

CUSTOMS ACT 1966

1966/19 – 1 January 1967

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**To consolidate and amend certain enactments relating to customs and excise
and to the importation and exportation of goods**

1 Short title

This is the Customs Act 1966.

2 Interpretation

(1) In this Act –

“aerodrome” means any defined area of land or water intended or designed to be used either wholly or partly for the landing, departure, movement, and servicing of aircraft; and includes any buildings, installations, and equipment on or adjacent to any such area used in connection with the aerodrome or its administration;

“aircraft” means any machine that can derive support in the atmosphere from the reaction of the air;

“boat” means any vessel other than a ship;

“bulk cargo container” means an article of transport equipment, being a lift van, movable tank, or other similar structure –

(a) Of a permanent character and accordingly strong enough to be suitable for repeated used; and

(b) Specially designed to facilitate the carriage of goods by one or more modes of transport, without immediate repacking; and

(c) Fitted with devices permitting its ready handling and its transfer from one mode of transport to another; and

(d) So designed as to be easy to fill and empty; and

(e) Having an internal volume of one cubic metre or more – and includes the normal accessories and equipment of the container, when imported with the container and used exclusively with it; but does not include any vehicle, or any ordinary packing case, crate, box, or other similar article used for packing;

“controlling authority” in relation to any wharf, customs airport, examining place, or customs containerbase, means the owner or occupier thereof, or any person having the control thereof; and includes any Harbour Board or local authority or public body having the control thereof;

“Customs” means the Customs Department;

“customs airport” means any aerodrome appointed as a customs airport under section 30;

“customs containerbase” means a place appointed under this Act for the reception, examination, or protection of goods subject to the control of the Customs and carried or to be carried in bulk cargo containers;

“declaration” means a declaration made under this Act;

“documents” includes books;

“dutiable goods” means goods of a kind subject to duty on their importation or on their manufacture in a manufacturing warehouse or on their entry for home consumption;

- “duty” means any duty payable on goods on the importation thereof, and includes duty payable under this Act on goods produced in a manufacturing warehouse;
- “examination station” means a place at a Customs airport appointed by the Secretary as an examination station under this Act;
- “examining place” means a place appointed under this Act for the examination by the Customs of goods subject to the control of the Customs;
- “forfeited goods” means any goods in respect of which a cause of forfeiture has arisen under the Customs Acts;
- “goods” means all kinds of movable personal property, including animals;
- “importer” means any person by or for whom any goods are imported; and includes the consignee of any goods and any person who is or becomes the owner of or entitled to the possession of or beneficially interested in any goods on or at any time after their importation and before they have ceased to be subject to the control of the Customs;
- “intent to defraud the revenue of Customs” means –
- (a) An intent to evade or to enable any other person to evade payment of the duty or any part of the duty payable on any goods; or
 - (b) An intent to obtain or to enable any other person to obtain, in respect of any goods, any drawback or refund of duty not authorised by law or in excess of that which is authorised by law; or
 - (c) An intent to evade or to enable any other person to evade payment of any money payable to the Crown under this Act;
- “Manager” means any officer appointed as Revenue Manager at any port or in respect of any district; and includes the Financial Secretary; and also includes the chief officer of Customs at any port or other place, and any proper officer acting for the time being in place of the Manager either generally or in respect of any of his powers or functions, whether during any vacancy in the office of Manager or otherwise;
- “manufacture”, in relation to tobacco, includes the processes of cutting, pressing, grinding, crushing, or rubbing any raw or leaf tobacco, or otherwise preparing raw or leaf tobacco or manufactured or partially manufactured tobacco, and of making cigarettes whether from duty-paid or from non-duty-paid tobacco, and of putting up for use or consumption in any way any scraps, waste, chippings, stems, or deposits of tobacco resulting from any processing of tobacco;
- “manufactured tobacco” means tobacco that has been manufactured or prepared by any means or in any shape for smoking or for any other purpose;
- “manufacturing warehouse” means any place for the time being licensed as a manufacturing warehouse under Part 4; and includes a tobacco-manufacturing warehouse;
- “master”, in relation to any ship, means the person (other than any person not belonging to the ship who has the lawful conduct of it for the time being in actual charge or command of the ship;
- “Minister” means the Minister of Foreign Affairs;
- “Normal Tariff” means the rates of duty and the exemptions from duty specified in the column headed “Normal Tariff” in the Tariff; and includes any modification or amendment thereof that may hereafter be made;
- “officer” means any person employed in the service of the Customs;

- “other preferential rates of duty” means the rates of duty and the exemptions from duty specified in the column headed ‘other preferential rates of duty’ in the Tariff; and includes any modification or amendment thereof that may hereafter be made;
- “owner” includes –
- (a) In respect of any ship or aircraft, any charterer of the ship or aircraft, and any person acting as agent for the owner or charterer;
 - (b) In respect of any goods, the importer or other person for the time being possessed of or beneficially interested in the goods;
- “package” includes every means by which goods for carriage may be cased, covered, enclosed, contained, or packed but does not include a bulk cargo container or a pellet;
- “pallet”, except in the Tariff, means a device on the deck of which a quantity of goods can be assembled to form a unit load for the purposes of transportation, handling, or stacking with the aid of mechanical devices; but does not include a bulk cargo container; and, in relation to a pallet that is imported laden, does not include any goods laden thereon”;
- “pilot”, in relation to any aircraft, means the person for the time being in charge or command of the aircraft;
- “port” means a port of entry appointed as such under section 26 and, where it is not inconsistent with the context, includes a Customs airport;
- “prohibited imports” means goods imported or landed in breach of any prohibition of importation contained in the Customs Acts;
- “proper officer” in relation to any matter, means any officer acting or employed in that matter by the order or with the concurrence (whether precedent or subsequent) of the Minister or the Secretary or under any other lawful authority;
- “raw tobacco” means unmanufactured tobacco, or the leaves and stems of the tobacco plant before they have passed through any process of manufacture;
- “restricted goods” means goods whose importation or exportation is prohibited by the Customs Acts, whether absolutely or subject to any exceptions or qualifications;
- “seal” means to affix the seal of the Customs;
- “Secretary” means the Financial Secretary and includes any officer of Customs acting for the time being, by direction of the Minister in the place of the Secretary, whether during any vacancy in the office of Secretary or otherwise;
- “ship” means any kind of vessel used in navigation, not propelled by oars only;
- “shipment” includes loading into an aircraft;
- “ships’ stores” includes aircraft’s stores;
- “smuggling” means importing, unshipping, landing, conveying, or otherwise dealing with any goods with intent to defraud the revenue of Customs;
- “Standard Tariff” means the Standard Tariff comprised in Part 1 of the Customs Tariff; and includes any modification or amendment thereof that may hereafter be made;
- “Tariff” means the Customs Tariff of Niue (comprising the Standard Tariff set out in Part 1 and the provisions set out in Part 2 as set out in Schedule 2 and includes all notes to the Tariff, or to any Part, section, chapter, subchapter, heading, subheading, or item thereof, set out in that Schedule; and also includes any modification or amendment of the Tariff or of the said notes that may hereafter be made;

“Tariff headings” or “headings”, means the headings of the Standard Tariff printed in bold type, being the headings of the Brussels Nomenclature established by the Convention for the Classification of Goods in Customs Tariffs signed in Brussels on 15 December 1950 and includes any modification or amendment of it that may hereafter be made;

“Tariff items” means the Tariff items of the Standard Tariff identified by 7 digits; and includes the headings to it so identified;

“Tariff subheading”, or “subheading”, means a subheading appearing in the Standard Tariff and not identified by any number;

“tobacco” includes cigars, cigarettes, and snuff;

“transit building” means a building or any part of a building for the reception, examination or protection of goods on their loading or unloading while subject to the control of the Customs;

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

“vehicle” means any conveyance of any kind whatsoever for use on land;

“warehouse” means a place of security licensed under section 80; and includes a crown warehouse;

“wharf” means a wharf or other landing place appointed as a wharf under this Act; and includes a sufferance wharf.

(2) Any reference in this Act to contravention of any provision of this Act, or of any regulations, licence, requirements, conditions, or directions thereunder, includes a reference to failure to comply with that provision.

3 Customs Acts defined

(1) In this Act, “Customs Acts” means this Act, the General Agreement on Tariffs and Trade Act 1948, the Niue Customs Tariff Act 1982, and all enactments made under any of these Acts.

(2) In its application to the subject-matter of any other of the Customs Acts this Act shall be read subject to the provisions of that other Act.

(3) Subject to subsection (2), the provisions of this Act, so far as they are applicable and with the necessary modifications, shall be deemed to be incorporated in and to form part of every enactment declared by this or any other Act to be a Customs Act.

(4) In the application of this Act to any Customs Act references to this Act shall, where necessary, be read as references to that Customs Act.

4 Importers

When in respect of any imported goods there are more importers than one (in accordance with the definition of the term “importer” in this Act) all the provisions of this Act with reference to the importer of those goods shall, except where the context otherwise requires, apply severally and independently to each of those importers.

PART 1
ADMINISTRATION

5 Customs Department

(1) There shall continue to be a Department of State to be known as the Customs Department.

(2) Subject to the control of the Minister, the Department shall be charged with the administration of the Customs Acts.

(3) The Department shall have such other functions as may be lawfully conferred on it.

6 Financial Secretary

There shall be appointed a Financial Secretary who, under the Minister, shall be the permanent head of the Customs and shall have the chief control of it.

7 Revenue Manager

At every port there shall be appointed an officer to be called the Revenue Manager who shall, subject to the Minister and the Secretary, have the chief control and management at that port of all matters relating to the Customs Acts.

8 Officers of Customs

There shall be appointed to the Customs such other officers as are considered necessary for the efficient administration of the Customs Acts.

9 Delegation of powers

(1) The Minister may, either generally or particularly, delegate to any officer of Customs all or any of the powers (except this present power of delegation) exercisable by him under the Customs Acts.

(2) With the written consent of the Minister, the Secretary may similarly delegate to any officer of Customs all or any of the powers (except this present power of delegation) exercisable by him under the Customs Acts.

(3) Subject to any general or special directions given or conditions imposed by the Minister or the Secretary, the officer to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this Act and not by delegation.

(4) Every officer of Customs purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(5) Any delegation under this section may be made to any specified person or to the holder or holders for the time being of any specified office or class of offices.

(6) Every such delegation, whether by the Minister or the Secretary, shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Minister or the Secretary.

(7) Any such delegation shall, until revoked, continue in force according to its tenor, notwithstanding the fact that the Minister or Secretary by whom it was made had ceased to hold office, and shall continue to have effect as if made by the successor in office of that Minister or Secretary.

10 Seal of the Customs

The seal of the Customs shall be the Royal Arms having the words "Niue – H.M. Customs" encircling the arms.

11 Customs flag

(1) The Customs flag shall be the Niue Ensign with the addition in the fly of the letters "H.M.C." in white in bold characters.

(2) The ships and boats employed in the service of the Customs shall be distinguished by the Customs flag.

12-13 [Repealed by 2004/270]

14 Charges in respect of attendance of officers

(1) Without limiting the power to make regulations conferred by section 306, Cabinet may make regulations in respect of the attendance of officers of Customs, whether or not within the working hours of the Customs, at any place for the purpose of performing or supervising any act required or permitted by the Customs Acts, and in particular –

- (a) Prescribing, except where otherwise provided in any of the Customs Acts, a rate or rates of charges for such attendance;
- (b) Providing for the liability of any person to pay any actual and reasonable expenses incurred by any officer in respect of the attendance;
- (c) Prescribing the person or persons or class or classes of persons by whom such charges and expenses shall be paid, or authorising the Manager to determine the person or persons by whom they shall be paid.

(2) All charges and expenses payable under this section shall constitute a debt due to the Crown.

(3) All charges and expenses paid under this section shall be receivable by the Secretary or the Manager and shall be paid into the Public Account.

15 Districts

(1) For the proper administration of the Customs Acts, the Secretary may by notice in the *Gazette* appoint adjacent to any port such district as he thinks fit; and the Manager at the port shall, subject to the control of the Minister and the Secretary have the chief control and management in that district of all matters relating to the Customs Acts.

(2) The Secretary may in like manner alter the boundaries of any such district.

PART 2

CONTROL OF THE CUSTOMS, GENERAL PROVISIONS AS TO ENTRIES

*Control of the Customs***16 Control of the Customs**

Goods shall be subject to the control of the Customs, within the meaning of this Act, as follows –

- (a) In the case of all goods imported, from the time of importation until delivery by the Customs for home consumption, or until exportation to any country outside Niue, whichever first happens;
- (b) In the case of all goods under drawback, from the time of the claim for drawback until exportation to any country outside Niue;
- (c) In the case of all goods for export that are subject to export duty, or the exportation of which is subject to any condition or restriction from the time when the goods are brought upon any wharf, or are waterborne for export, or are brought to any Customs airport or Customs containerbase for export until their exportation to any country outside Niue;

- (d) In the case of all goods on board any ship or aircraft and loaded in any country outside Niue, and in the case of ships' stores wherever loaded, at all times –
 - (i) While the ship is within the territorial limits of Niue; or
 - (ii) While the aircraft is at any place in Niue;
- (e) In the case of all goods produced in a manufacturing warehouse, from the time of their production until delivery by the Customs for home consumption or until exportation to any country outside Niue, whichever first happens;
- (f) In the case of spirits distilled, rectified, or compounded in Niue under a spirit maker's licence or a rectifier's and compounder's licence under the Liquor Act 1975, from the time when they are removed from the spirit store or distillery warehouse of any distiller, or from any other warehouse appointed for the lodging of spirits under that Act, until delivery by the Customs for home consumption or until exportation to any country outside Niue, whichever first happens;
- (g) In the case of spirits distilled pursuant to a vigneron's licence under the Liquor Act 1975, from the time when they are removed from the vigneron's storeroom under that Act until they have been used for fortifying wine produced from fruit grown in Niue or have been otherwise disposed of under that Act.

17 Delivery for home consumption

(1) For the purposes of this Act, goods shall be deemed to be delivered by the Customs for home consumption –

- (a) As soon as the proper officer gives to the owner of the goods notice of their unconditional delivery for home consumption; or
- (b) On the fulfilment of any conditions included in any notice of the delivery of the goods for home consumption given by the proper officer to the owner.

(2) Notice of delivery under this section shall be given in the prescribed form or manner.

18 No responsibility for safe custody of goods

(1) Neither the Crown, nor the Minister, nor any officer of Customs shall be responsible to any person for the safe custody of any goods subject to the control of the Customs, or shall be under any liability in respect of the erroneous delivery of any goods from such control.

(2) This section shall not apply to goods warehoused in a Crown warehouse.

General Provisions as to Entries

19 Making of entries

(1) Every entry of goods under this Act shall be made by the delivery of the entry by the person making it to the Manager or other proper officer.

(2) Any person making any entry shall truly answer all questions asked by the Manager or other proper officer relating to the goods referred to in the entry.

(3) Every entry shall be in the prescribed form.

20 Verification of entries

The Manager may require from any person making entry of any goods proof by declaration or the production of documents (in addition to any declaration or documents otherwise required by this Act or by regulations thereunder) of the correctness of the entry, and may refuse to deliver the goods or to pass the entry pending such proof.

21 Erroneous entries

(1) Every person who makes any entry (whether for home consumption or otherwise) that is erroneous or defective in any particular commits an offence and shall be liable to a fine not exceeding 2 penalty units or 3 times the amount of any deficient duty, whichever sum is the greater.

(2) In this section, "deficient duty" means the full duty on the goods which are comprised or ought to have been comprised in the entry less the amount of duty (if any) payable if computed under the entry as actually made and as if the goods had been entered for home consumption.

(3) For the purposes of this section, every declaration, invoice, certificate or written statement required or authorised by or under this Act to be made or produced by the person making an entry shall be deemed to form part of that entry.

(4) For the purposes of this section, every amendment of an entry shall be deemed to form part of that entry, but not so as to relieve any person from any penalty incurred in respect of the entry before its amendment.

22 Passing of entries

(1) An entry shall be passed by the Manager or other proper officer signing the entry, and on the passing of the entry the goods shall be deemed to be entered.

(2) Any entry so passed shall be warrant for dealing with the goods in accordance with the entry.

23 Cancellation and amendment of entry

(1) With the permission of the Manager, any entry may, after it has been made but not later than one day after it has been passed and while the goods still remain subject to the control of the Customs, be cancelled or amended by the person making it.

(2) When the Secretary is satisfied that any entry has been made in error but in good faith, he may permit the entry to be cancelled or amended, by the person who made it, at any time while the goods remain subject to the control of the Customs or, subject to such conditions as the Secretary may impose, at any time after delivery of the goods from such control.

(3) No cancellation or amendment of an entry by the person who made it shall take away or affect any penalty, forfeiture, or criminal liability theretofore accrued or incurred in respect of the entry.

(4) The Manager may make a refund of duty under any such cancellation or amendment of an entry.

(5) The cancellation or amendment of any entry shall be made in the prescribed manner.

24 Amendment of entries by officers

(1) Any officer, for the purpose of correcting any part of any entry, may amend that entry before it is passed.

(2) No such amendment shall take away or affect any penalty, forfeiture, or criminal liability theretofore accrued or incurred in respect of the entry.

25 Goods to be dealt with according to entry

(1) All goods in respect of which any entry has been made and passed shall forthwith be dealt with in accordance with the entry and with the provisions of this Act in respect of goods so entered.

(2) Every person commits an offence against this Act who is knowingly concerned in any contravention of this section.

PART 3

IMPORTATION, EXPORTATION, REMOVAL WITHIN NIUE

*Ports of Entry, Customs Airports***26 Ports of entry**

(1) The Minister may, by notice in the *Gazette*, appoint as a port of entry for the purposes of this Act any area specified in the notice, and fix the name of that port.

(2) A port of entry may be so appointed for any specified limited purposes exclusively, or for all purposes with specified exceptions, or without any such limitation; and if any such limitation is so imposed the port shall be deemed a port of entry in respect of the purposes so authorised only.

(3) The Minister may, by notice in the *Gazette*, declare that any port shall cease to be a port of entry for the purposes of this Act, or alter the limits or the name of any port, or impose any limitation on the purposes for which any port shall be a port of entry, or remove or alter any such limitation.

27 Boarding stations

(1) The Secretary may by notice in the *Gazette* –

(a) Appoint stations or places at which ships arriving at or departing from any port shall bring-to for the boarding or landing of officers of Customs;

(b) Appoint particular parts of any port at which ships laden with any particular cargo or class of cargo shall moor and discharge such cargo.

(2) Any such appointment may be in like manner revoked.

28 Wharves

(1) The Secretary may, by notice in the *Gazette*, appoint proper places within any port to be wharves for the loading and unloading of goods, and declare the limits of such wharves and fix the names thereof.

(2) The Secretary may in like manner impose such restrictions with respect to the use of any such wharf; and so long as any such restrictions exist the wharf shall be deemed to be a wharf under this Act for such purposes only as are consistent with those restrictions.

(3) The Secretary may declare that any wharf shall cease to be a wharf for the purposes of this Act, or may alter the limits or the name of the wharf, or alter or remove any restriction imposed upon its use.

29 Sufferance wharves

When the Secretary is satisfied that for any particular purpose there is no suitable wharf available he may, in writing, appoint any place within a port as a sufferance, wharf for that purpose, and permit its use for that purpose, subject to such conditions and restrictions and for such time as he thinks fit.

30 Customs airports

Subject to the concurrence of the Minister of Civil Aviation and to such conditions as to security and otherwise as that Minister thinks fit, the Minister of Foreign Affairs may, by notice in the *Gazette*, appoint any aerodrome to be a Customs airport, and may in like manner and with the like concurrence revoke any such appointment.

31 Examination stations at Customs airports

(1) Subject to the concurrence of the Secretary for Civil Aviation, the Secretary may by notice in the *Gazette* appoint for the purposes of this Act a place at any Customs airport to be an examination station for the loading and unloading of goods and for the embarking and disembarking of passengers.

