

# **CUSTOMS ACT 2019**

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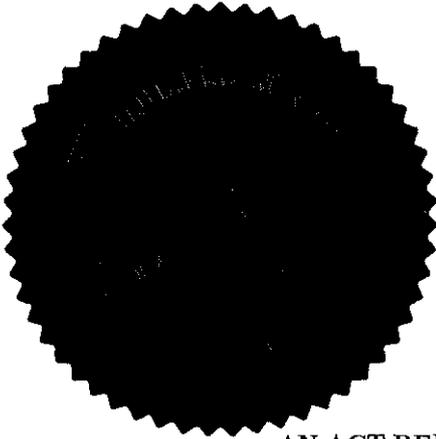
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REPUBLIC OF KIRIBATI  
(No 8 of 2019)

I assent,

  
18/9/2019  
Beretitenti  
2019

AN ACT  
entitled

**AN ACT RELATING TO THE COLLECTION AND MANAGEMENT OF  
CUSTOMS DUTIES IN KIRIBATI; AND FOR CONNECTED PURPOSES.**

Commencement: 2019

**MADE** by the Maneaba ni Maungatabu and assented to by the Beretitenti

**PART I—PRELIMINARY**

**1. Short title and commencement**

- (1) This Act may be cited as the *Customs Act 2019*.
- (2) This Act shall come into force three months following the publication of assent by the Beretitenti.

**2. Interpretation**

- (1) In this Act, unless the context otherwise requires, or this Act provides a definition for the purposes of a specific provision—

‘accompanying document’ means a document specified by the Minister under section 3 as one that must accompany required information;

‘aircraft’ means a machine that can derive support in the atmosphere from the reactions of the air other than the reaction of the air against the earth’s surface;

‘anyone’ includes a corporate entity;

‘Board’ means the Internal Revenue Board created by the *Internal Revenue Board Act 1990*;

‘class of entry’ means one of the classes of entries listed in section 31, and includes an informal clearance document;

‘clearance inwards’ means the document given under section 20(2);

‘clearance outwards’ means the document given under section 63(2);

‘commercial document’, in relation to goods, means a document or other record prepared in the ordinary course of business for the purposes of a commercial transaction involving the goods or the carriage of the goods;

'compliance warrant' means a warrant issued under section 118(3);

'Comptroller' means the Comptroller of Customs appointed under section 10;

'container' means a container within the meaning of the *Customs Convention on Containers*, done at Geneva on 2 December 1972, as amended from time to time;

'corporate entity' means—

- (a) a company; or
- (b) a co-operative; or
- (c) a partnership; or
- (d) a joint venture;

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

'customs agent' means a person licensed under section 126;

'customs area' means an area designated under section 145(1)(a);

'customs officer' means a person mentioned in section 12;

'customs territory' means a union of two or more countries who have agreed to—

- (a) substantially treat trade between themselves as being trade within a single country; and
- (b) impose substantially the same duties and other commercial regulations to other countries or customs territories;

'customs value' means the value of goods determined under Subdivision 5 of Division 1 of Part VII for the purposes of levying *ad valorem* duties of customs on imported goods;

'discharge report' means the report made under section 24;

'duty' means—

- (a) export duty; or
- (b) import duty;

'entry for temporary purposes in Kiribati' means an entry made under section 31(4);

'entry for use in Kiribati' means an entry made under section 31(2);

'export duty' means the tax imposed by section 94;

'export entry' means an entry made under section 62;

'export tariff order' means an order made under section 95;

'forfeited goods' means the goods listed in section 147(1);

'GATT 1994' means the *General Agreement on Tariffs and Trade* 1994;

‘general powers of customs officers’ mean the powers listed in the table in Schedule 1;

‘general rules for the Harmonized System’ means the rules setting out how to classify goods, as contained in the Harmonized System;

‘goods under customs control’ are those located in the places listed in section 16;

‘Harmonized System’ means the Harmonized Commodity Description and Coding System Nomenclature, made under the *International Convention on the Harmonized Commodity Description and Coding System* done at Brussels on 14 June 1983, as amended from time to time;

‘he or she’ includes a corporate entity;

‘import duty’ means the tax imposed by section 71;

‘import tariff order’ means an order made under section 72;

‘informal clearance’ means a clearance made under section 32;

‘Interpretative Notes’ mean the explanatory materials that are Annex I to the Rules of Valuation;

‘Kiribati Customs Administration and Enforcement’ means that part of the Ministry designated by the Minister under section 8;

‘master’ means the person in charge or command of craft;

‘Minister’ means the Minister responsible for the Customs;

‘owner’ includes any person who is or claims to be possessed of or beneficially interested in the goods, or to have control or power of disposition of the goods, including the person who imported the goods, or—

(a) the customs agent; or

(b) the person authorised under section 30(2)(b),

who acted on behalf of the owner in relation to the imported goods;

‘places under customs control’ mean those places listed in section 16;

‘post clearance audit’ means an assessment performed under Part IX;

‘private warehouse’ means a warehouse that may only accept goods owned by the private warehouse licensee;

‘prohibited exports’ means the goods listed in the table in Schedule 5;

‘prohibited imports’ means the goods listed in the table in Schedule 3;

‘provisional entry’ means an entry made under section 33;

‘public auction’ means an auction conducted under Division 5 of Part IV;

'public warehouse' means a warehouse that may accept goods entered for warehousing from anyone;

'refund' means a refund of import duty;

'remission' means a waiver of import duty payable on deteriorated, destroyed or damaged imported goods;

'replacement entry' means an entry made under section 34;

'request document' means a documents that must be provided by the custom officer to a master under sections 20(3) and 63(3);

'required information' means the information that must be provided to a customs officer before he or she makes a decision under a section of this Act in which the term appears, that has been specified by the Minister under section 3;

'restricted exports' means the goods listed in the table in Schedule 6;

'restricted imports' means the goods listed in the table in Schedule 4;

'rights document' means a document prepared under section 115;

'Rules of Origin' means the rules for determining the country of produce or manufacture of a particular good for the purposes of trade under a free trade agreement;

'Rules of Valuation' means the Rules of Valuation contained in the *Agreement of Implementation of Article VII of the General Agreement on Tariffs and Trades*, in Annex 1A of GATT 1994 (as incorporated into the WTO Agreement);

'ship' means a vessel used in navigation, not being a vessel propelled only by oars; and includes a hovercraft or submarine;

'shipment' or 'to ship' includes loading or to load into a craft;

'state warehouse' means a warehouse designated as such by the Comptroller under section 145(1)(c);

'transhipment' means goods unloaded from craft in Kiribati, for loading onto another craft to take the goods out of Kiribati without leaving customs control;

'transit' means goods moving under customs control from one designated port to another within Kiribati;

'unentered goods' are goods under customs control for which all entry requirements have yet to be made;

'valuation provisions' means the methods to be followed to work out the customs value of goods contained in Subdivision 5 of Division 1 of Part VII;

'vehicle' means any method of carriage or conveyance for use on land, whether or not it is also capable of being used on or over water, and includes any cart and wagon and any trailer attached to any such carriage or conveyance;

'warehouse licensee' means someone who has—

- (a) a private warehouse licence; or
- (b) a public warehouse licence;

'WTO Agreement' means the *Agreement Establishing the World Trade Organization*, done at Marrakech on 15 April 1994.

*NOTE: Section 4 of the Interpretation and General Clauses Ordinance (Cap.46) provides that definitions of words or expressions shall extend to the grammatical variations and cognate expressions of such words or expressions.*

- (2) A note included in this Act is for explanatory purposes only and is not part of this Act.
- (3) For the purposes of this Act an officer, employee, principal or associate of a body corporate may do things required to be done under this Act on behalf of the body corporate.
- (4) For the avoidance of doubt—
  - (a) when classifying goods a person must have regard to the General Rules for the Harmonized System; and
  - (b) when working out customs value a person must have regard to the Interpretative Notes.
- (5) Where this Act requires someone to communicate anything using a document, the document can be provided electronically.

### **3. Required information**

- (1) For each provision that requires a customs officer to consider required information, the Minister—
  - (a) must specify the required information; and
  - (b) may specify an accompanying document, by publishing a notice in the *Gazette*.
- (2) The Minister must only specify the information and documentation necessary to make the decision for which the information is required.

### **4. Providing required information to a customs officer**

- (1) A person may provide required information to a customs officer—
  - (a) on paper; or
  - (b) electronically.
- (2) A customs officer must not make a decision that requires the consideration of required information unless the officer has—
  - (a) all the required information; and
  - (b) any accompanying document.
- (3) A customs officer must not make a decision that requires him or her to consider required information if the officer has grounds to believe the information is provided in a manner, which prevents the efficient processing of the information.

### **5. Time of importation**

Goods are taken to have been imported into Kiribati when—

- (a) if imported in craft arriving by sea – the first time the ship enters Kiribati waters; and
- (b) if imported in craft arriving by air – the first time the aircraft lands in Kiribati.

**6. Time of exportation**

Goods are taken to have been exported when the goods leave Kiribati.

**7. When goods are entered**

Goods are taken to have been entered when—

- (a) all required information has been provided; and
- (b) all duty, taxes and charges have been paid; and
- (c) in relation to entries for use in Kiribati and temporary importation into Kiribati, a customs officer has issued a release.

**PART II—ESTABLISHMENT OF THE KIRIBATI CUSTOMS ADMINISTRATION AND ENFORCEMENT  
AND THE GENERAL POWERS OF OFFICERS**

**8. The Kiribati Customs Administration and Enforcement**

The Minister must designate part of his or her Ministry to be the Kiribati Customs Administration and Enforcement.

**9. Customs seal**

The customs seal is the National Emblem of Kiribati with the words 'Kiribati Customs' encircling it, with the name of the designated port added.

*NOTE: The National Emblem of Kiribati is provided for under s.8 of the National Identity Act 1989.*

**10. The Comptroller of Customs**

- (1) There shall be a Comptroller of Customs, whose office shall be a public office.
- (2) The Comptroller shall be appointed by the Beretitenti, acting in accordance with the advice of the Public Service Commission tendered after consultation with the Board.
- (3) The Comptroller is a customs officer.

**11. Comptroller may delegate powers**

- (1) This section sets out the only way by which the Comptroller may delegate any of his or her powers or functions.
- (2) The Comptroller may delegate in writing any of his or her powers or functions (other than the function to review decisions made by customs officers in section 128) to—
  - a. a named customs officer; or
  - b. a customs officer holding a designated position or class of position within the Kiribati Customs Administration and Enforcement.
- (3) A delegation may be changed or cancelled at any time in writing.
- (4) When delegating power, the Comptroller may place limits and conditions on how, when or in what circumstances a delegate may exercise powers.

**12. Customs officers**

A customs officer is—

- (a) a Government officer attached to the Kiribati Customs Administration and Enforcement, other than—
  - (i) accounting staff;
  - (ii) secretarial staff;
  - (iii) support staff; and
- (b) any other person appointed in writing by the Comptroller.

### **13. General powers of customs officers**

- (1) The table in Schedule 1 sets out the general powers of customs officers.
- (2) Column 2 of the table in Schedule 1 specifies the power a customs officer may exercise.
- (3) Column 3 of the table in Schedule 1 specifies where the power may be exercised.
- (4) A customs officer must only exercise his or her general powers if he or she has grounds to believe it is necessary to do so to ensure compliance with this Act.
- (5) A customs officer exercising the power to examine goods under customs control listed as item 7 in the table in Schedule 1 must also follow the procedure as to how to examine goods in places under customs control set out in section 47.
- (6) A customs officer exercising the power to search a person listed as item 13 in the table in Schedule 1 must also follow the rules for searching people set out in Schedule 2.
- (7)
  - (a) A customs officer who seizes goods from a person in exercise of the power listed as item 16 in the table in Schedule 1 must give the person a written document setting out —
    - (i) the description of the goods seized; and
    - (ii) the reason for the seizure; and
    - (iii) what the person may do to challenge the seizure.
  - (b) However, a failure to give the person the document required by paragraph (a) does not make the seizure unlawful.

### **14. Indemnity**

Civil and criminal proceedings will not lie against a customs officer for anything done by him or her whilst performing his or her duties, unless the act was negligent or wilful.

## **PART III—CUSTOMS CONTROL**

### **15. When goods are under customs control**

- (1) Goods imported into Kiribati are under customs control from the time they were imported, until they are—
  - (a) released for use into Kiribati; or
  - (b) released for temporary use into Kiribati; or
  - (c) destroyed; or
  - (d) exported.
- (2) Goods exported from Kiribati are under customs control from the time they are brought to a customs area for export until they leave Kiribati.

### **16. Places under customs control**

These are places under customs control—

- (a) craft in Kiribati;
- (b) customs areas; and
- (c) places where goods under customs control are located.

## **PART IV—THE MOVEMENT OF GOODS AND PEOPLE INTO KIRIBATI**

### **DIVISION 1—EARLY REPORTING OF CARGO**

#### **17. Notice of arrival**

The master of a craft, or an agent of the master of a craft, that is en route to Kiribati from a point outside Kiribati must, unless otherwise approved by the Comptroller, must:

- (a) give to Customs, in a form (for example, in an electronic form) approved in writing by the Comptroller (either generally or for a particular case or class of cases), advance notice as may be prescribed of one or more of the following matters:
  - (i) the impending arrival of the craft;
  - (ii) its voyage;
  - (iii) its passengers;
  - (iv) its crew;
  - (v) its cargo, whether commercial or non-commercial, for discharge within Kiribati;
  - (vi) its commercial cargo not intended for discharge within Kiribati;
  - (vii) the designated port at which the craft will arrive, in accordance with section 19;
- (b) on arriving within the EEZ of Kiribati, ensure that the Global Positioning System of the craft, in particular small crafts, is turned on; and
- (c) on arriving within Kiribati, proceed directly to the designated port, unless directed elsewhere by a Customs officer.

#### **18. A master of craft must make a cargo report**

The master of craft proposing to unload goods in Kiribati must provide a customs officer with the required information necessary to identify the goods on board the craft, and the consignees of the goods—

- (a) seven days before the arrival of a ship; or
- (b) two hours before the arrival of an aircraft; or
- (c) such shorter period as the Comptroller may allow.

*NOTE: A master can make a cargo report using a person designated by the owner of the craft under section 28.*

### **DIVISION 2—UNLOADING THE CRAFT**

#### **19. Craft to touch down or land only at a designated port**

Subject to section 27, the master of craft entering Kiribati must only touchdown or land at a designated port.

*NOTE: The master of craft that lands or touches down anywhere other than a designated port commits an offence (Schedule 8, item 20). However, section 26 provides exceptions to this requirement in some circumstances.*

#### **20. Actions upon arrival**

- (1) On arrival at a designated port, the master of craft must—
  - (a) tell a customs officer of the arrival; and
  - (b) take the craft to a place a customs officer directs; and

- (c) prevent anyone coming on board craft before a customs officer, unless authorised by—
  - (i) a law of Kiribati; or
  - (ii) a customs officer; and
- (d) do everything that is needed to allow a customs officer to board the craft; and
- (e) not break bulk; and
- (f) unless a customs officer has approved, not allow anyone or anything to leave the craft until the customs officer who has boarded the craft has issued a clearance inwards; and
- (g) provide the customs officer who has boarded the craft with the required information necessary to inform the officer of the goods and people on board the craft.

*NOTE:* A master who—

- does not follow a lawful direction of a customs officer (Schedule 8, item 30); or
  - does not do everything needed to allow a customs officer to board a vessel (Schedule 8, item 22); or
  - breaks bulk (Schedule 8, item 24); or
  - fails to take reasonable steps to prevent people from boarding the craft before a customs officer (Schedule 8, item 21); or
  - fails to take reasonable steps to prevent goods or people from leaving the craft before a clearance inwards has been issued or the movement is authorised by a customs officer (Schedule 8, item 23), commits an offence.
- (2) Where a customs officer has grounds to believe that this Act has been complied with, the officer must issue a clearance inwards.
  - (3) Where a customs officer has grounds to believe that this Act has not been complied with, the officer must provide a request document to the master, setting out the things that the master must do before a clearance inwards is issued.
  - (4) A customs officer must not issue a clearance inwards until the master has complied with the request document.
  - (5) If the master does the things set out in the request document, a customs officer must issue a clearance inwards.
  - (6) A customs officer may require stores that are—
    - (a) alcoholic products; or
    - (b) tobacco products,
 other than a reasonable quantity of the products for the consumption of passengers and crew remaining on board the craft, to be placed in a sealed compartment.

**21. People must remain on board craft until a clearance inwards has been issued**

Unless a customs officer has approved, a person must remain on board craft until a clearance inwards has been issued.

*NOTE:* A person who leaves craft before it has received a clearance inwards without approval commits an offence (Schedule 8, item 27).

**22. Goods should be removed from cleared craft as soon as possible**

- (1) Goods must be—
  - (a) unloaded from craft that has been issued with a clearance inwards as soon as possible; and
  - (b) taken immediately to a customs area.

*NOTE:* Unless otherwise authorised, the goods must then stay in the customs area until they are entered (section 43).

- (2) The Comptroller may—
  - (a) detain craft that still contains goods 10 days (or such longer period that the Comptroller may allow) after the craft's arrival into Kiribati; and
  - (b) charge the master of the craft the reasonable costs involved in watching over the craft.
- (3) This section does not apply to craft with goods to be unloaded—
  - (a) at another designated port in Kiribati that has been entered for transit; or
  - (b) outside of Kiribati,that a customs officer considers to be sufficiently separated from goods being unloaded.

### **23. People must not board or leave craft under customs control without approval**

A person must not board or leave craft under customs control without the approval of a customs officer.

*NOTE:* A person who boards or leaves craft under customs control without approval commits an offence (Schedule 8, item 29).

### **24. Discharge report**

The master of craft must provide a customs officer with the required information necessary to allow the customs officer to determine whether—

- (a) all the goods listed on the cargo report were unloaded into a customs area; or
- (b) goods not listed on the report were unloaded,

as soon as possible after the unloading procedure concludes.

*NOTE:* The master of craft is liable to pay import duty if goods contained in the cargo report are not unloaded into a customs area (section 91(2)(a)).

### **25. Uncleared cargo list**

The occupier of the customs area into which goods under customs control unloaded from a craft were first placed must provide a customs officer with the required information necessary to allow the officer to determine whether containers or goods unloaded from craft bringing imported goods into Kiribati remain under customs control, within—

- (a) 21 days of the Comptroller issuing a clearance outwards to the master of the craft; or
- (b) such other period as the Comptroller may allow.

