export in the country of export to the importers premises in Namibia; or
 - (iii) any duties or taxes paid or payable in Namibia by reason of the import or the sale of the goods in Namibia.
- (b) If neither the imported goods, nor identical nor similar imported goods, referred to in paragraph (a) are sold at or about the time of import of the goods to be valued, the transaction value of the imported goods in terms of this subsection shall, subject to that paragraph, be equal to the unit price at which the imported or identical goods, or similar imported goods, are sold in Namibia in the same condition as that in which they were when imported, at the earliest date after the import of the goods to be valued, but not later than 90 days after such date of import.
- (c) If neither the imported goods nor identical nor similar imported goods referred to in paragraph (a) are sold in Namibia in the same condition as that in which they were imported, and if the importer in writing so requests, the transaction value of the imported goods in terms of this subsection shall be equal to the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in Namibia not related to the sellers of such goods, due allowance being made for the value added by such processing and the deductions referred to in that paragraph.
- (8) The transaction value of any imported goods in terms of this subsection shall be equal to a computed value, which value shall be computed by means of information supplied by the producer, to the satisfaction of the Commissioner, and shall consist of the sum of -

- (a) the cost or value of materials and manufacture or other processing in producing such goods;
- (b) the cost of -
 - (i) packaging, including that of the labour or materials concerned; and
 - (ii) containers which are dealt with as, for customs purposes, being one with the goods concerned;
- (c) the value, apportioned to the imported goods as deemed appropriate by the Commissioner, with due regard to any relevant request by the importer, of any of the following goods and services if supplied directly or indirectly by the importer free of charge or at reduced cost, for use in connection with the production or sale for export of the imported goods, in so far as such value has not been included in the price actually paid or payable in respect of -
 - (i) materials, components, parts and similar articles forming part of the imported goods;
 - (ii) tools, dies, moulds and similar articles used in the production of the imported goods;
 - (iii) materials consumed in the production of the imported goods; or
 - (iv) engineering, development work, art work, design work, plans and sketches undertaken elsewhere than in Namibia and necessary for the production of the imported goods;
- (d) the cost of transportation, loading, unloading, handling and insurance, and associated costs incidental to the delivery of the imported goods at the port or place of export in the country of export, and the placing of such goods on board ship or on any vehicle, or in a container as defined in section 1(2), at such port or place; or
- (e) an amount for profit and general expenses equal to that generally applicable to the sale of goods of the same class or kind as the imported goods, which are made by producers in the country of export.

(9) If the transaction value of any imported goods cannot be ascertained in terms of subsection (8), the Commissioner may determine such value on the basis of a previous determination or, if no previous determination exists, by the application, as he or she may deem reasonable, of any manner for ascertaining the transaction value in terms of subsection (1), (4), (5), (7) or (8), as the case may be, subject thereto that such determination shall not be based on -

- (a) the selling price in Namibia of goods produced in Namibia;
- (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
- (c) the selling price of goods on the domestic market of the country of origin or of export of the imported goods;
- (d) the cost of production, other than computed values which have been determined for identical or similar goods in accordance with subsection (8);

- (e) the price of the goods for export to a country other than Namibia;
 - (f) a system of minimum customs values; or
 - (g) arbitrary or fictitious values.
- (10) For the purposes of subsection (7)(a)(ii) or (8)(d) -
- (a) goods which are exported to Namibia from any country, but which pass in transit through another country shall, subject to any conditions which may be prescribed by rule, be deemed to have been exported directly from the first-mentioned country; and
 - (b) the port or place of export referred to therein shall be the place in the country of export if such goods -
 - (i) are packed in a container as defined in section 1(2) or, if not so packed in a container, placed on board a ship or on any vehicle which conveys such goods from or across the border of such country; or
 - (ii) if they are ships or vehicles and are moving under their own power, finally leave such country for Namibia.

(11) For the purpose of this section and of section 77, unless the context otherwise indicates -

“buying commission”, in relation to imported goods, means any fee paid by an importer to his or her agent for representing him or her abroad in the purchase of, and the payment in respect of, the goods;

“goods of the same class or kind”, in relation to imported goods, means goods produced by a particular industry or industry sector in the country from which the imported goods were exported, and falling within the same group or range of goods as the imported goods;

“identical goods”, in relation to imported goods, means goods produced in the same country and by the same or a different producer as the imported goods and which are the same in all respects, including physical characteristics, quality and appearance, but excluding minor differences in appearance, but does not include goods incorporating or reflecting engineering, development work, art work, design work, plans or sketches undertaken in Namibia;

“price actually paid or payable”, in relation to imported goods, means the total amount paid or to be paid, either directly or indirectly, by the buyer to or for the benefit of the seller in respect of the goods, but does not include dividends or other payments passing from the buyer to the seller which do not directly relate to the goods; and

“similar goods”, in relation to imported goods, means goods produced in the same country and by the same or a different producer as the imported goods and which, although not alike in all respects to the imported goods, have, with due regard to their quality and appearance, and the existence of a trade mark, like characteristics and like component materials which enable them to be employed for the same purposes and to be commercially interchangeable, but does not include goods incorporating or reflecting engineering, development work, art work, design work, plans or sketches undertaken in Namibia.

Adjustments to price actually paid or payable

77. (1) In ascertaining the transaction value of any imported goods under section 76(1), there shall be added to the price actually paid or payable in respect of the goods -

- (a) to the extent that they are incurred by the buyer but are not included in the price actually paid or payable -
 - (i) any commission other than a buyer's commission;
 - (ii) brokerage;
 - (iii) the cost of packaging, including that of the labour and materials concerned;
or
 - (iv) the cost of containers which are dealt with, for customs purposes, as forming an integral part of the goods;
- (b) the value, added to the value of the imported goods as deemed appropriate by the Commissioner, of -
 - (i) materials, components, parts and similar articles forming part of the goods;
 - (ii) tools, dies, moulds or similar articles, or materials, used in the production of the goods; or
 - (iii) engineering, development work, art work, design work, plans and sketches undertaken elsewhere than in Namibia and necessary for the production of the goods,

if such goods or services are directly or indirectly supplied by the importer, free of charge or at a reduced cost, for use in connection with the production or sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable;

- (c) royalties and licence fees in respect of the imported goods, including payments in respect of patents, trade marks or copyright, or for the right to distribute or to resell the goods, payable by the buyer, whether directly or indirectly, as a condition of the sale of the goods for export to Namibia, to the extent that such royalties and fees are not included in the price actually paid or payable, but excluding charges for the right to reproduce the imported goods in Namibia;
- (d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller; and
- (e) to the extent that they are not included in the price actually paid or payable in respect of the goods, the cost of transportation, loading, unloading, handling and insurance, and associated costs incidental to delivery of the goods at the port or place of export in the country of export, and placing such goods on board a ship or on any vehicle, or in a container as defined in section 1(2), at such port or place.

(2) In ascertaining the transaction value of any imported goods under section 76(1), there shall be deducted from the price actually paid or payable in respect of the goods, to the extent that they are included in such price, amounts equal to -

- (a) the cost of transportation and the cost of loading, unloading, handling and insurance, and associated costs incidental to the transportation of the goods from

the port or place of export in the country of export to the port or place of import in Namibia;

- (b) any of the following costs, charges or expenses, if identified separately, forming part of the balance of the price actually paid or payable for or in respect of the goods, namely -
 - (i) any expenditure incurred in respect of the construction, erection, assembly or maintenance of, or technical assistance provided in respect of, the goods after they have been imported;
 - (ii) the cost of transport and insurance of the goods in Namibia;
 - (iii) any duties or taxes paid or payable by reason of the import or the sale of the goods in Namibia;
 - (iv) any duty or tax applicable in the country of export from which the goods have been or will be exempted by way of a refund, drawback, rebate or remission;
 - (v) commission in respect of the sale of the goods;
 - (vi) interest charged in respect of the price payable in respect of the goods; or
 - (vii) any charge for the right to reproduce the imported goods in Namibia.
- (3) For the purposes of subsection (1)(e) or (2)(a) -
 - (a) goods which are exported to Namibia from any country, but pass in transit through any other country shall, subject to such conditions as may be prescribed by rule, be deemed to have been exported directly from the first-mentioned country; and
 - (b) the port or place of export referred to in any of those subsections shall be the place in the country of export where the goods concerned -
 - (i) are packed in a container as defined in section 1(2) or, if not so packed in a container, placed on board a ship or on any vehicle which conveys them from, or across any border of, such country; or
 - (ii) if ships or vehicles referred to in subparagraph (i) are ships or vehicles moving under their own power, finally leave such country for Namibia.

Value for excise duty purposes

78. (1) (a) For the purpose of assessing the excise duty on any goods manufactured in Namibia and specified in Section B of Part 2 of Schedule 1, the value of such goods shall, subject to this section, be deemed to be the full and final market price (before deduction of any discounts other than cash discounts) at which, at the time of sale, such or similar goods are freely offered for sale for consumption in Namibia, for purposes of trade in the principal markets of Namibia in the ordinary course of trade, in the usual wholesale quantities and in the condition and the usual packaging ready for sale in the retail trade, to any wholesaler in Namibia not deemed to be related as specified in section 76(2)(a) under fully competitive conditions, which value shall include -

- (i) the cost of packaging and packages;
- (ii) all other expenses incidental to placing the goods on any vehicle for delivery to the purchaser; and
- (iii) any non-rebated excise duty payable in terms of Section A of that Part of that Schedule on such goods,

excluding the non-rebated excise duty payable in terms of Section B of that Part of that Schedule or any sales tax payable on such goods.

- (b) Notwithstanding paragraph (a), the Commissioner may, if goods referred to in that paragraph are not sold to wholesalers in Namibia referred to in that paragraph, or are so sold in quantities which he or she deems to be insignificant in relation to the total quantities of such goods sold in Namibia, regard any other class of purchaser of such goods as such a wholesaler, and may make such adjustment to the price charged by the manufacturer to such class of purchaser as he or she deems reasonable, having regard to the wholesale functions taken over by such manufacturer and such class of purchaser, and to such other factors relating to such price as he or she may deem relevant.
- (c) For the purposes of this subsection the Commissioner may in writing determine -
 - (i) the quantity which shall be deemed to be the usual wholesale quantity;
 - (ii) the packaging which shall be deemed to be the usual packaging ready for sale in the retail trade; or
 - (iii) the cost of packaging or packages or any other expenses incidental to placing the goods on any vehicle.
- (2) (a) For the purpose of assessing the excise duty on any goods -
 - (i) specified in Section A of Part 2 of Schedule 1 (other than goods specified in items 117.01.10 and 117.05 to 117.30), the value of such goods shall be the price paid or payable in respect of such goods when sold for home consumption in the ordinary course of trade, in the usual trade packaging, where applicable, to any buyers not deemed to be related as specified in section 76(2)(a), plus any non-rebated excise duty payable in terms of Section B of that Part of that Schedule, but excluding the non-rebated excise duty payable in terms of Section A of that Part of that Schedule, fuel levy or any sales tax payable on such goods;
 - (ii) specified in items 117.01.10 and 117.05 to 117.30 of Section A of Part 2 of Schedule 1, the value thereof shall be the price paid or payable in respect of such goods when sold for home consumption in the ordinary course of trade to any buyers not deemed to be related as specified in section 76(2)(a), plus any non-rebated excise duty payable in terms of Section B of that Part of that Schedule, but excluding any sales tax payable on such goods.
- (b) For the purpose of paragraph (a) “price paid or payable”, means the total payment made or to be made, either directly or indirectly, by the buyer to or for the benefit of the seller in respect of the goods sold, but does not include dividends or other payments passing from the buyer to the seller which do not directly relate to the goods.

(3) If in the opinion of the Commissioner, goods are sold or otherwise disposed of under such conditions that the value thereof cannot be ascertained in terms of subsection (1)(a) or (2), as the case may be, the Commissioner may, in the form and in accordance with the procedures prescribed by rule, determine a value, which value shall, subject to the right of appeal to the court, be deemed to be correct for the purposes of this Act, and any amount due in terms of any such determination shall remain payable as long as such determination remains in force.

(4) The Commissioner may, when he or she deems it expedient, *mutatis mutandis* in accordance with subsection (3), amend or withdraw any determination made under that subsection and may make a new determination with effect from -

- (a) the date of first entry of the goods concerned;
- (b) the date of the determination made under subsection (3);
- (c) the date of such new determination; or
- (d) the date of such amendment,

as specified in such amendment.

- (5) (a) An appeal against any determination under subsection (3) or (4), as the case may be, shall lie to the High Court of Namibia.
- (b) An appeal referred to in paragraph (a) shall be noted within a period of 30 days from the date of the determination contemplated in that paragraph.

Value of certain specified goods

79. (1) If any motor vehicle is imported by a natural person for his or her own use and not for sale, the Commissioner may, notwithstanding section 75(1) or (4), but with due regard to section 76, determine a value which shall, subject to a right of appeal to the High Court of Namibia *mutatis mutandis* in accordance with section 75(6), be deemed to be the value for duty purposes of such vehicle.

(2) Notwithstanding subsection (1), if any natural person who was the owner of and has used a motor vehicle referred to in that subsection in any territory outside Namibia, for his or her own use and not for sale, imports such vehicle into Namibia from a territory other than the territory in which it was produced or manufactured, the Commissioner may determine the value of such vehicle for duty purposes as if it were imported into Namibia from the territory in which it was produced or manufactured.

Value of goods exported

- 80.** (a) For the purposes of this Act, the value of any goods exported from Namibia shall be the price of such goods free on board at the place of despatch from Namibia, which value shall be declared on the bill of entry (export).
- (b) If there is no free on board price in respect of the goods as contemplated in paragraph (a), the value in respect of such goods determined by the Commissioner shall, for the purposes of this Act, be deemed to be the value of such goods.

