

Laws of the Kingdom of Tonga

CUSTOMS and EXCISE ACT 2005

A BILL

for

**AN ACT RELATING TO THE COLLECTION OF REVENUE,
MANAGEMENT OF CUSTOMS, AND OTHER INCIDENTAL
MATTERS**

October 21 , 2005 - Draft

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“cargo declaration” means a declaration made to a proper officer providing information concerning the arrival of the aircraft and ship including the details of the cargo on board an aircraft or ship arriving in the Kingdom of Tonga;

“claimant,” in relation to proceedings for condemnation, means the person claiming that the goods are not liable to forfeiture;

“conveyance” includes an aircraft or ship or any other mode of transport for the carriage of persons, animals or goods;

“commercial documentation” means the commercial invoice, bill of lading, airway bill, packing list, certificate of origin, order, or confirmation of order and includes all correspondence in connection with the imported goods whether in electronic form or not;

“compliance powers” include the powers to: ask questions; search places, goods and conveyances; examine; measure; count; open; seal; draw samples; read and copy documents; and seize goods and documents;

“Commissioner” means the Commissioner of Revenue responsible for the collection of duties of customs and management of the Customs Service;

“confidential information” means information that directly or indirectly comes to the knowledge of, or into the possession of, a person while he or she is performing his or her duties under this Act (whether the information is related to those duties or not);

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

“Customs” means the Customs and Trade Division of the Department of Revenue Services, Government of Tonga;

“Customs area” and “Customs place” mean any place approved as such under Part XXVI;

“Customs clearance” means the completion of all Customs formalities to the satisfaction of the Commissioner;

“Customs control,” in relation to imported goods and goods for export, means goods that are not in home consumption within the Kingdom of Tonga and on which Customs clearance formalities require completion;

“Customs duty” is an amount payable to the government of the Kingdom of Tonga in accordance with the schedules to this and includes excise tax and export duty were applicable;

“Customs enactment” includes this Act, Customs Regulations and any other legislation conferring responsibilities on the Customs Service;

“Customs tariff” means the official publication at Schedule [] outlining the rates of Customs and excise duty for particular goods imported into or locally manufactured within Tonga;

“Customs officer” includes the Commissioner, any person employed in the Tonga Customs Service and persons appointed in writing by the Commissioner to perform a function for the purposes of a Customs enactment and persons not appointed in writing but for the time being assisting any Customs officer in the performance of his duties under this Act;

“Customs valuation” means the value of imported goods calculated by reference to Part VI and the Regulations;

“Customs warehouse” means any place appointed as such under Part XVI ;

“declaration” means the provision of any information to Customs whether verbally, in a document, or in electronic form by a person (or their agent) relating to particular importations or exportations of goods;

“declared airport” means a place nominated as such by the Minister in the [Gazette];

“declared port” means a place nominated as such by the Minister in the [Gazette];

“document” includes computer hardware and software and other information in electronic form;

“drawback” means the return or remission of Customs

duty payable on imported goods where those goods are subsequently exported from the Kingdom of Tonga;

“dutiable goods” means goods on which any duties of Customs are payable;

“duties of Customs” includes Customs duty, excise duty or any other tax or charge payable to Customs under any Customs enactment;

“electronic communications” means any information conveyed to a Customs officer by computer or other electronic form;

“entry,” in relation to the importation or exportation of goods, means the provision of the relevant declaration to the proper officer in accordance with the requirements of this Act and the Regulations;

“excisable goods” means goods imported into or manufactured in the Kingdom of Tonga on which excise duty or excise tax is payable;

“excise duty” is an amount payable to the government of the Kingdom of Tonga in accordance with the schedules to this Act on goods which are produced, distilled or manufactured within the Kingdom of Tonga;

“excise tax” is an amount payable to the Government of the Kingdom of Tonga in accordance with this Act on goods specified in Schedule [] to this Act imported into the Kingdom of Tonga;

“export” means the transportation of goods beyond the territory of the Kingdom of Tonga;

"export duty" means an amount payable in accordance with the Schedules of this Act on specified goods exported from the Kingdom of Tonga;

“exporter” means the owner of the goods for export;

“export cargo declaration” means a declaration made to a proper officer providing details of the export cargo and other information required under Part VII;

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

“export goods declaration” means a declaration made to a proper officer by an owner of goods for export describing the value, nature, quantity, destination, and other sufficient information about those goods to satisfy Customs requirements;

“goods” includes tangible personal property, commercial cargo, currency, persons, livestock, aircraft and ship’s stores, accompanied and unaccompanied baggage, and aircraft and ships;

“goods declaration” means a declaration made to a proper officer by an owner of imported goods describing the nature, value, quantity, place of manufacture, and other sufficient information about those goods to satisfy Customs requirements;

“Guide” has the same meaning as in the Regulations;

“Kingdom of Tonga” includes –

- (a) the islands and waters of the Kingdom of Tonga including its dependencies;
- (b) the inland waters of the Kingdom of Tonga, islands and dependencies;

“him” means a person of whatever gender;

“home consumption” means that goods have completed the required Customs clearance formalities and are available for free circulation because they are no longer under Customs control;

“importer,” in relation to imported goods, means the consignee, owner, or agent for those goods when they arrive in the Kingdom of Tonga and includes any person making a declaration under any Customs enactment concerning those goods;

“import” means to cause goods to arrive within the Kingdom of Tonga;

“imported goods” means goods which have arrived within the Kingdom of Tonga;

“in-transit goods” means goods which have arrived at a port or place within the Kingdom of Tonga but are not intended for final delivery to that port or place;

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

“lawful release by Customs” means that a person has obtained from the proper officer an authorisation or permission in writing to deal with goods in the way authorised;

“legitimate commercial documentation” means documentation reflecting the true substance of a transaction;

“master” means the person in charge or command of an aircraft or ship including his and the ship's agent;

“Minister” means the Minister of [Finance] responsible for the Customs portfolio;

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

“owner”, in relation to imported goods, excisable goods or goods for export, includes the legal owner of the goods or an agent of that person and any other person signing an official declaration to Customs under any Customs enactment concerning those goods;

“owner”, in relation to an aircraft or ship, includes the legal owner, master, agent or any person acting for those persons or holding themselves out to Customs under any Customs enactment to be the owner;

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

“passenger’s or crew’s effects” means goods in quantities which the Commissioner is satisfied do not exceed what could reasonably be expected to be required by a passenger or member of the crew for his or her own use and which are not subsequently sold;

“passenger’s accompanied baggage” means goods including currency, carried with the passenger on the same aircraft or ship;

“passenger declaration” means a declaration made to a proper officer providing details about the passengers or

crew on an aircraft or ship arriving in or leaving the Kingdom of Tonga;

“person” includes a natural person or body corporate;

“PICTA” means the Pacific Island Countries Trade Agreement;

“police officer” means a member of the Tonga Police Force;

“port” means a place or geographical area nominated by the Minister in the Gazette to be a port for the purposes of a Customs enactment;

“proper officer” means the Customs officer appointed or authorised by the Commissioner or Deputy Commissioner of Customs for the purposes of a Customs enactment;

“rate of duty” means a percentage of the customs value of the goods (for example 10%), a fixed amount (for example \$10 per kilo) or a combination rate (for example 10% + \$5 per kilo);

“reasonable quantities” of ships stores for the purpose of Part III of this Act means quantities determined by the Commissioner having regard to individual circumstances;

“Regulations” means the Regulations described in Section [304];

“sensitive goods” means those consumption goods which the Commissioner may from time to time declare in the Tongan Chronicle to be goods which present a higher risk for the proper administration of this Act and the Regulations;

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

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

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

“spirits” means liquid other than wine containing more than the [11.4%]of alcohol but excludes perfumed and medicated spirits]; **check this**

“sufferance wharf” means a place authorised by the Commissioner for the loading or unloading of an aircraft or ship which is not approved under Part XXVI;

“temporary admission” means the Customs procedure under which prescribed goods can be imported into the Kingdom of Tonga conditionally relieved from payment of duties so long as the goods are imported for an approved purpose or by an approved person and are intended for re-exportation within a specified period;

“this Act” includes any Regulations made to assist in its administration and interpretation;

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

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

“transhipment” in relation to the importation of goods into the Kingdom of Tonga means that the Kingdom of Tonga is not the final destination for those goods and they will be exported;

“vessel” includes any ship, boat, hovercraft, seaplane or other means of propulsion in, on, or under water;

“warehoused goods” means goods which are under Customs control which are placed in a Customs licensed or Government warehouse;

“warrant” means an authorisation by a magistrate or other authorised person allowing designated Customs officers to enter commercial or domestic premises for the purposes of a Customs enactment;

“waters of the Kingdom of Tonga” means any waters within a space contained within an imaginary line drawn parallel to the shores or outer reefs of the Kingdom of Tonga which appear above the surface at low water mark and ordinary spring tides and distant [3 miles] there from;

“wharf” means a place appointed as such under Part XXVI by the Minister of Finance and specified in the Gazette;

under Customs control from one approved or licensed place of Customs control to another such place specified in the approval, subject to the conditions imposed in that approval;

(b) Where approval is provided under paragraph (a) the proper officer may not require the lodgement of a Goods declaration in respect of those goods.

(3) Where a person receives Customs approval under subsection (2), the proper officer, after considering the departmental risk management guidelines (described in the Guide), may seal those goods or their containers.

Liability

5. (1) Where a person is authorised to do anything at all to or with (including move, control, and the like) goods under Customs control and cannot account for those goods when requested by the proper officer, that person in addition to being liable under Part XVIII is also liable for any duty or tax payable in respect of those goods.

(2) The person liable to pay duties of Customs where goods under Customs control cannot be accounted for under this Act is the person whose signature appears on the request to the Commissioner for written approval to move or have access to those goods under Customs control.

(3) Where the proper officer authorises goods to be moved under Customs control, that officer may require the applicant to lodge a security with the Commissioner pursuant to Part XV .

(4) Customs is not liable for any loss or damage to goods under Customs control, unless it is Customs' fault.

PART III

ARRIVAL AND REPORT OF AIRCRAFT AND SHIPS

- Procedure on arrival**
6. (1) The master of an aircraft or ship arriving in the Kingdom of Tonga must bring that conveyance directly and as quickly as possible to a boarding station nominated by the proper officer and if there is no such direction and then to a place authorised under Part XXVI .
- (2) The master of an aircraft or ship which has arrived at or departed from its place of disembarkation, unloading, embarkation, or loading within the Kingdom of Tonga is not to move that aircraft or ship to another place within the Kingdom of Tonga without the prior written approval of the proper officer.
- Unauthorised movement**
7. (1) Unless the permission of the proper officer is first obtained on a completed Customs form C [], cargo is to be loaded or unloaded from an aircraft or ship only at places prescribed in Regulations.
- (2) Imported cargo is to be unloaded from an aircraft or ship as soon as possible after the arrival of that aircraft or ship at the authorised place of unloading and, where written authorisation is provided by Customs, that unloading may take place, subject to the conditions of the authorisation, outside normal Customs business hours.
- (3) Customs may recover costs and expenses described in Regulations associated with permitting the master of an aircraft or ship to load or unload cargo outside of normal Customs business hours or at a place other than the designated place of loading or unloading.
- Commissioner's discretion**
8. Where the master moves an aircraft or ship contrary to this Part , that master commits an offence (see offences in Part XVIII) unless the Commissioner is satisfied with the master's written explanation which should include a description of the master's efforts to:
- (a) promptly notify the closest police or customs office within the Kingdom of Tonga of the presence of that aircraft or ship within the Kingdom of Tonga;

(b) implement risk management strategies to prevent goods under Customs control from entering free circulation within the Kingdom of Tonga; and

(c) prevent persons on board that aircraft or ship from unnecessarily disembarking from or from leaving the vicinity of that aircraft or ship.