*NOTE 1:* Section 22(2) requires goods unloaded from craft to be immediately moved to a customs area.

*NOTE 2:* The occupier of a customs area who cannot account for goods must pay the import duty (section 91(2)(b)).

### **26. Craft carrying goods entered for transit**

The master of craft carrying goods entered for transit must follow the requirements of this Division that are imposed on masters as if he or she were the master of craft importing goods into Kiribati.

### **27. Exceptions to Division 2**

- (1) Despite section 19, this Division does not apply where—
  - (a) due to force of weather; or
  - (b) because of mechanical failure; or
  - (c) the Comptroller has given approval,craft carrying goods into Kiribati lands somewhere other than a designated port.
- (2) If subsection (1) applies, the master of craft must—
  - (a) report the goods and the names of the people on board; and
  - (b) follow any directions given by a customs officer given so as to—
    - (i) allow the craft to be given a clearance inwards; and
    - (ii) ensure goods remain under customs control.

*NOTE 1: It is an offence not to follow a lawful direction of a customs officer (Schedule 8, item 30).*

*NOTE 2: Goods remain under customs control from the time they are imported until the time they are released for use in Kiribati, are destroyed or exported (section 15).*

## **28. Owners of craft must appoint a designated person**

- (1) The owner of craft importing goods into Kiribati must appoint a designated person.
- (2) A designated person may do all the things the master of craft may or must do under this Act.

### **DIVISION 3—THE ENTRY OF IMPORTED GOODS**

## **29. Goods that must be entered**

All goods contained in craft importing goods into Kiribati, other than—

- (a) passengers' accompanied baggage; and
  - (b) passengers' unaccompanied baggage; and
  - (c) containers which are not to enter use in Kiribati; and
  - (d) damaged and destroyed goods, where a remission has been approved; and
  - (e) stores for craft; and
  - (f) postal packages containing goods with a value of less than \$20,
- must be entered.

*NOTE 1: Goods on which duty is payable that are taken from a place under customs control without the payment of import duty are forfeited goods (section 152(1)(d)).*

*NOTE 2: Most goods that are being exported from Kiribati must also be entered (section 62).*

## **30. Making an entry**

- (1) A person—
  - (a) may enter goods that require to be entered under this Act at any time within 10 days prior to the expected arrival date of the goods in Kiribati; but
  - (b) must enter the goods as soon as possible after the goods have arrived in Kiribati.

*NOTE 1: Section 29 requires most goods imported into Kiribati to be entered.*

*NOTE 2: Unentered goods may be auctioned (section 53).*

- (2) A person who wishes to make an entry must make the entry—
  - (a) himself or herself; or

- (b) through a person named in a document given to a customs officer, which authorises the person named in the document to act as owner in relation to a particular transaction; or
- (c) through a customs agent.

(3) A person must not make an entry through any other person.

*NOTE 1: A person who allows anyone else to enter goods on his or her behalf (other than a person to whom section 30(2) applies) commits an offence (Schedule 8, item 35):*

*NOTE 2: A person who enters goods on behalf of anyone else without being a person to whom section 30(2) applies commits an offence (Schedule 8, item 36).*

### **31. Classes of entry**

(1) This section sets out the classes of entry a person may make.

#### *Use in Kiribati*

- (2) An owner may enter goods for use in Kiribati by providing a customs officer with the required information necessary to—
- (a) identify the goods; and
  - (b) work out how much import duty is payable.

#### *Warehousing*

- (3) An owner may enter goods for warehousing by providing a customs officer the required information necessary to identify—
- (a) the goods to be placed in the care of a warehouse licensee; and
  - (b) the identity of the licensee.

#### *Temporary use in Kiribati*

- (4) An owner may enter goods for temporary use in Kiribati by providing a customs officer with the required information necessary to—
- (a) identify the goods; and
  - (b) determine whether they are of a type that can be entered for temporary use in Kiribati.
- (5) An owner may only enter goods for temporary use if the person proposes to export the goods within—
- (a) six months from the day the goods were entered; or
  - (b) such other period as the Board permits.

#### *Transit*

- (6) An owner may enter goods for transit by providing a customs officer with the required information necessary to identify—
- (a) the goods that are to be unloaded in one designated port in Kiribati; and
  - (b) the second designated port within Kiribati where the goods are going to.

#### *Transshipment*

- (7) An owner may enter goods for transshipment by providing a customs officer the required information necessary to identify the goods to be transhipped.

### 32. Informal clearance

- (1) Despite section 30, where—
- (a) a person leaving craft is carrying goods on which import duty is payable—
    - (i) themselves; or
    - (ii) in his or her baggage; or
  - (b) a postal article has been imported into Kiribati on which less than \$500 of import duty is payable; or
  - (c) a customs officer has grounds to believe it is impractical for a person to make a class of entry,  
a customs officer may fill out an informal clearance.
- (2) An informal clearance under subsection (1) shall record—
- (a) the owner of the goods; and
  - (b) the goods; and
  - (c) the amount of import duty and other charges payable on the importation of the goods.
- (3) Where—
- (a) a customs officer completes filling out an informal clearance; and
  - (b) all taxes and charges are paid,  
the goods are taken to have been entered.

*NOTE: An informal clearance is taken to be a class of entry under the definition of 'class of entry' in section 2(1).*

### 33. Provisional entry

- (1) An owner who cannot complete an entry because he or she has insufficient information to do so may apply to the Comptroller to make a provisional entry by providing the required information necessary for the Comptroller to determine whether—
- (a) the tariff classification and statistical code are correct; and
  - (b) the amount of duty being offered is approximately correct.
- (2) Despite section 30, where a customs officer has grounds to believe—
- (a) the tariff classification and the statistical code are correct; and
  - (b) the amount of import duty the owner estimates to be the amount payable is approximately correct (called in this section 'the estimated amount'); and
  - (c) the owner pays 150% of the estimated amount to the customs officer,  
the Comptroller must treat the provisional entry as if it were an entry.
- (3) The owner must perfect the provisional entry within six months of having applied for it, by providing a customs officer with the information necessary to make a correct entry for the goods (called in this section 'the perfecting information').
- (4) If the owner does not provide the perfecting information within six months from the day he or she applied to make a provisional entry, the amount paid under subsection (2)(c) will be taken to be the correct amount of import duty payable on the importation of goods.

*NOTE: If an owner provides the perfecting information within six months, he or she may apply for a refund for the difference between the amount paid and the correct amount of import duty payable on the importation of goods, as the owner satisfies the criterion that the person has paid more duty than they are required to by law (section 110).*

### 34. Replacement entries

An owner may replace—

- (a) the class of entry he or she has made by providing a customs officer with the required information an owner must provide for the type of entry he or she wishes to make; or
- (b) the warehouse licensee named in a warehouse entry by providing a customs officer with a replacement warehouse entry containing the name of the new licensee.

**35. Correcting information on an entry**

An owner may correct information, other than—

- (a) a change in the class of entry; or
- (b) a change in a warehouse licensee named in a warehouse entry, by providing the new

information to a customs officer.

*NOTE: Changes to class of entry and warehouse licensee are governed by section 34.*

**36. Establishment of and access to the Customs automated system**

- (1) The Comptroller may establish a Customs automated system.
- (2) A person may not transmit to, or receive information from, a Customs automated system unless that person is an individual who is registered by the Comptroller as a user of that Customs automated system.

**37. Registered users**

- (1) An individual who wishes to be a registered user:
  - (a) may, in the prescribed form, apply to the Comptroller; and
  - (b) must provide other prescribed information.
- (2) The Comptroller may require an applicant for registration to give such additional information as the Comptroller considers necessary for the purpose of the application.
- (3) The Comptroller:
  - (a) may grant the application, subject to conditions, or refuse the application; and
  - (b) must, in writing, inform the applicant of the decision.
- (4) An applicant who is dissatisfied with a decision of the Comptroller under this section may, within 20 working days after the date on which notice of the decision is given, appeal to the Minister against that decision.

**38. Unique user identifier**

- (1) The Comptroller must allocate to a registered user a unique user identifier in a form or of a nature determined by the Comptroller.
- (2) The unique user identifier allocated under subsection (1) must be used by the registered user for the purpose of transmitting information to or receiving information from that Customs automated system.
- (3) The Comptroller may, by notice in writing, impose conditions on a particular registered user, or on registered users generally, on the use and security of unique user identifiers.

**39. Use of unique user identifier**

- (1) If information is transmitted to a customs automated system using the unique user identifier of a registered user, the transmission of that information is, in the absence of proof to the contrary, evidence that the information was transmitted by the registered user.

- (2) If the unique user identifier of a registered user is used by an individual other than the registered user, subsection (1) does not apply if the registered user has, prior to the unauthorised use of his or her unique user identifier, notified Customs that the unique user identifier is no longer secure.

**40. Conditions may be imposed on registered users**

- (1) The Comptroller may impose any condition on the existing registration on a specified registered user or a class of registered users or on all registered users.
- (2) A condition imposed under subsection (1) must:
- (a) be notified in writing to one or more registered users concerned; and
  - (b) unless one or more registered users concerned appeal under subsection (3), be complied with on or before –
    - (i) the 20th working day after the date of notification of the imposition of the condition on the registered user's registration; or
    - (ii) a later date specified by the Comptroller.
- (3) A registered user who is dissatisfied with the imposition of a condition on his or her user registration under subsection (1) may appeal in writing to the Minister within 20 working days after the date of notification of the imposition of the condition on the registered user's registration.
- (4) If the Minister is of the view that the imposition of the conditions under subsection (1) was reasonable in the circumstances, the registered user must comply with the condition on or before—
- (a) the 10th working day after the date of notification of the Minister's decision; or
  - (b) a later date specified by the Minister.

**41. Suspension or cancellation of registration of registered user**

- (1) The Comptroller may, by written notice to a registered user stating grounds for cancellation, cancel that user's registration if satisfied that the user –
- (a) has failed to comply with a condition imposed by the Comptroller under section 38(3) or 40(1); or
  - (b) has failed to comply with a condition imposed by the Comptroller under section 40(2) or (4) within the time specified in that section; or
  - (c) has been convicted of –
    - (i) an offence against this Act; or
    - (ii) an offence involving dishonesty or cybercrime under any enactment; or
  - (d) is, on one or more prescribed grounds, unfit to continue to be a registered user.
- (2) Despite subsection (1), the Comptroller may, by written notice to a registered user stating grounds for suspension, suspend that user's registration until a date or event specified in the notice if satisfied that the user's registration should not be cancelled, but should instead be suspended until that date or event, because the user –
- (a) has failed to comply with a condition imposed by the Comptroller under section 37(3); or
  - (b) has failed to comply with a condition imposed by the Comptroller under section 40(2), within the time frame specified in that section.

- (3) The date or event specified in the notice under subsection (2) may be the user's compliance with a condition imposed by the Comptroller under section 40.
- (4) If the person whose registration is suspended or cancelled is dissatisfied with the decision of the Comptroller under this section, that person may, within 20 working days after the date on which notice of the decision is given, appeal to the Minister against that decision.

**42. Customs to keep records of transmission**

- (1) Customs must keep a record of any transmission sent to or received from a registered user using a Customs automated system.
- (2) The record described in subsection (1) must be kept for a period of seven years from the date of the sending of or the receipt of the transmission, or for any other prescribed period.

**DIVISION 4—CONTROLLING UNENTERED GOODS**

**43. Unentered goods must remain in customs area until movement is approved**

Unentered goods must remain in the customs area they were taken to after being unloaded from the craft that imported them until—

- (a) they are entered; and
- (b) a customs officer approves the movement.

*Note 1: The occupier of a customs area who cannot account for goods must pay the import duty (section 83(2)(b)).*

*Note 2: Goods on which duty is payable that are taken from a place under customs control without the payment of import duty are forfeited goods (section 147(1)(d)).*

**44. Goods the subject of a replacement entry must remain where they are until movement is approved**

Goods the subject of a replacement entry must not be moved anywhere until a customs officer approves the move.

*Note 1: The occupier of a customs area or warehouse licensee who cannot account for goods must pay the import duty (section 91(2)(b)).*

*Note 2: Goods on which duty is payable that are taken from a place under customs control without the payment of import duty are forfeited goods (section 147(1)(d)).*

**45. Goods entered for warehousing must not be moved from a licensed warehouse**

Goods entered for warehousing must not be moved from a licensed warehouse contrary to a licence condition or without further entry or without approval by a customs officer.

*Note 1: A warehouse licensee who cannot account for goods must pay the import duty (section 91(2)(b)).*

*Note 2: Goods on which duty is payable that are taken from a place under customs control without the payment of import duty are forfeited goods (section 147(1)(d)).*

**46. Goods must be kept safe**

Where, in a document, the Comptroller asks—

- (a) the occupier of a customs area; or
- (b) a warehouse licensee; or
- (c) an owner who has—
  - (i) entered goods for transit; and

- (ii) moved the goods from the customs area they were taken to after being unloaded from the craft which imported the goods into Kiribati; or
- (d) an owner who has—
  - (i) entered goods for transshipment; and
  - (ii) moved the goods from the customs area they were taken to after being unloaded from the craft which imported the goods into Kiribati; or
- (e) an owner who has—
  - (i) applied for has moved the goods from the place they were located at the time of making the application,

to account for goods, the person must do so.

*NOTE: An occupier, licensee or owner who cannot account for goods must pay the import duty (section 91(2)(b)).*

#### **47. Examining goods**

- (1) An owner of goods must be present if a customs officer wishes to examine the owner's goods that are under customs control at a customs area, unless the Comptroller—
  - (a) has grounds to believe that it could jeopardise a prosecution the Comptroller may be considering against the owner; or
  - (b) cannot determine the identity of the owner of the goods.
- (2) A customs officer must give the owner a document—
  - (a) telling the owner of the goods to be examined the reason for the examination; and
  - (b) requesting the person to assist in the examination; and
  - (c) asking the person to contact the customs officer to set a time and place for the examination; and
  - (d) informing him or her that if he or she does not comply with the request within one month of the day the customs officer issued the notice, his or her goods may be sold at public auction.
- (3) If a time and place for the examination cannot be agreed, the Comptroller must—
  - (a) set a time and place; and
  - (b) give the owner a document advising him or her of the time and place.
- (4) To facilitate the examination, the owner may apply to the Comptroller to take custody of the goods by providing the required information necessary to allow the Comptroller to decide whether the owner can keep the goods under customs control safe.
- (5) The Comptroller may—
  - (a) accept the application; or
  - (b) reject the application; or
  - (c) require the owner to follow directions as to—
    - (i) where the goods should be located; and
    - (ii) how the goods should be protected.

*NOTE: A person who does not follow a lawful direction of the Comptroller commits an offence (Schedule 8, item 30).*

- (6) A customs officer must not—
  - (a) unless an application under subsection (4) is approved - allow the goods to be moved; or
  - (b) in any case - approve their release for use in Kiribati, until the examination has been conducted in front of the owner.

#### 48. Examining documents

Where goods are under customs control, a customs officer may give a document to the owner of the goods—

- (a) telling him or her to attend the place indicated in the document to—
  - (i) provide commercial documents; and
  - (ii) answer questions,

relating to goods under customs control referred to in the document; and

- (b) informing him or her that if he or she does not comply with the request within one month of the day the customs officer issued the notice, his or her goods may be sold at public auction.

#### 49. Access to goods

(1) A person, other than—

- (a) a customs officer; or
  - (b) the occupier of a customs area; or
  - (c) an employee of the occupier of a customs area; or
  - (d) a warehouse licensee; or
  - (e) an employee of a warehouse licensee; or
  - (f) a person entitled to access goods under this Act or any other law of Kiribati; or
  - (g) a person allowed access to goods under customs control so they may then destroy them; or
  - (h) a person who has entered goods for transit or transshipment who has been allowed by a customs officer to move goods; or
  - (i) a person allowed to access goods under subsection (2); or
  - (j) someone allowed to touch baggage under section 59,
- must not touch goods under customs control without reasonable excuse.

*NOTE 1: A person who touches goods under customs control without authority commits an offence (Schedule 8, item 32).*

*NOTE 2: Section 59 deals with who may handle baggage in a customs area at which passengers' baggage is being examined.*

(2) An owner may gain access to his or her goods under customs control or take goods under customs control into his or her care, so as to—

- (a) preserve them; or
- (b) improve the packaging or marketability of the goods; or
- (c) work out the quantity imported; or
- (d) prepare them for shipment,

by providing the Comptroller with the required information necessary to enable the Comptroller to decide whether allowing the owner access to goods would pose either a risk to either the revenue or public safety.

(3) The Comptroller may—

- (a) allow access; or
- (b) allow access subject to conditions; or
- (c) refuse access.

(4) A person must abide by any conditions made by the Comptroller when accessing his or her goods.

(5) The goods remain under customs control.

*NOTE 1: A person who fails to abide by any lawful conditions imposed on gaining access to goods under customs control commits an offence (Schedule 8, item 31).*

*NOTE 2: An owner allowed access under subsection (2) who cannot account for goods must pay the import duty (section 91(2)(b)).*

## **50. Releasing goods going into circulation in Kiribati**

Where a customs officer has grounds to believe—

- (a) the correct amount of import duty has been paid; and
  - (b) all other fees and charges payable under this Act have been paid; and
  - (c) all taxes and charges (however described) payable on the importation of goods under any other law of Kiribati have been paid; and
  - (d) any other requirement under this Act or any other law of Kiribati has been satisfied,
- on goods entered for use in Kiribati or for temporary use in Kiribati, the officer must immediately issue a release for the goods for delivery.

*NOTE: Until the release is issued, the goods must remain under customs control at places under customs control (section 15(1)).*

## **51. Goods entered for warehousing must be re-entered after two years**

The owner of goods entered for warehousing must re-enter the goods after two years from the day the owner first entered the goods for warehousing.