- (c) If the value of any individual item of any exported goods is, according to any provision of this section -
 - (i) in excess of N\$ One and includes a fraction of a N\$ One, such value shall be calculated and approximated to the nearest N\$ One, an amount in excess of 50 cents being regarded as N\$ One; or
 - (ii) less than N\$ One, such value shall be calculated as N\$ One.

Currency conversion

81. (1) The Minister may prescribe the date on and the time at which the price paid or payable in respect of imported goods shall, if expressed in foreign currency, be converted into the currency of Namibia.

- (2) The regulations made under subsection (1) may provide for -
 - (a) different dates and times in respect of different kinds or categories of goods imported from different territories; and
 - (b) such conditions relating to such conversion and the payment of the price payable, as the Minister may so prescribe.

Value of goods not liable to *ad valorem* duty

82. (1) Subject to subsection (2), the customs value of any imported goods shall, to the satisfaction of the Commissioner and in such form and manner as he or she may determine, be declared by the importer on entry of such goods.

(2) The Minister may by regulation exempt any class or kind of goods, or any goods to which circumstances so prescribed apply, from any provision of subsection (1), to the extent specified in the regulations.

Interpretation of sections 75, 76 and 77

83. (1) The interpretation of sections 75, 76, and 77 shall be subject to the agreement concluded at Geneva on 12 April 1979, known as the "Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade", the Interpretative Notes thereto, the Advisory Opinions, Commentaries and Explanatory Notes, Case Studies and Studies issued under such Agreement on Implementation.

- (2) (a) The Commissioner shall obtain and keep in his or her office two copies of the Agreement, Interpretative Notes, Advisory Opinions, Commentaries and Explanatory Notes, Case Studies and Studies referred to in subsection (1), and shall effect to such copies any amendment made to that Agreement, Interpretative Notes, Advisory Opinions, Commentaries and Explanatory Notes, Case Studies or Studies of which he or she is notified by the Secretariat of the Customs Co-operation Council, Brussels.
- (b) When in any legal proceedings any question arises as to the contents of the Agreement, or of any Interpretative Note, Advisory Opinion, Commentary, Explanatory Note, Case Study or Study referred to in subsection (1), or as to the date upon which any amendment thereto was effected as contemplated in paragraph (a), a copy of the relevant document as contemplated in that paragraph,

shall be *prima facie* evidence of the contents of such document or of the effective date of any amendment thereto, as the case may be.

CHAPTER X REBATES, REFUNDS AND DRAWBACKS OF DUTY

Specific rebates, refunds and drawbacks of duty

84. (1) Subject to this Act and to any conditions which the Permanent Secretary may prescribe -

- (a) any imported goods specified in Schedule 3 shall be admitted subject to a rebate of any customs duties applicable in respect of such goods at the time of entry for home consumption thereof, to the extent and for the purpose or use stated in the item of that Schedule in which such goods are so specified;
- (b) any imported goods specified in Schedule 4 shall be admitted subject to a rebate of any customs duties applicable in respect of such goods at the time of entry for home consumption thereof, to the extent stated in, and subject to compliance with, the item of that Schedule in which such goods are so specified;
- (c) a drawback or a refund of the ordinary customs duty, anti-dumping duty, countervailing duty, safeguard duty, surcharge and fuel levy actually paid on entry for home consumption on any imported goods specified in Schedule 5 shall, subject to paragraph (e)(i), be made to the person who paid such duties or any person designated in the notes to that Schedule, subject to compliance with the item of that Schedule in which such goods are specified;
- (d) in respect of any excisable goods or fuel levy goods specified in Schedule 6, a rebate of the excise duty specified in Part 2 of Schedule 1 or of the fuel levy specified in Part 5 of Schedule 1 in respect of such goods at the time of entry for home consumption thereof or a refund of the excise duty or fuel levy actually paid at the time of entry for home consumption shall, subject to paragraph (e)(i), be granted to the extent and in the circumstances stated in the item of Schedule 6 in which such goods are specified, subject to compliance with such item and any refund under this paragraph may be paid to the person who paid the duty or any person designated in the notes to that Schedule 6;
- (e) the Commissioner may -
 - (i) subject to paragraph (i), grant a refund of the ordinary customs duty, anti-dumping duty, countervailing duty, safeguard duty, surcharge or fuel levy leviable on any distillate fuel, to the extent stated in item 533.01 or 540.02 of Schedule 5 in which such fuel is specified, subject to compliance with that item, or a refund of the excise duty or fuel levy leviable on such fuel to the extent stated in item 609.05.10 or 640.03 of Schedule 6 in which such fuel is specified, subject to compliance with such item, and any refund under this subparagraph may be paid to any user who has purchased and used such distillate fuel in accordance with such items of Schedule 5 or 6, or to any person designated in the notes to such Schedule 5 or 6; or
 - (ii) investigate any purchase referred to in subparagraph (i), or the use of the distillate fuel referred to in that subparagraph to establish whether such fuel has been duly entered or is deemed to have been duly entered in terms of this

Act, or has been so used, and may refuse to allow or pay any such refund if he or she is not satisfied that such fuel has been so entered or used.

- (f) Any distillate fuel referred to in paragraph (e)(i) and which is purchased, shall be deemed to have been used in the order of the dates of such purchases.
 - (g) The extent of the refund referred to in subparagraph (e)(i) shall be the rate of such refund specified in such item of Schedule 5 or 6 in operation on the date of issue of the invoice concerned, referred to in subsection (5)(b)(ii).
 - (h) If the extent of the refund referred to in paragraph (e)(i) is amended and for any reason any liability to repay any refund of duty or fuel levy in respect of any quantity of fuel which the user may incur, cannot be assessed or the amount of duty or fuel levy refundable to such user in terms of any item of Schedule 5 or 6 cannot be calculated on any quantity of such fuel purchased by such user before such amendment, the quantity of such fuel in respect of any refund which the user is liable to repay, or the quantity used in accordance with any such item for the calculation of the amount refundable to such user, shall be determined by the Permanent Secretary according to the information at his or her disposal.
 - (i) Notwithstanding paragraph (e)(i), no refund contemplated in that paragraph shall be made to the State or to any Ministry, government, department, administration or any body, institution or authority mentioned in the notes to Schedule 5 or 6.
- (2)
- (a) Notwithstanding anything to the contrary in this Act contained, the Commissioner may, subject to the conditions, including conditions as to the registration of the person concerned, as he or she may in each case impose, allow, in respect of any refund referred to in subsection (1)(e)(i), any person to grant a provisional refund of duty and fuel levy to any registered user of distillate fuel who purchases such fuel from such person.
 - (b) Any provisional refund contemplated in paragraph (a) shall be granted to the person concerned in accordance with an estimate of intended use furnished by the user referred to in that paragraph.
 - (c) The Commissioner may pay to a person referred to in paragraph (a) or allow him or her to set off in terms of section 87 against duty or fuel levy for which he or she is liable, any amount which he or she granted to the registered user concerned at the times and on the furnishing of the particulars as the Commissioner may in writing determine.
 - (d) Any amount paid in error by the Commissioner to a person referred to in paragraph (c) shall be recoverable from such person under section 86.
 - (e) The Commissioner may cancel the registration of a person referred to in paragraph (a) if such person claims or receives any payment to which he or she is not entitled.
 - (f) Any provisional refund granted by a person referred to in paragraph (a) to a user referred to in that paragraph shall, subject to the paragraphs (g), (h) and (i), be deemed to be a refund made by the Commissioner under subsection (1)(e)(i).
 - (g) (i) Any user who has been granted a provisional refund contemplated in paragraph (a) shall, in relation to the actual use by him or her of the fuel concerned, furnish the Commissioner at such times as may be specified in

the notes to item 609.00, with a declaration in such form and supported by such documents as may be specified in such notes.

- (ii) A declaration referred to in subparagraph (i) shall be deemed to be an application for a refund referred to in subsection (5)(b)(i).
- (h) (i) If the provisional refund contemplated in paragraph (a) granted to the user concerned either exceeds or falls short of any amount refundable under item 533.01 or 540.02 of Schedule 5 or item 609.05.10 or 640.03 of Schedule 6, such excess shall be paid by such user upon demand by the Commissioner, and any shortfall shall be refunded by the Commissioner to such user, as the case may be.
- (ii) If the user referred to in subparagraph (i) fails to pay the amount demanded in terms of that subparagraph, such amount shall be recoverable from such user under section 86.
- (i) Any user of fuel who has been granted a provisional refund and who fails to comply with paragraph (g) shall be deemed to have used such fuel for a purpose or use other than the purpose or use stated in the items of Schedule 5 or 6 referred to in paragraph (h), and the amount of such refund shall be deemed to be a refund not duly payable to such user and shall be recoverable under section 86.
- (3) A rebate of duty in respect of any goods specified in Schedule 3 shall be allowed only in respect of goods entered for use -
- (a) in the production or manufacture of goods in the industry and for the purpose specified in the item of the Schedule in which such goods are specified;
 - (b) in a factory referred to in section 101(2)(f) of the Labour Act, 1992 (Act No. 6 of 1992);
- [The Labour Act 6 of 1992 has been replaced by the Labour Act 11 of 2007. Section 16 of Act 11 of 2007 provides that "any reference to a provision of the previous Act must be read as if it were a reference to the corresponding provision of this Act, in so far as possible".]**
- (c) in a mine as defined in section 1 of the Minerals (Prospecting and Mining) Act, 1992 (Act No. 33 of 1992);
 - (d) in works as defined in section 1 of the Mines Works and Minerals Ordinance, 1968 (Ordinance No. 20 of 1968);
- [The Mines, Works and Minerals Ordinance 20 of 1968 was repealed by the Minerals (Prospecting and Mining) Act 33 of 1992.]**
- (e) in any other place in connection with any other activity which the Permanent Secretary may prescribe for the purposes of this subparagraph; or
 - (f) in such industry, factory, mine, works or activity which complies with the requirements in respect of quantity of material used or quantity of goods produced or manufactured as the Permanent Secretary may prescribe.
- (4) Notwithstanding section 61, 62 or 63, a rebate of any anti-dumping duty, countervailing duty or safeguard duty specified in Schedule 2 in respect of any goods entered under any item specified in Schedule 3 or 4 may be granted if it is expressly stated in such item

of Schedule 3 or 4 that the extent of the rebate includes such anti-dumping duty, countervailing duty or safeguard duty.

- (5) (a) No person shall be entitled to a refund of customs or excise duty or fuel levy on any distillate fuel in terms of item 533.01 or 540.02 of Schedule 5 or item 609.05.10 or 640.03 of Schedule 6, unless he or she is registered with the Commissioner as a user of such fuel.
- (b) (i) Any application for the refund of a duty or levy in terms of paragraph (a) shall be in the form and shall contain the particulars and be supported by the documents, and shall be for the quantities and for the periods, as specified in the notes to item 609.00.
- (ii) Any seller of fuel referred to in paragraph (a) shall furnish any user referred to in that paragraph with an invoice reflecting the particulars, and shall keep a copy of such invoice for such period of time, as specified in the notes to item 609.00.
- (c) Any registered user shall complete and keep such books, accounts and documents, and furnish at such times such particulars of the ship, vehicle, machinery or other equipment in which fuel referred to in paragraph (a) is used, and any other particulars as specified in the notes to item 609.00.
- (d) Notwithstanding anything to the contrary in this Act contained, any user of fuel referred to in paragraph (a) who has been granted a refund under that paragraph and who fails to forthwith furnish an officer at his or her request with the books, accounts and documents specified in the notes to item 609.00 to be completed and kept in respect of the use of any distillate fuel purchased by him or her, shall be deemed to have used such distillate fuel for a purpose or use other than a purpose or use stated in the items of Schedule 5 or 6 referred to in paragraph (a) and the use declared in the relevant application for refund, and shall on demand pay to the Commissioner the full amount of any refund granted to him or her in respect of such fuel or such portion thereof as the Commissioner may determine, during a period of two years prior to the date of such request by such officer, failing which such amount or such portion shall be recoverable in terms of this Act as if it were the duty or levy concerned.
- (e) The Commissioner may refuse to register under paragraph (a) any person referred to in that paragraph, or may cancel any registration under that paragraph, if such person fails to complete, keep or furnish such accounts, books or documents as specified in the notes to item 609.00, or claims or receives any refund or payment to which he or she is not entitled in terms of the items of Schedule 5 or 6 referred to in that paragraph.
- (6) (a) (i) In addition to any liability for the payment of duty incurred by any person under any other provision of this Act, the person who enters any goods for use by him or her subject to a rebate of duty, or any person on whose behalf any goods are so entered, shall, subject to section 49 and to subsections (7) and (20) of this section, be liable for the duty on all goods so entered which have not been used or which have been disposed of otherwise than in accordance with this section and the item under which they were so entered, as if such rebate of duty did not apply to such goods and such person shall pay such duty on a written demand by the Commissioner.