(2) The Secretary may, with the like concurrence and in like manner –

(a) Alter the limits of any examination station;

(b) Impose such conditions and restrictions as he thinks fit in respect of the use of any examination station;

(c) Vary or revoke any such conditions or restrictions;

(d) Revoke the appointment of any examination station.

(3) Any examination station in respect of which any restrictions imposed pursuant to this section apply shall be deemed to be an examination station under this Act for such purposes only as are consistent with those restrictions.

32 Examining places

The Secretary, by writing under his hand, appoint at any port or Customs airport places for the examination by the Customs of goods subject to the control of the Customs and any such appointment may be in like manner revoked.

32A Customs container bases

(1) The Secretary may by notice in the *Gazette*, appoint places, at any port or Customs airport, to be Customs containerbases for the reception, examination, or protection of goods that are subject to the control of the Customs and are carried or to be carried in bulk cargo containers.

(2) The Secretary may impose such conditions and restrictions in respect of the use of any Customs containerbase, and vary or revoke any such conditions or restrictions.

(3) Subject to subsections (4) to (9), the Secretary may by notice in writing to the controlling authority of any Customs containerbase revoke the appointment of the containerbase.

(4) (a) Before revoking any such appointment the Secretary shall give to the controlling authority notice in writing stating that he intends to do so and that within 14 days after the receipt of the notice the controlling authority may appeal to the Minister against the Secretary's decision.

(b) The notice shall also state the reasons why he intends to revoke the appointment.

(5) (a) Within 14 days after the receipt by the controlling authority of the notice under subsection (4), the controlling authority may appeal to the Minister by giving to the Manager a notice of appeal in writing addressed to the Minister.

(b) The notice of appeal shall state fully the grounds of the appeal.

(6) The Minister shall consider the notice of appeal, and any further representations made by the controlling authority within the 14 days or within such further period as he may allow, and, if the controlling authority so requests, shall afford to the controlling authority an opportunity of being heard by him within such period or further period as aforesaid.

(7) On any such appeal the Minister may confirm or reverse the Secretary's decision, and the Minister's decision shall be final.

(8) Where an appointment is revoked under this section, the revocation shall take effect on such date as is specified in the notice of revocation or, if no date is so specified, from the time of the receipt by the controlling authority of the notice of revocation.

(9) Notice of the revocation of any such appointment shall be published by the Secretary in the *Gazette*.

33 Duties of controlling authorities

(1) The controlling authority of every wharf or Customs airport or Customs containerbase shall provide and maintain at the wharf or airport, or containerbase to the satisfaction of the Minister –

(a) Suitable office accommodation, at such place or places as the Minister may direct, for the exclusive use of officers of Customs employed at the wharf or airport or containerbase; and

(b) Such suitable transit buildings as the Minister may declare to be requisite in respect of the wharf or Customs airport, or Customs containerbase together with suitable weighing appliances for use in such transit buildings by officers of Customs.

(2) The controlling authority of every wharf or Customs airport or customs container base, shall store goods subject to the control of the Customs in such manner and in such place as the Manager or other proper officer of Customs may direct.

(3) Every controlling authority who fails to comply with any provision of this section commits an offence and shall be liable to a fine not exceeding 2 penalty units for every month or part of a month during which the default has continued.

34 Storage charges

(1) No charges shall be made by any controlling authority for the reception or storage in any transit building or on any wharf of any goods, being goods subject to the control of the Customs, during the period of 24 hours (exclusive of holidays) from the time of the landing of the goods.

(2) Without limiting subsection (1), where any such goods are detained by any officer of Customs for examination, weighing, analysis, or testing for Customs purposes, no storage charges shall be payable to any controlling authority in respect of the storage of the goods in any transit building or on any wharf during any period of such detention up to 96 hours (exclusive of holidays) from the time of their landing; but after those goods cease to be so detained there shall be payable in respect of them by the importer or exporter such storage charges as the controlling authority determines by bylaws made in that behalf.

35 Security

(1) Before appointing any place to be a wharf, sufferance wharf, Customs containerbase or examining place under this Act, or as a condition of the continuance of any such appointment, the Secretary shall require the controlling authority or other person having the control or use of that wharf, containerbase or examining place to give security to the satisfaction of the Secretary for the payment of duty on all goods that are wrongfully removed by any person from that wharf, containerbase or examining place.

(2) To the extent of that security the controlling authority or other person having the control or use of a wharf, sufferance wharf, Customs containerbase or examining place duly appointed under this Act shall be liable for all duty payable on goods that the Manager is satisfied have been so wrongfully removed, in the same manner as if the goods had been imported by the controlling authority or other person and entered for home consumption, and he shall not be released from his liability under this section by virtue of any other provisions of the Customs Acts or because a security previously given has been cancelled or for any other reason.

(3) All the provisions of this Act as to securities required by the Manager, so far as they are applicable and with all necessary modifications, shall apply to securities under this section.

*Arrival of Ships and Aircraft***36 Ships to come into port of entry only**

(1) The master of any ship shall not, without the written permission of the Manager, cause or permit his ship to enter any place in Niue other than a port of entry, unless driven there by stress of weather, want of provisions, or other necessity.

(2) Every master who acts in contravention of this section commits an offence and shall be liable to a fine not exceeding 10 penalty units.

37 Aircraft to land at Customs airport only

(1) Subject to section 38, the pilot in command of any aircraft shall not, without the permission of the Secretary given with the concurrence of the Secretary for Civil Aviation, cause or permit the aircraft to land at any place other than a Customs airport –

- (a) For the first time on any journey from any country outside Niue; or
- (b) While it is carrying any goods brought in that aircraft from any country outside Niue and not yet delivered from the control of the Customs.

(2) A person importing or concerned in importing any goods in any aircraft shall not bring the goods into Niue at any place other than a Customs airport.

(3) Every person who acts in contravention of any provision of this section commits an offence and shall be liable to a fine not exceeding 10 penalty units.

38 Aircraft landing other than at Customs airport

(1) Section 37 shall not apply in relation to any aircraft flying from any country outside Niue if the aircraft is required under or by virtue of any enactment relating to air navigation or is compelled by accident, stress of weather, or other necessity to land at a place other than a Customs airport.

(2) The pilot in command of any aircraft that is so required or compelled to land –

- (a) Shall, unless the place of landing is an aerodrome, forthwith report to an officer of Customs or to a constable;

- (b) Shall, if the place of landing is an aerodrome, forthwith report the arrival of the aircraft and the place whence it came to the person for the time being in charge of the aerodrome;
- (c) Shall not, without the consent of an officer of Customs, permit any goods carried in the aircraft to be unloaded from it or any of the crew or passengers to depart from its vicinity;
- (d) Shall comply with any directions given by an officer of Customs in respect of any goods carried in the aircraft.

(3) No passenger or member of the crew of any aircraft that is so required or compelled to land shall leave the vicinity of the aircraft without the consent of an officer of Customs or a constable.

(4) Nothing in this section shall prohibit the departure of crew or passengers from the vicinity of an aircraft or the removal of goods from it if that departure or removal is necessary for reasons of health or safety, or for the preservation of life or property.

(5) The pilot in command of any aircraft to which this section applies shall not be held to have committed a breach of this section if he proves that –

- (a) No officer of Customs or constable was readily accessible; and
- (b) He did not permit any goods to be unloaded from the aircraft or any passengers to depart from its vicinity; and
- (c) As soon as was practicable, he resumed and completed his flight.

(6) Every person in charge of an aerodrome to whom a report is made under subsection (2) (b) shall forthwith report the arrival of the aircraft to an officer of Customs.

(7) Every person who acts in contravention of this section commits an offence and shall be liable to a fine not exceeding 10 penalty units.

39 Transshipment of goods

(1) Except as permitted by the Manager, the master of any coastal ship or the pilot in command of any aircraft (other than an aircraft arriving on a journey from any country outside Niue), shall not, at any place other than a port of entry or Customs airport, cause or permit any goods to be transhipped into his ship or aircraft from –

- (a) Any ship, except a coastal ship; or
- (b) Any aircraft arriving on a journey from any country outside Niue.

(2) This Part shall apply –

- (a) To any goods so transhipped otherwise than at a port of entry or Customs airport; and
- (b) To any ship or aircraft into which such goods are transhipped –

as if the goods had been loaded into that ship or aircraft in a country outside Niue.

(3) Every master or pilot in command who acts in contravention of subsection (1) commits an offence and shall be liable to a fine not exceeding 10 penalty units.

40 Interference with cargo

If at any time after any ship or aircraft carrying goods brought from any country outside Niue arrives within the territorial limits of Niue and, before a report is made in Niue under section 45 –

- (a) Bulk is broken; or
- (b) Any alteration is made in the stowage of any goods carried, so as to facilitate the unloading of any part thereof before due report has been made; or

(c) Any part of the goods is staved, destroyed or thrown overboard, or any package is opened –
and the matter is not explained to the satisfaction of a Manager, the master of the ship or pilot in command of the aircraft shall be guilty of an offence and shall be liable to a fine not exceeding 4 penalty units.

41 Boarding of ships at sea

(1) The master of every ship arriving within the territorial limits of Niue shall bring his ship to for boarding on being approached by or hailed or signalled from any vessel in the service of the Customs having hoisted the Customs flag, or from any other vessel in the service of Her Majesty (whether in respect of the Government of Niue or otherwise) having hoisted the proper ensign and pendant; and shall by all reasonable means facilitate the boarding of the ship by the officers of Customs or by an officer of the vessel so approaching, hailing, or signalling.

(2) If the master fails to comply with this section he commits an offence and shall be liable to a fine not exceeding 4 penalty units.

42 Boarding of ships at boarding stations

(1) The master of every ship arriving at any port from any country outside Niue shall bring his ships to for boarding at the boarding station appointed for that port under this Act, and shall by all reasonable means facilitate the boarding of the ship by the officers of Customs.

(2) If the master fails to comply with this section he commits an offence and shall be liable to a fine not exceeding 2 penalty units.

43 Stations of ships

(1) The master of every ship, after his ship has been brought to at the boarding station and boarded by the officer, and after receiving permission from the proper officer of Customs, shall come up to the proper place of mooring or unloading as quickly as practicable without touching at any other place.

(2) After a ship has arrived at the proper place of mooring or unloading it shall not, except by the authority of the Manager or by direction of the harbour authority, be removed therefrom before the discharge of the cargo intended to be discharged at that port.

(3) If any provision of this section is contravened the master shall be guilty of an offence and shall be liable to a fine not exceeding 2 penalty units.

44 Aircraft brought to examination station

(1) The pilot in command of every aircraft arriving at a Customs airport –
(a) For the first time on any journey from any country outside Niue; or
(b) While it is carrying goods brought in that aircraft from any country outside Niue and not yet delivered from the control of the Customs – shall, on landing, forthwith take his aircraft to the examination station at the airport.

(2) The pilot shall not be held to have committed a breach of subsection (1) if he satisfies the Manager that –

(a) He was prevented, by circumstances over which he had no control, from so taking his aircraft to the examination station; and

(b) After report had been duly made by him under section 45, all the goods carried in the aircraft were conveyed to the examining place at that airport.

(3) After an aircraft has arrived at the examination station it shall not, except by the authority of the Manager or by direction of the controlling authority of the Customs airport, be removed therefrom before the disembarkation of passengers and unloading of cargo intended for that airport has been completed.

(4) If any provision of subsection (1) or (3) is contravened the pilot shall be guilty of an offence and shall be liable to a fine not exceeding 2 penalty units.

45 Inward report

(1) This section shall apply to –

- (a) Every ship, except a coastal ship; and
- (b) Every aircraft arriving at a Customs airport –
 - (i) For the first time on any journey from any country outside Niue; or
 - (ii) While it is carrying any goods brought in that aircraft from any country outside Niue and not yet delivered from the control of the Customs.

(2) On the arrival at any port or Customs airport of any ship or aircraft to which this section applies, the master or owner of the ship, or, as the case may be, the pilot in command or owner of the aircraft, shall within such time or times as may be prescribed –

- (a) Deliver to the Manager or other proper officer an inward report in such form and manner, containing such particulars verified by declaration, and with such supporting documents, as may be prescribed; and
- (b) Answer all questions asked by the Manager or other proper officer relating to the ship or aircraft and its passengers, crew, cargo, stores and voyage.

(3) If the master or owner or pilot fails to comply with subsection (2) he commits an offence and shall be liable to a fine not exceeding 2 penalty units.

(4) If the inward report so delivered is false, misleading, or defective in any particular, or if any document so delivered is not genuine or is false or misleading, or if the answer to any question is false or misleading, the master or pilot and the owner shall each be guilty of an offence and shall be severally liable to a fine not exceeding 5 penalty units.

46 Report of wrecked ships and aircraft

(1) When any ship or any aircraft carrying goods taken on board in any country outside Niue and not yet delivered from the control of the Customs is lost or wrecked within the territorial limits of Niue, the master or owner of the ship or, as the case may require, the pilot in command or owner of the aircraft, shall without unnecessary delay report the loss or wreck to the Manager at the port nearest to the place where the ship or aircraft was lost or wrecked, and shall comply, so far as it is possible for him to do so, with section 45(2) (a) and (b).

(2) If any of the provisions of this section are not complied with, the master or pilot and the owner shall each be guilty of an offence and shall be severally liable to a fine not exceeding 2 penalty units.

Importation

47 “Importation” defined

(1) For all the purposes of this Act, goods shall, except where otherwise expressly provided, be deemed to be imported into Niue if and so soon as in any manner whatever, whether lawfully or unlawfully, they are brought or come within the territorial limits of Niue from any country outside those limits.

(2) Goods whose destination is outside the territorial limits of Niue, and ships’ stores, shall not be deemed to have been so imported unless, while they are within those limits, they are removed from the ship or aircraft in which they arrived there, but if so removed they shall for all the purposes of this Act be deemed to have been brought within the territorial limits of Niue.

48 Prohibited imports

- (1) No person shall import into Niue any of the goods specified in Schedule 1.
- (2) Subject to subsection (3), the Cabinet may by regulation prohibit the importation into Niue of –
- (a) Any specified goods;
 - (b) Goods of any specified class or classes;
 - (c) All goods except goods of a specified class or specified classes;
 - (d) All goods whatsoever (without specification of any such goods or of the class or classes to which they belong).
- (3) The Cabinet may exercise the powers conferred on it by subsection (2) if in its opinion such exercise is necessary –
- (a) In the public interest; or
 - (b) For the protection of the revenue; or
 - (c) For the efficient administration of the Customs Acts; or
 - (d) For the prevention of fraud or deception, whether in relation to the Customs Acts or not; or
 - (e) For the prevention of any communicable disease; or
 - (f) In respect of goods whose sale in Niue would be an offence against the law.
- (4) Any prohibition imposed under this section –
- (a) May be general; or
 - (b) May be limited to the importation of goods from any specified place or by or from any specified person or class of persons; or
 - (c) May, whether general or limited, be absolute or conditional.
- (5) Any such conditional prohibition may allow the importation of goods –
- (a) Under the authority of a licence, or a permit (whether granted before or after the importation of the goods), or a consent to be granted by the Minister or by any other prescribed person upon or subject to such terms or conditions (if any), not inconsistent with the provisions of the prohibition, as may be imposed by the Minister or other person granting the licence, permit, or consent; or
 - (b) On or subject to any other prescribed conditions whatsoever.
- (6) [Repealed by 2004/270]
- (7) Every person commits an offence against this section who –
- (a) Imports into Niue or unships or lands in Niue any goods whose importation is prohibited by this section; or
 - (b) Commits any breach of, or fails in any respect to comply with, any term or condition on or subject to which there has been granted, under any regulation made under this section, any licence, permit, or consent under the authority of which any goods are imported into Niue.
- (8) Every person commits an offence against this section who –
- (a) Is knowingly concerned in any importation, unshipment, landing, breaching or non-compliance to which any provision of subsection (7) applies; or
 - (b) Without lawful justification or excuse, removes from any wharf, Customs airport, Customs containerbase or examining place any imported goods whose importation constitutes an offence against this section; or

- (c) Is knowingly concerned in or connives at the removal from any wharf, Customs airport, Customs containerbase or examining place of any goods whose importation constitutes an offence against this section.

(9) Where any goods are imported into Niue under the authority of a licence or permit or consent granted under regulations made under this section, and any person has knowingly made any false declaration or statement –

- (a) For the purpose of obtaining that licence, permit, or consent; or
- (b) As to compliance with any condition on or subject to which the licence, permit, or consent was granted –

he shall be guilty of an offence against this section.

(10) Every person who commits an offence against this section is liable to a fine not exceeding 10 penalty units or 3 times the value of the goods to which the offence relates, whichever sum is the greater.

(11) Any goods in respect of which any offence against this section is committed shall be forfeited.

(12) No goods otherwise dutiable shall be exempt from duty because their importation is unlawful.

49 Importation of brandy, whisky and rum

(1) Except as provided in subsection (3), no brandy imported into Niue shall be delivered from the control of the Customs unless the Secretary is satisfied that –

- (a) It is wholly the distillate of the fermented juice of fresh grapes; and
- (b) It has been matured by storage in wood for a period of not less than 3 years.

(2) Except as provided in subsection (3), no whisky or rum imported into Niue shall be delivered from the control of the Customs unless the Secretary is satisfied that it has been matured by storage in wood for a period of not less than –

- (a) Three years in the case of whisky; and
- (b) Two years in the case of rum.

(3) Any brandy, whisky, or rum that does not conform to the requirements of this section may be delivered from the control of the Customs, by direction of the Secretary, if he is satisfied that it is intended for scientific or industrial use or for such other purposes as he may permit.

50 Goods not to be landed or dealt with without permission

(1) Except as provided by this Act, no goods that are subject to the control of the Customs, and no goods that would become subject to that control if unshipped or landed, shall be unshipped or landed from any ship or aircraft to which this subsection applies, except pursuant to –

- (a) An entry made and passed in respect of those goods; or
- (b) A written permit granted by the Manager in respect of it:

Provided that if the landing of goods from any ship or aircraft is necessary for reasons of health or safety, or for the preservation of life or property, and if the permission of the Manager or other proper officer cannot readily be sought, the goods may be landed without such permission.

(2) Subsection (1) shall apply to:

- (a) Every ship, except a coastal ship; and
- (b) Every aircraft arriving at a Customs airport while carrying any goods brought in that aircraft from any country outside Niue.

(3) Subsection (1) shall not apply to any pallet that has a value of less than 0.5 penalty units and is imported laden.

(4) Every person who acts in contravention of this section commits an offence and shall be liable to a fine not exceeding 4 penalty units and the goods in respect of which the offence is committed shall be forfeited.

51 [Repealed 11/31/1968 (NZ)]

52 Method of unshipment

(1) All goods on any ship that are subject to the control of the Customs, or that would be subject to that control if unshipped or landed, shall, if unshipped, be either –

- (a) Landed at a wharf directly, or after direct conveyance to a wharf by water within the limits of the port; or
- (b) Transshipped directly, or after direct conveyance by water within the limits of the port, to the ship into which they are to be transshipped for export or removal.

(2) All goods on any aircraft, being goods brought by that aircraft from any country outside Niue shall, if unshipped, be either –

- (a) Landed directly at an examination station or, if the aircraft does not come to an examination station, conveyed directly from the aircraft to the examining place at the Customs airport; or
- (b) Transshipped directly, or by direct conveyance within a Customs airport, to the aircraft into which the goods are to be transshipped for export or removal.

(3) Every person who is knowingly concerned in any dealing with goods in contravention of this section commits an offence and shall be liable to a fine not exceeding 2 penalty units.

52A Removal of goods

(1) Except as provided by this Act, no goods that are subject to the control of the Customs shall be removed from any wharf, Customs airport, Customs containerbase, or examining place except –

- (a) With the permission of the proper officer of Customs after entry has been made and passed in respect of it; or
- (b) In pursuance of a written permit granted by the Manager in respect of it.

(2) Any bulk cargo container (including its contents, if any) may, in pursuance of a written permit granted by the Manager, be removed by the holder of the permit –

- (a) From a wharf to a Customs containerbase or an examining place only; or
- (b) From an examination station or an examining place at a Customs airport to a Customs containerbase or an examining place only.