*NOTE: Goods that are not re-entered for warehousing after two years may be sold at public auction (section 53).*

### **DIVISION 5—DEALING WITH UNENTERED GOODS**

## **52. What happens if goods remain unentered after 10 days?**

- (1) If, 10 days (or such longer period as the Comptroller allows) after goods arrive in Kiribati, goods under customs control remain as unentered goods, the Comptroller may direct—
  - (a) a customs officer; or
  - (b) the owner; or
  - (c) the occupier of the customs area at which the goods are located,to move the unentered goods to a state warehouse or a public warehouse.
- (2) Instead, the Comptroller may deem the goods to be in a state warehouse.
- (3) The Comptroller may—
  - (a) take any steps that are necessary to—
    - (i) preserve the goods; and
    - (ii) ensure the goods stay under customs control; and
  - (b) move the goods from one state warehouse to another; and
  - (c) charge the owner the reasonable costs incurred in doing any of these things.
- (4) For the avoidance of doubt, an owner is liable to pay state warehouse fees for goods deemed to be in a state warehouse pursuant to subsection (2), in addition to any costs charged under subsection (3).

*NOTE 1: The Minister may set state warehouse fees (section 151).*

*NOTE 2: Unentered goods that are (or are deemed to be) in a state warehouse for more than one month may be auctioned (section 53).*

### **53. Goods may be auctioned**

Goods—

- (a) in a state warehouse that are—
  - (i) unentered goods that have been in a state warehouse for more than one month; or
  - (ii) perishable; or
- (b) referred to in a notice to examine goods where an owner has not attended an examination of the goods within one month of the Comptroller issuing the notice; or
- (c) referred to in a notice to produce documents where an owner has not produced the documents within one month of the Comptroller issuing the notice; or
- (d) that have—
  - (i) been in a licensed warehouse for two years; and
  - (ii) have not been re-entered,

may be disposed of in a public auction.

### **54. Notification requirements for a public auction**

- (1) The Comptroller must publicly notify the time and place where the auction is to be conducted, and a description of the goods to be auctioned, at a time—
  - (a) in the case of all goods other than perishable goods – one month before the time the auction is to be conducted; or
  - (b) in the case of perishable goods – for as long a period as is possible in the circumstances.
- (2) The Comptroller must take all reasonable steps to tell the owner that his or her goods are going to be sold.
- (3) If the owner of goods referred to in section 53(a) can satisfy the conditions for entry set out in section 31 prior to the commencement of the auction, the Comptroller must withdraw the goods from auction.
- (4) If the owner of goods referred to in section 53(b) attends an examination of the goods prior to the commencement of the auction, the Comptroller must withdraw the goods from auction.
- (5) If the owner of goods referred to in section 53(c) produces the requested documents to the Comptroller prior to the commencement of the auction, the Comptroller must withdraw the goods from auction.
- (6) If the owner of goods referred to in section 53(d) re-enters the goods prior to the commencement of the auction, the Comptroller must withdraw the goods from auction.

### **55. The public auction process**

- (1) At any auction, the goods sold must fetch the sum (called in this section ‘the reserve price’) of—
  - (a) the amount of import duty the Comptroller estimates as payable on the goods (if any); and
  - (b) any other taxes and charges payable under—
    - (i) this Act; or
    - (ii) any other law of Kiribati; and
  - (c) the costs involved in conducting the auction.

- (2) If, at the auction, the goods do not reach the reserve price, title in the goods passes to the Republic.
- (3) The Comptroller may dispose of the goods referred to in subsection (2) in any manner the Comptroller sees fit (including destroying them).
- (4) If the goods reach the reserve price, title in the goods passes to the highest bidder, upon payment of the price.
- (5) The person to whom title in the goods has passed under subsection (4) must immediately remove the goods from a place under customs control.
- (6) If a person to whom title in the goods has passed pursuant to subsection (4) fails to remove them from a place under customs control within seven days, the Comptroller may again auction the goods by following the procedures set out in sections 54 and 55.
- (7) Where goods have been sold at auction at a price in excess of the reserve price, the original owner of the goods may, within one year of the day of the auction, make application to the Comptroller to be paid the difference between the reserve price and the price at which the goods were sold (called in this section 'the surplus'). The owner must provide the required information necessary for the Comptroller to determine that he or she is eligible to be paid the surplus.
- (8) If, having received an application made under subsection (7), the Comptroller is satisfied that the applicant is eligible to be paid the surplus, the Comptroller must pay the surplus to the applicant.

#### DIVISION 6—RESPONSIBILITIES OF MASTERS NOT UNLOADING GOODS IN KIRIBATI

##### **56. Responsibilities of masters not unloading goods in Kiribati**

- (1) This section sets out the reporting responsibilities of masters of craft not unloading goods in Kiribati.
- (2) The master must tell a customs officer that his or her craft has arrived in Kiribati as soon as possible, but in any case within 48 hours of arriving in Kiribati.

*NOTE: A master of craft not unloading goods who fails to report the arrival of his or her craft commits an offence (Schedule 8, item 25).*

- (3) A customs officer may direct the master to take his or her craft to a place so it can be boarded.

*NOTE: It is an offence not to follow a lawful direction of a customs officer (Schedule 8, item 30).*

- (4) If a customs officer has grounds to believe the craft will not unload or load goods in Kiribati, the officer may direct the master to do such things as are necessary to—
  - (a) ensure compliance with this Act; and
  - (b) grant a clearance outwards.
- (5) For the avoidance of doubt, the power to direct a person under subsection (4) includes the power to direct the master to attend an office of the Kiribati Customs Administration and Enforcement to provide such information as the officer directs.

- (6) If the master follows a direction made under subsection (4) then, despite section 63, he or she does not need to make an application for a clearance outwards.

#### DIVISION 7—PASSENGERS AND CREW

##### **57. Information must be provided on arrival**

A person arriving in Kiribati on craft must, immediately after they arrive, provide a customs officer with the required information necessary to permit the officer to identify—

- (a) who they are; and
- (b) the types of goods the person is importing into Kiribati.

##### **58. A person must not leave customs control until permitted**

A person on craft must not leave the customs area at which the craft arrived until permitted by a customs officer.

*NOTE:* A person having left craft who leaves a customs area without permission commits an offence (Schedule 8, item 28).

##### **59. Baggage**

- (1) The only people entitled to touch the baggage of a person entering Kiribati in a customs area where passengers' baggage is being examined are—

- (a) the owner of the baggage; or
- (b) a customs officer; or
- (c) a person performing a function under any law of Kiribati; or
- (d) an employee of the entity controlling the customs area.

*NOTE 1:* Anyone else who touches baggage commits an offence (Schedule 8, item 32).

*NOTE 2:* If baggage is in an area other than a place where passengers' baggage is being examined, section 49 applies.

- (2) Baggage cannot be removed from a customs area where passengers' baggage is being examined until—

- (a) all requirements under any law of Kiribati dealing with the importation of goods have been complied with; and
- (b) a customs officer has approved its removal from the customs area.

- (3) A customs officer may mark passengers' baggage for security purposes.

##### **60. Undeclared dutiable goods in baggage or on a person**

- (1) A customs officer must seize goods (called in this section 'discovered goods') on a person entering Kiribati or in the person's baggage if—

- (a) import duty is payable on the goods; and
- (b) the person entering Kiribati did not indicate to a customs officer that the goods were on them, or in his or her baggage.

- (2) The customs officer must—

- (a) detain the goods; and
- (b) give the person a document, explaining that—
  - (i) the discovered goods may be released to the person if the person pays an amount equivalent to 200% of the duty (called in this section 'the required sum') that would usually have been payable on the goods within one month (called in this section 'the required time');
  - (ii) otherwise the goods are forfeited.

- (3) If the person pays the required sum within the required time, a customs officer must release the discovered goods to the person.

DIVISION 8—IMPORT OF SHIPS AND AIRCRAFT

**61. Import of ships and aircraft**

- (1) Where a ship or an aircraft is imported into Kiribati otherwise than as goods contained in craft, the ship or aircraft shall be deemed to have been imported as goods contained in craft and unloaded as such on its arrival in Kiribati.
- (2) Where—
  - (a) a ship or an aircraft has entered Kiribati; and
  - (b) has not been entered in accordance with Division 3 of Part IV; and
  - (c) the Comptroller, after making such enquiries as he or she considers appropriate, has grounds to believe that the ship or aircraft might have been imported into Kiribati,the Comptroller may serve, in accordance with subsection (5), a notice in respect of the ship or aircraft stating that, if the ship or aircraft remains in Kiribati throughout the period of 30 days commencing on the day on which the notice was served, the ship or aircraft shall be deemed to have been imported into Kiribati and may be forfeited.
- (3) Where a notice has been served under subsection (2) in respect of a ship or an aircraft the Comptroller may, if he or she considers that, having regard to weather conditions or any other relevant matter, extend the period specified in the notice by serving, in accordance with subsection (5), a notice in respect of the ship or aircraft stating that that period has been extended and specifying the period by which it has been extended.
- (4) Where a notice has been served under subsection (2) in respect of a ship or an aircraft the Comptroller may, before the expiration of the period specified in the notice or, if that period has been extended under subsection (3), that period as extended, revoke that notice by serving, in accordance with subsection (5), a notice in respect of the ship or aircraft stating that the first-mentioned notice is revoked.
- (5) The Comptroller shall serve a notice under subsection (2), (3) or (4) by causing the notice to be affixed to a prominent part of the ship or aircraft.
- (6) Where the Comptroller serves a notice under subsection (2), (3) or (4) he or she shall, as soon as practicable after serving the notice, publish a copy of the notice in the *Gazette* and in a newspaper circulating generally in Kiribati.
- (7) Where—
  - (a) the Comptroller has served a notice under subsection (2) in respect of a ship or an aircraft;
  - (b) the Comptroller has complied with subsection (6) in respect of the notice;
  - (c) the notice has not been revoked under subsection (4);
  - (d) the ship or aircraft has remained in Kiribati throughout the period specified in the notice or, if that period has been extended under subsection (3), that period as extended; and
  - (e) an entry has not been made in respect of the ship or aircraft during that period or that period as extended, as the case requires,on the expiration of that period or that period as extended (as the case requires), the ship or aircraft shall be deemed to have been imported into Kiribati and are forfeited goods.

## PART V—THE EXPORT OF GOODS FROM KIRIBATI

### 62. Most goods exported from Kiribati must be entered

- (1) All goods, other than—
  - (a) containers that have not been entered; and
  - (b) baggage; and
  - (c) postal packages containing goods with a value of less than \$20; and
  - (d) goods in free circulation in Kiribati taken on board craft as stores; and
  - (e) goods being exported from Kiribati to satisfy the terms of conditional entry into Kiribati,must be entered for export.
- (2) A person may make an export entry by providing a customs officer with the required information necessary to identify—
  - (a) the goods the subject of the entry; and
  - (b) the taxes and charges payable on the exportation of goods from Kiribati (if any); and
  - (c) the overseas port to which the goods are going.
- (3) A person who has made an export entry must take the goods to a customs area as soon as possible.
- (4) If a person has made a customs entry but a decision has been made not to export the goods, the person must tell a customs officer as soon as possible.

### 63. Leaving the country

- (1) The master of craft leaving Kiribati must provide a customs officer with the required information necessary to allow an officer to ensure all the requirements of this Act have been satisfied.
- (2) Where a customs officer has grounds to believe this Act has been complied with, the officer must issue a clearance outwards.
- (3) Where a customs officer has grounds to believe this Act has not been complied with, the officer must provide a request document to the master, setting out the things that the master must do before a clearance inwards is issued.
- (4) A customs officer must not issue a clearance outwards until the master has complied with the request document.
- (5) If the master does the things set out in the request document, a customs officer must issue a clearance outwards.

## PART VI—PROHIBITED AND RESTRICTED IMPORTS AND EXPORTS

### 64. Prohibited imports

- (1) The goods listed in the table in Schedule 3 are prohibited imports.
- (2) The importation of goods listed in the table in Schedule 3 is absolutely prohibited.

*NOTE: It is an offence to knowingly import prohibited imports (Schedule 8, item 5).*

### 65. Restricted imports

- (1) The goods listed in the table in Schedule 4 are restricted imports.

- (2) In the table in Schedule 4—  
(a) the goods listed in column 2 are the goods subject to restriction; and  
(b) column 3 sets out the conditions under which the goods may be imported.

*NOTE: It is an offence to knowingly import restricted imports contrary to conditions under which they may be imported (Schedule 8, item 6).*

**66. Prohibited exports**

- (1) The goods listed in the table in Schedule 5 are prohibited exports.  
(2) The exportation of goods listed in the table in Schedule 5 is absolutely prohibited.

*NOTE: It is an offence to knowingly export prohibited exports (Schedule 8, item 7).*

**67. Restricted exports**

- (1) The goods listed in the table in Schedule 6 are restricted exports.  
(2) In the table in Schedule 6—  
(a) the goods in column 2 are the goods subject to restriction; and  
(b) column 3 sets out the conditions under which the goods may be exported.

*NOTE: It is an offence to knowingly export restricted exports contrary to conditions under which they may be exported (Schedule 8, item 8).*

**68. Prohibitions or restrictions on import not to apply in some circumstances**

Despite sections 64 and 65, prohibited imports may be imported, and restricted imports may be imported without compliance with any required condition, if they are—

- (a) imported for use as stores for craft; or  
(b) entered for transshipment,

unless the Minister has specified in a notice published in the *Gazette* that the goods listed in the notice cannot be imported at all, or that required conditions must be complied with, as the case may be.

**69. Amendments to Schedules 3, 4, 5 and 6**

Schedules 3, 4, 5 and 6 may be amended by the Minister, acting in accordance with the advice of the Cabinet, by publishing a notice in the *Gazette*.

**70. Comptroller to supply lists of prohibited and restricted imports and exports**

The Comptroller must give anyone who asks for a list of the goods that are subject to importation or exportation prohibitions or restrictions the list that is in force on the day the person asks for it.

**PART VII—THE DUTIES**

**DIVISION 1—IMPORT DUTY**

*Subdivision 1—Creation of a Tax Called Import Duty*

**71. Import duty**

- (1) A tax, called import duty, is imposed on the importation of goods into Kiribati.  
(2) Import duty is worked out—  
(a) if duty is payable on the value of the good imported – by multiplying the rate of duty payable by the customs value of the goods; or

- (b) if duty is payable on weight or volume – by multiplying the rate of duty payable by the weight or volume of the goods; or
  - (c) if duty is payable on the number of goods imported – by multiplying the rate of duty payable by the number of goods imported.
- (3) For the purposes of working out import duty, where goods are imported in packages—
- (a) if—
    - (i) duty is worked out on the basis of weight; and
    - (ii) the package indicates a weight,
 then import duty will be worked out on the basis of the net weight indicated on the package; or
  - (b) if—
    - (i) duty is worked out on the basis of volume; and
    - (ii) the package indicates a volume,
 then import duty will be worked out on the basis of the volume indicated on the package; or
  - (c) if—
    - (i) duty is worked out on the basis of the number of goods imported; and
    - (ii) the package indicates the number of goods contained therein,
 then import duty will be worked out on the basis of the number of goods indicated on the package.

*Subdivision 2—Working Out the Duty Payable on Imported Goods*

**72. What is the duty payable on goods imported into Kiribati?**

- (1) The Minister, acting in accordance with the advice of the Cabinet, may make an order, known as an import tariff order, to—
  - (a) set rates of duty payable on the importation of specified goods at a particular time; or
  - (b) identify goods, or quantities or classes of goods that are exempt from import duty; or
  - (c) identify goods, or classes of goods that may receive a reduction in or exemption from import duty if the owner of the goods follows conditions set out in the order,
 by publishing the order in the *Gazette*.
- (2) Without limiting subsection (1), an import tariff order may—
  - (a) adopt the Harmonized System as the basis of the tariff of Kiribati; and
  - (b) require imported goods to be classified according to the General Rules for the Harmonized System.
- (3) All goods must be classified to one of the items of the import tariff order.
- (4) For the avoidance of doubt, even if an import tariff order adopts the Harmonized System as the basis of the tariff of Kiribati, the order may add additional items to it for either tariff or statistical purposes.
- (5) An import tariff order may set different rates of duty payable depending on the country or customs territory of origin of the goods.
- (6) An import tariff order must specify the day when the order takes effect. However, an order must not specify a day earlier than the day the *Gazette* notice containing the order was published.
- (7) The Comptroller must give anyone who asks for the import tariff order the order in force on the day the person asks.

*Subdivision 3—Working Out the Origin of Imported Goods for the Purposes of Preferential Tariff Treatment*

**73. Entry of goods at preferential rates of duty**

- (1) This section applies if a person claims, under this Act or any other enactment or authority, a rate of duty for imported goods that is lower than the rate set out in the normal Tariff in respect of those goods.
- (2) The Comptroller may require the claim to be verified –
  - (a) at the time of entry of the goods; or
  - (b) at any subsequent time (including any time after the goods have ceased to be subject to Customs control).
- (3) If the Comptroller requires a claim to be verified at the time of entry of the goods and the claim is not verified to the satisfaction of the Comptroller, the goods may not be entered at the lower rate of duty.

**74. Unsubstantiated preference claim**

- (1) If the Comptroller is satisfied that the country of production or manufacture of goods cannot be properly ascertained, the goods are treated as the produce or manufacture of a country that is subject to the normal rates of duty.
- (2) Customs shall advise the importer by notice in writing of any decision of the Comptroller under this section.
- (3) For the avoidance of any doubt, this section applies whether or not the goods are subject to Customs control.

*Subdivision 4—Working Out the Origin of Goods for Export*

**75. Kiribati certificates of origin for goods for export**

- (1) The Comptroller shall be authorized to issue a certificate of origin for export from Kiribati.
- (2) A certificate issues under subsection (1) shall -
  - (a) identify the goods to which it relates; and
  - (b) certify that those goods originate in Kiribati.

**76. Authority to issue Kiribati certificates of origin**

- (1) The Comptroller shall be authorized to issue certificates of origin for exported goods to –
  - (a) certify that the goods originate from Kiribati; and
  - (b) enable the goods to claim preferential rates of duty in the country of importation pursuant to a free trade agreement to which Kiribati is a party.
- (3) Goods originate in Kiribati if, for the purposes of the relevant free trade agreement, the goods satisfy the requirements of the rules of origin prescribed for that agreement.
- (3) The Comptroller may delegate designate a body as a certification body if the Comptroller is satisfied that the body meets the prescribed criteria set out in accordance with section 77 (b), (c) and (d).

**77. Ministerial orders on Kiribati's certificates of origin and certification bodies**

The Minister may, acting on the advice of the Comptroller, make orders for any of the following purposes —

- (a) prescribing forms for the purposes of this Part; and
- (b) prescribing the manner in which applications for designation as a certification body shall be made; and
- (c) prescribing criteria for certification bodies; and
- (d) prescribing terms and conditions for a certification body; and

- (e) prescribing fees.