- (ii) Notwithstanding subparagraph (i), the Commissioner may, if goods referred to in that subparagraph were used in accordance with any other item relating to rebate of duty, accept duty on such goods as if they were entered under such other item.
 - (iii) Notwithstanding subparagraph (ii), the Commissioner may permit any duty paid on entry of goods referred to in that subparagraph subject to a rebate to be deducted from any duty for which any person becomes liable in terms of this paragraph.
- (b) The Controller may at any time take stock of goods entered for home consumption and stored on any premises registered by virtue of subsection (12), and duty shall, subject to paragraph (a), be paid forthwith on written demand in respect of any deficiency in the quantity of the goods detected as a result of such stock taking.
- (c) If the stock referred to in paragraph (b) is found to be greater than the quantity which should be on such premises, the excess shall be debited to stock.
- (d) Any person to whom any distillate fuel or residual fuel oil has been supplied from stock which have been entered subject to a rebate of duty for a purpose stated in the item under which such distillate fuel or residual fuel oil was so entered, and who applies such distillate fuel or residual fuel oil or any portion thereof for any other purpose, shall be guilty of an offence and shall, in addition to any penalty such person may be liable to, and notwithstanding paragraph (a), but subject to paragraph (e), be liable for payment of the duty to the extent of the rebate allowed on entry for home consumption of such distillate fuel or residual fuel oil on the full quantity of the distillate fuel or residual fuel oil so supplied to him or her, or on such portion thereof as the Commissioner may determine.
- (e) Notwithstanding paragraph (d), if the duty referred to in that paragraph has after such entry been increased, subject to a rebate, the extent of such rebate shall be deemed to be -
 - (i) the difference between the duty actually paid on entry for home consumption and such increased duty; or
 - (ii) if no duty was paid on entry for home consumption, such increased duty.
- (7)
 - (a) The Commissioner may, on such conditions as he or she may impose, in writing permit any person who has entered any goods subject to a rebate of duty under this section, to use or dispose of any such goods otherwise than in accordance with this section or with the item under which such goods were so entered, or to use or dispose of any such goods in accordance with any other item to which this section relates, and such person shall, subject to paragraph (b), thereupon be liable for duty on such goods as if such rebate of duty did not apply or as if they were entered under such other item to which this section relates, as the case may be, and such person shall pay such duty on a written demand by the Commissioner.
 - (b) Notwithstanding paragraph (a), in respect of any goods which are specified in any item of Schedule 3, 4 or 6, the Commissioner may, subject to the notes applicable to the item in which such goods are specified, or to any conditions which he or she may in each case impose, in writing exempt any such goods from the entire, or from any portion of the, duty payable thereon under this subsection, on the grounds

of the period or the extent of use in accordance with the item under which such goods were entered, or on any other grounds which he or she deems reasonable.

(c) Any duty paid on any goods referred to in paragraph (a) on first entry thereof shall, subject to a rebate of duty, be deemed to have been paid in respect of any duty payable on such goods in accordance with paragraph (a).

(8) (a) No drawback or refund shall, subject to paragraph (b), be made in respect of any goods specified in any item of Schedule 5 or 6, if such goods have been used or disposed of otherwise than in accordance with the provisions of this section and the item concerned, or if such provisions have not been complied with in respect of such goods.

(b) Notwithstanding paragraph (a), the Commissioner may, in respect of any class or kind of goods specified in any item of Part 1 of Schedule 5, and used in the manufacture of any goods marketed in Namibia, pay a drawback to the extent stated in such item, if goods of a comparable class, kind, quality and quantity, and manufactured or produced in Namibia, have been used in the manufacture of any goods exported.

(9) Any person to whom a refund of customs or excise duty or fuel levy has been granted on any distillate fuel in terms of item 533.01 or 540.02 of Schedule 5, or item 609.05.10 or 640.03 of Schedule 6, as the case may be, and who has disposed of such fuel or has applied such fuel or any portion thereof for any purpose or use otherwise than in accordance with such items and the use declared in the relevant application for refund, shall on demand pay to the Commissioner the full amount of any refund made to him or her in respect of such fuel or such portion thereof, failing which such amount or such portion shall be recoverable in terms of this Act as if it were the duty or levy concerned.

(10) If the tariff heading or subheading, or the tariff item or sub-item under which any goods are classified in Schedule 1 is expressly quoted in any item of Schedule 3, 4, 5 or 6 in which such goods are specified, the goods so specified in such item of any such Schedule shall be deemed not to include goods which are not classified under such tariff heading or subheading, or tariff item or sub-item, as the case may be.

(11) (a) Any goods entered for use subject to a rebate of duty under this section shall, for the purposes of this Act, be deemed to be entered for home consumption, but no entry in respect of any goods specified in Schedule 3 or 4 shall, subject to paragraph (b), be valid unless the number of the tariff heading and subheading under which such goods are classified in Schedule 1 and the number of the item of Schedule 3 or 4 in which such goods are specified, are both declared on such entry and the industry in, and the purpose for, which such goods are to be used as specified in that item, are declared on such entry.

(b) Notwithstanding paragraph (a), the Commissioner may exempt entries in respect of any class or kind of goods from any or all of the requirements of that paragraph.

(12) (a) No goods may, subject to paragraph (b), be entered or acquired subject to a rebate of duty until the person so entering or acquiring such goods has furnished security as the Commissioner may require and has complied with such other conditions (including registration with the Commissioner of such person's premises and plant) as may be prescribed by rule or in the notes to Schedule 3, 4 or 6 in respect of any goods specified in any item of such Schedule.

- (b) Notwithstanding paragraph (a), the Commissioner may, subject to such conditions as he or she may in each case determine, exempt, with or without retrospective effect, any person referred to in that paragraph from the provisions of this subsection.
- (c) An application for exemption in terms of paragraph (b) for the purpose of applying for a refund of duty shall be made to the Commissioner within a period of six months from any date contemplated in section 43(5)(c)(i), (ii) or (iii), as the case may be.
- (d) For the purposes of the application of section 43(5) to any exemption referred to in paragraph (c) of this subsection -
 - (i) any bill of entry passed in relation to goods in respect of which exemption is granted under paragraph (a) of this subsection, shall be deemed to have been passed in error by reason of duty having been paid on goods intended for purposes or use subject to a rebate of duty provided for in this section;
 - (ii) the goods concerned shall be deemed to have qualified for rebate at the time duty was paid on such goods; and
 - (iii) the duty paid on the goods concerned, shall be deemed to have been paid on the date on which the exemption referred to in subparagraph (i) was granted.

(13) Notwithstanding anything to the contrary in this Act contained, the Commissioner may, in respect of Schedule 5 or 6 and for the purpose of calculating the amount of duty refundable on any imported or excisable goods or fuel levy goods used in the manufacture, reconditioning, mixing or blending of any goods exported from or marketed in Namibia, determine the quantity of such goods so exported from or marketed in Namibia which shall be deemed to have been produced, reconditioned, mixed or blended from a given quantity of such imported or excisable goods or fuel levy goods, or the quantity of such imported or excisable goods or fuel levy goods which shall be deemed to have been used in the production, reconditioning, mixing or blending of a given quantity of such goods exported from or marketed in Namibia.

(14) No goods manufactured from excisable goods subject to a rebate of duty specified in any item of Schedule 6 shall be used in the place of such excisable goods in the manufacture of any other goods, if a rebate of duty to a lesser extent has been specified in any item of such Schedule in respect of such excisable goods when used in the manufacture of such other goods.

(15) If any goods, not being a spirituous beverage, manufactured from spirits subject to a rebate of excise duty in terms of any formula approved in writing by the Commissioner under any item of Schedule 6, are used as a beverage, he or she may, in the same manner, revoke his or her approval of such formula.

(16) No refund or drawback of duty shall, subject to subsection (17), be made by the Commissioner under this section unless an application for such refund or drawback in the form and in accordance with the procedures prescribed by rule, duly completed and supported by the documents and other proof so prescribed in order to prove that such refund or drawback of duty is due under this section, is received by the Minister -

- (a) in the case of goods exported -
 - (i) if the goods were exported by post, within a period of six months from the date on which such goods were posted; or

- (ii) if the goods were exported in any other manner, within a period of six months from the date of entry of such goods for export; or
- (b)
 - (i) in respect of any refund referred to in subsection (1)(e), within a period of six months from the last date of any period of use of any distillate fuel to which the application for such refund relates; and
 - (ii) in all other cases, within a period of six months from the date on which such refund first becomes due.
- (17) The Commissioner -
 - (a) may, in circumstances which he or she may deem exceptional, make a refund or drawback after expiration of the relevant period of time specified in subsection (16); and
 - (b) shall not make any refund contemplated in subsection (16)(b)(i) if the quantity of distillate fuel to which the application for such refund relates is less than the quantity as may be specified in the notes to item 609.00.
- (18)
 - (a) The Minister of Trade and Industry, or any staff member in his or her Ministry designated by that Minister in writing for such purpose may, in respect of goods which may in terms of any item of Schedule 3, 4, 5 or 6 be entered subject to a rebate of duty or subject to a drawback or a refund of duty, issue, subject to such conditions as that Minister or such staff member may specify, and with or without retrospective effect, a permit or certificate authorising entry of such goods subject to a rebate of duty, or authorising a drawback or a refund of duty in accordance with the item concerned, subject thereto that the permit or certificate concerned may only be issued with retrospective effect if all the provisions of such item, and such conditions so specified, have been complied with.
 - (b) For the purposes of section 43(5) -
 - (i) any bill of entry passed in relation to goods in respect of which a permit or certificate is issued under paragraph (a), shall be deemed to have been passed in error by reason of duty having been paid on goods intended for purposes or use subject to a rebate of duty under this section;
 - (ii) the goods in respect of which a permit or certificate referred to in subparagraph (i) is issued, shall be deemed to have qualified in all respects for a rebate at the time duty was paid on such goods; and
 - (iii) the duty paid on the goods concerned, shall be deemed to have been paid on the date on which the permit or certificate referred to in paragraph (a) was issued.
 - (c) Application for a permit or certificate to be issued under paragraph (a) shall be made to the Minister of Trade and Industry, to the Permanent Secretary: Trade and Industry or to a staff member referred to in paragraph (a) of this subsection in the form and manner determined by that Minister and within a period of six months from any date contemplated in section 43(5)(b)(i), (ii) or (iii), as the case may be.
- (19)
 - (a) The Minister may, on the recommendation of the Minister of Trade and Industry, by notice in the *Gazette* amend Schedule 3, 4, 5, 6 or 7, from such date

and subject to such conditions as he or she may determine and specify in such notice.

- (b) The Minister may, when he or she deems it expedient in the public interest to do so, by notice in the *Gazette*, *mutatis mutandis* in accordance with paragraph (a) -
- (i) amend any Schedule referred to in that paragraph; or
 - (ii) declare any amendment made under that paragraph to apply,

with or without retrospective effect, from the date he or she may specify in such notice.

- (c) An amendment made under paragraph (a) or (b) which repeals any existing provision in Schedule 5 or which excludes any goods from any existing provision of that Schedule, shall not apply in respect of goods, excluding distillate fuels referred to in item 533.01 or 540.00 of that Schedule, which were imported prior to the date of the relevant notice in the *Gazette*, and an amendment made under any such paragraph which embodies any additional provision in that Schedule or applies any existing provision of that Schedule in respect of additional goods, shall not, except in so far as the Commissioner in writing so directs and subject to such conditions as he or she may determine, apply in respect of goods which were imported prior to the date of publication of the relevant notice in the *Gazette*.

(20) Sections 54(7) and 65(8), (9) and (10) shall *mutatis mutandis* apply in respect of any amendment made under subsection (19) of this section.

(21) The Commissioner may refuse to accept an entry subject to a rebate or an application for drawback or refund under any item of Schedule 3, 4, 5 or 6 from any person who has persistently contravened or failed to comply with any provision of this Act or who has committed an offence contemplated in section 90, 93, 94 or 96, and the Commissioner may in writing cancel any registration of such person under this Act, or suspend any such registration for such period as the Commissioner may deem appropriate.

(22) Subject to section 20(10) and items 412.07, 412.08, 412.09, 531.00, 532.00, 608.01, 608.02, 608.03, 608.04, 615.01, 615.02 and 615.03 of Schedules 4, 5 and 6, no rebate or refund of duty in respect of any loss or deficiency of any nature in respect of any goods shall be allowed, but the Commissioner may allow the deduction from the dutiable quantity of the under mentioned goods of a quantity equal to the percentage stated below in each case, namely -

- (a) in the case of wine spirits (ethyl alcohol) manufactured in Namibia and entered for storage in a customs and excise storage warehouse, excluding spirits specified in paragraph (c), one comma five per cent of the quantity so entered;
- (b) in the case of spirits (ethyl alcohol), other than wine spirits, manufactured in Namibia, one comma five per cent of the quantity so manufactured and entered for use in making spirituous beverages;
- (c) in the case of unpacked excisable spirits intended for export and which are removed in bond from a customs and excise manufacturing warehouse for temporary storage in another customs and excise warehouse approved by the Commissioner for such purpose, such percentage, but not exceeding one comma two five per cent, of the quantity so removed as may represent a loss incurred while such spirits concerned are so removed and stored for such period as the Commissioner may in writing determine;

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- (d) in the case of wine manufactured in Namibia, naught comma five per cent of the quantity so manufactured and on which duty is paid;
- (e) in the case of any fermented apple, pear or orange beverage manufactured in Namibia, naught comma five per cent of the quantity so manufactured and on which duty is paid;
- (f) in the case of imported crude petroleum naphtha for use in the refining of petroleum products, or of imported or excisable petrol, a percentage equal to the full net loss incurred, but not exceeding naught comma two five per cent, of any quantity entered for storage and stored in a customs and excise storage warehouse during such period as the Commissioner may in writing determine, and only the owner of a customs and excise warehouse referred to in section 68(3)(b) shall be entitled to such deduction;
- (g) in the case of imported petroleum naphtha entered for use as fuel in the manufacture of ammonia, such percentage, but not exceeding naught comma two five per cent, of any quantity so entered as may represent a loss by evaporation;
- (h) in the case of imported or excisable petrol, distillate fuels or residual fuel oils, such percentage of any quantity removed in bond unpacked by ship from one place in Namibia to another place in Namibia, as the Commissioner may in writing determine, or, if no such percentage has been so determined, a percentage equal to the full net loss incurred while the goods concerned are so removed; or
- (i) in the case of distillate fuels entered for storage and stored in a customs and excise storage warehouse, a percentage equal to the full net loss incurred, but not exceeding naught comma one five per cent, of any quantity so entered and stored in such warehouse during such period as the Commissioner may in writing determine, and only the owner of a customs and excise warehouse referred to in section 68(3)(b) shall be entitled to such a deduction.

(23) No person shall, without the written permission of the Commissioner, divert any goods entered subject to a rebate of duty under any item of Schedule 3, 4 or 6 for export for the purpose of claiming a drawback or refund of duty under any item in Schedule 5 or 6 to a destination other than the destination declared on such entry, or deliver such goods or cause such goods to be delivered in Namibia otherwise than in accordance with this Act and, in the case of goods entered subject to a rebate of duty, otherwise than to the person who entered the goods or on whose behalf the goods were entered.