(3) Subsection (1) shall not apply to any pallet that has a value of less than twenty dollars and is imported laden.

(4) Every person who acts in contravention of any provision of this section commits an offence and shall be liable to a fine not exceeding 4 penalty units, and the goods in respect of which the offence is committed shall be forfeited.

52B Manager's permits

(1) Goods unshipped, landed, or removed under a Manager's permit shall be dealt with under the permit and with any directions given by the Manager.

(2) This Act shall apply to such goods in the same manner as if they had not been unshipped, landed, or removed, and for this purpose they shall be deemed to have remained upon or in the ship, aircraft, wharf, Customs airport, Customs containerbase, or examining place from which they were so unshipped, landed, or removed.

(3) If at any time such goods are dealt with by any person contrary to the terms of the permit or to the directions of the Collector, they shall be deemed for all the purposes of this Act to have been unlawfully unshipped, landed, or removed by that person as if the permit had not been granted.

(4) Any permit issued for the unshipment, landing, or removal of bulk cargo containers shall be issued to the controlling authority of a Customs containerbase or an examining place and shall relate to such containers generally.

(5) A permit for the unshipment, landing or removal of pallets may relate to pallets generally, or to pallets imported in any particular ship or aircraft, or to any specified class of pallets, or to pallets imported in specified circumstances.

(6) Any permit may be granted subject to such conditions and restrictions as the Manager thinks fit.

(7) Subject to subsections (8) to (12), if in the case of a permit granted to the controlling authority of a Customs containerbase or an examining place under subsection (4) the Manager has reasonable cause to believe that the controlling authority has committed a breach of this Act or of any regulations thereunder or of any condition or restriction imposed under this Act or such regulations, he may, by notice in writing to the controlling authority, revoke the permit, or suspend it for any period specified in the notice.

(8) Before revoking or suspending any such permit, the Manager shall give to the controlling authority notice in writing stating that he intends to do so and that within 14 days after the receipt of the notice the controlling authority may appeal to the Minister against the Manager's decision. The notice shall also state the reasons why he intends to revoke or suspend the permit.

(9) (a) Within 14 days after the receipt by the controlling authority of the notice under subsection (8), the controlling authority may appeal to the Minister by giving to the Manager a notice of appeal in writing addressed to the Minister.

(b) The notice of appeal shall state fully the grounds of the appeal.

(10) The Minister shall consider the notice of appeal, and any further representations made by the controlling authority within the said period of 14 days or within such further period as he may allow, and, if the controlling authority so requests, shall afford to the controlling authority an opportunity of being heard by him within such period or further period aforesaid.

(11) On any such appeal the Minister may confirm, reverse, or modify the Manager's decision and the Minister's decision shall be final.

(12) Where a permit is revoked or suspended under this section, the revocation or suspension shall take effect on such date as is specified in the notice of revocation or suspension or, if no date is so specified, from the time of the receipt by the controlling authority of the notice of revocation or suspension.

53 Kinds of entry of imported goods

Except as provided in section 54 or 54A all imported goods, when they have arrived at their port of discharge, or with the consent of the Manager at any time before their arrival, shall be there entered by the importer –

- (a) For home consumption; or
- (b) For warehousing; or
- (c) For export; or
- (d) For removal.

54 Passengers' effects exempt form entry

(1) Goods being the personal baggage or household or other effects belonging to and accompanying passengers in any ship or aircraft, and not being dutiable goods imported for the purpose of sale or exchange or as trade samples, may, subject to any prescribed conditions, be imported or exported without entry.

(2) The Manager may require entry of any such goods.

54A Certain goods exempt from entry

The following goods may, subject to any prescribed conditions, be imported or exported without entry –

- (a) Such bulk cargo containers, and such wagons, trolleys, or wheeled pallets specially designed for the handling of bulk cargo containers as may be prescribed;
- (b) Any pallet which has a value of less than twenty dollars and is imported laden:

Provided that in any case where the Collector is satisfied that the pallet is imported for sale or re-use in Niue he may require that entry be made;

- (c) Any pallet which has a value of less than twenty dollars and is imported unladen, and any pallet (whether imported laden or unladen) which has a value of twenty dollars or more, being in either case a pallet which is imported temporarily and in respect of which a Manager's permit for removal is granted under section 52A;
- (d) Such other goods or classes of goods as may be prescribed.

55 When entry to be made

(1) Subject to section 57, entries shall be made of all goods unshipped or to be unshipped at any port, or removed to any port, within such respective times after the arrival of the goods at that port as may be prescribed, or within such further time (if any) as the Manager may see fit to allow, but so that, if the goods are placed in quarantine, at least 7 days shall be allowed for entry after their release from quarantine.

(2) If default is made in the entry of any goods pursuant to this section, the Manager may cause the goods to be removed to a warehouse; and if the goods are not claimed and entries passed therefor within 3 months after such removal, duty shall thereupon become due and payable on the goods as if entered for home consumption, and the goods may be sold by the Manager.

(3) If any goods in respect of which default has been so made are, in the opinion of the Manager of a perishable nature, they may be sold at any time the Manager thinks fit, either before or after warehousing.

56 Vessels or aircraft imported

(1) Notwithstanding anything in this Act, entries shall be made in respect of such ships and other vessels, and in respect of such aircraft, being ships, vessels, and aircraft imported into Niue otherwise than as cargo, as the Minister may determine by notice in the *Gazette*.

(2) For the purpose of making entries in respect of any ship or vessel or aircraft imported into Niue otherwise than as cargo, and for all other purposes of the Customs Acts, every such ship, vessel, or aircraft shall be deemed to have been imported as cargo and to have been unshipped as such on its arrival.

57 Licence or permit for restricted goods

Where under any enactment the importation of any goods or of goods of any class or kind is prohibited except under the authority of a licence or permit, the Manager or other proper officer may refuse to accept an entry for those goods, or for any goods of that class or kind, until a licence or permit for their importation is produced to him.

58 Sight entries

(1) If the importer cannot immediately supply the full particulars for making an entry, and makes by himself or his agent a declaration to that effect before the Manager or other proper officer, he may make a sight entry in the prescribed form.

(2) A sight entry, on being passed by the Manager, shall be warrant for the landing and examination of the goods by the importer.

(3) The importer of the goods included in a sight entry shall, within 7 days after the passing of that entry, or within such further time as is allowed by the Manager, make complete entry of it; and if he makes default in doing so the goods may be dealt with by the Collector as if no sight entry had been made.

(4) Complete entry of the goods included in any sight entry shall be made in the same manner as if the sight entry had not been made.

59 Delivery of goods on sight entry

(1) The Manager may deliver goods from the control of the Customs for home consumption in pursuance of a sight entry, but only on receiving such security as he thinks sufficient to cover the full amount of duty.

(2) Complete entry of the goods for home consumption shall thereafter be made by the importer within such time as the Manager appoints; and if the importer makes default in making such entry he commits an offence and shall be liable to a fine not exceeding 2 penalty units.

(3) Goods so delivered on a sight entry shall, on such delivery, be deemed to have been entered for home consumption.

60 Goods for home consumption

Except as provided in section 181 when any imported goods have been entered for home consumption the importer shall forthwith pay to the Manager or other proper officer the duties (if any) payable thereon.

61 Importer may be required to furnish samples and illustrations

The importer of any goods shall furnish free of charge, for the use of the Customs, such samples or such illustrations, drawings, or plans relative to the goods as may be required by the Manager for purposes of analysis, classification, or record.

*Removal within Niue Exportation***62 Removal of imported goods within Niue**

(1) No imported goods subject to the control of the Customs shall be placed on any ship, boat, lighter, or other conveyance for removal within Niue until entry for removal has been duly made and passed therefor in the prescribed form and manner.

(2) When any imported goods have been entered for removal the importer shall forthwith remove them to another port of entry in accordance with the entry, without payment of duty in the first instance.

(3) The Manager may require from the importer security for the due removal of the goods in accordance with the entry, and for the payment of the duty thereon.

(4) When the goods so removed have arrived at their port of destination, or with the consent of the Manager at any time before their arrival, they shall be there entered for home consumption, warehousing, export, or further removal, in the same manner as if no former entry had been made therefor, and this Act shall apply accordingly.

(5) When any goods so entered for removal to another port arrive at that port they shall be forthwith brought to a wharf or an examining place or a Customs containerbase (as the case may require) appointed at that port for the examination of goods subject to the control of the Customs.

(6) If any goods are dealt with in contravention of subsection (1) they shall be forfeited; and any person so dealing with them commits an offence and shall be liable to a fine not exceeding 4 penalty units.

63 Export subject to control of Customs

(1) (a) No goods subject to the control of the Customs shall be placed on board any ship, boat, lighter, or other vessel or loaded into any aircraft or packed into any bulk cargo container in a Customs containerbase, to be shipped for export until entry has been duly made and passed therefor in the prescribed form and manner.

(b) Where the Manager is satisfied in respect of any goods that their exportation is not prohibited by any regulation made under section 70 he may permit such entry to be made within 6 days after the goods have been so shipped.

(2) When any imported goods have been entered for export the importer shall forthwith export them to a country outside Niue in accordance with the entry and with the provisions of this Act relating to the exportation of goods and, except as provided in section 181, no duty shall be payable thereon.

(3) If any goods are dealt with in contravention of subsection (1), they shall be forfeited; and any person so dealing with them commits an offence and shall be liable to a fine not exceeding 4 penalty units.

64 Entry for export of goods not subject to control of Customs

(1) When goods not subject to the control of the Customs are shipped for export, entry thereof for export shall be made in the prescribed form and manner, before shipment or within 6 days after the shipment, or within such further time as may be prescribed.

(2) If entry is not made in accordance with this section, the exporter and every person knowingly concerned in the exportation or intended exportation of the goods shall be guilty of an offence against this Act.

65 Method of shipment

(1) Goods subject to the control of the Customs for export or removal within Niue shall be brought to the ship, aircraft, or vehicle in which they are to be exported or removed by the most direct means reasonably available.

(2) Every person who deals with or is knowingly concerned in dealing with goods in contravention of this section commits an offence and shall be liable to a fine not exceeding 2 penalty units.

66 Goods not shipped according to entry

(1) If any goods entered for export or removal within Niue are not shipped according to the entry, the person making the entry shall immediately give to the Manager notice of the failure to ship and, as required by the Manager, cancel or amend the entry.

(2) Every person commits an offence against this Act who fails to comply with this section.

67 Information and securities in respect of exported goods

(1) When any goods have been entered for export the Manager may require the person making the entry to produce all documents relating to the goods, and, if the goods are subject to the control of the Customs, to give security that they will be landed at the place for which they are entered or otherwise accounted for to the satisfaction of the Manager.

(2) If required by the Secretary, a certificate in the prescribed form, to be given by such person as may be prescribed, shall be produced by the exporter in proof of the due landing, in accordance with the export entry, of any goods which at the time of shipment were subject to the control of the Customs.

(3) A Manager may refuse to allow any other goods subject to the control of the Customs to be exported by any person who fails within a reasonable time to produce any certificate so required of the landing of any such goods previously exported by him, or to account for such goods to the satisfaction of a Manager.

68 Exported goods not to be relanded

(1) No goods shipped for export shall be unshipped or landed, except in a country outside Niue, without the permission of the Manager or some other proper officer of Customs.

(2) If any goods which at the time of shipment were subject to the control of the Customs are unshipped or landed in breach of this section, they shall be forfeited.

(3) If any goods are unshipped or landed in contravention of this section, the master and owner of the ship, or the pilot in command and owner of the aircraft and every person knowingly concerned in such unshipment or landing, shall each be guilty of an offence and shall be severally liable to a fine not exceeding 2 penalty units.

69 Time of exportation

For the purposes of this Act the time of exportation of goods shall be deemed to be the time at which the exporting ship leaves the limits of her last port of call in Niue or at which the exporting aircraft departs from the last Customs airport at which it landed immediately before proceeding to a country outside Niue.

70 Prohibited exports

- (1) Cabinet may, by regulation, prohibit the exportation of any goods –
 - (a) Being arms, explosives, or military or naval stores, or being goods which in his opinion may, if exported, be used as or in the manufacture of arms, explosives, or military or naval stores or for any purpose of war; or
 - (b) Being goods the prohibition of whose exportation is in his opinion necessary for the preservation of the flora or fauna of Niue; or
 - (c) Being goods that have not been prepared or manufactured in accordance with or do not conform to any conditions as to purity, soundness, or freedom from disease imposed by any laws, rules, or regulations in force under any Act; or
 - (d) Being goods which would in his opinion be the source of danger to life or property at sea or in the air; or
 - (e) Being goods the prohibition of whose exportation is in his opinion necessary in the public interest.
- (2) The powers conferred by subsection (1) shall extend to authorise the prohibition of the exportation of –
 - (a) Any specified goods;
 - (b) Goods of any specified class or classes;
 - (c) All goods except goods of a specified class or specified classes;
 - (d) All goods whatsoever (without specification of such goods or of the class or classes to which they belong).
- (3) Any prohibition imposed under this section –
 - (a) May be general; or
 - (b) May be limited to the exportation of goods to any specified place or by or to any specified person or class of persons; or
 - (c) May, whether general or limited, be absolute or conditional.
- (4) Any such conditional prohibition may allow the exportation of goods –
 - (a) Under the authority of a licence, permit, or consent to be granted by the Minister or by any other prescribed person on or subject to such terms or conditions (if any), not inconsistent with the provisions of the prohibition, as may be imposed by the Minister or person granting the licence, permit, or consent; or
 - (b) On or subject to any other prescribed conditions whatsoever.
- (5) [Repealed by 2004/270]
- (6) Every person commits an offence against this section who –
 - (a) Exports or ships, with intent to export, or conspires with any other person (whether that other person is in Niue or not) to export, any goods from Niue, contrary to the terms of any prohibitions in force with respect to it; or
 - (b) Commits any breach of, or fails in any respect to comply with, any term or condition on or subject to which there has been granted, under any regulations made under this section, any licence, permit, or consent; or
 - (c) Knowingly makes any false declaration or statement for the purpose of obtaining any such licence, permit, or consent; or
 - (d) Is knowingly concerned in any exportation, shipment, breach, or non-compliance to which paragraph (a) or paragraph (b) applies.
- (6A) Any person who commits an offence against this section is liable to a fine not exceeding 10 penalty units or 3 times the value of the goods to which the offence relates, whichever is the greater.

(7) All goods shipped on board any ship or aircraft for the purpose of being exported contrary to the terms of any such prohibition in force with respect to it and all goods waterborne for the purpose of being so shipped and exported, shall be forfeited.

(8) No such prohibition shall apply to goods that are already loaded into the exporting ship or aircraft at the time when the prohibition comes into force.

(9) Any prohibition under this section of the exportation of any goods shall, unless otherwise specified, extend and apply to the shipment of such goods for use as ships' stores.

71 Ships in which goods may be exported

(1) Except by the permission of the Manager, no goods subject to the control of the Customs shall be exported in any ship of less than 50 tons gross register.

(2) If any such goods are exported or loaded on board any ship for the purpose of being exported in contravention of this section, the owner and the master of the ship, and any person knowingly concerned in such exportation or landing, shall each be guilty of an offence and shall be severally liable to a fine not exceeding 2 penalty units and the goods shall be forfeited.

Departure of Ships and Aircraft

72 Clearance of ships and aircraft

(1) Unless he has received from the Manager a certificate of clearance in the prescribed form –

(a) The master of any ship, except a coastal ship, shall not depart with his ship from any port; and

(b) The pilot in command of any aircraft shall not depart with his aircraft from any Customs airport for any country outside Niue.

(2) If any provision of this section is contravened, the master and the owner of the ship or the pilot in command and the owner of the aircraft, shall each be guilty of an offence and shall be severally liable to a fine not exceeding 10 penalty units.

(3) If the master of any ship or the pilot in command of any aircraft attempts or threatens to commit an offence against this section, the Manager or other proper officer may (in addition to any power of seizure and detention under Part 13 for any offence so committed) seize and detain the ship or aircraft until a certificate of clearance has been obtained, and section 292 shall apply in the same manner as if the ship or aircraft had been seized under Part 13.

73 Report outwards

(1) Before any certificate of clearance is granted to the master of any ship or the pilot in command of any aircraft, the master or pilot shall –

(a) Deliver to the Manager or other proper officer a report outwards in such form and manner, containing such particulars verified by declaration, and with such supporting documents, as may be prescribed; and

(b) Answer all questions asked by the Manager or other proper officer relating to the ship or aircraft and its passengers, crew, cargo, stores, and intended voyage or journey; and

(c) Produce such other documents as may be required by the Manager or other proper officer relating to the ship or aircraft and her cargo.

(2) If the report so delivered is false, misleading, or defective in any particular, or if the answer to any such question is false or misleading, or if any

document so delivered or produced is not genuine is false or misleading, the master or pilot shall be guilty of an offence and shall be liable to a fine not exceeding 5 penalty units.

74 Entitlement to clearance

- (1) Any ship or aircraft shall be entitled to a certificate of clearance when –
 - (a) Not less than 24 hours have elapsed after application for the clearance has been made to the Manager; and
 - (b) All inward cargo and stores of the ship or aircraft have been duly accounted for and all the other requirements of the law in regard to the ship or aircraft and her inward and outward cargo and stores have been duly complied with.
- (2) Nothing in this section shall prevent the Manager from granting the certificate at any time after application therefor if he is satisfied that subsection (1) (b) has been complied with.

75 Boarding of outward ships and aircraft

- (1) The master of every ship departing from any port shall, if required to do so by the proper officer, bring the ship to at the boarding station appointed for the port, and by all reasonable means facilitate boarding by officers of Customs.
- (2) The pilot in command of every aircraft departing from a Customs airport for any country outside Niue shall, if so required by the Manager or other proper officer, bring his aircraft to the examination station and by all reasonable means facilitate boarding by officers of Customs.
- (3) The master of any ship or pilot in command of any aircraft shall not depart with his ship or aircraft from any port or Customs airport with any officer of Customs on board in the discharge of his duty, without the consent of that officer.
- (4) If the master or pilot acts in contravention of this section he commits an offence and shall be liable to a fine not exceeding 4 penalty units.

76 Production of clearance

- (1) The master of every ship and the pilot in command of every aircraft to whom a certificate of clearance has been granted shall, on demand by an officer of Customs, produce the certificate for examination by the officer and answer any questions the officer may put to him concerning the ship or aircraft and its passengers, crew, cargo, stores, and intended voyage or journey.
- (2) If the master or pilot acts in contravention of this section he commits an offence.

77 Departure to be from port of entry or Customs airport only

- (1) Except with the prior permission of the Manager, no ship shall –
 - (a) Depart for any country outside Niue from any place in Niue other than a port of entry, save after being driven there by stress of weather, want of provisions, or other necessity; or
 - (b) Having cleared from any place in Niue for any country outside Niue, go to any place in Niue other than a port of entry, unless driven there by stress of weather, want of provisions, or other necessity.
- (2) Except with the prior permission of the Secretary, given with the concurrence of the Secretary for Civil Aviation, no aircraft shall –
 - (a) Depart from any place in Niue, other than a Customs airport, for any country outside Niue; or

- (b) Having obtained a certificate of clearance at any Customs airport in Niue, land at any place in Niue other than a Customs airport.
- (3) (a) Nothing in subsection (2) (b) shall apply in relation to any aircraft flying to any country outside Niue if the aircraft is required under or by virtue of any enactment relating to air navigation, or is compelled by accident, stress of weather, or other necessity, to land at a place other than a Customs airport.
- (b) Where any such aircraft is so required or compelled to land, section 38 (2) to (6) shall apply.
- (4) If any provision of this section, or of section 38 (2) to (5) (as applied by this section), is contravened, the master and the owner of the ship or the pilot in command and the owner of the aircraft shall be guilty of an offence and shall be severally liable to a fine not exceeding 5 penalty units.