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| Advance notice (aircraft) | 9. | The master of an aircraft arriving in the Kingdom of Tonga must notify the proper officer in writing or (where the Regulations allow) electronically, [one (1) hour] in advance about the time and place of that arrival. |
| Advance notice (ships) | 10. | The Master of a ship arriving in the Kingdom of Tonga must notify the proper officer in writing or (where the Regulations allow) electronically, [[twenty four (24)] hours in advance about the time and place of that arrival. |
| Cargo Declaration | 11. | <p>(1) Before imported goods may be discharged, landed, or released from Customs control, the master of the importing aircraft or ship must ensure that the proper officer is given a cargo declaration including information described in the Regulations.</p> <p>(2) Cargo declarations may be provided to the proper officer in hard copy or, where practicable and permitted by Regulations, electronically, at any time prior to the arrival of the conveyance but must be provided at least [4] hours prior to that arrival.</p> |
| Discrepancies | 12. | Discrepancies between the cargo declaration and the actual goods landed, such as shortages, incorrect marks and numbers, and breakages, must be immediately communicated in writing to the proper officer on Customs form C [] by the master of that aircraft or ship. |
| Master and owner liable | 13. | Where cargo reported to Customs in the cargo declaration is not unloaded for any reason, the master [or owner] of the aircraft or ship is liable to pay the duty on those goods unless Customs is satisfied with the explanation provided. |
| Passenger declaration | 14. | <p>(1) The master or owner of an aircraft or ship arriving in the Kingdom of Tonga is to provide to the proper officer in writing or (where the Regulations allow) electronically, a passenger declaration identifying the passengers and crew on board the aircraft or ship at the time of its arrival.</p> <p>(2) A passenger declaration may be provided to Customs</p> |

at any time prior to the arrival of the conveyance but must be provided for aircraft at least [one (1)] hour prior to that arrival and for ships, [twenty four (24)] hours.

Regulations for passengers and crew

15. No person is to leave from or embark onto any aircraft or ship in the Kingdom of Tonga unless prior written authorisation is obtained from the proper officer. The procedures for obtaining such authorisation are contained within the Regulations.

Unloading of goods

16. (1) Cargo unloaded from an aircraft or ship is to be placed into transit sheds pending delivery of those goods.

(2) “Transit sheds” means enclosed or unenclosed premises which are approved in writing by the Commissioner where goods under Customs control may be temporarily stored until a goods declaration has been approved by the proper officer or they have been moved elsewhere in accordance with this Act.

(3) The Regulations describe the requirements concerning the construction, layout, and management for transit sheds and the arrangements for the storage and accounting for goods within transit sheds under Customs control.

(4) On application by the owner, the proper officer may permit access to cargo under Customs control in transit sheds for normal operations necessary for their preservation, removal or other purposes.

(5) *Removal* – Goods under Customs control may be removed from a transit shed only if:

(a) an authorised goods declaration in accordance with Part IV is provided to the person responsible for the Customs control of those goods at the transit shed; or

(b) some other Customs written authorisation is provided to move those goods from that place.

(6) *Warehousing* – Imported goods unloaded from any aircraft or ship which remain undelivered in a transit shed two days from the completion of unloading (or other time as the proper officer permits) are to be taken to a Customs warehouse nominated by the owner of the goods or agent of the aircraft or ship and if there is no such nomination, the proper officer may nominate a suitable Customs licensed warehouse or a government warehouse.

(7) The owner is liable for all costs, charges, and expenses involved in moving imported goods from the place of unloading from the conveyance to the Customs licensed warehouse including the rent and other charges in connection with the storage of those goods within the transit shed (if any) and Customs warehouse.

(8) The owner is not permitted to take delivery of goods for home consumption until all outstanding Customs liabilities imposed by this Act are acquitted unless the Commissioner authorises in writing the movement of those goods to an approved place in accordance with Part II.

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| Regulations | 17. | Goods under Customs control must not be unloaded from or loaded onto an aircraft or ship at a sufferance wharf unless the conditions described in Regulations are met. |
| Master responsible | 18. | The master of an aircraft or ship who has completed the cargo declaration obligations to the satisfaction of the proper officer is required to duly unload all goods intended for delivery to that port into a transit shed nominated by the proper officer. |
| Breaking of bulk | 19. | The master of a ship is not to break bulk unless a cargo declaration has been provided in accordance with this Part or the written permission of the Commissioner is first obtained. |

PART IV

CLEARANCE OF IMPORTED GOODS

- Goods declaration-
first port** 20. (1) (a) Goods declarations for goods imported into the Kingdom of Tonga must be completed by the owner at the first port of unloading unless the proper officer, on application, authorises in writing those formalities to be completed at another port or place within the Kingdom of Tonga in which case those goods may be moved under Customs control without payment of duty and subject to the conditions imposed in the authorisation.
- (b) The goods declaration and application form for requests under this section are described in Regulations.
- (c) The proper officer at the first port may decide not to examine imported goods where approval has been provided to move goods under Customs control in accordance with this Part.
- (2) Where goods are moved under Customs control pursuant to subsection (1) on an aircraft or ship to another approved port or place within the Kingdom of Tonga, the person signing the application form to Customs for that movement is responsible for:
- (a) any Customs liability arising, except if that liability is shared or otherwise reduced by other provisions in this Act; and
- (b) complying with the Customs requirements imposed by this Act and Regulations at the next actual port or place of discharge of those goods within the Kingdom of Tonga.
- Goods declaration-
general** 21. (1) An importer is to lodge with the proper officer for review, a goods declaration which is a self assessment of the applicable Customs duty payable before those imported goods may be delivered for home consumption within the Kingdom of Tonga.
- (2) An importer is to lodge together with the goods declaration, the commercial documentation described in the Regulations.
- (3) Goods declarations may be lodged and processed by Customs prior to the importation of the goods into the Kingdom of Tonga.

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| Electronic lodgement | 22. | A goods declaration form may be communicated to Customs electronically (where the person is authorised by Regulations) or manually. |
| Other import requirements | 23. | <p>(1) A goods declaration in the form described in Regulations is required to be lodged with the proper officer for:</p> <ul style="list-style-type: none">(a) transshipment goods;(b) Customs warehousing of goods;(c) duty-free shop goods;(d) temporary importations;(e) inward and outward passenger processing;(f) reimportation or re-exportation;(g) exportation; and(h) excisable goods. <p>(2) Goods referred to in paragraphs (a) to (h) of subsection (1) are not to be moved from Customs control until the respective goods declaration form required to be lodged for those goods in accordance with Part IV has been authorised in writing by the proper officer. The exception to this requirement is where the proper officer authorises in writing the movement of the goods (for example, where goods are authorised to be moved from a transit shed to another approved place under Customs control).</p> |
| Importer's obligations | 24. | The importer must provide to Customs a factually correct goods declaration form and, as required by the Regulations, legitimate commercial documentation. |
| Importer's doubt | 25. | <p>(1) Where the importer has any doubt about any aspect of the information to be included on the goods declaration or about the commercial documentation, this doubt is required to be pre-notified to Customs in a form described in Regulations setting out those reasons for concern.</p> <p>(2) The Commissioner may permit the entry and delivery into home consumption of imported goods in cases of</p> |

PART V

IMPOSITION OF DUTIES

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| Imposition of duties of Customs | 27. | <p>(1) Duties of Customs are imposed by this Act on imported goods listed in Schedule [1] and excisable goods listed in Schedule [] ;</p> <p>(2) Owners are obliged to pay Customs and excise duty (where applicable) prior to the release of those goods into home consumption within the Kingdom of Tonga.</p> <p>(3) Exporters are obliged to pay export duty where applicable prior to export.</p> |
| Debt to government | 28. | <p>Duties of Customs where imposed by this Part are:</p> <p>(a) a debt payable to the Government of Tonga which is recoverable by the Commissioner at any time in a court of competent jurisdiction;</p> <p>(b) payable to the proper officer at the place where the goods declaration is reviewed by Customs unless otherwise authorised in writing by the Commissioner.</p> <p>(c) payable in the legal tender of the Kingdom of Tonga;</p> <p>(d) where unpaid by the owner, able to be offset by the Commissioner against any Consumption Tax credits due at any time to that owner.</p> |
| Recovery from importer/exporter | 29. | <p>Where Customs duty remains payable in respect of a particular importation, the Commissioner may recover the equivalent of that amount from that person prior to the Customs release of that person's subsequent importations.</p> |
| National Assembly – customs duty | 30. | <p>The Legislative Assembly may impose, vary, revoke, or ratify Customs or excise duties on imported, locally manufactured, or exported goods as it considers necessary.</p> |
| Minister – customs duty | 31. | <p>(1) The Minister may by Order, revoke, reduce, or increase any Customs or excise duties and that change has effect from the date specified in the Order subject to ratification by the Legislative Assembly.</p> <p>(2) An Order made under this section expires if a copy is</p> |

- not lodged with the [Clerk of the Legislative Assembly] within [10] days of its publication in the Gazette.
- Timing of liability – duties of customs** 32. The liability for customs and excise duty arises:
- (a) in respect of imported goods – when they are imported;
 - (b) in respect of exported goods – when they are accepted at the place of export for loading onto an aircraft or ship for export from the Kingdom of Tonga;
 - (c) in respect of goods made in Tonga – when the production, distillation, or manufacturing process is complete;
 - (d) in respect of goods not accounted for to the satisfaction of the Commissioner while still under Customs control – in accordance with this Act.
- Customs control – excise** 33. Excisable goods are subject to Customs control from the time of completion of the production, distillation, or manufacturing process until the correct amount of excise duty has been paid and, to ensure the proper administration of this Act, the provisions of Part II relating to Customs control apply equally to excisable goods.
- Payment – excise** 34. Excise duty is payable to the Commissioner before delivery of those goods from the place of production, distillation or manufacturing unless a prior written agreement has been authorised in writing by the Commissioner.
- Excise declaration** 35. An excise declaration on a Customs form C [] must be lodged with the proper officer for authorisation prior to any excisable goods being delivered into home consumption within Tonga.
- Communicate doubt – excise** 36. Where a person responsible for paying excise duty has any doubt about any aspect of the information to be included on the excise declaration or about the amount of excise duty payable, that person must communicate that doubt to the proper officer on a Customs form C [] prior to the lodgement of the excise declaration, setting out the reasons for doubt.
- Person liable – excise** 37. The owner, producer, or manufacturer of excisable goods is liable for excise duty and must pay that duty.

- Post entry audits–
excise** 38. The Commissioner is obliged to arrange post entry audits on selected persons paying excise duty to ensure compliance with this Act and the Regulations.
- Contractual
adjustment –
customs duty** 39. Where a rate of Customs duty changes after importation of goods but before Customs clearance of those goods and the agreed price in the Kingdom of Tonga is affected, the domestic buyer and/or seller may adjust the agreed domestic price to offset the increase or decrease in Customs duty.
- Full duty payable** 40. Where a person pays reduced customs duty or is not required to pay Customs duty based on a concession arising under this Act and the goods are not dealt with in accordance with the conditions of that concession, that person is required to account for those goods to the satisfaction of the Commissioner and immediately pay on demand the full amount of Customs duty which would have been payable had the concession not been granted.

PART VI

Customs Valuation

41. **CUSTOMS VALUATION**

Definitions (1) Interpretation

(1) In this Part, unless the context requires otherwise–

"customs value of imported goods" means the value of goods for the purposes of levying ad valorem duties of customs on imported goods;

“family” means, in relation to an individual, the husband or wife of the individual, a relative of the individual, and a relative of the individual’s husband or wife, and “relative” means mother, father, brother, sister, ancestor or lineal descendant and includes any person who is adopted legally or customarily by or as a sibling to the individual;

“foreign inland insurance” means the cost of any insurance relating to foreign inland freight;

“foreign inland freight” means the cost of transportation (including loading, unloading, handling and other expenses associated with transportation) of the goods to the place in the country of export from which the goods were shipped to Tonga;

"goods of the same class or kind" means goods which fall within a group or range of goods produced by a particular industry or industry sector and includes identical or similar goods.