(24) If any goods to which this section relates are used or disposed of, or dealt with or in, contrary to this Act, the whole consignment entered or transferred for use in terms of this section, of which such goods form part or formed part, or any other goods manufactured from such goods, shall be liable to forfeiture to the State.

(25) Except with the written permission of the Commissioner, which permission shall only be granted in circumstances which he or she deems to be exceptional and subject to such conditions as he or she may impose in each case, any goods entered under any item of Schedule 3, 4 or 6 for manufacturing purposes, or for such other purpose as may be specified in the notes to such item, shall be used for the purpose specified in such item at the time of such entry, or such other purpose, within a period of five years from the date of such entry.

General refunds in respect of imported goods or excisable goods

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85. (1) No refund of any duty or other charge in respect of imported goods, excisable goods, surcharge goods or fuel levy goods, other than a refund provided for in section 84 or 87, shall, except in accordance with this section, be made or granted.

(2) The Commissioner shall, subject to subsection (4), consider any application for a refund or payment from any applicant who contends that he or she has paid any duty or other charge for which he or she was not liable, or that he or she is entitled to any payment under this Act by reason of -

- (a) an error in determining an assessment or calculating the amount thereof;
- (b) the duty having been assessed on a value higher than the value for duty purposes;
- (c) a determination under section 51(8) or an incorrect tariff classification;
- (d) the goods concerned, prior to the release thereof for home consumption, having been damaged, destroyed or irrecoverably lost as a result of or due to circumstances beyond his or her control;
- (e) all or part of the goods concerned having been short landed, shortshipped or shortpacked;
- (f) the substitution of any bill of entry in terms of section 43(5); or
- (g) the duty having been reduced or withdrawn as provided for in section 54(3), 61(2), 62(2) or 63(2).

(3) Except with the written permission of the Commissioner, no application for a refund under this section shall relate to more than one bill of entry or other document in respect of which the alleged overpayment was made.

(4) No application for a refund or payment in terms of this section shall, subject to subsection (5), be considered by the Commissioner unless it is received by the Controller, duly completed, and in the form and in accordance with the procedures, and supported by the necessary documents and other proof, as may be prescribed by rule, in order to prove that such refund or payment is due under this section, within a period of two years -

- (a) from the date of entry for home consumption as provided in section 49(2), of the goods to which the application relates; or
- (b) from the date on which the duty to which the application relates was paid; or
- (c) if a determination of a tariff heading, tariff subheading or item referred to in paragraph (a) of section 51(8), or a value referred to in paragraph (a) of section 75(4) is, under paragraph (d) of section 51(8) or under subsection (5) of section 75, as the case may be, amended with retrospective effect from a date before or on the date on which the duty to which the application relates was paid, or any such determination is, under section 51(8)(a) or 75(5), as the case may be, withdrawn with such retrospective effect, and a new determination is thereunder made with effect from such withdrawal, from the date on which such amendment is effected or such new determination is made or, if such amendment or new determination is published by notice in the *Gazette*, from the date on which such amendment or new determination is so published; or

(d) if any Schedule is amended with retrospective effect, from the date on which such amendment is published by notice in the *Gazette*.

(5) Notwithstanding subsection (4), the Commissioner may, in circumstances he or she may deem exceptional, consider any application for a refund or a repayment made in terms of this section after expiration of the applicable period.

(6) If, after considering any application for a refund or payment in terms of this section, the Commissioner is satisfied that the applicant is entitled to any such refund or payment, the Commissioner may, subject to subsection (7), pay to the applicant the amount due to him or her.

(7) Notwithstanding subsection (6), no refund shall be made under this section if, in the case of goods imported by post, the amount of such refund is less than 50 cents or, in the case of goods imported in any other manner, less than N\$Five or, in the case of excisable goods manufactured in Namibia, less than N\$Two, unless the Commissioner is satisfied that exceptional circumstances exist which may warrant such refund.

Recovery of certain amounts paid by Commissioner

86. (1) If the Commissioner, purporting to act under section 84 or 85, pays to any person by way of a refund or a drawback any amount to which such person is not entitled in terms of any of those sections, or which amount so paid is in excess of the amount due to such person by way of a refund or drawback in terms of any of those sections, such amount or such excess so paid, as the case may be, shall, upon a written demand by the Commissioner, be repaid by the person concerned to the Commissioner, failing which such amount shall be recoverable from such person as if it were a duty or charge payable in terms of this Act, or part of such duty or charge, as the case may be.

(2) Subsection (1) shall *mutatis mutandis* apply to any amount set off in terms of section 87(a).

Set-off of certain amounts

87. (a) A licensee of a customs and excise warehouse who, in terms of the rules, is permitted to pay any duty monthly or quarterly, and who -

- (i) paid any duty for which he or she was not liable; or
- (ii) granted any provisional refund in terms of section 84(2); or
- (iii) becomes entitled to a refund in terms of item 534.00 of Schedule 5 or any item of Schedule 6,

may, subject to the approval of the Commissioner, at any time within a period of two years from the date on which such duty was paid, such provisional refund was granted or such licensee became entitled to such refund, as the case may be, set off such duty, provisional refund or amount refundable against that particular duty for which such licensee subsequently becomes liable, except that the duty refundable in terms of that item 534.00 be set off against the excise duty specified in Section B of Part 2 of Schedule 1 for which such licensee subsequently becomes liable, provided the monthly or quarterly accounts or bills of entry submitted by such licensee in respect of the payment of any duty against which any duty, provisional refund or amount refundable has been set off are accompanied by a full statement by such licensee, supported by a certificate by an officer, specifying the full

particulars and containing a full account of the circumstances in respect of such set-off, and such documentary proof as the Commissioner may in each case require.

- (b) If a set-off contemplated in paragraph (a) is not approved by the Commissioner under that paragraph, it shall be debited to the account of such licensee.

CHAPTER XI OFFENCES AND PENALTIES

Offences not specified

88. (1) Any person who contravenes any provision of this Act, or who fails to comply with any provision with which it is his or her duty to comply, shall, even if such contravention or failure is not elsewhere in this Act specifically declared an offence, be guilty of an offence.

(2) Any person convicted of an offence under any provision of this Act shall, if no penalty is expressly prescribed in respect of such offence, on conviction be liable to a fine not exceeding N\$8 000, or to an amount equal to three times the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(3) Any person who is convicted of an offence contemplated in subsection (2) within a period of three years after the date upon which he or she was convicted of any offence contemplated in that subsection, shall in respect of the subsequent conviction be liable to a fine not exceeding N\$16 000 or to an amount equal to three times the value of the goods in respect of which the subsequent offence was committed, whichever is the greater, or to imprisonment for a period not exceeding four years or to both such fine and such imprisonment.

Less serious offences and penalties in respect thereof

- 89.** (1) Any person who -
- (a) manufactures, or supplies the means or materials for, or assists in, the manufacturing of any still, or repairs, maintains, operates, imports, uses or sets up, or assists in the repairing, maintaining, operating, importing, using or setting up of any still, whether in his or her possession or custody, or in the possession or custody of any other person, or has in his or her possession any still, without the required lawful authority; or
 - (b) is found in any place where distillation in any form or manner is illegally conducted, if it is proven that such person had no lawful excuse or reason to be in such place at such time; or
 - (c) refuses or fails to comply with the lawful requirements of an officer, or refuses or fails to answer to the best of his or her ability any question which an officer in the exercise of his or her functions puts to him or her; or
 - (d) falsely holds himself or herself out to be an officer; or
 - (e) resists or hinders an officer in the exercise of his or her powers or in the performance of his or her functions under this Act; or

- (f) releases or sets free any person apprehended for any offence under this Act, or prevents the apprehension of any person who has committed any such offence,

shall be guilty of an offence and on conviction be liable, subject to subsection (2), to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) A person who is convicted of an offence contemplated in subsection (1) within a period of three years after the date upon which he or she was convicted of any offence contemplated in that subsection, shall in respect of such subsequent conviction be liable to a fine not exceeding N\$16 000 or to imprisonment for a period not exceeding four years or to both such fine and such imprisonment.

Serious offences and penalties in respect thereof

90. Any person who -

- (a) has upon his or her premises or in his or her custody or under his or her control, or purchases or otherwise obtains, or sells or otherwise disposes of, any illicit goods, knowing such goods to be illicit goods; or
- (b) not being a licensed manufacturer or dealer, without lawful authority has in his or her possession or custody, or under his or her control, excisable goods or fuel levy goods, or any partly manufactured excisable goods or fuel levy goods, upon which duty has not been paid; or
- (c) removes, or assists in or permits the removal of, any goods in contravention of any provision of this Act; or
- (d) renders odourless or colourless, or, prior to the sale thereof, reduces the strength of methylated spirits to a strength below a strength of 91,4 per cent absolute alcohol by volume, or prepares or sells or offers for sale or for consumption as a beverage, any preparation containing methylated spirits or spirits recovered from methylated spirits; or
- (e) removes or breaks or interferes with any lock, meter, gauge, rod, seal, mark or fastening placed on, or fitted or attached to, any warehouse, vessel, package, container or other article, place or plant, by an officer under any provision of this Act; or
- (f) damages, destroys or disposes of any goods to prevent the securing or seizure of such goods under this Act by any officer or other person authorised to secure or seize such goods, or takes into or has in his or her possession any goods which are being detained or have been seized; or
- (g) brings into Namibia or has in his or her possession any blank or incomplete invoice or any billhead or other similar document capable of being completed and used as an invoice in respect of goods which may be imported from outside Namibia, if it is proven that he or she has brought such document into Namibia or has such document in his or her possession, without any lawful reason or excuse; or
- (h) for any fraudulent purpose, makes use of a licence, permit or other document issued in respect of goods to which this Act relates; or

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- (i) claims or receives any rebate, drawback, refund or payment, or sets off any amount in terms of section 87(a), which he or she knows he or she is not entitled to under this Act; or
- (j) not being authorised to do so, gives or promises to give, directly or indirectly, any reward to an officer or to any person employed by the Government, in respect of the performance or non-performance by any such officer or person of his or her duties or employment under this Act, or conspires with or proposes to any such officer or person to do or to permit anything in contravention or evasion of any provision of this Act; or
- (k) being an officer or a staff member employed by the Public Service, demands or receives, except from or through the Government, any reward in respect of the performance or non-performance of any of his or her duties under this Act, or by any wilful act, neglect or default, does or permits or conspires or agrees to do or to permit anything in contravention or evasion of any provision of this Act; or
- (l) attempts to commit, or assists any other person in committing any offence mentioned in this section; or
- (m) from any goods made from or containing excisable goods or fuel levy goods, extracts or recovers such excisable goods or fuel levy goods in contravention of this Act; or
- (n) contravenes, or fails to comply with, any provision of section 17(13), 20(8), 36(5), 39(10), 67(1), 70(1), 84(9), 84(23), 98(1)(c), 123(4)(c) or 124(4); or
- (o) fails to comply with any condition determined under section 117(2)(a),

shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$20 000 or to an amount equal to three times the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Non-declaration in respect of certain goods

91. Any person who contravenes or fails to comply with any provision of section 14, shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$8 000 or to an amount equal to three times the value of the goods concerned, whichever is the greater, or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment, and the goods concerned, or any other goods in the container or package containing such goods, including such container or package, shall be liable to forfeiture to the State.

Prohibition with regard to stamps

92. (1) Any person who, otherwise than for any purpose provided for in this Act, uses, or has under his or her control or in his or her possession, or makes available to another person, any stamp, seal or die -

- (a) which is used under the authority of the Commissioner; or
- (b) the imprint of which is identical to or resembles the imprint of a stamp, seal or die referred to in paragraph (a), or of any stamp, seal or die used by a governmental authority in a foreign country under any law of such country relating to customs or excise or to the import or export of goods,

shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$2000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(2) Any person who, for any purpose other than for any lawful purpose under this Act, manufactures or has in his or her possession or under his or her control any stamp, seal or die, the imprint of which depicts the name of a company, firm or other business entity in a foreign country, or any sign or letter which could be reasonably understood to be a reference to such company, firm or business entity, shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$2000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Irregular dealings in goods

93. Any person who -

- (a) deals in, or who assists any other person in dealing in, any goods contrary to any provision of this Act; or
- (b) knowingly has in his or her possession any goods liable to forfeiture under this Act; or
- (c) makes or attempts to make any arrangement with a supplier, manufacturer, exporter or seller of goods imported or to be imported into, or manufactured or to be manufactured in, Namibia, or with any agent of any such supplier, manufacturer, exporter or seller, regarding any matter to which this Act relates, with the object of defeating or evading any provision of this Act,

shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$20 000 or to an amount equal to three times the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment, and the goods in respect of which such offence was committed shall be liable to forfeiture to the State.

False documents and declarations

94. (1) Any person who makes a false statement in connection with any matter dealt with in or by this Act, or who, for the purposes of this Act, makes use of a declaration or document containing any false statement, knowing such statement to be false, shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$40 000 or to an amount equal to three times the value of the goods to which such statement, declaration or document relates, whichever is the greater, or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment, and the goods in respect of which such false statement was made or such false declaration or document was used or issued, shall be liable to forfeiture to the State.