Stores for Ships and Aircraft

78 Stores exempt from duty

(1) Subject to any prescribed restrictions, such an allowance of stores as the Manager thinks adequate for the use of passengers and crew and the service of every ship or aircraft about to depart (whether directly or otherwise) for any country outside Niue may be shipped free of duty on entry for export under section 53 or from any warehouse, or under drawback of duty.

(2) Such stores shall be shipped pursuant only to an order of the Manager on request made in the prescribed form and manner by the master or owner of the ship or by the pilot in command or owner of the aircraft.

(3) On the issue of any such order in respect of warehoused goods, the stores therein mentioned shall be forthwith shipped in pursuance of the order in the same manner as if they had been entered for export, and all the provisions of this Act as to warehoused goods entered or shipped for export, so far as they are applicable, shall apply to it accordingly.

(4) On the issue of any such order in respect of goods to be shipped under drawback, the goods shall be forthwith entered in the prescribed form and manner for shipment as ships' stores under drawback, and, save so far as is otherwise prescribed all the provisions of this Act relating to drawback, so far as they are applicable, shall apply thereto accordingly as if the goods were for export and as if the master or owner of the ship or the pilot in command or owner of the aircraft, as the case may be, were the exporter.

(5) –

(6) Without limiting the power to make regulations conferred by section 306, regulations may be made under that section –

- (a) Determining what classes of goods are, or are not, to be deemed stores within the meaning of this section;
- (b) Extending the provisions of this section, subject to such restrictions and conditions as are deemed necessary, to whalers and other ships departing from Niue and returning to it without going to countries outside Niue.

79 Stores subject to duty

(1) If any ship or aircraft not being entitled to receive stores free of duty under section 78 leaves any port of entry or Customs airport having on board dutiable stores shipped under the authority of that section or loaded elsewhere than in Niue, duty shall be payable on those stores as if imported and entered for home consumption so far as they are consumed at any place, or in the course of

any voyage or journey between any 2 places, within the territorial limits of Niue at any time before the ship or aircraft becomes entitled under the said section 78 to receive stores free of duty.

(2) Entries shall be made and passed and duty paid on such stores in the prescribed manner and at the prescribed time.

(3) The owner and master of the ship or the owner and pilot in command of the aircraft shall be deemed to be the importers of such stores.

(4) Any ship or aircraft to which this section relates shall not be entitled to a certificate of clearance at any port or Customs airport until duty under this section has been paid.

PART 4

WAREHOUSES

Licensed Warehouses

80 Licensing of warehouses

(1) Any place of security for the deposit, keeping, and securing of dutiable goods without payment of duty on it may be licensed under this Act for any one or more of the following purposes –

(a) As a warehouse for the warehousing of dutiable goods generally;
or

(b) As a warehouse for the warehousing of such class or classes of dutiable goods as may be specified in the licence; or

(c) As a manufacturing warehouse (including a tobacco manufacturing warehouse) in which dutiable goods may be warehoused for use in such manufacture or processing of goods as is permitted by this Act or by regulations under this Act to be carried on in manufacturing warehouses.

(2) Any 2 or more places of security may be licensed as one warehouse.

(3) Any such warehouse may be situated in any port or outside the limits of any port.

81 Application for licence

(1) Every person who desires to obtain a licence for a warehouse shall make application therefor to the Manager.

(2) The application shall be made by the occupier of the premises to which it relates.

82 Security for warehouse

(1) Before any licence for a warehouse is granted the applicant therefor shall, if the Secretary so requires, give such security as the Secretary approves, and in such sum as he requires, for the payment of all duties which may become payable by the licensee under this Act in respect of any goods warehoused in that warehouse.

(2) The Secretary may require such security to be given by any such licensee in substitution for any security theretofore given by him, and may cancel the last-mentioned security accordingly.

(3) If any licensee fails or refuses to give any security required from him under this section, his licence may be cancelled by the Secretary by notice published in the *Gazette*.

83 Grant of licence

On receipt of an application from the occupier of any warehouse, the Secretary may grant to the occupier a licence for the warehouse, subject to section 82 and to such conditions as he may direct, or may refuse the application.

84 Harbour Boards and local authorities may hold licences

Notwithstanding anything to the contrary in any Act, any Harbour Board or any public or local authority having the control of management of any harbour may receive and hold a licence under this Act in respect of any warehouse in the occupation of that Board or public or local authority, and shall as the licensee thereof be subject to the same provisions, obligations, and liabilities as any other licensee under this Act.

85 Licence fees

(1) There shall be payable to the Crown by the licensee of every warehouse an annual licence fee.

(2) The annual licence fee shall consist of –

(a) A sum computed on the basis of the cubic contents of the warehouse or otherwise in accordance with prescribed scales; and

(b) In the case of a warehouse which in the opinion of the Secretary on account of its distance from the Customhouse or for any other reason, requires supervision involving unusual expenditure, an additional sum to be determined by the Secretary, not exceeding in any case \$1,500 a year; and

(c) In the case of any warehouse, if the Secretary determines, an additional sum, to be fixed by the Secretary sufficient to cover the reasonable expenses incurred by the supervising officer in travelling between his office or station and the warehouse.

(3) The measurement of the cubic contents of any warehouse shall be in accordance with regulations made under this Act.

(4) Every such licence fee shall be due and payable in advance on 5 January in each year.

(5) On the first grant of a licence a proportionate part of the proper annual licence fee, for the period elapsing between the time at which the licence takes effect and the next succeeding 5 January shall be due and payable by the licensee.

(6) On the cancellation, termination, or surrender of any licence, the licensee shall be entitled to a refund or remission of a proportionate part of the licence fee for the current year of the licence, calculated from the date of such cancellation, termination, or surrender to the end of that year.

86 [Repealed by 2004/270]

87 Termination of licence

Every licence for a warehouse shall be terminable by the Minister by not less than 3 months' notice in writing to the licensee.

88 Cancellation of licence

Any licence for a warehouse may be cancelled by the Secretary by notice published in the *Gazette* –

(a) If any licence fee payable in respect of the warehouse is in arrear and unpaid for 1 month after the due date; or

(b) If the licensee is convicted of any offence against the Customs Acts;

or

- (c) If the warehouse becomes, in the opinion of the Secretary, unfit for the purpose for which it was licensed; or
- (d) If the licensee becomes bankrupt or insolvent; or
- (e) If the warehouse ceases to be in the occupation of the licensee.

89 Transfer of licence

A licence for a warehouse may be transferred by the licensee, with the consent of the Secretary but not otherwise, to any successor of the licensee in the occupation of the warehouse.

90 Surrender of licence

A licence for a warehouse may be surrendered by the licensee by 1 month's notice in writing to the Secretary.

91 Closing of warehouse

On the termination, cancellation or surrender of the licence for any warehouse, or on any warehouse otherwise ceasing to be licensed under this Act, the warehouse shall be closed, and all goods therein that are subject to the control of the Customs shall be removed to some other warehouse by the owner of the goods, or shall be exported or entered for home consumption, or shall be otherwise dealt with as the Secretary may permit.

92 Use of manufacturing warehouses

The use of a manufacturing warehouse for the purpose of manufacture shall be subject to such conditions, restrictions, or exceptions as are prescribed by regulations under this Act or by the licence for that warehouse or by the directions of the Secretary.

93 Structural alterations of warehouse

(1) No structural additions to or structural alterations of any warehouse, and no new means of access or egress into or out of any warehouse, shall be made without the written permission of a Manager.

(2) If any provision of this section is contravened, the licensee shall be guilty of an offence and shall be liable to a fine not exceeding 2 penalty units.

Warehousing of Goods

94 Entry for warehousing

When any imported goods have been entered for warehousing the importer shall forthwith warehouse them in accordance with the entry without payment of duty in the first instance, except where otherwise provided in this Act.

95 Account of warehoused goods

(1) On the entry of any goods to be warehoused, the proper officer shall take an account of the goods in such manner and at such time and place as the Secretary may direct, either generally or in any particular case.

(2) Except where otherwise provided in this Act, the account so taken shall be that upon which all duties payable on those goods shall be ascertained and paid.

96 Receipt for warehoused goods

When any goods entered for warehousing have been duly deposited in the warehouse the licensee shall sign a receipt for them in the prescribed form.

97 Removal of goods to warehouse

If any goods entered to be warehoused are not forthwith warehoused accordingly by the importer, the Manager may remove them to a warehouse.

98 Packing of warehoused goods

Goods entered for warehousing shall be deposited in the warehouse in the packages in which they were imported, except goods repacked or skipped on a wharf with the permission of the Manager.

99 Repacking of warehoused goods

(1) The Manager may, as prescribed by regulations under this Act, permit the importer to sort, bottle, pack, or repack goods in any warehouse.

(2) In every such case a fresh account of the goods so dealt with shall be taken by the proper officer, and shall be substituted for the original account.

100 Duties of licensee

(1) The licensee of every warehouse shall –

- (a) Stack and arrange the goods in the warehouse so that reasonable access to and examination of every package may be had at all times;
- (b) Provide sufficient lights and just scales and weights for the use of the officers of Customs;
- (c) Provide all labour and materials requisite for the storing, examining, packing, marking, cooping, weighing, and taking stock of the warehoused goods whenever the Manager may desire.

(2) Every licensee who fails to comply with this section commits an offence and shall be liable to a fine of 0.5 penalty units for every day during which the offence has continued.

101 Access of officers of Customs to warehouse

The Manager and other proper officers shall at all hours of the day and night have access to every part of any warehouse and power to examine the goods in it, and may for that purpose break open the warehouse or any premises necessary to be passed through for obtaining access to it.

102 Restriction on right of warehousing

Without limiting the power to make regulations conferred by section 306, regulations may be made under that section –

- (a) Prescribing in respect of any class of goods the minimum quantity that may be entered for warehousing or cleared from a warehouse;
- (b) Prohibiting or imposing restrictions or conditions on the warehousing of dangerous goods, or of goods or classes of goods in respect of which any such prohibition, restriction, or condition is deemed necessary for any reason.

103 Sale of goods on which dues in arrear

If the warehouse dues on any warehoused goods are in arrear for 6 months or more, the goods may be sold by the Manager; but in the case of a licensed warehouse this power of sale shall not be exercised except at the request of the licensee.

104 Goods not to be removed without permission

(1) Except as provided by this Act, no goods that are subject to the control of the Customs shall be removed from any warehouse except –

- (a) With the permission of the proper officer of Customs after entry has been made and passed in respect of it; or
- (b) Under a written permit granted by the Manager in respect thereof.

(2) Every person who acts in contravention of this section commits an offence and shall be liable to a fine not exceeding 4 penalty units or the value of the goods in respect of which the offence is committed, whichever sum is the greater.

(3) Any goods removed in contravention of this section shall be forfeited.

105 Temporary removal of warehoused goods

(1) Subject to any regulations made under this Act, the Manager may permit the taking of warehoused goods out of the warehouse without payment of duty for any temporary purpose, for such convenient time and in such suitable quantities as he may approve, if sufficient security is taken for the return of the goods and payment of duty thereon.

(2) So long as any goods so removed remain subject to the control of the Customs they shall be deemed to be constructively warehoused in the warehouse from which they were so removed, and all the provisions of this Act shall continue to apply thereto accordingly.

106 Liability for duty on missing goods

(1) If any dutiable goods are removed from a warehouse by any person without the authority of the proper officer of Customs, or if any dutiable goods, after being warehoused, are not produced by the licensee to the Manager or other proper officer on demand made at the warehouse and are not accounted for as having been lawfully delivered from the warehouse, duty shall thereupon become due and payable on those goods as if entered for home consumption.

(2) The duty shall constitute a debt due to the Crown by the licensee and the importer, who shall be jointly and severally liable therefore, subject to this Act relating to refunds and remissions of duty.

(3) In this section, “licensee” includes any person who was the licensee of the warehouse at any time between the warehousing of the goods and the payment of the duties thereon, and all such persons shall be jointly and severally liable accordingly.

*Clearance of Warehoused Goods***107 Kinds of entry of warehoused goods**

Warehoused goods may be entered by the importer in the prescribed manner –

- (a) For home consumption; or
- (b) For export; or
- (c) For removal for warehousing elsewhere.

108 Entry for home consumption

When entry for home consumption has been made in respect of any warehoused goods the person making the entry shall forthwith pay to the Manager or other proper officer the duties, if any, payable thereon.

109 Entry for export

When any warehoused goods have been entered for export the person making the entry shall forthwith export the goods to a country outside Niue in accordance with the entry and with the provisions of this Act relating to the exportation of goods.

110 Entry for removal

(1) When any warehoused goods have been entered for removal for warehousing at any other warehouse (either at the same or any other port or place) they shall forthwith be removed in accordance with the entry, subject to such conditions as may be prescribed, and with such security for their due transmission and for the payment of the duty thereon as the Manager requires.

(2) On the arrival of the goods at the port or place of destination they shall be entered and warehoused in accordance with the entry for removal in the same manner and subject to the same provisions, so far as applicable, as in the case of the entry and warehousing of goods on the first importation thereof.

(3) Notwithstanding anything in section 62 (5) warehoused goods so removed may, with the permission of the Manager, be placed directly in a warehouse on their arrival at the port or place of destination.

111 Constructive warehousing

If, after any goods have been entered for warehousing either on importation or removal, and before they have been actually warehoused, they are entered for home consumption, exportation, or removal, they shall be considered as constructively warehoused and may be delivered for home consumption, exportation, or removal as if actually warehoused.

112 Rewarehousing

(1) When any goods have remained warehoused for 3 years (whether in the same or in different warehouses) the owner of them shall thereupon either –

- (a) Enter them for home consumption; or
- (b) Enter them for export; or
- (c) Rewarehouse them.

(2) No goods shall be rewarehoused without the permission of the Manager or other proper officer.

(3) Rewarehousing shall be effected as follows –

- (a) An application for rewarehousing shall be made by the owner to the Manager;
- (b) The goods shall be examined by the Customs at the expense of the applicant;
- (c) Duty shall, subject to this Act as to remission of duty, be paid on any goods found deficient;
- (d) A rewarehousing entry shall be made in the prescribed form for the goods according to the result of the examination;
- (e) On the passing of the entry a fresh account shall be substituted for the last account, and this shall complete the rewarehousing.

(4) When any goods have been rewarehoused this section shall thereafter apply to them as if they had been then warehoused for the first time.

(5) If in respect of any goods the owner acts in contravention of this section, duty shall forthwith become due and payable on those goods as if entered for home consumption, and they may be sold by the Manager.

*Crown Warehouses***113 Crown warehouses**

(1) The Secretary may, by notice in the *Gazette*, declare any building or other place in the occupation of the Crown and lawfully available for such use to be a Crown warehouse for the purpose of this Act.

(2) The Secretary may in like manner declare that any Crown warehouse shall no longer continue to be such.

114 Charges in Crown warehouses

Charges shall be made and payable in respect of goods warehoused in any Crown warehouse under the prescribed scale.

115 Warehousing in Crown warehouses

If any goods warehoused in a Crown warehouse are not lawfully removed within such period after warehousing as may be prescribed, duty shall become due and payable thereon as if entered for home consumption, and the goods may be sold by the Manager.

116 Licensed warehouses

Crown warehouses shall be wholly under the control of the Customs, and shall be specially available for the examination of goods and the storage of seized and unclaimed goods; but otherwise all the provisions of this Act relating to warehouses shall, so far as practicable, apply to Crown warehouses.

Special Provisions as to Manufacturing Warehouses

117-117A [Repealed by 2004/270]

118 Penalties for wrongful use of manufacturing warehouse

If the licensee of any manufacturing warehouse acts in contravention of any provision of any regulation made in relation thereto, or of any provision of his licence or of the directions of the Secretary, he commits an offence and shall be liable to a fine not exceeding 2 penalty units.

PART 5

119-135 [Repealed by 2004/270]

*Valuation of Goods***136 "Current domestic value" defined**

(1) When any duty is imposed on goods according to their value, or where for any other reason the value of any goods is to be determined for the purposes of the Tariff, such value shall be taken to be the fair market value of the goods when sold for cash in the ordinary course of business for home consumption in the principal markets of the country from which the goods are exported at the time when they were so exported.

(2) The value so taken is in this Act referred to as the current domestic value.

(3) Notwithstanding subsection (1), where for the purposes of any entry the amount of the current domestic value is required to be shown or declared, that amount shall be shown or declared, if it is not a whole number of dollars, at the nearest dollar, and, if it is a number of dollars and 50 cents exactly, at the dollar next below the amount.

(4) No deduction of any kind shall be allowed from the current domestic value of such goods because of any special or sample discount, or because of any special arrangement concerning the export of the goods or the exclusive right to their sale within certain territorial limits, or because of any royalty payable on patent rights but not payable when goods are so exported, or on account of any other consideration by which a special reduction in price has been or might be obtained.

(5) If it is proved to the satisfaction of the Manager that any drawback of import duty or excise duty has been paid or allowed on any parts, materials, or ingredients used in making any goods, or that any import duty or excise duty has been actually paid on the goods in the country from which they were exported or would have been payable on them in that country if they had been there entered for home consumption instead of being exported therefrom, the amount of that duty or drawback shall be deducted from the current domestic value of the goods as determined in accordance with the foregoing provisions of this section.

(6) When the current domestic value of any goods when sold for cash for home consumption as aforesaid depends in the ordinary course of business on the quantity sold, such value shall be determined by reference to the quantity actually imported at one and the same time by the same importer from the same seller or supplier, except that if the goods are imported under a bona fide contract of purchase made in the ordinary course of business and including a greater quantity of such goods than that which is actually imported at one and the same time the current domestic value of the goods shall be estimated by reference to the aggregate quantity so included in that contract and imported or to be imported in pursuance thereof within a period not exceeding twelve months.

(7) The determination of the Manager or, in the case of an appeal under section 142, the determination of the Minister, as to the existence and terms of any such contract as is referred to in subsection (6) and as to the quantity by reference to which the current domestic value of any goods is to be estimated in accordance with that subsection, shall be final and conclusive.

137 Production of invoice

(1) On the first entry (other than an entry for removal) of any goods, the importer or his agent shall produce to the Manager or other proper officer the invoice (as defined in section 138 for those goods, and make, and deliver to the Manager or other proper officer, a declaration in the prescribed form verifying that invoice and setting out the true value of the goods for the purposes of duty and such other particulars as may be prescribed.

(2) Unless the Secretary otherwise directs in relation to any class or classes of goods or transactions, the Manager or other proper officer shall retain the invoice so produced, or a legible copy thereof made by carbon or other duplicating process by or on behalf of the seller or consignor of the goods.

(3) If any failure to produce the invoice as required by this section is accounted for to the satisfaction of the Manager or other proper officer, proof of its contents by a copy of otherwise may be received in lieu of its production.

138 "Invoice" defined

(1) In this Act, "invoice" means –

- (a) In the case of goods imported on their sale, the original invoice prepared and issued by or on behalf of the seller showing –
 - (i) the true description of the goods; and
 - (ii) their current domestic value; and

- (iii) the actual money price paid or to be paid for them by the purchaser; or
 - (b) In the case of goods imported otherwise than on their sale, the original invoice prepared and issued by the consignor showing –
 - (i) the true description of the goods; and
 - (ii) their current domestic value.
- (2) Every invoice for imported goods shall be in the prescribed form.

139 Blank invoices

If any person has in his possession, without reasonable excuse, any blank or partly blank invoice forms, capable of being filled up and used as an invoice in such manner as to be likely to deceive the officers of the Customs, he commits an offence and shall be liable to a fine not exceeding 4 penalty units.

140 Valuation of goods by Collector

(1) Subject to this section, the amount of the invoice, after deducting therefrom all reasonable and lawful deductions in respect of discount, freight, insurance, and other charges, may be accepted by the Manager as sufficient proof of the current domestic value of the goods for purposes of duty, and he may value the goods and assess the duty accordingly.

(2) If the importer satisfies the Manager that the current domestic value of the goods for purposes of duty is less than the value as shown by the invoice after making such deductions as aforesaid, the Manager shall value the goods at the lower sum accordingly, and shall assess the duty on that value.