“identical goods”, in relation to imported goods, means goods that the Commissioner is satisfied –

- (a) are the same in all material respects, including physical characteristics, quality and reputation, as the imported goods;
- (b) were produced in the same country as the imported goods; and
- (c) were produced by or on behalf of the producer of the imported goods,

but does not include goods in relation to which -

- (i) art, design, development, or engineering work undertaken or substantially undertaken in Tonga; or
- (ii) models, plans, or sketches prepared or substantially prepared in Tonga,

was or were supplied, directly or indirectly, by or on behalf of the purchaser free of charge or at a reduced cost for use in relation to their production;

“overseas freight”, in relation to imported goods, means amounts (but not an amount of overseas insurance) paid or payable in respect of the transportation of the goods from their place of export to Tonga;

“overseas insurance”, in relation to imported goods, means amounts paid or payable in respect of insurance of the goods from their place of export to Tonga;

“place of export”, in relation to imported goods, means -

- (a) the place where the goods were posted for export to Tonga;
- (b) the place in the country of export to Tonga that the goods were packed into a transport container;
- (c) if goods, not being goods referred to in (a) or (b), were exported from a country by air or sea – the place where the goods were placed on board a ship or aircraft for export to Tonga; or
- (d) in any other case, a place determined by the Commissioner;

“price”, in respect of imported goods, means the sum of all amounts paid or payable, directly or indirectly, for the goods by or on behalf of the purchaser to or for the benefit of the vendor;

"royalty" in relation to imported goods includes a reference to an amount paid or credited (however described or computed and whether the payment or credit is periodical or not) being consideration for:

- (a) any rights associated with making, using, licensing or selling an invention;
- (b) the use of or the right to use a design; trademark; confidential information; or, any machinery, implements, apparatus or other equipment;
- (c) the supply of scientific, technical, industrial, commercial or other knowledge or information;
- (d) any forbearance in respect of any matter described in the above paragraphs.

“similar goods”, in relation to imported goods, means goods that the Commissioner is satisfied –

- (a) closely resemble the imported goods in respect of their component materials and characteristics;
- (b) are functionally and commercially interchangeable with the imported goods;
- (c) were produced in the same country as the imported goods; and
- (d) were produced by or on behalf of the same producer as the imported goods,

but does not include goods in relation to which –

- (i) art, design, development, or engineering work undertaken or substantially undertaken in Tonga; or
- (ii) models, plans, or sketches prepared or substantially prepared in Tonga,

was or were supplied, directly or indirectly, by or on behalf of the purchaser free of charge or at a reduced cost for use in relation to their production; and

“time of importation”, in respect of goods means the date on which the Commissioner prescribes those particular goods are deemed to be imported.

- (2) For the purposes of this Part, two persons are related persons if –
 - (a) both being natural persons –

- (i) they are connected by family; or
 - (ii) one of them is an officer or director of a company controlled, directly or indirectly, by the other;
- (b) both being companies –
- (i) both are controlled, directly or indirectly, by a third person (whether or not a company);
 - (ii) both together control, directly or indirectly, a third company; or
 - (iii) the same person (whether or not a company) is in a position to cast, or control the casting of 5% or more of the maximum number of votes that might be cast at a general meeting of each company;
- (c) one person being a company is, directly or indirectly, controlled by the other person (whether or not a company);
- (d) one person being a natural person, is an employee, officer, or director of the other person; or
- (e) they are members of the same partnership.

Customs value

(2) Customs value

- (1) For the purposes of any Act under which any import duty is imposed on imported goods by reference to their value, the value of the goods for customs purposes is the customs value determined in accordance with this Part.
- (2) Subject to this section, the customs value of imported goods is the transaction value of the goods as determined under section [15].
- (3) If the Commissioner cannot determine the transaction value of imported goods or the transaction value cannot be used as a result of section [14], the customs value of the goods is determined in accordance with the following methods, applied in the order set out below, that can be applied in respect of the goods –

- (a) the transaction value of identical goods as determined under section [16];
- (b) the transaction value of similar goods as determined under section [17];
- (c) the deductive value of the goods determined under section [18]; or
- (d) the computed value of the goods determined under section [19].

(4) An importer may apply, in writing, to the Commissioner for the order of consideration of the methods in subsection (3)(c) and (d) to be reversed.

(5) An application under subsection (4) must be made before the Commissioner commences to determine the customs value of the goods.

(6) If the customs value of imported goods cannot be determined under subsection (3), the customs value must be determined under section [20].

**Transaction
value not to
apply**

(3) Transaction value of imported goods not to apply

- (1) The transaction value of imported goods is not to be the customs value of the goods if—
- (a) there is a restriction on the disposition or use of the goods by the purchaser, other than a restriction –
 - (i) imposed by Tongan law;
 - (ii) limiting the geographical area in which the goods may be resold; or
 - (iii) that does not substantially affect the value of the goods;
 - (b) the sale or price of the goods is subject to a condition or consideration for which a value cannot be determined;
 - (c) part of the proceeds of any disposal, use or resale of the goods by the purchaser accrues, directly or indirectly, to the vendor, unless an appropriate adjustment can be made in terms of section [15(2)(g)]; or

- (d) the vendor and purchaser are related persons at the time the goods were sold for export unless –
 - (i) the Commissioner is satisfied that the relationship did not influence the price paid or payable for the goods; or
 - (ii) the importer satisfies the Commissioner that the transaction value of the goods closely approximates the transaction value, deductive value, or computed value of identical or similar goods sold at comparable trade and quantity levels to unrelated buyers in Tonga at or about the same time as the goods to be valued.

Transaction value of imported goods

(4) Transaction value of imported goods

- (1) The transaction value of imported goods is the price of the goods at the time they are sold for export to Tonga increased by the amounts specified in subsection (2) and decreased by the amounts specified in subsection (3).
- (2) For the purposes of determining the transaction value of imported goods, the price of the goods actually paid or payable is increased by the sum of the following amounts paid or payable, directly or indirectly, by or on behalf of the purchaser in respect of the goods to the extent that the amount is not included in the price -
 - (a) commission and brokerage, other than buying commission;
 - (b) packing costs, including any labour and material costs;
 - (c) the cost of containers that are treated as being one with the goods;
 - (d) royalties or licence fees payable as a condition of sale, other than for the right to reproduce the goods in Tonga;
 - (e) the cost of foreign inland freight and foreign inland insurance;
 - (f) the cost of overseas freight and overseas insurance;

- (g) the whole or any part of the proceeds of a subsequent use, resale or disposal of the goods by or on behalf of the purchaser that accrues to the vendor; and
 - (h) the value of any of the following goods and services supplied, directly or indirectly, by the purchaser free of charge or for reduced consideration for use in connection with the production and sale for export of the imported goods, apportioned to the goods in a reasonable manner and in accordance with generally accepted accounting principles –
 - (i) any materials, components, parts, and other goods incorporated in the imported goods;
 - (ii) any tools, dies, moulds, and other goods utilised in the production of the imported goods;
 - (iii) any materials consumed in the production of the imported goods; and
 - (iv) any engineering, development, art, or design work, plans or sketches undertaken outside Tonga and necessary for the production of the goods.
- (3) For the purposes of determining the transaction value of imported goods, the price of the goods actually paid or payable is decreased by the sum of the following amounts to the extent that these amounts are separately identified in the price paid or payable for the goods–
- (a) any expenditure incurred for the construction, erection, assembling or maintenance of, or technical assistance provided in respect of the goods after importation;
 - (b) the cost of transportation (including loading, unloading, handling and other expenses associated with transportation) of the goods after importation, and the cost of any insurance relating to such transportation;
 - (c) any duties or taxes paid or payable by reason of the importation or sale of the goods in Tonga;

- (d) financing costs paid or payable to the supplier in connection with the purchase of the imported goods.
- Transaction value of identical goods** (5) **Transaction value of identical goods**
- (1) If the customs value of imported goods cannot be determined under section [15], the customs value is the transaction value of identical goods in a sale of those goods for export to Tonga if –
- (a) the transaction value of the identical goods is the customs value of those goods; and
- (b) the identical goods were exported to Tonga at the same or substantially the same time as the imported goods and were sold to a purchaser –
- (i) at the same or substantially the same trade level as the imported goods; and
- (ii) in the same quantities as the imported goods.
- (2) If subsection (1) does not apply solely because identical goods were not sold under the conditions specified in subsection (1)(b), the customs value of the imported goods may be determined by reference to the transaction value of identical goods in a sale of those goods for export to Tonga if the identical goods were sold under any of the following conditions –
- (a) to a purchaser at the same or substantially the same trade level, but in different quantities from the imported goods;
- (b) to a purchaser at a trade level different from the purchaser of the imported goods, but in the same or substantially the same quantities as the imported goods; or
- (c) to a purchaser at a trade level different from the purchaser of the imported goods and in different quantities from the imported goods.
- (3) The customs value of imported goods under this section is the transaction value of identical goods referred to in subsection (1) or (2) adjusted to take account of –

- (a) commercially significant differences in the foreign inland freight and foreign inland insurance costs of the identical goods and those costs for the imported goods attributable to differences in distance and modes of transport; and
 - (b) if subsection (2) applies, differences in the trade levels, quantities, or both, as the case may be.
- (4) If, in relation to imported goods, there are two or more transaction values for identical goods that meet the requirements of subsection (1) or (2), as the case may be, the customs value of the imported goods is determined on the basis of the lowest of such transaction value.
- (5) This section does not apply if there is insufficient information to determine the customs value of imported goods under subsection (3).
- Transaction value of similar goods** (6) **Transaction value of similar goods**
- (1) If the customs value of imported goods cannot be determined under section [15 or 16], the customs value is the transaction value of similar goods in a sale of those goods for export to Tonga if –
- (a) the transaction value of the similar goods is the customs value of those goods; and
 - (b) the similar goods were exported to Tonga at the same or substantially the same time as the imported goods and were sold to a purchaser –
 - (i) at the same or substantially the same trade level as the imported goods; and
 - (ii) in the same quantities as the imported goods.
- (2) Section [16(2) to (5)] apply for the purposes of this subsection on the basis that the reference to “identical goods” is a reference to “similar goods”.
- (3) Goods produced by a different person must be taken into account only where there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued.
- Deductive value** (7) **Deductive value**

(1) Subject to section [13(4)], if the customs value of imported goods cannot be determined under section [15, 16, or 17], the customs value is the deductive value of the goods.

(2) If –

- (a) the imported goods, or identical or similar goods are sold in Tonga at the same or substantially the same time as the time of importation of the imported goods;
- (b) the goods were sold in Tonga in the same condition in which they were imported;
- (c) the sale was made at the first trade level after importation; and
- (d) the Commissioner is satisfied that the purchaser in the sale was not related to the importer and did not incur any costs referred to in section 15(2)(h) in relation to the goods sold,

the deductive value of the imported goods is the unit price of the imported goods, or identical or similar goods, as the case may be, at which the greatest number of the goods are sold, at the earlier state of importation, reduced by the following amounts determined on a per unit basis –

- (i) the amount of any commission;
- (ii) an amount for profit and general expenses, including all costs of marketing the goods based on sales in Tonga of goods of the same class or kind as the goods sold;
- (iii) the cost of transportation of the goods in Tonga (including loading, unloading, handling and other expenses associated with transportation) and insurance in relation to such transportation to the extent not deducted under paragraph (ii); and
- (iv) any amount referred to in section [15(3)(c)].