*Subdivision 5—Working Out the Customs Value of Imported Goods*

**78. Valuation provisions to be applied in Kiribati**

- (1) Subject to section 79, the customs value for goods is to be worked out, to the extent possible, using the methods set out in the Rules of Valuation, as adopted by this Subdivision.
- (2) When working out customs value under this Subdivision, regard must be had to the Interpretative Notes.

**79. Value to be worked out on a 'free on board' (FOB) basis**

For the avoidance of doubt, the customs value for goods is to be worked out on a 'free on board' basis, and shall exclude—

- (a) the cost of transportation to Kiribati of the goods being valued;
- (b) loading, unloading and handling charges associated with the transportation to Kiribati of the goods being valued; and
- (c) the cost of insurance.

**80. Interpretation**

- (1) In this Subdivision, unless the context otherwise requires,—
- 'buying commissions' means the fees paid by an owner to the owner's agent for the service of representing the owner abroad in the purchase of goods being valued;

'identical goods' means imported goods that—

- (a) are the same in all respects, including physical characteristics, quality and reputation, as the goods being valued, except for minor differences in appearance that do not affect the value of the goods; and
- (b) were produced in the same country as the goods being valued were produced; and
- (c) were produced by or on behalf of the producer of the goods being valued, but does not include goods which incorporate or reflect engineering, development, artwork, design work, plans and sketches for which no adjustment has been made under section 83 because such elements were undertaken in Kiribati;

'price actually paid or payable' is the total payment made or to be made by the owner to, or for the benefit of, the seller of the imported goods;

'produced' includes grown, manufactured or mined; 'similar goods' means imported goods that—

- (a) closely resemble the goods being valued in respect of component materials and parts and characteristics, and are functionally and commercially interchangeable with the goods being valued, having regard to the quality and reputation of the goods and the goods being valued; and
- (b) were produced in the same country as the goods being valued were produced; and
- (c) were produced by or on behalf of the producer of the goods being valued, but does not include goods which incorporate or reflect engineering, development, artwork, design work, plans and sketches for which no adjustment has been made under section 83 because such elements were undertaken in Kiribati;

'transaction value' means the value determined in accordance with section 82.

- (2) For the purposes of this Subdivision, if—
- (a) there are no goods that were produced by or on behalf of the person who produced the goods being

(b) there are no goods that are otherwise identical goods or similar goods, goods that were produced by or on behalf of a different person and that are otherwise identical goods or similar goods are taken to be identical goods or similar goods, as the case may be.

#### **81. Related parties**

- (1) For the purposes of this Subdivision, persons are deemed to be related only if—
- (a) they are officers or directors of one another's businesses; or
  - (b) they are legally recognised partners in business; or
  - (c) they are employer and employee; or
  - (d) in the case of persons that are bodies corporate – any person directly or indirectly owns, controls or holds 5% or more of the outstanding voting stock or shares of both of them; or
  - (e) one of them directly or indirectly controls the other; or
  - (f) both of them are directly or indirectly controlled by a third person; or
  - (g) together they directly or indirectly control a third person; or
  - (h) they are members of the same family.
- (2) Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other are shall be deemed to be related for the purposes of this Subdivision if they fall within the criteria of subsection (1).

#### **82. Determining the transaction value of goods**

- (1) Unless excluded under this Subdivision, the customs value of a good shall be its transaction value.
- (2) The transaction value of goods being imported into Kiribati is the price actually paid or payable for the goods when sold for export to Kiribati adjusted in accordance with section 83, provided that—
- (a) there are no restrictions as to the disposition or use of the goods by the owner other than restrictions which—
    - (i) are imposed or required by a law of Kiribati; or
    - (ii) limit the geographical area in which the goods may be resold; or
    - (iii) do not substantially affect the value of the goods; and
  - (b) the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued; and
  - (c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the owner will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with section 83; and
  - (d) the owner and the seller are not related within the meaning of section 81 or, where the owner and the seller are related, the transaction value is acceptable for customs purposes under subsection (4).
- (3) Where a customs officer has reason to believe that the relationship between the owner and the seller has influenced the price actually paid or payable for goods being imported, the officer must give the owner a document, indicating—
- (a) that the customs officer has reason to believe the relationship between the owner and the seller influenced the price actually paid or payable on the goods being imported; and
  - (b) asking the owner to provide information within seven days (or such longer period as the officer may allow) proving that the price actually paid or payable was not influenced by the relationship between the owner and the seller.
- (4) Where the owner and seller are related, the transaction value shall be acceptable for customs purposes and the goods valued under subsection (2) if—

- (a) the relationship between the buyer and the seller did not influence the price actually paid or payable for the goods; or
  - (b) the owner demonstrates that the transaction value closely approximates—
    - (i) the transaction value in sales to unrelated buyers of identical goods or similar goods for export to Kiribati;
    - (ii) the customs value of identical goods or similar goods as determined under sections 84 and 85; occurring at or about the same time.
- (5) In applying the tests set out in subsection (4)(b), due account must be taken of—
- (a) demonstrated differences in commercial levels and quantity levels; and
  - (b) the amounts referred to in section 83; and
  - (c) costs incurred by the seller in sales in which the seller and the buyer are not related, being costs that are not incurred by the seller in sales in which the seller and the buyer are related.
- (6) The tests set out in subsection (4)(b) are to be used at the initiative of the owner and only for comparison purposes. Substitute values may not be established under subsection (4)(b).

**83. Adjustments to the price actually paid or payable**

- (1) In determining the customs value under section 82, there shall be added to the price actually paid or payable for the goods being valued (to the extent they have not been included in the price actually paid or payable for the goods)—
- (a) commissions and brokerage, except for buying commissions; and
  - (b) the cost of packages which, under the General Rules for the Harmonized System, are taken to be as one with the goods in question; and
  - (c) the cost of packing (whether for labour or materials); and
  - (d) the value (apportioned reasonably and in accordance with generally accepted accounting principles) of—
    - (i) materials, components, parts and similar items incorporated in the goods being valued; and
    - (ii) tools, dies, moulds and similar items used in the production of the goods being valued; and
    - (iii) materials consumed in the production of the goods being valued; and
    - (iv) engineering, development, artwork, design work, plans and sketches undertaken elsewhere than in Kiribati, which is necessary for the production of the goods being valued,
 that have been supplied directly or indirectly by the owner free of charge or at a reduced cost for use in connection with the production and sale for export of the goods being valued; and
  - (e) royalties and licence fees in respect of the goods being valued, including payments in respect to patents, trade marks and copyrights, that the owner must pay, either directly or indirectly, as a condition of sale of the goods, but excluding charge for the right to reproduce the goods in Kiribati; and
  - (f) the value of any part of the proceeds of any subsequent resale, disposal or use of the goods being valued that accrues directly or indirectly to the seller, and
  - (g) the cost to finance the purchase of the imported goods.
- (2) In determining the customs value under section 82, there shall be deducted from the price actually paid or payable for the goods being valued (to the extent they have been included in the price actually paid or payable for the goods)—
- (a) charges for the construction, erection, assembly or maintenance of the goods or technical assistance, undertaken after importation of the goods into Kiribati; and
  - (b) the cost of transport after importation of the goods into Kiribati; and
  - (c) Kiribati taxes and charges payable on the importation of the goods into Kiribati; and

(d) financing costs paid or payable to the supplier in connection with the purchase of the imported goods.

if such costs or charges can be distinguished from the price actually paid or payable.

- (3) Additions and deductions to the price actually paid or payable for goods being valued must be made on the basis of objective and quantifiable information that clearly establishes the accuracy of the amount to be added or deducted.
- (4) No additions or deductions are to be made to the price actually paid or payable for goods being valued in determining their customs value except as provided in this section.

#### **84. Transaction value of identical goods**

- (1) If the customs value of imported goods cannot be determined using the transaction value, the customs value is the transaction value of identical goods in a sale of those goods for export to Kiribati if —
- (a) the transaction value of the identical goods is the customs value of those goods; and
- (b) the identical goods were exported to Kiribati on or about the same time as the imported goods and were sold to a purchaser —
- (i) at the same or substantially the same trade level as the imported goods; and
- (ii) in the same quantities as the imported goods.
- (2) If subsection (1) does not apply solely because identical goods were not sold under the conditions specified in subsection (1)(b), the customs value of the imported goods may be determined by reference to the transaction value of identical goods in a sale of those goods for export to Kiribati if the identical goods were sold under any of the following conditions —
- (a) to a purchaser at the same or substantially the same trade level, but in different quantities from the imported goods;
- (b) to a purchaser at a trade level different from the purchaser of the imported goods, but in the same or substantially the same quantities as the imported goods; or
- (c) to a purchaser at a trade level different from the purchaser of the imported goods and in different quantities from the imported goods.
- (3) The customs value of imported goods under this section shall be the transaction value of identical goods referred to in subsections (1) or (2) adjusted to take account of —
- (a) commercially significant differences in the foreign inland freight and foreign inland insurance costs of the identical goods and those costs for the imported goods attributable to differences in distance and modes of transport; and
- (b) if subsection (2) applies, differences in the trade levels, quantities, or both, as the case may be.
- (4) If, in relation to imported goods, there are two or more transaction values for identical goods that meet the requirements of subsections (1) or (2), as the case may be, the customs value of the imported goods shall be determined on the basis of the lowest of such transaction value.
- (5) Goods shall not be regarded as identical goods unless they were produced in the same country as the goods being valued.
- (6) Goods produced by a different person shall be taken into account only when there are no identical goods produced by the same person as the goods being valued.

#### **85. Transaction of Similar goods**

- (1) If the customs value of imported goods cannot be determined under section 82 and 84, the customs value shall be the transaction value of similar goods in a sale of those goods for export to Kiribati if
- (a) the transaction value of the similar goods is the customs value of those goods; and
- (b) the similar goods were exported to Kiribati on or about the same time as the imported goods and were sold to a purchaser —
- (i) at the same or substantially the same trade level as the imported goods; and
- (ii) in the same quantities as the imported goods.
- (2) Section 84 (2) to (6) apply for the purposes of this section on the basis that the reference to “identical goods” is a reference to “similar goods”.

## **86. Deductive value method**

- (1) If the customs value of imported goods cannot be determined under sections 82 and 84 or 85, the customs value shall be the deductive value of the goods.
- (2) If—
  - (a) the imported goods, or identical or similar goods are sold in Kiribati at or about the time of importation of the imported goods;
  - (b) the goods were sold in Kiribati in the same condition in which they were imported;
  - (c) the sale was made at the first trade level after importation; and
  - (d) the Minister is satisfied that the purchaser in the sale was not related to the importer and did not incur any costs referred to in section 83 (1)(g) in relation to the goods sold, the deductive value of the imported goods is the unit price of the imported goods, or identical or similar goods, as the case may be, at which the greatest number of the goods are sold, at the earlier date after importation, reduced by the following amounts determined on a per unit basis —
    - (i) the amount of any commission;
    - (ii) an amount for profit and general expenses, including all costs of marketing the goods based on sales in Kiribati of goods of the same class or kind as the goods sold;
    - (iii) the cost of transportation of the goods in Kiribati (including loading, unloading, handling and other expenses associated with transportation) and insurance in relation to such transportation to the extent not deducted under (ii); and
    - (iv) any amount other amount referred to in section 84.
- (3) If—
  - (a) the imported goods, or identical or similar goods are not sold on or about the same time as the time of importation but are sold within 90 days after the time of importation; and
  - (b) subsection (2)(b) to (d) are satisfied,the deductive value of the imported goods is determined in accordance with subsection (2) by reference to such later sale.
- (4) If—
  - (a) the imported goods, or identical or similar goods are not sold in Kiribati at the time of importation or within 90 days after that time;
  - (b) the goods are sold in Kiribati, after being assembled, packaged, or further processed, within 90 days after the time of importation; and
  - (c) subsection (2)(b) to (d) are satisfied, the deductive value of the imported goods shall be determined, at the request of the importer, in accordance with subsection (2) by reference to such sale and making a reduction on a per unit basis for the value added attributable to the assembly, packaging or further processing in Kiribati.
- (5) Subsection (4) shall not apply if the Minister has insufficient information to determine the amount of the value added attributable to the assembly, packaging or further processing in Kiribati.

## **87. Computed Value**

- (1) If the customs value of imported goods cannot be determined under sections 82, 84, 85 and 86, the customs value shall be the computed value of the goods.
- (2) The computed value of the imported goods, being the exporter's goods, shall be the sum of the following amounts —
  - (a) the cost or value of materials used in producing the goods;
  - (b) the cost of manufacture or processing to produce the goods;
  - (c) any costs referred to in section 83 (1) (b) and (f) ;
  - (d) the value of any goods or services referred to in section 83 (1)(g); and
  - (e) an amount for profit and general expenses equal to that generally applicable in sales of goods of the same class or kind as the imported goods, which are made by producers in the country of exportation and are the exporter's goods

## **88. Fall-back method**

If the customs value of imported goods cannot be determined under section 82, 84, 85, 86, 87 the fall back method shall be used and is such value as the Minister determines, having regard to the preceding methods of

valuation in this section in the order in which those methods would ordinarily be considered and of such other matters the Minister considers relevant but not including the following —

- (a) the selling price in Kiribati of goods produced in Kiribati;
- (b) any system that provides for the acceptance for valuation purposes of the higher of two alternative values;
- (c) the selling price of goods on the domestic market of the country of exportation of the imported goods;
- (d) the cost of production, other than computed value of identical or similar goods in accordance with section 86;
- (e) the price of the goods for export to a country other than Kiribati;
- (f) a system of minimum customs values; or
- (g) arbitrary or fictitious values.

**89. Customs value must be expressed in Australian dollars**

- (1) Customs value must be expressed in Australian dollars.
- (2) Foreign currencies must be converted into Australian dollars using either—
  - (a) the 'sell' spot rate published by—
    - (i) the Bank of Kiribati; or
    - (ii) another bank named in a notice published by the Comptroller in the *Gazette*; or
  - (b) a rate of exchange published by the Comptroller, in force on the day the required information for a class of entry was lodged with a customs officer, or, in any other event, when duty became payable.

*Subdivision 6—The Time when Import Duty is Worked Out*

**90. When is the amount of import duty worked out?**

Import duty is calculated—

- (a) if goods are entered before the goods are imported – as at the day the goods were entered; or
- (b) if goods are entered after the goods are imported – as at the day the goods were brought to a designated port; or
- (c) if goods—
  - i. are consumed on craft whilst in Kiribati; or
  - ii. are alcohol or tobacco products found to be missing from a container on craft sealed by a customs officer at any time prior to the departure of the craft from Kiribati,as at the day the master applies for a clearance outwards; or
- (d) if goods—
  - (i) have not been entered; and
  - (ii) a person entrusted with the goods has been unable to account for the goods under section 46,as at the day the Comptroller decided the person had not accounted for the goods.

*Subdivision 7—Working Out Who Must Pay Import Duty and How it is to be Paid*

**91. Who must pay import duty?**

- (1) The owner of goods must pay import duty.
- (2) Despite subsection (1)—
  - (a) the master of craft must pay the duty for goods listed in the cargo report that are not accounted for, unless it can be proved that goods were unloaded into a customs area; or
  - (b) where—
    - (i) the Comptroller has asked a person under section 46 to account for goods; and
    - (ii) the person cannot,that person must pay import duty.

**92. Mode of payment of import duty**

Import duty must be paid to the Comptroller by cash, cheque, electronic payment, or any other method the Comptroller may allow.

**93. Minimum duty payable**

The Comptroller may waive payment of import duty where the amount to be paid is less than \$20.

DIVISION 2—EXPORT DUTY

**94. Export duty**

- (1) A tax, called export duty, is imposed on the exportation of goods from Kiribati.
- (2) Export duty is worked out—
  - (a) if duty is payable on the value of the good exported – by multiplying the rate of duty payable by the customs value of the goods; or
  - (b) if duty is payable on weight or volume – by multiplying the rate of duty payable by the weight or volume of the goods; or
  - (c) if duty is payable on the number of goods exported – by multiplying the rate of duty payable by the number of goods exported.
- (3) For the purposes of working out export duty, where goods are exported in packages—
  - (a) if—
    - (i) duty is worked out on the basis of weight; and
    - (ii) the package indicates a weight,then export duty will be worked out on the basis of the net weight indicated on the package; or
  - (b) if—
    - (i) duty is worked out on the basis of volume; and
    - (ii) the package indicates a volume,then export duty will be worked out on the basis of the volume indicated on the package; or
  - (c) if—
    - (i) duty is worked out on the basis of the number of goods exported; and
    - (ii) the package indicates the number of goods contained therein,then export duty will be worked out on the basis of the number of goods indicated on the package.

**95. What is the duty payable on goods exported from Kiribati?**

- (1) The Minister, acting in accordance with the advice of the Cabinet, may make an order, known as an export tariff order, to—
  - (a) set the rate of export duty payable on the exportation of specified goods; or
  - (b) set an amount of duty payable on the exportation of specified goods; or
  - (c) identify goods, or classes of goods that are exempt from export duty, by publishing the order in the *Gazette*.
- (2) An export tariff order may set different amounts of duty payable depending on the country or customs territory of final destination.
- (3) An export tariff order must specify the day when the order takes effect. However, an order must not specify a day earlier than the day the *Gazette* notice containing the order was published.
- (4) The Comptroller must give anyone who asks for the export tariff order the order in force on the day the person asks.

**96. How are goods valued for export duty?**

Where export duty is payable on goods on the basis of value, the valuation provisions must be used to work out the customs value of the goods to be exported, except that—

- (a) the word 'import' (and its grammatical variations) must be read as the word 'export'; and
- (b) the word 'owner' must be read as 'the person purchasing the goods'; and
- (c) the words 'into Kiribati' or 'to Kiribati' must be read as meaning 'elsewhere than Kiribati'.

**97. When is export duty worked out?**

Export duty is worked out at the time the goods are entered for export.

**98. Who must pay the export duty?**

The person making the export entry for the goods must pay the export duty.

**99. Mode of payment of export duty**

Export duty must be paid to the Comptroller by cash, cheque, electronic payment, or any other method the Comptroller may approve.