(2) For the purposes of subsection (1), any invoice or other document relating to any kind, description, class, category, grade or quantity of goods shall be deemed to contain a false statement if the price charged by the exporter, or any value, commission, discount, cost, charge, expense, royalty, freight, duty, tax, drawback, refund, rebate, remission or other information of whatever nature declared therein or thereon and which has a bearing on value for the purposes of payment of any duty or on classification in terms of any Schedule to this Act, or on anti-dumping duty, countervailing duty or safeguard duty, or on the extent of any rebate, refund or drawback of duty -

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- (a) is not, except in so far as may be otherwise specified, exclusively related to goods of the kind, description, class, category, grade or quantity declared in such invoice or document; or
- (b) is adjusted or amended as a result of any separate transaction, arrangement, agreement or other consideration of any nature whatsoever, particulars of which are not disclosed in such invoice or document; or
- (c) represents any average or adjustment or amendment, particulars of which are not disclosed in such invoice or document, of such values, prices, commissions, discounts, costs, charges, expenses, royalties, freight, duties, taxes, drawbacks, refunds, rebates, remissions or other information in respect of goods of the same or of different kinds, descriptions, classes, categories, grades or quantities supplied by the same supplier.

Beer of higher alcoholic strength than specified on container

95. Any manufacturer of beer in whose customs and excise warehouse or on whose delivery vehicle beer is found, and which beer is packed for sale in the common customs area and is of an alcoholic strength by volume of more than naught comma five per cent higher than the strength registered and specified on the container concerned in terms of section 37, shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$8000 or to an amount equal to three times the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment, and the goods in respect of which such offence was committed shall be liable to forfeiture to the State.

Certain specified offences

- 96.** Any person who -
- (a) fails to advise the Controller of the receipt of any amended prescribed invoice, certificate or any credit note or debit note, or of any change in the circumstances or particulars of whatever nature as specified in any prescribed invoice, certificate or in any other document, or of any refund of money or deferred or secret or undisclosed discount, commission or other credit or debit which relates to any goods and which would increase the duty payable on such goods, or exclude such goods from any rebate or refund or other privilege under this Act; or
 - (b) fails to declare in, or omits from, any prescribed invoice or certificate any particulars (including value and origin) in respect of the goods to which such invoice relates and which would increase the duty on such goods or would exclude such goods from any rebate or refund or other privilege under this Act; or
 - (c) applies any money or credit received by or due to him or her as a commission in such a manner as to avoid or evade any duty or obligation, or to obtain any rebate or other privilege, in respect of any goods under this Act; or
 - (d) fails to issue an amended prescribed invoice or certificate if any particulars declared in any prescribed invoice or certificate in respect of any goods have changed in any manner whatsoever, or issues two or more different prescribed invoices or certificates in respect of the same goods; or
 - (e) makes or attempts to make, or assists in making or attempting to make any arrangement of whatever nature with any person inside or outside Namibia in

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connection with any goods imported or to be imported into Namibia with the object, or having the effect, of defeating or evading the provisions of any agreement entered into between Namibia and any exporting territory which provides for the restriction of, or control over, the export into Namibia of any goods in any manner, or any restriction of, or the control over, the export of any goods into Namibia imposed by any exporting territory in any manner by arrangement with or at the instance or suggestion of or with the approval of the Government of Namibia; or

- (f) produces to the Controller, for the purposes of paragraph (e) of section 41(1), any sample which is not a sample of the goods of which it purports to be a sample, or who, for the purpose of paragraph (d) of that subsection, produces a copy of any invoice or other document, or of any blueprint, illustration, drawing, plan or illustrated and descriptive literature which does not relate to the goods to which it purports to relate, or which is incorrect or incomplete or misleading in any respect, or who fails to comply with section 41(6); or
- (g) allocates the same identification number, code, description, character or other mark referred to in section 44(3) to different goods or to different classes or kinds of goods, or allocates more than one such identification number, code, description, character or other mark to goods of the same class or kind, or who quotes or reproduces any such identification number, code, description, character or other mark in any invoice or document relating to goods to which such number, code, description, character or other mark has not been allocated; or
- (h) contravenes or fails to comply with any of the provisions of section 112 or of any regulation made under section 81 or any rule made under section 112(5),

shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$40 000 or to an amount equal to three times the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding ten years, or to both such fine and such imprisonment, and the goods in respect of which such offence was committed shall be liable to forfeiture to the State.

Goods irregularly dealt with liable to forfeiture

97. (1) (a) Any goods imported, exported, manufactured, warehoused, removed or otherwise dealt with contrary to any provision of this Act or in respect of which any offence under this Act has been committed, including any container relating to any such goods, or any plant used contrary to any provision of this Act in the manufacture of any goods shall, subject to paragraph (b), be liable to forfeiture to the State wheresoever and in possession of whomsoever found.
- (b) Notwithstanding paragraph (a), forfeiture under that paragraph shall not affect any liability in respect of any other penalty or punishment which has been incurred under this Act or under any other law, or entitle any person to a refund of any duty or surcharge paid in respect of such goods.
- (2) (a) Any ship or vehicle used in the removal or carriage of any goods liable to forfeiture under this Act shall be liable to forfeiture under subsection (1)(a), if it is proven that such ship or vehicle was so used with the consent or knowledge of the owner of such ship or vehicle, or of any other person lawfully in possession or charge thereof.

- (b) Any ship or vehicle in which goods liable to forfeiture under this Act are used as fuel or in any other manner, shall be liable to forfeiture under subsection (1)(a), if it is proven that such goods were so used with the consent or knowledge of the owner of such ship or vehicle, or of any other person lawfully in possession or charge thereof.

Seizure

98. (1) (a) An officer, magistrate or member of the Namibian Police may, by written notice in the form and in accordance with the procedures, and for the period, prescribed by regulation, detain any ship, vehicle, plant, material or goods at any place for the purpose of establishing whether such ship, vehicle, plant, material or goods are liable to forfeiture to the State under this Act.
- (b) Any ship, vehicle, plant, material or goods referred to in paragraph (a) may be detained as set out in that paragraph at the place where they are found or shall be removed to, and stored at, a place of security determined by an officer, magistrate or member of the Namibian Police referred to in that paragraph, at the cost, risk and expense of the owner, importer, exporter, manufacturer or the person in whose possession or on whose premises they are found, as the case may be.
- (c) No person shall remove any ship, vehicle, plant, material or goods from any place where they are detained under paragraph (a) or from a place of security determined by an officer, magistrate or member of the Namibian Police.
- (d) If any ship, vehicle, plant, material or goods referred to in paragraph (c) are liable to forfeiture under this Act, the Commissioner may, at his or her discretion, seize such ship, vehicle, plant, material or goods.
- (e) The Commissioner may, notwithstanding paragraph (d), seize any other ship, vehicle, plant, material or goods liable to forfeiture under this Act.
- (2) (a) If any goods liable to forfeiture under this Act cannot readily be found, the Commissioner may, notwithstanding anything to the contrary in this Act contained, in writing demand from any person who imported, exported, manufactured, warehoused, removed or otherwise dealt with such goods contrary to any provision of this Act, or who committed any offence under this Act rendering such goods liable to forfeiture, payment of an amount equal to the value for duty purposes or the export value of such goods, plus any unpaid duty thereon, as the case may be.
- (b) For the purposes of paragraph (a), the value for duty purposes shall be calculated in terms of this Act relating to such value whether or not the goods concerned are subject to *ad valorem* duty or to a duty calculated according to a unit of quantity, volume or other measurement, as the case may be, approved by the Commissioner.
- (c) If the amount demanded under paragraph (a) is not paid within a period of 14 days after the demand for payment was made, such amount may be recovered as if it were a forfeiture incurred in terms of this Act.
- (d) This Act shall, in so far as it can be applied, *mutatis mutandis* apply in respect of any amount paid to the Commissioner or recovered in terms of this subsection, as if such amount -
- (i) were the goods concerned; and

- (ii) had been seized under subsection (1).

Notice of claim by owner in respect of seized goods

99. (1) Any ship, vehicle, plant, material or goods which have been seized under this Act, shall be deemed to be forfeited to the State and may be disposed of in terms of section 90, unless the person from whom such ship, vehicle, plant, material or goods have been seized or the owner thereof or his or her authorized agent, within a period of one month after the date of such seizure, in writing gives notice to the person so seizing or to the Commissioner or to the Controller in the area where the seizure was made, that he or she claims, or intends to claim the return to him or her of such ship, vehicle, plant, material or goods under this section.

(2) If no notice is given in terms of subsection (1), no legal proceedings of whatever nature solely based upon the seizure of such ship, vehicle, plant, material or goods shall after the expiration of the period of time specified in that subsection be instituted against the State, the Minister, the Permanent Secretary, the Commissioner or any officer.

(3) If a notice in writing has been given in terms of subsection (1), the person giving such notice may, within a period of 90 days after the date of such notice, but, except with the written consent of the Commissioner, not earlier than one month after such date, institute proceedings in the High Court of Namibia for the release of the ship, vehicle, plant, material or goods concerned, after which period of 90 days no legal proceedings of whatever nature solely based upon the seizure of such ship, vehicle, plant, material or goods shall be instituted against the State, the Minister, the Permanent Secretary, the Commissioner or any other officer.

Disposal of seized goods

- 100.** (a) Any goods which are seized under section 98 on the grounds that they are liable to forfeiture to the State under this Act, shall forthwith be delivered to the Controller at the customs and excise office nearest to the place where they were seized, or they may be secured by the Controller by sealing, marking, locking, fastening or otherwise securing or impounding such goods on the premises where they were found, or by removing them to a place of security determined by the Controller.
- (b) The Controller shall, after forfeiture of the goods referred to in paragraph (a), cause such goods to be sold by public auction or in any other manner which the Commissioner may deem appropriate, subject to such conditions as the Commissioner may determine.
- (c) The Commissioner may in writing direct that -
- (i) in lieu of being sold, any goods referred to in paragraph (a) be destroyed or be appropriated to the State; or
- (ii) if any goods referred to in paragraph (a) is of a perishable or dangerous nature, that such goods be sold or destroyed, as the case may be, before forfeiture.

Admission of guilt

- 101.** (1) (a) If any person -

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- (i) has, in the opinion of the Commissioner, contravened any provision of this Act or failed to comply with any such provision with which it is his or her duty to comply;
- (ii) has, in the form and in accordance with the procedures prescribed by regulation, been informed of the alleged contravention of, or failure to comply with, any provision of this Act contemplated in subparagraph (i), and been furnished with full particulars of such alleged contravention or failure;
- (iii) in the form and in accordance with the procedures prescribed by regulation admits every element of the alleged contravention or failure contemplated in subparagraph (i) and agrees to abide by the Commissioner's decision under this section; and
- (iv) deposits with the Commissioner an amount equal to the maximum fine which may be imposed by a Court upon a conviction for the contravention or failure contemplated in subparagraph (i), or such lesser amount as the Commissioner may consider sufficient, or in lieu of making such a deposit, makes such arrangements or complies with such conditions with regard to the payment of such amount as the Commissioner may determine,

the Commissioner may, after considering the admissions made by such person as provided for in subparagraph (ii) or after conducting such enquiry as he or she deems necessary, determine the matter summarily and may, without legal proceedings, order, by way of a penalty, forfeiture to the State of the entire or of any part of the amount so deposited or arranged for.

- (b) Anything done for the purposes of paragraph (a) by an agent generally or specially authorised thereto in writing by any person shall be deemed to have been duly done by such person in terms of that paragraph.

- (2) Any person referred to in subsection (1) may -

- (a) in the form and in accordance with the procedures prescribed by regulation, and within a period of three months from the date of any determination or order made by the Commissioner under subsection (1), as the case may be, appeal to the Minister against such determination or order so made, and the Minister may, after considering the determination or order appealed against, confirm the determination or order appealed against or make a new determination or order; or

- (b) within a period of three months after the date of the confirmation of a determination or order appealed against, or the making of any new determination or order, by the Minister under subsection (2)(a), appeal to the High Court of Namibia against such determination or order so made.

(3) Subject to section 69(3)(b), the imposition of a penalty under subsection (1) of this section shall not be deemed a conviction in respect of a criminal offence under this Act, and no prosecution in respect of such offence shall after the payment of a penalty so imposed be instituted or proceeded with.

(4) Nothing in this section shall in any way affect any liability relating to the forfeiture of goods or the payment of duty, or any other charges in respect of such goods.

Payment and disposal of fines and penalties

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102. (1) Subject to subsection (2), any fine or penalty recovered by the Commissioner under section 101, shall be paid to the Controller in the area where such fine or penalty is recovered, which fine or penalty shall, together with the proceeds of the sale of anything forfeited or seized under this Act, be paid into the State Revenue Fund.

(2) Notwithstanding subsection (1), the Commissioner may withhold an amount not exceeding one-third of any fine, penalty or proceeds referred to in that subsection, which he or she may then award to any person (including any officer) as a result of whose actions or conduct, or the information furnished by such person, the fine or penalty was imposed, or the forfeiture or the seizure made.

(3) The Commissioner shall within a period of 30 days after making any award under subsection (2), in writing notify the Minister of the name and address of the person to whom such award was made, and the reasons for and the amount of, such award.

Remission or mitigation of penalties and forfeiture

103. (1) The Commissioner may, subject to such conditions as he or she deems appropriate -

- (a) direct that any ship, vehicle, plant, material or goods detained or seized or forfeited under this Act be delivered to the owner thereof, subject to payment of any duty which may be payable in respect thereof or any charges which may have been incurred in connection with the detention or seizure or forfeiture, and further subject to such conditions providing for the payment of an amount equal to the value for duty purposes, of such ship, vehicle, plant, material or goods plus any unpaid duty payable in respect thereof, whichever may be applicable; or
- (b) mitigate or remit any penalty incurred under section 101.

(2) If the owner referred to in subsection (1)(a) in writing accepts the conditions contemplated in that subsection, he or she shall after such acceptance not be entitled to institute or proceed with any action for the recovery of any damages on account of the detention, seizure or forfeiture referred to in that subsection.

Recovery of penalties by process of law

104. (1) Without derogation from any powers conferred upon the Commissioner, any penalty, fine or forfeiture incurred under this Act may be recovered either by civil action or, subject to the Criminal Procedure Act, 1977 (Act No. 51 of 1977), upon criminal prosecution in any court of competent jurisdiction, and in the case of a criminal prosecution the court passing sentence may, in addition to such sentence, make an order regarding the payment of any unpaid duty or charge, or grant a civil judgment or enforce a forfeiture.