(3) If –

- (a) the imported goods, or identical or similar goods

are not sold at the same or substantially the same time as the time of importation but are sold within 90 days after the time of importation; and

(b) subsections (2)(b) to (d) are satisfied,

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

(4) If –

(a) the imported goods, or identical or similar goods are not sold in Tonga at the time of importation or within ninety days after that time;

(b) the goods are sold in Tonga, after being assembled, packaged, or further processed, within 90 days after the time of importation; and

(c) subsections (2)(b) to (d) are satisfied,

the deductive value of the imported goods is determined, at the request of the importer, in accordance with subsection (2) by reference to such sale and making a reduction on a per unit basis for the value added attributable to the assembly, packaging or further processing in Tonga.

(5) Subsection (4) will not apply if the Commissioner has insufficient information to determine the amount of the reduction for the value added attributable to the assembly, packaging or further processing in Tonga.

Computed value

(8) Computed value

(1) If the customs value of imported goods cannot be determined under section [15, 16, 17, or 18], the customs value is the computed value of the goods.

(2) The computed value of imported goods is the sum of the following amounts –

(a) the cost or value of materials used in producing the goods;

(b) the cost of manufacture or processing to produce the goods;

- (c) any costs referred to in subsections [15](2)(c), (f) and (g);
- (d) the value of any goods or services referred to in section [15](2)(h); and
- (e) an amount for profit and general expenses equal to that generally applicable in sales of goods of the same class or kind as the imported goods, which are made by producers in the country of exportation.

Fall back method

(9) Fall back method of valuation

- (1) If the customs value of imported goods cannot be determined under the preceding sections, the value must be determined by the Commissioner having regard to the methods for valuation specified in this Part and to any other information available to the Commissioner but not including any of the following matters -
 - (a) the selling price in Tonga of goods produced in Tonga;
 - (b) any system that provides for the acceptance for valuation purposes of the higher of two alternative values;
 - (c) the selling price of goods on the domestic market of the country of exportation of the imported goods;
 - (d) the cost of production, other than computed values which have been determined for identical or similar goods in accordance with section [19];
 - (e) the price of the goods for export to a country other than Tonga;
 - (f) a system of minimum customs values; or
 - (g) arbitrary or fictitious values.

Advice to importer

(10) Importer advised of method of computation

- (1) The Commissioner, upon written request, will advise the importer, by notice in writing, of the method used to determine the customs value of imported goods.

**Currency
conversion**

(11) Conversion of currency

- (1) The customs value must be expressed in a customs declaration in the currency of Tonga.
- (2) Where the conversion of currency is necessary for the determination of the customs value the rate of exchange to be used is the rate published for the country of export by the National Reserve Bank of Tonga on the day of importation of those goods into Tonga.

**Interpretative
notes**

(12) Interpretative notes

- (1) The Interpretative Notes contained within Annex 1 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 may be used to assist with the interpretation of the provisions under this Part and where there is any assistance required in understanding this Part, the interpretation provided by those Notes are to prevail.

of Tonga is responsible for complying with this Part.

**Authorised loading
Procedures**

48. (1) Authorised loading procedures for passengers and cargo are described in Regulations.

**Unauthorised
loading**

(2) The master of any aircraft or ship departing from the Kingdom of Tonga must not allow any loading of goods inconsistent with this Act or the Regulations except when the proper officer may authorise the loading of goods for exportation or for coastal carriage before all the imported goods in that aircraft or ship are discharged, subject to the conditions imposed by that proper officer.

**Export cargo
declaration**

49. (1) The master of a departing aircraft or ship is to provide to the proper officer at the port or place of loading (including a sufferance wharf) and prior to departure from the Kingdom of Tonga, an export cargo declaration in Customs form C [] showing the particulars described in the Regulations.

(2) No aircraft or ship is to depart from the Kingdom of Tonga unless the proper officer has approved in writing the export cargo declaration or unless the Commissioner directs in writing that such a written approval is not in the circumstances necessary.

(3) The Commissioner may impose an export cargo declaration fee in accordance with the Regulations which is payable by the master of the conveyance.

Approved stores

50. Regulations describe the procedures for the loading and unloading of ship's stores onto and from aircraft and ships.

**Boarding of
departing aircraft
or ship**

51. (1) A Customs officer may board any aircraft or ship departing from the Kingdom of Tonga to verify proper compliance with this Act (including the verification of any Customs clearance) and the master of the aircraft or ship is to immediately assist this verification.

(2) The master of a departing aircraft or ship must allow and assist a Customs officer to embark and disembark as requested by that officer.

Detention of ship

52. The proper officer may detain a departing aircraft or ship by not issuing Customs clearance until all expenses, costs,

or charges due in respect of imported or exported goods by that aircraft or ship are acquitted.

PART VIII

EXPORTATION OF GOODS BY AIR AND SEA

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| Export goods declaration | 53. | <p>(1) The owner of goods for export from the Kingdom of Tonga is to provide to the proper officer at the port or place of loading (including a sufferance wharf) prior to the loading of any goods for export –</p> <p>(a) an export goods declaration; and</p> <p>(b) where required, relevant commercial documentation relating to the export.</p> <p>(2) Goods for export are not to be presented for loading or accepted onto an aircraft or ship until Customs has authorised the export goods declaration.</p> <p>(3) The Regulations describe the classes of goods exempt from the requirement for an export goods declaration.</p> <p>(4) Information on the export goods declaration must be factually correct and, if an exporter is unsure about any of the facts presented, this is required to be pre-notified to Customs in writing on Customs form C [].</p> <p>(5) The form of an export goods declaration is described in the Regulations.</p> |
| Payment of export duty | 54. | <p>(1) The owner of goods for export from the Kingdom of Tonga must pay export duty, if any, as required by this Act.</p> <p>(2) The owner of goods for export from the Kingdom of Tonga must self assess export duty payable, if any, and specify that amount of duty to the proper officer on the export goods declaration.</p> |
| Dealing with export goods | 55. | <p>An export goods declaration once approved by the proper officer is authority to deal with those goods in the way</p> |

described in the declaration.

- Short loading** 56. Where goods are not loaded on the aircraft or ship specified in the export goods declaration, the exporter is to notify the proper officer within [twenty four (24)] hours after the departure of the aircraft or ship or within such further time as the proper officer authorises in writing.
- Time of exportation** 57. The time of exportation of any goods is:
- (a) where goods are exported by post, the day of posting;
 - (b) where goods are exported by aircraft or ship, the day that the aircraft or ship leaves that port or place within the Kingdom of Tonga to commence or continue its international voyage.

PASSENGERPART IX

ARRIVAL AND DEPARTURE OF PASSENGERS

- Interpretation** 58. In this Part, unless the context requires otherwise –
- “personal effects” means all articles, whether used or new, which a passenger may reasonably require for personal use on the journey, but not goods for commercial purposes, in commercial quantities, or for sale;
- “passenger “ means any person (but not a crew member) who –
- (a) temporarily enters or leaves the Kingdom of Tonga and does not permanently reside there; or
- (b) leaves (“departing resident”) or returns (“returning resident”) to the Kingdom of Tonga where the passenger normally resides;
- “passenger’s unaccompanied baggage” means baggage arriving before or after the passenger;
- “dual-channel system” is that Customs procedure where arriving and departing passengers are given the opportunity to either declare goods or not for Customs purposes.
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- Customs procedures for passengers** 59. (1) The Regulations describe the Customs offices and hours of operation for the Customs processing of passengers.
- (2) The master of an aircraft or ship arriving in or departing from the Kingdom of Tonga must not allow any person, whether passenger or not, to disembark from or embark onto that aircraft or ship in a way which is inconsistent with any law of the Kingdom of Tonga, including the Customs laws.
- (3) The Customs must use a dual-channel system described in Regulations for the Customs control of passengers and the clearance of goods carried by them.
- (4) Unaccompanied baggage is to be cleared by the proper officer in accordance with the Regulations.

**Passenger's
declaration**

60. (1) A master of an aircraft or ship arriving in the Kingdom of Tonga is to provide to passengers a passenger's declaration described in Regulations for the passenger to complete.
- (2) A passenger is to complete a passenger's declaration and give it to the proper officer before leaving the place of arrival or departure.
- (3) If for any reason a Customs officer is not at the passenger's place of arrival in or departure from the Kingdom of Tonga, that passenger is to arrange for the passenger's declaration to be delivered to Customs or the nearest police station prior to that arrival or departure.
- (4) A passenger arriving in the Kingdom of Tonga by the passenger's own means of transport must, within [24] hours after arrival within the Kingdom directly bring that conveyance to a Customs place as described in Regulations and provide to the proper officer a completed Customs form C [] described in Regulations

Passenger's goods

61. A passenger must provide to the proper officer a completed goods declaration in Customs form C [] for goods contained in accompanied or unaccompanied baggage which are not personal effects.

- Uncertainty** 68. If an owner is obliged to lodge with Customs a postal article declaration and is unsure of any aspect, that fact must be notified on the postal article declaration in the area provided.
- Regulations** 69. The Minister may make Regulations for the purpose of-
- (a) modifying or exempting the application of any Customs enactment to postal articles;
 - (b) ensuring the application of any Customs enactment to postal articles;
 - (c) empowering officers of the Post Office to perform duties for the purposes of any Customs enactment;
 - (d) ensuring compliance with bilateral or multilateral agreements concerning postal articles with the government or postal administrations of other countries;
 - (e) imposing penalties in addition to those within this Act, for importers of postal articles who contravene any Customs enactment; or
 - (f) for any other purposes associated with the government's regulation of the importation, exportation, and Customs clearance of postal articles.

PART XI

PICTA ISSUES & RULES OF ORIGIN

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| Import/export duties | 70. | <p>(1) Goods imported into Tonga and goods for export from Tonga which comply with the PICTA rules of origin are subject to customs duty rates in accordance with the rates specified in the Schedules to this Act.</p> <p>(2). The Minister may from time to time by Order impose Customs duties on PICTA Origin Goods so long as that imposition is not inconsistent with Tonga's obligations under the PICTA or the WTO.</p> <p>(3) PICTA Origin Goods are those goods which comply with the Rules of Origin set out in Article 5 and Annex 1 of the PICTA which are incorporated into Schedule [2] of the Regulations.</p> |
| Drawback | 71. | <p>(1) The Commissioner may refuse to treat goods as PICTA Origin Goods for the purposes of this Part where he is satisfied that those goods benefit in some way from drawbacks allowed by another Member State of the PICTA.</p> <p>(2) Any refusal under this section must be non-discriminatory towards member States.</p> |
| Internal taxes | 72. | <p>The Minister is not to impose any fiscal charges on imported goods of PICTA origin inconsistent with Tonga's obligations under the PICTA or the WTO.</p> |
| Disputes | 73. | <p>Any disputes arising concerning the interpretation, implementation or operation of the PICTA must be settled in a way consistent with Articles 21 and 22 of the PICTA.</p> |

PART XII

TEMPORARY ADMISSIONS

- Conditional entry** 74. Goods imported into the Kingdom of Tonga may qualify for duty-free admission where the proper officer is satisfied that they are goods of a prescribed class or are goods belonging to a prescribed person and that they will be exported from the Kingdom of Tonga within [12] months.
- Regulations** 75. Temporary admission requirements are described in Regulations.
- Non compliance** 76. Where imported goods initially qualify for temporary admission, but later, do not comply (because for example, the importer may have sold them), those goods are then liable for their normal Customs duty which must be paid immediately by the importer or current person in possession.
- Extension of time** 77. The Commissioner has the discretion to approve a written application for extension of the [12] months time limit for temporary admissions where he is satisfied with the reasons provided.
- Security** 78. The Commissioner may at any time require a security to be lodged by the importer for temporary admission goods.
- Goods declaration** 79. The Regulations describe which temporary admission goods require the importer to lodge a Temporary Admission goods declaration.