(3) If the Manager has reason to believe or suspect that the current domestic value of the goods for purposes of duty is greater than the amount of the invoice, after making such deductions as aforesaid, he may value the goods at such higher sum as he thinks proper, and assess the duty accordingly.

141 Valuation presumed to be correct

Every valuation made by the Manager under this Part (whether in accordance with the invoice or not) shall be taken to be correct, and duty shall be payable in accordance therewith, unless on appeal to the Minister under section 142 or in proceedings taken under this Act in a court of competent jurisdiction, a different amount is proved to be the correct value of the goods for the purpose of *ad valorem* duty.

142 Appeal to Minister from valuation

(1) From any valuation made by the Manager under this Part (whether in accordance with the invoice or not) the importer may appeal to the Minister.

(2) Notice of appeal under this section shall be given in writing to the Manager within 14 days after the assessment of duty, or without such further time as may be allowed by the Manager and while the goods still remain subject to the control of the Customs.

(3) On any such appeal the Minister shall, by himself or his lawful delegate, after giving a reasonable opportunity to the appellant to be heard, determine the true value of the goods for purposes of duty, and his decision on all questions of fact shall be final, except in the case of fraud.

(4) The Minister may delegate his power of hearing and determining any such appeal to any person or persons, whether officers of the Customs or not, but otherwise all the provisions of this Act as to the delegation of powers by the Minister shall apply to any delegation under this section.

(5) On any such appeal the burden of proving the true value of the goods shall be upon the appellant.

(6) If any such appeal is unsuccessful, the reasonable costs incurred by the Customs in the appeal, as fixed by the Minister or his delegate under such regulations (if any) as may be made in that behalf, shall be added to the duty and shall be paid by the appellant accordingly.

(7) If no appeal is so made to the Minister, the other provisions of this Act as to the recovery and refund of duty shall apply as if no such right of appeal has existed.

143 Invoices in foreign currency

(1) If the invoice shows the value of the goods in any currency other than that in force in Niue the value in Niue currency shall be ascertained according to a fair rate of exchange, to be declared in case of doubt by the Minister.

(2) For the purposes of this Act, the Minister may from time to time, by notice in the *Gazette*, determine the relation of Niue currency to the currency of any other country.

(3) Any such notice may at any time in like manner be amended or revoked.

144 Country of export

(1) Goods exported to Niue from any country but passing through any other country on their voyage to Niue (whether transhipped in that other country or not) shall be valued for duty as if they were imported directly from the first-mentioned country.

(2) The determination of the Manager as to the true country of export in any such case shall in every court or judicial proceeding be taken to be correct unless the contrary is proved.

145 Current domestic value of goods imported through intermediate country

(1) In this section, "intermediate country" means the country, not being the country of origin, from which any goods are imported into Niue.

(2) Notwithstanding section 136 the current domestic value of any goods imported into Niue from an intermediate country may, in such cases as Cabinet prescribes by regulation, be assessed at an amount exceeding, by such percentage as may be prescribed, the current domestic value of those goods in the country from which they were exported to the intermediate country at the time of their exportation to that country.

146 Valuation for assessment of duties

(1) If in the opinion of the Minister it is difficult, inequitable, or impracticable to determine the value of goods for the purposes of duty under section 136 because –

- (a) The goods are not sold for use or consumption in the country of export; or
- (b) They are not so sold in the ordinary course of business or in quantities similar to those imported into Niue; or
- (c) The exporter retains the property in them; or
- (d) They are not imported on their sale; or
- (e) They are not imported in pursuance of a bona fide contract of purchase made in the ordinary course of business; or
- (f) There is no reliable means of estimating their value owing to the imposition of a royalty on them; or

- (g) They are usually or exclusively sold or disposed of by or to agents, or re sold or imported in or under any other unusual or peculiar manner, conditions, or restrictions, either by way of limitation of purchases from or sales to any person or associations of persons or for any other reason –

the Minister shall determine the current domestic value of the goods in such manner and at such sum as he thinks just, and shall assess the duty accordingly, and his assessment shall be final.

(2) The current domestic value of goods as determined under this section shall not exceed the price at which the goods are, in the country of exportation and at the time when they were exported, sold in the ordinary course of business for domestic consumption to the ultimate consumer, if in the opinion of the Minister such price can be ascertained.

(3) Notwithstanding subsections (1) and (2), in the case of any goods being the produce or manufacture of a country not forming part of the Commonwealth, and being goods of a class or kind produced or manufactured in some part of the Commonwealth, the Minister may, in the exercise of the powers conferred on him by this section, determine a nominal value of those goods (whether such value is in his opinion that true current domestic value or not), if in his opinion the importation of those goods would, but for this section, be likely to affect prejudicially or injuriously any industry, trade, business, or occupation established or carried on in Niue or elsewhere in the Commonwealth.

(4) The nominal value determined under subsection (3) shall be such that the cost of the goods to the importer, including the duty payable thereon, shall not exceed by more than 20 percent the cost of similar goods, as determined by the Minister, including the duty on it, imported from and being the produce or manufacture of some part of the Commonwealth.

(5) The value so determined by the Minister shall be final, and for the purposes of the assessment of duties it shall be deemed to be the current domestic value.

147 Crown's right of compulsory purchase

(1) For the protection of the revenue against the undervaluation of goods subject to *ad valorem* duty, any goods of which entry is made may, at any time while they remain subject to the control of the Customs, be taken by the Crown at a price equal to their declared current domestic value, with the addition of such charges for freight, insurance, and other matters incidental to their importation as the Secretary thinks reasonable, and with the addition of any duties already paid thereon.

(2) The aforesaid right of taking goods shall be exercised only by the Secretary or the Minister, and the taking of the goods shall be deemed to have been effected as soon as a warrant for their taking has been signed by the Secretary or the Minister.

(3) On the signing of the warrant the goods shall become the property of the Crown, and shall be sold by the Manager, and the proceeds of such sale shall be accounted for as Customs revenue.

(4) The price payable by the Crown for the goods so taken shall be paid out of Customs revenue to the person making the entry.

(5) This section shall not be so construed as to restrict or take away any other powers possessed by the Customs in respect of the goods or any liability of the importer or any other person in respect of any offence committed in respect of the goods.

*Origin of Imported Goods***148 Determining country of origin**

(1) Without limiting the power to make regulations conferred by section 306, Cabinet may make regulations prescribing –

- (a) The classes of goods that shall be deemed for the purposes of the Customs Acts to be the produce or manufacture of any country;
- (b) The conditions to be fulfilled before any goods shall be deemed to be the produce or manufacture of any particular country.

(2) In respect of fish, whales, or other natural produce of the sea, or goods produced or manufactured wholly or partly therefrom at sea, anything done by or on board a ship belonging to any country shall be deemed for the purposes of this Act to have been done in that country, and any such produce of the sea or goods so produced or manufactured therefrom at sea, if brought direct to Niue, shall be deemed to be imported into Niue from that country.

(3) If any question arises as to the country to which any ship belongs for the purposes of subsection (2) the question shall be determined by the Minister, whose decision shall be final.

149 Importer to state country of origin

On making entry of any goods the importer or his agent shall state to the best of his knowledge, information, and belief the country of which the goods are the produce or manufacturer and shall satisfy the Manager of the truth of such statement, by declaration or otherwise, in the prescribed form.

150 Entry of goods at preferential rates

(1) Notwithstanding anything in section 119 or section 120 or elsewhere in the Customs Acts, the duty (if any) payable under the Normal Tariff shall be paid on all goods imported into Niue or entered therein for home consumption unless the following provisions of this section are complied with.

(2) Where it is claimed in respect of any goods that they are entitled to be entered free of duty or at any rate of duty lower than that set forth in the Normal Tariff in respect of such goods, they shall not be so entered unless, in verification of such claim, there is produced to the Manager in addition to an invoice of the goods, a certificate of origin in the prescribed form, signed by the seller or consignor.

(3) No such invoice as is referred to in subsection (2) shall be produced to the Manager at the time of making entry for those goods, or within such period as the Manager may allow.

(4) The certificate referred to in subsection (2) shall relate to any goods other than those to which the certificate mentioned in it refers.

(5) An extension of time under subsection (4) shall be granted on such conditions as to security for payment of duty, or as to payment of penalties, or otherwise, as may be prescribed, and on such further conditions (if any), as the Minister may in any case direct.

(6) In the case of goods sent by post or by airfreight or in such other cases (if any) as prescribed or with the consent of the Minister in any other case, the Manager may dispense with any certificate required by this section if evidence, satisfactory to him, is produced that the goods, if entered free of duty or at any rate of duty lower than that set forth in the Normal Tariff in respect of such goods, are entitled to be so entered pursuant to this Act.

(7) Nothing in subsection (1) shall be so construed as to affect the liability of any goods to duty under a tariff adopted under section 127.

151 Goods subject to forfeiture in case of false declaration

If the Manager has reason to believe that any goods referred to in any statement, declaration, invoice, or certificate under section 149 or 150 are not the produce or manufacture of the country mentioned in the statement, declaration, invoice, or certificate, he may detain them for examination; and if the statement, declaration, invoice, or certificate is false the goods shall be forfeited.

*Assessment and Recovery of Duty***152 Duty on imported goods a Crown debt**

(1) The duty on any imported goods shall, immediately on their importation, constitute a debt due to the Crown.

(2) Such debt shall be owing by the importer of the goods, and, if there are several importers (whether at or at any time after the time of importation), then jointly and severally by all of them.

(3) Subject to any special provisions made by this Act in that behalf, such debt shall become due and payable as soon as entry of the goods for home consumption has been made, or the goods have been wrongfully landed or otherwise wrongfully dealt with without having been entered for home consumption, or any other offence against this Act has been committed in respect of them.

(4) Such debt shall be recoverable by action at the suit of the Manager on behalf of the Crown.

(5) The right to recover duty as a debt due to the Crown shall not be affected by the fact that the goods have ceased to be subject to the control of the Customs, or that a bond or other security has been given for the payment of duty, or that no proper assessment of duty has been made in due course under this Act, or that a deficient assessment of duty has been made.

153 Duty on goods produced in manufacturing warehouse a Crown debt

(1) The duty on any goods manufactured in a manufacturing warehouse shall immediately on their manufacture constitute a debt due to the Crown.

(2) Such debt shall be owing by the person who is the licensee of the warehouse at the time when the goods are manufactured and by every person who thereafter becomes the licensee of that warehouse at any time before the duty has been fully paid, and by every person who is or becomes the owner of the goods at any time before the duty has been fully paid; and all such persons shall be jointly and severally liable for the duty.

(3) Section 152 (3) to (5) shall extend and apply to the duty referred to in this section.

154 Duty a charge on goods

(1) The duty on any goods shall constitute a charge on those goods until fully paid.

(2) If any duty so charged on any goods is due and unpaid, the Manager may take possession of the goods, and sell them or any part of them in satisfaction or part satisfaction of the charge.

155 Goods not to be delivered till duty paid

(1) Except as otherwise provided in this Act, no person shall be entitled to obtain delivery of any goods from the control of the Customs until the sum demanded by the Manager or other proper officer of Customs by way of duty on the goods has been paid in full.

(2) No action or other proceeding shall be instituted against the Crown or the Minister or any officer of Customs in respect of the detention of any such goods during any period before the payment of the full sum so demanded.

156 Payment of duty by one person not to affect liability of other persons

The liability of any person under this Act for the payment of duty on any goods shall not be extinguished or affected by the payment of the duty by any other person who may be liable for it under any other provision, whether or not the duty so paid has been refunded.

157 Incidence of altered duties

(1) In the case of any alteration in the law relating to the liability of any goods to duty or the rate of duty to which any goods are liable, such liability or rate shall, except where otherwise expressly provided, be determined –

- (a) In the case of goods warehoused or goods produced in a manufacturing warehouse (whether before or after such alteration in the law) by the law in force at the time when the goods are entered for home consumption;
- (b) In the case of all other goods, by the law in force at the time of importation or by the law in force at the time at which the goods are thereafter entered for home consumption, whichever is the more favourable to the importer.

(2) In this section, “alteration in the law” includes any variation which in any manner takes place at any time or periodically in the liability of goods to duty or in the rate of duty to which they are liable.

158-159 [Repealed by 2004/270]

160 Assessment of duty in particular cases

(1) When duties are imposed according to a specified quantity, weight, size, or value, the duties shall be charged proportionately on any greater or smaller quantity, weight, size or value.

(2) [Repealed 6/28/7970 (NZ)]

(3) Subject to the provisions of the Tariff, for the purposes of assessing duty on spirits –

- (a) The strength of any spirits shall be ascertained in the prescribed manner; and
- (b) If on entry for home consumption it is so ascertained that the strength of any spirits has increased or diminished by natural process of change while they were subject to the control of the Customs, duty shall be payable in accordance with the strength as so increased or diminished.

161 Alteration of goods

In such cases and under such conditions and restrictions as may be permitted by the Secretary, imported goods may be so altered as to fall under another item of the Tariff, and the liability of such goods to duty shall be determined accordingly and a refund or remission of duty may be made or allowed as the case may require.

162 Minimum duty collectable

Without limiting the power to make regulations conferred by section 306, regulations made under that section may prescribe the minimum amount of duty that need be collected on any goods; and any goods on which the duty if assessed under this Act would be less than the minimum so prescribed may, if the Manager thinks fit, be admitted free of duty.

163 Essences and other preparations

(1) Duty shall be charged on all essences, condensations, concentrations, or preparations of dutiable goods according to the quantity or equivalent of dutiable goods into which such essences, condensations, concentrations, or preparations can be converted according to a standard to be prescribed by regulations made under this Act.

(2) In default of any such regulations, or so far as they do not extend, duty shall be chargeable as if this section was not in force.

164 Reimportation of goods exported

Goods exported from Niue for such purposes as may be approved by the Minister, either generally or in any particular case, may on reimportation into Niue be admitted, subject to such conditions as the Minister may impose either generally or in any particular case, either free of duty or at such duty as may be determined by the Minister, not exceeding the duty that would be payable thereon if imported for the first time.

165 [Repealed 7/137/1967 (NZ)]

166 [Repealed by 2004/270]

167 Power to suspend excise duties on goods supplied to certain organisations

(1) Cabinet may by regulation suspend any excise duty in respect of any goods or classes of goods manufactured in Niue and –

(a) Supplied solely for the use of such organisations, expeditions, or other bodies as may be approved by the Minister and as may be established or temporarily based in Niue consequent on any agreement or arrangement entered into by or on behalf of the Government of Niue with the Government of any other country or with the United Nations; or

(b) Supplied solely for the use of persons temporarily resident in Niue for the purpose of serving as members of any such approved organisation, expedition, or other body.

(2) In respect of any goods or class of goods to which this section relates, the Secretary may impose such conditions as he thinks fit.

168 Samples of goods

Small samples of the bulk of any goods subject to the control of the Customs may, subject to such conditions as may be prescribed, be delivered free of duty.

169 Duties on wrecked goods

(1) All goods derelict, flotsam or jetsam, or landed, saved, or coming ashore from any wreck, shall be chargeable with duty as if imported in the ordinary course and entry thereof shall be forthwith made at the nearest port by the owner or person entitled thereto or having possession thereof; and all the provisions of this Act, so far as they are applicable, shall apply accordingly.

(2) If default is made in making such entry, duty shall become due and payable in the same manner as if the goods had been entered for home consumption.

170 Liability of owners of ships or aircraft for duty on missing goods

(1) If any cargo or ships' stores are smuggled into or unlawfully landed in Niue from any ship or aircraft being within the territorial limits of Niue or elsewhere, the owner and the master of the ship, or the owner and the pilot in command of the aircraft, shall (in addition to the liability of any other person) be jointly and severally liable for the payment of the duty on such cargo or stores, as if imported by them and entered for home consumption.

(2) The Manager at any port may demand from the owner or master of any ship, or the owner or pilot in command of any aircraft, at that port payment of any sum that he believes or suspects to be owing under the foregoing provisions of this section.

(3) So long as any sum so demanded by the Manager remains unpaid, the ship or aircraft shall not be entitled to a certificate of clearance.

(4) In all proceedings for the recovery of duty under this section, or for a refund of duty paid under this section, the sum so demanded by the Manager shall be presumed to be due and payable until the contrary is proved.

Refunds and Remissions of Duty

171 Recovery of duty paid in error

(1) At any time within one year after the payment of any sum by way of duty the person by whom payment was so made may institute proceedings against the Crown for a refund of such duty, or of any part thereof, on the ground that the duty was not lawfully chargeable, or was charged in excess, and whether the error alleged is one of fact or of law.

(2) Nothing in this section shall be so construed as to entitle any person to take proceedings for a refund of duty on any ground on which the determination of the Manager, or the Secretary, or the Minister is made final by this Act.

172 Secretary may refund duty paid in error

(1) If the Secretary is satisfied that any duty has been paid in error, whether of law or fact, he may refund it –

- (a) At any time within 3 years after it has been paid; or
- (b) At any later time, on an application made within such 3 years.

(2) If in any case, after any agreement is made, whether in Niue or elsewhere, for the sale of goods, the Secretary has authority to make a refund in respect of such goods, he may, before making the refund, require the production of evidence to his satisfaction that the importer has remitted to the buyer of the goods the amount of the refund.

172A Secretary may refund duty on forfeited goods

(1) When any duty or sales tax has been paid on any goods that are condemned or deemed to be condemned under Part 12, the Secretary may pay to any person appearing to him to be entitled to it a sum equal to the amount of that duty or tax –

- (a) At any time within 3 years after seizure of the goods; or
- (b) At any later time, on an application made within such 3 years.

(2) Such sum shall not exceed the amount that would be available for payment of duty under section 223 (3).

173 Remission or refund of duty on damaged and faulty goods

Whenever the Manager is satisfied that imported goods –

- (a) Have been damaged or have deteriorated in condition before importation; or
- (b) Are found, either before delivery from the control of the Customs or within such period after such delivery as may be prescribed, to be of faulty manufacture; or
- (c) Have been damaged or have deteriorated in condition after importation and while still subject to the control of the Customs, without the wilful act or the negligence of the importer or of the licensee of any warehouse in which they have been warehoused, or of the servants of the importer or licensee –

the importer shall be entitled to a remission or refund of duty on those goods to such extent and subject to such conditions and exceptions as may be prescribed.

174 Remission of duty on warehoused goods diminished in value

(1) When any imported goods have been warehoused for not less than 2 years and the Secretary is satisfied that, while so warehoused, they have diminished in value otherwise than by reason of damage or deterioration in condition, he may in such case and to such extent as may be prescribed allow to the importer a remission of duty on those goods.

(2) With the approval of the Minister in any case, the Secretary may allow a remission of duty under this section in respect of any warehoused goods, notwithstanding that they have been warehoused for less than 2 years.

175 Remission or refund of duty on goods destroyed, pillaged, or lost

(1) If the Manager is satisfied that any goods, at any time after their importation, and while still subject to the control of the Customs, have been destroyed, pillaged, or lost without the wilful act or the negligence of the importer or the licensee of any warehouse in which they have been warehoused or of the servants of the importer or licensee, the importer shall, subject to any prescribed exceptions, restrictions, or conditions, be entitled to a remission or refund of the duty on the goods.

(2) Except where an importer is entitled to exemption from duty under subsection (1), duty on all goods destroyed, pillaged, or lost after importation and while still subject to the control of the Customs shall be due and payable by the importer as if the goods had been entered by him for home consumption on their importation.

(3) When any goods have diminished in quantity or weight they shall to the extent of that diminution be deemed to have been lost within the meaning of this section.

(4) All goods specified in the inward report of any ship or aircraft or in an invoice produced in relation to any entry shall be presumed to have been actually imported unless the contrary is proved.

176 Remission or refund of duty on goods produced in a manufacturing warehouse

(1) Sections 173-175 shall extend and apply, with all necessary modifications, to goods manufactured in a manufacturing warehouse, as if the manufacture of those goods were their importation, and as if the licensee of the warehouse or the owner of the goods were the importer of the goods so manufactured.