**100. Minimum duty payable**

The Comptroller may waive payment of export duty where the amount to be paid is less than \$20.

DIVISION 3 – CUSTOMS RULINGS

**101. Application for Customs ruling**

(1) A person may make an application, in respect of particular goods specified in the application, to the Comptroller for a Customs ruling in respect of any one or more of the following matters:

- (a) the tariff classification of those goods;
- (b) whether or not those goods are, for the purposes of the tariff and in accordance with any applicable regulations made under this Act, the produce or manufacture of a particular country or group of countries, referred to in the application;
- (c) whether or not those goods are subject to a specified duty concession (under Subchapter 2 of the Tariff).

(2) An application under subsection (1) may be made in respect of imported goods:

- (a) at any time before the date of importation into Kiribati of the goods that are subject of the application; or
- (b) at any later time, if the Comptroller permits.

(3) Every application under subsection (1) must be in the prescribed form, and must:

- (a) state the name and address of the applicant;
- (b) specify the particular goods that are the subject of the application;
- (c) specify in respect of those goods, the matter or matters listed under subsection (1) on which the applicant requests a Customs ruling and the applicant's opinion as to what the Customs ruling should be;
- (d) unless the Comptroller agrees otherwise, be accompanied by the goods or a sample of the goods;
- (e) contain, or have attached, all information that is relevant to a proper consideration of the application; and
- (f) be accompanied by the prescribed fee.

(4) The Comptroller may, at any time, request further information from an applicant if the Comptroller considers that the information is relevant to the application.

**102. Making of Customs ruling**

- (1) Subject to subsection (4), the Comptroller must, in the case of an application made under section 101 (1), make a Customs ruling in respect of any particular goods specified in the application and in respect of the matter or matters on which the ruling is sought.
- (2) The Comptroller must make a Customs ruling under subsection (1) within such time or times as may be prescribed after receipt of:
  - (a) a properly completed application in respect of particular goods;
  - (b) the goods or a sample of the goods unless the Comptroller has agreed not to require receipt of the goods;
  - (c) all information that the Comptroller considers relevant to a proper consideration of the application;
  - (d) all information that the Comptroller requests under section 101 (4); and
  - (e) payment of the prescribed fee.
- (3) A Customs ruling may be made subject to such conditions as the Comptroller determines.
- (4) The Comptroller may decline to make a Customs ruling if, in the Comptroller's opinion, he or she has insufficient information to do so.

**103. Notice of Customs ruling**

The Comptroller must promptly give notice in writing to the applicant of:

- (a) a Customs ruling, together with the reasons for the ruling, and the conditions (if any) to which it is subject; or
- (b) a decision to decline to make a Customs ruling, together with the reasons for that decision.

**104. Effect of Customs ruling**

A Customs ruling in respect of particular goods is conclusive evidence for the purposes of this Act that the goods:

- (a) have a particular tariff classification; or
- (b) are or are not, as the case may be in accordance with applicable regulations made under this Act, the produce or manufacture of a particular country or a group of countries; or
- (c) are or are not, as the case may be, subject to a specified duty concession.

**105. Confirmation of basis of Customs ruling**

At any time after a Customs ruling is made, the Comptroller may, by notice in writing, require the applicant, within 30 days or such longer period as the Comptroller considers appropriate, to satisfy the Comptroller:

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

**106. Amendment of Customs ruling**

- (1) The Comptroller may amend a Customs ruling to correct any error contained in the ruling.
- (2) The Comptroller must, promptly after making the amendment, give notice in writing to the applicant of the amended Customs ruling and, subject to subsection (3), the ruling as amended applies to the applicant as from the date on which notice of the amendment was given to the applicant.
- (3) Despite subsection (2), if the amendment to the ruling has the effect of increasing any duty liability in respect of any goods in the following instances, then the ruling as given prior to amendment under this section must be applied to those goods:

- (a) where the goods are imported within three months of the date the notice of the amendment is given, under a binding contract entered into before that date;
  - (b) where the goods have left the place of manufacture or warehouse in the country from which they are being exported for direct shipment to Kiribati at the date the notice of the amendment of the ruling is given; or
  - (c) where the goods are imported on or before the date the notice of the amendment is given but have not been entered for home consumption.
- (4) Despite subsection (2), if the amendment to the ruling has the effect of decreasing any duty liability in respect of any goods, then the provisions of section 111 apply as if the higher duty had been paid in error.

**107. Cessation of Customs ruling**

- (1) A Customs ruling ceases to have effect on the earliest to occur of the following dates:
- (a) the date on which any information on which Customs ruling was made ceases to be correct in all material respects;
  - (b) the date of a material change in any of the information or facts on which Customs ruling was made;
  - (c) the date on which any of the conditions to which Customs ruling was made subject cease to be met or complied with;
  - (d) the date of a failure to satisfy the requirements of the Comptroller under section 105; or
  - (e) the date of expiration is three years from the date that notice of Customs ruling under section 106 is given to the applicant.
- (2) A Customs ruling does not come into effect if:
- (a) information on which it was made was not correct in all material respects; or
  - (b) a material change has occurred in any information or facts which it was made.

**108. Appeal from decision of Comptroller**

An applicant who is dissatisfied with a Customs ruling, or a decision to decline to make a Customs ruling, or a decision to amend a Customs ruling may appeal against that ruling or decision in accordance with section 129.

**109. No liability where Customs ruling relied on**

- (1) Where an applicant has relied on a Customs ruling in relation to specific goods or a specific matter, and, as a result:
- (a) the applicant has not paid the amount of duty that, but for this section, is payable on the goods;
  - (b) the applicant would, but for this section, be liable to the imposition of a penalty under section 138; or
  - (c) goods, but for this section, would be liable to seizure under this Act, the amount of the duty otherwise payable is not recoverable as a debt and the goods are not liable to seizure unless it is with regards to prohibited goods, as the case may be.
- (2) Subsection (1) applies only in relation to a matter on which a Customs ruling was given and where a Customs ruling has not ceased under section 107, and in accordance with any amendment to a Customs ruling that the applicant has received notice of under section 106.

## PART VIII—DEFERRED PAYMENT, REFUND AND REMISSION OF DUTY

### 110. Deferred payments

- (1) The Comptroller may:
  - (a) subject to any terms and conditions, approve a person or class of persons as persons who may defer the payment of duty due under Part VII and accordingly determine a duty accounting period;
  - (b) amend, suspend or withdraw the approval;
  - (c) vary, suspend or withdraw any term or condition under which the approval is given, or impose a new term or condition; or
  - (d) vary the duty accounting period.
- (2) The Comptroller must, in writing, advise a person or class of persons affected by a decision under subsection (1).
- (3) A person who is dissatisfied with a decision of the Comptroller under subsection (1) may, within 20 working days after the date on which notice of the decision is given, appeal to the Minister against that decision.

### 111. Refund of duty

- (1) A person who—
  - (a) has reason to believe that he or she has paid more import or export duty than required by law; or
  - (b) has—
    - (i) paid import duty on goods; and
    - (ii) will not be receiving the goods,is entitled to a refund of duty if, within 12 months from the day the duty was paid, he or she provides the Comptroller with the required information necessary to allow the Comptroller to determine whether the circumstances set out in this section existed.
- (2) An owner who has paid import duty on goods which were contrary to order or requirement, and who can prove—
  - (a) he or she has not used the goods; and
  - (b) the goods have been exported,is entitled to a refund of duty if, within three months from the day the duty was paid, he or she provides the Comptroller with the required information necessary to allow the Comptroller to determine whether the circumstances set out in this section exist.
- (3) An owner who has received a remission is entitled to a refund of import duty paid prior to receiving the remission by providing the Comptroller with the required information necessary to allow the Comptroller to determine how much import duty should be repaid to the person following the remission.
- (4) The Comptroller must decide within 30 days of receiving an application for refund under this section whether a refund should be paid.
- (5) Where the Comptroller has grounds to believe a refund is payable, the Comptroller must immediately refund the duty to the applicant.
- (6) The Comptroller must not approve a refund for less than \$20.

### 112. Additional duty imposed

- (1) If a duty, the payment of which has been deferred under section 110, remains unpaid by the due date for payment, additional duty must be imposed as follows:
  - (a) additional duty of 10% of the amount of duty unpaid by the due date;

- (b) additional duty of 2% of the amount of duty, including additional duty, unpaid at the end of the period of 30 days after the due date; and
  - (c) additional duty of 2% of the amount of duty, including additional duty, unpaid at the end of each succeeding period of 30 days.
- (2) Despite subsection (1), the Comptroller may remit or refund the whole or any part of any additional duty imposed by that subsection.
  - (3) If, for any reason, the amount of duty for which additional duty has been imposed under subsection (1) is amended, the additional duty must, if necessary, be adjusted accordingly.
  - (4) A person who fails to pay duty or additional duty under subsection (1) on the due date may be suspended from a deferred duty payment scheme by the Comptroller.
  - (5) A person liable for the payment of the duty who is dissatisfied with a decision of the Comptroller under subsection (3) may, within 20 working days after the date on which notice of the decision is given, appeal to the Minister against that decision.

**113. Remission of import duty**

- (1) An owner is entitled to a remission of import duty—
  - (a) where goods under customs control have, while they were under customs control,—
    - (i) deteriorated; or
    - (ii) become damaged; or
    - (iii) been destroyed; or
  - (b) where goods have been manufactured in a licensed warehouse under the conditions of a customs warehouse, scrap remains.
- (2) An owner may apply to the Comptroller for a remission by providing the Comptroller with the information necessary to—
  - (a) allow a customs officer to perform the duties set out in this section; and
  - (b) if goods are to be destroyed, to decide whether the destruction should be performed in the presence of a customs officer.
- (3) When applying for a remission, the owner must indicate whether he or she is going to—
  - (a) enter the goods for use in Kiribati; or
  - (b) destroy the goods, and then whether the owner proposes to—
    - (i) enter the scrap for use in Kiribati; or
    - (ii) abandon the scrap; or
  - (c) abandon the goods; or
  - (d) export the goods.
- (4) If an owner does not indicate what he or she is going to do with the goods referred to in a remission application, the Comptroller must not consider it.
- (5) When an owner wants to enter the goods for use in Kiribati, then, notwithstanding the valuation provisions that usually apply—
  - (a) the Comptroller must work out a customs value for the goods; and
  - (b) that value will be used as the customs value when working out how much import duty is payable; and
  - (c) the Comptroller must remit the difference between—
    - (i) the import duty worked out by the Comptroller; and
    - (ii) the import duty that would have been payable had the goods not been damaged or deteriorated.

- (6) Where a person wants to destroy the goods, the Comptroller may direct a person not to destroy the goods unless a customs officer is present. Otherwise, the Comptroller may allow a person access to his or her goods to destroy them.

*NOTE: It is an offence not to follow a direction of a customs officer (Schedule 8, item 30).*

- (7) Where the Comptroller has grounds to believe that the goods have been destroyed, the officer must remit all the import duty that would have been payable on them.
- (8) Where the owner of goods wishes to enter for use in Kiribati the scrap created from the destruction of the goods—
- (a) notwithstanding the valuation provisions that usually apply, the Comptroller must work out the customs value for the scrap; and
  - (b) the owner must enter the goods as scrap; and
  - (c) the Comptroller must remit the difference between—
    - (i) the import duty worked out by the Comptroller; and
    - (ii) the import duty that would have been payable had the goods not been destroyed.
- (9) Where an owner wants to abandon the goods or the scrap created from the destruction of goods that has been permitted under this section—
- (a) the Comptroller must remit the import duty that is payable on the goods; and
  - (b) once the Comptroller remits the duty, title in the goods is vested in the Republic; and
  - (c) the Comptroller may deal with the goods as he or she sees fit (including destroying them).
- (10) Where an owner wants to export the goods, the Comptroller must remit the customs duty once the person enters the goods for export.

## **PART IX—POST CLEARANCE AUDIT**

### **114. A customs officer may conduct a post clearance audit at premises**

A customs officer may enter any premises where he or she has grounds to believe that there are commercial documents relating to goods that have been imported into or exported from Kiribati in the previous five years, to conduct a post clearance audit to determine whether the correct amount of duty has been paid, by following the rules set out in this Part.

*NOTE: A post clearance audit of documents relating to exports can only be conducted if export duties have been imposed.*

### **115. Entering premises**

- (1) When entering premises, a customs officer must provide the occupier a rights document, which says that—
- (a) the officer may conduct a post clearance audit, and look at—
    - (i) commercial documents; and
    - (ii) the systems which generate commercial documents, relating to the importation of goods over the last three years; and
  - (b) the occupier may, if he or she wishes, answer questions and provide documents, but does not have to do so; and
  - (c) if the occupier does not wish to answer questions or provide documents, a customs officer may seek a compliance warrant from the Magistrates' Court, and if that is granted, the person must—
    - (i) answer any questions relating to relevant goods put by a customs officer; and
    - (ii) assist the officer in locating and examining commercial documents; and
    - (iii) examine the commercial systems that generate commercial documents; and
  - (d) the officer may take away documents for copying.

- (2) A customs officer must not start a post clearance audit until—
- (a) the occupier has been given a reasonable time to consider the rights document; and
  - (b) to decide whether or not to consent to the assessment taking place.

**116. Powers in relation to documents**

- (1) The Comptroller may, by notice in writing, require any person, including an officer employed in or in connection with any Government department, corporation, or local authority, or any officer employed in or in connection with any bank, to:
- (a) produce for inspection by an authorised Customs officer any documents or records that the Comptroller considers necessary or relevant to an investigation or audit under this Act;
  - (b) allow the authorised Customs officer to make copies of or to take extracts from any such documents or records; and
  - (c) appear before an authorised Customs officer and answer all questions put to him or her concerning any goods or any transactions relation to those goods that are the subject of any such investigation, or concerning the documents or records that are relevant to any such investigation.

- (2) Subsection (1) supersedes any provision relating to bank secrecy.

**117. What happens when an occupier consents to a post clearance audit?**

- (1) Where an occupier consents to a post clearance audit, a customs officer may stay on the premises, and—
- (a) examine commercial documents; and
  - (b) take extracts from commercial documents; and
  - (c) examine the commercial systems that generate commercial documents; and
  - (d) take away documents for copying; and
  - (e) ask questions of—
    - (i) the occupier; or
    - (ii) an employee of the occupier present at the premises; and
  - (f) ask the occupier to assist him or her in the post clearance audit.

- (2) However, the occupier is under no obligation to assist.

**118. What happens when an occupier does not consent to a post clearance audit?**

- (1) Where an occupier—
- (a) refuses consent for a post clearance audit; or
  - (b) withdraws consent for a post clearance audit,
- a customs officer may apply to a Magistrate for a compliance warrant.
- (2) In applying to a Magistrate for a compliance warrant under subsection (1), a customs officer must say, by information on oath, that—
- (a) he or she has grounds to believe that there are commercial documents relating to goods that have been imported or exported from Kiribati in the previous three years on the premises; and
  - (b) the officer gave the occupier a rights document; and
  - (c) the occupier either—
    - (i) refused consent for a post clearance audit; or
    - (ii) removed consent to continue a post clearance audit.
- (3) Where a Magistrate is satisfied the grounds set out in subsection (2) have been made out, he or she must grant a compliance warrant to the officer, in the form set out in Schedule 7.
- (4) A compliance warrant may be exercised by the customs officer named in the warrant at any time during daylight hours for seven days following the grant of the warrant.

- (5) The customs officer named in the warrant, assisted by such other officers as the officer may require and using such reasonable force as is necessary, may—
- (a) enter the premises named in the compliance warrant; and
  - (b) search the premises for commercial documents; and
  - (c) examine the systems that generate commercial documents; and
  - (d) require the occupier to assist him or her in the post clearance audit.; and
  - (e) require the occupier to answer questions in relation to the goods imported or exported by the occupier over the last three years; and
  - (f) examine documents; and
  - (g) take extracts from commercial documents; and
  - (h) take commercial documents away for copying.

**119. Copying documents**

- (1) Where a customs officer takes a document away for copying, the officer must give the occupier a receipt setting out the type of document that has been taken away.
- (2) If a customs officer takes a document away for copying, the officer must—
- (a) make a copy of the document as soon as possible; and
  - (b) return the original document to the occupier as soon as the copy is made.

**120. The use of information gathered by a customs officer under this Part**

- (1) Information gathered by a customs officer during a post clearance audit must not be used in any prosecution.
- (2) However, for the avoidance of doubt, information gathered by a customs officer when exercising any of the powers under this Part may be used by the Comptroller in any action commenced to recover any duty short paid.

**121. Restriction on use of this Part in relation to exported goods**

The powers contained in this Part may only be used to conduct a post clearance audit of commercial documents relating to exported goods if export duties are in force.

**PART X—RECOVERING SHORTPAID DUTY**

**122. Comptroller may recover duty short paid**

- (1) Where the Comptroller has grounds to believe that duty has been short paid or a refund has been wrongly-made, he or she may demand from the owner—
- (a) the duty short paid; or
  - (b) the refund wrongly paid,
- at any time up to three years from the time the person made the entry or applied for the refund.
- (2) The owner must pay the amount demanded by the Comptroller.

**PART XI—LICENSING**

**DIVISION 1—WAREHOUSE LICENSING**

**123. A person may apply to be a warehouse licensee**

- (1) A person may apply to be—
- (a) a public warehouse licensee; or
  - (b) a private warehouse licensee,
- by providing the Comptroller with the required information necessary to determine whether the applicant can manage and account for goods under customs control.

- (2) The Comptroller must consider any application received under subsection (1) and make a decision within 30 days of receiving it.
- (3) If the Comptroller has grounds to believe the person can manage and account for warehoused goods, the Comptroller must issue the person a warehouse licence.
- (4) A licence must contain conditions, which—
  - (a) permit a customs officer access to places controlled by a licensee containing goods under customs control; and
  - (b) set out the goods under customs control the licensee may accept for warehousing; and
  - (c) are considered necessary for the protection of the revenue; and
  - (d) are considered necessary to ensure goods remain under customs control.
- (5) A licence may contain conditions that govern how a licensee may manufacture goods from other goods that have been—
  - (a) imported; and
  - (b) entered for warehousing.
- (6) The Comptroller may—
  - (a) vary the conditions of the licence at any time; and
  - (b) revoke a licence.
- (7) Where a licensee—
  - (a) dies; or
  - (b) surrenders his or her licence; or
  - (c) has his or her licence revoked,
 any goods under customs control under the person's custody must be moved to any place a customs officer directs.