PART XIII

PROHIBITED IMPORTS AND EXPORTS

Prohibited imports and exports	80.	The Minister may prohibit the importation of goods into the Kingdom of Tonga or the exportation of goods from the Kingdom of Tonga.
Total prohibition – imports	81.	Part [1] of Schedule [X] describes goods which are totally prohibited from importation into the Kingdom of Tonga.
Conditional prohibition – imports	82.	Part [2] of Schedule [X] describes goods which may be conditionally imported into the Kingdom of Tonga and the conditions which apply to those imports.
Total prohibition – exports	83.	Part [3] of Schedule [X] describes goods which are totally prohibited from exportation from the Kingdom of Tonga.
Conditional prohibition – exports	84.	Part [4] of Schedule [X] describes goods which may be conditionally exported from the Kingdom of Tonga and the conditions which apply to those exports.
Addition to schedules	85.	The Minister may by Order delete from, add to, or otherwise vary the goods in the Schedules.
Licences and permits	86.	The relevant government department within the Kingdom of Tonga may issue an import or export licence or permit to an applicant where the Regulations require this as a condition of importation or exportation.
Compliance	87.	Where an applicant receives a licence, permit, or other government approval for importation or exportation of prohibited goods, the applicant is to comply with the conditions imposed.
Offence	88.	Where an applicant does not comply with all of the conditions imposed by a licence, permit, or other approval for the importation or exportation of prohibited goods, the applicant is guilty of an offence and the goods remain prohibited goods and subject to the seizure and forfeiture provisions of this Act.

- (1) loading and unloading coastal aircraft and coastal ships;
- (2) authorised loading and unloading places or coastal aircraft and ships;
- (3) their carriage of passengers, officers and crew; and
- (4) the form of account to be given to the proper officer at the port or place of discharge.
- Master responsible** 92. (1) Where goods under Customs control are accepted for carriage on a coastal aircraft or coastal ship, the master of that aircraft or ship is responsible to Customs for those goods remaining under Customs control.
- (2) The goods referred to in this section are to remain under Customs control until the master obtains written acknowledgement that those goods have been delivered by him to the consignee specified in the application approved by Customs for the removal of those goods from the port or place where they were loaded.
- Cargo declaration** 93. (a) The master of any coastal aircraft or coastal ship carrying goods under Customs control is to give to the proper officer at the port or place of discharge of those goods, and, prior to their unloading, a cargo declaration in a Customs form C [] identifying the particulars of those goods under Customs control;
- (b) The obligation imposed on a master by paragraph (a) may be excused only in special circumstances where, for example, there is no proper officer stationed at the place of discharge or there is some unexpected accident or the like, in which case, the master is to provide in writing on the same day to a police officer at that place a full account of the whereabouts and particulars of those goods physically discharged yet remaining under Customs control for the purposes of this Act.
- (c) Where a police officer is provided with an account in accordance with this section, that person is considered to be an officer of Customs for those goods and must perform whatever duties are necessary for the proper administration of the Act and the Regulations.
- Illegal landing** 94. The master of a coastal aircraft or coastal ship transporting goods under Customs control must not allow

those goods to be landed at a foreign port or at any place or port within the Kingdom of Tonga without prior written approval by the proper officer.

- Customs satisfaction** 95. Unless authorised by this Act, goods under Customs control involved in carriage by a coastal aircraft or coastal ship are not to be released into home consumption at any place within the Kingdom of Tonga until the proper officer is satisfied that all customs requirements are completed.
- Approval to leave** 96. Where goods under Customs control are discharged from a coastal aircraft or coastal ship, that aircraft or ship is not to leave that port or place until the proper officer has provided a Customs clearance on Customs form C [] for that aircraft or ship.
- Personal liability** 97. Owners and masters of coastal aircraft and coastal ships are personally liable for Customs liabilities arising, where those persons are unable to account to the satisfaction of Customs for goods under Customs control accepted by those persons or their delegates for carriage coastwise within the Kingdom of Tonga .

PART XV

CUSTOMS SECURITIES

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| Commissioner's power | 98. | <p>(1) The Commissioner has the power to require and take securities for:</p> <p>(a) compliance with this Act;</p> <p>(b) compliance with any condition or restriction imposed under this Act; and</p> <p>(c) the protection of the revenue through the correct collection of duties of customs.</p> <p>(2) Securities collected under this Part are to be cancelled or returned by Customs promptly after the Commissioner is satisfied that the security is no longer required or desirable for the purpose of this Act.</p> |
| Release | 99. | <p>The proper officer is not to release goods subject to a security from Customs control until the required securities are paid or put in place.</p> |
| Form | 100. | <p>Customs security applications are to be lodged with the Commissioner on Customs form C [].</p> |
| Manner | 101. | <p>The Commissioner may allow a Customs security to be provided by a bond, guarantee, or cash or by a combination of these.</p> |
| Forfeiture | 102. | <p>Where the conditions of a security are not complied with, then that security may be forfeited to the Crown at any time.</p> |

PART XVI

WAREHOUSES AND APPROVED PLACES

- Customs licensed warehouse** 103. (1) (a) A “Customs licensed warehouse” is a place for the storage either by the general public or by nominated persons of dutiable goods while they are under Customs control which is operated on a commercial basis by a private person licensed by Customs.
- (b) A Customs licensed warehouses may be either a public warehouse (where the general public may store goods under Customs control) or a private warehouse (where goods belonging to only nominated persons may be placed under customs control).
- (2) The Commissioner may issue an annual licence to an applicant for a Customs licensed warehouse if he is satisfied that the applicant is a fit and proper person and that the warehouse is sufficiently secure for the storage of goods under Customs control.
- (3) The licensee of a Customs licensed warehouse is obliged to pay an annual licence fee of TOP\$ XXX per year in addition to a Customs security in the amount determined by the Commissioner under Part XV .
- (4) The Commissioner may licence a person to operate a private Customs licensed warehouse subject to the procedures and conditions imposed in the licence.
- Government warehouse** 104. A “government warehouse” is a place specified in writing as such by the Commissioner, where goods under Customs control and goods otherwise detained by Customs may be temporarily stored at the discretion of the proper officer.
- Approved place** 105. An “approved place” is a place which is neither a Customs licensed warehouse nor a government warehouse but is a place where dutiable goods under Customs control may be stored subject to prior written approval by Customs.
- Warehousing procedures** 106. “Warehousing procedures” means the Customs procedures under which dutiable or excisable goods may be stored under Customs control without the prior payment of Customs or excise duty.

Regulations	107.	The Regulations describe the warehousing procedures relating to goods under Customs control.
Government indemnity	108.	The government of the Kingdom of Tonga is not responsible for any loss or damage to goods stored in a government or Customs licensed warehouse unless the damage is due to wilful negligence by Customs.
Assistance to Customs	109.	The licensee of a Customs licensed warehouse or approved place is to provide all necessary assistance to Customs in performing any search, examination or other activity required by this Act.
Facilities	110.	The licensee of a Customs licensed warehouse or approved place is to provide whatever facilities the Commissioner requires at that place (for example, office accommodation, maintenance of proper records, immediate access to records, and proper storage of packages).
Revocation	111.	The Commissioner may revoke a Customs warehouse licence where the licensee does not comply with the conditions of the licence.
Hours of operation	112.	The licensee of any Customs licensed warehouse must obtain prior authorisation from Customs about the hours of operation of that place and is to pre-notify Customs in writing of any variation.
Unauthorised entry	113.	No person is to enter any Customs licensed warehouse or approved place outside of the Customs approved hours of operation without Customs written authorisation.
Records	114.	The licensee or proprietor of any government or Customs licensed warehouse or approved place is to maintain sufficient records and procedures so as to properly account to the satisfaction of the proper officer for goods stored at that place under Customs control.
Availability of records	115.	The licensee or proprietor of any government or Customs licensed warehouse or approved place is to make available to the proper officer immediately on request, the records of any goods under Customs control stored or delivered at that place.
Identification	116.	All goods in any government or Customs licensed warehouse or approved place are to be stored by the licensee so that they may be easily identifiable at any time

		by the proper officer.
Liability	117.	Where the licensee of a government or Customs licensed warehouse or approved place is unable to account to the satisfaction of the proper officer for the whereabouts of any dutiable or excisable goods under Customs control recorded into that place, then the licensee is liable for and must pay to Customs the Customs duty on those goods.
Unauthorised movement	118.	Dutiable goods under Customs control stored in a government or Customs licensed warehouse or approved place must not be moved from that place until the written permission of Customs is provided as described in Regulations and all costs and fees are paid.
Customs auctions	119.	Goods remaining in any Customs licensed warehouse for a period exceeding [2] years which have not been re-warehoused in accordance with this Part, may be sold at public auction by Customs following procedures described in Regulations.
Rate for certain goods	120.	The Customs and excise duty to be paid when goods are subject to fixed rates of duty or tax are to be determined by reference to the measurement of those goods at the time they were placed in the warehouse, unless the Commissioner is satisfied about any variation.
Shortages	121.	Where there is a difference between the quantity or value of goods initially entered for warehousing and the goods entered for home consumption within the territory, Customs or excise duty on that difference are payable by the warehouse licensee unless a suitable explanation has been provided to Customs.
Liability	122.	The owner of goods is liable to self assess and pay any Customs or excise duty when goods are entered for home consumption from any warehouse.
Warehouse goods declaration	123.	The owner of goods is to lodge with the proper officer a goods declaration described in Regulations together with commercial documentation where required, before warehoused goods may be released into home consumption.
Licensee obligation	124.	The licensee of any warehouse or approved place is not to release goods into home consumption unless a Customs clearance described in Regulations is first obtained from the owner by that licensee.

Damaged goods not warehoused	125.	Damaged and pillaged goods or goods in inadequate packages may not be warehoused except as allowed by Regulations.
Officer to record details	126.	Where a declaration for goods to be warehoused is lodged with the proper officer, that officer is to maintain electronically or manually the details of those goods in an official record which will be used by Customs for the purposes of this Act.
Licensee to record details	127.	As soon as goods are presented to the licensee of a warehouse for storage within that warehouse, the licensee is to record electronically or manually the full details of those goods and that record is to be maintained accurately and safely within that warehouse. The proper officer is to verify as soon as practicable that those details are consistent with the details in the Customs official record for those goods.
Licensee to have copy of warehouse entry	128.	Goods are not to be accepted into a Customs licensed warehouse unless the licensee is provided at that time with a copy of the goods declaration for warehousing as described in Regulations.
Removal to another warehouse	129.	Goods deposited in a warehouse or approved place may, with the permission of the proper officer and subject to the conditions in that permission, be removed to another warehouse or approved place and the owner, where possible, is to be promptly notified unless he is already aware of that movement.
Time limit, goods not under Customs control	130.	Goods which are no longer under Customs control are not to remain in any Customs licensed warehouse or approved place more than 14 days after those goods receive Customs clearance.