(2) If the Secretary is satisfied that any waste of imported raw tobacco has resulted from any process of manufacture in a tobacco-manufacturing warehouse, he may permit a remission or refund of duty on the tobacco so wasted.

177 Remission of duty on goods not worth the duty

The Secretary may cause any dutiable goods that are subject to the control of the Customs and are not, in the opinion of the Manager, worth the duty payable on them to be destroyed or otherwise dealt with as the Secretary directs, and may remit the duty.

178 Duty on goods from countries not forming part of the Commonwealth

(1) In respect of any goods or of any class or classes of goods being the produce or manufacture of a country not forming part of the Commonwealth, the Minister may, on any of the grounds set out in subsection (2), direct that such goods or any goods of such class or classes be admitted as if they were the produce or manufacture of some part of the Commonwealth, or, in the alternative, that they be admitted at a rate of duty intermediate between the rate of duty or exemption from duty specified in the British Preferential Tariff and the rate otherwise applicable under the Standard Tariff.

(2) The Minister may exercise the powers conferred by subsection (1) on any of the following grounds, namely –

- (a) On the ground that he is satisfied that goods of a like kind are not economically produced or manufactured in the Commonwealth;
- (b) On the ground that goods of a like kind, being the produce or manufacture of the Commonwealth, are sold or offered for sale in Niue at unreasonably high prices and that in the opinion of the Minister the interests of the public are or will be thereby prejudicially affected;
- (c) On the ground that any conditions or restrictions attaching to the importation into Niue of goods of a like kind, being the produce or manufacture of the Commonwealth, or attaching to the sale or other disposition of such goods in Niue, are such that in the opinion of the Minister the interests of the public are or will be thereby prejudicially affected;
- (d) On the ground that goods of a like kind being the produce or manufacture of the Commonwealth, constitute an unduly large proportion of the total goods of that kind imported into Niue and that in the opinion of the Minister the interests of the public are or will be thereby prejudicially affected.

(3) Any direction given by the Minister under this section may in its application to any goods be revoked at any time before such goods are entered for home consumption.

(4) A direction under this section may in the discretion of the Minister be given in respect of any goods entered for home consumption before the date on which the direction is given, if an application for such a direction in respect of those goods has been made at a time not later than the date of entry of the goods for home consumption.

(5) Where the Minister gives a direction under subsection (4), a refund of the duty paid or of any portion of it may, subject to such conditions, if any, be made accordingly.

179 Duty may be reduced or remitted where prices of Niue goods increased

(1) This section shall apply only in cases where by this Act or by any other Act that may hereafter be passed goods of any class are made liable to Customs duty, or to an increase in the amount or the rate of Customs duty, as the case may be.

(2) The Minister may by order given under his hand and published in the *Gazette*, remit the duty payable on any such goods, or reduce the amount or the rate of duty on any such goods, if he is satisfied that the prices charged by the producers or manufacturers of similar goods being the produce or manufacture of Niue are in excess of the usual prices that were charged by producers or manufacturers of such goods immediately before the alteration of the law, and that the maintenance of the increased prices would be detrimental to the public interest.

(3) Every order under this section may in like manner be revoked or varied.

(4) Nothing in this section shall apply with respect to the duty on any goods imported into Niue if the Minister is satisfied that the whole of the increase in the prices of similar goods being the produce or manufacture of Niue is due to the increased cost of production, manufacture, or distribution, and has been fixed by the producers or manufacturers under any usual commercial practice followed before the alteration of the law or under a commercial practice adopted since such alteration and approved by the Minister for the purposes of this section.

180 Refund of duty on materials used in manufacture of agricultural implements, machinery, ships and boats

(1) In such cases and on such conditions as may be prescribed, but subject to subsection (2), any person who manufactures in Niue –

- (a) Agricultural implements of a kind mentioned in Schedule 4; or
- (b) Machinery of such a class that, if imported into Niue it would be liable to any duty imposed only on goods not produced or manufactured in the Commonwealth; or
- (c) Ships or boats –

shall be entitled to a refund of any duty paid on materials which have been used by him in such manufacture.

(2) Except in the case of materials used in the manufacture of agricultural implements of a kind mentioned in Schedule 4, no refund shall be granted under this section in respect of any materials not being the produce or manufacture of some part of the Commonwealth, unless the Secretary is satisfied that materials of the same class, being the produce or manufacture of some part of the Commonwealth, could not have been obtained on reasonable terms or conditions.

(3) In this section, “materials” means such materials used in the manufacture of any goods of a kind to which subsection (1) applies, and also such parts of any implements or machinery to which that subsection applies, and such parts of ships or boats (including machinery therefor), as cannot, in the opinion of the Secretary be advantageously manufactured or produced in Niue.

181 Duty on goods temporarily imported

(1) Where the Manager is satisfied that any goods have been temporarily imported, the duty payable on the goods may be secured by way of deposit of money or, in such cases or classes of cases as may be approved by the Secretary, but such other security as is provided for in this Act; and on receipt of such security the Manager may deliver the goods from the control of the Customs.

(2) Subject to subsection (3) and to such conditions (if any) as may be prescribed, the deposit so made shall be returned to the person by whom it was made, or, as the case may require, the security shall be released, if –

- (a) The goods, being goods imported to be used temporarily in Niue for industrial or commercial purposes, are exported within 12 months from the date of their landing (in this section referred to as the prescribed period) or within such longer period as the Secretary may determine in any particular case; or
 - (b) The goods, not being goods to which paragraph (a) applies, are exported –
 - (i) Within the prescribed period; or
 - (ii) Within such longer period as the Secretary may determine in any case where he is satisfied that the importer is prevented by *force majeure* from exporting them within the prescribed period; or
 - (c) The Secretary is satisfied that any such goods have been accidentally destroyed at any time within the period prescribed by or determined under this subsection.
- (3) Where in any case to which subsection (2) applies –
- (a) Goods imported to be used temporarily in Niue for industrial or commercial purposes are exported within the period prescribed by or determined under this section; or
 - (b) Any other goods, being goods on which in the opinion of the Minister duty should be paid, are so exported; or
 - (c) The Manager is satisfied that any such goods have been accidentally destroyed at any time within the period prescribed by or determined under this subsection –

duty shall be payable in respect of the goods on the amount by which their value for duty, as assessed by the Manager at the time of their exportation or destruction, is less than their value for duty, as ascertained in accordance with the Customs Acts, at the time of their importation.

(4) Where the Manager is satisfied that any goods have been shipped for export, or where any goods have been packed, for export, into a bulk cargo container in a Customs containerbase and the container has been secured to the satisfaction of the Manager, he may for the purposes of this section, treat them as having been exported.

(5) If at the expiry of the period prescribed by or determined under this section any security has not been dealt with in accordance with subsection (2) –

- (a) Any duty so secured by way of deposit of money shall be dealt with as Customs revenue; and
- (b) Any duty otherwise so secured shall be paid to the Manager by the importer within 14 days after the expiry of that period and on such payment the security shall be released.

182 Recovery of duty refunded in error

All money refunded by the Customs in error, whether of fact or law, shall be recoverable by action at the suit of the Manager on behalf of the Crown at any time within 3 years after the date of its payment, or without limit of time if the refund has been obtained by fraud.

*Drawbacks***183 Drawbacks of duty on goods exported**

(1) Drawbacks of duty on goods imported into Niue or produced in any manufacturing warehouse (whether before or after the commencement of this Act) may be allowed –

- (a) On the export of the goods; or
- (b) In respect of such imported or manufactured goods wrought into or attached to exported goods; or
- (c) In respect of such imported or manufactured goods, except fuel or plant equipment, consumed in the manufacture or production of exported goods.

(2) Drawbacks under this section shall be allowed in such cases, to such amount, on such conditions, and with such restrictions as may be prescribed.

(3) Where the Manager is satisfied that any goods have been shipped for export, or where any goods have been packed, for export, into a bulk cargo container in a Customs containerbase and the container has been secured to the satisfaction of the Manager, he may for the purposes of this section treat them as having been exported.

(4) Where drawback has been allowed on any goods so treated as exported, the goods shall not, without the permission of the Manager, be unshipped or relanded or unpacked before export.

(5) If, where drawback has been allowed on any goods so treated as exported, drawback has been paid in respect of any goods that are unshipped or relanded or unpacked before export, the amount of drawback allowed in respect of those goods shall, immediately on their unshipment or relanding, or unpacking constitute a debt due to the Crown and charged thereon; and such debt shall immediately be payable by the owner of the goods at the time of their unshipment or relanding or unpacking.

(6) Such debt shall be recoverable by action at the suit of the Secretary on behalf of the Crown.

(7) The right to recover drawback as a debt due to the Crown under this section shall not be affected by the fact that a bond or other security has been given in respect of the unshipment or relanding or unpacking of the goods before export.

(8) Every person commits an offence who is knowingly concerned in the unshipment or relanding or unpacking of any goods in contravention of subsection (4).

184 Entry for exportation under drawback

(1) Before any goods are shipped or waterborne to be shipped for exportation under drawback the exporter shall –

- (a) Make entry therefor in the prescribed form and manner; and
- (b) Produce the goods for examination by the Customs.

(2) The making of any such entry shall be deemed to be the making of a claim for drawback, and the goods shall forthwith become subject to the control of the Customs accordingly.

(3) If any goods are shipped or waterborne to be shipped for exportation before entry has been duly made and passed under this section, the right of drawback on those goods shall be forfeited unless the Secretary in any particular case determines otherwise.

185 Reimportation of goods exported under drawback

(1) Except in such cases and under and subject to such restrictions and conditions as may be prescribed, no goods shipped for export under drawback shall at any time thereafter be reimported into Niue.

(2) If any goods are reimported in contravention of this section they shall be forfeited and the importer or any person knowingly concerned in any such reimportation shall be guilty of an offence and shall be liable to a fine not exceeding 4 penalty units.

186–193 [Repealed by 2004/270]

PART 7

194-202 [Repealed by 2004/270]

PART 8

POWERS OF OFFICERS OF CUSTOMS

203 Examination of goods

(1) Any officer may examine, weigh, analyse, and test, or cause to be examined, weighed, analysed or tested, any goods subject to the control of the Customs, or any goods that he has reasonable cause to suspect are subject to the control of the Customs and may for this purpose open or cause to be opened any packages in which such goods are contained or suspected by him to be contained.

(2) All expenses so incurred by the Customs shall be a debt due to the Crown by the importer or exporter or the owner of the goods and shall be recoverable in the same manner as duty under this Act.

204 Examination of goods no longer under control of Customs

(1) After any goods have ceased to be subject to the control of the Customs the Secretary or any Manager if he has reasonable cause to suspect that any offence has been committed against the Customs Acts in respect of those goods, may, by warrant under the seal of the Customs, require any person who has or is supposed to have possession or control of those goods to produce them for inspection by the officers of Customs.

(2) Any officer may thereupon exercise in respect of the goods all the powers conferred by section 203 in respect of goods subject to the control of the Customs.

(3) If any person fails or refuses to produce any goods in accordance with such a warrant, or obstructs an officer in the exercise of his powers under this section, he commits an offence and shall be liable to a fine not exceeding 2 penalty units unless he proves that he had not possession or control of the goods or that he was otherwise unable to comply with the warrant.

205 Boarding of ships and aircraft

(1) While any ship or aircraft is within the territorial limits of Niue, any officer may board it.

(2) The Manager may station officers in any ship while it is within the limits of any port, and the master shall provide suitable accommodation below decks and suitable and sufficient food for those officers and also means of safe access to and egress from the ship in accordance with the requirements of any such officer.

(3) If the master fails to comply with subsection (2) he and the owner of the ship shall each be guilty of an offence and shall be severally liable to a fine not exceeding 0.5 penalty units for every day during which such default has continued.

206 Searching of ships and aircraft

(1) Any officer may search any ship or aircraft within the territorial limits of Niue.

(2) In the exercise of this power of search an officer may, by force if need be, enter every part of the ship or aircraft, and open any package, locker, or other place, and examine all goods found on the ship or aircraft.

207 Boarding and searching Her Majesty's ships and aircraft

The power conferred on an officer by this Act of boarding or searching any ship or aircraft shall extend –

- (a) To any ship or aircraft in the service of the Government of Niue; and
- (b) With the consent of the officer commanding or officer in charge, to any other ship or aircraft in the service of Her Majesty.

208 Firing on ships

The officer commanding or officer in charge of any ship in Her Majesty's service (whether in respect of the Government of Niue or otherwise) having hoisted and carrying the proper ensign and pendant or the Customs flag may, within the territorial limits of Niue, chase any ship which does not immediately bring-to when signalled or required to do so, and may, after having fired a gun as a signal, fire at or into the ship to compel her to bring-to.

209 Securing goods on ships and aircraft

(1) While any ship or aircraft is within the territorial limits of Niue, any officer of Customs may secure any goods on board that ship or aircraft and subject to the control of the Customs –

- (a) By fastening hatchways or other openings into the hold and by locking up, sealing, or marking the goods, or otherwise as may be thought necessary; or
- (b) By the removal of the goods to a Crown warehouse or other place of security.

(2) If any fastening, lock, mark or seal so placed by an officer upon any goods or upon any hatchway, opening, or place on any ship or aircraft is, except with the authority of an officer of Customs, opened, altered, broken, or erased by any person at any time while the ship or aircraft is at any place, or in the course of any voyage or journey between any 2 places, within the territorial limits of Niue, the person so acting, and the owner and master of the ship or, the owner and pilot in command of the aircraft, shall each be guilty of an offence and shall be severally liable to a fine not exceeding 4 penalty units.

210 Patrolling seacoast and aerodromes

Any officer and any person acting in his aid may –

- (a) Patrol upon and pass freely along and over any part of the seashore or on the shores or banks of any port, bay, harbour, or other waters, or over any part of the land immediately adjoining the seashore or such shores or banks as aforesaid; and
- (b) At any time enter and inspect any aerodrome and all buildings and goods therein.

211 Mooring vessels of Customs

The officer in charge of any boat or other vessel employed in the service of the Customs may haul the boat or vessel upon any part of the seashore or of the shores or banks of any port, bay, harbour, or other waters, or upon any part of the land immediately adjoining the seashore or such shores or banks as aforesaid, and may moor the boat or vessel on it.

212 Questioning persons

(1) Any officer may question any person who is on board any ship, boat, or aircraft, or who has within 48 hours landed from or got out of any ship, boat or aircraft, as to whether he has or within the said period of 48 hours has had in his possession any dutiable, restricted, uncustomed, or forfeited goods.

(2) Any person who, on being so questioned, refuses or fails to answer any question so put to him, or to answer any such question in writing if so required by the officer, or answers any such question incorrectly, commits an offence and shall be liable to a fine not exceeding 2 penalty units.

(3) Any dutiable, restricted, or uncustomed goods found in the possession of any such person shall be forfeited if, on being so questioned, he has denied or failed to disclose the possession of it.

(4) It is a defence to a charge under this section of answering any such question incorrectly to prove that the defendant did not know, and had no reason to know, that the goods were in his possession.

213 Searching persons

(1) If any officer or constable has reasonable cause to suspect that any person has unlawfully secreted about his person any dutiable, restricted, uncustomed, or forfeited goods, he may detain and search the person so suspected.

(2) Any person so detained may, before being searched, demand to be taken before the Manager.

(3) The Manager may order the person so detained to be searched, or may discharge him without search.

(4) A woman or girl may be detained as aforesaid but shall not be searched except by a female searcher appointed by the Manager either generally or for the particular case.

(5) No person shall be searched under this section unless he has first been informed of his right to be taken before a Manager.

214 Examining goods carried by persons

If any officer or constable has reasonable cause to suspect that any person is unlawfully carrying, otherwise than by secreting about his person, any dutiable, restricted, uncustomed, or forfeited goods, he may detain the person so suspected and examine any goods carried by him, and may for that purpose open any package carried by him.

215 Searching vehicles or boats

If any officer or constable has reasonable cause to suspect that any dutiable, uncustomed, restricted, or forfeited goods are contained in any vehicle or boat, he may stop it and search it.

216 Customs warrants

(1) The Secretary may grant a warrant in the form in Schedule 5 and under the seal of the Customs to any officer.

(2) Any such warrant, unless sooner revoked by the Secretary, shall remain in force so long as the person to whom it has been so granted remains an officer whether in the same capacity or not.

217 Entry and search under Customs warrant

(1) Subject to subsection (2) any officer having with him a Customs warrant granted to him under this Act may at any time in the day or night and on any day of the week enter into, by force if need be, and search any house, premises, or place in which he has reasonable cause to suspect that there are any uncustomed goods, or any goods subject to the control of the Customs, or any goods unlawfully imported, or any forfeited goods, or any goods in respect of which any offence has been committed against the Customs Acts, or any books or other documents relating to any such goods, or any books or other documents containing information that may lead to the recovery of any penalty or other money under the Customs Acts and may on any such entry break open and search any boxes, receptacles, packages, or places in which any such goods, books, or documents may be or may be supposed to be.

(2) On each occasion on which any officer proposes to use his warrant for the purposes of this section he shall first obtain the permission of the Manager who shall not grant permission unless he is satisfied that such reasonable cause as aforesaid exists.

(3) Any officer so acting under a Customs warrant may take with him and have the assistance of any constable and such other assistants as he thinks necessary.

(4) Any officer so acting under a Customs warrant shall show his warrant on demand to the occupier of the house, premises, or place that he so enters or proposes to enter.

(5) No officer or other person lawfully so entering in pursuance of any such Customs warrant shall be deemed to be a trespasser by reason of any act done by him after entry.

(6) When any entry has been so made any officer of Customs may make copies of or extracts from any books or documents as aforesaid; and in all Courts and in all proceedings such copies or extracts, if certified by an officer under the seal of the Customs, shall be received as evidence instead of the originals.

(7) Every person who obstructs an officer or constable or other authorised person in the exercise of any right of search or other right under this section or a Customs warrant commits an offence and shall be liable to a fine not exceeding 4 penalty units or to imprisonment for a term not exceeding 3 months, or to both.

218 Requisition to produce documents

(1) Whenever the Secretary has reasonable cause to suspect that goods have been unlawfully imported, exported, undervalued, entered, or otherwise unlawfully dealt with by any person contrary to the Customs Acts, or that it is intended by any person so unlawfully to import, export, undervalue, enter, or otherwise deal with any goods, or whenever any goods have been seized as forfeited under the Customs Acts, the Secretary may, by order under his hand and the seal of the Customs, require that person or any person whom the Secretary suspects to be or to have been the owner or importer of those goods immediately to produce and deliver to the Secretary or to any specified officer of Customs all invoices, bills, accounts, and statements of those goods, and of all goods imported

by the same person within 3 years next before the date of the order, and also immediately to produce for the inspection of the Secretary or any specified officer of Customs, and allow him to make copies of or extracts from, all books of account, invoice-books, or other books or records in which any entry or memorandum appears or may be supposed to appear respecting the purchase, importation, exportation, cost, or value of or payment for the said goods and any other goods so imported within the said period of three years.

(2) The Manager may, by order under his hand and the seal of the Customs, require any person (including any officer employed in or in connection with any Government department) to produce for inspection by him or by any specified officer of Customs all or any receipts, records, or other documents relative to any goods with reference to which any question has arisen under the Customs Acts; and to allow the Manager or other officer as aforesaid to make copies of or extracts from any such receipts, records, or documents; and to appear before the Manager or other specified officer as aforesaid, and to answer all questions put to him concerning any such goods, or such receipts, records, or documents as aforesaid.

(3) An order under this section may be directed to any corporation or local authority, or to any member, officer, or servant of any such corporation or local authority.

(4) Every person who fails or refuses to comply with any order made under this section commits an offence and shall be liable to a fine not exceeding 4 penalty units.

219 Documents in foreign language

When any document in a foreign language is presented to any officer for any purpose connected with the Customs Acts the Manager may demand to be supplied with an English translation of it, to be made at the expense of the person producing the document by such person as the Manager may approve, or verified in such manner as the Manager may require; and until the translation is produced the Manager or other proper officer may refuse to do any act in relation to the purposes for which the document was produced.