(2) Any civil proceedings under this section shall be instituted in the name of the Minister.

Jurisdiction of courts

105. (1) A Magistrate's Court has jurisdiction to try any person for any offence in terms of this Act if the goods, or any portion of such goods, in respect of which such offence was committed were found within, or was conveyed from, to or through the area of jurisdiction of such court.

(2) If any person, at any place deemed under section 6(2) to be a place of entry for Namibia, or in any territory with the government of which an agreement has been concluded under section 56, commits an offence in terms of this Act, such offence shall be deemed to have been committed in the area of jurisdiction of any court in which such person finds himself or herself at any point in time after the commission of such offence.

(3) Notwithstanding anything to the contrary in any other law contained, a Magistrate's Court has jurisdiction -

- (a) to impose any penalty prescribed by, or to make any order of court provided for in, this Act; or
- (b) to give judgment for any amount claimed under this Act, together with the costs of obtaining such judgment.

Notice of intended proceedings and period for instituting proceedings

106. (1) No legal proceedings shall, subject to subsection (2), be instituted against the State, the Minister, the Permanent Secretary, the Commissioner or an officer, as the case may be, in respect of anything done in pursuance of this Act, until a period of one month has expired after delivery to the Commissioner of a notice in writing setting forth clearly and explicitly the cause of action, the remedy sought, the full names and surname and physical address of the person who intends to institute proceedings and the name and address of the legal practitioner, if any, acting on behalf of such person.

(2) Subject to section 99, no legal proceedings contemplated in subsection (1) shall be instituted after the expiration of a period of one year from the date upon which the cause of action first arose.

CHAPTER XII GENERAL

Approval of container operators

107. (1) The Commissioner may, subject to subsection (2) and with the concurrence of the Permanent Secretary: Works, Transport and Communication, and further subject to the conditions prescribed by rule and as the Commissioner may in respect of a particular case determine, for the purpose of operating containers in Namibia, approve, in the form so prescribed, any person providing international transportation of containerized goods.

(2) An application for an approval under subsection (1) shall be made in the form and in accordance with the procedures prescribed by rule.

Master, container operator or pilot may appoint agent

108. (1) Notwithstanding anything to the contrary in this Act contained, the master of a ship, a container operator or the pilot of an aircraft may, subject to subsection (2) and at his or her own risk, instead of himself or herself performing any act, including replying to any question, required by or in terms of any provision of this Act to be performed by him or her, in writing appoint an agent to perform any such act on his or her behalf, and any such act performed by such agent so appointed shall in all respects and for the purpose of this Act be deemed to be the act of such master, container operator or pilot, as the case may be.

(2) Notwithstanding subsection (1) -

- (a) any master, container operator or pilot referred to in that subsection shall, upon receipt of a written demand by the Controller, appear before the Controller in person, or personally attend to or act in respect of or relating to any matter contemplated in that subsection; and
- (b) no master, container operator or pilot who has appointed an agent under that subsection shall be relieved from the liability for the fulfilment of any obligation imposed upon such master, container operator or pilot by this Act or to any penalty which may be incurred in respect of any obligation so imposed.

Liability of principal for acts of agent

109. Every importer, exporter, master, container operator, pilot, manufacturer, licensee, remover of goods in bond or other principal shall, for the purposes of this Act, be bound by any act done by an agent appointed under section 108(1) and acting on his or her behalf, whether in or outside Namibia.

Liability of agent for obligations imposed on principal

110. (1) An agent appointed under section 108(1) by any master, container operator or pilot and who in writing has accepted such appointment, or any person who represents himself or herself to any officer as the agent of any master, container operator or pilot, and who is accepted as such an agent by such officer, shall be liable for the fulfilment, in respect of the matter concerned, of all obligations, including the payment of duty and charges, imposed by this Act on such master, container operator or pilot, and to any penalties or forfeitures which may be incurred in respect of such matter.

- (2) (a) An agent appointed in writing by any importer, exporter, manufacturer, licensee, remover of goods in bond or other principal, and who in writing has accepted such appointment, or any person who represents himself or herself to any officer as the agent of any importer, exporter, manufacturer, licensee, remover of goods in bond or other principal, and is accepted as such by such officer, shall, subject to paragraph (b), be liable for the fulfilment, in respect of the matter concerned, of all obligations, including the payment of duty and charges, imposed by this Act on such importer, exporter, manufacturer, licensee, remover of goods in bond or other principal, and to any penalties which may be incurred in respect of such matter.
- (b) An agent or person referred to in paragraph (a) shall be liable in respect of the non-fulfilment of any obligation as set out in that paragraph, if it is proven that -
 - (i) he or she was a party to such non-fulfilment of any obligation by any importer, exporter, manufacturer, licensee, remover of goods in bond or other principal referred to in paragraph (a); and
 - (ii) when he or she became aware of such non-fulfilment, he or she did not notify the Controller thereof as soon as practicable; and
 - (iii) he or she did not take all reasonable steps to prevent such non-fulfilment.
- (c) No importer, exporter, manufacturer, licensee, remover of goods in bond or other principal shall by virtue of any provision of paragraph (a) or (b) be relieved from the liability for the fulfilment of any obligation imposed upon him or her by or under this Act or to any penalty which may be incurred in respect thereof.

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- (3) (a) A shipping and forwarding agent, or any agent acting for the master of a ship or the pilot of an aircraft, or any other class or category of agents which the Permanent Secretary may prescribe shall, before transacting any business with the Ministry, and any class of carrier of goods to which this Act relates and which the Permanent Secretary may prescribe shall, before conveying any goods, furnish to the Commissioner security in such form or in such amount as may be prescribed by regulation or as the Commissioner may, subject to paragraph (b), from time to time require for the due observance of the provisions of this Act.
- (b) Notwithstanding paragraph (a), the Commissioner may require from any agent or carrier, special or additional security in respect of any particular transaction or carriage of goods.
- (4) (a) An agent (including a representative or associate of the principal) representing or acting for or on behalf of any exporter, manufacturer, supplier, shipper or other principal outside Namibia who exports goods to Namibia, shall, subject to paragraph (b), be liable, in respect of any goods ordered through him or her or obtained by an importer by means of his or her services, for the fulfilment of all obligations imposed upon such exporter, manufacturer, supplier, shipper or other principal by or under this Act, and to any forfeitures which may be incurred by such exporter, manufacturer, supplier, shipper or other principal under this Act.
- (b) Notwithstanding paragraph (a), an agent referred to in that paragraph shall only be liable as set out in that paragraph if it is proven that -
- (i) he or she was a party to the non-fulfilment of any obligation by the exporter, manufacturer, supplier, shipper or other principal concerned; and
- (ii) when he or she became aware of the non-fulfilment referred to in subparagraph (i), he or she did not notify the Controller thereof as soon as practicable; and
- (iii) he or she did not take all reasonable steps to prevent the non-fulfilment referred to in subparagraph (i).
- (c) Every agent of a class referred to in paragraph (a) and specified in the rules for the purposes of this paragraph, shall register himself or herself with the Commissioner and shall, subject to paragraph (d), furnish security in such form or in such amount as may be prescribed by regulation or as the Commissioner may from time to time require for the due observance of any provision of this Act.
- (d) Notwithstanding paragraph (c), the Commissioner may accept security from any association of agents as may be approved by the Commissioner in writing, and which association undertakes to furnish security on behalf of its members.
- (e) No agent referred to in paragraph (c) shall conduct any business on behalf of any exporter, manufacturer, supplier, shipper or other principal referred to in paragraph (a) after a date determined by the Minister by notice in the *Gazette*, unless such agent has complied with paragraph (c).
- (f) The registration and operations of any agent referred to in paragraph (c) shall be subject to such conditions as the Permanent Secretary may prescribe by rule and the Commissioner may cancel the registration of any agent who has persistently contravened or failed to comply with any provision of this Act, or who is found guilty under any provision of section 90, 93, 94, 95 or 96.

(5) Any liability in terms of subsection (1), (2) or (4)(a) shall cease after the expiration of a period of two years from the date on which it was incurred in terms of the subsection concerned.

Agent may be called upon to produce power of attorney

111. If any person makes an application to an officer to conduct any business on behalf of any other person, or if any person presents himself or herself to an officer as the agent of any other person, such officer may require the person so applying or presenting himself or herself, to produce a power of attorney in the form prescribed by rule, signed by the person on whose behalf such application is made or on whose behalf the person so presenting himself or herself is alleged to be acting, and in default of the production of such power of attorney, the officer may refuse to allow such business to be conducted.

Business books, accounts, documents or other information to be available for inspection

112. (1) (a) Any person conducting any business in Namibia shall in Namibia and in the English language keep such books, accounts, documents or information relating to his or her business transactions as may be prescribed by regulation.

(b) Different provisions may be prescribed under paragraph (a) in respect of different classes or kinds of books, accounts, documents or information, or different classes of persons conducting business or different classes or kinds of businesses, as contemplated in that paragraph.

(c) Books, accounts, documents or information contemplated in paragraph (a) shall be kept in an accessible manner and in a manner acceptable to the Commissioner.

(d) Books, accounts, documents or information contemplated in paragraph (a) shall be retained for a period of five years from the date of importation, exportation, manufacturing or transport of any goods, but, in the case of goods stored or manufactured in a customs and excise warehouse, the period shall be extended until all the relevant goods have been duly cleared in terms of section 20(7) of the Act and have been delivered or exported.

(2) The Commissioner may, subject to such conditions as he or she may determine, allow any person contemplated in subsection (1) to, retain *in lieu* of any of the book, account document or information an electronic version, a reproduction or any other form of any such book, account, document or information, as approved by the Commissioner.

[A comma appears to have been omitted between the words “account” and “document” in the phrase “*in lieu* of any of the book, account document or information”.
The words “of the” in the same phrase are superfluous.]

(3) The person referred to in subsection (1) shall upon a demand made by the Customs produce such books, accounts, documents or information and shall submit such particulars in connection with his or her transactions to the Customs.

(4) The Commissioner may, subject to such conditions as he or she may determine, allow the person referred to in subsection (1) to, produce, in lieu of any book, account, document or information required to be produced in terms of subsection (3), an electronic version, a reproduction or other form approved in terms of subsection (5), of such book,

account, document or information, and the electronic version, reproduction or other form of the copy shall, for the purposes of this Act, have the force and effect of the original book, account, document or information concerned.

[The comma between the words “to” and “produce” is superfluous.]

- (5) The Permanent Secretary may prescribe -
- (a) the books, accounts, documents, transactions or operations in respect of which a chartered accountant’s certificate shall be produced to the Customs by the class of persons contemplated in subsection (1) as he or she may so prescribe; and
 - (b) the nature and form of a certificate contemplated in paragraph (a) and the intervals at which such a certificate shall be produced in terms of that paragraph.

[Section 112 is substituted with amendment markings by Act 17 of 2016.
Not all of the changes are indicated by amendment markings.]

Sellers of goods to produce proof of payment of duty

113. (1) Any person selling, offering for sale or dealing in imported or excisable goods or fuel levy goods, or removing such goods, or having entered such goods into his or her books, or having such goods mentioned in any document referred to in section 84(5) or 112, shall, when so requested by an officer, furnish such officer with particulars of the person from whom the goods were obtained and, if such first-mentioned person is the importer or manufacturer or owner of such goods, he or she shall furnish particulars of the place where the duty due on such goods was paid, the date of payment, the particulars of the entry for home consumption and the marks and numbers on the containers, cases, packages, bales or other articles concerned, which marks and numbers shall correspond to the marks and numbers on, or contained in, the documents produced as proof of the payment of the duty.

(2) In any prosecution or proceedings under this Act, any statement in any record, letter or any other document kept, retained, received or dispatched by or on behalf of any person to the effect that any goods of or at a particular price, value (including any commission, discount, cost, charge, expense, royalty, freight, tax, drawback, refund, rebate, remission or other information which relates to such goods and has a bearing on such price or value) or quantity, quality, nature, strength or any other characteristic, have been manufactured, imported, ordered, supplied, purchased, sold, dealt with or in, or held in stock by such person at any time, shall be *prima facie* evidence that he or she has at such time manufactured, imported, ordered, supplied, purchased, sold, dealt with or in, or held in stock, goods of or at such price, value, quantity, quality, nature, strength or other characteristic.

Liability of company or partnership

114. (1) In this Act, any reference to a person shall be deemed to include a reference to a company, close corporation, co-operative society, firm, partnership, statutory body, club or other juristic person, and in the event of any contravention of or non-compliance with, or the incurring of any liability under, this Act by any company, close corporation, co-operative society, firm, partnership, statutory body, club or other juristic person, any person having the management of any premises or business in, or in connection with which the contravention or non-compliance took place, or the liability was incurred, shall, subject to subsection (2), as a result of such contravention or non-compliance, be guilty of an offence and on conviction be liable to the penalties prescribed in respect of such contravention or non-compliance, and may be held liable in respect of any liability so incurred in terms of this Act.

(2) A person referred to in subsection (1) shall only be liable as contemplated in that subsection if it is proven that such person -

- (a) connived at or permitted; or
- (b) had knowledge of and did not take all reasonable steps to prevent,

the contravention or non-compliance contemplated in that subsection.

Interest on outstanding amounts

115. Notwithstanding anything to the contrary in any law contained -

- (a) interest shall be payable from such date and for such period as the Permanent Secretary may prescribe on any outstanding amount payable in terms of this Act, other than the outstanding amount in respect of any penalty or forfeiture so payable;
- (b) the interest payable in terms of paragraph (a) shall be calculated at the rate which the Permanent Secretary may prescribe, but which rate shall not exceed the rate of interest prescribed under the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975);
- (c) the Commissioner may on such conditions as he or she may deem necessary -
 - (i) remit any interest for which any person is liable by virtue of this section;
 - (ii) permit payment of any amount referred to in paragraph (a) by way of instalments of such amounts and at such times as he or she may determine;
- (d) any instalment paid as determined under paragraph (c) shall be utilised by the Commissioner to discharge, in that order, any penalty, forfeiture, interest or duty, or any other amount or amounts due by the person concerned in terms of this Act;
- (e) the interest payable in terms of paragraph (a) shall be calculated monthly, and for such purpose a portion of a month shall be regarded as a full month; and
- (f) any interest recovered under this section shall be for the benefit of the State Revenue Fund.