PART XVII

REFUNDS AND DRAWBACKS

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| Refunds and remissions | 131. | <p>(1) The Commissioner may allow refunds and remissions of any duty or excise tax paid or payable on any goods in the circumstances described in Regulations.</p> <p>(2) Claims for refunds and remissions of duty or tax under this Part are not permitted where the amount claimed is less than [TOP \$100]</p> |
| Calculation and application | 132. | <p>(1) Applications for refund are to be made on Customs form C [] within twelve (12) months of the payment of the duty, tax, or other charges.</p> <p>(2) Where the proper officer is satisfied that a claim for refund arises because of an error by Customs, that application is to receive facilitated processing.</p> |
| Application fee | 133. | Application fees are payable for refunds in the circumstances described in Regulations. |
| Drawback | 134. | <p>(1) The Commissioner may approve the payment of a drawback of Customs duty paid or payable on imported goods in circumstances described in Regulations;</p> <p>(2) No drawback is payable in respect of:</p> <p>(a) goods of a value less than TOP [].</p> <p>(b) goods whose value at the time of the claim for drawback is less than the value of those goods when imported;</p> <p>(c) goods which have been used within the Kingdom of Tonga .</p> |
| Eligibility | 135. | The Minister may describe in Regulations other goods which are not eligible for drawback. |
| Regulations | 136. | The Regulations describe the way to apply for a drawback and the amount of any drawback payable. |
| Commissioner's satisfaction | 137. | (1) No drawback is payable until the Commissioner is satisfied that the goods are exported from the Kingdom of Tonga; |

**Inward
processing**

- (2) Drawback remains payable if goods are exported from the Kingdom of Tonga but the Commissioner is satisfied that those goods are subsequently destroyed or permanently lost on board that exporting conveyance.
138. (1) Regulations describe the Customs requirements for inward processing eligibility, the operations permitted and the time in which the process must be completed within the Kingdom of Tonga.
- (2) Where the Commissioner is satisfied that particular goods imported conditionally free of Customs duty have not satisfied the conditions imposed in the approval, the full duty applicable to that class of goods is immediately payable and those particular goods are, from that time, considered to be under Customs control until that duty is paid.

PART XVIII

CUSTOMS OFFENCES

General	139.	A person conducting himself in one or more ways described in this Part is guilty of the offence described and is liable to penalties set out in Part XXI and, where applicable, the Regulations.
Agreement to permit an offence	140.	Where two or more persons communicate with the intention of engaging in any act which itself is an offence under this Part.
Hindering	141.	Where a person rescues any goods before a seizure or goods which have been seized or before a seizure, breaks or destroys any goods or documents relating to the seizure.
Assault	142.	Where a person assaults, resists, obstructs, hinders, or intimidates a proper officer exercising powers under this Act.
Smuggling	143.	A person who smuggles, unlawfully conveys, or has in his possession any smuggled goods.
Offers for sale	144.	A person who knowingly offers for sale smuggled or unlawfully imported goods whether or not duty was payable on those goods.
Master's liability	145.	The master of an aircraft or ship where: (1) that aircraft or ship is intentionally used or allowed to be used in smuggling; (2) the obligations imposed on that master in Parts III, VII, and XIV are not complied with.
Evasion	146.	A person who evades payment of any duty or tax which is payable.
Unauthorised refund	147.	A person who wilfully obtains any drawback, refund, or remission which is not payable.
Knowing misstatement	148.	A person who knowingly or recklessly makes an incorrect statement to a proper officer exercising powers under this

		Act.
Counterfeits	149.	A person who counterfeits goods, documents, seals, marks and the like for a purpose of avoiding or evading any law of Tonga.
Omitting a fact	150.	A person who knowingly or recklessly or otherwise, omits from a statement made to a proper officer exercising powers under this Act, a relevant fact , if that officer is misled.
Dishonoured cheques	151.	A person who presents a cheque to a proper officer in payment of a Customs liability, which is not honoured by the bank, unless the failure to honour the cheque is due to error on the part of the bank.
Misstatement	152.	A person who makes any written declaration to a proper officer which is factually incorrect (regardless of intention) unless that person satisfies the Commissioner that the inaccuracy was inadvertent and the duty involved is less thanTOP [\$25].
Unauthorised entry	153.	An unauthorised person who enters into a place where passengers from an aircraft or ship are disembarking.
Failure to answer	154.	A person who fails to answer a reasonable question from a proper officer exercising powers under this act.
Failure to produce	155.	A person who fails to promptly produce a document or record required for the purposes of this Act.
Lawful commands	156.	A person having control of an aircraft or ship which is liable to seizure or examination by a proper officer who does not obey an instruction from a proper officer.
Firearms and weapons	157.	A person who commits any Customs offence and is at the time of such involvement in possession of firearms, ammunition, or other weapons.
Removal or damage	158.	A person who removes, hinders, alters or damages anything used by a proper officer exercising powers under this Act.
Concealment	159.	A person concealing dutiable or excisable goods or prohibited imports or exports.
Prohibited imports/exports	160.	A person who imports or exports or causes to be imported or exported any prohibited imports or exports.

Customs brokers	161.	(1) A person holding himself out as a Customs broker where he is unlicensed to do so. (2) A Customs broker who does not immediately pay Customs duty to the Commissioner where there is a contractual or legal obligation on him to do. (3) A Customs broker who aids, abets, advises or assists in any way an importer or exporter to commit an offence under this Act or the Regulations.
Tariff classification and valuation	162.	A person who misrepresents the tariff classification or value of goods to a proper officer.
Unauthorised money, goods, or services	163.	A Customs officer who requests or accepts directly or indirectly any unauthorised money, goods, or services (or attempts or agrees to do so): (a) in exchange for that officer performing any Customs services; (b) in exchange for the non-performance of that officer's official duties; or (c) otherwise in connection with the officer's official duties.
Unauthorised production	164.	A manufacturer or producer of excisable goods who is not licensed by the Commissioner to manufacture or produce those goods.
False records	165.	A manufacturer or producer of excisable goods who has quantities of those goods in excess of the quantities recorded in the books of account without a reasonable explanation.
Failure to make declaration	166.	A person who fails to make a declaration required by the Customs laws.
Unauthorised interference	167.	A person who interferes with goods or conveyances which are being or have been examined, searched, secured, held, marked, sealed and the like by a proper officer.
Impersonation	168.	A person impersonating the Commissioner or any Customs officer for the purpose of obtaining directly or indirectly some benefit.

Aid; abet; procure	169.	A person who aids, abets, or procures directly or indirectly in any way a Customs offence.
Failure to account	170.	A person who fails to account, when obliged to do so, for goods under Customs control (including ship stores and conveyances).
Failure to deal	171.	A person who fails to deal with goods in accordance with a Customs declaration or approved Customs form or authorisation.
Unauthorised movement	172.	(1) A person involved with any unauthorised movement, alteration or interference with goods or conveyances which are subject to Customs control.
Master's compliance	173.	(a) A master of an aircraft or ship in the territory of the Kingdom of Tonga , who fails to comply with an instruction made by a proper officer under this Act. (b) Persons guilty of this offence are in addition, personally liable for the costs incurred by the government of the Kingdom of Tonga (if any) in rectifying the consequences of that Act.
Use or possession of firearms	174.	A person who uses or attempts to use firearms, offensive weapons, ammunition or other weapons in any way to prevent, deter or hinder a proper officer in the exercise of that officer's duties.
Enter Customs control area	175.	An unauthorised person entering a place where there are goods under Customs control.
Sufferance place	176.	A person loading or unloading or responsible for loading or unloading goods at a sufferance place in a way not authorised by this Act or Regulations.
Proprietor – transit shed	177.	(1) A proprietor of a transit shed who cannot account for goods under Customs control to the satisfaction of the proper officer. (2) A person who is employed for security purposes at any place where goods are stored under Customs control who permits goods under Customs control to be delivered into home consumption without proper written authorisation.
Finding and possession	178.	(1) A person who has in his possession prohibited or smuggled goods or goods under Customs control which

		have been found at sea or on land, unless the finding is reported to Customs or the police within 24 hours.
Threats	179.	A person threatening or abusing a proper officer so as to intimidate or deter that officer carrying out duties under this Act.
Disembarkation or boarding	180.	An unauthorised person disembarking from or who boards an aircraft or ship in the Kingdom of Tonga where the procedures described in Regulations are not followed.
Unauthorised loading and unloading	181.	The master of an aircraft or ship who allows any unauthorised loading or unloading of goods onto or from that aircraft or ship.
Unauthorised movement of aircraft or ship	182.	The master of an aircraft or ship who moves that aircraft or ship without the authority of the proper officer.
Bribery	183.	A person who offers or attempts to offer any inducement directly or indirectly to a person so that the Commissioner or any other Customs officer may be influenced in the exercise of his duties.
Impeding a Customs officer	184.	A person who impedes or attempts to impede a Customs officer in the exercise of his duty or rescues or attempts to rescue a person, thereby impeding a Customs officer in the exercise of his duty.
Attempt an offence	185.	A person who attempts any of the offences under this Part.
Forfeiture of goods	186.	A person who performs any act whereby goods (including conveyances) are forfeited.
Owners of aircraft and ships	187.	An owner of an aircraft or ship who does not appoint an agent to represent that owner in accordance with the requirements of Part XXVII .
Warehouse licensees duties	188.	A Customs warehouse licensee who does not comply with his obligations imposed by Part XVI .
Breach of confidentiality	189	A Customs officer who: (a) provides confidential information to another person; or (b) allows confidential information to be provided to another person; unless the transfer of that confidential information is

authorised by this Act or some other law of the Kingdom of Tonga.

		accommodation and food.
Patrol and pass	194.	Any Customs officer when exercising powers under this Act may patrol and pass freely over any part of the territory of the Kingdom of Tonga including the coast and the airport.
Customs mooring	195.	Any Customs officer in charge of a Customs vessel may take that vessel to or moor that vessel at any place in the Kingdom of Tonga for the purposes of this Act.
Answer questions (Customs control)	196.	A Customs officer may question any person connected directly or indirectly with goods under Customs control and that person must answer those questions.
Answer questions (smuggling)	197.	A Customs officer may question any person connected directly or indirectly with goods suspected of being smuggled and that person must answer those questions.
Detain	198.	Where a person refuses to answer questions about goods under Customs control or reasonably suspected of being smuggled, the officer may detain that person for the purposes of establishing identity and if necessary convey that person to the nearest police station.
Search conveyances	199.	A Customs officer may, without a warrant, stop and search any conveyance or goods within it to establish that there has been proper compliance with the Customs laws.
Unload goods	200.	A Customs officer may order the master of any aircraft or ship which has been detained, to unload goods suspected of being smuggled or under Customs control at a place for further examination.
Warrants	201.	A magistrate [the Commissioner] may issue the proper officer a warrant to enter domestic or commercial premises where the Commissioner has grounds to believe that there has been a Customs offence or that the particular premises are likely to contain information which will assist Customs in administering this Act.
Regulations	202.	The Regulations describe the matters to be included in a warrant.
Expiry	203.	A warrant expires seven days after it is issued.
Court order	204.	Where necessary, Customs may apply for a court order to compel a person to assist Customs to understand information stored in electronic format.