**124. Manufacturing in a warehouse**

- (1) Where a licensee is permitted to manufacture things from goods under customs control (in this section called 'the manufactured goods'), the licensee—
  - (a) must enter the goods imported that were used in making the manufactured goods; and
  - (b) may apply for a remission for any scrap remaining after the manufactured goods are made.
- (2) A licensee must not remove manufactured goods from the place they were made until the goods imported that were used in making the manufactured goods are entered.

**DIVISION 2 – DUTY FREE STORE LICENSING**

**125. Duty free store**

- (1) A duty free store license relates to the import and sale of goods, or quantities or classes of goods that are exempt from import duty under section 72(1)(b).
- (2) A person may apply to be a duty free store licensee by providing the Comptroller with the required information necessary to determine whether the applicant can manage and account for goods under customs control.
- (3) The Comptroller must consider any application received under subsection (2) and make a decision within 30 days of receiving it.
- (4) If the Comptroller has grounds to believe the person can manage and account for duty free goods, the Comptroller must issue the person a duty free store licence.

- (5) A licence must contain conditions, which:
  - (a) permit a customs officer access to places controlled by a licensee containing duty free goods;
  - (b) set out the goods under customs control the licensee may accept for duty free purposes;
  - (c) are considered necessary for the protection of the revenue; and
  - (d) are considered necessary to ensure goods remain under customs control.
- (6) The Comptroller may, at any time:
  - (a) vary the conditions of the licence; or
  - (b) revoke a licence.
- (7) Where a licensee dies, surrenders his or her licence, or has his or her licence revoked, any goods under customs control under the person's custody must be moved to any place a customs officer directs.

### DIVISION 3—CUSTOMS AGENT LICENSING

#### 126. Customs agents

- (1) A person may apply to be a customs agent by providing the Comptroller with the required information necessary for the Comptroller to decide whether the applicant has the experience necessary to accurately provide a customs officer with information relating to goods under customs control.
- (2) The Comptroller must consider any application received under subsection (1) and make a decision within 30 days of receiving it.
- (3) If the Comptroller has grounds to believe the person has the experience necessary to accurately provide a customs officer with information relating to goods under customs control the Comptroller must issue the person with a customs agent's licence.
- (4) The Comptroller may revoke a licence.

### PART XII—REVIEW

#### 127. When a customs officer must provide a statement of reasons

- (1) A person who disagrees with a decision made by a customs officer, other than a decision made under—
  - (a) Part IV (*The movement of goods and people into Kiribati*), other than section 49; and
  - (b) Part V (*The exportation of goods from Kiribati*); and
  - (c) Part XII (*Review*);
 may give the customs officer who made the decision a document asking for a statement of reasons as to why the decision (called in this Part 'the reviewable decision') was made, within 30 days of being informed of the decision.
- (2) A customs officer who made the reviewable decision referred to in subsection (1) must provide the person requesting a statement of reasons a written document setting out—
  - (a) why the particular decision was made; and
  - (b) the matters they considered when making the decision,
 within 30 days of receiving the request for a statement of reasons.

#### 128. Review by the Comptroller

- (1) A person who has received a statement of reasons provided under section 127(2) may (unless the Comptroller made the decision) ask the Comptroller to reconsider a reviewable decision within 30 days of receiving the statement of reasons.

*NOTE 1: The Board reviews decisions made personally by the Comptroller (s.129).*

*NOTE 2: The Comptroller may not delegate the function of reviewing a decision to anyone else.*

- (2) The request for a review—
  - (a) must be contained in a document; and
  - (b) may attach any documentation the person wants the Comptroller to consider.
- (3) The Comptroller must make a decision within 30 days of receiving a request for a review.
- (4) After considering the information provided under subsection (2), the Comptroller may—
  - (a) confirm the original decision; or
  - (b) vary the decision; or
  - (c) set aside the decision, and make his or her own decision in lieu thereof.
- (5) The Comptroller must only consider—
  - (a) the information provided under subsection (2); and
  - (b) the statement of reasons provided by the customs officer under section 127(2).
- (6) The Comptroller must provide a document to the person requesting the review which tells the person—
  - (a) what the Comptroller has decided; and
  - (b) the reasons for making that decision.

**129. Review by the Board**

- (1) Where a reviewable decision has been made personally by the Comptroller (and not a delegate), and the person to whom the decision relates has received a statement of reasons provided by the Comptroller under section 127(2), the person may, within 30 days of receiving the statement of reasons, ask the Board to review the Comptroller's decision.
- (2) The request for a review—
  - (a) must be contained in a document; and
  - (b) may attach any documentation the person wants the Board to consider.
- (3) The Board must make a decision within 30 days of receiving a request for a review.
- (4) After considering the information provided under subsection (2), the Board may—
  - (a) confirm the original decision; or
  - (b) vary the decision; or
  - (c) set aside the decision, and make its own decision in lieu thereof.
- (5) The Board must only consider—
  - (a) the information provided under subsection (2); and
  - (b) the statement of reasons provided by the Comptroller under section 127(2).
- (6) The Board must provide a document to the person requesting the review which tells the person—
  - (a) what it has decided; and
  - (b) the reasons for making that decision.

**130. Appeal to the Board**

- (1) Where the Comptroller has reviewed a decision under section 128(4), the person to whom the decision relates may, within 30 days of receiving the Comptroller's decision, appeal the Comptroller's decision to the Board.
- (2) The appeal—
  - (a) must be contained in a document; and

- (b) may attach any documentation the person wants the Board to consider.
- (3) The Board must make a decision within 30 days of receiving an appeal.
- (4) After considering the information provided under subsection (2), the Board may—
  - (a) confirm the original decision; or
  - (b) vary the decision; or
  - (c) set aside the decision, and make its own decision in lieu thereof.
- (5) The Board must only consider—
  - (a) the information provided under subsection (2); and
  - (b) the information considered by the Comptroller under section 128(5); and
  - (c) the Comptroller's decision provided under section 128(6).
- (6) The Board must provide a document to the person making the appeal which tells the person—
  - (a) what it has decided; and
  - (b) the reasons for making that decision.

**131. Appeal to the High Court**

- (1) Where the reviewable decision considered by the Board under either section 129(4) or section 130(4) deals with a matter other than—
  - (a) the assessment of duty; or
  - (b) the seizure of goods,

the person who requested the review or made the appeal (as the case may be) may, within 30 days of receiving the Board's decision, appeal to the High Court on a question of law only, and the notice of appeal shall state the question of law that will be raised on the appeal.

- (2) Where the High Court considers that the Board has made an error of law, the Court shall refer the matter to the Board with such directions as the Court may consider appropriate, and the Board must—
  - (a) reconsider its decision; and
  - (b) make another decision according to law.

**132. Disputed assessment of duty - review by the High Court**

- (1) Where the reviewable decision considered by the Board under either section 129(4) or section 130(4) deals with the assessment of duty, the person who requested the review or made the appeal (as the case may be) may, within 30 days of receiving the Board's decision, apply to the High Court for a review of the assessment.

- (2) Where the High Court considers that the Board has assessed duty at a rate higher than is appropriate in the circumstances of the case, the Court shall refer the matter to the Board with such directions as the Court may consider appropriate, and the Board must—
  - (a) reconsider its decision; and
  - (b) assess the duty to be paid at the rate determined by the Court.

**133. Challenge to the seizure of goods - review by the High Court**

- (1) Where the reviewable decision considered by the Board under either section 129(4) or section 130(4) deals with the seizure of goods (other than under a search warrant), the person who requested the review or made the appeal (as the case may be) may, within 30 days of receiving the Board's decision, apply to the High Court for a review of the seizure.

- (2) Where the High Court considers that the goods were seized without lawful authority, it shall order that the goods be returned to the person from whom they were seized.

**134. Case stated**

In addition to and without prejudice to any right of appeal conferred by this Act, the Board may, of its own volition, reserve for the consideration of the High Court on a case stated any question of law which may arise on the consideration of any request for review or appeal before it and any decision in such matter shall be subject to the opinion of the High Court.

**135. Decisions of the High Court final**

Decisions of the High Court under this Part are final and are not appealable to any Court.

**PART XIII—OFFENCES AND PROSECUTIONS**

**DIVISION 1—OFFENCES**

**136. Offences**

- (1) A person who contravenes this Act and commits an offence, set out in the table in schedule 8, is liable for prosecution.
- (2) Column 2 of the table in schedule 8 sets out who may be prosecuted for a particular offence.
- (3) Column 3 of the table in schedule 8 sets out the elements of the offence for which someone may be prosecuted.
- (4) Column 4 of the table in schedule 8 sets out the maximum penalty for commission of an offence under this Act.
- (5) The maximum penalty set out in the table in schedule 8, is -
  - (a) fixed for an individual who is convicted of the offence,
  - (b) for a body corporate, is 5 times that for an individual.

**DIVISION 2—PROSECUTION**

**137. Applying for search warrants and writs of assistance**

- (1) Where a customs officer has grounds to believe that—
  - (a) prohibited imports; or
  - (b) restricted imports used contrary to conditions; or
  - (c) goods on which customs duty—
    - (i) was properly payable; and
    - (ii) on which duty was not paid,are located on particular premises, the officer may apply to a Magistrate, by information on oath, for a search warrant for those premises.
- (2) Where the Magistrate forms an opinion that a search warrant should be granted, he or she must issue a warrant in the form set out in Schedule 9.
- (3) Where the officer applying for a search warrant has grounds to believe that the customs officers who will be executing the warrant may require assistance, the officer may also apply to the Magistrate for a writ of assistance.
- (4) Where the Magistrate forms an opinion that the customs officers executing a search warrant may require assistance in the execution of the warrant, the Magistrate must issue a writ of assistance in the form set out in Schedule 10.
- (5) A warrant remains in force for the period specified by the Magistrate in the warrant.
- (6) A writ of assistance remains in force for the period of the search warrant for which the writ of assistance is issued.

**138. Powers under a search warrant and writ of assistance**

- (1) Persons named in a search warrant or writ of assistance may—
  - (a) enter premises at any time of the day or night; and
  - (b) search the premises; and
  - (c) seize goods believed by the person seizing the goods to be—
    - (i) prohibited imports; or
    - (ii) restricted imports used contrary to conditions; or
    - (iii) goods on which customs duty was properly payable and on which duty was not paid; and
  - (d) seize any records (including records in an electronic format) relating to the goods referred to in paragraph (c); and
  - (e) seize any devices containing records relating to the goods referred to in paragraph (c), and take them to a place the Comptroller directs.
- (2) A person named in a writ of assistance may only enter premises in the company of a customs officer named in the search warrant for which the writ of assistance was granted.
- (3) Persons entering and searching premises under a search warrant or writ of assistance may use such force as is reasonable to enable them to execute the warrant.

**139. Time for prosecution**

Any proceedings for prosecution under this Act, must be commenced within seven years from the date of the commission of the offence.

**140. Place of commission of an offence.**

An offence under this Act must be taken to have been committed –

- (a) at a place where the offence took place; or
- (b) if the offence did not take place on land, at the place where the person could be conveniently brought to be prosecuted.

**141. Evidence**

- (1) A defendant must prove that –
  - (a) the proper duty was paid in relation to the importation or exportation of goods; or
  - (b) goods were lawfully –
    - (i) imported; or
    - (ii) exported; or
    - (iii) brought into use in Kiribati; or
    - (iv) unloaded from craft.
- (2) Unless the defendant can prove the contrary; an averment from a custom officer, will be taken to be evidence of the fact; that –
  - (a) a person is a custom officer; or
  - (b) goods were destroyed or thrown overboard to prevent seizure; or
  - (c) goods the subject of the proceedings were of a certain value; or
  - (d) an offence was committed at a particular place.

**142. Absolute liability**

In any prosecution for any offence under this Act, it is not necessary for the prosecution to prove that the defendant intended to commit an offence.

**143. The application of seals.**

Where something has the customs seal fixed on it, the court must presume that a customs officer affixed the seal, unless there is evidence to the contrary.

## PART XIV—MISCELLANEOUS

### DIVISION 1—OTHER RESPONSIBILITIES OF THE COMPTROLLER

#### 144. Security

- (1) The Comptroller may require a person who is—
  - (a) requesting a licence to do something under this Act; or
  - (b) licensed to do something under this Act; or
  - (c) seeking access to goods under customs control under this Act; or
  - (d) the occupier of a customs area; or
  - (e) proposing to enter goods on which the import duty payable is less than the duty usually payable if the person obeys conditions,to provide an amount of security that the Comptroller believes is necessary to ensure either the protection of the revenue or compliance with this Act.
- (2) The Comptroller must not ask for more security than is reasonably necessary in the circumstances in which the request for security is made.
- (3) A person who is asked to provide security may provide security in any form that the Comptroller is prepared to accept.
- (4) If a person is asked to provide security and he or she refuses, the Comptroller must—
  - (a) in the case of someone licensed under Division 1 of Part XI – revoke the licensee's warehouse licence; and
  - (b) in the case of someone occupying a customs area designated under section 145(1)(a) – cancel the customs area designation of the place occupied by the occupier; and
  - (c) in all other cases – not make the relevant decision that gave rise to the request for security until the person provides the security requested by the Comptroller.

#### 145. Designations

- (1) The Comptroller may, by notice published in the *Gazette*, designate places or areas to be—
  - (a) customs areas; or
  - (b) designated ports; or
  - (c) state warehouses; or
  - (d) temporary places where goods under customs control can be loaded or unloaded.
- (2) Where the Comptroller designates somewhere to be a temporary place where goods under customs control can be loaded or unloaded, that area shall be taken to be a customs area.
- (3) In making a designation under subsection (1), the Comptroller may set conditions (if any) for the designation.

#### 146. Identity cards

- (1) The Comptroller must issue a customs officer with an identity card.
- (2) A person issued with an identity card must return it to the Comptroller when the person stops being a customs officer.

### DIVISION 2—FORFEITED GOODS

#### 147. Forfeited goods

- (1) Goods—
  - (a) concealed on craft;
  - (b) concealed under customs control;
  - (c) concealed from a customs officer;
  - (d) on which import duty is properly payable, taken from a place under customs control without the payment of import duty;

- (e) that are prohibited imports;
  - (f) that are prohibited exports placed on board craft for export;
  - (g) entered for temporary use in Kiribati that have not been exported within the time provided for in section 31(5);
  - (h) that are restricted imports used contrary to a specified condition;
  - (i) forfeited under section 60(2)(b)(ii);
  - (j) that are ships and aircraft forfeited under section 61(7);
  - (k) that are eligible to be sold in a public auction; and
  - (l) that have been substantially misdeclared or under-valued, are forfeited goods.
- (2) Title in forfeited goods vests in the Republic, unless the decision to seize the goods is set aside on review or appeal under Part XII.
- (3) The Board may dispose of forfeited goods as it sees fit.

### DIVISION 3—OTHER PROVISIONS

**148. Special Procedures in disaster response**

In the event of a level 2 or level 3 disaster action as defined under the Disaster Risk Management and Climate Change Act 2019, expedited Customs arrangements will apply with respect to imported goods for relief, as provided for in that Act and Regulations.

**149. Commercial documents must be retained for seven years**

A person must retain copies, including electronic copies of commercial documents for seven years.

*NOTE: A person who does not retain commercial documents commits an offence (Schedule 8, item 17).*

**150. Recovery of moneys due under this Act**

- (1) Any amount due by way of duty, penalty, fee, charge or other amount due under this Act may be recovered as a debt due to the Republic.
- (2) Where, in respect of goods no longer under customs control, any duty, penalty, fee, charge or other amount remains unpaid by the owner, the Comptroller may—
- (a) set off the amount unpaid against any right to a refund to which the owner is or may become entitled; or
  - (b) not release goods of the owner that are under customs control until the amount is paid.

**151. Working days and hours, and overtime fees**

- (1) The normal working days of Customs officers shall be all days except Saturdays, Sundays and public holidays, and the normal working hours for working days are from 8.00am to 4.15pm.
- (2) Every Customs Officer shall be deemed to be on duty at all times and may at any time be called for duty in any part of Kiribati.
- (3) The Minister may, by notice published, set the service rates, overtime rates and any fees payable for duties performed by the Customs officer before or after the normal working hours;

**152. Fees for state warehouse**

The Minister may, by notice published in the Gazette, set out a fee for storing goods at a state warehouse.

**153. Permitting goods entered for temporary entry in Kiribati for longer than six months**

- (1) An owner of goods may apply to the Comptroller to permit goods that—
  - (a) will be entered; or
  - (b) have been entered,for temporary entry in Kiribati to remain in Kiribati for longer than six months, by providing the Comptroller with the required information necessary to allow the Comptroller to decide whether to permit the goods to remain for such longer period.
- (2) When considering the application, the Comptroller must take into regard guidelines made by the Board for the temporary entry of goods into Kiribati.
- (3) The Board must make guidelines as to—
  - (a) under which circumstances; and
  - (b) for how long,goods can be temporarily entered into Kiribati.

**154. Confidentiality**

- (1) Any information required by the Comptroller or customs officer under this Act, must be duly provided.
- (2) A person carrying out duties or responsibilities under this Act, shall not unless authorized in accordance with this Act, reveal information or other data of a confidential nature by virtue of their said authority, duties and responsibilities to any person not having such authority or carrying out such duties and responsibilities.
- (3) The Minister, on advice of the Cabinet may;
  - (a) designate any information as confidential, and in doing so may also exempt general summaries of aggregated information from confidential information.
  - (b) authorize in writing any person to —
    - (i) receive or access confidential information, or
    - (ii) access or restrict access to such premises holding confidential information, as he or she may designate.
- (4) Notwithstanding subsection (3); the following information shall be confidential —
  - (a) any information or data of a commercial nature provided in records, returns, or other documents under this Act;
  - (b) any information or other data used for craft monitoring purposes;
  - (c) such other information or data as may be prescribed.
- (5) Information may be disclosed to the extent —
  - (a) that disclosure is authorized or required under this Act or any other law; or
  - (b) that disclosure is to another international customs agency or other authority with which the Kiribati Customs Administration and Enforcement has an agreement for the exchange of information relating to or involving:
    - (i) protection of border security; or
    - (ii) processing of international passengers at the border; or
    - (iii) protection of public revenue; or
    - (iv) prevention, detection, investigation, prosecution or punishment of offences; or
  - (c) that the person providing information authorized its disclosure.
- (6) A person who contravenes this section commits an offence and in addition to any penalty, his or her appointment or other authority under this Act may be reviewed and terminated by the appropriate authority.