Samples

116. (1) An officer may on entry of any imported goods or during the manufacture of any excisable goods, or at any time after such entry or manufacture, and without payment of any compensation, from any person in possession of such imported goods or of any manufactured or partly manufactured excisable goods, take samples of such imported, manufactured or partly manufactured goods or of materials intended for the manufacture of excisable goods or of goods used under Chapter X, for examination or for ascertaining the duties payable on such goods or for such other purpose as may be prescribed by rule, and such samples shall be dealt with and accounted for in such manner as the Commissioner may direct.

(2) For the purpose of determining the duty leviable in respect of any goods comprising a single consignment, or any goods in any vessel, tank or other container of goods, the nature or characteristics of all the goods in such consignment, vessel, tank or other container

shall be deemed to correspond to the nature or characteristics of any sample taken by the officer from such consignment, vessel, tank or other container.

Expenses relating to landing, examination, weighing or analysis

117. (1) (a) The handling of or dealing with goods for the purposes of this Act shall be performed by or at the expense and risk of the importer, exporter, manufacturer or owner, as the case may be, of the goods and who has control of such goods, except in the case of goods examined at a customs and excise warehouse, at which place such handling of or such dealing with goods shall be performed at the expense and risk of the owner of such goods.
- (b) Any goods referred to in paragraph (a) remaining in the custody or under the control of the Commissioner after expiry of a period of 28 days from the date of due entry of such goods, may be removed by the Controller to the State warehouse or to any other place designated by the Controller in writing, and may thereupon be disposed of in accordance with section 46.
- (2) (a) Subject to the further provisions of this Act, the Commissioner shall not, except on such conditions, including conditions relating to security, as may be determined by him or her in writing, allow goods to pass from his or her control until the provisions of this Act or any law relating to the import into, or the export from, or the transit carriage through, Namibia of goods have been complied with in respect of such goods, and the State or the Minister or the Permanent Secretary or the Commissioner or any officer shall not be liable in respect of any claim arising from the detention of goods pending the decision of the Commissioner, or for the costs relating to such detention.
- (b) If the Commissioner deems it necessary for the purposes of paragraph (a) of this subsection or of section 116(1) that any goods should be analysed, he or she may in writing direct that such goods be analysed by a person designated, and in accordance with a method determined, by him or her.
- (3) The cost of analysis of any goods for the purposes of subsection (2)(b) shall be borne by the importer, exporter, manufacturer or owner, as the case may be, of such goods, except if the Commissioner, subject to subsection (4), deems the analysis necessary for the purposes of subsection (2)(a) and the result of the analysis confirms the correctness of the declaration or bill of entry made or presented by such importer, exporter, manufacturer or owner in respect of such goods.
- (4) Notwithstanding subsection (3), the cost relating to any analysis contemplated in that subsection shall not be borne by the State if such analysis is carried out in connection with any application for the refund of duty or substitution of any entry, or if the result of any analysis shows that the goods concerned were incorrectly or insufficiently described on the invoice concerned as prescribed by rule.

Control in respect of manufacturers of certain goods or materials and persons who conduct processes in connection with such goods or materials

118. (1) The manufacturer of any goods or materials used or capable of being used in the manufacture of any goods to which this Act applies, or any person who carries out any preliminary, intermediate or supplementary process in connection with such goods or materials, or in connection with any goods to which this Act applies, shall, in accordance with the written directions of the Commissioner -

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- (a) register with the Commissioner any formula, factory, machinery, instrument, appliance or apparatus used in connection with the manufacture of goods or materials, or the conducting of any process as the Commissioner may require;
- (b) comply with such conditions relating to such manufacture or to the conducting of any such process as the Commissioner may in each case impose;
- (c) keep such records as the Commissioner may in writing require relating to -
 - (i) the nature, characteristics, source, origin or quantities of the ingredients of such goods or materials, or of such other particulars relating to the ingredients of such goods or materials as the Commissioner may in writing specify;
 - (ii) the processes carried out in respect of the goods or materials referred to in subparagraph (i);
 - (iii) the persons on whose behalf any of the processes referred to in subparagraph (ii) were carried out; and
 - (iv) the purchasers of the goods or materials referred to in subparagraph (i); and
- (d)
 - (i) render such returns or furnish such certificates in respect of such goods or materials; and
 - (ii) produce such documents in support of any records kept in terms of paragraph (c), or returns or certificates rendered or furnished in terms of paragraph (d),

as the Permanent Secretary may prescribe.

(2) For the purposes of subsection (1), any preliminary, intermediate or supplementary process in connection with any goods or materials referred to in that subsection, shall include any process relating to the ordering, purchasing, selling or disposal of, and the entering into any contract for the manufacture of, any such goods or materials.

Destruction of goods and detention of ships or vehicles

119. (1) If, in the opinion of the Commissioner, it is necessary for the safeguarding of public health, or for the safety of the public or of the State, he or she may at any time, and at the expense and risk of the importer, exporter, owner, master or pilot concerned, as the case may be, in such manner and subject to such conditions as the Commissioner may determine -

- (a) cause any goods under customs and excise control to immediately be destroyed or otherwise disposed of; or
- (b) delay the departure of any ship or vehicle from any place in Namibia for a period not exceeding 48 hours.

(2) No person shall be entitled to any compensation in respect of any loss arising out of any *bona fide* action or conduct of the Commissioner under subsection (1).

Instruments and tables

120. (1) Except as otherwise provided in this Act, the Permanent Secretary may prescribe the instruments, meters, gauges and other appliances, and the tables, formulae and other methods of calculation to be used in ascertaining the mass, quantity, strength, relative density, temperature, pressure or any other characteristics of any goods for the purposes of this Act.

(2) The Permanent Secretary may, for the purpose of calculating the quantity or volume of any goods which have been manufactured or used as contemplated in this Act, prescribe tables estimating or indicating the quantity of such goods which shall be deemed to have been manufactured from any given quantity of any other goods, or the quantity of goods which shall be deemed to have been used in the manufacture of any given quantity of any other goods manufactured there from.

Production of certificate issued by officer on registration of certain motor vehicles

121. (1) No motor vehicle registering authority in Namibia shall register any imported motor vehicle unless a certificate issued by an officer is produced stating that the requirements of this Act in respect of such vehicle have been complied with.

(2) For the purposes of subsection (1) the expression “imported motor vehicle” does not include any motor vehicle manufactured in Namibia or which enters Namibia from any territory with the government of which an agreement has been concluded under section 56.

Wrecks

122. (1) For the purposes of section 74 and of this section, “wreck” includes -

- (a) flotsam, jetsam and lagan;
- (b) any portion of a ship lost, abandoned or stranded, or of the cargo, stores or equipment of such ship, or any other goods thereon; and
- (c) any portion of an aircraft which has been wrecked or abandoned, or of the cargo, stores or equipment of such aircraft, or any other goods thereon.

(2) Any person who has in his or her possession, or who acquires or obtains, any wreck, shall without delay give notice thereof to the nearest Controller and shall (unless he or she is the owner of such wreck or the duly authorised agent of the owner) if so required, forthwith deliver such wreck, or allow it to be delivered, to such Controller, and unless it is necessary for the preservation or safe-keeping of such wreck, no person shall without the written permission of such Controller remove or alter such wreck in any manner.

(3) Subject to this Act, any wreck found in, or brought into, Namibia may, at any time after it has come under the control of the Controller, be disposed of by him or her under section 46.

Prohibitions and restrictions

123. (1) No -

- (a) cigarettes with a mass of more than 2 kilogram per 1 000 cigarettes;
- (b) unlawful reproduction of any item or article, if such reproduction is prohibited from import under any law relating to copyright;

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- (c) prison-made or penitentiary-made goods;
- (d) publication or object or film as defined in section 47 of the Publications Act, 1974 (Act No. 42 of 1974), which is not intended for exhibition in public and which is undesirable as defined in that section; or
- (e) goods which may, in terms of any provision of this Act or of any other law, only be imported into Namibia in terms of a permit, certificate or other authority, unless imported under such a permit, certificate or other authority which purports to be issued by virtue of any such provision,

shall be imported into Namibia, unless in terms of a permit issued by the Permanent Secretary: Trade and Industry.

(2) The Minister may by notice in the *Gazette* suspend the operation of any provision of subsection (1) for such period of time as the Minister may specify in such notice, if he or she deems such suspension in the public interest.

(3) The Permanent Secretary may by rule prohibit or restrict the coastwise carriage or the transit carriage through Namibia of any goods referred to in subsection (1), or of any other goods in respect of any such prohibition or restriction which he or she deems necessary in the public interest.

- (4) (a) An officer may, for the purposes of any law other than this Act, or at the request of a member of the Namibian Police or of the authority administering such other law, detain any goods while such goods are under customs control.
- (b) Goods referred to in paragraph (a) may be detained under that paragraph at the place where such goods were found, or shall be removed to and stored at a place of security determined by an officer referred to in paragraph (a).
- (c) No person shall remove any goods from any place where such goods were detained under paragraph (a) or from a place of security determined by an officer under paragraph (b).
- (d) Any goods detained under paragraph (a) may be released by the Commissioner to the Namibian Police, to the authority administering any law contemplated in paragraph (a), or to the importer or the exporter concerned.

(5) No person shall manufacture cigarettes if the mass of the tobacco contained in such cigarettes exceeds 2 kilogram per 1 000 cigarettes.

Duty payable constitutes a debt to the State

- 124.** (1) (a) (i) The actual amount of duty for which any person is liable under this Act in respect of any goods imported into, or exported from, or manufactured in, Namibia shall from the date on which liability for payment of such duty commences; and
- (ii) any interest payable, or any fine, penalty or forfeiture incurred under this Act shall, from the time when it became payable,

constitute a debt to the State due and payable by such person, and any goods in a customs and excise warehouse or in the custody of the Commissioner (including goods in a rebate storeroom) and belonging to such person, any goods imported or

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exported by such person subsequent to the date upon which such debt became due, or any imported goods on any premises in the possession or under the control of such person, or any goods in respect of which an excise duty or fuel levy is prescribed (whether or not such duty or levy has been paid) or any materials for the manufacture of such goods, or any such materials on any premises in the possession or under the control of such person, or any vehicles, machinery, plant or equipment in the possession or under the control of such person in which fuel in respect of which any duty or levy is prescribed (whether or not such duty or levy has been paid), is used, transported or stored, may be detained in accordance with subsection (2) and shall be subject to a lien until such debt to the State is paid in full.

- (b) Any plant or still used for the manufacture of any goods in respect of which an excise duty or fuel levy is prescribed and which is in the possession or under the control of any person referred to in paragraph (a) or on any premises in the possession or under the control of such person, shall, subject to paragraph (c), be subject to a lien from the time when the liability for the duty or levy payable as contemplated in paragraph (a) in respect of any goods so manufactured commences until the debt concerned is paid, as if such plant or still is detained in accordance with subsection (2).
- (c) Notwithstanding paragraph (b), the Commissioner may in writing allow any plant or still referred to in that subsection to be used for such purposes and subject to such conditions as he or she may in each case impose.
- (d) Any capital goods in respect of which any surcharge has been withdrawn in terms of any permit issued by the Permanent Secretary: Trade and Industry shall, as security for the surcharge so withdrawn, be subject to a lien until the conditions specified in such permit have been complied with to the satisfaction of that Permanent Secretary, as if such goods are detained in accordance with subsection (2), unless, to the satisfaction of the Commissioner, other security is furnished.
- (e) Any claim by the State against any person in respect of a debt due as contemplated in paragraph (a) shall, notwithstanding any provision in any other law, have preference to the claim of any other person in respect of any goods or other item subject to a lien as contemplated in paragraph (a) or (b), and the State may proceed to recover the amount outstanding in respect of such claim if the debt is not paid within a period of three months after the date on which such debt became due.
- (f) Any refund of a duty or of a deposit, or of any other amount due to any person in respect of any matter whatsoever, may be set off against a debt referred to in paragraph (e).

(2) The Commissioner or an officer may, subject to subsection (3), detain any goods or other item referred to in subsection (1)(a) by sealing, marking, locking, fastening or otherwise securing or impounding it on the premises where it is found, or by removing it to a place of security determined by the Commissioner.

(3) Notwithstanding subsection (2), the Commissioner may allow any goods or item referred to in that subsection to be used by any person under such conditions as the Minister in each case may impose.

- (4) No person shall remove -

- (a) any plant or still, which is subject to a lien in terms of subsection (1)(b), from any place designated by an officer; or
- (b) any goods or other item detained under subsection (2) from the premises referred to in that subsection or from the place of security to which it may have been removed under that subsection.

(5) Any reference to goods in this section shall be deemed to include a reference to the container or package of such goods.

Entries or oaths made outside Namibia of full force and effect

125. Any entry, document, oath or declaration required to be made, executed or signed under this Act and so made, executed or signed outside Namibia shall, if so made, executed or signed before an officer, be binding and of full force and effect in Namibia.