Searching persons	205.	<p>(1) A proper officer may search persons where the proper officer considers it necessary for the purposes of this Act and where those searches are conducted, a Customs or police officer of the same gender is to conduct that search.</p> <p>(2) Where a proper officer has grounds to believe that a full body search and/or cavity search of a person is necessary for the purposes of this Act that search is to be conducted by a [registered medical officer.]</p>
Arrest	206.	<p>An officer of Customs or police may, without warrant, arrest any person where there are grounds to believe that person is involved in smuggling and that person is to be taken to the nearest police station.</p>
Assault	207.	<p>An officer of Customs or police may, without warrant, arrest any person where that person is involved in assault against a Customs officer exercising duties under this Act.</p>
Documents	208.	<p>A proper officer may impound or retain any document presented in connection with a declaration produced under this Act.</p>
Foreign language	209.	<p>If a document is presented to a proper officer in a foreign language, Customs may require a translation of that document at the owner's expense.</p>
Abandoned goods and conveyances	210.	<p>(1) Where goods or conveyances under Customs control are abandoned by the owner or master, the Commissioner may seize those conveyances or goods and, where he is satisfied with the particular circumstances of abandonment, dispose of them.</p> <p>(2) Where the Commissioner disposes of conveyances or goods in accordance with this section, then the proceeds if any are to be paid to consolidated revenue.</p>
Detain and search	211.	<p>Where a Customs officer suspects that a person is carrying smuggled goods, Customs may detain and search that person and that person must answer any questions asked by the proper officer concerning that inquiry.</p>
Power of arrest	212.	<p>A Customs officer may arrest any person without a warrant where the Customs officer suspects that the person has committed or is about to commit an offence against this Act and that person is to be taken immediately to the nearest police station.</p>

Produce documents	213.	A Customs officer may request a person to produce documents in connection with imported goods or excisable goods within five years of the importation or manufacture of those goods and that person must immediately produce those documents.
Masters and owners to answer questions	214.	<p>A Customs officer may:</p> <p>(1) question any master or owner of an aircraft or ship within the Kingdom of Tonga about the conveyance or goods carried on that conveyance;</p> <p>(2) request a master or owner of an aircraft or ship within the Kingdom of Tonga to produce any documents (including the Customs clearance) in connection with a conveyance or goods carried on that conveyance; and that master or his senior officer, if requested, is to attend before the proper officer and answer those questions; or</p> <p>(3) detain and arrest the master if the proper officer is satisfied that the conveyance is carrying goods contrary to this Act or the Regulations.</p>
Answer questions	215.	A Customs officer may question any person about dutiable goods where that officer believes that incorrect duty has been or will be collected and that person is to answer those questions.
Unauthorised departure	216.	Where a Customs officer believes that an aircraft or ship intends or is likely to depart for a destination outside the Kingdom of Tonga without Customs authorisation and without a proper explanation (for example, bad weather) the officer may take such steps as he considers necessary to prevent that departure.
General power to search airport and other places	217.	A Customs officer has the general power of access to and searching any part of a port, approved wharf, airport, or any other customs area and any vehicle or goods found at that place, including the power to break into or open any building, vehicle, place, or container which is locked and where the keys are not provided.
Compliance Powers	218.	<p>(1) A Customs officer may enter premises with the consent of the occupier and exercise compliance powers to verify whether a person is complying with this Act.</p> <p>(2) A Customs officer is to provide prior notice to an occupier of the premises before entering premises with consent.</p>

(3) A Customs officer entering premises or exercising any compliance powers must produce an identity card to the occupier.

(4) A Customs officer performing compliance audits is to follow procedures described in the Guide.

PART XX

SEIZURE AND FORFEITURE

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| Conveyances
forfeited | 219. | <p>The following ships and aircraft are liable to forfeiture to the Government:</p> <ul style="list-style-type: none">(1) an aircraft or ship used in smuggling or knowingly used in unlawful importation, exportation, or conveyance of any prohibited imports or prohibited exports;(2) an aircraft or ship where the master has refused to allow that aircraft or ship to be boarded by Customs;(3) an aircraft or ship from which goods are thrown overboard or destroyed to prevent seizure by Customs;(4) an aircraft or ship which is found to be concealing or fitted in any way for the purpose of concealing goods from Customs;(5) an aircraft or ship where the Commissioner is satisfied that the master cannot account for goods imported on that aircraft or ship;(6) an abandoned aircraft or ship. |
| Goods forfeited | 220. | <p>The following goods are liable to forfeiture to the Government:</p> <ul style="list-style-type: none">(1) goods which a Customs officer suspects are smuggled or unlawfully imported, exported, or conveyed;(2) prohibited imports or exports;(3) imported goods which have not obtained an approved licence or permission;(4) goods imported or exported in an aircraft or ship in which goods are prohibited to be imported or exported.(5) bulk goods where the bulk is broken without authorisation;(6) goods under the control of Customs that have been moved, altered, or interfered with, without authorisation; |

- (7) goods which are required by this Act to be dealt with in a particular way and are not dealt with in that way;
- (8) any other conveyance, goods, or animal used in smuggling or in the unlawful importation, exportation, or conveyance of any goods;
- (9) goods (but not passengers' baggage) found on any aircraft or ship after clearance which are not included on the cargo declaration and are not accounted for to the satisfaction of Customs;
- (10) prohibited exports put on any aircraft or ship for export or brought to any airport, wharf, or place for the purpose of export;
- (11) dutiable goods concealed, misdescribed, or misrepresented to Customs in any manner;
- (12) packages which have goods concealed which are not declared or are packed so as to deceive Customs;
- (13) dutiable goods found in the possession of or in the baggage of a person who has landed from or gone onboard an aircraft or ship where that person has denied that there are any dutiable goods in his possession, or who when questioned by an officer has not fully disclosed that such goods are in his possession or baggage;
- (14) dutiable unaccompanied goods imported by a person where the person has denied that there are any dutiable goods or after having been questioned by an officer has not fully disclosed that there are such goods;
- (15) goods offered for sale in the Kingdom of Tonga where the seller directly or indirectly states that the goods are prohibited or smuggled;
- (16) ship's stores which do not comply with the requirements described in the Act or Regulations;
- (17) goods or ship's stores which are loaded on board an aircraft or ship without an export goods declaration lodged with Customs in accordance with this Act;
- (18) goods and conveyances, in connection with the coasting trade, which do not comply with the requirements of this Act ;

(19) any imported or exported goods in connection with a Customs offence listed in Part VIII .

(20) goods under Customs control which are unable to be produced to Customs or otherwise accounted for where required.

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| Customs or police may seize | 221. | <p>(1) Where a proper officer has reasonable grounds to believe that goods are forfeited goods, either the proper officer (or a police officer) may seize those goods without a warrant.</p> <p>(2) Where a police officer seizes goods believed to be forfeited, written notification providing full details of those goods is to be provided to the Commissioner within 48 hours and the goods are to be made available for examination and analysis (where required) by Customs.</p> |
| Seizure notice | 222. | <p>A seizure notice in a form described in the Regulations must be given by Customs to the owner of seized goods or conveyances or if that person cannot be identified the person from whom the goods were seized, within [7] days after a seizure has taken place.</p> |
| Secure place | 223. | <p>Seized goods or conveyances are to be taken immediately by the proper officer to a Customs warehouse or other secure place and may be sealed and secured to ensure that those goods or conveyances remain under Customs control.</p> |
| Request for return | 224. | <p>The owner of seized goods or conveyances may request from Customs the return of those goods or conveyances seized within the time limits and on the form described in Regulations.</p> |
| Condemnation | 225. | <p>Where 30 days from the time of issue of the seizure notice there has been no request to the Commissioner by the owner for the return of seized goods, those goods are condemned as forfeited to the Crown and may be disposed of by the Commissioner following procedures described in the Regulations.</p> |
| Referral to court | 226. | <p>(1) Where the owner of seized goods believed by Customs to be forfeited, makes an application to the Commissioner for the return of those goods within 30 days, then the Commissioner may commence proceedings in court for any offence and seek an order for the condemnation of those goods.</p> |

(2) Where the prosecution in any proceedings requests an order for condemnation of goods in accordance with this Part, the court may grant the order.

Title	227.	Where goods are condemned as forfeited to the Crown then the title in those goods transfers absolutely to the Crown so extinguishing all other persons' rights to those goods.
Disposal	228.	Where goods are condemned, they may be disposed of as the Commissioner directs in accordance with the Regulations and after consideration has been given to the circumstances of each case.
Release to owner	229.	The Commissioner may allow, on application, goods or conveyances: (a) suspected of being forfeited; (b) forfeited; or, (c) condemned to be released back to the owner on payment of the outstanding duty (if any) and: (d) any other amount of penalty nominated by the court; or (e) an amount equivalent to a penalty nominated by the Commissioner.
Customs indemnity	230.	No proceedings may be commenced against the Commissioner or any other Customs officer in respect of a lawful decision made under this Part.

PART XXI

CUSTOMS PENALTIES

- Customs offences** 231. An offence against this Act or the Regulations may be a criminal, civil, or administrative offence depending on the categories of offences described in this Part.
- Criminal offences** 232. Offences described in the following sub-sections are criminal offences and the court may impose, on successful prosecution, a jail term of up to [two] years and/or a fine of up to TOP [**\$50,000**]:
- (1) section...
 - (2) section...
 - (3) section...
 - (4) section...
- (the sections to this provision and those below are to be completed following discussions with the Crown Law Office. Regard should be had to the existing Customs law, the consumption tax and income-tax legislation to ensure uniformity. However further regard should be had to the unusual circumstances of Customs work - see for example the provisions concerning offences relating to violence to Customs offices who board ships and are isolated from an office environment)**
- Civil offences** 233. Offences described in the following sub-sections are civil offences and the court may impose, on successful prosecution, fines up to the amounts specified against each sub-section below:
- (1) section...
 - (2) section...
 - (3) section...
 - (4) section
- Administrative penalties** 234. Offences against the following sub-sections, although

civil offences, may be dealt with by the Commissioner by imposing a monetary penalty on the guilty person without recourse to a court or tribunal:

- (1) section.....
- (2) section.....
- (3) section.....
- (4) section....

Unpaid administrative penalty	235.	Where an administrative penalty imposed by this Act remains outstanding for more than 28 days, that matter may then be prosecuted by the Commissioner as a normal civil offence.
Amount of administrative penalty	236.	The amount payable to the Commissioner for an administrative penalty is to be determined by the Commissioner having regard to the circumstances of each case but the amount is not to exceed 200% of any duties or taxes short-paid.
Policy	237.	The Commissioner is to issue public guidelines on how administrative penalties are applied.
Strict liability offences	238.	Offences against the following sub-sections are committed by a person if that person physically performs the act. That is, there is no mental element required to prove the offence: <ol style="list-style-type: none">(1) section....(2) section....(3) section...(4) section...
General penalty	239.	Where there is no specific penalty allocated to an offence against this Act then the penalty for that offence is an amount of TOP [XXXXX]

PART XXII

LEGAL PROCEEDINGS

- Repayment of underpayment** 240. Where the Commissioner is satisfied that the correct amount of Customs or excise duty has not been paid or an amount of refund or drawback has been incorrectly paid, the importer or manufacturer must pay immediately the amount demanded in writing by the Commissioner.
- Retrospectivity** 241. The Commissioner has the power to make demands under this Part for [four] years from the date that the duty or tax was payable.
- Recovery of duty** 242. (1) Duties of Customs constitute Crown debts and may be recovered under the Tongan civil procedures for the recovery of taxes.
- (2) Late payment interest on amounts referred to in paragraph (1) is due under the same rules as for late payment interest on taxes.
- Payment under protest** 243. Where there is a dispute about the rate or amount of any Customs or excise duty payable, a person may pay the disputed amount under protest and such payment will not incur a penalty.
- Recovery action** 244. Where a disputed amount is paid under this Part under protest, the person who paid that amount may:
- (a) request in writing the Commissioner to reconsider the amount of duty demanded based on further information not available at the time of the assessment, in which case the Commissioner is to provide a written response within 28 days of that request; or
- (b) commence proceedings in the Tribunal or [XXXX court] for the recovery of the amount paid within three months from the date of payment.
- Procedures** 245. Regulations set out the forms to be used by importers and manufacturers of excisable goods to pay amounts in dispute under protest.