### 155. Regulations

The Minister, acting in accordance with the advice of Cabinet, may make regulations to give effect to the provisions or for the purposes of this Act, and in particular may make regulations:

- (a) regarding the submissions of documents, customs declarations, customs entries and data messages to the Customs by electronic means;
- (b) regarding the retention of data by the Customs;
- (c) regarding the processing of customs declarations and customs entries by the Customs;
- (d) regarding advance cargo and passenger information;
- (e) with respect to the arrival, report and departure of crafts;
- (f) for the purposes of determining the country of produce or manufacture of both imported and exported goods:
  - (i) prescribing the goods or any type of class of goods that are deemed to be the produce or manufacture of any country or group of countries for the purpose of this Act;
  - (ii) prescribe the conditions to be fulfilled before goods are treated to be the produce or manufacture of any country or any group of countries; and
  - (iii) authorise the Comptroller to determine in relation to a specific goods:
    - A. that the percentage of the goods factory or works cost is to be increased or decreased;
    - B. the valuation or method of valuation including a reduced or zero valuation if any material, labour or overhead used in the goods production has been supplied free of charge or at a reduced cost;
    - C. the required percentage of qualified area content in case of unforeseen circumstances that are unlikely to continue; or
    - D. variations or conditions relating to the goods entering the commerce of another country;
- (g) for amending the list of offences and penalties in Schedules 8;
- (h) prescribing any matter required to be prescribed under this Act.

### 156. Repeal, savings and transitional provisions

(1) The *Customs Act 2005* is repealed.

(2) Despite the repeal of the *Customs Act 2005*, any —

- (a) civil proceedings commenced in a court before the commencement of this Act; or
- (b) administrative decisions or tariff classification opinions given under the *Customs Act 2005*; or
- (c) existing rights or proceedings relating to a refund, remission or drawback of duty under the *Customs Act 2005*; or
- (d) any application made under the provisions of the *Customs Act 2005* for waiver of any forfeiture; or
- (e) any condemnation of goods in accordance with the provisions of the *Customs Act*

2005,

continue in force as if they have been made or authorised under the *Customs Act 2005*.

(3) At the commencement of this Act—

- (a) the official designated as the Comptroller of Customs under section 10 of the *Customs Act 2005* will be the Comptroller of Customs under this Act; and
- (b) anyone appointed a customs officer under section 12 of the *Customs Act 2005* will be taken to be customs officers appointed under this Act; and
- (c) any place designated as a—
  - (i) port; or
  - (ii) place of loading or unloading within a port; or
  - (iii) boarding station within a port; or
  - (iv) an aerodrome,under section 120 of the *Customs Act 2005* will be taken to be a designated port for the purpose of this Act; and

- (d) any place designated as a—
  - (i) customs area; or
  - (ii) state warehouse,under section 120 (a) and (c) of the Customs Act 2005 will be taken to be a customs area for the purpose of this Act.

*NOTE: Section 19 of the Interpretation and General Clauses Ordinance (Cap.46) also provides that the repeal of the old Act does not affect any right, privilege, obligation or liability accrued or incurred under the old Act, nor does it affect any investigations or legal proceedings (including customs prosecutions) for breaches of the old Act, whether on foot or pending.*

SCHEDULE 1

(SECTION 13(1))

THE GENERAL POWERS OF CUSTOMS OFFICERS

| <i>Item No</i> | <i>Powers a customs officer may exercise</i>   | <i>Where the power may be exercised</i>             |
|----------------|--|---|
| 1              | Detain craft that has set down in Kiribati because of stress of weather or mechanical failure until the master of the craft has complied with directions given by a customs officer.   | Anywhere in Kiribati                                |
| 2              | Board and search—<br>(a) any craft that has arrived in Kiribati; or<br>(b) any craft at all on which goods entered for transit have been loaded,<br>to ensure that—<br>(i) all goods that may be liable for import duty have been identified; and<br>(ii) there are no prohibited imports on board; and<br>(iii) in the case of craft leaving Kiribati – that prohibited exports have not been loaded on the craft,<br>using such force as is reasonably necessary to be able to search every area of the craft. | Anywhere in Kiribati                                |
| 3              | Seal any—<br>(a) goods; or<br>(b) containers; or<br>(c) compartments,<br>on any craft carrying people or goods under customs control.  | Whilst goods are under customs control              |
| 4              | Ask questions of any person in relation to goods under customs control.  | Whilst goods are under customs control              |
| 5              | Inspect and take copies of documents on board craft relating to goods and people on board.   | Whilst goods under customs control are on the craft |
| 6              | Take samples of goods under customs control.   | Whilst goods are under customs control              |
| 7              | Examine goods under customs control.   | Whilst goods are under customs control              |
| 8              | Enter any place under customs control.   | At places under customs control                     |
| 9              | Direct a person to go from one area of customs control to another.   | At places under customs control                     |
| 10             | Direct a person to take goods under customs control from one place of customs control to another.  | At places under customs control                     |

| <i>Item No</i> | <i>Powers a customs officer may exercise</i>   | <i>Where the power may be exercised</i> |
|----------------|--|---|
| 11             | Search anything entering or leaving a place under customs control.   | At places under customs control         |
| 12             | Stop and search any form of craft (including vehicles) anywhere in Kiribati where a customs officer has reason to believe the craft contains—<br>(a) goods on which import duty has not been paid; or<br>(b) prohibited imports; or<br>(c) restricted imports being used contrary to conditions. | Anywhere in Kiribati                    |
| 13             | Where an officer has reasonable grounds to believe a person has—<br>(a) contravened this Act; or<br>(b) goods believed to have been removed from a customs area without payment of import duty,<br>to search him or her.   | Anywhere in Kiribati                    |
| 14             | Arrest anyone where the officer has reasonable cause to believe they have breached this Act, and to take them as soon as possible to a Magistrates' Court to be dealt with under law.  | Anywhere in Kiribati                    |
| 15             | Have the same powers as police officers with respect to customs offences.  | Anywhere in Kiribati                    |
| 16             | Seize goods the officer has reasonable grounds to believe are forfeited goods  | Anywhere in Kiribati                    |

SCHEDULE 2

(SECTION 13(4))

THE RULES FOR SEARCHING PEOPLE

1. Where a customs officer has grounds to believe that he or she may search a person, the officer must tell the person, before commencing the search, that they have a right to be searched in front of—
  - (a) a customs officer who is more senior to the officer proposing to do the search; or
  - (b) a Magistrate.
2. Where the person being searched indicates that he or she wishes to be searched in front of one of the persons referred to in Rule 1, the customs officer—
  - (a) must arrange for such a person to be present; and
  - (b) must not carry out the search until the person to witness the search arrives.
3. A witness to a search must be of the same sex as the person being searched.
4. An officer must be of the same sex as the person being searched. If he or she is not, the officer must arrange for a customs officer of the same sex as the person to be searched to perform the search. A search must not be carried out otherwise than in accordance with this Rule.
5. A search must be carried out with strict regard to decency.

SCHEDULE 3  
(SECTION 64)

PROHIBITED IMPORTS

| <i>Item<br/>No</i> | <i>Goods</i>   |
|--------------------|--|
| 1                  | Base or counterfeit coin, currency or banknotes of any country.  |
| 2                  | Articles of food intended for human consumption declared by the Minister responsible for health to be unfit for human consumption.   |
| 3                  | Indecent or obscene goods.   |
| 4                  | Animals, carcasses and hides that have been prohibited by the Minister, acting in accordance with the advice of the Cabinet, by notice published in the <i>Gazette</i> , to prevent the introduction or spread of any communicable disease.        |
| 5                  | Matches containing white or yellow phosphorous.  |
| 6                  | Goods manufactured outside of Kiribati bearing the name or trademark of anyone in Kiribati, unless the goods indicate the country of origin.   |
| 7                  | Prepared opium.  |
| 8                  | Pipes and other utensils used in smoking opium or preparing opium for smoking.   |
| 9                  | Goods bearing—<br>(a) the National Emblem of Kiribati; or<br>(b) any token or symbol so nearly resembling the National Emblem as to be capable of being readily mistaken for it,<br>without authorisation from the Office of the Beretitenti.      |
| 10                 | Fictitious postage stamps and anything capable of making fictitious postage stamps.  |
| 11                 | Knives having a blade which opens automatically by hand pressure applied to a button, spring or other device in or attached to the handle of the knife.  |
| 12                 | Knives having a blade which is released from the handle or sheath by—<br>(a) the force of gravity; or<br>(b) centrifugal force,<br>and when released is locked in place by means of a button, lever or other device.                               |
| 13                 | Solid contraptions that are—<br>(a) made or adapted to be gripped in the fist or fitted to or over one or more fingers; and<br>(b) equipped with any projection or striking surface ; and<br>(c) made or adapted for causing injury to the person. |
| 14                 | Imitation firearms so closely resembling firearms as to be calculated to deceive.  |
| 15                 | Machines for playing games of chance, which require no action by any player other than the actuation or manipulation of the machine.   |
| 16                 | Ice-block bags.  |
| 17                 | Non-biodegradable nappies  |
| 18                 | Single-use shopping plastic bags including carrier bags (dispensed from a roll and often used to   |

|    |   |
|----|---|
|    | separate meat, fish, fruits/vegetables from other grocery items) but does not extend to green garbage bags. |
| 19 | Goods the possession of which is prohibited by any law of Kiribati.   |
| 20 | Goods the importation of which is prohibited by any law of Kiribati.  |

SCHEDULE 4

(SECTION 65)

RESTRICTED IMPORTS

| <i>Item No</i> | <i>Goods</i>   | <i>Restriction</i>  |
|----------------|--|---|
| 1              | Absolute alcohol.  | May only be imported in the quantities permitted by the Minister, acting in accordance with the advice of the Cabinet.  |
| 2              | Ethyl Alcohol, as defined in the <i>British Pharmacopoeia</i> , as published from time to time.                | May only be imported in the quantities permitted by the Minister, acting in accordance with the advice of the Cabinet.  |
| 3              | Earth, soil, loam, sand, mud, dust, clay, ashes, and similar substances from any other source other than soil. | May only be imported if the goods originate in, and are imported directly from—<br>(a) Australia; or<br>(b) New Zealand; or<br>(c) Fiji; or<br>(d) the Solomon Islands; or<br>(e) Hawaii,<br>and are accompanied by a certificate given by an agricultural or scientific officer in the employment of the government of the country of origin of the goods which proves to the Comptroller that the goods are free from disease and any harmful form of animal, insect or plant life. |
| 4              | Goods the importation of which is subject to conditions imposed by any law of Kiribati.                        | Compliance with any conditions for importation set out under that law.  |

SCHEDULE 5

(SECTION 66)

PROHIBITED EXPORTS

| <i>Item No</i> | <i>Goods</i>   |
|----------------|--|
| 1              | Goods of any kind, the exportation of which is prohibited under a law of Kiribati. |

SCHEDULE 6

(SECTION 67)

RESTRICTED EXPORTS

| <i>Item No</i> | <i>Goods</i>  | <i>Restriction</i>   |
|----------------|---|--|
| 1              | Goods the exportation of which is subject to conditions imposed by any law of Kiribati. | Compliance with any conditions for exportation set out under that law. |

SCHEDULE 7

(SECTION 118)

COMPLIANCE WARRANT  
(Section 118, *Customs Act 2019*)

To:

Insert here the names of the officers to whom the warrant applies

For the purposes of conducting a post clearance audit under Part IX of the *Customs Act 2019*, you are authorised during daylight hours, using such reasonable force as is necessary, to enter

\_\_\_\_\_

Insert here the name and location of the premises to which the warrant applies

and—

- (a) search the premises for commercial documents; and
- (b) examine documents; and
- (c) examine the systems that generate commercial documents; and
- (d) take extracts from the documents; and
- (e) take commercial documents away for copying.

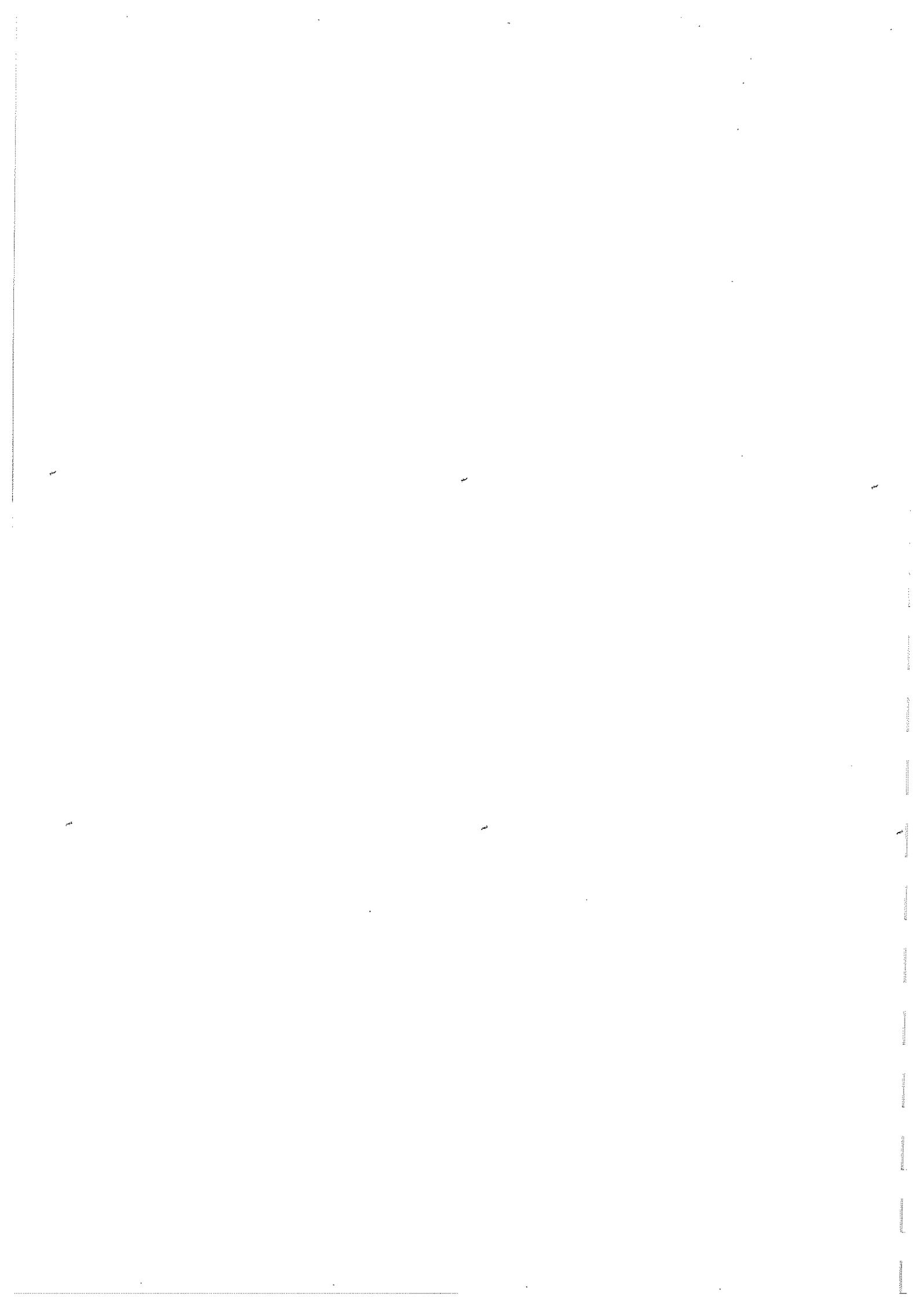
You may also require the occupier to—

- (a) assist in the post clearance audit; and
- (b) answer questions in relation to goods imported or exported by the occupier over the last three years.