Manufacture of excisable goods solely for use by the manufacturer thereof

126. (1) Notwithstanding anything to the contrary in this Act contained, and in respect of any excisable goods (except ethyl alcohol) manufactured by natural persons (except under item 604.00 of Schedule 6) for their own use and not for sale or disposal in any manner -

- (a) the Permanent Secretary may, if he or she is of the opinion that such manufacturing results in or is likely to result in loss of revenue, or is likely to be detrimental to any industry in Namibia to such extent as to warrant any action described in this paragraph, by rule prohibit the sale to any such person of any plant, apparatus, appliance, instrument or material used or suitable to be used in, or designed for the manufacture of, such excisable goods, or impose such conditions in respect of the advertising or sale of such plant, apparatus, appliance, instrument or material as the Permanent Secretary deems appropriate; or
- (b) the Commissioner may -
 - (i) for the purpose of calculating the duty payable on such excisable goods manufactured by any such person, estimate the quantity of such goods so manufactured or the strength or other characteristics of any such quantity in any manner he or she may deem appropriate;
 - (ii) relating to any quantity of such excisable goods in respect of which duty will become payable, accept duty (or any portion of such duty), calculated in any manner which he or she deems reasonable, from any person who, to the manufacturer of such excisable goods, sells or disposes of any material for use in the manufacture of such excisable goods; or
 - (iii) (aa) if he or she is of the opinion that such manufacturing does not result in or is not likely to result in a loss of revenue, or is not or is not likely to be detrimental to any industry in Namibia to the extent stated in paragraph (a); or
 - (bb) if, in the manufacture of such excisable goods, used parts or material on which any duty had been paid previously, was used to such extent as he or she deems reasonable,

exempt such excisable goods from the entire duty, or from any portion of the duty, payable on such goods, subject to such conditions as he or she may in each case impose.

(2) The manufacturer of any goods exempted from the entire or from any portion of the duty under this section, shall be liable for payment of the entire or of such portion of the duty as the Commissioner may determine, if such goods are sold or disposed of by such manufacturer.

(3) The Permanent Secretary may, subject to such conditions as he or she in each case may impose, by rule exempt any goods to which this section relates from any provision of Chapter IV, V or VIII of this Act.

Statistics

127. (1) Statistics, as the Minister in writing may determine, relating to -

- (a) the import and export trade of;
- (b) excisable goods manufactured in; or
- (c) fuel levy goods manufactured in or imported into,

Namibia shall be compiled and tabulated by the Commissioner, and published by the Minister by notice in the *Gazette*, in such form and at such times as the Minister may deem appropriate.

(2) For the purposes of subsection (1), any person -

- (a) entering any goods for import or export shall, in addition to any particulars necessary for making due entry of such goods, furnish particulars relating to such goods as the Commissioner may from time to time require for the compilation of import and export statistics contemplated in subsection (1); or
- (b) manufacturing any excisable goods or fuel levy goods shall, in such manner and at such times as the Commissioner may require, for excise duty purposes under section 78 or for fuel levy purposes, furnish the value of all excisable goods or fuel levy goods manufactured by him or her, whether or not such goods are subject to *ad valorem* duty or to a duty calculated according to a unit of quantity or of volume, or any other measurement, as the case may be.

(3) For the purpose of paragraph (b) of subsection (2), the value of any goods for fuel levy purposes shall be deemed to be equal to the value for excise duty purposes under section 78 in respect of such goods manufactured in Namibia.

Delegation of powers

128. The Minister may, subject to such conditions as he or she may determine and for such period of time as he or she in each case may specify, in writing delegate to the Permanent Secretary or to the Commissioner any of his or her powers under this Act, excluding any power relating to the amendment of any Schedule or to the making of any regulation, but shall not be divested of a power so delegated by him or her.

Substitution of Schedules

129. If any Schedule to this Act or any part or item thereof, is substituted and the new Schedule or any part or item thereof provides that the Minister or the Permanent Secretary or the Commissioner, as the case may be, may impose any condition, or approve of any matter or thing in relation to any class or kind of goods, any condition imposed or any approval given before such substitution by the Minister or by the Permanent Secretary or by the Commissioner, as the case may be, under the Schedule or part or item in relation to such class or kind of goods shall be deemed to have been imposed or given under the new Schedule or part or item, as the case may be.

Regulations and rules

- 130.** (1) The Minister may make regulations -
- (a) prescribing the powers, duties and functions, and the hours of attendance, of officers;
 - (b) determining services for which charges shall be payable, the rate and method of payment of such charges and the conditions attached to such services;
 - (c) relating to the reporting inwards and outwards of ships and aircraft (including such reporting of ships or aircraft calling or landing at places not designated as places of entry or customs and excise airports under this Act), the entry or departure of vehicles overland, the landing, loading, removal, detention, release, examination, carriage or handling of cargo (including transit and coastwise cargo), the control of persons (including their baggage and goods) entering or leaving Namibia, the placing into or removal from any State warehouse of goods and the removal in bond of goods;
 - (d) relating to the control of the storage or manufacture of goods in customs and excise warehouses (including the suitability of any buildings, plant or method of manufacture for the purposes of this Act, the hours for conducting any or all operations in any such warehouse, the supervision by officers of any such operations, the securing or marking of such plant, the inspection of, and the removal of goods from, such warehouses), the testing of the output of stills, the conditions on which stills may be made, be kept in possession, imported, disposed of or used and the fresh fruit or other items which may, or which shall not, be used by an agricultural distiller for the distillation of spirits;
 - (e) relating to the import, export, transit or coastwise carriage of goods, the entry of goods, the payment of duties or other charges or fees, the costs which shall, for the purposes of section 50, be included in or excluded from the production cost of goods in general or of any class or kind of goods, and the movement of goods to and from any territory with the government of which an agreement has been concluded under section 56;
 - (f) prescribing the form of and the particulars to be inserted in or on invoices or certificates in respect of any goods to which this Act applies and which are imported into or manufactured in Namibia;
 - (g) relating to the collection of duties by means of stamps, the method of applying stamps or stamp impressions or other marks to containers, the cancellation of stamps, the use of franking or counting machines, inks, dies or other appliances or materials, the accounting for stamp labels and stamp duties, and the disposal of stamp labels;

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- (h) relating to the collection of excise duties or fuel levy, the times when and the manner in which such duties or levies will be collected, and the granting of any extension of payment thereof;
- (i) relating to the collection of duties which become payable under subsection (2) of section 65;
- (j) governing the entry of goods under any item of Schedule 3, 4, 5 or 6 and prescribing the conditions on which such goods may be so entered or such goods may be transferred from one manufacturer or owner to another manufacturer or owner, as the case may be, or such goods may be used, and as to the registration of manufacturers or owners so entering goods, including -
 - (i) requirements as to the suitability of buildings, premises, storerooms and methods of manufacture for the purposes of this Act to be complied with;
 - (ii) the records to be kept; and
 - (iii) the form of the application for registration, and the particulars to be furnished,

by such manufacturer or owner;
- (k) prescribing the returns and price lists to be rendered by importers or manufacturers or owners of any class or kind of goods;
- (l) relating to security matters;
- (m) relating to all matters which by this Act are required or permitted to be prescribed by regulation; and
- (n) relating to any other matter which the Minister may deem necessary or useful to prescribe by regulation for the purposes of this Act.
- (2) The Permanent Secretary may make rules -
 - (a) prescribing the form of any licence, permit, bill of entry or certificate, or any other document, register, stockbook or return not prescribed by regulation and which he or she deems necessary to prescribe for the effective administration of this Act;
 - (b) relating to the circumstances under which a licence may be granted, the procedures relating to an application for the granting of a licence, including the manner in which such an application shall be lodged and considered, the requirements for the granting of an application for a licence, and the procedures relating to the issuing and the renewal of a licence, including the fees payable, if any, relating to the application for, or the issuing of or the renewal of a licence;
 - (c) prescribing the application form or forms and other particulars to be submitted when applying for any licence or permit in terms of this Act; and
 - (d) in respect of any matter in relation to which the Permanent Secretary may make rules under this Act, or in relation to which it is provided that such matter is to be dealt with in accordance with rules made by him or her.

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(3) The regulations or rules made under this section may, unless otherwise provided in this Act, provide penalties for any contravention thereof or failure to comply therewith not exceeding the penalties specified in subsection (2) of section 88.

Repeal of laws and savings

131. (1) Subject to subsection (2), the laws specified in Schedule 9 are hereby repealed to the extent set out in the third column of that Schedule.

(2) Anything done or purporting to have been done under a provision of any law specified in Schedule 9 and which could have been done under a corresponding provision of this Act, shall be deemed to have been done under such corresponding provision of this Act.

Short title and commencement

132. This Act shall be called the Customs and Excise Act, 1998, and shall come into operation on a date to be determined by the Minister by notice in the *Gazette*.

**SCHEDULE 9
LAWS REPEALED
(Section 131)**

[Schedule 9 appears before Schedules 1-8 in the *Government Gazette*.]

No and year of law	Short title	Extent of repeal
Act No. 91 of 1964	Customs and Excise Act, 1964	The whole
Act No. 95 of 1965	Customs and Excise Amendment Act, 1965	The whole
Act No. 57 of 1996	Customs and Excise Amendment Act, 1966	The whole
Act No. 96 of 1967	Customs and Excise Amendment Act, 1967	The whole
Act No. 85 of 1968	Customs and Excise Amendment Act, 1968	The whole
Act No. 25 of 1969	South West Africa Affairs Act, 1969	Section 6
Act No. 105 of 1969	Customs and Excise Amendment Act 1969	The whole
Act No. 98 of 1970	Customs and Excise Amendment Act, 1970	The whole
Act No. 89 of 1971	Customs and Excise Amendment Act 1971	The whole
Act No. 103 of 1972	Customs and Excise Amendment Act, 1972	The whole
Act No. 68 of 1973	Customs and Excise Amendment Act, 1973	The whole
Act No. 7 of 1974	Customs and Excise Amendment Act, 1974	The whole
Act No. 33 of 1974	Parliamentary Service Act, 1974	Section 19
Act No. 42 of 1974	Publications Act, 1974	Section 49
Act No. 64 of 1974	Second Customs and Excise Amendment Act, 1974	The whole
Act No. 71 of 1975	Customs and Excise Amendment Act, 1975	The whole
Act No. 105 of 1976	Customs and Excise Amendment Act, 1976	The whole
Act No. 12 of 1977	Customs and Excise Amendment Act, 1977	The whole
Act No. 112 of 1977	Second Customs and Excise Amendment Act, 1977	The whole
Act No. 93 of 1978	Customs and Excise Amendment Act, 1978	The whole
Act No. 110 of 1979	Customs and Excise Amendment Act, 1979	The whole
Act No. 98 of 1980	Customs and Excise Amendment Act 1980	The whole
Act No. 86 of 1982	Customs and Excise Amendment Act, 1982	The whole
Act No. 89 of 1983	Customs and Excise Amendment Act, 1983	The whole
Act No. 89 of 1984	Customs and Excise Amendment Act, 1984	The whole
Act No. 101 of 1985	Customs and Excise Amendment Act, 1985	The whole

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Act No. 52 of 1986	Customs and Excise Amendment Act, 1986	The whole
Act No. 97 of 1986	Transfer of Powers and Duties of the State President Act, 1986	Section 37
Act No. 84 of 1987	Customs and Excise Amendment Act, 1987	The whole
Act No. 69 of 1988	Customs and Excise Amendment Act, 1988	The whole
Act No. 68 of 1989	Customs and Excise Amendment Act, 1989	The whole
Act No. 17 of 1992	Post and Telecommunications Companies Establishment Act, 1992	The amendments to Act No. 91 of 1964 set out in the Schedule to Act No. 17 of 1992

SCHEDULES 1-8

[The remaining Schedules to the Act deal with customs and excise duties, and other duties and levies. They have not reproduced here because of their length, and because they are of limited interest to the general public.

Amendments to these Schedules are contained in the following:

Government Notice 208 of 1998 (GG 1943)

Government Notice 209 of 1998 (GG 1943)

Government Notice 71 of 1999 (GG 2092)

Government Notice 93 of 2000 (GG 2305)

Government Notice 187 of 2000 (GG 2386)

Government Notice 116 of 2001 (GG 2548)

noting that “the rates of duty specified in the SADC column” of the Schedule to that Government Notice were never brought into force

Government Notice 13 of 2002 (GG 2688)

Government Notice 61 of 2004 (GG 3181)

Government Notice 115 of 2004 (GG 3207)

Government Notice 116 of 2004 (GG 3207)

Government Notice 146 of 2007 (GG 3896)

Government Notice 213 of 2013 (GG 5264)

Government Notice 246 of 2013 (GG 5286)

Government Notice 307 of 2013 (GG 5344)

Government Notice 198 of 2014 (GG 5590)

Government Notice 66 of 2015 (GG 5724)

Government Notice 100 of 2016 (GG 6019)

Government Notice 101 of 2016 (GG 6019)

Government Notice 219 of 2016 (GG 6125)

Government Notice 230 of 2016 (GG 6132)

Government Notice 300 of 2016 (GG 6198)

Government Notice 93 of 2017 (GG 6289)

Government Notice 302 of 2017 (GG 6472)

Government Notice 77 of 2018 (GG 6574)

Government Notice 156 of 2018 (GG 6666).

Schedule 1 would have been amended by Government Notice 14 of 2002 (GG 2688), under the authority of section 54(2)(a)(v) of the Act. However, this Government Notice was to be brought into force by notice in the *Gazette* and no such notice has been located.

Schedule 1 was also amended by Government Notice 61 of 2007 (GG 3817), but this Government Notice was withdrawn by Government Notice 97 of 2008 (GG 4038).

Amended versions of Schedules 1-8 are contained in the “Harmonised Customs Tariffs Book”, which can be accessed by any member of the public at offices of the Ministry of Finance. In Windhoek, the Customs and Excise Directorate has an Information Centre at the head office of the Ministry of Finance (Fiscus Building). The telephone number for the Information Centre is (061) 209 2060. People outside of Windhoek can contact their local Ministry of Finance office to find out the nearest place to access a copy of the Harmonised Customs Tariffs Book. Online access to the Harmonised Customs Tariffs Book is available through Jacobsens Publishers, a Division of LexisNexis Butterworths (website: www.customstariff.co.za; email: jacobsens@lexisnexis.co.za; telephone: +27 (31) 268-3007). As of 2017, it is possible to register for a free trial of online access. This company also offers a subscription to online access.]

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