Repayment of overpayment	246.	Where as a result of a court or Tribunal decision, there has been an overpayment of Customs or excise duty, the Commissioner is to repay that amount together with any interest ordered by the court or Tribunal.
[Magistrate's] Court	247.	Any provision of this Act requiring recovery or enforcement (for example, the seizure and forfeiture provisions) may be brought summarily before a [Magistrate's]court.
Imprisonment	248.	Where any court convicts a person of an offence under this Act and imposes a penalty for that offence, the court may impose a term of imprisonment not exceeding [five (5)] years if: (a) the pecuniary penalty is not paid within the due time; or (b) the person convicted has been convicted of a Customs offence within the previous [1]year.
Limitation	249.	Proceedings under this Act may be commenced only within five (5) years after the date of the offence.
Condemnation	250.	Where the true owners of goods cannot be confirmed by the court in proceedings referred to in the preceding section then those goods are to be condemned.
Indemnity	251.	Customs officers performing their lawful duty are not liable to civil proceedings.
Smuggling prosecutions	252.	In prosecutions for smuggling, proof that the proper duty has been paid or the goods have been lawfully imported, delivered or exported or the like, is the responsibility of the defendant.
Averment	253.	In any Customs prosecution or proceeding, the averment of the prosecutor contained in the information, complaint, declaration, or claim is prima facie evidence of the matter or matters averred.
Commissioner may sell	254.	Where a pecuniary penalty is imposed on a person and remains unpaid, the Commissioner may sell any goods belonging to that person which may then or later be subject to Customs control, and recover the amount of that penalty from that sale.
Body corporate	255.	Where in a Customs prosecution it is necessary to establish the state of mind of a body corporate, it is

		sufficient to show that a director, servant, or agent of the body corporate who performed the conduct in the scope of his authority had that state of mind.
Manufacture for sale	256.	Excisable goods manufactured in the Kingdom of Tonga are to be taken to be goods manufactured for sale unless the contrary is proved.
Excisable goods found	257.	Excisable goods found in a place will be taken to have been manufactured in that place unless the contrary is proved.
Spirits found	258.	Where spirits are found on premises where there is an unlicensed still, those spirits will be taken to have been distilled by the occupier of those premises unless the contrary is proved.
Criminal burden of proof	259.	Where a criminal offence under this Act is prosecuted, the burden of proof obligations and the usual practice and procedure of the court in criminal matters apply.
Civil burden of proof	260.	Where a civil offence under this Act is prosecuted, the burden of proof obligations and the usual practice and procedure of the court in civil matters apply.
Two or more persons liable	261.	Where two or more persons are convicted of a Customs offence, each of those persons is liable for the full amount of any fine imposed by way of penalty.

PART XXIII

RETENTION OF COMMERCIAL DOCUMENTATION

Commercial documentation	262.	“Commercial documentation,” in relation to goods, means any document prepared in the ordinary course of business for the purposes of a commercial transaction involving the goods or the carriage of the goods, including related banking documentation, Customs declarations, commercial invoices, packing lists, bills of lading, airway bills, bills of material, manufacturing costs, correspondence, and records concerning the transaction, whether in hard copy or electronic format.
Retention time	263.	A person involved directly or indirectly in the importation or exportation of goods or the manufacture of excisable goods (including the financing of those goods) is required to maintain the relevant commercial documentation relating to that importation, manufacture or exportation for a period of five (5) years from the date of the liability of those goods to Customs or excise duty.
Production	264.	The proper officer may request, in writing, a person to produce commercial documentation relating to imported or exported goods and the original or a certified copy of that document must be immediately provided.
Certified copy of soft copy	265.	Where commercial documentation is maintained in soft copy then a certified hard copy of that documentation is to be provided.
Availability	266.	Commercial documentation which is required by this Act is to be made available, on request by the proper officer, within twenty four (24) hours of that request.
Certified copies	267.	Certified copies of commercial documentation are required to be retained by a person who must provide for any purposes the original documents to another government department or person.
Court proceedings	268.	Regardless of the other subsections to this Part, an owner of imported or exported goods is required to produce all associated commercial documentation where a Court is satisfied that the owner could reasonably anticipate that court proceedings have been or will be commenced in respect of those goods.

PART XXIV

TARIFF CONCESSIONS

Duty – Free 269. Goods described in Regulations are duty free under the
Tariff Concessions provisions of this Act.

PART XXV

CUSTOMS BROKERS

Customs broker definition	270.	“Customs broker ” means a representative of an importer, exporter, overseas exporter, or local manufacturer of excisable goods who contractually attends to the required Customs formalities on behalf of that person.
Commissioner’s discretion	271.	Subject to this Part, the Commissioner may allow a Customs broker to represent an owner of goods for the purposes of this Act.
Annual licence	272.	A person must be licensed by the Commissioner before acting as a Customs broker and that licence is renewable annually at the discretion of the Commissioner.
Qualifications	273.	A Customs broker must be qualified before the Commissioner grants a licence.
Regulations	274.	The qualification requirements for a Customs broker are described in the Regulations.
Owner authorisation	275.	An owner of goods is required to provide a written authorisation in the form described in the Regulations before a Customs broker may represent that owner.
Misrepresentation	276.	A person must not misrepresent that he is a licensed Customs broker.
Written authorisation	277.	Where a person claims to be a Customs broker for an owner, Customs may request written authorisation of that appointment and refuse to deal with that person if that written authorisation is not produced.
Deeming	278.	Where a Customs broker makes a declaration to Customs which is required by this Act on behalf of an owner, that declaration must be treated by Customs as if it were made by the owner.
Penalties	279.	Where a Customs broker makes a declaration to Customs, the agent is taken to be the owner of the goods (and is liable to the same penalties as the actual owner).
Security	280.	The Commissioner may require a licensed Customs

PART XXVI

ADMINISTRATION

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| General administration | 284. | The Commissioner is responsible for the general management and administration of this Act and for any other matter conferred on him by any other enactment. |
| Import licensing | 285 | <p>(1) The Minister may introduce a sectoral import licensing program (not inconsistent with WTO obligations) where it is considered necessary to achieve immediate major social and revenue goals within the Kingdom of Tonga.</p> <p>(2) Any import licensing program introduced under this section must apply only to sensitive goods.</p> <p>(3) Where an import licensing program is introduced under this Section the details are to be described in Regulations.</p> |
| Delegation | 286. | The Commissioner may delegate to any Customs officer any power or duty imposed on him by this Act or any other law of the Kingdom of Tonga, but not this power of delegation. |
| Commissioner | 287. | Where a delegated power or duty is exercised by the delegate, that activity shall be interpreted as being exercised by the Commissioner. |
| Appointment of ports etc | 288. | <p>(1) The Commissioner may by notice published in the Gazette, appoint, name, and fix the limits of ports, airports, wharves, sufferance wharves, or boarding stations for the purposes of this Act (referred to as “Customs places”).</p> <p>(2) The Commissioner may by notice published in the Gazette, revoke or vary any notice published under subsection (1) or any such appointment made prior to the commencement of this Act.</p> <p>(3) The Commissioner may in unusual circumstances and at his discretion, approve or revoke in writing, places for the loading or unloading of goods and the embarkation or disembarkation of passengers.</p> <p>(4) Appointments made by the Commissioner under</p> |

subsections (1) and (3) may be for the limited purpose specified in the notice or in writing.

(5) The Commissioner may at his discretion, approve or revoke in writing, any place within the Kingdom of Tonga for the storage, examination, or security of goods under Customs control.

Indemnity	289.	No judicial proceedings may be commenced against any person performing lawful duties under this Act in respect of such duties.
Confidentiality	290.	No person exercising powers under this Act is to communicate to any unauthorised person, directly or indirectly, any information or document obtained in the administration of this Act or any other law of the Kingdom of Tonga.
Powers of police	291.	Members of the Tonga Police Force have the same powers, authority and privileges as Customs officers when performing duties in accordance with this Act.
Police to assist	292.	Where requested, Police officers must assist Customs officers in the exercise of their duties.
Days of operation	293.	Customs offices will be open from Monday to Friday but not on weekends or public holidays unless a person has made prior written arrangements in accordance with the Regulations with the proper officer responsible for that Customs office.
Hours of operation	294.	Unless prior written arrangements are made with the proper officer, the hours of operation for Customs offices are between 8.30am and 4:30pm.
Location of Customs offices	295.	The locations of Customs offices are described in the Regulations.
Payable to Crown	296.	All money collected by Customs is payable to the consolidated revenue of the Kingdom of Tonga.
Licensing of coastal aircraft and ships	297.	The Commissioner may license coastal aircraft and coastal ships to carry goods under Customs control subject to any security imposed and the conditions imposed in the licence.

PART XXVII

MISCELLANEOUS

Compatibility of systems	298.	A person may provide a declaration to Customs under this Act in an electronic format only if the person is first registered with Customs to ensure compatibility of systems.
Electronic communication	299.	The Regulations describe how a person may register with Customs for electronic communication of declarations.
Agreement	300.	Persons registering to communicate with Customs electronically are required to enter an agreement with the Commissioner setting out the terms and conditions of that arrangement.
Commissioner authorised	301.	The Commissioner is authorised to make lawful decisions to deal with circumstances arising from the administration of this Act which are not specifically covered by this Act.
Compensation	302.	The Minister may decide not to proceed with a matter to court but instead accept on behalf of the Government a compensatory payment from any person reasonably suspected of the contravention of this Act so long as the affected person agrees in writing.
Forms	303.	(1) Where required, the Commissioner may specify in Regulations what forms must be used for the purposes of the Customs laws. (2) Where forms are described in Regulations those forms must be used.
Regulations	304.	(1) The Minister may make Regulations prescribing: (a) matters required or permitted by this Act to be prescribed by Regulations; or (b) any matters necessary or convenient to be prescribed for carrying out, better understanding or giving effect to this Act (regardless of whether that matter is required or permitted by this Act to be prescribed by the Regulations). (2) Regulations made under subsection (1) may provide for forfeiture of goods and the imposition of a fine of an

- amount not exceeding [TOP\$ XX] for contraventions of or failure to comply with any Regulations.
- Detention notice** 305. Where the Commissioner is satisfied that an aircraft or ship should be detained at a boarding station, a detention notice in writing is to be provided to the master detaining that conveyance until written permission to depart is provided.
- Translations** 306. A person producing any document to Customs in a language which is not the official language spoken in the Kingdom of Tonga must, if requested, provide a translation of that document to the satisfaction of Customs at his own expense.
- Official receipts** 307. The Commissioner must provide an official receipt for any money collected by him or his delegates and is to be in the form of an endorsed or receipted copy of the prescribed Customs form submitted by the person with the payment.
- Legal tender** 308. Monies paid to Customs to acquit Customs liabilities are to be in legal tender for the Kingdom of Tonga.
- Agents** 309. (a) Owners of aircraft and ships must appoint representatives within the Kingdom of Tonga where the masters of those aircraft and ships are obliged to comply with Customs laws, formalities, or procedures; and
- (b) Owners of aircraft and ships must ensure either personally or through their appointed agents that all Customs enactments are complied with and any other Customs formalities and requirements required by this Act or the Regulations are completed to the satisfaction of the Commissioner.
- Ship's stores** 310. Ship's stores are only those goods for consumption or use by the aircraft or ship, its officers, crew, and passengers and any goods (excluding passenger's baggage) not so required, are, for the purposes of this Act, the cargo of that aircraft or ship.
- Repeal provisions** 311. (1) The Customs and Excise Act CAP 67 is hereby repealed.
- (2) With respect to the Customs and Excise Act CAP 67 and any other enactment now repealed, the following provisions apply –

(a) all offices, appointments, Customs duties and taxes proclamations, rules, Regulations, by-laws, orders, warrants, seals, certificates, books, records, instruments, documents, proceedings and generally all acts of authority which originated under that Act or any other enactments, or any law now repealed must continue for the purposes of this Act as fully and effectually as if they had originated under this Act;

(b) where under any repealed law any act, matter or thing is authorised to be done, that act, matter or thing may be done under this Act unless this is inconsistent with the express provisions of this Act.

(c) where in any enactment, or in any proclamation, rule, Regulation, by law, order, form or document made under any enactment now repealed, reference is made to any Customs enactment or to the Customs and Excise Act or any Customs law that reference must be read and operate as if it had been made to this Act or the corresponding provisions of this Act.