Unless earlier revoked, this warrant remains in force for seven days from its date.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Magistrate



SCHEDULE 8  
(SECTION 136)  
OFFENCES

| <i>Item No</i> | <i>Person who may be prosecuted</i> | <i>Offence</i>  | <i>Maximum penalty</i>   |
|----------------|-------------------------------------|---|--|
| 1              | Anyone                              | Knowingly evading the payment of import or export duty  | A fine of \$10,000 or treble the amount of duty evaded (whichever is the higher), imprisonment for three years and forfeiture of the goods |
| 2              | Anyone                              | Concealing goods under customs control  | A fine of 10,000, imprisonment for three years and forfeiture of the goods   |
| 3              | Anyone                              | Knowingly possessing goods on which import duty properly payable has not been paid  | A fine of \$10,000, imprisonment for three years and forfeiture of the goods   |
| 4              | Anyone                              | Knowingly making a false or misleading statement to a customs officer   | A fine of \$10,000 and imprisonment for three years  |
| 5              | Anyone                              | Knowingly importing a prohibited import   | A fine of \$10,000, imprisonment for three years and forfeiture of the goods   |
| 6              | Anyone                              | Knowingly importing a restricted import contrary to a condition under which the goods may be imported                                     | A fine of \$10,000, imprisonment for three years and forfeiture of the goods   |
| 7              | Anyone                              | Knowingly exporting a prohibited export   | A fine of \$5000, imprisonment for two years and forfeiture of the goods   |
| 8              | Anyone                              | Knowingly exporting a restricted export contrary to a condition under which the goods may be exported                                     | A fine of \$10,000, imprisonment for three years and forfeiture of the goods   |
| 9              | Anyone                              | Knowingly holding themselves out to be a customs agent without being licensed by the Comptroller under Part XI                            | A fine of \$10,000 and imprisonment for three years  |
| 10             | Anyone                              | Committing an offence under this Act using a weapon   | Imprisonment for 30 years  |
| 11             | Anyone                              | Maliciously shooting at—<br>(a) a customs officer; or<br>(b) any form of craft carrying a customs officer, whilst the officer is on duty. | Imprisonment for 30 years  |

|               |  |   |  |
|---------------|--|---|--|
| 12            | Anyone   | Intimidating a customs officer  | A fine of \$1000 and imprisonment for one year   |
| <i>Item №</i> | <i>Person who may be prosecuted</i>                                    | <i>Offence</i>  | <i>Maximum penalty</i>   |
| 13            | Anyone   | Intentionally stopping—<br>(a) a customs officer; or<br>(b) anyone named in a search warrant; or<br>(c) anyone assisting a customs officer executing a search warrant or writ of assistance, from executing a search warrant or writ of assistance (as the case may be) | A fine of \$5000 and imprisonment for two years  |
| 14            | Anyone   | Intentionally stopping a customs officer from executing a compliance warrant  | A fine of \$5000 and imprisonment for two years  |
| 15            | A customs officer  | Accepting a form of benefit for not performing any part of his or her duty  | A fine of \$5000 and imprisonment for two years, with mandatory disqualification from employment in the civil service for five years |
| 16            | A customs officer  | Making an agreement with anyone not to perform his or her duty  | A fine of \$5000 and imprisonment for two years, with mandatory disqualification from employment in the civil service for five years |
| 17            | (a) An owner; or<br>(b) if export duties are being levied, an exporter | Failing to retain, for the required period, commercial documents relating to—<br>(a) goods imported; or<br>(b) if export duties are being levied, goods exported from Kiribati  | A fine of \$5000 and imprisonment for two years  |
| 18            | Anyone   | Preventing a customs officer on duty from lawfully exercising the general powers of a customs officer   | Where violence is used against the customs officer - a fine of \$5000 and imprisonment for two years.                                |
| 19            | Anyone   | Refusing to answer a question that a customs officer is entitled to ask the person under this Act   | A fine of \$1000 and imprisonment for six months   |
| 20            | A master of craft  | Touching down or landing anywhere in Kiribati other than a designated port, without approval from the Comptroller, unless the craft touched down or landed somewhere else due to—<br>(a) force of weather; or   | A fine of \$10,000 and imprisonment for three years.   |

| <i>Item No</i> | <i>Person who may be prosecuted</i>                                   | <i>Offence</i>   | <i>Maximum penalty</i>                              |
|----------------|---|--|---|
|                |   | (b) mechanical failure   |   |
| 21             | A master of craft   | Failing to take reasonable steps to prevent people boarding craft before a customs officer   | A fine of \$5000 and imprisonment for two years     |
| 22             | A master of craft   | Failing to do everything that is needed to allow a customs officer to board the craft  | A fine of \$5000 and imprisonment for two years     |
| 23             | A master of craft   | Failing to take reasonable steps to stop goods or people leaving craft without—<br>(a) a clearance inwards; or<br>(b) the approval of a customs officer            | A fine of \$5000 and imprisonment for two years     |
| 24             | A master of craft   | Allowing bulk to be broken before—<br>(a) a clearance inwards is issued; or<br>(b) the approval of a customs officer is given                                      | A fine of \$5000 and imprisonment for two years     |
| 25             | A master of craft not unloading goods in Kiribati                     | Failing to report the arrival of craft within 48 hours of arriving in Kiribati   | A fine of \$5000 and imprisonment for two years     |
| 26             | A master of craft   | Leaving Kiribati without obtaining a clearance outwards  | A fine of \$10,000 and imprisonment for three years |
| 27             | Anyone  | Leaving craft that has arrived in Kiribati before—<br>(a) a clearance inwards has been made; or<br>(b) a customs officer has approved the person leaving the craft | A fine of \$5000 and imprisonment for two years     |
| 28             | A person who has left craft arriving in Kiribati from another country | Leaving the place under customs control where the craft arrived without the permission of a customs officer  | A fine of \$5000 and imprisonment for two years     |
| 29             | Anyone  | Boarding or leaving craft under  | A fine of \$5000 and imprisonment for two years     |

|    |        |   |  |
|----|--------|---|--|
|    |        | customs control without the approval of a customs officer   |  |
| 30 | Anyone | Failing to follow a lawful direction given under this Act to the person by a customs officer  | A fine of \$10,000 and imprisonment for three years  |
| 31 | Anyone | Failing to abide by a lawful condition specified by a customs officer   | A fine of \$10,000 and imprisonment for three years  |
| 32 | Anyone | Touching goods or baggage under customs control without—<br>(a) being authorised under either section 49 or section 59; or<br>(b) reasonable excuse | A fine of \$1000 and imprisonment for one year.  |
| 33 | Anyone | Making an entry without the authorisation of an owner   | A fine of \$1000 and imprisonment for one year   |
| 34 | Anyone | Loading prohibited exports onto   | A fine of \$10,000 and imprisonment for three years  |
| 35 | Anyone | Allowing someone who is not—<br>(a) a customs agent; or<br>(b) someone authorised under section 30(2)(b),<br>to enter goods on his or her behalf    | A fine of \$1000 and imprisonment for one year   |
| 36 | Anyone | Entering goods on behalf of another person without being—<br>(a) a customs agent; or<br>(b) someone authorised under section 30(2)(b)               | A fine of \$1000 and imprisonment for one year   |
| 37 | Anyone | Attempting to commit an offence under this Act  | Half the maximum fine and half the maximum period of imprisonment provided for on conviction for the substantive offence |

SCHEDULE 9

(SECTION 137)

SEARCH WARRANT

To: \_\_\_\_\_

Insert here the names of the officers to whom the warrant applies

Being satisfied by information on oath that—

- (a) prohibited imports;\*
- (b) restricted imports used contrary to conditions;\*
- (c) goods on which import duty which was properly payable was not paid, \*

are located at

\_\_\_\_\_

Insert here the name and location of the premises to which the warrant applies

you are authorised, during any time of the day or night, using such reasonable force as necessary, to enter and search the premises and seize—

- (a) goods believed to be—
  - (i) prohibited imports; or
  - (ii) restricted imports used contrary to conditions; or
  - (iii) goods on which import duty which was properly payable was not paid; and
- (b) any records (including records in an electronic format) relating to the goods referred to above; and
- (c) any devices containing records relating to the goods referred to above,

and take them to a place the Comptroller of Customs directs.

Unless earlier revoked, this warrant remains in force for \_\_\_\_\_

Insert here the period of validity of the warrant

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Magistrate

\* Strike out if inapplicable

SCHEDULE 10

(SECTION 137)

WRIT OF ASSISTANCE

To all members of the Kiribati Police, and: \_\_\_\_\_

Insert here the names of anyone else to whom the writ applies

While in the company of: \_\_\_\_\_

Insert here the names of the officers named in the search warrant to which this writ relates

you are authorised, during any time of the day or night, using such reasonable force as necessary, to enter and search the premises identified on the search warrant to which this writ relates and seize—

- (a) goods believed to be—
  - (i) prohibited imports; or
  - (ii) restricted imports used contrary to conditions; or
  - (iii) goods on which import duty which was properly payable was not paid; and
- (b) any records (including records in an electronic format) relating to the goods referred to above; and
- (c) any devices containing records relating to the goods referred to above,

and take them to a place the Comptroller of Customs directs.

Unless earlier revoked, this warrant remains in force for \_\_\_\_\_

Insert here the period of validity of the search warrant to which this writ relates

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Magistrate

**CUSTOMS ACT 2019**  
**EXPLANATORY NOTES**

**1. Part I – Preliminary**

Provides the title of the Act and the date of commencement of the Act once enacted. It also lays out the definitions of key Customs terminologies that are used throughout the Act. These definitions are consistent with international Customs standards.

**2. Part II – Establishment of Kiribati Customs Administration and Enforcement and the General Powers of Officers**

Establishes the Office of the Kiribati Customs Administration and Enforcement under the Ministry of Justice as well as the Office of the Comptroller of Customs, provides a definition of a customs officer and establishes general powers of the Comptroller to delegate certain authorities of its Office as well as lays out the general powers of customs officers. It indemnifies customs officers from any liability to civil and criminal proceedings resulting from the performance of their duties conferred under the Act in good faith.

**3. Part III – Customs Control**

Clarifies the status of goods and areas that are to be considered subject to customs control for the purposes of enforcement of customs laws.

**4. Part IV – The Movement of Goods and People into Kiribati**

**a. Division 1 – Early Reporting of Cargo**

Imposes requirements on persons in charge of vessel due to arrive into Kiribati to report to Customs pre-arrival, the details of impending arrival including its voyage, passengers, crew and cargo.

**b. Division 2 – Unloading the Craft**

Imposes requirements relating to arrival clearance, the unloading of any cargo and disembarkation of person from a craft that has arrived into Kiribati from a journey outside of the EEZ of Kiribati. It also provides exceptions to these requirements that are consistent with international best practice and standards.

**c. Division 3 – The Entry of Imported Goods**

Imposes requirement to make entry of certain goods arriving into Kiribati, including opportunity to make entry prior arrival or after arrival of goods. There are various classes of entries introduced under this Division depending on the type of goods and their use in Kiribati. These forms are required to be completed and submitted to Customs depending on the type of goods and their

intended use in Kiribati. It also gives owners of goods that are subject to Customs control an opportunity to replace or correct entries without penalty. Under this Division, there are provisions allowing KCAE to establish and use Customs automated systems to assist with customs processes including but not limited to entry processing.

d. Division 4 – Controlling Unentered Goods

Provides clear guidelines as to the processes to be followed for goods that remain uncleared and subject to Customs control. There are requirements imposed by this Division on goods that have been placed under certain customs procedures such as the warehousing procedures and those in temporary storage within customs areas awaiting release into Kiribati or re-exportation.

e. Division 5 – Dealing with Unentered Goods

This provides clarification that goods left uncleared after 10 days of arriving in Kiribati may be dealt with by Customs to preserve the goods and ensure that their safe keeping and protection of government revenue. Government may charge storage fees for such goods left uncleared for a long period when the owner of such goods comes to clear them for home use. Where they remain uncleared Customs may auction these goods to recovery revenue owing on them. It also lays out the requirements to be met when Customs decides to dispose of the goods by way of public auctions.

f. Division 6 – Responsibilities of Masters not Unloading Goods in Kiribati

This division outlines the requirements to be followed by masters of crafts carrying goods into Kiribati where those goods are not destined to be unloaded in Kiribati but are due to be re-exported out of Kiribati at a later date and time.

g. Division 7 – Passengers and Crew

Sets out the requirements to be completed by passengers and crew disembarking from a craft that has arrived into Kiribati from a point outside of Kiribati.

h. Division 8 – Import of Ships and Aircraft

Outlines the circumstances where ships and aircrafts arriving into Kiribati shall be treated as imported goods as if they arrived as goods on board a ship or aircraft as cargo into Kiribati. It also provides the processes to be followed for entry of such crafts for processing of Customs clearances.

## **5. Part V – The Export of Goods From Kiribati**

Stipulates the requirements for export goods to be entered as such on a Customs export entry and lists those goods that are exempt from entry.

## **6. Part VI – Prohibited and Restricted Imports and Exports**

Creates Schedules 3, 4, 5 and 6 to the Act which lists the type of goods that are to be considered prohibited and restricted imports as well as those that are prohibited and restricted exports.

## 7. Part VII – The Duties

### a. Division 1 – Import Duty

#### i. Subdivision 1 – Creation of a Tax Called Import Duty

Creates import duties on goods imported into Kiribati and descriptions of how such import duty is to be calculated.

#### ii. Subdivision 2 – Working Out the Duty Payable on Imported Goods

Empowers the Minister to make import tariff orders imposing customs duties on imported goods. It also clarifies how duties in respect of imported goods are to be determined or calculated.

#### iii. Subdivision 3 – Working Out the Origin of Imported Goods for the Purposes of Preferential Tariff Treatment

These provisions determine the rules that Customs will follow when trying to determine the origin of goods imported into Kiribati for the purposes of ascertaining whether or not such goods are entitled to preferential tariff rates pursuant to an international free trade agreement that Kiribati may be party to.

#### iv. Subdivision 4 – Working Out the Origin of Goods for Export

Lays out the processes to be followed when Customs is tasked with certifying that goods to be exported from Kiribati to another party to a free trade agreement are in fact originating from Kiribati. It also creates a Kiribati certificate of origin that may be required to be issued for export goods that meet originating criteria under a free trade agreement to which Kiribati is member.

#### v. Subdivision 5 – Working Out the Customs Value of Imported Goods

Stipulates the methods to be used in working out the value of imported goods for Customs purposes. These methods similar to that of the WTO Agreement on Customs Valuation to the extent that Kiribati does not add overseas inland and ocean freight to the Customs valuation of imported goods for duty collection purposes.

#### vi. Subdivision 6 – The Time when Import Duty is Worked Out

Clarifies the time at which calculation of duty payable on imported goods should be made and the duties that should be applied at such times.

#### vii. Subdivision 7 – Working Out Who Must Pay Import Duty and How it is to be Paid

Provides clarification on who shall be entitled to pay import duties owing to the government for example that duty may be settled by third parties. It also provides the accepted methods of payment of duties. Furthermore, this Subdivision states the minimum value of duty that Customs may waive collection on.

b. **Division 2 – Export Duty**

Clarifies how export duty is to be calculated for the purposes of processing entries for export.

c. **Division 3 – Customs Rulings**

Provides that persons may apply to Customs to make binding rulings in respect of the following Customs matters: tariff applicable, valuation and origin of goods to be imported or exported from Kiribati.

**8. Part VIII – Deferred Payment, and Remission of Duty**

Empowers Customs to authorised deferred payment of customs duties due and owing on imported goods by certain persons. It also allows for refund or remission of duties that have been paid in error on goods where the duties have been wrongfully calculated or where payment has been made prior to arrival of the goods however the goods did not arrive.

**9. Part IX – Post Clearance Audit**

Empowers Customs to conduct audits of importers whose goods have already been cleared for home use in accordance with Customs clearances procedures. It also lays out the procedures to be followed when conducting post clearance audits.

**10. Part X – Recovering Duty Short Paid**

Empowers Customs to recover duties that are found to have been short paid on goods that have already been cleared by Customs.

**11. Part XI – Licensing**

a. **Division 1 – Warehouse Licensing.**

Introduces the Customs warehousing procedures and the requirements for licensing of public and private warehouses.

b. **Division 2 – Duty Free Licensing**

Introduces the Customs duty free licenses and the requirements for licensing application and decision on license applications.

c. **Division 3 – Customs Agent Licensing**

Imposes requirements for licensing of persons intending to act on behalf of another as a Customs agent/broker.

## **12. Part XII – Review**

Outlines the procedures to be followed by a person who is dissatisfied with a decision of a Customs Officer. From these initial appeals it also stipulates the various stages of internal appeals mechanisms that may be used by traders or persons affected by a Customs decision.

## **13. Part XIII – Offences and Prosecutions**

### **a. Division 1 – Offences**

Creates a schedule 8 listing the various types of Customs offences and their respective penalty provisions.

### **b. Division 2 – Prosecution**

Provides Customs with various investigative powers to enable it to successfully prosecute non-compliant persons. These include Customs ability to apply for search warrants and writs of assistance. It also outlines the statutory limitations for prosecution as well as evidentiary burdens in matters brought for prosecution under this Act.

## **14. Part XIV – Miscellaneous**

### **a. Division 1 – Other Responsibilities of the Comptroller**

Empowers the Comptroller to require certain persons dealing with customs controlled goods or occupiers of customs area to provide appropriate security in the form acceptable to the Comptroller necessary for the protection of government revenue that is owed on customs controlled goods or to secure compliance of persons with customs laws. It also empowers the Comptroller to designate certain places or areas as customs areas, designated ports, state warehouses or temporary storage facilities for customs purposes. Furthermore, it requires Customs officers to be issued identification cards for the purposes of identification of offices whilst conducting duties under customs laws.

### **b. Division 2 – Forfeited Goods**

Lists the goods that are deemed to be forfeited for Customs purposes and outlines the procedures to be followed in respect of forfeiture and disposal of goods.

### **c. Division 3 – Other Provisions**

Provides special procedures for imported goods for relief in disaster response in the event of level 2 or level 3 disaster actions. Provides further provisions in relation to recovery of revenue owing to the State, including the power of Customs to offset debts against refunds to which the same person may be entitled. The working hours of Customs are also stipulated in this part and empowers Customs to impose fees for overtime attendance, storage of customs controlled goods at state warehouses. It reiterates that any fees imposed must be

proportionate to the services rendered by Customs. There is a limitation period of 6 months for temporary entry of goods under temporary admission procedures. Moreover, there are confidentiality provisions under this Division which list the exceptions to rules that Customs is obligated to keep all information collected pursuant to this Act confidential. Some of the exceptions include sharing with other government and law enforcement agencies for enhanced border security, protection of government revenue and processing of the movement of persons and crafts across international borders.

Under this Division, the Minister is empowered to make regulations for the proper administration of this Act.

### 15. Schedules

- a. SCHEDULE 1—THE GENERAL POWERS OF CUSTOMS OFFICERS
- b. SCHEDULE 2—THE RULES FOR SEARCHING PEOPLE
- c. SCHEDULE 3—PROHIBITED IMPORTS
- d. SCHEDULE 4—RESTRICTED IMPORTS
- e. SCHEDULE 5—PROHIBITED EXPORTS
- f. SCHEDULE 6—RESTRICTED EXPORTS
- g. SCHEDULE 7—COMPLIANCE WARRANT
- h. SCHEDULE 8—OFFENCES
- i. SCHEDULE 9—SEARCH WARRANT
- j. SCHEDULE 10—WRIT OF ASSISTANCE

**Honorable Natan Teewe**  
**Minister for Justice**

### **Legal Report**

I hereby certify that none of the provisions of this Act are in conflict with the Constitution and the Beretitenti may properly assent to this Act

**Tetiro Maate Semilota**  
**Attorney-General**

CERTIFICATE OF THE CLERK OF THE MANEABA NI MAUNGATABU

This printed impression of the Customs Act 2019 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 3<sup>rd</sup> September 2019 and is found by me to be a true and correctly printed copy of the said Bill.



**Eni Tekanene**  
Clerk of the Maneaba ni Maungatabu

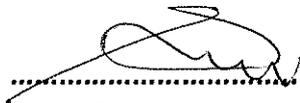
CERTIFICATE OF THE SPEAKER OF THE MANEABA NI MAUNGATABU

I certify that the above Act was on the 3<sup>rd</sup> September 2019 passed by the Maneaba ni Maungatabu on a Certificate of Urgency under section 68(3)(a) of the Constitution.



**Hon. Tebuai Uai**  
Speaker of the Maneaba ni Maungatabu

Published by exhibition at the Maneaba ni Maungatabu this ..... day of  
..... 2019.



**Eni Tekanene**  
Clerk of the Maneaba ni Maungatabu