220 Impounding documents

The Manager may impound or retain any document presented in connection with any entry or required to be produced under this Act; but the person otherwise entitled to the document shall instead be entitled to a copy certified as correct by the Manager under the seal of the Customs, and the copy so certified shall be received in all courts as evidence instead of the original.

221 Taking samples

Samples of any goods subject to the control of the Customs may, for any purpose deemed necessary, be taken, used, and disposed of by any officer of Customs in the prescribed manner.

222 Permitting examination of goods

Subject to any regulations made under this Act, the Manager may permit any person to measure, count, weigh, gauge, test, or examine any goods subject to the control of the Customs.

223 Mode of exercising power of sale

Whenever the Manager is empowered by this Act to sell any goods the following provisions shall apply, except so far as different provision is made by this act in any particular case –

- (a) The goods shall be sold by auction or tender, after such public notice as may be prescribed or, if no such notice is prescribed, after reasonable public notice;
- (b) The price shall be paid in cash on the acceptance of the bidding or tender;
- (c) No bidding or tender shall be necessarily accepted, and the goods may be reoffered until sold at a price satisfactory to the Manager;
- (d) The Manager or any officer of Customs authorised by him may act as an auctioneer in the sale of the goods without being licensed in that behalf;
- (e) The proceeds of the sale shall be applied in the following manner and order of priority –
 - (i) In the payment of the expenses of the sale;
 - (ii) In payment of the duty, as if the goods had been entered for home consumption;
 - (iii) In payment of warehouse and other charges;
 - (iv) In payment of any freight due on the goods, if written notice claiming such freight has been given to the Manager;
- (f) The residue of the said proceeds shall be paid to the person appearing to the Manager to be entitled to it.

224 Duty payable on goods sold by Manager

(1) When any dutiable goods are sold by the Manager under the authority of this Act, duty shall be payable thereon by the purchaser in the same manner as if they had been entered by him for home consumption, and the duty so paid shall be deemed to be part of the proceeds of the sale.

(2) When the duty on any such goods is *ad valorem* the Manager may, and subject to any regulations made under this Act, accept as their value, for the purpose of assessing the duty, the price at which they are so sold, or any less sum, instead of their current domestic value as otherwise determined under this Act.

225 Sale of forfeited goods

Sections 223 and 224 so far as they are applicable, shall apply to the sale of forfeited goods or other forfeited articles.

226 Payments by Manager

Subject to any regulations made under any of the Customs Acts, a Manager may pay out of any revenue in his hands and received under the Customs Acts –

- (a) All lawful refunds of duty, export duty, excise duty, or licence fees under those Acts;
- (b) All lawful drawbacks of Customs duty or excise duty under those Acts;
- (c) The amount of any deposits returnable under those Acts;
- (d) The costs of any legal proceedings under those Acts;
- (e) All expenses lawfully incurred in the administration of those Acts;
- (f) All rewards payable to officers of Customs or other persons under those Acts;
- (g) All money declared by this Act to be payable out of Customs revenue.

227 Expenses of removal and storage of goods by officers of Customs

(1) All expenses lawfully incurred by the Customs under this Act in the removal or storage of goods subject to the control of the Customs shall constitute a debt due to the Crown by the importer or exporter of the goods, as the case may be, and shall be a charge on the goods and recoverable in the same manner as duty under this Act.

(2) In the case of storage of goods in a Crown warehouse, the expenses shall include storage charges at the prescribed rate.

228 Reasonable and probable cause

No person shall be liable for any arrest, seizure, detention, or sale under the Customs Act unless it is proved that there was no reasonable or probable cause for it.

228A Protection of persons acting under authority of Act

Neither the Crown nor any officer or constable shall be liable for the loss of or damage to any goods occasioned by anything done or omitted to be done or purporting to have been done by an officer or a constable in the exercise of any power conferred on him by this Act or any regulations made under this Act, unless he has not acted in good faith or has acted without reasonable care.

PART 9
SECURITIES

229 Securities for payment of duty and compliance with Act

(1) A Manager shall have the right to require and take securities for payment of duty and generally for compliance with this Act and for the protection of the revenue of Customs, and pending the giving of the required security he may refuse to pass any entry or to do any other act in the execution of his office in relation to any matter in respect of which the security is required.

(2) Any security under this Act may, as required by the Manager, be by bond (with or without sureties) or guarantee to Her Majesty the Queen, or by a deposit of cash, or by all or any of those methods, to the satisfaction of the Manager.

(3) Any such security may be given in relation to any particular transaction, or generally with respect to any class of transactions or to all transactions, and for such period and amount as the Manager thinks fit, and under such conditions as to forfeiture, penalty or otherwise as the Minister may direct.

(4) Any bond or other security entered into or given under this Act by a person under the age of 20 years (otherwise than as a surety or guarantor) shall have the same force, effect, and validity as if that person had been of full age.

(5) Without limiting the power to make regulations conferred by section 306, regulations made under that section may prescribe forms of bonds, guarantees, and other securities; and any security may be either in the prescribed form or to the like effect, or in such other form as the Secretary in any particular case approves.

230 New securities may be required

If the Manager is dissatisfied with the sufficiency of any security, he may require a new security in its place, or in addition; and if the new security is not given he may refuse to pass any entry or to do any other act in the execution of his office in relation to any matter in respect of which the new security is required.

PART 10
AGENTS AND CARRIERS
Customs Agents

231 Who may act as agent

(1) No person shall act as agent for any other person in the report, entry, or clearance of ships, aircraft, or goods or otherwise for the purposes of the Customs Acts in relation to ships, aircraft, or goods, unless the person so acting is either –

- (a) A servant or clerk in the exclusive employment of his principal; or
- (b) A Customs agent licensed under this Act; or
- (c) A servant or clerk in the exclusive employment of a licensed Customs agent, and approved as such by the Manager under regulations made under this Act.

(2) If the Secretary is satisfied on reasonable grounds that any servant or clerk is, whether by reason of bad character, misbehaviour, or incompetence, not a fit person to act as agent for his principal for any of the purposes of the Customs Acts, the Secretary may refuse to permit that servant or clerk so to act.

(3) Any person who acts as an agent in contravention of this section, or who acts as an agent for any other person in any matter relating to the Customs Acts without being authorised by that person so to act, commits an offence.

232 Licensing of Customs agents

Without limiting the power to make regulations conferred by section 306 Cabinet may make regulations –

- (a) Providing for the granting of Customs agents' licences or of different classes of such licences;
- (b) Prescribing the minimum qualifications required by applicants for such licences or, where applicants or licensees are bodies corporate, by their servants or clerks in respect of whom approval is sought under the regulations;
- (c) Providing for the revocation of any such licences or class of licences;
- (d) Prescribing conditions, whether as to security or otherwise, of the grant or continuance of such licences or of any such class of licences;
- (e) Prescribing any annual or other fees to be payable in respect of any such licences or class of licences.

233 Written authority of agents

Any officer may require any person acting as or holding himself out as the agent of any other person in any matter relating to the Customs Acts to produce a written authority from his principal, and if such an authority is not produced he may refuse to recognise the agency.

234 Liability of principal for acts of agent

(1) Every declaration made or other act done by an agent in the course of his agency in relation to the report, entry, or clearance of ships, aircraft, or goods, or otherwise in relation to the Customs Acts, shall be deemed to have been made or done by his principal also, and the principal shall be liable accordingly to all penalties imposed by the Customs Acts.

(2) For the purposes of this section the knowledge and intent of the agent shall be imputed to the principal in addition to his own.

(3) This section shall apply whether the appointment of the agent was made under this Act or not.

(4) For the purposes of this section the agent of an agent shall be deemed to be also the agent of the principal.

235 Liability of agents

When any person acts or assumes to act as the agent of any other person in relation to the entry of goods, or in relation to any other purposes or provisions of the Customs Acts, he shall be liable to the same penalties as if he were the principal for whom he so acts or assumes to act.

*Customs Carriers***236 Conveyance of goods subject to the control of the Customs**

(1) No person except a licensed Customs carrier shall convey any goods subject to the control of the Customs.

(2) Nothing in this section shall apply to –

- (a) The conveyance of goods in any ship that is not a coastal ship, or in any aircraft that is in the course of any journey to or from any country outside Niue; or
- (b) [Repealed by 2004/270]
- (c) The carriage of goods by the servants of any Harbour Board or local or public authority having the control of any wharf or Customs airport.

(3) Every person who conveys or is concerned in conveying any goods subject to the control of the Customs contrary to this section commits an offence.

237 [Repealed by 2004/270]

PART 11

OFFENCES

*Offences in Relation to Officers***238 Influencing or resisting officer**

Every person commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 5 years who –

- (a) By threats or demands, attempts to influence or does influence any officer of Customs in the discharge of his duty; or
- (b) Assaults, or by force resists, obstructs, intimidates, or endeavours to intimidate any officer of Customs or any person acting in his aid in the execution of his duties.

239 Obstructing officers of Customs

Every person commits an offence who, otherwise than by force, wilfully obstructs any officer of Customs in the exercise or performance of any power or duty conferred or imposed on him by the Customs Acts.

240 Abusive or threatening language

Every person commits an offence who uses abusive, insulting, obscene, or threatening language to an officer of Customs while in the execution of, or in relation to, his duties under the Customs Acts.

241 Personation of officer of Customs

Every person who, not being an officer of Customs, by words, conduct, or demeanour pretends that he is an officer, or puts on or assumes the uniform, name, designation, or description of an officer, commits an offence and shall be liable to a fine not exceeding 2 penalty units.

*Other Offences***242 Smuggling**

If any person smuggles any goods he commits an offence and shall be liable to a fine not exceeding 4 penalty units or 3 times the value of those goods, whichever sum is the greater, and the goods shall be forfeited.

243 Defrauding the revenue of Customs

If any person contravenes this Act, or does any other act, with intent to defraud the revenue of Customs –

- (a) By evading or enabling any other person to evade payment of duty or full duty on any goods; or
- (b) By obtaining or enabling any other person to obtain any money by way of drawback or refund of duty on any goods; or
- (c) In any other manner whatsoever in relation to any goods –

or conspires with any other person (whether that other person is in Niue or not) so to defraud the revenue of Customs in relation to any goods, he commits an offence and shall be liable to a fine not exceeding 4 penalty units or 3 times the value of those goods, whichever sum is the greater, and the goods shall be forfeited.

244 Erroneous drawbacks or refunds

If any person obtains any drawback, refund, or remission of duty by means of any erroneous or defective declaration or written statement, or by producing to any officer of Customs any declaration or other document of any kind whatsoever that is not genuine or that is in any respect erroneous or defective, he commits an offence and shall be liable to a fine not exceeding 2 penalty units or 3 times the amount of that drawback, refund, or remission, whichever sum is the greater.

245 Erroneous declarations

Every person who makes any declaration under this Act which is erroneous in any particular commits an offence and shall be liable to a fine not exceeding 2 penalty units.

246 Wilfully false declarations

Every person who knowingly makes any declaration under this Act which is erroneous in any particular commits an offence and shall be liable to a fine not exceeding 2 penalty units.

247 Production of false documents

Every person who produces or delivers to an officer in the execution of his office any document as genuine that is not genuine, or any document as true that is in any respect erroneous, commits an offence and shall be liable to a fine not exceeding 4 penalty units.

248 Interference with goods

(1) So long as any imported goods or goods for export remain subject to the control of the Customs it shall not be lawful for any person, except with the permission of the proper officer of Customs, to make any alteration either in the condition of those goods or in the packages containing them, or to unpack, or repack the goods or to remove them from any place in which an officer of Customs has directed that they shall be stored.

(2) Every person who acts in contravention of this section commits an offence and shall be liable to a fine not exceeding 4 penalty units.

248A Unauthorised entry into passenger processing areas

Every person who, without the permission of the proper officer of Customs, enters on or remains in any area set aside for the examination, for the purposes of this Act, or the personal baggage of passengers disembarking from or embarking on any ship or aircraft at any time when such area is being used for such examination, commits an offence and shall be liable to a fine not exceeding 2 penalty units.

249 Ship or aircraft used for smuggling

If the master or owner of any ship or the pilot in command or owner of any aircraft suffers his ship or aircraft to be used for the purpose of smuggling goods or for the unlawful importation, exportation, or conveyance of goods, he shall be guilty of an offence and shall be liable to the same penalty as if he had himself smuggled or unlawfully imported, exported, or conveyed the same goods.

250 Ships and aircraft adapted for smuggling

If any ship or aircraft comes or is found within the territorial limits of Niue having –

- (a) False bulkheads, bows, sides, or bottoms adapted for the purpose of concealing goods; or
- (b) Any secret or disguised place adapted for the purpose of concealing goods; or
- (c) Any hole, pipe, or device adapted for the purpose of smuggling or unlawfully importing or exporting goods –

the master and the owner in the case of a ship, or the owner in the case of an aircraft, shall be guilty of an offence and shall be severally liable to a fine not exceeding 10 penalty units.

251 Counterfeit seals or marks

(1) Every person commits an offence and shall be liable to a fine not exceeding 4 penalty units who, without reasonable excuse, has in his possession, or makes, or uses any counterfeit seal, stamp, or mark in imitation of or colourably resembling any seal, stamp, or mark used by the Customs for the purposes of the Customs Acts.

(2) Every person convicted of an offence against this section shall, in addition to any penalty imposed pursuant to this Act, forfeit to Her Majesty, by virtue of such conviction, all articles in respect of which the offence was committed and in his possession.

252 Failure to comply with conditions of entry

(1) When under this Act or of the Tariff any goods are, if entered for a particular purpose or under any condition prescribed by the Minister, exempt from duty or liable to a lower rate of duty than if entered otherwise than for that purpose or under that condition, and any goods have been entered under that provision, every person commits an offence who knowingly –

- (a) Uses those goods for any purpose other than that for which they have been so entered; or
- (b) Fails to comply with any condition prescribed by the Minister in respect of the goods so entered.

(2) If any person commits an offence under this section he shall be liable to a fine not exceeding 3 times the amount of the duty or additional duty that would have been payable if the goods had been entered otherwise than under the

provision under which they were entered, or 4 penalty units whichever sum is the greater, and the goods shall be forfeited.

(3) The Secretary may accept from the owner of any goods so entered for a particular purpose or under any condition prescribed by the Minister the amount of duty or additional duty that would have been payable on them if they had been entered otherwise than for that purpose or under that condition, and thereafter this section shall cease to apply in respect of those goods.

253 Possession or custody of uncustomed goods or prohibited imports

Every person who has in his possession or custody any uncustomed goods or any prohibited imports commits an offence and shall be liable to a fine not exceeding 4 penalty units unless he proves –

- (a) That he obtained possession or custody of them without knowledge that they were uncustomed goods or prohibited imports; or
- (b) That he obtained possession or custody of them with some other lawful justification.

254 Possession of concealed goods

Every person found in possession of any dutiable or restricted goods concealed in any manner on any ship, boat, or aircraft shall be guilty of an offence and shall be liable to a fine not exceeding 4 penalty units.

255 Failure to answer questions truly

Every person commits an offence and shall be liable to a fine not exceeding 2 penalty units who, when required under this Act to answer any question put to him, fails or refuses to answer it, or does not truly answer it.

256 Liability of officers of body corporate

If a body corporate commits an offence against this Act, every director, manager, secretary, or other similar officer of the body corporate, and every person purporting to act in any such capacity, shall also be guilty of that offence if the act or omission constituting the offence occurred with his knowledge and consent.

257 Attempts

Any attempt to commit an offence against this Act shall be an offence punishable in like manner and constituting the like cause of forfeiture as if the offence so attempted had been actually committed.

General Provisions as to Offences

258 Offences punishable on summary conviction

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

259 Information to be laid by Manager

Every information for an offence against this Act shall be laid by a Manager.

260 Procedure

Any information for an offence against this Act may be laid at any time within 3 years after the date of the offence.

261 Value of goods for purpose of fine

When the amount of any fine under this Act is to be determined by reference to the value of any goods, their value shall be estimated according to the price for which goods of the like kind and of the best quality, on which the duties (if any) have been paid, are salable in Niue at the time of the offence.

262 General penalty

Every person who commits an offence against this Act for which no other penalty is provided shall be liable to a fine not exceeding 1 penalty unit.

263 Imprisonment for second offence

Any person who is convicted of an offence against this Act that is punishable by a fine only, and who has within 2 years before the conviction been convicted of the like offence or of any other offence against this Act, may, if the convicting court thinks fit, be sentenced to imprisonment for a period not exceeding 3 months, instead of or in addition to being sentenced to pay a fine.

264 Court may order payment of money in respect of duty

(1) In any proceedings for an offence under section 217 or section 218, if the court is of the opinion that the offence has been committed for the purpose of enabling the destruction or concealment of any evidence that would support a claim for duty or other money due to the Crown under the Customs Acts, it may, in addition to any other penalty, order the offender to pay to the Crown such further sum in respect of that claim as it thinks fit.

(2) Any order for payment under this section may be enforced in the same manner as a fine.

(3) The recovery of any amount under this section in respect of a claim shall not be deemed to extinguish the claim but shall be taken into account in determining the amount (if any) to be awarded in any subsequent proceedings that may be taken in respect of that claim.

265 Penalties independent of forfeitures

All penalties under this Act shall be in addition to and independent of any forfeiture, and all forfeitures under this Act shall, except where otherwise provided, be independent of any proceedings in respect of an offence.

266 Power of Manager to deal with petty offences

(1) This section applies to any offence against this Act that is committed in relation to any goods –

(a) Whose value does not exceed \$100; and

(b) On which any duty payable under the Tariff and this Act does not exceed \$20.

(2) If in any case to which this section applies any person admits in writing that he has committed the offence, and requests that the offence be dealt with summarily by the Manager, the Manager may at any time before an information has been laid in respect of the offence, accept from that person such sum, not exceeding 0.5 penalty units, as the Manager thinks just in the circumstances of the case, in full satisfaction of any fine to which that person would otherwise be liable under this Act.

(3) If the Manager accepts any sum under this section the offender shall not be liable to be prosecuted for the offence in respect of which the payment was made.

267 Arrest of offenders

Any officer of Customs or constable who has reasonable cause to suspect that any person has committed any offence against this Act with intent to defraud the revenue of Customs may, within 7 days after the supposed date of the offence, arrest that person without warrant.

*Rewards***268 Rewards for seizures and convictions**

(1) The Minister may order to be paid or distributed out of the revenue of Customs, to or among any officers or other persons by or through whom any seizure is made or fine recovered under the Customs Act, such rewards as the Minister thinks fit.

(2) Where any such seizure or fine results from an attempt to defraud the revenue of Customs, such rewards shall not exceed in the aggregate half the value as determined by the Minister of the goods seized or, as the case may be, half the amount of the fine.

PART 12

FORFEITURES

269 Application of this Part

This Part shall apply to all forfeitures accruing either under this Act or under any other of the Customs Acts.

*Forfeiture***270 Goods forfeited**

In addition to all other goods elsewhere declared by the Customs Acts to be forfeited, the following goods shall be forfeited to the Crown –

- (a) All dutiable or restricted goods found on any ship, boat, or aircraft or bulk cargo container being unlawfully in any place;
- (b) All dutiable or restricted goods found on any ship or aircraft or bulk cargo container after arrival in any port from any country outside Niue, not being goods specified or referred to in the inward report, and not being baggage belonging to the crew or passengers, and not being accounted for to the satisfaction of the Manager;
- (c) All dutiable or restricted goods found concealed in any manner on a ship, boat or aircraft or bulk cargo container;
- (d) Any package having in it goods not enumerated in the entry;
- (e) All dutiable or restricted goods found so packed as to be likely to deceive the officers of Customs;
- (f) All uncustomed goods which are found in any place.

271 Forfeiture of packages

The forfeiture of any goods shall extend to the forfeiture of the case, covering, or other enclosure, not being a bulk cargo container or a pallet, in which the goods are contained at the time of seizure.

272 Boats and vehicles forfeited

Every boat, vehicle, or animal used in smuggling goods, or in unlawfully conveying goods with intent to defraud the revenue of Customs, or in the importation or conveyance of prohibited imports or forfeited goods, shall be forfeited.

273 Equipment of forfeited boats, vehicles and animals

When any boat, vehicle, or animal has become liable to forfeiture under the Customs Acts, whether by virtue of section 272 or otherwise, all equipment thereof shall also be liable to forfeiture.

274 Forfeiture to relate back

When it is provided by this Act or any other of the Customs Acts that any goods are forfeited, and the goods are seized under this Act or with the Act under which the forfeiture has accrued, the forfeiture shall for all purposes relate back to the date of the act or event from which the forfeiture accrued.

*Seizure***275 Seizure of forfeited goods**

(1) Any officer or constable may seize any forfeited goods or any goods which he has reasonable and probable cause for suspecting to be forfeited.

(2) In any such case such force may be used as is reasonably necessary for effecting the seizure and securing the goods.

(3) All goods so seized shall be taken to a Crown warehouse or to such other place of security as the Manager or other proper officer directs.

(4) No goods shall be so seized at any time except within 2 years after the cause of forfeiture has arisen.

276 Where goods may be seized

Goods may be seized as forfeited wherever found within the territorial limits of Niue.

277 Rescue of seized goods

Every person who, without the permission of the Manager or other proper officer of Customs, whether pretending to be the owner or not, either secretly or openly, and whether with or without force or violence, takes or carries away or otherwise converts to his own use any goods that have been seized as forfeited, at any time before they have been declared by competent authority to have been seized without due cause, shall be deemed to have stolen the goods as if they were the property of the Crown and shall be guilty of theft accordingly.

278 Notice of seizure

When any goods have been seized as forfeited the Manager at or nearest to the place of seizure, or the Secretary shall, except when the goods are seized in the presence of some person having or claiming an interest therein, give immediate notice of the seizure, in the prescribed form, to the importer or some other person known or believed to have an interest in the goods, either by delivering the notice personally or by letter addressed to him and delivered at or transmitted by post to his last-known place of abode or business, but no seizure shall be invalidated or rendered illegal by any failure to give such notice.

*Condemnation***279 Condemnation without suit**

(1) All goods seized as forfeited shall be deemed to be condemned, as if by suit and judgment of condemnation, unless within one month after the day of the seizure some person gives notice in the prescribed form, verified by declaration in the prescribed form, to the Manager at or nearest to the place of seizure or to the Secretary, that he, or some one on whose behalf he acts, is entitled to the goods or to an interest in them and intends to dispute their forfeiture.

(2) The burden of proving in any proceedings that any such notice was duly given shall be on the person alleging it.

(3) Proceedings for the condemnation of any goods seized as forfeited may be commenced and prosecuted to judgment whether any such notice has been given or not.

280 Condemnation by High Court

(1) Proceedings for the condemnation of any goods seized as forfeited may in any case be instituted in the High Court by information in rem by the Manager.

(2) The procedure on any such information shall, subject to this Act, be in accordance with rules of court to be made in that behalf, and in default of such rules, or so far as they do not extend, then under the usual practice of the High Court in civil proceedings so far as applicable or, so far as not applicable, then on the directions of the Court or a Judge of it.

(3) On the filing of any such information in the High Court by the Manager notice of the proceedings shall be served on or given to such persons and in such manner as the Court or a Judge of it directs.

(4) Any person claiming any interest in the goods to which the information relates may within one month after the filing of the information, or within such further time as the Court or a Judge allows, file a statement of defence, and shall thereupon become a party to the proceedings.

(5) Every statement of defence shall set out the interest of the defendant in the goods to which the information relates, and shall be accompanied by an affidavit verifying the existence and nature of that interest.

(6) If no such statement of defence is duly filed by any person, judgment of condemnation of the goods to which the information relates shall be entered.

(7) Every such information shall be heard and tried before a Judge alone, unless the Court or a Judge is of opinion that it should be heard and tried before a jury and makes an order accordingly.

(8) On any such information costs may be awarded to or against the Manager or any other party to the proceedings.

281 No other action competent while condemnation proceedings pending

While any proceedings for condemnation are pending no action or other proceedings for the recovery of damages for the seizure of or the detention of the things seized, or for the recovery of possession of them, or for the recovery of money deposited in lieu of them, or of the proceeds of their sale, shall be commenced, or, if already commenced, shall be continued, without the leave of the High Court.

282 [Repealed by 2004/270]

283 Conviction to operate as a condemnation of forfeited goods

(1) Notwithstanding anything in the foregoing provisions of this Part relating to condemnation, but subject to subsection (2), when it is provided by this Act or by any other of the Customs Acts that on the commission of any offence any goods shall be forfeited, the conviction of any person of that offence shall have effect as a condemnation, without suit or judgment, of any goods –

(a) That have been seized in accordance with this Act or with the Act under which the forfeiture has accrued; and

(b) In respect of which the offence was committed.

(2) Subsection (1) shall not limit the right of any person, not being the convicted person or a person acting on his behalf, to claim that he is entitled to the goods or to an interest in them and to dispute their forfeiture under section 279.

*Miscellaneous Provisions***284 Delivery of goods seized on deposit of value**

(1) When any goods have been seized as forfeited the Manager at or nearest to the place of seizure may, if he thinks fit, at any time before their condemnation, deliver them to the owner or other person from whom they were seized, on the deposit with the Manager of a sum equal to their duty-paid value as determined by the Manager.

(2) The money so deposited shall be deemed to be substituted for the goods so seized, and all the provisions of this Act with respect to condemnation, so far as they are applicable, shall extend and apply to that money accordingly as if a claim thereto had been duly made under section 279 by the person depositing it.

285 Sale of perishable articles seized

(1) When any living creature or anything which, in the opinion of the Manager, is of a perishable nature has been seized as forfeited the Manager at or nearest to the place of seizure may, if he thinks fit, sell the thing so seized before its condemnation.

(2) The net proceeds of such sale shall be deemed to be substituted for the thing so sold, and all the provisions of this Act with respect to notice of claim and condemnation shall apply to those proceeds accordingly.

286 Disposal of forfeited goods

All forfeited goods shall, on forfeiture, become the property of the Crown, and shall be sold, destroyed, or otherwise disposed of as the Manager or the Minister may direct.

287 [Repealed by 2004/270]

288 Application of forfeiture provisions

All the provisions of this Act with respect to the forfeiture of goods shall extend and apply to any boat, vehicle, or other thing forfeited under the Customs Acts.

PART 13

DETENTION OF SHIPS AND AIRCRAFT

289 Ships and aircraft liable to detention

Any ship or aircraft shall be liable to detention under this Part when any offence has been committed for which the owner or master of the ship or the owner or pilot in command of the aircraft is liable as such to a penalty under this Act.

290 Seizure of ships and aircraft

(1) Any officer of Customs may seize any ship or aircraft that is liable to detention under this Act or which he has reasonable and probable cause for suspecting to be so liable.

(2) Any such seizure may be made in the same manner as a seizure of forfeited goods.

(3) No ship or aircraft shall be so seized at any time except within 2 years after the act or event that rendered it liable to detention.

291 Where ships and aircraft may be seized

No ship or aircraft shall be so seized elsewhere than within the territorial limits of Niue.

292 Rescue of seized ships and aircraft

(1) Every person who, without the permission of the Manager or other proper officer of Customs, whether under any claim or right or not, and either secretly or openly, and whether with or without force or violence, takes away any ship or aircraft seized as being liable to detention, at any time before it has been declared by competent authority to have been seized without due cause, shall be deemed to have stolen the ship or aircraft as if it were the property of the Crown, and shall be guilty of theft accordingly.

(2) For the purposes of this section the seizure of any ship or aircraft shall be deemed to be complete so soon as any officer of Customs has boarded the ship or aircraft and notified the master or the pilot in command or any other officer of the ship or aircraft that it is seized by the Customs, or so soon as any such officer of Customs has been resisted or obstructed in his endeavour to board the ship or aircraft for that purpose.

293 Security to be given before release of seized ship or aircraft

Every ship or aircraft so seized may be detained by the Customs until security is given to the satisfaction of the Manager or Secretary in such sum as he thinks sufficient, by or on behalf of the owner or master of the ship, or the owner or pilot in command of the aircraft, or some person claiming an interest in it, for the payment of any penalties and costs that may theretofore have been imposed or may thereafter be imposed on that owner or master or pilot in respect of the offence by which the liability of the ship or aircraft to detention accrued.

294 Avoidance of security

If no such penalty is imposed on the owner or master of the ship or the owner or pilot in command of the aircraft either before or within one year after the date of the seizure of the ship or aircraft, any such security shall become null and void, and the ship or aircraft, if no such security has been given, shall cease to be subject to detention.

295 Enforcement of security

If any such penalty is imposed on the owner or master of the ship or the owner or pilot in command of the aircraft either before or within one year after the date of the seizure of the ship or aircraft, any security so given shall become available for the recovery of the amount of the penalty and of any costs awarded.

296 Service of process

For the purpose of recovering any such penalty, any writ, summons, or other process may be served on the owner or master of any ship or the owner or pilot in command of any aircraft so seized (whether the defendant is within Niue or not) by leaving it or a copy of it on board the ship or aircraft; but nothing in this section shall preclude any other lawful method of service.

PART 14**EVIDENCE****297 Incriminating questions and documents**

(1) In any civil proceedings in any court under or in pursuance of any provision of the Customs Acts, whether for the recovery of any duty or tax or in relation to any forfeiture or otherwise, no person, whether a party to the proceedings or not, shall be excused from answering any question put to him, by interrogatory or otherwise, or from producing or making discovery of any document, on the ground that the answer to the question or the production or discovery of the document may incriminate or tend to incriminate him.

(2) In any proceedings in any court for an offence against the Customs Acts, a person called as a witness (including a person charged with the offence and called as a witness on his own application) shall not be excused from answering any question put to him touching the alleged offence, on the ground that the answer may incriminate or tend to incriminate him.

(3) A statement made, in any proceedings to which subsection (1) or (2) applies, by any person (other than the person charged with the offence in proceedings to which the subsection (2) applies) in answer to any such question, or a document of which production or discovery is so made by him in any such civil proceedings, shall not, in any criminal proceedings, be admissible in evidence against him except on a charge of perjury in respect of his sworn testimony or on a charge of making a false statement on oath or on a charge of knowingly making a false declaration under section 246.

298 Source of information need not be disclosed

No officer of Customs or constable and no witness for the Crown in any prosecution for an offence against the Customs Acts, or in any proceedings relative to the seizure, detention, or condemnation of ships, aircraft, or goods under those Acts, shall be compellable to disclose the fact that he received any information, or its nature or source, or to produce or disclose the existence or nature of any reports made by or received by him in an official or confidential capacity.

299 Burden of proof

(1) In any proceedings against the Customs Acts instituted by or on behalf of or against the Crown every allegation made on behalf of the Crown in any statement of claim, statement of defence, plea, or information, and relating to the identity or nature of any goods, or to their value for *ad valorem* duty, or to the country or time of their exportation, or to the fact or time of their importation, or to their place of manufacture, production, or origin, or to the payment of any duty on them, or to any act done or omitted with respect to it by any person, shall be presumed to be true unless the contrary is proved.

(2) The said presumption shall not be excluded by the fact that evidence is produced on behalf of the Crown in support of any such allegation.

(3) For the purposes of this section a prosecution for an offence against the Customs Acts shall be deemed to be a proceeding instituted on behalf of the Crown.

(4) For the purposes of this section, every proceeding instituted by or against the Crown in which any question arises as to the rights, powers, obligations, or liabilities of the Crown or any other person under the Customs Acts shall be deemed to be a proceeding under those Acts.

(5) This section shall extend and apply to proceedings in which the existence of an intent to defraud the revenue of Customs is in issue.

300 Burden of proof of justification

In all proceedings that are instituted against the Crown, or against the Minister or an officer of Customs or a constable or any other person, for any seizure, arrest or other act done in pursuance of the Customs Acts, and in which the existence of reasonable or probable cause or of any other justification for such act is in issue, the burden of proving the want of reasonable or probable cause or the absence of such justification shall be on the plaintiff.

301 Presumption of authenticity of documents

All documents purporting to be signed by or on behalf of the Minister or Secretary, or to be sealed with the seal of the Customs, shall in all courts and in all proceedings under the Customs Acts be deemed to have been so signed or sealed with due authority, unless the contrary is proved.

302 What evidence receivable

In any action or other proceeding under the Customs Acts, whether civil or criminal (other than a prosecution for an indictable offence), the court may in proof of any fact in issue admit and accept as sufficient such evidence as it thinks fit, whether such evidence is legally admissible in other proceedings or not.

303 Declarations under this Act

(1) Every declaration required or authorised by this Act shall be made in the prescribed form.

(2) Where by any such form it is indicated that the declaration shall be made before any person, then it may be made before the Secretary or any Manager or other officer of Customs, or before any postmaster or person for the time being lawfully acting in the place of a postmaster or before any such other person as may be prescribed.

PART 15**COOK ISLANDS AND NEW ZEALAND****304 Goods imported from Cook Islands and New Zealand**

(1) All goods imported into Niue from the Cook Islands or New Zealand, whether the produce or manufacture of the Cook Islands or New Zealand or not, shall be admitted into Niue free of duty.

(2) Nothing in this section shall apply to –

- (a) Goods in respect of which on their exportation from the Cook Islands or New Zealand any claim for drawback of duty has been made and allowed;
- (b) Goods which, by reason of warehousing or for any other reason, have been exported from the Cook Islands or New Zealand without payment of duty on their importation into the Cook Islands or New Zealand;
- (c) Goods produced in a manufacturing warehouse in the Cook Islands or New Zealand, unless they have been entered in the Cook Islands or New Zealand for home consumption and the duty (if any) paid on it;
- (d) Goods on which a rate of duty has been paid in the Cook Islands or New Zealand lower than that to which the goods are subject in New Zealand at the time of their importation into New Zealand;
- (e) Goods subject to any excise duty in the Cook Islands or New Zealand, unless such duty has been paid thereon as if they had not been exported.

PART 16**MISCELLANEOUS PROVISIONS****305 Goods passing through Post Office**

(1) Subject to this section and to any regulations made under this Act, the provisions of the Customs Acts shall apply to postal packets and to goods contained therein in the same manner as to any other goods.

(2) Without limiting the power to make regulations conferred by section 306, Cabinet may make regulations for the following purposes –

- (a) Modifying any provisions of the Customs Acts in their application to postal packets or to goods contained therein, or exempting such postal packets or goods from the application of any provisions of the Customs Acts, but not so as to affect the liability of any goods to duty or the rate of any duty or the law as to prohibited imports or exports;
- (b) Securing, in respect of such packets or goods, the observance of the Customs Acts and the payment of duty;
- (c) Enabling the officers of the Post Office to exercise or perform for the purpose of the Customs Acts all or any of the powers or duties of the importer or exporter, or of officers of Customs, in respect of such packets or goods;
- (d) Authorising the destruction or other mode of disposition of postal packets or goods in there on which duty is not paid within such time as may be prescribed;
- (e) Providing that any separate postal packets and any goods in it, whether addressed to the same or to different persons, may be treated for the purposes of the Customs Acts as a single package consigned to a single person, and that duty shall be payable thereon accordingly;
- (f) Prescribing the persons who shall be deemed for the purposes of the Customs Acts to be the importers or exporters of such postal packets or goods.

(3) In this section, “postal packet” means any letter, parcel, packet, or other article whatever received or transmitted by or through the Post Office.

306 Regulations

Cabinet may make regulations for the following purposes –

- (a) Prescribing the nature, size and material of the packages in which imported goods or goods for export or for removal within Niue are to be packed;
- (b) Prescribing the maximum weight or quantity of imported goods or goods for export or for removal within Niue that may be contained in any one package;
- (c) Prescribing the conditions of preparation or manufacture for export of any articles used for food or drink by man or used in the manufacture of articles so used;
- (d) Prescribing the conditions as to purity, soundness, and freedom from disease to be conformed to by goods for export;
- (e) Prescribing the manner in which goods shall be weighed or measured for the purposes of the Customs Acts, and the allowances or deductions that may be permitted in such weighing or measuring;
- (f) Modifying any provisions of the Customs Acts in their application to goods (not being goods passing through the Post Office) that are imported into Niue or exported from Niue by means of aircraft, but not so as to affect the liability of any goods to duty or the rate of any duty or the law as to prohibited imports or exports;
- (g) Prescribing forms for the purposes of this Act;
- (h) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of the Customs Acts and for the due administration thereof.

307 Penalties imposed by regulations

Any regulations made under this Act may prescribe fines, not exceeding in any case 2 penalty units for the breach of any such regulations.

308 Regulations

No regulation under this Act shall be invalid because it leaves any matter to the discretion of the Minister or of any other person, or because it authorises the Minister or any other person to give any consent or to issue any licence, permit, or other instrument on or subject to conditions to be imposed or approved by the Minister.

309-313 [Repealed by 2004/270]

Section 48 (1)

SCHEDULES

SCHEDULE 1
PROHIBITED IMPORTS

- Matches made with white phosphorus.
- All indecent documents and articles.
- False or counterfeit coin or banknotes; and any coin that is not of the established standard in weight or composition; and any coin or banknotes that are intended for circulation in Niue and are not legal tender in Niue.
- Goods manufactured or produced wholly or in part by prison labour, or within or in connection with any prison, jail, or penitentiary; also goods similar in character to those manufactured or produced in such institutions when sold or offered for sale by any person, firm, or corporation having a contract for the manufacture or production of such articles in such institutions, or by any agent of such person, firm, or corporation, or when originally purchased from or transferred by any such contractor.

SCHEDULE 2

THE CUSTOMS TARIFF OF NIUE

[Not reproduced, see now Customs Tariff Regulations 1982]

SCHEDULE 3

Section 134 (1) (a)

EXCISE DUTIES

Goods	Unit	Rates of Duty
Alcohol used in manufacturing warehouses in the production of –		
Perfumed spirit	per proof 1	80c
Toilet preparations	per proof 1	75c
Culinary and flavouring essences	per proof 1	44c
Medicaments (except medicated wine or wine mixed with food):		
Containing more than 50% of proof spirit	per proof 1	10c
Other		Free
Cigarette tubes, cigarette papers, and Cigarette paper manufactured in a Manufacturing warehouse	per 1,000 tubes or 1,000 papers or equivalent of 1,000 tubes or papers	7c
Sugar of any degree of polarisation		Free
Invert sugar and invert syrup		Free
Liquid sugar solution:		
On weight of sugar contained in the solution as determined by means of the Brix hydrometer or other similar instrument		Free
Treacle, molasses, golden syrup, maple sugar and maple syrup		Free
Tobacco, manufactured:		
Cigars and snuff	per kg	\$6.57

Cigarettes:

Not exceeding in weight 1.134 kg		
Per 1,000	per 1,000	\$11.90
Exceeding in weight 1.134 kg	per kg	\$10.49
Other manufactured tobacco	per kg	\$7.80

SCHEDULE 4
[Repealed by 2004/270]

SCHEDULE 5
CUSTOMS WARRANT

Section 216 (1)

To

Under the Customs Act 1966, you are hereby authorised to enter by day or night, and whether peaceably or by force if need be, any house, premises, or place in which you have reasonable cause to suspect that there are any uncustomed goods, or any goods subject to the control of the Customs or unlawfully imported, or any goods in respect of which an offence has been committed against the Customs Acts, or any books or other documents relating to any such goods, or any books or other documents containing information that may lead to the recovery of any penalty or other money under the Customs Acts, and to search any house, premises, or place so entered, and there to break open and search any boxes, receptacles, packages, or places in which any such goods, books, or documents may be or be supposed to be; and on any such entry to seize and take away any forfeited goods or any goods which there is reasonable cause to believe or suspect to be forfeited; and in so acting you are hereby authorised to take with you and have the assistance of any Constable and such other assistants as you deem necessary. For all which this shall be your sufficient warrant.

Given under my hand and the seal of the Customs, this day of 20
(Customs Seal)

Financial Secretary, Customs